

The Dangers of Strong Laws

What is the issue?

\n\n

\n

- Recently, 5 people were arrested under “Unlawful Activities (Prevention) Act (UAPA)” for allegedly having instigated violence in the Bhima-Koregaon riots.

\n

- This has again refreshed the need to reconsider legislations that have armed governments with a strong mandate to crush even democratic dissent.

\n

\n\n

What are the risks in empowering governments with strong laws?

\n\n

\n

- Even in the constituent assembly, concerns were raised on the wide ranging restrictions on fundamental rights, which may be misused.

\n

- They drew attention to the misuse of various “Public Safety Acts” and “Defence of India Acts” by the colonial regime, to curtail democratic opposition.

\n

- Many articulated that despite the best of intentions, the restricting provisions could easily be interpreted to authorise repression.

\n

- The accused booked recently, under UAPA for the Bhima-Koregaon riots case, are seemingly victims of a possible misuse of strong curtailment laws.

\n

\n\n

What are the provisions under UAPA?

\n\n

- UAPA gives vast discretionary powers to state agencies, rendering personal liberty at risk, and curtailing judicial oversight.
- As long as the government version (charge sheet) makes a case for an offence under UAPA, the court can't grant bail.
- Many constitution makers saw such detentions as a big risk, but the clause was retained with the condition that its use would be rare.
- Considering the inordinately slow pace of criminal trials in India, UAPA is effectively a warrant for perpetual imprisonment without trial.
- **Fallouts** - There have already been multiple cases where people have spent multiple years in jail, only to get acquitted at the end.
- Such detentions are hence a blatant assault on personal liberty, for which no amount of compensation can possibly be made.

Why is UAPA prone to misuse?

- The UAPA authorises the government to ban "unlawful organisations" (subject to judicial review) and penalises membership of such organisations.
- But "unlawful activities" is widely and vaguely defined, and encompasses terms like causing "disaffection" against India.
- **Membership** - Even "membership of an unlawful organisation" (which is a criminal offence that could entail even life imprisonment), is defined broadly.
- Notably, charge-sheets under UAPA often cite 'seizure of books of banned organisations' and 'having met active members' as proof for membership.
- Considering the extensiveness and comprehensiveness of the act, it sort of

comes close to criminalising even thoughts of people.

\n

- **Reform** - In 2011, the Supreme Court did make an attempted to narrow the scope of these provisions, in order to minimise misuse.

\n

- It held that “membership” was limited to cases where an individual is found to have engaged in active incitement of violence.

\n

- But the implementation of these provisions has nonetheless been patchy and arbitrary and governments continue to have unbridled power to arrest.

\n

\n\n

What is the way ahead?

\n\n

\n

- People occupying high government offices are also human, and hence, despite the best intentions of legislations, misuse is inevitable.

\n

- The best possible solution is one that minimises misuse, which can be done by reducing the discretionary powers of authorities.

\n

- In this context, pro-UAPA arguments that demand states to be given a strong unrestricted hand to control alleged disruptive activities are undesirable.

\n

- Hence, courts should hence strike down strong detention laws or frame sufficient safeguards to prevent misuse or improper use of such laws.

\n

- Another important aspect to improve the justice system in India is to speed up cases to avoid years of litigation, particularly when bail is not an option.

\n

\n\n

\n\n

Source: The Hindu

\n



SHANKAR
IAS PARLIAMENT
Information is Empowering