

Human Rights and Counterterrorism: A Comparative Analysis of Pakistan and India's Approaches to Civil Liberties and Security



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Abstract: *This article presents a comparative analysis of Pakistan and India's counterterrorism frameworks and their implications for human rights, especially concerning marginalized communities. Employing Critical Theory, the study examines how laws such as Pakistan's Anti-Terrorism Act (1997) and India's Unlawful Activities Prevention Act (UAPA) institutionalize "states of exception" that legitimize repression and suspend constitutional rights. The article analyzes India's revocation of Article 370 in Kashmir and Pakistan's crackdown on the Baloch Liberation Army (BLA) and the broader Baloch nationalist movement to show how counterterrorism is deployed to suppress dissent under the guise of national security. Despite their differing governance models India's electoral majoritarianism and Pakistan's political instability, both states use counterterrorism to justify structural violence, arbitrary detention, and censorship. The study underscores the urgent need for legal reform, judicial oversight, and rights-based governance that reconciles security imperatives with civil liberties in South Asia.*

Keywords: Counterterrorism, Anti-Terrorism act, 9/11, Human Rights, Unlawful Activities Prevention Act.

Introduction

There are now core challenges of the twenty first century of finding the proper balance between national security imperatives and human rights protection. After the 9/11 attack, the wide counterterror framework especially seen in the international arena chose lax policies to safeguard civil rights against national security under the principle of 'exceptionalism' (Scheinin, 2018). The second of these dilemmas is even more acute in South Asia due to protracted insurgencies, ethnonationalist conflicts and cross border terrorism, and two critical case studies are Pakistan and India. Pakistan and India both have a problem with militant factions. Taliban affiliated factions for

Pakistan and Kashmir militants, and Maoist insurgents for India whose very existence is a threat to their existence as states but whose response is distinctly different due to their respective political philosophy.

Post 9/11 the laws of both Pakistan and India, Pakistan's Anti-Terrorism Act (1997) and India's Unlawful Activities Prevention Act (UAAP), which give sweeping powers to security agencies while stripping due process, have been draconian (Chaudhary, 2022). Both countries are condemned by international human rights bodies such as the UN Human Rights Council on numerous counts for extrajudicial killings, arbitrary detentions, censorship, and so

forth (Edelman, 2024). But democratic institutions in India, like an independent judiciary and a vibrant civil society, may sometimes blunt abuse, as in Supreme Court decisions reducing one sort of shutdown, of the internet, in Kashmir (Vijaykumar v. Union of India, 2020). In comparison, Pakistan's hybrid regime that recognizes the military's outsized influence grants impunity to security forces (Siddiqi, 2017).

As an addition to the limited comparative analysis of counterterrorism and human rights in South Asia, this study advances theories of the competencies and responsibilities of national governments, their responsibility to protect, and the minimum standards for the treatment of persons in the context of counterterrorism in South Asia based on case studies (Pakistan's Crackdown on the Baloch Liberation Army (BLA) and India's revocation of Article 370 in Kashmir). It is methodologically based on the conduct of qualitative analysis of legislation, NGO reports, and secondary literature with the purpose of evaluating compliance with international human rights law and in particular the International Covenant for Civil and Political Rights (ICCPR) and Convention Against Torture (CAT).

Literature Review

The level of debate on the interplay between counterterrorism measures and human rights has been extensive and particularly so in the context of South Asia where both Pakistan and India continue to face serious security challenges. Herein, this review draws up the existing research on their approaches in terms of the legal frameworks, the human rights impacts and the socio-political dynamics.

In the post 9/11 age, states have passed counterterrorism laws that are glittering to the civil liberties. This tension can be shaped as a moral dilemma as Harvard and NYU scholars, Jeremy Waldron (2003) and Ronald Dworkin (2002). On the other hand, states must protect people, they must do so while maintaining democratic values. In direct relation to the idea of indefinite detention, Scheinin (2018) critiques how 'securitization' of governance normalizes

rights violations such as through emergency measures. While the UN Global Counter Terrorism Strategy endorses compliance with human rights law, thus far states have shown preference for security as demonstrated in United States' Patriot Act and Terrorist Act 2000 in the UK. These works create a theoretical reasoning of testing Pakistan and India's policies through the security-liberty paradigm.

Research Questions

How do Pakistan and India's counterterrorism frameworks balance national security imperatives with human rights protections, and what factors explain disparities in their treatment of civil liberties, particularly for marginalized communities?

Objectives

The research aims at critically analyzing and comparing the legal, institutional and socio-political dynamics shaping the counter terrorism policies of Pakistan and India with regard to their human rights.

Research Methodology

The present study analyzes human rights impacts of counterterrorism framework in Pakistan and India through the lens of qualitative comparative case study. The methodology integrates:

Document Analysis as a means of examining primary sources, or laws, policy documents and judicial rulings, and secondary sources, or NGO reports and academic literature etc.

Comparative Legal Analysis as Contrasting Pakistan's *Anti-Terrorism Act (1997) * and National Action Plan with India's Unlawful Activities Prevention Act (UAPA) and Armed Forces Special Powers Act (AFSPA).

Case Studies act as the focused analysis of certain incidents (e.g. The revocation of Article 370 in Kashmir by India, Pakistan's Crackdown on the Baloch Liberation Army and the Baloch Insurgency) that provide enough context to human rights violations. South Asian security and human rights, as well as peer reviewed articles and books. NGO Reports like Amnesty International, Human Rights Watch, and

International Crisis Group publications. Secondary data in form of coverage of counterterrorism operations and rights abuses in reputed outlets such as Dawn and The Hindu were reviewed.

Theoretical Framework

Application of Critical Theory to Pakistan and India's Counterterrorism Frameworks

The most appropriate framework to understand how counterterrorism policies in Pakistan and India contribute to systemic oppression, especially vis a vis the marginalized communities is that of the Critical Theory found in the works of Giorgio Agamben (2005) and Michel Foucault (1975). This theory is a critique against how states adopted security narratives to

use to create "states of exception" legal political zones where normal rights protections are suspended for this structural violence to happen based groups that are most vulnerable. Here I will apply this theory to both the countries.

1. Critical Theory: Core Tenets

Emergency laws are the laws in States of Exception which suspend constitutional rights and normalize repression.

Systemic oppression takes place through laws, policies, discourses and is institutionalized through the latter.

The victims are marginalized in the process of framing "Others" as existential threats in order to justify their exclusion.

2. Pakistan and India's Militarization, Ethno-Religious Exclusion and Legalized Repression

Pakistan: Militarization and Ethno-Religious Exclusion a. States of Exception Military Courts (2015–2019): Established after the Peshawar school attack, these courts bypassed civilian due process, trying civilians in secret trials. This created a legal black hole where rights like fair trials (ICCPR Article 14) were suspended. Anti-Terrorism Act (ATA) 1997: Vague definitions of "terrorism" allow arbitrary detention of activists, journalists, and ethnic minorities (e.g., BLA). b. Structural Violence Enforced Disappearances cases of missing persons reflect systemic flaw of security. c. Marginalization of "Others" Baloch Separatists: Labeled "anti-state" to justify military crackdowns in Balochistan.	India: Majoritarianism and Legalized Repression a. States of Exception Armed Forces Special Powers Act (AFSPA): Grants immunity to security forces in Kashmir and Northeast India, enabling extrajudicial killings and torture (e.g., 2010 Machil fake encounter case). Unlawful Activities Prevention Act (UAPA): Allows indefinite detention without charge, targeting Muslims, Dalits, and activists (e.g., Bhima Koregaon accused). b. Structural Violence Kashmir Lockdown (2019): Revocation of Article 370 under "national security" pretexts led to mass arrests, internet shutdowns, and criminalization of Kashmiri dissent. Citizenship Amendment Act (CAA): Excludes Muslims, institutionalizing Hindutva's exclusionary nationalism. c. Marginalization of "Others" Muslims: Framed as "anti-nationals" in BJP's Hindutva discourse (e.g., lynching under cow protection laws). Dalits/Adivasis: UAPA used to suppress land rights movements in Maoist-affected regions. India's legal exceptionalism under AFSPA/UAPA reflects a Hindu majoritarian state of exception, where Muslims and dissidents are stripped of rights to consolidate political power.
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3. Comparative Insights Through Critical Theory

Aspect	Pakistan	India
State of Exception	ATA's arbitrary detentions	AFSPA in Kashmir, UAPA's indefinite detention
Structural Violence	Enforced disappearances	Criminalization of Kashmiri/Muslim dissent
Marginalized "Others"	Ethnic minorities	Religious minorities (Muslims, Dalits)
Discursive Framing	"Anti-state" activists as threats	"Urban Naxals"/"Tukde Tukde Gang" as threats

4. Why Critical Theory Fits Best

Reveals Through Exposing Systemic Oppression: The way in which counterterrorism laws are deployed as social control, but not neutral security affairs.

For example, UAPA and ATA victimize no terrorists, in particular minorities.

Highlights States of Exception: Explains how laws in the states of emergency permanently prohibiting rights are maintained in conflict zones such as Kashmir and Balochistan.

Links Power and Violence: Connects state policies to broader structures of caste, ethnicity, and religious majoritarianism.

Example: India's Hindutva ideology.

• Pakistan's Anti-Terrorism Act 1997

In the 1990s, terrorism and sectarian violence started escalating in Pakistan, during which period the Anti-Terrorism Act (ATA) 1997 was brought into being. To address these security challenges, the law had stipulated the formation of specialized Anti-Terrorism Courts (ATC) to provide timely trials through expeditious procedures on looking away the typical delays of Pakistan's regular judicial system (Khan, 2016). The Act broadly defined terrorism to include bombings, assassinations, kidnappings and sectarian attacks and had given police increased powers to investigate suspects

immune from prolonged detention and confessions to the police officer even if they were obtained under duress. The penalties provided for the convicted individuals or groups under the ATA were severe and included life imprisonment and even death penalty, and asset forfeiture. A chief concern of the law was directed at curbing sectarian militancy, especially that caused by groups such as Sipah-e-Sahaba and Lashkar-e-Jhangvi that had played a role in carrying out widespread violence against religious minorities.

Further, a series of subsequent legislation, including the Protection of Pakistan Act of 2013, has led to the increase in the state powers in line with ongoing adjustments to evolving security dynamics (Jawad, 2022).

Amendments and Evolution:

The Act, which was revised several times, most recently in 2007 has post 9/11 amendments to comply with the international counter terrorism efforts such as banning groups connected to Al Qaeda.

In response to ongoing adjustments to security challenges, the Protection of Pakistan Act was expanded state powers when it was passed in 2013 (Ahmed, 2015).

• India's Unlawful Activities Prevention Act (UAPA)

Unlawful Activities Prevention Act (UAPA) was enacted in 1967 as a stringent anti-terrorism law to counter threats to the national security of India. The issue was initially framed to check against secession and separatism, but with hindsight, it has been extended post-9/11 and post the 2008 Mumbai attacks to prevent transnational terrorism. UAPA criminalizes “unlawful activities” broadly acts hurting India’s sovereignty, integrity or security and provides the government the power to label people and organisations as “terrorists” without a trial (which was strengthened further by a 2019 amendment). Associations can be banned by authorities, assets are frozen and suspects detained for up to 180 days without formal charges, bail is notoriously hard to secure. The legislative counsel’s say the law allows misuse to suffocate dissent, recognizing activists,

- **Comparison of both Acts**

Similarities Both laws prioritize expedited trials, harsh penalties, and expanded police powers. Accused of undermining due process and enabling state overreach.	Differences Scope: UAPA focuses more on “anti-national” activities beyond terrorism (e.g., secessionism), while ATA 1997 targets sectarian violence and militant groups. Individual Designations: UAPA’s 2019 amendment allows labeling individuals as terrorists, unlike ATA. Bail Provisions: UAPA’s bail restrictions are stricter than ATA’s.
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Case Study 1: India’s Revocation of Article 370 in Kashmir (2019)

Jammu & Kashmir (J&K) had been given special autonomy under Article 370 of Indian Constitution whereby it could enact laws except in the subjects of defense; foreign affairs and; communication. In August 2019, on August 5th, the Indian government revoked this status and divided the state into two Union Territories (J&K and Ladakh) directly under federal control. The rationale was India was integrating Kashmir into its mainstream and stifling separatist militancy (Pandya, 2022).

Human Rights Violations

The internet and phone went out for months, the longest in a democracy, crippling daily life,

journalists and marginalised communities as targets under the counterterrorism label. Images of Gautam Navlakha and student leader Umar Khalid being arrested are just some of such high-profile cases which have condemned the conflation of protest and terrorism. Despite the poor conviction rate, the UAPA is regarded as procedurally harsh for it places the burden of proof of innocence on the accused in certain cases, an issue in violation of due process and human rights (Chauhan, 2021). It is defended by its supporters as crucial to protecting national security in an area blighted by militancy, but its record is a poison that has poisoned India’s own record of balancing security requirements with democratic freedoms as allegations of authoritarian bullying multiply (Mahawar, 2020).

healthcare and journalism. Under the Public Safety Act (PSA), which permits detention without trial for up to two years, nearly 4,000 people including political leader such as former Chief Ministers Mehbooba Mufti and Omar Abdullah, activists and journalists were detained. Held peaceful protests, which were banned and security forces responded with pellet guns, tear gas, and live ammunitions leading to civilian injuries and deaths. Under the Unlawful Activities Prevention Act (UAPA), writers like Aasif Sultan, Kashmiri journalists, were charged for bringing news about protest (Malik, 2024).

The clampdown was condemned by the UN Human Rights Council, Amnesty International and other bodies as violative of freedom of

expression, movement and self-determination. Geopolitics required the U.S. and EU to express concern but not directly criticize India.

Indeed, the revocation pointed out the misuse of national security laws (UAPA, PSA) to repress dissent, at the cost of due process and ICCPR freedoms which India has signed up to.

Case Study 2: Pakistan's Crackdown on the Baloch Liberation Army (BLA)

The Baloch Liberation Army (BLA), designated as a terrorist organization. Emerging from longstanding grievances regarding political marginalization, economic exploitation, and military operations, the BLA has targeted state institutions, infrastructure projects (e.g., CPEC), and security forces. In response, Pakistan's counterterrorism strategy has involved widespread militarization of the province, mass arrests, enforced disappearances, and media blackouts.

Human Rights Violations

The BLA and affiliated groups have been criminalized under the Anti-Terrorism Act (ATA), with courts often bypassing due process.

The state has accused BLA of receiving foreign support and labeled the insurgency a threat to national sovereignty. This has further justified aggressive counterinsurgency tactics.

The BLA's violent activities contribute a cycle of violence, where civilian lives are in danger. Recent example of human rights violation is given below

2025 Jaffar Express hijacking (March 11–12, 2025)

On March 11, militants from the Balochistan Liberation Army (BLA) attacked the passenger train while it was passing through a tunnel in the Bolan Pass, derailing and seizing it amid hundreds of travelers.

The BLA took hostages, including civilians and security personnel, and issued a 48-hour ultimatum demanding the release of political prisoners.

<https://www.picss.net/articles/blas-shifting-claims-a-timeline-of-the-jaffar-express->

[hijacking/](#)

Pakistani security forces launched Operation Green Bolan, eventually rescuing hundreds of hostages in a 30–36-hour standoff. All 33 militants were killed; official reports say between 21–26 hostages and security personnel lost their lives, with dozens more injured.

Conclusion

In India, the abrogation of Article 370 led to sweeping crackdowns in Kashmir marked by mass detentions, communication blackouts, and the application of harsh laws like UAPA and the Public Safety Act. These actions curtailed civil liberties, stifled democratic expression, and deepened the alienation of Kashmiri Muslims, raising serious concerns about due process and freedom of expression under international human rights law.

In Pakistan, the state's aggressive response to the BLA insurgency including enforced disappearances, military operations, and legal abuses under the Anti-Terrorism Act highlights how counterterrorism has enabled prolonged states of exception in Balochistan. While the BLA's violent tactics endanger civilians, resource exploitation and violating human rights.

Recommendations

- Correct the vague provisions contained in the ATA and UAPA so that they cannot be misused against dissent. Define "terrorism" clearly to not include peaceful protest and political opposition.
- India should repeal the Armed Forces Special Powers Act (AFSPA) to take the immunity from security forces in conflict zones like Kashmir.
- National Human Rights Commission (NHRC) of India and Pakistan's Commission of Inquiry on Enforced Disappearances (COIED) should be empowered to investigate abuses, with effect.
- Policy to end systemic discrimination against Pashtuns, Baloch, Kashmiris

and Muslims; include reparations for victims of state violence.

- Mandatory defenses for journalists and activists against counterterrorism retaliatory charges are necessary.
- Development programs in the poor and marginalized regions where people are pushed towards radicalization by poverty and exclusion should be invested.

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