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THE PARADOX OF INDIA'S ANTI-TERRORISM LAWS

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ABSTRACT

India being the world's largest democratic nation witnesses tenacious threats of terrorism every now and then. The issue of terrorism is spreading its tentacles at a great speed within and outside our Indian territory. To combat this heinous issue, the government have enacted rigorous anti-terrorism laws as the Terrorist and Disruptive Activities (Prevention) Act (TADA), the Prevention of Terrorism Act (POTA), and the Unlawful Activities (Prevention) Act (UAPA). These laws act as a double-edged weapon as they have underwired the capacity of states to safeguard the security of the country and on the other hand, it raises grave concerns about the arbitrary arrests, protracted detention, custodial torture and violation of fundamental rights. This research paper tries to critically evaluate the anti-terrorism laws prevalent in our nation and the constitutional predicament it presents. The need of the hour is to ponder over and strike a balance between the counter-terrorism laws and the shield the civil liberties of the citizens.

Keywords- Terrorism, Anti-Terrorism Laws, Double-edged weapon, Constitutional predicament, Civil liberties etc.

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INTRODUCTION

To begin, it seems appropriate to define the term terrorism at the very first place. Within terrorism lies the word terror. **Terror comes from the Latin terrere, which means “frighten” or “tremble.”** When coupled with the French suffix isme (referencing “to practice”), it becomes akin to “practicing the trembling” or “causing the frightening.” Trembling and frightening here are synonyms for fear, panic, and anxiety - what we would naturally call terror.¹ Terrorism connotes to one of the crucial coercions to India’s sovereignty and integrity. India’s security is changing and varies across different acts of extremism, be it naxalism to diversified insurgencies in states of Jammu and Kashmir and North-Eastern States. Terrorists also take advantage of the modern means of communication and technology and to use the facilities available in the form of communication systems, transport, sophisticated arms and various other means.²

Every country in this world is endowed with the responsibility at both international and municipal levels to combat the issue of terrorism. Enactment of laws are an indispensable part of this strategy. In order to revert back to such a heinous crime, the Indian government takes due care and caution and has enacted plethora of anti-terrorism laws coupled with various amendments as India has a multi-faceted security landscape and this issue is of global importance.

The traces of terrorism in our country can be seen in the forms of rebellion, militancy, insurgency and extremism prevalent in different parts of the country be it North -Eastern states, Punjab, Jammu and Kashmir. These issues are evident because of the differentiated social, political, economic and geographical contexts. Amongst all these dilemmas, the combat mechanism via Indian legislations is still evolving.

The issue revolves around the paradox that these anti-terrorism laws act as a double-edged weapon giving the strength to the country to curb the menace of terrorism but at the same time also violates the fundamental rights of the people given in the constitution. The stimulating dilemma that emerges in contemporary times is to strike a balance between the national security of the nation and the individual liberties. Therefore, efforts have be made at all levels not to jeopardize the democratic beliefs that our country holds.

¹ United Nations Office on Drugs and Crime, Introduction to International Terrorism, *available at*: <https://www.unodc.org/>(last visited on September 04, 2025).

² Shruti B., Indian Counter Terrorism Law 34 (Lexis Nexis, Gurgaon, 1st edn., 2016).

THE NEXUS OF TERRORISM AND HUMAN RIGHTS

Terrorism as a frightening phenomenon has disturbed and thumbed every sphere of human life be it social, political, economic and cultural. It is the antithesis of independence of an individual and in its absence, independence holds no meaning without human rights.

Etymologically, Human Rights is merely a combination of two words. But when they are amalgamated together, they hold the very basic nuances of our existence. Human Rights emphasises on those basic rights which are inalienable and these are inherited by an individual simply because of the reason that they are born as human beings. The most pivotal issue that is faced by human rights is that of terrorism. The grave problem of terrorism is omnipresent around the world. Terrorism shrouds the basic essence of the human rights on this planet.

The problem of terrorism transcends all frontiers whether national, international, political or economic. Its solution calls for a global effort, international co-operation and trans-national actions.³

By committing acts of terror, terrorists by definition attack the values at the heart of the Universal Declaration of Human Rights, the two Covenants, and other international instruments, in particular many “first generation” rights.⁴ In today’s contemporary scenario, the indispensability of corrective measures and assessment of human rights in the realm of terrorism cannot be neglected. It is significant to understand different facets of this issue. The convergence of counter-terrorism law and human rights is one of the most difficult topics in modern legal discourse.⁵ As nations witness varied dimensions of terrorism i.e. asymmetrical warfare, non-state actors, digital radicalization, there is a urgent need for counter-terrorism legislations in coordinating with the national security issues and upholding the civil liberties acknowledged by the Constitution and International framework.

The jurisprudence of constitutional courts, international human rights organizations, and statutory frameworks such as emergency powers legislation and anti-terror laws demonstrate the tension between state sovereignty in ensuring security and the inviolability of fundamental rights such as liberty, privacy, and due process.⁶

³ Human Rights and Terrorism, *available at*: <https://www.legalservicesindia.com/article/1735/Human-Rights-and-Terrorism.html> (last visited on September 04, 2025).

⁴ David P. Stewart, “Terrorism and Human Rights, The Perspective of International Law” Policy Paper 2018-4, Middle East Institute (2018).

⁵ Terrorism And Human Rights: Striking A Balance Between National Security and Civil Liberties, *available at*: <https://www.legalserviceindia.com/legal/article-21317-terrorism-and-human-rights-striking-a-balance-between-national-security-and-civil-liberties.html>(last visited on September 04, 2025).

⁶ *Ibid.*

According to the *Amnesty International study*, it was showcased that the acts of terrorism have led to widespread violations of human rights, including the right to life, liberty, and security of person. It also emphasizes on the prolonged arbitrary arrest, torture and extra-judicial killings by the governments in the name of counter- terrorism measures.⁷ Notably, measures such as preventive detention, monitoring regimes, organizational proscription, and control orders frequently operate in legally ambiguous territory, raising issues about proportionality, accountability, and the possible normalization of extraordinary powers⁸

The major agenda of an impeccable counter- terrorism campaign lies in the fact that it upholds the human rights, ideals of democracy and uplifts the rule of law. It holds immense importance that the counter-terrorism legislation adheres to human rights and due processes. If the state fails to do so that it will resultantly aid the terrorist organizations rather than eradicating their malicious intent against the national security. It is imperative to prioritize the protection of human rights in counterterrorism efforts. This includes training law enforcement and security personnel on human rights standards, promoting accountability for human rights violations committed in the name of counterterrorism, and providing support and assistance to victims of terrorism.⁹ Thus, it is crucial to prioritize the human rights protections amidst the continuing menace of terrorism.

COUNTER-TERRORISM LEGISLATION IN INDIA

India is well known to be the chunk of the strategic triangle- India, America and Israel against terrorism and fundamentalism. Being part of such a strategic group, India has enacted plethora of laws applicable in its strictest sense possible shrouded as the “Special Enactments.” To curb the menace triggered by terrorism.

There are multifarious encounters in managing the internal affairs of the nation. Terrorism is spreading its tentacles at a great spree like intensification of the cross-border terrorism in India, the issue of infiltration of insurgent groups, sleeping cells and human bombs in diverse parts of the country. Terrorism is not a local problem anymore. The issue is impacting both the developed and the developing nations alike. The chronicle of the anti-terrorism legislations in India has seen as inconsistent graph. The pioneering step towards the repressive form of legislations were materialised in the form of preventive detention laws.

⁷State of Fear, available at <https://www.hrw.org/report/2015/09/17/state-fear/arbitrary-arrests-torture-and-killings>(last visited on September 04, 2025).

⁸ *Supra* note 5.

⁹ Zafeer Ahmed, Dr Sona Shukla, “The Impact of Terrorism on Human Rights: Current Challenges and Future Outlook: A Political Study” 6(2) International Journal for Multidisciplinary Research 10 (2024).

Various enactments have been protested on the pretext that it violates the fundamental rights of the citizens. The legislative and interpretative history of more than five decades after India got independence presents a dismal picture where the legislations have often curtailed the personal liberties, resulting in the progressive outlook towards upliftment of the constitutional provisions of our country. Terrorism has immensely affected India. The reasons for terrorism in India may vary vastly from religious cause and other things like poverty, unemployment and not developed etc.¹⁰ The Indian Supreme Court took a note of it in *Kartar Singh v. State of Punjab*¹¹, where it observed that the country has been in the firm grip of spiralling terrorist violence and is caught between deadly pangs of disruptive activities.¹²

The colonial government in India enacted these detrimental legislations in the garb of repressive laws and to suppress the general public in case they showed any discontent with the Britishers. These laws were drafted with the intention to secure the sovereignty of the state under British control.

There have been diversified laws enacted since the time of independence-

- **The Preventive Detention Act, 1950-** The Preventive Detention Act, 1950 empowered authorities in India to detain individuals without trial if their activities were seen as a threat to national security, public order, or the maintenance of essential services.¹³;
- **The Defence of India Act, 1962-** The Defence of India Act, 1962 was passed as emergency legislation during the Sino-Indian War to ensure national defense, public safety, and efficient military operations¹⁴;
- **The Unlawful Activities (Prevention) Act, 1967 (UAPA)-**In this Act, the Central Government may declare or designate any individual terrorist if he/she is found to be indulged in any kind of terror activities which is likely to cause a threat to the sovereignty or integrity of India.¹⁵ However, these are many pitfalls in it. Firstly, it does not allow any kind of dissent and it criminalizes mere thoughts and political protests that cause “disaffection” with the state¹⁶.

India’s approach to the UN Human Rights Council is guided by the spirit of engagement, dialogue and consultation. It believes that equal emphasis should be

¹⁰ Anti - terrorism laws in India, *available at:* <https://www.legalservicesindia.com/article/382/Anti---terrorism-laws-in-India.html> (last visited on September 04, 2025).

¹¹ [1994] 3 SCC 569

¹² *Supra* note 10.

¹³ Preventive Detention Laws, *available at:* <https://egyankosh.ac.in/> (last visited on September 04, 2025).

¹⁴ The Defence of India Act, 1962 *available at:* <https://www.indiacode.nic.in/> (last visited on September 04, 2025).

¹⁵ Section 15 of the UAPA, *available at:* <https://www.indiacode.nic.in/> (last visited on September 04, 2025).

¹⁶ Dr. Arya A. Kumar, Anti-Terrorism Laws in India: An Analysis 22(1) YMER 341(2023)

placed on both the promotion and protection of human rights as both are best pursued through dialogue, consultation and cooperation among States as well as technical assistance and capacity building.¹⁷

- **The Maintenance of Internal Security Act, 1971**-The act was enforced to suppress political dissent and curb activities that were deemed to be a threat to the security and sovereignty of the nation.¹⁸
- **Terrorist Affected Area (Special Courts) Act, 1984;**¹⁹
- **National Security Act, 1980**- An Act to provide for preventive detention in certain cases and for matters connected therewith²⁰;
- **The Terrorist and Disruptive Activities Act (TADA), 1985**- The objects and reasons of the Act stated that the new and overt phase of terrorism which requires to be taken serious note of and must be dealt with effectively and expeditiously.²¹;
- **The Prevention of Terrorism Act (POTA), 2002**- The new POTA of 1985 included provisions for proscribing organizations like that of the original UAPA 1967.²²
- The currently applicable legislations include **National Investigation Agency, 2008**- The Mumbai terror attacks have necessitated the Government to come up with substantial changes in the anti-terrorism laws.²³

Also, the Supreme Court in **Prakash Singh v. Union of India**²⁴, emphasized on the establishment of a neutral and autonomous statutory authority to look into the plethora of terrorism cases. The Act states that, “the superintendence of the Agency shall vest in the Central Government” without defining what superintendence means.²⁵

- **The Unlawful Activities Prevention (Amendment) Act, 2008; Baratiya Nyaya Sanhita, 2023; Information Technology Act, 2000.**²⁶

¹⁷ Next IAS, India on Terrorism, *available at:* <https://www.nextias.com/current-affairs/25-02-2021/india-on-terrorism/> (last visited on August 26, 2025).

¹⁸ Maintenance of Internal Security Act" (MISA) *available at:* <https://edurev.in/ask/2081767/Can-you-explain-about-the--Maintenance-of-Internal-Security-Act---MISA/> (last visited on September 04, 2025).

¹⁹ Terrorist Affected Areas (Special Courts) Act, 1985 (Act 61 of 1984), *available at:* <https://www.indiacode.nic.in/> (last visited on September 04, 2025).

²⁰ The National security Act, 1980 *available at:* <https://www.mha.gov.in/> (last visited on September 04, 2025).

²¹ Statement of Objects and Reasons of Terrorist and Disruptive Activities (Prevention) Act, 1985 (Act 31 of 1985), *available at:* <https://www.indiacode.nic.in/> (last visited on September 04, 2025).

²² The Unlawful Activities (Prevention) Act, 1967', *available at:* [Indiankanoon.org](https://indiankanoon.org/doc/1389751), 2021 <https://indiankanoon.org/doc/1389751> (last visited on September 04, 2025).

²³ *Supra* Note 16, p.343.

²⁴ (2006) 8 S.C.C. 13.

²⁵ National Investigation Agency Act, 2008, *available at:* <https://www.indiacode.nic.in/> (last visited on September 04, 2025).

²⁶ Anti- Terror Laws in India, *available at:* <https://blog.ipleaders.in/anti-terror-laws-india/> (last visited on September 08, 2025).

- It is not only at the national level that the laws have been enacted, diverse states have also enacted few legislations to combat the issue of terrorism like **Karnataka Control of Organized Crimes Act, 2000; The Maharashtra Control of Crimes Act, 1999; The Jammu and Kashmir (Public Safety) Act, 1978, The Armed Forces Special Power Act, 1958 etc.**²⁷

CONSTITUTIONALITY OF ANTI- TERROR LAWS

The confluence of national security imperatives and the preservation of civil liberties remains an ongoing challenge for democratic societies worldwide.²⁸

There are grave concerns which India's anti-terrorism laws raise. *The Committee on International Human Rights of the Association of the Bar of New York* conducted a study and specified that while sporadic efforts have been taken to limit the use of these laws and exercising the extra-ordinary powers only in emergency situations, but the provisions of these acts have blurred the implementation lines and every now and then they are also executed in the non-emergency scenarios, thereby resulting in the violation of fundamental rights. The study adds that Indian antiterrorism laws raise the following concerns:

- Overly broad and ambiguous definitions of terrorism that fail to satisfy the principle of legality;
- Pretrial investigation and detention procedures which infringe upon due process, personal liberty, and limits on the length of pretrial detention;
- Special courts and procedural rules infringe upon judicial independence and right to a fair trial;
- Provisions that require courts to draw adverse inferences against the accused in a manner that infringes upon the presumption of innocence;
- Lack of sufficient oversight of police and prosecutorial decision making to prevent arbitrary, discriminatory and dis uniform application; and
- Broad immunities from prosecution for government officials.²⁹

The main counterterrorism statute in India, the Unlawful Activities (Prevention) Act (UAPA), has also been often utilized by Indian authorities to arbitrarily imprison and arrest human rights activists and defenders. The government revised the legislation in 2008, 2012, and 2019 to

²⁷ *Supra* note 26.

²⁸ Ibrahim Daanish, Counter-Terrorism in India: Assessing the Impact and Efficacy of Anti-Terrorism Legislations 5 *Indian Journal of Integrated Research in Law* 562(2025).

²⁹ Impact of Anti-Terrorism Laws on the enjoyment of Human Rights in India, *available at*: <https://upr-info.org/> <https://upr-info.org/> (last visited on September 04, 2025).

correct several problematic aspects of the Prevention of Terrorism Act. These include provisions for extended incarceration without trial or charge, a reversal of the presumption of innocence, and an expansive definition of a "terrorist act."³⁰

US State Department 2006 report on India states that although the country has numerous laws protecting human rights, enforcement was lax and convictions were rare. Poor prison conditions, lengthy pretrial detention without charge, and prolonged detentions while undergoing trial remained significant problems.³¹

The judiciary has played a variety of roles in relation to anti-terrorism laws. On the one hand, the courts have typically upheld the legality of security, emergency, and special laws.³² Even when a person's human rights are being infringed, courts have a tendency to recognize the existence of particular circumstances and settings as justifications for a less strict interpretation and implementation of the law.³³

In **Maneka Gandhi v. Union of India**, it was held that any procedure must be just fair and reasonable and not be ambiguous as to its application.³⁴ When the law prescribes the same set of offences and the procedure for its application is different, questions are raised as to its fairness.³⁵ It was noted that terrorism is a world-wide phenomenon and India is not an exception.³⁶ In the words of the Court, "in recent times the country has fallen in the firm grip of spiralling terrorists' violence and is caught between the deadly pangs of disruptive activities. In such a situations measure must be taken to solve the issue." Reliance was placed on the judgment in Sukhdev Singh.³⁷

The Court's wide deference to the Government around anti-terror policy was also evident in the **P.U.C.L. v. India decision**.³⁸ In this case, the People's Union for Civil Liberties invoked similar arguments raised by the petitioners in Kartar Singh regarding the constitutional validity of POTA on federalism principles.³⁹

³⁰ India: Stop Abusing Counterterrorism Regulations, *available at*: <https://www.amnesty.org/en/latest/news/2023/11/india-stop-abusing-counterterrorism-regulations/> (last visited on September 04, 2025).

³¹ *Ibid.*

³² Tarali Neog, Balancing Act: Navigating National Security and Civil Liberties in Anti-Terrorism Legislation under the Indian Constitution 7 NLUALR (2023).

³³ *Supra* note 32.

³⁴ A.I.R 1978 S.C 597.

³⁵ This principle has been applied in the U.S Courts in the cases of Strunk v. United States, 412 U.S 434 (1973) and Coffin v. United States, 156 U.S. 432 (1895), *available at*: <https://supreme.justia.com/cases/federal/us/> (last visited on September 04, 2025).

³⁶ Kartar Singh v. State of Punjab, (1994) 3 S.C.C. 569, para 22.

³⁷ Sukhdev Singh v. Union Territory, A.I.R 1987 PH 5.

³⁸ (2004) 9 S.C.C. 580.

³⁹ *Supra* note 23 at 351.

The constitutionality of anti-terrorism legislations is challenged because of making their intrusions into fundamental rights, liberty, and basic human rights of individuals.⁴⁰ The confluence of national security imperatives and the preservation of civil liberties remains an ongoing challenge for democratic societies worldwide.⁴¹

The need for change in legislation as reflected by occurrences of prolonged incarceration without trial, minimal court surveillance, and stern bail conditions calls for immediate response.⁴² Strengthened supervision mechanisms, judicial accountability, and deference to international human rights norms need to be factored into India's counterterrorism strategy in the future in order to find the delicate but necessary balance between security and civil liberties.⁴³

CULMINATING REMARKS

Without a doubt, terrorism and its different facets is increasing at an alarming speed and India is one of the worst sufferers. Terrorism has hit not only the ideals of democracy in our nation but has also staggered the progress, development and survival of mankind. It has been realized by diverse nations worldwide that it is a global problem and international co-operation is a must to curb these heinous acts.

Because of this rationality, the liberty of every individual is of pivotal concern of all the member states and terrorists have the habit of targeting such ideals immeasurably. It has been postulated that counter-terrorism law has four aspects- preventive through timely intelligence, physical security to thwart terrorist attacks if intelligence fails, crisis management if physical security too fails and deterrence through investigation and prosecution.⁴⁴

It is the need of the hour that we have Anti-terrorism laws to safeguard the lives of the innocent people and uplift their human rights, but at the same time, it is also crucial to keep in mind that the enforcement of these rights should not act in a repressive manner that it is misused by punishing the innocents, instead of the wrong-doers because if that will be the case, it will have cascading effect rather than exterminating terrorism.

Morality will always be the question in consideration whenever these laws will be enacted. For example, The United States of America joined hands with various other countries, post 9/11

⁴⁰ *Supra* note 39 at 357.

⁴¹ Tarali Neog, Balancing Act: Navigating National Security and Civil Liberties in Anti-Terrorism Legislation under the Indian Constitution 7 NLUALR (2023).

⁴² *Ibid.*

⁴³ Strengthening Human Rights Accountability Mechanisms, *available at*: <https://hri.law.columbia.edu/> (last visited on September 04, 2025).

⁴⁴ *Supra* note 2 at xxiii.

attack and declared a ‘war on terrorism.’ Activists perceive it in bad light as it threatens and undermines the international human rights framework i.e. Universal Declaration of Human Rights and its related covenants.⁴⁵

Kofi Annan brings out this dilemma in well spoken words:

“We are all determined to fight terrorism and to do our utmost to banish it from the face of the earth. But the force we use to fight it should always be proportional and focused on the actual terrorists. We cannot and must not fight them by using their own methods- by inflicting indiscriminate violence and terror on innocent civilians, including children.”⁴⁶

Efforts have to be made to strike a balance between the national security and civil liberties as it is an ever-evolving phenomenon. These statutes should be implemented in a cautious manner so that it respects the inevitability of protecting rights of citizens and ensure that the essence of democratic principles is not hampered and the constitutional provisions are not violated.

⁴⁵Universal Declaration of Human rights, *available at*: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited on September 04, 2025).

⁴⁶ *Supra* note 44 at xxiv.