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EXCEPTIONAL LEGISLATIONS FOR COUNTERTERRORISM AND ECONOMIC OFFENCES - AN ANALYSIS TO ENSURE NATIONAL INTEREST

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ABSTRACT:

India having cluster of laws enacted by parliament to prevent and prohibit terrorism and economical offences. The security of India is very much important because the constitution of India for the protection and welfare of the Indian citizens the ultimate goal of the legislations is to prevent national security and fair economy to develop India. Those laws are TADA, PODA, MISA, COFEPOSA, FEMA etc, even many laws are there, the powers and functions under this act are not regulatory and unchecked. so various instances happen in India, to violate the fundamental rights of the peoples of India. Not only laws end those offences, to advance the human rights and fundamental rights its must to regulate the legislations.

KEYWORDS: Exceptional legislations, prevention and prohibition, unchecked powers, regulatory measures.

1.1. INTRODUCTION:

India's Parliament has passed a number of laws, including those pertaining to national security and counter-terrorism. Many of these laws fell short of protecting individual rights, despite their security intent. Our legislation was intended to protect the country's security, interests, and peace, but the majority of these laws have been given unchecked and unregulated power, compromising citizens' fundamental rights. These national security laws do not apply to a single law. It is clear that it is extremely important for any country to protect its interests and safeguard its national security, which is why these laws are also referred to as "EXCEPTIONAL LAWS".

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Exceptional laws are intended to address unique situations and are only temporary in nature. These restrictions differ from regular laws in that they require the government to confront multiple risks, making them necessary to address the situation. They could strengthen the executive branch or even restrict people's liberties and rights. The provisions regulating exceptional circumstances can be constitutional or legislative⁴.

1.2 RESEARCH METHODOLOGY:

The analysis of "EXCEPTIONAL LEGISLATIONS FOR COUNTERTERRORISM AND ECONOMIC OFFENCES - AN ANALYSIS TO ENSURE NATIONAL INTEREST" is purely based on doctrinal study. The data gathered for this study from various sources like books, journals and various court judgements on regarding to this study.

1.3. TERRORISM:

1.3.1. Meaning of terrorism:

A violent act committed against defenceless civilians in support of a political or ideological cause is referred to as terrorism. The word "terrorism" was first used, it referred to the Reign of Terror, which was the period of the French Revolution from September 5, 1793, to July 27, 1794, when the Revolutionary Government instigated violence and punitive actions against individuals believed to be opposition to the Revolution.

1.3.2. Types of terrorism:

Ideology oriented terrorism⁵: Any ideology can serve as a justification for using terror and violence. Terrorism with ideological motivations is generally divided into two categories:

- **Left-wing Terrorism:** The peasant class has frequently used violence against the ruling class throughout history, primarily motivated by so-called leftist ideologies. For instance, the Maoist organizations in Nepal and India
- **Right-wing Terrorism:** Right-wing groups usually want to restore the status quo or a state that they feel ought to have been maintained. Racist or ethnic overtones can occasionally be seen in right-wing beliefs. To defend the rights of a "oppressed"

⁴Seif el-Islam, A., "Exceptional Laws and Exceptional Courts," in *Egypt and Its Laws* (Arab & Islamic Laws Series, Vol. 22) 359–76 (Brill 2002) (doi:10.1163/9789004480391_022).

⁵ Testbook.com, *Terrorism: Background, Causes, Types, Impacts & More* (Aug. 2022), <https://blogmedia.testbook.com/blog/wp-content/uploads/2022/08/terrorism-e4f96793.pdf>

minority, they might compel the government to buy land or step in abroad. For instance, fascists in Italy and Nazism in Germany

Ethno-nationalist terrorism⁶: The intentional application of violence by a sub-national ethnic group to further its goals is known as ethno-nationalist terrorism. Either creating a distinct state or favouring one ethnic group over another is what they want. For instance, Sri Lankan Tamil nationalist groups

Religious terrorism⁷: These terrorists see violence as a holy deed or a divine responsibility, and their motivations are primarily or exclusively religious. It gives them different ways to justify and legitimize their actions than other terrorist organizations, and these unique features make religious terrorism more violent and dangerous when it comes to carrying out horrible deeds.

State terrorism⁸: “Violence committed by governments against perceived enemies” is the definition of terrorism. State terrorism can be directed internally against enemies within the country or outwardly against foes abroad.

Cyber Terrorism: Cyberterrorism is an act of terrorism that uses the internet to frighten a state and its citizens by causing large-scale computer networks to go down with computer viruses and other threats to computers, networks, and the data they contain.

Bio-Terrorism: In order to cause widespread death and suffering to people, bioterrorism employs biological weapons that are either naturally occurring or developed biologically.

Nuclear Terrorism: Any act of terrorism in which an individual or group of individuals detonates a nuclear weapon is referred to as nuclear terrorism. Nuclear terrorism is the use of nuclear material by terrorists in a variety of methods.

1.4 LEGISLATIONS:

India’s anti-terrorism laws have long been a point of dispute. Part III of the Constitution guarantees citizens essential freedoms, which are violated by these regulations. This is one of the key grounds of disagreement. The judiciary has grudgingly supported anti-terrorist laws that the legislature had previously passed. The goal of these laws was to be passed and put into effect until things got better. Making these spectacular acts a permanent part of the law was not the goal. However, the laws have been reinstated with the required modifications because of

⁶ Martin, G. (2014). Types of terrorism. In *Exchanging terrorism oxygen for media airwaves: The age of teraradian* (pp. 81-95). IGI Global.

⁷ Ibid

⁸ Ibid

the continuous terrorist activities.

1.4.1. Unlawful activities (prevention) act, 1967⁹:

The Unlawful Activities (Prevention) Act, commonly called the UAPA. It was passed in 1967 the act contains 54 section and 3 schedule. It aims at effective prevention of unlawful activities associations in India. Any action taken by a person or organization with the intention of undermining India's sovereignty and territorial integrity is referred to as unlawful activity¹⁰. If the Union so chooses, the Act grants the central government complete power to declare any activity unlawful by publishing an official gazette. The act's Chapter 3 addresses offenses and punishments. The death sentence and life in prison are the most severe punishments. Under UAPA, charges may be brought against both foreign and Indian nationals. Even if the crime is committed outside of India, on foreign territory, it will still apply to the offenders in the same manner. The UAPA states that the investigating agency has a maximum of 180 days from the date of the arrests to submit a charge sheet. The time frame may be further extended following notification to the court.

1.4.2. The Unlawful Activities (Prevention) Amendment Bill, 2019¹¹:

On July 8, 2019, Home Affairs Minister Mr. Amit Shah introduced the Unlawful Activities (Prevention) Amendment Bill, 2019 in the Lok Sabha. The Unlawful Activities (Prevention) Act of 1967 is amended by the bill. Among other things, the Act establishes unique protocols to address terrorist activity. According to the Act, if an organization:

- (i) commits or takes part in acts of terrorism,
- (ii) plans for terrorism,
- (iii) encourages terrorism,
- (iv) is otherwise involved in terrorism, the central government may designate it as a terrorist organization.

The Bill also gives the government the authority to label people terrorists for the same reasons.

Approval of NIA for property seizure: In accordance with the Act, before seizing any property that might be linked to terrorism, an investigating officer must get the Director

⁹ The Unlawful Activities (Prevention) Act, No. 37 of 1967 (India), <https://www.mha.gov.in/sites/default/files/A1967-37.pdf>

¹⁰ The Unlawful Activities (Prevention) Act, No. 37 of 1967, § 2(o) (India), https://www.mha.gov.in/sites/default/files/UAPA-1967_0.pdf

¹¹ Unlawful Activities (Prevention) Amendment Bill, 2019, Drishti IAS (July 25, 2019), <https://www.drishtiias.com/daily-news-analysis/unlawful-activities-prevention-amendment-bill-2019>

General of Police's approval. The Bill also states that the Director General of the National Investigation Agency (NIA) must give his or her consent before any such property can be seized if the investigation is being carried out by an NIA officer.

NIA Investigation: Cases may be investigated by officers with the rank of Deputy Superintendent, Assistant Commissioner of Police, or higher under the Act. The Bill also empowers NIA officers with the rank of Inspector or higher to conduct investigations.

1.4.3. The National security act 1980:

The National Security Act, 1980 is also called as NSA. The NSA is a preventive detention law enacted in 1980 to maintain public order and national security. Detaining someone for the purpose of preventing them from committing crimes in the future or from escaping prosecution is known as preventive detention. For the purpose of maintaining public order and state security, preventive detention and restrictions on personal freedom are permitted¹². No law allowing for preventive detention may permit the detention of an individual for more than three months¹³.

Power under the act:

The NSA gives the Centre or a State government the authority to detain a person in order to prevent him from acting in a way that jeopardizes national security.

The government can also detain someone to keep him from disrupting public order or to keep supplies and services available to the community. The maximum period for which one may be detained is 12 months. The National Security Council will be established in accordance with the act, and it will advise the Prime Minister on matters pertaining to national security.

National security council (NSC):

In India, the National Security Council (NSC) is a high-level council that advises the prime minister on matters related to national security, defence, and strategic policy. It is a three-level institution that oversees strategic issues pertaining to energy, politics, the economy, and security. The PM is the chair of the NSC. It was founded in 1998 and serves as a forum for conversations on all aspects of national security.

Criticism:

The statute permits the government to detain individuals without a trial for a maximum of one year. This power can be readily abused by the government to suppress dissent or target

¹² Article 22(3)(b) of the Constitution of India.

¹³ Article 22(4) of the Constitution of India.

political opponents. HR violations may result from this usage. Another issue is the NSA's opaqueness regarding the detention process. Detainees are frequently kept in the dark about the reasons for their custody, and the detention orders are kept private. This lack of openness may foster government misuse of authority.

1.4.4. The Terrorist and Disruptive Activities (Prevention) Act, 1987¹⁴.

TADA is another name for the Terrorist and Disruptive Activities (Prevention) Act of 1987. There are thirty sections in this statute. The act's goal is to stop disruptive and terrorist acts. A person will be punished and imprisoned for at least five years or life in prison with a hefty fine if they are proved to be a terrorist. The actions could be a violation of the nation's sovereignty, peace, or integrity; that is, any act, speech, advice, suggestion, or media that directly or indirectly undermines India's sovereignty, harmony, or integrity should be deemed terrorist acts, for which a fine and/or imprisonment will be imposed¹⁵. The act was repealed by the government of India, By June 30, 1994, more than 76,000 people had been detained under the act¹⁶. Police dropped twenty-five percent of these cases without filing any charges. Out of all the cases, only 35 percent went to trial, and 95 percent of those cases ended with acquittals. Of those arrested, less than 2 percent were found guilty. In the end, the TADA Act was repealed, and the Prevention of Terrorist Activities Act (2002–2004) took its place.

1.4.5. The Prevention of Terrorism Act, 2002.

POTA is another name for the Prevention of Terrorism Act of 2002. There are 64 sections in this statute. The act's Chapter II addresses punishment. After TADA was repealed, this Act is known to have replaced it. Most of the Supreme Court's recommendations in the Kartar Singh case were included in POTA. By this time, a number of groups had been classified as terrorist organizations. POTA was passed in order to address these types of organizations. It included several provisions outlining protocols for dealing with "terrorist organizations." It was illegal to become a member of such an organization and to help them in any way. It had clauses guaranteeing a speedy trial and a quasi-judicial structure to review the state's conduct in this area. A key element in attracting responsibility under POTA is men's rea. Due to the government's misuse of the provisions and a number of criticisms, POTA was repealed in

¹⁴ Terrorist and Disruptive Activities (Prevention) Act, 1987, (India), https://www.indiacode.nic.in/bitstream/123456789/15340/1/terrorist_and_disruptive.pdf

¹⁵ Terrorist and Disruptive Activities (Prevention) Act, 1987, §§ 3-8 (India), https://www.indiacode.nic.in/bitstream/123456789/15340/1/terrorist_and_disruptive.pdf

¹⁶ S. Hussain Zaidi, *Black Friday – The True Story of the Bombay Bomb Blasts* (Penguin Books 2002).

2004.

1.4.6. The Anti -Hijacking Act, 2016¹⁷.

The Anti Hijacking Act, 2016 contains 21 sections. It replaced the Anti Hijacking Act, 1982. It aims to enforce the Hague Hijacking Convention and the 2010 Beijing Protocol Supplementary to the Convention. If an offence is committed outside of India but the aircraft is registered or leased to Indians, or if the offender is Indian or stateless but resides in India (like in the case of an illegal Bangladeshi immigrant), or if the offence is committed against Indians, the new Act will still apply. The two primary adjustments are the death penalty and the life sentence. Both real hijackings and any alleged sincere threats are to be punished under the statute. It takes into account the potential for a technology threat to remotely take control of an aircraft, obviating the necessity of armed aircraft possession. It is illegal to plan to commit hijacking, attempt to commit hijacking, encourage others to do so, be an accomplice, or assist someone in evading detection.

Punishment¹⁸: A passenger or crew member who dies as a result of hijacking faces the death penalty. If not, a life sentence is imposed for the hijacking.

1.5. TERRORISM INCIDENTS IN INDIA:

- **Bombay blasts in 1993:** On March 12, 1993, a series of bomb blasts in Mumbai (previously known as Bombay) resulted in the deaths of about 257 persons, the destruction of assets worth over Rupees 27 crores, and more than 700 injuries. Dawood Ibrahim was the main defendant in the 1993 Mumbai serial bombing case. The Bombay Stock Exchange, one of the most well-known buildings in the city, was destroyed by thirteen bomb explosions.
- **Attack on the Parliament in 2001:** Almost nine persons were killed when terrorists from the Jaish-e-Mohammed (JeM) and Lashkar-e-Taiba (LeT) attacked and opened fire on the Parliament complex on December 13. According to reports, three AK-47 rifles, magazines, and UBGL grenades were discovered at the scene of the attack, along with a note. The victims were a gardener, two staff members from the Parliament watch

¹⁷ The Anti-Hijacking Act, No. 30 of 2016, (India), https://www.indiacode.nic.in/handle/123456789/2149?view_type=browse&sam_handle=123456789/1362

¹⁸ The Anti-Hijacking Act, No. 30 of 2016, §§ 4-5 (India), https://www.indiacode.nic.in/handle/123456789/2149?view_type=browse&sam_handle=123456789/1362

and ward, five Delhi police officers, and a female trooper in the Central Reserve Police Force (CRPF). Later, an injured journalist died. All five of the terrorists were shot dead.

- **Delhi Bomb blast in 2005:** On October 29, 2005, a series of bombs in Delhi, the country's capital, killed about 66 people and injured over 200 others. Targets included crowded markets and specific urban neighbourhoods. The blasts occurred on a Delhi Transport Corporation (DTC) bus in Sarojini Nagar, Paharganj, and Govindpuri. The terrorist group LeT was linked to the 2005 blasts. The 2005 Delhi explosions were reportedly the biggest act of terrorism in India outside of Kashmir since the 1993 Mumbai bombings.
- **The 2006 Mumbai Train Bombings:** Seven explosions took place over the course of 11 minutes on July 11, 2006, during evening rush hour on the Suburban Railway in Mumbai (formerly known as Bombay), the capital city of Maharashtra. The blasts caused approximately 700 injuries and over 209 fatalities. The culprits were terrorist organizations the Student Islamic Movement of India (SIMI) and Lashkar-e-Taiba (LeT).
- **2008's Jaipur Blasts:** The nation was once again taken aback by the May 13, 2008, terrorist incident in Pink City, Jaipur. Over 170 people were injured and roughly 80 people died as a result of nine bomb explosions in a 15-minute span.
- **2019's Pulwama Attack:** On February 14, 2019, our brave security forces in Pulwama, Jammu and Kashmir, became the target of one of the deadliest terror attacks in history, shocking the entire nation. The attack claimed the lives of at least forty CRPF members. A Jaish-e-Mohammed (JeM) terrorist rammed an explosives-filled vehicle on a bus carrying CRPF jawans. This particular bus was part of the CRPF convoy. To honour and remember soldiers who lost their lives in combat, a memorial has been built at the CRPF's Plethora camp, near the site of the terror attack.

1.6. ECONOMICAL OFFENCES:

Any act involving fraud (chit funds), forgeries of original or stolen cheques, deceit or tricking of financial institutions, or counterfeiting of money or money equivalents is referred to as a "economic offence," even if the phrase encompasses a wide range of crimes. The economic offense is also known as a financial offense. The reason the crime is referred to be a financial violation is because it involves money and its equivalent, which is related to a nation. Corruption can also consider an economic violation.

1.6.1. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974¹⁹:

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, is also called as COFEPOSA and the act contains 14 sections. The statute aims to combat smuggling, conserve and grow foreign exchange, and handle associated issues by establishing preventive detention under specific situations. Smuggling and violations of foreign exchange restrictions are seriously hurting the country's economy, but they are also negatively affecting the security of the state. Furthermore, while taking into account the individuals responsible for and the means by which these activities or violations are organized and carried out, as well as the reality that large-scale smuggling operations are organized and carried out covertly in some areas that are extremely susceptible to smuggling, it is imperative that measures for the detention of those involved in any way with these activities and violations be put in place in order to effectively prevent them. Further this act provides detention of a person who commits an offence under this act.

1.6.2. The Prevention of Corruption Act, 1998

The prevention of corruption act contains 30 sections. The Prevention of Corruption Act of 1988 establishes penalties for both public servants who commit acts of corruption and those who assist in such acts. Amendment of 2018 made it illegal for anyone to offer or accept bribes from public servants.

1.6.3. The prevention of food adulteration act 1954:

The prevention of food adulteration act contains 25 sections. The aim of the act is to prevent adulteration of food. Under this act, if the vendor's product fails to live up to the buyer's expectations or the article's stated standards, if there is anything in the item that detracts from the article's quality, if the item was produced or kept in an unsanitary environment. If the item includes any components that are unfit for ingestion by humans, such as rotten, decayed, or putrid plant or animal materials. if any harmful or toxic materials are present in the article. if the article's container is composed of any harmful material. if the article contains colouring agents other than those that are recommended. if any prohibited preservatives or preservative quantities exceeding recommended limits are present in the article. Whether or not the article

¹⁹ The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, No. 52 of 1974 (India), <https://dor.gov.in/sites/default/files/Conservation%20of%20Foreign%20Exchange%20and%20Prevention%20of%20Smuggling%20Activities%20Act%201974.pdf>

is harmful to health, it does not meet the committee's standards for quality and purity.

Nestle India Limited Maggi Case²⁰: The FSSAI recommended a ban on the noodles after reports of excessive lead content rendered them unfit for human consumption.

1.6.4. Fugitive Economic Offenders Act, 2018²¹:

Fugitive Economic Offenders Act, 2018 contains 26 sections. It aims to seize the property of economic offenders who fled the country in order to avoid being prosecuted or who refuse to return to the country in order to be prosecuted. A person against whom an arrest warrant has been issued for violating one of the Act's listed offenses, with the value of the offense equal to or greater than Rs. 100 crores, is considered a Fugitive Economic Offender (FEO). Some of the offences listed in the act are:

- Counterfeiting government stamps or currency.
- Cheque dishonour.
- Money laundering.
- Transactions defrauding creditors.

1.6.5 Prevention of Money Laundering Act,2002²²:

The Prevention of Money Laundering Act comprises 75 sections. Money laundering is the process of concealing or masking the origins of unlawfully obtained revenues so that they appear to have come from legitimate sources. It is typically associated with other, far more dangerous crimes such as extortion, robbery, and drug trafficking. The International Monetary Fund (IMF) believes that 2–5% of the world's GDP is laundered globally. Money laundering is punishable by hard imprisonment for at least three years and up to seven years, as well as a fine.

1.6.6 Foreign Exchange Management Act, 1999²³:

The Foreign Exchange Management Act of 1999 comprises 49 provisions. It empowers the Central Government to manage the flow of payments to and from persons located outside

²⁰ *M/S Nestlé India Ltd. v. Food Safety & Standards Authority of India & Ors.*, Writ Pet. (L) No. 1688 of 2015 (Bombay H.C. Aug. 13, 2015), (2015) 6 ABR 74.

²¹ The Prevention of Money-Laundering Act, No. 15 of 2003 (India), https://www.indiacode.nic.in/handle/123456789/4035?view_type=search&sam_handle=123456789/1362

²² The Prevention of Money-Laundering Act, No.15 of 2003 (India), as amended, §§ 3-4 (India), https://www.indiacode.nic.in/handle/123456789/2036?view_type=search

²³ The Foreign Exchange Management Act, No. 42 of 1999 (India), https://www.indiacode.nic.in/bitstream/123456789/1988/1/A1999_42.pdf

the country. All financial transactions involving foreign securities or exchanges require FEMA's clearance. All transactions must be conducted through "Authorised Persons." In the public interest, the Government of India may prohibit an authorized individual from engaging in foreign exchange transactions within the current account. Allows the RBI to put limits on transactions from capital accounts, even if they are carried out through a designated person.

This act authorizes Indian citizens living in India to transact in foreign exchange, hold or own immovable property in a foreign nation if the security, property, or currency was obtained or owned while the person was abroad, or if they inherit property from someone who is not in the country.

1.7. SUGGESTIONS

Parliament should periodically review the effectiveness, misuse and proportionality of these laws. Conviction rates and the complaint regarding violation of any human rights must be checked as well.

Committees must be established and empowered to recommend reforms in laws. Anti- Terror Legislation must be consistent with constitutional rights and international human rights standards like ICCPR, UDHR etc. Security cannot be used to justify arbitrary detention, Custodial torture or denial of due process.

The Government must take steps to ensure that these laws are not used as permanent tools of oppression.

The Government must enhance the capacity of investigative and enforcement agencies through better training, resources, and inter-agencies co-ordination to effectively implement exceptional legislations.

It must periodically review and update the existing exceptional laws to address the emerging economic threats and adopt to evolving financial crime and also ensure transparency in the application of exceptional legislations to prevent misuse or abuse of power, maintaining a balance between national security and individual rights. The Government must promote awareness among the stake holders, Including businesses and the public, about the legal provisions and consequences of economic offences. Steps should be taken to foster greater co-

operation with international agencies and countries to tackle the Trans-National economic crimes, Money laundering, and Terrorism financing.

1.8. CONCLUSION:

Law cannot eliminate terrorism or improve human rights on its own. Everyone wants to live in a peaceful society; thus, we must try to prevent violence and ensure that all citizens participate in diverse activities. Our goal should be to ensure that the constitutional rights are upheld. It is clear that much discussion and debate are required to ensure that the rule of law is protected even under challenging circumstances. The most crucial first step is to define precisely what qualifies as terrorism.. Sanctions on countries that support terrorism are vital. Furthermore, the politicization of terrorism must end. The United Nations and other international institutions must act as a platform for counterterrorism efforts. Furthermore, because the battle against terrorism involves both state and non-state actors, governments must work together and adapt to changing circumstances.

The majority of economic offenses go unreported to the police. Because economic offenses are often not reported, people are unaware of how serious they are. The researcher believes that all types of criminal activity are subject to underreporting. Since most people agree that crime in general and economic offenses in particular are harmful, significant steps need to be taken to guarantee the free recording of crimes. Economic offenses present a serious obstacle to the development of any society. The ability of these offense categories to upend a nation's social and economic order sets them apart. The Indian government has implemented several measures to mitigate socioeconomic crimes, such as enacting laws, forming regulatory bodies, and improving the legal framework.