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The Tension Between Human Rights and National Security in India: A Critical Review

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ABSTRACT

India, as the world's largest democracy, enshrines robust fundamental rights in its Constitution, yet frequently curtails them in the name of national security. This paper offers a critical review of the persistent tension between human rights and security imperatives in the Indian context. It examines how legislative frameworks—particularly the Armed Forces (Special Powers) Act (AFSPA), the Unlawful Activities (Prevention) Act (UAPA), and the Citizenship Amendment Act (CAA) coupled with the National Register of Citizens (NRC)—have been used to justify prolonged detentions, extrajudicial actions, and systemic discrimination, especially against marginalized communities in Kashmir, the Northeast, and among religious minorities. While the state invokes sovereignty and internal threats to legitimize these measures, this review argues that such laws often function less as tools of counter-terrorism and more as instruments of political control and social exclusion. The judiciary's inconsistent stance—progressive in theory but deferential in practice—further enables executive overreach. International human rights bodies have repeatedly flagged India's declining civic freedoms, yet the government rejects external scrutiny under the banner of sovereignty. Drawing on legal judgments, policy documents, and scholarly critiques, this paper contends that sustainable security cannot be achieved through the suspension of rights but must be rooted in constitutional morality, accountability, and inclusion. In an era of rising authoritarianism and shrinking democratic space, reconciling security with human dignity remains India's most urgent democratic challenge.

Keywords: *Human Rights, National Security, AFSPA, UAPA, Indian Constitution, Judicial Review*

India, as the world's largest democracy, occupies a unique and paradoxical position in the global discourse on human rights and national security. On one hand, its Constitution—adopted in 1950—guarantees a robust framework of fundamental rights, including equality before law (Article 14),

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freedom of speech and expression (Article 19), and the right to life and personal liberty (Article 21). These provisions are not merely legal formalities but have been dynamically interpreted by the judiciary to encompass dignity, privacy, and due process (Baxi, 2001; Sathe, 2002). On the other hand, India has faced persistent internal and external security challenges—from cross-border terrorism and separatist insurgencies to left-wing extremism and communal violence—that have prompted successive governments to enact extraordinary legal measures often at the expense of civil liberties. This duality has created a sustained tension between the state's duty to protect its citizens and its obligation to uphold their constitutional rights.

The post-independence era witnessed the gradual expansion of security legislation, beginning with the Defence of India Act during wars and culminating in permanent statutes like the Armed Forces (Special Powers) Act (AFSPA) of 1958 and the Unlawful Activities (Prevention) Act (UAPA) of 1967. While these laws were ostensibly designed to combat threats to sovereignty and integrity, their implementation has frequently led to systemic human rights violations, particularly in marginalized regions such as Jammu & Kashmir, the Northeast, and tribal belts affected by Naxalism. The Indian state justifies these measures under the doctrine of "reasoned exceptionality," arguing that exceptional threats demand exceptional responses (Chatterjee, 2012). However, critics contend that such reasoning has normalized emergency powers, eroded democratic accountability, and created zones of legal impunity where the rule of law is suspended in practice, if not in theory.

This tension has intensified in the 21st century, especially after the 2001 Parliament attack and more recently under the current political dispensation, which has increasingly framed dissent as anti-national and equated national security with majoritarian cultural homogeneity (Jaffrelot, 2021). Policies like the Citizenship Amendment Act (CAA) and the proposed nationwide National Register of Citizens (NRC) further blur the line between citizenship, security, and exclusion. Meanwhile, international human rights bodies—including the United Nations Human Rights Council and Amnesty International—have repeatedly expressed concern over India's shrinking civic space and the weaponization of security laws against activists, journalists, and minorities (Amnesty International, 2020; OHCHR, 2018).

This paper offers a critical review of the evolving conflict between human rights and national security in India. It examines key legislative frameworks—AFSPA, UAPA, and CAA/NRC—analyzes the judiciary's ambivalent role, and evaluates the implications for India's democratic ethos. Ultimately, it argues that sustainable security cannot be achieved through the suspension of rights but must be grounded in them.

Theoretical Framework: Rights vs. Security

The foundational tension between human rights and national security in India stems from competing conceptions of state power. Liberal democratic theory posits that the state exists to protect individual rights, with security as a means to that end (Dworkin, 1977). In contrast, realist and securitization theories (Buzan et al., 1998) view security as an existential imperative that may override normal legal constraints during crises. India's constitutional design attempts to reconcile these paradigms: while Part III guarantees justiciable fundamental rights, Part XVIII (Emergency Provisions) allows their suspension during war, external aggression, or armed rebellion (Articles 352–356). However, the invocation of "national security" has increasingly occurred outside formal emergency declarations, through ordinary legislation that embeds emergency-like powers into routine governance.

This legal ambiguity enables what legal scholar Upendra Baxi (1982) terms the "jurisprudence of suspicion," wherein entire populations—especially in conflict zones—are presumed guilty until proven innocent. The state's security narrative constructs certain groups (e.g., Muslims in Kashmir, Adivasis in Bastar, or activists in urban centers) as inherent threats, thereby legitimizing surveillance, detention, and even lethal force without due process. Crucially, this framework operates not as a temporary exception but as a permanent feature of governance, undermining the very democratic norms it claims to defend.

Key Legislation and Their Human Rights Implications

(a) The Armed Forces (Special Powers) Act, 1958 (AFSPA)

AFSPA remains one of the most controversial pieces of legislation in independent India. Enacted initially for Assam and Manipur, it was extended to Jammu & Kashmir in 1990. Under Section 4, armed forces personnel in "disturbed areas" may shoot to kill, arrest without warrant, and search premises without judicial oversight. Most critically, Section 6 grants them immunity from prosecution unless the Central Government sanctions it—a provision rarely invoked. This has fostered a culture of impunity, documented extensively by human rights organizations (Human Rights Watch, 1996; PUCL, 2005).

The 2004 killing of Thangjam Manorama Devi in Manipur—a suspected militant allegedly raped and murdered by Assam Rifles personnel—sparked massive protests and a 16-year hunger strike by Irom Sharmila, who demanded AFSPA's repeal. Despite the Supreme Court's landmark 2016 judgment stating that "the army is not above the law" and that every encounter must be investigated (Extra Judicial Execution Victim Families Association v. Union of India, 2016), no soldier has been prosecuted under AFSPA to date. The Act effectively creates a parallel legal universe where the right to life (Article 21) is rendered conditional upon geography and identity.

(b) The Unlawful Activities (Prevention) Act, 1967 (UAPA)

Originally intended to address secessionist movements, UAPA has undergone significant amendments—especially in 2004, 2008, and 2019—that transformed it into a broad anti-terror and anti-dissent tool. The 2019 amendment allows the government to designate individuals (not just organizations) as "terrorists" without trial, based on vague criteria such as "intent to threaten economic security" (Ministry of Home Affairs, 2019). Once labeled, individuals face social stigma, asset freezing, and near-impossible bail conditions.

Section 43D (5) of UAPA prohibits bail if the court finds the accusation "prima facie true"—a standard lower than "beyond reasonable doubt." This has led to prolonged pre-trial detentions, as seen in the Bhima Koregaon case, where activists like Sudha Bharadwaj and Varavara Rao spent years in jail without conviction (Amnesty International, 2020). Scholars argue that UAPA functions less as a counter-terrorism law and more as a mechanism of political repression, targeting voices critical of state policy (Sundar, 2020). The law's expansive definition of "unlawful activity" includes any action that "disclaims, questions, or disrupts" India's sovereignty—a clause so broad it could encompass peaceful protest.

(c) National Register of Citizens (NRC) and Citizenship Amendment Act (CAA)

The 2019 CAA offers fast-track citizenship to non-Muslim migrants from Pakistan, Afghanistan, and Bangladesh who entered India before 2015. Coupled with the proposed nationwide NRC—which requires all residents to prove their citizenship through legacy documents—the policy creates a two-tier system: non-Muslims excluded from the NRC can seek refuge under CAA, while Muslims face statelessness. This explicitly violates Article 14's guarantee of equality, as it introduces religion as a criterion for legal status (Ghosh, 2020).

In Assam, where the NRC was implemented in 2019, nearly 2 million people—many of them Bengali-speaking Muslims—were excluded, rendering them vulnerable to detention camps (HRW, 2020). The Supreme Court's passive oversight of this process, despite petitions challenging its constitutionality, reflects judicial deference to executive authority in matters framed as "national interest." Together, CAA and NRC represent a shift from civic to ethno-religious nationalism, where security is redefined as cultural purity rather than physical safety.

The Judiciary: Guardian or Complicit?

India's judiciary has played a dual role in the rights-security debate. Landmark rulings like Maneka Gandhi v. Union of India (1978) expanded Article 21 to include procedural fairness, establishing that "procedure established by law" must be fair, just, and reasonable. Similarly, in Puttaswamy v. Union of India (2017), the Court recognized privacy as intrinsic to dignity and liberty, striking a blow against unchecked state surveillance.

However, when it comes to security laws, the judiciary has often exhibited restraint. In People's Union for Democratic Rights v. Union of India (1982), the Court upheld the validity of preventive detention laws, asserting that "national security overrides individual liberty." More recently, in Union of India v. Mohd. Arif (2014), the Supreme Court refused to stay executions in terror cases, emphasizing "collective conscience" over due process. Even in the AFSPA context, while the 2016 judgment mandated investigations into encounter killings, it stopped short of declaring the Act unconstitutional, citing "operational necessities."

This pattern of judicial deference—what scholar Pratap Bhanu Mehta (2003) calls "constitutional silences"—reflects institutional caution in confronting the executive on security matters. The result is a jurisprudence that affirms rights in principle but tolerates their erosion in practice, particularly when marginalized communities are affected.

International Response and India's Stance

International criticism of India's security policies has grown steadily. The Office of the UN High Commissioner for Human Rights (OHCHR) released its first-ever report on Kashmir in 2018, calling for the repeal of AFSPA and accountability for abuses (OHCHR, 2018). Similarly, Amnesty

International and Human Rights Watch have documented the misuse of UAPA to silence dissent (HRW, 2021). Freedom House downgraded India from "Free" to "Partly Free" in 2021, citing "deteriorating conditions for Muslims and other marginalized groups" (Freedom House, 2021).

India's response has been consistent: it rejects external scrutiny as interference in sovereign affairs. Officials argue that Western democracies also curtail rights during crises (e.g., the USA PATRIOT Act), implying moral equivalence. Yet, unlike the U.S., India lacks robust congressional oversight, independent intelligence review boards, or sunset clauses for emergency laws. Moreover, India's refusal to ratify core human rights treaties—such as the Convention Against Torture—further isolates it from global accountability mechanisms (Rajagopal, 2003).

This defensive posture masks a deeper contradiction: while India champions multilateralism and democratic values abroad, it increasingly adopts illiberal practices at home. The gap between rhetoric and reality undermines its credibility as a normative power.

Conclusion: Toward a Rights-Based Security Paradigm

The tension between human rights and national security in India is not inevitable—it is politically constructed. Security laws like AFSPA and UAPA were born of specific historical contexts but have outlived their utility, becoming instruments of control rather than protection. True national security cannot rest on fear, exclusion, or impunity; it must be rooted in justice, inclusion, and the rule of law.

Reforms are urgently needed: AFSPA should be repealed and replaced with community-policing models; UAPA must be amended to restore bail rights and narrow the definition of "terrorism"; and CAA/NRC must be abandoned as discriminatory. Crucially, parliamentary committees and independent oversight bodies should monitor security operations to prevent abuse.

As Amartya Sen (2005) reminds us, democracy is not just about elections but about public reasoning and accountability. India's greatest security asset is not its army or intelligence agencies, but its constitutional commitment to human dignity. Preserving that commitment—even in times of crisis—is the surest path to lasting peace.

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