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# **PRELUDE TO DESPOTISM IN INDIA: A CRITICAL EXAMINATION OF THE UAPA, 1967 AND ITS IMPLICATIONS ON AN ERODING DEMOCRACY AND CONSTITUTIONALISM**

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## **ABSTRACT**

India has been regarded as the world's largest democratic nation which has adopted the lengthiest world. The democratic set up of India can be said to be no less than the reaction to the colonial experience faced by it during 18<sup>th</sup> century. The post-independent administrative and political discourse in India has however experienced a concerning trend of preserving colonial practices which ultimately cause an adverse impact and undermines the democratic promise which India enshrines under its constitution. These trends have often manifested in the form of draconian legislations leading to contemplation with respect to India's resolve in maintaining the efficacies of democratic institutions and adherence towards principles of constitutionalism. This paper seeks to observe the adverse impact of the Unlawful Activities Prevention Act (UAPA), 1967 an anti-terrorism and preventive detention legislation on the democratic edifice of India and its connotations on the erosion of constitutionalism. It seeks to understand the intricate inter-relatedness of a democratic set up and constitutionalism, the socio-political circumstances behind formation of the legislation, and the operation of the legislation throughout the years which has led to abhorrent consequences on India's sustainability of a constitutional democracy. This paper ultimately observes that the Unlawful Activities Prevention Act (UAPA), 1967 is indeed of draconian nature constituting a part of the larger trend of rise of despotism in India. The paper recommends that such legislations must be repealed with immediate effect and that under no grounds can civil liberties be infringed for the sake of some form of 'national security'.

**Keywords:** Constitutional, Democratic, Liberties, Erosion, Rights, Edifice.

The Unlawful Activities Prevention Act, 1967 (UAPA) has sparked an indefinite debate with respect to State despotism and arbitrariness in India. The legislation by and large has been accepted by majority of critics as being draconian in nature and that it reflects the colonial trend of suppression of individual rights and liberties for the purpose of maintaining State power by way of integrating vested interests leading to unfettered exercise of authority by the government. The issue of criminalization of dissent in a democratic set up which is meant to guarantee freedom of speech and expression and the issue of representatives of the people of the country who act according to self-interests instead of the will of the people who elect them has been recognized as the very crux for the erosion of constitutionalism in India. The notable works of authors such as Anushka Singh in 'Criminalising Dissent: Consequences of UAPA (2012)'<sup>1</sup>, Ravi Nair in 'The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes (2009)'<sup>2</sup>, Asish Gupta and Kranti Chaitanya in 'Unlawful Activities (Prevention) Act (2010)'<sup>3</sup> and many more have observed that the Unlawful Activities Prevention Act, 1967 (UAPA) is indeed a draconian legislation which needs to be repealed in order to ensure that individual's rights and freedoms can truly be preserved by limiting State action and power. There exists not much of a contradiction with respect to opinion on the UAPA, 1967 as much as there is room for more contemplation with respect to the larger trend of spurts of despotism in India. The repealing of the Unlawful Activities Prevention Act, 1967 is most certainly of immediate interest, however the issue extends to a much more severe degree. The very fact of such draconian legislations being enacted by the legislative body of the State and further being implemented by the executive reflects the glaring ineffectiveness of India's constitutional democratic set up and reveals as to the extent by which India is yet to secure a truly welfare state which considers individuals as the ends and not the means. The issue is not as to whether there exist draconian laws but as to why such laws can be sustained in post-independent India in the first place. This requires understanding the present socio-political environment and the realities of the administrative process and not merely the administrative framework which ultimately reveal the eroding edifice of India's set up. This paper will thus attempt to observe the larger implications of draconian legislations arising due to the incomplete nature of India's democratic and constitutional promise and what are the measures which need to be introduced for reforming the democratic system to ensure such arbitrary State actions to be prevented.

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<sup>1</sup>A. Singh, *Criminalising Dissent: Consequences of UAPA*, 47 *ECON. & POL. WKLY.* 14, 15-18 (2012).

<sup>2</sup>South Asia Human Rights Documentation Centre & Ravi Nair, *The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes*, 44 *ECON. & POL. WKLY.* 10, 11-14 (2009).

<sup>3</sup>A. Gupta & K. Chaitanya, *Unlawful Activities (Prevention) Act*, 45 *ECON. & POL. WKLY.* 4, 5 (2010).

**Research Methodology: -**

The paper utilizes primarily resources from online forums to conduct research and relies upon descriptive mode of research to analyze already existing studies and data with respect to the subject matter. The paper emphasizes significantly on recent case studies of individuals and eminent figures who have actively suffered by way of arbitrary actions and outright violations of rights to life and dignity through the UAPA, 1967 and relies upon the usage of deductive reasoning for the purpose of establishing the draconian nature and adverse effect of the Unlawful Activities Prevention Act, 1967 on the constitutional democratic edifice of the State. Thus, the sources referred to in this paper are secondary sources for the purpose of achieving its ends.

**Introduction: -**

India has been known as one of the most ancient civilizations to ever exist. Thus, India has experienced a prolonged history of cultural and political upheavals leading to significant changes in society. One of the most notable periods for the same would be the colonial rule of Britain over India. It was during this period that India had faced abhorrent conditions of suppression and subjugation causing severe deprivations of lives. The colonial rule had thus brought about a collective consciousness among the people of India with respect to the desired form of polity and governance that would ensure that welfare and dignified conditions of life take precedence over any form of national interests. This is the vision due to which India throughout its subjugation under British rule sought not only freedom but also a democratic form of rule with responsible and accountable elected representatives to ensure that the horrors of the colonial era may not be repeated again. India has thus enacted the world's lengthiest constitution borrowing relevant facets from various international jurisdictions which suit the Indian circumstances and society to formulate a comprehensive framework which would make it possible to secure the democracy which India seeks to achieve<sup>4</sup>. India however in reality remains far from a secured democracy and instead there has been an erosion of democratic institutions and constitutionalism as a guiding principle by way of institutionalized State action which inevitably reflects the extent to which vested interests have permeated the edifice of India's constitutional democracy. This is due to the fact that in spite of having a comprehensive

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<sup>4</sup>SAHRDC, *Stifling Freedom of Expression and Opinion*, 45 ECON. & POL. WKLY. 19, 20-22 (2010).

framework for administration, the actual process for administration is fraught with impending circumstances of bias and disparities<sup>5</sup>. The prominence of legislations that cause for unfettered exercise of powers by the government is one of the most significant causes for India's declining democracy. These legislations provide premises which legitimize excessive State action resulting in criminalization of any form of opposing opinions or dissents and leads to silencing of 'non-popular' speech and expressions. The glaring instance of the same and the prime focus of this paper is the Unlawful Activities Prevention Act, 1967 (UAPA). The Unlawful Activities Prevention Act, 1967 was enacted as a preventive detention legislation. Preventive detention essentially refers to the mechanism of detaining individuals for preventive purposes on the grounds of 'public order' or 'national security'. Article 22 of the Indian constitution provides for the fundamental right against arbitrary arrest and detention subject to exceptions such as under Article 22(3)(b) which enumerate the authority for preventive detentions<sup>6</sup>. The purpose of the Unlawful Activities Prevention Act, 1967 had been to give effect to such preventive detentions in order to ensure that acts adversely affecting the national security, territorial integrity and sovereignty of India may be strictly prevented including terrorist activities, however throughout the administrative and political discourse of the nation, the Act has only served as a means to silence dissenting opinions and criminalizing any form of opposition which the one's in power feel are against their vested interests. The cause of 'national security' and 'integrity and sovereignty' have been reduced to mere facades for exercising unfettered executive power upon those who are deemed to pose a threat to the existing differentia between the governing and those who are governed. Prominent incidents involving activists such as the cases of Umar Khalid, Father Stan Swamy and most recently, Professor G.N. Saibaba all shed light upon the draconian nature of the legislation and the extent of inhuman treatment conferred upon the people who have voiced their opinions and taken actions which were otherwise democratic exercise of their rights. The Unlawful Activities Prevention Act, 1967 subjects its victims to unjustified incarceration for prolonged periods without bails or trials and causes them to develop life threatening ailments and other forms of significant deprivations. Thus, the law reflects the collapsing of India's democratic edifice and indeed begets a wake-up call to reform the administrative process itself in order to ensure that such legislations causing undue deprivations of liberties cannot be enacted or sustained in the first place.

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<sup>5</sup>A. Teltumbde, *How the Regime Keeps Dissent at Bay*, 47 ECON. & POL. WKLY. 10, 11 (2012).

<sup>6</sup>F. S. Nariman, *Fifty Years of Human Rights Protection in India - The Record of 50 Years of Constitutional Practice*, 13 NAT'L L. SCH. INDIA. REV. 13, 14-17 (2013).

**The insoluble tension and inter-relatedness between Democracy and Constitutionalism: -**

Democracy and Constitutionalism must be understood from the perspective of a paradoxical union and inter-connectedness to have an idea as to how India's constitutional democracy has been structured to lay down a comprehensive framework for eradicating disparities. The issue of institutionalized State actions actively encroaching upon civil liberties without justifications such as the case with draconian laws and more specifically the Unlawful Activities Prevention Act, 1967 can only be understood with respect to the adverse impact on the erosion of democratic institutions and the slow but gradual depart of constitutional values reflecting the spirit of constitutionalism. Thus, in order to evaluate the over-arching erosion of the democratic edifice due to excessive State power it is essential to understand the extent to which a democratic set up is related to constitutional principles and more specifically, constitutionalism. The very conception of a 'constitutional democracy' is paradoxical in nature. This relation between the two has been observed through countless works of political theorists and one of the most notable works includes the work by Richard Bellamy and Dario Castiglione in the 'Constitutionalism and Democracy – Political Theory and the American Constitution'<sup>7</sup>. The focus of the work was on analyzing the conception of a 'constitutional democracy'. Democracy on the one hand reflects united and unrestrained, whereas constitutionalism reflects the necessary impediments which must be imposed for limitations on all the stakeholder of the State to ensure that arbitrariness may be prevented. A democratic government envisions that the authority of the government is derived from the people themselves and that the government functions for meeting the wants, desires and requirements of the people. A democratic set up thus envisions that people are the ends and not the means. Thus, ideally speaking a democracy is about people deciding whom to elect and how they should rule for the betterment of the people. Democracy is however not merely limited to the governance structure and permeates to the social fabric as well. A democracy also means a 'Democratic Society' or a 'Welfare State'. Thus, characterization of the State's functions to be aimed primarily at welfare is also a significant feature of the democratic rule<sup>8</sup>. Constitutionalism on the other hand primarily focuses on limiting. Thus, it is often contemplated as to whether constitutionalism has a limiting effect on the democratic edifice or is it a necessary measure to sustain democracy itself. The answer as such stand's affirmative in both the cases and thus the two are said to be in a relation

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<sup>7</sup>R. Bellamy & D. Castiglione, *Constitutionalism and Democracy – Political Theory and the American Constitution*, 27 BRIT. J. POL. SCI. 595, 596-618 (1997).

<sup>8</sup> Viktor J. Vanberg, *Liberal Constitutionalism, Constitutional Liberalism and Democracy*, 22 CONST. POL. ECON. 1, 2-3 (2011).

of 'insoluble tension' with each other and are inter-connected to the extent of mutual sustenance for each other<sup>9</sup>. Democracies by and large have adopted their systems of functioning through historical experiences of their socio-political discourse. However, the conception of a democratic system includes the free choice to reject historically endowed systems as well as to completely reform existing systems of governance as per as the will of the people. However, realistically speaking such a phenomenon of people freely dictating the regime is quite rare. Only direct democracies to an extent have achieved such feats however, in case of indirect and representative democracies several limitations exist both on individuals as well as elected heads of the State which have been constitutionally ordained. Thus, the question arises as to whether the democratic promises of such States stand invalidated or is there the existence of some form of justification for the same. It is believed that Constitutionalism in essence lays down the rules for the democratic game. It ensures that a democracy may not absolve itself by way of excessive utilization of freedom or arbitrary power. The preservation of existing institutions under democratic systems ensures that certain inherent features such as fundamental rights for dignity of the individual, consolidation of the weak will of the people, as well as immunity for social spheres of life which must not be interfered with are promoted which in turn only consolidates a democratic structure. The existence of principles of constitutionalism thus provides the guiding light for the functioning of a democratic edifice<sup>10</sup>. This can be understood with respect to an example. The 'Rule of Law' is one of the essential tenets of constitutionalism and it is widely followed in most of the world's democracies as it is not virtually possible to sustain a true democratic rule without such considerations. India is able to function as a democracy as it has imbibed the principle of 'rule of law' which provides for strict adherence towards the fundamental law of the land by all the stakeholders in the Indian State irrespective of one's standing with respect to wealth, status or prestige or other such factors<sup>11</sup>. Owing to modern political and administrative criterions no democracy can be said to strictly adhere to principles such as the 'rule of law' as has been discussed in this case. Nonetheless adherence towards certain tenets of constitutionalism is an essential feature for any democracy which wishes to be sustained. Thus, although constitutionalism and democracy may in a literal sense contradict each other, their paradoxical union is the very reason as to why a democracy can sustain itself

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<sup>9</sup> Wouter G. Werner, *Democracy, Constitutionalism and the Question of Authority*, 39 R & R. 267, 268-275 (2010).

<sup>10</sup> J. Habermas & W. Rehg, *Constitutional Democracy: A Paradoxical Union of Contradictory Principles?*, 29 POL. THEORY. 766, 767-781 (2001).

<sup>11</sup> Harvey C. Mansfield Jr., *Constitutionalism and the Rule of Law*, 8 HARV. J. L. & PUB. POL'Y. 323, 324-326 (1985).

and thus, any phenomenon which causes an erosion of democratic institutions also cause the adverse impact of deflection and departure from constitutional values which are essential facets of constitutionalism.

### **Understanding the Unlawful Activities Prevention Act, 1967 (UAPA): -**

The Unlawful Activities Prevention Act, 1967 in reality remains as the successor of its colonial predecessor. The British rule in India enacted the Rowlatt Act, 1919 for the purpose of curbing dissent and more specifically the national movement against the unpopular rule by conferring unfettered police powers on the state to punish any form of opposition. The Unlawful Activities Prevention Act, 1967 is by and large considered as the post-colonial and less stringent version of the Rowlatt Act, 1919<sup>12</sup>. It was formulated in pursuance of the committee report made by the National Integrated Council through the sixth amendment of the Indian constitution in 1963<sup>13</sup>. The primary agenda for the amendment was to make curtailments to guaranteed rights in the interest of sovereignty and integrity of the State of India. This was done so that 'national security' of India may be sustained and any acts which would threaten India's stability could be dealt with expeditiously. The purpose for the UAPA, 1967 was also to prevent terrorist activities which was later on made expressly clear through amendment of the same. The issue however, runs with respect to anti-terrorism laws of India in general. Some of the other notable anti-terror laws which were subsequently enacted and repealed due to popular dissent were the Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985 and the Prevention of Terrorism Act (POTA), 2002<sup>14</sup>. The Unlawful Activities Prevention Act, 1967 was amended several times starting from 1969, 2004, 2008, 2012 as well as in 2019. This testifies the repeated failure of the legislation to be abreast with recent times and also the extent of unpopularity of the legislation among the general public at large. The amendment of 2004 was to introduce 'terrorist acts' under the ambit of the legislation which re-introduced numerous provisions of the POTA, 2002. This amendment banned several organizations for being involved in terrorist activities and essentially made the UAPA, 1967 as not only a preventive detention law but also India's primary anti-terror law<sup>15</sup>. The UAPA, 1967 was amended in recent years in 2019 which further

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<sup>12</sup>K. L. Tuteja, *Jallianwala Bagh: A Critical Juncture in the Indian National Movement*, 25 SOCIAL SCIENTIST. 25, 27-28 (1997).

<sup>13</sup>Apoorva Mathur, *The Statutory Approach to Counter Terrorism in India: From MISA to the UAPA*, 24 SUPREMO AMICUS. 290, 294-295 (2021).

<sup>14</sup>Chris Gagne, *POTA: Lessons Learned from India's Anti-Terror Act*, 25 B.C. THIRD WORLD L.J. 261, 262-265 (2005).

<sup>15</sup>Vareny Chaudhary, *UAPA: A Critical Appraisal*, 3 JUS CORPUS L.J. 592, 595-597 (2022).

consolidated the scope of the Act which could now designate separate individuals as ‘terrorists’ without any form of organizational affiliations. The consolidation of such anti-terrorist provisions may on the face of the things provide a re-assurance with respect to India’s security measures, however such a surface level analysis cannot be further from reality. The UAPA, 1967 has repeatedly imposed severe and unwarranted restriction upon the constitutional rights and freedoms that are available to the citizens. The cornerstone of India’s fundamental rights which are enshrined under Article 14 (Right to equality before the law), Article 19 (Fundamental Freedoms) and Article 21 (Right to life and Liberty) have been repeatedly undermined due to the functioning of the UAPA, 1967<sup>16</sup>. The pragmatic implications of the legislation have been much different than the envisioned goal of ‘national security’ and has only provided for legitimizing of premises for exercise of unfettered power and criminalizing dissent against the ruling authority. Thus, presently there exists a conspicuous understanding that the UAPA, 1967 reflects as to how far-fetched India’s democracy stands from its normative structure and as to what extent India’s democracy is paving the path for a despotic future.

#### **The Unlawful Activities Prevention Act, 1967 and its implications on eroding democratic institutions and constitutionalism: -**

The Unlawful Activities Prevention Act, 1967 can be considered as one of the major impediments to India’s sustenance of a constitutional democracy. The severe undermining of democratic institutions such as those of separation of powers, checks and balances, fundamental rights and freedoms, etc. and the vitiation of essential tenets of constitutionalism such as the ‘rule of law’ has undoubtedly led to the erosion of India’s ideal of a democracy. The UAPA, 1967 has undermined judicial authority to a significant extent and has caused for the undue consolidation of executive and legislative initiative. This is due to the reason that the UAPA, 1967 can designate individual people as ‘terrorists’ without judicial determination for the same. Thus, it enables the State to determine persons of interest as terrorists and incarcerate them for indefinite periods without any recourse for bail or even a trial. This is indeed against the democratic process which provides the judiciary with the prime initiative for determining guilt or innocence for alleged offences. It is during such periods of prolonged detainment that individuals suffer from severe medical ailments due to the undermaintained conditions of

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<sup>16</sup> Tushar Nair, *Weaponisation of Sedition and the UAPA to Curb Free Speech in India*, 3 INT'L J.L. MGMT. & HUMAN. 1132, 1134-1137 (2020).

prisons which are prevalent in the nation<sup>17</sup>. Thus, the ruling authority is made to be in a position which virtually supersedes the scrutiny of the judiciary and rule of law. The rule of law does not mean mere adherence to the legislative process but means the adherence towards the legislative spirit of those laws which seek for betterment and upholding of liberties and dignity of the people. The pragmatic connotations of the UAPA, 1967 can only be understood through case studies of recent events which have conspicuously and repeatedly reminded the people of the unconstitutional and draconian nature of the legislation and the implications of such institutionalized State actions against the democratic edifice. The much recent case studies include: -

- a) *The Bhima Koregaon Incident*: - The Bhima Koregaon violence marks as one of the most prevalent abuses of the process of law and the adverse pragmatic implications of the UAPA, 1967 in action. The incident occurred on 1<sup>st</sup> January, 2018 when a significant number of the Dalit community assembled together at the 'Vijay Stambh' also known as the 'Victory Pillar'. The gathering was for the purpose of celebrating the 200<sup>th</sup> anniversary of battle of Koregaon which took place in 1818 between the Dalits and Peshwai forces. The battle signified a revolutionary change for the Dalit community who had won against the caste-based deprivations that they had to endure for decades. The assembly soon turned into a violent outburst as it was felt by members of the other communities that the commemoration and celebration was being performed in an inappropriate manner. FIRs were lodged alleging the collusion of 'left-wing' actors which had caused the violence. The Pune police then subsequently arrested 16 prominent figures including lawyers, professors, activists, journalists and even artists who are popularly regarded as the 'BK-16'<sup>18</sup>. The notable arrested activists included Varavara Rao, Sudha Bharadwaj, Arun Ferreira, Anand Teltumbde, Father Stan Swamy, Hany Babu, Sagar Gorkhe, Ramesh Gaichor and Jyoti Jagtap. These activists were well known for their active dissents and campaign against excess governmental measures. These activists were booked under the UAPA, 1967 and still continue to be incarcerated under the law for indefinite periods with only a few who have received bails. The entire ordeal has been critically disdained by the public at large as the arrests were made only on the basis of assumed guilt arising out of electronic evidences which in no way amounted to unequivocal determination of the guilt of the activists. The circumstances of particularly Father Stan Swamy

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<sup>17</sup> Reet Balmiki, *The Misuse of the UAPA and the Approach Taken by the Courts*, 2 *JUS CORPUS L.J.* 229, 230-236 (2022).

<sup>18</sup> Sakshath H. N., *Analysis of Independence of the Judiciary*, 2 *INDIAN J. INTEGRATED RSCH. L.* 1, 4-5 (2022).

who passed away during his period of incarceration was conspicuous evidence of the failure of the UAPA, 1967 as a national security law and also India's failing democracy<sup>19</sup>. Father Stan Swamy was a Jesuit priest and activist who actively advocated for the cause of the 'Adivasi' community of India and had led many campaigns against the ineffective governmental initiatives for the tribal communities. He was arrested in Ranchi in connection to the Bhima Koregaon case whereas in reality he had never been to Koregaon or had any connection to the violent incident according to statements provided by him before his death. Father Stan Swamy had already been suffering from health ailments owing to his old age such as Parkinson's and more<sup>20</sup>. Thus, inevitably being incarcerated under inhumane conditions which severely undermined any consideration for his health or old age and other basic needs including rejecting him bail on medical grounds, Father Stan Swamy ultimately succumbed on 5<sup>th</sup> July 2021 at his hospital bed. The utter inefficacy of democratic institutions and severe disregard for the principles of constitutionalism is evident from the ordeal itself and the extent to which institutionalized State action in encroaching upon human rights and freedoms has never been more concerning.

- b) *The death of Professor G.N. Saibaba*: - The death of Professor G.N. Saibaba is yet another incident which reminds the public at large of the horrors faced under the UAPA, 1967 and consolidates the cause against the begetting of draconian laws in a post-independent India. Professor G.N. Saibaba was a former professor at Delhi University who was arrested by the police in 2014 on the grounds of alleged Maoist links to the banned Communist Party of India. He was arrested on grounds of conspiracy to wage war against the State through unlawful activities. Professor Saibaba was booked under the UAPA, 1967 and had been made to go through unprecedented periods of incarceration. He was temporarily granted bail on medical grounds back in 2015 and 2016 however, he was shortly brought back to prison after the same. The following years were nothing less than years of struggle when he was repeatedly rejected of bail on medical grounds owing to his medical ailments<sup>21</sup>. Professor Saibaba had been suffering from ailments such as hypertension, diabetes and was disabled more than 90 percent which kept him confined to his wheelchair. The undermaintained conditions of prison had

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<sup>19</sup> Namrata Chakraborty & Ashish Deshpande, *Assessing the Unlawful Activities (Prevention) Act, 1967 (UAPA) and Its Impact on India's Prison Justice System*, 4 INT'L J.L. MGMT. & HUMAN. 3401, 3405-3407 (2021).

<sup>20</sup> Maitreya Sharma & Shivansh Agrawal, *Examining UAPA and NIA: Intersection of Human Rights and National Security*, 4 INT'L J.L. MGMT. & HUMAN. 664, 669-670 (2021).

<sup>21</sup> Vijay Kishor Tiwari, Arjun Ghosh & Sushanth Gajula, *Critical Pedagogy of the Disabled in Legal Academy and Possibility of Emancipatory Script of Disability Movements: A Critical Note*, 16 NUJS L. REV. 420, 444-446 (2023).

further aggravated his conditions causing him severe paralysis and suffering. On October 14, 2022 Professor Saibaba had been acquitted by the Nagpur Bench of Bombay High Court on the grounds that the trial court had proceeded with the conviction in spite of no sanction being priorly obtained to prosecute. This acquittal was short lived however as subsequently a special sitting was arranged upon appeal by the Maharashtra government to the Supreme Court whereby the acquittal order was stayed by the Supreme Court as it considered that the case was not adjudicated based upon merits and only procedural technicalities. This decision stood unprecedented as it reflected the extent to which vested interests had pervaded the fundamental organs of the government and indeed the democratic edifice at large. It was only on April 2023 when the Supreme Court had directed the High Court to take up the matter again and decide the case based on merits. This led to the second acquittal by the Bombay High Court in March 5, 2024 which held that not considering procedural technicalities is per se a failure of justice<sup>22</sup>. This shows yet again as to how the judicial system has been fraught with unprecedented flaws which delayed Saibaba's acquittal to extent where after his acquittal Professor Saibaba had to fight for his life in hospital leading to his inevitable demise on October 12, 2024 at the age of 57. The notion of 'justice delayed is justice denied' has never held more significance throughout India's administrative and political discourse and India's functioning agents of government including all of legislature, executive and judicial branches have never been more functionally inadequate. These incidents are the pragmatic evidences of India's eroding democracy and reforms for the existing edifice is more so prevalent than ever before.

### **Conclusion and Recommendations: -**

India's trends of rising despotism have been deeply entrenched into the very institutions and organs which are meant to prevent it. The ideal democracy undoubtedly is neither desired nor achievable in the light of present circumstances. This does not mean that a democratic nation will stray from the fundamental tenets which constitute it in the first place. Fundamental rights and freedoms are essentials of any democracy subject to reasonable restrictions in the interest of maintenance of the nation's order, however such restrictions cannot amount to curtailment of conditions for a dignified life without supervening circumstances which allow the same. The entire paper has observed that exercise of State power has been more in line with promoting disparities in the power imbalance rather than preserving or consolidating democratic

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<sup>22</sup>ZIYA US SALAM, *The Bhima Koregaon case and what it tells us about democracy*, THE HINDU (Apr. 11, 2024, 10:38 AM), <https://www.thehindu.com/books/the-bhima-koregaon-case-and-what-it-tells-us-about-democracy/article68050338.ece>.

conditions of rule and life. This is understood from the glaring lack of public influence on institutional process which ultimately serves the premises for legitimization of draconian laws, excess executive action and judicial impairment and inefficacy in the modern discourse. The contemplation lies with respect to the way forward. Unless effective reforms are introduced incidents such as those of Professor G.N. Saibaba and Father Stan Swamy may very well turn out to be casual stories of everyday life. India's status as a democracy may very well be reduced to an electoral autocracy and in order to prevent the same public scrutiny must be given more authoritative influence within the existing systems. Instruments of popular polls, independent surveys mandatorily giving sanction to legislative actions are some of the ways in which India's democracy may be sustained and pave the way for a desired future of welfare and development. Thus, the UAPA, 1967 must not only be repealed but such measures and instrumentalities must be introduced which prevent the enactment of such legislations in the first place. A democracy is formed out of the popular will and it can only be absolved by the popular will itself. The popular will thus cannot be disregarded and be subject to undue vested interests leading to a despotic order against the popular will.