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Counter-Terrorism Legislation in India

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Introduction

The Republic of India defined terrorism under section 15 of the Unlawful Activities (Prevention) Act of 1967 as an “act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or any foreign country.”¹ Counter-terrorism laws are under the purview of the Ministry of Home Affairs’ Counter Terrorism and Counter Radicalization (CTCR) Division. Counter-terrorism efforts in India have seen a varying slope of what the Republic of India considers an ‘Act of Terror’ over time and what measures the state is willing to adopt to prevent it.

To better accomplish their goals, key laws such as the Unlawful Activities Prevention Act (1967) have had their verbatim modified and adjusted. By creating an interconnected framework across pertinent governmental entities, these modifications have attempted to streamline investigations and strengthen security measures, making the process more transparent. For instance, section 25 of the 1967 principle act now includes the validity of an investigation conducted by a National Investigation Agency officer "with the prior approval of the Director General of the National Investigation Agency," as stated in Article 3 of the Unlawful Activities Prevention Amendment Act (2019)². Similarly, Article 6 of the same amendment acknowledged that individuals can also commit acts of terror, they need not be done by an organisation alone. This formal acknowledgement in the legislature was important to keep the alleged convict accountable. India’s first steps of counter-terrorism legislation were The Prevention of Terrorism Act of 2002 (POTA) and the Terrorist and Disruptive Activities (Prevention) Act of 1987 (TADA) until they were repealed by the state for their ‘constitutionality’³ being contested at multiple instances. The current legislative structure does not yet formally identify the numerous external dangers to India's national integrity, for which it must be prepared.

¹ Ministry of Home Affairs. (n.d.). THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967.

² THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2019

³ CLAWS. Centre for Land Warfare Studies, 2022

Background on India's counter-terrorism laws

Over the years, India's counter-terrorism laws have changed dramatically in response to the nation's intricate security issues. The main legislative frameworks were created to restrict acts of terrorism, maintain national security, and ensure symmetry between constitutional protections and preventative measures.

The Terrorist and Disruptive Activities (Prevention) Act of 1987 (TADA) was the first crucial act of India's anti-terrorism legislation. It was created to counteract terrorist activity and included stronger limitations than former laws. Hence, under the assumption that the state would use its power in good faith, the Supreme Court of India believed that the constitutionality of the Act in the seminal decision of *Kartar Singh vs. the State of Punjab* (1994).⁴ However, the Act received hostility for its abuse, as law enforcement authorities took advantage of its strict regulations and unchecked control causing it to be repealed in 1995. The Prevention of Terrorism Act (POTA) of 2002 followed TADA as its successor. The environment of worldwide terror following 9/11 and the rise in cross-border terrorism, especially the risks posed by Pakistan's ISI, prompted this law and supported its desperate requirement. As with TADA, POTA was heavily criticised. Human rights and civil liberties organisations contested the Act, raising issues of possible corruption in the judicial and policing system. POTA became a crucial political issue during the 2004 elections, and the United Progressive Alliance (UPA) administration consequently revoked the law.⁵ First passed in 1967, the Unlawful Activities (Prevention) Act (UAPA) underwent significant changes to become India's central anti-terrorism statute with the parliament creating a separate law that made terrorist conduct illegal in 2004 with its reach further broadening in 2008 and 2019 by further revisions.⁶

⁴ The Supreme Court of India. (1994). [*Kartar Singh Vs Punjab*].

⁵ The Telegraph, India (May 24, 2018), English News Paper.

⁶ THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2019

These legal changes reflect India's continuing battle to create counter-terrorism policies that function effectively all while striking a careful balance between individual civil liberties and national security. Currently, under the ambit of CTCR, there are 8 functioning Acts based on the National Investigation Agency and UAPA's functionality.

Criticisms

A major point of contention is the UAPA, a law passed with the intent and vision to safeguard India's national security, has come under growing criticism for its sweeping and possibly capricious implementation. According to empirical research, only 2.2% of cases filed under the UAPA between 2016 and 2019 resulted in court convictions, demonstrating a considerable discrepancy between legislative aim and judicial outcomes, raising serious concerns about its implementation.⁷

The legislative framework has many troubling traits. The UAPA challenges basic constitutional rights by introducing previously unheard-of powers. The provisions of the statute permit prolonged incarceration without charge or trial, the assumption of innocence being reversed, comprehensive definitions of acts of terrorism and possible targeting of people and institutions.

Human rights organisations have reported numerous cases of systemic misuse. There have been arbitrary detentions of prominent civil society members, journalists, and activists under the pretence of counter-terrorism measures. Moreover, prolonged detentions of student demonstrators and human rights advocates are noteworthy instances that point to a trend of repressing dissent using national security laws.⁸ These legislative issues can be better understood considering the geopolitical environment. India faces a complex terrorist environment that includes internal insurgencies, cross-border security concerns, religious and ethnic tensions, technical weaknesses, and intricate socio-economic marginalisation.

⁷ The Hindu. (2021, February 10). Parliament proceedings | 2.2 % of cases registered under the UAPA from 2016-2019 ended in court conviction.

⁸ Amnesty International. (2023, November 3). India: Stop Abusing Counterterrorism Regulations

However, opposing this, there is also a valid argument that such broad legislative measures are necessary considering India's distinct security situation. Strong counter-terrorism methods are required owing to India's past experiences, which include violence associated with partition, ongoing territorial conflicts, and continual external threats. But the criticism goes beyond specific instances. A larger trend of restricting civic space is exemplified by the methodical revocation of more than 20,600 non-profit organisation licenses and the targeting of human rights advocates, with Siddique Kappan's two-year unconstitutional arrest as an example. These issues have frequently been brought to light by international human rights organisations, which contend that these strategies violate democratic values.⁹

Finding a balance between individual rights and national security is the biggest challenge faced by the legal system. Although terrorism is a real threat, the current legislative strategy runs the risk of establishing a framework that might make civil society activism and lawful political opposition illegal.

Road Ahead

While the debate for the constitutionality of such legislative measures shall continue, the counter-terrorism legislative framework shall not ignore the rising need to incorporate and strengthen laws against growing and new means of warfare such as cyber terrorism and maritime terrorism. As technological advancements and geopolitical complexities reshape traditional threat paradigms, India must adapt and develop comprehensive strategies addressing emerging forms of terrorism, particularly in cyber and maritime domains. They must take inspiration from the actions of other players like the United States and their 'National Strategy to Secure Cyberspace'.¹⁰

Tapping into a strong legislative framework focusing on specific Cyber Terrorism threats has become necessary. Constructive laws that define cyberterrorism precisely and lay out extensive procedures for gathering digital forensic evidence shall play a starting role in the larger picture. A centralised national cyber threat monitoring centre with robust threat detection tools, and strong

⁹ Human Rights Watch. (2023). India: Events of 2022.

¹⁰ The National Strategy to Secure Cyberspace, Gov. of the United States of America

public-private cybersecurity collaborations are some of the complex technological skills required for this strategy. Moreover, social media radicalisation, cryptocurrency-based terrorist financing, and advanced cyberattack techniques are just a few of the new digital risks that one can identify. However, with modern advancements in technology happening everyday, the state's legislative framework needs to be adaptable enough to handle the same¹¹.

Another loophole in India's counter-terrorism framework is the lack of a national legislative stance on the maritime domain. Modernising coastal security requires comprehensive policy interventions that combine cutting-edge technical solutions with well-thought-out legislative frameworks. This calls for deploying state-of-the-art vessel tracking systems, creating integrated domain awareness platforms, and modernising marine surveillance infrastructure. The policy calls for creating specialised marine response units, expanding maritime counter-terrorism legislation provisions, and developing thorough threat assessment processes that improve international intelligence sharing and interagency cooperation.

Conclusion

India's counter-terrorism legislative framework reflects the intricate relationship between the fundamental need for national security and the protection of constitutional rights. Although strong laws like the NIA Act and the UAPA have improved the nation's capacity to handle complex security threats, their application has frequently sparked questions about democratic freedoms and human rights. To protect the intent and purpose of the Constitution, a more balanced and open approach is required, as shown by the problems of arbitrary detentions, low conviction rates, and possible abuse.

The Indian legislature must reevaluate its counter-terrorism measures to guarantee accountability, proportionality, and judicial scrutiny to uphold its democratic ideals. Along with advancing civil liberties and defending rightful opposition, safeguards against the abuse of broad authorities must be given top priority. The long-term effectiveness of anti-terrorism efforts depends on bolstering

¹¹ Data Security Council of India. (n.d.). National Cyber Security Strategy 2020.

legal procedures and increasing public confidence. At the same time, such proactive legislative reforms are required due to evolving security issues. Targeted measures are necessary in response to emerging risks, such as cyberterrorism and marine vulnerability. These few identified loopholes, among many others, may be filled solely by comprehensive marine counter-terrorism regulations and a separate Cyber Terrorism Prevention Act. Thus, investments by state parties in technology, interagency coordination, and international cooperation through confidence-building measures would play an essential role in countering such complex threats.

Given India's geo-political environment, which is heavily influenced by internal and external socio-political dynamics and realities, a sophisticated and flexible counter-terrorism policy is necessary. India can establish a strong framework that can handle present and upcoming issues by striking a balance between preserving constitutional ideals and strict security measures. The path forward entails developing a security architecture that protects the country and preserves its democratic values and dedication to justice.

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