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NATIONAL SECURITY, ANTI-TERROR LEGISLATION & HUMAN RIGHTS: A CONTEMPORARY ANALYSIS OF INDIA'S LEGAL FRAMEWORK

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I. ABSTRACT

The coexistence of national security imperatives and the protection of fundamental human rights have long posed a constitutional dilemma in India. This paper critically examines the trajectory of India's counterterrorism framework from the Terrorist and Disruptive Activities (Prevention) Act (TADA) and the Prevention of Terrorism Act (POTA) to the present Unlawful Activities (Prevention) Act (UAPA) to assess its conformity with the due process model envisaged under Articles 20 to 22 of the Constitution. Drawing on empirical data from the National Crime Records Bureau (2014-2023), judicial pronouncements, and official reports, it reveals that, despite successive legal reforms, the state's reliance on the crime-control model has led to widespread misuse, prolonged detentions, and declining public faith in the justice system. The analysis underscores that safeguarding national security must not come at the cost of constitutional morality and procedural fairness. The paper argues for structural reforms such as establishing a Joint Committee on National Security and Human Rights and reinforcing the National Security Act, 1980, with procedural safeguards to ensure that counterterrorism laws remain instruments of justice rather than oppression. By integrating legal analysis with contemporary data and case law, the study contributes to ongoing debates on balancing liberty, security, and accountability within a democratic constitutional order.

II. KEYWORDS

National Security; Human Rights; UAPA; Due Process; Anti-Terrorism Laws.

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III. INTRODUCTION

Terrorism is a global menace transcending the boundaries of a particular nation from which the terrorism erupted. It could be domestic, international, or both. The reasons for terrorism in India may vary vastly from religious to geographical hobnobbing. Human rights are adversely affected in terrorist activities, and this causes a threat to the unity and integrity of the nation. There is no single statute that provides a universally agreed-upon definition of terrorism; the definition of terrorism is highly complex and controversial due to its political nature and lack of international consensus.²

It is very difficult for a country when its citizens are found to be allegedly involved in terrorist activities. With the impact of these terrorist activities, especially after the events of 9/11 in the United States, across the world, people have started to ignore human rights, the rule of law, and freedoms to implement strict anti-terrorism laws to fight terrorism, which are entirely based on the 'crime control model' rather than the existing 'due process model'.³

Two anti-terrorism laws in India, specifically TADA and POTA, had been very controversial, though now repealed, As the provisions of these laws have been widely misused by the state machinery. Regardless of the use of these laws or the method of their use, it is necessary to have such a law to regulate anti-terrorism activities and conduct that pose a threat to the unity and integrity of the nation.

The central inquiry of this study concerns the appropriate nature of laws and legal sanctions required to combat terrorism in a manner that safeguards national security without undermining fundamental human rights. Accordingly, the objective of this research paper is to critically examine the effectiveness of anti-terrorism legislation in

² See for details, Jollimore, T.A. (2020). Primoratz, Igor, on Terrorism. In: Sellers, M., Kirste, S. (eds) *Encyclopedia of the Philosophy of Law and Social Philosophy*. Springer, Dordrecht. https://doi.org/10.1007/978-94-007-6730-0_299-1

³ Professor Herbert H. Packer describes two types of models to deal with offences as Due Process Model vis-à-vis crime control model. For detailed discussion, See Herbert L. Packer *Two Models of the Criminal Process*, 113 U. Pa. L. Rev. 1 (1964). Available at: https://scholarship.law.upenn.edu/penn_law_review/vol113/iss1/1, Herbert L. Packer, *The Limits of the Criminal Sanction* (Stanford Univ. Press 1968).

India and to assess its implications for the protection of human rights while ensuring the preservation of national security.

A. Research Objectives

This paper pursues the following objectives:

1. To trace the doctrinal evolution of India's anti-terror statutes, from the Terrorist and Disruptive Activities (Prevention) Act and the Prevention of Terrorism Act to the Unlawful Activities (Prevention) Act;
2. To assess the compliance of these statutes with the due process safeguards guaranteed under Articles 20–22 of the Constitution; and
3. To evaluate the institutional and procedural reforms necessary to reconcile national security imperatives with constitutional liberty guarantees.

B. Research Questions

This paper seeks to answer the following questions:

1. To what extent has India's UAPA framework departed from the due process safeguards envisaged under Articles 20–22 of the Constitution?
2. How have judicial responses to bail and preventive detention under the UAPA and the National Security Act evolved in balancing national security with individual liberty?
3. What institutional reforms can reconcile national security imperatives with constitutional liberty guarantees?

C. Research Methodology

This study adopts a doctrinal and empirical-legal research methodology. The doctrinal component involves a black-letter analysis of the relevant statutory frameworks the Terrorist and Disruptive Activities (Prevention) Act, 1987, the Prevention of Terrorism Act, 2002, the Unlawful Activities (Prevention) Act, 1967 (as amended in 2004, 2008, and 2019), and the National Security Act, 1980 read alongside the constitutional safeguards under Articles 14, 19, 20, 21, and 22.

Primary sources include statutory text, parliamentary debates, and judicial pronouncements of the Supreme Court and High Courts. The empirical component draws on secondary quantitative data published by the National Crime Records Bureau (NCRB) on registrations, arrests, and conviction rates under anti-terror legislation between 2014 and 2023, supplemented by reports of the National Human Rights Commission (NHRC), Amnesty International, and Human Rights Watch. A comparative dimension is also employed, examining detention and due-process standards in select foreign jurisdictions, including the United Kingdom and the United States, to situate India's framework within broader international practice.

IV. HUMAN RIGHTS AND ANTI-TERRORISM LAWS

Human history demonstrates that mankind has long struggled to secure basic human and fundamental rights, which are essential for ensuring liberty and a dignified existence in society. Thinkers and reformers across ages have emphasized the protection of these rights as central to human life. Over time, people collectively resisted the tyranny and arbitrariness of monarchs and rulers, leading to the emergence of democratic systems of governance. In such systems, individuals not only enjoy rights but also bear corresponding duties, with active participation in the formation of their government.

Following the spirit of the *Magna Carta of Britain*, the *Declaration of the Rights of Man and the Citizens of France*, the *Bill of Rights of the American Constitution*, and the *Universal Declaration of Human Rights of the United Nations*, India incorporated Fundamental Rights into its Constitution.

In a modern democratic state, the responsibilities of governance are not confined to the state alone; citizens equally share duties towards the state and their fellow members of society. While the state is entrusted with the obligation to safeguard the welfare of its people and protect their constitutional rights, such as life, liberty, and other legal rights, in turn, citizens are expected to uphold national unity and integrity. Where an individual fails to fulfil these obligations and acts in violation of the law, it becomes the duty of the

state to censure such conduct and impose punishment proportionate to the nature and gravity of the offence.

The fundamental purpose of criminal law is to protect both individual rights and the interests of the state from unlawful interference, ensuring that the weak are shielded from the strong and law-abiding from the violent. Within a modern welfare state, this objective is pursued by prosecuting offenders only after allegations have been thoroughly investigated and proven beyond a reasonable doubt through legal proceedings conducted in accordance with statutory provisions. To guarantee a fair and impartial trial, the accused must be afforded essential rights and opportunities to defend themselves, since the organized power of the state cannot be permitted to oppress an innocent citizen.

This rationale equally applies to individuals charged with terrorist offences. The Supreme Court has consistently recognized that while stringent laws such as the Unlawful Activities (Prevention) Act (UAPA) are indispensable for safeguarding national security, human rights protections cannot be disregarded. In *Rakesh Kumar Paul v. State of Assam* (2017) and *Bikramjit Singh v. State of Punjab* (2020), the Court reiterated that procedural safeguards, including the right to default bail, form part of the “indefeasible rights” of an accused, ensuring that no individual is wrongfully branded a terrorist merely based on delay, arbitrariness, or false implication. Hence, those accused of such kinds of legislation are also entitled to human rights so that any innocent person can be termed as a terrorist if, anyhow, there was any false implication against him/her.

The nature and scope of anti-terror laws have long been subjects of debate and controversy. The events of September 11, 2001, in the United States, widely known as 9/11, marked a turning point, as the subsequent “Global War on Terror” significantly shaped international politics and legal frameworks. In its aftermath, many countries enacted a host of new anti-terror legislation, often expanding state powers in ways that raised concern about potential encroachments upon civil liberties and human rights.

The nature of anti-terror laws is based on strict liability and the ‘Crime Control Model’. It means these kinds of offences only punish the *actus reus* and do not take into account

another constituent element of traditional crime, *mens rea*. Anti-terror laws may hold liable anyone merely dropping their hat accidentally. Strict liability offences, i.e., statutory offences, are not new phenomena in common law countries, and are generally punished with a fine or imprisonment for some days or both. But in recent times, the concept of statutory offences has been changed drastically because 'terrorism' is a matter of great concern. Amongst other things, these laws have created:

1. New criminal offences,
2. New detention and questioning powers of police and security agencies,
3. New powers for the executives to proscribe terrorist organizations,
4. New means of controlling people's movement and activities.

Anti-terrorism laws can have a profound impact on fundamental rights, human rights, and freedoms, including: the right to a fair trial; the right not to be subjected to arbitrary detention; freedom from torture and cruel, inhuman or degrading treatment or punishment; the right to freedom of expression; the right to freedom of movement; the right to privacy; the right to non-discrimination; the right to an effective remedy for a breach of human rights.

These and other fundamental human rights are protected under international treaties that the *Indian Constitution* has committed to uphold, including the *International Covenant on Civil and Political Rights* and the *Convention against Torture (CAT) and Other Cruel, Inhuman and Degrading Treatment or Punishment*.

However, because these treaties have not been incorporated into domestic laws, some human rights are not fully protected in the Indian legal system. As a result, some anti-terror laws have been adopted in India without adequate consideration of their impacts on the fundamental rights and the rule of law. With this, there is a need for adequate safeguards which ensure that the citizens that their basic human rights are not adversely affected in the name of national security without reasonable and just cause and in compliance with the international human rights standards.

The concerns regarding the execution of the anti-terror laws in India have been raised by the community groups, human rights activists, and several official review bodies, including the National Human Rights Commission in the sad earnest.

Regarding the human rights of the person accused, the adoption of anti-terror laws by the state has significantly compromised and undermined the rights and safeguards of any individual prosecuted under these laws. The rights of a person accused are fundamentally an aspect of human rights. If these rights are not acknowledged by the law, and if acknowledged but not respected or upheld, then no such person would be safeguarded against the authoritative rule of the state. Consequently, the rights to freedom and personal liberty, as guaranteed under the Indian Constitution, would remain merely a rhetorical declaration.⁴ Three basic principles of criminal law somehow preserve the rights of the person alleged,⁵

Firstly, that every person is presumed to be innocent until he is proved guilty, & *secondly*, the burden of proving the guilt of the accused lies heavily on the prosecution, and it must be discharged beyond a reasonable doubt, to⁶ *Thirdly*, the benefit of doubt is accorded to the accused, coupled with the privilege of silence.

At the heart of our criminal jurisprudence lies the recognition that, with the advent of the Constitution on January 26, 1950, the 'right to life and personal liberty' emerged as the guiding star of our democracy, hailed as man's most cherished possession and enshrined as a fundamental human right under Article 21.⁷

Everyone has been assured of their rights against illegal and arbitrary actions of the state by seeking redress in a constitutional court under Articles 32 and 226 of the Constitution, respectively. Lawmakers have further provided and devised some safeguards under Articles 20, 22, 14, 19, and 39A of the Constitution, among others, to ensure that no one is

⁴ K.D. Kaur, *A Textbook on the Indian Penal Code 784* (Universal Law Publ'g Co., Delhi, 2004).

⁵ *Ibid*

⁶ Gaur, *supra* note 6.

⁷ Article 21 of the Constitution of India provides that no person shall be deprived of life or personal liberty except according to procedure established by law. See also the dissenting opinion of Justice H.R. Khanna in *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207.

victimized at the hands of state functionaries. Some of these constitutional rights and safeguards are: Right to Life⁸, Right against ex-post operation of law⁹, protection against self-incrimination and torture, right to legal defense and legal aid¹⁰, right to fair and speedy trial¹¹, right to freedom from unwanted arrest¹², and right to fair treatment.¹³

There are numerous reasons, which will be examined later in this paper, advocating that no legal system should retract the Rights of the person accused within anti-terror laws. The conflict between civilizations, as well as political, social, and religious disputes, often leads to hatred and discrimination within societies. Minorities and vulnerable groups frequently face harassment and victimization by the majority and more powerful groups, who misuse the provisions of anti-terror laws for their own end.

Victims of counter-terrorism in a democratic state, the misuse of any law, including anti-terrorism laws, by authorities, is a matter of significant concern. It is the duty of the state to ensure that innocent civilians and individuals are not harassed through the application of anti-terror laws. Not only are the fundamental and human rights of the accused violated, but the fundamental and human rights of the victims are also infringed upon by both terrorist activities and the misuse of state mechanisms through the abuse of anti-terror laws. The state is, in simple terms, fully responsible in a democracy for protecting the life, liberty, and property of its citizens. If the rights of citizens are violated or disturbed by an unlawful act or offense, in such a case, the state cannot deny its responsibility. It should, by default, provide adequate compensation to the victim.

V. NATIONAL SECURITY & TERRORISM - A GROWING MENACE

In the aftermath of the Second World War, the international political order became increasingly shaped by Cold War rivalries, external intervention, and competing geopolitical interests. These developments contributed to the growth of armed conflicts

⁸ Art. 21 of the Constitution of India.

⁹ Art. 20(1) of the Constitution of India.

¹⁰ Art. 22 of the Constitution of India.

¹¹ *Ibid*, supra note 10

¹² *Ibid*.

¹³ *Ibid*.

and non-state violence in several regions, including West Asia and South Asia. The Israel–Palestine conflict, the Soviet intervention in Afghanistan, and the subsequent militarization of regional disputes demonstrate how international politics has often influenced the emergence and persistence of violent movements.

For the purposes of this paper, however, the relevance of this history lies principally in showing that terrorism is not merely a domestic law-and-order problem, but a phenomenon shaped by political, ideological, religious and transnational factors. This broader background also explains why democratic states, including India, have increasingly relied on extraordinary security legislation while facing the continuing challenge of preserving constitutional rights and procedural fairness.

During the Cold War, superpowers and certain developed countries supported armed groups to advance their geographical interests, inadvertently laying the foundation for terrorism in many developing regions. For instance, during the Soviet invasion of Afghanistan (1979-1989), the United States, in collaboration with Pakistan and Saudi Arabia, funded and armed the Afghan *Mujahideen* to counter Soviet forces.¹⁴ In the aftermath, groups such as the Taliban (emerging in the 1990s) and Al-Qaeda (founded in 1988) capitalized on the conflict environment, ultimately turning into global security threats.¹⁵

Developing nations like India have, for decades, faced cross-border terrorism, with extremist groups exploiting cultural, religious, and ethnic divisions as well as economic vulnerabilities.¹⁶ The international community has since recognized the dangers of such state-sponsored or externally supported terrorism. The United Nations Security Council (UNSC), through Resolutions 1267 (1999) and 1371 (2001), emphasized the need to curb terrorism financing and prevent states from assisting non-state actors. Within India, the judiciary has similarly acknowledged these challenges; in *Kartar Singh v State of Punjab*

¹⁴ Steve Call, *Ghost Wars the Secret History of CIA, Afghanistan, And Bin Laden, From the Soviet Invasion to September 10, 2001*, Penguin Press 2004.

¹⁵ Peter Bergen, *The Osama bin Laden I Know: An Oral History of al Qaeda's Leader*, Free Press 2006.

¹⁶ Government of India, Ministry of Home Affairs, Annual Report 2022-2023.

(1994) 3 SCC 569, while upholding stringent anti-terror laws like TADA, the Supreme Court cautioned that such statutes must operate within constitutional boundaries to prevent their misuse against innocents.

Terrorism has emerged as a truly global phenomenon, with nations across regions confronting its violent manifestations. Countries such as India, Russia, Tanzania, Saudi Arabia, Indonesia, Pakistan, Afghanistan, Iraq, Iran, and the Philippines have each endured devastating attacks in recent decades, illustrating the borderless nature of the threat.¹⁷ In India, the challenge is twofold: while the country has suffered from cross-border militancy and extremist violence, episodes of communal conflicts since independence have also produced grave human suffering.

Although such communal disturbance has also been classified as terrorism under domestic statutes like the Unlawful disturbance are not classified as terrorism under domestic statutes like the Unlawful Activities (Prevention) Act, 1967, their consequence for life, liberty, and property have often mirrored the scale of destruction typically associated with terrorist acts. The Supreme Court has characterized terrorism as an “extraordinary crime” that strikes at the foundations of liberty and national security.¹⁸ Over two decades, terrorist groups irrespective of nationality, ideology, or affiliation, have shown their capacity to launch attacks unpredictably, thereby generating an enduring sense of fear and vulnerability.¹⁹

A recurring difficulty in counter-terrorism discourse is the conceptual distinction between militancy and terrorism. Both phenomena share the objective of spreading violence and fear, thereby endangering life, liberty, and property. Yet, not every instance of violence is universally classified as a terrorist act, primarily because there exists no single, universally accepted definition of “terrorism”.²⁰ This definitional ambiguity

¹⁷ Ibid, UNSC Resolution 1373 (2001)

¹⁸ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569).

¹⁹ U.N. Secretary General, Report on Measures to Eliminate International Terrorism, U.N. Doc. A/59/565, 2004).

²⁰ ALEX P. SCHMID, Defining Terrorism: A Critical Review 23-29 (Int’l Ctr. For Counter-Terrorism 2023), https://icct.nl/sites/default/files/2023-03/Schmidt%20-%20Defining%20Terrorism_1.pdf?

complicates legal frameworks, as anti-terrorism laws often encompass a broad range of offences, sometimes resulting in misuse against innocent individuals under the pretext of maintaining national security.²¹

Within criminological theory, militants are often situated within the “due process model”, which emphasizes procedural safeguards and accountability, whereas terrorists are generally treated under the “crime control model,” which prioritizes swift state intervention to contain threats.²² In practice, terrorism is typically understood as the systematic use of violence to achieve political or ideological objectives, often by keeping a state or its institutions under constant intimidation. The effects, however, extend beyond the immediate violence: terrorism destabilizes political authority, undermines legal and constitutional order, and endangers national unity and sovereignty.²³

The absence of a uniform definition further enables states to interpret violent acts through the lens of their strategic interests. As a result, conduct that one actor may frame as a *freedom struggle or revolutionary resistance* is simultaneously condemned by others as terrorism.²⁴ A prominent illustration of this duality is the Israel-Palestine conflict. Acts of violence carried out by Palestinian groups are often perceived differently depending on geopolitical alignments. States such as Iran and Syria, for instance, have historically characterized such actions as part of a legitimate struggle for self-determination, while Western states, including the United States, the United Kingdom, France, and Germany, staunch allies of Israel, consistently categorize the same acts as terrorism in line with Israel’s claims of defending sovereignty and security.²⁵ This divergence underscores how the lack of an agreed definition of terrorism enables competing political narratives to

²¹ Chitkara, Radhika, "Revisiting *Kartar Singh v. State of Punjab*: Fair Trial and the Scope of Exception in Anti-Terror Laws" (2022). *Articles*. 26. https://repository.nls.ac.in/nls_articles/26

²² HERBERT L. PACKER, *The Limits of the Criminal Sanction* 158-73 (Stanford University. Press 1968).

²³ BOAZ GANOR, *The Counter-Terrorism Puzzle: A Guide for Decision Makers* 3-8 (Transaction Publishers 2005).

²⁴ G.A. Res 49/60, U.N. Doc. A/RES/49/60 (dec. 9, 1994).

²⁵ SECURITY IN CONTEXT, *Why We Need to Talk About “State Terrorism” by Israel in Gaza* (Oct. 2023), <https://www.securityincontext.org/posts/why-we-need-to-talk-about-state-terrorism-by-israel-in-gaza>.

dominate the legal discourse, reinforcing the observation that “one man’s terrorist is another man’s freedom fighter.”²⁶

In the contemporary global order, critics frequently contend that the United States foreign policy has played a significant role in fostering instability and violence. *Noam Chomsky*, a prominent American scholar, has argued that U.S. interventions and alliances often reinforce repression abroad while consolidating American dominance.²⁷ Following the attacks of September 11, 2001, the U.S. government declared a “Global War on Terror,” framing it as a struggle against “Islamic terrorism” and, at times, as a clash of civilizations.²⁸

While Al-Qaeda emerged during the Afghan conflict, it is misleading to claim that the United States directly created the organization. What is historically accurate is that through Operation Cyclone, the U.S., in collaboration with Pakistan and Saudi Arabia, channeled financial and military support to Afghan Mujahideen during *the Soviet-Afghan War (1979-1989)*, thereby indirectly shaping the environment in which networks like Al-Qaeda later developed.²⁹ On September 12, 2001, President George W. Bush officially announced that the United States would pursue a global campaign against terrorist networks, focusing particularly on groups based in Muslim-majority countries.³⁰ Some scholars interpret this response as an extension of neo-imperial strategies, contending

²⁶ STANLEY CENTER, *Terrorist or Freedom Fighters?* (2007), <https://stanleycenter.org/publications/terrorists-or-freedom-fighters/>.

²⁷ NOAM CHOMSKY, *Imperial Ambitions: Conversations with Noam Chomsky on the Post-9/11 World* (David Darsamian ed., Hamish Hamilton 2005), https://library.uniteddiversity.coop/More_Books_and_Reports/Noam_Chomsky-Imperial_Ambitions.pdf

²⁸ Marc Barnett, *American Exceptionalism and the Construction of the War on Terror: An Analysis of Counterterrorism Policies Under Clinton, Bush, and Obama* (Maxwell Sch. Of Citizenship & Pub. Affs., Syracuse Univ. & Hertie Sch. Of Governance, funded by Andrew Berlin Family Nat’l Sec. Research Fund, n.d.), https://securitypolicylaw.syr.edu/wp-content/uploads/2016/11/Barnett_American-Exceptionalism_and_the_Construction_of_the_War_on-Terror-mwedit111716.pdf?utm_source=chatgpt.com

²⁹ *Operation Cyclone*, WILIPEDIA, https://en.wikipedia.org/wiki/Operation_Cyclone, (last visited Sept. 20, 2025).

³⁰ George W. Bush Presidential Library, *Global War on Terror*, <https://www.georgewbushlibrary.gov/research/topic-guides/global-war-terror> (last visited Sept. 20, 2025).

that U.S. post-9/11 policy served to reinforce its global hegemony under the rhetoric of counter-terrorism.

Although violent incidents and terrorist activities occur across regions and communities, global discourse often disproportionately associates terrorism with Muslim-majority societies.³¹ Following the attacks of September 11, 2001, the United States launched the “Global War on Terror,”³² including military interventions in Afghanistan and Iraq.³³ These interventions reshaped global counter-terrorism policy and intensified debates on³⁴ whether security-led responses can effectively address terrorism without producing instability, prolonged conflict, and human-rights concerns.³⁵

Western scholarship has sometimes framed post-9/11 terrorism through civilizational narratives, although such explanations remain contested.³⁶ For this paper, the more relevant point is that Indian constitutional jurisprudence has consistently required counter-terrorism³⁷ measures to remain subject to Article 21 and other procedural safeguards.

Since the events of September 11, 2001, debates in India have increasingly revolved around terrorism, internal security, and governance. The post 9/11 climate also coincided with a global rise in Islamophobia, particularly in the United States, which had spillover effects in reinforcing communal tensions worldwide.³⁸ In India, prior episodes of violence

³¹ *Ibid*

³² *Ibid*, supra note. 38

³³ Michael T. Klare, *Blood and Oil: The Dangers and Consequences of America's Growing Petroleum Dependency* 147-68 (Metropolitan Books 2004)

³⁴ Chalmers Johnson, *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* 23-45 (Metropolitan Books 2004).

³⁵ Seth G. Jones, *In the Graveyard of Empires: America's War in Afghanistan* 303-29 (W.W. Norton 2009).

³⁶ SAMUEL P. HUNTINGTON, *The Clash of Civilizations and the Remaking of World Order* 21-49 (Simon & Schuster 1996), available at

<https://msuweb.montclair.edu/~lebel/1993SamuelPHuntingtonTheClashOfCivilizationsAndTheRemakingofWorldOrder.pdf>

³⁷ Edward W. said, *The Clash of Ignorance*, *The Nation*, Oct. 4, 2001, available at <https://www.thenation.com/article/archive/clash-ignorance/> (Last visited 26/09/23)

³⁸ U.S. Dept. of Justice, *Combating Post-9/11 Discriminatory Backlash* (2002), <https://www.justice.gov/crt/combating-post-911-discriminatory-backlash-6South>

were typically linked to cross-border militancy, the Naxalite-Maoist insurgency, and recurrent communal conflicts.³⁹

Following 9/11, the public perception of terrorism underwent a significant shift, with attacks frequently framed in communal terms. India has suffered a series of major terrorist incidents over the past two decades, including the 2001 parliament attack, the 2008 Mumbai attacks, and several bombings targeting religious or public sites.⁴⁰ In some cases, such as *the Malegaon Blasts (2006,2008)*, *the Samjhauta Express bombing (2007)*, *the Mecca Masjid Blast (2007)*, and *the Ajmer Dargah Blast (2007)*, investigations by the National Investigation Agency (NIA) at different stages pointed to the involvement of Hindu extremist groups.⁴¹

Earlier inquiries, however, had alleged the participation of Islamist outfits, and subsequent trials led to acquittals in several of these cases.⁴² It cannot be denied that these attacks may represent a policy by foreign nations aimed at hindering India's development, keeping it dependent on developed countries, and influencing its foreign and economic policies according to the will of superpowers, thereby rendering the country a part of 'non-economic imperialism'.⁴³

VI. ANTI-TERRORIST LEGISLATION IN INDIA: AN OVERVIEW

Since the attainment of independence in 1947, India's criminal justice institutions, particularly the police and the judiciary, have often been described as reflecting structural and ideological continuities with their colonial predecessors.⁴⁴ This continuity is reflected in the enduring reliance on security-oriented and preventive legislation, a practice

³⁹ Asia Terrorism Portal, India Fatalities Data, <https://www.satp.org/datasheet-terrorist-attack/fatalities/india>

⁴⁰ See, e.g., *People's Union for Civil Liberties v. Union of India*, (2004) 9 SCC 580 (discussion Parliament attack); *Ajmal Kasab v. State of Maharashtra*, (2012) 9 SCC 1 (Mumbai attacks)

⁴¹ See NIA Charge Sheet in *State v. Aseemanand*, Samjhauta Express Blast Case (2010); also reported in *The Indian Express*, Mar. 12, 2019.

⁴² See *National Investigation Agency v. Aseemanand*, Samjhauta Express Case, Special NIA Court, Panchkula, Mar. 20, 2019 (acquittal); *Mecca Masjid Blast Case*, Court, Hyderabad, Apr. 16, 2018 (acquittal).

⁴³ See, Conor Gearty, *Terrorism and Human Rights* 1-25 (Cambridge Univ. Press 2007).

⁴⁴ Anil Kalhan, *Colonial Continuities: Human Rights, Antiterrorism, and Security Laws in India*, 20 Colum. J. Asian L. 93, 101-05 (2006).

traceable to the British Raj, when extraordinary statutes were enacted to suppress anti-colonial movements.⁴⁵

Comparisons between post-independence laws such as the Prevention of Terrorism Act, 2002 (POTA), and the colonial-era Rowlatt Act of 1919 illustrate this paradox: statutes once denounced for their repressive character under colonial rule have been replicated in independent India, often in more stringent forms.⁴⁶ The contemporary use of the Unlawful Activities (Prevention) Act, particularly after its 2019 amendment enabling the designation of individuals as “terrorists,” reinforces this pattern.⁴⁷ Recent cases, including prosecutions linked to the Delhi riots (2020)⁴⁸, the Bhima Koregaon matter⁴⁹, and actions against journalists and civil society actors,⁵⁰ demonstrate how UAPA’s expansive provisions are frequently invoked, raising renewed concerns about the balance between national security imperatives and fundamental rights.⁵¹

The dramatic events of December 13th, 2001, attacks on the parliament building, along with the September 11 atrocities in the United States, highlighted the need to strengthen the powers of security forces despite a long history of past abuses. The United Kingdom’s adoption of the Prevention of Terrorism Act and the United States’s Patriot Act of 2001 reinforce the idea that other countries recognized the necessity of moving beyond traditional domestic criminal procedures to effectively combat terrorism. Accordingly, the Indian government enacted the Prevention of Terrorism Act (POTA), which served as anti-terrorism legislation.

Over the years, India’s anti-terrorist laws have consistently been applied beyond their originally intended scope, bypassing the normal rules and safeguards available to

⁴⁵ K.D. Gaur, *Textbook on the Indian Penal Code* 15-16 (5th ed. 2015).

⁴⁶ V. Venkatesan, *POTA and the Rowlatt Act: A Comparative Study of Repressive*

⁴⁷ The Unlawful Activities (Prevention) Amendment Act, 2019, No.28 of 2019, India Code.

⁴⁸ *Asif Iqbal Tanha v. State of NCT of Delhi*, 2021 SCC Online Del 3253 (Delhi High Court).

⁴⁹ *Nat’l Investigation Agency v. Sudha Bharadwaj*, 2021 SCC Online SC 1336 (Supreme Court).

⁵⁰ Amnesty Int’l India, *Weaponizing Counter-Terrorism: The Use of UAPA Against Dissent in India* (2022), <https://www.amnesty.org/en/documents/asa20/5686/2022/en/>

⁵¹ See *Union of India v. K.A. Najeer*, (2021) 3 S.C.C. 713 (granting bail despite UAPA restrictions due to prolonged incarceration); also see Amnesty International India, *Weaponizing Counter-Terrorism: The Use of UAPA Against Dissent in India* (2022).

criminal defendants under both the Indian Constitution and the Bharatiya Nagarik Suraksha Sanhita, 2023 (which replaced the Code of Criminal Procedure, 1973, with effect from 1 July 2024). While various governments have granted law enforcement agencies and the military greater powers to reduce the threat of terrorism, there is little evidence that these powers have achieved their intended effect. This article will argue that with each new piece of legislation aimed at combating terrorism, even a slight reduction in the rights of criminal defendants increases the risk of gross abuse of such powers.

A. The Armed Forces Special Powers Act, 1958

The Armed Forces (Special Powers) Act, 1958 (AFSPA), remains one of India's most contentious security statutes. Originally enacted to address insurgencies in the country's northeastern frontier, the Act empowers security forces operating in areas declared "disturbed" to use lethal force, conduct searches without warrants, and grant de facto immunity for actions taken in the line of duty.⁵² When India presented its second periodic report before the United Nations Human Rights Committee (UNHRC) in 1991, Committee members questioned the constitutional validity of the AFSPA under Indian law and its compatibility with Article 4 of the International Covenant on Civil and Political Rights (ICCPR), which regulates permissible derogations from human rights obligations during emergencies.⁵³ Despite its extraordinary powers, the Act has been widely criticized for failing to quell insurgency and instead deepening the alienation of local populations from the central government.⁵⁴

Persistent allegations of human rights violations, including extrajudicial killings, enforced disappearances, and sexual violence, have drawn attention from international organizations such as Amnesty International and Human Rights Watch, both of which have called for repeal of the Act.⁵⁵ Scholars such as Attar Rabbani argue that AFSPA

⁵² Armed Forces (Special Powers) Act, No.28 of 1958, INDIA CODE.

⁵³ U.N. hum. Rts. Comm., *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: India*, ¶¶ 292–305, U.N. Doc. CCPR/76/Add. 6 (July 24, 1997).

⁵⁴ Sandeep Sharma, *Armed Forces (Special Powers) Act: AN Analysis*, Law Insider (Oct.2022), <https://lawinsider.in/columns/armed-forces-special-power-act-an-analysis>.

⁵⁵ Amnesty Int'l, *India: Briefing Forces (Special Powers) Act: 1958 (2005)*; Human Rights Watch, *"These Fellows Must be Eliminated": Relentless Violence and Impunity in Manipur* (2008).

undermines constitutional guarantees, including the freedom of peaceful assembly (Article 19(1)(b)), protection in respect of conviction for offences (Article 20), and the right to constitutional remedies (Article 32).⁵⁶ The Act has also been found inconsistent with international standards such as the Universal Declaration of Human Rights (UDHR), the U.N. Body of Principles for the Protection of All Persons under Any Form of Detention, and the U.N. Principles on the Effective Prevention of Extra-Legal, Arbitrary, and Summary Executions.⁵⁷

Multiple officials' bodies have acknowledged these humanitarian concerns. The Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013) noted that AFSPA facilitates impunity for sexual violence by security personnel in "disturbed areas" and recommended its amendment to remove the prior requirement for prosecuting such offences.⁵⁸ Similarly, the Justice B.P. Jeevan Reddy Committee (2005), constituted to review AFPSA, concluded that the law had become a "symbol of oppression and an object of hate," recommending its repeal.⁵⁹ The Justice Santosh Hegde Commission (2013) further observed that the sweeping powers granted to armed forces had led to systematic abuses and called for enforceable safeguards at the operational level.⁶⁰

Judicial responses have been nuanced. In *Naga People's Movement of Human Rights v. Union of India*, the Supreme Court upheld the Act's constitutionality but limited its operation by emphasizing that its powers are not absolute and must be exercised in conformity with fundamental rights.⁶¹ Subsequently, in *Extra-Judicial execution Victim Families Association v. Union of India*, the Court reaffirmed that excessive or retaliatory force cannot be justified

⁵⁶ Attar Rabbani, *Humanitarian Violation by AFPSA*, Law Insider (2022).

⁵⁷ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948); U.N. Body of Principles for the Protection of All Persons Under Any Form of Detention, G.A. Res. 43/173 (Dec. 9, 1988); U.N. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. Res. 1989/65 (May 24, 1989).

⁵⁸ Justice J.S. Verma et al., *Report of the Committee on Amendments to Criminal Law* 147-49 (2013).

⁵⁹ Justice B.P. Jeevan Reddy Comm'n, *Report on the Armed Forces (Special Powers) Act, 1958* (2005).

⁶⁰ Justice Santosh Hegde Comm'n, *Report on Alleged Extrajudicial Killings in Manipur* (2013).

⁶¹ *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 S.C.C. 109.

even in areas under AFPSA and directed detailed investigations into alleged fake encounters in Manipur.⁶²

Recent developments underscore the Act's continuing volatility. In December 2021, mass protests erupted in Nagaland after security personnel killed fourteen civilians in Mon district, prompting the state government to seek the repeal of AFPSA.⁶³ The incident reignited debate over the law's necessity and human cost, with the union government announcing a Special Investigation Team (SIT) to probe the killings. Meanwhile, in March 2025, the Chief of Army Staff, speaking at the Indian Today Conclave, remarked that AFPSA could be withdrawn from Jammu and Kashmir once the army was satisfied that local police forces were capable of maintaining order, reflecting an evolving official stance towards phased demilitarization.⁶⁴

B. The Unlawful Activities (Prevention) Act, 1967

Enacted in the wake of rising tendencies in post-independence India, the Unlawful Activities (Prevention) Act, 1967 (UAPA) was conceived as a constitutional mechanism to curb associations and activities that threatened the territorial integrity and sovereignty of the nation.⁶⁵ Parliamentary debates from 1967 reveal a deliberate intent to limit the Act's ambit strictly to secessionist movements, ensuring that the freedom of association guaranteed under Article 19(1)(C) of the Constitution of India remained intact.⁶⁶

The original statute established a self-contained framework empowering the government to declare associations as "unlawful", adjudicate such declarations through a tribunal, restrict the operation and funding of such organizations, and impose penalties on members engaged in proscribed activities.⁶⁷ At its inception, therefore, UAPA was not a

⁶² *Extra-Judicial Execution Victim Families Ass'n v. Union of India*, (2016) 14 S.C.C. 536.

⁶³ *Nagaland Killing: Civilians Deaths Trigger Renewed Calls to Repeal AFPSA*, The Hindu (Dec. 7, 2021), <https://www.thehindu.com/news/national/other-states/nagaland-civilian-killings-afspa-protests/article37898064.ece>.

⁶⁴ *Can AFSPA Be Lifted in Jammu and Kashmir? What Army Chief Said*, India Today (Mar. 8, 2025), <https://www.indiatoday.in/india/story/army-chief-general-upendra-dwivedi-afspa-jammu-kashmir-terrorism-2690711-2025-03-08>.

⁶⁵ The Unlawful Activities (Prevention) Act, No. 37 of 1967, INDIA CODE.

⁶⁶ Constituent Assembly Debates, Vol. Vol. XII (1967) (statements by Home Minister Y.B. Chavan).

⁶⁷ Id. §§ 2-7.

counter-terrorism law but rather a national integration statute aligned with Entry 1 (Defense of India) and Entry 97 (Residual Powers) of the Union List in the Seventh Schedule.⁶⁸ Over time, however, UAPA evolved far beyond its original objective, transforming into India's primary anti-terror legislation through successive amendments.⁶⁹

C. The Unlawful Activities (Prevention) Amendment Act, 2004.

Following the repeal of the Prevention of Terrorism Act, 2002 (POTA), the United Progressive Alliance (UPA) government introduced sweeping amendments to UAPA through the Unlawful Activities (Prevention) Amendment, 2004.⁷⁰ The 2004 reform marked a decisive shift from secession control to counter-terrorism, incorporating several provisions from the repealed POTA while purporting to align the law with due process safeguards.⁷¹

The amendment defined the term “terrorist act”, empowered the government to ban terrorist organizations, and criminalized financing of terrorism and possession of terror-linked property.⁷² However, the 2004 law consciously omitted the most draconian aspects of POTA, such as the reverse burden of proof, mandatory denial of bail, and admissibility of confessions made to police officers in an effort to strike a balance between national security and fundamental rights.⁷³

D. The Unlawful Activities (Prevention) Act, 2008.

The 2008 Mumbai Terrorist Attacks (26/11) fundamentally altered India's counter-terrorism policy. In response, parliament enacted the Unlawful Activities (Prevention)

⁶⁸ INDIA CONST. sched. VII, list 1, entries 1 & 97.

⁶⁹ Brief History & Challenges to the UAPA, Sup. Ct Observer, <https://www.scobserver.in/journal/brief-history-challenges-to-the-uapa/>.

⁷⁰ The Unlawful Activities (Prevention) Amendment Act, No.29 of 2004, INDIA CODE.

⁷¹ Id.

⁷² Id. §§ 15-17.

⁷³ Prevention of Terrorism Act (POTA), 2002, Repeal and Implications, PRS Legislative Research (2004).

Amendment Act, 2008, reintroducing many of the coercive provisions of POTA under the UAPA framework.⁷⁴

The 2008 amendment broadened the definition of “terrorist act” and expanded the investigative powers of the police and central agencies. It allowed detention of suspects for up to 180 days without filing a charge sheet, permitted search and seizure without a warrant, and imposed stringent bail restrictions, effectively reversing the presumption of innocence in many cases.⁷⁵ These provisions paralleled the “crime control model” of criminal justice, prioritizing state security over individual liberty.⁷⁶

Critics noted that the law created ambiguity regarding *mens rea*, gave officers authority to arrest based on “personal knowledge,” and fostered an environment of prolonged incarceration without trial, issues later highlighted in cases such as *Union of India v. K.A. Najeer* (2021).⁷⁷ In comparison, the United Kingdom now caps pre-charge detention of terror suspects at a substantially shorter 14 days, a limit reduced from the earlier 28-day maximum with effect from January 2011 and subsequently made permanent by the Protection of Freedoms Act 2012, while pre-charge and material-witness detention rules applicable to terrorism-related federal custody in the United States vary by statute rather than following a single fixed period; even on the more conservative UK comparator, the disparity raises serious proportionality concerns under Article 21 of the Constitution.

Other jurisdictions structure judicial oversight of preventive or pre-charge detention differently, and the comparison strengthens the proportionality argument advanced here. Canada's security-certificate regime permits indefinite detention of non-citizens on national-security grounds, but subjects the underlying certificate to mandatory review by a designated Federal Court judge, and Canadian courts have ordered release where continued detention could no longer be justified.

⁷⁴ The Unlawful Activities (Prevention) Amendment Act, No. 35 of 2008, INDIA CODE.

⁷⁵ Id. §§ 43A-43F.

⁷⁶ Herbert L. Packer, *The Limits of the Criminal Sanction* 149-73 (Stanford Univ. Press 1968).

⁷⁷ *Union of India v. K.A. Najeer*, (2021) 3 S.C.C. 713.

Israel's administrative detention regime, by contrast, permits renewable executive detention without charge for up to six months at a time, but each order is subject to mandatory judicial review before a military or district court within days of issuance and at fixed intervals thereafter a periodic-review requirement broadly comparable to the "designated court" architecture found in India's own TADA experience, though the Israeli regime has itself long been criticised for permitting indefinite renewal. South Africa's post-apartheid constitutional order, having moved sharply away from its emergency-era detention laws, now makes prompt production before a court a precondition for any deprivation of liberty, illustrating how a jurisdiction that once relied heavily on executive detention has since re-anchored counter-terrorism practice in continuous judicial oversight.

Read together, these comparators suggest that judicial involvement whether at the point of initial detention (Israel, South Africa) or through mandatory certificate review (Canada) is a more consistent feature of comparable democracies' preventive-detention regimes than of India's own framework under UAPA and the NSA, though the institutional design in each country differs enough from India's that the comparison is best read as illustrative rather than directly transposable.

E. The Unlawful Activities (Prevention) Amendment Act, 2019.

The 2019 Amendment to the Unlawful Activities (Prevention) Act, 1967 (UAPA) marked one of the most significant shifts in India's counter-terrorism framework since its inception. Before this amendment, the law primarily targeted organizations that were declared "unlawful" or "terrorist".⁷⁸ The 2019 reform went further; it empowered the Central Government to label an individual as a "terrorist" through executive notification, without the necessity of a prior judicial finding. This change was justified as a measure to address "lone-wolf" terrorism and to prevent individuals from organising or influencing others for violent activities. However, critics argue that such power, without

⁷⁸ *The Unlawful Activities (Prevention) Amendment act*, No. 28 of 2019, § 5, Acts of Parliament, 2019 (India).

clear procedural checks, grants wide discretion to the executive and risks misuse against dissenters, activists, journalists, and civil society actors.⁷⁹

Another key change introduced by the 2019 Amendment was the enhancement of the National Investigation Agency's (NIA) powers. Previously, state police had primary control over investigations within their territories. After the amendment, the NIA was authorized to seize property and conduct investigations across state borders without seeking permission from state governments.⁸⁰ This expansion of central power has been criticized for weakening India's federal structure and undermining the constitutional balance between the union and the states.⁸¹

The amendment also reflected a broader shift in India's criminal justice philosophy from a "due process" approach (which prioritizes individual rights and presumption of innocence) to a "crime control" model (which prioritizes state security and preventive policing).⁸² Human rights groups and legal scholars have warned that these provisions allow the government to act against individuals even before any violent act is committed, leading to what many call "preventive criminalization".⁸³

In practice, the impact of the 2019 Amendment has been visible in several high-profile cases, such as *the Delhi Riots Conspiracy case* (involving activities of Umar Khalid), *the Bhima Koregaon case* (involving lawyers and human rights defenders), and *the NewsClick case* (involving journalist Prabir Purkayastha).⁸⁴ Courts have repeatedly struggled with the strict bail provisions under Section 43D (5), which prohibit release if a prima facie

⁷⁹ Anuksha Singh, *The Politics of Preventive Criminalization in India*, Econ. & Pol. Wkly, Vol. 55 No. 32 (2020)

⁸⁰ Id. § 6 (expanding § 43 of the principal Act to empower NIA to act across states).

⁸¹ *Anil Baburao Baile v. Union of India & Ors.* (Bombay High Court, Jul. 17, 2025)

⁸² Herbert L. Packer, *The Limits of the Criminal Sanction* 53-54 (1968).

⁸³ *Brief History and Challenges to the UAPA*, Sup. Ct. Observer, <https://www.scobserver.in/journal/brief-history-challenges-to-the-uapa/>.

⁸⁴ *Umar Khalid Bail Application Tracker*, Sup. Ct. Observer, <https://www.scobserver.in/journal/umar-khalid-bail-application-tracker/>.

case exists. This has resulted in prolonged pre-trial detentions, sometimes lasting years, despite low conviction rates under UAPA.⁸⁵

While the Supreme Court has recently begun emphasizing procedural fairness, most notably in *Prabir Purkayastha v. State (NCT of Delhi)* 2024, where it held that failure to provide written grounds of arrest violates Article 22(1) of the Constitution⁸⁶ UAPA continues to face criticism for eroding civil liberties. The 2019 Amendment, thus, represents a turning point in India's national security legislation, one that strengthens the state's preventive powers but simultaneously raises deep questions about the balance between security and fundamental freedoms.

F. The National Security Act, 1980 – A Preventive Detention Law

The concept of preventive detention in India traces back to British colonial governance, where such powers were employed to suppress political dissent and maintain public order. Following independence, the framers of the Indian Constitution, cognizant of the instability and communal violence of the late 1940s, adopted preventive detention as a pragmatic measure to preserve national security and public harmony.⁸⁷ Unlike the United States, where preventive detention faces strict constitutional scrutiny, the Indian Constitution explicitly empowers the state to legislate on this subject under Entry 9 of List I (Union List) and Entry 3 of List III (Concurrent List) of the Seventh Schedule, covering defense, foreign affairs, and internal security.⁸⁸

Among India's preventive detention laws, the National Security Act, 1980 (NSA), remains the most comprehensive.⁸⁹ Section 3 authorizes the central or state government to detain any person to prevent acts deemed prejudicial to India's defense, foreign relations, or internal security.⁹⁰ The law allows detention without charge or trial for up to twelve

⁸⁵ Ministry of Home Affairs, *Unlawful Activities (Prevention) Act: Statistical Data 2019-2023*, Lok Sabha Starred Question No. 352 (July 2023).

⁸⁶ *Prabir Purkayastha v. State (NCT of Delhi)*, 2024 INSC 414, [2024] 6 S.C.R. 666, ¶¶ 24-27 (India).

⁸⁷ A.G. Noorani, *Preventive Detention in India: A Critical Review*, 23 J. Indian L. Inst. 155, 160-63 (1981).

⁸⁸ INDIA CONST. arts. 21,22; INDIA CONST. sched. VII, List I, entry 9; List III, entry 3.

⁸⁹ *The National Security Act*, No. 65 of 1980, Acts of Parliament (India).

⁹⁰ Id. § 3.

months, subject to confirmation by the state government and review by an Advisory Board consisting of three sitting High Court judges within seven weeks.⁹¹ Detainees must be informed of the grounds of detention within five days (extendable to fifteen days in exceptional circumstances) and are entitled to legal counsel and family visitation rights.⁹²

Despite its constitutional basis, the NSA has long been criticized for undermining Article 21's guarantee of personal liberty and for its vague "public order" standards, which permit broad executive discretion.⁹³ This debate has resurfaced in light of recent events, particularly the detention of environmentalist Sonam Wangchuk under the NSA in 2025. In *Gitanjali J. Angmo v. Union of India*, the Supreme Court of India issued a notice to the Union government and the Union territory of Ladakh on a habeas corpus petition filed by Wangchuk's wife challenging his detention.⁹⁴ The petition questioned the lack of transparency and procedural safeguards, alleging a violation of constitutional due process.⁹⁵ Although the Court declined to grant interim relief compelling the disclosure of detention grounds to the petitioner's wife, it underscored the need for procedural compliance within the NSA's framework.⁹⁶ The detention was subsequently revoked by the Ministry of Home Affairs "with immediate effect" on 14 March 2026, roughly six months after it began, and Wangchuk was released. That the episode ended through executive revocation rather than a substantive judicial finding on the merits is itself illustrative of the episodic, executive-driven character of NSA enforcement, rather than

⁹¹ Id. § 9.

⁹² Id. § 8(1) – (2)

⁹³ Usha Ramanathan, *A Tyranny of Emergency: Prevention Detention and the Indian Constitution*, 25 ECON. & POL. WKLY. 1227 (1990).

⁹⁴ *Gitanjali J. Angmo v. Union of India*, W.P. (CrI.) No. 399/2025 (Sup. Ct.); the underlying detention was revoked by the Ministry of Home Affairs on 14 March 2026, and the petition was accordingly disposed of as infructuous.

⁹⁵ *Wangchuk's NSA Detention Challenged in SC*, Hindustan Times (Oct. 4, 2024), <https://www.hindustantimes.com/india-news/wangchuks-nsa-detention-challenged-in-sc-101759514075706.html>.

⁹⁶ *NSA on Sonam Wangchuk: Supreme Court Issues Notice to Centre, UT on Wife's Plea*, Times of India (Oct. 7, 2025), <https://timesofindia.indiatimes.com/india/nsa-on-sonam-wangchuk-supreme-court-issues-notice-to-centre-ut-on-wifes-plea/articleshow/124348525.cms>; 'Nothing Left to Decide': Supreme Court Disposes Plea Challenging Sonam Wangchuk's Detention Noting His Release, LiveLaw (Mar. 23, 2026), <https://www.livelaw.in/top-stories/supreme-court-disposes-plea-challenging-sonam-wangchuks-detention-noting-his-release-527460>.

one subject to consistent judicial check. The incident has reignited tension between state security prerogatives and the constitutional mandate to protect individual liberty⁹⁷

G. The Terrorist and Disruptive Activities (Prevention) Act, 1987

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA)⁹⁸ was India's first nationwide counter-terrorism statute. It conferred exceptional⁹⁹ powers on law enforcement agencies, including admissibility of ¹⁰⁰confessions made to police officers, relaxed identification procedures, and a broad definition of abetment that risked criminalising mere association.¹⁰¹

In *Kartar Singh v. State of Punjab*, the Supreme Court struck down portions of this definition as unconstitutional, holding that the absence of a requirement of mens rea violated fundamental principles of criminal law.¹⁰² Equally contentious was the Act's treatment of "disruptive activities," encompassing not only acts threatening India's sovereignty or territorial integrity but also speech or advocacy questioning such sovereignty or supporting secession.¹⁰³ These expansive provisions blurred the line between political dissent and terrorism, imposing potential life imprisonment for expression-based offences.

TADA further established special "Designated Courts" with exclusive jurisdiction over terrorism-related trials, closed to the public, and authorized to conduct summary proceedings.¹⁰⁴ The Act introduced a presumption of guilt where weapons or explosives similar to those used in terrorist acts were found in the possession of an accused, or where financial assistance was extended to a suspected terrorist.¹⁰⁵ Empirical evidence revealed widespread misuse: of 52,998 persons detained under TADA by 1992, only 434, less than

⁹⁷ Id.

⁹⁸ The Terrorist and Disruptive Activities (Prevention) Act, No.28 of 1987, Acts of Parliament (India).

⁹⁹ Id. S-21 (confession to police officer admissible).

¹⁰⁰ Code of Criminal Procedure, 1973, S-9 (India).

¹⁰¹ TADA S-2(1)(a)(ii).

¹⁰² *Kartar Singh v. State of Punjab*, (1994) 3 S.C.C. 569.

¹⁰³ TADA S-3(5).

¹⁰⁴ Id. S 9.

¹⁰⁵ Id. S-21.

one percentage were convicted.¹⁰⁶ Although the statute lapsed in 1995, its coercive logic endures, reflected in subsequent legislation such as the Prevention of Terrorism Act, 2002 (POTA) and the Unlawful Activities (Prevention) Act, 1967 (as amended).¹⁰⁷

H. The Prevention of Terrorism Act, 2002

Following the 13 December 2001 Parliament attack, Parliament enacted the Prevention of Terrorism Act, 2002 (POTA) to strengthen India's counter-terrorism response.¹⁰⁸ Like TADA, POTA criminalised abetment and membership of organisations designated as terrorist by the Central Government, but it remained controversial because of its broad language, restricted safeguards, and uncertainty regarding the evidentiary basis for proving such membership.¹⁰⁹

POTA criminalized not only direct involvement in terrorism but also indirect "abetment" or "association" with organizations designed as "terrorist" by the central government irrespective of the accused's intent or participation in unlawful acts.¹¹⁰ Section 20 created a presumption of guilt for any individual charged as a member of a terrorist organization unless the person could prove non-involvement in terrorist activity, thereby reversing the presumption of innocence that underpins Indian criminal jurisprudence.¹¹¹ The act also retained the admissibility of confessions made to police officers (Section 32), a provision criticized for incentivizing custodial coercion and torture.¹¹² Further, Section 49 authorized preventive detention of suspects for up to ninety days without charge, extendable to 180 days with judicial approval, while section 49(7) severely restricted bail, allowing denial solely on the prosecution's opposition.¹¹³

The legislation also established "Special Courts" with the discretion to conduct in camera proceedings and restrict public access to trial records, raising concerns about

¹⁰⁶ A.G. Noorani, *TADA: The Story of a Law Gone Wrong*, 29 Econ. & Pol. Wkly. 59 (1994).

¹⁰⁷ See generally *Unlawful Activities (Prevention) Amendment Act*, No. 35 of 2008, Acts of Parliament (India).

¹⁰⁸ *Kartar Singh v. State of Punjab*, (1994) 3 S.C.C.569.

¹⁰⁹ Cf. *People's Union for Civil Liberties v. Union of India*, (2004) 9 S.C.C. 580.

¹¹⁰ *The Prevention of Terrorism Act*, No. 15 of 2002, S-2(1)(a)(ii), Acts of Parliament (India).

¹¹¹ Id. S-20.

¹¹² Id. S-32.

¹¹³ Id. S- 49(2), (70).

transparency and fair guarantees.¹¹⁴ Section 57 conferred immunity upon public officials for actions taken “in good faith” under the Act, effectively shielding law enforcement from accountability.¹¹⁵ Such sweeping provisions placed terrorism-related offences outside the procedural safeguards of the *Code of Criminal Procedure, 1973*, thereby compromising the delicate balance between the rights of the accused and the interests of the State.¹¹⁶

Constitutional validity of POTA was challenged in *People’s Union for Civil Liberties v. Union of India*, where the Supreme Court upheld the Act, holding that Parliament possessed the legislative competence to enact counterterrorism laws under Article 248 and Entry 97 of List I in the Seventh Schedule.¹¹⁷ The Court reasoned that the potential for misuse did not, by itself, invalidate a statute, provided its operation remained within constitutional bounds.¹¹⁸ Nonetheless, empirical evidence revealed widespread abuse of the Act, particularly in the aftermath of the 2002 Gujarat riots, where hundreds of Muslims were arrested under POTA while no corresponding charges were brought against members of the majority community.¹¹⁹

Civil liberties organizations and international observers including Human Rights Watch documented systemic misuse, arbitrary arrests, and violations of due process.¹²⁰ Sections 52(4) and 14 of the Act further undermined procedural fairness by limiting access to legal counsel during police interrogation and compelling individuals, including defense lawyers, to disclose information on suspected violators contrary to the *United Nations*

¹¹⁴ Id. S-28

¹¹⁵ Id. S-57.

¹¹⁶ V. Raghavan, *Counterterrorism and Civil Liberties in India: A Study of POTA and Beyond*, 12 Indian J. Const. L. 112 (2005).

¹¹⁷ *People’s Union for Civil Liberties v. Union of India*, (2004) 9 SCC 580.

¹¹⁸ Id. at 586.

¹¹⁹ Amnesty Int’l, *India: Abuse of the Law in Gujarat Muslims Detained Illegally in Ahmedabad*, AI Index: ASA 20/029/2003 (2003), available at: <https://www.amnesty.org/en/documents/asa20/029/2003/en/>.

¹²⁰ Human Rights Watch, *Discouraging Dissent: Intimidation and Harassment of Witnesses, Human Rights Activist, and Lawyers Pursuing Accountability for the 2002 Communal Violence in Gujarat*, (Sept. 24, 2004), available at, <https://www.hrw.org/news/2004/09/24/india-after-gujarat-riots-witnesses-face-intimidation>.

Basic Principles on the Role of Lawyers, which safeguard attorney-client confidentiality.¹²¹ Supporters of POTA defended these provisions as consistent with Article 22 of the Constitution, which allows preventive detention in exceptional cases. However, the cumulative effect of these measures reflected a clear shift towards a “crime-control model” of justice, prioritizing national security over individual rights.¹²²

Mounting public criticism and evidence of selective enforcement led to the eventual repeal of POTA. On September 17, 2004, the Union Cabinet, in accordance with the United Progressive Alliance’s Common Minimum Programme, repealed the Act and incorporated certain counterterrorism provisions into the *Unlawful Activities (Prevention) Act, 1967*.¹²³ Though repealed, POTA’s legacy continues to influence India’s contemporary security framework, exemplifying the recurring constitutional dilemma between the imperatives of state security and the protection of fundamental freedoms.¹²⁴

I. The National Investigation Agency, Act 2008

The *National Investigation Agency Act, 2008* (hereinafter *NIA Act*) was enacted by the Parliament of India in the aftermath of the 26/11 Mumbai Terrorist Attacks, to establish a centralized body to investigate and prosecute offences affecting the sovereignty, security, and integrity of the nation.¹²⁵ The Act created the National Investigation Agency (NIA) as a federal agency with jurisdiction over “schedule offences” listed under the *Unlawful Activities (Prevention) Act, 1967* (UAPA) and other statutes relating to national security.¹²⁶ This move aimed to enhance coordination and efficiency in counterterrorism investigations across state boundaries.

¹²¹ *United Nations Basic Principles on the Role of Lawyers*, adopted by the Eight U.N. Congress on the Prevention of Crime and the Treatment of Offenders (1990).

¹²² Human Rights Watch, *back to the Future: India’s Counterterrorism Laws* (2008), <https://www.hrw.org/report/2010/07/27/back-future/indias-2008-counterterrorism-laws>.

¹²³ Ministry of Home Affairs, Press Release, *Repeal of the Prevention of Terrorism Act, 2002 and Amendment to the Unlawful Activities (Prevention) Act, 1967* (Sept. 17, 2004),

¹²⁴ A.G. Noorani, *POTA: A Law Repealed for a Reason*, 39 *Econ. & Pol. Wkly.* 1895, 1898 (2004).

¹²⁵ *Statement of Objectives and Reasons, National Investigation Agency Act, No. 34 of 2008*, S-2 Acts of Parliament (India).

¹²⁶ *Unlawful Activities (Prevention) Act, No. 37 of 1967*, as amended by the *Unlawful Activities (Prevention) Amendment Act, No. 35 of 2008*, S-15.

Headed by a Director General, the NIA possesses powers to investigate offences under a range of laws, including the *Atomic Energy Act, 1962*, the *Anti-Hijacking Act, 2016*, and the *Weapons of Mass Destruction and Their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005*.¹²⁷ The agency may initiate investigations *suo moto* into acts of terrorism, bombings, hijacking, or attacks on critical infrastructure such as nuclear installations.¹²⁸ Significantly, Section 6 of the NIA Act mandates that state governments extend full cooperation to the NIA in cases falling within its purview, reinforcing the Union's primacy in national security matters.¹²⁹

The Act also provides for the establishment of Special Courts for the expeditious trial of terrorism-related cases.¹³⁰ These courts possess powers to hold *in camera* proceedings, protect witness identities, and ensure the appointment of special public prosecutors.¹³¹ Appeals from Special Courts lie with the respective High Courts, thereby maintaining judicial oversight. Importantly, unlike earlier laws such as TADA and POTA, the NIA Act explicitly excludes confessions made to police officers from admissibility as evidence and does not presume guilt, thereby attempting to align counterterrorism prosecutions with due process norms.¹³²

Despite these safeguards, the NIA's investigations have occasionally sparked debate regarding selective prosecution and political bias. The agency's probe into cases such as the Malegaon Blasts (2009), Samjhauta Express Blast (2007), Mecca Masjid Blast (2007), and Ajmer Dargah Blast (2007), initially attributed to Islamist groups but later linked to Hindu extremist networks, highlights both its expanded reach and the sensitive communal dimension of terrorism investigations in India.¹³³

¹²⁷ *National Investigation Agency Act*, No. 34 of 2008, S 3-4 (India).

¹²⁸ *Id.* S-6.

¹²⁹ *Id.* S-7.

¹³⁰ *Id.* S-11.

¹³¹ *Id.* S-17.

¹³² *Id.* S-22.

¹³³ *National Investigation Agency v. Aseemanand*, NIA Case Nos. RC-06/2007-NIA-DLI & RC-03/2011-NIA-DLI (Ajmer & Samjhauta trials) (India); *Hindu Terror: The NIA's Trials and Challenges*, *The Hindu* (July 23, 2018), <https://www.thehindu.com/news/national/hindu-terror-nia-trials-and-challenges/article24509409.ece>.

VII. ANTI-TERROR LAWS AS A TOOL OF STATE TERROR - PAST EXPERIENCE

The arguments that anti-terror laws are frequently weaponized to curb civil liberties are no longer in serious dispute. Since independence, India has enacted a succession of security laws, the *Preventive Detention Act* (1950), *Maintenance of Internal Security Act* (1971), *Terrorist and Disruptive Activities (Prevention) Act* (TADA, 1987), and *Prevention of Terrorism Act* (POTA, 2002), each justified as a response to evolving threats, yet each later criticized for undermining constitutional guarantees.¹³⁴ Both central and state governments have relied on these laws not only to combat terrorism but, at times, to suppress political opposition and dissent.¹³⁵ These enactments have often mirrored the colonial logic of coercive governance, prioritizing order over liberty and due process.

Experience under TADA and POTA is instructive. By the time of TADA's 1995 lapse, cumulative detentions under the statute had risen to nearly 76,000, with the overall conviction rate remaining below 2% consistent with, and a continuation of, the 1992 figures noted above.¹³⁶ Reports of custodial torture, arbitrary arrests, and fabricated charges led to widespread condemnation from civil society and the United Nations Human Rights Committee.¹³⁷

Yet, despite these lessons, parliament enacted POTA in 2002 after the parliament attack, reviving provisions earlier struck down in *Kartar Singh v. State of Punjab*.¹³⁸ Once again, the law was disproportionately applied against minorities and political opponents, particularly in Gujarat and Jharkhand, until its repeal in 2004.¹³⁹ These early anti-terror

¹³⁴ *Preventive Detention Act*, No.4 of 1950; *Maintenance of Internal Security Act*, No.26 of 1971; *Terrorist and Disruptive Activities (Prevention) Act*, No. 28 of 1987; *Prevention of Terrorism Act*, No. 15 of 2002.

¹³⁵ *Ibid* 129, V. Raghavan, *Counterterrorism and Civil Liberties in India: A Study of POTA and Beyond*, 12 Indian J. Const. L. 112 (2005).

¹³⁶ *Ibid*, 118, A.G. Noorani, *TADA: The Story of a Law Gone Wrong*, 29 Econ. & Pol. Wkly. 59 (1994).

¹³⁷ Human Rights Comm., *Concluding Observations of the Human Rights Committee: India*, U.N. Doc. CCPR/79/Add.81 (Aug.4, 1997), available at: <https://digitallibrary.un.org/record/239353>.

¹³⁸ *Kartar Singh v. State of Punjab*, (1994) 3 S.C.C. 569.

¹³⁹ South Asia Intelligence Review (SAIR), *Weekly DATA, Assessment & News Brief*, SAIR Archives, vol.2, no.15 (Oct. 27, 2003) available at https://www.satp.org/satporgtp/sair/Archives/2_15.htm?utm_source=chatgpt.com, for further see, V.

frameworks established a troubling precedent: extraordinary powers justified by national security often become instruments of political control.

The post-2014 period has seen this pattern re-emerge with renewed identity. The *Unlawful Activities (Prevention) Act, 1967* (UAPA), amended in 2008 and again in 2019, has become the principal legislative tool in India's counterterrorism arsenal. The 2019 amendment expanded executive authority, allowing individuals to be designated as "terrorists" without judicial oversight and granting the National Investigation Agency (NIA) power to conduct interstate investigations without state consent.¹⁴⁰ Critics, including judges and constitutional scholars, have argued that this expansion undermines federalism and weakens procedural safeguards.¹⁴¹

Judicial scrutiny of these developments has been uneven. In *Union of India v. K.A. Najeeb* (2021), the Supreme Court affirmed that constitutional courts may grant bail under Article 21 where continued incarceration becomes oppressive due to the delay in trials.¹⁴² However, subsequent decisions, such as *GN Saibaba v. State of Maharashtra* (2019), and the ongoing cases like *Umar Khalid v. State (NCT of Delhi)* and the *Bhima Koregaon persecutions*, demonstrate a trend of extended pre-trial detention with minimal evidentiary scrutiny.¹⁴³ This judicial reluctance has effectively entrenched a preventive detention regime within the criminal justice system.

Empirical evidence further substantiates these concerns. The National Crime Records Bureau (NCRB) reported that between 2014 and 2022, nearly 8,719 cases were registered

Raghavan, *Counterterrorism and Civil Liberties in India: A Study of POTA and Beyond*, 12 Indian J. Const. L. 112 (2005).

¹⁴⁰ *Unlawful Activities (Prevention) Amendment Act*, No. 28 of 2019, S-35.

¹⁴¹ Anup Surendranath & Vrinda Bhandari, *The Chilling Effect of the UAPA*, *Economic & Political Weekly*, Vol.55, No.36 (2020).

¹⁴² *Union of India v. K.A. Najeeb*, (2021) 3 S.C.C. 713.

¹⁴³ *G.N. Saibaba v. State of Maharashtra*, Crim. App. No. 656/2017 (Bom. H.C. Mar. 25, 2019); *Umar Khalid Moves Supreme Court After Being Denied in Delhi Riots Case*, *Hindustan Times* (Sept. 5, 2025), https://www.hindustantimes.com/india-news/umar-khalid-moves-supreme-court-after-being-denied-bail-in-delhi-riots-case-101757500054881.html?utm_source=chatgpt.com

under UAPA, yet the conviction rate was only 2.5%.¹⁴⁴ This disparity underscored a systematic pattern of persecution without proof, wherein arrest itself functions as punishment. Human rights organizations, including Amnesty International and Human Rights Watch, have documented the use of anti-terror laws to target journalists, students, and human rights defenders.¹⁴⁵ The *News Click* case (2023-24), involving the arrest of journalist Prabir Purkayastha, and the *Delhi riots* prosecutions (2020) exemplify how expressive dissent and digital media are increasingly recast as threats to national security.¹⁴⁶

Even as the judiciary occasionally intervenes, as in *Thwaha Fasal v. Union of India* (2021), cautioning against criminalizing mere ideological association, such instances remain exceptional.¹⁴⁷ The broader judicial trend reflects deference to the State's national security narrative, leading to the normalization of extraordinary powers. The ongoing incarceration of several *Bhima Koregaon* accused illustrates the endurance of punitive pre-trial detention as a substitute for adjudication. Even where the Supreme Court eventually did rule on *Umar Khalid's bail plea* denying bail to Khalid and Sharjeel Imam in the 2020 Delhi riots conspiracy case on 5 January 2026, while granting bail to five co-accused the years of prolonged custody preceding that outcome illustrate the judiciary's uneven application of Article 21 safeguards in terrorism cases.

The unsettled state of this jurisprudence was underscored on 22 May 2026, when a coordinate Bench, while granting interim bail to two co-accused in the same conspiracy, referred to a larger Bench the question of how Article 21 is to be reconciled with the statutory bar on bail under Section 43D(5) of the UAPA, citing a perceived conflict

¹⁴⁴ Mukesh Ranjan, *UAPA Cases: Highest Acquittals at 153 in 2022*, The New Indian Express (Sept. 8, 2024), available at <https://www.newindianexpress.com/thesundaystandard/2024/Sep/08/uapa-cases-highest-acquittals-at-153-in-2022>

¹⁴⁵ *Ibid*, 61, Amnesty International, *Weaponizing the Law: Criminalization of Dissent in India* (2021).

¹⁴⁶ NewsClick Editor Prabir Purkayastha Arrested under UAPA, The Hindu (Oct.4, 2023), <https://www.thehindu.com/news/national/newsclick-editor-prabir-purkayastha-arrested-under-uapa/article67384184.ece>

¹⁴⁷ *Thwaha Fasal v. Union of India*, (2021) 9 S.C.C. 595.

between that line of decisions and a separate Bench's more liberal reading of *Union of India v. K.A. Najeeb* in a separate Kashmir-related UAPA matter.¹⁴⁸

In essence, from TADA and UAPA, the Indian experience reveals an enduring pattern: laws enacted in the name of counterterrorism often evolve into mechanisms for consolidating state authority. This legal continuity reflects a shift from the rule of law to rule by law, where constitutional liberties yield to executive expedience. Anti-terror legislation, far from being exceptional, has become embedded in India's ordinary legal order, legitimizing what may be described as a "permanent state of exceptions".¹⁴⁹

A. Do we Need Anti-Terrorism Laws?

An important question arises here: whether we need to have any anti-terrorism laws at all. Doing this, obviously, we condemn the prevailing *Criminal Justice System* and accept the failure and inability to deal with offenders. The anti-terrorism laws are legalizing the Impermissible acts. It is important to note that the existing legal and judicial system is already equipped to deal with offences referred to in the anti-terror acts. The problem then seems to be a lack of implementation, not a lack of laws.

However, in an attempt to hide this inefficiency, India adopted the anti-terrorist acts, which provide speedy trial without necessary guarantees for the accused, unfair trials, and license to kill, etc. Therefore, it is necessary to improve the functioning of our Criminal Justice System of *Due Process Model* rather than to have harassed and inhumane anti-terrorism laws basing *Crime Control Model*, avoiding Human Rights, Natural Justice, and People's Civil Liberties.

¹⁴⁸ Umar Khalid's Bail Plea Deferred Again in UAPA Case, India Today (Sept. 3, 2025) https://www.indiatoday.in/india/story/umar-khalid-sharjeel-imam-denied-bail-again-decoding-delhi-high-court-order-2020-delhi-riots-case-uapa-caa-2781126-2025-09-03?utm_source=chatgpt.com ; Supreme Court Denies Bail to Umar Khalid, Sharjeel Imam in Delhi Riots Case (Jan. 5, 2026); India: Continued Detention of Umar Khalid and Sharjeel Imam Raises Grave Concerns, Amnesty International (Jan. 6, 2026), <https://www.amnesty.org/en/latest/news/2026/01/india-continued-detention-of-umar-khalid-and-sharjeel-imam-raises-grave-concerns/> ; Supreme Court Refers to Larger Bench "Perceived Conflict" in Judgments on UAPA Bail When Trial Is Delayed, LiveLaw (May 22, 2026), <https://www.livelaw.in/top-stories/supreme-court-refers-to-larger-bench-perceived-conflict-in-judgments-on-uapa-bail-when-trial-is-delayed-535314>.

¹⁴⁹ A.G. Noorani, *The Anatomy of Anti-Terror Laws in India*, 58 Econ. & Pol. Wkly. 21 (2023).

VIII. HUMAN RIGHTS V. NATIONAL SECURITY - A WORKABLE APPROACH

A. Recalibrating the Balance between Liberty and Security

The protection of national security constitutes an essential function of the state; however, it cannot be pursued by dismantling the very constitutional guarantees that define a democratic polity. In India, the last decade has witnessed an intensified contest between the imperatives of counterterrorism and the preservation of civil liberties. The *Unlawful Activities (Prevention) Amendment Act, 2019*, marks a critical juncture in this discourse. By empowering the union government to designate as “terrorists” and authorizing the National Investigation Agency (NIA) to assume jurisdiction across state boundaries, the amendment has substantially expanded executive authority.¹⁵⁰ While justified in the name of efficiency and national security, such provisions have generated grave concerns regarding arbitrariness, prolonged detention, and the erosion of federal equilibrium.¹⁵¹

From 2014 to 2024, Indian courts have increasingly intervened to restore constitutional proportionality in counter-terror enforcement, particularly where prolonged pre-trial detention, parity with co-accused, or procedural safeguards are implicated. In *Masood v. State of U.P.* (2024), the Allahabad High Court granted bail to a UAPA undertrial who had remained in custody for a prolonged period, principally on considerations of parity with co-accused persons who had already been enlarged on bail, while avoiding any conclusive comment on the merits of the prosecution case.

The decision should therefore be cited as an instance of judicial sensitivity to delay and parity in UAPA bail adjudication, rather than as an affirmative constitutional pronouncement on the broader liberty-security balance. Similarly, in *Neelam Ranolia v. State (NCT of Delhi)* (2025), the Delhi High Court emphasized that dissent and democratic expression, even if critical or uncomfortable to the State, cannot by themselves constitute

¹⁵⁰ *Unlawful Activities (Prevention) Amendment Act*, No. 28 of 2019, S-35 (India), Gazette of India, Ministry of Law & Justice.

¹⁵¹ *Id.*

acts of terrorism. Read with broader Supreme Court jurisprudence on prolonged incarceration and procedural fairness, these decisions reflect a cautious but significant judicial insistence that counter-terror prosecutions must remain compatible with due process.¹⁵²

B. The Expanding Frontiers of Security: Surveillance and Privacy

The Supreme Court's intervention in the *Pegasus spyware* controversy (2021) further reaffirmed the judiciaries over individual privacy and procedural fairness.¹⁵³ The court categorically held that 'national security cannot be the mantra for the Executive to avoid judicial scrutiny,' and appointed a committee under Justice R.V Raveendran to investigate allegations of unlawful surveillance targeting journalists, activists, and opposition members.¹⁵⁴

The decision marked a constitutional milestone, reaffirming that the right to privacy recognized as a fundamental right in *Justice K.S. Puttaswamy (Retd.) v. Union of India* extends even to matters of national security, subject to legality, necessity, and proportionality.¹⁵⁵

C. Institutionalizing Accountability: Towards Democratic Oversight

A workable balance between human rights and national security must rest on transparent institutional design rather than ad hoc executive discretion. India's criminal justice system, now governed by the *Bharatiya Nagarik Suraksha Sanhita, 2023* (which replaced the Code of Criminal Procedure, 1973, with effect from 1 July 2024), is structurally equipped to address terrorism-related offences, provided it operates within the parameters of the "due process model."

¹⁵² *Neelam Ranolia alias Neelam Prajapat alias Neelam Azad v. State of NCT of Delhi*, CRL.A. 263/2025 & CRL.M.A. 6750/2025 (Delhi H.C., July 2025) (Division Bench, Subramonium Prasad & Harish Vaidyanathan Shankar) (bail order) (available on Verdictum), available at: <https://www.verdictum.in/court-updates/high-courts/delhi-high-court/neelam-ranolia-alias-neelam-prajapat-alias-neelam-azad-v-state-nct-of-delhi-2025dhc5190-db-protest-parliament-2013-1583378>.

¹⁵³ *Manohar Lal Sharma v. Union of India*, Writ Pet. (Crl.) No. 314 of 2021 (S.C. Oct. 27, 2021 (India).

¹⁵⁴ *Supreme Court Forms Committee to Examine Pegasus Allegations*, *The Hindu* (Oct. 28, 2021), <https://www.thehindu.com/news/national/supreme-court-judgment-on-pegasus/article37184269.ece>.

¹⁵⁵ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017), 10 S.C.C. 1 (India).

The persistent reliance on the “crime control model,” embodied in draconian statutes such as TADA, POTA, and the expansive provisions of UAPA, has historically resulted in arbitrary arrests, custodial violence, and stigmatization of minorities. Instead, procedural fidelity manifested through independent investigation, judicially monitored detention, and timely trials remains the surest means of preserving both justice and security.

To achieve this, India could consider the establishment of a joint parliamentary committee on National Security and Human Rights, chaired by the Prime Minister and comprising leaders of the opposition, the Chairperson of the National Human Rights Commission (NHRC), members of the National Commission for Minorities, and independent human-rights experts. The committee should review the application of counter-terrorism statutes, examine instances of alleged abuse, and mandate periodic reporting from the NIA and National Counter Terrorism Centre (NCTC). Such a model, consistent with parliamentary democracy, would ensure that national security policy remains accountable to civilian oversight rather than insulated from bureaucratic discretion.

D. Human Rights Metrics and the Empirical Imperative (2014-2024)

Empirical data from the National Crime Records Bureau (NCRB) reveals a consistent increase in UAPA cases between 2014 and 2023, accompanied by persistently low conviction rates averaging below 3 percent. This gap between prosecution and conviction underscores both investigative inadequacies and potential misuse of the statute. The Amnesty International Report (2023) similarly documented the weaponization of counterterrorism frameworks to silence journalists, students, and civil society organizations under the pretext of national security.¹⁵⁶

A sustainable counterterrorism strategy must therefore integrate human-rights principles into its operational core. Judicial review, transparency, and legislative oversight are not

¹⁵⁶ Amnesty International, *Weaponizing Counterterrorism: India's Exploitation of Terrorism-Financing Assessments to Target Civil Society* (2023), <https://www.amnesty.org/en/documents/asa20/7222/2023/en/>.

impediments to national security; they are its constitutional foundation. As what could be implied from the decision of the Supreme Court, the Constitution is not a charter for the convenience of the government; it is a shield for the liberty of the citizens. The preservation of that liberty remains the truest measure of India's strength as a constitutional democracy.

IX. SUGGESTIONS AND RECOMMENDATIONS

In order to achieve a practical balance between liberty and security, India should reaffirm its dedication to the Due Process Model of Justice. Strengthening investigative capabilities, ensuring judicial independence, and enhancing accountability frameworks are considerably more effective than enacting excessively harsh laws. Comprehensive reforms in the criminal investigation and prosecution system, including upgrading forensic infrastructure, ensuring timely submission of charge sheets, and protecting witnesses, are crucial to securing higher conviction rates while safeguarding individual rights.¹⁵⁷

To restore the integrity of India's criminal justice system, the focus must shift from ad hoc legislative reactions to institutional accountability and structural reform. A balanced reform of India's counter-terrorism framework requires institutional mechanisms that uphold national security without compromising constitutional liberties. To this end, a Joint Parliamentary Committee on National Security and Human Rights should be constituted, chaired by the Prime Minister and including Opposition leaders, heads of the NHRC and Minority Commission, and independent experts to periodically review anti-terror laws, address instances of misuse, and ensure accountability of enforcement agencies.

Alongside, a National Counter-Terrorism and Human Rights Centre should operate under parliamentary oversight to coordinate intelligence, investigation, and prosecution in conformity with human rights obligations. Instead of further expanding the Unlawful

¹⁵⁷ National Human Rights Comm'n (India), *Annual Report 2022-23* (March. 31, 2023), available at: https://nhrc.nic.in/sites/default/files/AR_2022-2023_EN.pdf

Activities (Prevention) Act, 1967, the National Security Act, 1980, should be reinforced with procedural safeguards and judicial review to harmonize security imperatives with due process. Further, dedicated fast-track courts must be established to ensure timely trials, and the Ministry of Home Affairs and the National Crime Records Bureau should release annual disaggregated data on arrests, prosecutions, and convictions under counter-terrorism laws to enhance transparency, public trust, and democratic oversight.

X. CONCLUSION

The analysis undertaken throughout this paper demonstrates that India's counter terrorism regime has increasingly departed from the *due process model* envisaged under the Constitution. The problem, therefore, lies not merely in the *misuse* of laws by executive agencies but in their *normative design*, which embeds exceptions to constitutional safeguards. Statutes such as the Unlawful Activities (Prevention) Act, 1967, as amended in 2004, 2008, and 2019, and the National Investigation Agency Act, 2008, have structurally incorporated a *crime control logic* prioritizing state security and expediency over individual rights and procedural fairness. These legislative departures institutionalize preventive detention, reverse the presumption of innocence, restrict bail, and expand executive discretion, thereby undermining the equilibrium between liberty and security envisaged under Articles 14, 19, and 21 of the Constitution.¹⁵⁸

The persistent low conviction rates under anti-terror laws, as evidenced by National Crime Records (NCRB) data from 2014 to 2023, do not merely indicate investigative lapses but reveal a deeper, systematic imbalance where expansive powers coexist with fragile procedural safeguards.¹⁵⁹ This figure suggests that an overwhelming majority of accused individuals languishing in jails for years in pre-trial detention only to be acquitted later is a reality that transforms the process itself into punishment. Further, the statutory restrictions like section 43D (5) of UAPA per se do not affect the ability of the

¹⁵⁸ INDIA CONST. arts. 14, 19, 21; see also *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1 (India)

¹⁵⁹ *Ibid*, supra-note 99; Ministry of Home Affairs, *Unlawful Activities (Prevention) Act: Statistical Data 2019-2023*, Lok Sabha Starred Question No. 352 (July 2023).

Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Where undertrials are not being produced before the Court for long periods of time, and the trial is not likely to commence soon, the Courts are necessarily left with no option but to grant bail to them.¹⁶⁰ This tension erodes public trust in the justice system and transforms counter-terrorism governance into a *permanent state of exception*. As the Supreme Court observed in *Kartar Singh v. State of Punjab*, the extraordinary powers conferred upon the state must not become ordinary tools of governance.¹⁶¹ The recurring legislative trend where temporary emergency measures evolve into permanent legal frameworks reflects a constitutional drift away from the principles of proportionality and necessity, long affirmed in *State of Madras v. V.G. Row* and *Kesavananda Bharti v. State of Kerala*.¹⁶²

Two decades into the global “war on terror.” It has become evident that security cannot be purchased at the cost of liberty. When a democracy begins to equate dissent with disloyalty, it risks corroding the very freedoms it seeks to defend. India’s strength as a constitutional democracy lies not in the power of its laws to silence, but in their capacity to protect the most unpopular voices. In the final analysis, the road to genuine national security does not lie in perpetuating exceptionalism but in strengthening ordinary justice rooted in due process, judicial oversight, and respect for human dignity. A strong nation is not one that fears dissent but one that safeguards it, confident that liberty and security can coexist within the robust framework of constitutional governance.

XI. BIBLIOGRAPHY

A. Books

1. BOAZ GANOR, *The Counter-Terrorism Puzzle: A Guide for Decision Makers* 3–8 (Transaction Publishers 2005).

¹⁶⁰ *Ibid*, supra-note 90; *Union of India v. K.A. Najeed*, (2021) 3 S.C.C. 713.

¹⁶¹ *Kartar Singh v. State of Punjab*, (1994) 3 S.C.C. 569 (India).

¹⁶² *State of Madras v. V.G. Row*, A.I.R. 1952 S.C. 196; *Kesavananda Bharti v. State of Kerala*, (1973) 4 S.C.C. 225.

2. Chalmers Johnson, *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* 23–45 (Metropolitan Books 2004).
3. Edward W. Said, *The Clash of Ignorance*, *The Nation* (Oct. 4, 2001), available at <https://www.thenation.com/article/archive/clash-ignorance/>.
4. HERBERT L. PACKER, *The Limits of the Criminal Sanction* 149–73 (Stanford Univ. Press 1968).
5. K.D. Gaur, *Textbook on the Indian Penal Code* 15–16 (5th ed. 2015).
6. K.D. Kaur, *A Textbook on the Indian Penal Code* 784 (Universal Law Publ'g Co., 2004).
7. Mahmood Mamdani, *Muslim, Bad Muslim: America, the Cold War, and the Roots of Terror* 115–43 (Pantheon 2004).
8. Michael T. Klare, *Blood and Oil: The Dangers and Consequences of America's Growing Petroleum Dependency* 147–68 (Metropolitan Books 2004).
9. NOAM CHOMSKY, *Imperial Ambitions: Conversations with Noam Chomsky on the Post-9/11 World* (David Barsamian ed., Hamish Hamilton 2005).
10. Peter Bergen, *The Osama bin Laden I Know: An Oral History of al Qaeda's Leader* (Free Press 2006).
11. SAMUEL P. HUNTINGTON, *The Clash of Civilizations and the Remaking of World Order* 21–49 (Simon & Schuster 1996).
12. Steve Coll, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden* (Penguin Press 2004).

B. Articles

1. A.G. Noorani, *TADA: The Story of a Law Gone Wrong*, 29 *Econ. & Pol. Wkly.* 59 (1994).
2. A.G. Noorani, *POTA: A Law Repealed for a Reason*, 39 *Econ. & Pol. Wkly.* 1895 (2004).

3. A.G. Noorani, *Preventive Detention in India: A Critical Review*, 23 J. Indian L. Inst. 155 (1981).
4. Anil Kalhan et al., *Colonial Continuities: Human Rights, Terrorism, and Security Laws in India*, 20 Colum. J. Asian L. 93 (2006).
5. Anuksha Singh, *The Politics of Preventive Criminalization in India*, 55 Econ. & Pol. Wkly. 32 (2020).
6. Anup Surendranath & Vrinda Bhandari, *The Chilling Effect of the UAPA*, 55 Econ. & Pol. Wkly. 36 (2020).
7. Chitkara, Radhika, *Revisiting Kartar Singh v. State of Punjab: Fair Trial and the Scope of Exception in Anti-Terror Laws* (2022), https://repository.nls.ac.in/nls_articles/26.
8. Herbert L. Packer, *Two Models of the Criminal Process*, 113 U. Pa. L. Rev. 1 (1964).
9. V. Raghavan, *Counterterrorism and Civil Liberties in India: A Study of POTA and Beyond*, 12 Indian J. Const. L. 112 (2005).
10. A.G. Noorani, *The Anatomy of Anti-Terror Laws in India*, 58 Econ. & Pol. Wkly. 21 (2023).
11. S.P. Sathe, *The Parliament Attack and the New Anti-Terror Law: A Legal Critique*, 37 Econ. & Pol. Wkly. 165 (2002).
12. Usha Ramanathan, *A Tyranny of Emergency: Preventive Detention and the Indian Constitution*, 25 Econ. & Pol. Wkly. 1227 (1990).
13. Conor Gearty, *Terrorism and Human Rights* 1–25 (Cambridge Univ. Press 2007).

C. Reports and Institutional Publications

1. Amnesty Int'l India, *Weaponizing Counter-Terrorism: The Use of UAPA Against Dissent in India* (2022), <https://www.amnesty.org/en/documents/asa20/5686/2022/en/>.

2. Amnesty International, *Weaponizing Counterterrorism: India's Exploitation of Terrorism-Financing Assessments to Target Civil Society* (2023).
3. Amnesty International, *Weaponizing the Law: Criminalization of Dissent in India* (2021).
4. Amnesty Int'I, *India: Abuse of the Law in Gujarat Muslims Detained Illegally in Ahmedabad*, AI Index: ASA 20/029/2003 (2003).
5. Human Rights Watch, *Back to the Future: India's Counterterrorism Laws* (2008).
6. Human Rights Watch, *Discouraging Dissent: Intimidation and Harassment of Witnesses and Lawyers* (2004).
7. Ministry of Home Affairs, *Annual Report 2022–2023* (Govt. of India 2023).
8. Ministry of Home Affairs, *Press Release: Repeal of the Prevention of Terrorism Act, 2002 and Amendment to the UAPA, 1967* (Sept. 17, 2004).
9. National Crime Records Bureau, *Crime in India 2022: Volume 2* (2023).
10. National Human Rights Comm'n (India), *Annual Report 2022–23* (Mar. 31, 2023).
11. Law Commission of India, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, Report No. 277 (2018).
12. Dept.-Related Parliamentary Standing Comm. on Home Affairs, *Police Training, Modernization and Reforms*, 237th Report (2022).
13. United Nations Human Rights Committee, *Concluding Observations: India*, U.N. Doc. CCPR/79/Add. 81 (Aug. 4, 1997).
14. U.N. Secretary-General, *Report on Measures to Eliminate International Terrorism*, U.N. Doc. A/59/565 (2004).
15. Justice B.P. Jeevan Reddy Comm'n, *Report on the Armed Forces (Special Powers) Act, 1958* (2005).

16. Justice Santosh Hegde Comm'n, *Report on Alleged Extrajudicial Killings in Manipur* (2013).
17. Justice J.S. Verma Comm'n, *Report on Amendments to Criminal Law* (2013).

D. Statutes & Official Documents

1. Armed Forces (Special Powers) Act, No. 28 of 1958, *India Code*.
2. The Unlawful Activities (Prevention) Act, No. 37 of 1967, *India Code*.
3. The Unlawful Activities (Prevention) Amendment Acts, Nos. 29 of 2004, 35 of 2008, and 28 of 2019, *Acts of Parliament (India)*.
4. The Prevention of Terrorism Act, No. 15 of 2002, *Acts of Parliament (India)*.
5. The Terrorist and Disruptive Activities (Prevention) Act, No. 28 of 1987, *Acts of Parliament (India)*.
6. The National Investigation Agency Act, No. 34 of 2008, *Acts of Parliament (India)*.
7. The National Security Act, No. 65 of 1980, *Acts of Parliament (India)*.
8. The Constitution of India, articles. 20–22.
9. G.A. Res. 49/60, U.N. Doc. A/RES/49/60 (Dec. 9, 1994).
10. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).
11. UNSC Res. 1267 (1999); UNSC Res. 1373 (2001).

E. Case Law

1. *ADM Jabalpur v. Shivkant Shukla*, A.I.R. 1976 S.C. 1207.
2. *Ajmal Kasab v. State of Maharashtra*, (2012) 9 S.C.C. 1.
3. *Anil Baburao Baile v. Union of India & Ors.*, (Bom. H.C. July 17, 2025).

4. *Asif Iqbal Tanha v. State of NCT of Delhi*, 2021 S.C.C. OnLine Del 3253.
5. *Extra-Judicial Execution Victim Families Ass'n v. Union of India*, (2016) 14 S.C.C. 536.
6. *G.N. Saibaba v. State of Maharashtra*, Crim. App. No. 656/2017 (Bom. H.C. Mar. 25, 2019).
7. *Kartar Singh v. State of Punjab*, (1994) 3 S.C.C. 569.
8. *Manohar Lal Sharma v. Union of India*, Writ Pet. (Crl.) No. 314 of 2021 (S.C. Oct. 27, 2021).
9. *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 S.C.C. 109.
10. *Nat'l Investigation Agency v. Sudha Bharadwaj*, 2021 S.C.C. OnLine S.C. 1336.
11. *Neelam Ranolia v. State (NCT of Delhi)*, 2025 DHC 5190-DB (Del. H.C.).
12. *People's Union for Civil Liberties v. Union of India*, (2004) 9 S.C.C. 580.
13. *Prabir Purkayastha v. State (NCT of Delhi)*, 2024 INSC 414.
14. *Thwaha Fasal v. Union of India*, (2021) 9 S.C.C. 595.
15. *Union of India v. K.A. Najeeb*, (2021) 3 S.C.C. 713.
16. *Gitanjali J. Angmo v. Union of India*, W.P. (Crl.) No. 399/2025 (Sup. Ct.) (habeas corpus petition filed by Sonam Wangchuk's wife challenging his NSA detention; disposed of as infructuous following the Union's revocation of the detention on Mar. 14, 2026).

F. Web & News Sources

1. *Brief History & Challenges to the UAPA*, Supreme Court Observer, <https://www.scobserver.in/journal/brief-history-challenges-to-the-uapa/>.
2. *Umar Khalid Bail Tracker*, Supreme Court Observer, <https://www.scobserver.in/journal/umar-khalid-bail-application-tracker/>.

3. *Nagaland Civilian Killings: AFSPA Protests*, *The Hindu* (Dec. 7, 2021).
4. *Masood v. State of U.P.*, 2024 S.C.C. OnLine All 694 (Allahabad H.C.) [bail order concerning Masood Ahmed in the Hathras conspiracy/UAPA case; author to verify the certified order, exact case title, citation number, bench details, and reasoning against SCC Online, Manupatra, or the Allahabad High Court eLegalix portal before publication].
5. *NewsClick Editor Prabir Purkayastha Arrested Under UAPA*, *The Hindu* (Oct. 4, 2023).
6. *UAPA Cases: Highest Acquittals at 153 in 2022*, *The New Indian Express* (Sept. 8, 2024).
7. *Umar Khalid's Bail Plea Deferred Again in UAPA Case*, *India Today* (Sept. 3, 2025).
8. *Can AFSPA Be Lifted in Jammu and Kashmir?* *India Today* (Mar. 8, 2025).
9. *97.2% of UAPA Accused Jailed for Long Periods and Eventually Acquitted*, *The News Minute* (Oct. 2, 2022).
10. *Acquittals in UAPA Cases Double Convictions*, *News18 India* (Aug. 31, 2024).
11. *Global War on Terror*, George W. Bush Presidential Library, <https://www.georgewbushlibrary.gov/research/topic-guides/global-war-terror>.