



Human rights of prisoners with special reference to public safety act after the abrogation of Article 370

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Abstract- Human rights are essential rights to which everybody on this planet is entitled without prejudice, or rights that are necessary for living a life as a human being. These rights, however, are routinely abused by state agents who are not held accountable. The un-challenged and unbridled power is bound to corrupt if not limited within the ambit of human rights and fundamental rights. The prisoners who are already in jails facing many issues and worse condition is of the undertrial prisoners who are incarcerated awaiting the outcome of their case in a court of law. The right to a fair trial is a basic protection of human rights and the rule of law, aimed at ensuring that justice is administered fairly but under Public Safety Act, the fair trial and principles of natural Justice are being neglected by the agents of the state. As a normal human being is still fighting for basic human right and some are in jail without any cause and do not know when their fate will be decided. Like in Jammu and Kashmir, many political leaders were house arrested under the Jammu And Kashmir Public Safety Act on the day of declaration of the abrogation of the Article of 370 of the constitution of India by the Union government in the name of national security. This paper critically highlights the importance of justice delivery system and how Public Safety Act is violating the due process of law and basic norms of human rights.

Key Words: Human Rights, fair trial, fundamental rights, natural justice

I. INTRODUCTION

The purpose of the criminal justice system is to protect everyone whether accused or victim or undertrial or prisoners. No one should be denied of the justice. The problem of the under trial prisoners is not hidden by anyone. The prisoners who are arrested under penal law are much better than the persons who are detained under “*the Unlawful Activities (Prevention) Act (UAPA), 1967 and the Public Safety Act (PSA) 1978*”, or *National Security Act or the Armed Forces Act*. As these laws are the genies in the hand of the ruling government since they are framed whether during British colonial rule or after the independence. We have always seen the misuse of these laws and always opposed by the people and the party in opposition but in fact no one wants to throw away the power to suppress other in their hands.

Many times these laws are considered as the violative of the basic human rights enshrined in the international treaties or international covenants and the fundamental rights enshrined in the Indian constitution.

In Jammu and Kashmir (herein after J&K) after the abrogation of the Article 370 of the constitution of India which gave special status to J&K we saw the blatant and broad use of these detention laws on every one i.e. on political leaders, separatists, stone pelters, journalists, juveniles and even senior citizens. No one remain untouched from the grip of these draconian laws.

Article 370 unique feature of a state or featuring unique to a state

The tale is 69 years old if you take the root of Article 370. On January 26th 1950, the Indian Constitution came into force, and Article 370. The then Indian Prime Minister, Jawaharlal Nehru, and J&K PM Mohd. Sheikh Abdullah's, and other representatives, debated Article 370 for five months, From May to October 1949. J&K was the only State in India's Union to discuss its membership terms with the syndicate. The state or union administration may unilaterally modify or revoke it, except as provided by that clause or we can say that neither the state nor the union government can alter or revoke it unilaterally, except in accordance with the terms of that provision.

Gulzari Lal Nanda (Then union home minister) explained in the Lok Sabha on December 4th, 1964: “the only way of taking the constitution of India into Jammu and Kashmir is through the application of the Article 370. It is a tunnel. It is through this tunnel that a good deal of traffic has already passed and more will”.

P. Chidambaram (Then union minister) acknowledge in Rajya Sabah on August 6th, 2010 that “Jammu and Kashmir had acceded to India in ‘unique circumstances’ and state poses a unique problem which require a ‘*unique solution*’”.

On August 5th, 2019 the ruling union government has diluted the Article 370 of the constitution of India and abrogated Article 35A of the constitution. Which take away the special status of the state of J&K and turned it into the two union territories i.e., *union territory of the J&K and union territory of the Ladakh*.

PSA – A Cut throat law.

Exacerbating the situation for Kashmiris are the discretionary confinements made under the PSA, a law the Jammu and Kashmir Assembly sanctioned in 1978 that allows, “the State (now Union Territory) ruling government to keep the person, without trial”, “persons acting in any manner in conflict with the security of the State” for up to two years. In addition, it permits confinement for up to one year where “any person is acting in any manner prejudicial to the maintenance of public order”.

The PSA was enacted to combat timber smuggling in J&K, but it was later used by then-chief minister Sheikh Abdullah to impose it on political leaders in order to reduce political stress and unrest in the state at the time. And, after that day, the intent for which the act was passed and the effect was far from it, it has become a tool in the hands of the ruling party to enforce it on anybody from whom they fear some attack. Many claim that it is a strict rule that violates an accused person's basic rights because he is not allowed to know the reason for his detention. This Act most often violates Articles 14, Article 19 and Article 21 of the Indian Constitution.

The most heinous and punitive aspect of this Act is that it requires the state government to imprison anyone for up to two years without a trial. Within four weeks of receiving the approval order, the government must forward the case to the advisory committee. The committee must issue its recommendations within eight weeks of the matter being referred to it. If the committee decides that there are compelling reasons for the pre-trial detention, the government can detain him for up to two years.

The detained person has few rights. When an individual is arrested, they have the legal right to consult legal representative as well as the right to know the reason for their arrest. However, when a person is arrested or detained under the PSA, person does not have the above-mentioned rights unless adequate grounds for the detention can be identified.

Since 1978, there have been an expected 20,000 arrests in J&K under the PSA, according to the reports of Amnesty International. This exhibit that even as the then ruling political parties, the Peoples Democratic Party (PDP) and the National Conference (N.C.), who are presently raising the alarm about the abuse of the PSA and other draconian laws were themselves facilitators of the culture to held the chicken from the neck. For instance, more than 1,000 detentions were made under the PSA between March 2016 and August 2017 (Mehbooba Mufti was Chief Minister for most of this period).

In July 2016, Burhan Wani, the commander of the Hizbul Mujahedeen was killed in a clash with the security forces, which triggered a public response and quickly escalated into a widespread civil protest. The J&K High Court invalidated 1,706 detention orders between 2008 and 2017, in 2016, there were 215 such detention orders were quashed. Former Chief Ministers Mehbooba Mufti and Omar Abdullah used the PSA to combat separatists, but they also gave amnesty to those who had been arrested, as Omar Abdullah did in 2010 and 2012.

On February 5, 2020, the Indian government told the general public that 389 people had been detained under the PSA following the repeal of Article 370 of the Indian Constitution. Former Chief Ministers Mehbooba Mufti, Dr. Farooq Abdullah, and Omar Abdullah are among those detained. The PSA has also resulted in the detention of several other political leaders and ordinary people. The reasons for these detentions are ambiguous and subjective. Even before being detained under the PSA, Dr. Abdullah claimed to be under house arrest.

After the abrogation of the Article 370, national political leaders tried to visit J&K, were denied permission to enter J&K and were sent back from Srinagar airport. “The economic, social and political impact of these actions for 11 months has been disastrous.”

Following the revocation of Jammu and Kashmir's special status on August 5, 2019, there has been a significant increase in the number of cases in which the Unlawful Activities (Prevention) Act and the PSA have been commonly used. According to a report prepared by the National Crime Records Bureau, 255 cases were reported under the UAPA in J&K in 2019, trailing only Manipur (306) and Tamil Nadu (270). According to the facts, anti-terror laws have recently been used against journalists, university students, conservative politicians, and even boys playing cricket or a desperate father demanding his son's body from the authorities, all in the name of defending sovereignty and preserving law and order.

"613 individuals, including separatists, stone pelters, over ground workers, and others, have been detained under the PSA, and a total of 430 people detained under the PSA have been released, while no one is under house arrest in J&K," said the Ministry of Home Affairs in a written reply in Rajya Sabha on the number of arrests in Jammu and Kashmir under the PSA since August 1, 2019".

Shah Faesal, a former IAS officer and the founding father of the Jammu and Kashmir People's Movement, was prevented from leaving the country at Delhi Airport and returned to Srinagar, where he was detained under the PSA. This law has also resulted in the imprisonment of Hurriyat leaders such as Masarat Alam and JKLF leader Yasin Malik. In fact, in January 2021, National Conference vice president and Dr. Abdullah's son, Omar Abdullah, vowed to revoke the contentious PSA if he returned to power in the State.

On the other hand in March 2021, Inspector General of Police Kashmir Vijay Kumar said that "Stone pelting is more of a problem than militancy. It creates a negative impact and keeps tourists away. Anyone who indulges in stone pelting will be slapped with Public Safety Act (PSA) and nobody will be allowed to disrupt peace in summers".

As laid down under Section 13(2) of PSA, "the detaining authority need not to inform or explain the detained individual the reason for the action or detention, if it decides that it goes against public interest."

Following the revocation of Article 370, "anybody detained under the PSA can now be conveniently lodged in any jail outside the state", according to the union ministry of home affairs, which carried out the amendment.

Many separatist and stone pelters were detained in the aftermath of the Pulwama attack, and then J&K Governor Satya Pal Malik approved a provision to shift detainees to jails outside the J&K. Earlier a proviso was present in Section 10, which provided that, "the detained persons who are permanent residents of the State shall not be lodged in the jails outside Jammu and Kashmir". After the amendment in the PSA, "all those who have been imposed PSA can be easily lodged in any jail in any part of the country". "There is no more legal protection which can be made ground before the courts for challenging lodging of PSA detainees in the jails outside Jammu and Kashmir", legal experts said, as the law is amended very cunningly to leave no stone unturned. In addition to this, according to the PSA, within four weeks of the order of detention, the government must submit to the Advisory Board the reasons for the order of detention as well as any representation made by the individual affected by the order. After reviewing the material presented to it, the Advisory Board will determine in its report whether there is adequate or fair cause for the detention of the individual in question under the PSA or not.

Rights of the prisoners

Following International instruments laid down the rights of prisoner. The prohibition of torture of any form and other cruel, inhuman or degrading treatment of any type is enshrined in the following regional and universal human rights instruments:

- (i) Universal Declaration of Human Rights, 1948.
- (ii) American Declaration of the Rights and Duties of Man, 1948.
- (iii) European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950.
- (iv) However, India have yet to ratify the 1987 UN convention against torture and other cruel, inhuman or degrading treatment or punishment (UNCAT).
- (v) United Nations Standard Minimum Rules for the Treatment of Prisoners, 1955.
- (vi) Draft Principles on Freedom from Arbitrary Arrest, Detention and Exile (1963).
- (vii) International Convention on the Elimination of All forms of Racial Discrimination, 1965 (ICERD)

- (viii) International covenant on the civil and political rights 1966, which is the core treaty of the protection of prisoner's rights and it, is ratified by India.
- (ix) American Convention on Human Rights, 1969.
- (x) Declaration on the Protection of All Persons from being subjected to Torture and other Cruel Inhuman or Degrading Treatment or Punishment
- (xi) Optional Protocol to the International Covenant on Civil and Political Rights (1976).
- (xii) Code of Conduct for Law Enforcement Officials (1979).
- (xiii) Convention on the Elimination of All Forms of Discrimination against Women 1979(CEDAW).
- (xiv) African Charter on Human and Peoples' Rights, 1981.
- (xv) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984.
- (xvi) UN Declaration on Basic Principles of Justice for Victims of Crime and abuse of Power 1985.
- (xvii) Inter-American Convention to Prevent and Punish Torture, 1985.
- (xviii) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment, 1987.
- (xix) European Convention for the Prevention of Torture and other Cruel, Inhuman or degrading treatment or punishment, 1989.
- (xx) Cairo Declaration on Human Rights in Islam, 1990.
- (xxi) Charter of Paris for a New Europe, 1990.
- (xxii) International Convention on the protection of the Rights of All persons against Enforced Disappearance (CPAED) 1992.
- (xxiii) Arab Charter on Human Rights, 1994.

Sunil Batra v. Delhi Administration, the Supreme Court stated unequivocally that "fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration."

Indian statutory provisions

- ❖ Prisoner's act 1894 provides for accommodation, sanitary conditions shelter, safe custody and other rights of prisoners.
- ❖ Prisoners' act 1990 also provides for rights of prisoners.
- ❖ Section 76 Cr.P.C right to produce before the magistrate.
- ❖ Cr.P.C Section 304 of provides, "legal aid at state expenses to the accused in certain cases".
- ❖ Section 309 Cr.P.C provides for the right to speedy trial.
- ❖ First schedule of Cr.P.C right to bail to the accused.

Constitutional provisions

The constitution of India indirectly provided many important fundamental rights to the prisoners like:

- ❖ Article 14 (equality before law) i.e. based on "*RULE OF LAW*" by A.V Dicey, are the golden words or the magic wand to bring out the social justice. In this there is no difference between ruled and the rulers.
- ❖ Article 19(freedom of speech and expression).
- ❖ Article 20 provides protection against double jeopardy and self incriminations.
- ❖ Article 21 right to due process and fair trial, right to speedy investigation and trial and bouquets of rights for prisoners under different Supreme Court guidelines.
- ❖ Articles 22 guarantee to the prisoner the right to be presented before a magistrate within 24 hour and seek counsel of his own choice. Article 22 (1) & (2) provide for, "protection against arrest and detention in certain cases." "Every person who is arrested and detained in custody shall be produced before the nearest judicial magistrate within a period of twenty-four hours of such arrest.....and no such person shall be detained in custody beyond the said period without the authority of a magistrate."
- ❖ Similarly, "a criminal trial which may result in depriving a person of not only personal liberty but also his right to life has to be unbiased and without any prejudice for or against the accused", Nahar Singh Yadav v. union of India
- ❖ Article 39 -A right to have counsel and legal aid.

Aftermath of Abrogation of Article 370 Vis a Vis Violation of Human Rights

Article 370 arrogations led to detention of many political leaders and many minor persons including separatists, stone pelters whether minor or major under PSA and the unlawful activities prevention Act. The rights that the detained person were denied were:

1. Right to bail.
2. Right to life and liberty.
3. Right to know the cause or charges of arrest,
4. Right to represent by the legal representative.
5. No fair trial.
6. Denial of speedy trial and
7. Denial of access to media and internet.
8. The people who were not detained i.e. local people were kept away from right to internet.
9. other peoples who were not detained or arrested or we can say the general public right violated are:

- The state's businesses were severely harmed, as mostly business is based on the tourism, forcing the majority of small business owners into loan defaults or even business closure. So right to employment and livelihood has been violated.
- A large number of citizens have lost their jobs or had their pay deferred or reduced: right to livelihood and employment infringed.
- School and university closures have had a serious impact on education and have increased the trauma of children and parents; right to education was neglected.
- Curfews and roadblocks severely limited access to healthcare; right to good health facilities and right to liberty have been curtailed.
- Local and regional media lost their semblance of independence: right to free expression and right to information infringed.
- Internet blockade: right to internet curtailed.

What's worse was the fact that no elected official left to defend the interests of the Jammu and Kashmir people, "the Indian state and people have been almost totally alienated from the people of the Kashmir Valley." Legislative bodies where people may demand redress cease to exist. According to the report by Justice Madan Lokur and Radha Kumar, "human rights violations under the categories of the civilian are security, health, children, youth, industry and media".

If we go by the above-mentioned violated rights of the detained or arrested persons, they were like having a moving body inside the four walls of rooms or a building having no soul or we can say a bird caged in gold cage having food, shelter and cloth but no freedom and other liberties to move out of the cage but at the mercy of the those who holds the key. No doubt they all were house arrested which is also known as "*little glorified jail*". They were denied all the rights to move freely and express themselves. Most importantly if we go by the detention of certain peoples, they were mostly we can say "political prisoners". A person who is charged under certain crime can have access to court of trial but what about those who don't know under what charges they are arrested and when they are going to release. In other words, the political prisoners were kept "*incommunicado*".

At this time, it's just hard to describe the word, "political prisoners" in a strict legal context. The difficulty in defining the term is due to many factors, and the term has been used in a number of ways due to lack of a common legal meaning. "*Peter Benenson*" coined the term "*prisoner of conscience*" in a 1961 letter that sparked the creation of the international human rights organisation Amnesty International. Since then, the words "*political prisoner and prisoner of conscience*" have been used interchangeably. However, the majority of governments prefer the term *security detainees*.

The term "political" denotes that the detainees have committed actions that expressly threaten the power and sovereignty of the government that is holding them. Recognizing that they are "political hostages" implies that a nation recognises that it is up against a threat. As a result, regimes are often unable to accept that they are keeping "political prisoners" in their jails.

Amnesty International has been particularly successful with its campaigns on behalf of "prisoners of conscience" and defined as "prisoners of conscience all persons detained because of their beliefs, but has specifically excluded those who have used or advocated violence".

By analyzing, historical and current cases of political prisoners we can make out that political prisoners have been prosecuted by legal systems and incarcerated by political regimes not for violating codified rules, but for having conflicting thoughts and ideas that profoundly questioned established power structures.

Human right and the political prisoners.

The terms of the Universal Declaration gained little consideration in the immediate aftermath of its adoption. But people around the world began to care about it over time, particularly after the 1970s. This is attributable, in part, to a conference held in Helsinki in 1975 to agree on the inviolability of the boundaries that resulted from World War II. The Universal Declaration was stated in the conference's final act, Helsinki Accords of 1975.

The very presence of today's political prisoners reflects that the nations that possess them or detain them without providing legal rights are violating many major international humanitarian treaties. The Universal Declaration of Human Rights (herein after UDHR) is the most significant. The UDHR, although having no legal sanctions, was meant to act as a "common norm of achievement for all peoples and all nations."

"No one shall be tortured or subjected to cruel, inhuman, or degrading treatment or punishment", laid down by Article 5. Political prisoners' reported treatment has been appalling because they are often held in secret, with no objective oversight or restraint.

UDHR Article 6 provides that, "everyone (includes irrespective of caste, creed, sex, gender, colour, religion or region) the right to recognition everywhere as a person before the law". Political prisoners are sometimes detained on lame excuses or without any serious offence being committed, essentially depriving them of this right. Furthermore, cases of forced "disappearances," like house arrest or to detain at unknown place, in which those opposing to ruling government have been made to vanish physically and legally without official recognition of their imprisonment, are connected to the question of political prisoners.

Article 9 of the UDHR states that, "no one shall be subjected to arbitrary arrest, imprisonment, or exile". Although most countries accept treason and sedition as offences, they do not cover the essence of political crimes committed by voicing views contrary to those of the ruling classes.

Political captives are often expected to cope, or are held without excuses, depending on the socio-legal system in place.

Especially relevant to the political prisoners, Article 18, which ensures, "the right to free speech, conscience, and faith".

Human rights organisations have accused some of the pact's key signatories of holding political prisoners and interning them for no reason other than imposing their ideology on those who disagree with those in power.

When a large number of a government's critics are held without fair and just trial under emergency laws like PSA in J&K, it is difficult for the ruling party to deny unequivocally that it is imprisoning people for political reasons. Governments who act in this manner usually claim that their actions are merely temporary and are meant to prevent chaos.

Opponents of a government incarcerated after being sentenced by criminal courts may and do object to their imprisonment on a variety of grounds, like

- That their sentences were the product of arbitrary or discriminatory processes.
- That they were not "regular crimes," but rather actions that had been criminalised by the ruling government in order to censor its critics.
- That the government's attempts to criminalise such activities, such as treason, are warranted due to the government's intrinsic illegitimacy.

In fact, the position of political prisoners will affect when they are freed. In this respect, the result could be either good or bad. Political prisoners would be required to serve a significantly larger part of their terms before being considered for parole. A change of regime, or even a shift in the political environment, on the other hand, could result in early release. This flexibility is contradictory to other legal standards in that it suggests that when it comes to elected officials, executive intervention is allowed to disrupt the normal functioning of the criminal justice system. The rule of law enables the system to act on the basis of a clear, predetermined, and impartial definition. The fact that the rule of law is consistently violated in these situations indicates that imprisoning political opponents is only a successful means of settling a political crisis, but rather an admission of political weakness.

The rights of political prisoners that are violated after the abrogation of Article 370 are:

- ❖ Arbitrary or unlawful deprivation of life.
- ❖ Arbitrary arrest or detention.
- ❖ Illegal arrest procedure and treatment while in detention.
- ❖ Denial of fair trial.
- ❖ No access to right to a fair trial.
- ❖ No right to visit the legal representative.
- ❖ No civil or criminal remedies available.
- ❖ Interference with one's privacy, home, family, or correspondence on an arbitrary basis.
- ❖ No contact with the outside world.
- ❖ Right to access internet denies.
- ❖ Restriction to foreign travel

Interference by the Supreme Court for restoring the rights of the citizens

In *Anuradha bhasin v. union of India*, Supreme Court held that, "right to access internet forms a part of freedom of speech and expression under article 19(1) (a) and ban of internet in J&K is violative of it". Other cases which declare right to internet as fundamental right are *faheem shirin v. state of Kerala (2019)* and *the case of foundation of media professionals v. union of India and anr (2020)* that is popularly known as the 4G case.

Sita Ram Yechury v. Union of India, this case is famously known as the J&K habeas corpus case, in this Sita Ram Yechury, general secretary of the communist party of India filed a habeas corpus plea in the supreme court of India question the constitutional validity of the detention imposed on one of the leaders of his party Mohd. Yousuf Tarigami when lockdown was imposed in j and k after the abrogation of article 370 by the union government.

The Supreme Court allowed the petitioner to visit the detenu, however restrictions were impose in his meet and he was not allowed to carry out any other political activity during this tenure.

In the case of detained Dar, court said that the respondents did not informed the petitioner-Dar about his right to make a representation to the detaining authority against the order of detention, are guilty of committing infraction of a Constitutional right ensured to the petitioner under Article 22(5) of the Constitution of India and the legal right guaranteed to him under Section 13 of the PSA, so the order of

detention is declared invalid and unreasonable according to the law. The High Court has passed order to release the three detenu under PSA and directed the authorities to release the detenues from the preventive custody.

After 14 months of detention under PSA former CM of J&K Mehbooba mufti was released, she was detained in August 2019 ahead of repudiation of special status to J&K. MEHBOOBA Mufti was first arrested under Sections 107 and section 151 of the Cr.P.C and later booked under the PSA. She mostly remained house arrested.

Omar Abdullah was released after 8 months of detention, in an interview after release from detention he said “.....But from the midnight of the 4th of august when reports started coming in of people being detained, arrested, some removed from their homes and political leaders being placed under house arrest, we knew that we had to expect something pretty serious.....I don’t think any of us imagined that it would be such a drastic change.”

Though the bulk of legislation are their but if PSA is imposed on you then no way to get out of its web, the detenu has to live in jail on the mercy of the political authorities without any charge and knowing the cause of arrest and no approach to the temple of justice. Many political leaders rights were violated as all were house arrested in compliance with the rules of the PSA.

The Indian legislature inserted the Section 436 A in 2005 in Cr.P.C with an aim to give the “custodial justice” to the one who has spend the half the period of the maximum entailed for the offence.

For Speeding up Human Rights it incorporates:

- ❖ The liberation of all remaining "stone-pelters" and political detainees who face no genuine accusations and are facing minor charges.
- ❖ FIRs against those who are first-time offenders or minor offenders should be withdrawn.
- ❖ Security forces' disruptive activity should be reduced.
- ❖ Amnesty and rehabilitation for militants who renounce aggression against the people of the state and the state.
- ❖ All victims of abuse must be brought to justice.
- ❖ Constant monitoring of the execution of numerous Acts aimed at combating militancy.

Need to Amelioration of PSA

Most delegations that visited J&K opposed the state government's extensive use of the PSA. Although its usage has been greatly diminished in recent years, the Act's large powers make it vulnerable to exploitation and should be updated accordingly. The key issues with the PSA are addressed in Chapter IV, which deals with the Power to Render Orders Detaining Certain Individuals, and in Section 8 Detention of Certain Persons. This segment lists various grounds for imprisonment, including “promoting, propagating, or seeking to establish feelings of enmity or hostility or disharmony on the basis of faith, ethnicity, caste, culture, or territory, incitement, instigation, abetment, and actual commission of such acts.” Then it is the responsibility of District Collectors or District Magistrates to decide, providing a twelve-day period during which the Government needs to sanction the arrest. The time for clearance should be no more than four days.

Second, when it comes to the duration of imprisonment, the PSA makes no difference between crimes. It enables to carry forward the detention for:

1. Disturbance of public order up to one year.
2. Actions “prejudicial to the security of the State” up to 2 years.

Given that incidents of public disorder will vary from minor to major, the probation duration should be no more than one week for minor offences and one month for major offences.

Considering that acts “prejudicial to the welfare of the State” are much more serious offences, three months' imprisonment should be sufficient to proceed to trial. Juveniles should not be kept in any way under the PSA.

Not to mention but violating domestic laws, like constitution of India, Cr.P.C. and other humanitarian laws, the State's implementation of the PSA violates international law also. According to Article 9(2) of the International Convention on Civil and Political Rights (ICCPR), "a detained citizen has a right to be promptly notified of the grounds of the detention, even though the arrest is for protective purposes." However, Section 13 of the PSA provides for, "non-disclosure of grounds for up to ten days". The non-disclosure of the reasons for incarceration makes it difficult for arrested detainees to provide legal safeguards from their incarceration, and it violates the detainee's right to justice and representation to be made in the court of law.

In, *Mohd Umar v. union of India*, The Supreme Court ruled that failing to disclose the reason for an arrest is unjust and illegal, and thus the PSA violates both domestic and international law. Furthermore, while Article 14(3) (b) of the ICCPR states that detainees have the right to consult with and be served by counsel of their choosing; Section 16(5) of the PSA expressly rejects this right.

J&K courts are often reluctant to hear cases involving stone pelters and terrorist crimes, and they do not take action against officials or listen to habeas corpus petitions. Thousands of habeas corpus cases are still pending in Kashmir valley courts, according to a report undertaken by the South Asia Centre for Human Rights and the Center for Law and Development.

II. CONCLUSION

In most of the cases the persons slapped with the PSA remain in jail for long period of time as no hearing and the lame behavior of the authorities. Although most of them released soon as they have FIRs against them. The legislator can check whether changes are needed to put some restrain or limit on the use of PSA or not. The most of the delegations who visited the j&k criticized the widespread use of PSA by the authorities. Although its use has been greatly reduced by now, the radical power of the law makes it vulnerable to abuse and should be revised accordingly.

The state's primary responsibility is to protect society from criminals and to provide swift justice to victims of crime. The laws are intended to protect people's basic liberties from infringement. In a civilised society, the existing democratic government is obligated to uphold the rule of law and the procedures established by law in the justice delivery system. The Public Safety Act provides legal shield to the state which creates hindrances to the normal procedural law and it works differently without following the primary constitutional guidelines while arresting a person. Even when a state is experiencing a national emergency, it is important that State agents should not use their powers unilaterally. Fundamental human rights include human rights, equality, and personal freedom which need to be preserved. Human rights concerns about law enforcement agencies and such laws (PSA) which is blatantly abusing their authority lead to despair and a lack of confidence in the institutions that uphold the rule of law.

Rule of law is a response to absolutism, which implied power without juridical limits, and the monopolization of the law by the security agencies is a threat to constitutional democracy. The state powers with absolutism are basic hinderance to constitutionalism and subjection of everyone to the law. The idea of limiting the power through rule of law aims at the protection of the personal rights. In this sense, human rights are based on the idea that human beings are endowed with inherent and inalienable rights, which are conceived as specific liberties and immunities to power, enforceable before a court of law. The PSA in other words, the subjection of power to the law, and its control by the state authorities without any checks and balances is direct in violation of human rights. The Constitution sets forth essential rights that the citizen can enforce against the constituted powers, amongst which legislative power but PSA is one of draconian piece of legislation which is based on a law contrary to the constitutional principles.

1. Detention should be sufficient to allow for a hearing.
2. Re consideration of such harsh laws, at least some amendments must be done to remove the human right violative provisions.
3. Juveniles should not be treated in any way under the PSA.
4. Stone-throwers and political prisoners who have not been charged with specific offences should be released immediately.

5. Establishing fast-track courts to expedite the trials of people who have been imprisoned for many years.
6. To restrict the PSA's indiscriminate use.
7. Bringing those responsible for human rights abuses to justice.
8. Imposing stringent bar on the use of special powers of the forces deployed in the J&K.
9. The perspective to see the problem of the people must be changed, actually it's not the problem of the people it's the ego clashes of the government of the two countries whose heeds are paid in the form of loss of the people whether tangible or intangible.

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