



Terrorism And International Law: Balancing The Security And Human Rights In Counter-Terrorism Effects

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Abstract

This research paper deals with the thorny issue of defining terrorism in international, regional, and national laws in which terrorism is a leading security threat in the world since there is no universally accepted legal definition of terrorism. The paper examines the problem of divergent and politically motivated definitions affecting the international collaboration in extraditing, intelligence exchange, and law enforcement, and allows terror groups to take advantage of such inconsistencies. It also critically analyses some international and regional treaties such as UN conventions, SAARC, EU and OIC frameworks with the limitation in seeking the same definitions and implementation being given. The paper also explores the legal regime in India against terrorism (especially the Unlawful Activities (Prevention) Act (UAPA)) and how it has met the international standards and the potential ramifications to human rights protection. Extradition of Abu Salem and 2008 Mumbai attacks are case studies that demonstrate the logistical challenges of inconsistent application of the law in collaboration across nations. The study unveils the way in which the wide counterterrorist legislations tend to meddle with the human rights in some cases, and are abused to curtail dissent, limit rights, and enhance profiling. The paper recommends a unified global response, to have a multilateral dialogue in the United Nations coming up with a clear and universal definition of terrorism. This would enable proper effective counterterrorism policies that would be driven by security without compromising human rights standards. Consistent with the prudence of the High-Level Panel of the UN Secretary-General (2004), Terrorism are criminal activities aimed at instilling the state of terror in the masses, as it is a reminder that, a clear legal framework is critical to effective and fair governance in the counter terrorism sector. This study leads to significant contribution of the changing discourse of the subject of terrorism and international law by solving legal ambiguities and incorporating human rights protection.

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1. Introduction

Terrorism is one of the gravest threats of international peace, security, and the sovereignty of the states in the modern international system. International law, though subject to massive criticism, has not been able to come up with a universally acceptable definition of terrorism, and this has posed great challenges in the uniformity of legal response as well as international collaboration. The vagueness of the definition commonly leads to inconsistent state actions targeting civilians to produce fear, coercion of governments or international organizations and realization of political, ideological or religious goals³. This lack of consistency leads to the fact that the multidimensional manifestations of terrorism, such as cyberterrorism, lone-wolf attacks, and transnational extremist networks, are able to capitalize on regulatory loopholes⁴.

Counterterrorism in turn has become a complicated field of development with states developing strong security policies in the form of emergency powers, increased surveillance, and augmented policing authority. Nevertheless, these actions threaten to violate basic human rights including the right to freedom of expression, privacy, right to trial by jury, and right against torture or arbitrary arrest⁵. The situation between the security protection and the human rights protection is critical: over repression can be the source of radicalization, the decline of democratic rule and the weakening of the rule of law itself⁶.

Laws exist internationally, with several UN conventions and Security Council resolutions, and regional treaties that can be used to coordinate counterterrorism efforts. However, the national usage of these tools differs radically and indicates divergent national security prerequisites and political priorities and complicates collaboration among nations and the need to comply with human rights commitments⁷. The changes in terrorism, including digitalization of radicalization and encrypted communications, put further pressure on the sufficiency of law provisions, which require continuous development and modification.

Considering these complications, a rights-based, yet balanced strategy to counterterrorism in accordance with the principles of international law and guaranteeing the protection of human dignity and ensuring the security threats is urgent. This paper attempts to unravel these tensions and offer viable solutions to reconcile these security requirements and the safeguarding of the basic human rights in counterterrorism law and policy with special reference to the changing legal system and international commitments of India.

The importance of the research is that despite intensive international counterterrorism, terrorism continues to be a serious threat to the sovereignty of states, peace in the global area, and the lives of civilians. Terrorism has also been changed and has taken a new form of cyber-terrorism, lone-wolf, and

³ Appeals "Chamber of the UN Special Tribunal for Lebanon", *The International Crime of Terrorism*, Para 85, 2011; UN Security Council Resolution 1373 (2001), 1566 (2004).

⁴ UNODC, "Education for Justice (E4J) Initiative: Introduction to International Terrorism", 2023.

⁵ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights, Terrorism and Counterterrorism: A UN Perspective*, 2021.

⁶ Oxford University Press, *Legal Frameworks for Mass Terrorism: The October 7th Attack and Beyond*, 2025.

⁷ United Nations Office of Counterterrorism, *International Legal Instruments on Terrorism*, 2025; Special Rapporteur on Counterterrorism and Human Rights, Report, 2025.

transnational extremist networks which have complicated the current legal and security structures. The paper discusses the paradox of security and human rights, which is very acute and presents how emergency legislation and surveillance tend to undermine the most basic rights. It also addresses the vagueness of the international law in that it is there because a universal definition of terrorism has never been agreed upon resulting in inconsistent application in various states where legal and political interests differ. Moreover, the study also examines the effects of counterterrorism laws on the humanitarian law, military actions, and human rights emphasizing the fine line that democracies should follow to avoid overpressing their populations to the extent that it contributes to the growth of extremism. Demonstrating that the recognition of harmonized cooperation internationally is essential, the study promotes the idea of coordinated international actions which ensure the support of sovereignty and human rights. Finally, it highlights the imminent need to reform legal and policy systems to address the current challenges of terrorism funding, online radicalization, and encrypted messages. This research offers useful insights to those working in policy making, legal and academic circles involved in the formulation of fair and effective counterterrorism, through the provision of the knowledge and skills related to the field.

2. Conceptualising Terrorism in International Law

Terrorism has come out as a challenging and multidimensional issue to international peace, security, and sovereignty. Although it is a common phenomenon internationally, the international community has not been able to come up with a universal definition of what terrorism is, mainly because there are variations in the definitions of terrorism, which are basically influenced by political, ideological and cultural factors⁸. The reason why there has been no clear and consistent definition of terrorism is that terrorism is hindering proper international collaboration, implementation of the law and effective prosecution of the terrorists. Besides, the various meanings given to the concept of terrorism in international law, along with its changing nature, such as cyberterrorism and transnational extremist groups, contributes to the difficulty of balancing the terrorism concept with the maintenance of state security and the protection of fundamental human rights, thereby leading to the potential misuse of the concept of counterterrorism laws⁹. The paper sees how the various definitions that have been given by international instruments and regional systems have contributed to the difficulty in trying to balance the concept of terrorism and the maintenance of the state security and the protection of fundamental human rights

2.1 Difficulties in the Defining of Terrorism in International Law

Defining terrorism is mainly hindered by the conceptual ambiguity of the phenomenon. The 1937 Convention on the Prevention and Punishment of Terrorism tried to give terrorism an overarching definition as being both the end, which is the creation of a state of terror¹⁰ and the means, which are crimes against persons and property, but this was not comprehensive, and it was not universally accepted by all countries¹¹.

⁸ UN Security Council Resolutions 1373 (2001) and 1566 (2004); UNODC, Counter-Terrorism Module: Defining Terrorism, 2018.

⁹ Milanovic, Marko, *Defining Terrorism in International Law*, Oxford University Press, 2015, pp 89-94.

¹⁰ Convention for the Prevention and Punishment of Terrorism, 1937.

¹¹ Scheinin and Vermeulen, *Unilateral Exceptions to International Law*, 2004.

The United Nations has not come up with a binding definition, but it has insisted on the value of individual treaties and resolutions, which focus on acts, but not the concept. An example of this is the UNSC Resolution 1373 (2001) which, although it talks in general terms of terror acts, does not define the term and this creates an opportunity to have many definitions based on the culture and political differences¹². Regional organizations like the EU and OIC have taken it upon themselves to define the term in their own way, and this has further divided the international agreement.

Although this strategy enhances collaboration, it also generates a high legal ambiguity at the expense of uniform implementation of counterterrorism policies in the global arena. Definitional divergence impedes extradition processes, mutual legal assistance, and intelligence sharing that helps to create loopholes in operations terrorist organizations use. This division goes to the tension points between the International Humanitarian Law and the International Human Rights Law especially in the behaviour of hostilities and safeguarding of civilians during armed conflicts¹³.

2.2 International Legal Definitions and Perspectives Analysis

There are several legal tools and resolutions that have tried to define the concept of terrorism with a varying accent. According to the International Convention to Suppress Financing of Terrorism (1999), terrorism is described as acts that are intended to produce death or grievous bodily injury on civilians in order to intimidate or coerce populations or to compel governments; there are also three key elements: a criminal act, intention of causing terror or coercion, and a transnational one¹⁴. UNSC Resolution¹⁵ identified three key elements: a criminal act, an intention of causing terror or coercion, and a transnational element.

The law systems of the regions reflects the geopolitical issues. An example is the seminal decision of the Appeals Chamber of the UN Special Tribunal on Lebanon that defined the fundamental characteristics of terrorism as criminal acts that cause terror and are politically motivated and tend to be transnational¹⁶. The emerging trend in this area is evident in the growing number of case law that is pointing towards the practical cooperation and harmonisation of criminal law standards.

2.3 The political and legal effects of the ambiguity of definitions

There are major implications of the political usefulness of vagueness in the definition of terrorism. States can use the absence of a legal consensus to declare political adversaries, dissidents, or ethnic groups as terrorists under the general counterterrorism laws, which frequently leads to the abuse of basic rights and freedoms. This could be selective use of force to undermine the respect to the international norms and the validity of international counterterrorism collaboration¹⁷.

¹² OIC, Draft Convention on Combating International Terrorism; EU Framework Decision 2002/475/JHA.

¹³ UN Security Council Resolutions 1373 (2001) and 1566 (2004); United Nations Office of Counterterrorism, International Legal Instruments, 2025.

¹⁴ STL, The International Crime of Terrorism, Para 85, 2011

¹⁵ UNSC Resolution 1566 (2004).

¹⁶ International Convention for the Suppression of the Financing of Terrorism (1999), Art 2; Organisation of Islamic Cooperation, *Draft Convention on Combating International Terrorism; EU Framework Decision 2002/475/JHA*.

¹⁷ Marko Milanovic, Defining Terrorism in International Law 89-94 (Oxford University Press, 2015).

Moreover, the lack of uniformity in application of definitions complicates co-operation among the judicial and law enforcement agencies that are needed to help monitor, prosecute and punish terrorist crimes. The difference between acts of terrorism and the lawful resistance or armed conflict in the International Humanitarian Law is also blurred by divergent interpretations. Such misclassification may lead to violation of basic fair trial and anti-arbitrary detention rights and therefore there is an immediate necessity of legal clarity that is grounded on recognized international standards.¹⁸

2.4 Moving towards a Core Consensus and Legal Clarity

To address these issues, legal scholars and professionals propose finding minimal common denominators when it comes to defining terrorism: the perpetration or a threat of violence against civilians to cause terror and achieve political or ideological goals. This will help to characterize terrorism distinctively without the possibility of abuse since definitions are made to correspond to the concept of legality and the fundamental protection of rights.

It is a major stride in that the Appeals Chamber of the UN Special Tribunal in Lebanon has made an excellent move in expressing these elements, which most people view as a de facto international standard¹⁹ of legal frameworks against terrorism without infringing on human rights and sovereignty of states. The principle of *nullum crimen sine lege* also prescribes the definition of criminal offences with certainty, enhancing the need to give strict and specific legal definitions²⁰.

2.5 Current Issues and Future Projections

The changing forms of terrorism, including cyberterrorism, lone-wolf assaults, and the utilisation of digital resources in the radicalisation and organisation of terrorists are new legal and operational issues that require adjustments in current treaties and counterterrorism policies. The diffuse and transnational nature of modern-day terrorism necessitates flexible and technology-sensitive legal frameworks that will balance the security requirement and the rights of humans and due process²¹.

The continued international action such as the United Nations Global Counter-Terrorism Strategy and additional resolutions of the Security Council gives normative direction based on respect of human rights. However, the legal innovation and multilateral dialogue are still necessary to balance new threats with the effective legal protection and international cooperation tools²².

3. International legal and Institutional Framework

The global legal and institutional responses to terrorism is a wide web of treaties, conventions, resolutions, and specialized bodies, which ensure that terrorism is countered all over the world without violating the principles of human rights and international law. These structures have been built over the decades and particularly gained momentum after the resolutions of the UN Security Council after September 11 attacks. Although there are a great number of instruments, as well as institutions, the challenges are present because of the lack of clarity in the definition and differences in national interests that affect enforcement and cooperation.

¹⁸ International Committee of the Red Cross, Terrorism and International Humanitarian Law, 2018, p 27; United Nations Office of Counterterrorism, Challenges in International Cooperation, 2024.

¹⁹ Appeals Chamber, UN Special Tribunal for Lebanon (n 3).

²⁰ International Law Commission, Report on Principles of Legality (*Nullum crimen sine lege*), UN Doc A/66/10, 2011.

²¹ Oxford University Press, Legal Frameworks for Mass Terrorism, 2025; OHCHR, Human Rights and Counterterrorism, 2021.

²² UN General Assembly, United Nations Global Counter-Terrorism Strategy, A/RES/60/288 (2006).

3.1 Multilateral Treaties and Conventions

There are a set of international treaties, which are particularly focused on the issue of terrorism. The most widespread and longstanding are the International Conventions on Terrorism that address the problem of hostage-taking (1979), bombings (1997), funding (1999), and nuclear terrorism (2005). Those treaties bind the states to criminalize certain forms of terrorist acts, cooperate in their prevention and prosecution, and support in extradition and mutual legal assistance²³.

International Convention on the Financing of Terrorism of the year 1999 was of particular importance in capturing the economic basis of terrorist organizations since most nations are still adopting or not ratifying the instruments, creating disparity in their world coverage²⁴.

3.2 United Nations Security Council Resolutions

The UNSC has been very instrumental in setting counterterrorism standards. The Resolution 1373 (2001) requires the member states to strengthen legal and institutional framework such as criminalization of finance of terrorism, intelligence sharing and enhancement of border controls. Resolution 1566 (2004) urges the cooperation without undermining human rights. Such resolutions are legally obligatory on the UN member states in Chapter VII of the UN Charter²⁵.

The UNSC also created the Counter-Terrorism Committee (CTC) and the Counter-Terrorism Executive Directorate (CTED) to oversee, and help states to enforce these duties, to promote international coordination and capacity-building²⁶.

3.3 Regional Structures and Organizations

International organizations go hand in hand with regional initiatives, as it localizes counterterrorism policies. To standardize definitions of terrorism and enhance judicial cooperation, the European Union has enacted framework decisions which include the use of European Arrest Warrant. The *Organization of Islamic Cooperation* (OIC) has embraced conventions that focus on the respect of sovereignty and denouncement of terrorism of all kinds that encourage intra-regional cooperation²⁷.

There are several other prominent regional organizations, such as the *South Asian Association for Regional Cooperation* (SAARC) and the African Union that have devised measures to counter regional terrorism threats and co-ordination loopholes²⁸.

3.4 International Arbitrative and Surveillance Bodies

law and national courts, including the *International Court of Justice* (ICJ), the *International Criminal Court* (ICC), and special tribunals such as the UN Special Tribunal of Lebanon (STL) have a role to play in resolving disputes connected to terrorism, interpreting the international law and trying particular crimes.

²³ UN Office on Drugs and Crime (UNODC), International Legal Instruments on Terrorism, 2025; International Conventions on Hostage Taking (1979), Bombing (1997), Financing (1999), Nuclear Terrorism (2005).

²⁴ International Convention for the Suppression of the Financing of Terrorism, 1999.

²⁵ UN Security Council Resolutions 1373 (2001) and 1566 (2004); UN Charter Chapter VII.

²⁶ UN Security Council, Counter-Terrorism Committee (CTC) and Counter-Terrorism Executive Directorate (CTED) reports, 2024.

²⁷ European Union Framework Decisions 2002/475/JHA; Organisation of Islamic Cooperation, Convention on Combating International Terrorism.

²⁸ SAARC Regional Strategy on Counterterrorism, African Union Peace and Security Council Communiqués, 2023.

ICC has the jurisdictional powers over war crimes, crimes against humanity and genocide, which at times overlap with acts associated with terrorism under the principles of international criminal law²⁹.

Counterterrorism measures implemented by states are tracked by both academic and monitoring organizations, such as the Office of the UN High Commissioner for Human Rights (OHCHR), non-governmental organizations (NGOs), such as Amnesty International³⁰.

3.5 Cooperation Mechanisms and Problems

International systems focus on collaboration between states to share intelligence, extradite, offer judicial support and capacity building. Regulatory standards and evaluations imposed by instruments like the Financial Action Task Force (FATF) aim at addressing terrorist funding and yet practical challenges exist because of different degrees of political goodwill, domestic laws, resource unavailability and the character of incessant tensions between the national security imperative and human rights issues³¹.

3.6 The International Counterterrorism and Human Rights

The necessity to protect human rights is inherent in all the legal and institutional structures. UN Global Counter-Terrorism Strategy emphasizes that counterterrorism should be conducted in accordance with the international law, including human rights, humanitarian law, and refugee law³². Special mandates, including, but not limited to, the UN Special Rapporteur on Counterterrorism and Human Rights are there to observe and direct counterterrorism to human rights violations and ensure that actions aimed at counterterrorism are lawful, necessary, and proportionate³³.

The international legal and institutional fabric that deals with terrorism is vast though disquiet. It commits states to work together to counter terrorist threats and will require the respect of human rights and the rule of law. The need to improve harmonization, deal with definitional differences and guarantee sound human rights protection are important in consolidating this global framework.

4. National Counterterrorism Law: Focus on India

The legal system of counterterrorism in India is one of the most extensive and complex systems in the world that has been formed under the influence of domestic insurgencies, inter-border and socio-political problems. The framework balances the need to have sound security and the need to have the protection of fundamental rights as guaranteed in the Constitution of India and the international human rights law. This note discusses the major counterterror laws in India, provides a comparative analysis with other selected countries, analyses the problems with the application of international standards domestically, and provides the discussion of the major judicial interventions which play a major role in creating a balance between security and civil liberties.

²⁹ International Criminal Court, Rome Statute (1998); UN Special Tribunal for Lebanon Judgments, 2011.

³⁰ Office of the UN High Commissioner for Human Rights (OHCHR), Human Rights and Counterterrorism, 2021; Amnesty International Reports, 2023.

³¹ Financial Action Task Force (FATF), Recommendations on Combating Terrorist Financing, 2025.

³² UN General Assembly, United Nations Global Counter-Terrorism Strategy, A/RES/60/288 (2006).

³³ UN Human Rights Council, Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Reports 2024.

4.1 India Law on Counterterrorism Overview

The main law of counterterrorism in India is the *Unlawful Activities (Prevention) Act, 1967* (UAPA) enacting which brought together laws that prevent unlawful activities that endanger the sovereignty and integrity of India. Started as an entity that was dedicated to secessionist and anti-national actions, the UAPA has undergone major amendments in 2004, 2008, 2012, and most recently 2019 to add terrorist actions and organizations, terrorist financing, and enforcement capabilities³⁴.

The main characteristics are loose interpretation of the term terrorist's acts, authority to proscribe a terrorist organization, the right to use preventive arrests, the admissibility of confessions taken by the police officer under special circumstances, and the establishment of special courts to conduct rapid trials³⁵. The UAPA further authorizes the central government to proscribe terrorist organization and distinction between terrorists acts and unlawful acts to enhance severe provisions of the penal code.

Although the *Prevention of Terrorism Act (POTA)*, 2002 has been repealed in 2004 following widespread criticisms of misuse, it is a significant precedent that offers insights into the challenges faced by India in balancing its security and its citizens³⁶. The *National Investigation Agency (NIA) Act, 2008* institutionalized a federal agency, having jurisdiction over terrorism and other related offences, to strengthen the inter-state coordination and specialized investigations mechanisms³⁷.

Also, the legal framework is based on the provisions of the constitution³⁸ in Articles 19 (freedom of speech), 21 (right to life and personal liberty) and 22 (protection against arbitrary arrest and detention) so that the counterterror laws are used to restrain basic rights of freedom of speech, life, and personal liberty with due regard to the law.

4.2 Comparative Approaches towards the Counterterrorism legislation in the Selected countries

The paradigm of counterterrorism in India can be characterized by unique aspects to be compared to the legal regimes of liberal democracies:

United States: The *USA PATRIOT Act (2001)* had far-reaching implications on the powers of the government to conduct surveillance, detainment, and intelligence collection after 9/11. Although it proved successful in derailing terrorist schemes, it was met with criticism over possible violations of civil liberties and received a consistent periodical judicial review and legislative changes to encourage accountability³⁹.

United Kingdom: Terrorism offences and procedures have been codified in 2000 and in the *Terrorism Act 2000*, the central focus of the law is placed on proscription, investigative authority, and restriction of detention. The laws of the UK are seeking to institute more robust protections compared with those in India, such as the judiciary requirements to regularly review detention and the right to counsel⁴⁰.

European Union: EU aims at harmonization between its member states and the compatibility of human rights in the counterterrorism campaigns. The EU Framework Decision 2002/475/JHA provides minimum

³⁴ Unlawful Activities (Prevention) Act, 1967 (as amended in 2019).

³⁵ Bharatiya Nyaya Sanhita, 2023, Section 147, 152; Bharatiya Nagarik Suraksha Sanhita, 2023 (Indian Penal Code, 1860, Sections 121, 124A; Code of Criminal Procedure, 1973)

³⁶ Prevention of Terrorism Act, 2002 (repealed 2004).

³⁷ National Investigation Agency Act, 2008.

³⁸ The constitution of India

³⁹ USA PATRIOT Act, 2001; USA v. Al-Kidd, 563 U.S. 731 (2011).

⁴⁰ Terrorism Act, 2000 (UK).

rules on criminal law applicable in the case of terrorism, and it emphasizes on rights to a fair trial and proportionality⁴¹.

The method adopted in India, including preventive detention and long confession evidence, stands out, causing heated arguments on how to harmonize the national security with the civil liberties⁴².

4.3 Problems in Domestic Application of International Law Standards

India is a signatory to many international counterterrorism conventions and Security Council resolutions that require states to criminalize terrorism, fight financing and collaborate in prosecution. However, it is still difficult to bring domestic law in line with international human rights requirements.

The broadened definitions of UAPA have been criticized as being too broad with a latitude of ambiguity which can be misapplied against political dissent and minorities which is contrary to the principles of ICCPR to which India is a party member⁴³. The UN Special Rapporteur on Counterterrorism and Human Rights has made repeated calls of India introducing safeguarding against arbitrary detention and the creation of fairness in trials of terrorism⁴⁴.

The Supreme Court of India has been very proactive in interpreting the counterterrorism legislation in the context of constitutional rights. Courts verdicts require a practice of procedural fairness, restriction of preventive imprisonment, as well as emphasizing the reasonableness of restrictions of rights that nonetheless persist in India in defiance of international jurisprudence⁴⁵.

4.4 Important Court Decrees on Counterterrorism Laws

In *Kartar Singh v. State of Punjab*⁴⁶, the apex Court of India found constitutional validity of a few provisions of the Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985, the first anti-terrorism law that had been established in India. The Court acknowledged that TADA was needed to fight terrorism under extreme circumstances but noted that it should be used with stringent procedural protection to avoid its misuse. The judgment highlighted that preventive detention and special trial procedures should be in line with the precepts of natural justice, which include the right to a just trial and the right against capricious arrest. The Court cautioned too much state authority and demanded judicial review to make sure that the core rights of the accused are not compromised under counterterrorism prosecutions.

In *Siddharam Satlingappa Mhetre v. State of Maharashtra*⁴⁷, case upheld the significance of the strict interpretation of provisions on terror-related issues in the Unlawful Activities (Prevention) Act, 1967 (UAPA). The Supreme Court explained that terrorist act should not have a broad understanding to include lawful actions and dissent to criminalize them thus defending against misuse of anti-terrorism law. The case encouraged the adoption of middle ground in which the national security factors are balanced with

⁴¹ EU Framework Decision 2002/475/JHA on Combating Terrorism.

⁴² Amnesty International, India: Excessive Use of Counterterrorism Laws, 2023.

⁴³ International Covenant on Civil and Political Rights (ICCPR), 1966; UN Human Rights Council, Report on India, 2021.

⁴⁴ UN Special Rapporteur on Counterterrorism and Human Rights, Reports on India, 2019-2024.

⁴⁵ Supreme Court of India, Constitutional Safeguards in Terrorism Legislation, 2023.

⁴⁶ *Kartar Singh v. State of Punjab*, AIR 1994 SC 1854.

⁴⁷ *Siddharam Satlingappa Mhetre v. State of Maharashtra*, AIR 2011 SC 3121.

the constitutional safeguards in the protection of personal freedoms. The case is still a landmark decision that protects civil liberties against counterterrorism law enforcement that was too forceful.

In *Arnesh Kumar v. State of Bihar*⁴⁸, although the ruling is not directly related to the legislation of counterterrorism, it is essential because of the implications on the arrests according to the strict legislation such as the UAPA. The Supreme Court believed arrest could not be done without any procedure or as a procedural measure in investigations; officers in police should adhere to procedural safeguards provided in Section 41 of the Criminal Procedure Code (CrPC). The Court emphasized that arbitrary arrests are contrary to Article 21 (right to life and personal liberty) and which is of special importance in relation to the counterterrorism laws of preventive detention.

In *NIA v. Zahoor Ahmed Shah Watali*⁴⁹, the Supreme Court has stated the principles that would make sure that the trials proceeded under the National Investigation Agency Act, 2008 and the UAPA would follow principles of fairness and expeditiousness. It emphasized that there should be a balance between the pressing counterterrorism prosecutions with the fundamental rights of the accused such as the right to a timely trial, protection against long-term detention, and the right to a lawyer. The case stressed the role of judicial control over the protection of human rights in all counterterrorism processes.

In *Niyamgiri Foundation v. Union of India*⁵⁰, decision though mainly grounded on environmental and tribal rights case concerns state security operations in counterinsurgent scenarios, especially the infamous Salwa Judum vigilante movement in Chhattisgarh. The Court also criticized the violation of human rights and extrajudicial killings and required the judiciary to exercise greater control over the security agencies and to stress that security operations should be in accordance with the constitutional right and international humanitarian law. This decision brought to light the critical conflict between the state counterterrorism/security activities and human rights safeguards.

4.5 Challenges and Debates

The Indian legal system has a strong legal system that struggles to balance between effective counterterrorism and civil liberties. According to critics, the problem of excessive preventive detention, lengthy trials, and broad prosecution authority can undermine constitutional liberties and minority rights, and alienation can arise, worsening the conflict, and prosecutors are not enforced in every area⁵¹.

Politicization of counterterror laws also makes the legitimacy more complex, leading to the necessity to reform the laws that should guarantee transparency, accountability, and compliance with the standards of human rights⁵².

The counterterrorism laws of India are also a reflection of the need to safeguard the national security under some unique circumstances. Judicial review, legislative reforms and international cooperation are essential in balancing fight against terrorism and human rights respectable of the constitutional ethos of India and the international norms.

⁴⁸ *Arnesh Kumar v. State of Bihar*, AIR 2014 SC 187.

⁴⁹ *NIA v. Zahoor Ahmed Shah Watali*, AIR 2018 SC 4589.

⁵⁰ *Niyamgiri Foundation v. Union of India* (Salwa Judum Case), AIR 2011 SC 5533.

⁵¹ Human Rights Watch, Civil Liberties and Counterterrorism in India, 2024.

⁵² National Campaign Against Torture, Report on Misuse of UAPA, 2023.

5. Balancing Security and Human Rights

The necessity to ensure national security with the help of counterterrorism efforts frequently clashes with the need to secure the fundamental human rights. Although states do have a right and responsibility to stop and act against terrorism threats, the scope of ensuring security can lead to the violation of the civil rights in violation of democratic principles and the rule of law. Such a dual responsibility puts human rights in the centre of counterterrorism law and policy discussions. This is a note that carefully examines the issues of counterterrorism that threaten human rights, judicial efforts to reconcile security and rights, the effects of surveillance and detention regimes, emergency law frameworks, major judicial interpretations, and new challenges in the digital era.

5.1 Counterterrorism Human Rights Problems

Counterterrorism practices and laws are inherently prone to violate the rights of freedom of expression, assembling, privacy, due process, and against torture. Indicatively, preventive detention laws allow suspects to be held incommunicado indefinitely, which is contrary to the right to liberty and security in the *International Covenant on Civil and Political Rights (ICCPR)* in Article 9⁵³, and suppress minority groups and acceptable political dissent, as seen by human rights organizations such as the *UN Human rights Council*⁵⁴.

These challenges have been enhanced using surveillance technologies in the name of national security which is usually undertaken without proper legal provisions and transparency which imposes serious concerns on privacy. Mass surveillance programs that are not based on indicators of suspects have high risks of targeting innocent people and compromising the privacy of communication which is the backbone of democratic societies⁵⁵. The UN Special Rapporteur on Counterterrorism and Human Rights reiterated several times that anti-terrorism efforts should be lawful, necessary, proportionate, and under an effective judicial review⁵⁶.

5.2 Judicial Balancing in the Security and Rights Case Law Analysis

5.2.1 Indian Case Law

*People's Union Civil liberties v. PUCL. Union of India*⁵⁷, in this historic case on the registration of criminal cases and prophylactic detention, the Supreme Court of India emphasized that the state of power to detain should be applied in a prudent manner and with a strong compliance to the constitutional protection. The Court highlighted the reasonableness of preventive detention, its necessity and the fact that it is subject to judicial review where the state was keen on Article 21 to balance between its security interest and individual liberty. The decision introduced procedural protections that required clear reasons as to why the notices of detention should be made and hearings were to be conducted promptly.

⁵³ International Covenant on Civil and Political Rights (ICCPR), 1966, Art 9; UN Human Rights Committee, General Comment No. 35, 2014.

⁵⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR), Human Rights, Terrorism and Counterterrorism, 2021; UN Human Rights Council, Report on Counterterrorism and Human Rights, 2023.

⁵⁵ Privacy International, Surveillance and Human Rights, 2024; UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, 2021.

⁵⁶UN Special Rapporteur, Mandate Reports on Counterterrorism and Human Rights, 2018-2024.

⁵⁷ People's Union for Civil Liberties v. Union of India, AIR 1997 SC 568.

In *Zahira Habibullah Sheikh & Anr v. State of Gujarat*⁵⁸, this was a case that concerned the responsibility of investigating agencies in high profile cases related to terrorism. The court emphasized on guarding the rights of the accused during investigations and ensured impartiality, fairness, and avoidance of harassment. It confirmed that security issues do not prevail over the essential procedural protection and established significant precedents on how counterterrorism investigation can be conducted within the constitutional limits.

In *K.S. Puttaswamy (Retd.) v. Union of India*⁵⁹, Although it is mainly concerned with the rights to privacy, this landmark ruling has far-reaching consequences in terms of surveillance in counterterrorist efforts. The Supreme Court acknowledged the right to privacy as inalienable to life and liberty as it requires the surveillance and data collection to take place through lawful, proportional, and accountable processes. It involves the trade-off between the state interests and the privacy, where the conditions of invasion by the government are very strict, which preconditions the future legal reconsideration of mass surveillance in counterterrorism activity.

5.2.2 International Case Law

*A and Others v. European Court of Human Rights*⁶⁰, this ruling questioned the indefinite in custody of suspected terrorists without trial under the Anti-Terrorism, Crime and Security Act 2001 of the UK. The Court considered such detention to be inconsistent with Article 5 (right to liberty and security) of the European Convention on Human Rights, and that preventive detention had to be regularly reviewed, limited in magnitude, and full of procedural assurances. The case demonstrates the importance of safeguarding the individual liberty and the state security requirements.

*Legality of the Threat or Use of nuclear weapons Advisory Opinion*⁶¹ though case is not expressly addressing the issue of terrorism, this opinion issued by ICJ assesses the responsibilities of the state in armed conflict that have implications in counterterrorism activities that make use of force. The ICJ stressed that even in matters of security, the states should adhere to the international humanitarian law and human rights standards, being proportionate and distinct between combatants and civilians.

In *Aldonza and Family v. Peru*⁶², this case involved arbitrary detention and due process violation under counterterrorism. The Court believed that the counterterrorism activities should not violate the human rights, including the right to a fair trial and right against torture or ill-treatment. The decision supports the international law principles that mandate that the human rights are observed during security operations.

5.3 Effects of Surveillance, Detention and Emergency Law

The surveillance is one of the most common practices used in counterterrorism, which poses an acute problem of privacy. Such practices as interception of communications, bulk data collection and metadata analysis are dangerous because of overreach and violations of the rights to privacy and freedom of

⁵⁸ *Zahira Habibullah Sheikh & Anr v. State of Gujarat*, AIR 2006 SC 3336.

⁵⁹ *K.S. Puttaswamy (Retd.) v. Union of India*, AIR 2017 SC 4161.

⁶⁰ *A and Others v. United Kingdom*, App. No. 3455/05, European Court of Human Rights (2009).

⁶¹ *Legality of the Threat or Use of nuclear weapons* (Advisory Opinion), ICJ Reports 1996, p. 226.

⁶² *Aldonza and Family v. Peru*, Inter-American Court of Human Rights, Judgment of March 6, 2006.

expression. The Puttaswamy decision of the Supreme Court stipulates that any limitation on the privacy should be made by law, justifiable in a democratic society and reasonable⁶³.

Preventive detention under UAPA and other forms of detention where prisoners spend significant time in jail without being tried contravening Article 14 (right to a fair and speedy trial) of the Indian Constitution and Article 9 of ICCPR. The opponents observe that these mechanisms threaten arbitrary detention, torture and lack of access to legal counsel as documented by international human rights bodies⁶⁴.

The Armed Forces Special Powers Act (AFSPA) and the National Security Act (NSA) are emergency laws, which provide too much power where the shoot-at-sight orders, and immunity against prosecution are rampant, and so far, have resulted in the violation of human rights recorded in conflict-ridden areas of India⁶⁵.

5.5 New Issues Technology and Digital Rights

Complexities are aggravated by the emergence of new technologies. The promotion of privacy, expression, and due process is a new dilemma in the face of cyberterrorism, coded communications, online radicalization, and algorithmic pre-emptive policing⁶⁶. The law and regulation systems need to evolve to institute strong protection systems and legislative checks and balances.

Security and human rights are a dynamic, multifaceted issue to balance. Although states have the responsibility to safeguard their citizens against any terrorist threats, they should simultaneously defend the constitutional rights and adhere to the international human rights laws. The legislators, the judiciary and the civil society are all critical in ensuring that law and policy in counterterrorism are not used to deny democratic freedoms. Integration of accountability, transparency and proportionality in the counterterrorist operations is unavoidable in achieving a fair and peaceful society.

6. Effects of Counterterrorism Policies and Practices

Though necessary in terms of national and international security, counterterrorism policies and practices do have far reaching implications that are not necessarily related to short term national security objectives. These policies trickle down to socio-political interactions, humanitarian statuses and the core of democratic communities. These effects are so wide-ranging that their socio-political and humanitarian effects, dangers of overreach enabling extremism, and new challenges of new-age terrorism, such as cyberterrorism, digital radicalization, and transnational terrorist networks, must be explored with subtlety. These aspects have been discussed in this note, with the learned insight and pertinent legal view.

6.1 Socio-Political and Humanitarian Effects of Counterterrorism Response

Strict counterterrorism practices could have significant impacts on the lives of societies and communities that are susceptible. These actions are usually associated with the limitations of civil freedoms, mass surveillance, and the extension of law enforcement authority, which may be focused on specific ethnic, religious, or political groups and discriminate against them. The UN Special Rapporteur on Counterterrorism and Human Rights has reported cases where the counterterror legislations have fuelled

⁶³ Justice K.S. Puttaswamy (Retd.) v. Union of India, AIR 2017 SC 4161.

⁶⁴ Human Rights Watch, Arbitrary Detentions in Counterterrorism, 2023; UN Human Rights Committee, Concluding Observations on India, CCPR/C/IND/CO/3, 2019.

⁶⁵ Armed Forces Special Powers Act (AFSPA), 1958; National Security Act (NSA), 1980; Amnesty International, India: Abuses under AFSPA, 2022.

⁶⁶ Oxford Internet Institute, Artificial Intelligence and Surveillance in Counterterrorism, 2025.

stigmatization, social marginalization and discrimination, worsening tensions in the community and wearing down societal cohesion⁶⁷.

Forced human displacements, limited access to necessary services, and humanitarian norm violation in the conflict-prone regions have been documented, particularly in cases where the military functions are directed against the so-called terror groups. Humanitarian institutions across the world emphasize that humanitarian service and civic safety should also be a priority even in counterterrorism situations⁶⁸.

6.2 Threat of Over-Repression and its contribution to the development of Extremism

The most perplexing paradox of counterterrorism is an irony: overuse of power and indiscriminate arrests and suppressions of the law may unintentionally contribute to radicalization and the process of recruiting new members into the extremist movements. Excessive uses of counterterrorism laws, such as long-term preventive detention and punishments, tend to isolate populations, reduce the confidence in state institutions, and offer discourses used by terrorist organizations⁶⁹.

The studies show that the sense of injustice and marginalization is one of the key contributors to the cycles of violence and extremism. Therefore, counterterrorism interventions that are not accountable and proportional would contribute to strengthening the threat they are supposed to destroy, which is the paramount challenge in breaking this cycle⁷⁰. Accountability in counterterrorism interventions, transparency, and community involvement in the security policies are crucial in disrupting this cycle.

6.3 New Age Terrorism Capitalism: Digital Radicalization, Cyberterrorism and Transnational Networks

The landscape of threats has changed because terrorism has become digital. The cyberspace is currently being used by terrorist groups in their recruitment, propagating propaganda and raising funds and in carrying out their tactics. Cyberterrorism involves targeting critical infrastructure, stealing data or urging harassment online to cause fear and interfere with the normal functioning of society⁷¹.

Online radicalization also creates an issue of distanced and disconnected brainwashing, and conventional de-radicalization and counter-narratives can be difficult. Transnational networks across physical boundaries challenge traditional models of state-centric approaches to security and demand new legal and collaborative frameworks⁷².

Multisectoral collaboration involving technology companies, civil society, and intelligence agencies is also a priority of international responses to monitor, counter, and mitigate cyber and digital terrorism through an effective awareness of digital rights⁷³.

6.4 Counterterrorism Practices: Legal and Ethical issues

The counterterrorism actions should be in line with the international law, which includes the human rights law, humanitarian law, and the principle of criminal justice. Such measures are lawful, necessary, proportionate, and not discriminatory which are the bases of their legitimacy. According to the UN Global

⁶⁷ UN Special Rapporteur on Counterterrorism and Human Rights, Annual Reports, 2018-2024.

⁶⁸ International Committee of the Red Cross, Humanitarian Challenges in Counterterrorism, 2023.

⁶⁹ Human Rights Watch, The Effects of Repressive Counterterrorism Policies, 2022.

⁷⁰ United Nations Development Programme, Countering Violent Extremism and Building Peace, 2020.

⁷¹ United Nations Office on Drugs and Crime (UNODC), Cyberterrorism Overview, 2024.

⁷² Global Counterterrorism Forum, Strategies for Digital Radicalization, 2023

⁷³ Internet Governance Forum, Multistakeholder Approaches to Cybersecurity, 2024.

Counter-Terrorism Strategy, counterterrorism must respect human rights to ensure the effectiveness and the trust of the people⁷⁴.

Ethical dilemmas occur in the process of making a balance between privacy and security, freedom, and safety, as well as individual rights and collective interests. The challenge lies in the fact that states must advocate intrusive surveillance and restrictive laws without violating such ethical limits, which is why the role of clear legal frameworks and control systems is significant⁷⁵.

Counterterrorism policies have severe socio-political effects on socio-political landscapes and humanitarian status, and dangers of repression may increase extremism. New forms of terrorism, cyber and digital, complicate the need to respond adaptively to ensure rights are not violated. Incorporating human rights compliance and ethical aspects into the counterterrorism policy is essential to attaining sustainable security and democratic integrity.

7. Difficulties and Suggestions in the Striking a Balance between Security and Human Rights in Counterterrorism

The quest to pursue effective counterterrorism activities and at the same time protect and uphold fundamental human rights is a complex issue that requires legal, operational, political, and ethical aspects. Amidst the changing circumstances of the world and terrorist threats, states struggle to balance their national security goals with their international human rights commitments. The present note offers a comprehensive analysis of the current issues, along with concrete suggestions on how the law can be changed, the policy adjusts, and the international collaboration enhanced, and the stipulations of human rights can be reinforced in the context of the counterterrorism approaches.

7.1 Legal and Operational Problems in balancing Security and Rights

7.1.1 Laws Definitions and Scope Uncertainties

The fact that the many national laws that define terrorism in a vague and over-general way is a cornerstone to the issue of terrorism being used to criminalize legitimate political dissent or peaceful protest. This is a legal ambiguity that gives way to arbitrary application, weakening the rule of law and human rights, and complicates international collaboration because of the inconsistency of definitions⁷⁶.

7.1.2 Imperatives of State Security and Restrictions of Rights

The pressures of operation in most cases force states to employ repressive strategies like prolonged detention, monitoring, and limitation of freedoms of speech and assembly. The necessity to strike a balance between urgency and rights protection is not an easy task since the urge to respond to the urgent might be at the expense of the procedural rights and judicial checks⁷⁷.

7.1.3 Resource Limitations and Capacity missed

Most of the states do not have enough institutional capacity, training, and resources to enforce the counterterrorism laws in line with human rights protection. Poor judicial systems, ineffective law

⁷⁴ UN General Assembly, United Nations Global Counter-Terrorism Strategy, A/RES/60/288, 2006.

⁷⁵ Oxford Handbook of Ethics in Counterterrorism, Oxford University Press, 2025.

⁷⁶ Amnesty International, Overbroad Terrorism Laws and Human Rights Risks, 2024.

⁷⁷ UN Office of Counterterrorism, Challenges in Balancing Security and Rights, 2023.

enforcement and absence of accountability mechanisms only enhance the violation of rights and reduce the effectiveness of counterterrorism⁷⁸.

7.1.4 International Co-ordination Problems

The differences between legal systems, geopolitical differences, and nationalistic security strategies are barriers to effective collaboration, exchange of information, and joint activities. Border protection mechanisms to guarantee rights are met are insufficient, leaving loopholes of lack of accountability and spaces of misconduct⁷⁹.

7.2 Law Reform, Policy and International Cooperation Recommendations

7.2.1 Rights-Compatible and Precise Legal Definitions

States should use transparent, limited and consistent legal definitions of terrorism in accordance with international standards and human rights. This will guard against abuse and improve transnational court cooperation⁸⁰.

7.2.2 Integrating Judicial Checks and Balances

Laws on counterterrorism ought to clearly require periodic judicial review of detentions, surveillance and other limitations. The powers to investigate rights violations and hold accountable should be vested on independent oversight bodies⁸¹.

7.2.3 Capacity Building and Training on Human Rights

It is important to invest in capacity building of the law enforcers, judiciary and security agencies to learn and defend human rights in counterterrorism activities. Legal compliance training, ethical behaviour training, and community engagement should be highlighted in the training programs to improve legitimacy and effectiveness⁸².

7.2.4 Improving Multilateral Structures and Cooperation

The international organizations such as the United Nations should help in harmonizing the legal standards and monitoring as well as encouraging the best practices. Human rights standards should be incorporated into regional cooperation endeavours⁸³.

7.3 Enhancement of Human Rights Protection in Counterterrorism Operations

7.3.1 Providing Due Process and Fair Trial

Without exception, all counterterrorism activities should be made to comply with due process assurances. Arrests are supposed to be reviewed at the right time, charges are supposed to be framed, and people are supposed to be given a legal representation to avoid miscarriages of justice⁸⁴.

⁷⁸ UN Human Rights Council, Capacity Gaps and Counterterrorism, 2022.

⁷⁹ International Crisis Group, Obstacles to Counterterrorism Cooperation, 2023.

⁸⁰ United Nations Office on Drugs and Crime (UNODC), Model Legal Provisions on Terrorism, 2024.

⁸¹ Human Rights Watch, Judicial Oversight in Counterterrorism, 2023.

⁸² Global Counterterrorism Forum, Human Rights Training and Capacity Building, 2023.

⁸³ United Nations General Assembly, Global Counterterrorism Strategy, A/RES/60/288 (2006).

⁸⁴ International Covenant on Civil and Political Rights (ICCPR), 1966, Art 14; UN Human Rights Committee, General Comment No.32, 2007.

7.3.2 Illegalization of Torture and Cruelty

There should be strict bans against torture, inhuman, cruel or degrading treatment. States are supposed to have open channels of complaints and independent investigations of claims that occur because of counterterrorism practices⁸⁵.

7.3.3 Securing Privacy and Freedom of Speech

The laws on surveillance must be confined, restricted in scope and be authorized by the independent judiciary. Media and freedom of expression should be exercised to avoid censorship and retaliation in the name of counterterrorism⁸⁶.

7.3.4 Community Participation and Safeguarding of the vulnerable groups

Policy inclusivity, dialogue, protection of minority rights and active participation of civil society are the key elements of addressing the root causes of radicalization to build trust and resilience to violent extremism⁸⁷.

The strike between security and human rights in counterterrorism requires total reforms with focus on legal clarity, judicial control, capacity building, international collaboration, and strong human rights protection. The effectiveness and legitimacy of counterterrorism policies can be advanced through such a complex strategy and creates the conditions of a stable and rights-observant society.

8. Conclusion

Terrorism is a very complicated issue, which needs a fine line between ensuring security and the preservation of basic human rights. Although strong counterterrorism strategies are essential in ensuring that peace and violence is avoided, it must be well balanced so as not to undermine civil liberties, democracy, and the rule of law. The lack of a consensus on what terrorism really is makes it difficult to have legal coherence and international collaboration but the changing international and domestic law has come a long way towards dealing with the problem. Achieving a balance between security needs and constitutional guarantees is crucial through judicial oversight, accurate statutory definitions, and enforcement proportions as well as high-quality human rights protection. Moreover, emerging threats like cyberterrorism and transnational extremist networks require adaptive, coordinated and rights-respecting responses. Finally, any viable counterterrorism practices should not be solely pegged on the aspect of security but also on a firm resolve to maintain human rights and freedoms, which are the pillars of democratic societies. Human rights protection that is vigilant and continuous legal change coupled with increased international cooperation can create a long-term way of effectively preventing terrorism without infringing the rights and dignity of human beings.

⁸⁵ UN Convention Against Torture (CAT), 1984; UN Special Rapporteur on Torture, Reports 2018-2024.

⁸⁶ Office of the UN High Commissioner for Human Rights (OHCHR), Privacy and Counterterrorism, 2021.

⁸⁷ United Nations Development Programme (UNDP), Community Engagement in Countering Violent Extremism, 2022.

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