
COUNTER-TERRORISM IN INDIA: ASSESSING THE IMPACT AND EFFICACY OF ANTI-TERRORISM LEGISLATIONS

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I. ABSTRACT

This paper explores the evolution and implementation of anti-terrorism laws in India, with comparative insights from the United Kingdom and the United States. Terrorism remains one of the most significant challenges to global peace and security, and India has been particularly affected by terrorist attacks in recent decades. In response, the Indian legal framework has undergone multiple amendments and revisions to strengthen counter-terrorism measures. Legislations such as the Unlawful Activities (Prevention) Act (UAPA), and the now-repealed Prevention of Terrorism Act (POTA) have been instrumental in tackling terrorism. However, their application has often sparked debates on constitutional rights, due process, and the scope of executive powers. The paper further assesses the efficacy of these laws, particularly in the context of major terrorist incidents like the 26/11 Mumbai Attacks (*Mohammed Ajmal Amir Kasab v. State of Maharashtra*, 2012) and the 2001 Parliament Attack (*State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru*, 2005), among other such attacks. These cases demonstrate the judiciary's approach to counter-terrorism, addressing issues such as the admissibility of evidence, the right to a fair trial, and the appropriateness of capital punishment. The discussion extends to the role of investigative agencies, forensic advancements, and international cooperation in counter-terrorism efforts. The paper also addresses the tension between national security and the protection of human rights, providing an analysis of how anti-terrorism measures often intersect with human rights and civil liberty concerns and are subject to their violation. While counter-terrorism laws aim to ensure national security, they have been criticised for enabling preventive detention, prolonged incarceration without trial, and limitations on legal recourse and representation. The comparative analysis with the UK and the US legislations, highlights best practices and potential areas for reform to strike a balance between national security and civil liberties.

Keywords: Terrorism, Human Rights, UAPA, Constitution, Counter-Terrorism, India, POTA, TADA.

II. Introduction

Terrorism continues to be a threat to national security and public order, and there is a need for strict legal measures to counter its effects. India's counter-terrorism legislation, most notably the Unlawful Activities (Prevention) Act of 1967, also known as UAPA, has been effective in countering terrorist threats but has also evoked human rights and constitutional protection concerns. This paper discusses the development of India's anti-terrorism legislations, comparing their conformity with international norms and their efficacy in reconciling security and human rights. In a comparative assessment of United Kingdom and United States counter-terrorism legislation, the article identifies critical similarities and differences in legal responses. Judicial rulings in such landmark cases as *Mohammed Ajmal Amir Kasab v. State of Maharashtra, 2012*¹ and *State (NCT) v. Navjot Sandhu, 2005*², highlights the judiciary's role in counter-terrorism efforts. The paper also outlines possible human rights abuses, calling for reforms that increase accountability while ensuring that national security actions do not violate fundamental rights.

III. Evolution of Anti-Terrorism Legislations in India

In order to combat terrorism, the government has introduced several anti-terrorism legislations that aim to prevent and punish terrorist activities. As a result of several terrorist attacks, India's counter-terrorism legislative framework has evolved throughout time; violation of human rights, unconstitutional provisions, arbitrariness and the shift from pre-independence to post-independence era, are some grounds on which these legislations have evolved.

India has introduced a number of legislative measures to combat internal security issues including terrorism. An outline of the aforementioned acts' background, objectives, salient features, and criticisms can be found below;

A. Terrorist and Disruptive Activities (Prevention) Act, 1987³

TADA, enacted in 1987, to address the growing threat of terrorism, especially in Punjab during the Khalistan movement. The act sought to provide law enforcement organisations the authority

¹ Mohammed Ajmal Amir Kasab v. State of Maharashtra, AIR 2012 SUPREME COURT 3565, (2012) 9 SCC 1

² State (NCT) v. Navjot Sandhu, 2005 11 SCC 600

³ The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) (Repealed), No. 28, Acts of Parliament, 1987 (India)

to stop and deal with terrorist activity.

The essential provisions included acts that used bombs, explosives, or other dangerous weapons to intimidate the government or instil fear in the populace. Moreover, special courts created as designated courts under the statute to expedite the trial of offences. Confessions to police were another important clause; the statute allowed confessions made to police officers to be used as evidence, disregarding the rule of law.

Due to claims of abuse, arbitrary detentions, and forced confessions, TADA came under severe scrutiny for possible human rights abuses and violation, issues were raised by the act's strict restrictions and broad definitions. In 1995, TADA was repealed as a result of such issues and public outrage.

B. Prevention of Terrorism Act, 2002⁴

POTA was passed in 2002 as an effective legislative framework to fight terrorism in the wake of the 2001 attack on the Indian Parliament. It aimed to solve the shortcomings of current legislation in addressing emerging terrorist threats.

The Essential provisions of the act included, threats, efforts, and preparations to conduct terrorism, which were now included in the definition of terrorist acts. Suspects could be held in preventive custody for a maximum of 180 days without being charged. Furthermore, communications interception, which permitted authorities to intercept communications in order to stop terrorist attacks.

POTA was criticised for abuse of law and due process, such as focussing on political rivals and particular communities. Concerns were voiced over human rights and constitutional violations. POTA was repealed in 2004 as a result of these complaints and misuse assertions.

C. Unlawful Activities (Prevention) Act, 1967⁵

The Essential features of the act outlines several provisions, such as, an association may be declared illegal by the Central Government by publishing a notice in the Official Gazette. Penalties for involvement in illegal organisations' operations are outlined in the

⁴ The Prevention of Terrorism Act, 2002 (POTA) (Repealed), No. 15, Acts of Parliament, 2002 (India)

⁵ The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India)

UAPA. The Central Government can now designate individual as terrorists according to an amendment to the UAPA.

The act has come under scrutiny for abusing the UAPA to suppress and persecute minorities. It has been said that the UAPA makes it more difficult for the accused to get bail. The UAPA has a wide definition for extending the definition of "terrorist activity" to encompass common criminal offences.

IV. Counter-Terrorism Legislations in the United Kingdom and the United States: A Comparative Analysis

A comprehensive comparison of anti-terrorism laws in the US, UK, and India demonstrates different approaches influenced by their respective legal systems, historical backgrounds, and reactions to evolving terrorist threats. Comparative analysis enables us to determine international norms, comprehend the legal implications, and to understand how a nation approaches safeguarding its interests and national integrity.

A. Legal Definitions and Scope

India: The Unlawful Activities (Prevention) Act of 1967⁶, particularly subsequent to its amendment in 2008 and 2019, gives a very wide definition to terrorism. It includes acts done with the intent to endanger the unity, integrity, sovereignty, or security of India, as well as crimes against property and persons. Interestingly, the 2019 amendment allows for the listing of persons as terrorists, a provision which has raised questions about possible abuse and encroachment on individual freedom.

United Kingdom: The Terrorism Act of 2000⁷ gives an in-depth definition of terrorism to include acts with a high level of violence directed against individuals, property, or computer systems in an attempt to influence the government or intimidate citizens. The courts in the UK focus heavily on preventing violent crime as well as the dissemination of extremist ideologies that might promote terrorism⁸.

⁶ Id at 5.

⁷ Terrorism Act 2000, c. 11 (UK).

⁸ David Lowe, *Terrorism, Law and Policy: A Comparative Study* 192 (2d ed. 2022).

United States: Domestic terrorism is characterized by the USA Patriot Act of 2001⁹ as activities that risk human life and are intended to affect government policy or intimidate or coerce individuals. To avert terrorist activity, the Act expands interagency information sharing and monitoring powers¹⁰.

B. Preventive Detention and Due Process

India: Concerns exist regarding potential human rights violations since the UAPA allows for detention without trial for up to 180 days with no judicial oversight. The Act's stringent bail conditions often cause long detentions without charge or trial, making it challenging to balance individual freedoms with national security.

United Kingdom: The 2006 Terrorism Act provided for a maximum of 28 days of custody without charge in the United Kingdom, the initial nation to apply extended detention periods. Firm court oversight processes are present, however, and subsequent amendments have reduced this period, showing commitment to finding a balance between security needs and civil liberties¹¹.

United States: Non-citizens suspected of terrorism-related activities can be held for a maximum of seven days without charge under the USA PATRIOT Act. While there are current debates regarding the impact of the Act on civil rights, the Constitution provides citizens and legal permanent residents with additional protections¹².

C. Surveillance and Intelligence

India: The UAPA provides the police with sweeping surveillance powers, such as the ability to track communications and conduct warrantless searches. Although intended to bolster national security, these provisions have been criticized for lacking adequate checks and balances, which could lead to abuses of power.

⁹ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

¹⁰ *Id.* at 8.

¹¹ Vijay Kumar Vimal & Pawan Kumar, Comparative Analysis of Preventive Detention Laws in Different Legal Systems: A Critical Appraisal, Volume 3 Issue 4 INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES 144-147 (2020).

¹² *Id.*

United Kingdom: Referred to as the "Snooper's Charter," the Investigatory Powers Act of 2016¹³ consolidates surveillance powers and allows mass data collection under the oversight of a court. The Act seeks a balance between the necessity for the collection of intelligence and the protection of individuals' right to privacy.

United States: By permitting entry into company documents and roving wiretaps, the USA PATRIOT Act significantly expanded surveillance authority. There have been ongoing judicial battles and modifications resulting from the Act's contentious parts, which opponents argue infringe on private liberties.

D. Oversight and Accountability

India: The UAPA has a weak oversight provision, with very few provisions for parliamentary or judicial review of its use. This weakness has raised fears of arbitrary application and the targeting of political dissidents in the name of counter-terrorism.

United Kingdom: The UK's counter-terrorism legislation is under strict scrutiny by independent institutions, including the Independent Reviewer of Terrorism Legislation, to ensure that the application of such legislation is in accordance with human rights and democratic values.

United States: The USA PATRIOT Act has provisions for congressional oversight, and its more contentious provisions are subject to periodic reauthorization, offering opportunities for legislative review and public debate.

E. Impact on Civil Liberties

India: Fears regarding erosion of democratic rights and marginalisation of weaker sections due to the broad provisions of the UAPA, which have been attacked as muzzling dissent and minority groups.

United Kingdom: In an attempt to find a balance between security and civil liberties, the rigorous laws of the country are tempered by the presence of oversight organisations and

¹³ Investigatory Powers Act 2016, 2016 c. 25.

review mechanisms by the courts.

United States: The USA PATRIOT Act's sweeping surveillance and detention powers have raised debate regarding civil rights abuses, leading to a review of some of its provisions to more effectively protect individual freedoms without compromising security.

The extent to which these anti-terrorism laws conform to international human rights standards is different when analysed critically. With its emphasis on responsibility and oversight, the UK system demonstrates a concerted effort towards conformity with international norms. In contrast, India's UAPA poses challenges to conforming to its international human rights obligations with its stringent curbs and minimal safeguards. While the US policy does involve oversight measures, it consistently lacks any form of balance between national security and individual rights, which shows ongoing challenges in its compliance with global standards¹⁴.

An analysis of the anti-terrorism laws in the United States, United Kingdom, and India demonstrates the different methods for balancing national security and civil liberties. In the United States, post 9/11 efforts, including the USA PATRIOT Act, have increased governmental authority, giving rise to debates regarding possible incursions into civil liberties¹⁵. Conversely, the United Kingdom has adopted strong anti-terrorism legislation with strong checks and balances in place, trying to balance security and human rights. India's strategy, especially under the Unlawful Activities (Prevention) Act (UAPA), has been accused of vague definitions and abuse of power, giving rise to allegations of human rights abuses. These approaches reflect the intricate problem of being able to counter terrorism effectively while preserving basic freedom and rights.¹⁶

V. India's UAPA vs. International Standards

Compared to global human rights standards, India's Unlawful Activities (Prevention) Act has been subject to close scrutiny. The UAPA's wide definitions and discretion have raised concerns regarding potential overreach and erosion of due process, even though it was designed

¹⁴ Riddhaa Bhattacharya & Muskan Kumari, *Legislating Against Terrorism: A Human Rights Perspective "A Comparative Analysis Between India, UK, USA and Australia"*, 7 *Indian Journal of Law and Legal Research* 337-339 (2025).

¹⁵ Mark Sidel, *Choices and Approaches: Anti-Terrorism Law and Civil Society in the United States and the United Kingdom After September 11th*, Volume 61, Issue 1 *The University of Toronto Law Journal* 119-146 (Winter 2011).

¹⁶ *Id.*

to deal with the issues created by terrorism. In particular, provisions that allow for indefinite detention without rigorous oversight by the courts diverge from the procedural safeguards provided in international human rights agreements such as the International Covenant on Civil and Political Rights (ICCPR). As per scholars, these provisions of the UAPA not only risk infringing individuals' rights but also undermine public trust in the judicial process, which suggests that the structure of the Act's functioning has to be fundamentally revised to comply with international standards.

In contrast, counter-terrorism policies in nations like the US and the UK feature more balanced measures more in accord with international standards. For instance, the legal system of the UK has both regular parliamentary scrutiny and rigorous judicial review, ensuring that policies such as preventative detention are regularly re-evaluated and revised. Similarly, the USA PATRIOT Act has legislative oversight and reauthorisation provisions that serve as checks on any misuse even though it has a wide scope. These models show how effective counter terrorism strategies can safeguard national security without compromising people's fundamental rights—a balance that the UAPA is currently struggling to achieve. This study is focused on how much India's counterterrorism legislation has to be revised with a sense of urgency to enhance accountability and bring its response into conformity with global human rights norms.

VI. Human Rights Concerns and Counter-Terrorism

For those governments committed to upholding democratic liberties and national security, the intersection of counterterrorism measures with human rights protections is a major impediment. There has been heated debate regarding whether counterterrorism legislation, often characterized by broad investigative powers, preventative detention, and sweeping surveillance authority, are compatible with international human rights norms. Critics argue that such actions risk violating core rights such as freedom of assembly, the right to a fair trial, and the right to effective judicial oversight¹⁷. To avoid public activities by government inadvertently stigmatising or marginalising vulnerable individuals, experts say a balanced and open proportionate approach must be followed whereby security necessities are weighed

¹⁷ OSCE Office for Democratic Institutions, Handbook on Monitoring Freedom of Peaceful Assembly 8-9 (2011).

against civil freedom necessities carefully.

Robust counterterror policies with sound human rights protections are not only possible but are also shown in comparative experience in nations such as the US and the UK. The UK, for example, has achieved a fine balance between state power and individual freedoms by combining rigorous judicial review procedures with regular parliamentary oversight, which has been an important check on the potential abuse of security measures. A dynamic process of aligning national security programs with constitutional protections is also evidenced by the ongoing legal reforms in the US, which have been ignited by controversies over the methods of surveillance and detention. These models provide compelling evidence that counterterrorism strategies can effectively eliminate security threats without compromising the basic tenets of a democratic society when they are placed within an accountability and transparency framework.

VII. Constitutional Provisions

Basic rights that are the foundation of the nation's democratic ethos are guaranteed in the Indian Constitution, which is the supreme law of the land. While *Article 21* ensures protection of life and personal liberty, *Articles 19 and 21* guarantee freedoms of speech, assembly, and association. Yet, some legislations, including UAPA, 1967, have had to be enacted in response to the needs of national security, particularly against terrorism. In providing the government with sweeping powers to prohibit organizations and arrest anyone suspected of terrorist activities, the UAPA aims to prevent activities that threaten India's integrity and sovereignty. Although dealing with security matters, this legal framework has been subject to discussions whether it is in line with constitutional requirements, especially regarding potential infringement on fundamental rights¹⁸.

Certain UAPA provisions, like prolonged imprisonment without trial and stringent bail conditions, are criticized for the possibility of infringing the right to a fair trial and individual freedom enshrined in the constitution. Fears of abuse and erosion of civil liberties have been raised by the Act's broad definitions and discretionary powers given to police enforcement. This clash of interests illustrates the delicate balance that must be struck between safeguarding the Constitution's core freedoms and empowering the government to fight terrorism. The

¹⁸ Sumit Kumar, The Constitutional Analysis of Anti-Terror Provisions Under the Unlawful Activities (Prevention) Act, 1967, 7 Indian Journal of Law and Legal Research 3307-3309 (2025).

evolution of such legislation continues to be influenced by continuing judicial review and public debate, which seeks to reconcile constitutional protections with national security needs.

VIII. Case Laws: Terrorist Attacks in India

The Indian judiciary has faced tremendous challenges in deciding cases emerging out of terrorist acts, most notably in the case of *Mohammed Ajmal Amir Kasab v. State of Maharashtra* and *State (NCT of Delhi) v. Navjot Sandhu*. The cases are not just landmark in accentuating the difficulties involved in prosecuting acts of terrorism but also in emphasising the role played by the judiciary in striking a balance between national security requirements and upholding constitutional rights.

i. Mohammed Ajmal Amir Kasab v. State of Maharashtra, 2012¹⁹

Facts: Ten Pakistan based militants, *Lashkar-e-Taiba*, carried out a series of well-organised terrorist attacks in Mumbai on November 26th, 2008. 166 people were killed and several injured as the attackers assaulted numerous targets, including the Taj Mahal Palace Hotel, the Oberoi Trident Hotel, and the Chhatrapati Shivaji Maharaj Terminus. The lone captured attacker, Ajmal Kasab, was apprehended after an encounter with the police. His arrest provided significant insight into the operations of the attacks.

Issues: The primary issues raised during the adjudication of the case are;

1. Right to Legal Representation: Kasab's initial rejection of a legal aid evoked controversy on the accused person's entitlement to a fair trial and the responsibility of the state to accord legal aid, particularly to suspects facing serious charges.
2. Admissibility of the confessions provided by the accused under Section 164 of the Criminal Procedure Code was examined in this case, with particular reference to allegations of coercion and circumstances under which the confessions were obtained.
3. Application of the Death Penalty: Given the "*rarest of rare*" theory evolved in previous jurisprudence, the judiciary had to determine whether the death sentence awarded by

¹⁹ Id at 1.

the trial court was justifiable.

Analysis: Eyewitness testimony, forensic evidence, and Kasab's own confessional statements were some of the numerous pieces of evidence that the Supreme Court considered in detail. Even when Kasab retracted his confession, the Court held that the corroborative evidence was unimpeachable. The panel emphasized that, as enshrined in Article 22(1) of the Indian Constitution, the right to counsel is a fundamental component of a fair trial. In order to ensure that Kasab's trial met due process standards, the Court appointed competent defence lawyers.

In light of the gravity and extent of the attacks, the Court applied the "rarest of rare" test to the death penalty. The judgment highlighted that when the collective conscience of society is stirred and the atrocious nature of the crime requires exemplary punishment, such a sentence is warranted. In accordance with its stringent stance against acts threatening public order and national security, the Court upheld the death penalty.

ii. State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru, 2005²⁰

Facts: Five armed terrorists affiliated with the *Jaish-e-Mohammed* organization attacked the Indian Parliament on 13 December 2001. Six security personnel and one civilian were killed in the shootout that erupted after the assailants breached parliamentary security. Other casualties were prevented through the timely action of security personnel. After further investigation, several others were arrested on suspicion of being involved in conspiracy with the terrorists and aiding and abetting them, including Navjot Sandhu (Afsan Guru), Shaukat Hussain Guru, S.A.R. Geelani, and Muhammad Afzal Guru.

Issues: The primary issues raised during the adjudication of the case are;

1. Confessional Statement Admissibility: The case considered whether confessions made to police officers under the Prevention of Terrorism Act (POTA) were valid, particularly where they implicated co-accused accused.
2. Standard of Proof for Conspiracy: Where the prosecution had primarily depended on circumstantial evidence and direct evidence was scarce, the judiciary examined the

²⁰ Id at 2.

standard of proof required to establish the accused's participation in the conspiracy.

3. Admissibility of Electronic Evidence: The case addressed the conditions for proper certification under the Indian Evidence Act and the process of admitting electronic evidence, including phone records and intercepted calls.

The Supreme Court rigorously tested the evidence presented. Though the Court held that confessions made to police officers under POTA are admissible, its evidentiary value must be carefully evaluated, especially in the context of voluntariness and absence of compulsion. Since there was not sufficient evidence to link S.A.R. Geelani and Afsan Guru with the conspiracy, the court acquitted them, noting that being a member of the prime accused is not tantamount to conviction unless there is enough corroborative evidence.

The judgment highlighted the significance of adhering to procedural procedures while admitting electronic evidence. The Court stressed that for ensuring the validity and reliability of electronic records, proper certification *u/Section 65B* of the Indian Evidence Act must be done. The standards of evidence for electronic evidence in subsequent court cases have been considerably influenced by this aspect of the judgment.

In both cases, the judiciary demonstrated a commitment to upholding the rule of law while balancing a challenging task between preserving individual rights and national security interests. The rulings maintain the integrity of India's judicial process by ensuring that even accused individuals of the most heinous crimes are afforded a fair trial and demonstrating a commitment to constitutional principles.

IX. Conclusion

India's anti-terrorism legislation has evolved to accommodate the growing complexity and seriousness of terrorist threats. While legislation such as the Unlawful Activities (Prevention) Act (UAPA) has provided the government with a wide range of powers to combat terrorism, they have also raised concerns regarding potential human rights abuses, judicial overreach, and erosion of fundamental freedoms. A more balanced approach is needed, one that safeguards international human rights norms and constitutional safeguards and preserves national security, as exemplified by a comparison between the United States and the United Kingdom.

The role played by the judiciary in ensuring the observance of due process and the rule of law in maintaining counterterrorism provisions is reflected by its judgments, particularly in such cases as *Navjot Sandhu v. NCT* and *Mohammed Ajmal Amir Kasab v. State of Maharashtra*. Yet the need for change in legislation as reflected by occurrences of prolonged incarceration without trial, minimal court surveillance, and stern bail conditions calls for immediate response. Strengthened supervision mechanisms, judicial accountability, and deference to international human rights norms need to be factored into India's counterterrorism strategy in the future in order to find the delicate but necessary balance between security and civil liberties. India can only effectively combat terrorism while remaining true to its democratic ideals, ethics and constitutional commitments by adhering to a balanced approach.