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CONSTITUTIONAL LIMITS ON COUNTER- TERRORISM IN INDIA: BALANCING NATIONAL SECURITY AND FUNDAMENTAL RIGHTS

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Abstract

Terrorism constitutes a significant challenge to India's sovereignty, unity, and constitutional integrity. The spectrum of this threat includes cross-border insurgencies, digital radicalisation, and complex terror financing networks, all of which undermine the pillars of national security. Concurrently, the Indian Constitution upholds a robust commitment to principles such as justice, liberty, security and the rule of law. This creates an enduring tension between the imperatives of safeguarding individual freedoms and the necessity of maintaining collective security in the face of such threats. This paper critically analyses the constitutional dilemmas India encounters in its counter-terrorism efforts, emphasising the inherent conflicts between fundamental rights enshrined in Articles 14, 19, and 21, and the reasonable limitations placed on these rights in the interest of sovereignty, integrity, and public order. The framework of preventive detention under Article 22, alongside stringent statutory measures like the Unlawful Activities (Prevention) Act (UAPA) and the expanding jurisdiction of the National Investigation Agency, reflects the state's prioritisation of security. This study examines significant judicial pronouncements from A.K Gopalan and Maneka Gandhi to the Puttaswamy judgement on privacy, highlighting the critical constitutional imperatives of fairness, proportionality, and accountability in the implementation of these counter-terrorism laws. It delves into the role of the Basic Structure Doctrine and the Principle of proportionality as the crucial mechanism for preventing executive overreach. In the context of globalisation and the emergence of the digital threat. It is imperative that Indian harmonizes its counter-terrorism strategies with international human rights norms, all while maintaining its constitutional ethos.

Keywords: Constitutional Morality, Fundamental Rights, Preventive Detention, Proportionality Doctrine.

1. INTRODUCTION

Recently, India, recognised as the largest democracy globally, is also significantly impacted by terrorism. The threat landscape is varied and evolving, encompassing issues such as the cross-border military conflict in Kashmir, left-wing extremism, and digital radicalisation. Terrorism poses a direct challenge to India's sovereignty, integrity and security, which are fundamentally valued in the preamble of the Constitution.¹ India has witnessed several terrorist attacks in past, like the 2017 Amarnath yatra attack in Jammu and Kashmir, the 2016 Uri attack, the 2008 Mumbai attack and, in recent times, the 2025 Pahalgam attack, which took place on general civilians by armed terrorists near Pahalgam in India's Jammu and Kashmir, in which 26 civilians were killed on 22 April 2025.² This incident is one of the most brutal and inhuman acts ever perpetrated by terrorist organisations.³ Some terrorist groups exist in India, such as left-wing terrorism, Narco-terrorism, religious terrorism, and cross-border terrorism. The integrity and sovereignty of India are seriously affected by terrorism.⁴

The Constitution of India addresses the tension between liberty and security. The framers of the Constitution deliberately created a framework where the fundamental rights safeguard personal freedoms; on the other hand, reasonable restrictions protect national security, public order and sovereignty.⁵ For instance, Article 19 guarantees freedom of speech, expression, and movement but allows for restrictions in the interests of integrity and security.⁶ Similarly, Article 21 protects the right to life and personal liberty but also mentions that "procedure established by the law" permits the state to intervene when security is jeopardised.⁷ Furthermore, Article 22 deals with preventive detention- an extraordinary measure designed to address threats such as terrorism- while also including constitutional safeguards to prevent its abuse.⁸ Consequently, the Constitution represents a balancing act: it upholds democratic freedoms while acknowledging the need for robust measures against security threats. In today's world, as terrorism adapts and manifests through new avenues like Cyber radicalization and terror financing, maintaining the constitutional balance between liberty and security becomes increasingly vital.

¹ INDIA CONST. pmbi.

² "Pahalgam Terror Attack: 26 Civilians Killed in Jammu and Kashmir," *The Hindu* (Apr.23,2025), <https://www.thehindu.com/news/national/pahalgam-terror-attacks-2025>.

³ Id.

⁴ Ministry of Home Affairs, *Annual Report 2024-25* (Gov't of India 2025).

⁵ INDIA CONST. art. 19; see also *State of Madras v. V.G. Row*, AIR 1952 SC 196, (India).

⁶ INDIA CONST. art. 19(2).

⁷ INDIA CONST. art. 21; *A.K. Gopalan v. State of Madras*, AIR 1976 SC 1207, (India).

⁸ INDIA CONST. art. 22; *A.D.M. Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207.

The Indian Constitution serves as a dynamic framework embodying the collective aspirations of its citizenry while functionally safeguarding civil liberties, particularly in the face of crises. As a robust democracy, India has encountered various security challenges that necessitate a careful balance between state security measures and individual rights. Enacted in 1950, the Constitution not only enshrined a comprehensive set of civil liberties but also delineates the institutional mechanisms for their protection and enforcement. Consequently, any proposed anti-terrorism legislation must undergo rigorous constitutional scrutiny to ensure it aligns with both the explicit provisions and the underlying principles of this foundational legal document. This paper explores the constitutional foundations, legal framework, judicial responses, and global dimensions of Counter-terrorism, while suggesting a way forward rooted in Constitutionalism.⁹

2. CONSTITUTIONAL FOUNDATIONS FOR LIBERTY AND SECURITY

The Constitution of India was formulated in the context of the tumultuous events surrounding partition, characterised by communal strife and the looming spectre of global conflicts and authoritarian regimes.¹⁰ The architects of the Constitution understood that the concepts of liberty and security are inherently interdependent; absolute liberty can lead to disorder, while unchecked security risks authoritarianism.¹¹ Consequently, they designed a Constitutional framework that strikes a balance, ensuring the protection of individual rights while granting the state the authority necessary to maintain national sovereignty, territorial integrity, and public order. This duality reflects a sophisticated understanding of governance that seeks to harmonise civil liberty with the imperative of a secure and stable society.¹²

A. Preamble as a Guiding Vision

The preamble enshrined *Justice, Liberty, Equality* and *Fraternity* as the ideals of the republic.¹³ At the same time, it speaks of securing the unity and integrity of the nation. This dual emphasis sets the tone, balancing freedom and security.

⁹ *National Investigation Agency Act*, 2008, No 34, Acts of Parliament, 2008 (India).

¹⁰ *H.M. Seervai*, *Constitutional Law of India* 3-5 (4thed. 1991).

¹¹ *Granville Austin*, *The Indian Constitution: Concerns of a Nation* 26-27 (Oxford Univ. Press 1999).

¹² *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 (India).

¹³ INDIA CONST. pmb.

B. Fundamental Rights with Reasonable Restrictions

Article 19 of the Indian Constitution enumerates fundamental freedoms, specifically encompassing the rights to speech, expression, assembly, association, movement, and profession. However, this article delineates permissible restrictions under clauses (2) to (6), which allow for limitations on the aforementioned rights for reasons such as sovereignty, national integrity, public order, state security, and considerations of decency and morality.¹⁴ Article 21 extends protections to life and personal liberty, and these principles are broadly interpreted by the Supreme Court in several cases. Importantly, while this right is fundamental, it can be constrained through a procedure prescribed by law, contingent upon the requirements that such a procedure is just, fair, and reasonable- as established in the landmark case of *Maneka Gandhi v. Union of India (1978)*,¹⁵ This framework embodies a critical equilibrium wherein individual liberties are safeguarded without undermining national security imperatives.

C. Preventive Detention under Article 22 of India's Constitution

Article 22 of democratic constitutions introduced a critical legal mechanism for preventive detention, primarily justified by concerns about state security, the maintenance of the public order and the regulation of essential supplies. Under this provision, parliament has the authority to mandate detention for a period not exceeding three months without the necessity of prior approval from an advisory board. In exceptional cases, this duration can be extended to twelve months or more.¹⁶ But sometimes some critics classify this policy as a “necessary evil”, the architects of the constitution contended that, given the volatile circumstances following independence, such powers were essential for maintaining stability and governance.¹⁷

Right of an Arrested Person under Article 22 (1) and Article 22 (2)

In the context of legal rights about arrest and detention, the provisions outlined in Article 22 of the Indian Constitution provide critical protections for Individuals.¹⁸

Specifically, Article 22(1) mandates that an arrested individual must be informed of the grounds for their arrest. Additionally, Article 22(1) ensures that the arrested person has the right to consult and be defended by a legal practitioner of their choice, thereby safeguarding

¹⁴ INDIA CONST. art. 19 (2) – (6).

¹⁵ *Maneka Gandhi v. Union of India*, (1978) SCC 248, (India).

¹⁶ *A.K Roy v. Union of India*, (1982) 1 SCC 271, (India).

¹⁷ *H.M Seervai*, Constitutional Law of India 859-861 (4th ed. 1991).

¹⁸ INDIA CONST. art. 22.

the right to legal representation.¹⁹ Article 22(2) stipulates that any person who is arrested must be presented before the nearest magistrate within a 24-hour timeframe, ensuring that detention does not extend beyond this period without a magistrate's authorisation.²⁰

However, Article 22(3) delineates specific exceptions to these protections. Notably, the safeguards provided in Article 22 (1) and 22 (2) are not applicable in two instances: first, if the individual is categorised as the alien enemy and second, if the arrest occurred under laws of preventive detention.²¹ The justification for the first exception arises from national security concerns during wartime, where enemy nations may pose a threat. Conversely, the rationale for the second exception was contentious during the drafting of the constitution, prompting extensive debate among the members of the constituent assembly due to the potential for abuse inherent in preventive detention for abuse inherent in preventive detention laws. This reflects a complex balancing act between individual rights and state security interests in the legal framework.

The subsequent amendment of the anti-terror legislation in India, notably the Terrorist and Disruptive Activities (Prevention) Act (TADA) of 1985 and the Prevention of Terrorism Act (POTA) of 2002, incorporated provisions for preventive detention.²² This statute permitted the detention of individuals for an initial period up to 180 days, with TADA allowing for the detention to extend to one year in certain cases. Legal scholars argued regarding the potential misuse of these laws, which were purportedly used to disproportionately target minorities and marginalised communities in various states.²³

While the TADA and POTA have since been replaced, many of their provisions have been assimilated into the Unlawful Activities (Prevention) Act (UAPA).²⁴ The UAPA has been recently amended in response to the 2008 terror attacks in Mumbai.²⁵ Under the current framework of UAPA, law enforcement agencies can detain individuals without formal charges for a maximum of 90 days.²⁶ If the public prosecutor successfully demonstrates that the investigation remains incomplete, this detainment can be extended up to 180 days.²⁷

¹⁹ INDIA CONST. art. 22(1).

²⁰ INDIA CONST. art. 22(2).

²¹ INDIA CONST. art. 22(3).

²² Terrorist and Disruption Activities (Prevention) Act, 1987, § 20, No. 28, Acts of Parliament, 1987, (India).

²³ See generally Upendra Baxi, *The Crisis of the Indian Legal System* 142-45 (1982).

²⁴ Unlawful Activities (prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India).

²⁵ Unlawful Activities (Prevention) Amendment Act, 2008, No. 35, Acts of Parliament (2008).

²⁶ Id. Section 43D (2)(a).

²⁷ Id. Section 43D (2)(b).

D. Directive Principles of State Policy (DPSPs)

Non-justiciable DPSAPs like Article 38(social order), Article 39A (justice), and Article 51 (international peace and security) provide a constitutional obligation to maintain stability and harmony. By ensuring social and economic justice, DPSAPs indirectly address root causes of extremism and insecurity.²⁸

E. Emergency Provisions (Article 352-360)

The Constitution empowers the Union to suspend certain freedoms during national emergencies (e.g., war, external aggression, armed rebellion).

National Emergency (Article 352)

A national Emergency in India is proclaimed by the President when the Nation's integrity or any part of its is endangered due to war, external aggression, or armed rebellion. The term "internal disturbance", originally used to describe such circumstances, was revised to "armed rebellion" following the 44th Constitutional Amendment Act of 1978.²⁹ The declaration of a National Emergency resulted in substantial Modifications of the federal framework, significantly augmenting the centre's authority over the states. During this period, Parliament is empowered to legislate on any matter enumerated in the State List. Furthermore, the fundamental rights enshrined in Article 19 are automatically suspended. To legitimise the emergency, both the houses of Parliament must endorse it within one month of the declaration, and it may be extended in six-month increments, provided it receives consistent parliamentary approval.³⁰

President's Rule (Article 356)

President's Rule, formally recognised as State Emergency under the Indian Constitution, is invoked when a state's governance deviates from constitutional norms. This situation may arise due to political instability, the forfeiture of legislative majority, or pervasive failure in maintaining law and order. The President, upon the recommendation of the Governor or through independent assessment, may take over the state's administration. During State Emergency, the state legislature may either be dissolved or suspended, and legislative authority is transferred to the Parliament. Although commonly termed as "State Emergency" in connection with this provision. For presidential Rule to sustain its validity, it requires ratification from both Houses of Parliament within a two-month timeframe. This governance

²⁸ INDIA CONST. art, 38, 39A& 51.

²⁹ The Constitution (Forty-Fourth Amendment) Act, 1978, Section 38., No. 44, Acts of Parliament 1978, (India).

³⁰ INDIAN CONST. art.352.

can be perpetuated in intervals of six months, extending up to a maximum of three years, contingent upon justified continuance and requisite approvals.³¹

Financial Emergency (Article 360)

A financial Emergency can be proclaimed when there is a significant threat to the financial stability of India or any specific region within its territory. Although this provision has never been utilised in India's history. It grants substantial powers to the central government once activated. Under this scenario, the President may mandate that States adhere to certain economic policies, implement salary reductions for government employees, including judicial officers, and require prior approval for all financial and monetary legislation. Unlike other forms of emergencies, a financial emergency remains effective until the President formally revokes it, and it does not necessitate ongoing parliamentary sanction for its continuation.³²

F. Judicial Review as a Safeguard

The framers vested the Supreme Court and High Court with powers of judicial review under Article 32 and 226.³³ This ensures that while the state may restrict rights for security, its actions remain subject to constitutional scrutiny and cannot override the '*Basic Structure of the Constitution*'.³⁴

3. ANTI-TERRORISM LEGISLATION

Terrorism poses significant security challenges, prompting states to adopt a range of countermeasures. Among these are anti-terrorism legislative frameworks aimed at mitigating terrorist threats. In response to the escalation of terrorism in recent years, numerous countries, including India, have enacted stringent anti-terrorism laws. Even before independence, British rule enacted several harsh laws to suppress political dissent and insurgencies. Like the Defence of India Act, 1915, and later the Rowlatt Act, 1919, allowed preventive detention without trial.³⁵ These colonial experiences shaped both the debates in the Constituent Assembly and the inclusion of preventive detention (Article 22) in the Constitution.³⁶ India's legal response includes a mixture of legislation influenced by its colonial past and newer statutes implemented, particularly from the 1980s onward. However, a number of these laws have been

³¹ Id. art. 356.

³² Id. art. 360.

³³ Id. arts. 32&226.

³⁴ *Kesavananada Bharati v. State of Kerela*, (1973) 4 SCC 225 (India).

³⁵ Defence of India Act, 1915, No. 4, Gazette of India, 1915 (India); Rowlatt Act, 1919, No. 2, Gazette of India 1919, (India).

³⁶ INDIA CONST. art.22

rescinded or deemed unconstitutional due to misapplication and overreach. The original intent was to allow such measures to be temporary, enacted during periods of heightened threat rather than becoming entrenched in the legal framework. Yet, due to the nature of persistent nature of the terrorist threat, these laws have been reintroduced, often with necessary amendments to better address contemporary challenges. The Indian governments have consistency sought to refine its legal arsenal to effectively counter both terrorist and separatist activities that have afflicted the nation for decades.³⁷

3.1 Preventive Detention Laws

Indian Constitution is one of the special Constitutions in the entire world that provides preventive detention laws. Preventive detention may be frequently used under Article 22 of the Indian Constitution at any time or in any place. The term “Preventive Detention” originated in the Government of India Act, 1935,³⁸ and is referenced in the Indian Constitution without a proper definition. It refers to actions taken to prevent potential harm to society rather than punishing past action. The main purpose is to protect the state from threats such as sabotage and public disorder. The earliest instance of preventive detention by presidential order was a more detailed Act in 1784 allowing the governor-general to detain individuals suspected of endangering peace and safety. Importantly, the Act provided a detainee the right to understand the charges against them within five days.³⁹

The Government of India Act of 1935 marked a significant turning point, empowering both the central and provincial Governments with the authority to craft the laws that are governing preventive detention.⁴⁰ This legislation emerged as a safeguard for the robust defence of British India, ensuring public safety and seamless maintenance of order during tumultuous times. During the time of the Second World War, the British authorities enacted a revised Defence of India Act in 1939, further solidifying their resolve to protect the homeland amidst the uncertain tides of conflicts.⁴¹ With the dawn of a new era following the adoption of the Constitution, Parliament swiftly instituted the Preventive Detention Act of 1950. This law established a framework for detaining individuals, including foreign nationals, when it's deemed a threat to India's defence, security, international relations, etc.⁴² As the country faced new challenges,

³⁷ See generally A.G. Noorani, Challenges to Civil Liberties in India 57-61 (2012).

³⁸ Government of India Act, 1935, 25&26 Geo. 5c 42 (U.K.).

³⁹ See H.N. Randle Preventive Detention in India, 6 India Y.B Int'l Aff. 22, 24 (1960).

⁴⁰ Government of India Act, 1935, section 16, No. 26 Geo. 5c. 2, Acts of Parliament, 1935 (U.K).

⁴¹ Defence of India Act, 1939, No. 35, Gazette of India 1939, (India).

⁴² Preventive Detention Act, 1950, No. 4, Acts of Parliament 1950, (India).

the Maintenance of Internal Security Act was introduced in 1971,⁴³ effectively rekindling the powers of the Preventive Detention Act after its lapse in 1969. In December of that year, amid a climate of urgency and concern, Parliament passed the Defence of India Act, 1971.⁴⁴ This pivotal legislation granted sweeping powers, enabling authorities to impose indefinite preventive detention on individuals, conduct searches and seizures without warrants, and engage in wiretapping- all aimed at quelling civil and political unrest. The Act was a response to a declared emergency, embracing exceptional measures designed to uphold public safety, reinforce national defence, and prosecute specific offences related to threats against the nation and its citizenry. Article 22 of the Constitution of India outlines the safeguards granted to individuals who are arrested as well as those held under the Preventive Detention Statutes. This provision was a continuous topic during the drafting of the Constitution. Under its framework, preventive detention laws may be enacted in India on the grounds of national security and maintenance of public order. These jurisdictions have significant implications for civil liberties, raising concerns about the balance between state authority and individual rights.⁴⁵

The National Security Act of 1980,⁴⁶ enacted by the parliament following the Congress's return to power, remains in effect today and has reinstated various provisions in effect today and has reinstated various provisions from previous acts such as the Preventive Detention Act (PDA) and the Maintenance of Internal Security Act (MISA). This legislation empowers security forces to detain individuals without a warrant if there are reasonable grounds to suspect that their actions posed a threat to public safety, economic stability, or national security. Detention orders issued under this Act are limited to a maximum of 12 days for initial compliance, with the overall detention period capped at 12 months. Moreover, such orders are subject to modification or revocation at any time during their validity.⁴⁷ This framework delineates the scope and limits of preventive detention while balancing state security imperatives with individual rights.

3.2 Various Anti-terrorism laws in India

India's legislative framework for combatting terrorism comprises several punitive laws, some of which have been repealed over time. Currently, the pertinent statutes include: the National Security Act, 1980, the National Legislative Agency Act, 2008, the Unlawful Activities

⁴³ Maintenance of Internal Security Act, 1971, No. 26, Acts of Parliament, 1971 (India).

⁴⁴ Defence of India Act, 1971, No. 42, Acts of Parliament 1971, (India).

⁴⁵ INDIA CONST. art. 22(3)-(7).

⁴⁶ National Security Act, 1980, No. 65, Acts of Parliament, 1980, (India).

⁴⁷ Id. section 13.

(Prevention) Act, the Armed Forces (Special Powers) Act, 1958. Together, these legislative measures form the backbone of India's counter-terrorism strategy, addressing various incidents of national security threats.

A. The Unlawful Activities (Prevention) Act, 1967

India adopted its Constitution on November 26, 1949, while it came into force on January 26, 1950, granting citizens various rights. Concerns over the potential imbalance in state functioning led to the first amendments in 1951, which revised Article 19(2) to impose limitations on rights. The Unlawful Activities (Prevention) Act (UAPA) was enacted in 1967 to prevent illegal activities, especially after the 9/11 attacks, which prompted stricter anti-terror laws globally, including in India. The UAPA has faced criticism for granting excessive power to the executive and for its potential to infringe on minority rights. Over the years, the UAPA has undergone multiple revisions, with significant changes in 2004, 2008, 2012, and the most significant amendment in 2019, which allowed the designation of individuals as terrorists.⁴⁸

B. Maintenance of Internal Security Act (MISA), 1971

The Maintenance of Internal Security Act, enacted in 1971, was introduced during a tumultuous period in India characterised by the Naxalite insurgency, significant political upheaval, and external security threats. This legislation conferred extensive powers upon both central and state authorities to detain individuals indefinitely without trial, ostensibly on the grounds of maintaining internal security. MISA gained notoriety during the emergency period (1975-77), when it was employed to detain a substantial number of political figures, journalists, and activists without due process. The law's extensive and often arbitrary use underscored the risks associated with unchecked preventive detention powers, rising serious concerns about civil liberties and human rights violations. In the wake of the emergency, the Janata Government repealed MISA in 1977, effectively denouncing it as a manifestation of authoritarian overreach and a violation of democratic principles. The repeal marked a critical juncture in India's legislative approach to internal security, reflecting a broader commitment to restoring civil liberties post-emergency.⁴⁹

C. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974

The COFEPOSA Act was enacted with the primary objective of addressing smuggling activities and infringements of foreign exchange regulations, perceived as significant threats to India's financial stability. Unlike the Maintenance of Internal Security Act (MISA), which

⁴⁸ The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament 1967, (India).

⁴⁹ The Maintenance of Internal Security Act, 1971, No. 26 (repealed 1977), Acts of Parliament, 1971 (India).

targeted political dissenters, COFEPOSA focused specifically on economic offenders. It empowers authorities to detain individuals suspected of smuggling or engaging in unlawful foreign exchange transactions for durations of up to one year without trial.⁵⁰ Notably, COFEPOSA remains operational today and continues to be employed in the prosecutions of economic for potentially undermining judicial oversight, as it allows for preventive detention in circumstances where conventional judicial processes might be more appropriate. Critics argue that this creates a problematic ambiguity between criminal prosecution and preventive measures.

D. National Security Act (NSA), 1980

The National Security Act (NSA), enacted in 1980, is a critical preventive detention statute in India, providing both central and state governments with the authority to detain individuals for a period up to 12 months on the grounds of perceived threats to national security, public order, or the supply of essential commodities.⁵¹ The Act's contentious nature arises from its expansive scope, encompassing issues such as terrorism, communal violence, and economic offences. In reality, the NSA has frequently been invoked by the state governments to detain political adversaries, activists, or protesters under the broadly defined rationale of "public order". The tendency towards misuse has spurred significant critique from civil rights advocates and legal experts, who argue that the Act undermines democratic freedoms. Nonetheless, proponents within the government continue to advocate for the necessity of combating terrorism, organised crime and civil unrest, framing it as an essential tool for maintaining public safety and order.

E. Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985-1995

The Terrorist and Disruptive Activities (Prevention) Act (TADA) is a legislative framework in India aimed at countering terrorism and related disruptive acts. Initially enacted in the year 1985 and revised in 1995 with modifications in 1987, TADA was introduced in response to escalating insurgency in Punjab and extended its applicability to the entire nation. TADA was significant as it represented the first comprehensive anti-terrorism legislation in India, establishing a legal basis for counter-terrorism operations.⁵² The 1987 amendments to TADA, enacted on September 3 1987, introduced a bifurcation of the law's provisions. This version included a sunset clause that initially granted a two-year enforcement period from May 24, 1987, subject to renewal. Consequently, it underwent a series of extensions in 1989, 1991, and 1993, reflecting the sustained need for the legislative measures to address the threat of terrorism

⁵⁰ Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, No. 52, Acts of Parliament, 1974 (India).

⁵¹ National Security Act, 1980, No. 65, Acts of Parliament, 1980 (India).

⁵² The Terrorist and Disruption Activities (Prevention) Act, 1987, No 28, Acts of Parliament, 1987 (India).

during volatile periods in India's history.⁵³

Under this Act, individuals found to be terrorists may face a minimum of 5 years to life imprisonment, along with fines, for actions that disrupt the country's sovereignty and integrity. Law enforcement agencies have significant powers to address terrorism, including the requirement to present detainees before a judicial magistrate within 24 hours. Under the Terrorism and Disruptive Activities (prevention) Act (TADA) of 1985, over 76,000 people were arrested, with a significant percentage of cases dropped or resulting in acquittals.⁵⁴ The TADA Act was eventually replaced and replaced by the Prevention of Terrorism Activities Act, which also faced controversies and was later cancelled.

F. Prevention of Terrorism Act (POTA), 2002-2004

The Prevention of terrorism Act (POTA) was enacted in response to the 2001 Parliament attack, with the explicit objective of enhancing counter-terrorism capabilities. The legislation facilitated preventive detention, permitted the interception of communications, and authorised the prosecution of organisations deemed to be engaged in terrorist activities. However, similar to the Terrorism and Disruptive Activities (Prevention) Act (TADA), POTA faced significant criticism for its potential misuse against marginalised communities, political adversaries, and dissidents. Various state administration disproportionate applied POTA, prompting concerns regarding its adherence to democratic principles.⁵⁵ Following a governmental transition in 2004, POTA was replaced, although many of its provisions were subsequently integrated into the Unlawful Activities (Prevention) Act (UAPA).

G. The National Investigation Agency Act, 2008

The National Investigation Agency Act, 2008, was established in response to the 26/11 Mumbai terrorist attack, which highlighted significant shortcomings in the Indian counter-terrorism framework and intelligence coordination mechanism. Before the enactment of this legislation, the responsibility for investigating terrorist offences largely rested with state police forces, often leading to jurisdictional conflicts, inefficiencies, and coordination challenges, particularly with the transactional nature of terrorism, which frequently transcends state boundaries. The legislation officially established the National Investigation Agency (NIA) as the primary law enforcement agency tasked with counter-terrorism efforts in India. The Act came into existence on 31 December 2008, positioning the NIA to investigate and prosecute offences related to terrorism at both the national and international levels.⁵⁶ The foremost

⁵³ Id.

⁵⁵ The Prevention of Terrorism Act, 2002, No 15, Acts of parliament, 2002 (India).

⁵⁶ National Investigation Agency Act, 2008, No.34, Acts of Parliament, 2008 (India).

objective of the NIA Act was to create a specialised central investigative agency to deal with offences relating to terrorism and threats to national security. Terrorism, by its very nature, often transcends state boundaries and requires a coordinated, uniform, and expert response. The Act, therefore, empowers the Union Government to establish the National Investigation Agency (NIA) as a federal police body with jurisdiction across India.⁵⁷ One of the primary objectives of this act to ensure the speedy and effective investigation and prosecution of offences affecting the sovereignty, integrity, and security of the nation. This includes cases relating to terrorist attacks, hijacking, unlawful activities, smuggling of arms, and other crimes having inter-state and international dimensions. By providing a uniform mechanism, the Act intends to overcome the limitations of state-level investigation, which often suffer from lack of resources, expertise and inter-state cooperation. The Act also aims to strengthen India's counter-terrorism framework in line with international obligations under treaties such as the UN Security Council resolution against terrorism. In this sense, the NIA is designed as India's equivalent to institutions like the FBI in the United States, dedicated to maintaining internal security while upholding constitutional values.

H. Bharatiya Nyaya Sanhita, 2023

Crimes against the state are covered in Chapter VI of the Bharatiya Nyaya Sanhita, 2023.⁵⁸ Offences against the state are comprehensively defined to safeguard India's sovereignty and integrity. Section 147 punishes waging war or attempting/abetting it with death or life imprisonment,⁵⁹ while Section 148 criminalises conspiracy to wage war or overawe the government, even without overt acts, with punishment up to life imprisonment. Section 149 targets preparations such as collecting arms or men for rebellion; Section 150 penalises concealment of designs to wage war.⁶⁰ Section 151 protects constitutional authorities like the President and Governors from assaults, restraint, or intimidation to influence their powers. Section 152, replacing colonial sedition, criminalises acts that incite secession, armed rebellion, or subversive activities through speech, writing, electronic means, or funding, but excludes lawful criticism of government actions.⁶¹ Sections 153-158 extend protection to India's peaceful foreign relations by punishing war or depredation against friendly states, receiving property from such offences, and ensuring strict liability of public servants in custody of state

⁵⁷ National Investigation Agency Act, 2008, No.34, Acts of Parliament, 2008 (India).

⁵⁸ Bharatiya Nyaya Sanhita, 2023, No 46, Acts of Parliament, 2023 (India).

⁵⁹ Id. section 144-148

⁶⁰ Id. section 149-150

⁶¹ Id. section 151-152

prisoners or prisoners of war, including aiding or harbouring their escape.⁶² Collectively, these provisions modernise and broaden the scope of offences against the state, balancing national security with constitutional freedoms.

I. Bharatiya Nagarik Suraksha Sanhita, 2023

Under BNSS, 2023, sections 148-150 delineate the powers granted to authorities for managing unlawful assemblies that pose a threat to public order.⁶³ Specifically, section 148 empowers Executive Magistrates and Police Officers (minimum rank of sub-inspector) to issue dispersal commands to any unlawful assembly consisting of five or more individuals. Should the assembly refuse to disperse, the use of force is authorised, potentially with civilian assistance, to disperse or apprehend the offenders. Under Section 149, this framework is enhanced by permitting the District Magistrate to requisition armed forces for dispersal when public security necessitates such action. This provision mandates the use of minimum force to mitigate injury.⁶⁴ Furthermore, Section 150 extends these powers to commissioned or gazetted officers of the armed forces in instances where communication with a Magistrate is infeasible; however, such officers must adhere to the directives of a Magistrate post-incident.⁶⁵ Additionally, Section 163 provides a mechanism for issuing urgent preventive orders in scenarios involving nuisance or imminent danger. This allows a Magistrate to compel individuals or the public to refrain from specific activities or to undertake measures regarding property to avert obstruction, injury, or threats to life, health, and safety, as well as to prevent disturbances such as riots or affrays. These emergency orders can be enacted by the State Government and generally remain effective for a period of two months, extendable by the State Governments for up to six months.⁶⁶

This study argued that India's anti-terrorism laws reflected the state's continuous effort to safeguard national security, sovereignty, and public order against terrorism, insurgency, and other emerging security threats. There are various legislations such as the Unlawful Activities (Prevention) Act, the National Security Act, the National Investigation Agency Act, and the Bharatiya Nyaya Sanhita, 2023, which provide a comprehensive legal framework that is necessary to investigate, prevent, and prosecute terrorist activities. Given India's complex security environment, strong counter-terrorism laws are essential and cannot be entirely dispensed with. However, the historical experience of laws such as MISA, TADA, and POTA

⁶² Id. section 153-158

⁶³ Bharatiya Nagarik Suraksha Sanhita, 2023, No 46, Acts of Parliament, 2023 (India).

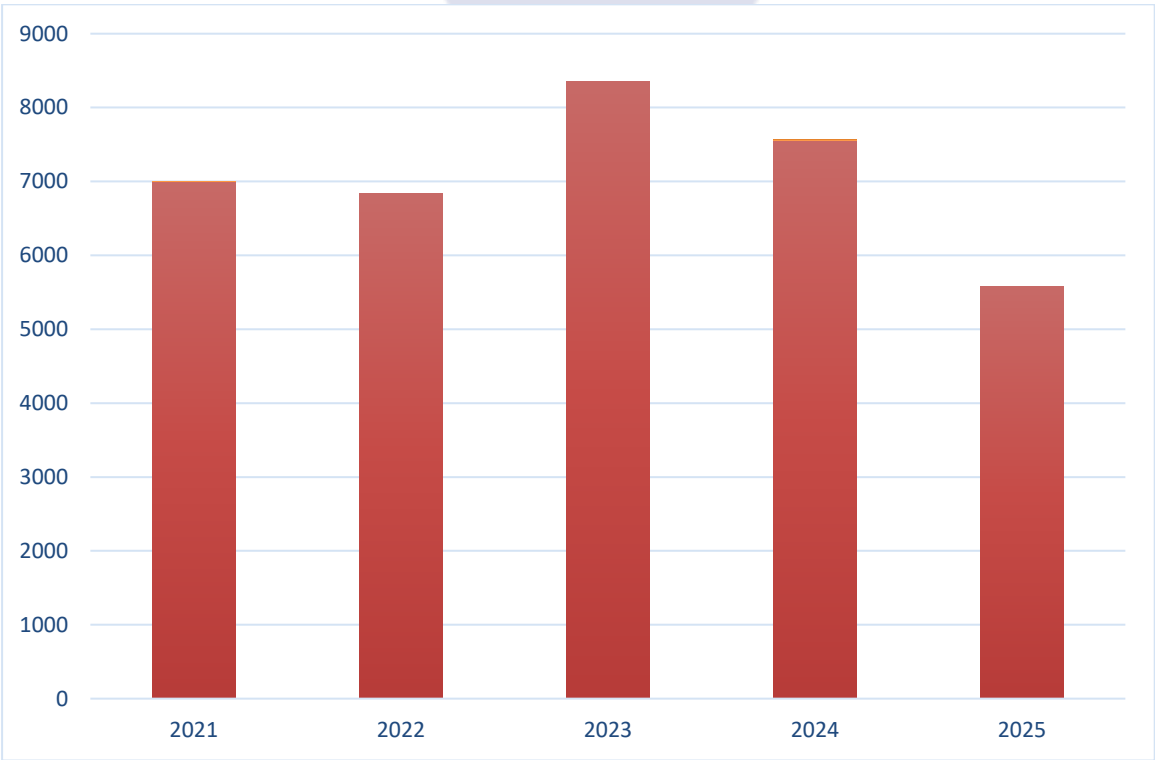
⁶⁴ Id. section 149.

⁶⁵ Id. section 150.

⁶⁶ Id. section 163.

demonstrates that the extraordinary powers are susceptible to misuse when exercised without adequate safeguards. Their application against political opponents, activism, and ordinary citizen examine that the constitutional risk associated with unchecked executive discretion. Although preventive detention is recognised under Article 22 of the Constitution, it should remain considered as an exceptional measure rather than a substitute for ordinary justice. At this point, India requires a clear counter-terrorism framework which effectively addresses the security threats while ensuring transparency, accountability and meaningful judicial review. A balanced legal approach is essential to maintain both national security and the constitutional values of liberty, equality, and the rule of law.

Figure 1: Year wise comparison of Global Terrorism-Related Deaths



Sources: Compiled by Author based on data and analysis from the institute for Economics & Peace, Global Terrorism Index (2022, 2023, 2024, and 2025 editions), and the Global Terrorism Database, and etc.

4. JUDICIAL RESPONSE TOWARDS TERRORISM AND LIBERTY IN INDIA

The Indian judiciary has played a pivotal role in delineating the constitutional equilibrium between national security imperatives and individual liberties. The persistent threat of

terrorism, both domestically and across borders, has necessitated a rigorous judicial examination of the legitimacy of preventive detention statutes, the interpretation of fundamental rights enshrined in Article 14, 19, and 21, and the scope of executive authority in exigent circumstances.

4.1. Early Judicial Approach: Defence to State Power

In the initial post-independence years, the judiciary predominantly endorsed the expansive preventive detention authorities exercised by the state. In the landmark case of *A.K Gopalan v. State of Madras (1950)*,⁶⁷ the Supreme Court affirmed the constitutionality of preventive detention under Article 22, analysing fundamental rights in a fragmented manner rather than in a cohesive framework. The court tended to prioritise state security concerns over the procedural safeguards, reflecting a period marked by judicial restraint in matters relating to national security.

4.2. Expansion of Liberty and Due process of law

In the landmark case of *Maneka Gandhi v. Union of India (1978)*,⁶⁸ the Supreme Court articulated a significant constitutional transformation by asserting that the “procedural established law” under Article 21 must adhere to standards of justice, fairness, and reasonableness. This ruling effectively interconnected Article 14, 19, and 21, forming a triad that reinforced individual liberties, and it’s also called the golden triangle of the Constitution. Consequently, even legislative measures about anti-terrorism and preventive detention must now satisfy the criteria of fairness and reasonableness, establishing a critical boundary that prevents arbitrary infringement on fundamental rights by security legislation.

4.3. Judicial scrutiny of Anti-Terrorism Laws

The judiciary has undertaken rigorous scrutiny of various anti-terrorism statutes, notably the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), and the Prevention of Terrorism Act, 2002 (POTA).

In *Kartar Singh v. State of Punjab (1994)*,⁶⁹ while the Supreme Court upheld the constitutionality of TADA, it issued a caution regarding its potential misuse, indicating that such misuse would contravene fundamental rights, particularly by mandating strict scrutiny of

⁶⁷ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27 (India).

⁶⁸ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

⁶⁹ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 669 (India).

confessional statements made to police officers. In a similar view, in *People's Union for Civil Liberties v. Union of India (2004)*,⁷⁰ Court highlighted the imperative that POTA should not devolve into a tool of oppression, therefore underscoring the necessity for robust judicial oversight and the principle of proportionality in the application of anti-terrorism measures. The Unlawful Activities (Prevention) Act (UAPA) has also faced Judicial examination. In *National Investigation Agency v. Zahoor Ahmad Shah Watali (2019)*,⁷¹ the Supreme Court adopted a restrictive interpretation of the bail provision under Section 43D (5), evidencing the Court's caution stance concerning national security. However, subsequent benches have argued for an equilibrium between the imperatives of liberty and security, advocating for nuanced jurisprudence that respects both foundational rights and legitimate state interest.

4.4. Preventive Detention and Constitutional Safeguards

Preventive detention, sanctioned under Article 22 of the Indian Constitution, constitutes a departure from the principle of individual liberty. In the landmark case of *A.K Roy v. Union of India (1982)*,⁷² the Supreme Court underscored the necessity for stringent adherence to constitutional and procedural safeguards, including the timely communication of grounds and the obligation for advisory board review. These mechanisms are paramount in preventing the executive from abusing preventive powers. Ultimately, judicial review serves as the principal safeguard against arbitrary detention.

4.5. Judicial Philosophy: Balancing Liberty and Security

The Supreme Court has consistently articulated that liberty should be viewed not as conflicting forces but as complementary. In *PUCL v. Union of India (Telephone Tapping Case) 1997*,⁷³ the Court critically addressed the use of national security as a pretext for infringing upon civil liberties, establishing essential procedural safeguards. The Judiciary's mandate is to ensure that while the state engage the counter-terrorism efforts, it does so within the confines of the constitutional framework, thereby reinforcing the rule of law as the paramount security of law. The Supreme Court's ruling in *Puttaswamy v. Union of India (2017)*,⁷⁴ expanded the concept of privacy to include informational privacy, impacting counter-terrorism surveillance practice. The court emphasised that any restriction on privacy for security must adhere to legality,

⁷⁰ *People's Union for Civil Liberties v. Union of India*, (2004) 9 SCC 580 (India).

⁷¹ *Nat'l Investigation Agency v. Zahoor Ahemed Shah Watali*, (2019) 5 SCC 1 (India).

⁷² *A.K Roy v. Union of India*, (1982) 1 SCC 271 (India).

⁷³ *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301 (India).

⁷⁴ *Justice K.S Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

necessity, and proportionality. This approach balances the recognition of terrorism as a significant threat while maintaining constitutional morality and procedural fairness. The principle guiding this balance is that the constitutional framework should not be compromised in the fight against terror, ensuring that anti-terror measures remain effective and accountable within India's constitutional framework.

5. THE LIBERTY VS. SECURITY DILEMMA IN CONSTITUTION

The liberty-security dilemma in constitutional democracy raises the question of how much individual freedom should be sacrificed for collective security. In India, this is complicated by the constitutional provisions for both personal freedoms and state responsibilities. National security concerns lead to extraordinary laws that can limit individual rights, such as preventive detention and surveillance. However, personal liberty and due process are essential constitutional values. The judiciary underscores the necessity for security and liberty to coexist within the framework of the rule of law.

The Supreme Court's reasoning in *Kartar Singh v. State of Punjab (1994)* and *A.K Roy v. Union of India (1982)*⁷⁵ exemplifies this balance- recognising terrorism as a grave threat while insisting on the procedural safeguards against arbitrary detention. On the other hand, in *Maneka Gandhi v. Union of India (1978)*,⁷⁶ the Court expanded the interpretation of Article 21 to ensure that "procedure established by Law" must be just, fair and reasonable, thereby limiting executive arbitrariness even during National Crises. The tension between national security and individual liberty in a post-9/11 context highlights the role of digital surveillance and algorithmic policing in countering terrorism. It raises concerns about privacy and freedom of expression, questioning whether true liberty can be upheld in a climate of extensive security measures. The Indian Constitution aims to address these issues by ensuring that security actions are constitutionally accountable and subject to judicial review. The fight against terrorism in India involves several core constitutional principles that define the nature of the State.

A. Rule of Law

Central to Indian's connotational democracy, the Rule of Law requires all actions taken by the State, even in counter-terrorism efforts, to be legally grounded and subject to judicial review.

⁷⁵ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 (India); *A.K. Roy v. Union of India*, (1982) 1 SCC 271 (India).

⁷⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India).

Arbitrary detentions and extrajudicial acts violate this principle, as affirmed in cases like *PUCCL v. Union of India (1997)* and *ADM Jabalpur v. Shivkant Shukla (1976)*, emphasising that liberty cannot be suspended except as per constitutional provisions.⁷⁷

B. Fundamental Rights and Reasonable Restrictions

Part III of the Constitution of India-particularly Article 14,19,21 and 22-directly intersects with anti-terror operations. Article 19 guarantees freedoms while allowing reasonable restrictions for national security; Article 22 permits preventive detention with certain procedural safeguards. This dual framework upholds individual liberty while permitting necessary constraints for public safety.

C. Doctrine of Proportionality

The doctrine of proportionality mandates that restrictions on rights must be necessary, suitable, and minimally invasive. Established in *Puttaswamy v. Union of India (2017)*,⁷⁸ this principle is crucial for evaluating laws like the UAPA and the National Investigation Agency Act, which provide substantial powers to the executive.

D. Separation of Powers and Judicial Oversight

Anti-terror laws often challenge the balance among the legislature, executive, and judiciary. The separation of powers principle ensures judicial oversight of executive actions to prevent misuse, with Courts promoting fair trials and the presumption of innocence even in National Security contexts. Constitutional morality, undermined in *Kesavananda Bharati (1973)* and *Navtej Singh Johar (2018)*,⁷⁹ mandates that state power remain confined within moral and constitutional limits. Even during crises, democracy must resist authoritarian temptations, ensuring that individual dignity and fairness are upheld, thus reinforcing India's identity as a democratic republic.

E. Era of Globalization

Globalization has redefined the nature of terrorism, transforming the threat that necessitates the implementation of sophisticated counter-terrorism strategies, including drone warfare and targeted killings. These measures pose significant challenges in distinguishing between

⁷⁷ *People's Union Civil Liberties v. Union of India*, (1997) 1 SCC 301 (India); *ADM, Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 521 (India).

⁷⁸ *K.S Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

⁷⁹ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India); *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

conventional warfare and law enforcement protocols. The deployment of drones, often justified under the self-defence clause of Article 51 of the UN Charter, raises critical issues related to state sovereignty, human rights considerations, and principles of proportionality.⁸⁰ This is particularly evident in operations like the U.S. drone strike in Pakistan and the targeted killing of Qassem Soleimani in 2020, which have sparked intense debates about their legality and moral jurisdiction.⁸¹

These actions, frequently rationalised as pre-emptive security initiatives, undermine key tenets of international humanitarian law and constitutional protections against arbitrary state actions. For constitutional democracies such as India, which are increasingly encountering analogous pressures through drone surveillance and cross-border military operations, it is essential to strike a delicate balance between the imperative of national security and the protection of individual liberties. India's constitutional ethos, grounded in principles of liberty, dignity, and the rule of law, mandates that any technology or military tactic adopted must adhere to standards of accountability, proportionality, and transparency. Therefore, in our interconnected world, the real challenge for constitutionalism lies in harmonising the demands of security with the fundamental values of human rights and democratic accountability.

6. CONCLUSION

In the contemporary constitutional landscape of India, the challenges posed by terrorism represent a critical test of democracy resilience-specially, the capacity to ensure national security while upholding fundamental tenets of liberty, justice, and human dignity. The progression of anti-terror legislation, from the Terrorist and Disruptive Activities (preventive) Act (TADA) to the Unlawful Activities (prevention) Act (UAPA), and now to provisions within the Bharatiya Nyaya Sanhita (BNS), underscores India's commitment to addressing threats against its sovereignty and unity. However, the implementation of these measures must be circumscribed by the constitutional parameters established by the judiciary, particularly invoking the doctrine of proportionality and the basic structure doctrine. The judiciary has consistently retreated that the rule of law and constitutional ethics cannot be overridden, even under the aegis of national security. As globalisation, technological advancements, and asymmetric warfare redefine terrorism- manifesting in forms such as cyberattacks, drone warfare, and transactional extremist networks- India is confronted with a dual imperative:

⁸⁰ U.N. Charter art. 51.

⁸¹ *Falih Hassan & Michael Crowley, U.S. Strike Kills Qassim Suleimani in Baghdad*, N.Y. Times, Jan. 3, 2020, <https://www.nytimes.com/2020/01/03/world/middleeast/qassem-soleimani-killed.html>.

safeguarding its citizenry while preserving the constitutional ethos intrinsic to its democracy. Genuine constitutional governance necessitates a nuanced equilibrium between liberty and security, where preemptive actions are balanced with mechanisms of accountability, respect for human rights, and rigorous judicial oversight. Ultimately, the resilience of the Indian Constitution is not solely measured by its capacity to counter threats, but by its steadfast commitment to maintaining freedom, equality, and justice, even in the most challenging circumstances.

