



NATIONAL SECURITY LAWS IN INDIA AGAINST FREEDOM OF SPEECH AND EXPRESSION

By Shreya Rawat

PhD Scholar

*From Law College, Uttarakhand University,
Dehradun*

ABSTRACT

The tussle between security of a nation and freedom of expression is nothing new. Every government in power uses the security laws in its favor. Sometimes it is used to gag up the voices disagreeing with the policies of government and some other times they are imposed so as to prevent the citizens from working or even keeping a particular ideology. Creating harmony between national security and fundamental rights is indeed a challenging task. This paper highlights the historical background of security laws in India, incidents of recent arrests under them, key problems lying behind and the response of Indian judiciary. The researcher has attempted to find a solution to the problem of imbalance between the two.

KEYWORDS: Government, Imposed, Ideology, Arrests

I. INTRODUCTION

The objective of Security laws is to safeguard the national interest or to defend the nation from villainous elements. But the said laws in India are often criticized for giving unchecked and unregulated authority to the state. Any nation would need a security law when the situation demands so

e.g., Emergency. But India is one such country where such laws are always in force. Lately the security laws in India have been heavily exploited. From human rights violation of the pregnant woman Safoora Zargar to the death of the Octogenarian activist Father Stan Swamy, the inhumanity of the state and the misuse of security laws against those who raise their voices have crossed their limits. The world is watching and condemning India. The United Nations has been criticizing India in the international front but the state is not giving an ear to it.

Former CJ of India Justice Dipak Misra headed bench once stated that “dissent is the safety valve of any democracy.” But as the state restricts the fundamental rights of citizens for its own purpose, it becomes antithetical to the values of democracy. Openly disagreeing with the government and its policies should never be fearful. But unfortunately, this is what is happening. In the preventive detention laws, administration has an upper hand.

Administrative detention is a dangerous activity as it is prone to grave misuse. The biggest proof of its misuse is the low conviction rate. It shows how unnecessarily the repressive laws are being used.

We can see that now the state is not able to tolerate even a word against it. Whether it is social media or any other public platform, the failure of government, its policies, its illogical statements and misinformation it provides if pointed out can land a person in jail. The cost that comes with being straightforward, opinionated and rebellious is not that anyone can afford. The common masses have thus resorted to Self-censorship. Before expressing an opinion or



posting some statement, one has to give it a hundred thoughts. Only some dare to open up and those are pushed into prisons.

Security laws are devoid of legal safeguards provided under ordinary laws. There is no bail right or compulsion to present the detenu before judicial magistrate. Proceedings can go as long as the authorities want and the fate and future of the prisoners remain uncertain.

Preventive detention laws which are supposedly formed to tackle terror activities in the nation becomes a weapon to intimidate the citizens of the country who put forward their opinions or viewpoints critical of the government. The lack of protests and dissent is dangerous to the society as it makes the government unaccountable.

If no one questions the decision of the government, it can become arbitrary. The government is supposed to be answerable to the common masses of India who have given it the position. This has been the nature of state to try and shut mouths of people who speak up against them, not a particular government but almost every government. And not just in India, this occurs in the rest of the world also. For instance, in past one year there have been huge protests in France as well as Hong Kong against their security laws.

The recent incidents in India put a big question mark on its democracy. While the security laws are said to be aimed at boosting integrity of nation, there is need to ask whether these laws are strengthening the democracy or weakening it?

¹ National Security Act, businessstandard.com, (last visited 23 July 2021)

II. OBJECTIVES:

The main objectives of this study are:

1. To elaborate the history of security laws in India and define the present laws;
2. To analyze the misuse of present national security laws in the country; and
3. To find out the solution to the existing problem of imbalance between security laws and fundamental rights.

III. METHODOLOGY:

The methodology used by the researcher is Doctrinal method of research. The research has been entirely carried out on the basis of already published sources and internet articles. The main sources used for this project are E newspapers, Parliament Digital Library, internet articles, bare acts, Supreme Court Cases online.

IV. HISTORICAL BACKGROUND OF THE NATIONAL SECURITY LAWS AND DESCRIPTION OF THE EXISTING ONES:

The security laws we have in India are a result of colonial construct. In 1818, Bengal regulation act was enacted to empower the British government to arrest anyone for maintenance of public order without giving the arrested person the right to recourse to judicial proceedings. In 1919, the Rowlatt Act was introduced that allowed confinement on the basis of suspicion and without a trial.¹ The Jallianwala Bagh tragedy took place during the protest against the said draconian Act.



As India got independence, it was facing internal disturbance and communal violence on huge scale due to partition. The new government was supposed to tackle this tactfully and thus the need of a preventive law was felt. Thus, the government introduced *The Preventive Detention Act, 1950*.² The law had provision to detain a person for one year without any charge. (In between this, an anti-terror law called the *UAPA, 1967*³ was introduced. It is still existing and has recently got a controversial amendment. It has been discussed further.) The PDA had a 'sunset clause' which means that it was made for a temporary period i.e., till the disturbance prevailed in the country. In 1969, the law got lapsed as the purpose had been fulfilled. But it was just a break in the story.

Two years later, a new similar law was brought known as *MISA i.e., Maintenance of Internal Security Act, 1971*⁴. It was done by the Indira Gandhi government to control the citizens. The act was very similar to the PDA, 1950 except that it had even more restrictions. The State heavily misused the legislation and put several people behind the bars for a long time without any trial. Not to forget it was the same time when the infamous 1975 national emergency was in force. In 1977 national emergency ended and MISA also got lapsed. But as the nation could not be without a security law, a new preventive detention law was brought again in 1980.

*NSA i.e., National Security Act, 1980*⁵ (which is in existence even in the present India) gives massive authority to the state to arrest a person if there is apprehension of harm to 'national interest and public order'. The law is criticized as it has sections that override the provisions of important laws existing in India. While Section 50 of CrPC (code of criminal procedure) asserts that a person should be informed of the grounds of his arrest, NSA authorizes the police to detain a person for five days straight without mentioning the reason. This period can also go beyond the said time and extend to ten days in special circumstances. According to Section 50 of CrPC the arrestee has to be presented by the police before the (judicial) magistrate within twenty-four hours. There is no such rule in NSA. Article 22(1) of the Constitution provides for Right to have a legal practitioner/ advocate to the arrested. The NSA on the other hand gives no such right. Thus, it is infamously known as '*Na vakeel, Na daleel, Na appeal*' (*No lawyer, No plea, No appeal*) law. Also, as there is no First Information report in these cases, the NCRB (National Crime Records Bureau) does not include these cases in its data. This makes the authorities free in their power to arrest anyone and exploit the arrestee. When no one is watching, the authorities become arbitrary.

In 1987 due to rising terrorist activities and separatist movement in Punjab, *Terrorist and Disruptive Activities Act (TADA)*⁶ was introduced. The TADA overrode important statutes in India like CrPC and the

² Preventive Detention Act, 1950 [REPEALED] ACT 4 of 1950

³ Unlawful Activities Prevention Act, 1967 ACT 37 of 1967

⁴ Maintenance of Internal Security Act, 1971 [REPEALED] ACT 26 of 1971

⁵ The National Security Act, 1980 ACT 65 of 1980

⁶ Terrorist and Disruptive Activities Act, 1987 [REPEALED] ACT 28 of 1987



Constitution. It created various new offences, gave more power to the police and reduced the safeguards of arrestees. Under the TADA confessions before the police that are otherwise inadmissible in court (Indian Evidence Act, sec. 25⁷) were admissible. This resulted in increasing police torture, abuse and brutality. There were allegations of huge misuse of the act by the government. In ten years, there were 70,000 arrests under the said law. In 1995, TADA was repealed using the sunset clause.

In December 2001, there was a terrorist attack on the Indian parliament. Several political leaders died. The need for strengthening the anti-terror laws in India was felt. Thus, was introduced *The Prevention of terrorists Act (POTA)*⁸. Although in a new packet, the POTA was a reflection of TADA. It had the same objectives as well as the same provisions. It gave excessive powers to the state and less safeguards to the arrestees. It was alleged that political parties were misusing the law to fulfil their political needs. Eventually, in 2004 the POTA was lapsed.

Now coming to the most controversial security law at the present time, the UAPA. In 1962, the erstwhile Chief minister of Madras CN Annadurai proposed a separate Tamil Country in his Rajya Sabha speech. Meanwhile, there was external aggression from China. The demand for separate state was forgone but the Central Government felt the need to be prepared for any further internal crisis. It was felt that there is the need to restrict the freedom of citizens. The

National Integration Council set up a committee for national integration and Regionalism. The committee recommended the 16th amendment, 1963 of the constitution that provided reasonable restrictions in the three fundamental rights namely Freedom of speech and expression, the Right to assemble peacefully without arms, and the Right to form associations. In addition, and pursuant to this in 1967, *Unlawful Activities Prevention Act (UAPA)*⁹ was formed. As said earlier, the UAPA is still in force in India with a new debatable amendment. The enforcement agency of UAPA is NIA i.e., National Investigation Agency. The objective of UAPA as described in the Act itself is *to make powers available for dealing with activities directed against the integrity and sovereignty of India*. Atal Bihari Vajpayee, former Prime Minister and the then leader of the opposition commented on the Joint Select committee of the parliament which amended the initial draft saying that *The Committee was given a donkey so that it could be turned into a horse but it resulted in a mule. Now this mule can be good to carry burden of the home ministry but if the ministry thinks that they can ride the mule and fight a battle for national integrity, I humbly oppose it.*¹⁰ Multiple parties opposed the bill on the contention that it would be used to suppress dissent of the opposition.

After the POTA got repealed in 2004, there was a void felt. So, there were new provisions added to UAPA, which were very similar to the POTA. For this reason, UAPA is also infamously known as POTA 2.0. The parliament added the words *'terrorist*

⁷ The Indian Evidence Act, 1872 Act 1 of 1872, section 25

⁸ Prevention of terrorists Act, 2002 [REPEALED] ACT 15 of 2002

⁹ Supra footnote no.3

¹⁰ Page 85, Lok Sabha debates (Third session), Parliament Digital Library



activities’ in the preamble. The *new amendment 2019* amended *Section 35 and 36* of the UAPA. It gives power to the central government to designate an organization as a terrorist organization or an individual as terrorist if; it commits or participate in acts of terrorism, prepares or promotes terrorism, otherwise involved in terrorism. *Under 43D* If a person is booked under UAPA he can be detained for *180 days (6 months)* without filing a chargesheet. This period can also be extended by the authorities. He has no right of bail as well unlike the ordinary rule under CrPC (section 167). One more amendment is the addition of 4th schedule. The government has the power to declare someone as a terrorist and put his name in the said schedule. This gives immense power to the government to brand anyone as a terrorist. Although, this can be challenged in an appeal within 45 days but to the same authority which prosecuted him. So, it’s a remedy just for the sake of name. UAPA also bars the courts to take suo motu cognizance of the matters concerned.

There is one more preventive detention law called the Public Safety Act¹¹ especially applying to Jammu and Kashmir, which is discussed later.

V. MISUSE IN INDIA PRESENTLY (UAPA, NSA, PSA)

From minor incidents to major ones, the police administration, the Union and state governments these days are resorting directly to UAPA or NSA or PSA. No need of IPC. No need of CrPC. Following are the most recent incidents of misuse of these security laws.

¹¹ The Jammu and Kashmir Public Safety Act, 1978 ACT 6 of 1978

1. ELGAR PARISHAD 16 ARRESTS UNDER UAPA

UAPA has lately been invoked against activists, journalists and student leaders. In 2018, several human rights activists and intellectuals were arrested in the clashes between right wing and left wing during the 200th commemoration of the Bhima Koregaon battle. They were alleged to have given inflammatory speeches in the Elgar parishad. They were alleged to be conspiring the assassination of the present Prime minister. Among the 16 arrestees were Vernon Gonsalves, labor rights activist; Sudha Bardwaj, human rights activist; Varvara Rao, tribal rights activist; Gautam Navlakha, journalist; Father Stan Swamy, tribal rights activist. There has been no trial since the day of arrest till now. Nor there is sufficient legal basis to keep them inside the prison. Many of the arrestees are over 60. Almost all of them have health conditions. There are several bail applications given till then on the basis of diminishing health. They all except one are still languishing behind the bars without a single bail opportunity. The one who is an exception is father Stan Swamy who died in July 2021.

The series of incidents that took place few weeks ago are disturbing, distressing and agonizing. 84-year-old Father Stan Swamy, writer of over 70 books, a Jesuit priest, an activist who fought for rights of tribes of Chhattisgarh died in the cell. He was suffering from Parkinson’s disease. In this disease, the patient cannot pick or hold things properly. He applied for a Sipper and a straw as he was unable to hold a glass of



water due to his illness. The jail authorities went for the permission of court for this. The court, well, let alone bail, it did not allow the sipper. The UN criticized the custodial death calling it a 'stain' on the human rights record of India. A UN human rights expert was quoted as saying that there is no excuse for smearing a human rights defender as a terrorist and no reason to die as Father Stan did.

2. ANTI- CAA PROTEST ARRESTS UNDER NSA and UAPA

During the protests against the Citizenship Amendment bill, various activists and protesters were slapped with the UAPA. It was done on the basis of speeches that were made condemning the biased nature of the CAB (later CAA). More than 300 activists and students like Gulfisha Fatima, Sharjeel Imam, Safoora Zargar and Akhil Gogoi were arrested. The pre-trial detention was without any sufficient evidence. There were reports of serious allegations of torture, ill-treatment by the police and human rights violations.

Safoora Zargar, a student from AMU was 4 months pregnant when she was arrested. It was alleged that she was not provided adequate diet and denied contact with the family. She was granted bail in her sixth month of pregnancy that too after pressure at the international level. The UN experts stated that it seemed like a chilling message deliberately being sent that the people who speak against the policies of the government would not be tolerated.

In 2019, Dr. Kafeel Khan, a pediatrician and humanitarian also known for saving lives of many children during the Gorakhpur Hospital burning, was arrested. He was arrested under section of 153B and 505(2)

for allegedly 'inciting hatred' through a speech at AMU protesting against CAA. As the proceedings went further, he was granted bail by the court. But he was not released in fact booked under the NSA section 3(2). So, he couldn't apply for bail then, as the said law bars. He spent 3 months in jail first and after the completion of the said period the detention was extended for 3 more months. During his arrests, various former IAS, IPS, IFS officers and the UN itself urged for his relief. But the authorities did not pay any heed. They did not stop there and desired to extend the period for another 3 months. His mother filed a Habeus Corpus plea and the Allahabad High Court finally acquitted him and cleared him from any NSA charges. Basically, a person who is an asset to the country, and more important a human was subject to confinement for such a long period without any valid reason at all.

3. DELHI RIOTS ARRESTS UNDER UAPA

In between the protests against CAA, riots took place in Delhi which took life of many. After the said riots Umar Khalid, a student leader from JNU was booked under the same law. Along with him were Natasha Narwal, Devangana Kalita, Asif Iqbal and many more. Again, the same allegation-inflammatory speech.

After being in police custody for nearly 1.5 years, the trio was set free by the Delhi High Court. They said that UAPA is being used to silence the dissenting voices. Asif also revealed that there is grave violation of human rights inside prisons. The authorities violate the rights of prisoners. It was the peak time of corona pandemic and inmates were not even tested. Jails were overcrowded, many fell ill, had fever and



other symptoms but proper medication was not provided. They had to protect themselves from the pandemic somehow. It was a difficult time for all of them. He alleged that he was mentally tortured by the authorities. He stated to a media house that the government believes that the only way people can be stopped from questioning it is by slapping them with charges under the UAPA.¹²

4. JAMMU KASHMIR 370 REMOVAL ARRESTS UNDER PSA

Recently, while before abrogating Article 370, the two former Chief ministers of Jammu and Kashmir were detained under Public Safety Act that enables the authorities to detain a person for two years straight without any trial. A person can be taken into custody to prevent him from acting against the security of state or maintenance of public order. Like the other security laws, the detenu has no right to file bail application or to engage any lawyer to represent him. After the passing of the J and K reorganization Act, 150 state Acts were nullified but PSA was not repealed.¹³ Both the said former CMs were kept under house arrest for six months in the beginning and then later the period was extended. 50 other politicians were arrested and kept under house arrest. All this was done following the abrogation of Article 370. The Amnesty International states that Public Safety Act is a 'lawless law.'¹⁴

¹² Intifada P Basheer, 'I was called traitor and Jihadi, Asif Iqbal', Outlookindia.com, (last visited 23 July,2021)

¹³ Public Safety Act, drishtias.com, (last visited 23 July 2021)

¹⁴ A lawless law Public safety act detentions, www.amnesty.org, (last visited 23 July 2021)

5. COW SLAUGHTER ARRESTS UNDER NSA

As per the statement of the Chief Secretary (Home), the UP police invoked NSA against 139 people in the state in one year (2020). Out of all those, 76 were about Cow slaughter. These cases in no condition fall under the ambit of NSA but still the provisions are being used. What are animal rights laws for? Looks like U.P. does not need IPC now. The minister of home affairs, G Kishan Reddy made it clear in the parliament in 2020 only that 'transporting of cattle' and 'cow slaughter' are not covered under the NSA but the use was and is still rampant.¹⁵ The chief minister of U.P. was quoted as saying that it would create fear among criminals. Definitely. And also give power to the police to arrest anyone as per their sweet will. And then U.P. wouldn't need any other law now. Because NSA is there.

The telegraph reports that all those alleged in cow slaughter are from the minority and the phrases used in the FIRs are totally identical, which unveil the state discrimination. As the NSA is a law that allows arrest without a formal charge and trial¹⁶, it is repeatedly used by the governments to suppress a particular community and makes it easy to put people behind the bars.

6. STATEMENT AGAINST THE GOVERNMENT ARRESTS UNDER NSA

¹⁵ Kaunain sheriff M, 94 out of 120 orders quashed, The Indian Express, (last visited 23 July,2021)

¹⁶ The editorial board, Secure grip: Cow slaughter and the National Security Act, the telegraph, last visited July 2021



The state governments have now fancied themselves as the whole nation and statements in their criticism as ‘a threat to public order’. This is why now the laws for security of the nation are being used in case of hurt to personal sentiments also. Recently in Manipur, a journalist was jailed under NSA over his Facebook post about a political leader from the ruling party in Manipur. The statements were sarcastic comments on the statement previously given by the leaders of the ruling party. One of them namely, Erendro Leichombam was released on the order of the Supreme Court after being in jail for 45 days. The other activist is still in jail. Basically, the freedom of expression has got a hit in social media also. The common citizens either come to streets or express themselves in the social media platforms. In the situation of unreasonable restrictions and fear of landing in prison one cannot fully express himself or take a stand.

7. RELIGIOUS CONVERSION ARRESTS NSA

As if the above incidents are not enough, the Uttar Pradesh government has gone one more step ahead and has started arresting people under the NSA for allegedly converting religion of Hindus to Muslim. The chief minister has instructed the authorities to arrest the conversion clerics and similar people under the NSA and confiscate their properties. But why NSA? That is the question. In *Madan Singh v. State of Bihar*¹⁷, the apex court defined terrorism as inextricably linked to violence and other than physical harm, it causes psychological devastation on society as a whole. The act of

Conversion, proselytizing facilitating or inducing the religious conversions simply do not rise to the level of terrorism. So, invoking NSA in the cases of conversion defies logic.

In each of the said cases, we can pretty much realize that either the application of the said laws was not needed or if needed, it was done to suppress any kind of criticism that ‘could’ take place. The government has been petty enough to slap the stringent laws in almost every other case that goes against their political motives.

VI. JUDICIAL STANCE

The increased useless and unnecessary use of the security laws have increased the responsibility of the courts. The courts, both the Apex court and High Courts have lately been found sometimes rectifying, sometimes criticizing while some other times admonishing the government and police authorities. The judiciary has time and now explained that these acts should not be used so rampantly and ordinarily but the authorities keep on misusing the laws. In the recent past, the courts have been frequently dealing with the matters related to the arrests under preventive detention laws.

In July 2021 only under the order *L. Raghmani Singh v. District Magistrate, Imphal West District*¹⁸ the Supreme Court released the Manipur activist and journalist arrested under the NSA for criticizing the ruling party. A bench of Justices M.R. Shah and D.Y. Chandrachud held that a person cannot be placed under custody for such a

¹⁷ *Madan Singh v. State of Bihar* (2004) 4 SCC 622

¹⁸ *L. Raghmani Singh v. District Magistrate, Imphal West District, WP(Crl) 266/2021*



matter. If the detention continues, it would be a violation of right to life and personal liberty. The petitioner's plea stated that the arrest is a misuse of prevention detention law to stifle an innocuous speech and that it is case of malice in law where the said law is being used to shut off political voices.

In *Re: Distribution of essential supplies and services during pandemic*¹⁹ case the apex court directed that no clampdown must be there on information or statement on social media or harassment of individuals for information on social media. Thus, the court clearly explained the freedom on social media and prohibited the use of arrest measures in such petty cases, which mean nothing but a way of expression by an individual. But the activity was repeated again by the ruling government in Manipur. The Supreme court judge DY Chandrachud while addressing a conference recently said that Anti-terror legislation should not be misused for quelling dissent. It is the duty of courts to defend the liberty of citizens. He said that no law can be employed to harass citizens and take away their freedom.²⁰ He referred to his own judgment in *Arnab Goswami v. The State*²¹ to reemphasize that the Courts should ensure that they become the first line of defense for the freedom of citizens.

In June 2021, the Delhi Court released three accused student activists in the Delhi Riots case. The bench of Justices Siddharth Mridul and Anup Bhambani in its order in *Asif Iqbal*

*Tanha v. State*²² asserted that it is to be borne in mind that bail right cannot be thwarted by simply saying that it is grave; this can only beget the duration of the sentence that is only possible after the trial. The court pointed out the "anxiety of the state to suppress dissent" and the "somewhat blurred lines" between the right to protest and terrorist activity.

In the order releasing the other accused *Natasha Narwal v. The State*²³, the court cited the case *Hitendra Vishnu Thakur and Others v. State of Maharashtra*²⁴ and others where it was held by the Supreme court that the extent of a terrorist activity must be beyond the effect of ordinary crime and cannot arise merely by causing disturbance of law and order. An act to be terrorism as per the court should be a totally "abnormal phenomenon." The court also declared that "Every terrorist may be a criminal but every criminal cannot be labelled as a 'terrorist' only to set in motion TADA." In the present times this should definitely apply to the UAPA.

The court held that 'Protesting does not equal terrorism'.

The Allahabad High court while releasing Kafeel Khan, the arrestee in the anti-CAA protest in 2020 held that his speech did not promote hatred as alleged by the Aligarh District Magistrate. The bench that consisted of Govind Mathur J. and Saumitra Dayal Singh J. in *Nuzhat Perween v. State of U.P. and another*²⁵, held that Dr. Kafeel's speech

¹⁹ Re: Distribution of essential supplies and services during pandemic, SMW (C) No.3/2021

²⁰ Utkarsh Anand, Anti-terror law should not be used to quell dissent, hindustantimes.com, last visited July 2021

²¹ Arnab Manoranjan Goswami v. The State of Maharashtra, CRL.A. no. 743/2020

²² Asif Iqbal Tanha v. The State, CRL.A. No. 39/2021

²³ Natasha Narwal v. State of Delhi NCT, CRL.A. 82/2021

²⁴ Hitendra Vishnu Thakur and Others v. State of Maharashtra (1998) 4 SCC 494

²⁵ Nuzhat Perween v. State of U.P. and another, W.P. 264/2020



did not threaten the peace and tranquility of the place. The court also held that invoking the stringent NSA based on the ground provided by the police and the extension of the period of detention was illegal and “not sustainable in the eye of law.”

As described earlier, the U.P. administration invoked NSA in cow slaughter cases also. Between January 2018 to Dec 2020 only, the Allahabad High Court gave orders under 120 Habeas corpus petitions challenging preventive detention under the National security Act. In 94 cases, the orders of District magistrates were quashed. In the remaining cases, the detainees were subsequently granted bail as ‘judicial custody’ was not required as per the courts. In 11 detentions, the court quoted that there was non application of mind by the District Magistrate. In 13 detentions, it was cited that the detinue was not given the right to represent his case effectively. In seven others, it was noted that there was no need to invoke NSA.²⁶

In *Union of India v. K.A. Najeeb*²⁷, where the accused was arrested under the UAPA and remained in jail for 5.5 years without any trial. His bail applications were continuously rejected. It was held by the Kerala High court that Speedy trial and Access to justice is a fundamental right and thus it was his right to get bail. In *Shaheen Welfare Association v. Union of India*²⁸ the apex court held that any unreasonable delay in trial of a person is the violation of fundamental right to life and liberty. While issuing bail to the Republic Media anchor

Arnab Goswami in an abetment to suicide case, the court was reported as saying “deprivation of liberty for even one day is one too many.” The bench was quoted as saying that the courts must ensure that they remain the first line of defense against the deprivation of liberty.²⁹

Thus, even in the case of preventive laws where the interference of judiciary is almost minimal due to all the bars put in the Acts themselves, the Courts have fulfilled their duty to safeguard the rights of citizens. The Courts rebuked the government if and when needed, defined the ambit of preventive detention laws and continuously stood up for the values enshrined under the Constitution.

VII. MAJOR PROBLEMS LYING BEHIND SECURITY LAWS IN INDIA:

To summarize, following are the main problematic issues lying behind India’s security laws.

- a) The Process given under the security laws: The problem is not the punishment but the whole process. The process is itself the punishment. There is pre-trial arrest on the basis of apprehension only or insufficient proofs. It is not required on the part of the police to inform of the grounds of arrest for a long time. People languish in jails without any trial for years. Due to the lack of legal measures, nothing much can be done.
- b) Less involvement of Judiciary: One more problem is that the role of Judiciary is limited when it comes to security laws. No

²⁶ Supra footnote no. 13

²⁷ *Union of India v. K.A. Najeeb* (2021) 1 SCC SC 50

²⁸ *Shaheen Welfare Association v. Union of India* (1996) 2 SCC 616

²⁹ Ananthakrishnan G, Depriving liberty even for 1 day is one too many, *The Indian Express* (last visited July 2021)



provision of producing before the magistrate within a particular time is there. Right to apply for bail does not arise soon unlike regular laws. The judiciary thus cannot interfere or do much even if it finds something wrong.

- c) Excessive power to the executive: The security laws provide excessive power to the executive which in turn result in arbitrariness of administration. The arrests under the security laws mainly concern with the command of District magistrate or NIA. It is very clear that this pillar of the government dances to the tune of ruling party. The ruling party, whatever or whichever it be, often uses the security laws to serve their political whims.
- d) Broad and vague definition of terrorism: Section 15 of the UAPA is often criticized on the point that it gives a very vague definition for terrorism. When the laws are vague and not clearly defined, they are vulnerable to misuse. The ambit of what terrorism is, has not been clarified. The authorities have time and not taken advantage of the unclear aspect of the preventive detention laws.
- e) Selective use of the laws: Another problematic issue with the said detention laws is that they have been used very selectively. The ruling party indiscriminately arrests all in the opposition but when it comes to its own followers, they neglect all their faults. Then the matter of 'hate speech', 'inflammatory statements', 'public order' and everything takes a backseat. The government thus uses the administration to penalize or capture only people of opposite mindset.
- f) Unnecessary use of the laws: The above given examples are sufficient to understand how mindlessly the preventive detention laws are used. It seems like it is the best and the easiest way to harass a person, as it has no boundaries, no specific meaning of crimes and it does not need any evidences too. A person can easily be detained under the said laws without any questions being asked. This has resulted in widespread use of the laws when it isn't even required.
- g) Low conviction rate: As per the data provided by the home ministry in the Rajya Sabha only 2.2% cases registered under the UAPA resulted in conviction by the court of law. The number of people arrested between the said period was 5922 and those of convicted was 132. This alarming data implies the extensive misuse of UAPA to deprive people of their rights.
- h) Threat to the freedom of speech and expression: It is obvious that the fear of being in captivity and confinement would make one meek and submissive. Citizens would be reticent to put forward their opinions. They would rather choose to keep their viewpoints to themselves. Thus, these 'security laws' are a threat to freedom of speech.
- i) Goes against constitution: The troublesome provisions of these laws go against the constitution Article 22, that provides clear measures for arrest of a person. As article 22(1) states that a person cannot be detained unless being informed of the charges against him. The Article also provides for right to get an advocate or legal help, but here we know the case very well by now. It also infringes Article 19.



- j) Goes against human rights: The stringent provisions of these laws go against the basic human right to natural justice. The principle ‘Audi Alteram Partem’ is forgone here. The detained person is not spared a chance before the court of law to prove his innocence. The administration can arbitrarily push anyone to detention for years. This is also against the human right to liberty.

VIII. CONCLUSION:

The question is not that whether we should or should not have security laws in the country. For the protection of a country’s sovereignty and safety it is important to have security laws. The whole point of discussion is to realize that the laws we have regarding the security of nation are full of flaws and they create loopholes that can be and in fact are being used to detain innocent persons.

Firstly, these ‘special’ laws must be kept for ‘special’ circumstances only. There is no dearth of laws. India has in its penal code almost every offence covered. The use of security laws must be really rare. The use of security laws as just another law is dangerous in itself as it deprives one of ordinary legal measures, unlike the other laws. There needs to be a control for the correct use of these laws.

Secondly, strict action must be taken against those in administration who invoke NSA without any reasonable cause. If there is wrong or mindless use of the said laws by the authorities, they should be prosecuted. This will lead to the careful use of the Acts and the police would not go slapping these laws on every other person who speaks out.

Thirdly, more involvement of the judiciary. The administration becomes arbitrary when left to itself, the judiciary keeps an eye on that. It is recommended that the cases must be tried in the court of law with all legal safeguards without any reservation. In these times of injustice and autocracy, the judiciary is standing up for the rights of the commons. The judiciary is the sole institution left now that can stand up for the rights of citizens. So, if the arrests are subject to judicial review, then lots of problems may be rectified.

Fourthly, it has to be understood that there is difference between a terrorist and an insurgent. One person’s terrorist can be another’s rebel. Dissenters should not be suppressed. They are performing their civic duty. They point out the faults and mistakes of the government. Dissent triggers the government to fare well and work in the favor of citizens.

Fifthly, it is to be kept in mind that a particular government cannot be blamed entirely. The governments change and criticize each other. New faces replace each other but none of them strive to change the draconian laws. Why? Because it is beneficial for them. They use it as per their political whims.

Sixthly, it is high time that the authorities understand that Bail is a norm and jail is an exception, not the other way around. Arresting someone and not giving the right to present his part is unfair. The ambit of the laws needs to be made clear. So that the arrests are not carried out so casually and if done, the person gets the right to prove his innocence at least prima facie.



Lastly, not to forget India is the same country that provided basic rights to even a cold-blooded terrorist for whole 4 years and was praised for that at the world level. So, the country should not undermine the human rights of protesters who are in fact the citizens of the state.

The freedom of speech and expression should never be unreasonably restricted. It is wrong to perceive that it is for the society only as it helps not just in raising the voices of commons but the betterment of the government itself. There should be people always who speak out loud if the policies of the rulers are unfair and ‘these people’ includes one and all, as the former President of USA Thomas Jefferson once said “Dissent is the highest form of Patriotism.”

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