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EVOLUTION OF ANTI-TERRORISM LAWS IN INDIA

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ABSTRACT

India's fine balancing act between security and human rights is reflected in the country's enactment of anti-terrorism laws. This paper discusses how India has responded to terrorism through the law over the years, from colonial law to post-independence legislation such as The Terrorist and Disruptive Activities (Prevention) Act (TADA), The Prevention of Terrorism Act (POTA), and the current legislation known as The Unlawful Activities (Prevention) Act (UAPA). The research examines why these acts were enacted, their impact, and criticisms of them, all in the context of India's Constitutional system and its duty to uphold human rights. Through comprehensive legal analysis and comparison, this work demonstrates how India's anti-terrorism practices has evolved with emerging threats, court ruling and political exigencies. It asserts that although effective legal instruments are necessary to fight terrorism, increasing dependence on preventive detention, sweeping powers for authorities and diminishing safeguard for the individuals raise grave concerns about abuse and democratic accountability. The paper concludes by proposing a framework for anti-terrorism law that upholds rights and sustains the rule of law without losing sight of real security imperatives.

INTRODUCTION

Terrorism is an extremely complex issue because it has a diverse origin and expense, motivation and ideologies. In today's time terrorism is one of the biggest threats many countries are facing. The word 'terrorism' is so threatening which can make people frightened. The menace of terrorism has affected many countries in one way or the other, which also threatens the integrity, unity and sovereignty of a nation. Some organisations as well as states use terror as a policy tool to achieve their political and strategic objective which makes it even more

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complicated. Terrorism has always been a topic of discussion because it affects many countries. It is a multifaceted phenomenon and there are several causes attached to it.

In India, there have been several terrorist attacks of which are the infamous 26/11 Mumbai attack, the parliament attack, Mumbai bomb blast 1993 and many more. Since the act of terrorism has been frequent in the past also, there are many anti-terrorism laws made to deal with the issue. The terrorism can be defined as the use of unlawful force or violence against public property or private property. Terrorism is of two types according to the legislation, international and national terrorism. It is a generic term which is used for the use of bombs, assassinations, armed attacks or hostage situations which conveys a political message. Terrorism has been one of the most serious problems in recent days, as every day we hear of terrorist activities occurring in some part of the world. The terrorists are using new methods and techniques to pursue these activities.

TERRORISM AND HUMAN RIGHTS

The main goals of a successful counter-terrorism campaign are to protect human rights, consolidate democracy and maintain the Rule of Law. The reaction to terrorism cannot be selective or result in unleashing a wave of uncontrolled repression, which would, as a by-product, significantly violate the rights of citizens. Therefore, it is imperative to achieve a fair balance between securing the safety and integrity of the nation and protecting the human rights of citizens.

In fact, there should be no compromise in the process of eliminating terrorism from the nation. It is required by, and expected of, the state to and ought to take all feasible legal, security, social and economic steps to counter terrorist organizations. However, needs to be kept in mind is that in India, the largest democracy of the world, human rights of citizens, which are non-alienable and are guaranteed by the Constitution, cannot be allowed to be sacrificed. Notably, Article 21 (Protection of life and personal liberty, or right to life), Article 20 (Protection in respect of conviction for offences, or Protection against Testimonial Compulsion) of the Constitution cannot be suspended even in the event of an Emergency.

Thus, statecounterterrorism should, at all costs, maintain the Rule of Law, respect human rights and adhere to due processes. Failure by the State to do so would only drive large segments of the population away and inadvertently assist the terrorists. It is just as important to remember that it is the terrorists and terrorist organisations which are, beyond a doubt, always complicit in wholesale human rights atrocities, and not the security apparatus (except perhaps in rare exceptions) which often get blamed in the sensational press and activist agenda-driven circles. The terrorist abuses, however, do not get as much publicity partly due to fear of death arising from violent retaliations and victimization. As a former US Senator, Henry Jackson, wrote… "It is a shame that democracies would let the precious word 'freedom' be linked with acts of terrorists.

LEGISLATION FOR ANTI-TERRORISM

Indian anti-terrorism legislation draws its roots from preventive detention legislation enacted during British colonial rule. The laws received statutory support during the era of independence, allowing the Central and the State Governments to detail people without trial. The war of 1962 resulted in the promulgation of laws granting powers to the Central Governments to enact provisions for protecting national security and India's defence. Such laws provided the authorities with expansive powers, such as holding persons in custody and limiting their movement. So also, was introduced the Maintenance of Internal Security Act (MISE) in 1971 to deal with threats to national security, especially during the time of tensions between India and Pakistan. The Armed Forces Special Power Act (AFSPA) in 1958, originally drafted to safeguard India's Northeast frontier from anticipated Japanese invasion, was afterward extended to Assam and Manipur, both north-eastern Indian states. They set the template for new anti-terrorism statutes in India, important laws are the terrorist And Disruptive Activities (Prevention) Act, TADA of 1987, the prevention of terrorism act, PODA of 2002, the unlawful activities, prevention act, UAPA of 1967, (as amended) and the National Investigation Agency Act of 2008. The Indian Penal Code and the Code of Criminal Procedure also give the provisions for investigating and prosecuting cases related to terrorism. Some states have created their own legislation to address law and order issues. Provision from the

Arms Act, 1959, the Explosive Substances Act 1908 and the Explosive Act, 1884 further complement these efforts. The focus of these pieces of legislation was to provide tight punishment and introduce special proceedings for prosecuting individuals charged with terrorism or abetting terrorism. But most of these legislations were revoked following extensive human rights violations. Despite this terrorism has continued in the nation, the Supreme Court highlighting its seriousness in the *Kartar Singh v. State of Punjab case*,[2] mentioning that India has been trapped in a vicious cycle of mounting terrorist violence. Though anti-terrorism laws were intended to be a permanent component of the legal system, regular terrorist attacks have forced amendments and repeal of these legislations over the years.

THE TERRORIST AND DISRUPTIVE ACTIVITIES PREVENTION ACT, TADA

The Terrorist and Disruptive Activities (Prevention) Act TADA, passed in 1985 was bought in the face of growing terrorism and public alarm, and disruptive to communal peace. It introduced stringent provisions to curb terrorist activities and instituted new offences, such as "terrorist act" and "disruptive activities". The act stressed the imperative to deal with the changing threat of terrorism decisively and promptly. Originally to remain in force for two years TADA was repeatedly extended up to 1995. TADA introduced major reforms in the legal response to terrorist cases, defining terrorism, membership in outlawed organisations, funding terrorism, and disruptive events. It defined "disruptive activity" as acts meant to cause injury to India's sovereignty. A peculiar characteristic of TADA was its overriding powers, such as providing the central government with the mandate to frame rules for implementing and set special courts to try terror cases. Bail under TADA was strict, and prisoners could be detained for prolonged duration. The act provided for confessions to police to be used as evidence, a significant deviation from the law of evidence. Punishment for terrorist offences could be death or life imprisonment, with smaller punishments for other offences. The act also conferred special powers upon government officers to function as police, and offences under TADA. Appeals were taken directly to the Supreme Court. The

[2] Supra

government made further statements to the police officer, admissible evidence, even statements recorded on tapes or mechanical devices, particularly if the individuals had infringed certain acts, e.g., the Arms or Explosive Acts.

THE PREVENTION OF TERRORISM ACT (POTA):

The Prevention of Terrorism Act (POTA), 2002, provided provisions for prohibiting terrorist groups, much like the original UAPA of 1967. It also included some elements of TADA, which was India's first significant anti-terrorism law. TADA was reenacted in 1987 with a provision for a two-year extension for Parliamentary consideration. An organisation was a terrorist group if it was included in the UAPA schedule or worked under a name like the one listed. Prior to POTA, the UAPA contained a mechanism for Proscribing illegal organisations, where the government had to release the decision in the official gazette and provide a reason for banning it. POTA altered the procedure by eliminating the necessity for the government to justify the reason for issuing a ban. POTA has defined terrorism as acts aimed at threatening India's unity, integrity, sovereignty, or creating fear with severe punishments like death or life imprisonment and at least five years fines. Belonging to a terrorist organisation may lead to imprisonment for life or a fine up to Rs. 10 lakhs. The legislation permitted courts to presume culpability if someone was caught in possession of weapons or fingerprints. Summary trials could be held by special courts, take evidence like handwriting, fingerprints, DNA, and voice samples, and use confessions to the police made in any form as evidence.

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT 1967 UAPA

The act was legislated to prevent effectively unlawful activities by persons and association with the objective of tackling terrorism by making activities which are a threat to India's sovereignty illegal. The act vests the Central government with the right to declare any individual as a terrorist if they are discovered to be indulging in activities, which endanger India's sovereignty or integrity. An "Unlawful association" has been defined as any Collective group that indulges in, promotes, or assists unlawful activities or whose members engage in such activities. The act authorises inspectors of the National Investigation Agency to

investigate unlawful activities with the prior sanction of the concerned authority. Investigators may carry out searches and seizures, subject to the intimation of the designated officer of the state within 48 hours of such action. The state also clarifies a terrorist act in conformity with treaties enumerated in its schedule. Although it places some limitations on fundamental rights, it enables the government to declare acts or organisations as illegal on its whim.

The Supreme Court headed by Justice Ranjan Gogoi granted a notice to the Central regarding the act with the matter pending in *Jyoti Babasaheb Chorge vs. State of Maharashtra*[3] , Justice Thipsay dealt with the issue of membership of an organisation by citing the Arup Bhuyan vs. State of Assam[4] case, which drew a distinction between active and passive membership in the Chorge case, the petitioners who had been charged with being Naxalites and Maoists, were arrested under UAPA but released on bail after more than a year in prison. Likewise, in *Sri Indra Das vs. State of Assam*[5]. The court read down UAPA and TADA provisions that criminalised membership of banned groups, holding that a literal interpretation of those provisions could be violative of Article 19 and 21 of the Constitution[6]. Another petition moved by the Association for Protection of Civil Rights (APCR) challenged Section 35 of UAPA, which allows the Centre to designate individuals as terrorists and include their name in schedule 4, a provision that previously applied only to organisations. The petition argued that granting such unfettered power to the government violated Article 14[7]. The court rejected this argument emphasising that terrorism is not a routine and order issue but a national security challenge.

As a "security legislation", UAPA allows the government to detain a person for offences defined in the act, but it has several flaws. To begin with, it stifles dissent by criminalising, political protest, or expressions of discontent against the state, thereby violating the constitutionally granted rights to free expression. Secondly, under UAPA, people may be arrested and held for 180 days without even filing a charge sheet, contravening the Fundamental Right to Life and Personal Liberty

[3]Jyoti Babasaheb Chorge vs. State of Maharashtra, 2012 SCC OnLine Bom 1460
[4]Arup Bhuyan vs. State of Assam, 2011 (3) SCC 377
[5]Sri Indra Das vs. State of Assam, 2011 (3) SCC 380
[6]Article 19 and 21 of The Indian Constitution
[7]Article 14 of The Indian Constitution

under Article 21[8]. Thirdly, the act provides the government with extensive discretionary powers, used frequently to quell dissent, silence, critics and crush public debate and freedom of the press. UAPA allows Parliament to curtail citizens' freedom and right for protection of India's sovereignty and integrity. The government has also rationalised amendments by contending that individuals as well as organisations are responsible for terrorist acts. The worry is that citizens who use their fundamental rights will be designated as terrorists and tried under UAPA without adequate mechanism for a fair trial. It is argued that the government repeatedly employs loosely phrase legislation such as UAPA to suppress dissent and civil freedom.

NATIONAL INVESTIGATION AGENCY ACT 2008 (NIA ACT)

The Mumbai terror attacks led the government to introduce profound reforms in anti-terrorism legislation. Furthermore, the Supreme Court in *Prakash Singh vs. Union of India*[9] focused on the imperative of a statutory agency committed to dealing with terrorism cases on its own. Three major steps were taken against terrorism, revising the Unlawful Activities (Prevention) Act UAPA, 1967, setting up special courts for trial of terror-related cases; and passing the National Investigation Agency Act (NIA act), 2008. The NIA Act was intended to resolve the legal intricacies experienced by investigating agencies and local police, particularly in a case such as the trial of the sole surviving terrorist involved in the Mumbai Attacks. The act provided for certain offences such as sedition and waging war against State are scheduled offences under Section 3(2)[10]. Officer NIA from the rank of sub-Inspector have been wasted with power equal to Station house officers (SHOs) in affected regions. Terror accused are tried on a day-to-day basis and special courts, with prosecutors specifically appointed for NIA cases. changes made in UAPA extended the period for police remand of terror accused up to 30 days from earlier 15 days. But operational details of the NIA are controlled by the political executive instead of professional officials, e.g., the Director General of the Agency. The act generalises a terrorist act as scheduled offences and requires investigation by the NIA, but it consistently enact the "the

[8]Fundamental Right to Life and Personal Liberty under Article 21 of The Indian Constitution
[9]Prakash Singh vs. Union of India, 2006 8 SCC 1
[10]Section 3(2) of The National Investigation Agency Act, 2008

superintendence of the agency shall vest in the central government" without defining "superintendence" appropriately. This ambiguity has historically resulted in the politicisation of policy as with analogous provisions in State and Central Police Acts. There is a chance to correct this by defining the political executive's roles and the operational duties of the Director General clearly. Ideally, the choice whether to involve the NIA as an enquiry should be at the discretion of the Director General, minimising undue political interference. Section 6(3), though heightens the likelihood of political interference by laying down the Central government, must determine within 15 days whether an offence is a scheduled offence or not. Secondly, the NIA is not empowered to investigate specific inter-state and transnational crimes, including human trafficking, drug trafficking, cybercrime and organised crime, although these offences tend to have possible connections with terrorism. Investigation and combating such crimes would be held by a unified national approach. Clearly, the NIA was formed in a hurry to meet the increasing number of cases of terrorism. Certain provisions of the act give the central government the power to enact rules and clarify ambiguities, providing scope for improvement. For example, specifying what constitutes "other relevant factors" for referring the NIA to investigate schedule offences could improve its operation clarity. With political will at both the central and state levels, the NIA can become a model for future reforms in policing and law enforcement.

The Maintenance of Internal Security Act 1971 (MISA 1971).

The Act was passed by the parliament in 1971 and was one of the most controversial acts of that time. The Act was controversial as it gives immense power to government and the law enforcement agencies to detain any person by whom internal security of the country is in danger, these sorts of detention could exist up to 12 months[11]. Basically, the act was enacted to deal with issues of internal security that threaten the security of India. The Act could not survive for long and ultimately was repealed as when the Janata Party came into force. The

[11]Mehr Gill, (Edited by Explained Desk) "Explained: Why Rajasthan government has discontinued 'Emergency'pensions",(17 October 2019) available athttps://indianexpress.com/article/explained/rajasthangovernmentnationalemergencypensions-discontinued-misa-dir-ashok-gehlot-6074332/ (Visited on 1 April 2025).

Act had received a lot of criticism due to its misuse during the "Emergency 1975". The individuals of the opposition party were forcefully detained in the wake of the same act to make sure that their voices against wrong would be suppressed. When the Emergency was announced on 25th June 1975 allegedly on the grounds of internal disturbance. Prime Minister, Indira Gandhi during a 'radio broadcast to the nation' to justify the emergency told,

"In the name of democracy, it has been sought to negate the very functioning of democracy. Duly elected government has not been allowed to function… Agitations have a surcharged atmosphere, leading to violent incidents…Certain persons have gone to the length of inciting our armed forces to mutiny and our police to rebel. The forces of disintegration are in full play and communal passions are being aroused and threatening our unity…How any government can worth the name stand by and allow the country's stability to be imperial?"[12]

Well, the circumstances which lead to the proclamation of the Emergency is known to everyone. Former Prime Minister lost the case in Allahabad High Court which also ordered her not to hold any public office for that specific period. That is why the proclamation of emergency was announced, also the advice of the council of ministers was not taken. It was merely Mrs Indira Gandhi who did not want to lose her chair so the whole emergency incident happened. During the time of emergency, the MISA 1971 that was enacted was being abused. It was used as a weapon by the party in power to stop the people from raising their voices against the wrong done to the country.

A commission was formed known as the Shah Commission to make a report on emergency, they made their report in 1978. They noted in their report that "MISA was used as a weapon against all kinds of activities, not remotely connected with the security of the state, public order or maintenance of essential supplies. Government servants accused of corruption or misconduct, petty traders breaking conditions of licensing, persons engaged in land litigation, contractors providing sub-standard material for construction contracts, those challenging government election in civil courts, those selling milk at exorbitant rates, workers in factories pressing their demands or criticizing the management, person accused (not convicted of doing irregularities or defalcation in cooperative societies and banks,

[12]Cited in Norman D. Palmer, "The Crisis of Democracy", Vol. 19, p 386 (1975).

those not complying with the family planning schemes of the government or refusing to get themselves sterilized all came within the all-pervading sweep of MISA".[13]

NATIONAL SECURITY ACT 1980

On 23 September 1980, the NSA 1980 came into force when the Congress government was in power. This act gave a wide power in the hands of the central as well as state government to detain any individual who became or allegedly to become a threat to the national security of the country. These suspected persons could be thrown to the jails up to 12 months without any charge in purview of this act. Rationale behind the enforcement of this was to prevent crimes.

"The laws related to preventive detentions exist way back from the early days of the colonial era when the Bengal Regulation of 1818 was enacted to empower the government to arrest any person on the ground for defence or maintenance of public order without providing the aid to the individual recourse to judicial proceedings. Almost after a century, the British government enacted the Rowlatt Acts of 1919 that allowed putting the persons behind the bars merely on the reason of suspicion without any trial. Post India's Independence, the country got its first ever law on detention rule which was enacted when the government of Prime Minister Jawaharlal Nehru was in power i.e. the Preventive Detention Act of 1950".[14] "The NSA is a close iteration of the 1950 Act. After the Preventive Detention Act expired on December 31, 1969, the then Prime Minister, Indira Gandhi, brought in the controversial Maintenance of Internal Security Act (MISA) in 1971 giving similar powers to the government. Though the MISA was repealed in 1977 after the Janata Party came to power, the successive government, led by Mrs. Gandhi, brought in the NSA".[15]

It was observed that when the act was brought during the period when congress was in power, it did not receive any sort of criticism.[16] The objective and reasons

[13]Report of Shah Commission of Inquiry, Government of India, New Delhi (1978), p 43-44.
[14]Hemant Singh, "What is the NSA,1980 and when is it imposed?" Published in Jagran josh (7 April 2025)available at https://www.jagranjosh.com/general-knowledge/what-is-the-national-security-act-1980-1586240033-1 (Visited on 20th April 2025)
[15]Soibam Rocky Singh "What is National Security Act?" Available athttps://www.thehindu.com/news/national/what-is-nationalsecurityact/article26292232.ece (Visited on 22nd February 2025)
[16]National Security Act 1980 (Act No. of 1980).

which were attached to the bill which says to bring the act is important to take measures on the social tensions, communal disharmony, and so on. In addition to this, the Congress government said "The anti- social and anti-national elements including secessionist, communal and pro caste elements and also other elements who adversely influence and affect the services essential to the community pose a grave challenge at the lawful authority and sometimes even hold the society to ransom. Considering the complexity and the nature of the problems, particularly in respect of defence, security, public order, and essential services to the community. It is the considered view of the government that the administration would be greatly handicapped in dealing effectively with the same in the absence of powers of preventive detention".[17]

The National Crime Record Bureau (NCRB), that works for the collection and the analysis of the crime data in the country does not even include cases within its database, this is so because no FIR's have been registered under the National Security Act, 1980. That is why it is difficult to find out the exact number of cases of detention with respect to this act.

MAHARASHTRA CONTROL OF ORGANISED CRIME ACT 1999 (MCOCA)

The law was enacted in the year 1999, Maharashtra Act No. 30 of 1999 came in order to deal with organised crimes and the terrorism. As explained in the preface of the act it clearly mentioned there was a need for this act with the tremendous increase in organised crime in the Maharashtra state. Mumbai as being the economic capital of India can be easily targeted by the criminals who hoard money by using illegal means. The need of such an act arises when there is a continuous increase in the crimes such as adduction, murders etc. It is quite evident from such activities that these groups are more active in the state region. The aim of the act was to control terrorism in the state.

The statement of object and reason of the act says that "organised crimes have been for quite some years now come up as a serious threat to our society. It knows no national boundaries and is fuelled by illegal wealth generated by contract killing, extortion, money laundering, smuggling etc. The illegal wealth and black

[17]Venkat Iyer, "States of Emergency: The Indian Experience", Butterworths India (2000), p 213.

money generated by organised crime is very huge, it has had a serious adverse effect on our economy. It was seen that the organised criminal syndicate made a common cause with terrorist groups and fostered narco-terrorism which extended beyond the national boundaries. There was reason to believe that the organised criminal gangs had been operating in the state and thus there was an immediate need to curb their activities. It was also noticed that the organized criminals have been making extensive use of wire and oral communications in their criminal activities.

[18]"In the year 2010, there were 27 people arrested by the police and they were also gone for prosecution under this act. The act in itself is so strict that the criminals who were in jails for a long period lost hopes for early bails. The Maharashtra Control of Organised Crime Act (MCOCA), 1999 as being attached to a particular state is used by the Maharashtra government to stop organised crime, the same act was also adopted for the capital. A senior police officer added that, the act makes special provisions for prevention and control of, and for coping with, criminal activity by organised crime syndicate or gang. The police personnel also said, "the criminals cannot avail bail for at least six months under this act".[19]

The Arunachal Pradesh Control of Organised Crime Act of 2002. (APCOCA)

It was enacted and took much influence from the MCOC Act 1999. The preamble of the act says, "The Arunachal Pradesh Legislative Assembly enacted an Act known as Arunachal Pradesh Control of Organised Crime Act (APCOCA) on August 23, 2002. The Act aims to prevent and control, and also to cope with, criminal activities perpetrated by organised crime syndicates or gangs, and matters or incidents related to such activities. Provision of the Act, among other things, consists of the details of its range, trial procedures and punishment for crimes committed. In fact, an ordinance in this regard has already been in force since April 3, 2002".

[18]Maharashtra Control of Organised Crime Act, 1999 (Maharashtra Act No. 30 - of 1999)available athttps://www.satp.org/satporgtp/countries/india/document/actandordinances/maharashtra9.htm (Visited on25th March 2025).

[19]MCOCA: Delhi police's tool against all crimes" available at https://www.hindustantimes.com/delhi/mcocadelhipolicestoolagainstallcrimes/storyYpCDpi1dBxKMQLtn5zvx0O.html (Visited on 25th March 2025)

APCOCA provides for a variety of harsh punishments, including death penalty to the individuals who are involved in criminal acts prejudicial to the interest of the nation. The Act also empowers the government to seize the property of the accused individual. The act also empowers the government to intercept all types of communications including telephonic conversation of the accused.

The Gujarat Control of Terrorism and Organised Crime Act(GCTOC)

It is one of the most controversial anti-terrorist laws which were enacted during the year 2003. This act was enacted by following the and the act came into force on 1st December 2019.

The Act was not getting then president's assent due to some of the provisions which claimed to be controversial such as the telephonic conversation of an accused booked the act would be considered as legitimate evidence. A confession to a police officer not below the rank of Superintendent of Police would be admissible in the courts.[20]

The government passed the bill in March 2015. The bill was mainly aimed at tackling terrorism and organized crimes such as contract killings and human trafficking. The bill was previously known as the Gujarat Control of Organised Crime (GUJCOC) Bill. The bill has been rejected by the President three times since 2004. The bill was reintroduced in March 2015; however, the controversial provision highlighted above was still retained.

JUDICIAL PERSPECTIVE

The proactive and dealing with it started right from the pre-independence era when cases relating to preventive detention acts were decided. Several challenges to the constitutional validity of the Defence of India Act, 1915, were moved before the courts, which time and again upheld these acts. Judicial activism of terrorism legislation in India can be divided into three phases: pre-independence terrorism legislations, post-independence legislation on terrorism, and post-2005 legislation on terrorism. Throughout these stages the Supreme Court has, by and

[20]Gujarat to enforce new anti-terror law from Dec. 1 available atwww.thehindu.com/news/national/otherstates/gujarattoenforcenewantiterrorlawfromdec1/article30100890.ece (Visited on 26th March 2025).

large, supported the Indian Parliament's power to legislate on terrorism and appeal provisions under Challenge. The judiciary has been crucial in interpreting constitutional provisions, establishing their scope and determining their content. Nevertheless, in anti-terrorism law cases, the judiciary has tended to eschew its typical activist role, Preferring a more rigorous compliance with legislative intent.

India has also suffered major internal security threats, namely cross-border terrorism and insurgencies in different states. These menaces have amplified, especially post-independence, with the increasing sophistication of technologies that have aided terrorists in communicating and carrying out attacks more systematically. The nature of terrorism that is Changing poses great challenges for the peace and security of the country. For this purpose, judicial interpretations on preventive detention statutes have played an important role. Courts have stressed that the reasons for detention should be logically related to the purpose of keeping the detained person from enjoying their personal freedom.

In the pre-independence era, the judiciary interpreted terrorism-related legislations in terms of rigidity and strict interpretation of legislative measures, usually placing state security ahead of other concerns. For example, in*Ameer khan's case*[21], the court recognised the detainee's right to submit a representative on their behalf. In *Bhagat Singh's case*[22]Though preventive detention legislation was enforced strictly with the aim of consolidating colonial authority; the accused did not have the right to appeal against a death sentence.

In *Keshav Talpade v. Emperor*[23]The court struck down Rule 26 of the Defence of India Act on the ground that it was ultra vires as it went beyond the rule-making powers of the authority for detaining persons suspected of certain acts under the act. The requirements of the "mere satisfaction" standard. In the same vein, in *Emperor v. Sibnath Banerjee*[24], the court held that it could not determine the reasonableness or sufficiency of the grounds for detention by the governments under Rule 26. The privy council reaffirmed this position by holding that orders of detention should be presumed to be valid on their face.

These pre-independence statutes show that the British government largely used the Defence of India Act to justify preventive detention and criminalise conduct

[21]A.A. Khan and Ors. Vs. Ameer khan And Ors., AIR 1952 MYSORE 131
[22]Bhagat Singh Vs. Emperor, (1931)33BOMLR950
[23]Keshav Talpade v. Emperor, (1944)46BOMLR22
[24]Emperor v. Sibnath Banerjee, (1946)48BOMLR1

against the state. Although most of the judiciary backed Parliament's legislative power to implement preventive detention legislations, divergent opinions like those by Justice Kania posited that detainees were entitled to challenge the reason for their detention. Justice Kania also believed that some provisions of Section 14(1) of the Act contravened Article 22(5) of the Constitution[25] and were thus unconstitutional. The Court also referred to *Machinder Shivaji v. The King*[26], stating that the reasons for preventive detention should be clearly linked to the detention order itself.

TADA:

In *Kartar Singh v. State of Punjab*[27]the constitutional validity of TADA was challenged. Two members of the five-judge bench opined that Section 15 of TADA[28], which makes confessions to police officers admissible as evidence, was unconstitutional. Yet, the Court upheld the general validity of TADA and stressed that it is Parliament's prerogative to enact laws that differentiate between terrorists and ordinary citizens. This case is a landmark in judicial examination of anti-terror legislation, in which the following issues were canvassed:

1. Legislative Competence: Parliament was said to have no power to pass legislation such as TADA, which was brought in 1985 to counter the insurgency in Punjab.
2. Admissibility of Confessions: The admissibility of confessions obtained from police officers under Section 15 of TADA as substantive evidence in court was said to contravene basic canons of criminal justice.
3. Right of Appeal: The withholding of a conventional right of appeal and the allowance of a direct appeal to the Supreme Court were condemned for the possibility of obstructing a fair and speedy trial.
4. Anticipatory Bail and Bail Provisions: The denial of anticipatory bail under Section 438 of the Cr. P.C. [29]and the transference of bail-granting authority to an executive magistrate under Sections 167 and 164 of the Cr.

[25]Article 22(5) of The Indian Constitution
[26]Machinder Shivaji v. The King, AIR 1950 FC 129
[27]Supra
[28]Section 15 of The Terrorist and Disruptive Activities (Prevention) Act, 1987
[29]Section 438 of the Cr. P.C.

P.C. [30]were objected to on the grounds of being against criminal justice principles.

Notwithstanding these difficulties, the Supreme Court upheld Parliament's power to pass anti-terrorism legislation such as TADA. It explained that "public order," which is enumerated under Entry 1 of the State List, refers to lesser offences, separating them from the more serious issues dealt with by central anti-terrorism legislations.

AFSPA

The constitutionality of the Armed Forces Special Powers Act, 1958 (AFSPA) has been challenged, especially regarding law and order being a state subject. The Supreme Court, though, validated AFSPA's legitimacy in *Naga People's Movement of Human Rights v. Union of India*[31](1998). In its judgment, the Court laid down some important points:

1. Although the Central Government may issue a Suo motu declaration, it is better if the State Government is consulted first.
2. AFSPA does not provide for arbitrary powers to issue a declaration that an area is "disturbed."
3. The declaration should be temporary and subject to periodic review every six months.
4. Authorized officers under AFSPA should exercise only the minimum force necessary for effective action.
5. The authorized officers must strictly follow the "dos and don'ts" laid down by the army.

CONCLUSION

Terrorism that has been discussed in earlier chapters of this paper has a lot of complexity. It is strange to know that after so many years a universal definition of the term 'terrorism' has not been given. The phenomena have so many facets in it that it is difficult to get a common definition. So many countries who have been a constant victim of these acts have defined terrorism or terrorist acts as per their own conveniences, possibilities are there that the countries may not agree upon a common understanding.

[30]Sections 167 and 164 of the Cr. P.C.

[31]Naga People's Movement of Human Rights v. Union of India, 1998 (2) SCC 109

The hypothesis that is "Going by the number of attacks and the intensity with which the terrorist acts were conducted, the efficacy of various terrorist laws in force in India appear ineffective, the role of anti-terrorism laws in India proves to be complete fail to curb the issue of terrorism, though several legislations enacted by the parliament to curb the menace of terrorism" is disapproved as an analysis that has been provided in the various chapter of this dissertation. By the recent amendment to Unlawful Activities Prevention (Amendment) Act 2019, it made the law stronger to tackle the issues related to terrorism.

In general, terrorism is the outcome of improper functioning of political, economic, administrative and social sectors. The word 'terrorism' alone can terrorise many people, the military actions would not be sufficient to understand its impact. The state must take actions which could be a blend of political, administrative, social and military actions to combat terrorism. To fight terrorism, stringent laws with a proper strategy is of utmost importance.

It has been argued several times that the extraordinary laws are a response towards extraordinary situations and the emergence of this primarily comes from the freedom and openness which democracy allows. Thus, they are essential to its working and aid three important purposes such as curative, restorative and corrective. It can be observed that terrorism does not affect or rather target only one nation, nowadays most of the countries are affected by the acts of terrorism. That is why there is growing awareness to combat terrorism internationally. Although there are already international treaties in existence which compliment it with anti-terrorist provisions under the United Nation.

As of now, it has been crystal clear that at present when many countries become victims of terrorism, it's high time that a common and a universal definition of terrorism needs to be recognised. All countries which have been in the past, and present have been victims, need to come together and mutually should work upon this. Terrorism is that act which cannot be justified anyway. Obviously, there have been several instances of terrorism which have shocked the nation nationally as well as internationally. The origin of terrorism is old and the acts which were carried out in the name of terrorism have a negative impact worldwide. The account of terrorism is as old as human's preparedness to practice violence to affect politics. The Sicarii were a first-century Jewish set who assassinated

enemies and traitors in their movement to overthrow their Roman rulers from Judea.

When we deal with the issues related to terrorism the perspective of human rights gets automatically attached to it, this is so because it's an act against society, against the nation just for the satisfaction of goals which inspire the terrorists to do those acts. Terrorism only leads to destruction and is inhumane in nature. The human rights of the victims get snatched as they become victims because they act and thus their human rights vanish. Though many eminent scholars, agencies etc. have given their own interpretation of terrorism which may be justified to one country or may not be justified to another. There is no universal definition of terrorism likewise there is not a particular form of terrorism. Terrorism gets inspired by several reasons i.e. there is no kind of terrorism. The existence of different kinds of terrorism may also act as an alarming call to the world. Every act of terrorism is done with some objective stuck to it that leads to the cause of it.

During the completion of this dissertation, it can be noted that the causes behind the instances of terrorism are as many as its definition. It may be inspired by the religious issue, economic issue, political issue etc. this need to be given an importance. These root causes of terrorism should be removed by taking proper initiatives and measures. Once the causes are stopped it will immensely help in the reduction of such acts.

It is obvious that many laws have come in past years to curb the menace of terrorism but till now the existence of terrorism is present. The present government has adopted the "zero tolerance policy" towards this approach. The anti-terrorism laws need to be strict to tackle day-to-day terror. India has suffered a lot because of the terrorist acts, the Mumbai bomb blast 1993, 26/11, parliament attack etc. are some examples which have spread the terror in the country. The laws working in the country have some lacunae which were not rectified. It also needs to be noticed that attacks are done just to show the world the power of terrorism, which is of course illegal and inhumane at the same time. As India is the second largest country in terms of population so the laws must meet the standard of that, lives of so many people are at stake when such acts happen.

As in this dissertation, already it has been discussed regarding a series of anti-terror laws with the reasons behind their failure. Right from the MISA 1971 which

was enacted in the name of safeguarding the security of India but ultimately ended by misuse of it by the ruling government. When a law is enacted and is abused to this extent, the faith of the common man gets shattered. There should be a policy adopted by the governments also that the laws are enacted in the interest of the public not for government interest which can be manipulated according to their demands. In 1975 when the emergency was proclaimed, it could be seen when the opposite party began raising their voice against the unappropriated move. The voice of leaders was suppressed, and the worst part was they were detained behind the bars with accusations of this act. How is this step anyhow justified? If some government makes use of their power and makes use of these kinds of sensitive laws just for their own interests. It is the responsibility of the government to think about the entire nation positively. After so many MISA incidents many other laws like NSA 1980, TADA 1985, UAPA 1967 POTA 2002 etc. emerged to the forefront. Most important change brought is the enactment of the National Investigation Agency Act (NIA), 2008 as the first step towards effective management of terrorism related offences. Combating terrorism is a shared responsibility of central, state and local governments. This Act contemplates centre-state collaboration in investigation of terrorist cases.

The Unlawful Activities Prevention Act 1967 got its recent amendment in 2019. The amendment also attempted to make some change in the definition of what constitutes a terrorist. The amendment to "schedule 4 of the UAPA Act will also allow the NIA to designate a person suspected to have terror links as a terrorist.