

Terrorism and Human Rights in India: A Legal and Ethical Balance

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Abstract:

The global rise of terrorism has compelled states worldwide to adopt stringent counter-terrorism measures, often leading to a complex and challenging dilemma: how to effectively combat terrorism while simultaneously upholding fundamental human rights. India, a nation that has grappled with terrorism for decades, faces this challenge acutely. This research paper examines the delicate legal and ethical trade-off between national security needs and protection of human rights in India's counter-terrorism regime. It dissects important anti-terrorist legislation, considers judicial interventions to protect civil liberties, and addresses the inbuilt tensions that emerge in practice. By exploring paradigm cases and the consideration of international human rights and humanitarian law principles, the paper makes a case for a sophisticated approach that upholds both security and rights, proposing strong oversight mechanisms and the invocation of due process to ensure that abuses are prevented and the moral legitimacy of the state's actions is maintained.

Keywords: Terrorism, measures to counter terrorism, international humanitarian principles, protection of human rights

1. Introduction:

Terrorism, with its indiscriminate brutality and purpose to create terror, constitutes one of the most serious threats to peace, security, and human rights in the world today. States, including India, have pushed back in the form of passing far-reaching anti-terrorism laws and pursuing aggressive counter-terrorist policies. But these steps are usually at the expense of civil liberties and human rights, which creates a deep tension between the state's responsibility to guard its citizens and its responsibility to uphold fundamental freedoms. This balance is the nub of legal and ethical controversy concerning counter-terror activity.

India has a long and bitter experience with dealing with terrorism in all its many forms, ranging from cross-border infiltrations to internal insurgencies. This ongoing fight has resulted in the development of a strong, but sometimes contentious, legal system intended to counteract terrorist activity. The difficulty for India, as for most other democracies, is how to balance these laws and their application so as to effectively thwart terrorist threats without undermining the core values of a democratic state, such as the rule of law, due process, and human rights. This essay aims to explore this intricate nexus, providing a critical assessment of India's response and the human rights implications.

2. Defining Terrorism in the Indian Context:

In contrast to most Western countries, India has embraced a wide definition of "terrorist act" in its main anti-terrorism law, the Unlawful Activities (Prevention) Act (UAPA), 1967 (as amended). This wideness is the source of both operational convenience for the police and anxiety for human rights activists.

The UAPA does not define "terrorism" explicitly but defines a "terrorist act" in Section 15 as any action done with the intent to threaten the unity, integrity, security or sovereignty of India or to cause terror among the people or any section of the people, by employing bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological, radiological, nuclear or otherwise) of hazardous nature or by any other means of whatever nature, to cause or likely to cause:

1. death or injuries to individuals
2. loss of or damage to property
3. interruption of any supply or service to the community's life
4. damage or destruction of any property or equipment employed or meant to be employed for the defence of India or in relation to any other purposes of the Government of India, the State Government or any local authority
5. destruction or damage of any equipment or property used or to be used in relation to any other public utility service
6. intimidation, coercion or terrorisation of a person or part of the people.

This broad definition, and especially the language "any other means of whatever nature" and "intimidation, coercion or terrorisation," has been accused of being able to cover acts that could otherwise be covered under ordinary criminal law and thus permitting the use of more onerous anti-terror provisions. The emphasis in the definition on intent to "strike terror in the people or any section of the people" is also wide-ranging, and it has been the subject of controversy regarding interpretation and misuse against dissent or free speech.

3. Human Rights Framework in India:

India's adherence to human rights is guaranteed in its Constitution, specifically Part III, which ensures an extensive list of Fundamental Rights. Such rights are justiciable, i.e., they can be appealed to the Supreme Court or High Courts for enforcement. Some of the most significant rights pertinent to the debate regarding terrorism and human rights are:

Article 14 (Equality before Law): Provides for equality of all persons before the law and equal protection of the laws.

Article 20 (Protection in respect of conviction for offences): Provides protection against ex post facto laws, double jeopardy, and self-incrimination.

Article 21 (Protection of Life and Personal Liberty): The widest of rights, construed by the Supreme Court to comprise the right to live with human dignity, right to speedy trial, right to legal aid, and safeguard against arbitrary arrest and detention.

Article 22 (Protection against arrest and detention in certain cases): Ensures protection such as the right to be informed of the reasons for arrest, the right to consult a legal professional, and the need to produce an arrested individual before a magistrate within 24 hours.

Article 19 (Protection of certain rights regarding freedom of speech, etc.): Ensures basic freedoms such

as freedom of speech and expression, assembly, association, movement, residence, and profession, with reasonable restrictions in the interests of national security, public order, etc."

These basic rights are the constitutional foundation upon which counter-terrorism legislation is measured. The Indian judiciary, and most importantly the Supreme Court, has served as a custodian of these rights, frequently pitting them against the security needs of the state.

4. Most Important Anti-Terrorism Acts in India and their Human Rights Implications:

India has a record of passing special anti-terrorism laws in the face of perceived security threats, and they have usually evoked controversies regarding their compatibility with human rights norms.

4.1. Former Laws (TADA and POTA):

Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987: India's initial comprehensive specialized anti-terrorism law. It had following controversial provisions:

Draconian Powers: Provided for extended pre-trial detention (up to one year without charge).

Confessions to Police Officers: Made confessions legally admissible in court, a radical deviation from regular criminal law.

Reverse Burden of Proof: Shifted the burden of establishing innocence to the accused in specific situations.

Special Courts: Created special courts for trials, usually in camera.

Human Rights Issues: Popularly condemned for its abuse possibilities, arbitrary detentions, and low prosecution levels despite large detention figures. It was finally permitted to expire in 1995 because of broad reports of human rights abuses and its biased effect on minority groups.

Prevention of Terrorism Act (POTA), 2002: Passed subsequent to the 2001 Parliament attack, POTA restored most of the provisions of TADA, such as:

Wide Definition of Terrorist Act: As wide as TADA.

Increased Powers of Detention and Investigation: Permitted wiretapping and other surveillance activities.

Police Confessions' Admissibility (with protections): Sought to cure TADA's weaknesses by admitting such confessions only if made to a police officer who is not below the rank of Superintendent of Police.

Human Rights Concerns: Shared the same issues as TADA in terms of abuse potential, arbitrary detentions, and restrictions on due process. POTA was repealed in 2004 by the new government primarily due to fear of its misuse.

4.2. The Unlawful Activities (Prevention) Act (UAPA), 1967 (as amended):

After the repeal of POTA, the UAPA, an older legislation originally used to address unlawful associations, was far-reachingly amended in 2004, 2008, 2012, and 2019 to become India's main anti-terrorism legislation. Most of the tight provisions of TADA and POTA were re-enacted in the UAPA.

Procedural Provisions and Human Rights Consequences

Wide Definition of "Terrorist Act" and "Unlawful Activity": As explained above, the broad definitions can result in arbitrary detentions and political dissent being targeted.

Designation of Persons as Terrorists (2019 Amendment): Enables the central government to designate individuals as "terrorists" without going through a previous judicial process. It is contended that this undermines the principle of "innocent until proven guilty" and can result in blacklisting and social stigmatization without due process.

Extended Detention Period: Permits pre-charge detention for up to 180 days (as opposed to 90 days in

ordinary law) and extended police custody, making it more difficult for suspects to be granted bail.

Bail Provisions of a mandatory nature (Section 43D(5)): Makes it very hard to grant bail if the court feels that there are "reasonable grounds for believing that the accusation against such person is prima facie true." The provision, in effect, puts a reverse onus of proof on the accused during the bail stage and has been faulted with abrogating the presumption of innocence.

Freedom of Expression and Association Restrictions: The expansive definitions of "unlawful activity" and "terrorist act" have been invoked to suppress freedom of speech and association, especially against activists, journalists, and protestors.

Reduced Threshold of Evidence for "Terrorist Act": Although police officer confessions are excluded under UAPA, the general scheme is considered to be less stringent regarding evidentiary requirements in establishing a "terrorist act" than with run-of-the-mill criminal offenses.

5. Judicial Review and Checks:

The Indian judiciary has always acted as a necessary check on the power of the executive, especially in the area of human rights. Even when it comes to stringent anti-terror laws, the courts have tried to introduce checks and interpret provisions in a way that safeguards fundamental rights.

Kartar Singh v. State of Punjab (1994): In this watershed case related to TADA, the Supreme Court virtually affirmed the constitutional validity of the Act but made some procedural measures, like having a confession before a police officer recorded by a senior officer and brought before a judicial magistrate. The Court recognized, however, the exceptional character of the legislation.

PUCL v. Union of India (2004): During the time that POTA was operative, in this case (albeit largely concerning interception of communication) the Supreme Court reiterated stringent observance of safeguards to ensure powers under such legislations were not abused.

Post-Repeal of POTA: The Supreme Court has, in later judgments, underlined the requirement of circumspection in invoking anti-terror measures and underscored due process and fair trial.

Bail Jurisprudence under UAPA: The Supreme Court and other High Courts have, over the years, increasingly demonstrated a readiness to critically examine the strict bail provisions under UAPA. Although Section 43D(5) renders bail challenging, some judges have ordered bail, laying stress on the requirement of credible prima facie material to be produced by the prosecution as well as keeping in view factors such as long-term detention without trial. The Supreme Court's judgment in *The National Investigation Agency v. Zahoor Ahmad Shah Watali* (2019) restricted the ambit of judicial review at the stage of bail to some extent, rendering it more challenging for accused persons to secure bail under UAPA. Nevertheless, recent judgments, such as *Anil Vasant Rao Deshmukh v. State of Maharashtra* (2023) and others, reveal a sustained judicial attempt to reconcile individual freedom with the interest of the state. * Protecting Freedom of Expression: In cases where the UAPA seemed to be used against journalists or activists for criticizing the government, courts have stepped in. They have stipulated that criticizing government policies or holding unpopular opinions cannot be construed as a "terrorist act" or "unlawful activity."

Union of India v. K.A. Najeeb (2021): In this landmark judgment, the Supreme Court, considering the harsh bail provisions under UAPA, held that extended periods of incarceration (usually without trial) in itself can be a reason for granting bail, particularly when the trial is not likely to end within a reasonable timeframe. This judgment offers an important ray of hope for numerous undertrials of UAPA cases.

Even with these judicial interventions, sheer numbers of cases, complexity of legal arguments, and the languid pace of trials often result in individuals accused under UAPA remaining in pre-trial detention for several years, at times even before charges are framed.

6. Ethical Balance and International Standards

The conflict between counter-terrorism and human rights is not Indian; it is an international ethical challenge. International human rights law (IHRL) sets the parameters that define the limit on the actions of the state, even when faced with serious threats.

Proportionality and Necessity: IHRL mandates that the only restriction of rights must be necessary in a democratic society and proportionate to the legitimate aim being pursued. Counter-terrorism measures, although legitimate, should not be overbroad or applied arbitrarily.

Non-Derogable Rights: Some rights, including the right to life, the ban on torture, and the right to a fair hearing, are non-derogable, i.e., they cannot be suspended even during public emergency.

Due Process and Fair Trial: IHRL underscores the significance of due process, such as the presumption of innocence, right to counsel, right to a fair trial, and right to contest detention.

International Humanitarian Law (IHL) and Counter-Terrorism: IHL primarily applies in situations of armed conflict, regulating the conduct of hostilities and protecting those not participating in fighting. In general, counter-terrorism operations within a state's territory are governed by domestic law and IHRL, not IHL. However, if counter-terrorism operations escalate to an armed conflict (either international or non-international), then IHL would apply alongside IHRL.

Limited Direct Applicability: In most counter-terrorism activities, which encompass law enforcement and intelligence operations, IHL has limited direct applicability.

Guiding Principles: However, IHL principles such as distinction (between combatants and civilians), proportionality (in force use), and humanity (preventing cruel treatment) can still guide ethical behaviour by counter-terrorism forces when IHL is not technically applicable. Torture prohibition, for example, is absolute under IHRL and IHL.

Classification Debate: There is a universal debate regarding whether some ongoing long-term counter-terrorism campaigns by states or non-state armed actors cross the threshold into "armed conflict" and hence activate IHL. India's official position generally looks at such operations through a law enforcement prism and stresses IHRL's applicability.

Balancing Security and Liberty: The underlying ethical dilemma is how much freedom are citizens willing to give up for security. Grossly sweeping legislation has the potential to lead to a police state.

Preventive Justice vs. Retributive Justice: Anti-terrorism legislation tends towards preventive detention, an attempt to head off future actions. This collides with the conventional criminal justice model of punishing past crime, raising ethical issues in regards to pre-emptive punishment.

Stigmatization and Discrimination: The wide use of anti-terror laws can result in stigmatizing particular groups or communities, generating discrimination and alienation that can paradoxically be detrimental to long-term security.

Responsibility for Abuses: Ensuring responsibility for human rights violations by state institutions in the cause of counter-terrorism is an essential moral necessity.

7. Case Studies:

Dr. Binayak Sen Case: Renowned human rights activist and physician Dr. Binayak Sen was held guilty

under UAPA and sedition laws in 2010 on charges of Maoist links, drawing large-scale national and international criticism over implications to freedom of expression and association. He was acquitted by the Supreme Court later, highlighting the judiciary as a corrective forum, but only after prolonged legal warfare.

Bhima Koregaon Case: The case concerns the arrest of some of the country's leading human rights activists, lawyers, and academics under the UAPA for suspected connections with a Maoist conspiracy. The lengthy detention without trial of numerous suspects, the tight bail conditions, and allegations of planted evidence (e.g., electronic evidence found on computers allegedly planted) have attracted strong criticism from human rights bodies across the world, raising serious questions regarding due process and the abuse of UAPA against dissent. The case highlights the difficulties presented by the UAPA's high bail regime and the sluggishness of trials.

Siddique Kappan Case: A Kerala-based journalist, Kappan was arrested under UAPA in Uttar Pradesh en route to report on the Hathras rape case in 2020. He was kept in prison for more than two years without bail before finally being granted bail by the Supreme Court and subsequently by the High Court in the PMLA case. His case is a classic example of concern over criminalization of journalism and arbitrary use of anti-terror law. * **Tehelka Case** (against Tarun Tejpal, under POTA): Although POTA was withdrawn, previous cases under it show cause for concern. The Supreme Court in 2004 declared unconstitutional a provision of POTA concerning confessions made before police officers (Section 32) in *People's Union for Civil Liberties v. Union of India*, holding that such confessions cannot be used against a co-accused, thus providing a limited protection.

These instances, and others like them, graphically illustrate the operational difficulties of juggling security and rights, and the urgent, even belated, role of the judiciary in correcting course.

8. Related Research Papers and Scholarly Discourse

The subject of "Terrorism and Human Rights" is a very dynamic and broad field of academic and policy research across the world and in India. It is not possible to provide an exact figure, but thousands of research articles, books, journal publications, reports of human rights groups, and policy papers discuss different aspects of this topic. Some of the prominent themes of scholarly discussion are:

Constitutional Validity of Anti-Terrorism Laws: Legal assessments of UAPA, TADA, and POTA, their conformity with basic rights.

Judicial Review and Activism: Research on the contribution of the Supreme Court and High Courts to the interpretation and implementation of anti-terrorism laws, and their attempts to protect human rights.

Effect on Civil Liberties: Studies of the implication of counter-terror laws on freedom of speech, association, privacy, and due process.

Bail Regime under UAPA: Detailed examinations of the stringent bail provisions and their implications for under-trial prisoners.

Security vs. Liberty Debate: Philosophical and legal debates on the inherent trade-off and the optimal balance.

Comparative Counter-Terrorism Laws: Comparisons of India's counter-terrorism laws with the laws of other democracies and their human rights implications.

International Human Rights Law and Counter-Terrorism: Examination of how international human rights standards interact with state counter-terrorism operations.

Victims of Terrorism vs. Rights of Accused: Discussion on the balance between victims of terrorism and

the due process rights of accused individuals.

Abuse and Misuse of Laws: Empirical research and reports listing purported cases of abuse or politically motivated use of anti-terrorism legislation.

Indian and international major law journals, human rights journals, and publications by organizations such as the National Human Rights Commission (NHRC), Amnesty International, Human Rights Watch, and the International Commission of Jurists (ICJ) are important sources for this study.

9. Conclusion:

India's experience in fighting terrorism while maintaining human rights is an ongoing and dynamic challenge. The legal architecture, specifically the UAPA, gives the state wide-ranging powers that are considered necessary to tackle sophisticated threats. Yet the expansive definitions, the strict bail provisions, and the risk of extended detention without trial engage genuine concerns regarding the undermining of core rights, most notably the right to personal liberty and fair trial.

The Indian judiciary, in its interpretive role, has served as a vital protector of human rights, seeking to inject due process and proportionality into the enforcement of these potent laws. Landmark rulings, sometimes limited by legislative language, have frequently asserted insistence on rigid compliance with protections and brought relief in particular cases of arbitrary detention or violation of basic rights.

The recent judicial focus on correct speedy trial rights and considering extended detention as a basis for bail under UAPA is an important development. More than judicial vigilance is needed to balance the legal and ethical scales to achieve the best result. It calls for: **Legislative Review:** Regular and intense review of anti-terrorism legislation to make sure that they are narrowly crafted, proportionate, and have strong human rights protection.

Enhanced Oversight Institutions: Effective and independent oversight institutions for law enforcement agencies engaged in counter-terrorism activities. **Capacity Development:** Education of police and judicial officers in human rights norms and due process in counter-terrorism investigations.

Transparency and Accountability: Greater transparency in the use of anti-terror legislation and effective accountability mechanisms for any human rights violations. **Public Discussion:** Encouraging an enlightened public discussion that weighs security necessities against the precious principles of a democratic society.

Finally, the resilience of India's democracy is not only its capacity to resist external threats, but also its determination to safeguard the rights and dignity of all its citizens at all times, even in times of serious challenges. Balancing this is not only a legal requirement but an ethical necessity which supports the authority and sustainability of counter-terrorism initiatives.

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