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EXAMINING THE HUMAN COST OF OPPRESSIVE LAW: LIFTING THE DRACONIAN VEIL

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Abstract:

This article aims to bring the controversies caused due to the wrongful uses of draconian laws into the limelight, the primary objective of which was to establish peace and social harmony in the society. The paper aims to find out how the implementation of these laws by the government sparked rage among the citizens of the country due to the inhuman treatment of those who are detained, how their rights were infringed and why do these laws need to be repealed as soon as possible. Some of the draconian laws like sedition and Unlawful Activities Prevention Act (“UAPA”) were brought into effect during the British-India era, All the more reason to repeal them and bring a more effective counterpart into action. India today is a sovereign country who is not bound to follow the British -era enforced law which were used by the British as a tool to suppress freedom struggle at that time. The perspective which the Indian democracy needs to have today how maintain peace and harmony while being on the watch, i.e., to legislate such laws which are not too harsh in nature but are effective and can be used in the rightful manner , in an immediate effect.

Introduction:

What are Draconian Laws?

Draconian laws, basically, are laws which were introduced and enforced by the government to prevent any anti-national or anti-government act happening in the premises of this country, and they are pretty harsh in nature. The person who is convicted under these laws have to go through very harsh treatment from the authorities, the convict loses his fundamental rights and all kinds of freedom he is entitled to. The main purpose behind the enactment of these laws is for the citizen’s safety and smooth operation of the government. But more than often, the government misuses these laws to keep the government critiques silent. The repeal of these laws is proposed by experts because as such, the conviction rate is normally around 2%. To simplify it, only 2% of the total convictions are proven guilty in a court of law. The atrocities committed due to the enforcement of these laws is why injustice in the country is increasing substantially. There have been instances where the common civilian has suffered collateral damage in between the fights and cold war going on between the country and terrorists from infamous organisations like Lashkar-e-Taiba, Al-Qaeda and other such armed gangs. The government needs to keep tabs on the activities of such infamous terrorist organisations but at the same time protect the lives of innocent citizens. The only advantage of the UAPA and Armed Forces Special Powers Act is that the army can execute the individual as soon as the suspect has been confirmed, there is no need to proceed with order from the higher-ups. This gives the army distinguished powers with which comes great responsibilities.

Discussion:

Unlawful Activities (Prevention) Act (Uapa) ,1967

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Stated by government, a counter-terrorism law. It is used as a tool used by government which grants infinite power in the hands of the government and hold any individual or group or association a criminal without proving the same.²

South Asia Human Rights Documentation Centre, & Nair, R. (2009)³ - discusses the issue related to wrongful enactment of the UAPA act. Terrorist activities should be tackled smartly and more specifically, without any collateral damage. Before the law is implemented, it should be discussed with the concerned authorities with reasonable care.

A. How long can a person be arrested under this law, until proven guilty in the court of law?

- A person convicted under this act can be kept in the lockup for about 180 days and the time limit can exceed as per authorisation of the concerned higher-ups.

B. Under what circumstances can this law be implemented?

- If an individual is a participant of any illegal association or organisation or any designated terrorist organisation, an action can be taken up against him under this act.
- But this was only till 2019, the act was amended and it stated that the government can designate any individual a terrorist without court trial. This amendment created a controversy as it inherently violated the constitution of India and International human rights law.

C. What is the conviction rate of this law?

- Out of the total 4,690 arrested under this law, only 149 were proven guilty by the courts. That is only 2% conviction rate, the fact itself proves that the government misuses this law to harass and silence those who criticise the government's policies and unfair practices publicly.⁴

D. UAPA should be revoked for the following reasons:

- This act is often used as a tool by the government to keep the targets under custody for a prolonged time.
- National Crime Record Bureau, a government regulatory institution has stated that approximately 93% of the cases filed under UAPA are pending in the courts (they are being ignored) and only 27% have been proved guilty.

Sedition Act, 1860⁵

² Kelso, C. M., Green, T. M., Guffey, J. E., & Larson, J. G, Unlawful Activities Prevention Act-UAPA (India) & US-Patriot Act (USA): A Comparative Analysis. Homeland Security Rev., 5, 121 (2011).

³ South Asia Human Rights Documentation Centre, & Nair, R., The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes, Economic and Political Weekly, 10-14, (2009).

⁴ South Asia Human Rights Documentation Centre, & Nair, R., The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes, Economic and Political Weekly, 10-14, (2009).

⁵ Smith, J. M., The sedition law, free speech, and the American political process. The William and Mary Quarterly: A Magazine of Early American History, 497-511 (1952).

The Sedition act, which was implemented during the British Raj, is still in effect but, under the Indian penal code section 124A. The main reason behind this act being criticised so much by the people is because its existence has put a restriction on the freedom of speech, which is a fundamental right of every citizen mentioned in article 19 of Indian constitution. This act was brought into effect by the British to prevent offences against the state and its status changed into cognisable offence in 1973.

A. What does the Sedition act criminalise?⁶

- This act prohibits any act that incites violence or public offences either through words, written or spoken, or actions which encouraged or stimulated hatred towards the government. This act is always misused by the government to target journalists and activists who express their critical views in public. Sedition act is like an excuse used by the government which is why it needs to be repealed.

B. How long can a person be detained under this law (if convicted)?

- A person, proved guilty for sedition can be kept in the custody for 3 years and in some cases for lifetime as well, it depends upon the gravity of the situation.

C. Why should sedition law be revoked?⁷

- It does not act in accordance with the International human rights law. The International human rights law puts forth the basis fundamental rights such as freedom of expression, right to privacy, right to life, social security and education. The Sedition law is evidently in violation of it.
- It does not act in accordance with the freedom of expression in the constitution of India.
- The conviction rate under this law is under 27% which proves that 73% accused are acquitted by the court after spending considerable amount of time in the jail. This fact proves the misconduct of the government to accuse those who have not incited violence against the state but expressed their opinion publicly.

What is status of conviction under the sedition charges?

2014 to 2020 - Arrests under sedition charges rise but conviction is very low at 2.25%

Year	Cases Registered	Cases Chargesheeted	Cases Convicted	Trials Completed
2014	47	14	1	4
2015	30	6	0	4
2016	35	16	1	3
2017	51	27	1	6
2018	70	38	2	13
2019	93	40	1	30
2020	73	28	3	6
Total	399	169	9	66

⁶ Times of India, (Aug 4, 2022, 2:18 IST), <https://timesofindia.indiatimes.com/india/over-half-of-uapa-accused-in-18-30-agegroup-mha-data/articleshow/93332598.cms>

⁷ Mukherjee, M., Sedition, Law, and the British Empire in India: The Trial of Tilak (1908). Law, Culture and the Humanities, 16(3), 454-476 (2020).

High-profile individuals who were booked under Sedition:⁸

- Vir Das - He delivered a controversial speech in the USA publicly in which he stated in a sarcastic way how Hippocratic and extremist India is when it comes to religions, respecting women and following traditions. Das was booked under sedition but he was not convicted of the charge.
- P.A Ranjith – P.A Ranjith is an Indian filmmaker who expressed his political opinion while criticizing the government and its ideals.

Armed Forces Special Powers Act (AFSPA), 1958

(with the aim to restore normalcy in disturbed areas)

Basically, the Armed forces special powers act is an ordinance passed by the upper and lower house of the parliament and enforced by the government which;

1. granted special powers in the hands of the governor of the state to declare any area a disturbed area (within the premises of that particular state).
2. Allowed any commissioned or non-commissioned officer or any other dignitary of equivalent rank in a disturbed area can without warrant:
 - a. Open fire or use force, which may even result in death if he feels that it is necessary to maintain public order after giving requisite warning, before taking action. The action can be taken against any person who is violating any law, which prohibits assembly of more than 5 persons, possession of weapons or any tool which is capable of being used as a weapon.
 - b. If the officer is of the opinion to destroy a shelter from which arms attacks are made, or a place where weapons are stored or any training camp which is used to train potential terrorist or any hideout of armed gangs.
 - c. Place any person in detention without a warrant, if the person is confirmed to have committed a cognizable offence, or any suspect or a person who is suspected to commit an offence.⁹
 - d. enter and search without warrant, any place which can be a hideout of a criminal or recover a person believed to be wrongfully detained.

Provided -

1. The action taken by force or arrest made is justifiable.
2. The arrested person should be handed over to the police in the nearest police station as soon as possible.

Rights of the person detained - no legal suit can be initiated against that person, or he cannot be presented in the court as a witness. (except with the prior permission of the central government)

Controversy:

The central government is not alleged to have wilfully violated this legislation, but there have been several instances in the past where the past of regular individuals, such as the right to privacy or the right to free speech, have been violated while the government was in operation.

⁸ Aljazeera, (July 2, 2021), <https://www.aljazeera.com/news/2021/7/2/india-terror-law-uapa-muslimsactivists>.

⁹ The New India Express, (May 15, 2022, 6:05 AM), <https://www.newindianexpress.com/opinions/2022/may/15/draconian-laws-must-go-forever-2453638.html>.

Incident that sparked up the controversy - In Nagaland, on December 4, security forces opened fire on civilians which resulted in 14 civilians killed and 11 more injured in the Mon district in 3 consecutive actions.

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CIVILIAN CASUALTY	2019	2020	2021
Civilians killed in Assam	0	2	11
Civilians killed in Nagaland	1	0	14 *
Civilians killed in Manipur	7	0	9

An Army officer, his wife and their son were among 7 killed in Manipur

CIVILIANS KILLED IN NORTH EAST			
CASUALTY & SURRENDER	2019	2020	2021
Civilians killed in NE due to insurgency	21	3	33 *
Security forces killed in NE	4	5	8
Extremists killed in NE	12	21	39
Extremists surrendered in NE	158	112	1448

* includes 14 killed by security forces at Mon

Conclusion:

Although draconian laws have been criticized for the inhuman treatment of suspects and have multiple times committed serious errors like opening fire on suspected civilians or arresting potential armed gangs without warrant and treating them mercilessly or putting government critics, comedians behind the bars for expressing their views which were rightist in nature, the effects of these laws have created fear in the wrongdoers too. Illegal activities like smuggling of arms, drugs etc. has reduced, hideouts of armed criminals have been taken care of by the armed forces of India, possession of weapons in north-east states has reduced and less crimes are occurring compared to the statistics before 5 years.

Therefore, it is safe to say that the **first hypothesis has been proved correct** through the facts collected by verified government websites and trustworthy news sources. Speaking of sedition law specifically, it has stopped many hate speeches which had the potential to incite violence in the public and while we look from our own perspective, riots and violent protests destroy public property the burden of which heavily falls on the taxpayers themselves. Although the conviction

rate of these harsh laws are not so convincing, these have helped government departments work smoothly without any discrepancy.

The facts of this article prove the second hypothesis to be correct as well. **Persons who are detained under this law are not treated well in the police station either.** They are beaten up, a thorough inspection is carried out in their private property which invades the privacy of the person and his family as well. Most of the time, the desired results are also not obtained after the investigation.¹⁰

A. What Can Replace These Laws?

The existing laws can be replaced by new ones that have a similar character and goal but are less severe and can act right away to punish the wrongdoers. The issue here is not whether these may be changed or replaced; rather it is whether the legislature takes these into consideration. The legislature and executive have been totally oblivious of the mistakes committed by them. The feeling of guilt cannot change the past but working on it in the future is of utmost importance right now. To bring about a change in the judicial system of India¹¹ and to curb the injustice happening in India due to Draconian laws, the parliament needs to take into account the members and leaders of the younger generation in the most crucial deliberations and decision-making processes. Younger generations are more aware of current issues, and they approach the situation with an open mind rather than a conservative one. Modern solutions must be used to address modern concerns.

¹⁰ Arora, V., Citizens, The Smoking Guns of AFSPA and bare life in Northeast India. *Sociological Bulletin*, 69(3), 351-367 (2020). ¹¹ Wani, A. A., & Desai, D. D, The road to peace in Kashmir: Public perception of the contentious AFSPA and PSA, Observer Research Foundation (2018).