



Anti-Terror Laws in India and the USA: A Constitutional Review of the UAPA and the Patriot Act

^{*1}Dr. Varun Srivastava and ²Aayushi Singh

^{*1}Assistant Professor, Department of Law, Amity Law School, Noida, Amity University, Uttar Pradesh, India.

²Student, Department of Law, Amity Law School, Noida, Amity University, Uttar Pradesh, India.

Abstract

When examining the anti-terror laws of the United States and India, the first point that stands out is that both nations face threats from terrorism, both domestically and internationally. As a result, they have had to enact specific legislation to counter these threats effectively. To prevent future attacks and ensure national security, governments must equip law enforcement agencies with the necessary tools and powers. However, this raises a crucial challenge—striking the right balance between safeguarding citizens' rights and protecting national integrity while implementing these laws. In the case of the Patriot Act, concerns have been raised regarding its potential to enable racial and ethnic discrimination, which runs contrary to the fundamental principles upon which the U.S. Constitution is built. Similarly, an assessment of how the Unlawful Activities (Prevention) Act (UAPA) is enforced reveals that it often infringes on individual rights, calling into question India's commitment to democratic values. Despite the stringent nature of these laws, the judiciary in both countries has, through various rulings, defended fundamental rights against their arbitrary application. This paper seeks to provide a comparative analysis of anti-terror laws in the United States and India, ultimately offering recommendations to address instances where these laws result in serious violations of civil liberties.

Keywords: Constitution, Civil Liberties, Judiciary, PATRIOT Act, UAPA.

Introduction

Terrorism strikes at the very core of humanity, with its devastating impact felt by both developed and developing nations alike. The growing frequency of terrorist activities on a global scale has become a pressing concern for the international community. Terrorism is not confined by religion, identity, or borders—it can target a particular faith, a government, or even be state-sponsored. It may also arise from separatist movements, radical ideologies, political extremism, opposition to perceived governmental oppression, or even biological warfare.

Although terrorism often stems from deep-rooted grievances and ambitious objectives, its consequences are overwhelmingly borne by innocent victims who lose their lives to senseless violence. Those responsible for such acts attempt to justify their actions by arguing that they have no legal or peaceful means to achieve their goals. However, this reasoning collapses under scrutiny, as no cause, no matter how deeply held, can ever justify the large-scale, inhumane slaughter of innocent people.

Given the grave threat terrorism poses in today's world, governments worldwide have responded with decisive action to protect their citizens and fulfil their international responsibilities. These efforts include enacting stringent laws to address terrorism in various forms, ensuring that the

executive branch enforces these laws effectively, and relying on the judiciary to impose strict penalties that serve as a deterrent. Each nation designs its anti-terrorism legislation based on the unique challenges it faces, reflecting the specific nature of threats within its borders.

For a comprehensive analysis of this critical issue, the authors have chosen to focus on two democratic sovereign nations—the United States and India. By employing a comparative approach, this study will critically examine the anti-terror laws of both countries and their effectiveness in combating terrorism.

Evolution of Anti-Terrorist Legislation

Before exploring the content and functioning of any law in daily life, it is crucial to understand its historical development. In the following sections, the authors will examine how anti-terrorism legislation has evolved in both India and the United States.

Timeline of the Evolution of Indian Anti-Terror Laws

India has long grappled with the threat of terrorism. Over time, the country has enacted several laws to address this challenge, including the Unlawful Activities (Prevention) Act (UAPA), Chapter VI of the Indian Penal Code, and the National Security Act (NSA), among others. However, this

chapter will primarily focus on the UAPA, which serves as the cornerstone of India's anti-terror framework.

To gain deeper insights into the issue and formulate a comprehensive approach to national integration, the government established the National Integration Council. As a result of these deliberations, the Unlawful Activities (Prevention) Bill was introduced in 1966, marking a significant step in India's legislative efforts to combat terrorism^[1]. In its original form, the Act functioned more like a Committee of Inquiry rather than a strict enforcement law. However, the terrorist attacks of September 11, 2001, in the United States reshaped the global landscape and significantly influenced how people perceived one another^[2]. Following the attacks, there was a widespread perception that every Muslim and Asian was a potential suspect. In response to the threat terrorism posed to global stability, the United Nations Security Council proposed and adopted Resolution No. 1373/2001. This resolution aimed to strengthen international security measures, recognizing the urgency of the situation after the attack on the United States.

Under Chapter VII of the United Nations Charter, all member states were required to take decisive action against terrorism. This included preventing and disrupting the flow of financial support to terrorist organizations by any means. Countries were also mandated to freeze accounts and restrict financial aid, whether direct or indirect, to groups involved in terrorist activities.

In compliance with these international obligations, India enacted the UAPA Amendment Act of 2004. The government was committed to intensifying its fight against terrorism, particularly in light of its responsibilities under UN Resolution 1373. It saw the need to amend the UAPA to ensure that all aspects of terrorism were effectively criminalized^[3]. The amendment effectively incorporated provisions from the Prevention of Terrorism Act (POTA), which was being repealed due to widespread misuse, while aligning the definition of "terrorist" with that previously outlined in the Terrorist and Disruptive Activities (Prevention) Act (TADA), which had been revoked in 1995^[3].

Further amendments to the UAPA were suggested and approved on December 17, 2008, following the armed terrorist event that occurred in Mumbai on November 26, 2008^[5]. The UAPA incorporated additional provisions similar to those found in POTA and TADA, including extended police custody for the accused, prolonged detention without formal charges, and strict restrictions on granting bail^[6]. In 2012, the UAPA was amended to expand the definition of a "terrorist act," incorporating offenses that could jeopardize the country's financial stability^[7].

A Timeline of the Evolution of America's Anti-Terror Laws

Just as India has enacted multiple laws to combat terrorism, the United States has also implemented several anti-terrorism statutes, including the SAFETY Act of 2002, the Homeland Security Act of 2002, and the Antiterrorism and Effective Death Penalty Act of 1996. However, for the purpose of this study, the primary focus will be on the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.

The rise of terrorism targeting American interests can be traced back to the 1970s when extremist groups began engaging in hostage crises, bombings, hijackings, and

assassinations. These escalating attacks raised concerns within the U.S. government, leading to an increase in counterterrorism efforts throughout the 1980s. Between 1968 and 1986, the number of anti-American incidents surged from 54 to 139.

Unlike terrorism in India, which is often linked to specific territorial or ideological conflicts, anti-American terrorism stems largely from the ambiguous and often controversial policy directions of the U.S. government. This form of terrorism manifests in two ways—domestic attacks originating within the country and foreign threats from external extremist groups^[8].

In the 1990s, the United States witnessed a surge in anti-government terrorism, which later declined over time. This movement was a significant aspect of anti-American terrorism, driven primarily by domestic extremist groups that sought to undermine the authority of the federal government. Most of these groups adhered to far-right ideologies, which often included isolationist beliefs and white supremacist views. Their rhetoric was further fueled by millennial anxieties, reflecting fears of government overreach and societal collapse^[9].

The bombing of the Alfred R. Murrah Federal Building in Oklahoma City in April 1995 brought heightened public awareness of domestic extremist groups throughout the early 1990s. Investigations revealed that the attack was carried out by homegrown terrorists, who were later apprehended and prosecuted. Their actions were, in part, a response to perceived injustices, including retaliation against Arab-Americans.

However, following the September 11 attacks, the focus of counterterrorism efforts shifted significantly. In comparison, domestic terrorism appeared to pose a lesser threat, as national security priorities centered on combating international terrorist organizations^[10].

This legislation sought to bolster national security and improve counterterrorism measures. In response to the global terrorism threat, the United Nations Security Council adopted Resolution 1373, stressing the importance of identifying terrorists and disrupting their financial networks. Notably, for the first time in its history, the UN Security Council officially classified the September 11 attacks in Pennsylvania, New York, and Washington as acts of global terrorism, acknowledging them as significant threats to international peace and security^[11].

Anti-Terror Legislation and Democracy in the 21st Century

In today's world, one of the most crucial policies for any nation is ensuring stability, security, and order in the face of terrorism. To achieve this, governments develop laws that address key concerns such as counterterrorism strategies, financial support for terrorist activities, and legal procedures for handling terrorism-related cases.

However, a troubling question arises—what happens when these laws are misused, not to target terrorists, but to suppress dissent among citizens? Dissent plays a vital role in a democracy, ensuring that those in power remain accountable. This has sparked widespread debates in liberal democracies worldwide, as nations struggle to strike a balance between national security and the constitutional rights of their people. The challenge lies in preventing the abuse of counterterrorism laws while maintaining the safety and sovereignty of the state.

UAPA: A Grievous Case of Exploitation

The preamble of the Unlawful Activities (Prevention) Act (UAPA) states:

"An Act to address terrorist activities and associated issues, as well as to more effectively forbid certain illegal behaviors by individuals and organizations."

As India's primary anti-terrorism legislation, the UAPA grants sweeping powers to law enforcement agencies. It imposes strict bail conditions, expands police authority to search, seize, arrest, and protect witnesses, and provides broad investigative discretion.

Under Sections 15 and 43E, an individual accused of committing a "terrorist act" is presumed guilty unless proven otherwise, creating a case of predetermined allegations. Additionally, it extends the investigation period, allowing authorities up to 180 days to complete their probe and file a charge sheet.

The 2019 amendment to the UAPA introduced one of the most controversial changes—empowering the central government to designate individuals, not just organizations, as terrorists. A separate chapter of the Act deals with the seizure of property and earnings linked to terrorism.

Furthermore, the UAPA criminalizes a wide range of terrorism-related offenses, specifying punishments for activities such as:

- Setting up terrorist camps,
- Financing terrorism,
- Providing shelter to terrorists,
- Threatening national security, and
- Conspiring against the State.

Special provisions also impose strict penalties on trusts, societies, and corporations found guilty of engaging in or supporting terrorist activities^[12].

According to NCRB data, in 1226 instances that were filed nationwide in 2019, as many as 1948 people were detained under the UAPA. The number of arrests in these instances between 2015 and 2018 was 1128, 999, 1554, and 1421, respectively^[13], and the cases were registered as 897, 922, 901, and 1182^[14, 15]. Even though the number of cases fell to 796 in 2020, the one-year fall in cases cannot offset the five-year growth in UAPA cases of 72%^[16, 17]. It would be ideal if this decline continued or at least remained stable beyond 2021. However, the most striking revelation comes from data presented to the Lok Sabha by the Central Home Ministry, which indicates that the actual conviction rate under the UAPA stands at just 2.2%.

This statistic highlights a critical issue—while a significant number of individuals are arrested under the law, many cases fail to withstand judicial scrutiny. The prosecution often struggles to meet the legislative and constitutional safeguards required for conviction. As a result, the judiciary is compelled to release many of the accused, raising concerns about the arbitrary use of the law and its potential for misuse^[18, 19]. According to the NCRB 2019 report, there were 5134 cases in total, including new and outstanding cases^[20]. Following the Central Government's 2019 reorganization of Jammu and Kashmir, the J&K government has filed 1,200 more UAPA cases against almost 2,300 individuals, of whom 46% are still incarcerated^[21].

Human Rights Watch's "World Report 2021" states that "Indian authorities brought politically motivated cases against human rights defenders, student activists, academics, political opponents, and critics, primarily under stringent sedition and terrorism laws"^[22].

India's position was downgraded from "free" to "partly free" in 2021, by the Freedom House's "Global Democratic Ratings"^[23].

According to Human Rights Watch's "World Report 2021," Indian authorities have misused stringent sedition and anti-terrorism laws to target human rights defenders, student activists, academics, political opponents, and government critics. The report highlights the politically motivated nature of many cases, raising concerns about the suppression of dissent and the erosion of democratic freedoms in the country.

Patriot Act V Democratic Rights

The United States' counterpart to India's UAPA is the USA PATRIOT Act, which was enacted on October 26, 2001, just six weeks after the September 11 attacks that shook the nation.

This legislation significantly expanded the scope of intelligence investigations, allowing authorities to legally collect financial records, credit history, and communication data, as well as track cash flows and digital communications linked to individuals deemed a threat to national security.

Before the PATRIOT Act, law enforcement agencies required court approval to intercept a person's communications, and surveillance was limited to specific crimes. It was also illegal to electronically monitor individuals using mobile phones, computers, or other digital platforms without judicial authorization.

However, under the new law, the FBI was granted sweeping powers to access information through National Security Letters (NSLs)—a type of administrative subpoena that does not require judicial approval. The Act further authorized the FBI to gather customer data from various sources, including banks, telephone companies, and internet service providers, greatly enhancing the government's surveillance capabilities^[24].

The PATRIOT Act was designed with three primary objectives. First, it enhances information sharing among government agencies by eliminating restrictions that previously limited coordination between federal, state, and local law enforcement, thereby improving counterterrorism efforts. Second, it expands state surveillance powers and mandates private entities, such as banks and internet service providers, to share data with authorities, while also reducing their legal liability for doing so. Finally, the Act strengthens and broadens existing criminal laws related to terrorism by introducing new provisions, harsher penalties, and expanded legal definitions, ensuring a more comprehensive approach to combating terrorism^[25].

Although the Fourth Amendment mandates that the government obtain a search warrant before entering a home or business to seize property, Section 213 of the PATRIOT Act introduces an exception. This provision, known as "sneak and peek" warrants, allows for delayed notification of searches, meaning authorities can conduct searches without immediately informing the target. This controversial measure enables law enforcement to gather evidence without tipping off the subject of an investigation, raising concerns about potential violations of privacy and due process (Department of Financial Services)^[26].

The PATRIOT Act has faced criticism for allegedly infringing on civil liberties, but its supporters argue otherwise. They contend that the Act merely extends existing laws to cover terrorists and terrorist organizations rather than introducing entirely new restrictions. Additionally, it enhances cooperation among government agencies, allowing

them to share intelligence more effectively and identify connections that could help prevent attacks. Proponents also claim that improved information-sharing mechanisms help ensure that individual rights are not unintentionally violated. Furthermore, the Act includes provisions that allow victims of cyberattacks and hacking to seek compensation, strengthening protections against digital threats ^[27].

Under the PATRIOT Act, the government has been granted broad authority to detain non-citizens suspected of terrorism for up to seven days before formally filing charges for prosecution or deportation. However, since 1996, U.S. law has already allowed for indefinite detention in cases where a detainee's home country refuses to accept their return. In effect, the PATRIOT Act further extends this power, allowing authorities to imprison individuals suspected of terrorism without trial, raising concerns about due process violations and potential misuse of power ^[28].

The "USA Patriot Act" is only one part of the US government's larger counterterrorism strategy that moves away from democratic ideals ^[29]. Although the PATRIOT Act permits the detention of suspected terrorists without charge or trial if their home country refuses to recognize them, the U.S. government has also exercised this authority against American citizens suspected of terrorism. A notable example is Yasser Hamdi, a U.S. citizen captured on the battlefield in Afghanistan and subsequently detained in a military prison. The government classified him as an "enemy combatant," justifying his detention without trial. This case, along with others, has sparked significant debate over the limits of executive power, civil liberties, and the potential erosion of constitutional protections, particularly regarding the right to due process ^[30].

For instance, Ali Saleh Khalifa Al-Marri, a Qatari student studying in the United States, was initially charged with credit card fraud and lying to the FBI. However, after his arrest, the U.S. military reclassified him as an "enemy combatant", leading to his indefinite detention without trial. This case marked the first instance where an individual who had been formally charged with a crime was later designated as an enemy combatant, raising serious concerns about due process, legal rights, and the unchecked expansion of executive authority under the PATRIOT Act ^[31].

These instances align with the November 13, 2001, directive issued by the Bush administration, which declared that international terrorists would be tried in military tribunals rather than traditional criminal courts. Unlike civilian courts, these tribunals were composed of executive branch officials and military personnel, rather than an independent judiciary, raising concerns about impartiality and fairness. Additionally, the identities of witnesses were withheld, the rules of evidence were significantly loosened, and, most notably, judicial review was not permitted. This shift in legal procedure sparked widespread debate, with critics arguing that it undermined fundamental legal protections and the right to a fair trial ^[32].

A Comparative Study of the Anti-Terror Legislation in USA and India: UAPA V Patriot

The United States and India, as the world's two largest democracies, have worked together to counter global terrorism, fostering national and international efforts to minimize casualties and property destruction. Both nations, having experienced devastating terrorist attacks, have enacted comprehensive laws aimed at preventing future threats. In 2010, the two countries solidified their cooperation through

the India-U.S. Counter-Terrorism Partnership, a key component of their bilateral strategic alliance, designed to promote mutual security interests. Reflecting their shared commitment to combating terrorism, India's Unlawful Activities (Prevention) Act (UAPA) and the U.S. PATRIOT Act employ similar counterterrorism strategies, granting their respective governments expanded powers to address emerging threats ^[33].

The PATRIOT Act, UAPA, and its predecessors, TADA and POTA, share several key features aimed at strengthening counterterrorism efforts. Both countries employ special courts, with designated courts in India and FISA courts in the U.S., to handle terrorism-related cases. They also permit electronic surveillance with fewer safeguards for terror suspects, allowing authorities to monitor communications more extensively. Additionally, both laws grant the power to detain suspects for prolonged periods before formal charges are brought, raising concerns about due process. Another common feature is the seizure of financial assets, enabling law enforcement to freeze and confiscate economic resources linked to terrorism. Furthermore, these laws enforce harsher sentencing, imposing severe penalties and extended imprisonment for those convicted of terrorism-related offenses. While these provisions aim to enhance national security, they have also sparked debates regarding civil liberties and the balance between security and individual rights ^[34].

The UAPA permits the use of hidden witnesses and the acceptance of coerced confessions, raising serious concerns about due process and fair trial rights. Similarly, the PATRIOT Act grants law enforcement broad discretion to access communications, financial records, credit information, and consumer data without requiring an authorized search warrant or judicial approval. Additionally, the Act enhances information sharing between state authorities, allowing for a more coordinated approach to counterterrorism but also raising concerns about privacy and potential misuse of power.

Anti-Terror Law: The National Security Vs Civil Rights Debate

The primary responsibility of any government is to identify and prevent potential terrorist threats to safeguard national security. In line with this objective, both the United States and India have developed anti-terror laws that share similarities, as both nations have amended their security legislation to address specific acts of terrorism. However, the risk of misuse arises when the government is granted excessive powers, often at the expense of citizens' civil rights, which are protected under their respective constitutions and reinforced by judicial safeguards. In practice, the implementation of these laws has resulted in an imbalance of power, where the emphasis on national security often outweighs the protection of individual rights. This power asymmetry became particularly concerning in India following the 2019 amendment to the Unlawful Activities (Prevention) Act, 1967 (UAPA), which further expanded the government's authority, raising fears of potential misuse and suppression of dissent.

National Security: A Shield for UAPA/Patriot Act

When a nation's national security is at risk, civil liberties are inevitably affected. To safeguard sovereignty and national integrity, governments often find themselves compromising individual freedoms in the name of security. In an effort to prevent potential terrorist acts, law enforcement agencies are granted broad powers to collect extensive information, even if

some of it is unrelated to any specific crime.

Under criminal law, investigations typically require "reasonable cause and suspicion," but in the context of counterterrorism efforts, the scope of surveillance and searches expands significantly, often with fewer legal restrictions, making national security a justification for far-reaching governmental authority^[35].

The UAPA amendments serve as a clear example of how due process and fair trial rights can be disregarded in the name of national security. By prioritizing security over civil liberties, the law has become a tool for the widespread detention of dissenting individuals under the justification of maintaining public order. The most problematic aspect of the amendment is that it allows the government to label an individual as a terrorist—even before a fair trial—based solely on the claim that their actions pose a threat to society. This shift has led to serious human rights violations in India, raising concerns over misuse of power and suppression of dissent.

Anti-Terror Legislation and Human Rights Law

Article 29 of the Universal Declaration of Human Rights (UDHR) asserts that human rights cannot be arbitrarily compromised. Similarly, the UN Global Counter-Terrorism Strategy emphasizes that counterterrorism measures must not violate fundamental human rights. However, numerous instances of arbitrary enforcement of both the PATRIOT Act and the UAPA reveal how democratic principles are often sacrificed under the guise of national security. These laws have been used not just to combat terrorism but also to suppress political opposition, thereby jeopardizing individual freedoms and democratic values^[36].

The PATRIOT Act has been widely criticized for infringing on the basic liberties of immigrants in the United States, while even natural-born citizens are not immune due to the expansive surveillance powers granted to the executive branch. These powers have often been used to silence opposition and settle personal scores. Similarly, in India, the UAPA has been weaponized against civil rights activists, student groups, and human rights defenders, severely curbing free expression. A particularly alarming concern is the indefinite detention of individuals without concrete evidence of a terrorist act, where arrests are justified solely based on an ongoing investigation. This arbitrary use of power by law enforcement agencies, without proper judicial safeguards, directly violates the fundamental human right to bail and raises serious concerns about due process and fair trials^[37].

UAPA and Patriot Act: A Tale of Vague Provisions

The UAPA's Section 35(2) grants the government the authority to designate an individual as a terrorist solely based on suspicion of involvement in violent activities. This provision removes the necessity of filing a charge sheet or an FIR, effectively allowing the government to take action without formal accusations or legal proceedings. Since regular court trials are bypassed, individuals are deprived of their right to a fair trial, making it impossible for them to defend themselves in a court of law. Without judicial scrutiny, proving that a person has no ties to any terrorist organization becomes exceptionally difficult. Additionally, under the UAPA, anyone remotely associated with a detained individual—even through casual acquaintance—risks being apprehended. The broad and vague definition of terrorism under this law has also raised concerns, as it encompasses peaceful political protests and activism, potentially leading to the criminalization of dissent and democratic expression. This

issue was notably discussed in *A.K. Roy v. Union of India*^[38], where the constitutional validity of preventive detention laws was challenged, the Supreme Court reaffirmed the fundamental legal precept that a person's right to life and liberty cannot be jeopardized due to uncertainty. The allegations made against the accused should be reflected in the charges brought against him. The widely construed act might include a wide range of suspected individuals, which is disastrous for civil rights. A simple social media post might be interpreted as a terrorist act "which may provoke or is meant to stir up disaffection against the state" due to excessive confidentiality in the hands of executives. The statute doesn't include a sunset clause or other protections against future abuse.

Even in the United States, District Judge Audrey Collins ruled against Section 805 of the Patriot Act, declaring it unconstitutional in the case of *Humanitarian Law Project v. Ashcroft*^[39]. This provision, which prohibits offering advice or support to organizations designated as terrorist groups, was deemed overly vague and ambiguous. The court held that the law's lack of clarity violated both the First Amendment, which protects freedom of speech and association, and the Fifth Amendment, which guarantees due process. The ruling highlighted concerns that the provision could criminalize legitimate humanitarian aid and peaceful advocacy, making it a serious threat to constitutional rights.

Role of Court's in Tackling Anti-Terror Cases

When an individual's legally guaranteed rights are infringed upon, the judiciary plays a crucial role in upholding and protecting those rights. However, a significant challenge is that many people remain unaware of their legal rights and the laws that shape them, despite their profound impact on daily life. Generally, a person seeks judicial intervention only after their rights have been violated. When a law or certain provisions are challenged for being unconstitutional or infringing on fundamental rights, the judiciary's role in safeguarding individual liberty against legislative and executive overreach becomes clear. The courts act as a check on arbitrary state power, ensuring that constitutional guarantees are upheld^[40].

The highest courts in both the United States and India have consistently aimed to preserve individual freedoms while ensuring national security. When reviewing anti-terrorism laws, they have exercised caution, balancing the rights of individuals against the state's security concerns. However, there have been instances where courts have hesitated to address blatant constitutional violations, particularly when national security is at stake. In some cases, such infractions have been overlooked or deprioritized, raising concerns about judicial inaction. Despite these challenges, the judiciary's role in safeguarding civil liberties remains vital, serving as a check against executive and legislative overreach^[41].

The author seeks to illustrate how the Supreme Courts in the United States and India have played a role in safeguarding individual freedoms when anti-terrorism laws have been enforced. By citing specific cases, the discussion highlights instances where the judiciary has intervened to protect citizens' rights. In the United States, the Supreme Court has, at times, ruled in favor of individuals affected by the USA PATRIOT Act, ensuring that constitutional protections are upheld even in the face of stringent national security measures.

In *Al-Maari v. Spagone*^[42], the accused was held indefinitely on the suspicion of engaging in terrorist activities; however,

before the case could be heard, the government transferred him from military custody to the Advocate General's custody, leading the court to dismiss the case as moot. Despite this, the lower court had already ruled that detaining an individual solely on suspicion of terrorism was improper. This situation highlights how the administration deliberately prevented the case from reaching the Supreme Court, raising concerns about executive interference in judicial review.

One may argue that *Boumediene v. Bush* ^[43] this seminal case played a crucial role in the defense of prisoners' legal rights. The US Supreme Court rejected the government's argument that Guantanamo Bay detainees were beyond the reach of judicial jurisdiction simply because the facility was located outside US borders. The court ruled that, given the US exercised de facto jurisdiction over Guantanamo Bay, detainees could not be denied fundamental rights guaranteed by the US Constitution. This decision reinforced the principle that constitutional protections extend to individuals under US control, regardless of geographic location.

The issue remains the same when examining the Indian scenario. When anti-terrorism laws are misused, the Supreme Court of India has intervened to prevent individuals from being unjustly imprisoned or deprived of their freedom for frivolous reasons. The judiciary has, at times, acted as a safeguard against executive overreach, ensuring that the fundamental rights guaranteed by the Constitution are upheld, even in cases involving national security concerns. However, as seen in the US, there have also been instances where the courts have deferred to the state's security interests, making it a delicate balance between individual liberties and counterterrorism efforts.

The accused in *Union of India v. K.A. Najeeb* ^[44] in this case, the accused faced charges under the Unlawful Activities Prevention Act (UAPA) along with other offenses. The Kerala High Court granted bail after the undertrial had already spent more than five years in jail. However, when the matter reached the Supreme Court, it declined to intervene. The Supreme Court reaffirmed that the fundamental rights of an accused person under Article 21 of the Constitution cannot be violated by repeatedly denying them bail, even under the stringent provisions of anti-terror laws. This ruling emphasized the importance of due process and the protection of individual liberties, even in cases involving national security concerns.

In *Bikramjit Singh v. State of Punjab* ^[45], the Apex Court ruled that Magistrates do not have the authority to extend the period for an inquiry under Section 43-D(2)(b) of the UAPA, as per the first proviso. This ruling is significant because it ensures that Magistrates do not misuse their authority to prolong the incarceration of the accused beyond the legally permitted timeframe. By restricting the power of Magistrates in extending the investigation period, the Supreme Court reaffirmed the importance of due process and protection against arbitrary detention, reinforcing the balance between national security and individual rights.

A strong and independent judiciary is essential to maintaining the delicate balance between national security and individual liberty. The courts in both India and the United States have played a crucial role in preventing the misuse of anti-terrorism laws while ensuring that constitutional rights are upheld. By scrutinizing executive and legislative actions, the judiciary ensures that legal provisions are not arbitrarily applied and that due process is followed. Judicial oversight serves as a check against overreach, reinforcing the idea that security measures must not come at the cost of fundamental

freedoms.

Conclusion

To ensure national security, both the United States and India have implemented anti-terrorism laws. The stringent provisions of the "USA PATRIOT Act" and "UAPA" have been justified as necessary measures for the welfare of the state. However, their misuse has frequently resulted in the infringement of individual freedoms, as seen in their practical application.

The broad scope of these laws often extends to actions unrelated to terrorism, which not only curtails civil liberties but also slows down the judicial system, as an overwhelming number of cases obscure genuine terrorist threats. While societies must make certain sacrifices regarding fundamental rights, lawmakers in both democracies should not allow national security concerns to overshadow the core values of public policy. The excessive misuse of such laws threatens the democratic principles of individual liberty and due process, making it difficult to maintain a proper balance between security and rights.

In light of these concerns, the author proposes the following recommendations:

- a) Comprehensive revisions to anti-terror laws are essential, particularly in response to data revealing their misuse. The most frequently abused provisions must be restructured to prevent executive overreach, ensuring innocent individuals are not unjustly punished, as such injustices contradict the fundamental principles of legal fairness.
- b) The judiciary must set strict legal precedents to hold the executive accountable for misusing these laws. Additionally, frivolous cases should be met with severe penalties to foster deterrence and prevent exploitation of the legal system.
- c) Those wrongfully accused must be provided rehabilitation to help them reintegrate into society, as being acquitted does not always restore normalcy to their lives.
- d) Courts must be empowered with greater authority to effectively curb the misuse of anti-terror legislation and ensure legal safeguards are upheld.

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