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IMPARTING INJUSTICE THROUGH DRACONIAN LAWS

Aditi Sharma¹

The word 'Justice' indicates the very wide ambit of delivering equal rights and opportunities to everyone regardless of any differentiation amongst people.² However, having the concept of 'fairness' which we call justice in our mind we are really progressing towards a world where we face and witness discrepancies and contradictions in what we preach and what is actually being practiced, regardless of the full-fledged definition of Justice we have which propagates equal treatment of every individual.

Rule of law ensures that one is ruled by no man, but by law. Rule of Law embodies the doctrine of Supremacy of law.³ It furnishes the foundation for a pragmatic system of governance. In the Indian Constitution, the constitution is the supreme law of the state where other laws fall in conformity. The Rule of Law has been adopted under the Preamble, where the ideals of justice, liberty, and equality are enshrined.⁴ Having rules, codes and procedures would surely help in creating a systematic decorum in a society, however, how is that rule really being implemented is the issue at hand. We have civil and political rights for the poor, and the vulnerable, only on paper.

We do need something consciously carved out from the meeting of many brains governing issues since that could be legitimate and credible, but why do these mindfully made laws sometimes go against us and our

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² Ginsberg, Morris. "The Concept of Justice." *Philosophy*, vol. 38, no. 144, 1963, pp. 99–116. *JSTOR*, <http://www.jstor.org/stable/3748508>. accessed 4 Jun. 2022.

³ TREMBLAY, LUC B. *Rule of Law, Justice, and Interpretation*. McGill-Queen's University Press, 1997. *JSTOR*, <http://www.jstor.org/stable/j.ctt81bnq>. accessed 4 Jun. 2022.

⁴ Kaushal, Pranav. "Rule of Law under Indian Constitution." *Law Corner*, 12 Mar. 2022, lawcorner.in/rule-of-law-indian-constitution/#Concept_of_Rule_of_Law. accessed 3 Jun. 2022.

rights to an extent that people start losing trust in our justice delivery system.

We are, needless to say, progressing towards a more dogmatic democracy where we're only puppets who have to follow what our rule guides us as going against it by expressing dissent would slap Sedition or would send us to Jail under disturbing the public order. The constitution of our country endows the basic fundamental rights and principles of natural justice whose violation may result in undermining the rule of law resulting in arbitrariness and unreasonableness. The courts can undo laws that are arbitrary, tyrannical, violate the basic norms of law and justice, and disturb the structure of the constitution. But how inconsistent is that with what we witness in the current scenario. The principles of natural justice; no one should be a judge in his own case, no one should be condemned unheard, and reasoned decision to preserve people's rights, are being hampered openly under some stringent laws.

Unlawful Activities Prevention Act, 1967 is one such legislation which is an anti-terror law containing stringent and controversial provisions like Section 43D(5), where definitions of a terror or an unlawful act are not clear which then blurs the line between the two, giving the government overarching powers to criminalize dissent and use it in a routine fashion, despite the fact that this has to be used rarely, only in the grave and substantial cases.

The major problem with this provision is that it violates the very principles laid down by our rule of law. The innocent people booked under this law have to face an indiscriminate period of jail up to six months without even a chance to be heard of an opportunity of a fair trial. Under-trials have been languishing behind the bars for years without any hope for their bail. The famous names like Father Stan Swamy, who was convicted under this Act and eventually died in jail

without even getting medical aid despite his serious illness was one such instance of how draconian can a law be on innocents.⁵ Any trivial act like booking a minor under the Unlawful Activities Prevention Act, 1967, as he was alleged to have made anti-national slogans at the funeral of a man who died in an accident, or Indian college students cheering for Pakistan during the T20 matches, or a person in Assam who uploaded a Facebook post saying '*Taliban in Afghanistan is not terrorism*', shows that in order to stifle any behavior which stands contrary to what the government believes, the government can go to any lengths to suppress people, their voices and their actions.⁶

An act that was supposed to be for terrorists, for those who create instability on a mass level, who are a threat to our nation in a much more explicit way, is being used so frequently and easily being imposed on anyone.⁷ This would inflict not just physical but mental agony on the incarcerated individuals. The right to life under Article 21 is blatantly denied by keeping them jailed for years, along with which their dignity and respect are also deeply hurt.

The action of the government to keep the Sedition law in abeyance has definitely stirred hope for many who have been detained for just expressing their views openly from Vinod Dua to Disha Ravi who have been slapped with Section 124A for being critical of the government's policies and improper actions. Living in a democratic country that gives its citizens the freedom of speech and expression under Article 19(1)(a), also is seen stifling people's voices by bracketing their actions and expressions under reasonable restrictions under Article 19(2).

⁵ Khan, Niranjana Sahoo and Jibran. "UAPA and the Growing Crisis of Judicial Credibility in India." *ORF*, 29 Nov. 2020, www.orfonline.org/expert-speak/uapa-growing-crisis-judicial-credibility-india/. accessed 3 Jun. 2022.

⁶ Maqbool, Umer. "Offences Not Heinous: Kashmir Minor Booked under UAPA Gets Bail" *The Wire*, thewire.in/rights/jammu-and-kashmir-minor-teenager-uapa-bail-heinous-juvenile-justice-board. accessed 4 Jun. 2022.

⁷ Shaoni Das 09 May, et al. "The Unlawful Activities (Prevention) Act and a Long Way to Justice." *NewsClick*, 9 May 2022, www.newsclick.in/the-unlawful-activities-prevention-act-long-way-justice. accessed 4 Jun. 2022.

The way these laws are being aggressively used in any frivolous and flippant matter shows that we are living in a democracy controlled by an imperious and despotic regime that cannot hear a word against them.

For any democracy to function well, it must ensure a free and independent judiciary. The most important institution in imparting justice and the one where people's hopes are attached is the Judiciary. The courts have worn multiple hats while interpreting UAPA. The most controversial 'Watali' judgement wherein the Supreme court held that bail to the accused in UAPA cases would only be granted when the accusations are prima facie true basis regardless of the material produced by the prosecution.⁸ Though after this judgement the courts did make an effort to subside this by involving the concerns like right to speedy trial and ensuring if the prima facie accusations are true.⁹

In any case, the accused is always first presumed innocent until proven guilty, however here, this law stands diametrically opposite to this principle since here the accused is first put behind the bars without any right of being heard or opportunity of a trial, and after six months the fate of the accused is decided, which causes a huge loss to an individual's life, liberty and dignity. K.A. Najeeb¹⁰ had to wait for five years for his bail, whereas the other fellow accused went through their trial. In these cases, there is huge pendency of cases causing inordinate delays, and out of the people booked under this act, below two percent of them are actually guilty which lends a cloak of legality to lapses in due procedures of law.

⁸ Mandhani, Apoorva, et al. "UAPA Doesn't Stop Courts from Granting Bail When Fundamental Rights Are Violated, SC Says." *The Print*, 2 Feb. 2021, theprint.in/judiciary/uapa-doesnt-stop-courts-from-granting-bail-when-fundamental-rights-are-violated-sc-says/597133/. accessed 2 Jun. 2022.

⁹ UAPA, Criminal Justice Seditio &, et al. "The Unlawful Activities (Prevention) Act and a Long Way to Justice – the Leaflet." *The Leaflet – An Independent Platform for Cutting-Edge, Progressive, Legal, and Political Opinion.*, 8 May 2022, theleaflet.in/unlawful-activities-prevention-act-and-a-long-way-to-justice/. accessed 1 Jun. 2022.

¹⁰ Union of India v. K.A. Najeeb, (2021) 3 SCC 713.

Rule of Law is a tool to ensure justice¹¹, however, when this is used to create laws that stand contrary to the basic principles laid down by our constitution, it becomes a serious concern as it can lead to even distrust and anguish in people regarding imparting of justice and the very system itself. A nation is built when its people are represented, protected, and managed well. However, some laws exceed the threshold of fairness and become overarching which affects the social fabric of a nation. Therefore, for a country to be maintained with peace and tranquility, it is a must to rethink, reform, and redesign the ways not just our laws but authority works, which would be helpful in ensuring that justice is righteously delivered through the legitimate and credible rule of law which the population believes in.

¹¹ Dworkin, Ronald M. "What Is the Rule of Law?" *The Antioch Review*, vol. 30, no. 2, 1970, pp. 151–55. *JSTOR*, <https://doi.org/10.2307/4637281>. accessed 4 Jun. 2022.