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"It's not the land which matters, but the people."
– RABINDRANATH TAGORE

The accession of the erstwhile princely state of Jammu & Kashmir had been an extraordinary event in the history of independent India. The immediate circumstances following the incursion from the tribal Pashtuns of Pakistan resulted in the signing of the instrument of accession by Maharaja Hari Singh, paving the way for J&K becoming a part of the Indian Union. Although in practice, the instrument of accession allowed the Indian Union to exercise power limited to the subjects of Defense, Foreign Policy, & Communication. In addition to this, a separate Constitution and a special status were provided under the Indian Constitution in the form of Article 370. The root of the recent controversy is the dilution of Article 370 by way of a Presidential Order, in addition to the reorganization of the state into two different Union Territories.

BACKGROUND

Article 370 which gave J&K the state special status was adopted by the Indian Constituent Assembly on 17 October 1949. The same ensured greater autonomy to the state in all matters except as specified under the instrument of accession. On December 4, 1964, at Lok Sabha, home minister Gulzari Lal Nanda said: *"It is Article 370 which provides for the progressive application of the provisions of the Constitution to J&K, Article 370 is neither a wall nor a mountain, but that it is a tunnel. It is through this tunnel that a good deal of traffic has already passed, and more will."*

The article was enlisted in Part XXI of the Constitution: *"Temporary, Transitional and Special Provisions."* Following its establishment, the Constituent Assembly of Jammu and Kashmir was empowered to specify the features of the Indian constitution that were to be applied to the state or to abrogate Article 370 in full. The 1954 Presidential Order was issued after consultation with the Constituent Assembly of the State, specifying the articles of the Indian constitution which applied to the State. Since then, numerous provisions of the constitution were made applicable to the state following the procedure as required under the law. Strictly going by the legal sense, the state had become an integral part of the Indian Union the day it signed the instrument of accession. Further, the J&K constitution (enacted in the year 1956) under Article 3 & 4 explicitly declared the State of Jammu and Kashmir to be an integral part of the Union of India. It stated that territory of the state shall comprise of all the territories which on the fifteenth day of August 1947, were under the sovereignty of the Ruler of the State.

Though in reality, the conflict which has been persisting for many decades is far more complex and perplexing. Firstly, the problem persisted due to demographic differences of the state and the demand of the people for independent rule since under the Dogra dynasty. Secondly, it aggravated due to the cross-border terrorism tactics employed by the neighbor State along with the rise in local militancy. Lastly, it can be attributed to the different political ideologies battling for the total control of the state; calling for the dilution of the special rights and status, thereby helping in the true assimilation of the state with the rest of the country. The same became possible with the presence of the parliamentary majority of the Modi-led government. President Ram Nath Kovind issued a constitutional order on 5 August 2019 that superseded the order of 1954 and made all the provisions of the Indian Constitution relevant and valid to apply to the state of J&K. The same order in its process also resulted in the deletion of Article 35A, the matter which was sub-judice in the apex court. Consequently, Article 370 was completely obliterated & diluted in essence; and J&K's unique status eviscerated. After this, the Parliament would have the authority to legislate on all issues that are subject to the parliamentary powers left to the J&K legislature— something similar to Delhi.

LEGAL ISSUES

Beginning with the first legal issue, it is the Presidential Order C.O. 272, which has the crux of everything that follows. A Statutory Resolution introduced in the Rajya Sabha, which – invoking the authority that flows from the effects of Presidential Order C.O. 272 – mentions that the President abrogates (much of) Article 370. Then the Reorganization Bill was introduced, that bifurcates the state of J&K into the Union Territories of Ladakh (without a legislature) and Jammu and Kashmir (with a legislature). This reorga-

-nization of State is scheduled to take place on 31 October 2019.

To understand the legal issues, we need to begin with the language of unamended Article 370. Article 370, as is well known,

limited the application of the provisions of the Indian Constitution to the state of Jammu and Kashmir. Under Article 370(1)(d), constitutional provisions could be applied to the state from time to time, as modified by the President through a Presidential Order, and upon the concurrence of the state government (this was the basis for the controversial Article 35A, for example).

However, perhaps the most substantial aspect of 370 was the provision under clause 3. Clause 3 itself authorized the President to pass an order removing or modifying parts of Article 370. The proviso stated that: *Provided that the recommendation of the Constituent Assembly of the State referred to in clause (2) shall be necessary before the President issues such a notification.*

In other words, to amend Article 370, there is a requirement of recommendation from the Constituent Assembly of J&K. Now, the Constituent Assembly (CA) of J&K ceased functioning in 1957. This led to an age-old debate: whether Article 370 has effectually befitted as a permanent part of Constitution. The same has been affirmed by the Supreme Court in the case of State Bank of India v Santosh Gupta, stating that the article has acquired permanent status. However, the issue is, since there is no CA to give consent to its amendment, if it would necessitate a reinforcement of a J&K CA to amend it or if it can be amended through the ordinary amendment procedure as stated in the Constitution.

C.O. 272, however, takes an entirely different path. C.O. 272 uses the power of the President under Article 370(1) (see above), to indirectly amend Article 370(3), via a third constitutional provision: Article 367. Article 367 provides various guidelines about how the Constitution may be interpreted. Now, C.O. 272 adds to Article 367 an additional clause, which has four sub-clauses. Sub-clause 4 stipulates that "in proviso to clause (3) of Article 370 of this Constitution, the expression 'Constituent Assembly of the State referred to in clause (2)" shall read "legislative Assembly of the State."

Let us look at the amendment procedure adopted by the government in detail. Article 370(1) allows the President – with the concurrence of the government of J&K (more on that in a moment) – to amend or modify various provisions of the Constitution in relation to J&K. Provisions of Article 370(3) state that if Article 370 is to be amended, it can be done so by the concurrence of the Constituent Assembly of J&K. According to C.O. 272, the power under Article 370(1) and Article 367 to amend a provision of the Constitution has been used. This circuitously amends Article 370(3) and eliminates the need of the concurrence of the Constituent Assembly for any further amendments to be introduced for Article 370. This amendment results in the introduction of statutory resolution, that recommends to the President the removal of (most of) Article 370.

However, the most important issue here is, "Is the process legal as per the procedure established by law?" The legality of this amendment can be traced back to Article 370(1)(c), which stated (before amendment) that *"notwithstanding anything contained in this Constitution, the provisions of Article 1 and this Article shall apply in relation to that State.*" This is a very imperative clause as it showcases well-defined rule that the power of the President to amend the Constitution with respect to J&K does not extend to Article 1 and Article 370 itself. Article 370(1)(d) demarcates "other provisions" of the Constitution that can be altered and amended by the help of Presidential Order. Henceforth, by the purview of this provision under Article 370(1)(d), Article 370, cannot be amended by a Presidential Order.

Several legal experts have justified this procedure stating that C.O. 272 does not directly amend Article 370, it is an order to amend Article 367. However, one very pertinent point that has been overlooked is that the gist of those amendments is to amend Article 370.The Hon'ble apex Court opined on multiple occasions, that you cannot do indirectly what you cannot do directly. Therefore, the legality of C.O. 272 and its purpose to amend Article 370 is dubious, and it pitches into question and doubt the entire exercise from the grass root level.

There is another point of contention that has to be noted. C.O. 272 says that the government of the state of Jammu and Kashmir concur with this decision. However, the state of Jammu and Kashmir, for months, has been under President's Rule. Subsequently, the consent provided has to be of the Governor of the State. This again highlights two procedural flaws. Firstly, the Governor is not a representative of State but a representative of the Centre akin to the President. This means that the Central Government has appropriated its own permission to amend the Constitution while implementing Presidential Order 272.

Henceforth, it can be seen that there are grave legal and constitutional glitches with Presidential Order C.O. 272 – which led to the foundation of both the statutory resolution and the Reorganization Bill.

STRUGGLES AHEAD

The Government has come under severe criticism from different quarters regarding the way it has handled the situation in the state. There have been reports of gross human rights violation including a blackout of communication channels and disallowing the members of the media to report ground situations. Political leaders have been put under house arrest and the infamous Public Security Act has been used to detain several civilians from different walks of life in the state. The action of the government has also been seen as an attack on the federal structure and polity. It has raised apprehensions regarding the dilution of other provisions providing concessions or benefits to other states under the constitution. The act in essence has been seen as an attack and a violation of the spirit of the constitution. The claims of the government in relation to the impact of the action benefiting the state will be ascertained with time. However, what is important to be seen is the approach of the judiciary in handling the matter in hand, when it will hear a plethora of petitions filed in relation to the different restrictions imposed affecting human rights in addition to the legal validity of the Presidential Order.

HONG KONG: THE TIGHTROPE OF RIGHTS AND VALUES

CONTEXT

In spite of Carrie Lam declaring the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019 (popularly known as the Extradition bill) as dead, the protests in Hong Kong are showing no signs of fizzing down. Instead, they seem to be gaining momentum as the weeks pass by.

In order to understand the context of the protests as well as the legitimacy of the protestor's demands, it is important to have a look back into history starting from the Joint Declaration of 1997. In the Joint Declaration, the Government of the People's Republic of China declared that it had decided to resume the exercise of sovereignty over Hong Kong with effect from July 1, 1997, and the Government of the United Kingdom declared that it would restore Hong Kong to the People's Republic of China with effect from July 1, 1997.

Points (a), (b), (i) of Annex 1 of the aforementioned Joint declaration establish Hong Kong as a Special Administrative Region and that would enjoy a high degree of autonomy under the People' government (China). Point (i) of the aforementioned Annex is perhaps the most relevant and disputed issue in the recent protests. It explicitly mentions that the policies, in this case, the high degree of autonomy of Hong Kong amongst other things, would remain unchanged for 50 years from 1997 that is till 2047.

CURRENT SITUATION AND IMMEDIATE CAUSE OF PROTEST

Massive protests erupted in Hong Kong against amendments in the Extradition law introduced by the Beijing loyalist government led by the Chief Executive, Carrie Lam. Prima Facie the amendment attempts to resolve flaws in Hong Kong's extradition laws but when put under scrutiny, it becomes evident that the amendment ultimately intends to cement China's control over Hong Kong.

When Hong Kong's Extradition Accords were being framed, China and Taiwan were not included because they had a "fundamentally different criminal justice system operating in the mainland" and because of "concerns over the mainland's track record on the protection of fundamental rights," according to an April statement by the Hong Kong Bar Association. This amendment would now empower the government to extradite people to the mainland (China).

The problem here is that the basic law of Hong Kong has a democratic basis to it which is completely antithetical to China's political structure. Taking into consideration the clauses of the Joint Declaration, this move of introducing the amendment was seen as an infringement on Hong Kong's 'high degree of autonomy' as agreed to between China and Great Britain. China's growing influence in Hong Kong did not help the situation at all. This was one of the primary reasons why people were protesting in Hong Kong.

As far as the current situation is concerned, the five demands of the protestors were initially rejected. The demands were the full withdrawal of the extradition bill, an independent inquiry into the protests, fully democratic elections, dropping of the term "riot" in describing protests, and a general amnesty for all those so far arrested. The protests which started peacefully are now talking a violent turn in response to police brutality. Also, it is to be noted that, at the time of writing, one of the protestors major demands have been met. The Chief Executive, in the first week of September, announced the withdrawal of the amendment in a substantial victory for the protestors.

Additionally, the presence of Chinese troops on the bordering areas of Hong Kong is raising concerns in the international community. Pentagon Lt. Col. David Eastburn said in a statement "We are monitoring the Chinese military movements in and around Hong Kong closely,". "We stand with the G7 countries in calling for violence to be avoided and in reaffirming the importance of the Sino-British Joint Declaration." Therefore, a volatile situation is prevailing in Hong Kong at the moment.

HONG KONG AND THE PRINCIPLE OF SELF-DETERMINATION

Essentially, the right to self-determination is the right of a people to determine their own destiny. In particular, this principle allows people to choose their own political status and to determine their own form of economic, cultural and social development. Exercise of this right can result in a variety of different outcomes ranging from political independence through to full integration within a state.

The question is whether Hong Kong possesses the right of self-determination, being a Special Administrative Region of China. Under Article 31 of the Chinese Constitution, the "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions." This Article of the Chinese Constitution along with the Joint Declaration of 1977 are the only relevant statutory provisions in the current scenario. Further, as per these provisions, Hong Kong has been granted the right to decide all policies except defense and external affairs and also the right to maintain its own public order.

If Hong Kong has autonomy to this extent, then does that give it a reasonable justification to establish a State of its own based on the principle of Self-Determination? There does not lie a binary answer to this open-ended question.

In fact, the people of Hong Kong are themselves not clear with what they want if we were to take a look at the demands raised in the ongoing protest. This in any way does not deny the existence of pro-democratic elements present and also protesting in Hong Kong but it attempts to highlight the lack of consensus amongst the majority population.

THE TIGHTROPE OF RIGHTS AND VALUES: AN ANALYSIS

Being a Special Administrative Region and subject to the Joint Declaration of 1977, the political scenario in Hong Kong is interesting, to say the least. Under the Joint Declaration, Hong Kong was allowed to retain its pre-existing system of governance, which was heavily influenced by British democratic values, but China would continue to be the supreme power over Hong Kong. To put this into perspective, Hong Kong is a Democratic region (taking into consideration the Basic Laws of Hong Kong) existing within a powerful de facto State (China).

The seeming absurdity to this picture has more to it than what meets the eye. The fundamental rights and values which a particular system of governance embodies are at loggerheads here viz. communist values and democratic values. This is also one of the problems which the protests in Hong Kong have brought out. The people of Hong Kong demand the right to decide for themselves how they would want to approach this legal tightrope; as to whether they want to adopt the rights and values of the overarching

INTERNATIONAL NEWS

- **G7 Leaders Support Hong Kong's Autonomy**

The G7 leaders confirmed the existence and importance of the Sino-British Joint Declaration of 1984 on Hong Kong and called for violence to be avoided.

- **Puerto Rican Women on the Front Lines**

Puerto Ricans took to the streets by the hundreds of thousands demanding that the Governor Ricardo Roselló resign. And he did.

After 15 days of unyielding mass protests—in San Juan, on social media, and across the globe—Gov. Roselló announced his resignation at 11:45 p.m. on July 24, 2019. That would not have happened without women on the frontlines of this historic movement. And Puerto Rico needs the support of women now more than ever.

- **Amazon Rainforest Fire: Brazil's Indigenous Tribe Commits to Fight Until Last Drop of Blood**

There are more than 18,000 Mura that live in Amazonas state, the largest and best-preserved state in Brazil's Amazon rainforest, according to data compiled by the non-government organization Instituto Socioambiental.

Members of the tribe showed Reuters an area the size of several football fields near their village, where the forest had been cleared away, leaving a broad dirt hole in the ground pockmarked by the treads of heavy machinery.

state (China) or stand by the democratic rights and values on which their basic laws are built upon.

At this moment, as per the Statutory laws and declarations, the status quo in Hong Kong cannot be tampered with by either China or other International parties. However, the caveat is that a huge possibility to the contrary is also real and present.

Therefore, the situation in Hong Kong is volatile, to say the least, but things can be resolved if the tightrope of rights and values is treading upon carefully.

NATIONAL NEWS

- **Why Saving Aarey Forest is Important for Mumbai?**

The battle to save the 1,300-hectare Aarey forest land, Mumbai's last green lung in the northern suburb, Goregaon continues. The Maharashtra government is mulling to provide a part of this ecologically sensitive zone for a Metro car shed, invoking strong protest by environmentalists and citizens' groups.

- **Ravish Kumar Wins Magsaysay Award '19**

Senior Indian journalist Ravish Kumar on Friday was awarded this year's Ramon Magsaysay Award, regarded as the Asian version of the Nobel Prize, for harnessing journalism 'to give voice to the voiceless'.

- **Assam Govt., Parties Announce Legal Aid to Needy Left out of NRC**

The Assam government said it will provide legal aid to needy people whose names do not figure in the NRC list. Besides the government, the state's ruling BJP and opposition Congress have also come forward to help the needy ones left out of NRC.

- **PM Modi launches Jal Jeevan Mission on Independence Day.**

Prime Minister Narendra Modi announced during his Independence Day speech that the government will launch a Jal Jeevan Mission to bring piped water supply to every house. He also urged the people to come forward and contribute in conserving water resources.

National Digital Health Blueprint Report: an Analysis of Privacy Concerns

Introduction

National Health Policy, 2017 (NHP, 2017) emphatically focused on extensive deployment of Digital Tools/Technology to enhance health system performance to make healthcare affordable, accessible, and equitable and to realize the goal of Universal Health Coverage (UHC). In pursuance of this, in July 2018, the NITI Aayog released a proposal document, National Health Stack (NHS). After consultation, it formed a committee, chaired by former Ministry of Electronics and Information Technology (MeitY) secretary and former UIDAI Chairman J. Satyanarayana, to create an implementation framework for NHS. The committee submitted its report titled 'National Digital Health Blueprint Report (NDHB)' to the Ministry of Health and Family Welfare (MHFW) on April 24, 2019. This report was made public on July 15, 2019.

National Digital Health Blueprint Report

The vision of NDHB is "[t]o create a National Digital Health Eco-system that supports Universal Health Coverage in an efficient, accessible, inclusive, affordable, timely and safe manner, through provision of a wide-range of data, information and infrastructure services, duly leveraging open, interoperable, standards-based digital systems, and ensuring the security, confidentiality and privacy of health-related personal information."

The Objectives of NDHB are allied to the Vision of National Health Policy 2017 and the Sustainable Development Goals (SDGs) relating to the health sector. Some of the key objectives of the policy are:

- Establishing and managing the core digital health data and the infrastructure required for its seamless exchange;
- Promoting the adoption of open standards by all the actors in the National Digital Health Eco-system, for developing several digital health systems that span across the sector from wellness to disease management;
- Creating a system of Personal Health Records, based on international standards, and easily accessible to the citizens and to the service providers, based on citizen-consent
- Promoting Health Data Analytics and Medical Research
- Enhancing the efficiency and effectiveness of Governance at all levels
- Ensuring Quality of Healthcare and leveraging the Information Systems already existing in the health sector

While the Blueprint has identified 23 Building Blocks, a few of the critical capabilities of National Digital Health Ecosystem (NDHE) are:

- Identification: The Blueprint handles the requirements of Unique identification of Persons, Facilities, Diseases and Devices through two Building Blocks, namely, Personal Health Identifier (PHI), and Health Master Directories & Registries. This can be achieved through a combination of Aadhaar-based Identification/ Authentication and through other specified types of identifiers.
- Citizen to be in Control: The Blueprint achieves the complex and mandatory requirements of maintaining the confidentiality, security, and privacy of health records through Consent Manager, Anonymizer and Privacy Operations Centre.
- Service Access/ Delivery: Access and delivery to be implemented by a combination of Web (India Health Portal), Mobile (MyHealth App) and Call Centres besides Social Media Platforms. Given the significant spread of smartphones and the prospects of its further growth, The Blueprint emphasizes the *'Mobile First' principle* for the majority of services.

- The Command, Control and Communication Centre enable real-time monitoring and real-time interventions needed in the NDHE.
- Interoperability: It is a pre-requisite for development of integrated digital health services and continuum of care. The Health Information Exchange and the National Health Informatics Standards enable and promote the interoperability of various building blocks.

NDHB envisions establishing National and Regional Registries to create Single Source of Truth in respect of clinical establishments, healthcare professionals, health workers and pharmacies.

A new entity, National Digital Health Mission (NDHM), is recommended to be established as a purely government organization with complete functional autonomy on the lines of Unique Identification Authority of India (UIDAI) and Goods and Services Network (GSTN). NDHM is to be charged with the responsibility of implementing NDHB. The role of the NDHM will be to provide information and data to different components of the health eco- system to work together and also provide the technological infrastructure for collection and storage of core/ master data through the various registries.

ANALYSIS OF PRIVACY CONCERNS

Research organizations like Centre for Internet and Society (CIS) and Software Freedom Law Centre (SFLC) have analysed NDHB and have found that NDHB raises serious privacy concerns especially given the fact that India still does not have a comprehensive data protection law. The Blueprint recommends the use of Aadhaar based identification/authentication for schemes notified under Section 7 of the Aadhaar Act, and through other specified types of identifiers or use of offline Aadhaar identification/authentication in others to achieve uniqueness in PHI. Though, NDHB provides for multiple identifiers and leaves the final decision on the use of Aadhaar with MHFW to be decided in consultation with MeitY and UIDAI, the potential use of Aadhaar for PHI is worrying because: firstly, the use of Aadhaar for health services should be backed by law as per the Supreme Court judgment in *K.S. Puttaswamy v. Union of India*, which at present is lacking; and secondly, as Aadhaar is used for multiple purposes, it can lead to centralization of one's data linked to Aadhaar, resulting in persons being prone to data profiling.

Healthlocker, in which a person's sensitive health data would be stored, will be modelled on Digilocker. However, Digilocker has inadequate security measures. Digilocker does not have any method to take explicit consent from the users, as the consent is assumed on singing up for the service. It is unclear whether passing of Personal Data Protection Bill, 2018 (PDP Bill) into law would address this concern. The Information Technology (Controller of Digital Locker) Rules, 2016 regulates Digilocker. These rules do provide for some security measures, however, the process of Digilocker is not as strong and consent based as PDP Bill. Both IT Act (Section 81) and PDB Bill (Section 110) have overriding effect. It remains to be seen that how this conflict is ultimately addressed.

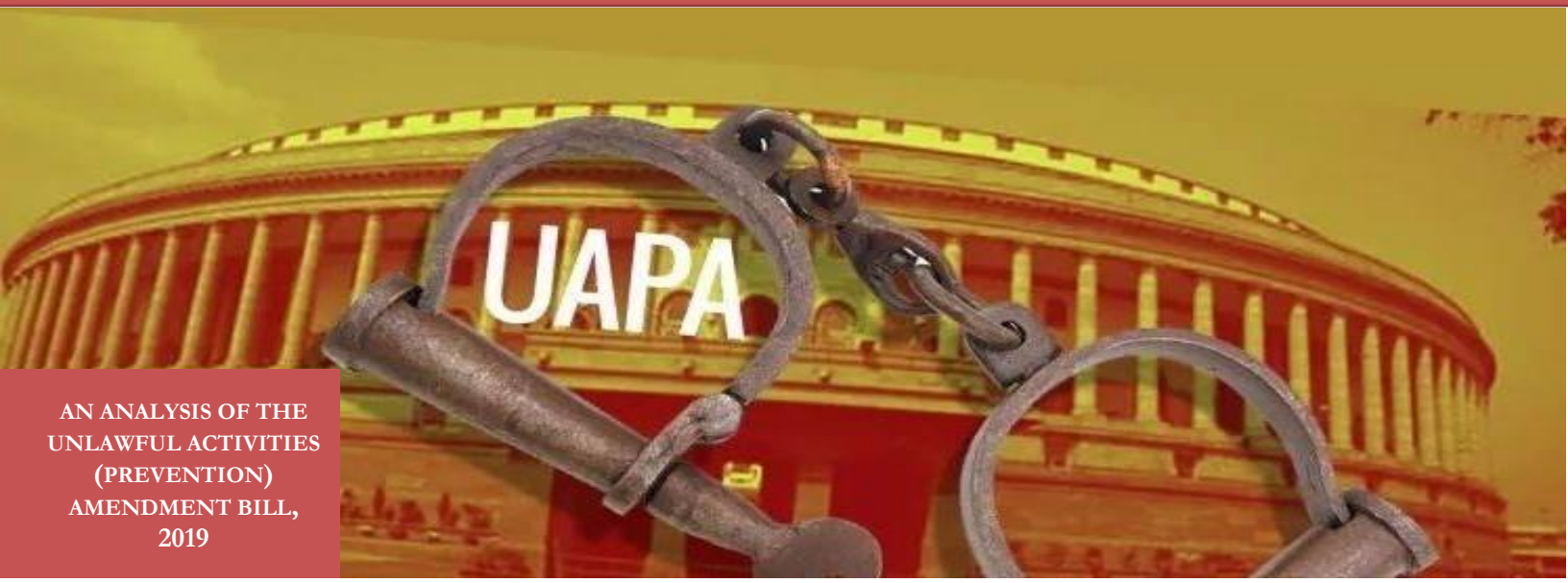
Moreover, the NDHB does not give individuals an opportunity of hearing against disclosure by Care Provider. The amount of data each actor can access further remains unclear. The Blueprint also does not give individuals an option to opt-out of the system.

NDHB does not give individuals the right to be forgotten/ erasure and the right to correction, although these rights are proposed in the PDP Bill. In contrast to the right to correction, NDHB requires immutability of records so that "records once created cannot be deleted or modified without following due process". Further, once the medical records are entered, they cannot be deleted even on the person's death. NDHB does not adopt the principle of data minimization or purpose limitation. NDHB should instead adopt these principles, and give patients control over their data and allow them to make changes in incomplete or out-of-date or misleading health data.

For Privacy and Security purposes, NDHB recommends that provisions, guidelines, standards prescribed in Electronic Health Records Standards for India, 2016 (EHR standards) should be incorporated. The EHR standards go on to state that the "authorization document" can provide that if the user does not provide an authorization (permission) for the use or disclosure of identifiable health information, she/he may not be able to receive the intended treatment. This makes it appear that it is compulsory for Indian citizens to obtain PHI and give access to one's digital personal health records so as to be able to receive medical services. This defeats the idea of free and informed consent. This issue needs to be clarified in NDHB.

Furthermore, the procedural safeguards in existing laws against misuse of Electronic Health Records are grossly inadequate. The rules under the Clinical Establishments Act, 2010, make it obligatory for healthcare providers to implement EHRs, however, the rules do not provide procedural guarantees against abuse of the data. The Information Technology Act 2000, read with Sensitive Personal Data or Information Rules, 2011 (notified under Section 43A) (SPDI Rules) imposes obligations for the protection of Sensitive Personal Information (SPI), including for medical records, but they are unsatisfactory. Section 43A of Information Technology Act, 2000 requires persons whose data was unprotected to prove that wrongful loss/gain was caused. This provision provides remedy only when wrongful loss/gain occurs and moreover, such wrongful loss/gain may occur or come to the person's notice years later.

In conclusion, it could be said that though the intention behind NDHB is benevolent, progressive and egalitarian, it fails to adequately address the privacy concerns. It was unsuccessful in materializing "the consent principle". This could partially be attributed to vagueness and complexity of NDHB owing to its lack of details. Further, lack of an effective privacy regime in the form of personal data



AN ANALYSIS OF THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT BILL, 2019

INTRODUCTION

In order to send a strong message to the world about India's commitment to end terror, the Unlawful Activities (Prevention) Amendment Bill was introduced in the recent session of the Parliament. The bill sought to amend the Unlawful Activities (Prevention) Act, 1967, a law which prevents unlawful activities that may pose danger to the integrity and sovereignty of the country. This has previously been amended in 1969, 2004, 2008 and 2012.

The Bill was introduced in the Lok Sabha on 8th July'19, passed by the Lok Sabha on 24th July '19 and by the Rajya Sabha on 2nd August '19; and it finally received presidential assent on 9th August '19. The key objectives of the Act are to amend the present law to label an individual as a terrorist and to empower the National Investigation Agency to conduct the investigation and prosecution more efficiently.

AMENDMENTS IN THE ACT

Designation of individuals as terrorists

One of the key amendments in the revised Act is the designation of individuals as 'terrorists'. The earlier position with regard to this was that the government may designate an organization as a terrorist organization if it is involved in:

i. Committing or participating in acts of terrorism
ii. Preparing for terrorism
iii. Promoting or encouraging terrorism
iv. Or is in any other manner involved in terrorism.

Now the government can designate a person as a terrorist on the same grounds. The rationale behind the same is that designating an organization as a terrorist organization allows individuals to circumvent the law under a new name or with another organization to continue their unlawful activities. Hence, this amendment seeks to effectively prevent individuals from indulging in unlawful activities. This move is in line with anti-terror legislations of several countries and the United Nations.

However, the issue with this provision lies in the fact that no procedure has been laid down that needs to be followed in order to designate an individual as a terrorist. The provision only mentions certain grounds on the basis of which a person shall be deemed to be involved in terrorism. Hence, an individual may be labelled as a terrorist without any trial, thus making this provision arbitrary and therefore, capable of abuse. The Opposition also raised concerns over this provision in the Bill, stating that it was highly capable of being misused by the government against persons opposed to them.

A Public Interest Litigation was filed in the Supreme Court, a week after the notification of the amendment in the Unlawful Activities (Prevention) Act, 1967. It is contended that the amendment is violative of Articles 14, 19 and 21 of the Constitution of India. The amendment regarding the designation of individuals as terrorists has been challenged as being violative of Article 14 of the Constitution. The petition argues that in the absence of detailed grounds or reasons for designation, the provision confers "arbitrary and unfettered power without any limits or bounds" and is hence, violative of Article 14 of the Constitution.

Empowering the National Investigation Agency

The Bill empowers the National Investigation Agency (hereinafter "NIA") to carry out search and seizure activities throughout the territory of India, without any interference of the concerned state. The government has argued that this has been done in order to expedite the process of investigation and prosecution.

For this purpose, the Director General of the NIA has been empowered to attach properties acquired from the proceeds of terrorism. Another concern is that post the amendment in the UAPA, and a parallel amendment in the National Investigation Agency Act, the central government has ensured that the NIA can investigate terrorist acts without the intervention of a state's police. This is a violent attack on the federal structure of the country.

THE SHADOWS OF TADA AND POTA

The evolving dynamics of law is one of the major reasons behind the development of the country. This can be very well witnessed in the maturity of national security laws. After the repealing of the Terrorist and Disruptive Activities (Prevention) Act, 1985 and Prevention of Terrorism Act, 2002, because of their draconian provisions, the UAPA emerged as the major anti-terrorism law in India. The harsh provisions were now devoid of vagueness and took a softer tone. The provisions dealing with bail, which had made obtaining bail for alleged terrorists extremely difficult, were repealed. Secondly, the sections which dealt with the extension of police custody beyond the usual fifteen days were struck down. Thirdly, the provisions that allowed the confessions recorded before a police officer to be admissible in the court of law, were also omitted.

UAPA might be a successor to TADA and POTA, and the law dealing with terrorists is less ambiguous as it once was, but the debris of the two laws seems to have surfaced in the UAPA. Provisions of the TADA and the POTA resonate heavily in UAPA.

Both the previous acts, TADA and POTA focused on organized forms of terrorism. The recent amendment has now enabled an individual to be labelled as a terrorist, increasing the gambit from the labelling being limited to organized terrorism by terrorist associations and organizations. with Amit Shah stating the "terrorist acts are committed not by organizations but by individuals", focus from the terrorist organization has been shifted to a terrorist. The nature of terrorism has been grossly undermined by this, as a terrorist act cannot exist in isolation, but in a web of well-connected and pre-planned activities aimed at creating a fear amongst the masses. The aim here does not seem to be nabbing individuals involved in participating in terrorist activities but maximizing a larger political interest of identifying individuals who work against the interests of not the state, but the government. Hence, the unwarranted arrest of alleged terrorists under TADA and POTA, because of their political differences has been validated in the UAPA in a structured manner.

The recent amendment allows seizure of property by the government agency, National Investigation Agency, on suspicion of terrorist involvement. A similar provision existed in POTA, in section 7, giving power to the police to seize property of alleged terrorists. With a parallel amendment in the National Investigative Agency Act, which strengthen the government's discretion in passing cases to the NIA, the area of governmental involvement in handling terrorists has increased.

TADA was installed in the political turmoil of the 1980s India, which called for the government to counter the growing terrorism in India, however, the tense political situation in the country is such that UAPA might take the same route. With a war on ideology, the fear of violation of rights because of political biasness yet again stands.

While the threat of national security looms over the country, and the same has to be constructively tackled, a fear also lingers, the fear of history repeating itself. TADA and POTA were grossly misused for advancing political agendas; with the similarities witnessed, it is hoped the end reached because of UAPA is not the same.

CONCLUSION

With connectivity growing and news spreading like wildfire, the media stands as the buttress on which our demands of the fulfilment fundamental rights stands.

The intention behind the amendment of the UAPA shall surface only after a reasonable time has been given to the government act on the same, but vigilance of the citizens is very important to make sure that the purpose of the act is fulfilled.

The act with its wider scope of nabbing terrorism, from threats to our economy to our security, has to be fruitfully implemented, without it being used for selfish purposes of realizing political agendas.

Moreover, proper scrutiny of the use of the act should be done. If it is used to silence dissent, then the citizens of the country have to yet again stand against it.

The principle of intelligible differentia should be realized to its maximum, and the purpose of the act should be limited to the needs of national security and not advancement of a particular ideology.

Contributions are invited for the next issue of the CASIHR Newsletter. The last day is 15th October '19 which can be mailed on casihr@rgnul.ac.in

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VOL IV ISSUE III

CENTRE FOR ADVANCED STUDIES IN HUMAN RIGHTS

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