
HUMANISING ANTI-TERROR LAWS: INDIA AND THE WORLD

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ABSTRACT

Over the last two decades, countries around the world have enacted increasingly stringent laws to regulate terror-related activities. Often justified on the grounds of national security and the necessity of maintaining public order, these laws grant extensive and unchecked powers to the State. They provide for a framework whereunder fundamental rights guaranteed by instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant of Civil and Political Rights (ICCPR) can be legitimately curtailed upon by the State. India has been no exception this trend. The Indian Government, over the last decade, has used to laws like the Unlawful Activities (Prevention) Act (UAPA) to arrest critics under the garb of national security. Individuals arrested under anti-terror laws have been denied bail for years, and have been kept in jail without being told the reasons behind their arrest. Moreover, the UAPA has been amended to give unrestricted powers to the Union Government without any corresponding mechanism to prevent its misuse.

This paper aims to analyze how Indian anti-terror laws are increasingly becoming incompatible with the fundamental rights guaranteed by Part III of the Constitution. Further, it compares Indian terror laws to the anti-terror laws passed in foreign jurisdiction and basis that, gives recommendations to align Indian terror laws with the fundamental rights guaranteed by the Constitution.

I. Introduction

The Indian Constitution guarantees to all its citizens, amongst other rights, the fundamental right to equality, the right to free speech, as well as the right to life and liberty.¹ These three rights, which form the bedrock of Indian democracy, form part of the “Golden Triangle”. This Golden Triangle ensures that Indians can actively voice their opinions and criticize the Government without any fear of being reprimanded. Moreover, the Golden Triangle creates a framework whereunder all individuals, irrespective of their religion, community or caste, are treated equal before the law.² This framework, however, has come under significant threat over the last few decades from anti-terror laws, that seek to legitimize the denial of basic human rights.

Ever since independence, India has had laws that have imposed restrictions on individual freedoms on the ground of “national security”, and “public order.” These laws have almost always given the State unlimited powers, without providing for a corresponding mechanism to keep a check on potential abuse of power. This has resulted in rampant misuse, and human right excesses.³ In the garb of protecting national security, the Union Government has tried to justify indefinite detentions, custodial torture, and, in some cases, even a free warrant to kill.⁴ Such instances have witnessed a dramatic increase in the last decade, with crucial amendments being made to the Unlawful Activities (Prevention) Act, 1967 to broaden its ambit. The last decade has witnessed the arbitrary arrest and torture of journalists, civil society members, and vocal critics of the Union Government in the garb of national security.⁵

This paper seeks to examine the anti-terror framework that exists in India, and the corresponding human rights abuses. The first part of the paper examines the existing Indian framework, while the second section examine the anti-terror framework that exists in foreign jurisdictions. The third sections provides recommendations that need to be implemented to prevent the potential abuse of anti-terror laws.

¹ Constitution of India, 1950, Articles 14,19,21.

² Sukarm Sharma, Rescuing Article 19 from the “Golden Triangle”: An Empirical Analysis of the Application of the Exception Clauses under Article 19, 15 NUJS L. Rev. 320 (2022).

³ Anil Kalhan, Colonial Continuities: Human Rights, Antiterrorism, and Security Laws in India, 20 Colum. J. Asian L. 93 (2007).

⁴ Id

⁵ Legal Experts Call for a Repeal of UAPA over Misuse and Rights Violations, *Frontline* (May 20, 2024), <https://frontline.thehindu.com/news/supreme-court-advocates-call-for-a-repeal-of-uapa-over-misuse-and-rights-violations/article68195582.ece>.

II. India's Anti-Terror Framework

A. Unlawful Activities (Prevention) Act, 1967 (UAPA)

The UAPA is the primary legislation dealing with terror-related activities in India. While it was originally enacted in 1967, the Act has undergone significant amendments subsequently. The Act was legislated in the backdrop of the 16th Amendment to the Constitution, which imposed reasonable restrictions on the rights guaranteed by Article 19. The UAPA did not originally deal with terror-related activities.⁶ It was only through an amendment in 2004 that provisions pertaining to terrorism were added to the Act.⁷

The Act has been criticized for violating several fundamental human rights. For instance, a 2019 amendment of the Act makes it possible for the Union Government to declare any individual a terrorist.⁸ The amendment, however, does not lay down any objective criteria for determining who constitutes a terrorist, and neither does it provide for any rules to keep the Government from abusing its powers.⁹ The Act also does not allow the individual notified as a terrorist to challenge the designation before the Courts. Instead, it merely provides that an individual notified as a terrorist may challenge the designation before the Central Government which can decide on the same without having to refer to the Court.¹⁰ The Act, thus, creates a framework whereunder the Government can punish its critics by designating them as a “terrorist” without having to provide any evidence to the Court.

Moreover, the provisions of the UAPA make it virtually impossible for an arrested individual to get bail. Section 43D of the UAPA provides that an individual arrested under the Act shall not be released on bail if the Court is of the opinion that the allegations against the accused are *prima facie* true.¹¹ Section 43D, thus, reverse the burden of proof and imposes the burden of proving his/her innocence on the accused himself. In *NIA v. Zahoor Ahmed Shah*, the Supreme Court explicitly stated that while determining if bail is to be granted under the Act, the Court shall not go into a detailed examination of the prosecution's case, it shall only examine if there

⁶ Dewal, Snigdha Singh, *Analysing the Impact of the Unlawful Activities Act, 1967 on Individual Rights in a Comparative Manner*, October 10, 2023, available at <https://ssrn.com/abstract=4597870>.

⁷ Unlawful Activities (Prevention) Act, 1967, Section 17.

⁸ Unlawful Activities (Prevention) Amendment Act, 2019.

⁹ Unlawful Activities (Prevention) Act, No. 37 of 1967, § 35.

¹⁰ Unlawful Activities (Prevention) Act, No. 37 of 1967, § 36.

¹¹ Unlawful Activities (Prevention) Act, No. 37 of 1967, § 43D.

is a prima facie case against the accused.¹² Further, the Court held that the normal rule of jail being the exception shall not apply to cases under the UAPA. What aggravates the situation further is that the default bail rule, under the UAPA, extends the time period for filing a chargesheet from the usual 90 days to 180 days.

B. Prevention of Money Laundering Act, 2002 (PMLA)

The PMLA is used to criminalize the funding of terror-related activities. Provisions of the Act are often invoked in combination with Section 17 of the UAPA. Section 3 of the Act defines “money laundering” as the act of knowingly or unknowingly “indulging in the proceeds of a crime, including possession, concealment or concealment” or assisting another individual in doing the same.¹³ The Act has conferred wide ranging powers on the Enforcement Directorate to investigate all individuals accused of the offence of money laundering, and to attach property acquired using the proceeds of the crime. Much like the provisions of the UAPA, the PMLA too has been criticized on the ground that it confers significant powers to the investigating agencies without providing for adequate procedural safeguards to prevent the abuse of power.

For instance, unlike as in the case of most offences, the PMLA does not mandate the filing of a First Information Report (FIR). Instead of an FIR, the PMLA only mandates the filing of an internal report called the “Enforcement Case Information Report” (ECIR), which is not even required to be disclosed to the accused.¹⁴ As such, the accused is not told in detail the offence for which he is charged and/or arrested. Furthermore, as in the UAPA, the burden of proving of innocence lies on the accused. The ED also has the power, under Section 50, to force any individual to give testimonies under the threat of arrest, in blatant violation of the right against self-incrimination laid out in Article 20 of the Constitution.¹⁵ It is also important to note that Section 5 empowers the ED to attach property merely on the apprehension that the proceeds of the crime, or the money obtained therefrom, is likely to be concealed.¹⁶

Like the UAPA, the PMLA too imposes stringent conditions for bail. Section 45 of the Act lays down the “twin test” for bail. It provides that an individual arrested under the Act must prove to the Court that there are reasonable grounds for believing that he/she did not commit the

¹² NIA v. Zahoor Ahmed Shah, 2019 5 SCC (1).

¹³ Prevention of Money Laundering Act, No. 15 of 2003, § 3.

¹⁴ Prevention of Money Laundering Act, No. 15 of 2003, § 19.

¹⁵ Prevention of Money Laundering Act, No. 15 of 2003, § 20.

¹⁶ Prevention of Money Laundering Act, No. 15 of 2003, § 35.

offence for which he is accused.¹⁷ He must further prove that he/she is not likely to commit any offence while on bail.¹⁸ However, in the absence of detailed reasons being given to the accused on arrest, it is virtually impossible for him/her to prove his innocence.

C. Armed Forces Special Powers Act, 1958 (AFSPA)

The AFSPA was primarily enacted to deal with secessionist movements in different parts of the country. Section 3 of the Act allows the Union Government to declare any state, or a part thereof, as a “disturbed area” and deploy the army therein to aid “civil powers.” While the maintenance of internal order is a responsibility conferred on the State Government under List II of the Seventh Schedule, the AFSPA creates a framework wherein the responsibility of maintaining internal order is shifted to the Armed Forces, primarily the army.

Human rights activists have criticized the AFSPA on the ground that the armed forces, in “disturbed areas”, have been given wide ranging powers without adequate checks. For instance, Section 4(a) allows armed forces to use “force, even to the causing of death” if it believes that the same is necessary to maintain public order.¹⁹ Similarly, Section 4(c) empowers the armed forces to even arrest an individual without requiring an arrest warrant. Section 5, which deals with arrest, further does not mandate the armed forces to inform the accuse of the reasons behind his/her arrest.²⁰ While Section 5 mandates the armed forces to provide a report of the circumstances surrounding the arrest, in practice, such a report is rarely given by the forces.²¹ Moreover, unlike in ordinary cases of arrest, AFSPA does not lay down a time limit within which a person arrested has to be presented before the Magistrate.

It is, however, Section 6 that is the most criticized. Section 6 of the AFSPA provides complete immunity to armed forces. It provides that no prosecution, or suit shall be filed against members of armed forces for acts undertaken by them under the provisions of the AFSPA without the prior permission of the Union Government.²² In essence, therefore, an individual who is injured by members of the armed forces has no legal recourse to get compensation for the injuries suffered.

¹⁷ Prevention of Money Laundering Act, No. 15 of 2003, § 45.

¹⁸ *Id*

¹⁹ Armed Forces (Special Powers) Act, No. 28 of 1958, § 4(a).

²⁰ Armed Forces (Special Powers) Act, No. 28 of 1958, § 5.

²¹ *Id*

²² Armed Forces (Special Powers) Act, No. 28 of 1958, § 6.

D. National Security Act, 1980 (NSA)

The NSA, along with the UAPA, serves as the primary legislation providing for preventive detention in India. Section 3 of the Act empowers the Central and State Governments to detain any individual who it believes may act in a manner prejudicial to the interests of India, the security of India, or in any manner prejudicial to the interests of a particular state or if he/she disturbs the supply of essential services.²³ An individual, under the Act, can be detained for a maximum of 12 months though the detention order is to be placed for review before an Advisory Board within 3 weeks of the detention.²⁴

It is often seen that the State Governments across the country, but particularly in Uttar Pradesh, use provisions of the Act to target its critics. For instance, in January 2020, the Uttar Pradesh Government detained an individual under Section 3 of the Act for leading a protest against the Citizenship Amendment Act.²⁵ Similarly, in April 2023, the State Government issued a detention order under Section 3 against a leader of an opposition party for unpaid tax dues.²⁶ Further, the State Government also imposed NSA charges on an individual accused of cow slaughter.²⁷

These instances expose how easily the State can misuse provisions of the Act to arbitrarily detain its critics without any check. This is primarily because of the vague grounds of detention laid out in Section 3. The Section does not define what constitutes an act “prejudicial to the interests of the State”, and neither does it define what exactly qualify as an act endangering national security. In the garb of national security, provisions allowing for preventive detention are almost always used to attack, and detain political opponents.

²³ National Security Act, No. 65 of 1980, § 3.

²⁴ National Security Act, No. 65 of 1980, § 13.

²⁵ SC Dismisses UP Plea Against HC Quashing Kafeel Khan Detention under NSA, *The Hindu* (Dec. 17, 2020), <https://www.thehindu.com/news/national/sc-refuses-to-interfere-with-allahabad-hc-order-quashing-detention-of-kafeel-khan-under-nsa/article33353707.ece>.

²⁶ SC raps UP for invoking NSA in municipal tax recovery case, *The Hindustan Times* (Apr.12, 2023), available at <https://www.hindustantimes.com/india-news/supreme-court-quashes-nsa-charges-against-sp-leader-yusuf-malik-orders-immediate-release-criticizes-up-govt-s-non-application-of-mind-101681241676561.html>

²⁷ Bulandshahr Violence: NSA Invoked Against Accused, *Times of India* (Jan. 14, 2019), <https://timesofindia.indiatimes.com/india/bulandshahr-violence-nsa-invoked-against-accused/articleshow/67527456.cms>.

III. Anti-Terror Framework in Foreign Jurisdictions

A. United States of America

The primary anti-terror statute in the USA is the Patriots Act of 2001. The Act, which was passed in the aftermath of the 9/11 terror attacks, gives sweeping powers to the Federal Bureau of Investigation (FBI) and the Central Investigation Agency (CIA) to undertake surveillance, and investigate any person suspected of terrorism.²⁸ While before the Act was legislated, investigating agencies were required to secure a warrant to undertake surveillance and search the premises of those accused of terrorism, the Act makes it possible for the Federal Government to undertake mass surveillance even in the absence of probable cause.²⁹

Furthermore, the Act greatly broadened the definition of “terrorism”. The definition includes within its ambit any act which appears to be “dangerous to human life” which either seeks to “intimidated the civilian population” or try to coerce the Federal or State Government into changing its policies.³⁰ The definition, as such, can cover even ordinary acts of dissent and protests, which are a regular feature of every democracy. It is also pertinent to note that Section 806 permits the Government to seize any or all assets of an individual who is suspected to be involved in “terrorist” activities without getting prior permission from the Courts.³¹

The Patriot Act is especially harsh towards to foreign citizens. Section 412 allows the Attorney General to classify any alien citizen as a being involved in terror-related activities without having to substantiate the same.³² The Attorney General may also consider an individual to be a “national security threat”, and classify him/her as such though what constitutes a “threat” has not been defined.³³ Once classified as such, the said citizen would mandatorily have to be detained, and charged for an offence within 7 days of the detention. It is also pertinent to note that aliens certified under Section 412 are not eligible for bail.³⁴ These Sections of the Act have

²⁸ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, § 216, 115 Stat. 272.

²⁹ *Id*

³⁰ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, § 802, 115 Stat. 272.

³¹ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, § 806, 115 Stat. 272.

³² Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, § 412, 115 Stat. 272.

³³ *Id*

³⁴ *Id*

mainly been used against Muslim immigrants living in the United States, with studies showing that more than two-thirds of the individuals arrested under Section 412 practice Islam.³⁵

The Act, thus, creates a framework whereunder it is possible for the State to systematically target a particular section of the society or community without any check. It denies individuals, particular non-citizens, basic human rights such as access to liberty and freedom. Much like the anti-terror laws in India, the Patriots Act does not provide for a mechanism to keep a check on the State's unbridled powers.

B. European Union

Member states of the European Union (hereinafter referred to as the "EU") are free to make national laws governing terrorism in their respective territories. In 2017, the EU released a directive on combatting terrorism, which lays down a list of activities that mandatorily have to be outlawed in all national anti-terror laws.³⁶ It is also pertinent to note that the EU requires all its member states to comply with basic human rights standards while undertaking counter terrorism activities.

The EU, in 2002, released guidelines on Human Rights and the Fight Against Terrorism". The Guidelines, while acknowledging and re-affirming the obligation of each State to protect its citizens from terrorism, lays down a basic standard of rights that must be conferred on those accused of terrorism.³⁷ Article 1 of the Guideline provides that all anti-terror measures undertaken by States must respect "human rights and the rule of the law."³⁸ Further, Article IV provides for an absolute prohibition of torture or any inhumane treatment of detainees.

Unlike the anti-terror framework in India, the law in the EU seeks to respect the right to life and liberty of those accused of terrorism. The EU Guidelines ensure that there is a check on the unbridled powers of the State, by providing that an individual who is accused of terrorism shall be presumed to innocent and that the burden of proving guilt would continue to be on the prosecution.³⁹ Moreover, the Guidelines state the arrest of any individual accused of terror

³⁵ The USA PATRIOT Act: A Policy of Alienation, 9 Mich. J. Race & L. 163 (2003).

³⁶ Directive 2017/541, of the European Parliament and of the Council of 15 March 2017 on Combating Terrorism, 2017 O.J. (L 88) 6.

³⁷ Council of the European Union, Guidelines on Human Rights and the Fight Against Terrorism, H (2002) 4.

³⁸ Council of the European Union, Guidelines on Human Rights and the Fight Against Terrorism, H (2002) 4, art. I.

³⁹ Council of the European Union, Guidelines on Human Rights and the Fight Against Terrorism, H (2002) 4, art. VII.

related activities would be regularly reviewed by the Courts to prevent prolonged detention.⁴⁰

C. United Kingdom

The Terrorism Act, 2000 is the main legislation dealing with terror related activities in the UK. It gives sweeping powers to investigating authorities to arrest, question and seize property of any individual suspected to be involved in terrorism. The powers given to authorities were further enhanced through the Prevention of Terrorism Act, which was enacted in the aftermath of the 2005 London bombings.⁴¹

Human rights activists have often criticized the “stop and search” provisions laid out in Section 44 of the Terrorism Act, which give complete liberty to the police to stop and search any individual in public if they suspect him/her to be involved in terror-related activities.⁴² Research, however, has shown that the police is twice as likely to search people of color, and Asians as compared to the white population.⁴³ Furthermore, activists have criticized the extremely broad definition of terrorism laid out in the Section 1 of the Act. The Act defines “terrorism” as anything involving violence against individuals, as well as acts posing a risk to the general public.⁴⁴ The Act, however, does not define what exactly constitutes a “risk to the general public”, neither does it seek to provide a check on the power to label an individual as a terrorist.

In addition to the above-mentioned provisions, activists have also frequently criticized the power given to the Government to issue “Temporary Exclusion Orders.” These orders can be issued by the Government to prevent any individual suspected of terrorism from entering the country for a period of 2 years.⁴⁵ Section 2 of the Counter Terrorism Act, 2015 allows the Government to issue the exclusion order only on a mere apprehension, or suspicion that the individual is engaged in terrorism.⁴⁶ It does not require the Government to provide substantial proof of the same, leading to the creation of a framework whereunder the Government is given

⁴⁰ Council of the European Union, Guidelines on Human Rights and the Fight Against Terrorism, H (2002) 4, art. VII.

⁴¹ Christian A. Honeywood, Britain’s Approach to Balancing Counter-Terrorism Laws with Human Rights, 9 J. Strat. Sec. 28 (2016), <http://www.jstor.org/stable/26473337>.

⁴² Terrorism Act 2000, c. 11, § 44 (UK).

⁴³ Section 44 Terrorism Act, *Liberty*, <https://www.libertyhumanrights.org.uk/human-rights/justice-and-fair-trials/stop-and-search/section-44-terrorism-act>.

⁴⁴ Terrorism Act 2000, c. 11, § 1 (UK).

⁴⁵ Counter-Terrorism and Security Act 2015, c. 6, § 2 (UK).

⁴⁶ *Id*

completely freedom to expel any individual without being required to provide reasons for the same.

IV. Recommendations for Indian Laws based on Foreign Jurisprudence

Anti-terror laws around the world are based on the belief that it is imperative to impose restrictions on the liberty of individuals, to protect the larger interests of the State. Such laws, which are enacted to maintain national security, almost always give wide ranging powers to the State apparatus. While giving wide ranging powers, however, it is also pertinent to ensure that there remains a check on the exercise of such powers to prevent human right excesses. Unfortunately, anti-terror laws in India do not provide for such a check. The framework created by Indian anti-terror laws, such as UAPA, AFSPA and the NSA, is such that the Union Government can legitimately deprive individuals of their fundamental rights without any repercussions. Individuals can be subjected to prolonged incarceration, be detained without being told reasons behind the same, and be designated as a “terrorist” without having the right to challenge the same before Courts.⁴⁷

There are numerous instances of anti-terror laws being exploited to particularly target vocal critics of the Government, and of individuals being detained under anti-terror laws for multiple years without getting an opportunity to present their case. Umar Khalid, for example, has been in jail for 5 years after being charged for an offence under the UAPA.⁴⁸ Despite multiple bail applications across various Courts, he has not been able to secure bail of the stringent conditions for bail laid out in Section 43D of the UAPA.⁴⁹ Similarly, Siddique Kappan, a journalist who was travelling to Hathras to cover a rape case, was arbitrarily arrested under the UAPA and was accused of having links with a terror outfit operating in Kerala. Kappan eventually spent more than two years imprisoned before he was granted bail by the Supreme Court.⁵⁰ The misuse of the UAPA is best illustrated by the fact that out of almost 9,000 registered cases under the Act, only 215 have resulted in a conviction, translating to a

⁴⁷ See Section II: India’s Anti-Terror Framework.

⁴⁸ Cops Oppose Bail of Umar Khalid, Others in 2020 Delhi Riots: Speeches Created Fear, *India Today* (Jan. 10, 2025), <https://www.indiatoday.in/india/law-news/story/delhi-2020-riots-umar-khalid-sharjeel-imam-uapa-case-delhi-high-court-2662653-2025-01-10>

⁴⁹ Id

⁵⁰ SC Relaxes Bail Condition on Kerala-Based Journalist Siddique Kappan in UAPA Case, *Indian Express* (Nov. 4, 2024), <https://indianexpress.com/article/india/siddique-kappan-uapa-case-sc-bail-conditions-kerala-journalist-9652787/>.

conviction rate of less than 3%.⁵¹

While the problem of lack of adequate checks in anti-terror laws is not specific to India, and exists universally, it is particularly aggravated in India. In this context, it is pertinent to refer to the checks present in the anti-terror laws enforced in foreign jurisdictions, primarily the EU. The law in the EU stands out from the law in other jurisdictions, in as much as it seeks to balance the need to protect “national security” with the liberty and freedom of citizens. The EU mandates all its member States to adhere to a basic standard of rights while prosecuting individuals accused of terrorism.⁵² Further, the EU Guidelines on Anti-Terrorism mandate that the trial be conducted in an expeditious manner, and that the accused shall only be imprisoned for a “reasonable period of time” which shall regularly be reviewed by the Courts.⁵³

It is, therefore, essential to make the following changes to the law in India to ensure that fundamental rights of those accused of terrorism are respected:

1. The stringent conditions of bail laid out in Section 43D of the UAPA, which prohibits the Court from granting bail if there exists reasonable grounds for believing the prosecution’s charges to be “prima facie” true, should be relaxed. The normal rule of “bail being the rule” should be extended to the UAPA, and the mere gravity of the offence should not make it impossible for the accused to get bail.
2. The Union Government’s power to designate an individual as a “terrorist” should be subject to judicial review before Courts. It must present evidence, and mere suspicion, should not be enough for terrorist designation.
3. The pre-charge detention period of 180 days, as provided for under Section 43D, should be reduced to at the maximum 90 days. Further, the burden of proof should not be reversed in the UAPA, i.e. the burden of proof should still be on the prosecution, and the accused should not be presumed to be guilty.

⁵¹ UAPA Cases: Highest Acquittals at 153 in 2022, *The Indian Express* (Sept. 8, 2024), <https://www.newindianexpress.com/thesundaystandard/2024/Sep/08/uapa-cases-highest-acquittals-at-153-in-2022>.

⁵² Council of the European Union, Guidelines on Human Rights and the Fight Against Terrorism, H (2002) 4.

⁵³ Council of the European Union, Guidelines on Human Rights and the Fight Against Terrorism, H (2002) 4, art. VII.

4. Section 6 of the AFSPA should be amended to ensure that members of the armed forces are held accountable for their actions under the Act. Further, Section 4(a) of the Act, which gives an open license to members of the armed forces to kill, should be modified to prevent its misuse.
5. The maximum period of preventive detention, as provided by the NSA, should be reduced from 12 months to 3 months, as was the case in the earlier acts dealing with preventive detention such as the Preventive Detention Act, 1950.

V. Conclusion

Countries around the world have strengthened their anti-terror framework to the extent that it gives complete immunity to the State to arrest, torture, detain and harass any individual in the garb of protecting national security. Such wide powers are almost always mis-used, and Governments end up deliberately targeting those who criticize its policies and actions. This is primarily because anti-terror laws, while giving extensive powers to the State, do not provide for adequate mechanisms to keep a check on potential mis-use and abuse of power. Individuals who are detained and prosecuted under anti-terror laws are denied some of their most basic human rights, even while their trial is kept pending for decades.

India is no exception to the general trend of abuse of terror related laws. The last decade, ever since the NDA Government came to power in 2014, has witnessed an exponential rise in the number of cases registered under the UAPA. However, the conviction rate has remained less than 2%.⁵⁴ Moreover, with the stringent conditions of bail laid out in Section 43D of the UAPA, it has become almost impossible for the accused to get bail. The draconian provisions of the UAPA, when combined with equally broad provisions of the AFSPA and the NSA, create a mechanism whereunder the Union Government can arrest, torture, kill and harass any individual for “security purposes” with complete immunity. Individuals accused of terrorism are, therefore, effectively stripped of some of their fundamental human rights.

It is imperative to ensure that security laws do not become a tool for shutting down dissent to the Government. While the Indian Constitution, through the golden triangle of Articles 14, 19 and 21, guarantees to all its citizens the fundamental right to equality and dignity, anti-terror laws have emerged as a legitimate means of restricting its applicability. Though it is important

⁵⁴ UAPA Cases, *supra* note 51.

to ensure that we have a legal framework that is fully capable to deal with terror-related offences, it is equally important to ensure that such a framework is balanced with the rights guaranteed by the Constitution.

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