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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

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FROM DISSENT TO DETENTION: A CRITICAL ANALYSIS OF THE USAGE RULE OF LAW AGAINST DISSENT

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Abstract

This research paper is an in-depth critical analysis of the paradoxical association between the rule of law and dissent in democracies, concentrating especially on India. Dissent is as a basic democratic right that ensures the conservation of the rule of law and the enrichment of political plurality. But at the same time, legal systems throughout the world, including signatories to treaties such as the ICCPR, are enforce laws to silence dissenters, all under the pretext of national security and public order. This paper looks at the main legal Indian provisions with special reference to the colonial times the Indian Penal Code Section 124A that has been replaced by Section 152 of the Bharatiya Nyaya Sanhita. The analysis depicts that the two law texts characterize the extensive and unclear language which gives the authorities the possibility of controlling the political side of the people's expression. The study also uncovers the systemic weak points in the protection of the rights of those arrested and detained victims of national security laws and preventive detention, presenting the ways in which these legal mechanisms violate the due process and basic freedoms. By comparing India's situation with other countries from around the world, the research illustrates how the procedure of going through the security and preventive detention laws can actually legitimize repression coming from the security forces under the cover of legality, what is connoted by constitutional ideas being compromised, thereby highlighting the need for a rigorous judiciary, a clearly defined legislation, and an engaged civil society not only to keep democratic dissent alive as one of its practices but also to demonstrate once more that the rule of law is the real protector of freedom and not simply an instrument of control.

Keywords

Dissent, National Security Laws, Preventive Detention, Rule of Law, Sedition

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Introduction

Dissent is a crucial part of the democratic architecture, as it not only acts as a safeguard against the concentration of state power but also as a means for the expression of alternative governance models. However, across the globe, the rule of law, which has always been seen as a protector of liberty and equality, has ironically been used to suppress dissent. This tension seems to mirror a fundamental contradiction: Is the law that claims to ensure justice at the same time an instrument of control? This paradox frames the scope of the present dissertation which is centred on how dissent is controlled, treated as a crime, and frequently restricted under the guise of legality and public order. On a global scale, there exists a vast array of treaties, conventions, and jurisprudence, which highlight the right to dissent as a normative core. The International Covenant on Civil and Political Rights, along with the supplementary interpretations by such bodies as a Human Rights Committee, is setting up that freedom of thought, speaking, and gathering are indispensable rights of democratic societies. However, there are discrepancies between these high-reaching norms and the realities of sovereignties when they confront rebellious authorities, revealed in world practices. This gap is thus very prominent in situations where governments employees invoke security-based reasons for restricting the extent of dissent allowed.

The legal history of India demonstrates these inconsistencies too. For example, the very words of the first Indian Penal Code's Section 124A, legislation describing the offense of sedition, has always been criticized on its compatibility with the constitutionally guaranteed freedom of speech. The recent law establishing its successor, Section 152 of the Bharatiya Nyaya Sanhita (BNS), both marks the continuity of the state's strategy and signals the state’s recalibration of its approach by simultaneously safeguarding sovereignty while limiting opposition. Through these measures, the struggle between the state's demand for stability and the citizens' right to political participation continues to be fought. Matters become even more serious in the context of national security where procedural safeguards often are only a façade. For example, security-oriented arrests and detentions almost always undercut criminal due process protections and overly favour the discretion of the state. These relationships reveal the constitutional democracy's systemic weaknesses in guaranteeing the substantive rights of arrestees and detenues such as the rights to legal counsel, fair trial, and humane treatment which constitute the core of criminal due process.

By using a comparative perspective one can also see that India is not the only one who utilizes the rule of law against dissent. The exercise of preventive detention powers and the enactment of security measures are legitimized by the necessity of guaranteeing the sovereignty, tranquillity, and public safety of states in different jurisdictions. However, in practice, they are often a mask of repression that merely changes its form from direct to procedurally legal. Such a scenario invites further inquiry on what this means for democracy, i.e. does the use of legal means to repress dissent paradoxically lead to the gradual withering of the constitutional ideals that governments claim to uphold? This research paper looks at the issues mentioned above via five interconnected questions: How the international standards and norms on dissent are articulated; The historical and contemporary significance of sedition provisions in India; The extent of safeguards under national security laws; The global practices of using law to suppress dissent, and to what extent preventive detention mechanisms undermine fundamental rights. The work aims at exploring the contradiction of dissent being recognized as one of the key democratic principles but actually being closely associated with threat perception and detention facilitated by legality and the rule of law forming the very locus of enforcement and challenge thereof.

Statement of Problem

The Indian state's reliance on security-oriented statutes, particularly Section 124-A of the IPC, the Unlawful Activities Prevention Act (UAPA), and related anti-terror legislation, has increasingly been employed to target activists, journalists and NGOs, often on tenuous evidentiary grounds and without full observance of due-process safeguards. Although originally crafted to protect national integrity, these laws now function as mechanisms that curtail the constitutional guarantees of freedom of speech (Article 19) and personal liberty (Article 21), as the Supreme Court has affirmed that criticism of government policy remains protected unless it incites violence. Empirical data reveal a dramatic rise in sedition filings (165 % increase between 2016 and 2019) and a persistently low conviction rate (approximately 3 % in 2019), underscoring a pattern of punitive overreach rather than legitimate security enforcement. The UAPA's provisions for extended pre-charge detention (up to 180 days) and restrictive bail conditions further erode judicial review and exacerbate the chilling effect on dissenting expression. International human-rights bodies, including Human Rights Watch, have denounced these statutes as anti-democratic tools that

criminalize legitimate protest and violate international standards of freedom of expression. Consequently, the expanding scope of security legislation threatens the balance between state security imperatives and the democratic principles of free speech, political dissent and legal fairness, prompting urgent calls for reform to restore the rule of law.

Research Questions

This study explores the intersection of dissent, national security laws, and fundamental rights, focusing on the misuse of Section 124A of the IPC, Section 152 of the BNS and the UAPA, 1967. It critically examines their impact on individual freedoms, legal representation, and democratic participation, while evaluating international norms and legal frameworks. By analysing the use of these legal provisions to suppress dissent, the study aims to highlight the erosion of constitutional protections, particularly freedom of speech and personal liberty. It will also explore the role of legal tools in transitioning from protest to detention, assessing both domestic and international legal perspectives on human rights.

- What international legal standards or norms exist to address the misuse of national security laws for the suppression of dissent, and how are these norms reflected or engaged within India's legal system?
- How are legal provisions such as Section 124A of the Indian Penal Code (1860) and Section 152 of the Bharatiya Nyaya Sanhita (2023) invoked in the arrest and detention of individuals, and what are the underlying justifications for their application?
- To what extent do legal frameworks in India safeguard the rights of arrestees and detenues, especially regarding access to legal representation under national security laws, and how does this impact their right to a fair trial?
- In what ways are the principles of the rule of law employed across different jurisdictions manage or suppress dissent, and what are the broader implications of such practices for democratic governance and freedom of expression?
- What legal mechanisms and provisions facilitate the transition from public dissent or protest, as articulated by petitioners challenging the State, to preventive detention or incarceration, and how do these practices impact fundamental rights?

- How do the arrest and detention practices under national security laws impact individuals' fundamental rights, particularly freedom of speech and personal liberty, both in the Indian context and under international human rights frameworks?

Significance of Research

This research is important to highlight the complex relationship between dissent and the rule of law under democratic governance, and it focuses particularly on the legal system in India. Dissent is a necessary democratic mechanism that keeps the system healthy since it prevents the concentration of power in the hands of the authoritarian and generates political pluralism. Nevertheless, the investigation reveals the paradox of law, especially characterizing the anti-sedition and the national security legal system, which frequently turn completely into suppressors of the legitimate opposition. Such a situation raises serious problems with constitutional freedoms. This study, by making a critical examination of not only international human rights norms but also their domesticated versions in the Indian legal regime, contributes to the understanding of the gaps between legal guarantees and their enactment in practice. The examination of preventive detention and procedural safeguards gives valuable clues of the system faults, where the rights of the fair trial and legal bail, which are the basics of the rule of law, are violated. Additionally, by incorporating India's experience in global practices, the study discloses the widespread occurrences of repression under the cover of legality, thereby eliciting vital questions about the vigour and sustainability of democratic institutions all over the world. The primary objective of this research is to inform the policymakers, scholars, and the civil society about the urgent legislative clarity, judicial supervision, and institutional reforms needed in order to safeguard dissent as an indispensable pillar of democratic governance.

Scope and Limitation of Research

This study deals primarily with how the rule of law in the Indian context has been affected by dissent, focusing on sedition laws (Sections 124A IPC and 152 BNS), legislation on national security, and the practice of preventive detention. Human rights principles enshrined in international instruments such as the ICCPR are used as the standard for comparison. The paper utilizes a doctrinal legal method as the main approach, supplemented by the qualitative evaluation

of judicial pronouncements, legislative changes, and dissent repression practices in different countries. Nevertheless, the study is constrained by the concentration on legal texts and the decisions of courts with minimal emphasis on empirical data such as statistics of arrests or detention under these laws. The comparative aspect, while highlighting global trends similar to India's, does not allow for very detailed country-specific analyses of the countries apart from India. Furthermore, the research work here focuses on laws and legal structures, without the suggestion that the changes in political scenarios may even occur through the pressure of political groups or the clandestine activities probably by the dissenters. The researchers have, however, impressed a comprehensive, critical, and legal perspective among others on the challenges of balancing national security and fundamental rights in democracies.

Objective of Research

The paper aims to achieve the following objectives:

- To identify and analyze international standards or norms, if any, that condemn the misuse of law in suppressing dissent
- To examine instances of arrest and detention under Section 124A of IPC, 1860, Section 152 of BNS, 2023 and UAPA, 1967 and analyze the reasons for the same
- To analyze if legal representation is accessible for individuals who have been arrested or detained preventively.
- To analyze how the rule of law been employed to suppress dissent across different jurisdictions
- To identify the legal tools or provisions being used to transition from dissent (protest, criticism) to detention or incarceration
- To examine the effect of such legal actions with respect to fundamental rights of individuals

Research Methodology

The method for the doctrinal research undertaken is to review the instances where individuals have been arrested or detained under Section 152 of the Bharatiya Nyaya Sanhita, 2023, and its erstwhile Section 124A of the Indian Penal Code, 1860, which has been repealed. Utilizing a doctrinal and

case-based methodology, the research analyzes both recent and key cases, and the intentional targeting of enforcement agencies against non-governmental organizations and media entities. The paper evaluates how these practices erode constitutional protections outlined in Articles 19 and 21, leading to a chilling effect on free speech and democratic participation. By examining legal texts, judicial decisions, and policies, the paper critiques the facade of legality that conceals politically motivated prosecutions. Given the doctrinal nature of the research, the methodology will be primarily focused on legal analysis, using qualitative methods to analyze and interpret existing laws, judicial precedents, and other relevant legal documents. The research will draw on both domestic and international legal frameworks, jurisprudence, and legal theory to evaluate the usage of the rule of law in suppressing dissent. This paper will focus on analyzing laws related to dissent, freedom of speech, and detention, primarily by examining statutes, case laws, legal opinions, and other authoritative legal documents.

Literature Review

This literature review explores the intersection of dissent and national security laws, focusing on the Unlawful Activities (Prevention) Act, 1967 (UAPA) in India. It examines scholarly critiques of the law's misuse, particularly its impact on freedom of speech, political opposition, and human rights, while assessing broader implications for democratic governance and justice. It examines scholarly critiques of the law's misuse, particularly its impact on freedom of speech, political opposition, and human rights, while assessing broader implications for democratic governance and justice. Critics argue that the law undermines constitutional rights, particularly due process and the presumption of innocence. The review also evaluates calls for reform and alternative legal frameworks that better balance national security with individual freedoms.

1) Laws and Legislations
    - The Constitution

      The Constitution being the grund norm and the supreme law of the land offers a framework for the analysis of the doctrine of rule of law. This will be done in the context of a select few Articles, which are as follows:
        - Article 14

Equality before law and equal protection of the law, as expressed by this Article, are the embodiment of the doctrine of rule of law in the Constitution.

- Article 19

  This Article explicitly provides for the protection of certain rights regarding freedom of speech, amongst others. These rights are central to healthy and productive dissent and discourse, in a strong democracy. These rights are, however, not without reasonable restrictions and it is in the interpretation of these reasonable restrictions that ambiguities arise, lending the State a larger ambit of power.

- Article 21

  This Article provides for the protection of life and liberty in the presence of dissent is of immense significance as it is often the basis for legal recourse, in addition to Article 32.

- Article 32

  The right to move the Supreme Court by appropriate proceedings is one of the first "line of defence" against arbitrary exercise of power. This is exercised in the form of writs, which include habeas corpus, mandamus, prohibition, quo warranto and certiorari

- Article 136

  This Article provides for mechanisms of special leave to appeal from any judgement, decree, determination, sentence or order in matters passed or made by any Court in India.

- Article 226

  It is similar to Article 32 in the sense that Article 226 is the equivalent of the Article 32 for High Courts, in the territories where the respective High Courts exercise jurisdiction.

- Section 152, Bharatiya Nyaya Sanhita, 2023 and Section 124A, Indian Penal Code, 1860

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Section 152 of the Bharatiya Nyaya Sanhita, 2023 and Section 124A Indian Penal Code, 1860 (repealed) are related provisions. Both sections provide for ample ambiguity regarding interpretation which are used in cases of legal proceedings against dissent. The nuances of the terminology used will be explored, along with landmark rulings.

- Unlawful Activities (Prevention) Act, 1967 and Unlawful Activities (Prevention) Amendment Act, 2019

  The Unlawful Activities (Prevention) Act of 1967 and its subsequent amendments through the years, the last of which was in 2019 provides for the more effective prevention of certain unlawful activities of individuals and associations, classified as such due to the threat to the sovereignty and integrity of the country. The 2019 amendment empowers the Union government to designate individuals as terrorists without certain procedural requirements. A few provisions of the Act have bee criticized as being in contravention with various international covenants and agreements.

2) Judicial Decisions
   - Asif Iqbal Tanha vs State of NCT of Delhi, 2021

     The court held that exceptionally stringent provisions of the UAPA are meant to apply only to exceptional cases and not as substitutes for ordinary penal law. The court also criticized the state's tendency to confuse "protest" for "terrorist activity"
   - Iqbal Ahmed Kabir Ahmed vs State of Maharashtra, 2021

     The court clarified that the allegations in the chargesheet must be individualized, factual and particular. The gap between what an individual is accused of, and the actual event, cannot be filled by inference or speculation.
   - Sajal Awasthi vs Union of India, Association for Protection of Civil Rights vs Union of India

In both cases, the petitioners argued that the ambiguity in the definition of 'terrorist' or 'terrorist activities' resulted in individuals being classified as those involved in terrorist activities, making the provision manifestly arbitrary.

- Zahoor Ahmed Shah Watali vs National Investigation Agency
  The Supreme Court held that the courts must not examine the evidence produced but only accept it at face value, when granting bail under the provisions of UAPA, if the National Investigation Agency has already framed charges against the individuals in question.

3) Articles

- **Sedition Laws and Its Implications- Indian Perspective - Dr Suja Nayar, Urvashi Sharma and Arpita Khare, Shodhak: A Journal of Historical Research ISSN: 0302-9832, Vol. 53, Pt. B (May-August) 2023**
  This paper critically examines the historical trajectory and contemporary application of sedition laws in India, with respect to Section 124A of the IPC. It highlights how sedition, introduced during the colonial period to suppress freedom movements, continues to be employed to stifle dissent and silence criticism. Despite constitutional guarantees under Article 19(1)(a), the arbitrary invocation of sedition has curtailed free expression and weakened democratic norms. The authors review landmark cases such as *Kedarnath Singh v. State of Bihar* that upheld sedition's constitutionality but limited its scope, alongside instances where courts have resisted its misuse. Importantly, the paper situates sedition as a colonial legal legacy retained in post-independence India, noting NCRB data on its increasing application but negligible conviction rates, indicating its function as a tool of harassment rather than justice.

- **Authoritarianism in Indian State, Law, and Society - M. Mohsin Alam Bhat, Mayur Suresh and Deepa Das Acevedo, Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America, 2022, Vol. 55, No. 4, Symposium: Autocratic Legalism (2022)**

This paper situates India's contemporary legal environment within the global framework of "autocratic legalism," a process by which law itself becomes the tool for undermining democratic accountability. It explains how legal systems, while outwardly upholding constitutionalism and rule of law, can be systematically deployed to centralize authority and curtail dissent. The authors highlight the growing reliance on exceptional legal measures, such as expansive "anti-terror" provisions, restrictive citizenship policies, and the empowerment of non-state actors through legal and institutional mechanisms in order to blur the boundary between lawful governance and the suppression of opposition. The study argues that India's case illustrates not only the use of law to consolidate state power but also the diffusion of such power into everyday legality, where ordinary legal institutions normalize restrictions on fundamental freedoms. This is done by the weakening of individual rights, and the erosion of safeguards meant to protect democratic participation.

- **The Right to Dissent in the Socio-legal Context: Reimagining Citizenship, Strengthening Democracy – Shalu Nigam, Research Gate (10.31219/osf.io/ubkra)**

  This paper provides a normative and socio-legal exploration of dissent, situating it as a democratic necessity rather than a threat. It argues that authoritarian states habitually construe dissent as disobedience, criminalizing peaceful resistance by weaponizing law. Through historical and comparative examples, from colonial India's sedition laws and Rowlatt Act to post-independence laws like UAPA, AFSPA, TADA, and POTA, the author demonstrates how dissent has repeatedly been suppressed under the pretext of "national security" or "public order." Importantly, the paper emphasizes how preventive detention and exceptional legal frameworks undermine constitutional guarantees of free speech and assembly, thereby criminalizing ordinary political activity. By connecting dissent to philosophical ideas of Thoreau, Gandhi and Martin Luther King Jr., it situates resistance as an ethical imperative against unjust laws.

4) Reports

- A Decade of Darkness – Article 14 (Independent Initiative)
  It is an interactive repository which offers a comprehensive public, empirical study on the deployment of sedition law since 2010. It documents over 800 sedition cases implicating more than 13,000 individuals, highlighting the unsettling persistence of a colonial-era law that most democracies have abolished. The platform structures its findings across four intuitive themes, which are, the People, the State, the Courts, and the Stories, which enable nuanced examination of who is accused, which authorities pursue sedition, how judiciary responses vary, and what individual narratives reveal. State-wise breakdowns expose concentrated litigation in regions like Karnataka, Bihar, Uttar Pradesh, and Punjab. Accused individuals often endure up to 50 days in trial custody and up to 200 days before high-court bail. Trial courts tend to reject bail more frequently, while high courts grant it at a markedly higher rate. This repository blends quantitative and qualitative data to elaborate on the systemic misuses of sedition law, especially towards dissent, protest, and criticism, thus forming a critical analysis of the subject matter.

- Stifling Dissent: The Criminalization of Peaceful Expression in India (2016) – Report by the Human Rights Watch
  It provides a compelling critique of how broad and archaic provision, primarily sedition, criminal defamation, hate speech, and laws against hurting religious sentiment are deployed to suppress dissent. This disproportionately targets journalists, activists, students, and marginalized communities. Using interviews, court records, and media accounts, the report demonstrates how India's colonial-era Section 124A is routinely invoked. Through prominent cases such as the arrest of the student leader Kanhaiya Kumar for a campus event and the detention of a folk singer, S. Kovan, the report illustrates how legal instruments are misused to penalize peaceful expression. The report also argues that the mere initiation of these cases dubbed as "punishment by process" creates a chilling effect, inducing self-censorship regardless of ultimate outcomes. It closes with specific

recommendations which includes the repeal or amendment of the relevant provisions, amongst others.

- India: Persecution of Minorities and Shrinking Space for Dissent – Submission to the 41st UPR Working Group by Amnesty International
  It offers a critical assessment of how Indian authorities utilize laws to stifle opposition and silence marginalized voices. The report details the misuse of sweeping statutes such as the Unlawful Activities (Prevention) Act (UAPA), the Foreign Contribution (Regulation) Act (FCRA), and the Information Technology Rules, which have been used to curb freedom of expression, restrict civil society organizations, and criminalize peaceful assembly. Human rights defenders, journalists, and protesters face frequent intimidation, arrests, and prolonged pre-trial detention. Minorities such as Dalits, Adivasis, and Muslims are disproportionately targeted, reflecting the intersection of discriminatory policing and restrictive laws. The report highlights how protesters are often charged with sedition, promoting enmity, or hurting religious sentiments. Such charges function as "punishment by process," where the burden of navigating the legal system itself becomes a tool of repression. The use of financial restrictions against NGOs, including the cancellation of thousands of FCRA licenses, underscores how regulatory frameworks are manipulated to shrink civic space.

Scheme of Study

International Standards and Norms on Dissent

International legal rules regulating the use of national court security laws to silence opposition mainly derive from human rights law principles laid down in various treaties and declarations, for example, the Universal Declaration of Human Rights (UDHR)[1], the International Covenant on Civil and Political Rights (ICCPR)[2], and statements made by United Nations human rights organs. These agreements and measures establish basic rights to freedom of expression, assembly, and

[1] Roosevelt, Eleanor, Universal Declaration of Human Rights (2000)
[2] International Covenant on Civil and Political Rights, Adopted by the UN General Assembly on 16th December, 1966

association and state that any restrictions on these rights must be implemented by law, necessary, proportionate, and must be non-discriminatory[3]. Limitations must be legally and morally justified, must be the least severity necessary to attain their object, and must be non-discriminatory in nature according to the Siracusa Principles[4]. While Article 19 of the ICCPR ensures freedom of expression, Articles 21 and 22 guarantee the rights of peaceful assembly and association. The Siracusa Principles offer more details on the issue of national security, stating that security reasons should not be used for suppressing the dissenting opinions of legitimate groups or those in political opposition[5].

These internationally recognized principles also have several points of contact in India's legal system, expressed both formally and informally, despite the strong contradictions and conflicts. India is a signatory to the ICCPR, and the Indian Constitution also stipulates the rights granted in Article 19(1)(a), but there are some restrictions allowed only as "reasonable" and "in the interests of the sovereignty and integrity of India, public order, decency or morality." At the same time, measures such as the Unlawful Activities (Prevention) Act (UAPA), the National Security Act (NSA), and the colonial-era sedition law (Section 124A IPC) have been criticized for the expansive and vague types of definitions in them leading to a situation whereby pre-emptive arrests and prolonged detention without trial can be done targeting mostly dissenters, activists, journalists, and minority groups[6]. Courts in India have acknowledged that it is necessary to find a middle ground between national security and civil liberties, but some verdicts have confirmed restrictive laws by taking into consideration factors of state sovereignty and public order. Such judicial support together with limited procedural safeguards and delays in the provision of legal representation has led to the affidavits about the erosion of due process rights as well as the chilling effect on dissent.

[3] Lawyers' Rights Watch Canada, THE RIGHT TO DISSENT: A Guide to International Law Obligations to Respect, Protect and Fulfill the Right of All Persons to Participate in Public Affairs by Engaging in Criticism, Opposition and Dissent (2017)

[4] Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, American Association for the International Commission of Jurists

[5] Eric A. Friedman & Lawrence O. Gostin, Human Rights Principles in Public Health Emergencies: From the Siracusa Principles to COVID-19 and Beyond, Petrie-Flom Ctr. at Harvard Law Sch. (Nov. 7, 2023), https://petrieflom.law.harvard.edu/2023/11/07/human-rights-principles-in-public-health-emergencies-from-the-siracusa-principles-to-covid-19-and-beyond/.

[6] Human Rights Watch, Stifling Dissent: The Criminalization of Peaceful Expression in India (May 2016), https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india

On the basis of India's legislative and enforcement practices, scholars term the Indian situation as one where human rights protection is "subservient" to national security imperatives, and this, in their view, leads to a weakening of constitutionalism and democratic accountability[7]. The Indian example is a reflection of the global patterns of occurrences wherein the issue of national security legislation, if not under strict control, can lead to the use of such legislation as a tool for repression rather than protection. The most prominent and comprehensive international human rights jurisprudence also provides grounds for reforms which comprise clearer legal definitions of laws, increased procedural safeguards, the presence of the independent oversight, and transparency in harmonizing national laws with the obligations taken at the international level[8]. It is of great importance to take steps for the enhancement of democratic institutions, especially an independent judiciary and a free press, if we want to be regarded able to keep the balance between national security concerns and respect to the basic rights of dissent, assembling, and free political expression.

Sedition and Sovereignty: Sections 124A IPC and 152 BNS

Statutory clauses like the Section 124A of the Indian Penal Code (IPC) 1860 and the Section 152 of the Bharatiya Nyaya Sanhita (BNS), 2023, have major roles in the arrest and detention of people who are accused of doing acts that are considered illegal with regard to national security, sovereignty, and public order[9]. The sedition law or Section 124A IPC banned any behaviour or discourse which leads to the production of hatred, contempt, or disaffection against the government established by law in India. The provision allows the convicted to be sent to jail for life or a period of up to three years at the same time a fine is also imposed. Traditionally, the main reason for Section 124A was centred on the maintenance of public order and protecting the authority of the state, but over the years, due to its vague and broadly drafted language, it has become susceptible

[7] Ramprakash Chaubey, *In the Name of National Security: The Fragility of Human Rights*, 13 *J. Res. Hum. & Soc. Sci.* 254, 265 (2025), available at www.questjournals.org

[8] Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights Indicators: A Guide to Measurement and Implementation* (2018), https://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf.

[9] Indian Penal Code § 124A (1860); Bharatiya Nyaya Sanhita § 152 (2023).

to misuse, most of which are cases where political dissent and criticism of government policies are the alleged perpetrators accused under the cover of national security[10].

On the other hand, Section 152 of the Bharatiya Nyaya Sanhita (2023), which substitutes Section 124A, is designed to define "the acts endangering the sovereignty, unity, and integrity of India"[11]. Such words, writings, signs, electronic communication, financial means, or other modes that purposefully or knowingly excite or attempt to excite secession, armed rebellion, or subversive activities or to coerce separatist sentiments are made punishable acts under this provision. Section 152 provides for punishment with imprisonment for life or for a term that may extend up to seven years along with fines and is non-bailable, cognizable offense tried by a Court of Session. The rationale behind this provision is the defense of national sovereignty and territorial integrity, signaling a legislative change from sedition against the government to safeguarding the nation's unity and security.

Section 152 though purports to update the judicial approach to the challenges to the wholeness of the nation by broadening the kinds of acts illegal that can be punished to include various forms of communication, such as electronic and financial media, is under fire for its unclear language and wide terms like "subversive activities" and "separatist activities" that have not been clearly defined in the statute. Tejender Pal Singh v. State of Rajasthan (2024) and similar judicial rulings reiterate that there must be an imminent connection between the speech or act and the occurrence of rebellion or public disorder for the provision to be lawfully referred to[12]. The Rajasthan High Court was very instrumental in freeing the accused from the clutches of Section 152 BNS and particularly referring a case on political expression where it pointed out the danger of the provision being used against dissent only and stressed the importance of the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Indian Constitution. Relative to Section 124A IPC, Section 152 BNS addresses the issue of activities hindering the state, which indicates an extension of

[10] Pallav, *Gamut of Sedition Law in India: A Critical Study with Reference to Section 152 of the Bharatiya Nyaya Sanhita, 2023*, 3 *Indian Journal of Legal Studies and Social Science* 104, 104–14 (2023), https://ijlsss.com/gamut-of-sedition-law-in-india-a-critical-study-with-reference-to-section-152-of-the-bharatiya-nyaya-sanhita-2023/.
[11] Indian Penal Code § 124A (1860); Bharatiya Nyaya Sanhita § 152 (2023).
[12] Tejender Pal Singh v. State of Rajasthan, [2024:RJ-JD:14186], S.B. Cr. Misc. Bail Application No. 9655/2023 (Rajasthan High Ct. Mar. 27, 2024), https://indiankanoon.org/doc/92901821/

coverage but also raises concerns about the extent of control. While these laws do share characteristics such as the imposition of severe penalties and being deterrents for infringers of the public order and sovereignty, the broader range of the BNS provision may turn out to be a serious threat to civil liberties if not checked by a proper judicial application[13]. One of the potential dangers is the vagueness of the definitions and the risk of suppressing lawful dissent and peaceful criticism of democratic freedoms.

The decision to arrest individuals allegedly involved in the acts listed in IPC Section 124A or BNS Section 152 usually rests on the premise that they pose a threat to national security and the justifications revolve around the maintenance of sovereignty, unity, and public order. Nevertheless, Section 152 represents a legislative attempt to update and widen the legal framework. The underlining issue therein that keeps the door open for the ongoing watchdog function of the judiciary in ensuring these provisions do not turn out to be instruments for repressing the political dissenters and, thus, guaranteeing the constitutional and democratic principles in India.

Safeguarding Rights of Arrestees and Detenues in India under National Security Laws

The Indian legal system has regulations in the Constitution as well as in statutes that safeguard the rights of those who have been arrested or are in custody. These rights mainly focus on the accessibility of legal representatives and ensuring the right to a fair trial. Apart from these two rights, the Constitution in Article 22 also lays down the rights linked to preventive detention such as the right to be given information on the grounds of arrest, the right to file a representation against the detention, and the maximum period of detention without filing charges.

The National Security Act (NSA) of 1980 can be considered as the most striking illustration of a law on preventive detention whereby the government is allowed to detain persons beforehand for maintaining public peace and national security. Advisory Boards whose members conduct the review of detention cases and governments who inform detainees of their rights ensure the

[13] Bhandari, P. (2022). "Judicial Oversight and the Protection of Civil Liberties in India." *Journal of Indian Law and Society*, 13(1), 67-88.

protection of detainees as mentioned in Article 22. However, these rights experience practical difficulties. As an example, in Sarabjeet Singh Mokha v. District Magistrate (2021), the Supreme Court pointed out the great delay by state authorities in examining the representations of the detainees under the NSA which was held to be unconstitutional as it violated procedural rights as guaranteed by the Constitution and weakened the balance between executive powers and individual liberties[14].

Legal representation is one of the key features of the guarantees of a fair trial under Article 21 of the Constitution, which becomes difficult in national security laws. Though Article 22(1) secures the right to a legal advisor just after the arrest, this privilege is limited in cases of preventive detention as per Article 22(3) that excludes preventive detention laws from some of the safeguards. The Supreme Court has declared on many occasions that prevention of detention is a last resort and, therefore, the denial or limitation of legal assistance at the time of detention is quite capable of restricting the available litigating options and also affecting the right to a fair trial[15]. There is normally a need, within the existing procedural framework, to make the detained persons aware of the charges and grounds without delay as well as allowing them to submit their representations. Yet, there have been many reports of implementation lapses, administrative delays, and lack of transparency. These situations not only limit detainees' capabilities to challenge their detentions and to ask for judicial reviews in time but also affect the right to a fair trial in that prolonged detention without formal charges, hiding evidence, and limiting access to the legal counsel are instances in which the tension between state security concerns and individual rights emerges.

Even though it appears that India has a comprehensive constitutional and legal system which goes to a great extent to provide and assure that those arrested or detained have easy access to a lawyer, the real scenario in which these rights are safeguarded under national security laws exposes some systemic problems. Not only do these problems hamper the rights of detainees to a fair trial but also necessitate the introduction of better procedural safeguards, the provision of prompt judicial

[14] Sarabjeet Singh Mokha v. District Magistrate, Jabalpur, (2021) 20 SCC 98 (India).
[15] A.K. Roy v. Union of India, (1982) 1 SCC 271

oversight, and monitoring of executive functions for equilibrium between national security and basic human rights in a democratic society.

Rule of Law and the Suppression of Dissent: Global Practices and Democratic Implications

The principle of the rule of law is basic to the democratic system of government and that ensures that laws are applied on equal terms, fairly, with full openness, and respect for human rights. Nevertheless, in different legal systems, the use of this concept as a principle is sometimes deliberately implemented or manipulated, aimed at controlling, containing, or even going beyond by repression with a considerable influence on freedom of expression and the political system's vigour[16]. On a global scale, numerous countries implement the letter of the law which is constructed primarily for public order or national security but they twist the practice of the law in a way that they consider, and this is by no means the strangest, peacefully expressed ideas as well as protests to be offenders and opposing groups to be protagonists, thus, practically they are suppressing dissent. To illustrate, these types of political or legal organizations are always engaged in exercises of invoking simultaneously, sedition, anti-terrorism laws, and regulations of public order to provide as a cover for justifying the authorities' actions of detaining, censoring, and prosecuting political dissidents, journalists, human rights defenders, and minorities groups[17]. The adoption of these very kinds of measures, which frequently depends on very general legal norms that allow for the extension of harassment activities under the pretext of security and order, can be noted in the overstepping of powers.

We can look at India where sedition laws from the colonial days are still employed to silence opposition even though the constitution guarantees free speech as one of its rights. The law makes it illegal to say or do anything that leads to "hatred or contempt" of the government which is a criterion that courts have tried to narrow by requiring that violence be the result of the action. However, the law has not been used against the activists and the protesters only; the authorities have been doing it in a way that pretends to be proactive in political expression. This phenomenon is not limited to India only as it is found all over the world. For example, in Hong Kong the security

[16] Vijay Kumar Vimal & Pawan Kumar, *Comparative Analysis of Preventive Detention Laws in Different Legal Systems: A Critical Appraisal*, *International Journal of Law Management & Humanities* (2020).
[17] Id

concerns law that was originally meant to be used against national security threats led to a clampdown on the freedom of the press as well as the pro-democracy movement. This is but a singular case within a larger global trend of states using legal means to silence the opposition.

These methods applied by states have significant negative implications in the long run. When the rule of law becomes a mechanism to limit dissent, it weakens the accountability systems that are the backbone of democratic health, going against pluralism and turning the area into one of self-censorship and fear. The opposition and other political groups acting within civil society will have less freedom and will be at risk of prosecution, thus silencing those who are vital for holding dialogues and initiating changes. Such a development is eventually going to lead to the reduction of electoral competition and lower down the capability of institutional checks and balances, thus causing a gradual transformation of democracies into authoritarianism[18]. Furthermore, the concept of security loses its integrity when legal tools designed for public safety are disproportionately applied against the peaceful dissenters, and at the same time, the gap between potential threats and proper political criticism continues to get narrower.

Although rule of law and due process should empower individuals with free speech and freedom to assemble, their hijacking to silence dissent has become an alarming global phenomenon[19]. The process endangers democratic governance by narrowing civic space and denying the citizens fundamental rights that are necessary for holding the government accountable. The need for the active involvement of the judiciary so that there would be no misuse and democratic norms would continue to be respected, is insisted. National states are required to implement the measures that would make certain that security issues do not supersede constitutional guarantees, first-rate objectivity in law enforcement, and the fundamental pluralism that reinforces democracy.

[18] Larry Diamond, Facing Up to the Democratic Recession, 26 J. Democracy 141 (2015), https://www.journalofdemocracy.org/articles/facing-up-to-the-democratic-recession/.
[19] Nancy Bermeo, On Democratic Backsliding, 27 J. Democracy 5 (2016), https://www.journalofdemocracy.org/articles/on-democratic-backsliding/.

Legal Mechanisms Facilitating Preventive Detention and Their Impact on Fundamental Rights in India

In India, laws related to preventive detention are strong legal tools that give the officials the power to detain people even before they commit such acts to prevent possible threats to public order or the security of the country. Through these laws, the movement from public dissent or protest, usually voiced by petitioners' opponents of the State, to jail without an immediate trial, becomes easier. The constitutional provision under Article 22(3) allows such a detention for the reasons related to the security of the state, public order, or essential supplies, but it is subject to some procedural guarantees[20]. The apex court of India has been very clear in its verdicts spanning over years that preventive detention is an extraordinary or exceptional power that should be exercised sparingly and only when very exceptional conditions are met posing a real threat to the security of the state[21].

One of the key elements of the legal systems is that they legally require the authorities who have some power to detain give the detained not only the substantive grounds for detention but also all the documents related to it that should be translated into a language understandable to enable effective representation as the Supreme Court held in Jaseela Shaji vs Union of India (2024)[22]. In the Court's opinion, there were also some procedural derelictions such as the delay in the provision of documents, and the neglect of detainees' representations being considered promptly. In their opinion, such deficits indicate a violation of Article 22(5), which guarantees the earliest opportunity for detention challenge. This verdict strengthens the constitutional safeguards that are aimed at providing protection against arbitrariness in detention and ensuring the rights of a fair trial in cases of preventive custody.

The development of Court's law on the matter also clearly sets out the differences between 'law and order' and 'public order'. In addition, it limits the power of those engaged in preventive detention only to cases where as 'public order' is truly threatened. In one of the Court decisions leading to reversal of preventive detention of a law student (2025), the Court has outlined giving

[20] INDIAN CONST. art. 22, § 3.
[21] Kanu Sanyal v. District Magistrate, (1973) 3 SCC 538
[22] Jaseela Shaji vs UoI, 2024 INSC 683

reasons under the National Security Act (NSA) that an immediate threat to law and order alone cannot be the excuse to illegally detain a person, but there should be considerable proof to indicate a threat to public order. This judgment is in line with the Judiciary's efforts to bring the use of preventive detention to a halt in the areas of suppression of political dissent or protest activity, thereby asserting the fundamental rights enshrined in Articles 19 and 21 of the Constitution.

But the problem remains in the challenges. The extent and the discretion of the preventive detention regime usually led to the decision of the detainee being taken based on very general or even unsupported grounds, which have a negative impact on the individual's rights and the right to a fair trial, while judicial relief is usually slow and limited. Detention without trial boots against the presumption of innocence and limits the rights to freedom of speech, assembly, and movement[23]. Consequently, it is a real problem for the democratic system of governance, particularly when it is done against dissenters and political activists.

Despite that Indian law provides procedural safeguards for the protection of fundamental rights of arrested persons and those in custody, preventive detention regulations continue to be a difficult and disputable issue. In most cases, the public protest is turned into jailing once such powers are employed, which causes a national security versus constitutional freedoms debate. Constant court-mandated supervision and even more rigorous implementation of the procedural guarantees are imperative to avoid the misuse of such powers in silencing the legitimate democratic dissent or opposition.

Finding

This study exposes the constant existence of a troubling paradox that the law, although in theory positioned as the protector of freedoms and justice, is very often being used as an instrument of control to suppress dissent. At the international level, treaties like the ICCPR grant the right to the dissenters, there is however a sizable gap between these standards and their local implementation,

[23] Human Rights Watch, Stifling Dissent: The Criminalization of Peaceful Expression in India (2016), https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india.

particularly in the field of national security[24]. India represents the contradiction by the example of its sedition laws, such as Section 124A of the IPC and currently Section 152 of the Bharatiya Nyaya Sanhita (BNS), which, in spite of the changes in the legislature, are still characterized by ambiguous and broadly framed provisions that ease the process of turning political dissent and criticism into the crime of the unlawful ones.

The study illuminates that the procedural guarantees for individuals arrested or detained under national security laws are mostly insufficient in reality with the delays in the provision of legal aid and the limited control of the judiciary leading to the undermining of the right to a fair trial. The preventive detention mechanisms, although allowed by the constitution under certain conditions, are used excessively and in an arbitrary manner, thereby changing the dissent into detention without the proper legal process.

The comparative research shows that the Indian legal method is merely a part of the larger worldwide trend where the states employ legally binding instruments as a means of justifying and implementing the repression while at the same time conceal the authoritarian control under the rule of law. This tendency jeopardizes the principles of democracy by diminishing the accountability, scaring the freedom of expression and limiting the area of the civil society. The study points out the critical need for more explicit statutory definitions, the scrupulousness of judges and the existence of the institutional checks that are strong enough to prevent the misuse of legal powers against dissent thereby protecting democratic rights and constitutional governance from being endangered.

Conclusion

This paper is just a glimpse of the intricate behaviour that the rule of law has in relation to or rather against dissent. It lays out that these two are not always compatible but often intertwined with a sea of contradictions and contested interpretations. Above all else, dissent stands as a vital organ in the life of a democracy: it keeps the rulers in check, allows diversity of opinions, and, most

[24] Inter-American Commission on Human Rights, Preventive Detention and Human Rights (2020), https://www.oas.org/en/iachr/reports/pdfs/PreventiveDetention.pdf.

importantly, it is the inalienable right of people to question the authority of the government. The law, which is generally expected to protect freedom and guarantee fairness, has, however, been repeatedly used to silence dissenters. In a sense, the struggle is clearly visible in the history of the sedition and preventive detention laws in India and also speaks worldwide of how countries utilize legal systems to control political opposition.

The most alarming aspect might be the issue of preventive detention, which makes it difficult to distinguish between those considered a potential threat and those who have committed an offense. The Court has through various decisions mentioned that the use of preventive detention as a security measure should be very limited and can only be allowed in very exceptional cases. Nevertheless, in reality, there are many instances, which justify the practice of indefinite or pre-trial incarceration as a routine one. Procedural rights such as the provision of the reason for detention in time, effective legal assistance, and prompt hearings are frequently violated at the same time that detainees are trapped in the middle ground between legality and arbitrariness. When democratic countries opt for preventive detention and imprisonment as a means of getting rid of protests, they are not only causing harm to the individuals but are also slowly killing the dissent as an essential part of democratic culture. The study unveils that; besides the existence of formal guarantees, genuine measures are necessary to protect dissent. It requires a re-commitment to real constitutionalism, where rights are not sacrificed to a vague understanding of order or sovereignty. This re-commitment has several facets. Legislators need to be careful in developing statutes that are specific, narrow in their scope, and aimed directly at the reduction of overreach; the courts ought to interpret the rights-protective issues in question with the greatest vigilance, and civil society has to be as active as ever in its role as one who continuously monitors the creeping authoritarianism phenomenon.

It is the final turning point where dissent changes its nature from detention that profoundly challenges democracies. The main paradox, among others, brought up at the beginning of this discussion about if the law can be simultaneously the guardian of freedom and the very instrument of oppression, does not come forth as an abstract logical puzzle but as an instant political and legal reality. The survival of democracies depends on them allowing the right not only to agree but also

to oppose to be protected, even when, and especially when, the dissent feels uncomfortable to those in power.

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