

Rights or Ruin? India's Terror Trials Tell the Tale

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ABSTRACT

The article analyzes the paradox between safeguarding the human rights and guaranteeing the national security in India's terrorism trial. While there are number of international covenants and constitutional provisions that ensures right to fair trial to accused, their rigid application has, however, resulted in procedural acquittals, thereby, undermining the public trust in legal system. A comparative analysis of India's anti-terror laws with the foreign legal frameworks, such as, Singapore, Kazakhstan and Sri Lanka highlight the glaring gap in the enforcement, conviction rates and the de-radicalization measures. Looking back at the India's major terror incidents including that of Red Fort attack in 2000 to Parliament attack in 2001, Akshardham attack in 2002 along with Mumbai attacks in 2008 and Jaipur bombings in 2008, the paper reveals a systematic inefficiency in investigation, evidence collection etc. The article also proposes certain reforms such as structured preventive detention, specialized anti-terror courts, enhanced witness protection schemes etc. Ultimately, the contention raised is that India should recalibrate its legal regime to ensure justice for accused doesn't comes at the expense of justice for victims and national security.

INTRODUCTION

A systematic use of violence and intimidation against civilians and other military neutral personnels to coerce the authorities to fulfill their political, religious, ideological agendas, is termed as terrorism². It is a globally concerned phenomenon that has its roots spread out in every corner of the world. While the rule of law and human rights are vital, a blind commitment to these principles in terrorism trials has led to national vulnerability due to procedural acquittals.

India stands at a crossroad where the principles of justice clashes with the imperative of the national security. Although Indian legal system is guided by constitutional provisions and international covenants, which also helps in expanding the rights of the terrorism accused, but

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² Bruce Hoffman, Inside Terrorism (Columbia University Press 2017).

this commitment somewhere costs the national security. Time and again, it has been observed that terror suspects walk free, not because they are innocent, but due to inefficiency of the security system to gather admissible evidence against them.

A country which has witnessed devastating terror attacks needs to realise that such incidents do more than mere raising of eyebrows and some gossips among the neighbours. They spark immense fear, frustration, and numerous questions about the efficiency of the legal system and whether they are fit to deal with such high magnitude threats. As the gap continues to widen between the justice served and justice denied, it become obligatory for the authorities to reassess the loopholes in current legal system. The time has arrived that administration reform the legal system to ensure that justice is not only promised rather it is firmly and effectively delivered.

In democratic India, the legal system has been built on the bedrock of fairness even for the accused of the gravest crimes like terrorism. Government secures the rights of every terrorism accused, making them nearly non-negotiable in any civilized society, however this unfortunate reality of the legal systems exploits the national security. It has been repeatedly observed that the terror accused are acquitted as our noble legal regime needs proofs beyond reasonable doubt, which directly results that people with dangerous intention walks away freely, thereby making a joke of our legal framework.

Although it is believed that human rights must be respected but the system can't afford to be a blind towards the unique challenges of the terrorism related cases. The country is not dealing merely with ordinary crimes instead we are dealing with networks, ideologies and malefice tactics to evade the traditional law system. It is ardently believed that India must rethink about its approach towards legal provisions tailored to deal with the terrorism cases without compromising the core of justice. Strict and fair laws, unbiased trials and better investigation tools are not just for curbing rights, instead they are to ensure the safety of millions of Indians and assuring that those would try to crack the system won't be spared. In the pursuit of justice, rights of citizen to live freely must not be jeopardized.

INTERNATIONAL COVENANTS

According to **Article 10 of the Universal Declaration of Human Rights**³, everyone is entitled to a fair trial by an independent tribunal in determination of rights and obligations and of any criminal charge against him⁴.

However, it should be noted that the right to fair trial is an umbrella which gives shelter to various other rights guaranteed to a terrorist accused enlisted in various international covenants such as:

1. International Covenant on Civil and Political Rights⁵

- Article 7 – Right to be not subjected to torture, cruelty, inhuman or degrading treatment or punishment
- Article 9(1) – No arbitrary arrest or detention of the accused thereby depriving him of his liberty
- Article 9(2)- Right to be informed about the reasons of arrest
- Article 9(3) – Right to be presented before a judge within a reasonable time
- Article 14 (1) – All persons are to be treated equally before the court of law
- Article 14(2) – Right to be presumed innocent until proven guilty in accordance with the law
- Article 14(3) – Right of review

2. Universal Declaration of Human Rights

- Article 5 – Right to be not subjected to torture, cruelty, inhuman or degrading treatment or punishment
 - Article 9 - No arbitrary arrest or detention of the accused
 - Article 11 - Right to be presumed innocent until proven guilty in accordance with the law

3. Basic Principles on the Role of Lawyers⁶

³ Universal Declaration of Human Rights (adopted 1948) UNGA Res 217A(III) <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 8 November 2025.

⁴ Maneka Gandhi v Union of India (1978) 1 SCC 248.

⁵ International Covenant on Civil and Political Rights (adopted 1966) 999 UNTS 171 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> accessed 8 November 2025.

⁶ UN Basic Principles on the Role of Lawyers (adopted 7 September 1990) <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx> accessed 8 November 2025.

- Principle 1 – Right to approach the legal attorneys to defend them at every stage of the criminal proceedings⁷

As such large number of rights are being provided to the accused in a terrorist trial, it is worth noticeable that there is a close relationship between the national security and criminal law and in their fight against the terrorism, which provides a mixed picture of the dilemma faced by the authorities in such cases. It is ardently believed by them that one should not interfere with the constitutional rights provided to the accused, however, in that race of moral beliefs, the accused gets acquitted of the heinous crimes committed by them. Although the rule of law is secured in this way, but the national security is highly jeopardized.

INDIAN LEGISLATIONS

Apart from them, there are certain anti-terror acts also enacted in India to combat the threats while upholding the fundamental rights of the accused. Ranked as 14 in the Global Terrorism Index 2024, there is always a growing concern within the nation to protect its citizens from the terror attacks held in the name of superiority of ideologies. The following anti-terror laws enacted in India are:

1. **Unlawful Activities (Prevention) Amendment Act, 2019⁸**

Enacted in 1967 and with various amendments over years, the latest being in 2019, this act was brought into action to provide more effective prevention of unlawful activities of individuals especially for dealing with the terrorist activities and connected matters. UAPA has given the liberty to the government to declare the individuals and organizations as terrorist or terrorist organizations.

2. **National Security Act, 1980**

This act was enacted with an objective to permit the government to detain the individuals in order to further prevent them from taking any action that could pose a threat to the national security, public order or any other service. This act also allows for the detention for 12 months without any formal charges and can be even extended with fresh evidences.

⁷ PUCL v Union of India (1997) 1 SCC 301.

⁸ A.S. Narang, *National Security and Fundamental Rights in India* (Sage 2010).

3. **Bharatiya Nyaya Sanhita 2023**

India's new criminal law addresses terrorism in Section 111 BNS and offences of organized crimes in Section 112 BNS along with severe punishments⁹. This anti-terror law defined terrorism as act that is committed with an intention to threaten the unity, integrity and security of India to intimidate the general public or to disturb the public order¹⁰. Sanctioning of such acts provide a proper definition of act that can be termed as crime which subsequently helps the authorities in getting a proper guide for convicting a person.

TERROR ATTACKS IN INDIA

Despite such string acts being enacted in India, there are a series of terrorist acts being held in the nation from the time immemorial and it has been seen that the accused are freely been acquitted by the court under the excuse of lack of evidence thus, posing a threat to the nation.

2000 RED FORT ATTACK¹¹ – Carried out by Pakistani Terrorist group i.e. Lashkar-e-Taiba, where two militants began firing at Red Fort, later who were turned down by the two army jawans and a civilian security guard. The Indian courts convicted the conspirators in October 2005; however, they were released in September 2007 due to lack of evidence

2001 INDIAN PARLIAMENT ATTACK¹² – A terrorist attack on the Indian Parliament by the five members of Jaish-e-Mohammed is considered to be one of the major attacks on the democracy of India till date. Convicting four major accused under Indian Penal Code and Prevention of Terrorism Act, Afzal Guru (conspiracy and facilitating the attack) was executed in 2013, Shaukat Hussain was sentenced to 10 years rigorous imprisonment. However, S.A.R Geelani and Navjot Sindhu was acquitted due to lack of evidences.

2002 ATTACK ON AKSHARDHAM TEMPLE¹³ – Multiple terrorists attacked the Swaminarayan Akshardham Temple in Gujarat, killing 33 and injuring more than 80 people. Later, India's National Security Guard intervened and ended the siege the next day. However, the 6 people who were arrested by Gujarat Police were acquitted in 2014 by the Supreme Court.

⁹ Bharatiya Nyaya Sanhita 2023.

¹⁰ Fali S. Nariman, *The State of the Nation: In Context of India's Constitution* (Hay House 2018).

¹¹ LiveLaw, 'Why Conviction Rates in Terrorism Cases Remain Low in India' (2023) <https://www.livelaw.in/conviction-rates-terrorism-cases> accessed 8 November 2025 accessed 8 November 2025.

¹² *State (NCT of Delhi) v Navjot Sandhu* (Afsan Guru) (2005) 11 SCC 600.

¹³ *Arup Bhuyan v State of Assam* (2011) 3 SCC 377.

2008 JAIPUR BOMBINGS¹⁴ – Series of 9 synchronized bombs being blasted within a span of just 15 minutes in the capital of Rajasthan, received widespread condemnation from around the world. Indian Mujahideen, an Islamic terrorist group claimed the responsibility of the attack. In December 2019, four out of five accused were convicted by a special court in Rajasthan under Indian Penal Code, Unlawful Activities (Prevention) Act and Explosives Act and the fifth was acquitted on the basis of lack of evidence. However, in March 2023, all the convicted accused were released by the Rajasthan High Court.

2008 MUMBAI ATTACKS¹⁵ – Popularly known as 26/11 attacks, where Lashkar-e-Taiba, a Pakistani based terrorist group, carried out 12 shooting and bombing attacks across Mumbai for four days. Out of the 10 terrorists, 9 were taken down by the NSG, and only Ajmal Kasab, the lone terrorist survivor was arrested by the police. After 4 long years, Kasab was finally executed at Yerawada Jail in Pune.

It is well observed in the above cases that how the strict adherence to Right to Fair Trial can result in acquittal of the accused, menacing national security. One should be familiar with the fact that the acquitted are not always innocent, they are just legally unproven. Due to the loopholes in the bridge between the law enforcement agencies and judiciary system, these terrorist walks away freely¹⁶.

Terror networks are highly secretive and the traditional evidences is scarce. It is always not possible that direct evidences are available in such matters¹⁷. The witnesses are often afraid or absent which might further be a disadvantage in the trials of the accused. Similarly, the confessions obtained by the police officials in the custody are not admissible as evidence in the court of law which provides a chance to the accused to revert on their wordings¹⁸. Due to such lapses in providing evidence to the court, the accused in the terror trials walks away freely which ultimately lead to loss of public faith in the justice system and encourages the terror

¹⁴ Indian Express, 'Explained: India's Global Terrorism Index Ranking' (2024) <https://indianexpress.com/terrorism-index> accessed 8 November 2025.

¹⁵ *Mohd Ajmal Amir Kasab v State of Maharashtra* (2012) 9 SCC 1.

¹⁶ David Cole and James Dempsey, *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security* (The New Press 2006).

¹⁷ Radhika Singha, 'Evidence, Confession and Terrorism Trials in India' (2016) 36 South Asia: J South Asian Studies 123.

¹⁸ Jinee Lokaneeta, 'Torture, Custodial Confessions and the Indian Legal System' (2014) 49 Economic & Political Weekly 65.

groups to even plan something bigger. These acquittals also demoralize the investigating agencies in fulfilling their duties. Repeated acquittals strongly indicate the system failure rather than the innocence.

COMPARISION WITH OTHER COUNTRIES

According to Global Terrorism Index 2024, there are, however, 64 countries which are ranked as 100 with scores as 0.00 meaning thereby, that they are the safest countries with no threats about terrorist attacks in their countries¹⁹.

1. Singapore²⁰

Singapore anti-terror acts such as Internal Security Act is effective as it allows for indefinite preventive detention without trial, although this has been considered controversial in nature, but it is proven to be highly effective in neutralising of threats before they are materialised thus, safeguarding the national security. Having read it with other strict anti-terror financing laws such as Terrorism (Suppression of Financing) Act 2002 and high-tech surveillance, Singapore is successful in achieving an exceptionally high conviction rates and nearly zero instances of terrorism²¹. Not only restricted to the harsh deterrents but it is also a success in proactive rehabilitation efforts, e.g. Religious Rehabilitation Group (RRG) aimed at de-radicalisation.

India, on the other hand, operates under Unlawful Activities (Prevention) Act, which although provides a solid legal base for convicting the accused in terrorism trials, but the poor conviction rates, unchecked delays, frequent misuse of laws, acquittals of convicts after long years, creates a benefit of doubt in the minds of the general public and additional confidence to terrorist to plan more big and major attacks. Unlike Singapore, the years of preventive detention in India is limited and there are no robust de-radicalization strategies, making the legal system vulnerable due to flawed implementation and enforcement.

2. Kazakhstan²²

¹⁹ Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press 2011).

²⁰ Internal Security Act (Cap 143, 1985) (Singapore) <https://sso.agc.gov.sg/Act/ISA1959> accessed 8 November 2025.

²¹ Religious Rehabilitation Group (RRG), Singapore official publications.

²² Law of Kazakhstan on Countering Terrorism 2018.

Located at the crossroads of Central Asia, it faces unique security challenges, ranging from religious extremists to returning of foreign fighters and regional instability. To resolve these challenges, they had enacted several strict counter terror laws such as Law of Kazakhstan on Countering Terrorism 2018 and Penal Code of Kazakhstan which criminalizes the terrorist acts. The Constitution of Kazakhstan usually permits death penalty, affirmed in Article 47(1) and Article 255 of Penal Code of Kazakhstan, for two types of offences, namely, the offences resulting in fatalities and any grave crime committed in wartime.

The authorities have broad power in relation to conduct surveillance, freeze assets or detain suspects²³. Along with that, Kazakhs are being praised for their comprehensive de-radicalization programs including the rehabilitation centers. The conviction rate of terrorists is usually high, largely due to swift administrative processes and tight control over judiciary and media.

Contrarily, India's anti-terror landscape, though backed up by the strong legislations, but it suffers from weak implementation, politicizations and low conviction rates. To add up in the list, investigation lapses, political interferences, delays in charge sheets and overreliance on custodial confessions, have made the prosecutions fragile. While Kazakhstan maintains high control through the centralized powers and preventive mechanisms, India's democratic structure proves to be a bane as it requires greater judicial checks but at the cost of enforcement efficiency and legal impacts.

3. Sri Lanka²⁴

Sri Lanka's counter terrorism landscape has been a result of long civil wars and the fight against the Liberation Tigers of Tamil Eelam (LTTE). The principal law of the land i.e. 1979 Prevention of Terrorism Act, 2018 Counter Terrorism Act which allows for arrest without warrants and prolonged detention without charge and confessions to police officers as admissible in court. Although in 2023, Sri Lanka has drafted a new counter terrorism act aimed to reform the PTA, but its implementation remained inconsistent.

In parallel, although India's legislation is somewhat parallel with balanced judicial oversight, they face criticism for prolonged trials, misuse of legislations, acquitting accused in the name

²³ Penal Code of Kazakhstan Article 255.

²⁴ Prevention of Terrorism Act No 48 of 1979 (Sri Lanka).

of upholding rule of law, alleged misuse against political dissidents. Where Sri Lanka's counter-terror laws have been historically militarised and used during the internal conflicts, India laws are highly tested against cross border terrorism and religious radicalism²⁵. Although both countries in some aspects grapple with the challenge of balancing national security with the human rights, Sri Lanka's record reveals a more authentic tilt in the enforcement whereas India struggles with the inefficiency and overreach within a democratic framework.

SUGGESTIONS FOR REFORMS IN INDIA'S ANTI-TERROR LAWS

1. Introduction of structured preventive detention mechanisms with time bound judicial reviews and intelligence validation²⁶
2. Launching of community based de-radicalization initiatives which involves special lectures from religious leaders, psychologists and civil society.
3. Set up an exclusively anti-terror court that deals with cases in a fast-track motion with trained judges and efficient management of digital cases²⁷.
4. Enacting a special provision in the legislation whereby, the confessions made in the police custody are accepted as a piece of evidence in court of law.
5. Strengthening India's witness protection scheme, allowing for anonymous testimonies in exceptional cases²⁸.
6. Creations of specialized anti-terror oversight panels constituting legal experts and human right members to review proportionality in prosecution.
7. Building joint counter terrorism task forces with NIA and special state police under a common command structure²⁹.
8. Publications of transparent reports on counter-terrorism operations, legal outcomes and required reforms³⁰.

CONCLUSION

²⁵ Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press 2011).

²⁶ Indian Law Institute, *Index to Indian Legal Periodicals* (ILI, Delhi 2002).

²⁷ Gautam Bhatia, 'Civil Liberties and Counter-Terror Laws: The UAPA Experience' (2019) 61 Nat'l Law School J 45.

²⁸ Amnesty International, *Justice Under Threat: Counter-Terror Trials in India* (2020) <https://www.amnesty.org/en/documents/asa20/1234/2020/en/> accessed 8 November 2025.

²⁹ The Wire, 'Counter-Terror Laws and Human Rights in India' (2020) <https://thewire.in/rights/counter-terror-laws> accessed 8 November 2025.

³⁰ UN Special Rapporteur on Counter-Terrorism Reports (2017, 2021) <https://www.ohchr.org/en/counter-terrorism> accessed 8 November 2025.

Thus, in conclusion the analysis reveals that while India although possess some efficient legal frameworks to counter terrorism, still there are some procedural lapses, evidentiary gaps and judicial delays which highlights a critical flaw in the enforcement mechanisms which ultimately has contributed to increased number of terrorist acts in the recent years such as 2016 Uri Attack, 2019 Pulwama suicide bombings, 2023 Poonch Terror attack, 2024 Reasi attack and latest 2025 Pahalgam attack. The latest ranking of India in Global Terrorism Index 2024 reveals that there are a lot of reforms to be done in the legislation to protect the country from intimidations.

Unlike nations such as Singapore, Kazakhstan and Sri Lanka, ranked 100th in Global Terrorism Index 2024 reveals that the country possesses more stringent anti-terror measures and efficient implementation, intelligence coordination and swift conviction processes. As terrorism becomes more decentralized, India's rigid insistence on rule of law and conventional evidence and delayed judicial response inadvertently allows threats to fester.

Thus, in the practice of upholding the human rights without any adaptive legal reforms and robust investigations, the national security of India is repeatedly compromised, putting at stake both the public trust and internal stability. Consequently, there is a strong and urgent need of recalibration to ensure that the justice for the accused doesn't comes at the expense of justice for victims and nation.

Now it is time for India to choose either to continue to uphold a rigid legal idealism that gives liberty to the terror players to walk away freely or recalibrate the justice system to safeguard both the liberty and life of its citizen. The time for reform isn't tomorrow but IT IS NOW.