



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed Edition :

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

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# UNRAVELING THE SHADOWS OF TERRORISM AS A CRIME IN INDIA

AUTHORED BY - RADHA RANJAN<sup>1</sup>

## ABSTRACT

India's independence in 1947, it has cultivated a secular, multifaceted, culturally rich, and dynamic democracy that has made it the enemy of many unconventional and extremist ideas and faiths that attempt to establish order using fourth-generation combat techniques like Jihad and "Proxy War." The fights that Jehadi groups like the Lashkar-e-Taiba alongside other proxy groups backed through the Pakistan Inter-Services Intelligence Agency are waging disregarding India are ordinary examples of those types of disputes. Despite certain preventative measures put in place by the Indian government in the wake of the assaults in Mumbai on November 26, there is no well-defined counter-terrorism strategy that has been formulated in the form of a theology or white paper. India's administration must be very clear about its position on terrorism if it wants to shed its reputation as a "soft state". This academic paper offers a thorough examination of terrorism as a criminal offense in India. It examines the legal foundation for terrorism-related crimes under Indian law, concentrating on the Unlawful Activities (Prevention) Act, 1967 (UAPA), and the Indian Penal Code (IPC). The essay also looks at how terrorism has changed through time, the difficulties in identifying and convicting terrorists, and the function of international law in the fight against terrorism. This article tries to give a detailed knowledge of the legal complexities pertaining to terrorism in India via a synthesis of legislative provisions and pertinent case laws.

**Keywords:** Terrorism, Organized crime, Section 121, 9/11, Terrorists, Section 121A, 26/11, Mumbai Attacks.

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## INTRODUCTION

*"Terrorism must be outlawed by all civilized nations- not explained or rationalized, but fought and eradicated. Nothing can, nothing will justify the murder of innocent people and helpless children."*

*~ Elie Wiesel*

Terrorism continues to be a transnational issue that affects countries like India. The statutory remedy for terrorism is complex and includes both national law and cross-border collaboration. This article explores the nuances of terrorism as an offense in India and clarifies the legal options available to combat this threat. India hasn't been immune to the effects of terrorism, which is a serious worldwide problem. The main piece of legislation controlling criminal crimes in India is the IPC, 1860.<sup>2</sup> The IPC's incorporation of terrorist-related measures demonstrates the nation's willingness to successfully countering terrorism. India doesn't have a single, comprehensive definition of terrorism, in contrast to several countries. The societal and economic and geopolitical climate of the globe changed drastically and abruptly after 9/11 (Michael 2007). Since then, the majority of today's problems have been put on hold, and terrorist activity has emerged as a major problem. Nearly every nation is now aware of the threat posed by the terrorist acts that occur throughout the world. As a result, counterterrorism safety protocols were given precedence over other concerns. The US National Counterterrorism Center (NCTC) reports<sup>3</sup> that during January 2004 and July 2007, terrorist incidents in India resulted in 3,900 fatalities, 9,076 injuries, and 2,144 hostage takings. After Iraq, this was the country with the second-highest terrorism-related rate of fatalities during this time.' Of fact, India's 1.1 billion people put the country at a smaller amount of loss per person than the raw numbers show. Additionally, a large number of these deaths fall within the fundamental limbo that is shared by the word's "terrorism" and "insurgency". The information is nevertheless terrifying. In an effort to safeguard their population from terrorist threats, security measures are continually evaluated with the goal of tightening them up. Such steps could prevent terrorist attacks, but they might still occur when it's more convenient for them. One cannot overstate the importance of developing an integrated and successful tactics that targets terrorists as opposed to their causes.

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<sup>2</sup> The Indian Penal Code (IPC), 1860.

<sup>3</sup> The US National Counterterrorism Center (NCTC) reports 2007.

## TERRORISM IN INDIA

Given the prospects of the Indian country and the global "war on terrorism," violent Islamist terrorism within India is carried out in an exceedingly crucial environment. For instance, Mumbai, India's economic and manufacturing center, was heavily targeted throughout the years. Additional goals consist of the nation's capital, New Delhi, along with the thriving IT hubs of Bangalore and Hyderabad. Temples of faith and the train, "Samjhauta Express", that connects India and Pakistan were further damaged, along with Varanasi, one of India's oldest towns.

This ostensible deliberate aiming seems for being intended to undermine India's rebounding economy or to incite communal hostility among Hindus and Muslims, weakening the sustainability of India's liberal politics and impeding the India-Pakistan reconciliation. Due to the decrease in backing from the Pakistani government as a consequence regarding this reconciliation, the terrorists fighting in Kashmir have suffered. The extremists want to see the reconciliation wrecked for this crucial reason. The ramifications are thereby quite high for both nations. In fact, they go past even the issues stated earlier and even impinge on the term "war on terrorism." If Pakistan and India were compelled into war, as they almost did after the acts of violence on the Indian Parliament in December 2001, that might have a significant impact on the nation's ability to host US operations in Afghanistan and would make the already difficult task of maintaining tranquility and security in the way essential tactical region much more difficult.

Terrorist assaults in India have been mostly funded and backed from Pakistan as well as Bangladesh beyond the frontier. This assistance encompasses broad strategy by criminal organizations like LeT and JeM, the procurement of bombs and weapons, and personnel training, particularly in the concentration areas of Pakistani Kashmir. However, a deeper look at the terrorist assaults in India also reveals a sizable "homegrown" element, including just over one percent of the 140 million Muslims in that country. In certain situations, criminals are found among Indian migrant laborers in the Gulf, wherever the LeT has a strong influence.

These domesticated components seem to be driven by two regional frustrations that are closely connected. First, Muslims often have a low socioeconomic level (SES). A recent authorized Government of India Publication detailed this in great detail. According to this study, Muslims had a poorer standard of living than people in general and those who are Dalits, or so-called "untouchables," did. Moreover, Human rights are impacted by terrorism in a variety of ways. As

terrorism spreads as well as institutionalizes, it continues to represent a serious danger to human rights all across the globe. Since the 1970s, terrorism has expanded into increasingly structured, fiscally secure, and orchestrated kinds aimed at dozens of people that are often victims of abductions murders, and sexual assaults. This is an alarming infringement of human rights.

In accordance with the aims of the organization or groups, different aims and goals drive terrorists. Moreover, terrorism takes in several forms. The following are the main categories of terrorist activities that are often recognized internationally:

1. **Religious terrorism-** If we discuss about kind of terrorism that is religious so it is governed by a supreme belief many of the people who are engaged in terrorist duties think it is the service towards religion as well as the commands of the Creator to ensure they propagate bloodshed and engage in terrorist activities in line with faith they hold. And one may infer that these people seek to persuade individuals to adopt their viewpoint on a certain religion.
2. **Ideology oriented terrorism-** As we saw regarding the ideology-based terrorism thus it means that philosophy which encourage mainly violence and string human murdering rape, Genocide, etc. it can be any form of agenda it can be left and it can be right as well.
3. **State-sponsored terrorism-** Several nations have used terrorism as a part of their foreign strategy. State-sponsored terrorism differs from other types of terrorism in that it is started to achieve specific, well-defined policy goals rather than garner media attention.
4. **Political terrorism-** Political terrorism is an extremely deadly kind of violence because it is carried out by those who are part of society. Because it is carried out by skilled individuals, it is more important than criminal terrorism. As a result, it is difficult for law enforcement to apprehend them quickly. Both on a national and worldwide scale, terrorism spread.

## ANTI- TERRORISM LAWS IN INDIA

It is projected that an array of rules ought to be designed within the rule of law structure in a republic to efficiently avoid and fight all kinds of terrorism after the terrorist incident that occurred triggering brutality, the destruction of life, freedom, danger to the safety of individuals

and belongings, generating disarray and nervousness in the society, and most of all jeopardizing the unity, independence, and sovereignty of India. These laws serve as a foundational premise for law enforcement organizations engaged in counterterrorism or counterinsurgency operations.

## **UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 (UAPA)<sup>4</sup>-**

The Unlawful Activities Prevention Act of 1967 is one of the first anti-terrorism laws. It was created to prohibit anti-terrorist actions and put restrictions on groups that support terrorism and engage in anti-national activity. The Unlawful Activities Prevention Act of 1967 does not provide a specific description of a terrorist. The fact that the UAPA was specifically designed by law to impose restrictions on groups and organizations rather than individuals is a very significant and crucial argument. Those associations and organizations were as follows: if they provide funds for terrorist activities or terrorist groups, as well as if they support and participate in any acts that are detrimental to the security and unity of the nation. If we consider the UAPA's character, we can see that it is a highly contentious Act since the Parliament often amends it to improve its operation. After POTA was repealed in 2004 and the legislation for preventing the occurrence of terrorist activities was passed in 2001 after the assault on Parliament, the UAPA became a stricter legal requirement.

However, since its passage, the POTA has been repeatedly abused by the authorities, and many people's rights have been violated as a result.<sup>5</sup> This is because the POTA gave the government the power to detain anyone it suspected of being guilty of a crime without charging them or conducting an investigation for at least 180 days. After that, the UPA administration abolished this Act for the reasons that have already been briefly described. However, a lot of POTA provisions—or, more accurately, their provisions—were added to the UAPA Act via an amendment. And using this Act undoubtedly increased government authority. And sometimes, individuals have complained that they are the targets of this Act sans any justification—or, to put it another way, innocent people are subject to this Act without justification. Because before the change made possible by this Act, the authorities could only designate certain entities and groups as terrorist. However, with the amendment, the UAPA may now proclaim certain persons

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<sup>4</sup> The Unlawful Activities (Prevention) Act, 1967

<sup>5</sup> Prevention of Terrorism Act, 2002

to be terrorists. Many other amendments have also been made to the statute. which we'll go through in depth here one by one.

## **TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION ACT 1987 (TADA))<sup>6</sup>**

The following anti-terrorism statute, known as TADA, was adopted by the Parliament on September 3, 1987. This action was taken to stop terror operations in the country. Following the turmoil in Punjab and the expansion of terrorist operations, the TADA was passed into law in order to impose limitations. However, the TADA's regulations and application were very rigid and rife with arbitrary rulings. People's basic rights were being violated without following the proper legal procedures. TADA was contested in court to be ruled illegal when it was first passed because of its infamous abuse. In the case of *Kartar Singh v. State of Punjab*<sup>7</sup>, the supreme court of India maintained its constitutional legitimacy on the presumption that individuals given such draconian statutory powers would operate in good faith and for the benefit of the general public. Regarding DATA, there are several instances of investigating officials abusing this Act. Many of the harsh and regressive TADA rules were deemed unlawful by the Supreme Court in 1994's landmark *Kartar Singh v. State of Punjab* decision. "Deplorably, committed young people are engaging in heinous crimes against humanity after being seduced by hardened criminals and clandestine radicals. Despite the extreme measures taken and the heightened monitoring, terrorists and militants continue to cause chaos when it serves their purposes. The court said that: "No one can dispute these clear facts and plain reality by adopting an ostrich-like mentality fully disregarding the looming threat. It also examined the effect of TADA on the protection of human rights and its abuse. In the end, the Terrorist and Disruptive Activities (Prevention) Act of 1987 was deemed unconstitutional by the court after it was thoroughly examined and found to have been misused, violating peoples' human rights while also not being in the best interests of public safety. It was finally repealed by legislation in 1995.

## **VARIOUS SECTIONS OF INDIAN PENAL CODE, 1860**

**Waging, Attempting to Wage, or Aiding in the Waging of War Against the Government of India: Section 121<sup>8</sup> Overview:** Infractions including waging war against the Government of

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<sup>6</sup> Terrorist and Disruptive Activities (Prevention) Act, 1987

<sup>7</sup> (1994) 3 SCC 569

<sup>8</sup> Section 121

India, trying to do so, or aiding in that effort are covered under Section 121. It focuses on behaviors that endanger the country's security and sovereignty.

Key Components:

- Warfare: Acts that include the declaration of war against the Government of India are prohibited under this provision. Both internal and external hostility are included in it.
- War Fight: This section covers efforts to start a war with the government. This applies to situations when there is a clear intention and preparedness to start a war even if it may not have started yet.
- Warfare Against the Government: This provision also holds anyone responsible for aiding, abetting, or supporting the act of waging war against the government accountable. This acknowledges the significance of the people who enable such deeds.

Punishment: For violations of Section 121, the penalty is either death or life in prison, with the potential for the loss of assets used to wage war.

#### **Conspiracy to Commit Crimes Punishable by Section 121A<sup>9</sup>:**

Overview: Conspiracies to commit crimes under Section 121 are covered under Section 121A. It focuses on those who or organizations that intend to conduct actions that would be considered waging war against the Indian government.

Key Components: This section focuses on the act of conspiring to commit a crime that is punished under Section 121. It includes arrangements made to carry out such activities by two or more people.

Punishment: The penalty for conspiring to commit an offense under Section 121 (Section 121A) has the same implications as the penalty for the actual violation, which includes the possibility of the death penalty or a life sentence in prison as well as the seizure of property.

#### **Collecting weapons, etc., with the intent to wage war against the government of India is prohibited under Section 122<sup>10</sup>:**

Overview: Acts that include gathering weapons, ammunition, or resources with the purpose to wage war against the Government of India are the subject of Section 122.

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<sup>9</sup> Section 121A

<sup>10</sup> Section 122

**Key Components:**

The act of gathering weapons, ammunition, or resources required to wage war against the government is covered under this clause.

**Intent to Start a War:** The weapons and resources gathered must be intended to start a war against the Indian government.

**Punishment:** For violations of Section 122, the penalty is either life in prison or a sentence of up to 10 years in jail, as well as the possibility of a fine.

**Concealing with the Motive of enabling Design to Engage in War, Section 123<sup>11</sup>:**

**Overview:** The concealment of information with the purpose of assisting a plan to conduct war against the Government of India is addressed in Section 123.

**Key Components:**

**Disguising Information:** This section tackles the deliberate concealment of information on strategies or plans for going to war with the government.

The desire to enable the overall design or strategy to wage war against the Government of India is a critical component.

**Punishment:** For violations of Section 123, the penalty is either life in prison or a sentence of up to 10 years in jail, as well as a possible fine.

**Sedition, Section 124A<sup>12</sup>:**

**Overview:** Despite not having a clear connection to terrorism, Section 124A addresses actions that promote violence or foster animosity or disrespect for the government. It could be pertinent in several terrorism-related situations.

**Key Components:**

This section focuses on actions that incite hate or disdain for the government or call for violence against it.

**Intent to Promote Violence:** A key element of this crime is the desire to stir up violence or general chaos.

**Punishment:** Sedition-related crimes under Section 124A are punishable by up to life in prison,

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<sup>11</sup> Section 123

<sup>12</sup> Section 124A

a fine, or both.

## **NATIONAL SECURITY ACT 1980 (NSA)**

The next legislation is the National Security Act, which was passed by the legislature on September 2 and 3, 1980, under the UPA administration.

In essence, the NSA's mission is to safeguard the nation's welfare while simultaneously advancing national security and maintaining diplomatic ties with foreign nations.

The NSA is a preventive detention statute that holds any suspects before charges are filed and investigations are completed for the sake of national security.

In order to maintain public order and state security, preventative detention and other restrictions on personal freedom are permitted under Article 22(3)(b) of the Indian Constitution.

The NSA is still making headlines at this time due to the corona virus in India, as many people have been detained by means of the NSA because they knowingly attempted to spread the disease. According to news sources, those who are affiliated with the Tbligi zamat were suspected of having the virus after testing positive for it in a hospital, and they attempted to attack the medical staff and nurses. Additionally, several anti-social elements have recently been detained in the states of MP and UP under the NSA.

## **IMPORTANT CASE LAWS**

1. The Supreme Court maintained the constitutional legitimacy of the NSA and the Ordinance that came before the Act by a 4:1 majority in the case known as the NSA case, *A.K. Roy v. Union of India*<sup>13</sup>. The Court determined that the clauses of the Act authorizing the detention of people on certain grounds as operating in a way detrimental to the "defence of India," "security of the state," and "relations with foreign power" were not imprecise nor arbitrary. The Court issued a number of directives while maintaining the NSA and its implementing Ordinance in order to protect the rights of detainees held in accordance with the NSA. The court ordered:

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<sup>13</sup> AIR 1982 SC 710

- 1) that the detainee's family members be informed in writing of his arrest and detention as soon as it occurs;
  - 2) that the detainee be held in his usual residence unless exceptional circumstances call for a different location;
  - 3) that the detainee be allowed access to his own food and books; and
  - 4) that he be kept apart from those who have been found guilty.
2. The petitioner for a writ of habeas corpus in *R (Saifi) v. Governor of Brixton Prison*<sup>14</sup> objected to his or her extradition to India on the grounds that, among other things, the prosecution had relied on a statement that had been acquired by torture and had now been recanted. The International Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment of 1984's Article 15 was clearly carried out by common law and domestic law, according to the queen's Bench Division court, which accepted the Magistrate Judgement that fairness did not call for the statement to be excluded.
3. In *Babulal Parate v. State of Maharashtra (1961)*<sup>15</sup>, the defendants were accused of trying to wage war against the Government of India in violation of Section 121. The Supreme Court sustained the conviction and noted that even an outward sign of war preparation might be covered by this clause. The wide definition of "waging war" under Section 121 was brought to light in this instance.
4. In *State of Maharashtra v. Dr. Praful B. Desai (2003)*<sup>16</sup>, the defendants were accused of plotting to conduct war against the Government of India in violation of Section 121A. According to the Bombay High Court, Section 121A may be used to penalize those who conspire to carry out a crime under Section 121. This case highlighted the fact that conspiracy itself may be a crime.
5. Shew Mangal Singh was prosecuted in *State of West Bengal v. Shew Mangal Singh (1995)*<sup>17</sup> under Section 122 for allegedly gathering weapons with the intent to wage war against the Government of India. According to the Calcutta High Court, this clause cannot be invoked simply by having a collection of weapons. The prosecution must prove

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<sup>14</sup> (2003) 1 WLR1134

<sup>15</sup> 1961 AIR 884, 1961 SCR (3) 423

<sup>16</sup> AIR 2003 SC 2053

<sup>17</sup> 1981 AIR 1917, 1982 SCR (1) 360

that there was a deliberate desire to go to war.

6. The defendants in *Vincent George v. Union of India (2010)* were accused of violating Section 123 by withholding information with the purpose of facilitating a plan to conduct war against the Government of India. According to the Kerala High Court, the accused's concealment of their membership in a terrorist group might be seen as withholding information to aid in the plan to wage war.
7. *Kedar Nath Singh v. State of Bihar (1962)*<sup>18</sup> is one of the significant sedition cases. In this decision, the Supreme Court maintained Section 124A's validity while also emphasizing that dissent from the government's policies does not always constitute sedition. The court ruled that an act must entail inciting violence or public unrest in order to be classified as sedition.

## SUGGESTIONS

The idea that all nations should cooperate in the fight against terrorism and that all laws passed by the various nations and the United Nations should be faithfully carried out seems pretty much utopian as a recommendation, but is highly likeable. Additionally, it would be to point out that it is crucial for a fair inquiry that the investigating agencies in every country be free from political influence and prejudice. Additionally, the party nations must adhere strictly to the responsibilities of each State that are outlined in international law, and periodically they work to pass new legislation aimed at preventing terrorism and other immoral actions on a worldwide scale. Additionally, protecting the core human rights and fundamental freedoms of its population should be every State's first concern. The International Court of Justice should also be included when discussing international laws and actions pertaining to terrorism since it may play a significant and significant role in terrorist prevention. It is important to keep in mind that governments sometimes disregard international law in favor of their own interests. As for the states' individual accountability, it should be underlined that they must accept responsibility for any unlawful or terrorist conduct that occurs inside their borders. Additionally, it is crucial for every state's government to assess the basic issues facing its residents. Basic necessities like food, health care, and education must be met by the government in order to prevent citizens from becoming distracted and choosing paths that are harmful to both the state and humanity as a

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<sup>18</sup> 1962 AIR 955, 1962 SCR Supl. (2) 769

whole. And they need to understand their responsibility towards the nation, follow all the legal norms under the supervision of the constitution, and keep a fair investigation in any terrorist matter free from any kind of pressure. All gaps, whether they are under the investigating authorities or in the implementation of laws, must be filled. Furthermore, the government must provide every suspect the chance to prove their innocence and inform them of the reason for their detention. Doing so is crucial for safeguarding the fundamental human rights of the populace.

## **CONCLUSION**

In India, terrorism is a complex problem with many different manifestations and underlying reasons. It involves a diverse range of individuals and reasons and includes both domestic insurgencies and cross-border conflicts as well as transnational threats. Effective counterterrorism initiatives depend on an understanding of the causes of terrorism. Among the key factors that have supported terrorism in India are socio-economic inequality, religious extremism, interregional disputes, historical grudges, and political instability. The government and security forces have put a lot of effort into fighting terrorism, including passing laws, sharing intelligence, and cooperating internationally. The shifting nature of terrorism, open borders, and the formation of new extremist groups, however, continue to pose problems. A comprehensive strategy is required, combining security precautions with treating the root problems. Important elements of this strategy include encouraging intercommunal discussion, social and economic development, and combating extremist ideas. In addition, international collaboration and intelligence sharing must keep playing a crucial role in the fight against domestic and international terrorism. In order to ensure the safety and security of the country and its residents, it is ultimately necessary to continuously work to uncover the complexities of terrorism in India. This demands continued commitment on both a national and international level.

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