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EVOLUTION OF LEGISLATIVE RESPONSES TO TERRORISM IN INDIA: A HISTORICAL ANALYSIS

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Abstract

This research paper delves into the legislative responses to terrorism in India, tracing their evolution from early independence to contemporary times. It examines the debates and deliberations within the legislative bodies, the recommendations of advisory bodies like the Law Commission of India, and the judicial interpretations that have shaped the legal framework to combat terrorism. The paper discusses critical laws such as the Preventive Detention Act, the Armed Forces Special Powers Act, and the Terrorist and Disruptive Activities (Prevention) Act, along with their amendments and implications. Furthermore, it analysesthese laws' challenges and criticisms, including concerns about civil liberties and potential misuse. Through this historical analysis, the paper aims to provide insights into the complex interplay between security imperatives and constitutional principles in India's fight against terrorism.

Introduction

Acts of disregard and contempt for human rights have resulted in barbarous actions that have outraged the conscience of humanity. The advent of a world where human beings can enjoy freedom of speech, belief, and freedom from fear and want has been proclaimed as the highest aspiration of ordinary people. Many international covenants on human rights and national constitutions guarantee the person's right to life, liberty, and security. The movement for securing human rights for all gained strength after the conclusion of the Second World War. On the other hand, states are obligated to maintain the sovereignty, unity, and integrity of their countries from

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internal disturbances as well as external aggression. The ultimate goal of human rights and sovereign powers is to ensure that human beings, wherever they are living, are guaranteed the right to live in a peaceful and harmonious society by enjoying the right to life, personal liberty, safety, and security.

In recent times, the great scourge on humanity is the menace of terrorism. Although not a new phenomenon, it attracted increased attention after the terrorist attack on the World Trade Center in New York on September 11, 2001. India has been aware of the threat of terrorism for a long time. Still, the attack on the Indian Parliament on December 13, 2001, and the attack in Mumbai on November 26, 2008, prompted Indian policymakers to take fresh notice of this desperate behaviour by certain sections of society. It is with this backdrop that an attempt has been made in this paper to locate the various laws in India that aim to tackle extraordinary situations like terrorism and extremism. Ordinary criminal law may not address these situations, so it may be necessary to pass specific extraordinary legislation to deal with such extraordinary circumstances. The legal regime to control terrorist activities may be classified into:

1.1 International Legislative Response

1.2 National Legislative Response

Regarding international law, the laws of war are considered a potential legal regime for controlling terrorist activities. Issues that arise at the global level include the principle of double criminality, the doctrine of political offences, extradition, the right to asylum, and war crimes, for which there appears to be no uniform and universally acceptable approach.

The League of Nations, the predecessor of the United Nations, founded during the June 1945 San Francisco Conference, took the first significant step towards discussing a draft Convention for preventing and punishing terrorism in 1934. Although the Convention was eventually adopted in 1937, it never came into force.

The problem of international terrorism has been under consideration by the United Nations General Assembly since 1972. On September 23, 1972, the Assembly recommended including an item in the agenda and bringing it before the Sixth Committee: measures to prevent international terrorism, which endangers innocent human lives or jeopardises fundamental freedoms, and a

study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance, and despair and which cause some people to sacrifice human lives in an attempt to effect radical changes.

On its recommendations, the General Assembly adopted a resolution on December 18, 1972, deciding to establish an Ad Hoc Committee on International Terrorism consisting of 35 countries. The Committee held its first session in 1973 without achieving any positive results but submitted its report to the Assembly. Due to a lack of time, the Assembly could not consider the item until the thirty-first session held in 1976. In 1976, the Assembly adopted a resolution inviting the Ad Hoc Committee to work according to the mandate initially entrusted to it. The resolution also askedstates to submit their observations as soon as possible to the Secretary-General to enable the Committee to perform its mandate more efficiently. It also requested the Secretary-General to transmit an analytical study of those observations to the Committee. The Ad Hoc Committee met in 1997 and submitted a report to the Assembly without further progress. In the 1979 session, the Ad Hoc Committee worked out general recommendations relating to practical cooperation measures for the speedy elimination of the problem of international terrorism. These recommendations reflected a standard view of fundamental importance.

On the recommendations of the Ad Hoc Committee, the General Assembly it adopted a resolution on December 17, 1979, condemning acts of terrorism and urging all States, unilaterally and in cooperation with other States and relevant United Nations organs, to contribute to the progressive elimination of the causes underlying that kind of terrorism. The resolution called upon all States to fulfil their obligations under international law to refrain from organising, instigating, assisting, or participating in acts of civil strife or terrorist acts in another State or acquiescing in organised activities within its territory directed towards the commission of such acts. Since 1979, no further progress has been made in the following years, except for the endorsement of the resolution adopted in 1979. In 2002, the Ad Hoc Committee restarted negotiations on a comprehensive international treaty on terrorism, deliberating on complex topics such as a definition of terrorism and its relation to liberation movements, possible exemptions to the scope of the treaty regarding the activities of armed forces, and how to advance the level and

types of international cooperation to combat terrorism. However, no Convention has been concluded as yet. The United Nations Charter was a landmark in this unique legal development.

The Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution 217 A (III) on December 10, 1948, states that disregard and contempt for human rights have resulted in barbarous acts that have outraged the conscience of humanity. The advent of a world where human beings can enjoy freedom of speech, belief, and freedom from fear and want has been proclaimed as the highest aspiration of ordinary people. The Universal Declaration permits States to impose reasonable restrictions on the rights and freedoms of individuals through the enactment of laws to protect the rights and freedoms of the people in general. Article 29 states that in the exercise of rights and freedoms, everyone shall be subject to such limitations as are determined by law solely to secure due recognition and respect for the rights and freedoms of others and to meet the just requirements of morality, public order, and the general welfare in a democratic society.

Imposing reasonable restrictions on the rights and freedoms of unscrupulous elements constituting a severe threat to public order due to their involvement in activities destroying life, liberty, and property of other fellow beings, these laws, far from being at variance with the Universal Declaration of Human Rights, are very much by its provisions in Article 29. These anti-terror laws do not deny any person equality or equal protection before the laws, guaranteed by Article 7 of the Universal Declaration of Human Rights.

Terrorism itself involves the violation of human rights, and anti-terror laws have been enacted to protect the human rights of people trampled upon by terrorists with impunity. As provided by the Universal Declaration of Human Rights, nothing in the Declaration may be interpreted as implying for any State, group, or person any right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth therein. Therefore, when terrorists perpetrate acts of terrorism, they destroy the rights and freedoms of fellow human beings or groups of fellow human beings in contravention of the principles enshrined in the Universal Declaration of Human Rights. In times of emergency, the Universal Declaration does not prohibit enacting more stringent laws to tackle the problem of terrorism.

Unlike the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights does not prohibit the enactment of more stringent laws to tackle the problem of terrorism. Article 4 of the Covenant defines rights in greater detail than the Universal Declaration, stating that in times of public emergency that threaten the life of the nation and the existence of which is officially proclaimed, parties to the Covenant may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion, or social origin. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16, and 18 may be made under this provision. The only rights that may never be suspended or limited, even in emergencies, are the right to life, freedom from torture, freedom from enslavement or servitude, protection from imprisonment for debt, freedom from retroactive penal laws, the right to recognition as a person before the law, and freedom of thought, conscience, and religion.

Article 14 of the International Covenant on Civil and Political Rights states that all persons will be treated equally before the law without discrimination in civil and criminal cases. The press and public have been informed of public interest, the presumption of innocence is given to those accused of criminal charges, human rights guarantees are provided in full equality, rehabilitation of juveniles is allowed, and the right to review. Appeal is granted to all accused, and when it is found that there was a miscarriage of justice, the person has to be pardoned. Finally, the right against double jeopardy is protected.

The following list identifies the major terrorism conventions open to ratification by all states, with a summary provided in each case of the principal provisions in each instrument. In addition to the summarised provisions, most of these conventions provide that parties must establish criminal jurisdiction over offenders (e.g., the state(s) where the offence takes place, or in some cases, the state of nationality of the perpetrator or victim, or in the case of an aircraft, the state of registration.

Analysis

India's constitutional commitment to maintaining fundamental rights while combating some of the world's most serious terrorist threats is a proud one. The Indian government's efforts to limit the use of its anti-terrorism laws and renew its efforts to transform its colonial-era policies and criminal justice institutions can serve as an international example. In recent years, following the Mumbai bomb blasts, the Indian government wisely chose not to enact new draconian legislation to replace the Prevention of Terrorism Act (POTA), emphasising instead the need to upgrade its intelligence and investigative capacity to prevent acts of terrorism and hold perpetrators accountable. About twenty to thirty Acts passed at the central or state levels to cope with "terrorism."

During the framing of the Constitution, there was extensive discussion on Article 22, which deals with the safeguards available to arrested persons and detainees detained under preventive detention laws. While supporting the necessity of preventive detention laws, G. Durgabal Deshmukh observed that when it comes to shaking the very foundations of the State, which stands for the freedom of several individuals, the difficulties of the State take precedence over the freedom of one individual. Another member, P.K. Sen from Bihar, also supported such measures, stating that given the troubled times the country and the world were passing through, some special measures for the security of the State were necessary.

However, other members, like Mahavir Tyagi, opposed preventive detention laws because life, liberty, and the pursuit of happiness are three fundamental rights. The State comes into being not because it has inherent rights of its own but because individuals with inherent rights of life and liberty forego a part of their rights and deposit it with the State.[2] Tyagi argued that introducing a detention clause would change the chapter on fundamental rights into a penal code worse than the old Defence Rules of India. B.R. Ambedkar, however, supported preventive detention laws, overruling the objections of members like Mahavir Tyagi. Thus, the Constituent Assembly took cognisance of extreme situations like terrorism and provided specific measures to curb the same.

The Law Commission of India, an advisory body headed by a former Judge of the Supreme Court, recommended in April 2000 the adoption of a law designed to deal firmly and effectively

[2] G.B. Reddy, Indian Legal Regime Related to prevention of Terrorism, Terrorism in South Asia:View from India, (2004) New Delhi, India Research Press at 246-248.

with suspected terrorists and their activities, departing from the liberal investigation and trial procedures generally in use. The Commission was of the view that the impact of terrorism, both internal and external, over the past few decades in India fully justified the measures envisaged in the proposed legislation. They opined that when the very existence of a liberal society is at stake, drastic measures meant to strengthen law enforcement and the maintenance of public order are a necessary evil.

The Law Commission, while examining the Prevention of Terrorism Bill of 2000, observed that legislation to fight terrorism is necessary in India, although its enactment alone would not subdue terrorism. It may, however, arm the State to combat terrorism more effectively. The Commission noted that the Indian Penal Code (IPC) was not designed to fight or check organised crime of the nature India is faced with now, where organised groups or gangs, trained, inspired, and supported by fundamentalists and anti-Indian elements, try to destabilise the country and make no secret of their intentions.

The act of terrorism, by its very nature, generates terror and a psychosis of fear among the populace, rendering people helpless spectators of the atrocities committed before their eyes. People become afraid of contacting the police authorities about any information they may have about terrorist activities, much less cooperate with the police in dealing with terrorists. It is difficult to get any witnesses because people are afraid for their safety and the safety of their families. Even judges and prosecutors have been gripped with such fear and terror that they were not prepared to try or prosecute cases against terrorists, as was the case during the worst days in Punjab and is the situation today in Jammu and Kashmir. This contributes to the enormous delay in proceeding with trials against terrorists. Insisting upon independent evidence or applying the usual peacetime criminal prosecution standards in such a situation may be impracticable. It is necessary to have a special law to deal with a particularproblem, as an extraordinary situation calls for a remarkable law designed to meet and check the situation. The Commission noted that it is one thing to provide internal structures and safeguards against possible abuse and misuse of

the Act, and altogether a different thing to say that because the law is liable to be misused, there should be no such Act.[3]

The Government of India, through the Ministry of Home Affairs, requested the Law Commission to undertake a fresh examination of the issues of suitable legislation for combating terrorism and other anti-national activities, given that the security environment has changed drastically since 1972 when the Law Commission had sent its 43rd Report on Offences against National Security. The Government emphasised the urgency of the subject, as while the erstwhile Terrorists and Disruptive Activities (Prevention) Act of 1987 had lapsed, no other law had been enacted to fill the resulting vacuum, leaving India with no law to combat terrorism. The Commission was asked to take a holistic view of the need for a comprehensive anti-terrorism law in India after considering similar legislations enacted in other countries faced with the problem of terrorism.

Chapter V.A. of the Indian Penal Code, 1860, introduced the new offence of criminal conspiracy into the criminal law of India through the Criminal Law Amendment Act of 1913. The British introduced this section to deal with the problem of the freedom movement carried out by the native people. Conspiracy under the Penal Code was punishable in two forms: a) conspiracy by way of abetment and b) conspiracy involved in certain offences. In the former, an act or illegal omission must take place in pursuance of the conspiracy to be punishable. At the same time, membership suffices to establish conspiracy charges in the latter. In 1870, the law of conspiracy was widened by its insertion into the Indian Penal Code, making it an offence to conspire to commit any of the offences mentioned in the Code and punishable under the same.[4]

The Preventive Detention Act of 1950 was passed initially for one year but was extended periodically until 1969. During this period, the Act was challenged in the Supreme Court for its validity, and Parliament continued to amend it. In 1971, the need was felt to frame another Preventive Detention Act with the object of "maintaining internal security," leading to the infamous Maintenance of Internal Security Act of 1971, which was later grossly misused to settle all political opposition during the Emergency (1975-1977). The Act gave extraordinary powers to

[3]K. D. Gaur, A Textbook on The Penal Code, 3rd Edition (2004), Delhi, Universal Law Publication, at 176.
[4]AIR 1988 SC 1883; AIR 1989 SC 653

the executive, the misuse of which was observed by the Supreme Court, turning it into an "engine of oppression posing a threat to the democratic way of life."

The total rout of the Congress party during the March 1977 General Election could be taken as a measure of public resentment against the misuse of the Maintenance of Internal Security Act. The Janata Party Government, fulfilling one of its poll promises, repealed the Act on July 3, 1978. Though the Maintenance of Internal Security Act was gone, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, and the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act of 1980 continued. Soon, the need was felt to frame another Preventive Detention Act to tackle communalism and extremist activities. The National Security Act (NSA) was formulated in 1980 to cope with situations of communal disharmony, social tension, extremist activities, industrial unrest, and the increasing tendency of various interested parties to engineer agitations on different issues.

The framers of the Indian Constitution believed that in a free India with a democratic and representative government, the need for preventive detention laws would rarely arise and would be used sparingly and cautiously. However, in 1950, the Parliament passed the Preventive Detention Act to curb the "violent and terrorist" activities of communists in Hyderabad, West Bengal, and Madras States. The Supreme Court upheld the constitutional validity of the Act in terms of Parliament's power to enact such a law. Still, Chief Justice Kania and Justices Mahajan and Mukherjee observed in A.K. Gopalan v. State of Madras that preventive detention laws were repugnant to democratic constitutions and did not exist in democratic countries.[5]

Gopalan filed a petition under Article 32(1) of the Constitution of India for a writ of habeas corpus against his detention in the Madras Jail, showing how he had been detained since December 1947. While he was under detention under one of the orders of the Madras State Government, on March 1, 1950, he was served with an order made under Section 3(1) of the Preventive Detention Act, IV of 1950. He challenged the legality of the order, contending that Act IV of 1950 contravened the provisions of Articles 13, 19, and 21 and that the requirements of the Act were not by Article 22 of the Constitution. He also challenged the order's validitybecause it was issued mala fide—the burden of proving that allegation was on the applicant. Due to the

[5]AIR 1950 SC 27.

penal provisions of Section 14 of the impugned Act, the applicant did not disclose the grounds supplied to him for his detention. Therefore, the question of mala fides of the order could not be examined under this petition.

The question of the validity of Act IV of 1950 was argued at great length before the Supreme Court. This was the first case in which the different Articles of the Constitution of India contained in the Chapter on Fundamental Rights had come up for discussion before the Supreme Court. In another case, Ram Krishnan Bhardwaj v. State of Delhi, Chief Justice Patanjali Shastri stated that preventive detention is a severe invasion of personal liberty, and the meagre safeguards provided by the Constitution against the improper exercise of this power must be zealously watched and safeguarded by the Supreme Court. This was a petition under Article 32 of the Constitution for the issue of a writ like habeas corpus, directing the release of the petitioner, Dr Ram Krishan Bhardwaj, a medical practitioner in Delhi who was said to be under unlawful detention.

The Armed Forces (Assam and Manipur) Special Powers Act, 1958, was one of the earliest statutes introduced in post-independent India, reflecting several emerging developments and trends. Primarily, it reflects Indian independence, a landmark step towards democratic government. The northeastern region of India has been problematic, with certain parts demanding autonomy, if not secession, from the Indian Union. With armed rebellions, it became necessary to enact the Armed Forces Special Powers Act of 1958 to deal with the problem. The Act enabled certain special powers to be conferred upon Armed Forces members in disturbed areas in the State of Assam and the Union Territory of Manipur.

The Act gave powers to the Governor of Assam or the Chief Commissioner of Manipur to declare the whole or any part of the state or union territory as a disturbed area if they believed it was in such a disturbed or dangerous condition that the use of Armed Forces in aid of the civil power was necessary. The Act conferred powers on commissioned officers, warrant officers, non-commissioned officers, or any other person of equivalent rank in the Armed Forces to fire upon or otherwise use force, even to the causing of death, against any person acting in contravention of any law or order, if they deemed it necessary for the maintenance of public order, after giving such due warning as they may consider necessary. It also gave these officers

the power to prohibit the assembly of five or more persons carrying weapons or things capable of being used as weapons, firearms, ammunition, or explosive substances.

The Act allowed the armed forces to destroy arms dumps or any structure used as a training camp for armed volunteers or utilised as a hideout by armed groups. Officers could arrest without warrant any person who had committed a cognisable offence or against whom there was a reasonable suspicion of having committed or being about to commit a cognisable offence, using such force as necessary to effect the arrest. Additionally, the armed forces had the power to enter and search premises without a warrant, make arrests, recover any person believed to be wrongfully restrained, or confine any arms, ammunition, or explosive substance believed to be unlawfully kept in such premises. 1972, the Act was extended to other states and union territories in the northeastern region.

When the constitutional validity of this Act was challenged in Indrajit Barua v. State of Assam, the Delhi High Court held that the rule of law enunciated in Article 21 of the Constitution was available to the most significant number and that there were sufficient guidelines for the executive regarding the circumstances, safeguards, and powers to be exercised.[6] The court found that the Act provided adequate safeguards and that the powers conferred upon the executive could not be said to be arbitrary. In People's Union of Democratic Rights v. Union of India, the Gauhati High Court held that if the entire state was declared as a "disturbed area," the court would strictly examine the justifiability of such a declaration and directed the State to review whether there was any necessity to make such a declaration.[7]

The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983, was similar to the earlier Act, except that it enlarged the scope of powers to include "any property reasonably suspected to be stolen property" and added provision to "stop, search, and seize any vehicle or vessel reasonably suspected to be carrying any proclaimed offender, any person who has committed a non-cognizable offence, or against whom there is a reasonable suspicion of having committed or being about to commit a non-cognizable offence, or any person carrying arms, ammunition, or

[6]AIR 1983 Del 513
[7]AIR 1992 Gau 23: 1991 (2) Gau LR 1.

explosive substances believed to be unlawfully held by them." The Act allowed necessary force to effect such stoppage, search, or seizure.

The Armed Forces (Jammu & Kashmir) Special Powers Act, 1990, was also similar to the earlier Acts but enlarged the definition of disturbed areas and dangerous conditions to include "activities involving terrorist acts directed towards overthrowing the Government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting the harmony amongst different sections of the people." It further expanded the definition to include activities "directed towards disclaiming, questioning, or disrupting the sovereignty and territorial integrity of India or bringing about the secession of a part of the territory of India from the union or causing insult to the Indian National Flag, the Indian National Anthem, and the Constitution of India."

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), was enacted in the background of an escalation of terrorist activities. The Statement of Objects and Reasons of the TADA Act stated that the 1985 Act was expected to control the situation within two years. Therefore, its life was restricted to two years from the commencement date. However, it admitted that due to various factors, such as stray incidents, in the beginning, becoming a continuing menace, especially in states like Punjab, it was felt that to combat and cope with terrorist and disruptive activities effectively, it was necessary not only to continue the law but also to strengthen it further. The Act provided that persons in unauthorised possession of sure arms and ammunition specified in the Arms Rules, 1962, or other explosive substances in a notified area by the State Government would be punishable with imprisonment for a term of not less than five years, which may extend to life imprisonment, and with a fine.

The term "terrorism" lacks a precise definition. In the case of Hitendra Vishnu Thakur, the Supreme Court described terrorism as the use of violence where the most significant result is not merely the physical and mental damage inflicted upon the victim but the prolonged psychological effect it produces or has the potential to make on society as a whole.[8] The court stated that if the objective of an activity is to disrupt societal harmony or terrorise people, it

[8]Hitendra Vishnu Thankur v. State of Maharashtra, AIR 1994 SC 2623: (1994) 4 SCC 602: 1995 CrLJ 517

would undoubtedly be considered a terrorist act. However, in the case of Sanjay Dutt,[9] a five-judge bench of the Supreme Court refrained from adopting the above definition of terrorism and held that the Hitendra Vishnu Thakur case had incorrectly applied the provisions of Section 167 of the Code of Criminal Procedure (CrPC). The bench ruled that the right of an accused to be granted bail was an "indefeasible right" only from the time of default until the filing of a charge sheet, and it does not survive once the charge sheet is filed.

In the case of Uday Mohan Lal Acharya v. State of Maharashtra,[10] a three-judge bench of the Supreme Court they considered the scope of Section 167(1) of the CrPC. Two judges, while explaining the five-judge bench decision in Sanjay Dutt, concluded that the expression "if not already availed of" meant that an accused who had not applied for bail earlier could do so at any time before the filing of the charge sheet and offer to furnish bail when directed by the court.

The Supreme Court, in People's Union for Civil Liberties v. Union of India,[11] observed that under certain conditions, additional and unusual powers may need to be granted to the police to deal with terrorism. It may be necessary to fight terrorism with a strong hand, which could involve vesting a significant amount of discretion in the police officers or other paramilitary forces engaged in combating them. If the police's version of the incident were valid, there would be no question of any interference by the court. The court stated that it is not for them to dictate how terrorists should be fought, as it is the responsibility of the force on the spot to decide when, how, and where to act. The court acknowledged that it cannot be blind to the fact that even after fifty years of independence, India's territorial integrity is not entirely secure, with various types of separatist and terrorist activities occurring in several parts of the country. These activities must be subdued, and whether they should be fought politically or dealt with by force is a matter of policy for the government to determine. The court may not be the appropriate forum to resolve such questions.

In another case, People's Union for Civil Liberties v. Union of India,[12] the Supreme Court discussed the need for new approaches, techniques, weapons, expertise, and laws to face the

[9]Sanjay Dutt v. State through C.B.I., Bombay, 1995 Cr LJ 477: (1994)5 SCC 410: 1994 AIR SCW3857.
[10]2001 AIR SCW 1500: (2001) 5 SCC 453: AIR 2001 SC 1910
[11]AIR 1997 SC 1203:" 1997 AIR SCW 1234: (1997) 3 SCC 433.
[12]AIR 2004 SC 456: 2003 AIR SCW 7233: (2004) 9 SCC 580.

challenge of terrorism. The Parliament, recognising the necessity of a new anti-terrorism law for a better future, enacted the Prevention of Terrorism Act (POTA) to address this resolve.

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) further stipulated that confessions made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or using any mechanical device shall be admissible in the trial of that person for an offence under the proposed legislation or any rules made thereunder. The Act also provided that the designated court shall presume, unless proven otherwise, that the accused has committed the offence. Additionally, in the case of a person declared as a proclaimed offender in a terrorist case, the evidence regarding their identification by witnesses based on their photograph shall have the same value as the evidence of a test identification parade. The Act was extended to India and applied to its citizens within and outside the country. Initially, the duration of the Act was two years, but it was extended to a total of eight years.

Regarding punishment, the TADA Act stated that if an act of terrorism resulted in the death of a person, it may be punishable with death or life imprisonment, along with a fine. In other cases, the offence is punishable with imprisonment for a term of not less than five years, which may extend to life imprisonment, and shall also be liable to a fine.

The Act's provisions were not limited to the offenders but extended to anyone who conspires, attempts to commit, advocates, abets, advises, incites, or knowingly facilitates the commission of a terrorist act or any act preparatory to a terrorist act. Such individuals shall be punishable similarly and with the same punishment as the offenders.

The TADA Act also included disruptive activities that were categorised differently from terrorist activities. Disruption was defined as any action taken, whether by speech or through any other media or in any other manner whatsoever, which questions, disrupts, or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India, or which is designed to bring about or support any claims, whether directly or indirectly, for the secession of any part of India.

Conclusion

The legislative responses to terrorism in India reflect a complex balancing act between the imperatives of national security and the protection of civil liberties. From the early years of independence to today, successive governments have enacted laws to combat terrorism, often in response to specific threats and challenges. However, these laws have also sparked debates about their constitutionality, efficacy, and potential for abuse. The judiciary has played a crucial role in interpreting and scrutinising these laws, affirming the importance of fundamental rights while acknowledging the need for robust measures to tackle terrorism. As India continues to grapple with evolving threats, the challenge lies in crafting laws that are both effective in countering terrorism and respectful of democratic principles. Policymakers must heed the lessons of history and engage in a nuanced dialogue that ensures security without compromising the rights and freedoms enshrined in the Constitution.