Legal Frameworks for Counter-Terrorism: Evaluating Anti-Terrorism Legislations

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Table of Contents

Abstract

“Terrorism has become a systematic weapon of a war that knows no border or seldom has a face”. Hence, it becomes important to have effective strategies to counter such a heinous crime against mankind. In terms of dealing with it by force, it's the army that rightly gets its job done, but what about the laws? are they effective enough in countering terrorism or are they just a formality on paper, this is indeed a very debatable topic.

India is a country that has been into the entanglement of the dynamic nature of terrorism but more has been the entanglements in its anti-terror legal frameworks. Over the years, after independence, there have been multiple such laws for countering terrorism which could either not stand the test of constitutionality or has been criticised for the draconianism it held. Further, there has also been a cluster of opinions, judgements of courts and questions over the fundamental rights, due to the laws implemented for tackling the evil of terrorism. Hence, in this paper, we ought to study and analyse the legal frameworks of counter-terrorism implemented by the government of India and their effectiveness in fulfilling their objective.

Introduction

The concept of terrorism has evolved significantly over time, tracing its roots back to the "Reign of Terror" during the French Revolution. Terrorism in the contemporary world is more dangerous than ever, from it getting embedded in the usage of cyberspace which may grant access to dangerous weapons, to the probability of using chemical or biological warfare tactics which would be devastating for the world.

Looking at the dynamic and diverse nature of terrorism in India, it can be said that having a generic policy for all states won’t be the correct approach, especially in a democratic country. The fact that human rights often tend to contravene the anti-terror legislation, finding the grey between the black & white is of utmost importance. The vague understanding of the word terrorism has been one of the prime reasons for various biases, and various other loopholes leading to unfair detentions, causing human rights violations.

Methodology

This paper relied majorly on secondary data to examine the legal frameworks for counter-terrorism. Data was sourced from reports and dashboards available on the websites of State and Central Government ministries/departments and also from the think tank websites showcasing data on terror laws in India. Some important sources were the Ministry of Home Affairs, the official gazette of India which offered comprehensive data for the previous years which helped in understanding the trends. The research papers and the Supreme Court cases

were also referred to, which provided deep knowledge and insights on the topic. For recommendations, suggestions of experts and judgements of the Supreme Court were majorly relied upon.

Central Legislatures

Terrorism is the biggest threat to national security and it has to be dealt with utmost importance, which brings out the necessity of having rigid legal frameworks. Hence, the following analysis shows the government of India's legal attempts to counter-terrorism to secure the nation's security.

Terrorist and Disruptive Activities [TADA]

The TADA Act was introduced in the year 1985 by the Late. Shri Rajiv Gandhi led Indian National Congress party. It aimed at countering terrorist activities in the midst of growing terror in Punjab because of the Khalistani movement and also due to extremist activities in other states. The act also defined terror activity in section 3[1] focusing on the intent to overthrow the Government or to strike terror in the people by adversely affecting the harmony amongst different sections of the people. The opponents criticised the act, as it targeted political dissents and also for it being repealed to appease the minorities for creating vote banks.

Section 3[5]: The section dealt with the offence of a terrorist gang or a terrorist organisation, which is involved in terrorist acts. It aims at punishing any person who is a member of such an organisation which is deemed to be a terror organisation.[1]

Analysis:

1. In the section, it's not clarified if merely being a member of an organisation and not being part of the terror activities of the organisation also qualifies to be booked under the act or not.
2. Secondly, due to this unclarity in the act, it led to the arrest of even the innocent ones, causing the violation of the fundamental rights of Art 19 & Art 21.
3. Hence, mentioning, more specifically, that **members who were directly involved in the pursuit of inciting violence or creating public disorder** would only be punished, could have provided much clarity to the act.

***Section 15*:** Section 15 of TADA provides for the admissibility of evidence and confessions made to the police in court. According to section 15[1], the statements made to the police by the accused would be admissible in the court which is contrary to sections 25 and 26 of the Indian Evidence Act.

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[1] Section 3[5]

Analysis:

1. This section gave extended powers to the police to extract the necessary or favourable evidence from the accused, which was usually done with the use of coercion that compelled the accused to comply with the police officials.
2. It violates an individual's fundamental right mentioned in Art. 14, 19 & 21 as the police personnel having an inherent interest in solving the crime, may take any such actions mentioned above.
3. Instead, the admissibility of the evidence or confessions should have been in the **presence of the legal support of the accused** to ensure transparency and protection of the accused rights as well.

Section 20[8]: The section states about the bail provisions of the accused. It restricts bail to an accused unless and until the Court is satisfied and that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

Analysis:

1. The stringency of this section resulted in a lot of backlogs in the jail without proper trials being conducted, resulting in the accused being in jail for a long time. A total of 76,166 people were arrested under the act and the conviction only being 843 i.e just 1.11% after spending years in jail.[2]
2. The provision jolted Art 21 of the constitution by forcing an individual to live under police oppression while disregarding personal liberty.
3. The bail provisions could have been relaxed without compromising much on national security by **granting bail on the severity of the accused's crime, based on the available pieces of evidence**. Then making sure to keep track of the ones out on bail by restricting them to be within the territorial jurisdiction of the district court, seizing their passport and requiring the accused to report to the police station regularly.
4. Secondly, the delay in trials was a major reason for expanding the scope of abuses to human life. For which the lack of special designated courts had been the main reason, that must have been treated with the **setting up of such special courts for speedy trials.**

Prevention of Terrorist Activities [POTA]

POTA was a reactionary policy by the BJP-led NDA government to the terrorist attack on the parliament and also due to the prevailing situations of the time. It had defined terrorism to be

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[2] Cf. PUDR, Black Law and White Lies: A Report on TADA, 1985-1995, People's Union for Democratic rights Delhi, 3 (May 1995)

an "act done with an intent to threaten the unity, integrity, security and sovereignty of the country or to strike terror in any section of people" under section 3 of the act. Similar to its precedent TADA, POTA was also criticised on the grounds of violation of human rights by the state agencies. The NDA-led government had faced enough criticisms for bringing such a law into existence and had also been accused of using it for their political will.

Sections 18, 20, 21 & ***22:*** Sections 18-22 dealt with the offences of the organisations i.e. either professing, abetting or financing terrorism. The terms being used in the section contribute to the vagueness of their implementations, providing scope for arbitrary use of the powers by the officials.

Analysis:

1. Section 18 provides for declaring an organisation as a terrorist. The Sub-sections [2] and [3], provide the government with the full authority to declare any organisation as a terror organisation without even requiring it to make any statement clarifying the reason behind the ban. There should have been provisions that compel the government to justify the reason for this power being exercised.
2. Section 20 mentions the offence of being a member of a declared terror organisation. Well, sub-sections, [a] & [b] specify the grounds for prosecution of such members, but since the ultimate power rested with the officials to detain the individual members of the organisation under the act, the section proved to be draconian.
3. Next, even the vagueness in sections 21 & 22 mentioning the support provided to a declared terror organisation either financially or through other means gave scope for the officials to misuse their powers.
4. Hence, the misuse of these sections exploited the fundamental rights of an individual specified in Art 19 & 21 of the constitution rather than being effective in fulfilling their objective.

Section 32: Similar to the TADA, the police under this section had the extreme powers of getting confessions from the accused person which would be admissible in the court.

Analysis:

1. Indifferent from the provision of TADA, this section resulted in the use of force and coercion to get favourable statements by the officials. In order to protect the accused from such force, sub-sections [2] & [3] provide for a mode of conduct to get confessions. The safeguards provide for not binding the accused to make confessions against his will and secondly, recording the confessions in an atmosphere free from threat or inducement. On the contrary, these were barely considered by the police in the due process.

2. Emphasis on a provision that had legal implications on the police for such misuse of powers would have been of great importance to ensure a fair trial.

Section 52: The section 52 of the act provides for the safeguards of the rights of the accused. Such as consulting and meeting a legal practitioner to represent the accused during interrogation as well as informing the accused's family members of his/her arrest.

Analysis:

1. In order to ensure the humane treatment of the accused, it is necessary for the accused to be in touch with a legal practitioner. Even the Supreme Court in the case of Suk Das v. Union Territory of Arunachal Pradesh had ruled that the appellant was never informed that he was entitled to free legal assistance and was convicted even though when he didn't have a lawyer to represent him. This was seen as undermining the spirit of Art 21 and hence the court ordered for the state to provide legal assistance to the appellant.[3]
2. But in contrast, the admonitions of the court had been disregarded on continuous occasions which led to the denial of a lawyer to the accused under arrest.

Unlawful Activities Prevention Act [UAPA]

The UAPA was first introduced in the year 1967 to prevent unlawful activities in India, it was amended quite a few times in 2004, 2008, 2012 and lastly in 2019. Section 2 of the act defines an unlawful activity as any action that supports or incites the secession of any part of India, or that questions or disrespects the sovereignty and territorial integrity of the country.

Section 3: The section provides the Home Ministry of the central government to declare a group to be a "terrorist organisation," "terrorist gang" or "unlawful association" with immediate effect. Complementing section 3, is section 4 which provides for the government to prove the basis of declaring an organisation as unlawful, terrorist within 6 months in the presence of the tribunal of a high court justice nominated by the central government.

Following this section are sections 10 and 20 which provide for punishment, for being a part of an unlawful or a terrorist organisation respectively.

Analysis:

1. Firstly, the decision to declare any association as terrorist or unlawful is based on the 'opinion' of the government as stated in section 3[1], post which within 6 months the basis of the same has to be proven to the tribunal. The word 'opinion' is ambiguous and subject to the centre's wish, this should be with certain set criteria on an initial basis for declaring the organisations as unlawful and accordingly banning them.

[3] ((1986) 2 SCC 401)

2. Secondly, with respect to detaining the members of the unlawful and terror organisation, the members who weren't even taking part in the activities were also subjected to imprisonment. The Supreme Court's judgement in the Arup Bhuyan vs State of Assam case clarified that a member who continues to be a part of the banned organisation even though not involved in activities and hasn't left even after it being declared unlawful is liable to the punishment.[4] Hence providing some clarity to the provisions.
3. The basis for the above judgement was the guarantee of the due process of declaration of an organisation as unlawful by the ratification of tribunals. But, a loophole to this has been used by the government for identifying the group to be unlawful, as a front of an organisation already declared as banned, which allows the government to skip the due procedure of the law. The Revolutionary Democratic Front & Kabir Kala Manch were recognised as the banned Maoist group's fronts and were considered unlawful under the act. Hence, this loophole allows the government to arbitrarily use its power of declaring organisations as unlawful and detaining individuals which provides for the uncontrolled powers of the government.

Section 43.[D]: The section provides for extending the duration of detention from 90 days to 180 days on the report of the Public Prosecutor's progress of investigation and by stating the reason for the extension of the detention period to the special court.

Analysis:

1. The Code of Criminal Procedure provides for bail provisions in section 167 which compels the investigating agency to grant bail after a stipulated time of 90 days. On the contrary sec. 43[D] extends the period of detention to 180 days, which undermines an individual's fundamental right to life.
2. The Bhima-Koregaon Case was one such incident wherein the individuals i.e the activists were detained without even a proper trial and it also resulted in the death of activist Stan Swamy.[5] The section not only subjugated the freedom of speech of the activists involved in the protest but also questioned the safeguards laid for the Right to Life of an individual. Also according to a PUCL report in 2022, it was observed that less than 3 % of arrests made under the UAPA resulted in convictions between 2015 and 2020, depicting the inefficiency of the act, and hence it becomes important to set certain boundaries within the act that would bring down its misuse.[6]

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[4] (2011) 3 SCC 377
[5] Bhima Koregaon activist protest
[6] Scroll.in

Section 35: With the 2019 amendment in the act by the NDA-led BJP government, the scope of UAPA was expanded to designate individuals as 'terrorists' for up to two years without any provisions for a judicial appeal.

Analysis::

1. The power being granted to the government to now designate an individual as a terrorist was based on:
    A. commits or participates in acts of terrorism or
    B. prepares for terrorism or
    C. promotes or encourages terrorism or
    D. is otherwise involved in terrorism.

    Now, the use of the word, "terrorism" can be noticed in designating an individual as a terrorist, but in the act nowhere the word "terrorism" is defined. This provides extreme powers to the state agencies to interpret the word at their convenience [7]
2. The main reason for bringing in such an amendment was to fix the loophole that allowed individuals to form new organisations if their previous ones were declared as terror organisations. Currently, as per the data released by the National Investigation Agency, the total number of individuals designated as terrorists stands at 56.[8]
3. The section to delist an individual as a terrorist, seeks only the government to act upon, which is seen as draconian since the government would act based on its interest and not based on providing justice. Hence, it should also have been the judiciary that could have taken necessary actions with the aid of the NIA in such matters.

Indian Penal Code & Bhartiya Nyaya Sanhita [BNS]:

The Indian Penal Code of 1860 implemented during the British era is the substantive law for criminal offences in India which was followed even after the independence.

Section 121: The section provided for imprisonment of life and fine or death sentence to whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war.

Analysis:

1. The code didn't have any terror-specific provisions but it dealt with offences of attempting or waging war against the government of India, the punishment being death or life imprisonment in sec. 121. It was under this section only wherein Afzal Guru was convicted of the offence of being the prime conspirator in the Parliament attack of 2001. Similar, was the case filed against Ajmal Kasab under section 121 of IPC for the Mumbai attacks in 2008.

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[7] Indian Express
[8] NIA

2. The IPC does not deal with the term terrorism, though an attempt has been made to encompass the same in "waging the war against the government". This however has not been efficient in dealing with the difference of interpretation of the two terms.

Bhartiya Nyay Sanhita:
The IPC served as a medium to convict terror activities but the need to define terror laws was still felt for bringing efficiency into the code in dealing with such activities. The introduction of the Bharatiya Nyay Sanhita brought in provisions for dealing with the discrepancy within the IPC.
Section 113: The section defines terrorism and also specifies an individual as a terrorist. Under the Sanhita, " Terrorism is defined as any act in India or any foreign country to threaten the unity, integrity and security of India, or to intimidate the general public or a segment thereof, or to disturb public order."
Analysis:

1. Contrary to the IPC, section 113 of BNS has been very comprehensive in stating various offensive activities causing terrorism in its sub-sections and also stringent in punishing the activities from sub-sections 2-6. The BNS has brought more credibility and stringency compared to the IPC in countering terrorism but concerns remain about the extended powers of governments and police.
2. But now the question has also been raised about the need to include terror-specific provisions similar to that of UAPA, despite the act being in existence. In the section, it has also been mentioned that an officer not below the rank of Superintendent of Police has the authority to decide the case to be either filed under UAPA or under the BNS. The criteria for considering the cases under either of the legal frameworks hasn't been mentioned which gives police the authority to act upon their vested interest and this loophole can be potentially misused.

Special Enactment

The special enactments being narrow, cover only certain aspects of counter-terror laws. Hence, the following analysis shows the ability and efficiency of the government's implemented special enactments to counter-terrorism.

1. **The Armed Forces Special Powers Act [AFSPA]**: This act was a result of growing violence in the northeastern states when the state governments were incapable of maintaining peace due to internal disturbance. The act in Sec. 1 had conferred certain special powers to the armed forces in the disturbed areas in the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.

Section 3: The section granted the power to declare any specific area as a 'disturbed area' to the specific authorities, i.e., the Governor, administrator of that Union Territory or the Central Government.

Analysis:

1. Firstly, a clear definition of a 'disturbed area' seems to be missing in the act and also the circumstances under which the act would be implemented have not been stated. This gives the government and the authorities the power to declare an area as disturbed at their will even if it is not justified. This not only harms the federal powers of the state but also the population of the state which has to face the rigidity of the act. One such example is Tripura, which was declared as a disturbed area while the same was opposed by the state government.
2. Such vagueness of the definition was challenged in the Indrajit Barua v. State of Assam case, wherein the precision of the definition was not considered necessary and was left to the understanding of the government.[9]
3. Secondly, an area was continued to be considered as a "disturbed area" until the notification of the central government, this again undermined the state's federal powers. The Supreme Court in the Naga People's Movement of Human Rights v. The Union of India addressed this issue. The court mentions that section 3 can't be construed as conferring power without any time limitation, and hence should be reviewed after 6 months periodically.[10] However, it didn't have any major impact as states or certain areas of the state were continued to be considered as disturbed areas.

Section 4: The section sets out the power to the armed forces in the disturbed area. Under sub-section [a] the armed forces to maintain peace had been given the right to use force, to shoot which could even cause death. In sub-section [b], the army was provided with the power to arrest or search without any warrant.

Analysis:

1. The provision granting such draconian powers to the army is completely violative of the fundamental Right to Life in Art 21 of the Constitution. The power for the use of force and especially killing of people was completely based on the discretion of the army personnel. Such a provision in the act that puts the life of an individual at stake should be reviewed effectively to amend the section. The amendment in the section should be with respect to limiting the exercising of such power to avoid its misuse. It also violates one's right under Art 19[1] to

[9] AIR 1983 DELHI 513
[10] AIR 1998 SUPREME COURT 431

hold meetings, processions etc as the act didn't allow for the gathering of five or more people.

2. The sub-section 4[b] allows for the use of force by the armed forces in search of evidence. It does not specify the spectrum of force to be used, which leaves scope for further violation of the rights of an individual.

Section 6: The section grants impunity to the armed forces in the disturbed areas, i.e. no legal proceedings will be held under the act without the sanction of the Central government.

Analysis:

1. This section acted as a freeway for the armed personnel involved in the misuse of the powers provided in sec 4, as they no longer had to fear the legal proceedings and consequences. This again contributes to violations of the citizen's rights in the areas declared as disturbed.

Jeevan Reddy Committee's Review on AFSPA:

1. The recommendations of the committee were firm towards repealing the act due to its vagueness which became a symbol of oppression and an instrument of discrimination and high-handedness.
2. On the other hand, the committee also recommended introducing amendments to the UAPA, which was far more comprehensive in dealing with terrorism than AFSPA, instead of suggesting a new piece of legislation.
3. As suggested by the committee, having a single legislation for terrorism would erase the feeling of discrimination and alienation among the people of the north-eastern states. The presence of safeguards in the UAPA would also ensure the people's rights as compared to AFSPA.
4. The committee also recommends the setup of a grievance cell, which involves authorities from concerned agencies as well as from civil society. The cell was meant to be transparent, and quick to provide information on the whereabouts of missing persons within 24 hours. The cells were to be set up in every district which has a presence of the armed forces. As per the committee, these cells would have guarded against abuses to protect the people and the honour of the forces.
5. Lastly, the committee recommended the government to publish the name and the time period, not exceeding 6 months, for which a place would be termed as a disturbed area through a notification published in the official gazette.

   Along these lines, it also mentions the review of the situation of the disturbed area by the Central government in consultation with the State government to check the necessity of the deployment of the armed forces.

Current Situation

Due to significant improvements in the security situation in North Eastern States, the Armed Forces Special Powers Act, 1958 (AFSPA) has been removed completely from 24 districts and partially from 1 other district of Assam, 15 Police Station areas in 6 districts of Manipur and 15 Police Station areas in 7 districts of Nagaland in 2022. In Arunachal Pradesh, AFSPA has been reduced to 2 Police Station areas, looking forward, to bringing back normalcy to the state[11].

2. **Cyber-Terrorism:** Technological advancements have brought about a change in the conventional form of terrorism which believed in physical presence to incite terror. Despite various provisions and acts, there are numerous cases of cyber crimes taking place in the country, dangerous are ones that target the government institutions such as those of defence, economic, and international relations, directly.

   According to ECS Biztech, a cyber security service provider, more than 40,300 attempts have been made by Chinese Hackers to attack CyberSpace in India.[12] Another such attack was on the Kudankulam Nuclear Plant in 2019, which wasn't identified on an initial basis but resolved later, but could have been proved to be disastrous.[13] India lacks sufficient cyber laws to deal with the dynamic nature of cyber terrorism in the current world which makes it vulnerable to various cyber attacks. Hence, having a frontline cyber framework is of utmost importance to tackle the most evil form of terrorism.

The Information and Technology Act:

Section 66F: Section 66F defines the provisions for cyber terrorism in India. It emphasises punishing the act of breaching into computer data, without proper authorisation, with an intention to threaten the unity and integrity of the nation and striking terror in people.

Analysis:

1. From the above definition, it could be inferred that cyber terrorism is an act of hacking, blocking and computer contamination to restrict legally authorised persons from accessing computer resources in general or to gain or obtain unauthorised access to any information which is a 'restricted information' being a matter of security of the state, or

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[11] Ministry of Home Affairs, Annual Report 2022-23

[12] https://www.ecsbiztech.com/chinese-cyber-attacks-indian-firms-on-alert-vulnerabilities-amid-by-chinas-cyber-threat/

[13] https://www.thehindu.com/news/national/npcil-acknowledges-computer-breach-at-kudankulam-nuclear-power-plant/article61968950.ece

foreign relation etc. Further, the act also mentions the intent i.e. to threaten the security, sovereignty and integrity of India or strike terror in the minds of people or a section of people which may result in disruption of civil services and also affect the critical information infrastructure.

2. Further, section 69 of the IT Act, talks about the powers to issue directions for interception or monitoring or decryption of any information, signifying the communicational aspect of cyber terrorism, which is missing in the definition of cyber terrorism in section 66F.

***Information Technology Guidelines for Cyber Cafe Rules, 2011*:**

The cyber smart extremists avoid private internet connections through home computers and hence prefer cyber cafes to conduct such activities, because of the risk of identification of their location and data which led to the formation of guidelines for Cyber Cafes.

According to section 2 of the proposed rules, every cyber cafe must have a log register to notify the persons who would be using cyber cafes for accessing and using computer resources. This would ensure having a database and keeping track of the activities of the cafe which would assist in identifying the cybercrime activities.

In accordance with the above section, is the section 4 which compels the cafe to restrict users from accessing the computer or computer networks established in the cafe unless the user provides valid identity proof. This would ensure accurately identifying the person involved in any cyber activity deemed to be offensive.

Section 69 A: The section provides for the power to issue directions for blocking information through any computer resource from public access in the interest of sovereignty and the integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable Offence.

Analysis:

1. The intention of the section as stated was to block any such information that the government felt to be against the mentioned principles i.e. sovereignty, integrity etc. But since the discretion of considering what ought to be against the mentioned principles rested with the government, it in a way had the power to use such a loophole for its political gains.
2. The Supreme Court, in the Shreya Singhal case, in its judgement held that section 69 A was constitutional and cannot be argued based on violation of Art 19 of the constitution as clause 2 provided for exceptions that were justified in the case.[14] Still, criticism has been that the act has mauled the freedom of expression and that of the press, especially for bringing down the allegations for political gains.

[14] AIR 2015 SUPREME COURT 1523

National Investigation Agency

The section 3[1] of the NIA Act provides for the establishment of the National Investigation Agency (NIA) as a result of the Mumbai terror attacks. The NIA is entitled to investigate matters relating to a special category of offences or the 'Schedule Offence'. The schedule offences include those offences that fall under the purview of the UAPA, Atomic Energy Act, Explosives Substance Act etc. It additionally also investigates offences such as human trafficking, counterfeiting of currency etc.

Section 6[4]: The section provides for the transfer of the case from the police authorities of the state government to the NIA if the Central government is of the opinion that the offence is a scheduled offence and is to be investigated by the agency.

Analysis:

1. This section provides for the possible contravention of the federal system, since law and order are matters of the state list with respect to its territory, this has resulted in criticisms from the state governments. The central agencies over the years had been influenced by the centre, and so has been the case with the NIA. The NIA is considered to be a tool in the hands of the Central government to control the state government's affairs.
2. This section was challenged in the Supreme Court in the Pragyasingh Thakur vs. State of Maharashtra, ATS, Mumbai case wherein the court had justified the powers granted to the central government by the section.

Section 17: The section grants the protection of the witnesses through closed trials and undisclosed proceedings. It states that the place of the trial would be decided by the court and would also be made sure that the name and address of the witness would be nowhere mentioned.

Analysis:

1. The basis for the section is the protection of the witness from any kind of harm that can be caused to him/her for the statements made by the person and also to ensure that the witness feels free to provide the necessary statements.
2. The justification for cause stands true but on the other hand, this also puts doubt on the transparency of the trial proceedings which are completely undisclosed.

Intelligence Bureau

The Intelligence Bureau(IB), is an intelligence body of the government of India, that used to function at the international level but currently, it is responsible for alerting the government regarding internal threats. It is not an investigation body but it's responsible for only monitoring and advising the government, apart from this, it's also tasked with intelligence collection in the border areas in executing counter-terrorism tasks and keeping track of VIP security, and threat analysis.

The IB, meant only for national security, has also been used as a tool against the opposition parties for political gains for which the organisation has received criticisms. Concerning its duties to be performed, IB has been criticised for its failure to detect the movement of the Chinese troops in the Galwan Valley, which resulted in a clash between the Indian and the Chinese troops. While on a positive note, most of the intelligence activities conducted by the IB are often hidden but some of the successes have been placed in the public domain. It claims to have alerted the Hyderabad police of the blasts being carried out and had also informed the Mumbai police about a possible terror attack on the city which happened in the year 2008.[15]

It becomes necessary for the IB to be guided with a legal framework that would ensure its accountability and also reduce the chances for potential misuse by the political parties for which it has been criticised by time and now.

Research & Analysis Wing [R&AW]:

The formation of the Research & Analysis Wing can be dated back to the 1962 Indo-China war wherein the intelligence department of that time i.e. IB failed in its objectives, post which the need for a separate intelligence agency for international affairs was necessary. The R&AW has a crucial role in maintaining national security and hence is involved in various such planning in neighbouring countries.

The activities of the R&AW have always been confidential and hence not disclosed on public domains. Only a few of them are known to the public, i.e. their contribution to India's first successful nuclear test, the India-Pak war of 1971 etc. On the other hand, the agency has been criticised on grounds of corruption within the agency, its inability to detect moles in the organisation bringing down the efficiency of the organisation.

State Legislatures

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15 https://economictimes.indiatimes.com/news/politics-and-nation/government-had-intelligence-inputs-on-26/11-mumbai-attacks-says-former-nsa-mk-narayanan/articleshow/29127352.cms?from=mdr

The state legislature like the central legislature has also been developed with certain measures and legal frameworks by the respective state governments to counter extremist & terrorist activities. The frameworks at the state level are of great importance because the administration being under the control of the respective government, is more accessible for them to maintain the law and order at the ground root levels and create security policies suiting the demography of the state.

Maharashtra Control of Organized Crime Act 1999

The Maharashtra Control of Organised Crime Act was enacted in the year 1999 to tackle organised crime and terror activities in Maharashtra and Delhi. Section 2 of the act states the objective of the existence of the act, it defines an organised crime on the idea of it being as "any unlawful activity by an individual, or by a syndicate, by use of violence or threat of violence, with an objective gaining undue economic or other advantage for himself or any person or promoting insurgency".

Section 14: The section provides for the authorization of communication interception to an official not less than the rank of Superintendent of Police after making an application which would be ratified by the competent authority.

Analysis:

1. The section provides for a competent authority to view the application submitted for the interception which is deemed to be a member of the executive. Hence this ultimately leaves scope for the government to use it for political motives. The section should have taken into consideration the judicial authority as a competent authority for an unbiased procedure instead of the executive authority.
2. Such kind of authorisation to interception in other countries, like in the U.S. is been given after securing a warrant from the judge, whereas in France & Germany, it's the magistrate who provides the authority. This particular MCOCA section must also have been guided by similar principles.
3. This section was later on challenged in the case of State of Maharashtra vs. Bharat Shanti Lal Shah case, wherein the Bombay High Court had struck down sections 13-16.[16] Stating that the state government had no competence and only the Parliament had power to make such laws.

Section 21[4]: The section provides for extending the duration of detention from 90 days to 180 days on the report of the Public Prosecutor's progress of investigation and by stating the reason for the extension of the detention period to the special court.

[16] 2008 AIR SCW 6431

Analysis:

1. The extension of detention provided in the section contributes towards the violation of the fundamental right to life in Art 21 of the Constitution.
2. The possible stringency of this section is further complemented by Sec 18 of the act, which provides for the admissibility of statements of the accused in court, made to the police. The extension of detention, provided in the act might then contribute towards the use of more oppressive measures by police to harass the accused for extracting favourable confessions.
3. The duration of 90 days provided for detention should be enough for the prosecution to gather evidence and prove the guilt of the accused. In the case of inability to prove the guilt, the burden must be on the prosecution and the accused should be considered for bail, as any further detention would only lead to oppression of one's rights.

Anti- Terrorist Squads [ATS]

Anti- Terrorist squads, well known as ATS, is a particular police service operating in various states like Uttar Pradesh, Maharashtra, Rajasthan, Kerala, Gujarat, West Bengal and Bihar to identify and counter the terrorist groups. They have achieved around 23 gallantry medals for their work. The ATS was also highly influenced by fighting modern-day terrorism from the SWATS, US, anti-terrorist squads. The concept of the ATS was first brought into existence in the state of Maharashtra in India in the year 1989 to have a special task force to combat the threats and actions of terrorism.

As far as the tasks of the ATS in Maharashtra are concerned they have been successful in gathering information on anti-national elements and monitoring and eliminating the actions of terrorists, mafias and other organised criminal syndicates in the state. On 26th November 2008, the ATS in Mumbai took part in the hostage rescue operations at different locations of Mumbai, including the Taj and Trident hotels.[17] On the other hand, the Gujarat ATS, on October 20th, had arrested a Pakistani spy sending sensitive information to Pakistan, from Tarapur, a town in Gujarat.[18] The ATS also play a crucial role in blocking the money laundering being done for terror activities and they make sure to coordinate with the IB and R&AW to receive tips on possible activities.

[17] Times of India

[18] Economics Times

Role of Police

The frontiers of countering terrorism are the army at the borders and it is the police who are responsible for the internal security of the country and are the front line of a counter-terrorism response. A mismanagement on this front would be no less than a disaster. Taking for example the Mumbai terrorist attack of 2008 and the Pathankot airbase attack of 2016, exposed key vulnerabilities in India's defence against terrorism. Ajai Sahni, executive director of the Institute of Conflict Management, cannot be more correct when he argues that Indians "can't have first-rate counter-terrorism in a third-grade policing system". That's where the question arises as to, why is the police system in the country so inefficient?

Why so much inefficiency?

The internal security structure faces added challenges with a poorly trained and understaffed police force and insufficient modern equipment at its disposal. Moreover, because of India's notorious and pervasive VIP culture, the number of police personnel available for the security of the common citizen is very dismal. As per the centre's information to the Parliament as of 28th March 2023, the current police-public ratio in the country stood at 152.80 per lakh persons.[19] This has a huge bearing on the professional responsibilities of the force including counter-terrorism. [20] Secondly, the police in India are mentally conditioned to deal with law and order problems and when countering terrorism and insurgency, they find it extremely difficult to respond effectively. This often results in the states rushing to the Centre to hand over their responsibility at the first sign of any serious trouble.

The Way Forward:

As discussed earlier as well, the importance of police in dealing with terrorism, shouldn't be only limited to First Information Report but also be trained in responding "first" in a terror or an extremist attack in the state. Hence there have been certain measures by the government to make the police forces efficient enough to combat terrorism. The Ministry of Home Affairs mentions in its annual report, the Special Tactics Wing that recruits the state police and conducts counter-terror courses on Explosives, IEDs and post-blast procedures. Next, exercise GANDIV, has been another counter-terrorist program, conducted by the NSG in the presence of active participation of state police, ATS and other central forces. Hence, more such initiatives are required to have an efficient and effective police force in countering terrorism.

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19 https://newsonair.gov.in/News?title=Police-Public-ratio-in-country-stands-at-152.80-per-lakh-person-as-per-actual-strength&id=458358

20 https://www.jstor.org/stable/26867926

Recommendations:

Terrorism is a major threat to the world and concerning India, wherein it's present in various dimensions and aspects, the laws must be implemented efficiently, keeping in mind their possible misuse. After observing and analysing the legal frameworks and legislations of the Central and the State governments, and noting the shortcomings of each of them, the following recommendations are being made :

1. Firstly, the problem that arises is the misuse of powers by the authorities involved in the investigation of cases, due to which human rights violations take place and hence it should be addressed. Therefore, it is recommended for the set up of a specific vigilance commission to act upon the officials involved in the misuse of their powers by **issuing penalties, suspension or imprisonment** depending on the extent of the violation of their jurisdiction. Along the line, the composition of the commission's members should also consider **the retired Supreme Court judges, retired senior officers and activists** to ensure a just decision by the committee.

2. As discussed in the paper, the people accused of an offence under an act and later not convicted are at a great loss of their fundamental rights and human dignity for which compensation should be made compulsory. The **amount that would be compensated to the victims should be decided on a prior basis in the respective legal framework** itself, concerning the extent of the violation of the individual's rights.

3. Next, it becomes necessary for the provisions in every act to be reviewed after a certain time to be up to date with the dynamic nature of terrorism. Hence, **setting up a Special Legislation Review Committee** consisting of retired Supreme Court judges to review the legislation becomes very important. The **time interval for the review of a particular act should be made according to the severity of the law** or act. Take for example AFSPA, which provides the army powers to shoot or use extreme force to curb violence based on the opinion of the personnel, hence such legislation should be reviewed every year and so on for other laws.

4. Cyber terrorism is taking the most dangerous form of terrorism in the coming times and hence having a comprehensive legal structure to counter it becomes important. However, the current law has only one provision for the same in the IT Act in sec 66. F and generally refers to the other provisions of the IT Act and the IPC. Hence, it becomes important for the government to address the same by **introducing a comprehensive legal framework specifically on cyber terrorism**. At the same time, formulating a cyber security policy is also important to provide a direction to the country's cyber security initiatives, hence bringing accountability.

5. The stringency in the terror provisions takes into consideration the use of lethal solutions during investigation as seen in AFSPA, which **should be justified when it is "absolutely necessary" to prevent certain unforeseen situations.** This must be done, however, in very strict conditions to respect human life as much as possible, even with respect to a person suspected of preparing a terrorist attack. For this, the **Court must carefully scrutinise, as noted above, whether the force used by the soldiers** was strictly proportionate to the aim of protecting persons against unlawful violence. It should also take into consideration whether the anti-terrorist operation was planned and controlled by the authorities to minimise, to the greatest extent possible, recourse to lethal force.

6. To ensure that the accused receives a fair trial, any difficulties caused to the defence by a limitation on its rights **must be sufficiently counterbalanced by the procedures followed by the judicial authorities.** For example, a person suspected of terrorist activities and detained pending trial should be entitled to regular supervision of the lawfulness of his or her detention by a court. The accused in detention should also be provided with regular medical check-ups to ensure his safety and rights until conviction.

7. It would always be desirable and appreciable that **a confession or statement of a person be recorded by the Judicial Magistrate whenever the Magistrate is available in preference to the Executive Magistrates.** The need for the same arises out of the nature of the counter-terror laws which provide for the admissibility of confessions in the court made by the accused to the police. The recording of the confessions by the judicial magistrate would ensure fair trials and proceedings in the court.

8. Having a legal framework and a charter for the intelligence agencies to lay **down the functions and duties of intelligence organisations** is of utmost importance. This will provide the agency with the correct direction to perform its duties and also avoid their misuse by political parties.

9. It is also recommended **to have a single authority executing control and orders to the intelligence agencies** for the entire intelligence system to be in the loop. This is necessary to avoid any such kind of miscommunications and have the coordination of the agencies in line for immediate actions on all possible threats. The **setup of the National Counter Terrorism Centre [NCTC]** has been under consideration for a long time, but due to Centre-State issues with the same, it hasn't been possible. The NCTC

could be set up as the nodal agency for coordination and decision-making for the intelligence agencies for informed and rapid decision-making.

10. It has been a nature of not only the usual CRPC provisions but also that of the terror-specific provisions to detain a person on suspicion even though in the absence of proper evidence. The detention of an individual in such terror provisions goes up to 90 days without bail and is extended to 180 days, causing human rights violations and backlogs in the court over the years.
    Hence, the only pragmatic way is to reduce the prison population of the detainees and then **deal with undertrials on a priority basis concerning the gravity of the cases of the individuals** before the evidence fades away or is lost. Such an approach will take care of both the competing interests.
    A. In the first category, there could be the accused whose liberty may prove to be a menace to society and threatful to the prosecution. Such kind of accused shouldn't be granted bail and trials should proceed with special focus.
    B. In the second category, there could be the accused against whom there is evidence but not enough to be held in detention for long, which would be at the discretion of the court, should be granted bail. The time being for the bail being limited.
    C. In the last category, there could be the accused who is detained purely based on suspicion and no evidence exists against him and hence should be granted bail. The time period for the same being more than that of the accused in the second category, or as decided by the Hon'ble court.

    This would not only ensure that the accused against whom there isn't enough evidence would have to comparatively compromise less on his rights & at the same time the focus could be shifted to the cases of the first category which demand special focus.

11. Next, it has also been observed that the number of special courts set up to conduct trials and deal with terror cases is less in number, which makes it necessary to **increase the number of special courts**. This would ensure rapid and efficient trials and reduce the backlogs in the courts.

12. Taking inspiration from the American legislation in designating a group as a terrorist organisation, it is recommended to have a detailed "administrative record," which would be a compilation of information, demonstrating that the statutory criteria for designation have been satisfied. Post which, the parliament with a majority would have to pass the designation of the organisations as terrorists, when not in session, the

president would be expected to do the same, which would further require the ratification of Parliament when in session.

A. The designated organisation should also by law have the right to seek judicial review of the designation, not later than 30 days after the designation is published in the Schedule.
B. Post the designation and quashing of the petition for revocation of the organisation, the terror-declared organisation would again have the opportunity to file a petition for revocation, 2 years after the declaration. Provided that, if no such review has been conducted within 5 years, then the Parliament would be expected to review the designation to determine whether revocation would be appropriate or not.

13. India as a country shares borders with a couple of nations, of which some have been the bases of various terrorist groups. The illegal migrations from these nations, to be specific from Bangladesh have been contributing to increased terror activities in the country especially in the northeast. This was also realised by the Supreme Court in 2001 while hearing a Public Interest Petition. Hence, to address this issue, there is an immediate **need to have legislation to prevent unauthorised migration** and deterrent punishment for aiding in immigration enforcement.

14. Lastly, it is recommended that fulfilling the training needs of the police at the lowest level needs much strengthening, especially in terms of the protection of human rights and sensitising them towards the same. It would be useful to have a look at what are the best practices and promote them accordingly. The second aspect is to have combined training for senior police officers, prosecutors and judges to make them efficient in dealing with cases related to terrorism.

Conclusion

“Terrorism is a contempt of human dignity”, and to address this contempt it becomes important for the government to implement such legal frameworks and legislations that are efficient and effective. Over the years, as seen in the paper, there have been various acts that were introduced, amended, lapsed, and then new acts came up to address the loopholes of the previous ones. Several agencies and authorities also play a significant role in countering terrorism and what's important is ensuring their independence from political interference, because these are the ones that would play crucial roles in the implementation of the legislation. Looking at the changing nature of terrorism, it becomes important to also keep the legal framework reviewed and updated with time for it to be efficient. Last but not least, for the best

interest of the nation and its people, it's necessary for the government to fill the lacunas in the system to counter the evil of terrorism by still upholding the value of democracy.

References

1. Ministry of Home Affairs | Government of India. “Ministry of Home Affairs | Government of India,” January 5, 2024. https://www.mha.gov.in/en/divisionofmha/counter-terrorism-and-counter-radicalization-division.
2. The Hindu. “An Anti-Terror Law and Its Interference with Liberty,” December 12, 2023. https://www.thehindu.com/opinion/lead/an-anti-terror-law-and-its-interference-with-liberty/article67631382.ece.
3. NETWORK, LIVELAW NEWS. “New Penal Code Bill Widens Scope Of ‘Terrorist Act’, Includes Acts Threatening Economic Security Of India.” New Penal Code Bill Widens Scope Of “Terrorist Act”, Includes Acts Threatening Economic Security Of India, December 12, 2023. https://www.livelaw.in/top-stories/new-penal-code-bill-widens-scope-of-terrorist-act-includes-acts-threatening-economic-security-of-india-244369.
4. “Union Home Minister and Minister of Cooperation, Shri Amit Shah Replied to the Discussion on the Bharatiya Nyaya (Second) Sanhita, 2023, the Bharatiya Nagarik Suraksha (Second) Sanhita, 2023 and the Bharatiya Sakshya (Second) Bill, 2023 in the Lok Sabha Today, the House Passed the Bills after Discussion,” n.d. pib.gov.in/Pressreleaseshare.aspx?PRID=1988913.
5. Uncivil Law, Lessons from India’s failed “anti-terror” legislation - South Asia Human Rights Documentation Centre (SAHRDC). “Uncivil Law, Lessons from India’s Failed ‘Anti-Terror’ Legislation,” n.d. https://www.hrdc.net/index.php.
6. Jaishankar, Dhruva. “The Evolution and Roles of India’s National Security Council — ORF America.” ORF America, February 24, 2022. https://orfamerica.org/newresearch/the-evolution-and-roles-of-indias-national-security-council.
7. The Arms (Amendment) Bill, 2019. “The Arms (Amendment) Bill, 2019,” November 29, 2019. https://prsindia.org/billtrack/the-arms-amendment-bill-2019.
8. The Bharatiya Nyaya (Second) Sanhita, 2023. “The Bharatiya Nyaya (Second) Sanhita, 2023,” December 12, 2023. https://prsindia.org/billtrack/the-bharatiya-nyaya-second-sanhita-2023.

9. The 2019 Amendment to NIA: A Critical Analysis – The Law Blog. "The 2019 Amendment to NIA: A Critical Analysis," July 28, 2020. https://thelawblog.in/2020/07/28/the-2019-amendment-to-nia-a-critical-analysis/.
10. RAW: India's External Intelligence Agency | Council on Foreign Relations. "The Covert Clashes Between India's and Pakistan's Spy Agencies," December 5, 2023. https://www.cfr.org/backgrounder/raw-indias-external-intelligence-agency.
11. The Times of India. "ATS Traces 11 Suspects in Maharashtra Planning to Spread Terror in UP | India News - Times of India," n.d. https://timesofindia.indiatimes.com/india/ats-traces-11-suspects-in-maharashtra-planning-to-spread-terror-in-up/articleshow/106523061.cms.
12. The Hindu. "Causing Floods Is a Terrorist Offence in Proposed Bharatiya Nyaya Sanhita Bill to Replace Indian Penal Code," August 22, 2023. https://www.thehindu.com/news/national/causing-floods-is-a-terrorist-offence-in-proposed-law-to-replace-indian-penal-code/article67223509.ece.
13. Evolution of India's Anti-Terrorism Law – Center For Land Warfare Studies (CLAWS). "Evolution of India's Anti-Terrorism Law – Center For Land Warfare Studies (CLAWS)," September 10, 2022. https://www.claws.in/evolution-of-indias-anti-terrorism-law/.
14. FIU-India. "FIU-India," n.d. https://fiuindia.gov.in/files/AML_Legislation/pmla_2002.html#:~:text=The%20Prevention%20of%20Money%20Laundering%20Act%2C%202002%20(PMLA)%20forms,effect%20from%20July%201%2C%202005%20.
15. editor, DDE. "IB (Intelligence Bureau)-All You Need to Know." DDE, February 2, 2019. https://defencedirecteducation.com/2019/02/02/all-about-ib-india/.
16. Pike, John. "Research and Analysis Wing [RAW] - India Intelligence Agencies." Research and Analysis Wing [RAW] - India Intelligence Agencies, n.d. https://www.globalsecurity.org/intell/world/india/raw.htm.
17. The Economic Times. "Ahmedabad: Gujarat ATS Arrests Pak Spy from Tarapur for Sending Sensitive Information to Pakistan," October 20, 2023. https://economictimes.indiatimes.com/news/india/ahmedabad-gujarat-ats-arrests-pak-spy-from-tarapur-for-sending-sensitive-information-to-pakistan/videoshow/104590215.cms.
18. The Economic Times. "Terrorist Arrested by UP ATS from Jammu-Kashmir's Anantnag," n.d. https://economictimes.indiatimes.com/news/india/terrorist-arrested-by-up-ats-from-jammu-kashmirs-anantnag/articleshow/102464617.cms.
19. The Economic Times. "Maharashtra ATS Nabs 5 Terror Accused from Pune; Chase Caught on Cam," August 4, 2023.

https://economictimes.indiatimes.com/news/defence/maharashtra-ats-nabs-5-terror-accused-from-pune-chase-caught-on-cam/videoshow/102422580.cms.

20. Gurdaspur attack: How Punjab Police bravely battled terror. "Gurdaspur Attack: How Punjab Police Bravely Battled Terror," n.d. https://www.dailyo.in/politics/gurdaspur-terror-attack-punjab-police-force-ss-saini-pakistan-5272.
21. The Times of India. "Pota: A Law More Misused than Used | India News - Times of India," n.d. https://timesofindia.indiatimes.com/india/pota-a-law-more-misused-than-used/articleshow/713739.cms.
22. An Over View Of The Maharashtra Control Of Organized Crime Act, 1999. "An Over View Of The Maharashtra Control Of Organized Crime Act, 1999," n.d. https://legalserviceindia.com/legal/article-3158-an-over-view-of-the-maharashtra-control-of-organized-crime-act-1999.html.
23. "International Journal of Advances in Engineering and Management (IJAEM)," n.d. https://www.ijaem.net/.
24. *Jurisprudence of Anti-Terrorism Laws*, 2019. http://books.google.ie/books?id=a4-mzwEACAAJ&dq=Jurisprudence+of+Anti-Terrorism++Laws&hl=&cd=3&source=gbs_api.
25. ShastriSatish, C. "Law Relating To Cyber Terrorism," 2012. http://hdl.handle.net/10603/341395.
26. C. Raj Kumar, Human Rights Implications of National Security Laws in India: Combating Terrorism While Preserving Civil Liberties, 33 Denv. J. Int'l L. & Pol'y 195 (2005).