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PROPORTIONALITY IN ANTI-TERROR LEGISLATION: BALANCING STATE SECURITY AND INDIVIDUAL RIGHTS

Dr. Akashdeep Singh

Associate Professor of Law, Rayat College of Law, Railmajra, S.B.S. Nagar, Punjab

Abstract

The evolving nature of terrorism has compelled states worldwide to enact stringent legal frameworks designed to counter national security threats. In India, legislations such as the Unlawful Activities (Prevention) Act (UAPA), National Security Act (NSA), and the Prevention of Money Laundering Act (PMLA) form the backbone of the state's anti-terrorism regime. While these statutes are justified as necessary instruments to ensure security and order, their broad provisions often lead to the curtailment of fundamental rights, including the rights to life, liberty, fair trial, and free speech. This raises a critical constitutional question—whether such legislative measures satisfy the principle of proportionality, which requires a fair balance between the means employed and the intended objective. This research examines the concept of proportionality as a constitutional standard of judicial review in the context of anti-terror laws in India. It explores whether current legal provisions and their implementation uphold or infringe upon the delicate equilibrium between safeguarding national security and protecting individual freedoms. The study adopts a doctrinal legal methodology, supported by critical analysis of case laws and statutory frameworks. It argues that a lack of robust application of the proportionality principle has led to excessive state powers and undermined constitutional safeguards. The paper concludes with recommendations for embedding proportionality as a legislative and judicial tool to ensure that anti-terror laws operate within the bounds of constitutional morality.

Keywords: Proportionality, Anti-terror Legislation, UAPA, Fundamental Rights, Constitutional Law, National Security, Human Rights, Judicial Review, Constitutional Morality

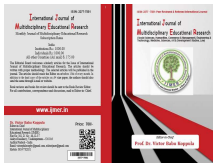
Introduction

The twenty-first century has witnessed an alarming escalation in transnational terrorism, prompting nations to adopt increasingly forceful legal strategies to combat the threat.¹ The September 11, 2001, terrorist attacks served as a pivotal moment in the evolution of global counterterrorism strategies, leading nations around the world to strengthen their efforts against terrorism. While many nations had faced terrorist threats prior to 9/11, the attacks significantly heightened the urgency of addressing such threats, making counterterrorism a top priority for domestic authorities as well as regional and international bodies. Alongside these enhanced security measures, there has also been growing concern over the potential misuse of state authority under the guise of fighting terrorism, highlighting the need for safeguards to prevent the erosion of civil liberties.²

There is often a perceived conflict between safeguarding human rights and ensuring national security. Government narratives on security frequently emphasize that, in certain situations, civil liberties and individual freedoms may need to be limited in order to protect the broader interests of the state. In India, while several robust legal measures have been enacted to counter terrorism and uphold national security such as, The Unlawful Activities (Prevention) Act, 1967 (UAPA), especially after its 2004 and 2019 amendments, exemplifies the expansion of state authority in the name of national security. The National Security Act, 1980 (NSA) allows preventive detention without trial, and the Prevention of Money Laundering Act, 2002 (PMLA), though ostensibly aimed at financial crimes, is often invoked in terrorism-related cases. These laws permit sweeping powers such as extended pre-trial detention, restricted access to bail, reversed burden of proof, and limitations on judicial oversight. These laws often face criticism for failing to align with international human rights standards. Over the past five decades since gaining independence, India has taken considerable steps to develop a

¹ Randy Borum, *Psychology of Terrorism* 4 (University of South Florida, USA, 2004).

² Victor V. Ramraj, Michael Hor, Kent Roach, *Global Anti-Terrorism Law and Policy*, 1 (Cambridge University Press, 2012).



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comprehensive legal, constitutional, and institutional framework aimed at the protection and promotion of human rights. Since the 1980s, the Indian judiciary—particularly the Supreme Court—has played an active role in reinforcing these protections. Through a series of landmark rulings, the courts have imposed checks on executive and law enforcement powers, while at the same time broadening the scope and understanding of civil liberties.³

In this context, the doctrine of proportionality emerges as a critical tool for assessing whether the limitation of rights by such laws is justifiable. Originating in European legal traditions and later adopted in various common law jurisdictions, proportionality has evolved into a structured method for courts to examine the legitimacy, necessity, and impact of state action that restricts fundamental freedoms.⁴ In Indian constitutional jurisprudence, the doctrine has found explicit endorsement in landmark cases such as *Modern Dental College v. State of Madhya Pradesh*⁵, *Justice K.S. Puttaswamy (Privacy)*⁶, and *Anuradha Bhasin v. Union of India*⁷. Despite this, courts have been inconsistent in applying proportionality rigorously when adjudicating national security matters.

The central concern of this research is whether India's current anti-terror regime meets the constitutional test of proportionality. This question is not merely legal but also deeply philosophical: can a democracy preserve its identity while permitting the state to exercise unchecked power in the name of security? Proportionality offers a framework to resolve this dilemma by asking whether the means adopted by the state are suitable, necessary, and minimally restrictive in achieving their ends.⁸

This paper argues that anti-terror legislation in India, particularly in its drafting and execution, often fails to uphold the principle of proportionality. Provisions that allow the designation of individuals as terrorists without trial, denial of anticipatory bail, and indefinite preventive detention violate core constitutional safeguards. The judiciary's deferential attitude in national security cases further exacerbates the problem, allowing executive overreach to go unchecked.

The need for this research is both timely and necessary. In a democratic polity governed by the rule of law, national security cannot be pursued at the cost of fundamental rights. The protection of life, liberty, and due process must not be suspended by invoking a perpetual state of emergency.⁹ This paper thus seeks to contribute to the scholarly and legal discourse on anti-terror law reform, advocating for a more rights-sensitive approach that places proportionality at the core of legislative and judicial reasoning.

Understanding the Doctrine of Proportionality

1. Introduction to the Doctrine

The doctrine of proportionality is a fundamental principle in constitutional and administrative law that serves as a standard for evaluating the legitimacy of state action, particularly when such action restricts fundamental rights.¹⁰ It is based on the idea that the means employed by the state to achieve a legitimate objective must not be excessive in relation to the aim

³ C. Raj Kumar, "Human Rights Implications of National Security Laws in India: Combating Terrorism While Perserving Civil Liberties Combating Terrorism While Perserving Civil Liberties", 33(2) *Denver Journal of International Law and Policy* 196-197 (2005).

⁴ Juan Cianciardo, "The Principle of Proportionality: The Challenges of Human Rights", 3 *Journal of Civil Law Studies* 179 (2010).

⁵ AIR 2016 SC 2601

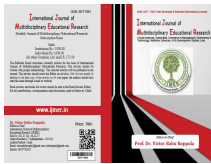
⁶ AIR 2017 SC 4161

⁷ AIR 2020 SC 1308

⁸ Andrii Kubko, "The principle of proportionality in the restriction of human rights during the war in Ukraine", 13(82) *Amazonia investiga* 141 (2024).

⁹ C. Raj Kumar, "Human Rights Implications of National Security Laws in India: Combating Terrorism While Perserving Civil Liberties", 33(2) *Denver Journal of International Law & Policy* 217 (2005).

¹⁰ Rüdiger Wolfrum, "Proportionality: Reconsidering the Application of an Established Principle in International Law" 99 *International Law Studies* 677 (2022).



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pursued. Rooted in European legal systems and widely adopted across liberal democracies, proportionality has evolved into a vital framework for balancing competing interests—most notably, individual rights and collective security.¹¹

In essence, proportionality asks whether:

1. The objective is legitimate;
2. The measure taken is rationally connected to that objective;
3. There are less restrictive alternatives available;
4. There is a proper balance between the benefits of the measure and the harm to rights.¹²

In the context of anti-terror legislation, where laws often operate in the shadow of perceived urgency and national threat, proportionality functions as a legal shield to prevent the erosion of civil liberties under the guise of national security.¹³

2. Historical Development and Global Emergence

The roots of proportionality lie in German administrative law, where it developed as a mechanism to control state action.¹⁴ It gained prominence through the jurisprudence of the German Federal Constitutional Court and was later adopted by the European Court of Human Rights (ECHR) as part of the interpretation of the European Convention on Human Rights (ECHR).¹⁵ In jurisdictions such as the United Kingdom, proportionality gained traction post-1998 with the enactment of the Human Rights Act, which incorporated the ECHR into domestic law.¹⁶ In Canada, the Supreme Court articulated the proportionality test in *R v. Oakes* (1986), forming what is known as the "Oakes Test" under Section 1 of the Canadian Charter of Rights and Freedoms. These developments paved the way for proportionality to become a central doctrine in comparative constitutional law.¹⁷

3. Structure and Elements of the Doctrine

The proportionality test typically comprises four analytical steps:

1. **Legitimate Aim:** The state action must pursue an objective that is considered constitutionally acceptable—such as national security, public order, or the prevention of terrorism.
2. **Rational Connection:** There must be a logical nexus between the objective and the measure adopted. For example, if a provision aims to prevent terror financing, it must be demonstrably capable of achieving that aim.
3. **Necessity (Least Restrictive Means):** Among multiple available options, the state must adopt the measure that least restricts individual rights while still achieving the intended goal.
4. **Balancing (Proportionality stricto sensu):** The benefits of the measure must outweigh the harm caused to the individual's rights. This is the most nuanced part of the test, requiring courts to engage in a value-based assessment.

These steps impose both procedural discipline and substantive justification on state action, thereby ensuring rights are not curtailed unnecessarily.¹⁸

¹¹ Juan Cianciardo, "The Principle of Proportionality: The Challenges of Human Rights", Vol. 3 *Journal of Civil Law Studies* 179 (2010).

¹² Dhruv Goel, "Administration of Doctrine of Proportionality in Administrative Law", Volume 3 (3) *Indian Journal of Integrated Research in Law* 2-3 (2023).

¹³ Waseem Ahmad Qureshi, "Applying the Principle of Proportionality to the War on Terror" Volume 12 (3) *Richmond Public Interest Law Review* 383 (2019).

¹⁴ Poonam Rawat, "Doctrine of Proportionality: Expanding Dimensions of Judicial Review in Indian Context", Volume 3 (1) *Dehradun Law Review* 87 (2011).

¹⁵ Radha Ranjan, "Evolution of the Doctrine of Proportionality: Assessing its Scope and Ambit in Relation to the Right to Privacy in India", 10 (1) *Indian Journal of Law and Human Behaviour* 33-34 (2024).

¹⁶ Nimita Aksa Pradeep, "Doctrine of Proportionality in Indian Administrative Law: An Analysis", *Indian Journal of Law, Polity and Administration* 5 (2022).

¹⁷ Adam M. Dodek, "The Dutiful Conscript: An Originalist View of Justice Wilson's Conception of Charter Rights and Their Limits Conception of Charter Rights and Their Limits", 41 *The Supreme Court Law Review: Osgoode's Annual Constitutional Cases Conference* 347-350 (2008).

¹⁸ Shruti Bedi, "Proportionality and Burden of Proof: Constitutional Review in India", 10 *Indian Journal of Constitutional Law* 4-5 (2021).



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4. Proportionality in Indian Constitutional Law

The Indian Constitution does not contain a single, overarching limitations clause for all fundamental rights; rather, each right is governed by its own specific restrictions, either explicitly stated in the text or shaped through judicial interpretation. Traditionally, the courts relied on the test of "reasonableness" under Articles 14 and 19 to evaluate the validity of these restrictions. However, especially in the post-2010 period, the Indian judiciary—though initially cautious—has increasingly adopted the doctrine of proportionality as a more refined framework for balancing individual rights against the interests of the state in complex constitutional cases.¹⁹

a. Early Approach: Reasonableness vs. Proportionality

The Supreme Court formally introduced the Doctrine of Proportionality in *Om Kumar v. Union of India*,²⁰ where it declined to interfere with the punishment imposed on four civil servants, finding no legal violation or excessive disproportionality in the disciplinary action. In doing so, the Court not only laid the groundwork for applying proportionality in Indian administrative law but also clarified its scope. It distinguished between administrative and legislative actions, holding that while the proportionality test applies more rigorously to administrative decisions, legislative measures are subject to broader scrutiny under standards such as arbitrariness or manifest unreasonableness. This nuanced approach has since been reinforced through subsequent judicial pronouncements.

b. Shift to Structured Proportionality: Key Judgments

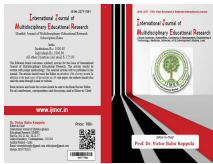
- **Modern Dental College v. State of Madhya Pradesh (2016):** The Court formally adopted the four-pronged proportionality test, aligning Indian law with international standards. The judgment underscores the **Doctrine of Proportionality** as the guiding principle in balancing the fundamental right of private unaided professional institutions under Article 19(1)(g) to establish and administer educational institutions with the State's obligation to regulate education in public interest. While recognizing education as a noble occupation and not a commercial enterprise, the Court held that the right to occupation is not absolute and is subject to reasonable restrictions under Article 19(6), specifically to promote transparency, uphold fairness and merit in admissions, and curb profiteering practices. The Court emphasized that the **regulatory measures such as conducting a Common Entrance Test (NEET), fee regulation, and reservations** are constitutionally valid and proportionate as they aim to uphold the **right to equality (Article 14)** for students and fulfill **Directive Principles** under Part IV. These restrictions maintain a just balance between institutional autonomy and social control, ensuring that education serves the broader goal of social transformation, and thus, do not violate institutional rights.²¹
- **Justice K.S. Puttaswamy (Privacy) v. Union of India (2017):** In this landmark judgment, the Supreme Court of India unanimously held that the **right to privacy is a fundamental right**, intrinsically linked to the right to life and personal liberty under **Article 21** of the Constitution. The Court not only affirmed privacy as a constitutionally protected right but also laid down a structured framework for evaluating any limitations or restrictions imposed upon it. Central to this framework is the **doctrine of proportionality**, which the Court reiterated as the **standard for assessing the validity of any restriction on fundamental rights**, particularly under Article 21. The judgment significantly strengthened the protection of civil liberties in India, particularly in the context of **emerging technologies, surveillance, data collection, and digital governance**. Moreover, by invoking the proportionality test, the Court brought Indian constitutional jurisprudence in line with global human rights standards, especially those followed by the **European Court of Human Rights** and other constitutional democracies. The ruling also laid the groundwork for future legislation, such as data protection laws, and reaffirmed the importance of **individual autonomy, dignity, and the freedom to make personal life choices without undue state interference**.²²

¹⁹ Aparna Chandra, "Proportionality in India: A Bridge to Nowhere?", 3(2) *University of Oxford Human Rights Hub Journal* 62 (2020).

²⁰ AIR 2000 SC 3689.

²¹ AIR 2016 SC 2601

²² AIR 2018 SC (SUPP) 184.



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- **Anuradha Bhasin v. Union of India (2020):** Concerning internet shutdowns in Jammu and Kashmir, the Court found that the government had failed to meet the **"temporary and proportionate"** requirement in its internet suspension orders and had not provided adequate public disclosure to allow for legal challenges. It directed the government to **review and revoke indefinite or unjustified restrictions**, reaffirming that **executive discretion is not above constitutional principles**.²³
- **Internet and Mobile Association of India v. RBI (2020):** In this landmark case, the **Supreme Court of India** examined the legality and proportionality of the **RBI circular dated April 6, 2018**, which barred entities regulated by the Reserve Bank of India from providing banking services to individuals or businesses dealing in **virtual currencies (VCs)**. The Supreme Court struck down the RBI's ban on cryptocurrency transactions, holding that the measure was not proportionate to the objective and lacked empirical justification. This judgment is a critical affirmation of the **doctrine of proportionality in economic regulation**, where the Supreme Court made it clear that **regulatory overreach, unsupported by concrete harm**, cannot be sustained. It marks a progressive step toward **judicial oversight of economic policy** when such policies infringe upon **constitutional freedoms like the right to trade and profession (Article 19(1)(g))**.²⁴

Doctrine of Proportionality and the Indian Experience with Anti-Terror Laws: A Critical Analysis

India's response to terrorism has evolved through a series of legislative enactments designed to empower the state with exceptional powers during times of perceived security threats.²⁵ However, while these laws aim to address real threats, their usage often raises questions about the constitutional balance between state security and individual liberties, particularly with respect to the doctrine of proportionality under Articles 14, 19, and 21 of the Constitution.²⁶

A. Legislative Framework: Core Anti-Terror Laws in India

1. Unlawful Activities (Prevention) Act, 1967 (UAPA)

Amended multiple times (notably in 2004, 2008, 2012, and 2019), the UAPA is India's principal anti-terror law. This act makes the laws more stringent and terrorism specific and also to make the investigation, trials etc. in the cases of terror to be on a different footing than other crimes which provides certain deviations from the general provisions of Cr.P.C²⁷. It allows:

- Designation of individuals and organizations as terrorists (Section 35).
- Detention for 180 days without filing a charge sheet (Section 43D).
- Presumption against bail (Section 43D (5)), shifting the burden on the accused.
- Broad definition of "unlawful activities" and "terrorist acts", often criticized as vague and overbroad.

²³ AIR 2020 SC 1308.

²⁴ AIR 2021 SC 2720.

²⁵C. Raj Kumar, "Human Rights Implications of National Security Laws in India: Combating Terrorism While Preserving Civil liberties", 33(2) *Denver Journal of International Law & Policy* 196 (2005).

²⁶Anil Kalhan et.al., "Colonial Continuities: Human Rights, Terrorism, and Security Laws in India", 20 (1) *Columbia Journal of Asian Law* 96 (2006).

²⁷ Ramanand Garge, *Jurisprudence of Anti-Terrorism Laws- An Indian Perspective* 32 (Vivekananda International Foundation, New Delhi, 2019).



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2. National Security Act, 1980 (NSA)

A preventive detention law that permits detention up to 12 months without trial on the basis of suspicion of acting against the security of the state or public order. It circumvents normal criminal law procedures and excludes judicial review beyond the scope of habeas corpus.²⁸

3. Prevention of Money Laundering Act, 2002 (PMLA)

While primarily an economic offence statute, it is often invoked in terror-financing cases. It allows for:

- Attachment of property without prior conviction.
- Arrest and detention without supplying a copy of the Enforcement Case Information Report (ECIR).
- Presumption of guilt under certain conditions (Section 24).²⁹

B. Judicial Responses and the Doctrine of Proportionality

Indian courts, particularly the Supreme Court, have had a mixed record in reviewing anti-terror laws. While the formal constitutionality of these laws has largely been upheld, their application in individual cases often reflects inadequate attention to proportionality.³⁰

1. K.A. Najeeb v. Union of India (2021)

In this landmark ruling, the Supreme Court granted bail to a UAPA accused who had spent over five years in custody without trial. The Court observed: “Statutory restrictions like Section 43D (5) of UAPA cannot override the overarching constitutional guarantees under Articles 21 and 14.” This case is significant because the Court acknowledged that continued pre-trial incarceration without likelihood of early conclusion of trial amounted to a disproportionate infringement of personal liberty. It emphasized that the right to a speedy trial is a facet of Article 21, and when trials are indefinitely delayed, statutory bars to bail cannot operate mechanically. However, *Najeeb* remains an exception, not the norm.³¹

Union of India v. K.A. Najeeb (Review Petition)

Though the government challenged the above decision, the Court stood firm, reinforcing the view that liberty cannot be held hostage to legislative presumptions indefinitely, especially when the trial does not commence in a reasonable timeframe.

2. National Investigation Agency v. Zahoor Ahmad Shah Watali (2019)

This case marked a regressive turn in UAPA jurisprudence. The Supreme Court held that:

“At the stage of bail, courts must assume the prosecution’s case to be true and examine whether the allegations, on their face, meet the UAPA standards.”

Effectively, this ruling:

- Elevated the threshold for bail under UAPA to an almost insurmountable standard.
- Denied the accused meaningful judicial review during the investigation stage.
- Disregarded the principles of presumption of innocence and the requirement of proportionality in pre-trial detention.

This judgment has been widely criticized for compromising the right to liberty, resulting in prolonged detention without trial, particularly in politically sensitive or high-profile cases.³²

3. Kartar Singh v. State of Punjab (1994) – Under TADA

While upholding the Terrorist and Disruptive Activities (Prevention) Act (TADA), the Supreme Court did issue guidelines to minimize misuse. However, it maintained that extraordinary laws were justified during extraordinary times, showing

²⁸ National Security Act, 1980, Section 13.

²⁹ Prevention of Money Laundering Act, 2002, Section 24.

³⁰ <https://lawandotherthings.com/indian-supreme-courts-mixed-record-on/> (last visited on June 18, 2025).

³¹ AIR 2021 SC 712.

³² AIR 2019 SC 1734.



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significant deference to legislative judgment on national security. This judgment set a precedent for tolerating draconian provisions under the guise of necessity, often with limited application of proportionality in such contexts.³³

4. People's Union for Civil Liberties (PUCL) v. Union of India³⁴ (2004) – On POTA

In upholding the Prevention of Terrorism Act (POTA), the Court recognized concerns of misuse but refrained from striking down key provisions. Notably, POTA was later repealed by Parliament due to widespread allegations of abuse, not judicial invalidation. This underscores a pattern where the judiciary validates anti-terror laws, leaving legislative or executive self-restraint as the primary mechanism for safeguarding rights.³⁵

C. Procedural Safeguards Often Sacrificed

1. Bail as an Exception, Not the Rule:

Bail under UAPA and NSA is made virtually inaccessible through statutory presumptions, despite the Supreme Court's repeated affirmation that bail is the norm and jail the exception.³⁶

2. Lack of Judicial Review:

Detentions under NSA can be ordered without public disclosure of grounds, and the detainee has limited opportunity to contest the decision. Courts typically refrain from second-guessing the executive unless the detention is found to be patently illegal.³⁷

3. Vague and Broad Definitions:

Terms like “unlawful activity,” “disruptive acts,” or “economic security” under these laws are so broadly defined that peaceful dissent, protest, or association can be criminalized, often without recourse to proportionality analysis.³⁸

India's anti-terror legal architecture reflects a deep tension between constitutional freedoms and coercive state power. While courts have occasionally invoked the doctrine of proportionality to safeguard liberty (e.g., *K.A. Najeeb*), the general judicial posture remains deferential to national security claims. The judiciary must move towards a structured and consistent application of proportionality, ensuring that exceptional powers do not become routine instruments of state control. Only through stronger procedural safeguards, rights-based judicial reasoning, and accountability mechanisms can India ensure that its fight against terrorism does not sacrifice the fundamental values of liberty and democracy.

Analysis: Inconsistent Application of Proportionality in Anti-Terror Cases

While Indian courts have formally adopted the doctrine of proportionality, its application in the context of national security laws remains hesitant and inconsistent. On one hand, judgments like *K.A. Najeeb*³⁹ represent a rights-affirming trend, acknowledging that excessive detention without trial violates constitutional norms. On the other hand, *Watali*⁴⁰ reflects excessive judicial deference, prioritizing security over liberty.

This inconsistency arises from:

- Judicial reluctance to challenge executive claims of “national interest.”⁴¹

³³ 1994 SCC (3) 569

³⁴ 9 S.C.C. 580; A.I.R. 2004 S.C. 456

³⁵ C. Raj Kumar, “Human Rights Implications of National Security Laws in India: Combating Terrorism While Preserving Civil liberties”, 33(2) *Denver Journal of International Law & Policy* 196 (2005).

³⁶ *State of Rajasthan v. Balchand*, AIR 1977 SC 2447.

³⁷ *A.K. Roy v. Union of India*, (1982) 1 SCC 271.

³⁸ *K.A. Najeeb v. Union of India*, (2021) 3 SCC 713

³⁹ *ibid*

⁴⁰ *National Investigation Agency v. Zahoor Ahmad Shah Watali*, AIR 2019 SC 1734.

⁴¹ *Mohammed Zubair v. State of NCT of Delhi*, 2022 SCC Online SC 897



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- Over-reliance on statutory presumptions and restrictions.⁴²
- Absence of structured analysis using all four proportionality steps.⁴³

Recommendations

- Statutory incorporation of proportionality in anti-terror legislation to mandate judicial review on all four prongs.
- Courts must scrutinize necessity and least restrictive means, especially in pre-trial detentions.
- Regular judicial training and guidelines on applying proportionality in national security contexts.
- There should be time limits and regular reviews for laws like NSA and UAPA so that they are not misused. These laws should not be permanent, and their use should be checked from time to time by independent authorities or courts.

Conclusion

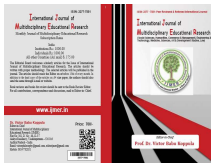
In the struggle between liberty and security, the doctrine of proportionality offers a constitutional compass. While the threat of terrorism is real, the solution must not lie in eroding the very values that define a democratic society. Indian jurisprudence must move toward a consistent and structured application of proportionality in reviewing anti-terror laws. As India continues to grapple with internal and transnational threats, the reliance on laws like UAPA and NSA is likely to persist. However, without a rigorous application of the proportionality principle, such laws may end up corroding the very democratic values they aim to protect. Therefore, embedding proportionality in legislative design and judicial interpretation is not just a legal necessity but a democratic imperative.

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⁴² National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1.

⁴³ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1, also in Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353.



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