THE HINDU CHENNA THURSDAY, AUGUST 22, 2019

# Sacrificing liberty for national security

The Unlawful Activities (Prevention) Amendment Act could prove catastrophic for fundamental rights



In Parliament this month, former Union Minister P. Chidambaram questioned the need for certain amendments to the Unlawful Activities (Prevention) Act (UAPA), 1967. The Bill empowers the Central government to name any individual a terrorist if it believes him or her to be so.

### **Arguments in Parliament**

Mr. Chidambaram said, "We [the Congress] are opposing the mischievous amendment which has empowered the Central government to name an individual [as a terrorist]... The real mischief is in Section 35 subsection (2)... as amended reads: The Central government shall exercise its power under Clause (a) of sub-section (1) in respect of an organisation or an individual only if it believes [that] such [an] organisation or individual is involved in terrorism... There is no FIR. There is no charge sheet. There are no charges framed. There is no trial in a court. There is no conviction... What is the basis in which you will name an individual? Only because you believe he's involved in terrorism... My worry is, who you are going to name first? Don't compare Hafiz Saeed with Gautam Navlakha. My worry is there's a close parallel between sedition and unlawful activity. In Bhima Koregaon... all the accused... are all activists... I believe that none of them advocates violence. If you name somebody only because you believe he is involved in terrorism, that day none of us can sleep in peace."

Defending the amendment, Home Minister Amit Shah said: "This Act is to fight terror and has no other purpose... Chidambaramji asked why name an individual as a terrorist when the organisation he is affiliated to is already banned. It is because we ban one organisation, another one comes up by the same individual. Till when will we keep banning organisations?"

The above parliamentary exchange mirrors the uneasiness of the powerless when confronted by the



The UAPA carries no safeguards against its misuse at an individual level." Activist Gautam Navlakha and human rights lawyer Sudha Bharadwaj, who were charged under the UAPA, in New Delhi in 2018. • SUSHIL KUMAR VERMA

House... A grand debate was held

that time. Shri Yashwant Rao Chavan

went on assuring the Members that it

would not be applied against them.

He gave an assurance that the Go-

vernment was seeking a right to take

action against those who wanted to

disintegrate the country. I too deli-

vered my speech. I started [sic] my

apprehension that the Government

would involve all the opposition par-

ties in the name of so-called cause of

integrity and declare the opposition

as unlawful. Those who would be de-

clared unlawful would go under-

ground. You want to stop the unlaw-

ful activities, but how can you stop

these activities, you have the option

to arrest them; but are you making

arrests that can win the battle of

It is pertinent to mention that

when Vajpayee was speaking thus,

the Rashtriya Swayamsevak Sangh it-

self had been declared unlawful un-

der the UAPA by a notification of De-

cember 10, 1992. Despite his

apprehensions in 1967, Vajpayee and

other individual members of banned

organisations were not arrested sole-

ly on grounds of being a member of

confined only to cases of secessionist

organisations. It has now been ex-

tended to cases of terrorism too. Af-

ter two draconian anti-terrorist legis-

lation – the Terrorist and Disruptive

Activities (Prevention) Act and the

Prevention of Terrorism Act – were

repealed due to repeated misuse by

law enforcement authorities, the UA-

PA was amended in 2004 to bring in-

Today, however, the UAPA is not

such an organisation.

seemingly righteous indignation expressed by governments seeking increased powers to deal with disaffection and anarchy. Governments keep asserting that they bear no malice, but only seek to keep the country united against existential threats. Those in Opposition are wary of laying the citizen's liberties at the feet of the great man of the day.

The UAPA was passed by the Indira Gandhi government. Its political iustification then was to deal with the secessionist utterances of the Dravidian movement. During the 1962 war, the Communist Party blamed Jawaharlal Nehru and did not wholeheartedly support the Indian troops. In 1966, Hindu Sadhus protesting against cow slaughter marched in front of Parliament. It was against this backdrop that an unlawful activity was defined as "any action taken... (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India."

In his speech in Parliament during the no-confidence motion of July 1993, Atal Bihari Vajpayee recalled, "When the Unlawful Activities (Prevention) Bill was presented in the House in 1967, I was a member of the to its fold cases of terrorism. A large list of organisations such as the Liberation Tigers of Tamil Eelam, the Hizbul Mujahideen and the Khalistan Commando Force have been included in the schedule to the UAPA as banned organisations. Most of these bans are not challenged, and judicial tribunals have upheld the imposition of such bans from time to time.

Banning an organisation renders its members vulnerable to prosecution. Other than imprisonment, consequences include loss of property linked to terrorism. To avoid such drastic results, a member of such an organisation may prove that he or she has not interacted with the organisation after the ban order. The organisation itself may challenge the notification in a judicial tribunal.

No defences All these defences will vanish if an individual is notified as a terrorist. No link to any organisation needs to be proved. What is worse is that people consorting in any manner with a notified individual can also be roped in under the Act. The Act itself is broadly framed, to sweep in all kinds of suspect organisations. The same looseness of language when applied to an individual can be catastrophic at the level of his fundamental rights. Almost any utterance on social media these days can be construed as one "which causes or is intended to cause disaffection against India".

The Act itself carries no safeguards against its misuse at an individual level. A judicial determination at a later stage is scant solace to a man in danger of losing liberty and his house for being associated with someone who has been designated as a terrorist under the Act. The die has been cast, however. Despite Mr. Chidambaram's arguments, his party ended up ensuring the passage of the amendment. At the end of the day, the Congress and the BJP have together sacrificed individual liberties at the altar of national security. Benjamin Franklin said: "Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety.' Indians deserve better respect for their liberties than this ill-thoughtout parliamentary misadventure.

Sanjay Hegde is a senior advocate of the

# The risks of legalising cannabis

Commercialisation could be dangerous



There is a growing movement in the West to legalise cannabis, with rumblings of the same in India. Having conducted medical research on cannabis at Yale University for several decades, we urge India to carefully weigh the risks and benefits of cannabis before blindly following suit with the West.

In India, cannabis, also known as bhang, ganja, charas or hashish, is typically eaten (bhang golis, thandai, pakoras, lassi, etc.) or smoked (chillum or cigarette). Its potency depends on the content of its principal active constituent, tetrahydrocannabinol, though cannabis contains more than 500 other chemicals. In India, there is a tradition of using cannabis in many religious contexts. But although Ayurvedic texts refer to cannabis as a treatment for several maladies, what is often overlooked is that it is categorised as Upavisha Varga (sub poisonous), and its recreational use has been described as toxic.

### **Busting myths**

There are many misconceptions about cannabis. First, it is not accurate that cannabis is harmless. Its immediate effects include impairments in memory and in mental processes, including ones that are critical for driving. Long-term use of cannabis may lead to the development of addiction of the substance, persistent cognitive deficits, and of mental health problems like schizophrenia, depression and anxiety. Exposure to cannabis in adolescence can alter brain development.

A second myth is that if cannabis is legalised and regulated, its harms can be minimised. With legalisation comes commercialisation. This comes at a cost which we have seen with tobacco and alcohol over the last century. The morbidity and mortality associated with tobacco and alcohol rank amongst the top 10 in terms of the global disease burden. Tobacco, too, was initially touted as a natural and harmless plant that had been "safely" used in South American religious ceremonies for centuries. The tobacco industry invented cigarettes for ease of use, altered the acidity of tobacco to make it less harsh, added other chemicals to improve its taste, mass-produced cigarettes, and sold them using sophisticated advertising. It manipulated knowledge about the adverse effects of tobacco despite being aware of these effects, and successfully staved off legal battles for decades. No amount of taxation of the tobacco industry can compensate for the health toll on billions of tobacco users over the last century. Despite knowledge of the risks of smoking, cigarettes remain legal and the tobacco industry continues to thrive. This also highlights the point that once out, the genie cannot be put back into the bottle.

It's important to make a distinction between legalisation, decriminalisation and commercialisation. While legalisation and decriminalisation are mostly used in a legal context, commercialisation relates to the business side of things. The goal of commercialisation is to sell as much of the product, and the cannabis industry is steadily growing in the U.S. In fact, as the sale of tobacco products have shown signs of a decline in the West, some tobacco companies have entered the cannabis market. Altria, the maker of Marlboro cigarettes, has invested \$1.8 billion (₹12.400 crore) in the cannabis grower Cronos Group. These commercial entities will bring their wealth of experience navigating the law, their successful marketing, their well-oiled lobbying, and deep pockets to influence the government to maximise profit and minimise risk to their commercial enterprise. In the U.S., cannabis is being incorrectly advertised as being "natural" and "healthier than alcohol and tobacco". Commercial entities also understand that targeting the young assures them lifelong customers. A new array of cannabis products in the form of ice creams, sweets, and even softdrinks are becoming available. The West also says that legalising and regulating cannabis will "undermine criminal markets". Congress MP Shashi Tharoor echoed this view last year. Yet, as we have seen in Colorado, the black market has only increased.

### **Considering alternatives**

In 1961, driven by Western nations, the UN sponsored an international treaty to prohibit the production and supply of drugs including cannabis. India resisted and negotiated exceptions, loopholes, and deferrals. It is ironic that the West is now legalising cannabis and other drugs. Given that some in India are clamouring for the same, the country should carefully consider all the risks, and consider alternatives. One, it could decriminalise cannabis but forbid commercialisation. Two, if India were to liberalise its policy on cannabis, it should ensure that there are enough protections for children, the young, and those with severe mental illnesses, who are most vulnerable to its effects. Finally, treatments for those who become addicted to cannabis should be offered.

Deepak Cyril D'Souza is Professor of Psychiatry at the Yale University School of Medicine and Jatinder Singh is a research fellow in the Department of Psychiatry, Yale University School of Medicine

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FROM THE ARCHIVES

The Lok Pal experiment

(From an Editorial)

FIFTY YEARS AGO AUGUST 22, 1969

With the passing of the Lok Pal and Lokayuk-

tas Bill by the Lok Sabha, the country is em-

barking on a fresh method of tackling the

problem of corruption and maladministra-

tion at the highest levels. Though many re-

medies and procedures are even now availa-

ble to get wrongs righted the chief merit of

the Lok Pal (called "Ombudsman" in the

Scandinavian countries) is that he will be ea-

sily accessible to the common man who feels

that he has been wronged by some action by

a Minister or Departmental Secretary. The

Lok Pal is to be appointed by the President

in consultation with the Chief Justice of India

and the Leader of the Opposition and he will

be an independent authority who cannot

look forward to a second term of office. He

will have the power to call for official docu-

ments and summon any person to give evi-

dence and he will submit his recommenda-

tions for remedial action to the Government

within a short time. The Government will

have to intimate within three months the ac-

A HUNDRED YEARS AGO AUGUST 22, 1919.

Reuter's report of what he called the Indian

Congress held at Johannesburg in the first

week of this month made it appear to be no

more important than a local meeting of the

ordinary variety held to protest against what

he believed to be not very serious grievanc-

es. That the impression created by Reuter

was wholly false and that the Conference

was a most momentous one in many ways is

now clear from the account of its nature ap-

pearing in South African Indian papers re-

ceived by yesterday's mail. In the first place,

tion it has taken on his report.

The Peril in South Africa.

## The 'Kerala Model' is unsustainable

Over the years, parties have responded to commercial interests over the welfare of people

PULAPRE BALAKRISHNAN

In 2018 Kerala was overwhelmed by an unprecedented natural event. Flooding combined with landslides caused many deaths. Floods were not new to Kerala, which receives high rainfall. What was new compared to the times of equally high rainfall in the early part of the last century was the flooding due to inept dam management and the vulnerability of the terrain induced by the pattern of land use. In 2019 we have seen some of this repeated. This year it is the landslides that have caused most deaths. They are a relatively recent phenomenon, pointing to the role of uncontrolled economic

Man-made factors leading to devastation point to the unsustainability of the so-called 'Kerala Model', a term used to describe the economic policy underpinning the State's recent growth and development history. Lauded for the high human development indicators it is believed to have bestowed upon the State, this construct contributed to a self-congratulatory discourse within the power elite. Based on the pertinent observation of Amartya Sen that the State seemed to have attained high social development at a relatively low level of income by comparison to the rest of India, it was soon appropriated by the political class including artists and intellectuals who collaborate with state power. Any lack of enthusiasm was greeted with intolerance, similar to what ultra-nationalists display today when challenged on their claims about India.

## Many failures

Criticism of the Kerala Model has been based on its several failures. The foremost is the inability to meet the employment aspirations of the people, pushing them to live under authoritarian regimes overseas. Second, the laudable public provision of health and education has been financed by borrowing. Kerala has the highest per capita public debt among States, implying that we are passing on the bill for our own maintenance to future generations. Finally, Kerala has not done so well when viewed through the lens of gender justice.

High levels of female education have not led to an equally high participation of women in the labour force or in governance, even though they participate equally in elections.

Two consecutive years of a natural calamity exacerbated by human action are a revelation that the Kerala Model has run its course. The extraordinary events that we have witnessed this year range from fountains sprouting out of the earth due to the hitherto unknown 'water piping' to constructed structures shifting, physical phenomena not vet widely understood. There has been overbuilding in Kerala, with absentee owners having invested in luxury houses they do not always occupy. As a result poorer households are crowded out of safe locations on the plains to precarious ones on the hills.

### **Relaxing rules**

Public policy has failed miserably to regulate land use including rampant quarrying, which destabilises the earth's surface, with political patronage. Truth is that public policy is part of the problem. The floodgates were opened in 2015 when the Congress party did away with environmental clearance for quarries in existence for three years. Then in 2017 the Pinarayi Vijayan government relaxed the rules for quarrying further. It also weakened the provisions of the legislation governing conversion of agricultural land into construction sites. The rice paddies had both produced food and served as gargantuan sinks for rainwater. Kerala's principal political parties, irrespective of their ideologies, have responded to commercial interests over the welfare of ordinary people.

To come out of this morass the people of Kerala would have to rely on themselves. They need to acknowledge that their consumption pattern must change as it has adversely impacted the natural environment, the consequences of which have begun to hurt them. In this task they are unlikely to be guided by the State's politicians and intellectuals who led them into this cul-de-sac in the first place.

Pulapre Balakrishnan is Professor, Ashoka University, Sonipat and Senior Fellow, IIM Kozhikode

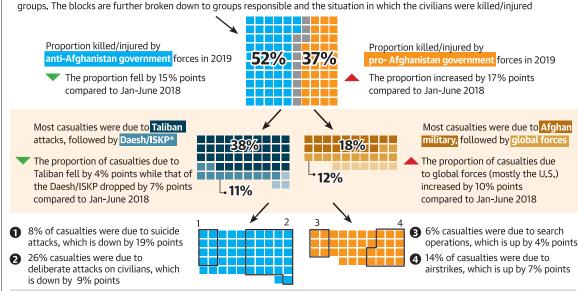


## **DATA POINT**

\*Islamic State of Iraq and Levant - Khorasan Province

### Civilian casualties in Afghanistan (January to June) **Afghan atrocities** 6000 In Afghanistan, though the number of civilian casualties was at a seven year low in the first half of 2019, the 4000 proportion of deaths/injuries due to the national military and allied international 3,812 casualties in 2019 – forces have increased significantly. the lowest in seven years The share of casualties due to terrorist 2000 attacks have fallen. By Sumant Sen 2010 2014 2016

How to read the chart | The 100 blocks represent the 3,812 civilian casualties between January and June 2019 due to various



Designed by **Vignesh Radhakrishnan** and **L. Balamurugan** Source: United Nations Assistance Mission in Afghanistan

### it was a convention of the entire Indian community in the Union. The exact significance of this will be appreciated, only if one remembers that the Indian community in South Africa is not a compact body living in close contact and under uniform laws, but one scattered throughout the Union and subject to the varying local provincial laws. For the time being, no doubt, it is only in the Transvaal that danger has arisen in the shape of the recent Asiatic Act. But, as Indian Opinion puts it, "whilst it is true that

the storm centre is, for the time being, the

Transvaal, there is reason to fear that the po-

sition of Indians throughout the Union is a

matter for grave concern."