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**FREEDOM VS SECURITY: CRITICAL EXAMINATION OF THE
HUMAN RIGHTS CONTRAST WITHIN THE NATIONAL SECURITY
LAWS IN INDIA.**

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Abstract:

The Article critically examines the complex paradox between national security and human rights under the framework of national security laws. There are certain fundamental rights guaranteed by the Constitution that should not be abridged by the government unless in case of proclaimed emergencies, but with the enactment of certain national security laws such as UAPA, AFSPA, and NSA, the government is entitled with the power to suppressively break down the civil liberties guaranteed to the citizens under the pretext of ensuring the security and integrity of the state. These laws were enacted for national security, and are being operated with vague definitions and limited judicial limitations, which fosters the path of their misuse. The article examines this paradox through landmark judgements and also encompasses the disputed provisions of these legislations, highlighting the incidents where it has been constantly misused. In the final analysis, the article argues that the security and integrity of a State cannot be ensured by eroding the basic human rights of the citizens; There should be a democratic approach while dealing with the concerns pertaining to the collective security of the state. Lastly, the article suggests certain recommendations by the analysis of the scenario and the facts.

Introduction:

The Constitution of India guarantees fundamental rights such as freedom of speech, personal liberty, peaceful assembly, and equality. These rights are said to be very essential and should not be alienated from a human. Though under the name of national security and integrity, several legislations such as the Unlawful Activities Prevention Act (UAPA), National Security Act (NSA), and Armed Forces Special Power Act (AFSPA) empower the government machinery to curtail and suspend these very fundamental rights. The delegated powers of curtailment present a paradox: legislations are meant to safeguard the liberties of

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the citizen, but may simultaneously infringe upon their rights. This article would encompass the debate on this quandary, reviewing the balance and imbalances through several landmark cases, judicial decisions, and the role of the Constitution.

The National Security and Human Rights Paradox:

The foremost paradox between Human Rights and National Security lies in the conflicting responsibility of the State: to protect the rights and liberties of the citizens guaranteed and simultaneously ensure the security and integrity of the State. The fundamental rights guaranteed by the Constitution such as Right to Speech (Article 19), Right to life and personal liberties (Article 21), Rights Against Self- Incrimination (Article 20), and Right against Arbitrary Arrest (Article 22), are often curtailed by certain legislation in times of apprehended threat.

The International Human Rights institutions, such as the International Covenant on Civil and Political Rights (ICCPR), provide a reasonable way to limit and derogate these rights during national emergencies, but under certain strict and clear conditions. In contrast to the prescribed condition, the Indian government often enforces extraordinary measures through certain legislations like UAPA, NSA, and AFSPA to suspend and curtail the guaranteed rights without the formal proclamation of national emergencies, eventually eroding the balanced path between national security and human rights.

National Security Legislation in India and Its Effect on Human Rights:

The parliament of India has enacted many legislations under the name of national security and integrity to safeguard the state from terrorism, insurgency, and internal disturbances. In the meantime, some of them got dissolved, and some of the legislations are still prevailing. These legislations have remained the topic of discourse and criticism by human rights organizations and civil rights activists under the pretext of violating and hampering fundamental civil rights. Some of the provisions of this legislation usher in a way for the government to curtail the fundamental rights of the citizens.

Unlawful Activities Prevention Act (UAPA): The UAPA was enacted in 1967 to deal with the unlawful and terrorist activities that could undermine the security and integrity of the state. In 2019, the amendment in the Act made a significant change by empowering the

government to designate an individual as a ‘terrorist’ under Schedule IV of this Act². Before this amendment, only organizations were to be designated under the label of terrorists, individuals were not under the ambit. The definition of “unlawful activities” and “terrorist act” under the legislation is considered to be vague, which paves the way for the government to incorporate the activities of students, activists, and critics under the umbrella of unlawful and terrorist acts.

National Security Act (NSA): This act allows the government to the preventive detention for up to 12 months without any clear and formal charges. The detainees under this act were denied full access to legal representation. These cases were dealt with by the advisory board formulated under this act, which consists of national security experts outside the government, and the transparency of the process is constantly being put under debated. The legislation has been constantly used against the protestors, dissenters, and students to silence their voices. The question of the necessity of this act is being regularly raised.

Armed Forces Special Power Act (AFSPA): The legislation was enacted to empower the armed forces for their effective functioning while dealing with the insurgency and terrorists in the “disturbed areas” such as Jammu & Kashmir, and certain parts of the North East. The law provides a discretionary power to the Armed Forces, even empowering them to shoot to kill, authority, and immunity from legal prosecution. Despite constant criticism by the NHRC and the UN human rights organizations on account of several false killings and certain events of glaring human rights abuses by the armed forces personnel, the act remains robustly intact.

These provisions of the national security laws collectively pose a significant threat to human rights by the government. There is a plethora of events and cases that fortify the claim that the executives are empowered significantly, which can be used to undermine fundamental human rights under the pretext of safeguarding the security and integrity of the state.

Balancing Rights and National Security Concerns:

India had faced genuine security threats to its territorial sovereignty and integrity over time, and had witnessed several separatist movements starting just after its independence. In this situation of crisis, the paramount concern was to ensure the territorial integrity of the state, simultaneously upholding the civil rights of the citizens. To balance out this conflict, several observations were laid down by the court.

²*Sajal Awasthi v. Union of India*, SUP. CT. OBSERVER (Jan. 28, 2025),

In (*Union Of India vs K.A. Najeeb*, 2021)³ the Supreme Court granted bail to the accused under the UAPA, emphasizing that the right to life and personal liberty under Article 21 cannot be suspended due to stringent bail conditions. The Court held that prolonged incarceration without trial violated fundamental rights, and procedural laws must yield when constitutional rights are at stake, marking a significant stance against the misuse of preventive detention.

In the (*Nuzhat Parveen v. State of Uttar Pradesh*, 2020)⁴, popularly known as Dr Kafeel Khan's case (2020), the Allahabad High Court quashed his detention under the National Security Act (NSA), stating that his speech during anti-CAA protests did not incite violence or threaten public order. The Court observed that the state had misused preventive detention to curb dissent. It reaffirmed that criticism of government policies, even if harsh, falls within the ambit of free speech guaranteed by the Constitution.

In the landmark judgment of (*Naga People's Movement for Human Rights v. Union of India*, 1997),⁵ the Supreme Court upheld the constitutionality of the Armed Forces (Special Powers) Act (AFSPA) but emphasized the need for safeguards to prevent abuse of power by security forces in disturbed areas. The Court highlighted the necessity of balancing national security concerns with the protection of fundamental rights, particularly in conflict zones.

These theoretical safeguards to balance the freedom and security are laid down in cases, but they have constantly failed to uphold the freedom of citizens, or it can be said that these doctrines and changes have been abruptly ignored by the executive. It is significantly dependent on the judicial discretion and willingness to safeguard the rights through constitutional measures and limit the executive power.

Criticism of National Security Laws:

Despite the number of constitutional safeguards and guidelines that have been laid down to ensure the civil liberties of the citizens, the national security laws have been constantly used in the political diaspora to curb and silence the voices of dissenters, activists, critics, and even students. The central criticism of these legislations is peripheral to the selective application of these laws against the marginalized sections of society, which predominantly include the minority groups, civil rights activists, and the dissenters.

³*Union of India v. K.A. Najeeb*, Crim. A. No. 98 of 2021 (India S.C. Feb. 1, 2021).

⁴*Nuzhat Parveen v. State of Uttar Pradesh*, Habeas Corpus W.P. No. 264 of 2020 (All. H.C. 2020).

⁵*Naga People's Movement for Human Rights v. Union of India*, W.P. (Crl.) No. 550 of 1982 (India S.C. Nov. 27, 1997).

On 14 June 2024, the Delhi lieutenant governor sanctioned the prosecution of “Arundhati Roy” and “Sheikh Showkat Hossain” under the stringent counter-terrorist act for their speech, which was made 14 years before in 2010 against the human rights violation that was ongoing in the Kashmir valley.⁶ This act of the government itself highlights the position that the government can use these laws against the political dissenters and critics for its ulterior motives.

Certain cases of charging dissenters and activists under UAPA rapidly burgeoned during the Anti-CAA protest of 2019. Many students were booked under the UAPA on the grounds of unlawful activities and terrorist acts without any reasonable evidentiary backing, and are still under trial. Umar Khalid, a student activist from JNU, has been incarcerated for the last 6 years in the case under the anti-terror law, Unlawful Activities (Prevention) Act (UAPA), and provisions of the Indian Penal Code for allegedly being a mastermind of the riots.⁷

The conviction rate under UAPA is significantly low. People's Unions for Civil Liberties (PUCL) study finds that between 2015 and 2020, a total of 5,924 people registered under the UAPA, out of which only 2.8 percent of the undertrials were convicted, and the rest 97.2 percent of the undertrials trial still awaiting their verdict.⁸

The condition of abuse is even worse in the case of AFSPA. The legislation provides absolute discretion to security forces to use their utmost measures to suppress the insurgency and terrorism, even empowering them the right of shooting to kill with total immunity from legal proceedings.

In 2004, the naked protest by Meira Paibis against the custodial killing and rape of a young woman “Thangjam Manorma” by the troops of Assam Rifles. In response to this abuse, around 30 women angrily came forward together and stood naked in front of the Assam Rifles headquarters with banners which says “Army Rape Us”.⁹

The Kunan Poshpora Incident: In February 1991, the personnel of the Rajasthan Rifles conducted a cordon and search operation in the Kunan Poshpora Village of Kupwara District, Jammu & Kashmir. The villagers alleged that the security forces repeatedly raped over 100 women of the village through out the search operation, Human Rights watch also assessed that

⁶ *Human Rights Abuses in Conflict Zones*, AMNESTY INT'L (June 24, 2024)

⁷ P. L. Vincent, *State Power and Dissent*, THE TELEGRAPH ONLINE (May 29, 2025),

⁸ Janhavi, *Mass Detentions and the UAPA*, THE NEWS MINUTE (Oct. 2, 2022)

⁹ Sunil, O., *Militant Rape Allegations Rejected*, THE TIMES OF INDIA (Jan. 10, 2013),

the number of survivors were around 100¹⁰. The Army, however, condemned the allegations in a statement as “terrorist propaganda,” and the government investigation also denied the occurrence of the incident and called the allegations ‘baseless. Although International Human Rights Organizations were skeptical about the findings and how the investigation was conducted.

These incidents sparked the debate on the misuse of national security laws through the government machinery by undermining and violating the fundamental and civil rights of citizens. The AFSPA necessity and the extent of power granted to the personnel have been constantly impugned by the civil rights activists, NHRC, and the International Human Rights Institutions, but its presence and enforcement still remain intact in the democratic diaspora.

Recommendations:

Despite the constant misuse of national security laws, it cannot be said that the presence of such laws is unnecessary; it is the duty and obligation of every country to safeguard its territorial sovereignty and integrity. These laws are crucial for the country to counter insurgency, internal disturbances, acts of terrorism, and separatist movements, but the question arises as to what extent the power must be delegated to the governmental institutions, where a line should be drawn, and what remedies are guaranteed against the misuse of those laws.

Certain recommendations that may ensure the proper functioning of these legislations.

The Judicial oversight must review the cases under the National Security Act, which allows the government to detain a person for a maximum period of 12 months without any trial and without notifying them of the grounds of their arrest. These provisions are prima facie violative of human rights. A special court comprising judicial members and security experts could be formulated to look into the matter of these cases, and the occurrence of the trial should not be kept in abeyance on the pretext of national security.

The reform under the laws should be of paramount importance; the definitions of “Unlawful activities” and “Terrorist” should be unambiguously defined in the legislation, the vagueness to such an extent opens the door for the government institutions to misuse the law.

¹⁰P. Jha, *Unravelling a Mass Rape*, THE HINDU (June 4, 2016),

The civil liberties of the citizens should be protected at any cost, no one should be denied of their fundamental rights before or after the arrest under these laws. It would be catastrophic for the democratic values of the state if it were allowed to curtail or undermine the civil liberties of a citizen under the name of safeguarding national security.

The provisions of AFSPA empowering the security personnel with the right to shoot and kill, alongwith the immunity from legal proceedings, should be scrapped on an immediate basis; the confiscation of this power does not tend to dissolve the act as a whole. It is understood that empowering security forces with certain power is necessary to effectively tackle the rising threats of insurgency and terrorism, but that does not mean empowering them with immense power that could be easily misused. The cases under AFSPA should not be kept out of the judicial ambit. An independent body should be constituted to investigate the necessity and validity of a death caused by the armed forces under the legislation.

There should be absolute transparency in the detention process The accused should be informed about his grounds of arrest, the kin of the accused should be informed by the arresting agency, they must be presented before the trial court within 24 hours of their arrest, and if court finds it prudent to extend the duration of detention it may be extended by the courts discretion.

Conclusion:

The debate on the necessity and constitutionality of national security laws should be dealt with utmost prudence by ensuring both the national integrity and security of the nation simultaneously upholding democratic values by safeguarding the fundamental and human rights of the citizens. It cannot be denied that the enactment of national security laws is indispensable to secure the citizens, and by the enactment, there should be certain discretion that should be vested in the executive authorities for the effective implementation of the legislation, and to foster the reason behind the enactment. But there should be reasonableness and limits in the delegation of power, the authorities should not be empowered to such an extent that they could easily misuse the legislation. There should be an overarching authority to deal with matters pertaining to the misuse of law.

To determine whether a law is draconian or not, it should not be judged on the intent of the enactment but on its implementation.