

The Importance of Anti-Terrorism Law on National Security of India

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Abstract

With terrorism on the rise, financial measures to prevent and punish terrorist acts are becoming increasingly crucial. Subsequently, terrorism is a violent and illegal method of achieving a goal that affects almost every aspect of human life. As a result, legislation dealing specifically with terrorist acts must consider the possibility that they were planned or funded from outside India. When a government faces a terrorist threat, it will take whatever measures it deems necessary to counter that threat. Whereas these measures will almost certainly include infringing on the fundamental rights of citizens. Although, terrorist attacks on poor democracies with territorial conflicts are common. But domestic terrorism may not have a significant impact on fundamental rights. Along with human rights and the rule of law must be the cornerstones of the global fight against terrorism. Thus, this necessitates the development of national counter-terrorism strategies aimed at preventing terrorist acts. Overall terrorist groups target India more frequently because they know liberal countries usually give in to their demands. Another point to consider is that the main anti-terror law lacks sufficient and inadequate provisions to address the issue of cross-border terrorism. It also needs to be strengthened to allow India to effectively combat the cyber aspect of terrorism. To summarize Anti-terrorism measures should protect democracy, rule of law, and fundamental rights.

Introduction

The current research illustrates the need of anti-terrorism laws in India since democracy is threatened when terrorism seeks to undermine it. With terrorism on the rise, financial measures to prevent and punish terrorist acts are becoming increasingly crucial. However, the cost of carrying out these crimes typically involves raising funds from clandestine networks, training units, mounting complex operations, purchasing weapons, or hiring co-conspirators. To put it simply, the Indian government has not enacted a number of considerable legislative changes to modernise national safety laws and strengthen India's response to potential threats of terrorism. In other words, counter-terrorism legislation is critical because: a) some counter-terrorism laws have the potential to disproportionately infringe on fundamental rights, such as the right to liberty and the right to a fair trial; b) the risks involved in implementing the counter-terrorism measures are insufficient and; c) the limited ability particularly in India for a person to test the law. Subsequently, terrorism is a violent and illegal method of achieving a goal that affects almost every aspect of human life. Conversely, terrorism is the reverse of independence, making it irrelevant. More specifically, terrorism in India has been fuelled by political, ideological, and ethnic factors that threaten the social fabric. It is necessary to put a stop to terrorist activities so that citizens can exercise their social, economic, and political rights¹. In fact, the Mumbai attacks were among the most violent terrorist attacks carried out

¹ Indeed, ethno-nationalist terrorism, religious terrorism, left-wing terrorism, narco-terrorism, and cross-border terrorism are all found in India. On the other hand, attacks on the Amarnath Yatra in Jammu and Kashmir in 2017, Uri attack on 2016, and 2008 Mumbai attack.

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by terrorist organisations. Furthermore, terrorism has had a significant impact on Jammu and Kashmir, the northeast Indian states, and parts of central India where Maoists are still active (President speeches: Development, Security and Human Rights, 2008).

Despite this, India has repeatedly enacted legislation to combat terrorism². It is possible to be punished under the UAPA even if the offence is committed outside of India. Therefore, the most recent amendments were made in 2013, and they primarily addressed the economic and financial aspects of terrorism. Moreover, acts committed outside of India may still endanger India's unity, integrity, security, economic security, and sovereignty, which is what constitutes a "terrorist act." As a result, the reasoning behind such a provision is that legislation dealing specifically with terrorist acts must consider the possibility that the acts were planned or funded from outside Indian territory. In addition to telecommunication towers, roads, mining infrastructure, railroad properties, government buildings, schools, roads, bridges, etc., they also target government buildings, schools, roads, bridges, and more. Naturally, terrorism and war always have a negative impact on the economy. Nevertheless, terrorists attack productive resources that could have produced valuable goods and services. Several times, Maoists have attempted to sabotage road construction by attacking security forces and damaging the roads, as well as the vehicles and machinery used in the work (Kalhan, Conroy, Kaushal, Miller, & Rakoff, 2007).

Consequently, terrorism, in its worst form, has aimed to destroy the fabric of the country, create a sense of loss of security, and create an intractable conflict situation, thereby affecting citizens' social and cultural rights³. Alternatively, terrorists choose iconic symbols as targets and destroy them with unrivalled ferocity to achieve their goal⁴. The world today faces an existential threat that has been fought against for over fifty years. During that time, it has learned a great deal, both from its successes and its failures.

Terrorism violates the fundamental rights

From the above study it was established, there is little agreement on which rights are not only affected the most when it comes to how low terrorism affects fundamental rights. It is reasonable to assume that when a government faces a terrorist threat, it will take whatever measures it deems necessary to counter that threat. However, these measures will almost certainly include infringing on the fundamental rights of their citizens. Although, terrorism on a global scale has negligible impact on people's perceptions of civil liberties. In spite, this could be explained by the fact that governments that are hampered by a free press and the separation of powers are less likely to restrict fundamental rights in the aftermath of a terrorist attack. Furthermore, this shows that terrorism, on its own, does not pose a serious threat to the fundamental stability and functioning of democratic states. It has been demonstrated that after a terrorist attack, there is an effect on the repression of certain physical integrity rights. Moreover, transnational terrorism has a significant negative impact on disappearances and extrajudicial killings, but not on torture or political imprisonment. On the contrary, transnational terrorism may not have a significant impact on certain rights, domestic terrorism has been found to do so. But this does not mean that transnational terrorism is insignificant (Joseph, 2016).

² Therefore, the Unlawful Activities (Prevention) Act, 1967 (UAPA) is the primary antiterrorism law in force in India at the moment. It is clear that, Parliament passed this law in 1967 to allow for the imposition of reasonable restrictions on the rights to free speech and expression.

³ Following the Mumbai attacks in 2008, there was a significant drop in the number of foreign tourists visiting India. As a result, foreign tourist arrivals in the country dropped in 2009 compared to the previous year.

⁴ In the 2008 Mumbai attacks, the heritage buildings Taj Mahal Palace and Victoria Railway Terminus were attacked.

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As stated previously, terrorism is most prevalent in democracies with low levels of legitimacy, poor fundamental rights practises, intermediate levels of political and economic development, and unresolved conflict among ethnic or political groups. Conversely, wealthy, advanced democracies did not experience prominent levels of chronic terrorism unless they interfered in the affairs of other countries through military intervention or occupations, in which case such countries were frequent targets of transnational terrorism. Such transnational attacks are frequently perpetrated by authoritarian regimes against democratic states. In particular, domestic terrorist attacks on poor democracies with territorial conflicts are common. Nonetheless, the institutional constraints placed on Indian democratic governments are typically greater than those placed on other types of regimes. Although these constraints are intended to protect citizens of India from the abuse of power by their leaders, they also limit the Indian governments' actions and ability to combat terrorism. Importantly, terrorist groups see India as a soft target that can be pressured to give in to their demands due to India's cost sensitivity. Alternatively, this demonstrates that terrorist groups target India more frequently because they know liberal countries usually give in to their demands (Ghatwai, 2010).

As a consequence, human rights and the rule of law must be the cornerstones of the global fight against terrorism. This necessitates the development of national counter-terrorism strategies aimed at preventing terrorist acts, prosecuting those responsible, and promoting and protecting fundamental rights and the rule of law. In summary, it entails measures to address the conditions conducive to the spread of terrorism, such as a lack of the rule of law and violations of fundamental rights, ethnic, national, and religious discrimination, political exclusion, and socioeconomic marginalisation; to encourage the active participation and leadership of civil society; to condemn fundamental rights violations, prohibit them in national law, investigate and prosecute them promptly, and prevent them; and to pay due attention to terrorism. In contrast, it endangers or kills innocent people, destroys people's freedom from fear, jeopardises fundamental freedoms, and seeks to destroy fundamental rights. With respect to terrorism, it has a negative impact on the establishment of the rule of law, undermines pluralistic civil society, seeks to destroy society's democratic foundations, and destabilises legitimately formed governments. In comparison, it negatively impacts economies and societies, jeopardizes friendly relations between nations, and negatively impacts relations of cooperation among nations, including development cooperation (Goodwin, 2012).

The earlier discussion of counterterrorism can be further developed here, counterterrorism requires that all law enforcement officials, including police, prosecutors, and officials in charge of detention and prison facilities, abide by the law. Evidently, the authorities in charge of fighting terrorism must be extremely vigilant against abuses of power and should instil a culture of respect for the law primarily by those charged with its execution. The strength of such an approach is that states must enact measures that have an impact on individual liberty, such as pretrial⁵ procedures for terrorism offences and control orders. In short, detentions include those used to further investigate whether a person was involved in or assisted in the commission of a terrorist offence, as well as those used to gather intelligence about terrorist activities. As with any other crime, a state may lawfully detain people suspected of terrorist activity as part of its counter-terrorism efforts. It is essential, however, to strictly adhere to the law concerning personal security and due process if a measure involves the deprivation of liberty. Any such measures must, at the very least, include judicial oversight and the ability for detainees to have the legality of their detention determined by a judicial

⁵Pretrial procedures for terrorism offenses, including provisions concerning bail and the remand of people in custody awaiting trial; pretrial detention (detention before laying a criminal charge against a person for the purpose of further investigating whether that person was involved in the commission, or assisted in the commission.

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authority. Thus, adherence to due process and a fair hearing are required for the proper protection of a person's liberty and security (Mate & Naseemullah, 2010).

In addition, some states have used torture and other forms of ill-treatment to combat terrorism, while legal and practical safeguards to prevent torture, such as regular and independent monitoring of detention centres, have frequently been ignored. Hence, India sometimes have returned suspects of terrorist activity to countries where they face a real risk of torture or other serious human rights violations, infringing on the international legal obligation of non-refoulement. In rushing to pass legislation and practical measures to counter terrorism have created negative consequences for civil liberties and fundamental rights (Office of the United Nations High Commissioner for Human Rights, 2008).

The catastrophe on national security

In light of this, it is proposed here to investigate the interpretation of specific provisions of anti-terror laws by the judiciary at various stages of the trial. It is primarily intended to focus on how the courts have interpreted terrorist acts and responded to the challenges posed by the interpretation and evolving process of anti-terror legislation enactment. In addition to studying the jurisprudence of anti-terror laws in isolation from general criminal law, an emphasis should be given to studying them from the perspective of national security, which will reduce the chances of legislation failing as it did in the past. Even though UAPA is the main anti-terror law, it is observed that it lacks sufficient and inadequate provisions to address the issue of cross-border terrorism. It also needs to be strengthened to allow India to effectively combat the cyber aspect of terrorism and the growing threat of radicalization. Furthermore, the country lacks a professional and well-trained special task force that is dedicated to dealing with and investigating terrorism-related crimes has effective legal and forensic support and is responsible for investigating terrorism-related crimes. Accordingly, the overlap between special laws and the general Criminal Procedure Code (CrPC) causes a tremendous delay in terrorism-related cases, necessitating the enactment of special provisions pertaining to procedure, investigation, evidence, and trials. To this end, cyber-crime is the core element of 21st-century terrorism (JOSEPH, 2016).

Finally, the necessity of zero tolerance for political interference. Hence, terrorism legislation can be developed with the goal of providing the government with civil, administrative, and criminal law tools to counter the contemporary, complex terrorist threats with a global scope. By blocking financing channels and other infrastructure supporting terrorist activities, the comprehensive anti-terror law must contain punitive and preventive measures. Due to the many intricacies of the federal system, issues have developed as a result of several contradicting situations that have evolved as a result of the overlapping of centre and state issued legislation. However, the establishment of special courts under various anti-terror laws failed to facilitate an expeditious trial; thus, they undermined the purpose for which they were created. In the majority of terrorism-related cases, courts have had to determine the legality and application of anti-terror laws. Likewise, constructive political conversation in the interest of national security can help to address such a quandary. In most circumstances, courts have found a method to sustain the legitimacy of both sets of legislation, thus resolving any inconsistency. Consequently, this is consistent with the court's traditionally deferential attitude towards national security statutes, which have seldom been challenged⁶. More importantly, to prevent terrorism, any government must take proactive measures, including the implementation of policies, the installation of an efficient task force, and the establishment of a mature civil society, all of which

⁶ On multiple occasions, courts have upheld the validity of TADA, POTA, and UAPA based on the premise that terrorism is an extraordinary crime requiring extraordinary laws.

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prevent narrow partisan interests from interfering in the broad fight against terrorism⁷. It is worth noting, however, that in the majority of terrorism-related cases, the courts uphold the legitimacy of the usual criminal laws of the state. As a result, any legislative activity that departs from long held and established norms of criminal proceedings without proper rationale and discussion, when establishing anti-terror legislation as well as special statutes at the federal and state levels, will always come under rigorous scrutiny and will be regarded as indefensible and hence unsustainable in law (Ramanand Garge, 2019).

To further understand the role of anti-terrorism law, if the government wants to effectively combat the threat of terrorism, national security must take precedence above all other issues, particularly those linked to federalism. In relation to a bipartisan national commitment to combating terrorism is required. Rather, an efficient counter-terrorist infrastructure must be built on a "tripod" comprising three major components: an omnibus statute covering all aspects of terrorism; a single investigative agency to pursue terrorism cases promptly and in a timely manner; and an agency to collect, analyse and distribute intelligence inputs relevant to terrorism. In India, however, the inability to define terrorism has broad implications across the national security architecture, with some extremely serious ramifications. As discussed above, it is necessary to analyse anti-terror initiatives within the larger context of national security, rather than seeing them as just political reactions to terror attacks. On the other hand, bail jurisprudence of special legislation has remained a complicated phenomenon in which the granting of bail is not wholly governed by the application of the CrPC. Despite, this complication creates a circumstance that may promote alternative interpretations of specific sections. As a result, there is a greater necessity to evaluate these special laws on numerous legal dimensions from the standpoint of national security. As a consequence, national security must take priority over any other consideration, including those related to federalism, if the country is to deal effectively with the terrorism threat (Garge, 2019)

Conclusion and Recommendations

From the above, we may conclude that anti-terrorism measures should, therefore, be designed to protect democracy, the rule of law, and fundamental rights, which are core values in our society and the Constitution. It has been emphasized from time to time that terrorism creates an environment that is harmful to the right of people to live in peace. Evidently, terrorism's goal is to destroy democracy's very fabric, and it has now emerged as a serious threat to humanity. Therefore, the law should be strict enough with maximum punishment sentences for terrorists. Furthermore, Indian anti-terrorism laws have raised a slew of human rights concerns, some of which are similar to concerns raised by anti-terrorism legislation in other countries. Thus, these laws need to be corrected to incorporate all the international standards. Finally, it is advisable that all sections of the UAPA that raise human rights concerns be repealed, and terrorism and other security laws should be amended to ensure tighter administrative and judicial oversight of the investigation and prosecution decisions, as well as transparency, so as to ensure nationwide uniformity and adherence to principles of fundamental rights. In contrast, the UAPA and other security laws should be amended to eliminate provisions for official immunity, and prior government approval should be required for any prosecution of government officials. Even though, development and implementation of appropriate reforms of the criminal justice system are required with the assistance of state governments, international organizations, and civil society. Notwithstanding, include information on how India's anti-terrorism laws and institutions are practical and how they meet international human rights standards in future reports.

⁷ The overall review of the procedural elements of several anti-terror legislation shows that the UAPA has severe rules that make the work of investigation and prosecution a little simpler because of its provisions related to evidence, admission of confessions to police officials, and so forth.

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