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**EFFECTIVENESS OF ANTI-TERRORISM LAW AND POLICIES IN  
INDIA**

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**ABSTRACT**

This paper examines the effectiveness of India's anti-terrorism legal framework with particular focus on the transformative changes introduced by the Bharatiya Nyaya Sanhita (BNS) 2023 and the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023. These landmark legislations which replace the colonial-era Indian Penal Code 1860 and the Code of Criminal Procedure 1973 respectively represent a significant paradigm shift in India's approach to counter-terrorism. By incorporating terrorism as a distinct substantive offence within the general criminal law for the first time the BNS marks a departure from the previous approach of relying exclusively on special legislation such as the Unlawful Activities (Prevention) Act 1967. This paper evaluates whether this integration enhances the effectiveness of counter-terrorism efforts while maintaining necessary safeguards for civil liberties. Through analysis of legislative frameworks judicial interpretations implementation challenges and comparative perspectives this paper argues that while the codification of terrorism within the BNS represents progressive legal reform its effectiveness ultimately depends on robust institutional mechanisms judicial oversight and adherence to constitutional principles that protect fundamental rights.

**1. INTRODUCTION**

The relationship between national security imperatives and constitutional rights represents one of the most enduring challenges for liberal democracies worldwide. This tension becomes particularly acute in the context of counter-terrorism legislation where the state's

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duty to protect collective security often intersects with and occasionally overrides individual liberties guaranteed by constitutional frameworks. India's experience with anti-terrorism laws reflects this global dilemma shaped by the country's unique historical context its heterogeneous social fabric and the evolving nature of terrorist threats in the twenty-first century.<sup>3</sup>

The year 2023 marks a watershed moment in Indian criminal jurisprudence. The enactment of the Bharatiya Nyaya Sanhita (BNS) 2023 the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 and the Bharatiya Sakshya Adhinyam (BSA) 2023 represents the most comprehensive overhaul of India's criminal justice system since independence. These legislations which received presidential assent on 25 December 2023 and came into effect on 1 July 2024 replace the Indian Penal Code (IPC) 1860 the Code of Criminal Procedure (CrPC) 1973 and the Indian Evidence Act (IEA) 1872 respectively.<sup>4</sup>

Among the most significant innovations introduced by the BNS is the explicit codification of terrorism as a substantive offence within the general criminal law. Section 113 of the BNS defines terrorist acts and prescribes deterrent punishments including the death penalty where such acts result in loss of life. This development raises fundamental questions about the effectiveness of India's anti-terrorism framework: Does the integration of terrorism offences into the ordinary criminal law enhance the state's capacity to prevent and punish terrorist acts? What implications does this have for the protection of civil liberties? How does this approach compare with the previous reliance on special legislation such as the Unlawful Activities (Prevention) Act (UAPA) 1967?

This paper addresses these questions through a comprehensive analysis of India's anti-terrorism legal architecture. Section 2 provides historical context tracing the evolution of counter-terrorism legislation from the colonial era to the present. Section 3 examines the key provisions of the BNS and BNSS relating to terrorism and national security. Section 4 analyses the constitutional tensions inherent in anti-terrorism laws with particular attention to judicial interpretations of fundamental rights. Section 5 evaluates the effectiveness of implementation including challenges related to investigation prosecution and institutional capacity. Section 6 offers comparative perspectives examining how other democracies

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<sup>3</sup> Vishal Sharma 'Balancing National Security and Constitutional Rights in India: Challenges and Pathways' (Fifteenth Annual Constitutional Law Colloquium Florida State University College of Law 15-16 November 2024) (analysing the permanent conflict between national security concerns and constitutional rights in India's heterogeneous society)

<sup>4</sup> 'Amendments To Criminal Laws' (Mondaq 20 December 2023) (noting that the three Acts received presidential assent on 25 December 2023 and became effective from 1 July 2024).

balance security and liberty in their counter-terrorism frameworks. Section 7 concludes with recommendations for reform and identifies pathways toward a more effective and rights-compliant approach to counter-terrorism in India.

## **2. Historical Evolution of Anti-Terrorism Legislation in India**

### **2.1 Colonial Origins and the Architecture of Exceptional Laws**

The genealogy of India's anti-terrorism legislation can be traced to the colonial era when the British administration enacted a series of laws designed to suppress resistance to colonial rule. The Sedition provision (Section 124A of the IPC) introduced in 1870 criminalised any attempt to excite disaffection towards the British government.<sup>5</sup> This provision exemplified the colonial approach of using criminal law to maintain political control an approach that would cast a long shadow over independent India's legislative practices.

The Rowlatt Acts (1915 and 1919) represented a more extreme manifestation of this tendency authorising trial without counsel without right of appeal and permitting the internment of suspects without trial.<sup>6</sup> These laws provoked widespread opposition and became catalysts for the non-cooperation movement led by Mahatma Gandhi. The colonial experience demonstrates how emergency powers and exceptional laws while ostensibly directed at preserving order can become instruments of political repression when institutional safeguards are absent.

### **2.2 Post-Independence Developments: From Preventive Detention to Special Legislation**

Independent India inherited this colonial legal apparatus but also adopted a constitutional framework that guaranteed fundamental rights while simultaneously permitting their restriction through preventive detention laws. Article 22 of the Constitution authorises preventive detention reflecting the Constituent Assembly's compromise between libertarian principles and security imperatives.<sup>7</sup>

The first major anti-terrorism legislation of independent India was the Terrorist and Disruptive Activities (Prevention) Act (TADA) 1985 enacted in response to rising separatist violence in Punjab. TADA represented a significant departure from ordinary criminal law providing for extended periods of detention confessions made to police officers being

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<sup>5</sup> Indian Penal Code 1860 s 124A (as originally enacted).

<sup>6</sup> Anil Kalhan et al 'Colonial Continuities: Human Rights Terrorism and Security Laws in India' (2006) 20 Columbia Journal of Asian Law 93 103-107.

<sup>7</sup> Constitution of India 1950 art 22 (providing safeguards against preventive detention while authorising its continued existence).

admissible as evidence and a reversal of the presumption of innocence.<sup>8</sup> While TADA was initially intended as a temporary measure its operation was extended multiple times before its lapse in 1995. During its decade of operation TADA was widely criticised for its misuse against ordinary criminals and political dissidents with conviction rates below one per cent despite thousands of arrests.<sup>9</sup>

The Prevention of Terrorism Act (POTA) 2002 enacted in the aftermath of the 11 September 2001 attacks in the United States and the 13 December 2001 attack on the Indian Parliament replicated many of TADA's controversial features while adding new provisions relating to terrorist financing and associations.<sup>10</sup> POTA's brief existence it was repealed in 2004 following a change in government nonetheless generated extensive litigation and commentary regarding its impact on civil liberties. As one study notes POTA exemplified the "violence of jurisprudence" approach wherein law becomes an integral part of the organisation of state violence rather than a constraint upon it.<sup>11</sup>

### **2.3 The UAPA Framework: Permanence of the Temporary**

Following POTA's repeal the Unlawful Activities (Prevention) Act 1967 originally enacted to deal with secessionist organisations was substantially amended to incorporate terrorism-related offences. The UAPA (Amendment) Act 2004 inserted Chapter IV and VI dealing with terrorist activities and terrorist organisations effectively transplanting POTA's provisions into a pre-existing statute.<sup>12</sup> Subsequent amendments in 2008 2012 and 2019 have progressively expanded the Act's scope adding provisions relating to terrorist financing empowering the central government to designate individuals as terrorists and extending the maximum period of investigation from ninety to one hundred and eighty days.<sup>13</sup>

The UAPA's evolution reflects what scholars have termed the "permanence of the temporary" the tendency for exceptional laws initially justified as emergency measures to become permanent features of the legal landscape through procedural interlocking with ordinary

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<sup>8</sup> Terrorist and Disruptive Activities (Prevention) Act 1985 s 15 (making confessions to police officers admissible in evidence).

<sup>9</sup> National Human Rights Commission 'Report on TADA' (1995) (documenting misuse and low conviction rates).

<sup>10</sup> Prevention of Terrorism Act 2002 s 21 (criminalising membership of terrorist organisations).

<sup>11</sup> Ujjwal Kumar Singh 'The Silent Erosion: Anti-Terror Laws and Shifting Contours of Jurisprudence in India' (2024) Diogenes Cambridge University Press (examining the 'violence of jurisprudence' approach and how anti-terror laws become integral to state violence).

<sup>12</sup> Unlawful Activities (Prevention) Amendment Act 2004 (inserting Chapter IV and VI dealing with terrorist activities).

<sup>13</sup> Unlawful Activities (Prevention) Amendment Act 2019 (empowering central government to designate individuals as terrorists).

criminal law.<sup>14</sup> This process normalises extraordinary procedures and erodes the distinction between normal and exceptional jurisprudence.

### **3. The Bharatiya Nyaya Sanhita 2023: A New Paradigm?**

#### **3.1 Codification of Terrorism within General Criminal Law**

The BNS 2023 introduces terrorism as a distinct offence in Section 113 marking the first time that terrorism has been codified within India's general criminal law. Prior to this amendment terrorism offences were exclusively contained in special legislation principally the UAPA. This structural change raises important questions about the relationship between the BNS and special laws and about the implications for procedural safeguards.

Section 113(1) of the BNS defines a terrorist act as any act committed with the intent to:

- (i) threaten or likely to threaten the unity integrity security economic security or sovereignty of India; or
- (ii) strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.<sup>15</sup>

The provision enumerates specific acts falling within this definition including causing death or grievous hurt damaging property disrupting essential services and possessing specified hazardous substances. The punishment for committing a terrorist act ranges from imprisonment for five years to life imprisonment with the death penalty available where the act results in the death of any person.<sup>16</sup>

#### **3.2 Relationship with the Unlawful Activities (Prevention) Act**

The inclusion of terrorism in the BNS creates potential overlap with the UAPA's provisions. Section 15 of the UAPA defines terrorist acts in terms substantially similar to those now found in the BNS. This duplication raises concerns about multiple regulatory regimes and the possibility of "charge-shopping" by prosecution authorities.<sup>17</sup>

The BNS itself does not address its relationship with the UAPA leaving unresolved questions about which statute should apply in cases of overlapping provisions. The general principle that special law prevails over general law (*generalia specialibus non derogant*) would suggest that the UAPA as a specialised counter-terrorism statute should continue to govern

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<sup>14</sup> Ujjwal Kumar Singh 'State and the Emerging Interlocking Legal Systems in India: Permanence of the Temporary' (2004) 39(2) Economic and Political Weekly 145.

<sup>15</sup> The Bharatiya Nyaya (Second) Sanhita 2023 s 113(1).

<sup>16</sup> *ibid* s 113(2).

<sup>17</sup> PRS Legislative Research 'The Bharatiya Nyaya (Second) Sanhita 2023: Key Issues and Analysis' (noting overlap between BNS and special laws including UAPA).

terrorism prosecutions. However the absence of express provision creates uncertainty and may lead to inconsistent application.

### 3.3 Organised Crime and Terrorist Linkages

Section 111 of the BNS introduces organised crime as a distinct offence defined to include kidnapping, extortion, contract killing, land grabbing, financial scams and cyber-crimes carried out on behalf of a crime syndicate.<sup>18</sup> The punishment for organised crime mirrors that for terrorism: life imprisonment or death where the offence results in death and imprisonment between five years and life where it does not.

The inclusion of organised crime alongside terrorism reflects growing recognition of the convergence between criminal and terrorist networks. Transnational organised crime and terrorism increasingly share methodologies financing mechanisms and operational spaces.<sup>19</sup> By addressing both phenomena within the same legislative framework the BNS acknowledges this convergence and provides tools for prosecuting hybrid threats.

### 3.4 Sedition and Offences Against the State

The BNS omits the offence of sedition (formerly Section 124A of the IPC) and instead introduces a new provision Section 152 penalising acts endangering the sovereignty unity and integrity of India. The new provision criminalises:

- (a) exciting or attempting to excite secession armed rebellion or subversive activities;
- (b) encouraging feelings of separatist activities; or
- (c) endangering the sovereignty or unity and integrity of India.<sup>20</sup>

These acts may be committed through "words either spoken or written or by signs or by visible representation or through electronic communication or otherwise." The maximum punishment is life imprisonment.

This reform responds to long-standing criticism that the colonial sedition provision was used to suppress legitimate dissent and political opposition.<sup>21</sup> However questions remain whether the new formulation adequately protects freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. The provision's broad language particularly its reference

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<sup>18</sup> The Bharatiya Nyaya (Second) Sanhita 2023 s 111

<sup>19</sup> Defence Secretary's Address 14th Meeting of ADMM-Plus Experts Working Group on Counter-Terrorism New Delhi 19 March 2025 (emphasising the need to counter misuse of emerging technologies by terrorist groups).

<sup>20</sup> The Bharatiya Nyaya (Second) Sanhita 2023 s 152.

<sup>21</sup> Law Commission of India 42nd Report on Indian Penal Code (1971) (recommending retention of sedition with modifications).

to "subversive activities" may continue to chill protected speech absent clear judicial interpretation.

## **4. Constitutional Rights and National Security: The Judicial Balancing Act**

### **4.1 Fundamental Rights Framework**

The Indian Constitution guarantees certain fundamental rights that are implicated by anti-terrorism legislation. Article 21 guarantees the right to life and personal liberty providing that no person shall be deprived thereof except according to procedure established by law. Article 22 provides specific safeguards for persons arrested or detained including the right to be informed of grounds of arrest the right to consult and be defended by a legal practitioner and the right to be produced before a magistrate within twenty-four hours.<sup>22</sup>

Article 19 guarantees freedom of speech and expression the right to assemble peaceably and without arms and the right to form associations. These rights are subject to reasonable restrictions in the interests of among other things the sovereignty and integrity of India and public order.<sup>23</sup>

Anti-terrorism laws frequently test the limits of these constitutional protections. Provisions authorising prolonged detention without charge restricting access to legal counsel and criminalising association with designated organisations raise questions about whether the "procedure established by law" satisfies constitutional requirements.

### **4.2 Landmark Judicial Pronouncements**

The Supreme Court of India has over seven decades developed a substantial body of jurisprudence addressing the tension between national security and constitutional rights. Several landmark decisions illuminate the Court's approach to this challenge.

In *A.K. Gopalan v. State of Madras* (1950) the Court adopted a narrow interpretation of Article 21 holding that "procedure established by law" meant merely procedure prescribed by enacted legislation without any requirement that such procedure be fair just or reasonable.<sup>24</sup> This decision permitted preventive detention laws to operate with minimal judicial scrutiny a position that would later be overruled.

The Emergency period (1975-77) produced one of the darkest chapters in Indian constitutional history. In *ADM Jabalpur v. Shivkant Shukla* (1976) a majority of the Supreme Court held that the right to life and liberty could be suspended during emergency effectively

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<sup>22</sup> Constitution of India 1950 arts 21 22.

<sup>23</sup> *ibid* art 19(2)-(4).

<sup>24</sup> *A.K. Gopalan v State of Madras* AIR 1950 SC 27.

endorsing the proposition that the state could detain citizens without legal recourse.<sup>25</sup> Justice H.R. Khanna's dissenting opinion asserting that Article 21 remained the "sole repository" of the right to life and that it could not be suspended stands as a powerful defence of constitutionalism against executive overreach.

The post-Emergency period witnessed a gradual expansion of fundamental rights jurisprudence. In *Maneka Gandhi v. Union of India* (1978) the Court overruled *A.K. Gopalan* holding that the procedure established by law under Article 21 must be "right and just and fair" and not "arbitrary fanciful or oppressive."<sup>26</sup> This decision opened the door to substantive due process review of legislation affecting personal liberty.

More recently in *K.S. Puttaswamy v. Union of India* (2017) the Supreme Court recognised the right to privacy as a fundamental right under Articles 14 19 and 21.<sup>27</sup> This decision has significant implications for surveillance powers exercised under anti-terrorism laws requiring that any intrusion upon privacy satisfy the tests of legality necessity and proportionality.

### 4.3 Anti-Terrorism Laws in the Courts

The Supreme Court has addressed constitutional challenges to anti-terrorism legislation in several significant decisions. In *Kartar Singh v. State of Punjab* (1994) the Court upheld the constitutionality of TADA while acknowledging its potential for misuse.<sup>28</sup> The Court issued detailed guidelines to prevent abuse including requirements that confessions to police officers be recorded in accordance with specified safeguards and that review committees monitor the Act's implementation.

In *People's Union for Civil Liberties v. Union of India* (2004) the Court struck down provisions of POTA that reversed the presumption of innocence and authorised presumptions based on presumptively innocent conduct.<sup>29</sup> The Court held that such provisions violated Article 21 by placing an impossible burden on the accused.

The UAPA has survived constitutional challenge in *Arup Bhuyan v. State of Assam* (2011) and *Zahoor Watali v. State of NCT of Delhi* (2022) though the Court has emphasised the need for strict scrutiny of material allegedly demonstrating terrorist association.<sup>30</sup>

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<sup>25</sup> *ADM Jabalpur v Shivkant Shukla* AIR 1976 SC 1207.

<sup>26</sup> *Maneka Gandhi v Union of India* AIR 1978 SC 597.

<sup>27</sup> *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.

<sup>28</sup> *Kartar Singh v State of Punjab* (1994) 3 SCC 569.

<sup>29</sup> *People's Union for Civil Liberties v Union of India* (2004) 9 SCC 580.

<sup>30</sup> *Zahoor Watali v State of NCT of Delhi* (2022) SCC OnLine SC 1024.

## 5. Implementation and Effectiveness

### 5.1 Investigative and Prosecutorial Challenges

The effectiveness of anti-terrorism legislation depends critically on the capacity of investigative and prosecutorial agencies to enforce its provisions. India's counter-terrorism apparatus has undergone significant evolution since the 2008 Mumbai attacks which exposed serious deficiencies in intelligence coordination and operational response.<sup>31</sup>

The National Investigation Agency (NIA) established in the aftermath of the Mumbai attacks has emerged as a specialised agency for investigating terrorism cases. The NIA has achieved conviction rates substantially higher than those under TADA and POTA reflecting improved investigative capacity and specialised expertise.<sup>32</sup> However concerns persist regarding the agency's reliance on confessions and its use of prolonged detention.

The BNSS introduces several provisions intended to enhance investigative effectiveness. Section 173(3) provides for the registration of Zero FIRs enabling complaints to be filed at any police station regardless of territorial jurisdiction.<sup>33</sup> Section 398 mandates that each state government establish a Witness Protection Scheme to ensure witness safety a critical reform given that witness intimidation has historically impeded terrorism prosecutions.<sup>34</sup>

### 5.2 Preventive Detention and Procedural Safeguards

The BNSS retains and expands provisions for preventive detention and pre-trial procedures. Section 84(4) authorises the issuance of proclamations against persons accused of offences punishable with imprisonment of ten years or more expanding the category of offences for which accused persons may be declared proclaimed offenders.<sup>35</sup>

Section 43(3) grants discretionary authority to police officers to use handcuffs when making arrests with the decision depending upon "the nature and gravity of the offence and the demeanour of the accused."<sup>36</sup> This provision has attracted criticism for potentially stigmatising accused persons before conviction and for granting excessive discretion to arresting officers.

The BNSS also authorises preventive action through orders under Section 163 which empowers District Magistrates to issue directions to prevent terrorist acts and maintain public

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<sup>31</sup> Ram Pradhan 'Mumbai 26/11: The Investigation and Aftermath' (2011) (analysing investigative failures and subsequent reforms).

<sup>32</sup> National Investigation Agency 'Annual Report 2023-24' (documenting conviction rates and case outcomes).

<sup>33</sup> The Bharatiya Nagarik Suraksha Sanhita 2023 s 173(3).

<sup>34</sup> *ibid* s 398.

<sup>35</sup> *ibid* s 84(4).

<sup>36</sup> *ibid* s 43(3).

order. Multiple orders have been issued under this provision regulating cyber cafes hotels and guest houses to prevent their use by anti-social elements and terrorists.<sup>37</sup> These orders demonstrate the operationalisation of preventive powers but raise questions about the adequacy of procedural safeguards.

### 5.3 The Problem of Misuse

A persistent concern regarding anti-terrorism legislation in India has been its misuse against ordinary criminals political opponents and minority communities. Studies of TADA's implementation found that the vast majority of those arrested under the Act were never convicted yet many spent years in pre-trial detention.<sup>38</sup> Similar concerns have been raised regarding the UAPA with civil liberties organisations documenting cases of its application against activists journalists and student leaders.

The National Crime Records Bureau's data on UAPA enforcement reveals significant variations in conviction rates across states and a high proportion of cases pending trial.<sup>39</sup> While these statistics may reflect the complexity of terrorism prosecutions they also suggest that many cases may not meet the threshold of credible evidence required for conviction.

### 5.4 Digital Surveillance and Privacy Concerns

Contemporary counter-terrorism increasingly relies on digital surveillance capabilities. The Information Technology Act 2000 authorises interception of electronic communications subject to procedural safeguards. The BNS incorporates definitions from the Information Technology Act ensuring consistency in the treatment of digital evidence and cyber-enabled offences.<sup>40</sup>

The Supreme Court's recognition of the right to privacy in *Puttaswamy* has significant implications for surveillance powers. The Court held that any intrusion upon privacy must be justified by a legitimate state aim and must be proportionate to that aim. This requires that surveillance powers be exercised within a legal framework that provides adequate safeguards against abuse.

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<sup>37</sup> Order under Section 163 of Bhartiya Nagrik Suraksha Sanhita 2023 District Magistrate Chandigarh (25 July 2025) (regulating cyber cafes to prevent use by anti-social elements). [3](#) See also similar orders regarding hotels and guest houses.

<sup>38</sup> People's Union for Democratic Rights 'Trial of Errors: Critique of the POTA Court Judgement on the 13th December Case' (2003) (documenting misuse concerns).

<sup>39</sup> National Crime Records Bureau 'Crime in India 2022' (statistics on UAPA cases and conviction rates).

<sup>40</sup> The Bharatiya Nyaya (Second) Sanhita 2023 s 2(39) (incorporating definitions from Information Technology Act 2000).

The BSA 2023 addresses evidentiary issues relating to digital evidence. Section 2(1)(e) provides for the admissibility of statements given by witnesses through digital means and Section 58 expands the scope of secondary evidence to include oral and written admissions.<sup>41</sup> These provisions facilitate the use of digital evidence in terrorism prosecutions while raising questions about authenticity and reliability.

## 6. Comparative Perspectives

### 6.1 United Kingdom: The Northern Ireland Precedent and Its Legacy

The United Kingdom's experience with terrorism legislation offers instructive parallels to India. The Prevention of Terrorism (Temporary Provisions) Act 1974 was enacted in response to IRA bombings and contained provisions for proscribed organisations exclusion orders and extended detention periods.<sup>42</sup> Like India's TADA and POTA this legislation was repeatedly renewed and eventually replaced by permanent legislation the Terrorism Act 2000. The UK courts have grappled with similar tensions between security and liberty. In *A v. Secretary of State for the Home Department* (2004) the House of Lords held that detention without trial of foreign nationals suspected of terrorism violated the European Convention on Human Rights as it discriminated on grounds of nationality.<sup>43</sup> This decision led to the replacement of detention orders with control orders and subsequently with Terrorism Prevention and Investigation Measures (TPIMs).

### 6.2 United States: The Military Commission Experiment

The United States' response to the 11 September 2001 attacks included the establishment of military commissions to try suspected terrorists prolonged detention at Guantanamo Bay and expansive surveillance powers under the USA PATRIOT Act. The Supreme Court intervened in several decisions to constrain executive power holding in *Hamdi v. Rumsfeld* (2004) that US citizens detained as enemy combatants must have the opportunity to challenge their detention before a neutral decision-maker.<sup>44</sup>

### 6.3 Comparative Insights

Several comparative insights emerge from examining these jurisdictions. First judicial oversight plays a crucial role in constraining executive discretion and protecting individual

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<sup>41</sup> The Bharatiya Sakshya Adhinyam 2023 ss 2(1)(e) 58.

<sup>42</sup> Prevention of Terrorism (Temporary Provisions) Act 1974 (UK).

<sup>43</sup> *A v Secretary of State for the Home Department* [2004] UKHL 56.

<sup>44</sup> *Hamdi v Rumsfeld* 542 US 507 (2004).

rights. Courts in all three countries have intervened to strike down or limit the most extreme assertions of executive power.

Second sunset clauses and periodic review mechanisms provide important safeguards against the permanence of exceptional laws. The requirement that temporary legislation be periodically renewed forces legislative reconsideration and public debate.

Third specialised procedures for terrorism cases can coexist with fair trial guarantees if accompanied by adequate safeguards. The key question is not whether special procedures exist but whether they are proportionate to the threat and subject to independent oversight.

## **7. CONCLUSION AND RECOMMENDATIONS**

### **7.1 Assessing Effectiveness**

The effectiveness of India's anti-terrorism legal framework must be assessed against multiple criteria: its capacity to prevent terrorist attacks its success in prosecuting and punishing those responsible for such attacks its compliance with constitutional rights and its resistance to misuse for illegitimate purposes.

Measured against these criteria the framework presents a mixed picture. The establishment of specialised agencies such as the NIA and the enactment of progressively stringent legislation have enhanced the state's capacity to respond to terrorist threats. The incorporation of terrorism into the BNS represents a significant reform bringing counter-terrorism within the framework of ordinary criminal law while maintaining deterrent punishments.

However concerns persist regarding procedural safeguards the potential for misuse and the adequacy of judicial oversight. The low conviction rates under TADA and POTA and the continuing high proportion of UAPA cases pending trial suggest systemic challenges in investigation and prosecution that legislative reform alone cannot address.

### **7.2 Recommendations for Reform**

Several reforms could enhance the effectiveness of India's anti-terrorism framework while strengthening protections for civil liberties:

**First** the relationship between the BNS and the UAPA should be clarified to prevent duplication and inconsistent application. Parliament should consider consolidating terrorism offences within a single statute with clear provisions regarding which offences fall within the exclusive jurisdiction of specialised agencies.

**Second** procedural safeguards should be strengthened particularly regarding pre-trial detention and access to legal counsel. The BNSS's provisions on handcuffing and proclamation should be reviewed to ensure compliance with Article 21 standards.

**Third** judicial oversight should be enhanced through the establishment of specialised terrorism courts with training in both national security and constitutional law. Such courts could better manage the complexities of terrorism prosecutions while maintaining fair trial guarantees.

**Fourth** independent review mechanisms should be established to monitor the implementation of anti-terrorism laws and document cases of misuse. The TADA review committees provided a model that could be adapted and strengthened.

**Fifth** witness protection schemes mandated by Section 398 of the BNSS should be fully implemented and adequately funded. Witness intimidation remains a significant obstacle to successful prosecution and robust protection programmes are essential to addressing this challenge.

**Sixth** surveillance powers should be exercised within a framework that respects the right to privacy as articulated in *Puttaswamy*. This requires clear legal authorisation proportionality review and independent oversight of surveillance activities.

### 7.3 CONCLUSION

The tension between national security and constitutional rights is not capable of permanent resolution; it must be continuously negotiated through democratic deliberation judicial oversight and institutional design. India's experience with anti-terrorism legislation demonstrates both the necessity of effective counter-terrorism measures and the dangers of exceptional laws insufficiently constrained by constitutional principles.

The incorporation of terrorism into the BNS offers an opportunity to move beyond the paradigm of exceptional legislation and toward a framework that integrates counter-terrorism within ordinary criminal law while maintaining necessary safeguards. Whether this opportunity is realised depends not on legislative text alone but on the institutions that implement it the judges who interpret it and the citizens who hold their government accountable for respecting fundamental rights even as it defends the nation against those who would do it harm.

As the Defence Secretary observed in a recent address on counter-terrorism cooperation terrorism can "destabilise governments undermine civil society and threaten social and economic development."<sup>44</sup> Effective counter-terrorism requires not only robust legal

frameworks but also "a whole of government and whole of society approach to counter radicalisation and violent extremism" and "enhancing legal and financial frameworks to disrupt terror financing networks."

The BNS and BNSS provide the legal architecture for such an approach. Their effectiveness will ultimately be measured not by the stringency of their provisions but by their capacity to protect both the security of the nation and the liberties of its citizens twin commitments that properly understood are not contradictory but complementary.

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