WWW.IJRPR.COM

International Journal of Research Publication and Reviews

Journal homepage: www.ijrpr.com ISSN 2582-7421

Balancing Civil Liberties with National Security in India: A Study

Puneet Inder Kaur Sekhon[1], Dr. Radhika Dev Varma[2]

[1]LLM, Chandigarh University
[2]Professor, Chandigarh University

ABSTRACT:

The fragile equilibrium between protecting civil liberties and national security imperatives has grown in importance in the modern period.

This article explores the complex interactions between these two important facets by looking at anti-terrorism laws in the context of the Indian Constitution. In a time of changing security dynamics and transnational threats, countries struggle to maintain national security while protecting their citizens' fundamental rights. The article clarifies the Indian context, where anti-terrorism laws are used to manage the challenging challenge of balancing civil freedoms and national security considerations.

The goal of this study is to achieve a balance between protecting national security interests and preserving the valued civil liberties guaranteed by the Indian Constitution, and the term "harmonizing" perfectly captures this goal. The need to make sure that counter-terrorism measures don't impose undue restrictions and that they adhere to constitutional guidelines is inherent in this balance.

Creating laws that enable law enforcement to take decisive action against terrorist elements without violating the rights of innocent people is essential to striking a balance between anti-terrorism initiatives and civil liberties.

Keywords: security, liberty, detention, freedom, human rights, violations, implementation, infringement.

INTRODUCTION:

In the ever increasing complexity of the world, the delicate equation between national security and civil liberties is not only significant but extremely hard to harmonise. The tedious task of governance deals with both the concepts simultaneously presneting a paradox between the two as the implementation of one affects the enjoyment and prevalence of the other. The freedom of speech, expression, association and movement enjoyed in a democarcy are directly linked to potential acts of violence that could destroy or destabilise the state in a huge manner. On the contrast, we see that intense and rigid application of security laws could easily result in infringement of civil libertiesand violation of basic human rights. Such synchronisation of the two concepts is intricate in a country like India where striking an equillibrium has always been a struggle owing to its highly diverse and large population, disturbing relations with some of its neighbours and faulty appliaction of anti-terrorism laws. It has been witnessed innumerable times where the state has had to strike a right balance between civil liberties and freedom of the citizens since both are of utmost importance for the proper governanace of the nation.

Safeguarding national security of a nation alongwith the conservation of civil lierties are both equally crucial for true governance of the state. Both are so interwoven one cannot be brought into existence without exerting influence on the other. Harmonisation and reconciliation of the two should be the goal of every government. Therefore, finding the ideal balance is both morally and legally required since too much of either could jeopardize the foundation of a free and just society.

OVERVIEW:

The notion of ‘national security’ as existing today is not just concerned with territorial integrity but also includes various kinds of threats to the unity of the antion or influencing the lives of innocent people. This has resulted in countries framing stringent legislations involving serious violations of privacy and personal liberty. These could also involve detention of individuls without following the procedure of a fair trial and giving the opportunity of being heeard to the detainee. Now this is a genuine concern because it takes away the basic human rights of the individual that a human posesses by the virtue of being human. Hence, such inhumane provisions are detreminental to a democratic governement especially in cases of their misuse or arbitrary imlementation.

The security of a state refers to the protection of sovereignity in any shape or form and prevention of any such activity that carries the potential to create terror in the society and instill fear in the minds of the citizens.

The phrase “civil liberties” as embedded in the Indian democracy, presents such inalienable rights that are imperative in leading a life of joy and dignity. These include rights like the right to equality, freedom of speech and expression, freedom to profess and practice religion, privacy and the protection from tyrannical actions. The primary authentication mark of a just and fair legal system is its dedication towatds the provision and availability of such civil liberties with appropriate safeguards for the same.

In the Indian context, a variety of civil liberties have been guaranteed under the Constitution enforced in 1950, which also describes the procedures for defending and upholding these rights.

So to make sure that anti-terrorism laws adhere to the language and spirit of the founding document, they must pass the constitutional litmus test.

Even during emergencies, the Indian Constitution, a living constitution that represents the will of the people as a whole, acts as a sentinel to prevent the degradation of civil liberties. India, a thriving democracy, has had to deal with a variety of security issues.

In the aftermath of certain events such as terrorist threats, public perception may change dramatically leading to increased backing for security. This could, however, ignite discourses on the implications of the same on civil liberties in the long run.

A proper system of checks and balances between the arms of government as well as an independent judiciary reduces the chances of the aforementioned scenario occurring. Accountability is achieved through the existence of control mechanisms in place.

There is a need to address the issues of security within the society through addressing the issues of trust and confidence on the governments by way of rendering legitimacy of the measures in the foreground without the issue being overly secretive.

Considerations may mitigate for or against the balance in context depending on the threat level or context, although such modifications should be on short notice and within a very limited time frame if possible.

Obtaining equilibrium is a process from which conflict resolution strategies have to be evaluated and placed into operation to promote the importance of security and the rights of citizens.

Through an examination of legal provisions, judicial interpretations, and case studies, this article aims to shed light on the delicate balance that India strives to achieve – one that respects its security concerns while safeguarding the democratic values that define its identity. By exploring the nuances of harmonizing these seemingly opposing forces, the article seeks to uncover how the Indian Constitution provides the framework for this endeavor. This article contributes to the larger discourse on reconciling security and liberty in an increasingly complex world.

Everyone agrees that human rights are universal, belonging to every person and therefore God-given (though this does not mean that they can never be infringed upon, a notion that is the basis for distinguishing between derogable and non-derogable rights and others). Each person has certain fundamental human rights and also there are certain additional rights as prescribed by the laws of separate nations. Furthermore, Omeruse’s universal basic approach is also stressed by the ICCPR in Art.4, paragraph 2, which imposes absolute deprivations on certain individual’s basic rights that cannot be derogated from even during states of war and public emergency. The most important are the right to life, and to freedom from slavery and from torture or cruel, inhuman or degrading treatment or punishment. Other rights that are also considered as the part of civil liberties within the category of personal liberty and the right to a fair hearing, can be summarily suspended in times of emergency, which poses a risk to the survival of the community and legally sanctioned but to the degree entirely demanded by the circumstances. Such a clause is present in Article 15 of the European Convention on Human Rights, in relation to which the same torture rights and rights to freedom from slavery are non-derogable and imprescriptible.

The 9/11 attacks which subjugated New York and Washington D.C. on September 11, 2001 and the 4 December 13 2001 battle at Indias parliament house seems to have heated up conversation about whether there is a need for national security laws in India, and the human rights dimensions concerns and civil liberty issues which are likely to arise from the enactment of such laws. The strengthening of national security laws6 around the world seems to be pursued with the objective of8 combating terrorism8 and other forms of internal and external threats to the States and the societies in which people live. ‘With relation to these events’ the Indian government ‘has been compelled’ to enact a new law, that so I say, appears to be draconian and unnecessary. The Indian Government Passed this Law contrary to the general will of the people who overwhelmingly were opposed to the Law. Contrary, one can argue, the National Human Rights act India NHRC lashed out at the Prevention Of Terrorism Act of 2002 (POTA) when it was still a draft. The NHRC after a consensus that “there is no need for the enactment of law based on the Draft Prevention of Terrorism Bill of 2000” furthered its recommendation against the bill.9 As per the practice of normal remedies by non governmental organizations and others, owing to the eleventh hour enactment of Khotriwan the courts say supreme court which has always upheld the law and its constitutional validity over any bias and sentiment.

Following the elections, the government was formed by the Congress party within India in May 2004.

The government of India along with analyzing critical anti-terrorism measures has also incorporated severe provisions of national security; however, such measures do not stand the scrutiny of human rights standards. There exist measures which could have averted the opposition gaining control along with the electorate that the framework extended. Over the last 50 years following independence, India has made progressive advancement once with even greater purpose towards establishing a legal, constitutional and institutional framework for the protection, promotion and even domestication of human rights. Since the years 1980 and onwards, these measures have been buttressed in a wide variety of judicial pronouncements which have been delivered by the Indian judiciary, more especially the Supreme cour13t of India, which has greatly limited government powers to include that of its police and other

enforcement mechanisms while opening up many spheres of freedom and liberty. They were defended in particular by drawing a wide and purposive interpretation to Fundamental Rights as provided for under Chapter III of the Constitution of India.

The international human rights framework, conventions or treaties to which India was a signatory or ratifying party, also justified the limitations on governmental powers. However, the contemporary reality of Indian executive governance demonstrates the weaknesses and inadequacies of the treaties and conventions. As a result, police, military and para-military forces continue to violate human rights. This problem underscores the need to develop a culture amongst law enforcement officials that respects human rights as a sine qua non for the preservation of the rule of law. Passing certain laws under the guise of protecting national security in India offers an occasion to examine the human rights understanding in a constitutional sense. These laws granted significant powers to the Indian executive, thus providing greater opportunity for abuse and violation of fundamental rights. This article addresses the issue of Indian national security law operation and the efforts to combat terrorism while protecting human rights.

The government of India along with analyzing critical anti-terrorism measures has also incorporated severe provisions of national security; however, such measures do not stand the scrutiny of human rights standards. There exist measures which could have averted the opposition gaining control along with the electorate that the framework extended. Over the last 50 years following independence, India has made progressive advancement once with even greater purpose towards establishing a legal, constitutional and institutional framework for the protection, promotion and even domestication of human rights. Since the years 1980 and onwards, these measures have been buttressed in a wide variety of judicial pronouncements which have been delivered by the Indian judiciary, more especially the Supreme court of India, which has greatly limited government powers to include that of its police and other enforcement mechanisms while opening up many spheres of freedom and liberty. They were defended in particular by drawing a wide and purposive interpretation to Fundamental Rights as provided for under Chapter III of the Constitution of India.

It further elaborates the legal structure of anti-terrorism laws in India with special reference to the Prevention of Terrorism Act of 2002 (POTA) and discusses the critical implications thereof from the viewpoint of human rights. This paper also discusses the Supreme Court of India's judgment declaring the constitutional validity

of POTA, but at the same time it underlines the need for checks and balances in enforcing antiterrorism laws. However, forming a Congress-led government in India has resulted in the repeal of POTA. This is a significant positive development as far as resistance by the human rights movement goes to ensure that civil liberties are not compromised in fighting terrorism and the need for national security. However, apprehensions are aroused about how the strengthening

of other criminal law legislations can also have the same impact of POTA.

It analyzes the human rights implications of the emergency provisions under the Indian Constitution in order to identify the current state of jurisprudence.

It also critically evaluates some judgments of the Supreme Court of India which have given birth to the law of habeas corpus.

The article argues that it is natural for citizens worldwide, including citizens in India, to feel threatened under certain "terrorized" circumstances, but that any State or territory's response to terrorism or other national security threats needs to be fashioned within the domestic and international human rights framework. Understanding that the rule of law cannot be protected by the rule of force supports this argument; hence, India and other countries of the world ought to ensure that in their zeal to combat terrorism and to create a secure environment, they should not pass laws, rules, and regulations that violate constitutional ideals, political culture and other domestic and international human rights commitments.

BACKGROUND:

The threat of terrorism brings about certain insecurities that need to be dealt with by the action of the state in different ways. One such course of action is the enactment of anti-terrorism laws. To fix the problem of terrorism, tbese laws on terrorist activities are created. Due to the rise on terrorism in the last few years, many countries have enacted suitable and effective anti-terror laws. India too has witnessed the passing of several anti-terrorism legislative measures some of which are colonial in nature and intend the law rules passed, especially after the year nineteen eighty. Nevertheless, much of this legislation was rendered impotent or repealed because of its misuse. These laws were likely expected to be passed and enforced only for a brief period until conditions improved. The intention was not to make these very repressive measures a permanent

feature of the laws of the land. But with the ever present menace of terrorism, such laws have been reinstated afresh with necessary modifications. Given that terrorism has been an issue for our country for a long time, the government of India has enacted a few laws to controll the terrorism and secessionism.

These measures may be divided into:

1) Preventive detention laws

2) Other punitive laws

PREVENTIVE DETENTION LAWS:

As a matter of fact, the expression “Preventive Detention” found its way into the provisions of the Government of India Act, 1935 and has been used in Entry 9 of List I and Entry 3 of List III of the Seventh Schedule to the Constitution of India,2 nonetheless there is no conclusive legal definition of the

term in the Indian legal system. It is an action which is directed towards the future and not the past and here, neither is a crime involved. Among the two terms more often than not the term 'punitive' is replaced by the term 'preventive'. Instead of waiting for the man to commit the deed and then punishing for it, the approach is preemptory in nature, so as to intervene and prevent the man from committing the deed, in the first instance. Hence, thus the last mission of preventive detention centers on the aspect that the person will cause no damage to society and also to protect the state from espionage and other covert activities that aim to create disorder within the public.

The East India Company Act of 1780, included the first historical instance of incarceration of an individual on the behest of the president, however this was also known as the legislative Act of 1784 which was precise. It permitted the Governor-General to fix and clinch any individual or individuals engaged in or suspected of engaging in any cross-border communication or activities that posed any threat or risk to the peace, safety and security of British settlements and possessions in India apart from justifying preventive detention of such persons whose normal activities were a threat to the state's security However, the above said Act however did allow the detained person to know the basis for the detention within five days[1].

Also these included later enacted Acts such as the Bengal Regulation of 1812, the Bengal Regulation of 1818 for State Prisoners, Madras State Prisoners' Regulation II of 1819, Bombay State Prisoners' Regulation XXV of 1827 and State Prisoners Ordinance of 1850 providing for detention and arrest without a warrant. As per these rules, a prisoner was not allowed to file a writ of habeas corpus before the court. Nevertheless, the detenue was entitled to defend himself and it was also provided under section 491 of the Criminal Procedure Code4 that a right to writ of habeas corpus existed[2].

It is to be noted that the current Article 22 of the Constitution, dealing with the guard given to arrested individuals and imprisoned subjects under the preventive detention laws, was one of the regions which was debated vigorously when drafting the constitution. It further states that preventive detention laws can be invoked in the country by the government in the name of 'national security' and 'public order' respectively.

Inevitably, the effective legislature led to the enactment of the Preventive Detention Act of 1950 within a short span of time upon the operation of the Constitution. The Act, as its name suggests, allows for imprisonment of gunny sacks of people especially non-citizens in India or those considered a threat to particular issues such as those relating to defense, international relations, internal peace, and other essential services.

Shortly after the ratification of the Constitution, Preventive Detention Act, 1950 was passed by the Parliament which invoked detention as a precaution against any activities likely to be harmful to India's defensive capabilities, international relations, internal and external security, public order, and essential supplies and services. Internal Security Act, which was also known as ISA Act and was enacted in 1971 which restored the powers of the PDA after it's lapse in 1969 came into force. To address the defence situation that arose in the year 1971, Indian Parliament enacted Defence of India Act, 1971 on 4th December, 1971. This Act conferred the enormous powers of detention of persons without trial for prolonged periods termed 'preventive detention', search and seizure of articles without obtaining any precepts from the courts, and cordoning off territories using electronic surveillance devices upon the State for the purpose of curbing social and political unrest inside the country, and neutralizing agents and actions that threaten national integrity including but not limited to sabotage, terrorism, espionage, and other national security risks. The Act was enacted because of the severity of the emergency declared by the then President and outlined the use of extreme measures to ensure public and national interest, including the defence of the country, civil defence, dealing with certain crime and related matters.

After Congress regained power in 1980, the Parliament passed the National Security Act of 1980, which remains in effect to this day. With this Act, some PDA and MISA provisions were brought back. If someone is suspected of posing a threat to national security, economic viability, or public safety, security personnel are authorized to hold them without a warrant. It also allows preventative detention for a maximum of 12 months, and the procedural requirements are essentially the same as those under the PDA and MISA. Security officers who helped put an end to the violence are likewise granted immunity under the Act. This is the only law in India that permits preventive detention in the fight against terrorism.

According to the Act, the Central Government or the State Government may detain an individual in order to stop them from acting in a way that jeopardizes the State's security, the upkeep of public order, the upkeep of community-essential supplies and services, or in any other way for which detention is required. Any detention order made under this legislation may be implemented anywhere in India, but its duration cannot exceed 12 days[3].

The maximum detention period is twelve months[4]. At any time, a detention order may be modified or revoked[5].

In India, various factors have resulted in the need for stringent national security laws. Mr. K.P.S. Gill, Former Director General of Police of the State of Punjab in India, has argued that: "national security legislation is not just a definition of crimes or new patterns of criminal conduct and the prescription of penalties. It relates to the entire system, institutional structures and processes that

are required to prevent and punish such crimes, maintain order, and protect the sphere of governance[6].

In an urge for anti-terrorism legislations in India, an extensive set of laws aimed to be able to fight those infamous activities of counter terrorism law, as well as the one of combating such crimes like organizes crime must be drafted and take their permanent place in our books. But again, that argument has

[1]Chatterjee, Dr. S. S. (2003). Control of Political Offences in India Through Laws (p. 226). Kolkata: Kamal Law House

[2]Ghosh, S.K. (2005). Terrorism: World Under Siege (pp. 397-398). New Delhi: Ashish Publishing House

[3] National Security Act, 1980, section 3.

[4] ibid, section 13

[5] ibid, section 14

[6] K.P.S. Gill, "The imperatives of national security legislation in India"

got a particular state perception of some threats, that somehow ultimately seem to get shaped basically in line with those enforcing or implementing the enforcing law through strategies.

It does not consider the causes of terrorism and other terrorist threats. Its approach is narrow because it only tries to build institutional and law enforcement apparatuses as a response to terrorism and other national security issues.

The main thrust of the argument above is that: (1) the existing legal framework is inadequate; and (2) more laws and more powers in these laws are needed for law enforcement officials to effectively combat terrorism and other offenses relating to national security. It is almost ironic that there are incessant calls for more laws to protect Indian national security, even when there exists already a plethora of legislation on protection of national security that are found in India, including general crime preventing legislations. Domestic and International Human Rights

NGOs and useful interventions by Supreme Court of India, various High Courts, National Human Rights Commission (NHRC) and State Human Rights Commissions have documented human rights violations committed by law-enforcement officials. This has brought the human rights violations committed by the State and its institutions to the attention of both the judiciary as well as the NHRC; these violations were redressed by provision of compensation to victims of crime and abuse and sometimes action against the errant functionary.

OTHER PUNITIVE LAWS

Chapter VI of the Indian Penal Code (IPC) deals with “offenses against the State and the Army." The sections are broadly grouped into the offenses of: (1) waging, attempting or conspiring to wage war against the Government of India (IPC sections 121, 121A, 122, and 123); (2) assaulting the President of India (or Governor of a State) with an intent to compel or restrain the

exercise of any lawful authority (IPC section 124); (3) waging war against a State at peace with the Government of India (IPC sections 125); (4) permitting or aiding the escape of a state prisoner or a prisoner of war (IPC sections 128, 129, 130); and inciting others to rebel against the State (IPC section 124A)[7] While the above sections of the Indian Penal Code are intended to protect national security in whatever form or another, very little controversy exists about these sections, except the one on sedition. The term "sedition" in section 124A IPC refers to an individual's action, be it words, deeds, or writings that intend to disrupt the peace and calmness of the state and encourage others to topple the government through a change of law[8].

Section 124A of the IPC: Sedition - Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1 - The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2 - Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3 - Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

A literal reading of the sedition section depicts that the law aims at punishing the acts or attempt of a person who brings into hatred or contempt, or creates disaffection towards the Government established by law in India. Arguably, such acts could prove to be threatening to national security and deserve tough punishment. Such type of threat to national security needs to be distinguished from others.

from terrorism, which is discussed subsequently. The three readings to section 124A support the type of "hatred or contempt" or "disaffection" that the statute is aiming to prohibit. The sedition statute was challenged at the constitutional level under the provisions for freedom of speech and expression in the Constitution of India. Article 19 of the Constitution confers Indian citizens six basic freedoms: (1) freedom of speech and expression; (2) freedom of assembly; (3) freedom of association; (4) freedom of movement; (5) freedom of residence and settlement; and (6) freedom of profession, occupation, trade, or business.

None of these freedoms is absolute, and each of them is particularly restricted by clauses two through six of Article 19, but the inclusion of the word "reasonable" in Article 19(2) has acted as an effective check so that even the parliament cannot curtail the citizen's rights unreasonably. Under other circumstances, the courts may decree those restrictions as unconstitutional as well. Clause two to six of Article 19 list down the reasons for which the State is allowed to restrict their citizens' freedom citizens' rights. These limitations include; the interests of the public at large, security of the State, public order, morality or decency, and other grounds as mentioned in those sub-sections. There would be valid grounds for including reasonable restrictions on citizens' rights, because individual freedom sometimes has to give way for the general good of the community.

Comparing this provision with the ones included in the newly introduced Bhartiya Nyaya Sanhita, 2023 (BNS), we can see that the crime of sedition was described in full in Section 124A of the former IPC. Although a similar offense is provided for under Section 152 of the BNS, the BNS does not refer to this as sedition and instead reclassifies it as acts that jeopardize India's sovereignty, unity, and integrity. Section 152 reads as follows:

[7] K.D. Gaur, criminal law-cases and materials 635-44 (3d ed. 1999)

[8]Ratanlal & Dhirajlal, the law of crimes 415-22 (23d ed. 1991)

"Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation, or by electronic communication or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

Explanation.—Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section."[9]

Since the BNS doesn't list all the activities that could be interpreted as a threat to the country's sovereignty, unity, and integrity, or even provide an example of what could be interpreted as such, the net cast by inserting the phrase "endangering India's sovereignty or unity and integrity" could be broad and abused. According to the wording of Section 152 of the BNS, it is illegal to do anything that "excites or attempts to excite, secession or armed rebellion or subversive activities." On the other hand, the BNS also gives the authorities more leeway in interpreting whatever conduct might be included by this Section, which creates uncertainty.

The terms "electronic communication" and "financial means," which are both instruments that can be used to incite secession, armed revolt, or separatism and are punishable under Section 152 of the BNS, have also been added.

The definition of "Electronic Communication" is found in BNSS Section 2(d)(i).

The BNS does not define the term "financial means," hence it is up to the courts to determine it.

Furthermore, the sentence under Section 152 of the BNS has been extended from three to seven years. Although the administration claimed that the BNS no longer punished sedition, in reality, the BNS not only gives us a more comprehensive application of the previous "Sedition" law, but it also imposes harsher penalties.

Over the years, the concept of freedom restrictions, its meaning and scope have also been explained.

In order to drive home the point that balancing individual liberties with social interest is necessary, the behest of Justice Das seems appropriate: "Social interest in individual liberty may well have to be subordinated to other greater social interests. Article 19's protected freedoms call for a constitutional analysis, and any such restriction imposed thereon needs to be reasonable, while simultaneously constituting a designation in the Constitution. Reasonable restrictions on freedom of speech and expression can be placed upon the interests of the security of the State. The wording "security of the state" is subject to numerous interpretations; thus, judicial interpretation of these words is important, lest the ambiguity can provide a source for abusing the Constitution.

In *Thappar v. State of Madras*[10], the Supreme Court of India clearly noted that "security of state" does not refer to ordinary breaches of public order, because they do not pose any danger to the State itself. The Constitution (First Amendment) Act of 1951 followed this rule, for preservation of public order became one of the grounds for imposing restrictions upon the freedom of speech and expression.

The right of freedom of speech and expression encompasses protection for seriously criticizing existing government systems, policies, and administration mechanisms, along with protection for suggesting and proposing the formation of a new system[11]. In the landmark case *Queen Empress v. Tilak*[12], the Bombay High Court held that inciting feelings of enmity against the government is enough to make a person liable for the sedition law. However, in *Niharendu v. King Emperor*[13], the Federal Court construed section 124A rather liberally and the Chief Justice argued that: "the acts or words complained of must either incite disorder or must be such as to satisfy reasonable men that that is their intention or tendency." The court declared that the core element of the offense was public disorder, or the reasonable anticipation or likelihood thereof. The decision was radical because it limited the offense of sedition to actions which tended to incite violence or any other form of disorder and not to all forms of dissenting remarks.

India has a number of harsh anti-terrorism legislation, some of which have already been overturned at various times. The National Security Act of 1980, the National Investigation Agency Act of 2008, the Unlawful Activities (Prevention) Act of 2012, the Unlawful Activities (Prevention) Act of 2008, the Unlawful Activities (Prevention) Act of 2004, the Unlawful Activities (Prevention) Act of 1967, and the Armed Forces Special Powers Act of 1958 are currently the laws in effect in India to combat terrorism.

Unlawful Activities Prevention Act, 1967 (UAPA):

India's Constitution was ratified on November 26, 1949, and it became operative on January 26, 1950. The Constitution granted its citizens many rights, and it soon became clear that the operation of the state would become gravely out of balance if these rights were not upheld. This necessity led to the first revision of the Indian Constitution in 1951, which replaced Article 19's clause (2), which placed suitable restrictions on the use of such rights. The Constitution (Sixteenth Amendment) Act, 1963 further amended Article 19(2) in response to the Committee on National Integration and Regionalism's recommendation, which was made by the National Integration Council to impose reasonable restrictions in the interest of India's sovereignty and integrity. Furthermore, to implement the aforementioned Constitutional Amendment's provisions, the Unlawful Activities (Prevention) Bill was presented to the Parliament. It became the Unlawful Activities (Prevention) Act, 19678 after being accepted by both Houses of Parliament and ratified by the President

[9] Bhartiya Nyaya Sanhita, 2023

[10] Thappar v. State of Madras, A.I.R. 1950 S.C.R. 594).

[11] Niharendu v. Emperor, A.I.R. 1942 F.C.R. 22, 26)

[12] Queen Empress v. Bal Gangadhar Tilak, I.L.R. 22 (Born.) 112).

[13]Narayan, A.I.R. 1947 P.C. 82

of India on December 30, 1967. The initial purpose of the act was to create a procedure for obtaining information, and the Criminal Procedure Code, 19739, was to be followed for trying the accused[14]. The original act's stated objectives and rationales state that it seeks to prevent any unlawful action that individuals or organizations may engage in.

All liberal democracies saw a significant increase in the intensity of their antiterrorism laws following the 9/11 attacks[15]. This presented an opportunity for countries concerned about terrorist activities in one of the most developed countries to implement punishing laws. At the time, there wasn't much opposition to this disaster since nations were horrified by it. After September 26, 2001, the situation in India was similar[16].

The state must protect its citizens from those who would violate their rights, but it shouldn't do so at the price of the minority's rights in the country. Because they provided no practical safeguards and gave the executive branch vast authority, earlier anti-terrorism legislation were repealed[17].

The public's distaste for the UAPA continues to grow with each revision because it still represents the same things.

When the UAPA was first formed, lawmakers discussed its necessity and possible misuse, and opposition parties voiced their concerns. The government retorted that an arbitrary ban on the group would not have taken place at that time because the Act required it to carry the burden of proof in order to establish an organization's prohibition.

Therefore, even though the original Act included constitutional protections15, it was the focus of public and scholarly investigation due to its amendments and continued limitations on particular minority organizations. After several amendments, anti-terror provisions were added to the UAPA in 2004. The most recent and controversial revisions, which classified people as terrorists, were made in 2008, 2012, and 2019.

National Investigation Agency Act, 2008:

The National Investigation Agency Act of 2008 was passed to investigate and prosecute individuals for offences affecting the sovereignty, security, and integrity of India, as well as offences relating to state security, friendly relations with foreign states, and offences under laws enacted to carry out international treaties, agreements, conventions, and resolutions of the United Nations, its agencies, and other international organizations[18].

The National Investigation Agency (NIA) Act, 2008 was passed by the Parliament in the wake of the recent spike in terrorist attacks, including the attack on the British Parliament and the Mumbai attacks, with the aim of increasing professionalism in the investigation of terrorist acts for the first time, a national investigation agency with the authority to look into matters over the entirety of India's territory has been envisioned by the NIA Act. It is the shared obligation of the federal, state, and local governments to combat terrorism. It is crucial to develop tactics, precise intelligence, and current databases on terrorists to counter terrorist actions.

The important aspect of The National Investigation Agency Act of 2008 is that it applies to the whole of India, Indian citizens living outside of India, and passengers on ships and aircraft with Indian registry. During the investigation of a crime, the NIA personnel is attributed with the same rights as that of a police officer. The NIA investigates a crime only when the central government believes the crime is related to terrorism and requests that the NIA look into it. It can look into additional offences related to terrorism. The State Government provides the NIA with full support in conducting criminal investigations. The Act's investigation-related provisions have no bearing on the State Government's authority to look into and prosecute any terrorism-related crimes or other offences.

Armed Forces Special Powers Act, 1958:

One of the most draconian legislations ever enacted by the Indian Parliament is the Armed Forces (Special Powers) Act of 1958 (AFSPA). The act gives special powers to the armed forces in what it deems "disturbed areas" and has only six provisions. In 1972, it was amended to cover all seven states in India's north-eastern region. It was initially only applicable to the north eastern states of Assam and Manipur23. The Armed Forces (Special Powers) Act of 1948 is where the Armed Forces (Special Powers) Act of 1958 got its start. The Indian government passed four ordinances in response to the situation that developed in some areas of the country because of the country's 1947 division.

The major purpose of the act is to make it possible for military personnel to be granted special authority in troubled areas of the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura. According to the Act, the Governor must declare a certain area to be a disturbed area before AFSPA can be implemented there[19].

Definitions relating to this Act are given under Section 2 of the Act. The Act defines that the term "armed forces" shall mean armed forces and air forces, which are regarded armed forces on land. Other Union armed forces could be included in it. A "disturbed area"[20] is further defined as a region that has been identified as a disturbed area under Section 3 of the Act. Therefore, the Governor shall declare an area to be a disturbed area before AFSPA can be

[14] Anjana Prakash, "It's Time for the Government To Redeem Itself and Repeal the UAPA", The Wire, 25 July 2021

[15] Mark Pearson and Naomi Busst, "Anti-terror laws and the media after 9/11: Three models in Australia, NZ and the Pacific", Decemeber 2006.

[16]Maeen Mavara Mahmood, 'The Conundrum of the Unlawful Activities (Prevention) Act, 1967: A Comparative Analysis with Analogous Legislations' (2021) 26 Supremo Amicus 214.

[17]Bhamati Sivapalan & Vidyun Sabhaney, 'In Illustrations: A Brief History of India's National Security Laws' (The Wire, 27 July, 2019)

[18]"Amendment to the National Investigation Agency Act, 2008: An Act of Violation" (Amendment to the National Investigation Agency Act, 2008: An act of violation - Frontline, August 5, 2019)

[19]Armed Forces Special Powers Act 1958, s 3.

[20]ibid s 2(b)

implemented there. The Hon'ble Supreme Court of India, however, held that section 3 cannot be construed to grant the authority to make a declaration at any time. The declaration before that the period of six months shall have expired;

It ought to be reviewed periodically.

The provision of the act, which generated the most controversial debate is Section 4, that establishes some concrete authorities of the military services. The Armed Forces Section 4 in the Act authorized the forces to prohibit fives people or more and prevent gathering in a single place. If they see that any person or numbers of individuals are violating a law; they are capable of shooting while giving proper caution.

If there is a good faith suspicion that any type of weapons could be carried by a vehicle, the authorities can stop and search the vehicle.

The army can arrest the suspect(s) without a warrant if there is reasonable doubt about whether a cognizable offense has been committed. The Act grants the military a right to enter a location without a search warrant and to conduct a search there.

Maharashtra Control of Organized Crime Act, 1999 (MCOCA):

In an effort to eradicate both organized crime and terrorism, the Maharashtra Control of Organized Crime Act, 1999 (MCOCA), was enacted by the state of Maharashtra in the year 1999. The evil of organized crime was growing, as it was stated in the declaration of object and reasons, and the Maharashtra State did not have any effective legislation to control the organized crimes effectively. It was necessary to enact laws along the lines of the current law to deal with them. The Act itself contains provisions to prevent the misuse of the law. The passage of this law is expected to significantly reduce the propagation of fear in society and allow for significant control of the criminal groups supporting terrorism[21]. The preamble of MCOCA declares the existing laws to be insufficient in dealing with or checking the scourge of organized crime. For effective countering of the challenge of organized crime, the government has resolved to make a special law that contains provisions which are strict and have deterrent value and, inter alia, includes the interception of wire, electronic or oral communication under specific circumstances.

Only the Special Court whose local jurisdiction the offence was committed to or, as the case may be, the Special Court established for trying offences may try any offence under the MCOCA31. Under the MCOCA, filing of a charge sheet has been made possible within 180 days whereas it normally takes 90 days under the ordinary law. During MCOCA proceedings an apprehended person can be kept in police custody for a period of 30 days rather than the usual 15 days after the accused is brought to court within 24 hours, instead of normal criminal cases[22]. The Act thus permits the interception of wire, electronic, or oral communications[23], which makes the intercepted information admissible as evidence against the accused in court, requires every order issued by the authority with the necessary authority to approve the interception to be reviewed by a review committee, and some restrictions are put on the intercept.

Anyone who fails to comply with an order made under subsection (3) is liable to imprisonment for a term of up to one year and also liable for fine which may extend up to a thousand rupees.

For ensuring the safety of the witness, such is the provision that the courts of law need not issue a summons for appearance in court if the said witness is not willing for doing so. There should be no fear of any form of victimization under such a judiciary system. It is suggested to do so by a Deputy Commissioner or above.

rank officers handle the case, especially in MCOCA cases. A Deputy Commissioner of Police or a higher rank officer is the only one who can record the voice of a gang member detained and wanting to confess; the confession is admissible in court[24]. In such a case, it must not be under investigation nor supervised by the Deputy Commissioner of Police or any rank above him who will record the confession.

Criminal Procedure Code, 1973

Every Executive Magistrate or Officer in charge of a police station (not below the rank of a sub-inspector) shall have powers to order any unlawful assembly or any assembly exceeding five persons, which may be likely to cause a disturb the public peace[25]. The above magistrate or policeman may use such degree of force as may be necessary to break up or disperse the unlawful assembly or to apprehend and commit its members to custody[26]. If the Executive Magistrate is of opinion that he cannot disperse an unlawful assembly with the aid of ordinary activity, he shall be entitled to use armed forces in order to do so[27]. Such a gathering can be dispersed by any commissined officer of armed forces assisted by the armed forces subordinate to him on his satisfaction that public order is likely to be endangered by such an assembly, and without an order from any Magistrate can be tackled[28]. Further, section 144 of the Criminal Procedure Code, 1973 provides that the District Magistrate, Sub Divisional Magistrate, or any other Executive Magistrate, specially empowered by the State Government, may order a particular person or the public at large to refrain from doing something or not to assemble in a public place so as not to cause immediate harm or danger to human life, health or safety, a disturbance of the public tranquillity, a riot, or an affray. Whilst the

[21]'Maharashtra Control of Organized Crime Act, 1999 Explained by Adv. Ravi Drall, Delhi High Court' (Lawstreet.co)
[22]The Code of Criminal Procedure 1973, s 167(2)
[23]Maharashtra Control of Organized Crime Act 1999, s 14
[24]ibid s 23 (1)(b)
[25] The Code of Criminal Procedure 1973, s 129(1)
[26]Ibid s 129 (2).
[27]ibid s 130 (1).
[28] Ibid s 131

above clause is not specifically aimed at terrorism, it may still act to limit terrorist activities in some areas in which it is prohibited for any members of that community to venture outside their houses. If a terrorist should decide to venture outside in such an area he will be quickly identified should police be efficiently patrolling the area.

CONSTITUIONAL VALIDITY:

Anti-terrorism laws are special laws that have sometimes been enacted to respond to extraordinary situations. The judiciary has, time and again, validated the legislations. The legislative authority of the Parliament to enact different types of anti-terrorism laws has, through various cases, been questioned.

As anti-terrorism laws are special laws, they conform to the jurisprudential history of other special laws that have sometimes been enacted to address peculiar situations. India is not an exception to this rule. The British only meant to detain those who were perceived to be a threat to the British settlement in India when they enacted the first preventive detention law in 1793. The Bengal State Prisoner's Regulation was later enacted by the East India Company in Bengal, and was in force for a considerable period as Regulation III of 1818. Regulation III, an extra constitutional regulation violating all the fundamentals of liberty, allowed that the detention of anyone could take place for any number of months without any legal action proceeding against him on account of lack of sufficient grounds for doing so. The greatest weapon the British had of ending political violence was Regulation III. Regulation III of 1818, though gradually extended to other parts of British India, was mainly used in the early two decades of the 20th century to curb revolutionary terrorist activities in Bengal. The Regulation allowed the "personal restraint" of people against whom there may not be a proper cause to take any legal proceedings for preventing tranquillity in the territories of native princes so entitled to its protection and the security of British dominions from external hostility and internal commotion. The start of the 20th century marked the arrival of many secret organizations together, which expressed the desire for independence, leading to the Indian revolutionary movement. In order to check the growing flow, several acts were put into place during this time period.

The judiciary has played different roles with regard to anti-terrorism laws.

First, the courts have generally upheld the legality of security, emergency, and special laws. Even if a person's human rights are being violated, courts have a tendency to recognize the existence of particular circumstances and settings as justifications for a less strict interpretation and implementation of the law.

Before the Indian Constitution of 1950, India was administered by the Government of India, and the distribution of legislative power between the Federation and the Provinces was the same. As Entry 1 of List II of the seventh schedule to the Government of India Act, 1935, those in such custody are those who are liable to preventive detention with respect to the maintenance of public order. The makers of our Constitution thought that the necessity for framing such preventive detention legislation would rarely arise and should be used sparingly and cautiously in a free India with a democratic and representative government. However, the Preventive Detention Act, which was passed by the Parliament in 1950 to stop the "violent and terrorist" activities of the the communists in the states of Madras, West Bengal, and Hyderabad was a sagacious move. *A.K. Gopalan v. State of Madras*[29] was the very first case that was dealt by the Indian judiciary after enactment of the Indian Constitution. The Preventive Detention Act is not liable to proclamation of an emergency under Part XVIII of the Constitution or to advent of any war with foreign power. Hence, our Constitution accepted this as a matter distinct from other emergency laws. A novel addition to the Constitution is preventive detention.

The Court noted that Terrorism impacts the security and sovereignty of nations and ought not to be equated with the law and order or public order problem confined to the State alone in responding to the issue of the legislative competence of the Parliament to enact the anti-terrorism legislation. In holding that the Parliament possessed the authority to frame and put this Act in place, it recognized the need for collective worldwide action. The court even went so far as to suggest that a statute cannot be declared unconstitutional based only on misuse of the law.

CONCLUSION:

The confluence of national security imperatives and preservation of civil liberties continues to be an ongoing challenge for democratic societies worldwide. In anti-terrorism legislation, this challenge is an especially deep one, as states attempt to protect citizens from the threat under an umbrella of democratic values they are so eager to hold close. This paper delves into the Indian approach to resolving this trilemma of reconciling national security and civil liberties under the constitutional lens.

It reveals insights that resonate beyond its borders. The journey through the gradation of Indian anti-terrorism legislation and its constitutional underpinnings underscores the delicate equilibrium that must be struck. The Indian Constitution stands as a steadfast guardian of civil liberties, enshrining the principles of equality, freedom, and justice. It is precisely during times of security crises that the true mettle of a democracy is tested, as it must navigate the treacherous waters of countering terrorism with an eye on its fundamental principles.

The world community may benefit greatly from the lessons learned from India's experience. One of the most important factors is the necessity of using precise language when defining "terrorism" in laws, avoiding general and ambiguous language that could be abused. To ensure that they do not violate the rights they are intended to defend, any counterterrorism measures must be reasonable, required, and open to judicial review. A key component of the effort to balance civil liberties and national security is the judiciary's involvement.

[29]A.K. Gopalan v. State of Madras [1950] SC 27

Courts evaluate the Constitution's provisions and make sure anti-terrorism laws follow its tenets, making them the final arbiters. The idea of "constitutionalism" emphasizes the need to protect people's fundamental rights even in the midst of hardship.

In summary, the effort to balance civil liberties and national security is a complicated and dynamic process. It calls for a careful approach, one that preserves the democratic principles that make a country what it is while honoring the need to protect its inhabitants from terrorism. A framework that strikes this balance is offered by the Indian Constitution, which places a strong focus on the rule of law, the separation of powers, and fundamental rights.

REFERENCES:

- National Security Act, 1980
- Indian Penal Code, 1860
- The Code of Criminal Procedure 1973
- Maharashtra Control of Organized Crime Act 1999
- Armed Forces Special Powers Act 1958
- www.mha.gov.in
- www.lawmin.gov.in