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## NATIONAL SECURITY ARCHITECTURE FOR COUNTER-TERRORISM WITH REFERENCE TO TADA AND POTA

~ *Syedah Naureen Fatima*

### ABSTRACT

The paper analyses India's national security architecture through a thorough examination of the anti-terror legislation TADA and POTA. It examines the historical circumstances that led to the establishment of these unique legislations, such as the Emergency, the Punjab insurgency, and the 2001 Parliament attack. The study illustrates how this legislation enhanced State authorities by enabling longer detention, police-recorded confessions, special tribunals, and strict bail terms, while simultaneously raising severe concerns about abuse and abuses of fundamental rights.

The paper explores how the Supreme Court reconciled national security concerns with constitutional safeguards under Articles 14, 20(3), and 21, using a comprehensive examination of important cases like as *Kartar Singh v. State of Punjab* and *PUCL v. Union of India*. The decisions emphasise critical concerns such as legislative competence, fair trial standards, judicial independence, and coercive protections. The study finds that, while robust counter-terrorism legislation is occasionally required, its execution must be tightly linked with constitutional safeguards to prevent misuse and maintain civil freedoms.

Keywords: TADA, POTA, Counter – Terrorism

### INTRODUCTION

Terrorism has posed one of the most persistent and complex threats to India's national security since the post-independence period. From separatist movements and insurgencies to cross-border terrorism, the country has repeatedly faced situations that demanded strong legislative and institutional responses. In this context, India enacted two major anti-terror

laws: the Terrorist and Disruptive Activities (Prevention) Act (TADA) and the Prevention of Terrorism Act (POTA). Both laws emerged from periods of extraordinary crisis TADA from the violence following Operation Blue Star and rising insurgency in Punjab, and POTA in the global post-9/11 environment and after the attack on the Indian Parliament in 2001.

These laws introduced far-reaching powers, including extended detention without charges, admissibility of police-recorded confessions, the creation of special courts, severe restrictions on bail, and provisions for property forfeiture. While they were intended to enable swift action against terrorism, they also generated intense criticism for misuse, human rights violations, and departures from established principles of criminal justice.

The constitutional validity of several provisions of TADA and POTA was challenged before the Supreme Court, leading to landmark decisions such as *Kartar Singh v. State of Punjab* and *PUCL v. Union of India*. These cases addressed key questions concerning legislative competence, procedural fairness, the separation of powers, and the protection of fundamental rights under Articles 14, 20(3), and 21. The Court's reasoning in these judgments forms a crucial part of India's constitutional jurisprudence on national security.

This paper examines the historical background, legal provisions, judicial review, and controversies surrounding TADA and POTA. It aims to evaluate how India's counter-terrorism framework has attempted to balance the imperative of national security with the equally important need to safeguard civil liberties and maintain the rule of law.

### **TADA:**

When Indira Gandhi's election was challenged in the Allahabad High Court, the High Court declared the election void. After this judgment, Indira Gandhi declared an emergency in 1975, and the restrictions on fundamental rights came naturally. At that time, Indira Gandhi proposed a law under which the elections of the prime minister, president, or vice president cannot be challenged before any law. This amendment was challenged in *Indira Gandhi vs. Raj Narain*<sup>1</sup> before the Supreme Court. The Honourable Supreme Court followed the *Keshavananda Bharti vs. State of Kerala*<sup>2</sup> case, which established the basic structure doctrine holding that parliament cannot amend the constitution in any way that alters the fundamentals of the basic structure of the constitution. The Supreme Court struck down the amendment as

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<sup>1</sup> *Indira Nehru Gandhi v Raj Narain* AIR 1975 SC 2299.

<sup>2</sup> *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461.

it violated the basic structure of the constitution and held that free & fair elections are part of the basic structure and judicial review is part of the basic structure. Later In the case of ADM Jabalpur vs. Shivkant Shukla<sup>3</sup>, the suspension of fundamental rights, including Article 21 of the Constitution, was suspended. The Supreme Court upheld the validity of the abovesaid amendment. Although J. H. R. Khummu has given the dissenting opinion. He was about to become the Chief Justice of India, but due to his dissenting opinion in this case, he was superseded by M.H. Baig, who became the CJI in 1977.

Upon Indira Gandhi's assassination in 1984, the Indian Army invaded the Golden Temple complex in Amritsar as part of "Operation Blue Star (June 1984)" in order to wipe out armed Sikh separatists. Many Sikhs were incensed by the military intervention. She was shot and killed by two of her Sikh bodyguards as retribution for Operation Blue Star. The assassination increased the sense of unease in the country by sparking violent anti-Sikh riots throughout India. People started calling for specific anti-terror legislation. Terrorists were using Gorilla Attack strategy. The first TADA was passed by the government in 1985 in reaction to this violence and the general insurgency/instability in Punjab. It was offered as a short-term solution to the unusual situation. It was enacted for two years and applied to Punjab as well as other nearby states by 1990, this act was applicable in 23 states and 2 union territories, and in the mid-1990s, it was applied to all of India. It became a tool for executives in "Preventive Detention."<sup>4</sup> Even though it wasn't necessary to apply TADA, the government applied to India. It began to misuse a lot. Police can arrest anyone and imprison them even though he/she hasn't committed any terrorist act, and after being alleged under TADA, the court will not help them either. Due to the misuse of TADA, problems kept arising, and people were kept in jail even though they were not guilty.<sup>5</sup>

Problems with TADA:

- One of the problems was that law and order comes under the State List, while matters of national security are matters of the Union List, so is TADA a matter of the State List or the Union List?

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<sup>3</sup> ADM Jabalpur v Shivkant Shukla AIR 1976 SC 1207.

<sup>4</sup> Anil Kalhan, Gerald P Conroy, Mamta Kaushal, Sam Scott Miller and Jed S Rakoff, 'Colonial Continuities: Human Rights, Terrorism, and Security Laws in India' (2006) 20 *Columbia Journal of Asian Law* 95, 141.

<sup>5</sup> Association of the Bar of the City of New York, 'Colonial Continuities: Human Rights, Terrorism, and Security Laws in India' (Columbia Journal of Asian Law, vol 20(1), 2006) 141–150.

- Another problem was Section 15 of the TADA Act. It stated that a confession can be made before a police officer and in police custody and is valid. It didn't matter if the confession was due to coercion, undue influence, etc.
- The third problem was in section 19. It stated that the trial was conducted in a court of session, but no appeal can be filed in the High Court, directly filed in the Supreme Court. Suppose a poor person is convicted under the TADA in a court of session. How will he be able to go to the Supreme Court for an appeal? He has to face a lot of hindrances. No anticipatory bail in TADA.

More than a thousand cases were filed under TADA for illegal detention.

### **Kartar Singh vs state of Punjab (1994):**

- The following Acts' constitutionality had been challenged by the petitioners:
  1. The 1984 Terrorist Affected Areas (Special Courts) Act
  2. The 1985 Terrorist and Disruptive Activities (Prevention) Act
  3. The 1987 Terrorist and Disruptive Activities (Prevention) Act (TADA)
  4. Section 438 CrPC in Uttar Pradesh was eliminated by Section 9 of the Code of Criminal Procedure (U.P. Amendment) Act, 1976.

The 1980s saw an increase in terrorist activity in Punjab and other areas, prompting the imposition of these Acts. These statutes, according to the petitioners, violated fundamental rights and dealt with issues that fell under the State List (Entry 1: Public Order) rather than the Union List, making them unlawful.

A five-judge bench heard the case and issued three separate judgments: Justice S. Ratnavel Pandian wrote the main opinion, and Justices K. Ramaswamy and R.M. Sahai wrote two concurring but partly dissenting views.

Even though all five justices signed the certified copy of the main ruling, Justice Ramaswamy and Justice Sahai subsequently said that they had partially disagreed with some of Justice Pandian's reasoning.

Justice Ramaswamy disagreed with the constitutionality of Sections 9(7) and 15 of TADA, which dealt with the powers of designated courts and confessions made to police officers; he also disagreed with the jurisdiction of High Courts under Article 226 for enforcing rights under TADA; Justice Sahai agreed with most of the majority's viewpoint

but dissented on Section 15 (confession to police) and expressed a different opinion on Section 9(7) regarding the creation of designated courts.

Except Section 22 of the TADA Act, 1987, which was ruled to be unconstitutional and overturned, the Supreme Court ruled that all of these Acts were valid. This showed that although the legislation was lawfully passed by Parliament, one of its provisions went against the due process and fairness principles.<sup>6</sup>

- The main question was whether the Seventh Schedule of the Constitution gave Parliament the authority to pass this legislation.
  - The petitioners contended that as "public order" is covered by List II Entry 1 (State List), only state legislatures have the authority to enact legislation upholding it.
  - The Union Government said that terrorism is covered by List I Entry 1 (Defense of India) and List I Entry 97 (Residuary Powers) since it impacts national security and sovereignty, not merely local order.

The Court's response

The Union Government was supported by the Supreme Court.

It stated that terrorism is not the same as public order.

## **1. List II Entry**

### **1: Public Order**

- Describes local disruptions that occur within a state, including rioting or issues with law and order.
- The state government and local police can handle these problems.

### **2. Terrorism:**

- Affects national security and sovereignty.
- Aims to undermine the government's authority, frighten citizens, and cause instability in the nation.
- Involves widespread, coordinated violence that frequently has connections to other countries.

Therefore, terrorism falls outside Parliament's authority to safeguard India's defense and unity and goes beyond "public order."

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<sup>6</sup> (1994) 3 SCC 570, 570.

As a result, under Article 248 (Residuary Powers) and List I Entries 1 and 97 of the Seventh Schedule, Parliament was able to pass the Terrorist Affected Areas (Special Courts) Act, 1984, TADA 1985, and TADA 1987.<sup>7</sup>

A significant constitutional interpretation provided by the Court has since been established as a legal norm.

- "Public Order" (List II Entry 1) addresses safety and peace inside a state.
- "Security of the State" and "Defence of India" (List I Entry 1) deal with issues that jeopardise the existence and sovereignty of the country; terrorism falls into the second category by definition.

The Court stressed that terrorist activities are well outside the authority of the State List due to their scope, intensity, and organised nature.

TADA was therefore lawfully passed by Parliament under the Union List.

This approach is also consistent with other rulings from the Supreme Court, including

- *Dr Ram Manohar Lohia v. State of Bihar* (1966), which made a distinction between "public order" and "security of the State."
  - In *Arun Ghosh v. State of West Bengal* (1970), it was decided that less serious disruptions are related to public order. The Court noted that TADA legislation was not standard law and order measures, but rather were required to address the extraordinary threat of terrorism.
  - In *Kartar Singh v. State of Punjab* (1994), the Supreme Court addressed whether Parliament had the authority (legislative competence) to enact the Terrorist and Disruptive Activities (Prevention) Acts of 1985 and 1987 (TADA), or whether such a law fell within the purview of the States under the topic of "public order."
- The Indian Constitution's Seventh Schedule categorises "public order" under List II (State List, Entry 1) and "Defence of India" and "National security" under List I (Union List, Entries 1 and 97).

Justice Pandian, who delivered the majority verdict, emphasised that India's federal system grants Parliament control over its own legislative sphere.

According to Article 246 of the Constitution, Parliament has sole competence to legislate on the Union List, whereas State Legislatures can only legislate on the State List. In case of a conflict, Union law takes precedence.

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<sup>7</sup> *Kartar Singh vs state of Punjab* (1994) 3 SCC 570, pp 65–66

As a result, a law passed by Parliament is legal if it is related to any issue on the Union List, even if it indirectly touches on a state subject.

The Court emphasised that the TADA Acts were meant to address terrorism, which was not only a "public order" concern, but a national challenge to India's unity and sovereignty.

The Court cited Entry 1 of the Concurrent List (List III), which empowers both Parliament and State Legislatures to pass laws on "criminal law," except issues already covered by the Indian Penal Code (IPC).

Justice Pandian underlined that the founders of the Constitution employed broad language, "including all matters included in the Indian Penal Code at the commencement of this Constitution," implying that the authority to define and punish new crimes is shared.

When a crime affects national security or sovereignty, this shared power becomes exclusive to Parliament, since it falls under Union List Entry 1 (Defence of India) or Entry 97 (Residuary powers).

Thus, while terrorism is a criminal offence, it is not a standard criminal law issue, but rather a national one.

The court made a clear distinction between "public order" and "terrorism."

Justice Pandian noted that public order affects only a specific location, whereas terrorism affects the entire nation. The definition of terrorism includes deliberate violence and destruction, the use of fear and intimidation, and attempts to disrupt or destroy the government.

As a result, TADA could not be interpreted as a statute only concerned with "public order." It had a far broader reach and dealt with national defence and security, both of which are Union issues.

Justice Pandian supported this reasoning with landmark judgments such as *H. R. Bantia v. Union of India* (1969) 2 SCC 166, *Union of India v. H.S. Dhillon* (1971) 2 SCC 779, *Ramesh Thappar v. State of Madras*, AIR 1950 SC 124, and *Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740.

These decisions proved that Parliament's legislative powers are vast and supreme in its sphere, and that the term "defence of India" should be broadly defined to cover dangers such as terrorism.

- Justice Pandian stated that terrorism is not the same as "public disorder."  
While "public disorder" refers to internal peace inside a state, terrorism seeks

to instill fear, undermine government authority, and endanger national security.

The Court defined terrorism as "a grave manifestation of a disease that threatens the very existence of democracy."

Terrorism may be externally funded, politically or religiously motivated, and designed to instill terror throughout the country. As a result, Parliament was proper in legislating under Entry 1 (Defense of India) and Entry 97 (Residuary powers).

Justice Pandian found that Parliament's authority extends to:

- The Defence of India (List I, Entry 1),
- Matters affecting national security and sovereignty, and
- Any subject not specifically mentioned in other lists (List I, Entry 97 — Residuary powers).

Therefore, Parliament was competent to enact the TADA Acts of 1984, 1985, and 1987, as well as the Terrorist Affected Areas (Special Courts) Act, 1984.

These laws did not suffer from any lack of legislative competence.

Justice Pandian stated that terrorism is more than just a question of law and order. It is a national defence and security concern that cuts across state lines."

As a result, the Court determined that TADA was legally lawful and that Parliament have the authority to enact such legislation.

Other Judges' Opinions:

- Justice K. Ramaswamy concurred with the majority that Parliament has the ability to impose TADA due to the threat of terrorism to India's sovereignty. However, he held opposing views on several procedural features of the Act (particularly confessions and judicial authority).<sup>8</sup>
- Justice R.M. Sahai acknowledged that Parliament had the authority to adopt TADA, but disagreed on the justice of certain portions, such as Section 15 regarding confessions to police personnel.<sup>9</sup>

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<sup>8</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 393

<sup>9</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 443



- Section 3(1) empowers the Central Government to declare an area as 'Terrorist Affected' (Constitution of India, Article 14).

Per Curiam (by the court):

Section 3(1) of the Act empowers the Central Government to classify any region as a "terrorist affected area." This power is not ambiguous or unguided since it is limited by precise limitations outlined in the Act. The necessary requirements for making such a declaration are as follows:

- Nature of Offences (First Condition) The acts committed in an area designated as a "terrorist affected area" must be one or more of those mentioned in the Schedule to the Act of 1984.

- Type of Terrorist Activity (Second Condition): Terrorist offences must meet the definition of "terrorist" provided in Section 2(1)(h) of the Act.

The concept of "terrorist" encompasses behaviours such as murder, violence, disruption of critical services, and property damage to commit terrorist crimes (i-iv).

- Scale and Seriousness of Offences (Third Condition): Terrorist offenses must be big in scale and serious enough to make it necessary and expedient to implement the provisions of this Act in order to effectively combat such activities.<sup>10</sup>

Application of these requirements: The Central Government must completely satisfy all three of these requirements before declaring any place a "terrorist affected area" under Section 3(1). If any of these elements are not satisfied, the government cannot issue such a pronouncement. As a result, the Court dismissed the claim that Section 3(1) is unclear or without appropriate guidance. It found that the clause establishes clear requirements for using this power.

The Court also concluded that there was reasonable justification for the legislature to establish a separate procedure for major offences that directly harm a region's peace and calm. The law intends to rapidly address significant offences that may provoke fear and panic, expedite trials, and prevent the situation from escalating or spreading to surrounding communities.<sup>11</sup>

- The issue is whether Sections 3 and 4 of the TADA Act, 1987 are legitimate and constitutional, or if they should be repealed due to overlap with regular criminal legislation and unclear application guidelines.

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<sup>10</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 136

<sup>11</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 138,372,449

#### Grounds for Challenge:

The validity and efficiency of Sections 3 and 4 were challenged on three major grounds:

1. Sections overlap with other laws, including the Indian Penal Code, Arms Act, and Explosive Substances Act, which already penalise similar offences. As a result, it was contended that the TADA Act repeats existing laws without necessity.
2. No Clear Guideline for Application: The government may make arbitrary judgments because there is no explicit guideline to decide whether to prosecute someone under TADA and when under regular criminal laws.
3. Violation of Equality (Article 14): It was claimed that the lack of such a rule would lead to inequity before the law, which would be against Article 14 of the Constitution. Previous Supreme Court rulings, such as *State of West Bengal v. Anwar Ali Sarkar* (1952) and *A.R. Antulay v. Union of India* (1988), which found that any particular legislation or process must not be arbitrary or discriminatory, provided support for the claim.

#### Court's observation:

The Court agreed that certain offenses under Sections 3 and 4 would resemble offenses under ordinary criminal legislation.

The nature, purpose, and effects of terrorist and disruptive operations, however, are different; they are intended to instil fear and turmoil while endangering the country's security and sovereignty.

Because of their greater and more severe ramifications, the activities may be prosecuted differently under TADA even if they overlap with other offenses.<sup>12</sup>

The Court determined that:

- The arguments under reasons (1) and (2) (overlap and lack of guidelines) cannot be adopted after taking into account the TADA Act's intention and purpose as stated in its Preamble and Statement of Objects and Reasons.
- Regarding ground (3), the allegation of discrimination under Article 14, the Court cited the equality before the law principle in *Anwar Ali's* case but determined that there was no discrimination because:
  - o The TADA Act has a distinct and unique machinery for handling terrorism-related cases;
  - o The distinction between ordinary crimes and terrorist acts is reasonable and justified.

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<sup>12</sup> *Kartar Singh vs state of Punjab* (1994) 3 SCC 570, pp 142

Therefore, these arguments cannot be used to contest the validity of Sections 3 and 4.<sup>13</sup>

Final Decision: Per Curiam (by the Court):

Sections 3 and 4 of the TADA Act of 1987 were declared constitutional by the Supreme Court. It concluded that: The purpose of TADA is distinct: to address crimes that threaten the sovereignty, unity, and integrity of India; consequently, the Act's provisions are not ambiguous, not discriminatory, and fully constitutional; even if the provisions overlap with other penal laws, they deal with special kinds of offenses, those involving terrorism and disruption of national security.<sup>14</sup>

Section 5 of the Terrorist and Disruptive Activities (Prevention) Act of 1987: Possession of specific weapons and ammunition: Definition and application

According to Sahai, J.

Because it penalises someone for just having weapons or ammunition, even if there is no evidence linking them to terrorism, Section 5 is quite dangerous. Compared to Sections 3 and 4, which are applicable when a terrorist act is actually committed, this section is more severe. By designating the possession of such weapons as a preventative offence, the legislation seeks to prevent terrorism. The Seventh Schedule permits the legislature to enact such legislation. Even if it's indirect, there must be some connection between the possession and potential terrorist conduct. The Act's severity is seen in the fact that it permits prosecution for simple possession, which has consequences including property confiscation or bail rejection. This is true even if the individual is solely charged under Sections 3 and 4.

Although having weapons is illegal, it should only be tried under Section 5 if there is evidence linking the possession to terrorism or disturbance. If not, the law becomes capricious.

It is illegal to simply possess weapons or ammunition under Section 5. Because it presumes that possession might result in terrorism even in the absence of evidence of intent or use, the legislation is stringent.

While Section 5 simply calls for possession, Sections 3 and 4 apply when a real act of terrorism is committed. Act 43 of 1993 included subsections (5) and (6), which also stipulate that the individual must be associated with a terrorist organization.

The Constitution gives the legislature the authority to enact such legislation. The nature of the

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<sup>13</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 148

<sup>14</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 136, 142, 148, 368(4), 372, 449

offense is preventative. Even However, there must be some connection between the weapons and potential terrorist activities; otherwise, the penalty would be too severe and unjust. If there's no proof that the arms were meant for terrorism, prosecution under Section 5 would be unjust.<sup>15</sup>

On the majority of issues, Justice Pandian concurred with Justice Sahai; however, he emphasized that Section 5 may only be invoked in cases where there is unmistakable proof that the weapons or ammunition were intended or used for terrorist activities.

He also concurred with Justice Sahai that the clause shouldn't be used in the absence of evidence connecting possession to terrorism.<sup>16</sup>

- Terrorist and Disruptive Activities (Prevention) Act, 1987 – Section 8(1) & (2).

Forfeiture of Property – Power of Designated Court – Whether Violates Constitution

Issue: It was contended that Section 8 violates Articles 14 and 21 of the Indian

Constitution because: 1. It does not specify when property belonging to a convicted individual should be forfeited.

2. Property that is forfeited "free from all encumbrances" may unjustly penalize lenders and other third parties with financial stakes in the property but no connection to the crime.

Held (Court's Decision): The Supreme Court dismissed the contention.

Reasoning:

- The Designated Court's authority under Sections 8(1) and (2) is restricted and subject to stringent requirements:
  1. The order of forfeiture must be in writing.
  2. The property must be owned by the guilty individual.
  3. The property has to be made explicit in the order.
  4. Only after conviction—not before—can forfeiture take place.
- The court must document its reasoning since the order must be in writing.
- Section 19 guarantees legal protections by permitting an appeal to the Supreme Court immediately.

Conclusion:

Section 8 of the TADA Act does not violate Articles 14 or 21 of the Constitution.

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<sup>15</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 148

<sup>16</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 460(2)

The authority granted to the Designated Court by Sections 8(1) and (2) of the TADA Act must be exercised cautiously and only in certain circumstances. The property must be properly recognized in the documented forfeiture order, belong to the convicted individual, and only be forfeited upon conviction—not during the trial.<sup>17</sup>

The Designated Court must document its reasoning for issuing the order since it must be in writing. A formal court ruling, whether interim or final, is referred to as a "order." Additionally, an appeal from such an order may proceed straight to the Supreme Court on both factual and legal grounds under Section 19 of the Act.<sup>18</sup>

- Section 9 of the TADA Act of 1987 - Power to establish Designated Courts—is a legitimate statute that does not conflict with judicial independence or state authority. Since Section 9 is within Union powers (Entry 1, List I) and does not contravene State powers (Entry 65, List II) or Articles 233–235 of the Constitution, the Court ruled that it is legitimate.

Entry 1 of List I (Union List) was used to implement the TADA Act. Therefore, Entry 65 of List II (State List), which grants States the authority to establish courts, is not violated when the Central Government establishes Designated Courts.

The Central and State Governments may establish Designated Courts by means of announcements under Section 9. However, State-designated courts no longer have jurisdiction over offenses committed in a certain region if the Central Government creates such a court.<sup>19</sup>

The Central Government's judgment will be final if there is a disagreement on which Designated Court has jurisdiction.<sup>20</sup> The Court concluded that neither Entry 65 of List II nor Articles 233, 234, and 235 of the Constitution are violated by Section 9 of the TADA Act.<sup>21</sup>

- Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 9(7) – Judge Continuation Following Superannuation – Article 21 Validity

Principal Problem:

The question was whether Article 21 (right to life and fair trial) and judicial independence were violated by Section 9(7), which permits a judge to remain a Designated Court Judge

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<sup>17</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 156

<sup>18</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 157

<sup>19</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 160

<sup>20</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 161

<sup>21</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 162

even after retirement.

Arguments in opposition (by counsel):

Allowing a retiring judge to remain in office might jeopardize judicial independence and undermine Article 21's guarantee of a fair trial.

Majority Opinion (Judgment): • This circumstance differs from that of the Special Courts Bill, 1978 case.

Section 9(7) is legitimate and does not infringe Article 21 since the judge in this case continues to serve in the judiciary even after attaining retirement age. However, in order to prevent problems with continued duty after retirement, the Central and State Governments should make sure that each judge appointed has an adequate tenure.

Justice Sahai (Opinion Concurring):

It concurs with the majority; nevertheless, it states that no judge should be appointed after retirement; instead, appointments must be made before to retirement; otherwise, the aim of the Act would be violated.

Dissenting opinion: According to Justice Ramaswamy, the legislature meant to maintain judges under the authority of the Central or State Government, as evidenced by Sub-section (7) of Section 9, which permits judges of specified courts to remain in office even after attaining retirement age. He expressed worries that this undermines judicial independence and erodes public trust in the legal system. In view of these consequences, he recommended that the constitutionality of this section be investigated.

The majority ruled that the designated courts were legally lawful, and Justice Ramaswamy agreed. Nonetheless, he brought forward two primary issues pertaining to judicial independence:

1. According to him, the Constitution's guarantee of judicial independence is violated when Sessions Judges or Additional Sessions Judges are appointed to certain courts without the High Court's appropriate oversight and control. Judges are susceptible to executive influence because of this lack of oversight, which permits government meddling in the legal system.
2. He objected to the system that permits judges to remain in office after retirement, arguing that it undermines the impartiality and integrity of the judiciary by making justices feel reliant on the government.

Justice Ramaswamy disagreed with the majority based on these observations. He maintained that the "pleasure doctrine," which appoints judges at the government's whim rather than on the basis of their independence and talent, compromises justice and fairness in the legal

system. Because it jeopardizes the fundamental idea of an independent court, he came to the conclusion that Section 9(7) is unconstitutional.

- Confession recorded by a police officer not below the rank of Superintendent of Police made admissible — Such a special provision, based on the Act's classification, treats terrorists and disruptionists as a separate class of offenders from ordinary criminals under normal laws, and the offences specified under the Act as aggravated offences requiring the special provision of S. 15

The provision is non-discriminatory, as held by the majority. The categorization of criminals and offenses under the Act has a reasonable link with the goal and purpose of the Act, and Parliament has legislative power to enact it. The method for recording confession, subject to specified restrictions under Section 15 and the Rules, is not unreasonable, unfair, or oppressive under the circumstances. The provision of recording confessions by mechanical devices does not violate Arts. 14 and 21. However, recording confessions by a Magistrate under S. 164 CrPC is not prohibited by the Act. Guidelines for recording confessions by police officers have been incorporated into the Act and Rules, and screening/review committees have been established by both the Central and State Governments.

Held (per K. Ramaswamy, J., dissenting): Giving a police officer, regardless of position, the authority to record confessions goes against fundamental fair justice principles, shocks the conscience, and breaches Arts. 14, 20(3), 21, and 50. The ordinary man's suspicions regarding adherence to procedural protections are more important than the police officer's hierarchy because the perception of unfairness is a denial of justice. Furthermore, even if the Act's offenders and offenses constitute a distinct class, S. 15's harsher process must meet the requirements of Arts. 21 and 14.

Held (per Sahai, J., dissenting): S. 15 violates Arts. 20(3) and 21; the police approach differs from that of a judicial officer in that the former is focused on the outcome rather than procedural fairness; this approach does not change with officer rank; police culture is not yet mature enough for such a drastic change in procedure; it destroys the fundamental values of the Constitution; and legislative competence does not empower Parliament to enact a law that restricts or violates fundamental rights. The Indian Constitution, Articles 14, 20(3), 21, and 50, states that the law must still be reasonable and equitable. Natural justice, administrative law, and fair justice the idea behind the words and phrases "confession" and "compelled".

Constitution of India, Arts. 21 and 14 - Procedure established by law – Classification - If two procedures exist for two classes of people, both must pass the test of Arts. 14 and 21 - If one of the procedures is harsh, oppressive, unconscionable, unfair, unjust, or unreasonable, it would be unconstitutional.

Section 15 of the TADA Act shall be overturned if the procedural provision is discriminatory by breaking the equal protection of laws under Article 14 and is oppressive and breaches the idea of a just and fair trial, violating Article 21 of the Constitution. In order to determine if Section 15 contradicts Articles 14 and 21 of the Constitution, it is crucial to look at the categorisation of "offenders" and "offenses."<sup>22</sup>

The TADA Act separates terrorists and disruptors from regular criminals under the law. Additionally, it distinguishes between regular offences and serious crimes under the TADA Act. Under Article 14 of the Constitution, these distinctions must be examined to see whether they are legitimate and reasonable.<sup>23</sup>

The classification's goal must be taken into account to determine if the categorisation is appropriate. It is not necessary to make the distinction mathematically. The categorisation cannot be deemed acceptable if there is little to no difference between those who are included in the category and those who are not. To determine if such a distinction or categorisation justifies the different treatment and accomplishes the desired goal, a number of considerations must be considered.

As previously mentioned, individuals tried under the TADA Act constitute a separate class, and the trial process for them differs from that for other criminals because of the seriousness of their crimes. As stated in the preamble and the Statement of Objects and Reasons described previously in this judgment, the purpose and object of the Act are to be achieved by the differentiation and categorisation of accused individuals and offences under TADA.<sup>24</sup> In light of the aforementioned, we must determine whether Article 14 is violated by Section 15 of the 1987 TADA Act. The law would violate Article 14's equal protection of laws if the categorisation is arbitrary, irrational, or devoid of any significant foundation.<sup>25</sup>

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<sup>22</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 217

<sup>23</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 20

<sup>24</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 148

<sup>25</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 236



Section 15 of the TADA Act cannot be overturned based on the prior ruling. The Central Government cannot arbitrarily decide how "offenders" and "offences" tried by Special Courts under the 1984 Act or Designated Courts under TADA should be classified. The TADA Act categorises offences under both Acts and explicitly designates terrorists and disruptors as distinct criminals.<sup>26</sup>

As a result, the Act's discrimination allegation must be dismissed. The court merely needs to determine whether the authority provided is discriminatory under Article 14 and if it is utilized for reasons unrelated to the Act. We believe that the TADA categories make sense in relation to the Act's purpose. Therefore, Article 14 of the Constitution is not violated.<sup>27</sup>

Neither Article 14 nor Article 21 are violated by Section 15 of the TADA Act. Nonetheless, the Central Government need to think about implementing some of the recommendations we have made by making appropriate changes to the Act and its regulations.<sup>28</sup>

We have previously addressed the issue of Parliament's authority and determined earlier in this ruling that Parliament has the authority to pass the Special Courts Act of 1984 and the TADA Act. In light of this context, we maintain that the Act's process does not violate Articles 14 and 21 of the Constitution since it is neither unreasonable, unfair, or oppressive.<sup>29</sup>

Considering the practice in developed nations (such as the UK, USA, Australia, and Canada), we acknowledge the legislature's authority to prescribe a different mode of proof, even though at first, we agreed with the concern that making statements to police officers admissible in evidence might be dangerous. The contested clause cannot be deemed unconstitutional given the gravity of terrorism and disruptive actions that jeopardise public safety and national sovereignty, as well as the reluctance of victims and witnesses to testify out of dread for their lives. As long as the legislation does not violate any essential rights under Chapter III of the Constitution, it is constitutionally lawful if the urgency of the circumstance warrants it.<sup>30</sup>

Statutory and constitutional rules guarantee that an accused person cannot be prosecuted for making a self-incriminating statement while in detention. The claim that admissions made to police officers under TADA are comparable to those made to officials under other Acts (such

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<sup>26</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 243

<sup>27</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 244

<sup>28</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 368(9)

<sup>29</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 223

<sup>30</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 253

as the Railway Protection Force Act or the Customs Act) is untrue. Previous rulings from this Court and many High Courts have recognised that the personnel authorised by those Acts are not police officers.<sup>31</sup>

The procedure must continue to be equitable because higher-ranking police officials now have the authority to record confessions, which was formerly the responsibility of court authorities. The confession must be accurately and voluntarily documented, adhering to the correct protocol. There must be no reason to believe that a false confession was made. Credibility and veracity, not just the appearance of legality, must be guaranteed by the authorities.<sup>32</sup>

A confession may be written down or recorded on mechanical means, such as tapes or cassettes, in accordance with Section 15(1). Strict precautions must be taken to avoid false admissions because these recordings can be altered. In order to guarantee fairness and authenticity while recording confessions under Section 15(1), certain precautions should be closely adhered to.<sup>33</sup>

According to Section 15's subsection (2), the police officer must advise the accused that they are not required to confess and that any confession they make might be used against them.<sup>34</sup> Additional requirements are imposed under Rule 15 of the TADA Rules. A letter confirming that the accused was advised of their rights and that the confession was given willingly must be recorded by the police officer. The Chief Metropolitan Magistrate or Chief Judicial Magistrate of the region must then receive the recorded confession so that it may be submitted to the Designated Court that is overseeing the case.<sup>35</sup> Based on the reasoning above, we believe that since Section 15 does not contradict either Article 14 or Article 21 of the Constitution, it cannot be overturned.<sup>36</sup>

Section 15 of the TADA Act violates neither Article 14 nor Article 21 of the Constitution. However, the Central Government should examine the principles we have proposed and incorporate them into appropriate revisions to the Act and its implementing Rules.<sup>37</sup>

Based on the above consideration, we conclude that Section 15 is legitimate and not

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<sup>31</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 214

<sup>32</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 254

<sup>33</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 256

<sup>34</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 258

<sup>35</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 259

<sup>36</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 260

<sup>37</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 368 (9)

unconstitutional since it does not infringe Articles 14 or 21 of the Constitution. Despite having upheld Section 15, we explain that confessions recorded by a Magistrate under Section 164 of the Code of Criminal Procedure are not barred by the TADA Act. A police officer investigating a TADA case may record an accused's confession under TADA regulations, as can a Metropolitan Magistrate, Judicial Magistrate, Executive Magistrate, or Special Executive Magistrate under Sections 164(1) and 20(3) of the TADA Act. As a result, a confession under the TADA Act can be recorded by either a police officer not lower than the rank of Superintendent of Police (under Section 15) or a Metropolitan Magistrate, Judicial Magistrate, Executive Magistrate, or Special Executive Magistrate (under Section 164(1) read with Section 20(3) of the Act). We establish the following rules to guarantee that confessions made during police questioning are voluntary and fair:

1. Confessions should be recorded freely and, in the accused's, native tongue.
2. Confessions made under Section 15(1) must be presented to the Chief Metropolitan Magistrate or Chief Judicial Magistrate immediately, along with the initial statement.
3. The Magistrate shall record and sign the accused's statement. If there is an allegation of torture, the accused should be examined by a medical officer with at least the rank of Assistant Civil Surgeon.
4. TADA offenses shall not be investigated by police officers below the level of Assistant Commissioner (in major cities) or Deputy Superintendent of Police (elsewhere).
5. If a police officer wants detention for questioning, they must provide an affidavit stating the purpose and any delays.
6. During questioning, individuals should be advised that they are not required to confess and any statements they make may be used as evidence against them. If the individual decides to stay silent, the police must respect that decision.

These guidelines may be considered by the Central Government and included into the Act and Rules via revisions.<sup>38</sup> It is the court's responsibility to determine whether a confession is credible or acceptable. While doing so, the court must confirm that no traps, pressure, or improper methods were utilized during interrogation, and that all legal requirements were satisfied. To guarantee appropriate execution of the TADA Act, key authorities such as the Home Secretary and Law Secretary should form a Central Screening or assess Committee to

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<sup>38</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 260 - 263

assess all cases on a regular basis. Senior state authorities, such as the Chief Secretary, Home Secretary, and Director General of Police, will assess TADA cases and determine next steps.<sup>39</sup>

#### **DISSENTING OPINION:**

Justice Ramaswamy pointed out the significance of Article 21 of the Constitution, which safeguards life and liberty. He added that the approach outlined in Article 21 also involves the right method of uncovering the truth in criminal situations, implying that due process must be observed during investigations. In his dissenting opinion, Justice Ramaswamy cited Section 36 of the 1973 Code, which grants authority to senior police officials or officers in command of police stations throughout a region. He also noted Section 2(h) of the Code, which defines investigation and encompasses all actions taken by police personnel to acquire evidence, with the exception of those done by magistrates. Based on these laws, he questioned whether a senior police official, whose primary responsibility is to preserve law and order, could be as impartial and fair as a court magistrate while recording confessions from prisoners in police custody. He also questioned whether the non-obstante clause (a provision that allows one legislation to override another) in Section 15 of the 1987 Act protects or contradicts the legal principles enshrined in Articles 14 and 21 of the Constitution. Justice Ramaswamy supported his point of view by citing the case of *In Re: Special Courts Bill, 1978*, in which the specified procedure was determined to be unfair and unjust to the accused, in violation of Articles 14 and 21. He emphasized the need of preserving public faith in the court system, noting that delegating judicial authority to police personnel undermines this trust and the rule of law. He emphasized that the purpose of a police officer is to prevent crime and preserve order, not to carry out judicial tasks. He determined that, while police personnel must act decisively against crime, they must also follow basic measures to achieve fair justice. Allowing police personnel to record confessions is against the constitutional norms of Article 50, which separates the judiciary and the government. As a result, Section 15 was ruled to be unreasonable, unfair, and a violation of Articles 14 and 21 of the Constitution.

Justice Sahai (dissenting) argues that the handling of confessions by police officers and court officers varies significantly. A judicial officer is taught to ensure fairness and justice, whereas a police officer is trained to get outcomes, typically regardless of the method utilized. A fair

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<sup>39</sup> *Kartar Singh vs state of Punjab* (1994) 3 SCC 570, pp 264

conviction involves a just and honest inquiry and confessing procedure.

Due to their training and administrative responsibilities, police personnel frequently serve as tools of power rather than unbiased decision-makers. Individual dignity and liberty, which are key constitutional ideals, have yet to be completely implemented in the lower levels of the police force. Unlike in several other nations, the Indian police are not as entirely responsible to the people or the law.

Confessions given to police officers are untrustworthy since it is unclear whether the accused provided them freely or under duress. Confessions given to police personnel in non-notified regions have long been considered inadmissible under the law. Under the TADA Act, confessions to high-ranking police officials are acceptable, even for heinous crimes such as murder. Justice Sahai questioned the development, claiming that India's social and legal cultures are not prepared for such a revolution.

Confessions to police officers were not admissible even when the Constitution had Articles 21, 20(3), and 14. Allowing such admissions under Section 15 of TADA contradicts long-standing concepts of justice. It undermines the fundamental constitutional principles of fairness and liberty.

A confession is an acknowledgment of guilt, hence it must be given freely and voluntarily. If gained under duress, it breaches Article 20(3), which provides protection from self-incrimination. The phrase "compelled" refers to being forced to perform in a specific way, which might entail psychological or physical coercion. Any confession made under such circumstances is invalid.

In a democracy, no confession given to a police officer can be assumed to be voluntary or credible since the police atmosphere is coercive. Even though Parliament has the authority to enact laws, it cannot restrict basic rights.

Justice Sahai determined that Section 15 of the TADA Act is unconstitutional because it breaches Articles 20(3), 21, and 14, and should thus be repealed.

Distinguishing between police and judicial officers.<sup>40</sup>

- Justice Sahai stressed a key distinction between police and judicial officers.
- Judicial officers are educated to maintain fairness and due process, but police officers prioritize obtaining convictions via whatever means necessary.

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<sup>40</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 453

- Entrusting police with judicial authorities, such as recording confessions, undermines the rule of law and the integrity of justice.

### **Admissibility of Confessions<sup>41</sup>**

In England and America, confessions to police officers must be made in front of a lawyer, magistrate, or close family to ensure their voluntariness and believability.

Section 15 of TADA authorizes police officers (of SP rank) to record confessions without protections, rendering it vulnerable to misuse and pressure. Justice Sahai contends that even under TADA, when the offenses are significant, procedural fairness cannot be compromised. He points out that the Indian Evidence Act (Sections 24-26) and previous judicial judgments prohibit custodial confessions due to the inherent possibility of pressure and duress.

### **Constitutional Violations<sup>42</sup>**

Confession is an admission of guilt that must be free and voluntary. Compelling someone to confess contradicts both Article 20(3) (protection against self-incrimination) and Article 21 (life and personal liberty). According to Justice Sahai, Section 15 practically forces an accused to testify against oneself, which amounts to deprivation of liberty. Section 15 of TADA violates basic rights under Chapter III of the Constitution, making it unlawful and likely to be repealed.

### **Broader implications**

According to Justice Sahai, recording confessions by police, as seen in England or under emergency measures, demands a developed culture of responsibility, which India lacked at that time. He describes Section 15 as "destructive of basic values of the constitutional guarantee" and an unacceptable divergence from established criminal law. Finally, he believes that while combating terrorism is critical, it must come at the expense of fundamental rights and due process.<sup>43</sup>

- Sections 20(3) and (4)(a) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (as modified by Act 43 of 1993)

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<sup>41</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 454 - 455

<sup>42</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 456, 460(4)

<sup>43</sup> S G Goudappanavar, 'Critical Analysis of Confession under TADA and POTA' (2014) Bharati Law Review 111.

Executive Magistrate or Special Executive Magistrate in accordance with Criminal Procedure Code (CrPC) Sections 164 and 167

Held: The Constitution's Articles 50, 14, and 21 are not violated.

In a similar vein, the Special Courts Act's Section 15(a) is legitimate. Executive magistrates are judicial authorities that belong to the category of criminal courts.

Confessions or statements should, however, be recorded in front of a Judicial Magistrate whenever one is available rather than in front of an Executive Magistrate.

(CrPC, 1973, Ss. 164(1), 167(3), 20(1), (4); Constitution of India, Arts. 50, 14, 21; Terrorist Affected Areas (Special Courts) Act, 1984, S. 15(a).

Reasoning: When Section 20(3) of the TADA Act is read in conjunction with Section 164(1) of the CrPC, it becomes clear that Section 164(1) applies to TADA cases, albeit with a modification: Executive and Special Executive Magistrates, in addition to Judicial and Metropolitan Magistrates, have the authority to record confessions or statements.

It was claimed that the inclusion of Executive or Special Executive Magistrates in this procedure goes against the principles of judicial independence (Articles 14 and 21) and separation of powers (Article 50). Critics said that non-judicial authorities (Executive Magistrates) lack the judicial independence required for justice and that this permits confessions made under duress or pressure to be entered as evidence.

Observation of the Court:<sup>44</sup>

After considering these challenges, the Court clarified that Executive Magistrates are a recognized type of criminal tribunals in all states.

Magisterial functions are divided into two categories by the CrPC:

The High Court is in charge of Judicial Magistrates, while the State Government is in charge of Executive Magistrates. The judiciary's independence is preserved by this division.

Executive magistrates perform a restricted range of judicial duties, primarily those pertaining to administration or law enforcement.

Executive Magistrates' Courts are included as one of the classifications of criminal courts under Section 6 of the CrPC, which gives them the authority to act judicially in such cases.

They have the authority to issue orders in criminal situations as "judicial proceedings."

Executive Magistrates do not have a separate hierarchy or rank; instead, the State Government appoints Special Executive Magistrates for certain regions or purposes.

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<sup>44</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 305 - 309

It is not against criminal law principles to simply include Executive and Special Executive Magistrates with Judicial Magistrates under Section 164(1) CrPC, which grants them the authority to record confessions under the TADA Act. They are not external parties to the criminal justice system; rather, they are an integral part of it.

- Terrorist and Disruptive Activities (Prevention) Act, 1987 – S. 20(7) – Exclusion of the anticipatory bail benefit of S. 438 CrPC – Held, not in violation of Article 21 — Indian Constitution Article 21 is not violated by the TADA's Section 20(7) exclusion of anticipatory bail. A new clause in the law that grants a new right may be removed by later legislation. A new legal entitlement, such as anticipatory bail under Section 438, may subsequently be eliminated by another statute.

Criminal Procedure Code (U.P. Amendment) Act, 1976, S. 9 - Deleting the operation of S. 438 CrPC — Held, provision valid and not violative of Arts. 14, 19, and 21 — State legislature competent to do so — Act has been applied throughout the State, no discrimination — Constitution of India, Art. 254(2). The U.P. Amendment that removes Section 438 (anticipatory bail) is lawful. The Concurrent List empowered the State Legislature to make this amendment. It was authorized by the President under Article 254(2), superseding previous central law. Articles 14, 19, and 21 are not violated or discriminated against because they apply across the state.

Both Parliament and State Legislatures have the authority to enact criminal process legislation. Section 438 (anticipatory bail) was included for the first time in the 1973 Code. The Uttar Pradesh Amendment Act of 1976 removed this clause. West Bengal and Orissa later adopted provisions requiring notification to the state before granting anticipatory bail for major crimes.<sup>45</sup>

The Law Commission recommends anticipatory bail for circumstances when the accused is unlikely to flee or misuse bail. Anticipatory bail was not suited for terrorists or disruptive criminals. Parliament deliberately excluded such offenders from its jurisdiction.<sup>46</sup>

The U.P. Legislature had the authority to change the CrPC through the Concurrent List. The Amendment got Presidential assent under Article 254(2) and is applicable across the state,

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<sup>45</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 327

<sup>46</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 328



therefore there is no discrimination.<sup>47</sup> Given the foregoing, the contention that Section 438's deletion breaches Articles 14, 19, or 21 is rejected.<sup>48</sup>

- Terrorist and Disruptive Activities (Prevention) Act, 1987 — S. 20(8) and (9) — Conditions for release on bail — Held, provisions not violative of Art. 21 — Sub-section (8) is in accordance with S. 437 CrPC, and the source of authority for release on bail is S. 437, not S. 439 CrPC. — When exercising authority, the court should consider not only the accused's liberty but also the interests of the victims, the collective interest of the community, and the nation's safety. The Criminal Procedure Code of 1973, Sections 437 and 439, prohibits bail for people accused of offenses under this Act. However, there are two exceptions:
  1. The Public Prosecutor must have the opportunity to oppose the bail application.
  2. If objected, the court must be satisfied that the accused is not guilty and will not commit any offense while on release.

These criteria are consistent with Sections 437(1) and 437(3) of the Criminal Procedure Code. The TADA bail restriction is not excessive nor a violation of Article 21. Courts must preserve individual liberty while also considering the safety of victims, the community, and the nation. Police and prosecutors must refrain from misusing TADA. Judges must be fair, respecting constitutional ideals while maintaining national security.

- TADA Act of 1987 — Sections 20(8) and 19 — High Court's Power under Article 226

Can the High Court utilize its jurisdiction under Article 226 of the Constitution to issue bail or intervene in TADA-related cases?

Decision: Normally, No.

The TADA Act is a specialized statute designed to address terrorist incidents. Under Section 19, Designated Courts have special jurisdiction and can only appeal to the Supreme Court. If High Courts applied Article 226 on a frequent basis to grant bail or suspend proceedings, TADA's purpose and Parliament's aim would be defeated. • The High Court's constitutional jurisdiction under Article 226 cannot be fully removed. It can still be employed in rare and extreme instances, such as when there is apparent

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<sup>47</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 333

<sup>48</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 334

abuse of authority or no fair procedure is followed. The High Court must maintain judicial discipline ("comity") with the Supreme Court.

- Article 226 of the Indian Constitution outlines the scope of the High Court's power. The High Court has broad powers under Article 226 to ensure justice, which cannot be taken away by any law, including TADA. However, this power should be used carefully and only when absolutely necessary. In TADA cases, the High Court should not act as an appeal court unless the situation is extreme and exceptional.

The majority (Jayachandra Reddy, C.J., Venkatachalam, and Thommen, JJ.)

TADA was developed to address significant threats such as terrorism. This system includes specialized courts, regulations, and direct appeals to the Supreme Court. As a result, High Courts should refrain from interfering under Article 226 in most cases. Continuing to hear bail petitions under Article 226 would upset the system and contradict Parliament's intention. However, in exceptional circumstances when justice requires intervention, the High Court may use Article 226.

Per Sahai, J. (Concurring): The power under Article 226 is extraordinary and constitutional. It exists to correct serious injustice or manifest error, not for routine matters like bail. The High Court must use it only when there is a real violation of justice, not in ordinary TADA cases. Courts must respect the sensitivity of terrorism-related laws and not undermine their purpose.

According to Ramaswamy, J. (Dissenting), the High Court's competence under Article 226 is unlimited and cannot be curtailed by any Act, including TADA. The court has the authority to issue orders for bail, procedures, and rights violations. The High Court has permanent ability to intervene in TADA matters if it considers injustice has occurred, as stated in the Constitution. Parliament cannot limit this jurisdiction.

- Section 22 of the TADA Act allows for identification using photographs. Section 22, which only permitted identifying an accused through images, was repealed. The Court deemed this procedure unreliable and unjust, as photographs might readily deceive. Proper identification requires a test parade, not just images.<sup>49</sup>
- TADA Act — Section 21(1)(f) and Terrorist Affected Areas (Special Courts) Act of 1984 — Review of "Notified Areas"

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<sup>49</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 360 - 368

Held (by a majority)

State governments should evaluate regions designated as "terrorist affected" on a regular basis. Determine whether to continue or de-notify certain locations. A Screening or Review Committee can assess the issue and provide recommendations.<sup>50</sup>

- TADA Act — Right to Fair Trial

Issue: Whether the right to fair trial was violated since TADA operated even without an emergency.

Held: The right to fair trial is a fundamental right under Articles 20 and 21.

Parliament can make laws like TADA, but such laws must not destroy fundamental rights. The argument that TADA violated the right to fair trial was not accepted.<sup>51</sup>

- In the TADA Act — Expeditious Disposal of Cases case, the Court emphasized that fast trials are a fundamental right under Article 21. Designated Courts under TADA must complete cases expeditiously and without delays. The government should promptly replace empty presiding officer positions and establish more courts as needed.<sup>52</sup>

- Article 14 – Valid Classification

Held (majority): Different treatment under the law is permissible with a legitimate justification. Laws can define groups differently, but not arbitrarily or unfairly. The classification should align with the law's aim and contribute to its success.<sup>53</sup>

- Articles 20(3) and 21 provide protection from self-incrimination.

Held (majority)

Article 20(3) prevents accused individuals from being coerced to confess or testify against themselves. This concept falls within Article 21's right to life and personal liberty. Any legislation or practice requiring confession breaches these rights.<sup>54</sup>

Per K. Ramaswamy, J.:

The right to avoid self-incrimination is important. No one can be forced to acknowledge guilt or make self-incriminating statements. The State must defend any

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<sup>50</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 362

<sup>51</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 92 - 96

<sup>52</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 369

<sup>53</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 218 - 220

<sup>54</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 205 - 215

loss of liberty as fair and legal.<sup>55</sup>

Per Sahai, J.: Forcing confessions is a violation of liberty. The statute authorizing police personnel to record and use confessions as evidence contradicts Articles 20(3) and 21.<sup>56</sup>

- Articles 21 and 14 (Fair and Just Procedure) were upheld by the majority. Both substantive and procedural laws should be just, fair, and reasonable. A "procedure established by law" must not be harsh, capricious, or oppressive.<sup>57</sup>
- Article 21 states that legal procedures must be fair and just for the majority. Legal procedures impacting life or liberty must adhere to natural justice principles. It should be "right, just, and fair," not arbitrary or unrealistic. Fairness must be demonstrated via activity, sometimes known as "fair play in action."<sup>58</sup>
- Constitution of India, Article 21 - 'Life and Personal Liberty'  
Liberty: Meaning and Scope  
Liberty, together with equality and fraternity, are the foundation of democracy. While some control or restriction on liberty may be necessary for the greater good, it must not be excessive or burdensome.  
Individual liberty must occasionally yield to the happiness of the wider society. However, as long as legal remedies exist, every technique or action conducted by law enforcement must be constitutionally compliant.  
Courts must strike a balance between personal freedom and the public interest. (According to K. Ramaswamy, J.)<sup>59</sup>
- Article 21 of the Indian Constitution guarantees the right to a prompt trial. Under Article 21, the right to life and liberty includes the right to a prompt trial. It guarantees that the process is fair, rational, and just.  
From the time of arrest or imprisonment until the investigation, trial, appeal, and revision, this right is in effect. The goal is to guarantee justice and avoid needless delays.  
The facts of each case must be taken into consideration when determining whether a

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<sup>55</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 376

<sup>56</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 456

<sup>57</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 205-206, 214-215

<sup>58</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 216

<sup>59</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 373 - 375

trial should be postponed. This assurance is reflected in Section 309 of the Code of Criminal Procedure, 1973.<sup>60</sup>

Supporting Cases: *Vatheeswaran v. State of T.N.* (1983), *Abdul Rehman Antulay v. R.S. Nayak* (1992), *Beavers v. Haubert* (1905), *Strunk v. United States* (1973), *United States v. MacDonald* (1977).

The right to a quick trial protects the accused from extended incarceration and worry, while also benefiting the public interest.

It begins with arrest and continues through all stages — investigation, inquiry, trial, appeal, and revision — to minimize unjust and unnecessary delay.<sup>61</sup>

This case emphasizes the necessity of striking a balance between individual rights and national security. The dissenting opinions of Justices Ramaswamy and Sahai, which overturned portions of the 1987 Act, emphasized a crucial principle: even though terrorism poses a serious threat to national security and may warrant stricter laws, these laws must never be abused, even though the majority upheld the constitutional validity of the contested Acts. To safeguard the accused's rights and stop the misuse of anti-terror laws, safeguards must always be in place.

## **POTA**

Countries all across the world were increasingly wary of terrorism following the September 11, 2001 terrorist strikes in the United States. At the time, India was also dealing with severe security issues, particularly from extremist organizations like the LTTE in the South and in Jammu and Kashmir in the Northeast. Terrorists assaulted the Indian Parliament in New Delhi in December 2001, just a few months later. India's democracy was directly attacked by this. The Indian government responded by believing that more robust legislation was required to combat terrorism. Thus, in March 2002, the Prevention of Terrorism Act (POTA) was enacted by the Parliament. The government said it was required to address the rising terrorism danger. But, like the American Patriot Act, POTA quickly became one of the most contentious laws in Indian history.

POTA granted police and security services enormous authority. It empowered them to arrest and hold anyone for up to 180 days (six months) without filing official charges. It also made gaining bail extremely difficult because the accused had to establish their innocence before

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<sup>60</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 88 and 86

<sup>61</sup> Kartar Singh vs state of Punjab (1994) 3 SCC 570, pp 85 and 86

being freed. This violated the fundamental legal premise that all people are innocent unless proven guilty. When the Act went into effect, several complaints emerged of the statute being extensively exploited. POTA was said to have been used arbitrarily to target political opponents. Only four months after its passage, state law enforcement agents had detained 250 persons countrywide under the Act, and the number was quickly climbing. A scant eight months later, seven states where POTA was in effect had detained over 940 persons, at least 560 of whom were still in jail. Several important figures, including Vaiko, were detained under the legislation. Section 1(6) of the Act provided for an expiry period three years following its beginning. It had begun on October 24, 2001, and was set to terminate on October 24, 2004. The Prevention of Terrorism (Repeal) Ordinance, 2004, revoked the Act one month before its expiry date on September 21, 2004, and was later replaced by the Prevention of Terrorism (Repeal) Act, 2004 (assented to on December 21, 2004). The NDA urged the UPA to reintroduce the Act, but Congress attacked it and it did not pass.

Some sections of the act are:

- Section 3 of the Act defines "terrorist act" as any act that threatens India's integrity, security, or sovereignty, or causes death, devastation, or intimidation to the people.
- Police Special Powers: - Suspects can be detained for up to 180 days (6 months) without being charged.
- Confessions given to a police officer (SP level or higher) were accepted as evidence, a significant departure from standard legislation.
- Special Courts: - Established to enable fast trials. Proceedings can be held confidentially in camera, protecting witness identities.
- Forfeiture of Property and Financial Control: - Authorities may take property and freeze bank accounts suspected of being related to terrorism.
- Burden of Proof: In some situations, the burden of proof moved to the accused to establish their innocence, which is a significant divergence from the standard presumption of innocent.

POTA quickly became highly contentious, much as TADA had been previously. As a result, it became a significant political issue in the May 2004 elections. When the Congress-led coalition won the election, they upheld their commitment to repeal POTA since it had been "widely misused." The new administration stated that instead of special legislation, existing ordinary laws should be vigorously enforced.

Concerns persist even after POTA's formal repeal:

- First, even after it was formally repealed, POTA continued to harm many individuals. The repeal of POTA was not entirely retroactive, therefore lawsuits initiated under POTA might still continue.

However, unlike with TADA, the government adopted tougher measures to limit how long POTA would remain in effect after repeal. To do this, courts were barred from initiating new POTA proceedings for a year following the repeal, and central review panels were established to assess current cases before proceeding. These committees were required to complete their evaluations within one year after the repeal.

- Second, when the government abolished POTA, it retained some of its key prohibitions by amending the Unlawful Activities (Prevention) Act (UAPA) of 1967. These new UAPA laws continue to raise many of the same human rights issues that existed under POTA. Furthermore, several state governments already have antiterrorism legislation comparable to POTA and have even contemplated enacting additional ones. Although the central government's regulations, such as UAPA and its 2004 modifications, have primacy under the Indian Constitution, these state-level laws mean that comparable human rights issues that occurred under POTA may still occur in some states.
- Third, there is still much debate about whether India needs a unique national legislation to combat terrorism. Particularly in the wake of significant terrorist acts, opposition parties frequently denounce the government for abolishing POTA and even call for its reinstatement. For instance, The MDMK's founder and general secretary, Vaiko, was controversially detained and imprisoned for 19 months under the POTA for his support of the Liberation Tigers of Tamil Eelam (LTTE). A special POTA court condemned Delhi University lecturer S.A.R. Geelani to death for his suspected involvement in the 2001 attack on the Indian Parliament. On a legal technicality, the Delhi High Court later found him not guilty on appeal. Jamaat-e-Islami leader and Kashmiri nationalist Syed Ali Shah Geelani was detained under POTA. A member of the Legislative Assembly from Kunda, Uttar Pradesh, Raghuraj Pratap Singh, also known as Raja Bhaiya, was detained on suspicion of threatening Puran Singh Bundela, a dissident BJP MLA, with grave repercussions.

## **Conclusion**

A significant difficulty facing India's counterterrorism system today is striking a balance between security, federalism, and constitutional liberties. On the one hand, strong intelligence and law enforcement are necessary due to the threat of terrorism, which includes both domestic and international radicals. However, history demonstrates that extreme laws like POTA and TADA may be abused against political dissidents, minorities, and innocent people. Critics caution that without care, India may reproduce the shortcomings of TADA/POTA under a different name, even though the present UAPA (and related statutes) have brought improvements (e.g., parliamentary discussion, review processes).

One of the main issues is the extremely low conviction rate under special laws (around 2%), which means that many accused people endure years in prison before being found not guilty. Accusations of abuse (e.g., labelling activists or minorities as terrorists to quell dissent) and trial delays and overhangs (some inmates in recent instances have waited 10+ years for conviction). For many, the "process becomes the punishment" due to judicial delays and the propensity to refuse bail. Institutional inadequacies still exist: as seen by the delayed NCTC and previous jurisdictional disputes, intelligence-sharing across agencies and between the Centre and States is still insufficient. Additionally, despite calls for relaxation from human rights groups, politicians are under pressure to continue tightening regulations due to international responsibilities (such as FATF anti-terror funding guidelines).

The Unlawful Activities (Prevention) Act, 1967 (UAPA), which has undergone significant amendments, is India's primary anti-terror statute following the repeal of POTA in 2004. The UAPA Amendments of 2004 (and later in 2008, 2012, and 2019) added various POTA characteristics to the very modest legislation prohibiting secession that existed before to 2004. The majority of POTA's provisions were "re-incorporated" into UAPA 2004. The creation of a national registry of terrorist groups, the extension of the concept of "unlawful activity" to encompass terrorist activities, and the authority granted to state and federal police to look into specific terrorism charges are some of the major developments that have occurred throughout time. UAPA was reinforced to expand crimes and powers following the 2008 Mumbai attacks. The UAPA 2019 was particularly noteworthy since it gave the government the authority to declare people terrorists without following the legal system.

Today, the NIA Act, cordless phones, and other counterterrorism legislation coexist with UAPA to create a multi-layered legal framework. Many experts contend that the architecture is now "draconian" and easily abused. Well-known attorneys point out that UAPA's wide



criteria (such as "likely to threaten" public order) and the change in the burden of evidence effectively turn it into a weapon against minorities and dissidents. However, governments argue that strict rules are necessary, citing international commitments (such as FATF compliance) and transnational terrorism. The extensive reach of UAPA was upheld in a 2024 Supreme Court ruling, which further warned that "membership of an unlawful organisation" is a crime under UAPA.

From TADA to POTA to the current UAPA regime, India's counterterrorism history demonstrates the State's attempts to address changing threats while juggling constitutional and human rights limitations. Despite being passed under extraordinary circumstances, TADA and POTA illustrated the dangers of expansive and unbridled presidential authority. Nonetheless, modern legal and policy methods are influenced by their legacy.

To ensure that national security is maintained without sacrificing democratic ideals, a well-developed counterterrorism infrastructure must have robust investigation capabilities, unambiguous legal protections, and accountability procedures. India's institutional and legal solutions, which are firmly based in constitutionalism and the rule of law, must also change as threats do.