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Research Paper

Anti-Terrorism Laws and Human Rights in India: Practices, Problems and Prospects

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ABSTRACT

Terrorism has spread to almost all corners of the world. Hundreds of people die each year due to terrorist attacks, and their impact is more than just the loss of lives. There has been an upsurge in terrorist activities, intensification of cross-border infiltration, spread of left-wing extremism, and extension of secessionist conflicts in different parts of India. The use of modern means and technology enables terror organisations to strike and create terror among people at will. In many cases, the criminal justice system was not designed to deal with such heinous crimes. Analysing the necessity of enacting legislation to deal with and prevent terrorist activities, the Indian Government has introduced various strict anti-terrorism laws, such as the UAPA, TADA, and POTA, into the Indian criminal justice system. Although the primary objective of these anti-terror laws was to reduce the menace of terrorism and protect human lives, they were often directed against the basic freedom and rights of fellow citizens and misused for political purposes. Several cases of human rights violations have been lodged due to the overpowering legislation. In this context, this paper will analyse the impact of anti-terrorism laws on the basic rights of citizens in India and their scope and limits in the Indian judicial system.

Keywords: *Terrorism, Extremism, Inti-Terrorism Laws, Criminal Justice System, Human Rights*

Of all the threats that the world faces today, terrorism seems to be the most distinctive. As one of the major threats, it has pushed the world into a new age of insecurity (Zhang et al., 2018). A powerful demonstration of such threats can be seen on 11 September 2001 when 19 suicide terrorists of Al Qaeda hijacked three non-fighter US planes to destroy three outstanding US landmark targets: the World Trade Centre, the Pentagon, and Congress. Apart from the damage to billions of dollars' worth of property, more than 3,000 citizens from seventy-eight countries have been killed and thousands injured (Piazza, 2007). Several other high-intensity bombings from Spain to Kenya, Saudi Arabia to Russia, and Pakistan to Indonesia have demonstrated the strength of the threats the world faces today. The attacks directed against these countries have only been part of the global pattern of terrorism in the twentieth and now twenty-first centuries. Such trends of terrorism have

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replaced the threat of nuclear confrontation, which was the predominant threat during the Cold War (Li et al., 2021). Despite the use of every tool of statecraft– intelligence, law enforcement, military, political, diplomatic, economic, and financial–to reduce the menace of terrorism, the trend seems to be increasing day by day (Kumar et al., 2019; Saez, 2012).

Menace of Terrorism and Need of Anti-Terrorism Laws in India

Global Terrorism has emerged as the principal threat to the contemporary world and bears multifaceted forms and dimensions. In some cases, they seem more powerful than weak sovereign states (Carbonelli et al., 2024). Although the menace of terrorism has been at the forefront of public discourse since 9/11, it has been practiced as a political, religious, and criminal tactic for centuries. Although terrorism always represents violence, it was relatively low in the past decade. Initially, its acts were local and non-networked, involving few people. With the development of technology, terrorism has taken a sophisticated turn to excel into a new peak that has led to a peace catastrophe. Its dimensions have increased in terms of fatality, tactics, targets, and cadres. The human and financial resources of international terrorism have expanded. With the rise of religious and ethnic identity movements, terrorist activities gained new momentum. More than the immediate consequences, the menace of terrorism also affects the social, economic, psychological, and political structures of the country.

The growing trend of terrorism has emerged as a principal threat to India and the world. Being located in South Asia, the present epicentre of terrorism, India has fallen into the gravity of terrorism since independence. It has claimed more lives in India than in any other country. More than one hundred thousand persons have fallen victim to terrorism in various parts of the country (Kumar et al., 2017). The Indian version of terrorism is as old as the1940s and started just after independence, although the pre-independence era was not completely free from terrorist activities. Terrorism was, to some extent, practiced as a weapon in the freedom movement, especially in Bengal, although the overall picture was nonviolence (Shughart, 2006).

Since its existence, terrorism has been modulated by different compulsions in different regions in India. In some areas, terrorism is fabricated on ideological motives, while religion became the source in other cases, and even in some areas, terrorism has been launched on the basis of ethnicity. In other parts of India, militants employ terrorism as a technique in the insurgence phase of conflict to further their political cause (Rapoport, 2006; BIISS, 2017). Ethnic conflicts also seem to be a part of Indian society. For example, in a vast country like India, with a pluralistic society, there is no dearth of ethnic and political groups which are dissatisfied with their present status. Not all of them have secessionist demands, but many provide ready material for ambitious political leaders and external forces inimical to India to manipulate and exploit for their own designs country (Marwah, 2002). This produces a wider degree of distance between the government and the community, which later develops into terrorism. The trends of separatist terrorism in the land of peace first rooted in the northeastern region. Just after independence, the Nagas demanding independence approached the means of insurgency and terrorism. In Later years, the trends spread to the Northeast and other parts of India. Unlike Nagaland and other northeastern states, the Khalistani movement and Kashmiri insurgency are rooted in the late 1980s. Unlike the Nagas, these terrorist groups also started for independence. In 1990s the left-wing Naxalism emerged as a major insurgent movement for labourer and workers' rights (Jha & Shadangi, 2025).

Although India has been facing this problem in varying degrees of intensity since independence, in recent times, the tendency has increased several-folds. Today, the country is facing a proxy war, as well as both secessionist and ideological terrorism (Izarali & Ahlawat, 2021). The government is trying its best to prevent the increasing threat of terrorism through multilateral means. Apart from military, political, and economic options, there is a need for a strong legal system to curb the consequences of terrorism. In many cases, the ordinary legal system fails to punish the culprits of terrorist activities and stop the menace of terrorism. Moreover, the Indian legal system prevents law enforcement authorities from acting effectively against terror outfits. Hence, there was a need for an exclusive anti-terrorism law to contain the menace of terrorism in India.

An Overview of Anti-Terrorism Laws in India

Terrorism has immensely affected India since its independence. It has been suffering from all kinds of terrorism which pose an immense threat to its sovereignty and integrity. The reasons for terrorism in India may vary vastly from religion to geography to caste to history (Acharya, 2009; Singh, 2018). The Indian Supreme Court took note of this in Kartar Singh v. State of Punjab (1994), where it observed that the country had been in the firm grip of spiralling terrorist violence and was caught between the deadly pangs of disruptive activities (Noorani, 2002). Apart from many skirmishes in various parts of the country, there were countless serious and horrendous events engulfing many cities with blood-bath, firing, looting, mad killing even without sparing women and children, and reducing those areas into graveyards, which brutal atrocities have rocked and shocked the whole nation (Ganguly & Fidler, 2009). Unfortunately, determined youths lured by hardcore criminals and underground extremists and attracted by the ideology of terrorism indulge in committing serious crimes against humanity (Basu, 2012; Mohanty, 2013). Recognizing the severity of the threat, the Indian state has periodically enacted a series of special anti-terrorism laws aimed at preventing, investigating, and prosecuting terrorist activities (Bajpai, 2002; Muralidhar, 2004). These legislative measures have sought to strengthen the capacity of law-enforcement agencies to respond to emerging security challenges while balancing concerns relating to civil liberties and human rights (Singh, 2007; Human Rights Watch, 2011). Consequently, India's anti-terrorism legal framework has evolved through various enactments, amendments, and judicial interventions designed to address changing patterns of terrorism and insurgency. A brief account of these laws is provided below.

The Armed Forces (Special Powers) Act

The Armed Forces (Special Powers) Act (AFSPA), 1958, is one of India’s most controversial and enduring security laws, primarily governing border regions such as the Northeast and Jammu & Kashmir. Described as a "structural manifestation of state exceptionalism”, it creates a parallel legal framework that grants extraordinary powers to the military while insulating them from the ordinary criminal justice system (Agamben, 2005; Verma, 2012). What was ostensibly designed as a temporary, geographically restricted emergency measure has entrenched itself as a permanent feature of Indian governance in designated "disturbed areas." The Act represents the classic "state of exception" theorized by Giorgio Agamben: a space where the sovereign suspends the law to preserve the law, resulting in the creation of "bare life"—citizens who are stripped of legal protections and subjected to the raw, unmediated violence of the state apparatus (Basu, 2011). In regions like Kashmir and the Northeast, the AFSPA has not merely accompanied conflict; it has actively shaped the socio-political reality, breeding deep-seated alienation that perpetuates the very violence the Act seeks to eradicate (Hussain, 2008; Reddy, 2005).

The legacy of AFSPA is rooted in British colonial rule. It is a direct descendant of the Armed Forces (Special Powers) Ordinance of 1942, which was promulgated to suppress the Quit India Movement in British India (Reddy, 2005; Usha Ramanathan, 2007). Independent India resurrected this imperial instrument in 1958, initially to quell the Naga Insurgency. What was intended as a temporary, geographically restricted emergency measure has since become a permanent fixture of Indian governance in "disturbed areas" (Baruah, 2005; Hussain, 2008).

Key Provisions and Significance Statutory Architecture

The Act is built on three critical interlocking provisions that provide the military with absolute power and immunity in declared disturbed areas and give sweeping operational powers and protect armed forces from legal impunity.

Declaration of "Disturbed Areas" (Section 3)

The power to declare an area "disturbed" rests with the Central Government or the State Governor. Critics argue that this definition is vague, granting the executive immense, unchecked discretion to impose a de facto military regime on civilian populations (Armed Forces (Special Powers) Act, 1958).

Sweeping Operational Powers (Section 4)

This section authorises commissioned and non-commissioned officers, and even jawans, to use lethal force against any person acting in contravention of any law or order, even to the extent of causing death. Similarly, the law allows security forces to destroy property suspected of being an insurgent hideout and arrest and search without warrants based on mere "reasonable suspicion"(Jeevan Reddy Committee, 2005; Human Rights Watch, 2008).

The Shield of Impunity (Section 6)

This is the most contested provision of the Act. It mandates that no prosecution or legal proceedings can be instituted against any person acting under the Act without prior sanction from the Central Government. This effectively makes the state the sole arbiter of whether its own forces should face trial, creating a structural immunity guarantee (AFSPA, 1958; Human Rights Watch, 2008).

Unlike the NSA (preventive detention) or the UAPA (prosecuting specific terror acts), the AFSPA is a geographically bound law that empowers the Armed Forces rather than civil police, granting them judicial and executive-like powers in the field. Along with the NIA Act, it represents the "permanent institutionalization of the security state" in India (Baruah, 2005).

The National Security Act 1980

The National Security Act (NSA) of 1980 represents a significant legal anomaly within the Indian democratic framework, serving as the most enduring manifestation of preventive detention in independent India (Ramanathan, 2004; Noorani, 2011). Unlike traditional penal law, which punishes individuals for past actions, the NSA operates on anticipatory logic, allowing the state to incarcerate citizens based on the subjective suspicion that they might commit future acts prejudicial to national security or public order (Austin, 1999; Seervai, 1996).

The legal lineage of the NSA is inextricably linked to India's colonial past, tracing back to the Bengal Regulation III of 1818, which allowed the British government to arrest individuals for "maintenance of public order" without providing any legal remedies. This was followed by the infamous Rowlatt Acts of 1919, which similarly enabled detention without trial and

sparked nationwide protests in India (Sarkar, 2014; Bipan Chandra et al., 2016). Post-independence, the Indian legislature continued this tradition through the Preventive Detention Act of 1950 and the Maintenance of Internal Security Act (MISA) of 1971, the latter of which gained notoriety for its widespread misuse during the Emergency (Shah Commission, 1978; Noorani, 2011). The NSA was eventually enacted in December 1980 by the government of Indira Gandhi, ostensibly as a narrowly tailored tool to address exceptional threats such as espionage and border subversion (National Security Act, 1980; Jain, 2018).

Statutory Architecture and Provisions

Under Section 3 of the Act, both the Central and State governments are empowered to issue detention orders. The primary grounds for such orders include acting in a manner prejudicial to the defence of India, national security, or foreign relations of India. Additionally, individuals may be detained to prevent them from disrupting public order or maintaining essential supplies and services. The Act also grants the power to detain foreigners to regulate their stay or facilitate their expulsion. Notably, Section 5A stipulates that detention orders are severable; if an order is based on multiple grounds, it remains valid even if some grounds are found to be vague, non-existent or irrelevant (National Security Act, 1980).

Procedural Mechanisms and the "No Vakil" Doctrine

The NSA significantly alters the standard rules of criminal procedure, creating what has been popularly termed a system of “no vakil, no appeal, no daleel” (no lawyer, no appeal, no argument). While Section 8(1) requires the authority to communicate the grounds of detention within five to 15 days, Section 8(2) explicitly allows the state to withhold any facts it considers against the "public interest" to disclose. Furthermore, Section 11(4) mandates that a person detained under the NSA has no right to be represented by a legal practitioner before the Advisory Board. This creates a profound power asymmetry, pitting an unrepresented individual against the full legal machinery of the state (National Security Act, 1980; Jain, 2018).

The Advisory Board and Constrained Safeguard

The primary check on executive power under the NSA is the Advisory Board, constituted under section 9. The Board consists of three members who are, or are qualified to be, High Court judges appointed by the government. Within three weeks of detention, the government must submit the grounds and the detainee's representation to the Board, which must report within seven weeks on whether "sufficient cause" for detention exists. If the Board finds no sufficient cause, the government is legally bound to revoke the order. However, critics argue that the Board often acts as a "procedural rubber stamp" because it primarily reviews files compiled by the detaining authority without the standard rigors of a trial (National Security Act, 1980).

Jurisprudential Standing and the AK Roy Precedent

The constitutional validity of the NSA was largely settled by the Supreme Court in the landmark case of AK Roy vs. Union of India (1982), and the Union of India vs. While the Court upheld the Act, it recognised that preventive detention is an "evil" that must be suffered only to the minimum extent necessary to protect the collective interests of society *(*A.K. Roy vs. Union of India*,* 1982). The Court significantly restricted judicial review, ruling that the judiciary cannot substitute its opinion for the "subjective satisfaction" of the detaining authority (Ramanathan, 2004). This deference is rooted in the belief that the executive is better positioned to assess future threats. Later, in Maneka Gandhi v. Union of India, the

Court broadened the scope of "liberty" under Article 21, suggesting that any law violating personal liberty must pass the tests of reasonableness and proportionality (Jain, 2018).

Contemporary Weaponization and Misuse

In modern applications, the NSA has faced severe criticism for being used as a tool for political vendetta and general law-and-order management rather than for national security. A particularly pernicious phenomenon is "bail jailing", where authorities slap an NSA order on an individual just as they are about to be legally released on bail in a regular criminal case. This allows the state to circumvent the constitutional right to bail and extend incarceration for up to 12 months without trial. Statistics reflect this trend of misuse; for instance, the Allahabad High Court reportedly quashed 94 out of 120 NSA orders reviewed between 2018 and 2020, often citing a lack of evidence or procedural lapses (Basu, 2018; Jain, 2018).

The Unlawful Activities (Prevention) Act (UAPA) 1967

The Unlawful Activities (Prevention) Act (UAPA) was the first major legislation in independent India, specifically designed to address activities threatening the nation's sovereignty and integrity. Enacted in 1967, it was originally designed as a limited measure to protect the nation's territorial integrity (UAPA, 1967; Singh, 2007). Over six decades, it has evolved into a powerful and often controversial instrument of national security. During the initial parliamentary debates, there was a strong consensus among political leaders that the act's scope should be strictly limited to protect the constitutional right to association and prevent executive overreach into legitimate political activities. Consequently, the 1967 version functioned primarily as a code for declaring secessionist groups as unlawful and managing their assets (Noorani, 2011; Sathe, 2002).

The UAPA was first introduced to strengthen the Indian legal system after the evolution of the Naga insurgency in northeast India. The act was passed by both Houses of Parliament and received presidential assent on 30 December 1967 (Noorani, 2011). It was subsequently amended several times to incorporate the necessary techniques to the changing means of terrorism. As the nature of internal threats shifted from simple secessionist movements to networked, high-tech terrorism, the UAPA was systematically overhauled through several amendments in 1969, 1972, 1986, 2004, and 2008 (Ministry of Home Affairs, 2019; Singh, 2019).

This last amendment was enacted after POTA was withdrawn by the Parliament. However, in the last Amendment Act of 2004, most of the provisions of POTA were re-incorporated. The act was further strengthened after the 2008 Mumbai terror attacks. Following the repeal of the Prevention of Terrorist Activities Act (POTA)—which was discarded due to widespread reports of gross abuse and its use as a tool for political vendettas—the government amended the UAPA to re-incorporate many of POTA's 'operational teeth" (Noorani, 2011). While retaining common provisions, it introduced a formal definition of a "terrorist act", a concept that did not exist in the original 1967 statute (Singh, 2007). In the wake of the 2008 Mumbai terror attacks, the Act was further strengthened. This version significantly increased punishments, introducing the death penalty or life imprisonment for terrorist activities and harsher penalties for terror funding (Muralidhar, 2004).

Key Provisions of the Modern UAPA

While the enactment of the Unlawful Activities (Prevention) Act (UAPA) was a watershed moment in the Indian legal system, it gave unprecedented power to the armed forces to infringe on the civil rights of the people. The provisions of the laws are very strong and

framed to prevent terrorism and insurgency which was continuing in different parts of India. The key provisions of the Act are discussed below.

Expansive Definitions and Doctrinal Shifts

A significant departure in the 2004 amendment was the introduction of a formal definition for a "terrorist act". While the original 1967 Act dealt primarily with "unlawful activity" related to secession, the modern version specifically targets individuals and organisations involved in terrorism. The definition of a "terrorist" is now based on their involvement in these newly defined terrorist acts. This definitional expansion has fundamentally altered the legal landscape. An individual is now construed as a "terrorist" not merely through association but through specific involvement in the newly codified terrorist acts, thereby widening the net of state surveillance and prosecution (Ramanathan, 2012).

The Exacerbated Penal Architecture

The 2008 amendment introduced some of the most severe penalties in the Indian Criminal Justice System. According to the law, if any entity is found to be associated with terrorist activities that lead to the death of any person, the penalty can be death or life imprisonment. Similarly, the volume of sentences for terror funding and providing assistance to terrorist organisations also increased. Another significant aspect is that being a member of an unlawful association, or even assisting its operations through contributions or meetings, is punishable by imprisonment and fines.

Evidentiary and Procedural Rules

The UAPA includes specific departures from the ordinary Criminal Procedure Code (CrPC) and has undergone significant changes in evidence collection, witness protection, self-confessions, custodial detention, and grants of bail. Section 46 of this Act allows law enforcement agencies to make evidence collected through the interception of wireless, electronic, or oral communication admissible in court. Similarly, Section 44 provides for the protection of witnesses, allowing their identities to be kept secret in judgments and court records to ensure their safety and security. One notable safeguard restored in the 2004 version of the UAPA is that it differs from the much-debated POTA in terms of the confession by the accused (Jain, 2018). Under the law, confessions made to police officers are no longer admissible as evidence. Similarly, significant changes are made under the provision of bail and detention. According to the Act, suspects must be brought before a magistrate within 24 hours. Furthermore, the "presumption of innocence" remains with the prosecution, and bail is not necessarily denied during the first three months of the detention (UAPA Amendment Act, 2004).

The UAPA was designed to deal with associations and activities that questioned India's territorial integrity. When the Bill was debated in Parliament, leaders, cutting across party affiliation, insisted that its ambit be so limited that the right to association remained unaffected and that the executive did not expose political parties to intrusion. Therefore, the ambit of the Act was strictly limited to meeting the challenge of the territorial integrity of India. The Act was a self-contained code of provisions for declaring secessionist associations as unlawful, adjudication by a tribunal, control of funds and places of work of unlawful associations, penalties for their members, etc. The Act has always been worked holistically and is completely within the purview of the central list in the 7th Schedule of the Constitution (UAPA, 1967).

Terrorist and Disruptive Activities (Prevention) (TADA) Act 1987

The second major anti-terror act, The Terrorist & Disruptive Activities (Prevention) Act, came into force on 3 September 1987. This act had much more stringent provisions than the UAPA and was specifically designed to deal with terrorist activities in India. During the mid-1980s, the Indian state faced a period of profound internal instability, characterised by the intensification of the Khalistan movement in Punjab and persistent insurgencies in the North-Eastern "seven sister" states. These conflicts, alongside the later emergence of the Kashmiri insurgency, highlighted a growing governance and security crisis, where the ordinary criminal justice system was deemed insufficient to handle the "heinous crimes" and sophisticated, networked tactics of terror organisations (Brass, 1995). The state perceived that the regular legal framework actually "prevented the law enforcement authority to act against the terror outfits effectively" creating a need for an exclusive and stringent response. In response to this "spiraling terrorist violence", the Indian Parliament enacted the Terrorist and Disruptive Activities (Prevention) Act (TADA) in 1987 (Singh, 2007). This legislation represents a fundamental shift in Indian jurisprudence, characterised by the following:

TADA was not a standard penal code but a set of "draconic statutory powers" designed specifically to bypass the perceived sluggishness of the conventional system. It consciously diverged from the Code of Criminal Procedure (CrPC) and the Indian Evidence Act to grant law enforcement "wider and ruthless power" (Noorani, 2011). The draconian reputation of TADA stemmed from its specific procedural innovations, which structurally disadvantaged the accused from the moment of arrest to the final verdict, as discussed below. The act significantly altered the rights of the accused by allowing individuals to be detained in police custody for up to six months without formal charges or trials. Unlike regular Indian law, TADA allowed confessions made to the police—even those extracted under torture—to be admissible as evidence in a court of law (Bajpai, 2002).

Key Provisions of TADA

TADA was a major anti-terrorism legislation specifically designed to deal with terrorist activities in India. Although the law lapsed in 1995 due to widespread reports of abuse, its provisions were significantly more stringent than ordinary criminal laws. Based on these sources, the key provisions and characteristics of TADA include:

Extended Custodial Detention

One of the most controversial aspects was the power given to the police to detain individuals for a prolonged period of time. The TADA allowed suspects to be held in police custody for up to six months without any formal charge or trial (TADA, 1987; Muralidhar, 2004).

Admissibility of Confessions

Under ordinary Indian law, a confession made to a police officer is generally inadmissible in court. However, under the TADA, confessions made to the police were admissible as evidence, even if there were allegations that such confessions were extracted under torture (TADA, 1987).

Presumption of Guilt (Section 5)

This act created a legal presumption regarding weapon possession. If a person was found in the unauthorised possession of arms in a "notified area", the law automatically linked that individual to terrorist activity. This provision was criticised for undermining the fundamental right to be presumed innocent until proven guilty of a crime (TADA, 1987).

Special Judicial Oversight

The Supreme Court of India upheld the constitutional validity of these "draconic statutory powers" in the case of *Kartar Singh vs State of Punjab (1994)*, operating on the assumption that authorities would act in good faith for the public good (TADA, 1987).

Broad Investigative Powers

The law provided law enforcement with "wider and ruthless power" compared to the ordinary criminal justice system, which was perceived at the time as being too slow or ill-equipped to handle heinous terror crimes (TADA, 1987).

The Supreme Court of India upheld its constitutional validity on the assumption that those entrusted with such draconian statutory powers would act in good faith and for the public good in the case of Kartar Singh vs State of Punjab (1994) 3 SCC 569. However, there have been many instances of power misuse for collateral purposes. The rigorous provisions contained in the statute were abused by law enforcement officials. TADA lapsed in 1995 *(*Kartar Singh v. State of Punjab*,* 1994).

Prevention of Terrorist Activities Act (POTA) 2002

The Prevention of Terrorist Activities Act (POTA), 2002, represents one of the Indian state's most aggressive attempts to recalibrate the balance between national security and civil liberties. Enacted in the immediate aftermath of the 11 September 2001 attacks in the United States and the December 2001 assault on the Indian Parliament, the law was born out of a "geopolitics of panic" (Cole, 2003; Tellis, 2002). The act was passed in 2004 by a joint session of parliament after its defeat in the upper house by 113-98. It was only the third time a bill was passed by a joint session of both houses of parliament. The Bharatiya Janata Party (BJP)-led National Democratic Alliance (NDA) government argued that a specialised, hardened security posture was required to dismantle terrorist networks and choke their funding sources (Agamben, 2005; Wilkinson, 2011). The passage of POTA was historically significant because of its procedural path. After being defeated in the Upper House, it was passed on 26 March 2002 during a joint session of Parliament—marking only the third time in Indian history that such a measure was used to enact a bill (Lok Sabha Secretariat, 2002; Kashyap, 2015).

Key Provisions and Legislative Architecture

Critics frequently describe POTA as possessing the "structural DNA" of its discredited predecessor, the Terrorist and Disruptive Activities (Prevention) Act (TADA). It introduced expansive definitions and reintroduced controversial evidentiary rules that fundamentally altered the relationship between citizens and the state.

Broad Definition of Terrorism (Section 3)

POTA defined a "terrorist act" with alarming breadth, including not only violence threatening the integrity of India but also acts likely to "strike terror in the people or any section of the people". This subjective criterion allowed law enforcement to reframe relatively common crimes as terrorism (Government of India, 2002).

Admissibility of Confessions (Section 32)

In a move that negated the foundations of the Indian Evidence Act, POTA made confessions to a police officer (not below the rank of Superintendent) admissible in court. This ignored the historical vulnerability of detainees to custodial torture and was the primary reason TADA fell into disrepute (POTA, 2002).

Detention and Bail (Section 49)
The Act permits the detention of a suspect for up to 180 days without filing formal charges. Furthermore, bail provisions required the court to be satisfied that the accused had *not* committed the offence before granting release, effectively forcing a pretrial assessment of guilt (POTA, 2002).

Presumption of Guilt (Section 4)
Similar to TADA, Section 4 of POTA established a legal presumption that if a person was found with unauthorized arms in a "notified area," they were automatically linked to terrorist activity, undermining the right to be presumed innocent (POTA, 2002).

Once the Act became law, many reports surfaced of the law being grossly abused. Claims have emerged that the POTA legislation contributed to corruption within the Indian police and judicial systems. Human rights and civil liberty groups fought against it. The use of the Act became an issue during the 2004 election. The United Progressive Alliance government of India committed to repealing the Act as part of their campaign. On 7 October 2004 the approved the repeal of the POTA. However, after the Bombay attacks of 26 November 2008 the parliament enacted another anti-terror law, the Unlawful Activities (Prevention) Act (Noorani, 2011).

Some of the Significant Cases on POTA
Vaiko, a prominent Tamil politician, was controversially arrested under the POTA for his support of the Liberation Tigers of Tamil Eelam. Similarly, after the Mumbai Blasts of August 2003, three suspects were arrested under the POTA. However, the act was repealed the following year in 2004. In July 2006, a series of train bombings was carried out in Mumbai. In late November 2008, Mumbai was hit by the worst terrorist attack in recent Indian history. This has led some people to question the wisdom of repealing POTA, as there has been an escalation of terrorist attacks of worsening severity. In another case, S.A.R. Geelani, a lecturer at Delhi University, was sentenced to death by a special POTA court for his alleged role in the 2001 attack on the Indian Parliament. He was later acquitted on appeal by the Delhi Bench of the High Court on legal technicalities. Jammu and Kashmir leader Syed Ali Shah Geelani, the leader of the Jamaat-e-Islami group, was arrested under POTA. Raghuraj Pratap Singh, a.k.a Raja Bhaiya, a mobster and Member of the Legislative Assembly of Kunda, India was arrested on the orders of then Chief Minister, Mayawati Kumari and sent to jail under POTA.

The Prevention of Terrorism Act, which the National Democratic Alliance government insisted was the best remedy to deal with terrorist activities in India, was repealed by its successor, the United Progressive Alliance. The abolition of POTA was the Manmohan Singh government's first major policy decision after taking office in May. The decision was approved by the Union Cabinet on Friday, September 17. The only thing that remains is for the government to promulgate an ordinance to repeal the Act.

The 11 September terrorist attacks on the United States were the main reason. Several terrorist attacks, especially in the troubled state of Jammu and Kashmir, and the attempt to storm Parliament in New Delhi quickened the pace of POTA’s enactment. The act replaced an earlier anti-terrorism law known as the Terrorist and Disruptive Activities (Prevention) Act, which was allowed to lapse by the P V Narasimha Rao government back in 1995 (Tellis, 2002). Vajpayee's government said that POTA was India's boldest initiative to fight terrorism, disband terrorist outfits, and choke terror funding. It allowed the detention of a

suspect for up to 180 days without filing charges in court. It also allows law enforcement agencies to withhold the identities of witnesses and treats a confession made to the police as an admission of guilt. Under regular Indian law, a person can deny such confessions in court, but not under the POTA (Noorani, 2011; Ramanathan, 2007). According to the Union Home Ministry, approximately 800 people have been arrested and jailed under POTA. Approximately 4,000 people from across the country were also booked under the Act (Ministry of Home Affairs, 2003). From 1984 onwards, approximately 75,000 people were detained across India under TADA. Of these, 73,000 cases were subsequently withdrawn due to lack of evidence (Human Rights Watch, 2003; Noorani, 2011).

After the implementation of POTA, it was Jharkhand, not Jammu and Kashmir, the highest terror-affected state that saw the largest number of arrests under this Act. Approximately 250 people have been jailed under this law in the eastern state. The state government claims that POTA has been widely used in many parts of Jharkhand to curb the Naxalite threat. But human rights activists say POTA has been misused in Jharkhand against poor, low-caste, tribal people and farmers (Human Rights Watch. (2003).

Repeal and Transition to UAPA

Widespread criticism and reports of abuse made POTA a central issue in the 2004 general elections. Following their victory, the United Progressive Alliance (UPA) government made it a priority to repeal POTA in October 2004, which it did. However, the repeal did not end the use of stringent measures in the country. Critics argue that the Unlawful Activities (Prevention) Amendment Act, 2004, which was enacted immediately after POTA's revocation, re-incorporated most of the operational provisions of POTA, making what some described as only "cosmetic changes"(Human Rights Watch, 2003; Noorani, 2011). While the UAPA restored certain safeguards—such as making confessions to the police inadmissible and requiring suspects to be brought before a magistrate within 24 hours—it maintained the state's power to target terrorist acts and organisations (Muralidhar, 2004).

Unlawful Activities (Prevention) Amendment Act, 2004

After the revocation of POTA by the Congress-led UPA government, the Unlawful Activities (Prevention) Amendment Act, 2004 was enacted by the Indian Parliament on 7 October 2004 (Government of India, 2004). While civil liberties advocate initially celebrated the repeal of POTA, critics argue that the 2004 amendment functioned as a "Trojan Horse" or a "legislative conduit" that retained POTA’s operational "teeth," making only cosmetic changes by migrating its substantive penal provisions into the permanent UAPA frameworkFor critics, the new law has retained all the operational teeth of POTA or it has made only cosmetic changes (Singh, 2007; Jain, 2018). Although many provisions are common, the difference between the POTA and the UAPA is substantial.

Legal and Procedural Changes under the 2004 Amendment

Enacted alongside the repeal of POTA, the 2004 Amendment transformed the UAPA from an administrative law for associations into a permanent and comprehensive anti-terrorism law. It achieved this by migrating core POTA provisions—such as the definition of "terrorist acts”, organizational liability, and terror financing—into the UAPA framework. Some of the key divinations and emerging provisions are discussed below:

Redefining Terrorism and Unlawful Activity

A fundamental shift in the 2004 amendment was the introduction of a formal definition for a "terrorist act”, a concept that did not exist in the original 1967 statute. Although the Act does

not explicitly define the word "terrorist" in its definition clause, the term is now construed based on the definition of a "terrorist act", which uses language lifted almost verbatim from POTA. Previously, the 1967 Act focused primarily on "unlawful activity" and associations questioning India's territorial integrity (UAPA Amendment Act, 2004; Singh, 2019).

Procedural Oversight and Governance

The process of declaring an association as "unlawful" remains a centralised administrative function. The Central Government must declare an association unlawful and provide specific grounds for such a declaration under Section 3. The matter is then referred to a Tribunal under Section 4, which issues a "show cause" notice to the association to determine if sufficient cause exists for the declaration. Prior sanction from either the Central or State government is mandatory before a court can take cognizance of any offence under this Act (UAPA Amendment Act, 2004; Singh, 2019).

Restoring Due Process and Safeguards

To distinguish itself from POTA, the 2004 amendment made the Criminal Procedure Code (CrPC), 1973, applicable to matters of arrest, bail, confessions, and the burden of proof. The law empowered Magisterial Oversight of arrested individuals. The arrested accused must be presented before a magistrate within 24 h. Similarly, confessions made to police officers are no longer admissible as evidence, addressing the primary driver of custodial torture scandals under previous laws. Mostortantly, bailbailno longer automatically denied for the first three months, and the presumption of innocence has been restored, placing the burden of proof on the prosecution (UAPA Amendment Act, 2004).

Evidence and Penalties

Despite these safeguards, the Act maintained strong investigative powers, such as making evidence collected through the interception of electronic, wireless, or oral communications admissible in court under section 46. The 2004 amendment also established specific penalties for involvement in illegal associations. Simply being a member, attending meetings, or soliciting contributions for an unlawful association is punishable by up to two years' imprisonment and a fine. If a member possesses unlicensed firearms or explosives capable of mass destruction and commits an act resulting in death or grievous injury, the penalties are significantly more severe (UAPA Amendment Act, 2004).

The 2008 Escalation

Following the 2008 Mumbai terror attacks, the UAPA was further strengthened. The 2008 amendment introduced the death penalty or life imprisonment for terrorist activities and increased the number of sentences for terror funding and assistance. Additionally, Section 44 was introduced to ensure the protection of witnesses, allowing their identities to be kept secret in court records, orders, and judgments to prevent intimidation (Singh, 2019).

The National Investigation Agency Act, 2008

The National Investigation Agency (NIA) Act, 2008, represents a paradigm shift in India's internal security architecture, moving the nation from a decentralised policing model to a centralised federal counterterrorism apparatus (NIA Act, 2008; Ministry of Home Affairs, 2009). The immediate catalyst for this legislation was the 26/11 Mumbai terror attacks, which exposed systemic failures in coordination between state police forces and central intelligence agencies. Enacted in December 2008 alongside major amendments to the Unlawful Activities (Prevention) Act (UAPA), the NIA Act created a dedicated institution to investigate and

prosecute offences affecting India's sovereignty, security, and integrity (Singh, 2019; Kumar, 2015).

Institutional Framework and Establishment

Under Section 3 of the Act, the Central Government is empowered to constitute the NIA as a specialised federal body under the Ministry of Home Affairs. The Agency is headed by a Director-General and comprises officers with specialised training in counter-terrorism, intelligence analysis, cybercrime, and financial tracking. Unlike state police forces, whose powers are restricted to their respective states, NIA officers possess the powers of regular police officers throughout the entire territory of India. This allows the agency to independently register cases, conduct searches, and arrest suspects across state borders (NIA Act, 2008; Tellis, 2010).

Jurisdictional Mechanics

The NIA's authority is tied to the concept of "Scheduled Offences"—a specific list of crimes defined in the Act's Schedule. Initially, this included offences under the UAPA, Atomic Energy Act, and laws relating to anti-hijacking and weapons of mass destruction laws. Another significant provision of this Act is the "Takeover" Mechanism under Section 6. This critical provision allows the Central Government to unilaterally direct the NIA to assume control of an investigation from a state police force. Once the Central Government determines that a scheduled offence warrants a national-level enquiry, the state police must transfer all relevant records to the NIA (NIA Act, 2008).

Procedural Innovations and Special NIA Courts

To ensure speedy prosecution, the Act mandates the establishment of Special Courts. These are not temporary measures but represent a permanent, parallel judicial track carved out of the regular district judiciary system. Under Section 16(1), Special Courts can take cognizance of offences directly upon receiving a complaint of facts, bypassing the standard requirement for committal. Similarly, the Act grants these courts "unfettered discretion" to hold closed (in-camera) trials to protect witnesses or national security. In a significant departure from the standard due process, a Special Court may choose to proceed with a trial in the absence of the accused or their lawyer, provided it records the reasons for doing so (NIA Act, 2008).

The National Investigation Agency (Amendment) Act, 2019, significantly expanded the agency's "dragnet". The NIA is now authorised to investigate scheduled offences committed outside India, provided that the conduct targets Indian citizens or Indian interests. The 2019 update added human trafficking, counterfeit currency, cyber-terrorism, and offences related to explosive substances to the Schedule. The Director-General of the NIA has the power to approve the seizure and attachment of properties connected with terrorism (Singh, 2019).

Anti –Terrorism Laws and Violation of Human Rights

Terrorism is typically considered a low-intensity war. However, the loss that our country has suffered in the last two decades due to the rise in terrorist activities has been extensive (Wilkinson, 2011; Hoffman, 2017). India has fought four high-intensity wars and suffered over 6000 casualties. However, the total casualties due to terrorism are much higher than those in conventional war. India has already lost more than 70000 civilians. In addition, we have lost more than 9000 security personnel due to terrorist activities. Moreover, almost six lakh people in this country have become homeless as a result of terrorism (SATP, 2024). To deal with the growing menace of terrorism, the Indian government has enacted several anti-terrorism laws, such as the UAPA (1967), TADA Act (1987), NSA (1980), POTA (2002),

UAPA Amendment (2004), and the NIA Act (2008). Among these, the controversial anti-terror law, the Prevention of Terrorism Act (POTA), was the most controversial. It was passed after a much-hyped ten-hour debate in Parliament on 26 March 2002 (Kashyap, 2015). The intensity of the effects of the bill could be seen very clearly in the rejection of the bill by the upper house of the Indian Parliament, leading to a Joint Session of Parliament, a measure that had taken place only the third time in the past (Lok Sabha Secretariat, 2002). The Indian Ministry of Home Affairs justified the initial Ordinance after the 11 September 2001 terror attacks by claiming an upsurge of terrorist activities, intensification of cross-border terrorism, and insurgent groups in different parts of the country, despite the fact that Jammu and Kashmir witnessed a decrease in terrorist incidents (Ministry of Home Affairs, 2003; Government of India, 2002). Although the primary objective of these counter-terror laws is to protect human lives and property, they often become a tool for violating the human rights of fellow citizens. Several cases of the misuse of these draconian laws have been reported, and innocent people have been jailed and torched without any valid reason. A brief account of the impact of these laws on human rights is provided in the following section (Noorani, 2011; Ramanathan, 2007).

Denial of Basic Rights

The prime objective of any anti-terrorism initiative is to reduce human suffering, re-establish the rule of law, and protect and promote human rights. Along with other measures, anti-terrorism laws have been enacted to facilitate human values and dignity, often at the cost of human rights. The punitive anti-terrorism laws have given wider and ruthless power to law enforcement agencies which have repeatedly violated the basic rights of fellow citizens. States are expected to take all possible legal, security, social, and economic measures to neutralise terrorist groups. However, it must be kept in mind that in India, the largest democracy in the world, the human rights of citizens, which are nonalienable and guaranteed by the Constitution, cannot be sacrificed. Importantly, Articles 21 (Protection of life and personal liberty, or Right to Life) and 20 (Protection in respect of conviction for offences, or Protection against Testimonial Compulsion) of the Constitution cannot be suspended even during emergencies (Basu, 2018). Therefore, counter-terrorism efforts of the State should, under any circumstances, uphold the Rule of Law, observe human rights, and follow “due processes”. Failure on the part of the state to do so would only alienate large sections of the people. The Apex Court explained the expanded scope of Article 21 in Unni Krishnan v. The State of A.P. and the Apex Court itself provided a list of some of the rights covered under Article 21 (Jain, 2018).

Threats to Freedom of Expression

Certain provisions of POTA are even more draconian than those operational under TADA, particularly those seeking to curb the right to information and freedom of expression. Section 3 (8) of POTA, for example, punishes those in possession of information that could materially assist in preventing a terrorist act. Failure to provide such information is punishable by up to three years imprisonment. Section 14 empowers investigating officers to extract information from individuals suspected of having such information. Journalists and media organisations throughout the country have criticised these provisions, arguing that it places upon them a burden to disclose any information gathered in the course of their investigations (Human Rights Watch, 2003; Ramanathan, 2012).

Extended Custodial Period and Denial of Trials

Most counter-terrorism laws allot huge power to the police to arrest and put behind bars for a longer time compared to ordinary laws. They can also deny a trial for as long as six months.

For example, the TADA allowed for people to be detained in police custody for up to six months without charge or trial. While POTA limits this period to three months, the potential for abuse and arbitrary detention is equally high. POTA also lacks any provision to challenge the sufficiency of evidence cited by the prosecution (Human Rights Watch, 2003). As with the TADA, detainees are therefore likely to languish in prison without any evidence or formal charges being brought against them. In fact, the detention of persons under TADA continues to this day for offences allegedly committed before the law lapsed, a practice that authorities reportedly abuse through the spurious backdating of violations. The newly detained join thousands of others who continue to be held under a provision authorising their continued detention, even though the law itself is no longer in force (Amnesty International, 2004).

Alienation of the Right to a Fair Trial

Along with prolonged custodial detention, counterterrorism laws also pose a threat to the right to a fair trial which is guaranteed by the Constitution. The provision of Section 4 of POTA mimics Section 5 of TADA in setting out a legal presumption that if a person is found in unauthorised possession of arms in a notified area, he or she is automatically linked with terrorist activity. This and other provisions undermine the right to be presumed innocent until proven guilty.

Misuse against Political Rivalries

In most cases, anti-terrorism legislation has been misused by political parties to punish or at least defame their political rivals. As most laws, like POTA, empower police forces to arrest and detain the accused for as long as six months without filing the charge sheet or trial, it is nearly impossible to come out from the detention before the trial. Raghuraj Pratap Singh for example, A.K.A Raja Bhaiya, a mobster and Member of the Legislative Assembly of Kunda, was arrested on the orders of then Chief Minister, Mayawati (Noorani, 2011; Human Rights Watch, 2003). He was jailed under the POTA. Similarly, Vaiko, a prominent Marumalarchi Dravida Munnetra Kazhagam leader of Tamil Nadu, was controversially arrested under POTA for his support off the Liberation Tigers of Tamil Eelam. People believed that it was carried out at the instigation of Chief Minister Jayanalitha to harass the opponents. The Vajpayee government banned 32 organisations under anti-terrorism legislation (Ramanathan, 2004; Nowak, 2005).

CONCLUSION

Terrorism is one of the biggest threats to India's national security. This has endangered the democratic principles, sovereignty, integrity, and very existence of the country. India has already lost more than 70000 civilians and over 9000 security personnel since independence. Moreover, almost six lakhs people in this country have become homeless due to the prolonged low-intensity war as a result of terrorism. Considering the intensity and lethality of terrorism, India has enacted several counterterrorism laws to reduce the growing trends of terrorist activities. India introduced its first anti-terrorism legislation in 1967. Known as the Unlawful Activities (Prevention) Act (UAPA), this law was largely effective in curbing the threat of terrorism. Similarly, the Terrorist and Disruptive Activities (Prevention) Act (TADA) of 1987 and the draconian Prevention of Terrorism Act (POTA) were enacted to minimise terrorism activities, preserve law and order, and protect human rights. These legal initiatives, which are supposed to protect human rights, have become the main threat to the basic rights of fellow citizens. Two years after the enactment of the POTA, a number of issues regarding the possibilities of misuse of the provisions of the anti-terror law, including the targeting of minorities and using it against political opponents, had arisen. In Gujarat, all but one of the POTA detainees are from the Muslim minority, and in Tamil Nadu and UP, the

ostensible anti-terror law has been abused to book, without lucidity and accountability, political opponents and underprivileged communities, respectively. A decade-long experience with a previous national anti-terror law, the infamous Terrorist and Disruptive Activities Prevention (TADA), which was in force between 1985-1995 gives legitimacy to the fear that the misuse of such laws evokes among human rights activists, political dissenters, and minorities. Under the TADA, the conviction rate was less than 1%, despite the fact that the confessions made to the police, even if given under torture, were admissible as evidence. Therefore, the Government of India should take some hard steps to stop the misuse of such acts and put some checks on law enforcement agencies to guarantee the basic rights to life, personal liberty, and due process. The establishment of a civilian review board or civilian ombudsman committee, comprising judges and lawyers to monitor police stations, will be an ideal step to stop police atrocities. NGO input should also be considered. Encourage the Indian government to ensure that all reports of extrajudicial executions, "disappearances", deaths in custody, torture, and rape by security forces and unofficial paramilitary forces in conflict areas are promptly investigated and prosecuted.

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