



How to cite this article:

Talebzadeh, F. (2024). Balancing Security and Rights: Legal Narratives in Counterterrorism Policy. *Journal of Historical Research, Law, and Policy*, 2(3), 37-45. <https://doi.org/10.61838/jhrp.2.3.5>



Article history:
Original Research

Dates:

Submission Date: 09 May 2024

Revision Date: 12 June 2024

Acceptance Date: 24 June 2024

Publication Date: 01 July 2024

Balancing Security and Rights: Legal Narratives in Counterterrorism Policy

1. Farideh. Talebzadeh^{1*}: Department of Criminal Law and Criminology, Islamic Azad University, Mashhad Branch, Mashhad, Iran

*corresponding author's email: farideh.talebzadeh42@yahoo.com

ABSTRACT

This study aims to explore how legal professionals construct, justify, and critique counterterrorism policies in relation to individual rights and institutional legitimacy within a securitized legal context. The research employed a qualitative methodology grounded in a phenomenological approach to examine the lived experiences and interpretive narratives of legal practitioners, policy experts, and rights advocates based in Tehran. Sixteen participants were selected through purposive sampling to ensure relevance to the subject of counterterrorism legislation and rights discourse. Data were collected via semi-structured interviews, each lasting between 45 and 70 minutes, and continued until theoretical saturation was reached. Interviews were transcribed verbatim and analyzed using thematic analysis with the aid of NVivo software. An inductive coding process was followed by axial coding to identify patterns and interrelations among themes. Three primary themes emerged from the analysis: (1) legal justifications of security measures, including rule-of-law framing, preventive logic, and judicial endorsement; (2) rights and liberties under pressure, characterized by disproportionate targeting, suppression of dissent, and fear-based public consent; and (3) ethical and institutional dilemmas, such as professional role strain, institutional accountability gaps, and the erosion of democratic norms. Participants described how ambiguous legal terms and selective use of international norms facilitate the normalization of exceptional measures and the marginalization of human rights discourse. Legal narratives in counterterrorism policy are not merely descriptive but deeply constitutive of the security-rights equilibrium. In fragile or securitized contexts, law can function as both a facilitator of repression and a potential site of resistance. Understanding these narratives is crucial for designing legal reforms, enhancing institutional accountability, and protecting fundamental rights.

Keywords: Counterterrorism law; legal narratives; security and rights; qualitative research; judicial legitimacy; human rights; Iran.

Introduction

In the aftermath of global terrorist incidents and the enduring threat posed by non-state actors, governments worldwide have adopted increasingly robust counterterrorism policies. While intended to safeguard national security and public order, these measures have frequently generated tensions with the legal frameworks designed to protect fundamental rights and civil liberties. This tension is particularly pronounced in contexts where democratic institutions are fragile or evolving. The challenge of simultaneously preserving national security and upholding constitutional rights has thus emerged as a central legal and political dilemma of the 21st century (Donohue, 2008). Understanding how this dilemma is framed, rationalized, and contested within legal narratives is critical for assessing the legitimacy and long-term implications of counterterrorism legislation.



The legal architecture of counterterrorism policies often operates within a paradigm of exceptionalism, where normal constitutional principles are suspended or reinterpreted in the name of urgent state interests (Agamben, 2005). This “state of exception” legitimizes extraordinary powers, such as prolonged detention without trial, expansive surveillance, restrictions on freedom of expression, and the designation of individuals or groups as terrorists based on opaque criteria (Zedner, 2009). While these powers are frequently defended as temporary and necessary, their legal codification and institutional normalization raise profound questions about the erosion of democratic norms and the durability of legal protections (Ramraj, 2011). These questions become more complex in legal systems where judicial independence is compromised, oversight mechanisms are weak, or civil society actors face systematic constraints.

The discourse around counterterrorism and legal rights is often shaped by a preventive logic that emphasizes anticipatory action over reactive justice. This shift is emblematic of what Ericson (2007) calls “risk society governance,” wherein legal interventions are justified not on the basis of past wrongdoing but on projected future threats. Under this framework, law becomes a vehicle for managing uncertainty, privileging intelligence-led policing and preemptive legislation. However, such frameworks tend to stretch legal standards of evidence, undermine procedural fairness, and prioritize security over individual autonomy (Ashworth & Zedner, 2014). These dynamics are frequently obscured by a legal rhetoric that frames repressive measures as constitutional, necessary, and even rights-preserving.

In many jurisdictions, especially those facing chronic insecurity or political volatility, courts have demonstrated considerable deference to executive decisions in security matters. Judicial endorsement of state actions, often grounded in national security exceptions or emergency doctrines, contributes to what scholars describe as “juristocratic insulation” (Dyzenhaus, 2006). This insulation allows executive-driven counterterrorism agendas to operate with minimal accountability, often bypassing critical legal scrutiny. Furthermore, the elasticity of key legal terms—such as “terrorism,” “radicalization,” or “extremism”—enables selective enforcement, which may disproportionately target minority communities, political dissidents, or human rights activists (Horgan, 2009; Khalil, 2013). The legal vagueness embedded in such terms facilitates a flexible application of the law that aligns more with political priorities than with normative legal standards.

This tension between legality and rights protection is not simply a matter of legal drafting or institutional capacity. It reflects deeper normative conflicts over the role of law in mediating competing social values—namely, security and liberty. Scholars have noted that legal systems tend to oscillate between two poles in response to security threats: a “law-as-barrier” model, where legal norms constrain state power, and a “law-as-facilitator” model, where legal reforms are employed to legitimize and enable coercive actions (Gross & Ní Aoláin, 2006). The dominance of the latter model in contemporary counterterrorism regimes illustrates the instrumentalization of law for political ends. In such settings, legal narratives serve to rationalize repression, manage public dissent, and cultivate a perception of rule-of-law governance even when rights are systematically curtailed (Scheppelle, 2010).

In authoritarian or semi-authoritarian regimes, this instrumentalization takes on additional significance. Counterterrorism frameworks are not only legal tools but also discursive weapons deployed to delegitimize opposition and justify state violence. Human rights lawyers, journalists, and civil society actors are frequently labeled as threats to national security under vague anti-terrorism clauses (Macklem, 2010). The legal system, rather than acting as a counterbalance, may become complicit in rights violations through selective interpretation, procedural irregularities, and institutional silence. As a result, legal professionals working within these frameworks face ethical

dilemmas, strategic ambiguity, and professional risks when navigating counterterrorism cases (Satterthwaite, 2012).

The tension between rights and security is further exacerbated by the role of international legal norms. While many states invoke international conventions or UN Security Council resolutions to justify their counterterrorism practices, there is often a selective engagement with global human rights standards. For instance, while obligations under the International Covenant on Civil and Political Rights (ICCPR) require proportionality and necessity in the restriction of rights, such obligations are frequently marginalized in legal reasoning that prioritizes security imperatives (Office of the High Commissioner for Human Rights [OHCHR], 2014). This dual engagement with international law—one that embraces security mandates while sidelining human rights obligations—reflects a broader normative dissonance in contemporary legal practice.

Against this backdrop, it becomes essential to understand how legal professionals, policy-makers, and civil society actors interpret, construct, and challenge the legal narratives surrounding counterterrorism. Legal discourse is not merely a passive reflection of state policy; it is a constitutive force that shapes the boundaries of legitimacy, the contours of dissent, and the parameters of permissible resistance (Halliday & Shaffer, 2015). By analyzing these narratives qualitatively, we can illuminate the mechanisms through which law both enables and resists authoritarian drift.

Tehran offers a particularly rich context for this inquiry. As a capital city within a politically complex and security-sensitive nation, Tehran is home to a diverse range of legal actors, from government-aligned policy advisors to critical human rights lawyers. The Iranian legal system, while formally structured around a hybrid civil-religious framework, exhibits many features associated with securitized governance—such as expansive emergency laws, intelligence-led investigations, and executive dominance in legal interpretation (Zarifi, 2011). At the same time, Tehran hosts active legal debates, legal education institutions, and human rights advocacy that navigate the thin line between critique and repression. This makes it a fertile site for examining how legal narratives are shaped, contested, and lived under conditions of legal ambiguity and political constraint.

This study aims to explore these dynamics through a qualitative examination of legal narratives among professionals in Tehran involved in counterterrorism law and policy. Using semi-structured interviews and thematic analysis, the study investigates how these actors conceptualize the balance between security and rights, how they interpret ambiguous legal provisions, and how they experience institutional pressures in their professional roles. By foregrounding the lived experience and interpretive frameworks of these professionals, the study contributes to a more nuanced understanding of law's role in both facilitating and resisting repressive state practices.

Furthermore, this study adopts a socio-legal perspective, treating legal texts and statutes not as static instruments but as dynamic discursive practices shaped by institutional contexts, political pressures, and professional ethics (Ewick & Silbey, 1998). It attends not only to what the law says but also to how it is practiced, internalized, and challenged by those who operate within its ambit. Through this lens, legal narratives become a window into broader processes of governance, norm construction, and institutional legitimacy.

In doing so, this research responds to growing scholarly and policy interest in the qualitative dimensions of legal practice in securitized states. As governments increasingly invoke counterterrorism imperatives to justify legal exceptionalism, it becomes crucial to document and critically analyze how such imperatives are translated into everyday legal reasoning and professional practice (Crelinsten, 2009). By capturing the narratives of those who live

and work within this legal space, this study provides insight into the mechanisms through which security discourses are normalized, contested, and potentially transformed from within.

Methods and Materials

This study employed a qualitative research design to explore the legal narratives surrounding the balance between national security and individual rights within counterterrorism policy frameworks. A phenomenological approach was adopted to capture the lived experiences and interpretive insights of legal practitioners, policy experts, human rights advocates, and academic scholars who are directly or indirectly involved in counterterrorism law and policy discourse. Purposeful sampling was used to ensure participants possessed relevant experience and perspectives on legal interpretations of security-focused legislation.

A total of 16 participants were interviewed, all of whom were based in Tehran and had professional backgrounds in law, policy advising, or civil rights advocacy. Participants were selected to represent a range of ideological positions and institutional affiliations to enhance the richness and diversity of perspectives. The sampling process continued until theoretical saturation was achieved—that is, until no new themes or insights emerged from additional interviews.

Data were collected through semi-structured interviews conducted in person or via secure virtual platforms. Each interview lasted approximately 45 to 70 minutes. The interview protocol consisted of open-ended questions designed to elicit participants' views on how legal frameworks address terrorism threats while maintaining constitutional or human rights standards. Interview prompts encouraged reflections on policy justifications, legal reasoning, normative tensions, and perceived unintended consequences of counterterrorism legislation.

All interviews were audio-recorded with the participants' consent and subsequently transcribed verbatim for analysis. Confidentiality was maintained through pseudonymization, and participants were assured of their right to withdraw at any stage without consequence.

Thematic analysis was used to examine the transcribed data, following the analytical guidelines proposed by Braun and Clarke. Nvivo software was employed to facilitate coding, categorization, and the systematic retrieval of data segments. An inductive coding process was undertaken to identify emergent themes, followed by axial coding to explore relationships among codes and categories. Analytical rigor was enhanced through peer debriefing and iterative memo writing, allowing for the refinement of codes and the verification of thematic patterns.

Findings and Results

1. Legal Justifications of Security Measures

Rule-of-Law Framing:

Many participants emphasized that security policies are often framed as necessary and lawful acts grounded in the principle of state sovereignty. They argued that invoking national interest and constitutional authority enables governments to justify extensive powers under a legal cloak. One interviewee noted, "As long as it is wrapped in the language of legality, the public rarely questions the extent of power exercised." Such framing reinforces the perception that exceptional measures are legitimate if endorsed by the legal system, even when constitutional checks are bypassed.

Preventive Logic:

The preventive logic embedded in counterterrorism laws was a recurring narrative. Respondents explained how anticipatory legal doctrines—such as prosecuting intent before action—undermine traditional due process. A legal advisor remarked, “We are seeing laws that no longer require actual wrongdoing, just the possibility of future harm based on intelligence.” This shift from punishment to prevention creates a legal landscape where risk becomes sufficient to justify intervention.

Elastic Interpretation of Rights:

Several participants described how fundamental rights are subjected to elastic interpretations under security contexts. Legal exceptions and emergency clauses become normalized, allowing for temporary derogation that often becomes permanent. One human rights advocate stated, “They always say it’s temporary. But these restrictions, once introduced, rarely go away.” This elasticity makes rights vulnerable to political manipulation.

Judicial Endorsement:

Some participants pointed to the judiciary’s passive or complicit role in legitimizing security excesses. Courts often defer to the executive’s framing of threat, particularly when evidence is classified. As one respondent noted, “Courts rarely challenge executive decisions in these cases. They rely on national security arguments and stay silent.” Such strategic silence contributes to legal continuity without adequate checks.

Legal Ambiguity in Terror Definitions:

The vagueness of key legal terms like “terrorism” or “extremism” was a common concern. Participants argued that ambiguous definitions allow selective enforcement and political labeling. A legal scholar stated, “The law doesn’t define what constitutes extremism clearly, so it can be applied to anyone—journalists, activists, or minorities.” This ambiguity erodes legal predictability and fairness.

Use of International Norms:

Several interviewees noted that international norms and instruments are selectively invoked to lend legitimacy to domestic practices. While UN Security Council resolutions are cited to justify harsh measures, softer human rights instruments are often ignored. One participant reflected, “International law is cherry-picked to serve state objectives. Rights instruments are dismissed as irrelevant or Western.”

2. Rights and Liberties Under Pressure

Suppression of Civil Liberties:

Participants reported widespread curtailment of civil liberties—particularly freedom of expression, assembly, and privacy. Surveillance measures and arbitrary detentions were seen as routine under counterterrorism pretenses. A civil society member observed, “They just need to say it’s a security concern, and suddenly all protests are banned.” These restrictions go far beyond targeting terrorism and affect broader civic participation.

Disproportionate Targeting:

The enforcement of counterterrorism laws often targets marginalized or dissenting populations disproportionately. Respondents cited the profiling of ethnic minorities, suppression of student movements, and targeting of specific neighborhoods. One lawyer noted, “It’s not just about who’s a threat. It’s about who’s politically inconvenient.” Disparities in enforcement undermine public trust in the legal system.

Fear-Based Consent:

Many participants discussed the use of fear narratives to manufacture public consent for invasive laws. Media-driven fear, amplified by government rhetoric, was seen as instrumental in generating compliance. As one

respondent explained, “When people are scared, they will accept almost anything. The law rides on that fear.” This consent is less about informed agreement and more about psychological resignation.

Silencing Legal Dissent:

The legal community and civil rights organizations face suppression when challenging security laws. Interviewees described instances where legal professionals were threatened or delegitimized. A participant noted, “You speak up, and they call you a sympathizer or accuse you of aiding terrorism.” This stifling of legal dissent weakens democratic dialogue and professional independence.

Marginalization of Human Rights Law:

Participants reported a general sidelining of human rights frameworks in the name of national security. Human rights considerations are often seen as secondary or obstructive. One legal researcher stated, “In the policy meetings I’ve attended, human rights are barely mentioned, or worse, treated as an afterthought.” This marginalization reflects a normative shift toward security-first legal reasoning.

3. Ethical and Institutional Dilemmas

Tensions Between Security and Democracy:

Respondents frequently cited a deep tension between democratic values and security practices. Some viewed the shift as a structural imbalance favoring order over rights. One participant remarked, “Every policy that claims to protect democracy ends up hollowing it out from within.” These contradictions create a persistent legitimacy crisis for the legal system.

Institutional Accountability Gaps:

Accountability mechanisms—such as oversight committees or ombudsman offices—were perceived as weak or ineffective. Executive dominance in security policy was said to limit transparency and independent review. A participant explained, “There’s no one holding the security agencies accountable. The institutions meant to do that are toothless.” This institutional gap fosters impunity.

Legal Professional Challenges:

Legal practitioners working within or around counterterrorism systems face significant ethical strain. Some spoke of the dilemma between maintaining professional ethics and ensuring personal safety. A defense lawyer explained, “You are torn between your duty and the fear that your advocacy will be seen as siding with the enemy.” This ambiguity creates stress and moral compromise.

Long-Term Policy Impacts:

Several interviewees warned of the long-term consequences of rights erosion and normalization of exceptional measures. These include public desensitization, legal precedents that weaken rights protections, and institutional inertia. One scholar noted, “The longer these laws stay in place, the harder it becomes to undo their damage. They become part of the legal DNA.”

Reform Discourses:

Despite the challenges, participants described ongoing efforts to promote reform through rights-based security frameworks and independent policy reviews. Some advocated for inserting sunset clauses or external audits. One policy analyst emphasized, “We need security with accountability, not security versus accountability.” These reform discourses signal pathways for balance.

Civil-Military Legal Boundaries:

Participants highlighted the increasing encroachment of military frameworks into civilian legal space. Legal norms are often bypassed in militarized operations, blurring boundaries. A former judge observed, “In counterterrorism zones, civilian law has little say. It’s the command law that rules.” This shift raises concerns about the erosion of civilian oversight.

Discussion and Conclusion

This study explored the legal narratives shaping counterterrorism policy through in-depth interviews with 16 legal professionals, policy advisors, and rights advocates in Tehran. The analysis revealed three overarching themes: (1) legal justifications of security measures, (2) rights and liberties under pressure, and (3) ethical and institutional dilemmas. Each theme encompassed multiple subthemes, illustrating how counterterrorism law in a securitized legal context is interpreted, legitimized, and occasionally challenged. The findings suggest that legal narratives in counterterrorism are not simply reflections of written law but are dynamic discursive tools employed to reconcile or obscure normative contradictions between state security and individual rights.

A major finding of this study is the pervasive use of rule-of-law framing to justify exceptional security measures. Participants described how laws are drafted and defended using legal terminology that invokes national interest, constitutional validity, and public protection, effectively cloaking repressive practices in legality. This aligns with the broader literature on “rule by law” as opposed to “rule of law,” where law becomes a mechanism for legitimizing authoritarian control rather than limiting state power (Tamanaha, 2004). Similarly, the invocation of preventive logic, which emphasizes pre-criminal interventions, reflects what scholars call a shift toward “preemptive governance” (Amoore & de Goede, 2008). Legal professionals viewed this shift as undermining traditional standards of evidence, due process, and proportionality—principles long enshrined in international human rights law (OHCHR, 2014).

Participants also highlighted the elastic interpretation of rights, whereby constitutional protections are treated as malleable in times of security concern. This elasticity, while framed as temporary, often becomes normalized, a pattern well documented in states that declare ongoing states of emergency (Gross & Ní Aoláin, 2006). The judiciary’s complicity—expressed in terms of judicial endorsement or strategic silence—further perpetuates the cycle of exceptionalism. Courts were seen as reluctant to challenge executive authority, especially in cases involving classified information or national security labels. This observation echoes Dyzenhaus (2006), who argues that courts often fail to uphold legality during emergencies, leading to the quiet erosion of constitutionalism.

Another significant theme was the ambiguity of legal definitions, particularly concerning terms like “terrorism” and “extremism.” Participants criticized the vagueness of these categories, which enables selective targeting of political dissidents, minority groups, and civil society actors. This finding is consistent with previous studies noting how overly broad counterterrorism laws are weaponized against political opponents (Scheinin, 2011; Macklem, 2010). Furthermore, participants expressed concern about the selective use of international legal norms—where governments cite security-based UN resolutions while ignoring binding human rights treaties. This instrumentalization of international law reflects broader patterns of norm fragmentation and selective compliance (Halliday & Shaffer, 2015).

The second major theme—rights and liberties under pressure—highlighted the systematic suppression of freedoms of expression, association, and privacy. Respondents pointed to disproportionate targeting of marginalized populations, reinforcing findings from empirical studies that counterterrorism policies disproportionately affect ethnic and political minorities (Khalil, 2013; Zedner, 2009). The use of fear-based consent

was especially notable. Participants argued that public narratives, often bolstered by media rhetoric, manufacture societal compliance with repressive measures. This aligns with Altheide's (2006) theory of the "politics of fear," which describes how state institutions use fear to justify exceptional policies and diminish resistance.

Furthermore, the silencing of legal dissent emerged as a clear concern. Legal practitioners and rights organizations are often delegitimized or accused of aiding terrorism when they challenge counterterrorism legislation. This chilling effect echoes the experiences documented by Satterthwaite (2012), who found that human rights defenders face increasing constraints in securitized legal environments. Participants also identified a marginalization of human rights law in public discourse and legal proceedings. Rights-based arguments are often dismissed as Western imports or security threats, a perception noted in postcolonial legal scholarship (Rajagopal, 2003).

The third theme—ethical and institutional dilemmas—focused on the challenges faced by legal professionals and institutions in maintaining normative balance. Participants described a tension between security and democracy, where the very tools meant to protect democratic institutions were seen to undermine them. This tension reflects Zedner's (2009) argument that security rhetoric often leads to a trade-off model in which democratic values are sacrificed for state control. Moreover, the study revealed significant institutional accountability gaps, with oversight mechanisms such as parliamentary reviews or ombudsman offices described as weak or non-functional. These findings echo critiques of executive dominance in security governance (Ramraj, 2011).

Legal professionals also reported role-based ethical conflicts, expressing concerns about strategic compliance and fear of retaliation. Their narratives illustrate the personal toll of operating within a legal system that demands both loyalty to the law and alignment with state imperatives. This mirrors the "dual loyalty" dilemma described in legal ethics literature, especially in contexts where repression is legalized (Sarat & Scheingold, 2005). Participants additionally warned of the long-term consequences of sustained emergency governance: normalization of rights derogation, erosion of legal culture, and declining public trust in institutions.

Yet, amid these tensions, participants described reform discourses aimed at recalibrating legal balance. These include efforts to institutionalize safeguards, demand judicial independence, and frame security through a rights-based lens. This reformist momentum is consistent with recent literature that identifies subnational or bottom-up legal mobilization as a key avenue for normative change (Silbey, 2005). Finally, the blurring of civil-military legal boundaries in counterterrorism zones was identified as a structural concern. Legal authority is often overshadowed by security command structures, a condition that undermines civilian oversight and the rule of law.

Acknowledgments

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

Funding

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

References

- Agamben, G. (2005). *State of exception*. University of Chicago Press.
- Ashworth, A., & Zedner, L. (2014). *Preventive justice*. Oxford University Press.
- Crelinsten, R. D. (2009). *Counterterrorism*. Polity Press.
- Donohue, L. K. (2008). *The cost of counterterrorism: Power, politics, and liberty*. Cambridge University Press.
- Dyzenhaus, D. (2006). *The constitution of law: Legality in a time of emergency*. Cambridge University Press.
- Ericson, R. V. (2007). *Crime in an insecure world*. Polity Press.
- Ewick, P., & Silbey, S. S. (1998). *The common place of law: Stories from everyday life*. University of Chicago Press.
- Gross, O., & Ní Aoláin, F. (2006). *Law in times of crisis: Emergency powers in theory and practice*. Cambridge University Press.
- Halliday, T. C., & Shaffer, G. C. (2015). *Transnational legal orders*. Cambridge University Press.
- Horgan, J. (2009). *Walking away from terrorism: Accounts of disengagement from radical and extremist movements*. Routledge.
- Khalil, J. (2013). *Understanding terrorism: Challenges, perspectives, and issues*. Routledge.
- Macklem, P. (2010). Human rights in international law: Three generations or one? *London Review of International Law*, 1(2), 205–223.
- Office of the High Commissioner for Human Rights (OHCHR). (2014). *Human rights, terrorism and counter-terrorism*. United Nations.
- Ramraj, V. (2011). *Emergency powers in Asia: Exploring the limits of legality*. Cambridge University Press.
- Satterthwaite, M. L. (2012). Surveillance, secret evidence and torture: The legal framework for rights violations in the post-9/11 era. *Columbia Human Rights Law Review*, 43(2), 335–385.
- Scheppele, K. L. (2010). The international state of emergency: Terrorism, emergency powers, and the rule of law. *Harvard Law Review*, 122(5), 1520–1591.
- Zarifi, S. R. (2011). Rights, not just laws: Legal reform and human rights in Iran. *Harvard Human Rights Journal*, 24, 49–74.
- Zedner, L. (2009). *Security*. Routledge.