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# **NATIONAL SECURITY AND CRIMINAL LAW- EXAMINING TERRORISM UNDER BNS**

AUTHORED BY - VINAYAK GAUR & SHIVANSH GAUR

## **Introduction**

One of the gravest issues of the contemporary society is terrorism. Terrorism does not only constitute a crime against the people; it is also an assault on the sovereignty, unity and integrity of a nation. In contrast to ordinary crimes, terrorism possesses its own peculiarities: it can be political in nature; it can be ideologically or religiously justified; and the consequences of its actions extend beyond the individual and they inspire fear in the mass consciousness of the entire nation. Terrorism is an omnipresent menace in the Indian context, however it gets to be named (For instance, violent insurgency in the Northeast, left-wing extremism in central India, and cross-border terrorism in Jammu & Kashmir). The Indian criminal justice system has been growing ruthlessly to fight terrorism. In the past, terrorism was covered in various laws a patchwork fashion like the existing anti-terror laws to the Indian Penal Code, 1860 and the special acts such as the Unlawful Activities (Prevention) Act (UAPA). After the emergence of the Bhartiya Nyaya Sanhita (BNS), 2023 itself, which replaces IPC, India attempted to become more modern in criminal law regime. Notably, the BNS also includes clauses on the issue of terrorism that will offer definitions and clarification on the perception of terrorism as severe and different offence against the country.. This panel write-up aims to reflect on terrorism in the context of the BNS with reference to its definition, scope, ingredients legal provisions and potentially punishments

## **Statement of the Problem**

Terrorism has posed a serious challenge to India's sovereignty, internal security, and social fabric for many decades. While the Indian Penal Code and Unlawful Activities Prevention Act have provided allusion to terrorism in various forms, they lack precision and relevance, compartmentalizing and conflating it into the fabric of general law. The Bharatiya Nyaya Sanhita, 2023, attempts to codify terrorism as the legislated terrorism offence in India's general penal law. However, there are concerns around its breadth, potential to be abused, dichotomy between security and liberty, and how it relates to other special laws like UAPA. In fact, it frames the central problem within the following: does the BNS enact a legal regime which is

comprehensive, fair, and effective in addressing terrorism, while preserving the rights and liberties of the Constitution?

## **The Indian Anti-Terrorism Laws' Historical Context**

**Colonial History-** The framework for anti-terror legislation in India has its implications in colonialism. The British Raj enacted several repressive laws to limit political dissension, thus labelling many nationalist activities "terrorist activities". For example, the Defence of India Act and Rowlatt Act were concocted to repress freedom fighters. The historical development of these laws have been used to equate violent political activity with terrorism.

### **Post-Independence Changes**

After Independence, India faced another form of terrorism by way of secessionist movements, and cross-border militancy. In response, India had to introduce special legislations:

**Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985** - Enacted during the Punjab insurgency and provided law enforcement with excessive powers; TADA was criticized for abuse and repealed in 1995.

**Prevention of Terrorism Act (POTA), 2002** - Launched following the Parliament Attack of 2001, POTA was repealed in 2004 because of extensive allegations of abuse.

**Unlawful Activities (Prevention) Act (UAPA), 1967** – Originally the UAPA based its focus on unlawful associations, several amendments to UAPA had been enacted to include provisions to teeter on terrorism. Today the UAPA remains India's main anti-terrorism act<sup>1</sup>.

### **From IPC to BNS**

The laws of the Indian Penal Code (IPC), 1860 do not define terrorism itself as an offense, but rather punish acts of terrorism under general provisions, such as against waging war against the State (Section 121), conspiracy to commit offenses against the Government (Section 121A), and/or sedition (Section 124A). This circumstance presents a potential ambiguity and overlap with special legislations such as the UAPA. The Bharatiya Nyaya Sanhita, 2023 provides explicit definition and criminalization of terrorism within the general penal law itself, as opposed to the aforementioned special laws, which may represent a discontinuity with traditional criminal law.

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<sup>1</sup> MHA, *Government of India*, "Legislative Framework Against Terrorism in India," available at: <https://www.mha.gov.in> (last accessed September 2025); also see K.P. Saxena, *Anti-Terror Laws in India: A Critical Review*, Indian Journal of Public Administration, Vol. 61(3), 2015.

## **The Evolution of Terrorism in India**

The phenomenon known as "terrorism" has evolved immensely over the decades, influenced by political, social and other global phenomena. For instance, in the immediate post-independence years, the challenges faced were limited to localized insurgencies in some parts of the country, primarily in the north-east or Punjab (in the 1980s) instinctively by identity politics, demands for autonomy or their dreams of secession. The Kashmir issue from the late 1980s onwards was a watershed event that popularized cross-border terrorism and radicalization as common denominators of terrorism in India. With external influences supporting terrorists in Jammu and Kashmir, terrorism from Jammu and Kashmir emerged as organized, with networks, weapons, foining camps and details of terrorist targeting.

At the same time, Left-Wing Extremism (Naxalism) in central India represented another face of terrorism that was not motivated by religion or identity (the features of the saffron dream or dreams of secession). As a result, Naxalism targeted state institutions, development and civilians; severely limiting the prospects of state provision of governance and development in the regions where Naxalism emerged and evolved.

By the 2000s, terrorism in India was folded into the global jihadist narrative related to atrocities such as the 2001 Parliament Attack and the 2008 Mumbai attacks of international terror organizations. Technological advancements facilitated the challenge through the rapid dissemination of information, digital propaganda, and new financing models made possible through illicit, trans-national networks. As we stand today, terrorism in India is multi-faceted, having evolved from cross-border infiltration and home-grown radicalization to recruitment and financing through cyberspace. This transformation indicates a pressing need for a comprehensive set of laws such as the Bharatiya Nyaya Sanhita, 2023 to at least attempt to acknowledge not only the acts of violence themselves but also the preparatory and facilitative usage of activity.

### **Terrorism under the Bhartiya Nyay Sanhita, 2023**

The BNS contains several provisions addressing terrorism. These include Section 113 and Section 114:

Section 113 defines and punishes terrorist acts.

Section 114 punishes those committing a terrorist act, including the death penalty in the event

of exceptional circumstances<sup>2</sup>.

### **Definition of Terrorism (Section 113)**

Any act that aims to:

- Put India's sovereignty, unity, or integrity in jeopardy;
- Instill fear in individuals or a group of individuals; or
- Put India's economic stability at jeopardy or raise concerns about it. Such acts can include:

Using bombs, firearms, explosives and hazardous materials, attacking critical infrastructure, Impacting critical supplies and services, Other acts, of harboured or financed terrorists.

### **Punishments (Section 114)**

Death penalty or life imprisonment, in the event of a terrorist act causing the death of any person.

Imprisonment for not less than five years, literally up to life imprisonment not including using explosives, explosives etc, or hazardous materials.

Attachment and forfeiture of the property to or from terrorism, if you were involved in any of the above.

## **Thorough Analysis of Section 113 and Section 114**

Bhartiya Nyay Sanhita, 2023 (BNS) includes two closely interrelated provisions, Section 113 and Section 114 that offer a comprehensive framework for dealing with terrorism. Section 113 and Section 114 are aimed at a unified purpose that is to define, criminalize and penalize terrorism and conducts that are related to this act.

**Section 113** -Definition and Scope of Terrorism. The BNS anti-terrorism law is provided in Section 113. When giving a general theoretical definition of terrorism, the act or activities surrounding the offense are not only included but the activities that the offense upholds as well. In particular, the key factors are:

**Mens Rea (Intention):** It should be an act intended to threaten the sovereignty, integrity or the security of India or an act intended to intimidate and terrorize the people of India.

**Actus Reus (Conduct):** This has to be violent, property destruction, firearms or explosives or interference with essential services.

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<sup>2</sup> GOI. (2023). *BNS 2023*. Ministry of Law and Justice. Retrieved from <https://www.indiacode.nic.in>

**Effect:** This will require that the act result in death or injury, damage or result in mass apprehension or insecurity.

**Extended Liability:** It is also capable of enforcing liability to the people who fund it, who train people in it, who host terrorists, who provide help to terrorism to plan and execute. We can therefore observe that Section 113 has an inclusive, proactive definition which covers both the perpetrators of acts of terrorism and people who are involved directly or indirectly in social, moral or conduct that perpetuates terrorism.

### **Importance of Sections 113 and 114-**

These provisions represent the basic legal response against terrorism under BNS. - These provisions recognize the reality that terrorism is not simply violence but entails the preparation, facilitation and financial support of violence on others<sup>3</sup>. The recognition of these provisions alongside the global framework for counter-terrorism increases the legal rigour and comprehensiveness of India's framework.

### **Key Elements of Terrorism Under BNS**

The following elements must be established in order to classify an act as terrorism under section 113:

**Mens Rea (Intent)** - A threat to India's "unity," "sovereignty," or "security" must be the goal of the act, as must the intimidation or terrorization of the populace.

**Actus Reus (Conduct)** - The act must be violent, involve use of weapons, destruction or disruption of services. Effect - The act must either entail death, injury, or serious destruction of property; or create an atmosphere of fear and terror.

**Special Elements** - Financing terrorism, training, harboring, or facilitating terrorism also constitute terrorism. This broad and inclusive definition provides for intent, conduct, and result; not just the person who commits the act. It also ensures that not only the person who committed the act, but also those people who contribute to terrorism are guilty.

### **Judicial Interpretation and Case Laws**

Prior to the BNS, Indian courts had dealt with several terrorism-related cases outlined under the IPC and UAPA. Some notable decisions were:

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<sup>3</sup> UNODC stands for United Nations Office on Drugs and Crime. (2018). Criminal Justice Responses to Terrorism Handbook. United Nations Publications.

**Kartar Singh v. State of Punjab (1994):** the Supreme Court upheld the constitutional validity of TADA, but noted that it was necessary to have safeguards to prevent misuse of the law.

**PUCL v. Union of India (2004):** in relation to POTA, the Court stressed the need to balance national security and individual liberties.

**Yakub Memon Case (2015):** the Court upheld a sentence of death for his involvement in the 1993 Bombay blasts as part of a statement to stress the deterrent intentions behind anti-terror laws<sup>4</sup>.



### Obstacles in Handling Terrorism

India has some significant challenges, despite the fact that it has a body of laws:

**Cross-Border Terrorism:** The threat of state-sponsored militancy poses a threat to the national security of India, especially by the mutant of Pakistan.

**Radicalization and Recruitment:** Terror groups utilize the social media and online technology to practice terrorist propaganda.

**Human Rights Problems:** Anti-terror legislation made in India are basically extended mounds of bad regulations and recommendations, and can consume a great deal of time in relation to the arbitrary loss of freedom and the extended detention.

**Co-ordination Problems:** Investigations and prosecutions are being lost in translation without any real coordinating mechanism or authority round the central and state agencies.

<sup>4</sup> State of Punjab v. Kartar Singh (1994) 3 SCC 569. Union of India v. People's Union for Civil Liberties (PUCL), 2004 9 SCC 580. State of Maharashtra v. Yakub Abdul Razak Memon, 2015 9 SCC 552.

## Critical Commentary

The fact that provisions in respect of terrorism have been introduced must be considered a positive indicator of state modernization as far as criminal law in India is concerned. The law consists of two distinct articles, articles 113 and 114 - and this is independent of the meaning of terrorism, but also includes consecutive potential actions that may result in terrorism (materially, as well as financially). That is, we can all interpret in terms of financial or material contribution, we can host or harbor a terrorist, we can be said to threaten economic security, etc. - this wider provision too may potentially protect a person by not knowing that the party they are seeking to disclose are indirectly liable.. In this sense, this provision of BNS, is an advance in the journey for a complete and comprehensive legal position of terrorism; however, a significant number of issues arise, after one does a critical read of this section.

To begin with, one is rightfully concerned with its breadth. On the one hand, definitions like, "threatens the economic security of the nation," or "creates a fear in the public," etc. - if applied both will yield notoriously expansive interpretations<sup>5</sup>. Further, the objective is obviously increased latitude for law enforcement agencies to take action to deter terrorism - it should also be recognized the same language open to interpretation relates to difficult areas as well, and police could be confused into thinking dissent, protest, or simply criticism of the rule of law is also in effect, terrorism<sup>6</sup>.

In the context of a democracy, in theory and in practice an ambiguous definition, could not only silence dissent, but instead convert the political opposition out of the hands of the electorate into the hands of the state negatively impacting fundamental freedoms to outright criminalize them - especially since there need not be a defined victim<sup>7</sup>. Both BNS and UAPA have provisions for terrorism, its facilitation or financing, and support network. This greatly increases the possibility of the duplication of the prosecuting agency and the possibility of forum-shopping by enforcement agencies and the potential for different court interpretations. Unless some sort of harmonized situation is established, the duplication could amount to

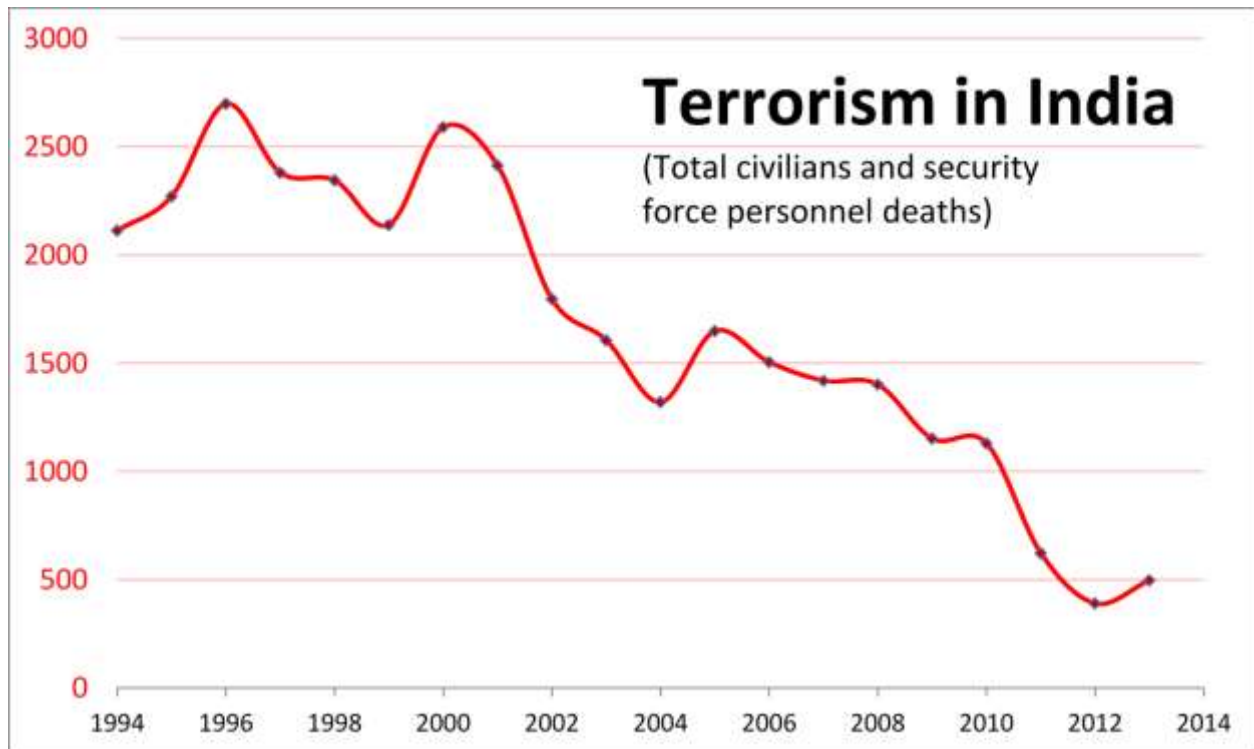
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<sup>5</sup> In the case of National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1, the significance of the broad definitions of "terrorism" in the UAPA was discussed.

<sup>6</sup> (Oxford University Press, 2016), p. 212. Gautam Bhatia, Offend, Shock, or Disturb: Free Speech under the Indian Constitution.

<sup>7</sup> "Terrorism and Fundamental Rights," by A.G. Noorani, Economic and Political Weekly, Vol. 41, No. 34 (2006), pp. 3709-3711..

ineffectiveness of anti-terrorism laws and regulations but increasing legal uncertainty<sup>8</sup>.



Thirdly, ineffective independent oversight was another weakness. The law prescribes heavy penalties including the death penalty, but they lack rigorous safeguards against arbitrariness and overreach. Given India's long history of the debate surrounding the abuse of special laws, the lack of checks on supervision can have an impact on public trust and on the constitutional promise of fairness. Constitutionally, laws against terrorism should be able to create the appropriate harmony between the needs of national security and the rights of individuals. The Indian Constitution's Article 14 guarantees equality before the law, while Article 21 protects the right to life and personal liberty.. With terrorist provisions wide enough to permit arbitrary arrests and detention or prison terms or rejection of bail that in themselves involve the protection of the Constitution, constitutional threats are presented.

Last, though deterrence through severe punishment cannot be overlooked, deterrence is insufficient. Based on experience internationally, counter-terrorism should encompass punitive, preventive, rehabilitative and community-based.

on punitive sanctions without systemic safeguards can tend to undermine democratic legitimacy causing alienation, and not security. Concisely, the BNS provisions on the same of

<sup>8</sup> "Indian Constitutionalism and Counter-Terrorism," by V. Balasubramaniam, Indian Journal of Constitutional Law, Vol. 10 (2019), pp. 45–67.

terrorism is a step in the right direction in an effort to consolidate and be comprehensive. But any relative definition narrowness, specificity, procedural security, systemic safeguards, lack of dependence on supervision, and compatibility with special legislation, as in UAPA, can render effective and legitimate questioning ineffective.

Thus, the most striking dilemma within the framework of counterterrorism law in India is the need to balance between the security and freedom.

