

Editorial

PEOPLE'S RIGHT



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EMAIL ID :

makkalurimai.cpdrtn@gmail.com

Contact no :

9444481186

9445162365

9884888695

New Year of 2021 has arrived. It has witnessed a reduction in the spread rate of the corona pandemic and the resumption of daily life and limping back of informal economy. This has provided some hope and relief to the people. Working masses who were severely affected by the sudden clamping of lockdown in 2020, are eager to go back to return to the free movement in search of restoration of their livelihood. However, a slew of anti-people laws promulgated by the Union ministry using pandemic as a pretext has intensified the repression of the working class and Peasantry.

The changes in labour codes introduced by different state governments, which had curtailed severely the rights of workers won through struggles did not see much stiff resistance from the workers as the trade union movement has significantly weakened in the country and as it is, the working masses were busy struggling for survival due to the extended lockdown. However, the three new farm laws, hurriedly enacted by the Union government with the aim of bringing in fundamental changes in farming practices, met with widespread protest by the farmers. This is because the corporate-friendly laws aim to bring in closure or reduction of APMCs, deprive farmers of the MSP, decontrols the production, storage, movement and sale of agricultural products and removed many food grains from the list of essential commodities. Thus the laws will not only hit the farmers, especially the small and middle farmers but also pose threat to food security.

The repeated requests by the farmers to the Union government to hear their grievances was unattended. As a result, defying the Corona pandemic and cold weather, millions of farmers from Punjab, Haryana, Western UP and other

states had converged at the Delhi border and stay put in 7 locations. Government efforts to scuttle their programme by digging up the roads from Haryana, deployment of heavy police and commando forces at Delhi borders did not deter the farmers from converging in big numbers. Protesting farmers and their stoic resistance, notwithstanding the highhandedness by the government to use force, the threat of arrest, branding the movement as anti-national, playing up divisive politics on communal lines etc, gave an impetus to the democratic forces who are hounded upon for expressing any sort of dissent since RSS/BJP seized power. The farmers have received solidarity and support from all quarters ranging from democratic forces, students and workers organisations and even several politicians .

On one hand people are trying to hold on to democratic rights and on the other hand, in the last few years the government has become predominantly centralised. The attack on federal structure has aided the present regime in dissolution of democratic institutions of governance, imposing its nominees in all key posts in such democratic institutions as well as educational and legal institutions. Even the stand-up comedians and their satirical jokes which are critical of the government, the BJP or RSS, are charged with serious penal measures and the comedians are arrested by the government. It is easy in today's India to get arrested under a sedition charge than to obtain a ration card

The draconian UAPA is slapped on thousands of struggling farmers, many arrested on frivolous charges on the pretext of causing violence at Red fort. Democrats all over India are threatened with UAPA charges on the mild resistance against the fascist's onslaught. More than 600 activists of the Bhim

Army were arrested on NSA charges for raising voice against Hathras rape and murder. 91 cases of UAPA are slapped on democratic rights activists in Andhra and Telangana state.

In our state of TamilNadu, government teachers, transport workers, health workers, nurses are all on the warpath for wage revision and regularisation. However, the election is around the corner in TamilNadu and a few other states. Hence, the TamilNadu government, which was hobnobbing with the centre in all its policy decisions like NEP, NEET, GST, demonetisation, reservation for economically backward sections, and farm bills has waived the farm loans to the tune of 12 thousand crores benefiting 14 lakh farmers. TN government has already withdrawn the political cases slapped on the anti-CAA protesters and the cases foisted on common people for lockdown violations in an attempt to mollify the public. At the same time, those opposed to the fascist Hindutva politics and anti-people developmental policies of the Centre are still arrested under UAPA in order to ensure that a consistent resistance against fascist program is not built.

At this juncture, we are bringing out in this issue topics focussing on the farm bill and UAPA law which impact the democratic aspirations of the people. In a vitiated political environment, when democratic movement is equated with anti-national activities, we showcase the history of the democratic rights movement in the country to set the position correct. The article on judiciary analyses the nature of the judiciary in this system in the light of recent developments. The editorial team finds the need for coming together of democratic forces against the onslaught and the necessity to stand in solidarity with the mass movements that open up the space for democracy stands highly relevant today.

Farm Bills & Peasant struggle

Gauthaman Babu

26th January 2021 will go down in history as a landmark day in the history of independent India. Citizens all over the country were glued to their television sets not just to watch the Republic Day celebration but also to know about the progress of the farmers' rallies which were declared by the protesting farmers earlier. The farmers, mainly from the states of Punjab, Haryana and Uttar Pradesh, had been camping on the outskirts of the city of Delhi as a protest against the Farm Bills, first introduced on 5th June 2020, and then promulgated as Acts in the monsoon session of the Parliament by the Central Government. More than lakhs of farmers, supported by thousands of workers, students, democratic-minded citizens, had decided to celebrate the adoption of the Constitution of India by taking out tractor rallies, parades and marches in the streets of Delhi.

Why did these farmers brave the cold Delhi weather, the police's initial harsh treatment, including facing water cannon, stay put in Delhi? This is because after the Central Government had introduced three farm bills, the farmers were convinced that these laws would put the farming community, especially the small and middle peasantry, into disarray and meek submission in front of corporate giants. They had termed these laws as anti-farmer and had appealed to the government

to repeal those laws. "*Delhi Chalo*" call by the farmers' groups was announced in September 2020. So much was the pressure from below that former Union Minister Harsimrat Kaur from Siromani Akali Dal (SAD) had to resign though SAD had been the oldest of the allies of the BJP and had supported it unconditionally in the past. Thus, the pulse of the farmers was not unknown to the ruling dispensation. However, the BJP-led NDA government was adamant and did not pay heed to the protesting farmers' repeated requests. In fact, from the BJP-led government's steps in introducing the bills to the present marked indifference, the current central government's anti-farmer attitude is in a clear display. Thus, after several rounds of negotiations failed with the government adamant in not changing its position, the farmers' organisations, led by Samyukta Kisan Morcha (SKM), wanted to showcase the importance of people in executing any issue related to the public affair by organising the tractor parade in a proper display of the spirit of "res publica".

What happened on that day is widely covered in different television channels and newspapers and is not the main focus of the present article. For the sake of completeness, it may be mentioned that the Delhi Police had delayed permissions, and they had unilaterally changed the routes on the night of 25th January. Police and paramilitary forces had been

deployed in full force; all major roads of Delhi were closed off with barricades, causing the parade to splinter off. On the other end, a small number of farmers were allowed passage to the ITO and Red Fort area. Thus the Delhi Police, through deliberate mismanagement of the law and order situation, created chaos to discredit the farmers' protest, which had otherwise been peaceful and well-coordinated since 25th November 2020. The Godi media and the Government spokespersons took up the opportunity of this ensuing chaos, and for the entire day, we heard in all the media bytes that how the farmers had created violence. These people conveniently forgot how all the senior leaders of the SKM had clarified in their TV channels that the farmers of their organisations had followed the agreed plan and the fact that they had condemned the violence in no uncertain term.

As an aftermath of this event, the government had tried to discredit an exemplary peoples' movement and tried to implicate 40 farmer leaders under different false cases, including an attempt to murder. The cases lodged against them include those under IPC Sections 162, 269, 308, 307, 427. The police had also arrested more than 200 people. In

addition, the power supply of Ghazipur Morcha had also been cut off, and the langar at Karnal Toll Plaza had also been forcefully shut down. Further, not satisfied with barricades, in the name of preventing any untoward incidences, the government had used barbed wires and have studded the roads with nails. (As see in pictures)

So let us try to understand why the farmers are protesting against these farm bills and why is the government so adamant and taking harsh measures against its own citizens? We shall start with a brief review of the farm bills and a discussion of the consequences before taking up the reasons behind the introduction of the bills.

Does the farm bills ensure freedom of the farmers or the traders?

The Government of India had brought in three ordinances on 5th June 2020 in the name of agricultural marketing reforms: the Essential Commodities (Amendment) Ordinance, 2020, the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Ordinance, 2020, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020. In this article, these are collectively called the Farm Bills.



Photograph of putting up barbed wire over barricades at Ghazipur border.



Nails on roads

The central objective behind the Farm Bills is to offer flexibility and freedom to farmers to sell their farm produce to private traders beyond the notified Agricultural Produce Market Committee (APMC) market yards or mandis and even to sell it to traders overcoming state boundaries. For example, the statement of objects and reasons of the Essential Commodities (Amendment) Bill, 2020 states that:

"While India has become surplus in most agricultural commodities, farmers have been unable to get better prices due to lack of investment in cold storage, warehouses, processing and export as entrepreneurs get discouraged by the regulatory mechanisms in the Essential Commodities Act, 1955. A High Powered Committee of Chief Ministers who examined this issue, recommended removal of stringent restrictions on stock, movement and price control of agricultural foodstuffs for attracting private investments in agricultural marketing and infrastructure."

According to the Central Government, the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 aims

"to provide for the creation of an ecosystem where the farmers and traders enjoy the freedom of choice relating to sale and purchase of farmers' produce which facilitates remunerative prices through competitive alternative trading channels; to promote efficient, transparent and barrier-free inter-State and intra-State trade and commerce of farmers' produce outside the physical premises of markets or deemed markets notified under various State agricultural produce market legislations; to provide a facilitative framework for electronic trading and for matters connected therewith or incidental thereto."

The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020, as per the Central government, attempts

"to provide for a national framework on farming agreements that protects and empowers farmers to engage with agribusiness firms, processors, wholesalers, exporters or large retailers for farm services and sale of future farming produce at a mutually agreed remunerative price framework in a fair and transparent manner and for matters connected therewith or incidental thereto."

Thus it is clear that the government feels that they can "help" the farmers by opening up the agricultural sector to private traders, both national and transnational. Thus the government is trying its best to satisfy the long-term lobbying of the multinational agribusiness corporations for pushing in a large-scale foreign direct investment (FDI) into Indian agriculture. The spokespersons of the BJP and the government feels that the criticism of the opposition parties smacks of illusion. They had alleged that the farmers had been misled by the pro-Khalistani, Maoists and others not happy with the country's progress. The pro-reform economists and the "experts" of the Godi media suggest that the bills will communicate the *truth* to the farmers. This template of freedom and empowerment of farmers are supposed to encapsulate the official idea of truth. However, even before going into the content, these claims seem outrageous in the eyes of democratic principles. If we accept, for the present, that the government is seriously interested in improving the lots of the farmers, we need to ask ourselves whether the stakeholders were consulted before promulgating such "beneficial(!) laws"? The answer is obvious!

Further, a serious problem lies in the consequences that seek to undermine the farmers' cognitive power to make independent judgments both on the nature of the bills and the protest actions taken up by them. By terming the farmers' protests a result of manipulation by the political parties, these spokespersons have shown utter disrespect to the farmers' moral courage in withstanding pandemic situation and police atrocities. Finally, these self-appointed guardians of freedom and truth suggest that standing with corporate interest is considered good politics, but supporting the farmers is bad.

But why do the farmers feel threatened at these bills? To understand these, we need to look at the provisions of the bills more critically vis-à-vis the condition of the farmers of the country. At the all-India level, marginal and small farmers who operate less than or equal to two hectares of land together comprise 87% of all farmers. There is a wide inter-state variation in farmers' distribution under marginal and small farm categories % 62% from the southern, eastern, and northeast Indian states. UP has the highest (15%) followed by Bihar (11%)¹.

Almost all farmers under this category in most of the states are debt-ridden. Thus, treating the farmers as a homogenous entity is incorrect.

These marginal and small farmers borrow money to meet their immediate cash flow in an uncertain situation (for example, crop failures, medical needs, etc.) and have to pay back after the harvest.

"This means that such a farmer is trapped in a regressive market mechanism in two ways. First, with no other means to repay the debt, the farmer is forced to sell the product

immediately after the harvest quite often to the creditor, probably at a pre-arranged price and in pre-decided quantities. Second, the sale of crops immediately after the harvest means that the farmer-debtor probably receives less than what they could have obtained at a later point in time when the market prices stabilise."²

How will these farmers gain "freedom" as claimed in this bill? These farmers will gain freedom only if the objective conditions in which farming, from the procurement of seeds to the storing and sale of the agricultural products, is carried out, becomes conducive to their survival. Thus, the small and marginal farmers' interest can arguably be best protected by the intervention of the state, modalities of governance to ensure that corporate interests do not capture the agricultural market mechanisms, or government intervention in creating infrastructural facilities for enabling the farmers to utilise the "freedom" of barrier-free trade in practice, among other things.

Do these bills satisfy these requirements? Let us start with the issue of selling through APMCs. The APMC Acts were introduced in the 1960s and 1970s to put a check on the monopoly powers of large traders and big buyers who historically used their economic power and extra-economic means to buy grain from poor farmers at low prices. It was to ensure there would not be exploitation of farmers in price fixation, grading, weighing and payments. As on today, only 7,000 APMC markets operate across the country and the procurement process is skewed towards certain regions and limited in reach. Hence, the majority of agricultural marketing is forced to happen outside the mandi network. Vijoo Krishnan has pointed out,

"For 31 crops sold between July, 2012 and

June 2013, local private traders were the biggest buyers in the case of 29 crops. Market yards or Mandis not all of which were under APMCs were the biggest buyers in just two crops arhar in kharif season and gram in the rabi season. The share of farmers selling their crops in APMC yards does not exceed 25 per cent for any crop except soyabean (Roshan Kishore, "Why farmers are opposing pro-farmer reforms", the Hindustan Times, 19th September, 2020).³

Thus, although not always implemented effectively, the APMC Acts introduced a system of auctions which was designed to bring more competition in purchase of agricultural produce. Hence, if the government were really interested in helping the small and marginal farmers, the government could have made efforts to reach out to these farmers by opening up of many more APMC markets and enabling proper procurement.

The procurement with a minimum support price (MSP), undoubtedly benefits, middle and rich farmers more than the marginal farmers and also the farmers producing wheat and rice stand to benefit more from the MSP. This could be one of the reasons why more farmers from the Punjab, Haryana and Western UP feel threatened of their livelihood. As mentioned earlier, Farmers' Produce Trade and Commerce (Promotion and Facilitation) Bill, 2020 and The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 offer farmers "***mutually agreed remunerative price***" without any commitment to honour the MSP. Had the government been so keen to help the farmers get more profit through private channels, then will it not assure the farmers at least MSP? In fact, is it unnatural to expect that Narendra Modi led government should honour the 2014

poll promise of fixing the prices at 50 percent above the comprehensive cost of production (C2+50% as suggested by the Swaminathan Commission) as promised by the BJP and Narendra Modi in 2014? Thus, the very word "**assurance**" in The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020 is misplaced and seems to assure only the traders, both national and international, an unbridled control over farm produce. This becomes more apparent when the Bill states that

"The parties entering into a farming agreement may identify and require as a condition for the performance of such agreement compliance with mutually acceptable quality, grade and standards of a farming produce. ... The quality, grade and standards for pesticide residue, food safety standards, good farming practices and labour and social development standards may also be adopted in the farming agreement."

Another clause from the same bill that states the farm services are to be provided by the sponsors, either partially or fully, under "production agreement". And what does "farm services" refer to?

"Farm services includes supply of seed, feed, fodder, agro-chemicals, machinery and technology, advice, non-chemical agro-inputs and such other inputs for farming".

Thus, under this so-called contract farming, a farmer is supposed to get supply of seeds, feed, agro-chemicals, machinery, etc. Let us start with the procurement of the seeds. Seeds, particularly the high-yielding variety, is sold by big companies and these varieties demand more water and fertiliser and our farmers will be forced to take up such seeds for producing more crops under the demand of the traders.

How can a group of small or even big farmers bargain with the big agribusiness entities, like Adani Wilmar, Pepsico, Walmart, Reliance Fresh, ITC etc, and achieve appropriate remunerative price? Both this bill and the Farming Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 provide a very detailed description of dispute resolution mechanism.

"In case of any dispute arising out of a transaction between the farmer and a trader under section 4, the parties may seek a mutually acceptable solution through conciliation by filing an application to the Sub-Divisional Magistrate who shall refer such dispute to a Conciliation Board to be appointed by him for facilitating the binding settlement of the dispute. ... If the parties to the transaction under sub-section (1) are unable to resolve the dispute within thirty days in the manner set out under this section, they may approach the Sub-Divisional Magistrate concerned who shall be the "Sub-Divisional Authority" for settlement of such dispute. Any party aggrieved by the order of the Sub-Divisional Authority may prefer an appeal before the Appellate Authority (Collector or Additional Collector nominated by the Collector) within thirty days of such order who shall dispose of the appeal within thirty days from the date of filing of such appeal. Any person aggrieved by an order under section 9 may, prefer an appeal within sixty days from the date of such order, to an officer not below the rank of Joint Secretary to the Government of India to be nominated by the Central Government for this purpose."

Dissatisfied farmer with limited resources, knowledge, and time, however, would not dare to challenge the legal prowess of powerful corporate entities who can hire expensive lawyers. If the legal process is not

enough deterrent for a farmer to accept the terms and conditions of the corporate giants, there are penalty provisions in the law

"Whoever contravenes the provisions of section 4 or the rules made thereunder shall be liable to pay a penalty which shall not be less than twenty-five thousand rupees but which may extend up to five lakh rupees, and where the contravention is a continuing one, further penalty not exceeding five thousand rupees for each day after the first day during which the contravention continues."

Leave aside a small farmer, even a big farmer would fear such massive penalties in a case of failure in dispute resolution and would not dare to challenge a corporate entity. The big farmers will be affected but worst-hit would be the marginal, small, and medium farmers whose bargaining power against hugely resourceful big corporations would be so tiny in reaching any contract regarding pricing and implementing such contract that such farmers would turn out to be economic slaves to the ten-tacles of the designs of big corporations. We echo what Pritam Singh has observed:

"My reading of many initiatives, including these latest ones of this government, in the sphere of agriculture is that their aim is to so weaken the economic sustainability of the marginal, small, and medium farmers that they are forced to do a distress sale of their lands to large agrobusiness corporations, domestic and foreign. Such farmers, dispossessed of their tiny holdings, will turn into wage labourers. The excess supply of such labourers in the rural economy and, through economically forced migration, in the urban economy will push down wage rates and would lead to increased profits of agrarian and urban capitalist enterprises. This is the hidden meaning of the word "transformation of agriculture" being used in selling this latest initiative."⁴

But are the farmers only getting affected or is there a potential problem for all of us?

There also remains a fear that the greed for more profit will push these industries to force the farmers to shift from food crops to cash crops.

Are we going back to the British East India Company Days when the peasants were forced to crop indigo?

Another danger that looms large is the hoarding of crops and artificially control the price of the crop by the traders. In the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Ordinance, 2020, it is mentioned that

"Notwithstanding anything contained in the Essential Commodities Act, 1955 or in any control order issued thereunder or in any other law for the time being in force, any obligation related to stock limit shall not be applicable to such quantities of farming produce as are purchased under a farming agreement entered into in accordance with the provisions of this Act."

In the Essential Commodities (Amendment) Act, 2020, Essential Commodities Act of 1955 is modified to allow stocking of food crops by the traders. Government intervention will come only under emergency situations:

"the supply of such foodstuffs, including cereals, pulses, potato, onions, edible oilseeds and oils, as the Central Government may, by notification in the Official Gazette, specify, may be regulated only under extraordinary circumstances which may include war, famine, extraordinary price rise and natural calamity of grave nature."

The government may intervene under normal circumstances only if there is a

"(i) hundred percent increase in the retail price of horticultural produce; or (ii) fifty per cent. increase in the retail price of non-perishable agricultural foodstuffs, over the price prevailing immediately preceding twelve months, or average retail price of last five years, whichever is lower."

The removal of stock limits and facilitation of bulk purchase and storage could also lead to hoarding of large quantities of crops, creating an artificial shortage, only to sell it later at higher prices. Amendments to the Essential Commodities Act in removing commodities like cereals, pulses, oilseeds, edible oils, onion and potatoes from the list of essential commodities will also emerge as a threat to food security.⁵

The farm bills and the question of constitutional validity

One of the direct fallouts of the farm bills is the fact that through these bills, the Central government tries to increase the centralisation process further. The attack by the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 on the limited revenue resources of the states is clear in the provision that "no market fee, cess or levy" can be levied by a state APMC Act or any other state law." Thus, after the GST implementation, this is yet one more attack on the revenue collection by the states. Further, regional disparities will become sharper. For example, agriculturally dependent states, such as Punjab and Haryana, and the farmers of these states would be the most adversely affected due to the weakening of the MSP structures. In contrast to that, industrially advanced states, such as Gujarat and Maharashtra, and the big business interests (especially agribusiness) based in these states would be the beneficiaries due to increased and easier access to foodstuffs and agricultural

raw materials from other states. This will increase regional and class tensions.

But are these laws violative of the constitutional provisions?

Entry 14 of the state list mentions the item relating to agriculture:

"Agriculture, including agricultural education and research, protection against pests and prevention of plant disease". Thus, it may appear that the Centre has encroached upon the rights of the states. However, India is not a federal country in a sense; some other countries, for example, the USA, are. In India, we have devolution of power. Thus, under Article 248 in Part XI of the Constitution, the Centre has the residuary powers of legislation relating to any item that is not mentioned in any of the three Union, Concurrent or State lists. Under Article 249, the Parliament has the power of legislation regarding any subject, even in the state list, if the Centre considers this to be necessary "in the national interest". There is no similar provision in the Constitution of any other country which has a federal structure. Even the 1935 British India Act, on whose format was made the basis for drafting independent India's Constitution, did not have a clause giving such overriding powers to the Centre. The Sarkaria Commission on Centre-state Relations pointed out that the Centre had used Entry 33 in the Concurrent list to enact the Essential Commodities Act 1955. It may also be noted that the states of Tamil Nadu and West Bengal had recognised the damaging impact of Entry 33 and 34 on a state's autonomy in the sphere of agriculture. What we see today after the promulgation of the Farm Bills is a much greater concentration of power in the hands of the Central government. Strengthening centralisation and privatisation are the two most prominent features of the Essential

Commodities (Amendment) Act, 2020. The most brazen form of the scale of the attack on the already limited autonomy that the states currently have can be assessed from the words of Section 12 of the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020:

"The Central Government may, for carrying out the provisions of this Act, give such instructions, directions, orders or issue guidelines as it may deem necessary to any authority or officer subordinate to the Central Government, any State Government or any authority or officer subordinate to a State Government, an electronic trading and transaction platform or to any person or persons owning or operating an electronic trading and transaction platform, or a trader or class of traders." (emphasis ours). Similarly, Section 16 of the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020 states: "The Central Government may, from time to time, give such directions, as it may consider necessary, to the State Governments for effective implementation of the provisions of this Act and the State Governments shall comply with such directions."

Thus, though not unconstitutional in nature, these laws are against the very ethos of India with its regional diversity and autonomy of the states. If the Central government cannot think of "atmanirbhar" states, then can the government bring in "atmanirbhar Bharat"!

There is one aspect of the Acts that still does not go with the constitutional guidelines. The Bills were passed in the monsoon session of the Parliament, and in Rajya Sabha, it was passed by voice vote though, it is learned that several members had demanded a division of votes. The rule is clear: even if a single member

demands a division of votes, then voice vote cannot be carried out. Article 100 of the Indian Constitution states that all questions of either House shall be determined by a majority of votes of the members present and voting. A majority can be determined only in terms of number, and therefore what this Article requires is that all questions in the House should be determined by recording the votes of the members present. Though Article 122 of the Constitution protects the proceedings of the House from judicial review, this protection is available only when the proceedings are challenged on the irregularity of the proceedings. Violation of the provisions of the Constitution is not mere irregularity and is therefore subject to judicial review.⁶

Farm laws and international pressure

From the analysis presented so far, it is clear that the BJP Government are running roughshod over even its closest political allies to please the big corporate companies and traders' lobby. But can their predecessor in forming the Central government, the Congress Party, claim insularity from the Farm Bills. Their election manifesto of 2019 had said,

"Congress will repeal the Agricultural Produce Market Committees Act and make the trade in agricultural produce—including exports and inter-state trade — free from all restrictions".

Thus, we see that the successive governments and major Parliamentarian parties share the same aspirations of opening up the agricultural sector for loot by the corporations. So, what is the common thread connecting these different governments? It is international pressure. Radha D'Souza has given a nice explanation of the international pressure on the Indian ruling elite in her video lecture.⁷ Here we briefly sum up her

observations. The focus of her talk addresses two questions:

- i) what is the source of these laws? And
- ii) how did the laws travel from the source to countries where the protests are taking place?

With the end of World War-II in 1945, old colonial powers had to give up direct control over many nations. It is since this historical juncture, the world capitalist system and imperialism started controlling markets in different countries indirectly through financial institutions. The organisations like the World Bank or the International Monetary Funds (IMF) started offering financial support with an underlying pre-condition of making laws to help reform domestic markets. Thus, in the Structural Adjustment Programme, the states were told how the money they receive need be spent, where the investment need be invested etc. Similarly, the World Bank, through its Good Governance Programme, restructures the architecture of the state. For example, in Good Governance Programme, the World Bank has spent 300 billion dollars in 160 countries under the conditions that states should the public sector, taxation, etc. In 1995, amidst extensive countrywide protest, India signed up to the World Trade Organisation. When there was a discussion on the Dunkel Draft (Dunkel was the Chairperson of General Agreement on Trade and Tariff (GATT) negotiations), Karnataka farmers stormed Cargill factory in protest against the Dunkel Draft because of its impact on agriculture.

WTO reforms in agriculture proposed three things. 1) Opening up of the agricultural market, 2) doing away with domestic support price, and 3) doing away with export subsidies. However, because of the steadfast opposition

of the Third World countries, it took nine years to arrive at some agreement. The Third World countries informed that if the subsidy is removed, the competition with these corporations will collapse their economy completely as theirs was primarily subsistence farming. At the end of nine years, the US, home to the largest agro-corporates, started pushing the governments, especially India, to agree to implement the conditions. Finally, at the Ninth Ministerial Conference of the World Trade Organization in Bali, in December 2013, a trade agreement was reached with an aim to lower trade barriers. This package, termed the Bali Package, is the first agreement reached through the WTO that all its members approved. In the days prior to the Bali WTO Meeting, though there was a climbdown from India's pre-1995 position of complete rejection of open market in agriculture, India was still championing domestic agricultural subsidies to continue indefinitely. USA, with pressure from giant corporates like Walmart, was countering such demands from India. Eventually, India and the US reached a compromise where it was agreed upon that a permanent solution to the Indian subsidies would be decided in separate future negotiations within four years. The U.S. and India finally came to a permanent agreement regarding India's food subsidies in November 2014 after the Narendra Modi led government came to power. In November 2015, Prime Minister Narendra Modi stated that the Bali Package had gone through a slowdown since its signature, urging other countries to implement it in due time.⁸

Now, if we look at the three agricultural laws, the government is doing away with procurement for PDS, open market access, and contract farming. This is the framework of international law which is implemented in any country in bits and pieces at different points of

time. If one goes back in history to see the legislation enacted at different times in India, which form the conditions or basis for implementing the three agricultural laws today, there have been systematic changes providing for these three laws' infrastructure to operate.

The Land Acquisition act brought about the first great change. The land acquisition act was amended to create a vast national land market. Land acquisition act makes the land buyable from the farmers by anyone, the estate agent or retailers or the investors or anybody if the farmers could not make the land viable for farming. That is how it opened up the land for global investors to buy up land in different places, including the mineral-rich Adivasi lands in Chattisgarh/ Jharkhand.

The second act that provided the necessary fillip for the present three laws is related to the land titling act. Land titling has been a problem in India. Land ownership in India was historically very local, and, quite often, the village community held land ownership. After the coming of the British, with the introduction of zamindari and ryotwari systems, the village lands possessed by the community became public land, and hence it belonged to the crown. In post-independence India, though the government introduced the land reforms partially and gave the land to the tillers, the land titling was never complete. Around 2000, the farmers organisations from developed countries, governments, agricultural organisations from the Third World had joined hands in a campaign for clear land title for the farmers. This gave rise to the model land titling bill of 2011, followed by several states' land titling acts. Without the land titling being clear, contract farming presented in the farm bills would not have seen daylight.

The third one deals with the retailing of food produce. In India, small shops account for 93-94% of food retailing. From 2013-14 onward, there is a big push for retailing by big supermarkets, and as a result, from 2% in 2013, it has inched forward to 15%. There is also a big push global agro market to claim Indian agriculture, and that is why we see Walmart joint ventures with Bharti from 2014.

The narration of Radha D'Souza makes it evident to us that the farm laws introduced by the Central government are direct consequences of the international pressure through WTO to which India is a signatory. At a recent meeting of the WTO on 28th July 2020, different members had raised concern about India's subsidies for rice in 2018-19. India pledged its commitment to adhering to the WTO dictates and stated that the "de minimis" support level (10% of its value of production) was exceeded only in the case of rice.⁹

It was already explained earlier that the Indian Constitution does provide ways through which the Central Government can enact laws for subjects like agriculture which normally belongs to the state list. There is one more provision in the Constitution through which the Central governments could effect changes in topics listed in the state list. Article 253 of the Indian Constitute provides grounds for legislation for giving effects to international agreements: "Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

Though the effect of the farm laws of 2020 is yet to be experienced, India and the world

has seen several such attempts of pushing corporatisation in agriculture under the garb of agricultural reforms. In India, amidst media hype, Chandrababu Naidu had introduced reforms in agriculture which was later found to have put agriculture in Andhra Pradesh in an advanced stage of crisis due to public policy. Not just in Andhra Pradesh, similar neoliberal reforms were carried out in several states in the period 1997-2004. Far from unshackling peasants, then, what neoliberal 'reforms' did was to plunge them into profound distress and shackle them with usurious debt. This had resulted in an increased number of farmers suicide in different states, particularly Andhra Pradesh and Maharashtra. There are similar examples worldover.

For example, in the international setting, this is precisely the model imposed on Mexican agriculture since the 1990s, and more particularly since 1994 (the North American Free Trade Agreement, NAFTA). Detailed descriptions are available in the publications of the Research Unit for Political Economy. For example, one can refer¹⁰ for learning about experience in Mexico and Philippines or refer to their latest article on 3rd December, 2020¹¹ and here we summarise their observations. Following Mexico's adoption of NAFTA, estate trading agency (its equivalent of Food Corporation of India) was dismantled and all state measures to support agricultural production were slowly wound down. Subsidies on its staple food (corn) were slowly reduced, and these were replaced by selective cash transfers to peasants and consumers. Does it ring a bell to the Indian readers about Modi's declaration of cash transfer in recent times? Imports of US corn (to Mexico, which is the very home of maize and the world's great treasury of maize varieties) tripled, and as a result, the

family farms in Mexico collapsed by well over half. Total agricultural employment fell sharply, without adequate growth in other sectors to absorb the displaced peasants and hence the unemployment nationwide rose. More than half the population could not meet basic needs, one-fifth could not meet food needs, and the number under the poverty line rose. The resulting demand depression caused Mexico's GDP growth rates to fall, to near the bottom for Latin America. The prices of the staple food (tortillas made from corn) rose steeply, and the entire market for maize flour got controlled by just two Mexican firms (of which Grupo Maseca controls 85 per cent) – a position that Ambani, Adani and Walmart would like to occupy in India today. Thus, in all likelihood, there is no reason to believe that the future of Indian farmers and working-class would be very different from that of their counterparts in Mexico unless we all come together to stem the rot.

Conclusion

This article brings out the danger of allowing the farm laws to perpetuate for the farmers and poses a significant threat to India's food security and crop diversity. Further, every democracy-loving citizens should be alarmed by the over-centralisation of power by the present ruling dispensation. This tendency, along with the rampant arrest of activists and farmers under charges of sedition and imposition of draconian UAPA, is indicative of the fascistic tendencies of the BJP-RSS. Though the Central government is wary of any criticism and is fast in labelling such criticisms as anti-national, in reality, they appear as eager partners to implement laws dictated by the WTO and help the crony domestic capitalist and transnational giants. It is, therefore, an ardent duty of every citizen to come out in support of

the farmers' struggle and safeguard the national interest. Then only we believe that we can stall anti-people domestic legislation and neo-liberal plans of imperialism.

1. <https://timesofindia.indiatimes.com/blogs/toi-edit-page/on-the-farm-bills-farmers-forming-cooperatives-will-be-able-to-negotiate-better-prices-on-their-produce/>
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4. <https://www.epw.in/journal/2020/41/commentary/bjps-farming-policies.html>
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UAPA - A Draconian Law

Sujatha, Ranjana, Alok

We are going through one of the most repressive times in post-Independent India where the fundamental rights of expression and the right to form any organization or association that can question government policies or fight for rights of the people have been criminalized. The government, armed with acts like Unlawful Activities Prevention Act (UAPA), is coming down heavily on all those standing up for the rights of economically and socially marginalized sections of people.

Not being satisfied with that, the government and its paid media go ahead and label such political and social work as going against the territorial integrity of India or causing disaffection against India, and therefore unlawful.

If we want a society where debate, dissent and collective resistance to centralization of wealth and power form the core of democracy, we should try to see where do the UAPA and other such acts fit exactly in that vision of a free India. These acts not only undermine existing hard-won rights by toiling masses but criminalize any expression or struggle for the rights of people.

As per UAPA, there need not be any trial that will prove one guilty of charges. Under the UAPA, it can take years to be acquitted. In 2015, the government's own statistics show that 72.7% charged under this law were acquitted. It is unsettling to imagine the number of people who spend time in jail for a crime they did not commit!

What is the crime of those arrested under the UAPA? Read on for some more details on UAPA and what they mean for our democracy.

Q: Why should we be concerned about Unlawful Activities Prevention Act?

Any arrest according to existing criminal law requires a warrant. Under UAPA, the police is free to arrest without any warrant. After that, the police is allowed to take up to 180 days to produce a charge sheet, while criminal law otherwise requires that the charge sheet be produced by 60 days if the crime the person is accused of a crime that may warrant a punishment of less than 10 years, and 90 days if the punishment is for more than 10 years. In India, this is now a reality. This is precisely what the security agencies can do to any of us due to powers afforded to it under UAPA. Should we not be concerned about such Acts?

In 2011, members of the Kabir Kala Manch (KKM), a cultural group formed in Pune after the Gujarat carnage of 2002, were arrested under the UAPA by the government of Maharashtra. A cultural group that performs songs and plays opposing caste and communal atrocities became a threat to national security of the mighty Indian state. In fact, the state does not have to justify its reasons while invoking UAPA. The KKM members were charged of being associated with the banned Maoist party. No proof was presented before arresting them. Their crime was that they had led a cultural protest against communal

pogroms carried by the Rashtriya Swamyamsevak Sangh (RSS) and spread awareness against caste atrocities through their performances.

The dangerously vague provisions of the Act have been regularly interpreted to describe almost anything as “causing disaffection against India” or “acting against the interests of India”. Anyone who says no to illegal corporate land grab, supports the right of workers to form a trade union or stands up for self-determination of the people of Kashmir, their “intention” will be up for scrutiny. Any expression of dissent against any actions or policies of an elected government has become criminalized; and one of the most effective weapons the state has been using for such criminalization is the UAPA.

Let us try and understand what the UAPA is, where it comes from and why it has become so handy to those in power.

Q. What is UAPA?

The Unlawful Activities Prevention Act (UAPA) is an act by which central or state government has unlimited powers to ban an organization, arrest an individual and term any activity terrorist if it does not fit their agenda. The UAPA came into existence in 1967. In its original form it gave central government unlimited powers to ban any organization, which it believed was advocating secession.

As if this was not bad enough, the law was amended in 2004, 2008, 2012 and most recently in 2019 to such an extent that for the vast majority of the people, the act acquired immense potential to turn India into a police state. For example, according to the amendments done prior to 2019 (amendments whose wordings remain completely vague), any activity which can even include writing, singing and dancing and that are interpreted by the government as “intentions” to disrupt territorial integrity of India or even more

ironically, causing disaffection against India, can be considered unlawful. So for example, if one writes in a public forum that demands of the Kashmiris for independence should be discussed, she may be arrested under UAPA.

And what does one mean by “causing disaffection against India”? KKM members were writing songs and performing plays about government policies like forcible and illegal acquisition of land for the benefit of big industrialists, songs against caste atrocities, but were still arrested under UAPA. Thus we do not have to actually commit any crime to be called a criminal under the UAPA.

Because the Maoist party is banned, if someone’s beliefs coincide with some of the beliefs of the Maoist party, he can be thrown in jail under UAPA. But it was under UAPA that Prof. Saibaba of the Delhi University, who is 90% disabled, is currently serving imprisonment after being convicted by a Maharashtra court. One doesn’t even have to be a member of the banned organization. In a healthy democratic society, banning organizations without due process of law itself would be unacceptable. Arresting a person who was at some point a member of a banned organization would be considered even more ridiculous and unlawful and arresting a person who may not even be a member of a banned organization but holds similar or same set of beliefs would sound like law of a totalitarian state. But that is exactly what UAPA is and does.

The UAPA has neither any provisions for mandatory periodic review as earlier national security laws like POTA and TADA did, nor is it time bound. Moreover, the UAPA has become permanent legislation. Therefore, we need to come together for the repeal of this law!

Q. What is the most recent amendment all about ?

Not to be outdone by repressive measures unleashed by the Congress, the RSS/

BJP regime went a step further in 2019. It amended the blatantly anti-democratic section 35 of UAPA. As per the UAPA act 2012, any organisation could be named a terrorist organisation by the government agencies like NIA and subsequent arrests of its members would follow. If this was not potent enough for fascists to bring about the changes they desired, the 2019 amendment adds to section 35 a clause under which ANY INDIVIDUAL could be designated as a terrorist even if they were not affiliated to any organisation.

This amendment gives an absolute power to the state over it's citizens and potentially makes every single citizen a terorrist . Prior to this amendment UAPA has turned the judicial slogan "innocent until proven guilty" on it's head. The 2019 amendment transforms it even further into "terrorist until proven innocent " !

Q. How does UAPA go beyond existing criminal laws?

The UAPA allows the police to search, seize and arrest without a warrant. It allows detention of the "accused" without filing of a charge-sheet for up to 180 days and police custody can be up to 30 days.

The underlying principle under all criminal law is that the accused is held to be innocent unless proven otherwise in a trial. The UAPA has turned this underlying principle on its head. The act primarily works on the presumption of guilt merely based on the evidence allegedly seized (which could include magazines of an organization from the time when the organization was not even banned!). It invalidates what till today defines evidence to be; the standard of inquiry has thus fallen.

While bail is a right, the UAPA makes it much more difficult to obtain bail. Unlike criminal law, anticipatory bail does not apply here! Thus, no legal mechanisms exist which can safeguard citizens against this rampant

misuse of power by state and security apparatus.

UAPA is not only a license to arbitrarily arrest but also to arbitrarily hold a person in confinement for long periods. "Terrorist Act" has not been well defined and any form of protest may also become Terrorist Act wherein the punishment may be upto Life Imprisonment or Death. Most of the sections in the Act prescribe minimum punishment of 5 years, irrespective of the nature of offence.

All this for a crime that remains undefined. In fact, one does not have to commit any crime to be arrested under UAPA, one can be arrested for one's beliefs.

Q. Do we have the freedom to think independently and hold different ideologies?

In the wake of liberalization of the economy, the central and state governments have become increasingly intolerant to any opposition of their economic policies. In the last four years we have seen the BJP/RSS government combining the neo-liberal paradigm with its Hindutva agenda and any opposition to its attempt to turn India into a Hindu Rashtra is termed anti-national. In effect, if someone's ideology is against the ideology of the RSS or that of the World Bank, she can be called a Maoist and arrested under UAPA.

However, in May 2015, the Kerala High Court delivered a landmark judgment that just being a "Maoist" is no crime, and that the police cannot arrest a person just on that account. This came in the wake of several people being arrested by the police and paramilitary forces without arrest-warrants for believing in left ideologies. The court also stated that a balance has to be maintained between the needs of the law enforcement agencies and the protection of the citizen from oppression and injustice of the state.

Earlier in February 2011, the Supreme Court had ruled that mere membership of a banned organization does not make a person criminal unless he or she resorts to or incites people to violence. The ruling assumed significance in the wake of life imprisonment given to the civil liberties activist Binayak Sen by a sessions court in Chhattisgarh. The Supreme Court passed the order while upholding the appeal of Arup Bhuyan, an alleged activist of the banned ULFA, challenging his conviction.

Today, resistance to any coercive or exploitative move or policy made by the present regime to push its economic and communal policies by any organization or individual is deemed to be terrorism. When there is no answer to the organized demands of those struggling for their rights or to any writing or view expressed as a critique of the present regime, it has become expedient to term it as Maoist, Naxalite or Islamic terrorism.

Q. What are the fundamental rights under the constitution that the UAPA violates?

The UAPA violates two most important fundamental rights guaranteed under the Constitution of India: Articles 19 and 20. It violates the Right to Freedom of Speech and Expression, to Form Associations and Unions. It also violates the Right to Life and Liberty.

The rights of workers to organize and to bargain for their rights with employers or managements, is being criminalized by invoking the draconian UAPA. Registered and old unions like Mazdoor Sangathan Samiti in Jharkhand, Bombay Electricity Contract workers Union and Mine workers in Sukinda district in Odisha have all been victims of UAPA induced injustices.

In Jharkhand scores of dalits and adivasis have been arrested under the UAPA and kept in prisons for long periods as undertrials. In Madhya Pradesh, the scenario is repeated with Muslims.

On the other hand, Hindutva based student organizations like ABVP are getting a free reign in campuses while the rights of Muslim students to form organizations like SIMI have been vanquished.

Q: Who can be arrested?

Anyone. But when the state is governed by an anti-people ideology and blatant bias for capitalists, some are more likely to be arrested than others.

Those who speak up when injustice is being meted out to them or to others around them, or are not in the good books of the authorities for making demands on behalf of a community or exploited sections, are vulnerable to such a repressive law. If you ask what the State is doing in Kashmir or why innocent people are shot dead in encounters or while demonstrating in a peaceful manner, your act of questioning itself is criminalized.

Looking at the hundreds of people arrested under the Act, we see that workers, students, political activists, lawyers, journalists and artists have all been arrested under this Act. A common factor among all the people arrested under UAPA is their opposition to injustice perpetrated on the most marginalized and most exploited sections of society: minorities, workers, adivasis and dalits.

Most of those who are arrested belong to the marginalized communities – adivasis, dalits, minorities, denotified communities. In 2013, 53% of population in prisons across the country comprised of dalits, muslims and adivasis, who are only 39% of the country's population. Everyone is certainly not equal before the law!

Industrialists, ministers, VHP and Bajrang Dal members who commit atrocities against religious and caste minorities, police and security personnel who can shoot at unarmed civilians have and will always remain protected

from acts like the UAPA. Those lynching Muslims in cases of cow vigilantism have never been arrested under UAPA.

Q: Who has been arrested?

Anti-working class bias of this government means that workers who assert their rights are likely to face intense state repression. When workers try to unionize, they don't do anything illegal and so UAPA is often the only resort to stop their activities.

Mazdoor Sangathan Samiti (MSS) is a registered trade union in Jharkhand which has worked with the informal adivasi workers since 1989. It has over 22,000 registered members. In November 2017 MSS organized a cultural program to celebrate 100 years of Russian Revolution. The BJP state government banned MSS since celebrating Russian Revolution is a criminal offence. This ban did not follow any legal procedure and MSS was not even allowed to defend charges against it. In February 2018, leaders of the MSS, Bachcha Singh and Deepak Kumar were arrested under UAPA with the all too familiar charge of them being associated with the Maoist Party.

The Bombay Electricity contract workers union is one of the most well organized unions in Bombay. Ever since its establishment in 2005, it has fought for rights of the contract workers to work with dignity and have won many struggles. In January 2018, 5 of its most prominent leaders were arrested for their supposed involvement in Bhima Koregaon violence under UAPA and still remain in jail. With most of the leadership in prison, the union has suffered a severe setback and Adani who now owns the company has a free run in exploiting workers further.

On June 12, 2017, three mine workers were arrested in Sukinda district in Odisha to intimidate and prevent the mine workers from forming a trade union and challenging human rights violations resulting from mass adivasi

displacement in the region. They were arrested under the UAPA on false and fabricated charges of conspiring to wage a war against the Indian state and inciting violence.

In the Bhangar movement in West Bengal, where people have organized a movement to protect their land, ecology and environment, 19 activists were arrested under the UAPA from January 2017, 13 of these being local village people and 6 from areas like Kolkata. The TMC government made all attempts to terrorize the people with mid-night raids, burning down of their shops, bomb attacks as well as arresting and torturing the family members of those active in the movement. These arrests under the UAPA are often another terror weapon used by the State.

A lawyer trying to get justice in such cases or a reporter trying to write about such cases, are not safe. Yes, UAPA also interferes with journalists and lawyers who uphold honesty and integrity of their profession and refuse to become lackeys of the rich and the powerful.

Journalists:

Santosh Yadav and Somaru Nag, two fearless journalists working in Bastar were jailed under UAPA in 2015 and then released after spending a year in jail as the charge of them being Maoist supporters turned out to be completely fabricated by the police. In fact in 2015 and 2016, Chhattisgarh police threw four journalists behind bars with the help of the UAPA.

Lawyers:

Advocate Murugan who works with political prisoners in Tamil Nadu was himself arrested and the charge was that he is a Maoist.

Surendra Gadling, a dalit activist and human rights lawyer who has worked tirelessly for release of political prisoners was arrested in June 6th for his supposed involvement in Elgar Parishad, which was a public meeting.

More recently, on the 28th of August 2018, Advocate Sudha Bharadwaj, also a democratic rights activist, trade unionist and lecturer, was arrested from Faridabad under the UAPA. So was Arun Ferrera from Thane in Maharashtra.

Activists:

Scores of activists are arrested and kept in jail for extended periods under this Act. These activists come from different strata of society and their only "crime" is to fight for the oppressed and question government policies.

Democratic rights activist Shoma Sen, adivasi rights activist Mahesh Raut, along with Sudhir Dhawale, a dalit activist and editor of an independent magazine from Maharashtra, Rona Wilson who has fought for rights of political prisoners and advocate Surendra Gadling, were arrested under UAPA. They have been accused of fomenting hatred among communities by being involved with a Dalit Conclave called Elgar Parishad which was held in December 2017 in Pune, Maharashtra. Clearly being part of a dalit conference has become a crime. This notorious FIR is being used to conduct raids and arrests till today.

Using the same FIR, most recently democratic rights activists Gautam Navlakha from Delhi and Vernon Gonsalvez from Mumbai and senior activist and poet Varavara Rao from Telangana have been arrested under the UAPA. These arrests were in connection with fictitious letters that the police furnished to the media without submitting them in the court. Although the court reprimanded the Maharashtra police for initiating yet another such media trial, as the trials are under UAPA, they will continue.

The list can go on and on. In 2015 over 100 arrests were made in Kerala alone under UAPA. 92 of those arrested were Muslims and the others were accused of belonging to the Maoist party. The arrests were so arbitrary that the police itself formed a special committee to investigate these arrests and found a

number of them to be fabricated.

In Madhya Pradesh, UAPA is a demon which has terrorized the Muslim community. After the act was used to ban the Student Islamic Movement of India (SIMI) in 2001, Madhya Pradesh police uses the ban on SIMI to arrest scores of ordinary Muslims who are accused of being members of SIMI. As the police do not need to give any explanation while using the UAPA, the ghastly scenario has emerged in Madhya Pradesh where prisons are filled with Muslim under-trials, other than those who have been killed in 'encounters'.

In August 2020, Professor Hannu Babu of Delhi University ,a notable academic and human rights activist was arrested under the "new and improved" UAPA . NIA arrested him for his "alleged ties with Maoists" and his supposed involvement in the farcical Elgar Parishad case . Hanny Babu remains in jail till date, just as all other activists who have been arrested in that case .

After the Delhi Pogroms, scores of students, activists and Muslim Youth have been arrested many under recently amended UAPA. Students and activists with a women's movement called Pinjra Tod, Devangana Kalaita and Natasha Narwal remain in jail till date. There are countless others.

Q: What has been the role of the media?

Trial under the UAPA in courts is both slow and uphill. Sections of the corporate media carry on a media trial where the presumption of guilt that the UAPA is based on, is upheld in an irresponsible and biased manner. Thus, the opportunities of a free and fair trial are further jeopardized. The accused is pronounced guilty even before the trial is over.

In essence, such biased media reporting upholds the economic policies and the heavy repression of dissenting voices. The search for investigative and objective analysis has

become a far cry. Facts are overridden by propaganda of a repressive state and its media houses.

While the media sensationalizes arrests, it maintains a stony silence on the hundreds of meetings and marches and demonstrations held in Maharashtra, Delhi, Punjab, Madhya Pradesh, Chhattisgarh, Jharkhand, Odisha, West Bengal, Tamil Nadu, etc. by the public and democratic forces that oppose and question the misuse of the Act.

Q: What can be done?

Over the last about three decades the situation of the poor sections of society has gotten very difficult. Not that it was easy earlier. But since the 1990s, the situation changed for the worse. While earlier there was some semblance of governments being bothered about the mood and the situation of people, after the 1990s, the entire scenario changed in most countries of the world, including India. The fact that the rich were becoming richer and the poor becoming poorer did not deter governments from following the same policies. The laboring poor, adivasis, dalits were rapidly dispossessed of whatever little they owned or had control over – land, forests, decent jobs, access to health care and education, nutrition, and all else. The share of the total national income that went to these sections of people became smaller and smaller. For example, according to an Oxfam study in the year 2017, 73% of the wealth created in India went to the top 1%, while the poorest 50% of the people got only 1%. Globally, 82% of the wealth in the year 2017 was cornered by the top 1%, while for the poorest 50%, there was no increase at all. For very large sections of people life became more and more difficult, with very long working hours, precarious employment, low wages, bad and unsafe working conditions, high morbidity and mortality, continuing violence against the most marginalized, while wealth and development

continued unabated and was more and more concentrated in a very small section of the extremely wealthy.

In order to merely assert ones humanity and right to dignity and life, sections like workers, peasants, dalits, adivasis, women, forest dwellers, fisher-folk and many more sections had to come out and protest, to struggle, to organize. That became the only way in which they could live and not perish.

This struggle for survival and dignity, this striving for a better future for themselves and their loved ones has been termed by those very wealthy people and their spokespeople as subversive, as anti-national, as terrorism, as left-wing extremism. This is a weapon that seeks to de-legitimize the very real and legitimate struggles of the people, to malign and stigmatize people who do not agree with this obscene inequality.

The more we keep quiet, the closer it will come and swallow us, more and more of us. That is why we need to oppose UAPA in a more organized, collective and sustained manner.

Sustained because, earlier there were two very draconian Acts – POTA and TADA. Immense efforts and energies were expended by committed human rights organizations and other organizations to oppose those legislations. We succeeded in getting them repealed, only to have the most draconian and anti-democratic clauses being added to this UAPA. So after so much effort and organizing, we are back with the same provisions that take away almost all our political rights.

Friends and comrades, this is merely a beginning to understand a very dangerous and repressive law. It is crucial at this dark hour to collectively fight for the repeal so that we are one step towards greater freedom and democracy!

REPEAL UAPA! Uphold the Right to Dissent!



Historical Role of DROs in India

Partho Sarothi Ray

The large scale destruction of lives and livelihoods in 2020 caused by the COVID-19 pandemic in India and its inept handling by the government has been accompanied by another sort of destruction, much more deliberate and calculated. It is the destruction of the democratic rights organizations (DROs) of India, as part of a vicious plan of the BJP government to irreparably shrink the democratic space for a future that we can only tremble to think about. "The price of liberty is eternal vigilance" is an oft-repeated statement, usually wrongly attributed to Thomas Jefferson. Notwithstanding who first made this statement, it is the democratic rights organizations who have historically taken the responsibility for the vigilance that is required to safeguard and protect our liberties, hard won in struggles waged and sacrifices made by our freedom fighters. These same democratic rights organizations have been targeted by the government in India in a process to delegitimize and finally destroy them, to clear the space for the inauguration a system where rights and liberties will only be for a chosen few and the rest of the people will be cowed down into subservience.

Democratic rights organizations, also called as Civil Liberties-Democratic Rights (CL-DR) groups, have had a long history both in India and internationally, and have played important roles in every democratic society. For example, the American Civil Liberties Union (ACLU), is a 100 year old organization that proudly proclaims itself as "our nation's guardian of liberty", and wields a lot

of authority and prestige, and has often stood against government policies and measures during its long history. In India the initiative to set up a civil liberties organization was taken by Jawaharlal Nehru in 1936 when he wrote to a large number of political leaders and intellectuals about the need of a broad-based civil liberties organization. These efforts culminated in the formation of the Indian Civil Liberties Union on 24 August, 1936. This was immediately followed by the setting up of units in the Calcutta, Bombay and Madras presidencies and in Punjab. ICLU had illustrious figures such as Rabindranath Tagore as its first honorary President and Sarojini Naidu as its first working President. Rammanohar Lohia, M Venkatarangaiah and S Pratap Reddy contributed to popularise the concept of civil liberties by writing pamphlets and articles.

The second impetus for the formation of democratic rights organizations came in the backdrop of the widespread state repression on the revolutionary movements in the late 1960's and early 1970's, leading to the formation of Association of Protection of Democratic Rights (APDR) in West Bengal as the first democratic rights organization in India in 1972. This was quickly followed by the formation of the Andhra Pradesh Civil Liberties Committee (APCLC) in 1974. Then came the Emergency imposed by Indira Gandhi in 1975, which was a direct show of naked state power curtailing the democratic rights of the people. The mass movements against the Emergency led to the formation of the People's Union for Civil Liberties and Democratic Rights (PUCLDR) in 1976 by Jaya

Prakash Narayan. Justice V.M Tarkunde was its president and Krishan Kant the general secretary. After the Janata Party government came to power PUCLDR became mostly inactive but the Delhi unit remained active under advocate Gobinda Mukhoty and led to the formation of Peoples' Union for Democratic Rights (PUDR) in February 1981. A number of other civil liberties organizations also came into being during this period such as Organisation for Protection of Democratic Rights (OPDR) in 1977 at Hyderabad and Committee for Protection of Democratic Rights (CPDR) and Lokshahi Haq Sanghathan in 1977 and 1979 respectively in Bombay. The process initiated by JP in PUCLDR, and involving luminaries such as justices V M Tarkunde, and Rajindar Sachar, advocates KG Kannabiran and Arun Shourie activist and author Rajni Kothari and others culminated in the formation of Peoples' Union for Civil Liberties (PUCL) as an all India civil liberties organization in 1980.

Over the last 40 years the democratic rights organizations have played a very important part in the socio-political process in India, and have really been the conscience-keepers of the nation. Their interventions and activism on various issues, ranging from custodial deaths to encounter deaths, from displacement to draconian laws, from political prisoners to peasants' rights have been exemplary and have safeguarded the flawed and limited democracy that we have had in India. Their legal interventions have given rise to judicial landmarks and helped influence major changes in the treatment of the citizenry by the state. For example, the landmark D.K. Basu vs the State of West Bengal judgement of 1996 which has laid down the guidelines for arrest and detention by the police was in response to a letter written to the Supreme Court by D.K. Basu, who was the chairman of Legal Aid Services, a CL-DR group, which was considered as a Public Interest Litigation (PIL). Fact-finding missions and their reports by democratic rights organizations have brought to light numerous cases of oppression, illegal actions and even massacres by state and non-state actors and helped provide a

semblance of justice to the victims. Democratic rights organizations have consistently criticized repressive actions by the government, irrespective of the party in power, both at the centre and in the states. Major debates have taken place within and between democratic rights organizations, and contrary to the version of those in power, democratic rights organizations have criticized not only the state but even when groups opposed to the state have indulged in violence or violated democratic rights. For example, K. Balagopal, one of the most well known democratic rights activists actually left the APCLC on the question of condemning Naxalite violence and started Human Rights Forum (HRF), another democratic rights group. However, democratic rights organizations have recognized the basic power asymmetry between the state and its allies and the ones opposed to state, as a general principle of politics recognized all over the world. Similarly, democratic rights organizations have opposed majoritarian tendencies and stood for the rights of minorities and the historically marginalized sections such as dalits and adivasis. The CL-DR groups have been a vibrant part of Indian democracy over the ups and downs of the last 40 years, and nearly every state has given birth to its own democratic rights organizations which have functioned locally and often coordinated among themselves to form nationwide democratic rights bodies such as the Coordination of Democratic Rights Organizations (CDRO). CDRO, for example, consists of 17 CL-DR groups from 14 states which coordinate with each other and amplify the issue of protection of democratic rights countrywide.

Because of their consistent criticism of the state's role in violating democratic rights of the people, democratic rights organizations have always been the bête noire of governments, whatever be the political ideology of the party in power. It is remarkable how democratic rights activists and organizations have been targeted for repression by governments in the centre and states, irrespective of the party in power. For example, Dr. Binayak Sen,

a world renowned paediatrician and public health expert, who was a national vice-president of PUCL, was accused of charges of sedition and imprisoned for nearly three years between 2007 and 2011. This was at a time when there was a BJP government in Chattisgarh and a Congress government at the centre. Democratic rights activists have been repeatedly arrested and imprisoned and democratic rights organizations targeted for state repression in various ways in nearly every state of India during this period.

However, the ascent to power of the BJP government under Narendra Modi opened a new, and unprecedented, chapter of repression of democratic rights organizations. A process of deligitimization of democratic rights organizations started by branding them as "anti-national", an umbrella term to brand anyone or any organization that opposes the majoritarian and authoritarian agenda of the RSS-BJP. Ministers sent out signals to the paramilitary forces and police that democratic rights was not something to be bothered about in their areas of operation as the government would "manage" that. And a discourse was created in society that the democratic rights organizations are actually not what they are, but "frontal organizations" of some organizations which are banned under laws such as the Unlawful Activities (Prevention) Act (UAPA). This discourse, ably amplified by mainstream media talk-show hosts who have no idea about the history and the activities of democratic rights organizations and social media elements subscribing to the RSS-BJP, has culminated over the last two years into a situation that every democratic rights organization in India today is under the threat of destruction. It has created the opportunity for state investigative agencies such as the National Investigation Agency (NIA), armed with extraordinary powers like the Gestapo under Nazi rule, to go about interrogating and arresting democratic rights activists all around the country. The UAPA, originally promulgated in 1967 and amended multiple times with the last amendment done by the BJP government in 2019,

has been made into an instrument of targeting democratic rights organizations, although the preamble to the act clearly states that it is "for the prevention of, and for coping with, terrorist activities". It is ironic that democratic rights organizations have themselves been made the target of a law which they have long opposed as draconian and undemocratic.

Therefore over the last two years we have witnessed the systematic deligitimization of democratic rights organizations all over India, which has culminated in 2020 in a full scale attack. The ground has been prepared well for this by the amendments to the UAPA, making it more draconian, and to the NIA Act, giving unbridled powers to the NIA. The well known Bhima Koregaon-Elgar Parishad case, under which 16 academics, authors, activists, advocates, poets and social workers have been arrested and imprisoned over the last two years has been used as a central weapon in this process of destruction of democratic rights organizations. Besides being all the above, what is common to most of these sixteen people imprisoned under UAPA is that they have been active and leading members of the major democratic rights organizations in India such as PUDR, CPDR, PUCL, Indian Association of Peoples Lawyers (IAPL), Committee for Release of Political Prisoners (CRPP) and Persecuted Prisoners Solidarity Committee (PPSC). Scores of other members of these and other democratic rights organizations have been interrogated, intimidated and harassed by the NIA during the purported investigation of this case. And through a bland statement in the voluminous supplementary chargesheet submitted to the special NIA court in Mumbai in October 2020, the NIA has labelled nearly all major democratic rights organizations in India including CDRO, CPDR, PUDR, CRPP, PPSC and IAPL as frontal organizations of the CPI(Maoist)! It is breathtaking that an organization such as the NIA, set up barely a decade ago and whose constitutionality under a federal setup has itself been under question, can have the audacity to label organizations that have more than 40 years

of history of functioning in India as "frontal organizations". It is even more saddening that such a branding of organizations which have involved some of the foremost legal and intellectual luminaries of India has barely caused a ripple in the society or the polity of India. It is a matter of fact that such allegations by the NIA will have to be proved in a court of law, but the mere fact that such labelling can be done without raising a hue and cry in the country is a telling sign of the times. It is also a sign of the times, and of the discourse that has been built over the last six years, that the state can even deny the basic agency to such organizations, which have been built over decades by some of the best minds of India, and merely consider them to be fronts of others. It is as if members of such organizations cannot have minds and agencies of their own and would be happy to function as proxies. It is sad that today there is no one in India to point out that in fact BJP is a proclaimed frontal organization of the RSS, a paramilitary organization which has itself been banned a number of times in independent India due to its terroristic activities and which has openly proclaimed its opposition to the Constitution of India.

Today, at the end of 2020, we are therefore in a scenario that major democratic rights organizations in India such as PUDR, CPDR and CDRO are under such threat that their functioning is seriously jeopardized. Organizations such as CRPP, whose focus is the release of political prisoners, or IAPL, which has tried to provide legal aid to victims of state repression or PPSC, which tries to help the thousands of adivasis, dalits and minorities who are suffering imprisonment as a result of state persecution in the conflict zones in India have virtually been decimated with most of their leading activists such as Rona Wilson, Sudha Bharadwaj, Surendra Gadling, Arun Ferreira and Stan Swamy being in jail. Beyond these, nearly every other democratic rights organization functioning in India has also been targeted. Amnesty International, one of the largest international human rights NGOs

functioning in 150 countries, was forced to stop its functioning in India as its bank accounts were frozen and its staff harassed due to its opposition to violation of human rights by the government of India. In state after state, this is the current situation. In Kashmir, the residences of Khurram Parvez and Parveena Ahangar, activists of Kashmir's main CL-DR group Jammu Kashmir Coalition of Civil Society (JKCCS) were raided by NIA in October as the agency accused the democratic rights organization of "carrying out secessionist and separatist activities". In Andhra Pradesh, 67 members of the democratic rights organizations HRF and APCLC including the state coordinator of HRF, V S Krishna, vice president of HRF, K Jayashree, and general secretary of APCLC, C Chandrasekhar were named in FIRs charging them under UAPA. In Assam, democratic rights activists Akhil Gogoi, and his colleagues Bittu Sonowal and Dhairjya Konwar, belonging to the organization Krishak Mukti Sangram Samiti have been arrested by the NIA and imprisoned under UAPA for their involvement in the anti-CAA protests.

Overall in 2020, in the backdrop of a pandemic ravaging the country, laws have been forced through by the BJP government to rob the livelihoods of labourers in the form of the four labour code acts and of farmers in the form of the three farm acts, and the citizenship rights of a large number of the most marginalized sections of the society through the CAA-NRC-NPR process. While this full scale attack on the rights to life and livelihood of the majority of our population continues, the deliberate destruction of the very organizations which stand in vigil of our rights and liberties is a crucial part of this process. Unless our courts, media, civil society and common citizens wake up to this fact and oppose this, the country will be heading towards a system conforming to the authoritarian-majoritarian worldview of the RSS-BJP. Some may call this system "Hindu Rashtra", but its real name is Fascism.



Indian Judiciary - A Critical review *

Shoaib Daniyal

Has the Indian judiciary suddenly stopped doing its job of acting as a check on the government and upholding the rights of Indians? Much of the English-language media over the last few weeks has featured laments that rely on a narrative of sudden judicial collapse.

While most of the concerns raised about lack of judicial oversight are accurate, what is not is a picture of a sudden change. The uncomfortable truth is that the Indian judiciary largely always functioned in an arbitrary manner. A narrative of decline comes not from any historical analysis but a lack of proper observation on the part of many pundits.

Caste in the court

Ambedkarite thinkers and activists, for example, have long pointed to the extreme arbitrariness in court workings, where lack of law and procedure is often used to effect outcomes that roll back social justice policies. This has found voice in the almost constant endeavour by courts to either deny or dilute caste-based reservations.

One of the first court judgements, passed by the Madras High Court in 1950 and upheld by the Supreme Court, after the new Constitution came into force was in fact to strike down the policy of caste-based reservations in socially progressive Madras Province based on the complaint of a Brahmin woman, Chamapakam Dorairajan, claiming she had been unable to secure a medical seat due to quotas. The political furore this caused among Tamils saw Prime Minister Jawaharlal Nehru's government rush to overturn the decision using the First Amendment to the Indian Constitution.

Faced with socially progressive lawmaking in the legislatures, courts fell back upon increasingly arbitrary pronouncements in order to dilute reservations. In 1992, the Supreme Court, while hearing a case on the validity of Other Backward Class reservations, not only made sure to cap them using an income criteria – which was not the basis of the law in Parliament and which went against the social justice logic of reservations – but also went on to arbitrarily take up the issue of Dalit and Adivasi reservations, ruling that affirmative action could not be applied to promotions.

A check on progressive policy

This sudden, arbitrary lawmaking from the bench – where the court made policy on SC/ST reservations in a case pertaining to OBC reservations – typifies judicial attitudes towards caste equity.

Ironically, even as courts strictly scrutinise SC/ST and OBC reservation, the upper caste quota introduced by the Modi government in 2019 as reservations for 'economically weaker sections' sailed through. Since the judiciary has – unlike with almost all other new quotas – chosen not to put a stay on it, it would be practically impossible for any future court to roll it back.

A similar trend is seen in the SC/ST Atrocities Act, where progressive legislation passed by Parliament is sought to be constantly diluted by the higher judiciary.

Many legal commentators paint a picture of courts as a guarantor of rights against government excess. But in the case of caste-based social justice, the ground situation stands largely reversed. "Much of this flows from the fact that courts in India are not representative," explained G Karunanidhy,

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General Secretary of the All India Federation of OBC Employees' Welfare Association. The data backs him up: As of 1999, out of 136 Supreme Court judges, only two were from Dalit or Adviasi communities – the lowest by far of any arm of government.

While other commentators have woken up to judicial bias in 2020, Ambedkarite thinkers have been pointing to it for years.

Class bias

A similar picture emerges from the research of law scholar Anuj Bhuwania, in his study of Public Interest Litigations in the early 2000s in Delhi. An Indian invention, the PIL allows the court to become a parallel governance mechanism. The lack of any checks and balances allows judges, as per Bhuwania, “to act on their biases (aesthetic, anti-poor or otherwise) and that too with a free hand in a most expansive manner”.

According to Bhuwania’s research, this unconstrained judicial power allowed courts through various decisions to evict almost a million slum dwellers in Delhi in the first decade of the millennium – more than double the number evicted during the infamous Emergency.

As with caste, with respect to class, normative theories of Indian courts being a check on government excess actually stand reversed on the ground. A slum dweller’s rights are far better protected by elected arms of government than the judiciary.

As stark an example of judicial tyranny the Delhi slum demolitions might be, maybe even worse was seen in 2013, when the Supreme Court announced that the state of Assam would see a strict citizenship verification test – the National Register of Citizens – conducted for all state residents. Such a citizenship test, often via documents going back generations, was unique across the world, producing a list of exclusions that was 19 lakh strong – more than twice the population of Rohingya refugees who fled Myanmar. The concept of a citizenship test has since then been taken up by the BJP as a campaign issue, with a promise to repeat the Supreme Court’s draconian exercise across the country.

Given the vast scales of human misery involved in just these two instances, it is difficult to argue that the Indian judicial system was any less arbitrary or more caring of rights earlier than it is today.

Hindutva vanguard

As with caste and class, any sanguine views of the India judiciary before Prime Minister Narendra Modi came to power changes somewhat when seen from the point of view of minority rights.

There has been much criticism of the Supreme Court’s unusual 2019 judgement awarding the land on which the Babri Masjid stood to the very forces that demolished the mosque in 1992. Less discussed is that the kar seva that led to the demolition was itself allowed by the Supreme Court.

So completely did the Supreme Court fail at that critical moment that even the observer it appointed blithely ignored his job and actually brought his family along to watch the mosque being torn down. To complete the disaster, the Supreme Court has not held the Uttar Pradesh state government and its ministers legally responsible for the demolition in spite of the fact that it allowed the kar seva on that fateful day based on the administration’s promises.

This is not all. In 1995, the Supreme Court held that since Hindutva was a “way of life” in India and not simply a religion, asking for votes in the name of Hinduism was perfectly fine. Later in 2005, the SC held that anti-cow slaughter laws that enshrined Hinduism’s reverence towards the animal were constitutional since “value of dung is much more than even the famous ‘Kohinoor’ diamond”, amongst other factors.

Notably, on both Hindutva and cow slaughter, the Supreme Court was actually in the vanguard of right-wing populist politics, taking radical positions that would only later become nationally hegemonic. Once the court’s record on minority rights is studied in full, its positions during the past few years become less surprising.

Praise for failing

Given the scope of the Indian judiciary’s interventions and freedom of movement to frame

policy, the Supreme Court has often been held to be the most powerful court in the world. However, on draconian laws such as preventive detention and anti-terror legislation, the court has consistently chosen to inexplicably not exercise this power, capitulating completely to the legislature. The only protection against "legislative tyranny" is not the court, Justice SR Das famously held in 1950, but in "free and intelligent public opinion".

As academic Shylashri Shankar has pointed out, ironically even as the court argued this, it also held that it was the ultimate custodian of the what it called the "Basic Structure" doctrine – a supposed inviolable essence of the Constitution that was only visible to the higher judiciary and based on which judges in India exercised a near-unique power of judicial review. Judicial review allows the judiciary to declare laws, executive actions and in India's case, even constitutional amendments, unconstitutional and strike them down.

Shankar points out the paradox: "Indian judges seized the power to review legislated laws but did not use the doctrine to assess whether preventive detention was a reasonable restriction on a citizen's liberty. The apex court rejected constitutional challenges to the Preventive Detention Act, TADA and POTA."

As in the earlier cases, this glaring judicial malfunction has happened with little critical commentary. In fact, the court's self-serving, inconsistent attitude towards judicial review has largely attracted praise from India's English-language commentariat.

Simplistic models

What explains this lacuna? Part of the reason is the shared biases between English-language commentators and benches. As Bhuvanaria points out, English newspapers mostly "drove the PIL discourse" during the court's rampage through Delhi's slums. Part of the reason also is that, as academic Shylashri Shankar explains, "India's Supreme Court has been studied by judicial scholars who tend to be lawyers influenced greatly by the normative approach". This places great emphasis on the law and other idealised theories such as courts being non-majoritarian in nature or a guarantor of

rights against government excess, thus emphasising what "ought to be" over what "is".

Shankar instead proposes a more empirical approach that emphasises multiple factors such as politics along with normative ones like the law in producing judicial outcomes in India. Shankar's statistical modelling shows that, contrary to idealised theories of the judiciary being a counter-majoritarian check, courts often move with the political environment. According to Shankar's statistical analysis, judges tend to favour the state in case of strong Union governments as well as become more pro-state at a time of heightened national security concerns in society.

An expected capitulation

The court's capitulation to a strong, ideologically consistent Union government such as the one currently in office is therefore unfortunate – but hardly surprising. The fact that commentators had largely cheered on the massive expansion of the court's powers earlier based on the idealised belief that the judiciary was uninfluenced by majoritarian politics in fact made the situation worse. As Bhuvanaria has pointed out, in the Modi age "the court has chosen not to deploy its vast powers against the government, but instead has placed its enormous arsenal at the government's disposal in pursuit of its radical majoritarian agenda".

Rather than a surprise, the current moment is connected causally to the fact that checks and balances on the judiciary were dismantled even as the courts came to exercise vast legislative and executive power far beyond their remit. This breakdown of democratic norms was praised earlier since plodding procedure was often seen to be an enemy of "justice" – an attitude that Bhuvanaria calls "judicial populism".

Rather than subjectively praise or criticise this judicial populism depending on its temporary outcomes, commentators must make sure to decry the idea of an activist, unchecked court itself and recognise that this has always harmed Indian democracy. The court didn't suddenly decline in the Modi years. It just so happened that the people who think so weren't keeping a critical enough eye out earlier.

