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ANALYSIS OF INDIA'S COUNTERTERRORISM LAWS FROM UAPA TO THE BHARATIYA NYAYA SANHITA, 2023

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Abstract

This paper is a critical review of how the counterterrorism system of India has developed since the initial preventive-detention laws and the extraordinary regimes of TADA and POTA, to the convergence of powers of the Unlawful Activities (Prevention) Act (UAPA) and the recent criminal law reforms of the Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Nyaya Sanhita (BNS). It examines the definitions of terrorism and unlawful activity, investigative authorities, bails and detention pending trial, the evidentiary regimes, and the issue of federalism through a doctrinal and comparative approach to the subject, based on constitutional principles and international human-rights norms. The paper claims that BNS repackages UAPA categories of counterterror to a large extent instead of narrowing or clarifying them, and UAPA remains predominant in practice by its strict bail provision, its designation authority and its NIA-centred enforcement. The paper concludes that the counterterror architecture in India institutionalizes a structurally exceptional, rights-restrictive paradigm and offers specific reforms on definition, oversight, sunset provisions, bail, and transparency of the statistics of terrorism.

Keywords: *UAPA, Bharatiya Nyaya Sanhita, counterterrorism, constitutional rights, bail and detention.*

1. INTRODUCTION

The development of India's counterterrorism framework is a constant struggle between the national security needs and the constitutional guarantees of liberty. From the early post-Independence preventive detention laws to specialized laws like the Terrorist and Disruptive Activities (Prevention) Act and the Prevention of Terrorism Act, India has over time consolidated counterterror powers in the Unlawful Activities (Prevention) Act (UAPA), which, with the 2004 and 2008 amendments, has become the country's primary counterterror legislation (Raman, 2015). The recent adoption of the Bharatiya Nyaya Sanhita (BNS), 2023, which is presented as part of a larger criminal law reform agenda, only adds to the need of a systematic investigation into the normative and legal boundaries of the offences of terrorism in modern India.

The rationale for looking at UAPA in conjunction with the BNS is to examine the extent to which the new code is a transformation, a supplement, or a restatement of existing counterterror norms. The research question is whether the BNS has a significant impact on the definitional, procedural, and evidentiary standards or UAPA still reigns over the counterterror architecture in India. Correspondingly, the research questions the conceptualization of terrorism, the distribution of the investigative discretion and the persistence of rights-restrictive mechanisms, especially in the light of constitutional protections under Articles 14, 19, 21, and 22 (Bhatia, 2020).

The objectives of this research are to critically analyse the doctrinal bases of UAPA and BNS, to make a comparative analysis of their substantive and procedural provisions, and to examine their conformity with the constitutional norms and international human rights standards. The hypothesis of work is that, even after the structural realignments in the BNS, the regime still maintains the exceptionalist logic inherent in UAPA, thus continuing to perpetuate a counterterrorism framework that places the state power above the freedoms of individuals (Mukherjee, 2023). The scope of the study is confined to doctrinal and jurisprudential analysis, without doing empirical fieldwork. Methodologically, the paper takes a doctrinal, comparative and analytical approach, relying on statutory texts, judicial decisions, parliamentary debates and scholarly literature. Limitations include the early stage of judicial interpretation of the BNS and the paucity of case law that has resulted.

The structure of the paper starts with a theoretical and constitutional framework and then goes on to doctrinal analysis of UAPA and an examination of terrorism related provisions within the BNS, culminating in a comparative assessment and critical evaluation of their normative coherence.

2. THEORETICAL AND LEGAL FRAMEWORK

The theoretical underpinnings of counterterrorism law must be placed in the wider international and constitutional debate on terrorism. International law does not have a universally accepted definition of terrorism, although there have been sustained efforts by the UN through Security Council resolutions and the Draft Comprehensive Convention on International Terrorism (Saul, 2006). However, international counterterrorism standards insist on legal certitude, proportionality, and adherence to human rights.

In India, the constitutional system places substantive and procedural limitations on counterterror laws. Articles 14, 19, 21 and 22 all require that state action comply with the principles of equality, expressive freedom, personal liberty and procedural fairness. The landmark Maneka Gandhi v. Union of India (1978) decision, which expanded the meaning of "procedure established by law" on the basis of the doctrines of reasonableness and proportionality, which restricts the arbitrary power of the state. These standards, namely, necessity, legality, proportionality, and judicial oversight, constitute the normative criteria against which counterterror laws such as UAPA and the BNS are to be judged (Gross & Ni Aolain, 2006). It is based on this framework that the comparative and doctrinal inquiry that follows in the paper is analytically grounded.

3. EVOLUTION OF INDIA'S COUNTERTERRORISM REGIME BEFORE BNS

3.1 Preventive Detention Laws Post-Independence

The counterterrorism path of India was a result of a wider preventive-detention system that preceded the specialised anti-terror laws. The Preventive Detention Act, 1950 authorised detention without trial for up to one year and was in force till 1969, which was the state's early reliance on extraordinary powers in peacetime (Sharma, 2015). The Maintenance of Internal Security Act (MISA), 1971 further increased the powers of the executive, particularly during the Emergency (1975-77), when thousands of people were detained for political reasons; the Shah Commission later reported rampant misuse (Khosla, 2012). Although MISA was repealed in 1978, its logic continued through the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) and the National Security Act, 1980 (NSA), both of which institutionalised long-term preventive detention (Singh, 2020). As scholars observe, these frameworks were weakened, and they would influence the legal context in which subsequent anti-terror laws would be enforced (Bajpai, 2019).

Table 3.1 - Post-Independence Preventive-Detention and Security Laws

Statute	Year	Purpose	Key Powers	Status
Preventive Detention Act	1950 - 1969	National security & public order	Detention up to 12 months	Lapsed (1969)
MISA	1971 - 1978	Internal security	Indefinite detention, search & seizure	Repealed (1978)
COFEPOSA	1974 - present	Economic security & anti-smuggling	Preventive detention for economic offences	In force
NSA	1980 - present	National security/public order	Detention up to 12 months	In force

(Sources: Sharma, 2015; Khosla, 2012; Singh, 2020; Bajpai, 2019)

3.2 TADA, 1985-1995: Structure, Misuse, and Judicial Responses

The Terrorist and Disruptive Activities (Prevention) Acts of 1985 and 1987 (collectively "TADA") were India's first specialised anti-terror statute. TADA's definition of terrorism was very broad and it authorised prolonged detention, admissibility of police confessions and in-camera trials (Dhawan, 1995). More than 76,000 people were arrested under TADA; conviction rates were less than 2%, indicating structural misuse (US State Dept., 1995).

In Kartar Singh v. The Supreme Court in State of Punjab (1994) affirmed the constitutionality of TADA, but recognized actual dangers of misuse, and provided a guideline on admissibility of confessions and a requirement of judicial review (Kartar Singh, 1994). The outcry of the people and political criticism led to the lapse of TADA in 1995.

3.3 POTA, 2002: Rationale, Critique, and Repeal

The Prevention of Terrorism Act, 2002 (POTA) was passed after the 2001 attack on Parliament, justified as being needed to deal with the inadequacy of ordinary criminal law (Menon, 2004). It was similar to TADA in that it allowed prolonged detention, special courts, and expansive investigative authority. POTA soon attracted criticism due to disproportionate application on minorities and political opponents (Gonsalves, 2003). In 2004, the government officially repealed POTA after recorded trends of abuse (Government of India, 2004).

3.4 Transition to UAPA as the Principal Counterterror Statute

The Unlawful Activities (Prevention) Act (UAPA) was originally passed in 1967 to control unlawful associations, but it was essentially changed in 2004. This amendment inserted some of the provisions of POTA, especially those concerning terrorism, into UAPA to enable the state to have an exceptional counterterrorism apparatus under a non-sunset law (Mukherjee, 2020). The amendments of 2004-2019 therefore harmonized UAPA as the primary anti-terror legislation in India.

3.5 Major Amendments to UAPA: 2004, 2008, 2012, 2019

In 2004, a new definition of terrorist act was presented in Section 15 and offences concerning terrorist organisations and funding were established (Bhullar, 2019). The 2008 amendment restricted the bail and expanded the forfeiture authority following the 26/11 attacks. In the amendment of 2012, more UN treaties were included. The 2019 amendment allowed the designation of individuals (not organisations only) as terrorists, which received much criticism as a violation of due process (UN Special Rapporteurs, 2019).

Table 3.2 - Key Amendments to UAPA

Amendment	Context	Major Changes
2004	Repeal of POTA	Introduced terrorism chapters; Section 15 definition
2008	Post-26/11	Strengthened bail restrictions; added UN treaties
2012	Treaty harmonisation	Added nuclear-terrorism provisions
2019	FATF compliance	Individual designation; expanded NIA powers

(Sources: Bhullar, 2019; Mukherjee, 2020; UN Special Rapporteurs, 2019)

3.6 Role of the National Investigation Agency (NIA)

The NIA was established by the National Investigation Agency Act, 2008, which gave it a national jurisdiction over scheduled crimes, including the majority of UAPA crimes (Raghavan, 2011). The conviction rate of NIA, which is officially stated to be over 90 percent, has been doubted by researchers, who claim that the high acquittal rates at trial are accompanied by the long pre-trial detention under the strict bail regime of

UAPA (Bhatia, 2020). Federalism issues have also been raised, as policing is a constitutional State matter.

3.7 Empirical Picture: NCRB Data, Conviction/Acquittal Rates, Undertrial Challenges

According to the NCRB data, there is a drastic difference between arrests and convictions. In 2014-2022, 8,719 cases of UAPA were registered, but only 222 of them were convicted, and over 24,000 people were on trial in 2016-2020 alone (NCRB, 2022). Several reports put the conviction rate at less than 3 percent, which implies that UAPA is more of a pre-trial detention tool (Jaffrelot and Shah, 2021).

Table 3.3 - UAPA Enforcement Data (2014-2022)

Period	Cases	Persons Arrested	Convictions	Acquittals	Conviction Rate
2014-2022	8,719	24,134+	222	567	<3%

(Source: NCRB, 2022; Jaffrelot & Shah, 2021)

4. THE UNLAWFUL ACTIVITIES (PREVENTION) ACT: DOCTRINAL ANALYSIS

4.1 Definition of "Unlawful Activity" and "Terrorist Act"

Section 2(f) describes the unlawful activity in a broad way, including speech, writing, or acts that disclaim, question or disrupt the sovereignty of India, and raises the question of possible overlap with the expression that is guaranteed by the constitution (Bhatia, 2020). Section 15 gives the meaning of terrorist act to encompass acts that are aimed to threaten the unity, integrity, security or sovereignty of India and this gives a broad definition net that blends violent crimes with political dissent (Saul, 2006).

4.2 Designation of Organisations and Individuals as Terrorists

Section 35-36 gives the government the power to designate organisations as terrorist organisations. This power was later expanded to those who have not been convicted in the past in the 2019 amendment, which has been criticised as eroding the presumption of innocence (UN Special Rapporteurs, 2019). According to scholars, the absence of judicial control over such administrative designation is against international human-rights standards (Mukherjee, 2020).

4.3 Arrest, Search, and Seizure Powers

UAPA authorises arrest without warrant, extended detention, and property forfeiture. These powers override safeguards in the Code of Criminal Procedure and give investigative agencies exceptional discretion (Raghavan, 2011).

4.4 Section 43D(5) and Bail Restrictions

Section 43D(5) imposes one of the world's most stringent bail standards. In *National Investigation Agency v. Zahoor Ahmad Shah Watali* (2019), the Supreme Court held that courts must accept prosecution evidence "as is" at the bail stage, making pre-trial liberty almost unattainable (Watali, 2019; Bhatia, 2020).

4.5 Special Courts under UAPA

Special Courts constituted under the NIA Act are designed for expedited trials, yet high pendency persists. Critics argue that these courts replicate extraordinary procedures while failing to ensure timely adjudication (Raghavan, 2011).

4.6 Constitutional Challenges and Judicial Interpretation

The Supreme Court has struck a balance between national-security legislation and Article 21 safeguards. The Court in K.A. Najeeb (2021) also decided that constitutional courts could grant bail even in the face of statutory prohibitions where the right to a speedy trial was infringed by extended incarceration (Najeeb, 2021). This partly nullifies Watali but is inconsistently enforced.

The long-standing conflict between freedom and national security, which is inherent in UAPA, remains a part of judicial interpretation and legislative practice (Bhatia, 2020).

5. BHARATIYA NYAYA SANHITA, 2023 AND BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

5.1 Rationale for replacing IPC and CrPC

On 1 July 2024, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Nyaya Sanhita, 2023 (BNS) came into force and replaced the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 respectively. The official Statement of Objects and Reasons highlights three motifs, which are decolonisation of criminal law, modernisation to respond to contemporary types of criminality (including organised crime, terrorism and cyber offences), and the pursuit of speedy justice by means of shorter timelines and greater use of technology (Government of India, 2023a). Although scholars commentary recognises the symbolic break with the codes of the colonial era, it is observed that the reforms are continuity- and rupture-producing: much of the offences are renumbered and rephrased, but the fundamental framework of state power and substantive criminalisation is still recognisably similar to the

IPC/CrPC matrix (Bajpai, Gupta, and Indusekhar, 2024).

The additional justifications are emphasized in policy handbooks developed by the Bureau of Police Research and Development (BPRD): victim-centricity, the introduction of forensic science into the mainstream investigation, and the explicit acknowledgement of organised crime and terrorism as the specific types of harm (BPRD, 2024). The reform in governmental speech is framed as a shift between the so-called colonial rule and swaraj in criminal law, which unifies a discourse of the three new codes, BNS, BNSS, and the Bharatiya Sakshya Adhiniyam (BSA), as indigenous, technology-savvy and nationhood-oriented tools of justice (BPRD, 2024).

5.2 Overview of terrorism-related provisions under the BNS

The BNS is the first provision in the general penal code to provide a multi-layered provision on the offence of terrorist act and a separate offence on acts threatening the sovereignty, unity and integrity of India. These are accompanied by a comprehensive definition of what constitutes organised crime and petty organised crime, an indication that there is an effort to bring under the ordinary penal code subject-matter, which had previously been predominantly the property of special legislation like UAPA and state organised-crime acts.

Section 109 of the BNS (bill numbering; named as section 111 in the final form in most comparative tables) defines organised crime as any ongoing illegal activity by an organised crime syndicate through the use of violence, intimidation, coercion, corruption or other illegal means to secure material gain, including economic crimes such as large-scale financial frauds and hawala transactions. It then recommends a pyramid of penalties with death or life imprisonment in the case of organised crime leading to death, and minimum five-year imprisonment with large fines in other cases, such as being a member of an organised crime syndicate and being a host to such offenders.

Section 111 BNS (clause 111 of the Bill) defines the term terrorist act in a broad manner: a terroristic act is committed by a person when he or she does any act in India or abroad with the intention of threatening the unity, integrity and security of India, intimidating the general population, disrupting the normal functioning of the state, or destabilising political, economic or social systems, by means specified in the Second Schedule to UAPA or by any acts that are covered by treaties listed in the Second Schedule to UAPA. It is not only commission and attempt that is criminalised, but also conspiracy, organisation of terrorist groups, membership of terrorist organisations, harbouring and financing or holding of proceeds of terrorism, with a direct cross-reference to the definition of the latter in UAPA (Government of India, 2023a, pp. 47-50). PRS Legislative Research

Individually, section 150 BNS on acts endangering sovereignty, unity and integrity of India, criminalises any individual who by words, signs, visible representation, electronic communication or financial means, excites or attempts to excite secession or armed rebellion or subversive activities, or encourages feelings of separatist activities, or endangers sovereignty or unity and integrity of India (Government of India, 2023a, p. 60). It is commonly regarded as the practical replacement of IPC section 124A on sedition and largely coincides with the concept of unlawful activity in UAPA section 2(o) and its offence-creating section 13 (Parashar, 2024; Project 39A, 2023).

Table 5.1 - New BNS offences relevant to counterterrorism

BNS provision	Core conduct	Relationship to earlier law / UAPA
s. 109-110 - Organised crime and petty organised crime	Continuing unlawful activity by an organised crime syndicate; petty organised offences such as serial thefts, snatching, ATM thefts	Draws heavily from state organised-crime laws; introduces a general national offence (BPRD, 2024).
s. 111 - Terrorist act	Terrorist acts, membership, support, financing, harbouring; linked to UAPA's treaty schedule and definition of proceeds of terrorism	Substantively mirrors UAPA s. 15 and related provisions, located now in the general penal code (Government of India, 2023a; Project 39A, 2023).
s. 150 - Acts endangering sovereignty, unity and integrity	Incitement or attempts to incite secession, armed rebellion, subversive or separatist activities; electronic communication expressly covered	Replaces sedition (IPC 124A) but substantially overlaps with UAPA's "unlawful activity"; punishment enhanced (Parashar, 2024; Government of India, 2023a).

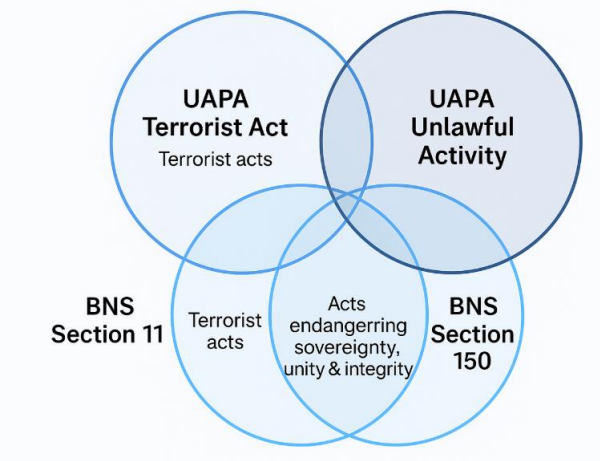

Figure 5.1 - Conceptual overlap of BNS sections 111 & 150 with UAPA "terrorist act" and "unlawful activity"

5.3 Procedural changes under BNSS affecting terrorism trials

The BNSS that substitutes the CrPC introduces various structural alterations with specific consequences on terrorism and organised-crime prosecutions. Although it does not directly establish a terrorism procedure code, its modifications to custody, charge-sheet schedules, forensic investigation, electronic procedures and trials in absentia all have an impact on how UAPA and BNS terrorism cases are investigated and prosecuted (PRS Legislative Research, 2023b; BPRD, 2024).

With respect to detention and remand, section 187(2) BNSS essentially alters the classical 15-day police custody stipulation of CrPC section 167. Under CrPC, the full term of police custody was required to expire within the first 15 days of remand; BNSS allows up to fifteen days of police custody in tranches at any time during the first 40 or 60 days of detention (depending on the maximum sentence prescribed) (Lawctopus, 2024). Lawctopus This structural flexibility will probably have practical implications in more complicated UAPA/BNS cases, where forensic and digital data often results in new arrests and custodial interrogation following the original remand.

Concerning the charge-sheet timelines, BNSS does not alter the 60/90-day framework, but supplements it with an expanded culture of compulsory timelines: charges in Sessions cases are to be framed within 60 days of the initial hearing and judgments are to be ordinarily delivered within 30 days of the end of arguments (extendable to 45 days) (Lawctopus, 2024; BPRD, 2024). Lawctopus+1 In another victim-focused step, section 193(3) BNSS requires the police to update the complainants on the investigation progress within ninety days, which is applicable in terrorism cases where there is mass victimisation.

A digital turn is also formalised in BNSS. It expressly permits the service of summons electronically, recording of evidence electronically, and the wide use of video-conferencing in investigations and trials (sections 63, 308-311), and broadens the authority of magistrates to order specimen finger impressions and voice samples, even of persons not in custody, thus enabling the collection of digital and forensic evidence (section 349) (Government of India, 2023b; Lawctopus, 2024). Lawctopus Coupled with BSA provisions on electronic records, this is likely to have a major influence on the evidentiary practice in terrorism prosecutions, which are becoming more dependent on electronic communications, online fund flows and metadata.

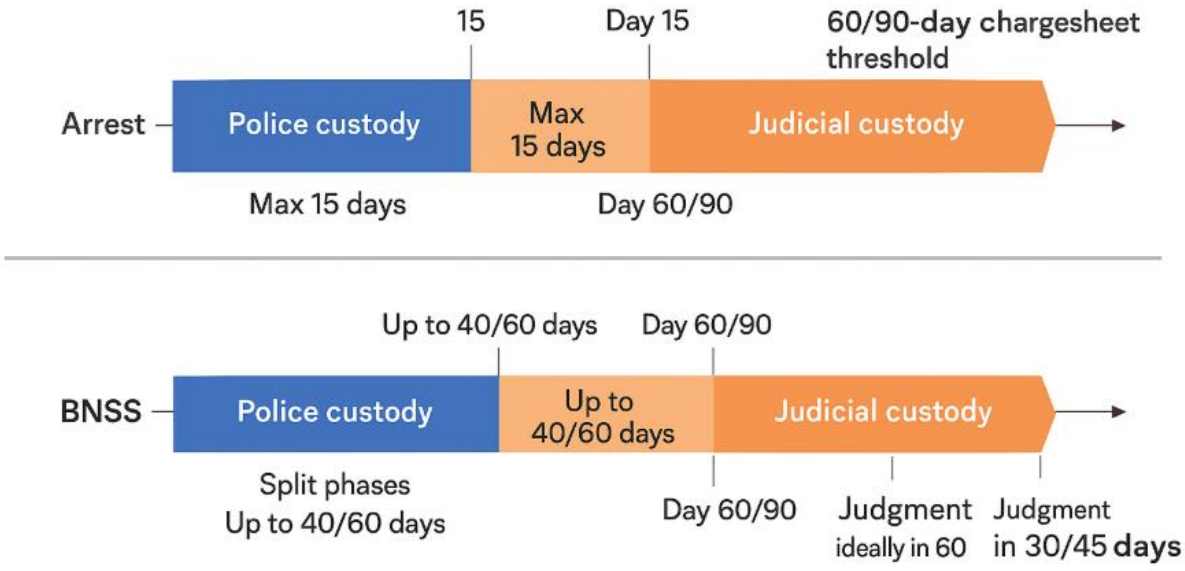

Figure 5.2 - Stylised timeline of custody and investigation under CrPC vs BNSS

5.4 Parliamentary debate and policy justification

The three criminal law Bills were discussed in parliament, highlighting the elimination of colonial sedition, the priority of the safety of women and children, the need to address organised crime and terrorism, and the introduction of technology and speed into the criminal procedure (Lok Sabha Debates, 2023). The Home Minister referred to terrorism as an existential threat and the need to introduce a zero-tolerance framework and specifically mentioned the introduction of the terrorist-act offence in BNS and the enhanced organised-crime provisions as the main success of the reform (Government of India, 2023a, pp. 115-116).

Simultaneously, the Parliamentary Standing Committee on Home Affairs, which is associated with the Department, has raised issues regarding the possibility of overlap between the provisions of BNS/BNSS and the already existing special statutes, ambiguity in the norms of detention and custody, and the risk that more recent and more severe offences like section 150 BNS will effectively re-establish the controls over sedition under a new name (Standing Committee on Home Affairs, 2023; Parashar, 2024). azb Critical commentary has also noted that the inclusion

5.5 Continuity vs reform: Relationship with UAPA

Doctrinally, BNS does not repeal or even amend UAPA; instead, it creates a parallel set of offences that substantially overlap with UAPA's concepts of "terrorist act", "terrorist organisation" and "unlawful activity", while continuing to cross-reference UAPA in relation to treaties, proceeds of terrorism and certain definitional aspects (Government of India, 2023a, ss. 111(1)(v), 111(6)). The result is a layered regime in which:

1. UAPA remains the principal special law for terrorism, carrying its own stringent bail regime and special procedures; and
2. BNS now enables the state to prosecute analogous conduct as ordinary penal offences (sections 111 and 150), potentially alongside or in lieu of UAPA charges.

This has two implications. First, the continuity of exceptionalism: nothing in the BNS/BNSS package dilutes or displaces the restrictive bail standard under section 43D(5) UAPA or its broad powers of designation and forfeiture. Second, the possibility of forum and label selection: prosecuting agencies may choose between BNS and UAPA (or combine them) depending on strategic considerations, which may expand rather than constrain prosecutorial discretion (Project 39A, 2023; AZB Partners, 2024).

6. COMPARATIVE ANALYSIS: UAPA VS THE COUNTERTERRORISM FRAMEWORK UNDER BNS

6.1 Definitions: Terrorism, Unlawful Activity, Organised Crime and Acts Threatening Sovereignty

The architecture of UAPA differentiates between unlawful activity (s. 2(o), which is concerned with secession, cession and acts that disclaim, question or disrupt sovereignty) and terrorism act (s. 15) (which is focused on violence or threats to life, property and essential services, and committed with intent to threaten the unity, integrity, security or sovereignty of India or to cause terror in people) (Saul, 2006; Bhatia, 2020). BNS on the other hand presents three related clusters of offences, namely, organised crime (s. 109), terrorist act (s. 111) and acts endangering sovereignty, unity and integrity (s. 150).

At a definitional level, BNS section 111 basically replicates the UAPA section 15 formula but limits the mental element to intent to threaten unity, integrity and security, intimidate the public, or disturb public order and explicitly connects the offence to treaty-based obligations under UAPA (Government of India, 2023a; Project 39A, 2023). Section 150, in its turn, follows the definition of the unlawful activity of UAPA almost word-to-word, with the important addition of electronic communication and financial means as the means of commission (Parashar, 2024). BNS organised crime is based on state-level laws and includes both violent and economic crimes committed by criminal syndicates (BPRD, 2024; AZB Partners, 2024).

Table 6.1 - Selected definitional comparisons: UAPA vs BNS

Concept	UAPA	BNS	Key issues
Terrorist act	s. 15, broad definition combining intent to threaten unity/sovereignty or "strike terror" with specified means and treaty-linked offences	s. 111, similar core but integrated into general penal code; explicitly cross-refers UAPA treaties and "proceeds of terrorism"	Risk of dual prosecution; conceptual redundancy; potential for forum shopping
Unlawful activity / acts	"Unlawful activity" in s. 2(o),	s. 150 penalises secession,	Overlap may widen net

endangering sovereignty	offence in s. 13	armed rebellion, subversive and separatist activities, including via electronic communication	for criminalisation of political expression; higher minimum punishment under BNS
Organised crime	Not defined in UAPA	s. 109 defines continuing unlawful activity by organised crime syndicates, including economic crimes	Extends counterterror-type logic into general organised-crime control; raises concerns of over-inclusion

The definitional vagueness and overbreadth concerns that have long accompanied UAPA are thus not resolved but partially transplanted into BNS. In particular, phrases such as "subversive activities", "feelings of separatist activities" and "destabilise or destroy the political, economic or social structures of the country" invite constitutional scrutiny under Articles 14 and 19 for over-breadth and chilling effect on political speech (Bhatia, 2020; Parashar, 2024).

6.2 Investigative powers: UAPA's special regime and BNSS's procedural redesign

UAPA superimposes the general procedural law on special powers regarding search, seizure, property attachment, naming of organisations and individuals, and investigation by central agencies, including the NIA. These authorities are closely interwoven with the NIA Act, 2008 that enables the central government to instruct NIA to probe UAPA offences in the country and to convict them in special NIA courts (Raghavan, 2011).

BNSS does not re-calibrate these special-law powers per se, but by reorganizing arrest, custody, forensic investigation and electronic procedures, it reorganizes the factual environment within which UAPA investigations are conducted indirectly. The right to request police custody in parts longer than 40/60 days; the necessity of a mandatory forensic examination of serious crimes (punishable with seven years or more) under section 176(3) BNSS; and the statutory incorporation of videography in search and seizure (s. 105) reinforce the arsenal of investigative tools and can make the collection of evidence more robust in terrorism (Lawctopus, 2024; BPRD, 2024).

Critics, however, warn that these reforms further increase the capacity to coerce suspects: longer and more flexible custody and more authority to obtain biometric and voice samples may increase pressure on suspects, especially when combined with the harsh bail regime of UAPA (Bajpai et al., 2024). Simultaneously, the adoption of technology and evidence-based research by BNSS arguably opens the room to more rights-compatible policing, as long as the protection is established and legally applied.

6.3 Bail and undertrial detention

The bail provision of UAPA, section 43D(5), as interpreted in Zahoor Ahmad Shah Watali, sets a very high standard of release, where the prosecution case must be taken at face value and bail denied in case of prima facie true accusations. This has created a structural change where punishment is basically put in the front-end into pre-trial detention, with low conviction rates but long incarceration (Bhatia, 2020; Jaffrelot and Shah, 2021).

BNSS does not make any direct amendments to section 43D(5) UAPA, but it modifies the overall framework of undertrial detention. The BNSS (Second) Bill further provides that the statutory right to release on bond after half the maximum sentence has been served in custody will not apply to offences punishable by life imprisonment and to individuals who are the subject of more than one prosecution (PRS Legislative Research, 2023b). As a significant number of UAPA and BNS terrorism offences are life or potential life sentences, this exception has a disproportionate impact on terrorism accused, which restricts instead of liberalizes the undertrial regime.

The overall impact is that, although K.A. Najeeb constitutionalises a safety-valve of excessive pre-trial detention under special legislation, BNSS, by broadening life-punishable categories and excising them out of statutory undertrial protections, runs the risk of normalising long-term detention in terrorism and organised-crime cases unless constitutional courts take proactive action (Najeeb, 2021; PRS Legislative Research, 2023b).

6.4 Evidentiary standards and special procedures

Special courts were already anticipated by UAPA and the NIA Act, expedited trials and liberal admissibility of particular types of evidence. This is further enhanced by the BNS/BNSS/BSA package that mainstreams electronic trials, electronic service, and massive use of digital and forensic evidence (Government of India, 2023b; Lawful Legal, 2025).

In the case of terrorism, there are at least three implications of this. To begin with, digital footprints (social media communication, encrypted messaging, cryptocurrency transactions) have now become squarely within a statutory evidentiary framework that

promotes their gathering and utilization, which may widen the range of incriminating content that can be used in UAPA/BNS prosecutions. Second, the trial-in-absentia procedure of section 356 BNSS, allowing the judgment against proclaimed criminals, is expected to be applied in high-profile terrorism cases with fugitives, casting doubt on the right to a fair trial and proper representation (Lawctopus, 2024). Third, the procedures of government-sanction and review, including previous permission to prosecute according to UAPA and BNS state-offence chapters, are executive-centric, and have very little independent control, but BNSS does not fundamentally redesign this area (Project 39A, 2023).

6.5 Federalism

The establishment of NIA and the centralisation of the investigation of terrorism under UAPA have been long criticised as undermining the federal system by transferring the power over the primary police activities to the Centre (Raghavan, 2011). As BNS now codifies terrorist and organised-crime offences nationally and BNSS restructures procedural powers in a similar manner, the centripetal force of criminal justice is arguably heightened.

Although the constitutional allocation of powers (Entries 1 and 2, List III) allows simultaneous legislation in criminal law and procedure, the practical impact of powerful central agencies, nationally harmonised offences and procedural regulations, and homogenous digital infrastructures is to squeeze out the room of experimentation at the state level, even in counterterror strategies (Bajpai et al., 2024; PRS Legislative Research, 2023a). Meanwhile, the continuation of state organised-crime laws and specialised police forces indicates a multifaceted, multilayered federalism and not centralisation.

6.6 Human rights and constitutional compliance

Rights wise, the UAPA-BNS-BNSS framework should be evaluated in comparison to Articles 14, 19 and 21 of the Constitution and the commitments of India under the International Covenant on Civil and Political Rights (ICCPR). Article 14 concerns of non-arbitrariness are due to overlapping and possibly duplicative offences (UAPA terrorism vs BNS terrorism vs BNS acts endangering sovereignty), which provide broad prosecutorial discretion without explicit legislative direction on which statute to choose (Bhatia, 2020; Parashar, 2024).

In Article 19, the scope of the words like subversive activities, feelings of separatist activities, and endangering sovereignty is subject to chilling legitimate political advocacy, especially in conflict-affected areas; this is reminiscent of long-standing human-rights criticism of the unlawful activity provisions of UAPA, and is now mirrored in BNS (Saul, 2006; UN Special Rapporteurs, 2019). The reading down of sedition through explanatory clauses by the court of Kedar Nath Singh is formally continued into section 150 BNS, although the penalties are increased and the electronic communication is included in the offence, which now revolves around modern methods of dissent and electronic expression (AZB Partners, 2024).

The most acute issues in article 21 are the ones concerning freedom and due process. The section 43D(5) bail bar of UAPA, coupled with the BNSS exception to undertrial release of the life-punishable offences combined with the extended police-custody structure, results in a procedural environment where terrorism suspects can be held in custody without a significant judicial review of the merits. K.A. Najeeb provides a constitutional check, but to those who can appeal to superior courts. UN Special Rapporteurs have also raised the issue internationally that individual terrorist designation and general speech-based crimes cannot be reconciled with the proportionality requirements of ICCPR articles 9 and 19 (UN Special Rapporteurs, 2019).

Overall, although BNS and BNSS bring modernising elements and strive to make terrorism and organised crime a part of the common criminal law, they do not eliminate but, on the contrary, strengthen the exceptionalist logic and rights-restrictive structure of UAPA. The outcome is a thick multi-layered counterterrorism regime where the trade-off between national security and civil liberties is a highly debated issue.

7. CRITICAL ASSESSMENT

7.1 Does BNS substantially reform counterterror provisions or simply restructure them?

The Bharatiya Nyaya Sanhita, 2023 adds the concept of terrorism, organised crime, and acts endangering the sovereignty, unity and integrity of India to the general criminal law, which on its part seems a step towards the normalisation of exceptional offences in the normal criminal law. But, on a close reading with the UAPA, the majority of the definitional and structural decisions are more of repackaging than transformation. The definition of a terrorist act in BNS is mostly a reflection of the wording and formatting of section 15 UAPA, and section 150 BNS replicates, with minor linguistic and technological modifications, the essence of the UAPA concept of an unlawful activity and the previous sedition model. The spread of the so-called organised crime bridges a gap in legislation, but also brings into the general code methods of criminalisation elaborated in special legislation. In this regard, BNS plays a codificatory and symbolic role, which makes it seem like reform, but does not change the conceptual breadth and elasticity of counterterror categories significantly.

7.2 Is UAPA still in control of counterterror regime in India?

UAPA is the key to the Indian counterterror architecture, even though the provisions related to terrorism have been introduced into BNS. It still has power: designation of organisations and individuals as terrorists; attachment and forfeiture of property as "proceeds of terrorism; specialised bail provisions under section 43D(5); and the bulk of NIA terrorism docket. BNS does not replace UAPA, but appears alongside it, cross-referring to the treaty schedule and elements of definition of UAPA. Practically, agencies continue to resort to UAPA in situations where they desire the advantages of high-bail, special courts, centralised investigation and wide-ranging preventive authority. Parallel or alternative charges can be framed using BNS, although it has not replaced the functional preeminence of UAPA in serious cases of national-security.

7.3 Risk of abuse: historical trends (TADA/POTA - UAPA)

One of the historical perspectives highlights that the dangers of abuse are not theoretical. Both TADA and POTA were both defended in the terms of necessity and extraordinary threats, but empirical research and government statistics demonstrated very low conviction rates, rampant overcharging and use against common political opponents and marginalised communities instead of just hard-core terrorists. The two laws were eventually permitted to expire or abolished under political and civil-society pressure. UAPA was subsequently revised to take a large portion of their architecture.

The trend that has developed is that of legislative migration of exceptional powers: once a given statute has become politically untenable, its inner workings are grafted into a new vehicle with a more neutral or broader title. The introduction of individual terrorist designation and the preservation of a very restrictive bail provision in UAPA, in combination with the imitation of terrorism and sovereignty offences by BNS, indicates that the system has internalised this exceptional logic instead of being informed by the historical experience of misuse (Jaffrelot and Shah, 2021).

7.4 Balancing national security with civil liberties

The constitutional promise does not lie in the fact that the state has to decide between national security and civil liberties, but that it should seek security within constitutionally limited means. In reality, though, the counterterror regime is inclined to preload security and push rights to ex post judicial review. The loose definitions of terrorism and acts that threaten the sovereignty imply that the entry point into the system, i.e., arrest, case registration, UAPA or BNS invocation, is comparatively easy, whereas the exits, i.e., bailed, discharged, acquitted, are few and slow.

This tension is reflected in the jurisprudence of the Supreme Court. Cases like Zahoor Ahmad Shah Watali have institutionalized a deferential stance at the bail stage, which in effect obligates the court to accept the prosecution case as true, but cases like K.A. Najeeb have cut constitutional exceptions where detention has become evidently oppressive. The overall result is a patchwork balance, which is highly reliant on the availability of higher courts and the goodwill of individual benches to claim constitutional constraints. This is a precarious balance in the eyes of rights, which puts great strains on the least prepared to carry them.

7.5 Emerging concerns

There are three new characteristics of the present architecture that should be considered.

First, the stigma and collateral consequences of terrorism can be imposed on named persons without prior conviction by individual designation as a terrorist under UAPA, which was adopted in 2019. Even though there are procedural mechanisms of review, they mostly work in the executive branch. This brings up grave issues of reputational damage, travel and financial limitations, and the chilling effect of association and expression (UN Special Rapporteurs, 2019).

Second, judicial discretion is shrinking, normatively and structurally. Statutory guidelines, including the prima facie true test of section 43D(5), have been construed normatively to significantly limit judicial review of the case presented by the prosecution at the pre-trial stage. In structural terms, the carve-outs of BNSS of undertrial protections of life-punishable offences and proliferation of offences with high mandatory minima provide the judges with less space to tailor results to specific situations.

Third, the regime generates systemic pre-trial incarceration. According to the official statistics, thousands of people are arrested under UAPA, yet a very minor percentage of them are eventually convicted. The law is therefore a preventive incapacitating mechanism of detention and not an accurate instrument of adjudged guilt. This image will be duplicated, and maybe even enhanced, as BNS terrorism and sovereignty crimes start to be employed with UAPA.

7.6 Comparative UK, USA, EU.

Even a cursory comparative look will show that India is not the only country that uses broad counterterror statutes, but it is unique in the extent to which exceptionalism is infused into the normal criminal justice.

In the United Kingdom, Terrorism Acts have a broad definition of terrorism and extensive police powers of stop, search, and pre-charge detention, although robust judicial review, vigorous parliamentary scrutiny (through institutions like the Independent Reviewer of Terrorism Legislation) and clear sunset and renewal provisions introduce institutional checks and balances (Walker, 2014).

In the United States, the USA PATRIOT Act and other actions have broadened surveillance and material-support offenses, although the majority of terrorism cases are prosecuted under the normal federal criminal law and constitutional principles of strict scrutiny and due process have limited some of the more extreme actions (Cole and Dempsey, 2006).

Member states are required by the European Union, in its Framework Decisions and directives, to criminalise terrorism-related actions, yet the European Court of Human Rights and the Court of Justice of the EU place counterterror measures under proportionality scrutiny, particularly when speech, association or privacy are at stake (Guild & Bigo, 2018).

In comparison to these systems, the Indian framework provides less independent oversight mechanisms and less structured proportionality review, and has very broad definitional and procedural powers in both special and general criminal law.

8. CONCLUSION AND SUGGESTIONS

8.1 Summary of key findings

This paper has followed the history of the counterterrorism legislation in India since the days of preventive detention and TADA/POTA to the unification of UAPA and the recent enactment of BNS and BNSS. It has demonstrated that although the new codes bring terminology up to date, organised crime and terrorism are incorporated into the general penal framework, and digital and forensic techniques in the criminal process, they do not fundamentally redefine the relationship between state authority and individual freedom in the counterterror arena. UAPA is the active heart of the regime and its main characteristics, such as broad definitions, high bail conditions, centralised investigation, and broad executive discretion, still influence the results.

8.2 Research question responses

The initial research question, whether BNS has a significant reforming impact on counterterror provisions, should be answered with a word of caution in the negative. The BNS terrorism and sovereignty offences are more of rearranging and replicating the categories that are already present, instead of reducing or defining them. The second question, whether UAPA still prevails in the Indian counterterror regime is answerable in the affirmative. UAPA continues to be the main foundation of designation, prosecution and detention in terrorism cases, and BNS is more of a supplementary codificatory layer than a substitute.

A third question behind the question--is the present framework able to balance national security and constitutional rights--has an answer that is more ambivalent. Paper procedural protections, judicial review and constitutional norms still exist; in reality, the combination of broad offences, limited bail and prolonged custody creates a massive bias in favor of security against liberty and political freedom.

8.3 Recommendations of legislative reforms

There are several specific reforms that may be implemented to bring the regime back to the constitutional and international standards without undermining legitimate counterterror operations.

To begin with, it is necessary to have narrower and more specific definitions of the terms terrorist act, unlawful activity, and acts that threaten sovereignty. The drafting must be aimed at strictly defined violent behavior and direct incitement to violent behavior, without referring to the vaguely defined subversive activities or feelings of separatist activities that may be interpreted as a criminalization of dissent.

Second, institutionalisation of independent oversight bodies should be carried out. A statutory reviewer or commission, which has access to classified information and is required to report to Parliament, could review the application of UAPA and BNS terrorism provisions, similar to the UK.

Third, the most extraordinary powers, including individual terrorist designation, special bail regimes, and extended custody, would have to be periodically sunsetted and renewed, to ensure that extraordinary measures become entrenched.

Fourth, bail reform is essential. Section 43D(5) ought to be revised to revert to a more balanced prima facie test, expressly instructing courts to take into account delay, the quality of evidence, and the role of the accused, and to provide reasons where bail is refused after a lengthy period in custody. The BNSS provisions regarding undertrial release must not cover broad categories of offences without justification of cases.

Lastly, there must be transparency in terrorism statistics. Disaggregated data on arrests, charges, convictions, acquittals, length of pre-trial detention, and use of individual designation would allow rigorous empirical evaluation, public discussion and judicial review (Jaffrelot and Shah, 2021).

8.4 Areas for future research

The current analysis has been majorly doctrinal and normative. The empirical research of arrests and profiling patterns, particularly between regions and communities, should be used in future work to

challenge the allegations of misuse and selectivity. Comparative constitutional analysis might examine how other jurisdictions have managed such tensions between counterterrorism and rights, and what institutional structures have been found to be resilient. It is also urgent to conduct region- and community-specific studies of the social effects of counterterror laws how they affect daily life in conflict-prone regions, political engagement, and reorganize citizen-state relationships.

This type of research would not only enhance our knowledge of the lived reality of the counterterror regime in India, but also guide more precisely focused reforms that would guarantee safety and freedom in a constitutional democracy.

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