



Research Paper

In the Name of National Security: The Fragility of Human Rights

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I. Introduction

In the modern world, national security has become one of the most powerful justifications for governmental actions. From counterterrorism efforts to emergency public health measures, states frequently invoke the necessity of protecting the nation to justify extraordinary policies. While safeguarding the security of a state's citizens is a fundamental responsibility of government, history shows that in the name of national security, basic human rights are often curtailed, marginalized, or altogether suspended. The very principles of freedom, dignity, and legal protection that democratic societies claim to uphold can quickly be compromised under the pressures of fear, conflict, and perceived threats.

The tension between national security and human rights is not a new phenomenon. Throughout history, during periods of war, revolution, or political upheaval, governments have employed emergency powers that infringe upon civil liberties, often rationalized by the need to preserve the nation. However, the aftermath of these periods frequently reveals lasting damage to the political and legal institutions meant to protect individual rights. In particular, marginalized groups often bear the brunt of security-driven policies, facing surveillance, detention, discrimination, and violence under the auspices of protecting the "greater good."

The events following September 11, 2001, profoundly reshaped global understandings of security and liberty. Governments around the world, led by the United States, adopted expansive measures—such as mass surveillance, indefinite detention without trial, and enhanced interrogation techniques—that were justified as necessary tools in the "War on Terror." Yet these measures raised urgent questions about the limits of state power and the vulnerability of human rights norms during times of perceived crisis. International human rights law, once seen as a safeguard against tyranny and abuse, struggled to restrain governments that invoked national security as an all-encompassing defense for their actions.

Today, the ongoing struggle between national security and human rights continues in new forms. Authoritarian regimes and democratic states alike have used the language of security to justify restrictions on freedom of speech, the press, and assembly. Emerging technologies, including sophisticated surveillance systems and artificial intelligence, offer unprecedented capabilities for monitoring and controlling populations, often without adequate legal oversight. Moreover, global challenges such as the COVID-19 pandemic have provided additional pretexts for emergency measures that, while sometimes necessary, have in many cases been exploited to consolidate power and silence dissent.

This paper explores how the invocation of national security has historically—and continues to—threaten the integrity of human rights protections. It analyzes key historical moments, legal frameworks, and contemporary case studies to demonstrate the fragility of rights when confronted by security imperatives. Ultimately, the paper argues that while security is essential, an unchecked focus on national defense can erode the democratic values and human dignity it purports to protect. Balancing national security and human rights is not only possible but imperative if societies wish to maintain both safety and freedom in an increasingly complex and insecure world.

II. National Security

National security refers to the protection and preservation of a nation's sovereignty, territorial integrity, political independence, and the welfare of its citizens from external and internal threats. It encompasses various aspects of the state's ability to safeguard its interests, both from foreign adversaries and internal risks such as terrorism, insurgencies, civil unrest, or organized crime. The concept extends beyond military defense and includes economic stability, energy security, cyber security, environmental concerns, public health, and the safety of a nation's institutions and democratic processes.

At its core, national security is about ensuring that a country has the **capacity to protect itself** from a range of potential threats that can disrupt or destabilize its society. The traditional definition often focuses on

military defense against foreign attacks. However, in the modern context, national security has become a **multidimensional concept** that incorporates various sectors such as:

1. **Military and Defense Security:** This involves the protection of the nation from foreign military threats and maintaining a well-equipped defense force capable of responding to conflicts or invasions.
2. **Economic Security:** Ensuring the nation's economic stability, which includes protecting critical industries, maintaining stable financial systems, managing resources, and ensuring the availability of essential goods and services.
3. **Cybersecurity:** Protecting the nation's digital infrastructure, systems, and data from cyber-attacks, hacking, and other forms of digital warfare that could destabilize governance, economy, or security.
4. **Energy Security:** Securing access to vital energy resources such as oil, gas, and electricity, ensuring they are available for the country's development and defense needs.
5. **Environmental and Health Security:** Protecting the population from environmental threats, such as natural disasters, climate change, pandemics, or health emergencies that could disrupt daily life or pose a risk to public health and safety.
6. **Terrorism and Counterterrorism:** Preventing acts of terrorism, whether domestic or foreign, and countering extremist ideologies that threaten the safety and stability of the state.
7. **Internal Security:** This refers to protecting a country from internal threats such as insurgencies, organized crime, political instability, and civil unrest. It involves law enforcement agencies, intelligence gathering, and maintaining public order.

In democratic countries, national security is usually managed by government agencies such as the **military, intelligence agencies, law enforcement**, and various ministries responsible for specific security aspects (e.g., the Ministry of Home Affairs in India). National security strategies also require a careful balance between protecting citizens and respecting their rights, freedoms, and democratic principles. The challenge for governments is to ensure that national security efforts do not **unduly infringe upon civil liberties**, such as the **right to free speech** or the **right to privacy**.

National security is often viewed as a key responsibility of the government, and policies regarding its protection tend to evolve in response to emerging global and domestic challenges. In the modern era, national security is no longer just about defense against military threats; it also includes economic, social, and technological considerations that directly affect a nation's stability and prosperity.

The **Supreme Court** in the case of **Maneka Gandhi vs Union of India** recognized that national security is not an unlimited or unchecked power. National security concerns should be balanced with the need to protect individual rights, and the Court emphasized that any action taken on national security grounds must be scrutinized to ensure that it is not excessive and is justified in the context of the threat.

III. Human Rights

3.1 Introduction: Human rights refer to the fundamental rights and freedoms that every individual is entitled to simply because they are human. These rights are universal and inalienable, meaning they cannot be taken away or denied, regardless of a person's nationality, ethnicity, religion, or social status. Human rights are meant to protect the dignity, freedom, and equality of all people and ensure that individuals can live without fear of oppression, discrimination, or exploitation.

3.2 Core Principles of Human Rights: Human rights are based on several key principles, including:

1. **Universality:** Human rights apply to all people, regardless of where they live, their culture, or their beliefs. These rights are not dependent on a particular legal system, political order, or government. They are inherent to all human beings.
2. **Indivisibility:** Human rights are indivisible, meaning all rights are equally important and cannot be separated or ranked. Civil, political, economic, social, and cultural rights are interdependent, and the full realization of one cannot be achieved without the others.
3. **Non-Discrimination:** Every individual is entitled to the full enjoyment of human rights without discrimination based on race, gender, religion, age, disability, sexual orientation, or any other status. Discrimination in any form is a violation of human rights.
4. **Equality:** Human rights promote equality by ensuring that all people have access to the same opportunities and protections. The idea of **equality** is central to human dignity and the belief that no one should be treated as inferior to others.
5. **Accountability:** States and governments are responsible for protecting and promoting human rights. If a government violates human rights or allows abuses to occur, it can be held accountable through international legal frameworks, courts, and human rights organizations.

3.3 International Framework for Human Rights: The global recognition and protection of human rights began with the creation of the **United Nations (UN)** after World War II. The **Universal Declaration of Human Rights (UDHR)**, adopted by the UN General Assembly in 1948, laid down a common standard of human rights for all people. The UDHR defines fundamental human rights, such as the right to **life, liberty, and security of person**, the right to **freedom of expression**, and the right to **participation in government**.

Since then, human rights have been further elaborated through various treaties and agreements, including:

- **International Covenant on Civil and Political Rights (ICCPR):** This treaty protects rights like the freedom of speech, the right to a fair trial, and the prohibition of torture or cruel treatment.
- **International Covenant on Economic, Social, and Cultural Rights (ICESCR):** This document focuses on rights related to work, education, health, and an adequate standard of living.
- **Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and Convention on the Rights of the Child (CRC):** These treaties aim to protect vulnerable and marginalized groups from discrimination and to promote equality in various aspects of life.

3.4 Human Rights in Practice: In practice, the protection of human rights involves both **national and international efforts**. Governments must implement laws, policies, and mechanisms that guarantee the protection of human rights for all citizens. However, human rights violations continue to occur in various parts of the world, particularly in situations of armed conflict, political oppression, or authoritarian regimes. In such cases, international organizations like the **United Nations, Amnesty International, and Human Rights Watch** play a critical role in monitoring abuses and advocating for the rights of individuals.

IV. Historical Background: National Security and Human Rights in India

The tension between national security and human rights in India is deeply rooted in its historical experience, beginning even before independence. Partition in 1947 triggered one of the bloodiest upheavals in modern history, with mass violence, forced migrations, and communal riots displacing millions. Amid this chaos, the newly formed Indian state faced the immediate challenge of asserting control and maintaining order in a landscape torn apart by religious animosity and political instability. Early security measures, including curfews, special police powers, and preventive detention, set a precedent for the state's readiness to curtail individual freedoms during perceived crises.

One of the earliest constitutional concessions to security over liberty was the insertion of **Preventive Detention** provisions in the Indian Constitution. Although India's Constituent Assembly largely endorsed democratic values, it also authorized preventive detention under **Article 22**, allowing individuals to be detained without trial for up to three months, a period that could be extended under special circumstances. The justification was rooted in the immediate post-Partition violence and fears of internal subversion. However, critics have long argued that such measures undermined the basic tenet of personal liberty that the Constitution sought to guarantee.¹

The 1960s and 1970s witnessed a further entrenchment of security-oriented governance, particularly in response to separatist movements and political unrest. In the northeastern states such as Nagaland, Manipur, and Assam, armed insurgencies demanding greater autonomy or secession prompted the enactment of the **Armed Forces (Special Powers) Act (AFSPA)** in 1958. AFSPA granted the military sweeping powers to arrest without warrant, shoot on suspicion, and maintain public order in "disturbed areas." Over the decades, AFSPA has been criticized by human rights groups for enabling widespread abuses, including extrajudicial killings, torture, and enforced disappearances, often with little to no accountability for security forces.²

Perhaps the most infamous episode demonstrating the fragility of human rights under the weight of national security concerns was the **Emergency** declared by Prime Minister Indira Gandhi between 1975 and 1977. Faced with political opposition, economic instability, and a court ruling that invalidated her election, Gandhi declared a state of emergency under **Article 352** of the Constitution, citing "internal disturbances." The Emergency period witnessed a virtual suspension of democracy: civil liberties were curtailed, political opponents were jailed without trial, the press was heavily censored, and forced sterilization campaigns were conducted under coercive government programs. The judiciary, too, capitulated during this period, most notably in the **ADM Jabalpur v. Shivkant Shukla** case, where the Supreme Court infamously ruled that citizens had no right to approach the courts for enforcement of fundamental rights during the Emergency.³

Although India returned to democratic governance in 1977, the Emergency left a lasting imprint on the nation's political and legal culture. It exposed the vulnerabilities within India's institutional framework and demonstrated how the rhetoric of security and national unity could override even the most basic human rights protections.

In the decades following the Emergency, national security remained a powerful justification for restrictive laws. The **Terrorist and Disruptive Activities (Prevention) Act (TADA)** was enacted in 1985 amid rising

insurgency in Punjab and growing violence in Kashmir. TADA allowed for extended detention without charges, reversed the presumption of innocence, and permitted confessions made to police officers as admissible evidence. The Act was heavily criticized for its widespread misuse, including the detention of thousands of individuals without sufficient evidence, leading to its eventual repeal in 1995.⁴ However, its successor, the **Prevention of Terrorism Act (POTA)**, introduced in 2002 after the attack on the Indian Parliament, reflected similar flaws and was likewise criticized for disproportionately targeting minority communities before being repealed in 2004.

Simultaneously, counterinsurgency operations in Kashmir, particularly during the 1990s, further strained the balance between human rights and national security. Faced with a violent separatist insurgency, the Indian state deployed massive numbers of troops under AFSPA and other special laws. Numerous reports from human rights organizations detailed cases of custodial deaths, enforced disappearances, and systemic abuses by security forces. The continued invocation of national security to justify prolonged emergency measures in Kashmir and the Northeast reinforced patterns of governance where the "exception" became the norm.⁵

The historical experience of India thus illustrates that while national security concerns are often genuine, the measures adopted to address them have too often undermined constitutional protections and democratic accountability. Moreover, the groups most affected—ethnic and religious minorities, regional insurgents, political dissidents—have frequently lacked the political power to challenge such measures effectively. As India continues to navigate complex internal and external threats, the challenge remains to ensure that national security does not become a pretext for indefinite restrictions on human rights.

V. Post-2000s and Contemporary Challenges: National Security and Human Rights in India

The early twenty-first century brought new security challenges to India, including the global rise of terrorism, growing internal dissent, and emerging technologies of surveillance. These developments prompted the Indian state to adopt increasingly stringent security measures, many of which have raised serious concerns regarding human rights violations and democratic backsliding. Particularly after high-profile terrorist incidents such as the 2001 Indian Parliament attack and the 2008 Mumbai attacks, national security became a dominant theme in political discourse, often eclipsing debates on civil liberties and constitutional protections.

One significant legislative development during this period was the enactment and expansion of the **Unlawful Activities (Prevention) Act (UAPA)**. Originally passed in 1967 to curb secessionist movements, the UAPA underwent substantial amendments in 2004, 2008, and most notably in 2019. The amended UAPA broadened the definition of "terrorist activity" and allowed the government to designate individuals—not just organizations—as terrorists without a judicial trial.⁶ Critics argue that the UAPA has been used disproportionately against political activists, journalists, and minority groups, allowing for prolonged pre-trial detention and making bail extraordinarily difficult. The vague definitions within the Act create a chilling effect on free speech and dissent, framing political opposition as a security threat.

The suppression of dissent in the name of national security has been particularly visible in the context of mass protests. The **Citizenship Amendment Act (CAA)**, passed in December 2019, sparked nationwide protests over its exclusionary criteria for citizenship, perceived by many as discriminatory against Muslims. The government's response involved a heavy deployment of police forces, widespread use of internet shutdowns, and preventive detention under colonial-era laws such as the **Section 144** of the Code of Criminal Procedure, which restricts public assembly.⁷ In several cases, protest organizers were booked under UAPA charges, thereby equating peaceful political mobilization with threats to national security.

The events surrounding the revocation of **Article 370** of the Indian Constitution in August 2019, which removed the special autonomous status of Jammu and Kashmir, provide another critical example. Anticipating unrest, the government placed the entire region under an unprecedented lockdown, deploying tens of thousands of troops, detaining political leaders, suspending internet services, and severely restricting movement and communication.⁸ These actions, justified on grounds of security and integration, effectively placed millions of citizens under a de facto state of emergency for months. While the state emphasized restoring order and preventing terrorism, international human rights organizations raised alarms about the prolonged denial of fundamental rights such as freedom of speech, access to justice, and freedom of movement.

The use of technology as a tool of state surveillance has further complicated the national security-human rights debate. India has rapidly expanded its digital surveillance capabilities through projects like the **Central Monitoring System (CMS)**, **Network Traffic Analysis System (NETRA)**, and the proposed **National Intelligence Grid (NATGRID)**. These systems allow government agencies to intercept communications and collect large volumes of data with minimal oversight.⁹ Concerns escalated after revelations of the alleged use of the **Pegasus spyware** against activists, journalists, and political opponents, raising fears that national security was being used as a blanket justification for the unlawful targeting of dissenting voices.

Internet shutdowns have also become a frequent tool in India's security strategy. According to international reports, India has led the world in the number of internet shutdowns for several consecutive years, often citing security concerns as justification.¹⁰ While shutdowns are sometimes implemented to prevent

misinformation or violence, they have significant impacts on freedom of expression, access to information, education, healthcare, and the economy. Prolonged shutdowns in Jammu and Kashmir, for instance, severely restricted civic life, impeding not just political organizing but also daily communication and access to essential services.

The **National Register of Citizens (NRC)** exercise in Assam presents yet another intersection of security, identity, and human rights. Originally intended to identify undocumented immigrants, the NRC process resulted in the exclusion of nearly two million people, many of whom were long-term residents of Assam.¹¹ The threat of statelessness and the absence of robust legal protections for excluded individuals fueled widespread fears, particularly among marginalized communities. The government's framing of the NRC as a measure to protect national security by combating illegal immigration highlights how deeply citizenship itself can become securitized, with devastating consequences for human rights.

A further concern is the increasing militarization of internal security forces and the normalization of repressive tactics. Police and paramilitary forces are often deployed to control civilian protests, with reports of excessive use of force, arbitrary detention, and custodial violence. The **Bhima Koregaon case**, in which several activists were arrested under UAPA charges based on allegedly planted evidence, illustrates how counterterrorism laws have been weaponized against civil society actors.¹² In many such cases, the judicial process itself becomes a form of punishment, with prolonged incarceration even before any determination of guilt.

The combination of stringent security laws, aggressive policing, technological surveillance, and legal impunity reflects a broader trend toward what scholars have termed the "securitization of dissent" in India. Under this framework, political opposition, advocacy for minority rights, and even environmental activism are increasingly portrayed as threats to national security. This shift erodes the democratic space for dialogue, protest, and accountability—hallmarks of a vibrant civil society.

While genuine security threats undoubtedly exist, the tendency to prioritize security imperatives at the expense of constitutional rights poses profound risks to India's democratic fabric. The Indian Supreme Court has occasionally intervened to safeguard rights—for instance, by emphasizing the proportionality principle in limiting state action¹³—but overall, judicial deference to executive claims of national security remains high. Without stronger safeguards, independent oversight mechanisms, and a renewed commitment to constitutional values, the drift toward a perpetual security state threatens to permanently weaken the protections that underpin India's democracy.

VI. Legal and Ethical Perspectives on National Security and Human Rights in India

6.1 Introduction: India's constitutional and legal framework reflects an inherent tension between safeguarding national security and preserving human rights. The framers of the Indian Constitution, mindful of the challenges faced during Partition and the early years of independence, incorporated provisions that allowed for reasonable restrictions on fundamental rights in the interest of national security, public order, and sovereignty. However, as history has shown, these exceptional powers have often been invoked in ways that disproportionately curtail civil liberties, raising profound ethical and legal questions about the balance between state power and individual freedoms.

6.2 Constitutional Foundations:

The Indian Constitution guarantees a comprehensive set of fundamental rights under Part III, including the right to equality (Article 14), freedom of speech and expression (Article 19), protection of life and personal liberty (Article 21), and protection against arbitrary arrest (Article 22). Yet, these rights are subject to reasonable restrictions in the interest of sovereignty and integrity of India, security of the state, public order, and decency or morality.¹⁴

The power to impose preventive detention, explicitly provided under Article 22, illustrates a significant concession to security imperatives. Preventive detention laws such as the **Preventive Detention Act** of 1950, **Maintenance of Internal Security Act (MISA)** during the Emergency, and contemporary statutes like the **National Security Act (NSA)** have been rationalized as necessary tools to prevent threats to the state. However, they have frequently been criticized for allowing the government to detain individuals without due process, sometimes indefinitely, based solely on executive satisfaction rather than judicial oversight.

The constitutional scheme thus reflects an uneasy compromise: while fundamental rights are celebrated as the cornerstone of Indian democracy, the mechanisms for their suspension or restriction, particularly during emergencies, provide the state with expansive powers. The challenge lies in ensuring that these powers are used judiciously and are subjected to effective checks and balances.

6.3 The Judiciary and National Security

The Indian judiciary has historically oscillated between deference to the executive during periods of perceived national crisis and robust defense of individual rights in more stable times.

The most glaring example of judicial abdication occurred during the **Emergency** (1975-77), when the Supreme Court, in **ADM Jabalpur v. Shivkant Shukla** (1976), upheld the suspension of the right to life and personal liberty under Article 21, even in the face of preventive detention. The Court ruled that no person could seek judicial review of detention orders during an emergency, despite the fact that the right to life is enshrined as fundamental to the Constitution.¹⁵ The judgment remains one of the most criticized in Indian legal history, with subsequent judicial and scholarly interventions acknowledging its error.

Earlier, in **A.K. Gopalan v. State of Madras** (1950), the Court upheld the constitutionality of preventive detention laws, interpreting Article 21 narrowly and focusing on procedural rather than substantive safeguards.¹⁶ This interpretation allowed the government to detain individuals without trial for extended periods, undermining the essence of personal liberty.

In contrast, the **Maneka Gandhi v. Union of India** (1978) case marked a pivotal shift in the judiciary's approach. The Court expanded the scope of "personal liberty" under Article 21, establishing that any law depriving a person of liberty must not only be procedural but also just, fair, and reasonable. This decision laid the foundation for stronger judicial scrutiny of state actions that infringe on fundamental rights as in this case the Supreme Court made significant observations about the relationship between national security and individual rights:

1. **Right to Personal Liberty and National Security:** The Court held that **national security** could not be used as a blanket justification for violating a citizen's **fundamental rights**, including the right to **personal liberty**. It emphasized that the state must provide **specific reasons** for restricting a person's rights, especially when invoking national security concerns.

2. **Due Process and National Security:** The Court interpreted the "**due process**" clause in the context of **Article 21** (Right to Life and Personal Liberty). It ruled that **national security concerns** cannot override the **principle of fairness** and the **right to a hearing**. If a government action affects a citizen's fundamental rights under the guise of national security, the action must still conform to principles of **natural justice** and **due process**.

3. **Interpretation of National Security:** The Supreme Court also noted that **national security** must be understood in a broader sense, which balances the state's legitimate concerns for security with the protection of **individual rights**. National security cannot be invoked to justify arbitrary or disproportionate measures, and any restrictions on rights must be reasonable, necessary, and proportionate to the situation.

4. **Duty of the Government to Inform:** The Court also mandated that when the government invokes national security as a reason to restrict a citizen's liberty, it must provide adequate and specific reasoning to justify its actions. The **principle of transparency** was emphasized, ensuring that **citizens are aware of the reasons** behind state actions, particularly when national security is cited.

Significance of the Case: This case marked a crucial turning point in Indian constitutional law. It emphasized that **national security** cannot be used as an arbitrary tool to infringe upon the rights of individuals. The Supreme Court established a framework that mandates a balance between **securing the state's interests** and ensuring that **individual freedoms** are respected. It also reinforced that **national security measures** must be subject to judicial scrutiny to ensure they do not violate **fundamental rights**.¹⁷

In **PUCI v. Union of India** (1997), the Supreme Court addressed the issue of surveillance and its impact on privacy rights. The Court struck down blanket government powers to intercept communications, emphasizing the importance of judicial oversight and the necessity of safeguards for preventing arbitrary surveillance. The Court ruled that interception of communications must be authorized by a competent authority and be for a fixed duration, thereby setting boundaries for executive powers in the name of security.¹⁸

Similarly, the Court examined the issue of military impunity in **People's Union for Civil Liberties v. Union of India** (1998), where the constitutionality of the **Armed Forces (Special Powers) Act, 1958** (AFSPA) was challenged. While the Court upheld the validity of AFSPA, it recognized the need for judicial review of military actions and the importance of maintaining constitutional limits on the powers of the armed forces.¹⁹ The Court's ruling emphasized that the armed forces must operate within the boundaries set by the Constitution, thus imposing a limited check on the extensive powers granted by AFSPA.

The **Kartar Singh v. State of Punjab** (1994) case examined the constitutionality of the **Terrorist and Disruptive Activities (Prevention) Act** (TADA). The Court upheld the law but acknowledged concerns about the potential for abuse. It recognized that while national security could justify strong counterterrorism measures, such laws must not be used to stifle dissent or violate fundamental rights.²⁰ This decision illustrated the continuing tension between security imperatives and individual freedoms.

A more recent case, **Tehseen S. Poonawalla v. Union of India** (2018), concerned the rise of mob violence and lynchings under the pretext of national security. The Court recognized the state's obligation to prevent such extrajudicial violence and issued guidelines to curb mob violence, ensuring the protection of human rights within a framework of law and order.²¹

However, the judiciary has been more cautious in cases involving internet shutdowns and emergency powers. In **Anuradha Bhasin v. Union of India** (2020), which concerned the shutdown of internet services in Jammu and Kashmir after the revocation of Article 370, the Supreme Court emphasized that the right to freedom of expression extends to the internet. Nevertheless, the Court stopped short of ordering immediate restoration of internet access,

leaving the government to determine the duration of the shutdown.²² This case highlighted the Court's careful approach, balancing the need for national security with the protection of civil liberties.

In these cases, the judiciary has shown an evolving sensitivity to the protection of human rights, but it has often deferred to the executive in matters where national security concerns are paramount. The balance between security needs and individual freedoms remains precarious, and the Court's decisions continue to reflect this tension.

6.4 Legislative Framework and Security Laws

India's legislative responses to security threats have tended to prioritize executive convenience over civil liberties. Acts such as the **UAPA**, **AFSPA**, and **NSA** provide expansive powers to the government and security agencies with limited external oversight. The procedural safeguards intended to prevent misuse—such as periodic review boards for preventive detention or requirements for central government sanction for prosecution under **AFSPA**—have proven weak in practice.

Moreover, the lack of a comprehensive data protection law exacerbates concerns over the unchecked expansion of state surveillance capabilities. While the **Supreme Court** recognized the right to privacy as a fundamental right in the **Puttaswamy** judgment, there remains a significant gap between this judicial recognition and the enactment of a strong statutory framework regulating surveillance and data collection.²³

India's counterterrorism and security laws often blur the line between legitimate security concerns and political repression. The broad and vague definitions within these laws allow the state to target not only violent actors but also political dissenters, journalists, and activists under the pretext of maintaining security.

6.5 Ethical Dimensions

The ethical questions surrounding national security and human rights are deeply complex. On one hand, the state has a legitimate obligation to protect its citizens from external aggression, terrorism, and internal disorder. Failure to act decisively in the face of genuine threats can lead to significant harm and undermine public trust in the state's capacity to govern.

On the other hand, when security measures disproportionately infringe upon individual rights, target vulnerable groups, or are used to suppress dissent, they undermine the very values the state purports to defend. A security regime that sacrifices constitutional principles in the name of expediency risks descending into authoritarianism.

Ethically, the state must ensure that any restrictions on rights are strictly necessary, proportionate, and non-discriminatory. This requires a commitment to transparency, accountability, and the rule of law. National security should be understood not simply as the absence of external or internal threats, but as the maintenance of a political and social environment where rights and freedoms are actively protected.

6.6 India's International Commitments

India is a party to several international human rights instruments, including the **International Covenant on Civil and Political Rights (ICCPR)**, which mandates that even during states of emergency, certain rights—such as the right to life, freedom from torture, and freedom of thought—must remain non-derogable.²⁴ Although international law recognizes that states may restrict some rights in the face of serious threats, such restrictions must be exceptional, temporary, and consistent with the principles of necessity and proportionality.

India's human rights record has come under international scrutiny in forums such as the **United Nations Human Rights Council**, particularly regarding issues in Kashmir, treatment of minorities, and restrictions on freedom of expression. While India often invokes sovereignty and non-interference in domestic affairs, its participation in international human rights regimes imposes a normative obligation to align domestic security practices with international standards.

6.7 Conclusion

The legal and ethical terrain of national security and human rights in India remains fraught with tension. While the Constitution provides a framework for balancing security and liberty, in practice, security concerns have often eclipsed rights protections. The judiciary has shown moments of resilience but has largely erred on the side of caution in national security cases. Laws like **UAPA**, **AFSPA**, and surveillance regimes remain vulnerable to misuse, while international norms call for stricter adherence to human rights even in times of crisis.

Ultimately, a mature democracy must be capable of ensuring security without sacrificing its foundational commitments to justice, liberty, and dignity. This demands stronger institutional checks, more robust judicial interventions, greater transparency in governance, and an unwavering public commitment to human rights.

VII. Reassessing Sedition: Human Rights and National Security in India

7.1 Introduction: Sedition laws in India, particularly Section 124A of the **Indian Penal Code (IPC)**, have long been a contentious issue at the intersection of national security and human rights. Enacted by the British colonial

government in 1870, the sedition law criminalized actions that could incite disaffection against the government. After India gained independence, Section 124A remained in force, and for decades, it became a tool frequently employed to suppress political dissent, protest, and critical speech under the guise of maintaining national security.

7.2 Historical Context of Sedition Laws

The sedition law has been employed by the Indian state as a means to silence political opposition, target activists, and curb free expression. From the early nationalist struggles to more recent cases, individuals such as **Bal Gangadhar Tilak**, **Mahatma Gandhi**, and **Aseem Trivedi** were all charged under sedition laws for voicing dissent or criticizing the government. In the modern era, the law has also been invoked against **journalists**, **students**, and **activists**, often used to stifle debates on national security or government policies.

The human rights implications of sedition laws are significant. Sedition charges directly conflict with the fundamental right to **freedom of speech and expression** guaranteed under **Article 19** of the Indian Constitution. Critics have argued that the sedition law is overly broad and vague, allowing the government to arrest individuals or curtail their rights without sufficient evidence of any actual threat to national security. This misuse of sedition laws undermines constitutional protections and curtails the essential democratic right to dissent and express alternative views.

A landmark case in this regard, **Kedar Nath Singh v. State of Bihar** (1962), saw the Supreme Court uphold the validity of sedition under Section 124A but clarified that sedition should only apply to speech that directly incites violence or disrupts public order. Despite this clarification, the law continued to be applied in ways that overstepped these boundaries, and critics argue that the law became a tool to silence those who simply criticized the government or questioned its policies.

7.3 The Removal of Sedition from the IPC under the Bharatiya Nyaya Sanhita (BNS), 2023

A significant reform came in 2023 with the introduction of the **Bharatiya Nyaya Sanhita (BNS)** Bill, which included the **removal of sedition charges** from the **Indian Penal Code (IPC)**. This reform represents a substantial shift in India's legal landscape, one that recognizes the need to protect **freedom of expression** and political dissent while ensuring national security. The BNS reflects a growing acknowledgment that sedition laws were being increasingly misused to curb free speech, target political opposition, and suppress criticism of the government, all under the guise of safeguarding national security.

The **removal of sedition** has been hailed as a **victory for civil liberties**, particularly the **right to free speech**. It signifies a rejection of the notion that national security concerns justify blanket restrictions on freedom of expression. The **BNS Bill** positions India's legal framework more in line with global democratic principles, where dissent, criticism, and political debate are seen as essential to the health of a democracy. Critics of sedition laws, including **civil society organizations** and **human rights activists**, have long argued that the law was frequently invoked to stifle any form of political opposition or protest, creating a climate of fear among citizens.

Although the repeal of sedition has been a positive step toward enhancing democratic freedoms, the Indian state still retains other legal mechanisms to address threats to national security. Laws such as the **Unlawful Activities (Prevention) Act (UAPA)** and counterterrorism measures remain in place and can still be invoked when national security is genuinely at risk. However, these laws are designed to target specific, tangible threats, not to stifle legitimate political speech or opposition.

7.4 Ethical and Legal Considerations

The ethical debate surrounding sedition laws highlights the **delicate balance** between ensuring national security and protecting individual rights. While the state has a legitimate responsibility to protect its citizens from violence, terrorism, and national security threats, the **overuse of sedition laws** creates an environment in which **critical political speech** is penalized, and citizens are discouraged from questioning the actions of the government. This undermines the democratic principle that freedom of expression is foundational to a functioning and transparent state.

The **removal of sedition** from the IPC is a step in the right direction for India, reaffirming the country's commitment to preserving fundamental rights in the face of security concerns. This reform emphasizes the importance of protecting the right to free speech while maintaining an effective, **proportional response to threats to national security**. Moving forward, India must ensure that national security laws, such as the **UAPA** and **AFSPA**, are used with strict adherence to human rights standards, ensuring that they are neither overbroad nor disproportionately applied.

The reform marks an important change in India's approach to governance, where national security considerations no longer automatically trump fundamental civil liberties. The focus now should be on more **targeted, transparent, and fair mechanisms** to address security threats without infringing on the rights of citizens to express dissent and engage in democratic processes.

Conclusion

The removal of sedition laws from the IPC, through the **Bharatiya Nyaya Sanhita (BNS)** reform, is a watershed moment for India's legal and ethical landscape. It reflects a growing understanding that **national security** and **human rights** are not mutually exclusive but must be balanced in a manner that ensures both are protected. India's commitment to democratic values, particularly freedom of expression, requires a legal framework that can protect the state from legitimate threats while safeguarding the rights of individuals to voice their opinions and engage in political discourse without fear of retribution. The shift away from sedition laws signals a move towards a more transparent and human rights-respecting legal system, one that strengthens the country's democracy and aligns it with international standards on free speech and civil liberties.

VIII. Recommendations: Balancing National Security and Human Rights in India

1. Reform of Existing Security Laws:

- **Unlawful Activities (Prevention) Act (UAPA):** While it is crucial to maintain laws that address terrorism and national security threats, the UAPA needs significant reforms to prevent its misuse. This includes clearer definitions of "terrorist activities" and tighter provisions on **preventive detention**. There should be an emphasis on **judicial oversight** and more stringent safeguards against arbitrary arrests and prolonged detention without trial.
- **Armed Forces Special Powers Act (AFSPA):** AFSPA has been critiqued for granting the military sweeping powers, often leading to human rights abuses. There is a need for a thorough review of AFSPA, particularly in **disturbed areas**. Reforms should ensure that the military is accountable under civilian law, and such powers should be subject to **judicial review**.

2. Enhanced Protection of Free Speech:

- The **right to free speech** should be safeguarded more robustly. As seen with the **removal of sedition from the IPC**, there needs to be a broader effort to ensure that freedom of expression is not stifled in the name of national security. **Vague or overly broad security laws** should be repealed or reformed to limit their potential for abuse.
- The Indian government should provide clearer guidelines for law enforcement on **how to differentiate between legitimate speech and incitement to violence**, especially when it comes to protests or dissent against the government. This can help ensure that those critical of the government are not unfairly prosecuted under the guise of national security concerns.

3. Strengthening Accountability Mechanisms:

- The **judiciary** plays a crucial role in checking executive overreach. To prevent misuse of national security laws, the Indian legal system should enhance the capacity of courts to handle cases involving **civil rights violations** and **national security**. Special courts or **tribunals** could be established to expedite such cases and ensure quick justice.
- **Human rights commissions** and **civil society organizations** should be empowered to monitor government actions and ensure that the state's measures to protect national security do not disproportionately infringe on civil liberties.

4. Transparent Surveillance and Data Protection Laws:

- As India continues to grapple with issues of **cybersecurity** and **digital surveillance**, clear and transparent laws need to be put in place. These laws should regulate the use of surveillance technologies by state agencies while protecting individuals' privacy rights. There should be limits on how long surveillance can continue and strict oversight on the usage of personal data.
- **Data protection laws** must be developed in line with international standards to prevent arbitrary or unwarranted access to individuals' private data under national security pretenses.

5. Strengthening International Cooperation:

- National security laws in India should be designed in alignment with **international human rights standards**, such as those outlined in the **Universal Declaration of Human Rights (UDHR)** and the **International Covenant on Civil and Political Rights (ICCPR)**. This will ensure that India's approach to national security is consistent with its commitments under global human rights law.
- India should also collaborate more closely with international organizations and other democracies to address the **global nature of terrorism** and **cybersecurity threats**, while respecting individual freedoms.

6. Effective Role of Judiciary:

- 1) **Judicial Review of National Security Laws:** The judiciary can play a vital role by exercising judicial review over laws and policies related to national security. Courts must assess whether such laws are consistent with the Constitution, particularly with respect to the fundamental rights guaranteed under Part III. By scrutinizing

the constitutionality of national security laws, the judiciary can ensure that they do not unjustifiably infringe upon the rights of citizens, such as freedom of speech, privacy, and freedom from arbitrary detention.

- 2) **Ensuring Proportionality and Necessity:** The judiciary can ensure that national security measures are proportional to the threat faced. Courts should evaluate whether the restrictions imposed are necessary and appropriate in the context of the specific threat. For example, if a government imposes curfews, detentions, or restrictions on freedom of movement, the judiciary can assess whether such measures are the least restrictive means available to achieve the security objectives, ensuring that they do not unnecessarily curtail civil liberties.
- 3) **Safeguarding Due Process Rights:** National security measures must be consistent with the due process of law. The judiciary can protect individuals' rights by ensuring that fair trial standards are upheld, including legal representation, access to courts, and protection from torture or inhumane treatment. When national security is invoked to detain individuals without trial or to hold people in secret detention, the judiciary can act to safeguard due process and protect individuals from arbitrary actions.
- 4) **Limiting Preventive Detention and Arbitrary Arrests:** One area where national security laws are often misused is in the preventive detention of individuals, sometimes without sufficient evidence or judicial oversight. The judiciary can intervene to ensure that preventive detention is not used arbitrarily and that individuals are not detained for long periods without charge. Courts can ensure that timely reviews of detention orders are conducted and that detainees have the right to contest their detention before an impartial judicial body.
- 5) **Protection of Freedom of Expression:** National security concerns are sometimes used to justify restrictions on freedom of speech and the press, often leading to censorship and suppression of dissent. The judiciary plays a crucial role in ensuring that such restrictions do not violate constitutional rights unless there is clear evidence of incitement to violence or a direct threat to national security. Courts must safeguard the freedom of expression and ensure that media freedom and political dissent are not unduly stifled in the name of national security.
- 6) **Preventing Abuse of Surveillance Powers:** National security measures often include surveillance of citizens, such as wiretapping, data monitoring, or internet surveillance. The judiciary can ensure that such surveillance is conducted only under strict legal frameworks and with adequate oversight. Courts should ensure that surveillance is targeted and based on reasonable suspicion, and that citizens' right to privacy is not violated by overreaching or mass surveillance tactics. The judiciary must enforce transparency and accountability in surveillance practices.
- 7) **Providing Access to Remedies and Legal Recourse:** The judiciary must ensure that citizens have access to remedies when their rights are violated under the guise of national security. Courts should provide avenues for individuals to challenge unlawful actions, such as unlawful detention, torture, or restrictions on freedom of movement, in a timely and effective manner. Access to legal recourse is essential to ensuring that national security measures are not misused by authorities to curtail rights.
- 8) **Balancing National Security and Human Rights in Emergency Situations:** During states of emergency, national security concerns often justify sweeping powers. The judiciary plays a critical role in limiting the scope and duration of such powers to prevent their abuse. Courts should ensure that emergency measures are temporary, necessary, and proportional to the specific threat. Emergency powers should never be used as a pretext for long-term suspension of human rights protections.
- 9) **Public Interest Litigation (PIL) and Judicial Activism:** In India, Public Interest Litigation (PIL) allows individuals or organizations to approach the courts on behalf of the public interest. The judiciary can use this mechanism to address national security issues that affect the general populace, such as unlawful detention, violation of privacy rights, or unlawful surveillance. The judiciary's activist role in such cases can ensure that human rights are safeguarded while also considering national security needs.
- 10) **International Standards and Human Rights Norms:** The judiciary must ensure that national security policies and practices are aligned with international human rights norms. By referencing international treaties such as the International Covenant on Civil and Political Rights (ICCPR) and Universal Declaration of Human Rights (UDHR), Indian courts can ensure that national security measures comply with global

standards. Courts should prevent any actions that violate international humanitarian law or international human rights standards.

IX. Conclusion: The Future of National Security and Human Rights in India

India's democratic ethos is rooted in its unwavering commitment to the **protection of human rights**, **freedom of expression**, and the **rule of law**. However, the tension between **national security** and **civil liberties** has often been at the forefront of legal and political discourse. The state has frequently invoked national security concerns as justification for curbing civil liberties, particularly in instances of dissent, protest, or criticism of the government.

The **removal of sedition** from the **Indian Penal Code (IPC)** under the **Bharatiya Nyaya Sanhita (BNS)** reform represents a significant and positive shift towards a more balanced legal framework—one that prioritizes the protection of fundamental rights, including the **freedom of expression**, while allowing the state to safeguard national security. This reform signals a turning point in recognizing the importance of political dissent and **civil liberties** in a democracy. However, while this is a critical step forward, it remains just the beginning.

To fully safeguard the **balance between national security and individual freedoms**, India must now focus on a broader reform of its security laws. Strengthening **judicial oversight** and ensuring **accountability** are paramount to prevent the misuse of security measures. Moreover, India must ensure that national security concerns are never used as a pretext to violate human rights or suppress political discourse.

Looking ahead, India must strive to create a legal environment where **freedom of speech** is **unequivocally protected** and national security measures are applied **proportionately** and **transparently**. National security should never serve as an excuse for undermining the democratic values enshrined in the Constitution. The future of India's democracy hinges on its ability to strike this delicate balance—safeguarding the rights of its citizens while effectively responding to genuine security threats.

In the pursuit of ensuring that **national security** and **human rights** coexist harmoniously, India must continue to evolve its legal and security frameworks. This includes a strong focus on **judicial oversight**, **accountability**, and robust protections for **fundamental rights**. Only through such comprehensive reforms can India ensure that its security measures are both **effective** and **just**, while respecting the democratic rights of its citizens.

As India progresses on this path, it is essential that both **legal and political leadership** remain vigilant. By fostering a culture of **transparency**, **accountability**, and **respect for human rights**, India can safeguard its democracy while ensuring its national security reflects its constitutional commitment to **human dignity** and **freedom**.

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