

LEGAL LOCK JOURNAL
2583-0384

VOLUME 4 || ISSUE 3

2025

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THE GENESIS OF TERROR: A HISTORICAL AND LEGAL ANALYSIS OF TERRORISM WITH A FOCUS ON INDIA

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ABSTRACT

Terrorism, a phenomenon deeply etched into the global consciousness, poses one of the most complex and persistent threats to international peace and security. This research paper delves into the historical evolution of the genesis of the term "terrorism," tracing its origins and transformations over centuries. It then examines the increasing instances of terrorism globally and within India, highlighting significant events like the 2001 Parliament attack, the 2019 Pulwama attack, and recent India-Pakistan tensions in 2025 due to the Pahalgam attack. The paper also discusses the existing international and Indian legal framework against terrorism, including a discussion of India's major counter-terrorism law, the Unlawful Activities (Prevention) Act, 1967 (UAPA). The paper concludes by giving suggestions for strengthening India's legal framework against terrorism, where democratic principles and safeguarding human rights are guaranteed.

INTRODUCTION

"Nothing, nothing justifies terrorism." –Mahmoud Darwish

Terrorism, a strategy of asymmetrical warfare, has influenced international politics over centuries. Its transformation mirrors change in ideology-driven motivations, technological developments, and geo-political relations. Terrorism, as analysed by Mr. Patrick. J. Kennedy is psychological warfare in which the terrorists attempt to influence us and alter our behaviour by spreading fear, doubt, and fragmentation in society. Terrorism is, therefore, defined by violence aimed at creating fear and political, ideological, or religious goals and has been a constant and nagging threat to international peace and security since ages. Its forms have changed over time, owing to the dynamics of changing political environments and technology.

In the words of Milos Zeman, "anyone who supports terrorism, anyone who sees terrorism as a legitimate means, anyone who uses terrorism to cause the death of innocent people is a terrorist in my eyes." This very statement itself portrays the harsh implications of terrorism in the modern world scenario which is greatly influenced by the universal threat that it poses. Its

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cataclysmic effect on human lives, economies, and social structures requires a holistic study of its causes, development, and the legal means used to combat it². This paper is an endeavour to present an in-depth analysis of terrorism, proceeding from its ideational origin to its modern-day international manifestations, with a specific focus on the Indian experience. Through an examination of historical patterns, milestone incidents, and current legal norms, this study attempts to shed light upon the intricacies involved in curbing terrorism on the one hand and maintaining basic rights and democratic values on the other. Geo-politically located in a strategic position and socio-politically heterogeneous, India has been both victimized and fought over in the war on terror.

GENERATION OF TERRORISM: HISTORICAL ASPECT AND EVOLUTION OF THE TERM

There is no legal³ or scientific consensus on the definition of terrorism. The term "terrorism" has a surprisingly specific and historically rooted origin, evolving significantly from its initial usage to its modern, multifaceted understanding. According to David Rodin "Terrorism is the deliberate, negligent, or reckless use of force against noncombatants, by state or nonstate actors for ideological ends and in the absence of a substantively just legal process."

- **Coining of the Term: The French Revolution and the Reign of Terror**

The word "terrorism" was first coined during the French Revolution primarily to describe the actions of the Jacobin Club during the Reign of Terror (1793-1794). While in power, Maximilien Robespierre, who was one of the leading figures of the Jacobins, asserted in 1794 that "terror is nothing other than justice, prompt, severe, inflexible".⁴ The period led to the systematic and at times brutal violence from the Revolutionary Government against citizens viewed as suspected enemies of the revolution through mass executions. In this applied meaning, terrorism was the use of a system or regime of terror by the state in order to achieve, maintain and exercise its authority while suppressing social dissent.

- **Evolution and Shifting Meanings in the 19th and 20th Centuries**

²Ken Bredemeier, US State Department: Terrorism Still a 'Pervasive Threat Worldwide', voanews (December 16, 2021 1:02 PM), <https://www.voanews.com/a/us-state-department-terrorism-still-a-pervasive-threat-worldwide-/6357632.html>.

³Frampton M. History and the Definition of Terrorism. In: English R, ed. *The Cambridge History of Terrorism*. Cambridge University Press; 2021:31-57.

⁴John Philip Jrnkns, terrorism, Encyclopedia Britannica (May 15, 2025), <https://www.britannica.com/topic/terrorism>.

The 19th century was a transitional time for the idea of "terrorism," particularly with the emergence of anarchism and revolutionary ideologies. Although they didn't apply the term "terrorist," the Russian radical Sergey Nechayev and others in the 1870s would use the term by self-identifying with it within their agendas of political change against government oppression. This can certainly be viewed as a turning point, and denoted that the idea of 'terrorism' would start to refer to violence by a non-state group or individual to pursue a political end.

By the late 19th and early 20th centuries, "propaganda by deed" had arguably become a normalized form of violent action for negative change by most anarchist groups. Propaganda by deed was intended to incite revolution through methods involving bombings and assassinations on target groups. For instance, the Irish Republican Brotherhood's "Fenian dynamite campaign" during the late 1880s is considered one of the earliest modern forms of terror campaigns. The mid-20th century was a time of anti-colonial movements with new groups, many of which adopted actions that could be characterized under the term terrorism for their independence. The UNODC states that, while there has not been a general definition developed, 'terrorism' has been defined in various documents of the UN as: "criminal acts, including against civilians, that are intended to cause death or serious bodily harm, or to take hostages, with the intention of intimidating public or group of person or particular person, in order to provoke a state of terror in the general public, or to intimidate a population or to compel a government or an international organization to do or abstain from doing any act".

- **Current Perception and Non-Consensual Definition**

Today, terrorism is still primarily viewed as "the unlawful use of violence and intimidation, especially against civilians, in pursuit of political, religious, or ideological goals." Further complicating the current timeframe, there is widespread knowledge of the terrorist threat; however, there is still no universally valid legal definition of "terrorism". This creates further complications because all international cooperation and legal resolution towards terrorism will be stalled indefinitely.

The UNODC argues, while no all-encompassing definition has been developed, 'terrorism' has been articulated in various UN documents as; "criminal acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages, with the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population or compelling a government or an

international organization to do or refrain from doing any act". This working understanding includes the defining elements of a criminal act, the intention to terrify, and political motives.

TYPES OF TERRORISM

Terrorism manifests in various forms, often categorized by the underlying motivations and perpetrators including:

- **Religious Terrorism-** Motivated by extremist interpretations of religious doctrines, often seeking to establish a theocratic state or engage in holy war. Examples include Al-Qaeda, ISIS, and Boko Haram.
- **Ethno-Nationalist Terrorism-** Driven by aspirations for self-determination, separatism, or the protection of a particular ethnic or national group. Examples include the Irish Republican Army (IRA) and the Liberation Tigers of Tamil Eelam (LTTE).
- **Left-Wing Terrorism-** Characterized by revolutionary, anti-capitalist, and anti-imperialist ideologies, often targeting symbols of state power or economic elites. Examples include the Red Army Faction (RAF) in Germany and the Red Brigades in Italy.
- **Right-Wing Terrorism-** Rooted in white supremacy, anti-immigrant sentiment, anti-government beliefs, or extreme nationalism. Recent years have seen a rise in lone-actor right-wing terrorism in Western countries.
- **State-Sponsored Terrorism-** When a state directly or indirectly supports or engages in terrorist acts against another state or its own citizens.
- **Cyber-Terrorism-** The use of information technology and digital platforms to launch attacks that cause severe disruption, fear, or damage, often targeting critical infrastructure.
- **Narco-Terrorism-** A term often used to describe the nexus between drug trafficking organizations and terrorist groups, where drug proceeds finance terrorist activities.

MULTIPLE INSTANCES OF INCREASING TERRORISM: A GLOBAL AND INDIAN PERSPECTIVE

The occurrence and deadly nature of terrorist attacks has differed in time and space according to major changes in the geopolitical landscape, technology, and socio-economic environments.

- **The Global Trends and Drivers of Terrorism (Recent examples from 2024-2025)**

In the recently published **Global Terrorism Index (GTI)**⁵, the current state of global terrorism appears complex and evolving in nature with respect to the trends and data available to analyse. There is a small decline in unintended deaths attributable to terrorism in 2024, with the exception of the attacks in Israel on October 7, 2023. While the toll of deaths from terrorism decreased in 2024, the proliferation of terrorism has indeed expanded geographically, with more countries experiencing at least a single terrorist event in a single year. Furthermore, the 2024 GTI also reported that more countries were classified as having increased levels of terrorism impact.

- Key findings and recent drivers include:

1.) Conflict Zones as Epicentres - An overwhelming majority (98%) of all terrorist deaths continued to occur in conflict zones, revealing a strong relationship between the existence of armed conflict and terrorist activities. The Sahel region remains the epicentre for terrorism worldwide, accounting for over half of all terrorism related deaths in 2024. (Institute for Economics & Peace, 2025).

2.) Persistent Threat from Major Extremist Groups - The Islamic State (IS) and its affiliates (e.g., IS Khorasan Province-ISK) remain the deadliest terrorist groups as they expanded their focus to even more countries. Tehrik-e-Taliban Pakistan (TTP) emerged quickly as another growing terrorist group with a marked uptick of attributed deaths.

3.) Rise of Lone Actor Terrorism in the West - In Western countries, lone wolf attacks now dominate, surpassing a vast majority of fatal attacks over the last 5 years. Generally, younger individuals are responsible for the attacks, and they do not have a relative formal affiliation with terrorist organizations.

4.) Geopolitical Instability and Hate Crimes - Events such as the Gaza conflict, have heightened instability in the Middle East and led to the rise of antisemitic and Islamophobic

⁵Institute for Economics & Peace, ACTIVATING TERRORISM POSITIVE INDEX PEACE, <https://www.google.com/url?sa=i&url=https%3A%2F%2Fwww.economicsandpeace.org%2Fwp-content%2Fuploads%2F2024%2F02%2FGTI-2024-web-290224.pdf&psig=AOvVaw1qlMn2S5m4WYLTklD9eJ7U&ust=1749729392578000&source=images&cd=vfe&opi=89978449&ved=0CAcQr5oMahcKEwiA0srVqOmNAXUAAAAAHQAAAAAQBA>.

hate crime incidences around the world, putting us in an environment that is primed for radicalization and actual terrorist acts.⁶

LANDMARK INCIDENTS OF TERRORISM IN INDIA

India has a long and painful history of addressing various types of terrorism, from the insurgencies rooted in ethno-nationalism to cross-border terrorism perpetrated by state and non-state actors from outside India.

Terrorism in India is rooted in a range of historical and political-social features including;

- **Insurgencies in Jammu and Kashmir-** The unsettled position of Jammu and Kashmir, has resulted in persistent insurgencies, often with cross-border support, which have taken on the form of significant terrorist violence.
- **Punjab Insurgency-** In the 1980s, Punjab witnessed a period of Sikh separatist extremism, including acts of terrorism like bombings and assassinations.
- **Naxalism/Maoist Insurgency-** A leftist extremist movement that seeks to destroy the state via armed struggle and primarily targets tribal and rural areas in carrying out attacks on security forces and infrastructure.
- **Insurgencies in the Northeast Region-** Multiple ethno-nationalist and separatist movements across the northeastern states of India has a legacy of armed struggle and terrorism.⁷

Significant Events of Terrorism in India

India has endured a significant number of abhorrent terrorist acts which highlights the longstanding threat to the country.⁸

1.) 1993 Bombay Bombings wherein a series of 12 co-ordinated bombings resulted in 257 deaths and left over 700 people injured, in large courted international organized crime and involved extremists.

⁶Angelique Shafa, Gaza conflict leads to rise in antisemitism and Islamophobia, Vision of Humanity, <https://www.visionofhumanity.org/gaza-conflict-leads-to-rise-in-antisemitism-and-islamophobia/#:~:text=The%20Global%20Terrorism%20Index%20has,the%20Council%20on%20American%20Islamic>.

⁷Raksha Kumar, For Kashmiris, resolution to decades of conflict remains a distant dream, NPR (August 21, 2022 9:12 AM), <https://www.npr.org/2022/05/13/1098730987/india-kashmir-conflict>.

⁸Dhiraj V Sonawane, Bipul K Garg, 26/11 Mumbai terrorist attack revisited: Lessons learnt and novel disaster model for future, National Library of Medicine (Aug 24, 2020), <https://pmc.ncbi.nlm.nih.gov/articles/PMC7479386/>.

2.) **1996 Lajpat Nagar Blast, Delhi** where a bomb blast happened in a crowded market killed 13 civilians and injured 39, with convictions linking the perpetrators to the Pakistani Inter-Services Intelligence (ISI).

3.) **2000 Terrorist Attack on Red Fort, Delhi** where an attack on the iconic Red Fort resulted in the death of casualties among the security personnel.

4.) **2001 Indian Parliament Attack** wherein on 13th December, 2001 five militants, who were found to be members of the Pakistan-based Jaish-e-Mohammed (JeM), entered the Parliament building in New Delhi. A 45-minute firefight resulted in the killing of nine people, including security personnel and a gardener. The five terrorists also died. This attack was a bold try at targeting the core of Indian democracy and took a toll on India's views regarding cross-border terrorism, shaping its counter-terrorism policy.

5.) **2008 Mumbai Attacks (26/11)** where a series of 12 coordinated attacks by Lashkar-e-Taiba (LeT), based in Pakistan, executed via gunfire and bombings over four days in Mumbai. It resulted in 166 fatalities and massive destruction, demonstrating the organising capability of an international terrorist group.

6.) **2011 Delhi High Court Bombing** where a briefcase bomb outside the Delhi High Court killed 12 people and injured 76.

7.) **2016 Uri Attack** wherein a militant attack on an Indian Army brigade headquarters in Uri was carried out which resulted in the killing of 19 Indian soldiers in Jammu and Kashmir.

8.) **2019 Pulwama Attack**⁹ which took place on February 14, 2019, a suicide bomber, a Jaish-e-Mohammed (JeM) militant, attacked a convoy of the Indian Central Reserve Police Force (CRPF) killing 40 CRPF soldiers, escalating tensions between India and Pakistan significantly.

RECENT INDIA-PAKISTAN TENSIONS AND RELATED EVENTS IN BETWEEN THE YEARS 2019-2025

The reactions to the Pulwama attack of 2019 spelled a serious escalation in the level of India-Pakistan tensions, entering into and through a period of deteriorating relations.

⁹Kashmir attack: Tracing the path that led to Pulwama, BBC News (1 May 2019), <https://www.bbc.com/news/world-asia-india-47302467>.

Following the Pulwama attack, India launched the **Balakot Airstrike** on February 26, 2019, when Indian warplanes transgressed into Pakistani airspace to target an alleged JeM training facility in Balakot, Khyber Pakhtunkhwa province. India very publicly claimed destruction and casualties to terrorists, and Pakistan promoted deception about the casualty assessment as well. Importantly, this moment was marked by the first Indian warplane transgression into mainland Pakistan since the war in 1970. On February 27, Pakistan reciprocated airstrikes, indicating a grounded air combativeness of the two nations would ensue, including the downing of an Indian warplane.¹⁰

India's initiative to revoke **Article 370**¹¹, in 2019 gave special status to Jammu and Kashmir, along with reorganizing Jammu and Kashmir into what became two Union Territories was characterized by the Indian government as a step toward full integration of Jammu and Kashmir, as well as restraining terrorism/separatism. Amit Shah, the Minister of Home Affairs, stated that Article 370 "sowed the seeds of separatism, which later turned into terrorism," and that its abrogation had reduced terrorist incidents by 70% in Jammu and Kashmir. Although the government argues there has been a sharp drop in stone-pelting and civilian deaths since the abrogation the security situation remains complicated as it is experiencing a spurt of targeted killings and continuing counter-insurgency operations.

Ongoing Border Incidents and Infiltration Attempts still persist including cross border infiltration attempts, drone activity relating to weapons and narcotics smuggling and ceasefire violations in the Line of Control (LoC) all of which continue to be a substantial trigger of contention between India and Pakistan.

"**The Pahalgam attack and Operation Sindoor**"¹² that took place between April-May, 2025 highlight recent tensions and ongoing counter-terrorism efforts. Tensions with Pakistan saw their most recent uptick in April 2025 following the terrorist attack in "Pahalgam, Indian-administered Kashmir," that killed 26 people, of which 25 were tourists (CSIS, 2025; UK Parliament, 2025). The Government of India blamed Pakistan-based insurgent groups for the attack and invoked its response with "Operation Sindoor," where missile strikes were used

¹⁰ Atlantic Council experts, Experts react: India just launched airstrikes against Pakistan. What's next?, Atlantic Council (May 6, 2025), <https://www.atlanticcouncil.org/blogs/new-atlanticist/experts-react/experts-react-india-just-launched-airstrikes-against-pakistan-whats-next/>.

¹¹ India Const. art. 370.

¹² PIB Delhi, Operation SINDOOR: India's Strategic Clarity and Calculated Force, Ministry of Information & Broadcasting (14 MAY 2025 8:53PM), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2128748#:~:text=Posted%20On%3A%2014%20MAY%202025,April%2022%2C%20terror%20struck%20Pahalgam.>

against what India would describe; "terrorist infrastructure in Pakistan and Pakistan-administered Kashmir". Pakistan claimed it was innocent and retaliated with drone strikes. The events developed into a fleeting hot escalation of violence before a ceasefire was negotiated on May 10, 2025.¹³

These recent incidents underscore the volatile nature of the India-Pakistan relationship, and how it is heavily influenced by cross-border terrorism and competing narratives, despite the ongoing diplomatic efforts from friendly countries to mediate dialogue and de-escalate such incidents.¹⁴

LAWS APPLICABLE TO TERRORISM: INTERNATIONAL AND INDIAN FRAMEWORKS

The fight against terrorism necessitates a comprehensive response from multiple angles, both international and national legal mechanisms.

International Legal Frameworks

The international community continues to respond to the issue of terrorism through a number of treaties, protocols and UN Security Council Resolutions, yet no widely recognised comprehensive convention exists because the parties disagree on the definition of terrorism. The international legal instruments that exist include the following:

United Nations Conventions and Protocols- There are 19 universal legal instruments adopted by the UN and specialised agencies that encompass a variety of terrorist acts.

- **“The International Convention for the Suppression of Terrorist Bombings (1997)”** defines and criminalizes the unlawful and intentional delivery, placement, discharge or detonation of an explosive with an intention to cause death, injury or extensive destruction.
- **“The International Convention for the Suppression of the Financing of Terrorism (1999)”** mandates states to criminalise the provision or collection of funds for terrorism for any purpose whatsoever, knowing that it is to be used to commit a terrorist act.

¹³Tanya Mehra, Operation Sindoor: a turning point for India in addressing terrorism in Kashmir?, International Centre for Counter-Terrorism (21 May 2025), <https://icct.nl/publication/operation-sindoor-turning-point-india-addressing-terrorism-kashmir>.

¹⁴Rahul Roy Chaudhury, India–Pakistan drone and missile conflict: differing and disputed narratives, The International Institute for Strategic Studies (15th May 2025), <https://www.iiss.org/online-analysis/online-analysis/2025/05/indiapakistan-drone-and-missile-conflict-differing-and-disputed-narratives/>.

- **“The International Convention for the Suppression of Acts of Nuclear Terrorism (2005)”** contemplates unlawful and intentional possession or wrongful use of nuclear or radioactive material or devices, aimed against human life.
- **“UN Security Council Resolutions”** includes a number of resolutions, especially those adopted after 11 September 2001, have obligations imposed upon states to combat and prevent terrorism. The resolution 1373 (2001), in particular, has three provisions related to preventing terrorism which require states to:

(1) criminalize the provision of funds,

(2) provide no safe haven for terrorists, and

(3) improve international cooperation.

- **“Financial Action Task Force (FATF)”** - The FATF is an intergovernmental body that issues a number of international standards to assist with anti-money laundering and counter-terrorist financing. The Financial Action Task Force (FATF) recommendations assist countries with developing strong AML/CFT toolkit.
- **“Mutual Legal Assistance Treaties (MLATs) and Extradition Treaties”** - These agreements enhance international cooperation to investigate and prosecute individuals engaged in terrorist activities and to transfer persons who have been criminally charged back to the requesting state.

Indian Legal Frameworks

India's domestic legal framework for tackling terrorism has gradually become stronger over time in response to major attacks.

Past Laws (Repealed) include:

- **“Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985”** - TADA, which applied during the Punjab insurgency, was a formidable piece of legislation and application of TADA allowed for extended periods of detention without charge, confessions to police officers which were considered admissible evidence, and special courts. TADA was criticized as a source of potential misuse and human rights abuses, and TADA was repealed in 1995.
- **“Prevention of Terrorism Act (POTA), 2002”** - POTA was enacted after the 2001 Parliament attack with the purpose of providing a stronger legal framework. Akin to

TADA, POTA allowed for extended detention and admissibility of confessions to a police officer, but it did have some safeguards like review committees. POTA was heavily criticized for potential misuse, and POTA was repealed in 2004.

- **“The Unlawful Activities (Prevention) Act (UAPA), 1967 (with amendments)”-** UAPA is the existing primary anti-terrorism law in India. UAPA was originally introduced to address unlawful associations and activities affecting the sovereignty and territorial integrity of India, but has received a number of amendments (2004, 2008, 2012, and 2019) to include acts of terrorism.

Significant Provisions OF “Unlawful Activities (Prevention) Act – UAPA”

Definition of "Terrorist Act"- The Act broadly defines a "terrorist act", such as any act committed with the intent to threaten the unity, integrity, security, or sovereignty of India, or to strike terror in the people, by using bombs, firearms, or other lethal weapons, or by any means, that causes or is likely to cause death or injury to persons, loss or damage to property, etc., or causes disruption of any essential supply or service.

Designation of Terrorist Organizations and Individuals- UAPA gives power to the central government to designate organizations and individuals as "terrorists" following the amendment in 2019.

Powers of Investigations and Detention- It enables long periods of detention without charge (up to 180 days), and makes bail difficult to obtain.

Banning funding for terrorist acts- Includes provisions for freezing assets and prohibiting financing terrorist activities.

Larger punishments- The Act make the punishments for certain terrorism-related offenses very severe compared to other similar offenses.

Admissibility of evidence- UAPA does not include the now controversial provision in which confessions to police officers would be admissible; however, the Act provides certain relaxations in the procedures for prosecutions.

CRITICAL ANALYSIS OF EXISTING LAWS ON TERRORISM IN INDIA

Although UAPA is certainly a vital weapon against terrorism in India, it has been a point of serious controversy and criticism, mainly related to its effects on civil liberties and misuse potential.

Concerns and Criticisms of UAPA include:

- **Overly Broad and Vague Definitions-** It is criticised that the definitions of "terrorist act" and "unlawful activity" under UAPA are too broad and vague and could possibly include legitimate protest or dissent within their reach. Such vagueness would result in arbitrary application and criminalization of conducts not necessarily violent or threatening in nature.
- **Violation of Due Process and Individual Freedom** including:

1.) Protracted Pre-trial Detention- The section permitting detention for 180 days without a charge sheet (and beyond with judicial approval) is a red flag. It is capable of inducing lengthy detention of people without being formally charged, infringing upon their right to a speedy trial and individual freedom.¹⁵

2.) Strict Bail Provisions- Bail provisions of UAPA are very strict and make it extremely hard for a person accused to procure bail, even if his involvement is doubtful. The onus of proof tends to rest on the accused to establish innocence, instead of the prosecution to establish guilt.¹⁶

3.) Identifying People as "Terrorists"- The 2019 provision making it possible to identify people as "terrorists" without a preceding judicial procedure has been highly controversial. The critics consider this provision to be insufficiently safeguarded, which can contribute to random labeling and loss of reputation without a reasonable hearing.

4.) Low Rate of Conviction- Even with the strict provisions, the rate of conviction under UAPA has been low in the past, which has questioned the law's effectiveness in getting convictions and raised fears that it could be used more for punitive detention than effective prosecution. The National Crime Records Bureau (NCRB) keeps records of UAPA cases, and while there have been large numbers of arrests, the rates of conviction trail behind, evident from NCRB's "Crime in India" reports.¹⁷

- **Political Abuse and Targeting of Dissent-** Human rights groups and civil society have often claimed that UAPA is excessively applied against political dissidents,

¹⁵Human Rights, *Terrorism and Counter-terrorism*, OHCHR, <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>.

¹⁶UAPAEPLAINER How difficult is it to obtain Bail under the UAPA?, Citizens for Justice and Peace (16, Sep 2023), <https://cjp.org.in/how-difficult-is-it-to-obtain-bail-under-the-uapa/>.

¹⁷PIB Delhi, CASES REGISTERED UNDER UAPA, Ministry of Home Affairs (31 JUL 2024 4:38PM), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2039655>.

human rights defenders, journalists, and minorities, instead of only against real terrorists. This undermines the credibility of the law being employed to suppress free speech and silent legitimate criticism of the government.

- **Lack of Accountability-** There are apprehensions concerning the accountability of law enforcement agencies where there is alleged abuse or misuse of power under UAPA. The challenge of contesting prolonged detentions or contesting grounds for designation can result in a lack of remedy for persons falsely accused.
- **Effect on Human Rights-** The combined effect of these provisions has raised doubts regarding the dilution of basic human rights, such as the right to liberty, the right to fair trial, and freedom of expression and association, which are guaranteed under the Indian Constitution.

BALANCING SECURITY AND CIVIL LIBERTIES

The chief challenge in formulating and enforcing anti-terrorism legislation is finding a subtle balance between ensuring national security and preserving basic civil freedoms. Excessively permissive or overbearing legislation, though appearing to provide instant security, may end up inadvertently compromising the very democratic principles they seek to preserve. The doctrine of proportionality, so that counter-terrorism practices are no more intrusive than needed, has been repeatedly invoked as a basic principle. The UN Global Counter-Terrorism Strategy underscored that upholding respect for human rights and the rule of law is the basis for combating terrorism.

SUGGESTIONS FOR STRENGTHENING INDIA'S LEGAL RESPONSE TO TERRORISM

To meet the challenges raised by the criticisms and make the anti-terror law of India more effective and legitimate, some of the following suggestions can be taken into account. These proposals are designed to harmonize national security compulsions with safeguarding core rights.

Legislative Reforms:

- a) **Sharpen and Refined Definitions-** Definitions of "terrorist act" and "unlawful activity" under UAPA need to be narrowed down and rendered more specific. This can be done by adding stricter objective criteria that directly differentiate between real

threats of violence and lawful acts of protest or dissent, reducing vagueness and scope for arbitrary use.¹⁸

b) Enhanced Judicial Control

- **Independent Review Mechanisms-** Set up strong, independent judicial review processes for detention orders and the proscription of people as "terrorists." These processes must be able to actually review the evidence and ensure due process is followed, avoiding arbitrary detention and stigmatization.
 - **Expedited Trial Procedures-** Introduce rapid court procedures exclusively for terrorism cases to guarantee prompt trials and minimize long pre-trial detentions, which often constitute pre-conviction punishment.
 - **Periodic Judicial Review-** Order periodic judicial review of all cases under UAPA where persons are detained without charge, with set time limits for such review to avoid indefinite detention.
- c) Renovate Bail Provisions-** While there is recognition of the seriousness of terrorism offenses, bail provisions need to be reconsidered in such a way that they are not excessively punitive. There is a need to balance the "bail, not jail" principle with an increased threshold for serious offenses but with transparent and well-defined criteria for refusing bail so that bail is not refused as a general rule but on the basis of tangible evidence of risk.
- d) Procedural and Institutional Reforms:**
- **Increased Training for Judiciary and Law Enforcement-** Offer specialized, ongoing training to judicial officers, police officers, and investigators in human rights, due process, and the careful application of anti-terrorism legislation. This can assist in ensuring that investigations are detailed, evidence-oriented, and uphold legal standards, lowering the occurrence of abuse.
 - **Improving Intelligence Collection and Analysis-** Invest heavily in improving human intelligence (HUMINT) and technical intelligence (TECHINT) capabilities to collect actionable intelligence which can preclude terrorist attacks and result in successful prosecutions and thus minimize over-reliance on general legal provisions for preventive detention.

¹⁸ Sodhi, P. P., & Jasrotia, A., THE IMPLICATIONS OF THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967: A CRITICAL STUDY. *ShodhKosh: Journal of Visual and Performing Arts*, 5(1), <https://www.granthaalayahpublication.org/Arts-Journal/ShodhKosh/article/view/4381>,

- **Effective Witness Protection Programs-** Put in place and properly fund effective witness protection programs to secure witness cooperation and protect witnesses' safety in terror cases, which tend to be high-risk.
 - **Independent Monitoring Body-** Create an independent monitoring body made up of legal professionals, human rights supporters, and ex-law enforcement members to supervise the enforcement of anti-terrorist laws, probe accusations of abuse or violation of human rights, and suggest corrective action. This would increase transparency and accountability.
 - **Contemporary Forensic Capabilities-** Upgrade forensic science capabilities for strong evidence gathering and analysis, thus bolstering prosecution cases and lowering the dependency on circumstantial evidence or duress-induced confessions.
- e) **Comprehensive Counter-Terrorism Strategies** including:
- **Deradicalization and Rehabilitation-** In addition to punishment, invest in holistically deradicalizing and rehabilitating individuals who have been radicalized or committed lesser crimes. It should seek to reintegrate them into society and respond to the grievances that may have pushed them into that direction.
 - **Community Engagement and Counter-Radicalization-** Create trust and collaboration with the community including those communities most at risk of being radicalized. Community-led projects, educational courses, and vocational courses will help address indicators of early radicalization and provide alternative pathways to vulnerable youth.
 - **Cohesive International Coordination-**Increase international coordination for information sharing, capacity building, and mutual legal assistance to combat transnational terrorism. Active members of a collaborative community of international organizations (i.e. UNODC, FATF, and the International Centre for Counter-Terrorism).
 - **Consideration for Human Development-** While hard and long-term, counter-terrorism should consider addressing socio-economic inequalities, political exclusion, governance issues, and other drivers of extremist action that may provide fertile ground for recruitment.
 - **An End-to-End Cyber Security Capability-** Establish a Cyber Security Department whose primary responsibility is to counter cyber-attacks related to terror, safeguard critical infrastructure, and halt the online spread of extremist ideologies.

CONCLUSION

Terrorism, with its many histories and evolving forms, remain a formidable issue for the security and democratic ideals of India's society. While the historical development of the term reveals its historical changes in meaning from the terror employed by states and non-state actors, the intent of instigating fear to carry out political objectives still holds true. India has bravely confronted and dealt with many acts of terrorism, from the brazen 2001 Parliament attack, to the 2019 Pulwama attack that created a sense of urgency for legal responses. The continuing tensions between India and Pakistan as evident in the Pahalgam attack and 'Operation Sindoor' with Pakistan in 2025, show the ugly and evolving threat. Indian legislators have introduced the Unlawful Activities (Prevention) Act (UAPA) to block this threat. However, there are serious issues identified including: broad definitions; excessive bail provisions; low conviction rates; and the potential to infringe upon civil liberties including misuse against dissent. Striking a balance between the requirement of sustainably managing national security versus ensuring and attending to a citizen's basic rights is tedious and evolving.

In order for India to proceed effectively, India needs to make more comprehensive reforms. This means making legislative reforms that clearly identify and define the UAPA; and increase judicial oversight and oversight. Parallel procedural and institutional reforms, such as improved training for the police and stringent intelligence collection, are also crucial. Finally, a balanced approach that pairs sound, but rights-sensitive, legal frameworks with active deradicalization measures, strong community engagement, and continued international cooperation is necessary. This overall approach will not only make the nation more secure, but also safeguard the very freedoms and democratic principles that terrorists try to destroy.