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Response to: Call for Inputs: Definitions of "terrorism", "terrorist organisation" and "violent extremism"

A CRITICAL STUDY OF TERRORISM DEFINITIONS WITHIN INDIA'S LEGAL FRAMEWORK

This submission[1] examines India's evolving counter-terrorism framework by analysing how decades of exposure to extremist violence have shaped its legal definitions, institutional responses, and human rights landscape. It traces the progression from early preventive detention laws to contemporary statutes such as the Unlawful Activities (Prevention) Act, the Bharatiya Nyaya Sanhita, the National Security Act, and specialised state-level legislation, highlighting the conceptual and procedural complexities within them. In doing so, this submission evaluates the gaps that arise from broad and impact-agnostic definitions of terrorism, the tensions they create with constitutional liberties, and the difficulties involved in crafting a precise and universally accepted definition in the absence of global consensus. It also examines emerging forms of terrorism, including cyber-based, financially driven, transnational, and environment-focused threats, emphasising the need for a balanced and rights-respecting approach in future legal reforms.

In the global world, there is no common definition given for the act of "**Terrorism**". According to the United Nations (hereinafter, referred to as "the U.N."), the world can't agree on a common definition of terrorism due to varied interests. As such, the U.N. views terrorism as the basic triangular relation where *"**A** would use **B** to coerce **C** into doing something which is in the interest of **A**.*[2] When this comes in between states, most of the common causes are either territorial, religious disputes or ideological differences and varied political interests. This **B** can

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[1] *Written under the esteemed guidance of **Dr. Shveta Dhaliwal** (Assistant Professor of Political Science at Rajiv Gandhi National University of Law) by **Daksh Khanna** (5th Year Student at RGNUL, Punjab), **Siya Pandita** (5th Year Student at RGNUL, Punjab), **Aryan Gupta** (3rd Year Student at RGNUL, Punjab), **Malhaar Pandita** (2nd Year Student at RGNUL, Punjab), **Sanya Srivastav** (2nd Year Student at RGNUL, Punjab), **Rakkshita Sharda** (1st Year Student at RGNUL, Punjab) and **Ridhima Arora** (1st Year Student at RGNUL, Punjab) – Members of **School Of Social Sciences And Interdisciplinary Studies (SSSIS), RGNUL***

[2] Office of the U.N. High Commissioner for Human Rights, *Human Rights and Counter-Terrorism: Module 1* 12–14 (U.N. Publ'ns 2018).

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be hostages, threats of bombings, possible bomb attacks, or biological assassinations to achieve their particular goal. India has been one of the victims of terrorism continuously since its independence, and as such, it becomes necessary to study how India has suffered under these and how, in response, it has developed various laws to fight against it. This will help us better understand how India developed its definition of terrorism and the implications of a definition so formed.

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BRIEF OVERVIEW OF INDIA'S EXPERIENCE WITH TERRORISM

India's history with terrorism goes a long way back, starting shortly after its independence and has been continuing across different regions in different forms with no end in sight. India's exposure to diverse threats has shaped its understanding of terrorism as a phenomenon that majorly relies on fear, coercion, and disruption of public order. This background is essential for understanding the evolution of India's anti-terror laws.

1. **The 1947 to 1948 Tribal Invasion of Jammu and Kashmir**

   This is one of the earliest episodes of terrorism witnessed by Jammu and Kashmir, which also laid the foundation for the accession of the princely state to India. In October 1947, Armed Pashtun tribesmen, who were allegedly supported by certain elements in the Pakistani state, entered the princely state to force its political alignment. Their actions included the killings, abductions and intimidation of civilians along with large-scale looting in towns, like Baramulla. Scholars argue that this attack was aimed at terrorising the civilian population to coerce their political decision-making.

2. **The Insurgency in the Northeast**

   In the following decades, India witnessed multiple insurgencies in the Northeast region, which used guerrilla tactics, specific intimidation of people, and attacks on administrative structures to coerce the government. These were largely labelled as terrorist activity of active separatists in the region.

3. **Punjabi Militancy During the 1980s and 90s**

   The Khalistan movement in Punjab brought a period of intense violence that included targeted killings, hijackings, bombings, and assassinations. The objective extended beyond inflicting physical harm – it sought to challenge state authority and create widespread fear among civilians and officials to obtain their objective of separating Punjab from the rest of India.

4. **The Continuous Insurgencies in Jammu and Kashmir (J&K)**

   Starting from the late 1980s, J&K witnessed a painfully long series of terrorist activities, with one of the most significant being the Exodus of the Kashmiri Hindus from the Kashmir region. The aftermath of these events continues to show effects even

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today, most recently with the Pahalgam attack, wherein many civilian tourists were killed in a mass firing. Most incidents of terror in this era involved intimidation, forced displacement, and threats against vulnerable groups, with bombings and armed assaults being the most common. The objective remains to terrorise the local population and destabilise the region, to force the state to drop its influence in the region.

5. **Terrorism Beyond Conflict Zones in the 2000s**

   In the early 2000s, India went through a series of terror attacks in major urban centres such as Mumbai, Delhi, Bangalore, and Ahmedabad. Terrorist groups, including Lashkar-e-Taiba, Jaish-e-Mohammad, and the Indian Mujahideen, were responsible for the attacks that produced this national-level panic and outrage. These incidents were clear signals that terrorism seeks influence far beyond the immediate site of violence. The broader aim of such terrorists was to undermine public confidence, create nationwide insecurity, and communicate political messages to domestic and international audiences through planned attacks and killings of innocents.

In response to this, Indian laws evolved at various stages to define terrorism and prevent similar incidents from happening. The Indian laws are a clear reflection of India's experiences and its commitment to take action against terror. The various Indian laws and how they define terrorism will be discussed in the next chapter.

Evolution of the Definition of Terrorism in India

India's relationship with terrorism laws is complicated. After independence, the government faced serious threats to their stability, and passed vague laws which allowed for indefinite detention for security reasons. Then, during the Emergency, these laws became instruments of political oppression. By the 1980s, with actual terrorism happening in Punjab, the legislature finally attempted to write a law that specifically defined terrorism instead of simply using catch-all security language. But that created new problems. This essay looks at how each major anti-terrorism law in India defined terrorism, why each law eventually failed or was repealed, and what that tells us about the ongoing tension between security and freedom.

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Post-Independence Security Acts

When India won independence in 1947, the immediate priority was maintaining stability amid partition violence and communal tensions. The **Preventive Detention Act of 1950** (hereinafter, **"PDA"**) became the first major security law of independent India. Home Minister Sardar Vallabhbhai Patel introduced it to deal with persons whose activities threatened national security. However, the law did not use the word "terrorism" at all. Instead, it allowed detention of anyone acting "*prejudicially*" toward defence, foreign relations, public order, or essential supplies. This vague language gave authorities wide discretion to detain people without trial, though detainees had the right to know the grounds of their detention and make representations, unless disclosure would harm public interest.[3]

The PDA was meant to be temporary, initially supposed to remain in force for only one year. However, the Parliament continued to extend it until it finally expired in December 1969. By then, new forms of internal disturbance were emerging, and the government felt it needed stronger tools. This led to the **Maintenance of Internal Security Act in 1971** (hereinafter, **"MISA"**).[4] Like the PDA, MISA did not define terrorism, but rather focused on broader threats to internal security. It gave the government power to detain people indefinitely if their actions were deemed prejudicial to defence, state security, or public order. What made MISA particularly controversial was its use during the National Emergency from 1975 to 1977.[5] The 39th Amendment even placed MISA in the Ninth Schedule of the Constitution, making it immune from judicial review.[6]

During the Emergency, enforcement of Article 21 was suspended, which meant that detention orders could not be challenged in any court.[7] This abuse left deep scars on India's democratic consciousness. When the Janata Party won the 1977 elections, one of their first actions was repealing MISA. The 44th Amendment Act of 1978 formally removed it from the Ninth

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[3] Preventive Detention Act 1950, s 3(a)
[4] Maintenance Of Security Act 1971, s 3(a)
[5]Praveen Rai, 'The Emergency and Democratic Backsliding in India' (2022) 57(28) *Economic and Political Weekly*.
[6] The Constitution (Thirty-ninth Amendment) Act 1975, s 4 (India).
[7] The Constitution of India, art. 21.

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Schedule[8] and introduced safeguards to prevent such misuse in future, including making the right to life absolute and non-derogable, even during emergencies.

TADA: India's First Real Definition of Terrorism

The real turning point came in the mid-1980s when India faced a surge in violent extremism, particularly the Khalistan movement in Punjab. The government realised it needed a law that specifically addressed terrorism rather than relying on vague security language. This led to the **Terrorist and Disruptive Activities (Prevention) Act** (hereinafter, **"TADA"**),[9] first enacted in 1985 and soon thereafter replaced by a more comprehensive version in 1987.

Section 3 of the TADA provided India's first comprehensive legal definition of a terrorist act. It described terrorism as acts committed "*with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people*."[10] The definition was specific about methods as well, covering the usage of bombs, dynamite, explosives, inflammable substances, lethal weapons, poisons, noxious gases, chemicals, or other hazardous substances. The act also covered hostage-taking and threats to kill or injure someone to compel the government to act or refrain from acting.

What made TADA's definition significant was its focus on intent. It recognised that terrorism was not just about violence but about the purposes behind it, which were to intimidate the government, spread fear among people, create division, or disrupt communal harmony. The law also acknowledged that terrorism could target essential services and infrastructure, understanding that modern terrorism went beyond just physical attacks on individuals.

However, TADA became notorious for its harsh provisions that violated basic principles of criminal justice. Section 21 reversed the burden of proof, meaning if weapons or explosives were found with an accused person, or if they had confessed, or if they had provided financial assistance to terrorists, they were presumed guilty unless they could prove their innocence.

[8] The Constitution (Forty-fourth Amendment) Act 1978, s 2 (India).
[9] Terrorist and Disruptive Activities (Prevention) Act 1987 (India).
[10] TADA 1987, s 3.

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This turned the fundamental principle of "innocent until proven guilty" on its head.[11] The law also allowed confessions made to police officers to be used as evidence in court, breaking the general rule that police confessions are inadmissible because of the risk of coercion. Accused persons could be detained for up to a year without trial, and kept in police custody for up to 60 days, creating endless opportunities for torture.

By the time TADA expired in 1995, evidence of widespread abuse had mounted. Studies showed that over 76,000 people had been arrested under TADA, but 25% of cases were dropped without charges, and of those brought to trial, 95% resulted in acquittals. Less than 2% of arrested persons were actually convicted.[12] The law had become a tool for harassment of minorities and political opponents rather than genuinely countering terrorism.

POTA: An Attempt at Reform

After TADA expired, there was a six-year gap until another major terrorist incident, the December 2001 attack on Parliament, which pushed the government to enact the **Prevention of Terrorism Act in 2002** (hereinafter, **"POTA"**).[13] POTA tried to refine TADA's approach while maintaining strong powers for law enforcement. Its definition of terrorism in Section 3 was similar to TADA, but with some important additions. It described terrorist acts as those committed *"with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people."*[14]

POTA used the same list of weapons and dangerous substances as TADA, covering bombs, explosives, firearms, poisons, gases, chemicals, and biological or hazardous materials. But it added something new. The law explicitly stated that "*raising funds intended for the purpose of terrorism*"[15] would also be considered a terrorist act. This was a significant evolution,

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[11] TADA 1987, s 21

[12] Human Rights Watch (Asia), *"The 'TADA Courts': A Briefing on the Terrorist and Disruptive Activities (Prevention) Act"* (1995)

[13] Prevention of Terrorism Act 2002 (India).

[14] *Ibid* s.3

[15] Prevention of Terrorism Act 2002, s 3(1)(b) and Sch (India) (retaining TADA's list of prohibited weapons and adding the new offence of raising funds for terrorism).

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recognising that terrorism required financial support networks and that cutting off funding was crucial to prevention.

The act also attempted to include some safeguards that POTA claimed would prevent TADA's abuses. While police confessions were still admissible, they had to be recorded within 48 hours before a magistrate, and the accused would be sent for medical examination if they alleged torture. Legal representatives could be present for part of the interrogation. Unlike TADA, POTA did not include provisions for preventive detention, though suspects could still be held for up to 180 days without charges being filed.[16]

Despite these supposed improvements, POTA faced the same problems as TADA. The UPA Government that came to power in 2004 concluded that the law had been significantly misused, with arbitrary arrests and violations of civil liberties. On September 21, 2004, POTA was repealed. But the government did not leave a vacuum. On the same day, it amended an older law to take POTA's place.

NIA: An Institutional Response

The definition of terrorism evolved not just in statutory language, but also in how India organised its response. The horrific attacks in Mumbai on November 26, 2008, famously known as the 26/11 attacks, exposed serious failures in India's counter-terrorism infrastructure. Ten terrorists from the Pakistan-based Lashkar-e-Taiba landed by boat and attacked multiple locations across Mumbai over three days, killing 166 people, including foreign nationals. The attacks revealed that existing agencies lacked the coordination, jurisdiction, and specialisation needed to prevent and respond to such sophisticated attacks.[17]

In response, Parliament passed the **National Investigation Agency Act**[18] (Hereinafter, **"NIA"**) on December 31, 2008, creating the NIA as India's principal federal counter-terrorism law enforcement agency. The NIA Act does not define terrorism itself but instead creates an agency to investigate offences already defined under UAPA and other laws. The NIA has concurrent

[16] Human Rights Watch, *India: Prevention of Terrorism Act (POTA) – A Human Rights Disaster* (HRW 2003) <https://www.hrw.org/report/2003/05/14/india-prevention-terrorism-act-pota-human-rights-disaster>.
[17] Ram Pradhan Committee, *Report of the High Level Enquiry Committee on 26/11* (Government of Maharashtra 2009).
[18] National Investigation Agency Act 2008.

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jurisdiction across India, meaning it can investigate terror cases in any state without needing state government permission. This was crucial because terrorism often crosses state boundaries, and state agencies sometimes lack resources, coordination, or expertise.

The NIA investigates "scheduled offences" including acts under UAPA, the Explosive Substances Act, offences related to atomic energy, matters covered by international treaties, and other crimes affecting national security. Cases investigated by the NIA are tried in Special Courts with exclusive jurisdiction. The 2019 amendment further expanded the NIA's mandate to investigate offences committed outside India involving Indian citizens or interests, and added cyber terrorism, human trafficking, and arms smuggling to its scope.

SAARC Convention: Regional Cooperation

While India developed its domestic laws, it also recognized that terrorism required regional cooperation. The **SAARC Regional Convention on Suppression of Terrorism** was signed on November 4, 1987, in Kathmandu and came into force in August 1988.[19] This was just two years after TADA, showing that India and its neighbours understood terrorism as a transnational threat.

The SAARC Convention did not create an entirely new definition of terrorism but drew from existing international treaties. It listed specific offences that member states would treat as terroristic and not as political offences for purposes of extradition. Article 1 of the Convention states:

"Subject to the overall requirements of the law of extradition, conduct constituting any of the following offences, according to the law of the Contracting State, shall be regarded as terroristic and, for the purpose of extradition, shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives: —

(a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague, on December 16, 1970;

[19] 'SAARC Regional Convention on Suppression of Terrorism' (signed 4 November 1987, entered into force 22 August 1988).

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(b) an offence within the scope of the Convention for the Suppression of Unlawful Act, against the Safety of Civil Aviation signed at Montreal, on September 23, 1971;

(c) an offence within the scope of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, signed at New York, on December 14, 1973;

(d) an offence within the scope of any Convention to which the SAARC member States concerned are parties and which obliges the parties to prosecute or grant extradition;

(e) murder, manslaughter, assault causing bodily harm, kidnapping hostage-taking and offences relating to firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property;

(f) an attempt or conspiracy to commit an offence described in sub-paragraphs (a) to (e), aiding, abetting or counselling the commission of such an offence or participating as an accomplice in the offences so described."[20]

These included aircraft hijacking and sabotage, offenses against internationally protected persons, hostage-taking, and "*murder, manslaughter, assault causing bodily harm, kidnapping, hostage-taking and offenses relating to firearms, weapons, explosives and dangerous substances when used as a means to perpetrate indiscriminate violence involving death or serious bodily injury to persons or serious damage to property*."

The convention's key innovation was ensuring that terrorists could not escape justice by crossing borders. Member states agreed to either extradite suspected terrorists or submit their cases for prosecution in their own courts. They committed to taking measures to prevent terrorists from using their territory and to cooperate on investigations.

In January 2004, SAARC member states signed an Additional Protocol that came into force in January 2006.[21] This protocol specifically targeted terrorism financing, criminalizing the

[20] *Ibid* art. 1.
[21] 'Additional Protocol to the SAARC Regional Convention on Suppression of Terrorism' (signed 6 January 2004, entered into force 12 January 2006).

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provision, collection, or acquisition of funds for terrorist acts. This reflected growing international recognition, especially after 9/11 and UN Security Council Resolution 1373, which discussed how cutting off terrorist financing was essential to combating terrorism.[22]

[22] UNSC Res 1373 (28 September 2001) UN Doc S/RES/1373.

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UNDERSTANDING THE EVOLUTION

Several themes have emerged across the decades. India moved from vague preventive detention language to increasingly precise definitions that specify intent, methods, and objectives. Early laws like the PDA and MISA avoided defining terrorism, relying instead on broad concepts of threats to security or public order. This vagueness invited abuse, as seen during the Emergency when MISA became a tool of political repression.

TADA represented a breakthrough by providing a comprehensive definition to terrorism, but its draconian procedures like reversing the burden of proof and allowing police confessions created new problems. POTA tried to refine this definition and add safeguards, but could not escape the fundamental tension between security and liberty. Unlawful Activity (Prevention) Act (hereinafter, **"UAPA"**)[23] reflects lessons from these experiences, providing a comprehensive definition while incorporating international obligations and creating somewhat better procedural protections, though debates about its misuse continue.

Secondly, different definitions evolved to recognize the changing nature of terrorism. Early laws focused on violence and disorder. TADA added the dimension of communal harmony and sectarian division, reflecting Punjab's experience. POTA explicitly addressed terrorism financing, while UAPA incorporated economic security and cyber dimensions, recognizing that modern terrorism could attack financial systems and digital infrastructure. The law also extended jurisdiction beyond India's borders, acknowledging terrorism's transnational character.

Thirdly, India moved from purely reactive legislation to building institutional capacity. The NIA represents recognition that fighting terrorism requires specialized, professional agencies with national jurisdiction, not just laws on paper. Similarly, the SAARC Convention shows understanding that terrorism cannot be fought by one country alone but requires regional cooperation on extradition, intelligence sharing, and mutual assistance.

The story of terrorism definitions in Indian law is ultimately one of continuous learning and adaptation. Each law responded to specific threats and contexts such as partition violence, the

[23] Unlawful Activities (Prevention) Act 1967.

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Emergency, Punjab militancy, the Parliament attack, and the Mumbai attacks. Each carried with it lessons from previous failures, though the pattern of initial good intentions followed by concerns about misuse has repeated itself. Today's framework under UAPA and the NIA is more sophisticated than the PDA of 1950, but the fundamental challenge remains – how to give the state enough power to protect citizens from genuine terrorism, while preventing those powers from being used to suppress legitimate dissent and target vulnerable communities.

The Indian Penal Code (IPC) did not contain any provision dedicated to addressing terrorist activities since its incorporation in 1860[24]. India's criminal law framework had dealt with terrorism as a separate matter requiring a specialised legislative response, and not as a distinct category of crime under the general penal code for decades. This gap became increasingly significant as terrorism evolved into an international, technologically sophisticated issue. The Parliament, to fill this gap, enacted the **Unlawful Activities (Prevention) Act (UAPA)** in **1967**, which became the country's primary statute for countering terrorism, and has remained so ever since. The UAPA provided a comprehensive framework for identifying, investigating, and prosecuting what were considered acts of terrorism, effectively compensating for the absence of a terrorism-specific provision in the IPC.

However, with the substitution of the IPC by the **Bharatiya Nyaya Sanhita** (hereinafter, **"BNS"**) in **2023**, the legal landscape has changed. The BNS, unlike the IPC, incorporates a definition to define a 'terrorist act,' bringing terrorism within the ambit of the general penal code for the first time. This has marked a conceptual expansion of the Indian criminal code, reflecting its intention to view ordinary criminal law with national security under the same light. The provision included in the BNS adopts a wide and modernised definition of terrorism inspired by that of UAPA, signalling continuity with India's existing counter-terrorism jurisprudence while ensuring harmonisation between special and general law.

Section 113[25] of the BNS defines 'terrorist acts' as follows:

[24] Indian Penal Code 1860
[25] Bhartiya Nyaya Sanhita 2023, s 113

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"Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature."[26]

The structure and language of the BNS provision have deliberately mirrored the long-standing definition of terrorism under the UAPA. The BNS definition, similar to its UAPA counterpart, incorporates a binary threshold that marries intent with probable consequences. It criminalises an act committed with the intent to threaten, or likely to threaten, the unity, integrity, sovereignty, security, or economic security of India, or an act which is intended to strike terror or is likely to strike terror among the public or any section thereof, whether within India or abroad.

This twin focus on intent and likelihood extends liability because the law does not require the act to have succeeded in causing damage; all that must be shown is that the act is objectively capable of causing destabilisation or terror. This aspect speaks to a preventive approach towards terrorism-that the law can intervene earlier in the course of any harmful conduct.

Clause (a)[27] of the definition enumerates the means by which a terrorist act may be committed. These include conventional instruments, namely, bombs, dynamite, explosives, inflammable substances, and firearms, and extend to chemical, biological, radioactive, and nuclear agents. The latter part of the definition introduces the words "*by any other means of whatever nature,*" thereby rendering the law technologically neutral and enabling it to respond to emerging forms of threat. In effect, the provision would cover an attack on national infrastructure by way of cyber-attacks; dissemination of harmful agents by drones, or any other emerging modality of violence that the traditional statutory phrase may fail to catch. **Sub-clauses (i) to (v)**[28] then

[26] *Ibid*
[27] Bhartiya Nyaya Sanhita 2023, s 113(1)(a)
[28] Bhartiya Nyaya Sanhita 2023, s 11

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detail the threshold consequences that make such acts terrorist in nature, like causing death or injuries, damage or destruction of property, disruption of essential supplies and essential community services, destabilizing India's monetary system through circulation of counterfeit currency, and damage to defence-related or strategic assets, reflecting the multi-faceted nature of the national security risk, which may be physical, economic, infrastructural, and military.

Clause (b)[29] broadens the scope of terrorism further to include acts intended to 'overawe' public functionaries, or acts resulting in the death or attempted death of such officials. This signifies an express recognition that the violence that is directed at representatives of the state has a large symbolic as well as functional impact, as it challenges the authority of government, weakens confidence of the public, and threatens institutional stability.

Clause (c)[30], on the other hand, categorises coercive acts like detention, kidnapping, or threats, undertaken to compel the Government of India, any State Government, foreign governments, or international organisations to act or abstain from acting. This aligns the Indian framework with global norms by treating hostage-taking, political coercion, and intimidation of state actors as essential components included in the definition of terrorism, even where mass violence is absent.

A close comparison makes it clear that the BNS provision reproduces the UAPA definition almost verbatim. Everything from structure to operative terms to consequence-based elements remains the same, save for minor editorial adjustments relating to punctuation, clause sequencing, and selective inclusion of bracketed amendments. However, in no case do the minor editorial adjustments alter the substance of the definition. What ensues, therefore, is a clear legislative intent to maintain continuity between the special counter-terrorism regime and the general penal code.

But despite an inclusive national security arrangement, it must be said that no terrorism-related case has so far been instituted under the BNS, mainly because terrorism continues to fall

[29] Bhartiya Nyaya Sanhita 2023, s 113(1)(b)
[30] Bhartiya Nyaya Sanhita 2023, s 113(1)(c)

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squarely within the UAPA, being the special legislation with enhanced procedural powers including prolonged detention, special investigating agencies, and strict bail provisions.

Since its enactment in 1967, the UAPA has been the central instrument for investigating and prosecuting terrorist activities in India. Law enforcements continue to rely on the same due to its special procedures and broader operational mechanisms when considering terrorism. Introducing a clause for terrorism in the BNS does not displace the UAPA; rather, it exists alongside it. The UAPA still continues to be invoked almost exclusively in terror-related matters, leaving the BNS provision dormant for now.

The Unlawful Activities (Prevention) Act, 1967, contains in Section 15 the same substantive definition of a 'terrorist act' that now finds almost verbatim reflection in the Bharatiya Nyaya Sanhita, 2023. This definition of terrorism as per Section 15[31] of the UAPA has been tested judicially for decades and has formed the backbone of India's anti-terror jurisprudence. Further, the effectiveness of the UAPA framework, both in investigation and prosecution, is demonstrated through landmark decisions of the Supreme Court interpreting Sections 15 and its related provisions.

One of the most important judgments is *Yakub Abdul Razak Memon v. State of Maharashtra*,[32] which arose from the 1993 Mumbai serial bomb blasts. Yakub Memon was convicted under UAPA Sections 15 (terrorist act), 16 (punishment for terrorist act), 18 (conspiracy), and 20 (membership of terrorist organisation), with the Supreme Court holding that the chain of evidence clearly established his active involvement in financing, planning, and facilitating the attacks, demonstrating the strength of UAPA in addressing large-scale conspiracies. In *National Investigation Agency v. Zahoor Ahmad Shah Watali*,[33] the Court examined the stringent bail standard under the UAPA in a Kashmir terror-funding case involving Sections 15, 17 (raising funds), and 18 (conspiracy), and held that courts cannot meticulously scrutinise evidence at the bail stage since Section 43D (5) mandates denial of bail if the accusation appears prima facie true. A different dimension of UAPA's effectiveness appears in *Arup Bhuyan v. State of*

[31] Unlawful Activities (Prevention) Act 1967, s 15
[32] *Yakub Abdul Razak Memon v State of Maharashtra* (2013) 13 SCC 1
[33] *National Investigation Agency v Zahoor Ahmad Shah Watali* (2019) 5 SCC 1

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Assam,[34] where the Court clarified that mere membership of a banned organisation is insufficient for conviction unless the prosecution proves active participation in violence or other acts under Section 15.

These cases, taken together, demonstrate how courts have interpreted Section 15 and cognate provisions in striking a balance between national security concerns and constitutional due process, establishing that UAPA can be both vigorous and principled, making it clear why UAPA remains the governing legislation for terrorism cases despite the enactment of similar provisions in the BNS.

However, the UAPA is not the only provision in use in India to contain terrorism. One of India's principal preventive-detention statutes also includes the **National Security Act** (hereinafter, **"NSA"**), 1980, which was enacted to empower the State to detain any person whose activities pose, are likely to pose, or are believed to pose a threat to national security, public order, or the maintenance of essential supplies and services. Unlike punitive criminal law, the NSA is premised on a forward-looking rationale, as it empowers the executive to restrain a person's liberty in advance of any actual crime, but based on a reasonable apprehension of her likelihood to commit acts prejudicial to national security or public order. Over the years, the Act has been applied in contexts as varied as communal tension, insurgency, sabotage, and other situations where questions of security are involved.

Section 14(a) of the NSA Act talks about situations in which persons may be detained for a period of longer than three months without obtaining the opinion of the Advisory Board, but *"not exceeding six months from the date of his detention where such person had been detained with a view to preventing him, in any disturbed area (i) from interfering with the efforts of Government in coping with the terrorist and disruptive activities; and (ii) from acting in any manner prejudicial to (a) the defence of India; or (b) the security of India; or (c) the security of the State; or (d) the maintenance of public order; or (e) the maintenance of supplies and services essential to the community."*[35]

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[34] *Arup Bhuyan v State of Assam* (2011) 3 SCC 377

[35] National Security Act 1980, s 14(a)

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One significant feature of the NSA, reflected in the clause above, is the power to detain individuals for extended periods, even beyond three months and up to six months before June 8, 1989, without requiring the Advisory Board's opinion. This applies when detention is ordered to prevent the obstruction of the government's management of a 'disturbed area,' especially where "terrorist and disruptive activities" (as defined under the TADA Ordinance) threaten to destabilise the region. The clarified legislative intent entails that in situations of heightened insurgency or organised violence, procedural safeguards may be temporarily relaxed to enable decisive and anticipatory action. This represents the preventive-detention logic at its best by targeting not only the completed terrorist act but also the likelihood of its occurrence.

The Supreme Court has, in various decisions, addressed the scope, purpose, and limits of such preventive power and emphasized that while the NSA can be invoked to prevent terrorist attacks or subversive conduct, invocation needs to meet strict standards of necessity, relevance, and nexus with public order or national security.

In *Rekha v. State of Tamil Nadu*,[36] the Supreme Court examined whether the NSA could be invoked against a habitual offender selling expired medicines. The State attempted to justify detention on the ground that her actions were prejudicial to public order, but the Court struck down the order, holding that preventive detention requires a direct and rational nexus with a genuine threat to public order, not mere ordinary or repetitive criminality. The Court stressed the distinction between law and order and public order, the latter requiring conduct capable of creating widespread harm, panic, or disturbance. This reinforced that the NSA is an exceptional measure meant to prevent serious threats such as terrorist or disruptive activities, not to punish past offences. This requirement of precision and relevance in detention grounds was further strengthened in *Khudiram Das v. State of West Bengal*,[37] where the Supreme Court, interpreting provisions under the similarly structured MISA, held that although preventive detention is based on the subjective satisfaction of the authority, such satisfaction is still subject to judicial review and cannot rest on vague or irrelevant grounds.

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[36] *Rekha v State of Tamil Nadu* (2011) 5 SCC 244
[37] *Khudiram Das v State of West Bengal* (1975) 2 SCC 81

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This judicially crafted balance between executive power and constitutional safeguards has hitherto framed India's approach to preventive security laws. While the NSA addresses threats to national security and public order through anticipatory detention, other specialized statutes have emerged to deal with more complex network-based threats.

Maharashtra Control of Organised Crime Act (hereinafter, **"MCOCA"), 1999**[38] is among one of them, which was enacted to combat the growing influence of organised criminal syndicates whose activities often overlap with terrorism, extortion, smuggling, and insurgency-related operations. MCOCA is both preventive and punitive, addressing the structure, continuity, and operational capability of organised crime groups.

The Act contains specific definitions in **Section 2(e)**[39] and **Section 2(f)**[40] that help demarcate the scope of "organised crime" and the entities capable of committing it. The definitions in them reflect the legislature's awareness that threats to national security are arising increasingly, not only from isolated individuals or spontaneous acts of violence, but also from coordinated networks that operate with a particular hierarchy, style of planning, and specific financial motivation. "Organised crime" under MCOCA requires continuing unlawful activity, such that it is a set of repeated and systematic conduct rather than isolated incidents. It must be carried out by individuals acting as part of a syndicate or on behalf of such a syndicate. The essential elements- violence, threat of violence, intimidation, coercion, or other unlawful means must serve the objective of obtaining pecuniary benefits, economic advantage, or promoting insurgency.

India's statutory architecture is crucial because it creates a legal bridge between organised criminal syndicates and terror networks, which frequently overlap in structure and operation. Modern terrorist modules often rely on organised crime groups for financing, logistics, weapons procurement, cross-border smuggling, circulation of counterfeit currency, recruitment, and sleeper-cell maintenance. These functions mirror the hierarchical continuity and coordinated illegal activity characteristic of organised crime syndicates. Courts have

[38] Maharashtra Control of Organised Crime Act 1999
[39] Maharashtra Control of Organised Crime Act 1999, s 2(e)
[40] Maharashtra Control of Organised Crime Act 1999, s 2(f)

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recognised this convergence, holding that terror cells operating systematically with defined chains of command may fall within the meaning of an "organised crime syndicate" under MCOCA.

This judicial position was strengthened in *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra*,[41] where the Supreme Court upheld the application of MCOCA to offences with cross-border or extra-territorial links, clarifying that acts extending beyond Maharashtra may still constitute organised crime if they form part of a continuing unlawful activity executed through a structured network. Similarly, in *State of Maharashtra v. Bharat Shantilal Shah*,[42] the Court upheld MCOCA's constitutionality, recognising it as a necessary tool against sophisticated syndicates, including terror-linked organisations whose methods resemble organised crime. Together, these rulings affirm that MCOCA can legitimately operate alongside specialised anti-terror statutes to target networked, system-based terrorism.

The evolution of India's legal framework from the colonial-era IPC to the BNS, and alongside specialised statutes like the UAPA, NSA and MCOCA, reveals a layered, adaptive response to evolving national-security threats. The BNS's inclusion of a terrorism clause marks a structural shift by integrating national-security offences into the general criminal code, though the UAPA remains the primary prosecutorial tool due to its specialised procedures and strong jurisprudential foundation. The NSA operates preventively, enabling anticipatory detention within constitutional limits, while MCOCA addresses the growing convergence between organised crime and terrorism by targeting continuity of unlawful activity, structured networks, and the economic/logistical architecture that sustains both syndicates and terror modules. Together, the BNS, UAPA, NSA, and MCOCA form an interconnected legal matrix that combines punitive, preventive and structural mechanisms, enabling India to respond to terrorism not merely as isolated acts but as complex, networked phenomena requiring multidimensional legal tools.

[41] *Zameer Ahmed Latifur Rehman Sheikh v State of Maharashtra* (2010) 5 SCC 246
[42] *State of Maharashtra v Bharat Shantilal Shah* (2008) 13 SCC 5

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IS PHYSICAL DAMAGE NECESSARY FOR CONSTITUTING A TERRORIST ACT?

Physical damage is one of the most common results of terrorist activities around the world. According to most of the global scholars and organisations, including the U.N., one of the main motives of terrorist activities is to spread fear and terror across the general public to gain an advantage by disrupting the public order and threatening the state to fulfil their objective. The most common result of this chaos is physical damage to the place where it occurs. There are various examples of this, the biggest being Iraq, Afghanistan and Yemen.[43] One of the recent conflicts of Israel and Palestine, where the war started with the alleged terror attack of HAMAS on Israel by launching around 5000 missiles in the dark of the night.[44] India has suffered from terrorism since its independence. India's most recent case of terrorism was that of the Delhi i20 car blast near the heart of the capital, in which 13 people died brutally, according to the reports, while 20 were gravely injured.[45] Thus, it becomes necessary to question whether "Physical Damage" is one of the main ingredients of the definition of terrorism.

The U.N. has no specific definition for terrorism. It understands it as a method of using terror to coerce someone, some ethnic group, state or any non-state actor to accept their terms. Even most of the definitions of regional organisations and various countries recognise even an attempt as a constituting factor for terrorism. To understand the reasoning behind it, we must first understand the word "Terrorism" as understood by global thinkers.

As established earlier, the U.N. views terrorism as a method of coercion. The motive of terrorism is not limited to dealing physical damage but to a broader context of producing fear in the hearts of a larger population of the country to pressure the governments to fulfil their

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[43] Institute for Economics & Peace, *Global Terrorism Index 2024* (2024) <https://www.visionofhumanity.org/wp-content/uploads/2024/03/GTI-2024-web.pdf.> accessed 21 November 2025.

[44] Al Jazeera, 'Hamas launches 5,000 rockets at Israel, triggering massive escalation' (Al Jazeera, 7 October 2023) <https://www.aljazeera.com/news/2023/10/7/hamas-launches-5000-rockets-at-israel.>accessed 21 November 2025.

[45] Dawn, 'Balochistan remains Pakistan's most volatile region as attacks surge' (*Dawn*, 22 January 2024) <https://www.dawn.com/news/1813750 accessed 21 November 2025>; The Hindu, 'Thirteen killed, seven injured in blast near Delhi's central district' (*The Hindu*, 14 February 2024) <https://www.thehindu.com/news/cities/Delhi/delhi-blast-i20-car/.> accessed 21 November 2025;

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ideological or other political and proclaimed goals and objectives. Anthony Richards, in his book Conceptualising Terrorism, argues that terrorism is "*The psychological effect of terrorism is central to its strategic logic. The physical harm itself is not the principal aim*."[46] He goes on to explain how terrorism is a method of violent communication. The main aim of this type of communication is to reach a wider audience and influence their perception and behaviour rather than the immediate victim. C.A.J. Coady, in his seminal work, says that "*Much terrorism relies on the threat of violence rather than its actual execution."*[47] He explains through this how the main motive of terrorism is to coerce the other party to bend according to their wish rather than inflicting damage. The laws made to counter terrorism also reflect these values. Many of the laws, international and national, treat even an attempt to or abetment as terrorism. This is to prevent terrorism from happening in the first place and deter any such event from happening in the future.

Such a trend in both national and international law arises due to many reasons. Firstly, every country wishes to root out terrorism from its roots itself. If countries are made to wait for physical damage to happen, the whole aim of such laws will be destroyed, and this will let the country suffer destruction before any action has been taken for prevention. India has witnessed many destructive events, such as the 26/11 attack and continuous confrontation across the Jammu and Kashmir region, resulting in various casualties across the region.[48] Thus, India has not kept Physical Damage as one of the Key ingredients as a constituting factor for terrorism. Even America's experience has led it to destroy terrorist groups without delay rather than waiting for any physical damage. Secondly, most of the new forms of terrorism, like Cyber terrorism, which does not cause any physical damage but operates through different media, while those who fund such terrorist activities will remain unscathed even after funding such atrocities. These are emerging challenges and even more dangerous ones in the contemporary age, where most of the work and life has become digital, changing the essential infrastructures.

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[46] Anthony Richards, 'The Problem with Defining Terrorism' (2014) 7(2) *Conflict, Security and Development* 219.

[47] C A J Coady, 'Terrorism' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Spring 2021 Edition) https://plato.stanford.edu/entries/terrorism/ accessed 19 November 2025.

[48] Shaswati Das and Mia Bloom, 'The counterterrorism–terrorism paradox: From defence to violence in Kashmir' (2025) *European Journal of International Security* https://doi.org/10.1017/eis.2024.28.

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In conclusion, to include the aspect of physical damage as a necessary ingredient for Terrorism and its definition will let such terror events happen, and since the state can't act till there is physical damage, the state gets bound to ignore the activities threatening their national sovereignty and integrity till it actually results in any harm.

Problems with the Existing Definition and Creating a New Definition:

One of the profound challenges that grips a nation's internal and international security is that of Terrorism. In addition to this, what is equally challenging is setting up a proper legal framework which defines, prosecutes and prevents terrorism in a legal and human rights context without infringing upon the fundamental rights of the people.[49] As the second largest democracy and a nation that has consistently been plagued by internal and external security threats, India has evolved a complex legal regime that addresses terrorism, integrated primarily in the Unlawful Activities (Prevention) Act, 1967 (UAPA), and recently updated criminal law, the Bharatiya Nyaya Sanhita, 2023, which includes sections on terrorism[50].

In a way, India's counter-terrorism statutes, the Unlawful Activities (Prevention) Act, 1967 (UAPA), and the Bharatiya Nyaya Sanhita (BNS), 2023, represent a nuanced effort to maintain public order and national security while at the same time upholding the rights and freedoms guaranteed in the Constitution.

The conundrum lies in the fact of whether or not material damage is a requisite part of the definition and consequently, the prosecution of terrorism, necessitates an even-flowing network of the two opposites: making overstretching preventive measures and the loosening of personal rights. The reasoning of the courts and interpretation applied, influenced by centuries-old legal principles, ensure that this balancing act flows smoothly; that the laws do not perish or be heavy-handed.

This section concentrates on the physical element in the commission of a terrorist act by the Indian legal system by looking into UAPA and BNS, discussing the current human rights

[49] Office of the United Nations High Commissioner for Human Rights, 'Human Rights, Terrorism and Counter-terrorism' < https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet32EN.pdf > accessed 8 November2025

[50] Saksham, 'Evolution of Anti-Terrorism Laws in India' (2025), International Journal of Advanced Legal Research, p5-6

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implications linked with the broad and vague definitions not requiring physical damage and placing them within international human rights and counterterrorism standards.

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INDIAN LEGAL FRAMEWORK: THE UAPA AND BNS DEFINITIONS OF TERRORIST ACTS

UAPA's Definition of a Terrorist Act

UAPA is India's seminal counterterrorism legislation, with stringent provisions that were significantly amended in recent years to widen the definition of offences related to terrorism and introduce clauses like declaring individuals as terrorists. It particularly characterises terrorism in a way that does not depend on a concrete, physical act or actual physical harm to constitute a terrorist act. Section 15 of UAPA defines what constitutes a "terrorist act." It includes acts which:

- Cause or are likely to cause death or injury to a person;
- Cause or are likely to cause damage to property;
- Endanger resources, disrupt supplies or services essential to the community;
- Instil fear, threaten public security, or are intended to compel the government by criminal means

Phrases such as "likely to" and including any acts in the statute, even if they do not necessarily result in physical harm, expand the scope of the law. The law specifically permits prosecution on the grounds of "likelihood" or "intention" to spread terror or undermine security, without any need for actual physical harm. As a result, the statute criminalises conduct that may not necessarily include real physical harm or immediate fear, but perhaps mere possibility or intention to provoke terror or distress[51]. For instance, even actions designed to threaten or induce the government or general public, that may not result in actual harm understood as injury or damage, warrant a characterisation of terrorism under UAPA.

While the wide scope of this act empowers and permits pre-emptive state action, the need for precision in criminal liability is fixed by the principle that no one should be punished except

[51] Snigdga Singh Dewal, 'Analysing the Impact of the Unlawful Activities Act, 1967 on Individual Rights in a Comparative Manner' (2023), SSRN

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by a clearly defined law (*nullum crimen sine lege*)[52]**.** The application of the phrase "likely to cause" introduces a preventive aspect but also poses the risks of vagueness unless judicial scrutiny anchors it to discernible intent and consequence.

In India, the courts have consistently sought to construe and interpret such provisions in a way that brings a balance in upholding effectiveness without sacrificing fairness. As observed in cases like *Shreya Singhal v. Union of India*[53] (2015), laws which lack clarity are easily subject to arbitrary enforcement, but in any case, clarity cannot be sacrificed for broad preventive purposes, underscoring the protective aspect of the presumption of innocence (*ei incumbit probatio qui dicit*) and the right to be heard (*audi alteram partem*) in criminal trials. This judicial policy guarantees that mere doubt or a very slight chance of harm cannot justify a conviction, this being a necessary protection to keep the balance between *salus populi suprema lex esto* (the welfare of the people is the supreme law) and constitutional liberties.

Bharatiya Nyaya Sanhita (BNS) and Terrorism Provisions

In the Indian penal law, the Bharatiya Nyaya Sanhita (BNS), 2023, the definition of "terrorist act" under Section 113[54], parallels and overlaps with that of the Unlawful Activities (Prevention) Act (UAPA). The statute does not limit its application to acts that cause physical harm but extends it to those acts that create fear or disruption, reflecting a conceptual continuity with UAPA's preventive orientation. This provision describes a terrorist act broadly as any act committed with the intent to threaten or likely to threaten the unity, integrity, sovereignty, or security of India, to intimidate the general public, or to disturb public order.

The act includes the usage of firearms, explosives, hazardous substances, causing death or danger to life, spreading fear, destroying property, or disrupting essential services. Penalties are stringent, ranging from the death penalty to life imprisonment with fines.

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[52] Aleksandra Rychlewska, 'The Nullum Crimen Sine Lege Principle in the European Convention of Human Rights: The Actual Scope of Guarantees' < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3025949 > accessed on 15 November 2025

[53] *Shreya Singhal vs Union of Indi*a AIR 2015 SC 1523

[54] Bharatiya Nyaya Sanhita 2023, section 113

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Furthermore, the law also penalises activities like the establishment of terrorism training camps, recruitment for terrorism, harbouring offenders, and dealing with proceeds of terrorism, reflecting a comprehensive approach.[55]

Critics prognosticate that such language might risk expanding terrorism definitions to include acts which potentially might lack the requisite actus reus, a tangible criminal act linked to concrete harm or threat and could ensnare non-violent conduct unintentionally. In judicial practice, however, the courts are expected to require a sufficient nexus between conduct and its anticipated impact to avoid unnecessary encroachment on rights, consistent with principles ensuring laws are not so vague as to permit arbitrary interference.[56]

Consequences and Human Rights Concerns

Both the Unlawful Activities (Prevention) Act (UAPA) and the Bharatiya Nyaya Sanhita (BNS) exist in the backdrop of a complex human rights environment where the protection of freedom of expression, association, and safeguards against arbitrary arrest and detention remain of utmost importance. The wide-ranging definitions of terrorism and the operational mechanisms in these laws can create challenges, including potential risks of prolonged detention, curtailments of certain freedoms, and the inordinate influence on already disadvantaged groups.

UAPA as well as BNS employ comprehensive definitions of terrorism that range from acts that cause physical harm to acts that are "likely to" create terror or disrupt public order, extending beyond the requirement of actual physical harm or immediate danger. The broadness of these laws provides law enforcement agencies with significant authority to address potential threats, but it also necessitates careful application to ensure that legitimate activities, such as peaceful protest or expression of opinions, are not inadvertently criminalised.

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[55] Priyank Ladoia, Shubhangi Jain, 'Conflict Between Bharatiya Nyaya Sanhita, 2023 and Special Statutes' < https://chambers.com/legal-trends/implications-of-the-indian-penal-code > accessed 8 November 2025

[56] Manisha Sethi, 'Tenuous Legality: Tensions within Anti-Terrorism Law in India' < https://docs.manupatra.in/newsline/articles/Upload/2346AF6B-79D0-4CA9-9174-5A2433D3C856.pdf >accessed 8 November 2025

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The Office of the United Nations High Commissioner for Human Rights (OHCHR) has surmised that the broad and sometimes vague language of these laws can give rise to conditions conducive to arbitrary or politically motivated actions, which may affect the rule of law and fair legal processes[57]. Similarly, Amnesty International has underscored its concerns on broadly phrased provisions related to acts causing "disaffection against India" that may disproportionately affect dissenting voices, media personnel, and minority groups, potentially leading to a chilling effect on fundamental freedoms[58].

The UAPA framework provides authorities with ample powers, ranging from arrests without prior court sanction to stringent restrictions on bail, which have in some cases resulted in pretrial incarceration lasting several years. Courts have noted cases where individuals faced prolonged incarceration pending trial with minimal evidence of violence or actual physical harm. The OHCHR and Human Rights Watch, among others, point out that such actions should not contravene international human rights standards, especially those found in Articles 9 and 14 of the International Covenant on Civil and Political Rights, which ensure protection from arbitrary arrest and guarantee the right to a fair trial.

Some procedural aspects include the reversal of the presumption of innocence and the establishment of special courts for terrorism-related crimes, which further complicates the entire landscape of rights, thus necessitating continued judicial oversight to balance national security objectives with individual freedoms[59].

Concerns relating to the application of these laws in political and civil contexts have surfaced in recent times. The Sections under UAPA concerning "inviting support" or "association" with terrorist organisations have, at times, been employed in situations involving journalists, student activists, non-governmental organisations, and human rights defenders. For instance, peaceful

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[57] United Nations, 'Experts call for immediate release of Kashmiri human rights defender' (2021) < https://news.un.org/en/story/2021/12/1108592 > accessed on 8 November 2025

[58] Amnesty International, ' India: Kashmiri Activist Held Under Abusive Law' (2021) < https://www.amnesty.org/en/latest/news/2021/11/india-kashmiri-activist-held-under-abusive-law/ > accessed on 8 November 2025

[59] Human Rights watch, 'India: Stop Abusing Counterterrorism Regulations' (2023) < https://www.hrw.org/news/2023/11/03/india-stop-abusing-counterterrorism-regulations> accessed 8 November 2025

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protests and dissent in Jammu and Kashmir and other regions have occasionally been met with charges under UAPA, leading to rising debates about the law's impact on civic engagement and democratic participation[60]. The United Nations Human Rights Council has therefore called upon the States to safeguard the freedoms guaranteed under Article 19 of the ICCPR, underscoring the essential role these freedoms play in preventing abuse and supporting political accountability.

The existing evidence showcases that certain categories, including Muslims, Kashmiris[61], students[62] and civil society activists[63] might suffer disproportionate and severe impacts under these legal frameworks. Besides the individual effect, the social repercussions, such as stigma, loss of livelihood, asset seizures, and community exclusion, also garner significant questions regarding equality and non-discrimination, fundamental principles protected by both Indian constitutional law and international human rights treaties.

The BNS, patterned closely after UAPA in its terrorism provisions, introduces new procedural differences that could affect how prosecutions are initiated and conducted. Notably, under BNS, there exists no requirement for prior government sanction before trial court cognisance, which officials and experts recognise could increase discretionary prosecutorial powers and the attendant risks of arbitrary action[64].

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[60] Human Rights watch, 'India: Arrests, Raids Target Critics of Government' < https://www.hrw.org/news/2023/10/13/india-arrests-raids-target-critics-government > accessed 8 November 2025

[61] United National Human Rights Office of the High commissioner, ' UN experts urge Indian authorities to stop targeting Kashmiri human rights defender Khurram Parvez and release him immediately' < https://www.ohchr.org/en/press-releases/2021/12/un-experts-urge-indian-authorities-stop-targeting-kashmiri-human-rights > accessed 8 November 2025

[62] India Today, '7 Kashmiri students arrested under tough law for rejoicing India World Cup loss' < https://www.indiatoday.in/india/story/kashmir-students-arrested-for-celebration-india-world-cup-loss-uapa-pro-pakistan-slogans-2468589-2023-11-28 > accessed on 8 November 2025

[63] First Post, 'Masrat Zahra booked under UAPA: Kashmiri photojournalist's work focussed mostly on women, conflict reporting in Valley' < https://www.firstpost.com/india/masrat-zahra-booked-under-uapa-kashmiri-photojournalists-work-focussed-mostly-on-women-conflict-reporting-in-valley-8278721.html > accessed 8 November 2025

[64] Ibid 3

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This case underscores the necessity for legal safeguards that uphold and guarantee the fundamental "right to life and personal liberty" as articulated in Article 21[65] of the Indian Constitution.

In conclusion, the anti-terrorism legislations of India operate at the intersection of protecting national security and adherence to constitutional and international human rights standards. The expansive scope and procedures under UAPA and BNS require constant monitoring and possible recalibration to ensure that freedom of expression, association, and fair trial rights are well protected. Such measures are crucial to prevent counter-terrorism laws from inadvertently becoming tools for the violation of rights or political suppression, thereby preserving the country's democratic values while addressing security imperatives.

[65] Constitution of India 1950, Art. 21

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PROBLEMS AND CHALLENGES OF A NEW DEFINITION

The current definition, although justified, has given rise to many human rights concerns, which are increasing day by day. Thus, in such a situation, the ordinary course would be to produce a new definition and regulate laws to ensure that such human rights violations do not take place. This solution, though sounding easy, is a very difficult step, and there exist many challenges with such a change.

Firstly, the global community can't agree on any specific definition. The U.N. has already cleared that, as of now, there exists no specific definition of terrorism. While India follows many regional groups, important ones are the Shanghai Cooperation Organisation (Hereinafter SCO) and the South Asian Association for Regional Cooperation (hereinafter SAARC), which give a definition for terrorism. India is a member of both, but within recent years, SAARC has become inactive and while SCO gives a good definition of terrorism along with its article 3 explaining that members are required to hand over such criminals who are caught without any exception on any grounds in its Shanghai Convention on Combating Terrorism, Separatism and Extremism.[66] India has yet to ratify these conventions and has kept its own definitions of terrorism, which are on much similar grounds to these, while having specific aspects for regional compatibility.

Secondly, India has recently faced another terrorist attack at the hands of LeT, where an i20 was blasted in the heart of the capital, which killed multiple innocent citizens. In such a situation where there exists a persistent threat of terrorism, any amendment is unlikely. In such circumstances, to compel any amendments will result in backlash from the people due to the psychological effect of such grave incidents on the minds of the citizens.

Thirdly, any new definition has to incorporate the new forms of terrorism. Cyberterrorism is one such form where there is deliberate use of computer networks to cause harm or disruption, often with the intent of intimidating a population or government. There have been many big incidents of cyberterrorism such as the Stuxnet incident which was a sophisticated worm,

[66] *Shanghai Convention on Combating Terrorism, Separatism and Extremism* (signed 15 June 2001, entered into force 29 March 2003) 2137 UNTS 241.

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believed to be developed by the United States and Israel, targeted Iran's nuclear program by damaging centrifuges, Colonial Pipeline Attack which in 2021 was a ransomware attack on the Colonial Pipeline, a major fuel pipeline in the United States, led to fuel shortages and disruptions across several states.[67]

One of the most important incidents of this was the WannaCry Ransomware where a global ransomware outbreak in 2017 that affected hundreds of thousands of computers worldwide, disrupting hospitals, businesses, and other critical services.[68] On 23 December 2015, the power grid in two western oblasts of Ukraine was hacked by the group "Sandworm", causing outages for around 230,000 consumers.[69]

Another threat is that of terrorist financing, where these terrorists use international networks such as Hawala, cryptocurrency and other major networks to finance their terrorist activities. An important incident is that the recent investigation shows that a major cement company (Lafarge) is going on trial in France for allegedly funding terrorist groups in Syria between 2012-2014 to keep its factory functioning.[70]

There is also the threat of specific–interest terrorism. According to the Federal Bureau of Investigation (FBI), such groups operate on extreme fringes of movements related to animal rights, environmental protection, anti-nuclear activism, and pro-life advocacy. Their goal is to compel segments of society to alter specific behaviours or attitudes by using targeted acts of disruption, vandalism, or violence, rather than by pursuing systemic political change.

One of the most common ones is Eco–terrorism. FBI notes that there was a clear rise in eco-terrorism since 1977, which began with the formation of the Sea Shepherd Conservation Society by former Greenpeace members, who carried out attacks on commercial fishing vessels

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[67] Yash Thakur and Kunvar Dushyant Singh, 'The Impact of Cyber Terrorism on Critical Infrastructure and National Security' (2025) 5(5) *Indian Journal of Legal Review* 415, 415–420 https://ijlr.iledu.in/wp-content/uploads/2025/04/V5I543.pdf accessed 22 November 2025.
[68] *Id.*
[69] US Cybersecurity and Infrastructure Security Agency (CISA), *Cyber-Attack Against Ukrainian Critical Infrastructure* (ICS-CERT, IR-ALERT-H-16-056-01, July 2021) https://www.cisa.gov/ics/alerts/IR-ALERT-H-16-056-01 accessed 22 November 2025.
[70] Le Monde, 'Cement maker Lafarge goes on trial in France for "funding terrorism" in Syria' (*Le Monde*, 4 November 2025) https://www.lemonde.fr/en/france/article/2025/11/04/cement-maker-lafarge-goes-on-trial-in-france-for-funding-terrorism-in-syria_6747085_7.html. accessed 22 November 2025.

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by cutting drift nets. The Bureau defines eco-terrorism as the use or threatened use of criminal violence against people or property by environmentally motivated subnational groups, often designed to send symbolic messages beyond the immediate target.[71]

In India, there is also the rise of Eco–terrorism as a threat. According to Dr Nishakant Ojha's GPI report, *India's Battle Against Eco-Terrorism and Global Trafficking*, wildlife trafficking in India has evolved from an environmental crime into a significant national security threat. Networks involved in the trade of endangered species such as tigers, elephants, rhinos, and pangolins are increasingly linked to transnational insurgent and terrorist organisations, especially in India's Northeastern states and along the Indo-Myanmar border.[72]

There exist many other forms of terrorism in the recent global order, which any new definition proposed will have to include to create a system where terrorism is defeated, and the people responsible for such activities do not escape accountability.

[71] Federal Bureau of Investigation, *Terrorism 2000–2001* (FBI 2002) <https://www.fbi.gov/file-repository/stats-services-publications-terrorism-2000-2001-terror00_01.pdf/view >. accessed 22 November 2025.
[72] Dr Nishakant Ojha, 'India's Battle Against Eco-Terrorism and Global Trafficking' (GPI, 22 April 2025) <https://globalpi.org/research/indias-battle-against-eco-terrorism-and-global-trafficking/>. accessed 24 November 2025.