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The Chilling Effect of Counter-Terrorism Laws on Journalism: Constitutional Challenges in India

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Abstract: This paper explores the intersection between India's counter-terrorism legal framework and constitutional guarantees of free speech, with a focus on its impact on journalism and news reporting. Statutes such as the Unlawful Activities (Prevention) Act (UAPA) and the recently introduced Bharatiya Nyaya Sanhita (BNS) §152 significantly expand state power to curb acts deemed threatening to national security. However, the breadth and vagueness of these provisions have enabled their application against journalists and media organizations, often in response to critical reportage or dissenting views. Such practices generate a pervasive “chilling effect,” discouraging investigative journalism and fostering self-censorship. Through doctrinal analysis of statutory language and judicial decisions—including the Supreme Court's interpretation of §152 and High Court interventions against overbroad measures such as the IT Rules' Fact-Check Unit—this paper delineates the constitutional limits of counter-terrorism laws under Articles 19(1)(a) and 19(2). Complementing legal analysis with press freedom indices and case data, it demonstrates the systemic risks these laws pose to independent journalism. The paper argues that while national security is a legitimate state interest, counter-terrorism laws must comply with the principles of proportionality, narrow tailoring, and procedural safeguards to avoid misuse against the press. It concludes by proposing a rights-compatible framework to harmonize security imperatives with the constitutional guarantee of a free press in a democracy.

Keywords: Counter-terrorism laws; Unlawful Activities (Prevention) Act (UAPA); Bharatiya Nyaya Sanhita, Section 152; Media freedom; Chilling effect; Article 19(1)(a); Article 19(2); Proportionality; Investigative journalism; India.

INTRODUCTION

Over the past few years, India has seen a sharp increase in the use of counter-terrorism laws against journalists and media platforms. Legal provisions originally enacted to combat armed insurgency and terrorism have been applied to news reporting, especially when it concerns communal violence, public protests, or governmental misconduct.

The ‘Unlawful Activities (Prevention) Act, 1967’ empowers authorities to label individuals and organizations as “terrorists,” authorize prolonged detention without formal charge, and restrict access to bail. Its definition of “unlawful activity” under section 2(1)(o) has been interpreted in a wider sense and has been used to target journalists who are critical of government policies. Similarly, Section 152

of the BNS, criminalises the dissemination of “false information prejudicial to national integration.” This has raised concerns because the language is seen as too broad and vague. This provision mirrors the infirmities of sedition law under Section 124A of the Indian Penal Code, which the Supreme Court has put on hold while it reviews its constitutionality.

Using counter-terrorism laws to regulate the press has become a worrying trend, with journalists facing charges under the UAPA for covering events like protests in Uttar Pradesh or ethnic violence in Manipur. As the fourth pillar of democracy, the media plays a crucial role, and such actions are seen as a threat to its independence. While these cases rarely lead to a conviction, the legal process itself acts as a form of punishment. Pre-trial imprisonment, a damaged reputation, and financial ruin are all powerful deterrents that stop journalists from reporting on difficult stories.

At the same time, the government's attempts to regulate digital media through the ‘Information Technology Rules, 2021’, including the 2023 amendment that created a government-run ‘Fact-Check Unit (FCU)’. The FCU's job was to find and flag any information about the government that it considered “fake, false, or misleading.” If a platform didn't remove this flagged content, it could be held legally responsible.

In the case of ‘Kunal Kamra v. Union of India’, the Bombay High Court ruled the FCU amendment was unconstitutional. The court found that the law violated ‘Articles 14, 19(1)(a), and 21’ of the Constitution and failed the proportionality test. The court's reasoning was that terms like “fake,” “false,” and “misleading” were too vague, giving the government too much power without any checks and balances. The Supreme Court has since put a temporary hold on the FCU notification until a final decision is made.

This trend shows a core conflict between the demands of national security and the constitutional promise of free speech under Article 19(1)(a). While the judiciary has long insisted that restrictions on this freedom must be “reasonable,” proportional, and include proper safeguards, the way anti-terror laws are actually used often ignores these rules. This has a chilling effect on journalism, making reporters hesitant to cover certain topics, and in turn, harming democratic accountability. This paper will examine these challenges in depth, comparing India's situation with legal precedents from around the world, and propose reforms to bring security laws in line with constitutional freedoms.

LITERATURE REVIEW

Scholarship on the conflict between counter-terrorism and press freedom indicates the risk of states misusing security laws to suppress dissent. International human rights law, particularly Article

19 of the ‘International Covenant on Civil and Political Rights (ICCPR)’, guarantees freedom of expression, allowing for restrictions only when they are necessary and proportionate. The ‘United Nations Human Rights Committee's General Comment No. 34’ highlights the press's role as a public watchdog and warns against vague restrictions that hinder legitimate reporting.

a. Comparative Jurisprudence

This perspective is supported by comparative legal precedent. European Court of Human Rights (ECtHR) in cases such as ‘Handyside v. United Kingdom’ recognized that freedom of expression protects not only agreeable or innocuous speech but also ideas that may “offend, shock, or disturb.” Similarly, in ‘Goodwin v. United Kingdom’, the ECtHR protected journalistic sources, recognizing their importance for investigative reporting. These cases underscore the need for narrowly defined state restrictions and strong judicial oversight.

b. Domestic Approach

Indian scholars such as Gautam Bhatia and Apar Gupta have critiqued the UAPA and allied regulations for their susceptibility to arbitrary enforcement. Bhatia argues that vague formulations of “unlawful activity” dilute the principle of legality, while Gupta points to the chilling effect produced by prolonged detentions without trial. Empirical data supports these concerns: studies reveal that UAPA prosecutions against journalists rarely secure convictions, yet they impose long-lasting professional and personal costs.

c. International Stance

International press freedom indices echo these findings. Reporters Without Borders ranked India 159 out of 180 in the 2024 World Press Freedom Index, citing legal harassment of journalists as a central factor. Comparative assessments note that unlike in the United States, where the First Amendment provides robust safeguards even in national security contexts, or in the UK, where judicial review tempers executive discretion under the ‘Terrorism Act 2000’, India lacks institutionalized safeguards specific to media freedom.

This body of literature establishes two core insights: first, that counter-terrorism laws in India are characterized by broad statutory language and weak procedural safeguards; and second, that their misuse against journalists produces a chilling effect that undermines democratic discourse. Building on these insights, the subsequent sections

analyze India's statutory framework, judicial responses, and the constitutional challenges posed by such laws.

STATUTORY FRAMEWORK

- a. 'The Unlawful Activities (Prevention) Act (UAPA)'
India's primary anti-terror law, the UAPA, empowers the state to label individuals and organizations as terrorists, detain suspects for extended periods without formal charges, and block funds or assets. The definitions of "terrorist act" and "unlawful activity" are notably broad, subsuming a wide range of expression and reporting under their ambit.
- b. 'Bharatiya Nyaya Sanhita (BNS) Section 152'
The BNS, India's new penal code, introduced sec. 152 to penalize the "spreading of false information prejudicial to national integration." Critically, the vagueness of what constitutes "false information" or "prejudicial intent" allows authorities to target news stories and editorials that challenge official narratives.

CONSTITUTIONAL ISSUES

Free Speech Under the Constitution

The Indian Constitution guarantees the right to freedom of speech and expression under Article 19(1)(a). This right, while fundamental, is not absolute and Article 19(2) permits the State to impose "reasonable restrictions" in the interests of the sovereignty and integrity of India, the security of the State, public order, decency, morality, contempt of court, defamation, or incitement to an offence.

Indian constitutional jurisprudence has repeatedly underscored that the test of "reasonableness" requires restrictions to be narrowly tailored, proportionate, and non-arbitrary. In *Chintaman Rao v. State of Madhya Pradesh*, the Apex Court explained that "reasonable restrictions" should strike a proper balance between freedom guaranteed under Article 19(1)(a) and the social control permitted under Article 19(2). Similarly, in *State of Madras v. V.G. Row*, the Court emphasized that the standard of reasonableness is to be determined on an objective assessment of the nature of the right infringed and the proportionality of the restriction imposed.³

Doctrinally, three constitutional principles are particularly relevant when counter-terrorism laws affect journalism:

'Proportionality': The Court in *Modern Dental College v. State of Madhya Pradesh* adopted a four-pronged test of proportionality, requiring that (a) the measure be designated for a proper purpose, (b) there be a

rational nexus between the restriction and the objective, (c) the measure be necessary in a democratic society, and (d) the restriction be balanced against the importance of the right.⁴

'Doctrine of Vagueness': In *Shreya Singhal v. Union of India*, the Court struck down Section 66A of the Information Technology Act, 2000, on grounds of vagueness and its chilling effect on free speech. The Court warned that vague legal provisions grant unfettered discretion to authorities, thereby encouraging arbitrary and overbroad application.⁵

'Prior Restraint': Although not expressly part of Article 19(2), the Court has generally disfavored prior restraint on publication, except in narrowly defined contexts. This principle aligns with comparative jurisprudence such as the U.S. Supreme Court's decision in *New York Times Co. v. United States*, where prior restraint was rejected even in matters involving national security.⁶

Together, these doctrines establish that while national security is a legitimate ground for restriction, the State must meet high standards of necessity, precision, and proportionality before limiting journalistic freedom.

Recent Judicial Pronouncements

Indian courts have grappled with the application of counter-terrorism and allied laws to journalistic activity. In *Shreya Singhal Case*, the Supreme Court's recognition of the chilling effect doctrine has become a touchstone for evaluating restrictions on expression. Building on this, the Court in '*Anuradha Bhasin v. Union of India*' held that indefinite internet shutdowns in Jammu and Kashmir were unconstitutional, emphasizing that restrictions must be proportionate, time-bound, and subject to periodic review.⁸

In recent times, High Courts have been increasingly active in challenging and intervening against excessive regulation by the state. They have stepped in to curb instances of governmental overreach, demonstrating a willingness to protect individual and institutional freedoms from disproportionate regulatory control. The act of Bombay HC in *Kunal Kamra Case* staying the establishment of the government's Fact-Check Unit under the Information Technology Rules, 2021, observing that such executive power could unduly suppress independent journalism, highlights the judiciary's role in protecting fundamental rights from potential governmental overreach in the digital age.⁹

Judicial opinion on the newly enacted Section 152 of the BNS has been cautious. In a suo motu proceeding concerning its scope, the Supreme Court acknowledged the State's prerogative to protect national integration but cautioned that vague terms like "false information" must not be used to stifle dissent.

Despite the judiciary's tendency to protect press freedom from excessive government interference, courts are often reluctant to strike down counter-terrorism laws entirely. Instead, they tend to provide relief on a case-by-case basis. This approach leaves journalists in a precarious position, as they have to still face prosecution even when courts have voiced strong support for free expression. This creates an unpredictable legal landscape for the media.

CHILLING EFFECT ON JOURNALISM

The "chilling effect" is when people avoid using their constitutional rights because they're afraid of legal punishment. For journalists, the possibility of being prosecuted under laws like the UAPA and BNS, leads to self-censorship. This self-censorship limits the press's ability to act as a democratic watchdog, a trend that is increasingly noticeable in India.

Case Studies of UAPA Prosecutions

Several high-profile cases illustrate the misuse of counter-terrorism laws to silence critical reporting:

- a. **Manipur and Kashmir:** Journalists reporting on ethnic violence in Manipur and human rights abuses in Jammu and Kashmir have faced charges under UAPA. In 2021, Manipur journalist Kishorechandra Wangkhem was detained under UAPA for social media posts critical of the government, highlighting the use of anti-terror provisions for non-violent expression. Similarly, Kashmiri journalist Fahad Shah, editor of *The Kashmir Walla*, was repeatedly arrested under UAPA for allegedly publishing "anti-national" content.
- b. **Uttar Pradesh Protests:** During the 2020–21 anti-Citizenship Amendment Act (CAA) protests, multiple journalists were booked under UAPA in Uttar Pradesh for covering demonstrations and alleged police excesses. Although few of these cases resulted in conviction, the prosecutions entailed lengthy detentions and intimidation.
- c. **Delhi Riots Coverage:** Reporters documenting the 2020 Delhi riots, including instances critical of state inaction and police conduct, faced criminal complaints. Some were accused of incitement merely for publishing fact-based reports.
- c. This trend suggests a clear pattern: the law is rarely used to secure a conviction. Instead, it seems to be primarily deployed as a tool for harassment and punishment, imposing significant legal

and personal burdens on individuals without a successful judicial outcome.

Empirical Evidence of Self-Censorship

Empirical evidence confirms that journalists are facing a chilling effect. In the 2024 World Press Freedom Index, India ranked 159th out of 180 countries, with Reporters Without Borders citing the frequent arrests and harassment of journalists under the Unlawful Activities (Prevention) Act (UAPA) as a significant reason. Furthermore, a 2022 survey by the Free Speech Collective revealed that 67% of journalists admitted to self-censoring or avoiding stories on topics like communal violence, terrorism, or government corruption because they feared legal consequences.

First-person testimonies reveal the heavy psychological and professional toll on journalists. Those who endure lengthy trials and imprisonment often lose their jobs, suffer damage to their reputation, and stop doing investigative work entirely. As journalist Siddique Kappan, who was arrested under the UAPA while going to cover the Hathras case, aptly put it, "the process itself was the punishment."

Broader Structural Consequences

The chilling effect doesn't just impact individual journalists; it also has a significant structural impact on India's media landscape, such as:

- a. **Weakening of Investigative Journalism:** Fear of criminal liability deters coverage of sensitive issues such as insurgency, communal violence, or state corruption.
- b. **Digital Media Vulnerability:** Independent online platforms, often critical of the government, face heightened scrutiny under both UAPA and IT Rules, producing disproportionate compliance costs and risk of shutdown.
- c. **Normalization of Self-Censorship:** Over time, self-censorship becomes institutionalized, with editorial policies avoiding coverage of politically sensitive issues.
- d. The cumulative effect is the erosion of journalism's constitutional role as a check on power. While the Supreme Court has acknowledged the chilling effect doctrine in *Shreya Singhal Case*, the absence of concrete safeguards in counter-terrorism laws perpetuates a cycle of intimidation.

DISCUSSION:

Proportionality and Safeguards

The principle of proportionality has become the main standard for courts to use when they have to balance

national security with freedom of speech. Indian courts have repeatedly stated that any restrictions on speech under Article 19(2) must be precisely defined, absolutely necessary, and include procedural protections. However, counter-terrorism laws often fail to meet this standard in practice.

Proportionality in Indian Constitutional Jurisprudence

The proportionality doctrine was crystallized in *Modern Dental College Case*, where the SC articulated a four-part test requiring that reasonable restrictions must follow:

- (1) pursue a legitimate aim,
- (2) be rationally connected to the aim,
- (3) be necessary in that no less restrictive measure is available, and
- (4) strike a balance between the right and the restriction.

In subsequent cases such as *Anuradha Bhasin Case*, the Court applied this test to internet shutdowns in Jammu and Kashmir, holding that restrictions on expression must be temporary, proportionate, and subject to judicial review.

In reality, the use of the UAPA to detain and prosecute journalists indicates that the principle of proportionality is not being implemented. Charges are often brought without enough evidence, bail is routinely denied in a mechanical manner because of legal presumptions, and trials are endlessly delayed. While the Supreme Court has stated that "bail is the rule and jail the exception," the opposite seems to be true under UAPA, which undermines the constitutional right to liberty.

The Problem of Vagueness and Overbreadth

The Supreme Court in *Shreya Singhal Case* emphasized that vague statutory language produces a chilling effect because citizens cannot reasonably foresee the scope of prohibited conduct. Section 152 of the BNS, which penalizes dissemination of "false information prejudicial to national integration," suffers from the same infirmity. The terms "false" and "prejudicial" are undefined, leaving interpretation to law enforcement agencies. This vagueness amplifies the risk of misuse against dissenting journalism.

Comparative Perspectives

Other constitutional jurisprudence provide models of proportional safeguards that are absent in India:

- a. United Kingdom: Under the 'Terrorism Act 2000', the offence of "encouragement of terrorism" is narrowly defined, and journalistic activity receives protection if it serves the public interest.⁵ Judicial review mechanisms ensure that executive decisions restricting media are promptly challenged.

- b. United States: The First Amendment offers near-absolute protection for speech, even in matters of national security. In '*New York Times Co. v. United States*' (the Pentagon Papers case), the U.S. SC refused to permit prior restraint on publication of classified material, underscoring that only direct, immediate threats to national security could justify such restrictions.⁶
- c. 'European Court of Human Rights (ECtHR)': The Court consistently applies the "pressing social need" standard, requiring states to justify restrictions on media with clear evidence of necessity. In '*Sunday Times v. United Kingdom*', the ECtHR held that restrictions on reporting must correspond to a pressing social need and be proportionate to the aim pursued.⁷

These comparative frameworks highlight India's lack of institutionalized safeguards. The absence of independent oversight, coupled with broad statutory powers, creates an environment where the burden falls disproportionately on journalists to prove their innocence.

Need for Procedural Safeguards in India

The proposals for reform include:

- a. Judicial Pre-Clearance: Prosecution of journalists under UAPA or BNS should require prior approval by a High Court judge, ensuring an independent check on executive discretion.
 - b. Time-Bound Trials: To prevent "process-as-punishment," trials under anti-terror laws involving journalists must be concluded within strict timelines.
 - c. Independent Oversight Bodies: A national "Press Freedom Ombudsman" or statutory commission could be empowered to review cases of alleged misuse.
 - d. Legislative Clarity: Parliament should amend counter-terrorism laws to clearly define prohibited conduct, ensuring that only incitement to violence or demonstrable falsehoods with intent to harm public order fall within their ambit.
- Without these safeguards, counter-terrorism laws will continue to operate as instruments of intimidation rather than tools of genuine security policy.

Recommendations

Based on the preceding analysis, India's counter-terrorism laws, while intended to address valid

security concerns, are having a disproportionate and negative impact on journalistic freedom. This is largely due to vaguely worded legal definitions, overly broad application of the laws, and a lack of proper procedural safeguards.

To effectively balance national security with the constitutional right to freedom of speech and expression (Article 19(1)(a)), a new framework that is compatible with these rights is urgently needed. The following recommendations propose essential legislative, judicial, and institutional reforms to achieve this.

Clarify Statutory Definitions

Vague terms like "unlawful activity" and "false information" in laws allow for arbitrary enforcement. The doctrine of vagueness, affirmed in *Shreya Singhal Case*, demands that laws are clear enough for people to understand what's prohibited. To fix this, Parliament should amend the UAPA and the BNS Sec. 152 so that they only punish incitement to imminent violence or knowingly false statements that cause verifiable harm to public order. This would align Indian law with Article 19 of the ICCPR, which permits restrictions on free speech only when they are necessary and proportionate.

Strengthen Procedural Safeguards

To prevent misuse of counter-terrorism laws against journalists, following safeguards must be implemented:

- a. **Judicial Pre-Clearance:** Prosecution of journalists under UAPA or BNS should require prior sanction from a High Court judge. This safeguard parallels the "prior judicial review" standard applied by the ECtHR in *Sunday Times v. United Kingdom*, which held that restrictions on media must correspond to a "pressing social need."³
- b. **Time-Bound Bail and Trials:** The Supreme Court has repeatedly held that "bail is the rule and jail the exception."⁴ However, UAPA reverses this presumption by imposing onerous bail conditions. Parliament should amend UAPA to provide for statutory bail within 90 days for journalists charged solely for expression-related offences, unless the prosecution can show a direct link to violent activity.
- c. **Independent Oversight Committees:** Independent panels comprising retired judges and press freedom advocates should review all UAPA cases involving journalists within 30 days of arrest. Such oversight would inject accountability into executive decisions.

Establish an Independent Press Freedom Ombudsman

Borrowing from international best practices, India should institutionalize a statutory "Press Freedom Ombudsman" or commission empowered to:

- Review complaints of arbitrary prosecutions against journalists.
- Issue binding recommendations for withdrawal of charges where prosecutions lack prima facie evidence of incitement or violence.
- Publish annual reports on the state of press freedom, similar to the role of independent press councils in democracies like Australia and South Africa.

Such a mechanism would reduce reliance on ad hoc judicial interventions and create a dedicated body to protect press rights.

Build Capacity in Law Enforcement and Prosecution

Much of the misuse of counter-terror laws stems from inadequate training of police and prosecutors on constitutional limits. Mandatory programs should be instituted on:

- The scope of Article 19(1)(a) and permissible restrictions under Article 19(2).
- The chilling effect doctrine as articulated in *Shreya Singhal*.
- International human rights standards, including the UN Human Rights Committee's General Comment No. 34.

This capacity-building would ensure that counter-terrorism tools are deployed only in genuinely security-related contexts, not to stifle legitimate reporting.

Comparative Borrowing from Democracies

India can learn from global legal systems to better protect press freedom.

- **United States:** India could adopt the strong protections against prior restraint, a concept where the government cannot block a publication before it happens. A key example is the *Pentagon Papers* case, where the U.S. Supreme Court ruled against the government's attempt to stop a newspaper from publishing classified documents.
- **United Kingdom:** India could look to the *Terrorism Act 2000*, which includes specific exceptions for journalistic activities. This provides a model for how to balance national security concerns with the public's right to information.

- European Court of Human Rights: India could use the "pressing social need" test to assess whether restrictions on free speech are constitutional. This test requires the government to prove that a restriction is necessary for a specific and urgent social purpose.

By incorporating these international best practices, India would align itself with a global standard of free press while strengthening its own constitutional commitment to it.

Legislative and Judicial Roadmap

Ultimately, reforming India's counter-terrorism framework to better protect press freedom requires a dual approach: legislative clarity and judicial activism. Parliament needs to revise overly broad laws, while the judiciary must continue to interpret these laws with a focus on the principles of proportionality and vagueness. Additionally, strategic lawsuits filed by civil society organizations can help push for gradual reforms, ensuring that constitutional protections adapt as security needs change.

CONCLUSION

This paper's analysis highlights the difficult relationship between counter-terrorism laws and press freedom in India. Laws like the UAPA and BNS, 2023, are meant to protect national security, but they contain vague and overly broad provisions. This makes them easy to misuse against journalists.

This misuse leads to more than just isolated incidents of harassment; it creates a systemic chilling effect. As a result, investigative journalism is discouraged, and self-censorship becomes the norm.

While Indian courts have established strong principles to protect press freedom—such as proportionality, vagueness, and rejecting prior restraint—there's a clear gap between these principles and how laws like the UAPA are actually used. For example, in *Shreya Singhal Case*, the SC invalidated vague legislation due to its chilling effect on free speech. Similarly, in *Anuradha Bhasin Case*, the court stressed that restrictions related to security must be proportional and reviewed regularly. However, the enforcement of these laws against journalists shows that these constitutional principles are often not followed in practice.

Reforming India's counter-terrorism framework is an urgent necessity, as the current system disproportionately impacts journalistic freedom through vague laws and inadequate safeguards. International examples from the United States, United Kingdom, and the European Court of Human Rights demonstrate that it is possible to balance security with a free press by incorporating principles like prior restraint, statutory protections for

journalists, and the "pressing social need" test. India must adopt these institutionalized checks and clarify statutory definitions, mandate judicial pre-clearance, and establish independent oversight. Ultimately, a free press is a vital ally to national security, strengthening public trust and accountability, and protecting it from misuse is not only a constitutional obligation but a democratic imperative.

Ultimately, a free press is not an obstacle to national security but its ally. Independent journalism provides accountability, exposes wrongdoing, and strengthens public trust — elements that are essential to a stable democracy. As Justice Brandeis observed in a different context, "sunlight is said to be the best of disinfectants." Protecting journalists from misuse of counter-terror laws is thus not only a constitutional obligation under Article 19(1)(a) but also a democratic necessity. The path forward lies in harmonizing security imperatives with the enduring principle that a free press is the lifeblood of constitutional democracy.

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