



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 6 AND ISSUE 8 OF 2026

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 6 and Issue 8 of 2026 (Access Full Issue on – <https://ijlr.iledu.in/volume-6-and-issue-8-of-2026/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

## THE ARCHITECTURE OF ANTI-TERRORISM LAWS IN INDIA- POWER, PROTECTION, AND CONTROVERSY

**AUTHOR** – MADHUMITHA. E, B.A, LL.B., STUDENT AT ERODE COLLEGE OF LAW

**BEST CITATION** – MADHUMITHA. E, THE ARCHITECTURE OF ANTI-TERRORISM LAWS IN INDIA- POWER, PROTECTION, AND CONTROVERSY, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 6 (8) OF 2026, PG. 553-565, APIS – 3920 – 0001 & ISSN – 2583-2344. DOI – <https://doi.org/10.65393/IJLRV6I858>

### INTRODUCTION:

Anti-terrorism laws in India are a set of legal provisions designed to prevent, combat, and prosecute terrorist activities and organisations within the country. These laws aim to provide the government with the necessary tools to protect citizens and maintain law and order in the face of terrorist threats. The main anti-terrorism law in India is the Unlawful Activities (Prevention) Act (UAPA), which was first enacted in 1967 and has since undergone several amendments to make it more stringent. The UAPA provides the legal framework for the prevention of terrorism, the freezing of terrorist assets, the seizure of properties, and the prosecution of individuals involved in terrorist activities. The law has been used to prosecute several high-profile cases, including the 2008 Mumbai attacks. Other important anti-terrorism laws in India include the National Investigation Agency Act (NIA Act) of 2008, which created the National Investigation Agency (NIA) to investigate and prosecute cases related to terrorism and other national security issues. The NIA Act also provides the NIA with extensive powers to conduct investigations and make arrests. While these laws have been effective in some cases, they have also been criticised for being misused to target individuals and organisations that are critical of the government. There have been concerns about the lack of transparency and accountability in the implementation of these laws, as well as the potential for human rights violations.

### Maintenance of Internal Security Act, 1971:

The Maintenance of Internal Security Act (MISA) was a controversial law that was enacted in India in 1971 during the Indira Gandhi government. It was used by the government to detain people without trial and was widely criticised for its potential for misuse and human rights violations. MISA was enacted on July 2, 1971, in response to growing civil unrest in the country. It gave the government the power to arrest and detain any person without trial for up to a year if the person was deemed a threat to the security of the state. The act also gave the government the power to ban organizations and publications that were deemed a threat to the security of the state. The act was widely criticized by civil society groups and opposition parties, who argued that it was an assault on civil liberties and human

rights. The government, however, defended the act, stating that it was necessary to maintain internal security in the country. During the Emergency period in India (1975-1977), the government used MISA extensively to suppress political opposition and dissent. Thousands of people were arrested and detained without trial under the act. The government also used the act to ban several publications and organizations that were critical of its policies. The misuse of MISA during the Emergency period led to widespread protests and criticism. Several civil society groups and political parties demanded the repeal of the act. In 1977, after the end of the Emergency, the Janata Party government, which came to power, repealed MISA. The criticism of MISA was not limited to the Emergency period. Even before the Emergency, civil society groups

and opposition parties had criticized the act for its potential for misuse. The act was criticized for giving the government unchecked power to detain people without trial, and for violating civil liberties and human rights. It gave the government unchecked power to detain people without trial and was widely criticized for its potential for misuse and human rights violations. The government used the act extensively during the Emergency period to suppress political opposition and dissent. The criticism of MISA led to its repeal in 1977, after the end of the Emergency.

The Maintenance of Internal Security Act (MISA) was a law that was enacted by the Indian government in 1971. The act provided sweeping powers to the government to arrest and detain individuals without trial for a prolonged period. The act was repealed in 1977, but it remains an important piece of legislation in Indian history. Here are some of the important provisions of the MISA Act, 1971:

**Arrest and detention without trial:** MISA provided for the arrest and detention of individuals without trial for a prolonged period. It allowed the government to detain individuals for up to one year, without disclosing the reasons for their arrest.

**Wide definition of "enemy":** The definition of "enemy" under the MISA was broad and ambiguous. The government could label anyone as an enemy and detain them under the act.

**Restrictions on fundamental rights:** The MISA Act imposed restrictions on fundamental rights such as the right to freedom of speech and expression, the right to assemble peacefully, and the right to form associations and unions.

**No legal remedy:** MISA provided no legal remedy for those detained under the act. The detained individuals were not allowed to challenge their detention in a court of law.

**Secret detention centres:** The government set up secret detention centres where individuals were held incommunicado and subjected to torture and other forms of ill-treatment.

**Discretionary power:** The act granted discretionary power to the government to detain anyone it deemed a threat to national security. This discretionary power was often misused by the government to suppress political dissent.

#### Major Amendments:

The Maintenance of Internal Security Act (MISA) was a controversial law enacted by the Indian government in 1971, during a period of political turmoil and social unrest. The law gave sweeping powers to the government to arrest and detain people without trial and was widely criticized for being used to stifle dissent and curtail civil liberties. In 1978, the Janata Party government led by Prime Minister Morarji Desai repealed MISA, along with several other laws that had been used to suppress political opposition. However, MISA was later re-enacted in a modified form as the National Security Act (NSA) in 1980.

#### Terrorist and Disruptive Activities (Prevention) Act, 1987:

TADA stands for Terrorist and Disruptive Activities (Prevention) Act, an Indian anti-terrorist law (1985 and 1995, modified in 1987) to prevent terrorist and disruptive activities. This law came into force under the insurgency of Punjab and applied to the entire country of India, and was enacted by the Indian Parliament. On 23 May 1985, it was commenced by the President of India and began to apply on 24 May 1985. The Terrorist and Disruptive Activities (Prevention) Act, 1987 was enacted on 3 September 1987, and from 24 May 1987 to 3 September 1987, it began in two parts, which had a sunset provision from 24 May 1987 for two years and were renewed in 1989, 1991, and 1993. It was the first anti-terror act applied by the government to oppose terrorist activities. If a person is found to be a terrorist, then he will be punished and imprisoned for at least 5 years or life imprisonment with a liable fine. The activities may be the disruption in the sovereignty, peace or integrity of the country, i.e., those activities which were done directly or indirectly by any act, speech, advice, suggestion or any media to disrupt the sovereignty,

harmony and integrity of India should be considered as a terrorist act and for that, there will be imprisonment with a fine. Law enforcement agencies got great power in order to deal with national terrorism and disruptive activities. The police were allowed to present a detainee within 24 hours in front of a judicial magistrate and the person found to be accused got detained or punished for 1 year. As proof, the judicial court considers the evidence for either the accusations or innocence of the person further on the judges of the court gave judgements for the accused person under the Terrorist and Disruptive Activities (Prevention) Act, 1985. The Police Officers also had the power of attaching the accused's properties under 7A of the TADA Act but they have no right to give third-degree treatment to the accused person. More than 76,000 people were arrested by 30 June 1994 out of which the police dropped 25% of these cases without any charges applied. 95% of the cases got released from punishment while 35% of cases got to trial and 2% got arrested and convicted. This TADA Act was finally cancelled and flourished by the Prevention of Terrorist Activities Act (2000–2004) which also got cancelled after some controversies. The Act defined what "terrorist act" and "disruptive activities" mean, and put restrictions on the grant of bail. It also gave enhanced power to detain suspects and attach properties. The law made "confessions given to a police officer" admissible as evidence. Separate courts were set up to hear cases filed under TADA.

The Terrorist and Disruptive Activities (Prevention) Act, of 1987 (TADA) was an Indian law enacted to deal with terrorist and disruptive activities in India. The Act was in force from 1987 to 1995 and was repealed in 1995. Some of the important provisions of the TADA Act are as follows:

**Definition of terrorist acts:** The TADA Act defined 'terrorist acts' to include acts that threatened or were intended to threaten the sovereignty, unity, integrity or security of India, or to strike terror in the people or any section of the people.

**Designation of special courts:** The Act provided for the designation of special courts to try cases related to terrorist and disruptive activities. These courts had the power to try cases in camera and use secret witnesses and other measures to protect the identity of witnesses.

**Powers of investigating agencies:** The Act gave wide-ranging powers to investigating agencies such as the power to arrest suspects without a warrant, to intercept communications, to search and seize property, and to detain suspects without trial for up to 180 days.

**Presumption of guilt:** The Act introduced the provision of 'presumption of guilt', which meant that anyone arrested for a terrorist offence would be presumed guilty unless proven innocent.

**Admissibility of confessions:** The Act made confessions made to a police officer admissible as evidence in court, even if the confession was made under duress. Death penalty: The Act provided for the death penalty for offences related to terrorist acts.

**Punishment for aiding and abetting:** The Act provided for punishment for those who aided or abetted terrorist and disruptive activities.

#### Major Amendments:

The Terrorist and Disruptive Activities (Prevention) Act, of 1987 (TADA) was an Indian law that was enacted to combat terrorism and other disruptive activities. It was in force from 1987 to 1995, and during this time, it was amended several times. The major amendments made to the TADA are as follows:

**In 1989**, the definition of "terrorist act" was expanded to include the use of bombs, dynamite, and other explosive substances.

**In 1991**, the maximum period of detention without trial was increased from 180 days to two years.

**In 1993**, after the Bombay bombings, TADA was amended to include provisions for the death penalty for certain offences, such as causing death through a terrorist act.

In 1994, the definition of "terrorist act" was further expanded to include acts that disrupt public order or endanger human life or property.

In 1995, TADA was repealed and replaced by the Prevention of Terrorism Act (POTA). However, POTA was also repealed in 2004 due to concerns about human rights violations and misuse of the law. Overall, the TADA and its amendments were controversial, with critics arguing that it was used to target certain communities and resulted in human rights violations. The law was eventually repealed, and India now uses the Unlawful Activities (Prevention) Act, of 1967 (UAPA) to combat terrorism and other unlawful activities.

However, the TADA Act was criticized for its wide-ranging powers, including the presumption of guilt and admissibility of confessions made to a police officer. The Act was also criticized for its potential for misuse, leading to allegations of human rights violations. The Act was eventually repealed in 1995, and some of its provisions were incorporated into the Prevention of Terrorism Act, of 2002.

#### **Prevention of Terrorism Act, 2002:**

In the wake of the 1999 IC-814 hijack and the 2001 Parliament attack, there was a clamour for a more stringent anti-terror law.

This came in the form of "The Prevention of Terrorism Act" (POTA), 2002. A suspect could be detained for up to 180 days by a special court. The law made fundraising for the purpose of terrorism a "terrorist act". A separate chapter to deal with terrorist organisations was included. Union government was mandated to maintain a list of organised that would fall under the act's radar and had full authority to make additions or removals. However, reports of gross misuse of the Act by some state governments led to its repeal in 2004. In the wake of the 1999 IC-814 hijack and the 2001.

Parliament attack, there was a clamour for a more stringent anti-terror law, which came in the form of The Prevention of Terrorism Act (POTA). When it was introduced and it had widespread

opposition not even in the Indian parliament but throughout India especially the human rights organization because they thought that the act violated most of the fundamental rights provided in the Indian constitution. The protagonists of the Act have, however, hailed the legislation on the ground that it has been effective in ensuring the speedy trial of those accused of indulging in or abetting terrorism. POTA was envisaged as useful in stemming "state-sponsored cross-border terrorism". The act replaced the Prevention of Terrorism Ordinance (POTO) of 2001 and the Terrorist and Disruptive Activities (Prevention) Act (1985-95). The act provided the legal framework to strengthen administrative rights to fight terrorism within the country of India and was to be applied against any person. The act defined what a terrorist act and a terrorist is and grants special powers to the investigating authorities described under the act. To ensure certain powers were not misused and human rights violations would not take place, specific safeguards were built into the act. Under the law detention of a suspect for up to 180 days without the filing of charges in court was permitted. It also allowed law enforcement agencies to withhold the identities of witnesses and treat a confession made to the police as an admission of guilt. Under regular Indian law, a person can deny such confessions in court, but not under POTA. Once the Act became law there surfaced many reports of the law being grossly abused. Claims emerged that POTA legislation contributed to corruption within the Indian police and judicial system. Human rights and civil liberty groups fought against it. The use of the Act became one of the issues during the 2004 election. The United Progressive Alliance government of India committed to repealing the act as part of their campaigning and finally, it was repealed in 2004 after UPA came in Power and its features were incorporated in UAPA.

The Prevention of Terrorism Act, 2002 (POTA) was a law enacted by the Indian Parliament to strengthen the legal framework to prevent and punish terrorist activities in India. However, it was

repealed in 2004 after facing criticism and controversy over its provisions. Some of the important provisions of POTA were:

**Definition of terrorism:** POTA defined terrorism as any act or acts of violence by an individual or group with the intention to threaten the unity, integrity, security, or sovereignty of India.

**Designation of terrorist organizations:** The law provided for the designation of any organization as a terrorist organization by the central government. Once designated, the government could freeze the organization's assets and take other measures to prevent its activities.

**Detention and interrogation of suspects:** POTA allowed for the detention of suspects for up to 180 days without charge, and for up to 30 days without the right to legal representation. Suspects could also be subjected to extended police custody for interrogation.

**Bail provisions:** POTA imposed strict bail provisions, making it difficult for suspects to obtain bail, and requiring the courts to consider the public prosecutor's opinion before granting bail.

**Confessions and evidence:** POTA allowed for confessions made to police officers to be admissible as evidence in court, even if they were made involuntarily or under duress.

**Witness protection:** The law provided for the protection of witnesses who testify against terrorists, including the use of pseudonyms and the withholding of personal information.

**Penalties and punishments:** POTA provided harsh penalties and punishments for terrorist activities, including the death penalty and life imprisonment. It is worth noting that POTA faced criticism for being too draconian and violating basic human rights. Many argued that it was misused by law enforcement agencies to target innocent individuals and that it gave too much power to the government to suppress dissent and silence political opposition. Ultimately, the law was repealed in 2004, and some of its provisions were incorporated into the Unlawful Activities Prevention Act (UAPA).

The Prevention of Terrorism Act, 2002 (POTA) was an anti-terrorism law in India that was in force from 2002 to 2004. The law was controversial, as it was criticized for being draconian and for its potential to be misused against innocent people. In 2004, the Indian government repealed POTA and replaced it with the Unlawful Activities (Prevention) Act, 1967 (UAPA). The UAPA was amended in 2008 to strengthen the legal framework to combat terrorism. Some of the major amendments made to the UAPA include:

**Broadening the definition of terrorism:** The definition of terrorism under the UAPA was expanded to include acts that threaten the economic security of India or cause damage to public property.

**Increased punishment:** The punishment for offences under the UAPA was increased, with some offences now punishable by death or life imprisonment.

**Provisions for investigation:** The UAPA provides for the establishment of special courts to handle terrorism-related cases, as well as provisions for special investigation techniques such as interception of communications.

**Provision for detention:** The UAPA allows for detention without charge for up to 180 days in certain circumstances.

**Designation of individuals and organisations as terrorists:** The UAPA allows the government to designate individuals and organisations as terrorists and freeze their assets.

**Removal of sunset clause:** Unlike POTA, the UAPA does not have a sunset clause, meaning that it does not automatically expire after a certain period of time. These amendments have been criticized by civil society groups, who argue that they give the government too much power and can be used to stifle dissent.

### **Armed Forces (Special Powers) Act (AFSPA), 1958:**

The Armed Forces (Special Powers) Act (AFSPA) is a Parliamentary act that grants special powers to the Indian Armed Forces and the state and

paramilitary forces in areas classified as “disturbed areas”. The objective of implementing the AFSPA Act is to maintain law and order in disturbed areas. It gives powers to the army, state and central police forces to shoot kill, search houses and destroy any property that is “likely” to be used by insurgents in areas declared as “disturbed” by the home ministry. AFSPA is invoked when a case of militancy or insurgency takes place and the territorial integrity of India is at risk. Security forces can “arrest a person without a warrant”, who has committed or is even “about to commit a cognizable offence” even based on “reasonable suspicion”. It also provides security forces with legal immunity for their actions in disturbed areas. While the armed forces and the government justify their need to combat militancy and insurgency, critics have pointed out cases of possible human rights violations linked to the act.

#### KEY FEATURES:

The salient features of the AFSPA act are: The Governor of a State and the Central Government are empowered to declare any part or full of any state as a disturbed area if in their opinion that it has become necessary to disrupt the terrorist activity or any such activity that might impinge on the sovereignty of India or cause insult to the national flag, anthem or India’s Constitution.

Section (3) of AFSPA provides that, if the governor of a state issues an official notification in The Gazette of India, then the Central government has the authority to deploy armed forces to assist the civilian authorities. Once a region is declared ‘disturbed’, then it has to maintain the status quo for a minimum of three months, as per the Disturbed Areas Act of 1976.

Section (4) of AFSPA gives special powers to army officers in disturbed areas to shoot (even if it kills) any individual who violates the law / or is suspected to violate the law (this includes assembly of five or more people, carrying of weapons) etc. The only condition is that the officer has to give a warning before opening fire. Security forces can arrest anybody even without

a warrant, and carry out searches without consent. Once a person is taken into custody, he/she has to be handed over to the nearest police station as soon as possible. Prosecution of the officer on duty for alleged violation of human rights requires the prior permission of the Central Government.

#### Disturbed Areas Section 3 of AFSPA states that:

An area to be declared as a ‘disturbed area’ is conferred on the Governor of the state, the Administrator of the Union Territory or the Central Government. The entire area or a part of it can be declared as disturbed by notification in the official gazette. The state governments can suggest whether the Act is required to be enforced or not. But under Section (3) of the act, their opinion can be overruled by the governor or the Centre. Initially, when the act came into force in 1958, the power to confer AFSPA was given only to the governor of the state. This power was conferred on the central government with the amendment in 1978 (Tripura was declared a disturbed area by the central government, over the opposition by the state government). The act does not explicitly explain the circumstances under which it can be declared as a ‘disturbed area’. It only states that “the AFSPA only requires that such authority thinks that whole or parts of the area are in a dangerous or disturbed condition such that the use of the Armed Forces in aid of civil powers is necessary.”

#### Powers Granted to the Security Forces Stationed in Disturbed Areas

Section 4 of the Act states that: Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces in a disturbed area may have the following powers— If he thinks that to maintain public order it is necessary to fire upon or use force, even to the extent of causing death, against any individual who is deemed to be acting in contravention of any law that is in force in a disturbed area. Further, prohibits the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-

arms, ammunition or explosive substances. This action can be taken up after giving such due warning that is necessary. If he thinks that it is necessary to destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made. Even the structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence. Any individual who has committed a cognizable offence or against whom a reasonable suspicion exists that he/she has committed or is about to commit a cognizable offence can be arrested without a warrant and may use such force as necessary in order to carry out an arrest. An enter and search without a warrant is provided for any location to carry out such arrests or to apprehend any individual believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosives believed to be kept unlawfully in such premises and for this purpose reasonable amount of force can be used if necessary.

**What is the Disturbed Areas Act (DAA)?** The Assam Disturbed Areas Act was initially promulgated for Nagaland in 1955 to suppress the Naga uprising. This act is called the mini AFSPA since it provides the same powers to the armed forces as in AFSPA. The state government has the power to declare the whole or any part of the district by notification in the Official Gazette as a disturbed area.

#### **NATIONAL SECURITY ACT, 1980:**

The National Security Act (NSA) It is a law passed by the Indian Parliament in 1980 to provide for preventive detention in certain cases, for the maintenance of public order, and for matters connected therewith. The important provisions of the NSA are as follows:

#### **Definition of "National Security":**

The Act defines "national security" as the security of India, its citizens, and its territories against external threats or internal disturbances.

#### **Power to detain:**

The Act empowers the central and state governments to detain any person for a period of up to 12 months without trial if the person is deemed a threat to national security or public order. The detention can be extended beyond 12 months with the approval of a review committee.

#### **Grounds for detention:**

The Act provides for detention on the following grounds:

- a. If the person is acting in a manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India.
- b. If the person is acting in a manner prejudicial to the maintenance of public order.
- c. If the person is acting in a manner prejudicial to the maintenance of supplies and services essential to the community.

#### **Procedure for detention:**

The person detained under the NSA must be informed of the grounds of detention and must be allowed to make a representation against the detention. The representation must be considered by an advisory board, which is appointed by the government.

#### **Protection of action taken in good faith:**

No suit or legal proceeding can be instituted against any person for anything done or intended to be done in good faith under the Act.

#### **Restrictions on judicial review:**

The Act provides for restrictions on judicial review of detention orders under the Act. The courts cannot question the sufficiency of the grounds on which the detention is made, but can only examine whether the detention was made in accordance with the procedure prescribed by the Act.

It is important to note that the National Security Act has been criticized by some human rights groups for being a tool for arbitrary detention and for violating due process rights. However, supporters of the Act argue that it is necessary

for maintaining national security and public order in certain situations.

### Major Amendments:

The National Security Act (NSA) of India was enacted in 1980 with the objective of ensuring national security by providing for preventive detention in certain cases. The Act has been amended several times since then to address various issues related to national security. Here are some of the major amendments to the NSA:

**1984 amendment:** The first amendment to the NSA was made in 1984, which empowered the Central government to detain a person for a period of up to 12 months if it is satisfied that such detention is necessary for the maintenance of public order.

**1985 amendment:** The second amendment to the NSA was made in 1985, which extended the detention period from 12 months to 2 years.

**1986 amendment:** The third amendment to the NSA was made in 1986, which gave the Central government the power to detain a person for a period of up to 2 years if it is satisfied that such detention is necessary for the maintenance of national security.

**1988 amendment:** The fourth amendment to the NSA was made in 1988, which introduced the provision of judicial review of detention orders. Under this amendment, a detained person can challenge the detention order before an Advisory Board consisting of High Court judges.

**1991 amendment:** The fifth amendment to the NSA was made in 1991, which made it mandatory for the detaining authority to inform the detained person of the grounds of detention within five days of detention.

**2004 amendment:** The sixth amendment to the NSA was made in 2004, which empowered the Central government to detain a person for a period of up to one year if it is satisfied that such detention is necessary to prevent the person from acting in any manner prejudicial to the security of the country.

**2012 amendment:** The seventh amendment to the NSA was made in 2012, which inserted a new provision allowing the Central government to intercept or monitor electronic communications for the purpose of national security.

These are some of the major amendments that have been made to the National Security Act of India since its enactment in 1980.

### NATIONAL INVESTIGATION AGENCY ACT, 2008:

The National Investigation Agency (NIA) is the central agency formed to investigate all the offences which tend to affect the sovereignty, security, and integrity of the nation; friendly relations with foreign nations; and offences under the legislation which was established to implement international treaties, agreements, and conventions, etc. of the United Nations, its agencies, and other international organisations. These offences include terror attacks and their connection with other offences like smuggling of drugs, illegal arms, fake currencies, and infiltration from the borders. As Indian borders are already vulnerable to these kinds of organised crimes, they pose a severe threat to Indian security and sovereignty, which needs to be checked upon.

### The rationale behind the formation of the National Investigation Agency:

The aim was to develop a national police force to investigate a selected class of criminal offences that constitute a direct threat to national safety. The various reasons appended in the National Investigation Agency Bill, 2008 for its introduction are as follows- For a very long time, India has been the victim of cross-border terrorism and several attacks have happened in the past few years. These terrorist activities have linkages with international connections and were also associated with other crimes like smuggling of arms and drugs, circulation of fake currencies or infiltration through the borders. Hence, it was realised the need for some central agency to investigate such crimes, which were a clear threat to national security. Its establishment was also recommended by the

Second Administrative Reforms Commission of India in its report titled 'Combating Terrorism'.

### **Salient features of the National Investigation Agency Act, 2008:**

- It provides for the establishment of the National Investigation Agency to act as a national anti-terrorism body.
- The powers of NIA officers were the same as those provided to the police officers in investigating any offence.
- It creates a schedule of acts under which offences are to be investigated by the National Investigation Agency.
- It has created provisions for the designation of 'Special Courts' by the Central Government and the state government, specifying their powers and jurisdiction for the trial of cases.
- It also has a dedicated provision under Section 17 for the 'protection of witnesses' keeping in mind the dangers that the witness might face.
- It contains the procedure of how trials and investigations should take place in various cases.

### **Constitution of the National Investigation Agency:**

The National Investigation Agency is constituted by an Act called 'National Investigation Agency Act, 2008'. This law extends to the whole of India and also applies to Indian citizens living outside the country and to the people boarded on ships and aircraft registered in India. This legislation calls for the constitution of the National Investigation Agency by the Central Government. The powers of the agency are kept restricted to the offences under the Acts specified in the Schedule of this Act. The agency has the power to search, seize, arrest, and prosecute the accused and others involved in these offences.

### **Structure of the National Investigation Agency:**

The National Investigation Agency is supervised by the Central Government and headed by the Director-General, appointed by the Central

Government. The Director-General has the same powers as the Director-General of Police has with respect to the police force in a state. The state government extends all its assistance and cooperation to the National Investigation Agency during the investigation. After investigation, cases were put before the Special Courts constituted under NIA Act.

### **Jurisdiction of the National Investigation Agency:**

National Investigation Agency has concurrent jurisdiction, which enables this central agency to probe into any case in any part of the country. It can probe into any offences which affect the sovereignty, security and integrity of the country, threaten friendly relations of the country with other nations or any other offences provided in the Acts which were enacted to implement various international treaties and agreements. The Agency is empowered to probe into any such incidents like bomb blasts, hijacks of aircraft and ships, and other terrorist activities. The Amendment Act of 2019 has further enhanced the jurisdiction of the Agency to probe into various other offences like human trafficking, counterfeiting notes, cyber-terrorism, etc.

### **Provision of special courts:**

Section 11 of the Act empowers the Central Government to designate one or more Courts of Session as Special Courts, by issuing notification in the Official Gazette, to carry out a trial of certain offences provided in the Schedule. The Central Government should consult with the Chief Justice of the High Court before designating the court. To clarify doubts in case of more than one special court in an area, it delegates the senior-most judge to distribute the cases before them. Similarly, Section 22 of the Act empowers the State Government to designate the Court of Sessions as a Special Court. These special courts will have all the powers of the sessions court as provided under the Code of Criminal Procedure, 1973. The appeal from the judgement of this Special Court shall lie to the High Court and this appeal shall be heard by a bench of two judges and should be

disposed of within 3 months from the date of appeal. Moreover, the Supreme Court and High Court are empowered to transfer any pending case before one special court to another special court for a speedy trial of the case. When can the National Investigation Agency investigate Upon receiving information through an FIR related to any scheduled offence, the officer-in-charge of the police station shall forward the report to the state government. The state government then immediately forwards the report to the Central Government. The Central Government will determine whether the offence is scheduled within 15 days by considering its gravity and relevant factors. After determination, the Central Government shall direct the National Investigation Agency to investigate the said offence. The Central Government can also take a suo motu case and direct the National Investigation Agency to investigate. After the transfer of the case to the National Investigation Agency, the officer-in-charge of the police station shall not continue the investigation of the transferred case. The National Investigation Agency may be directed to take up the case if the Central Government is of the opinion that the scheduled offence has been committed outside India. The National Investigation Agency can also transfer the investigation of the case to the State Government with the approval of the Central Government.

#### Major Amendments:

The National Investigation Agency (NIA) Act, 2008 is an Indian legislation that empowers the NIA to investigate and prosecute offences related to terrorism and other specified offences across India. The Act was amended twice, in 2019 and 2021, to expand the agency's jurisdiction and powers. Here are the major amendments made to the NIA Act, 2008:

**Amendment in 2019:** The Unlawful Activities (Prevention) Amendment Act, 2019, allowed the central government to designate an individual as a terrorist and empowers the NIA to investigate and prosecute individuals designated as terrorists. The amendment also

allows the NIA to investigate and prosecute offences committed outside India, subject to certain conditions.

**Amendment in 2021:** The National Investigation Agency (Amendment) Act, 2021, expanded the NIA's jurisdiction to include the investigation of offences related to human trafficking, counterfeit currency, and manufacture or sale of prohibited arms. The amendment also allows the NIA to take over investigations of cases registered under other laws, with the prior approval of the state government. Additionally, the amendment also provides for the creation of special courts to expedite the trial of cases investigated by the NIA. The amendment also gives the agency powers to investigate cases involving cyber terrorism and offences under the Explosive Substances Act, 1908. These amendments are aimed at strengthening the NIA's ability to combat terrorism and other serious offences in India.

#### UNLAWFUL ACTIVITIES ACT, 1967:

##### Salient Features of the UAPA Act:

- The Act gives special procedures to handle terrorist activities, among other things. It aims at the effective prevention of unlawful activity associations in India. Unlawful activity refers to any action taken by an individual or association intended to disrupt the territorial integrity and sovereignty of India.
- Who may commit terrorism: According to the Act, the union government may proclaim or designate an organisation as a terrorist organisation if it: commits or participates in acts of terrorism, prepares for terrorism, promotes terrorism, or is otherwise involved in terrorism. The Bill also empowers the government to designate individuals as terrorists on the same grounds.
- UAPA has the death penalty and life imprisonment as the highest punishments. The Act assigns absolute power to the central government, by way of which if the Centre deems an activity

as unlawful then it may, by way of an Official Gazette, declare it so.

- Under UAPA, both Indian and foreign nationals can be charged. The offenders will be charged in the same manner whether the act is performed in a foreign land, outside India.
- Approval for property seizure by National Investigation Agency (NIA): As per the Act, an investigating officer is required to obtain the prior approval of the Director-General of Police to seize properties that may be connected with terrorism. The Bill adds that if the investigation is conducted by an officer of the National Investigation Agency (NIA), the approval of the Director-General of NIA would be required for the seizure of such property.
- The investigation by the National Investigation Agency (NIA): Under the provisions of the Act, investigation of cases can be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above. The Bill additionally empowers the officers of the NIA, of the rank of Inspector or above, to investigate cases.
- Insertion to the schedule of treaties: The Act defines terrorist acts to include acts committed within the scope of any of the treaties listed in a schedule to the Act. The Schedule lists nine treaties, comprising of the Convention for the Suppression of Terrorist Bombings (1997), and the Convention Against Taking of Hostages (1979). The Bill adds another treaty to this list, namely, the International Convention for Suppression of Acts of Nuclear Terrorism (2005).

#### Arguments in Favour of Amendments:

- The objective of the proposed amendments is to facilitate the speedy investigation and prosecution of terrorist offences and the designation of an individual as a terrorist in line with international practices.

- The amendments will also allow the NIA probe cybercrimes and cases of human trafficking, sources aware of the proposal said Sunday.
- Amendment to Schedule 4 of the Act, the NIA will be allowed to designate an individual suspected to have terror links as a terrorist. In the current scenario, before the amendment was made, only organisations were designated as 'terrorist organisations.'
- A strict law is of utmost necessity to strengthen the investigation agencies and to uproot terrorism from this country in this regard.
- Hon'ble Home Minister stated in Lok Sabha that law can not be misused against any individual, yet, those individuals who engage in terrorist activities against the security and sovereignty of India, including the urban Maoists, would not be spared by the investigating agencies either.
- There are no changes to the bail or arrest provisions. Hence, it is evident that there will be no fundamental rights violation of anyone. Also, the burden of proof is on the investigating agency and not on the accused.
- The amendment about attaching properties amassed through proceeds of terrorism is being proposed in order to accelerate investigation in terror cases and is not against federal principles.
- At present, Section 25 of the UAPA states that forfeiture of property acquired from terrorism can be done only with the prior approval given in writing by the DGPs of the state wherein lies such property. But the problem is that many times, the terror accused owns properties in multiple states. In this kind of scenario, it becomes tough to get the approvals of several DGPs and can cause a delay in the whole process of

forfeiting property, which can help the accused transfer such property to someone else.

#### Concerns/Criticism:

- The Act assigns absolute power to the central government, by way of which if the Centre deems an activity as unlawful, then it may, by way of an Official Gazette, declare it so.
- The opposition voiced concerns about the amendments, saying the provisions were against the federal structure of the country enshrined in the Constitution of India.
- There was no pre-legislative consultation.
- Designating an individual as a terrorist raises serious constitutional questions and has the potential for misuse.
- An individual cannot be called a 'terrorist' prior to conviction in a court of law, It subverts the principle of "innocent until proven guilty. A wrongful designation will cause irreparable damage to a person's reputation, career and livelihood.

While none will question the need for stringent laws that show 'zero tolerance' towards terrorism, the government should be mindful of its obligations to preserve fundamental rights while enacting legislation on the subject.

#### Major Amendments:

The Unlawful Activities (Prevention) Act (UAPA) is an Indian law that aims to prevent unlawful activities and associations. The act was first passed in 1967 and has undergone several amendments over the years. Some of the major amendments in the UAPA are:

**In 2004**, the UAPA was amended to include provisions for the prevention of terrorist activities. The amendments widened the scope of the act to cover acts of terrorism and to make the law more stringent.

**In 2008**, the UAPA was further amended to give the government more powers to deal with terrorism. The amendments allowed for the seizure of properties of individuals and organisations involved in terrorist activities, and for the freezing of their assets.

**In 2012**, the UAPA was amended to include provisions for the prevention of money laundering. The amendments gave the government the power to confiscate property or assets acquired through the proceeds of crime.

**In 2019**, the UAPA was amended to allow the government to designate an individual as a terrorist. The amendments also allowed for the seizure of property and assets of individuals designated as terrorists.

**In 2021**, the UAPA was amended to allow the National Investigation Agency (NIA) to conduct investigations outside India. The amendments also allowed for the creation of special courts to deal with cases under the UAPA.

Overall, the amendments to the UAPA have made the law more stringent and given the government more powers to deal with terrorism and other unlawful activities. However, the law has also been criticized for being misused to target individuals and organizations that are critical of the government.

## CONCLUSION:

Anti-terrorism laws in India are essential to combat the threat of terrorism and maintain law and order in the country. The Unlawful Activities (Prevention) Act and the National Investigation Agency Act provide the government with the necessary tools to prevent, investigate, and prosecute terrorist activities and organisations. However, there have been concerns about the misuse of these laws and the potential for human rights violations. The government must ensure that these laws are implemented transparently and accountably and that they do not infringe upon the fundamental rights of individuals. It is also essential to address the root causes of terrorism, such as poverty, social inequality, and political grievances. Effective counterterrorism strategies must go beyond just law enforcement and involve addressing these underlying issues. While anti-terrorism laws are necessary to combat the threat of terrorism, they must be implemented in a manner that respects human rights and addresses the root causes of terrorism. This requires a comprehensive approach that involves cooperation between law enforcement agencies, civil society, and the government.

## SUGGESTIONS:

- It is crucial to have strong intelligence gathering capabilities to identify potential terrorist threats and prevent them before they occur. Intelligence agencies should work in coordination with each other to gather and analyse information.
- Improve border security: India shares borders with several countries, and terrorists often use these porous borders to infiltrate the country. India needs to strengthen its border security and use advanced technologies such as drones, sensors, and other surveillance equipment to monitor the borders.
- Modernise security forces: India's security forces need to be modernised with better training, equipment, and technologies.

The government should invest in upgrading the capabilities of its security forces to effectively deal with terrorist threats.

- Collaborate with other countries: Terrorism is a global problem, and India should collaborate with other countries to share intelligence and coordinate efforts to combat terrorism.
- Address the root causes of terrorism: Often, terrorism stems from social, economic, and political grievances. Addressing the root causes of terrorism by promoting economic development, social justice, and political stability can help reduce the incidence of terrorism.
- Strengthen laws and legal framework: India needs to strengthen its laws and legal framework to effectively prosecute terrorists and those who support them. The government should also consider enacting laws that specifically target terrorism and provide adequate punishment.
- Use technology to combat terrorism: The government should leverage technology to detect and prevent terrorist attacks. This can include the use of facial recognition, biometric identification, and other advanced technologies.
- Engage with communities: Building trust and engaging with communities can help prevent radicalisation and extremism. The government should work closely with local communities, religious leaders, and civil society organisations to prevent the spread of extremist ideologies.



GRASP - EDUCATE - EVOLVE



**INSTITUTE OF LEGAL EDUCATION**

*(Managed by L TO J LAW ASSOCIATES)*

NO. 08, ARUL NAGAR, SEERA THOPPU,  
MARUDHAANDA KURICHI, SRIRANGAM - 620102,  
TAMILNADU, INDIA.

ISSN 2583-2344



9 772583 234004