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The Dilemma Faced by Democracies in Balancing Counter-Terrorism and Safeguarding Human Rights: Lessons from India

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I. INTRODUCTION

It is important to understand that both terrorism and counter-terrorism are human right challenges. A genuine security concern arises from the acts of terrorism. Various measures are looked at by the state to tackle such concerns. One such measure used by democracies is the counter-terrorism legislation. The idea of using a legislation to deter the acts of terrorism is considered to be undemocratic because while this method reduces the acts of terrorism largely they at the same time encroach upon human rights of the innocent.

The execution of special laws without proper protection and no pattern of enforcement throughout the country has led to human right abuses. India has struggled a lot with political violence which has caused a threat to national security. Because national security is perceived as “an integral component of India's development process”,² it has become part of the very “essence of India's being”.

India has approached the issue of security with a wider ambit of comprehensive national security. Internal and territorial security is given more importance as compared to the issue of security. The states in India have the power to make laws regarding law and order. However, the central government exclusively has the power to make laws on national security which are authorized by the Constitution of India. The use of force came very naturally to India as it is a post-colonial developing state. Because the act of terrorism is so devastating and can harm the growth of the state the use of the military is resorted to.

While such powerful laws were being enforced with powers like preventive detention, shoot to kill suspected terrorists and arrest the government went ahead to violate fundamental rights of the citizens. This essay is going to focus on the lessons learned from India such as has the counter-terrorism laws violated human rights in the Indian context? Has the legislation on counter-terrorism been beneficial in strengthening the security of the nation?

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² N Manoharan, ‘Trojan Horses: Counter-terror Laws and Security in India’ (2009) Vol. 44, No. 46 Economic and Political Weekly, <https://www.jstor.org/stable/25663783>, accessed 5 November 2020.

II. INDIA AND COUNTER-TERRORISM: ANALYTICAL FRAMEWORK

Terrorism is an occurrence which includes sociological, economic, political and psychological factors. Hence terrorism is not just a state security concern but at the same time, it is a human insecurity issue.³ Anti-terror and security laws in India dates back to pre-independence years. The basic need for anti-terrorism laws is the fact that current laws have failed to meet the needs of the situation or restrain threats.

One of the most important questions one should reflect upon here is how have the extraordinary laws helped in the deterrence or prevention of terrorism? To answer the above question India is taken up as a case study for two primary reasons, first one being that India has been a successful democracy. Secondly, it has been posed with questions such as territorial sovereignty and security.

An authority on terrorism, Paul Wilkinson states that the basis of terrorism is “kill one frighten ten thousand”. Few features of terrorism laid out by Wilkinson are:

- It is premeditated with an aim to create a climate of extreme fear or terror.
- It is directed at the large audience or target than the immediate victims of violence.
- It essentially involves attacks on random and symbolic targets, including civilians.
- The acts of violence are seen by the society where it occurs as extra-normal, meaning they breach the social norms, thereby causing a sense of outrage; and
- Terrorism influences the political behavior in some way or the other- for example forcing opponents to concede some or all of the perpetrator's demands, to provoke an over-reaction, to serve as a catalyst for more general conflict, or to publicize a political cause”.⁴

The growth of terrorism in India can be seen in the last two decades. Irrespective of definitional problems of terrorism India has contributed largely in the international arena of terrorism. Internationally as well as regionally India is one of the first countries to call for a treaty definition of terrorism. Terrorism is a serious danger not just for the community or the individual but also to the entire nation at large and the rule of law terrorism was observed as equivalent to a war crime. This position was highlighted by the apex court in the case of *Madan Singh v. the State of Bihar*.⁵

³ *ibid.*

⁴ Paul Wilkinson, *Terrorism versus Democracy: The Liberal State Response* (2nd edn, Taylor & Francis 2006).

⁵ [2004] 4 SCC 622.

Internationally it has been proved that it is not possible to define the word 'terrorism' that is widely accepted. It has been seen before that there is a lack of commitment to derive a universal definition of terrorism because of basic issues such as the legal status of it as well as the libertarian movement which occur nationally or the state-sponsored terrorism. Terrorism is directly a threat to the fundamental rights guaranteed by the Constitution of India. It threatens the basic human rights such as the right to life, the right to freedom of speech and expression, due process etc. The right to life is a crucial fundamental right granted by the Constitution of India under Article 21.

It is also *constitutional mandate* to safeguard the right to life. Part III of the Constitution of India lays down fundamental rights for the protection of its citizens. Article 21 of the constitution states: "*life and liberty of the individual shall not be deprived by the state unless according to procedure established by law*".⁶

Part IV of the constitution deals with directive principles of state policy which implies a duty upon the state to promote the welfare and provide free legal aid for economically poor under Article 38 and 39 respectively. One of the most important constitutional mandates is with regard to the role of the judiciary at times of emergency. As it is of one of the most important pillars of democracy. Judiciary plays an important role while interpreting the anti-terror laws because it has to maintain a democratic balance between nations security and individual's fundamental rights. In cases relating to terrorist activities, it might be possible that a person's personal liberty particularly right granted under Article 21 be deprived.⁷

(A) Confession made under Anti-Terror Laws Admissible Violative of Article 21

The supreme court has answered this question by stating that the anti-terror laws are based upon reasonableness. Yet, the act has to clear the test of *reasonableness* under Article 21 of the Constitution.⁸ Article 21 of the Indian Constitution states: "*life and liberty of the individual shall not be deprived by the state unless according to procedure established by law*".⁹

The court has held that procedure mentioned under Article 21 must be borne in mind. It must be "light and just and fair and not arbitrary, fanciful or oppressive; otherwise, it would be no

⁶ Constitution of India, Article 21.

⁷ [1996] AIR 2957.

⁸ Mr. S. G. Goudappanavar, 'Critical Analysis Of Confession Under TADA And POTA' (2014) Manupatra, <<http://docs.manupatra.in/newsline/articles/Upload/FA7F562A-3614-4C67-B4F5-898FC92335C0.pdf>> accessed on 16 November 2018.

⁹ The Constitution of India, Article 21.

procedure at all and the requirement of Article 21 would not be satisfied".¹⁰ However, on the other hand, one of the most important arguments given for making a confession admissible is that a true and voluntary confession is the highest sort of evidence.¹¹

Wigmore, the leading author on evidence argued that confession on one ground can be excluded under one ground that is 'testimonial untrustworthy'. He further stated the confession doctrine in the following words:

- A confession is not excluded because of any breach of confidence or of good faith which may thereby be involved.
- A confession is not excluded because of any illegality in the method of obtaining it.
- A confession is not ignored because of any connection with the privilege against self-incrimination.¹²

However, the Constitutional bench Supreme court in the case of *Prakash Kumar v. State of Gujarat*¹³ held that under TADA whatever confessions are recorded it can be used against the accused for other offenses (ordinary laws) irrespective of whether the person is convicted or not. Irrespective of the fact that such a provision has not seen a place for itself in the current legislation (UAPA) it's important that the *Prakash Kumar* case be re-examined because it clearly contravenes Article 14 and 21 of the Indian Constitution.

The Law commission pointed out during drafting the POTA bill & stated that: "It is one thing to say, that the provisions of the legislation must be so designed as to prevent or minimize its abuse and misuse and quite another thing to say that because of the possibility of abuse, no such law should be enacted at all".¹⁴

The Supreme court in the *Yakub Menon* curative petition observed that "*the Court as the protector of the life of the persons under the Constitution has come to take note of a situation where a procedure established by law has not been followed while depriving the life of a person, no technicality shall stand in the way of justice being done. After all, the law is for man and law is never helpless and the Court particularly the repository of such high constitutional powers like Supreme Court shall not be rendered powerless*".¹⁵

¹⁰ [1978] AIR SC 597.

¹¹ Mr. S. G. Goudappanavar (n7).

¹² *ibid.*

¹³ [2005] 2 SCC 409.

¹⁴ *Prevention of Terrorism Bill (Law Com No 173, 2000).*

¹⁵ [2013] 13 SCC 1.

III. COUNTER-TERRORISM THROUGH LAWS: THE INDIAN CASE

Counter-terrorism consists of a range of actions. It is a mixture of both public, as well as foreign policies, are designed to put a stop to the terrorist actions. The counter-terrorism measures adopted by different states change depending on what they understand of terrorism or security threat. Terrorists replace laws of the state with their undemocratic activities or conduct. Terrorism is anti-thesis to democracy. The most fundamental question here is that if the problem can be addressed within a functional democracy?¹⁶

This is called the '*democratic dilemma*' which is confronted by the largest democracies because on one hand the state has to protect the security of its people and the sovereignty of the nation and if the state fails to provide for it then its credibility to function is considered to be questioned. And on the other hand, when a democracy falls under the actions of terrorism and gets into authoritarianism through counter-terrorism it loses legitimacy.¹⁷

(A) *The TADA and POTA: India's Unforgivable Laws*

Definition of 'Terrorist Act'

The current scenario is that globally and at the municipal level the 'act' of terrorism is defined and the word 'terrorism' is being ignored. This, however, is faced by a lot of questions such as ideology and motive in terrorism. But at the same time, it does not mean that by defining the term terrorist act it has made anything easier because the original problem still persists which is there is a huge void in adopting a global definition of terrorism.

The killing of the former Prime Minister Ms. Indira Gandhi led to the wake of India's earliest anti-terror laws. These anti-terror laws included Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA). The Terrorist and Disruptive Activities (Prevention) Act 1987 provided the central government with a large scale of powers which allowed the government to deal with individuals as terrorist as the statue classified. For instance, section 21 of the TADA stated that if a person is suspected terrorist then that person is presumed to be guilty and is responsible to establish his/her innocence.¹⁸

Furthermore, it is at the judge's discretion that the trial of the accused person will be held in camera. Advocates of civil liberties who argued against TADA stated that if nothing was done to keep the government's power in check it could go back to the time of Ms. Indira

¹⁶ Paul Wilkinson (n3) 12.

¹⁷ Boaz Ganor, "Preface," in Jonathan Adiri, Counter-terror Warfare: The Judicial Front – Confronting the 'Democratic Dilemma' of Counter-terror Warfare and the Evolution of the 'Probable Scope' (Herzlia: International Policy Institute of Counter-terrorism, July 2005).

¹⁸ Terrorist and Disruptive Activities (Prevention) Act 1987, s 21.

Gandhi.¹⁹ By the end of 1994, TADA had seen its failures due to which in the year 1995 it led to its expiration. However, the salient components of definitions in TADA like: of intention to threaten the country²⁰ or the people, usage of certain weapons were to be seen in POTA for two important reasons. Firstly, the state still had the power to take charge of those suspected persons retroactively for crimes committed during its enactment. Secondly, it allowed collecting the uncorroborated statements given by witnesses to police which was legitimized by the Supreme court.²¹

(B) Birth of POTA: The Post-TADA Era

Irrespective of TADA's failure to achieve its objectives the government would find ways to seek power to control or increase the states anti-terrorism powers. The year TADA was repealed the central government proposed Criminal Law Amendment Bill (CLAB) which had identical provisions as the TADA.

CLAB could not see the light of the day and was eventually replaced with the Prevention of Terrorism Ordinance (POTO) a proposal more dangerous than both TADA and CLAB combined. No number of arguments from the side of the government was enough for POTO to achieve the political support for it to be a law. It was not until the 2001 parliament attack that occurred in India that shocked the entire nation which gave the party (Bhartiya Janta Party/ BJP) the reason to begin the debate for a need of an Anti-terror law once again.

The government then stated that the current laws had failed to stopped the militants from attacking upon "the epitome of Indian democracy"²²

The government also confirmed that the number of Indians killed by the militants since 1968 has reached a critical number of 61,000.²³ The then Home Minister Advani agreed to the fact that TADA was an ineffective and a very misused Act. Furthermore, he stated that POTO is different from TADA. For instance, under POTO the investigation officers had the duty to warn the defendants that anything that they said or confessed could be used against them in the court proceedings. And hence they had the right to invoke the right to silence.²⁴

(C) The POTA: Denial of Individual Freedom and Rights

¹⁹ K. Balagopal, 'Law Commission's View of Terrorism' (2000) Vol. 35, No.25 Economic and Political Weekly, <<https://www.jstor.org/stable/4409410>> accessed on 12 November 2020.

²⁰ Terrorist and Disruptive Activities (Prevention) Act 1987, s 3(1).

²¹ [1994] 3 SCC 569.

²² Jayanth K. Krishnan, 'India's Patriot Act: POTA and the Impact on Civil Liberties in the World's Largest Democracy', (2004) 22 Law & Ineq. 265 <<http://scholarship.law.umn.edu/lawineq/vol22/iss2/4>> accessed on 16 November 2020.

²³ *ibid.*

²⁴ The Prevention of Terrorism Act 2002, s 32(1).

Loopholes with POTA

POTA contains a lot of afflict provisions from the TADA and further went on to add more controversial provisions. For instance, POTA states that it will criminalize a person who is a member of a terrorist gang or organization but however fails to state what will be the criteria for a person to be part of such a gang.

Even section 20 of the POTA states that it will 'presume' that an individual is a member of such a gang and has taken part in such activities and the burden of proof is on such persons to prove that he was not involved with such a gang or organization.²⁵ Such definitions which continued within the act allowed for unfair application of it.

Shortcomings of POTA

1. Presumption of innocence

The most important principle of criminal law is that the accused is presumed to be innocent until proven guilty. But however, under 4 of the POTA, it is presumed that the accused is 'guilty'. The person is liable to be punished with imprisonment for life or fine which can go on to ten lakh rupees or both.²⁶ This becomes very dangerous because this leads to a lot of arbitrary power with the central government which brings us to degradation of Right to life²⁷ provided under Article 21 of the Constitution.

2. Detention provisions of POTA

The detention provisions provided under POTA are problematic because when criminal cases are looked at in India it cannot be avoided that there many cases that haven't been tried for years which has caused a serious delay and obstruction injustice. It becomes even more difficult when it's been sanctioned by the parliament. Such as section 49 of the POTA which states that the accused can be locked up in jail for up to 90 days without production of the person before the court this period can extend to 3 more additional months. The statute does not demand any evidence from the prosecution side. Furthermore, section 49 subsection 7 states that bail can be denied for a period of one year.²⁸ This is clearly a disregard of Right to Fair Trial which comes under the ambit of Article 21.

3. Publication of information

The POTA makes it a necessity towards an individual to disclose information which is

²⁵ The Prevention of Terrorism Act 2002, s 20.

²⁶ The Prevention of Terrorism Act 2002, s 4.

²⁷ The Constitution of India, Article 21.

²⁸ The Prevention of Terrorism Act 2002, s 49(7).

important for the investigation. The act includes in its definition 'Lawyers' which violates and contravenes the lawyer and client relationship. If this provision is not is not complied with and the information is cautiously kept from the officer it can lead to three years of imprisonment.

4. *Special courts*

Under section 49(2) of the POTA, it allows for a Pre-Trial detention which grants 180 days of police detention before trial. This provision is misused and has seen a lot of cases of police brutality and prison deaths.

Special courts were also entrenched for trials under POTA wherein the act allowed the trials to take place without the presence of the accused's lawyer which is a grave violation of the fair trial rights.

(D) Unlawful Activities (Prevention) Act: The Law Today

It was on 26th November 2008 after the Mumbai terror attack that the government made submission of new counter-terrorism law. With not too many debates the Indian Parliament adopted the amendments to Unlawful Activities (Prevention) Act, 1967. The UAPA is now India's anti-terror law after the POTA was repealed in the year 2004. There have been many issues with the UAPA primarily being that the pre-detention period was increased from 90 days (as was in POTA) to 180 days.

One of the most recent instances of this draconian law being used could be seen in the case of G N Saibaba (professor, Delhi University) who was convicted under the UAPA and given a life imprisonment.²⁹ The definition of a terrorist act under the current law is defined under section 15(1)³⁰. The UAPA has been amended several times the recent ones have been in 2008, 2013 respectively. But the fundamental problems remain the same because the reflection of TADA can still be observed in the UAPA with terms such as weapon of choice, intention.

Shortcomings of UAPA

1. *Freedom of association violated*

Under section 20 of the UAPA, it criminalizes a person who is a part of 'terrorist gang' or 'organization' while it doesn't clarify or state what exactly these terms mean. Which is problematic because an individual can be arrested merely on the basis that he/she are

²⁹ Susan Abraham, 'Misuse of the Unlawful Activities (Prevention) Act' (25 March. 2017) Economic & Political Weekly <<https://www.epw.in/node/148545/pdf>>accessed 30th November 2020.

³⁰ Unlawful Activities (Prevention) Amendment Act 2012, s 15(1).

expressing political opinions with suspected terrorists. This is in violation the international covenant ICCPR's Article 22.

2. Procedure to arrest

Section 43A of the UAPA states that a designated police officer can arrest an individual based on the information provided to him. This information provided does not need an evidentiary value which clearly violates fundamental rights of the person being arrested and also gives a lot of unchecked power within the hands of the police authorities which increases arbitrary use of the powers.³¹

3. Witness Protection

According to section 44 if the court feels fit the identity of the accused may not be disclosed this is, however, a positive step taken by the act to protect the larger interest of the public but it also acts as a major loophole because if the witness identity is completely restrained then the law is not protecting the right of the accused to prove himself innocent through cross-examination of the witness.

4. Pre-charge period

The amended UAPA act has extended the detention period from 90 days to 180 days merely if the public prosecutor shows that the investigation is 'progressing' this is a very vague standard and leads to violation of right to life with dignity provided under Article 21.³²

(E) Role of the Courts

'We will bring terrorists to justice, or we will bring justice to the terrorists. Either way, justice will be done'

- George Walker Bush³³

The role of the judiciary is to interpret the existing law and to provide justice. Whenever a law is challenged based on its constitutionality the courts make sure that the law is rectified and, in this process, the courts are providing landmark principles.

In *PUCCL v. Union of India*³⁴ the constitutionality of POTA was contended wherein the Supreme Court stated that any act is drafted as a policy and then it is not within the court's

³¹ Unlawful Activities (Prevention) Act 2013, s 43 A.

³² Engage, 'India's Unforgivable laws' (Engage, 20 September 2018)

<<https://www.epw.in/engage/article/indias-unforgivable-laws>> accessed 10th December 2020.

³³ Ian Christopher McCaleb, 'Bush vows justice will be done urges resolve, patience as anti-terror campaign begins' (CNN, 21 September 2001) <<http://edition.cnn.com/2001/US/09/21/gen.president.speech/>> accessed on 20th November 2018.

³⁴ [2003] 4 SCC 399.

power to go into it and once it's passed with a majority of the government it has to be exercised by the government to protect the society and to prevent terrorism. Merely an assumption that the Act might violate rights the statute cannot be held unconstitutional.³⁵

In *Hyderabad v. Devendra Gupta* the apex court, in this case, held that terrorist strikes have three features in similar. They are:

1. Attack on the institution of democracy for example Parliament.
2. Attack on the civilians to spread fear among people.
3. Attack on symbols of national pride, for instance, National Flag, Monuments (Red Fort).³⁶

The honorable Supreme Court in the case of *Madan Singh v. the State of Bihar* stated that an activity cannot be claimed to be a 'terrorist' activity merely because it has caused a disturbance in law and order or public order.³⁷ The activity can only be categorized as a terrorist activity when its nature raises above the ordinary circumstances and it is difficult for the law enforcing agencies to control it.

Irrespective of the role of the court being very important it has led to a few disappointing cases one such case was wherein the SC upheld the TADA in the case of *A.K Gopalan v. State of Madras*³⁸ which could also be observed in *A.D.M Jabalpur v. S. Shukla*³⁹ which upheld amendments and gave a green signal to the Indira Gandhi's emergency rule from 1975-1977. This act of the apex court destroyed all the fundamental rights.

It's important to mention the majority judgment of *Kartar Singh*⁴⁰ wherein the apex court's recommendations were included in section 32 of the act (POTA). The recommendations made the apex court in the case of *Kartar Singh v. the State of Punjab* are:⁴¹

- The confession should be recorded in a free atmosphere in the same language in which the person is examined and narrated.
- The Chief Metropolitan Magistrate or the Chief Judicial Magistrate should record the statement of accused, if any allegation of torture and get signature on such complaint.

³⁵ Shylashri Shankar, 'Judicial Restraint in An Era of Terrorism: Prevention of Terrorism Cases and Minorities in India by Shylashri Shankar' (2015) Socio-Legal Review
<<http://docs.manupatra.in/newsline/articles/Upload/3649DBF5-BD2B-4DA1-8D75-4AC4DE698402.pdf>>
accessed on 30th November 2018.

³⁶ [2013] SCC 136.

³⁷ [2004] 4 SCC 569.

³⁸ [1950] SC 27.

³⁹ [1976] 2 SCC 521.

⁴⁰ [1994] 3 SCC 569.

⁴¹ *ibid*.

The accused should be immediately sent to a medical officer not lower in rank than Assistant Civil Surgeon for examination.

- Notwithstanding anything contained in Cr.P.C. no police officer below the rank of Assistant Commissioner of Police or Deputy Superintendent of Police should investigate any offense punishable under the TADA.
- Before the interrogation of the accused, the police officer should warn the accused that he is not bound to make confession and if he does so, the said confession may be used against him as evidence. On the other hand, if the accused asserts his right to silence the police officer must respect that right without compelling accused to make a statement.

The case argued here was that if the accused has to be produced before the magistrate within 48 hours of the confession. Why can't it be made directly before the magistrate? The court stated that it is in the domain of the parliament to decide which confession is admissible as far as it doesn't breach the constitution.⁴² The court also held that the act makes safety provisions such as to produce the accused before the magistrate to record any complaint regarding torture by police. By this, the court held that the provisions of confessions are fair and are not violating the provisions in the constitution.⁴³

In *Sri Indra Das v. the State of Assam*⁴⁴, the SC held that merely being part of a banned organization cannot criminalize a person. It has to be proved with evidence.

IV. CONCLUSION

Lesson from India's Counter-Terrorism laws

India acts as a caution to all the democracies that today find themselves tackling the terrorism issue. It shows how Anti-terror laws are to be made and implemented while keeping in mind to protect human rights. India has always supported the execution of its special laws. However, if *the enactment* of anti-terror laws has to be spoken about in India it has never been uniform it was always a response to a particular crisis. However, it is important to understand that 'seriousness' of an issue cannot be a ground for passing counter-terrorism laws. What is more important in such scenarios is to understand the consequences of making such laws. The draft of such laws have to be provided to the public for its recommendations only then will a country in its truest form be a 'democracy'.

The laws enacted have to maintain 'rule and the due process of the law'. It was once stated by

⁴² [2004] SC 456.

⁴³ *ibid.*

⁴⁴ [2011] 3 SCC 380.

the UN Secretary-General Kofi Anna that there cannot be any agreement for the protection of human rights and enforcing terrorism laws. He also pointed out that if human rights and democracy are handled equally it can bring a pause to terrorism.⁴⁵ In terms of *implementation* of the law, one lesson that stems out is that the provisions have to be clear and not ambiguous the statute has to have safeguards so that there cannot be any arbitrariness or misuse in the implementation of the act by authorities.

Another important lesson is that the focus should be also made on the *Criminal Justice System* it is essential that the justice system in the country is efficient which in India's context means such efficiency is required in three stages them being: Investigation, Adjudication, Prosecution. It is imperative for a security law to bear in mind all social, economic and political pressures to contribute to the best results against terrorism and hence it is critical to take the *comprehensive approach* must be adopted in the entire justice system.

The crucial counter-terrorism aim of the law should be to spread less fear and instill more confidence among people. There is definitely nothing better than having a legislation in tackling terrorism unless they don't contribute but instead fix loopholes and avoid human right violations.

This brings us to the next important lesson which is the *Contribution of the society* in understanding the effect of such anti-terror laws. In India, members of bar associations, human right activists and the media houses have played significant roles in bringing to light the human right abuses such laws have caused which helps in redressal of the problems caused.

In the end, it is important to state counter-terrorism laws should focus on reducing the "crisis of legitimacy".⁴⁶

⁴⁵ Kofi Annan's address to the UN Security Council meeting, 21 January 2002
< <https://www.un.org/press/en/2002/sgsm8105.doc.htm> > accessed 28th November 2020.

⁴⁶ N Manoharan (n1).

V. BIBLIOGRAPHY

Cases

1. A.D. M Jabalpur v S. Shukla [1976] 2 SCC 521.
2. A.K Gopalan v State of Madras [1950] SC 27.
3. Hyderabad v Devendra [2013] SCC 136.
4. Kartar Singh v State of Punjab [1994] 3 SCC 569.
5. Madan Singh v State of Bihar [2004] 4 SCC 569.
6. People's Union for Civil Liberties v Union of India [2004] SC 456.
7. Prakash Kumar v State of Gujarat [2005] 2 SCC 409.
8. PUCL v Union of India [2003] 4 SCC 399.
9. Shaheen Welfare Association v Union of India [1996] AIR 2957.
10. Sri Indra Das v State of Assam [2011] 3 SCC 380.
11. Yakub Abdul Razak Memon v State of Maharashtra [2013] 13 SCC 1.

Legislation

1. The Constitution of India, 1950.
2. Prevention of Terrorism Act, 2002.
3. Terrorist and Disruptive Activities (Prevention) Act, 1985.
4. Unlawful Activities (Prevention) Amendment Act, 2004.
5. Unlawful Activities (Prevention) Amendment Act, 2008.

Government Documents

1. Law Commission 173rd Report.

Books

1. Paul Wilkinson, *Political Terrorism* (London: Macmillan, 1974), p. 12.
2. Ujjwal Kumar Singh, *The State Democracy and Anti-Terror Laws in India* (Sage Publications India Pvt Ltd 2007).

Journals Articles

1. Engage, 'India's Unforgiveable laws' (Engage, 20 September 2018).

2. Ian Christopher McCaleb, 'Bush vows justice will be done urges resolve, patience as anti-terror campaign begins' (CNN, 21 September 2001).
3. Jayanth K. Krishnan, 'India's Patriot Act: POTA and the Impact on Civil Liberties in the World's Largest Democracy', (2004) 22 *Law & Ineq.* 265.
4. K. Balagopal, 'Law Commission's View of Terrorism' (2000) *Economic and Political Weekly*, Vol. 35, No.25.
5. Kofi Annan's address to the UN Security Council meeting, 21 January 2002.
6. N Manoharan, 'Trojan Horses: Counter-terror Laws and Security in India' (2009) *Economic and Political Weekly*, Vol. 44, No. 46.
7. N Manoharan, 'India's Internal Security Situation: Threats and Responses' (2013) *Sage Publications India Quarterly*, 69.
8. Mr. S. G. Goudappanavar, 'Critical Analysis of Confession Under TADA And POTA' (2014).
9. Shylashri Shankar, 'Judicial Restraint in An Era of Terrorism: Prevention of Terrorism Cases and Minorities in India by Shylashri Shankar' (2015) *Socio-Legal Review*.
10. Susan Abraham, 'Misuse of the Unlawful Activities (Prevention) Act' *Economic & Political Weekly* (25 March. 2017).
