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A blot on Indian civilisation

Charles Chasie

MUCH has been written about the extraordinary and extra-judicial legislation in India which have become a blot on its civilisation and greatness. Such legislation ridicules India's democracy, justice system, equality and fundamental human rights and makes a mockery of the very Constitution, all in the name of "national security" and "fighting insurgency".

This extraordinary laws have naturally often come under severe attack from various quarters, both within and outside the country. Some have also questioned whether national security is synonymous with security of the armed personnel because these laws, like the Armed Forces (Special Powers) Act, have more to do with protecting the security forces and their actions than securing the safety and security of the public.

The fact is that human security of all citizens of the country forms the core of national security.

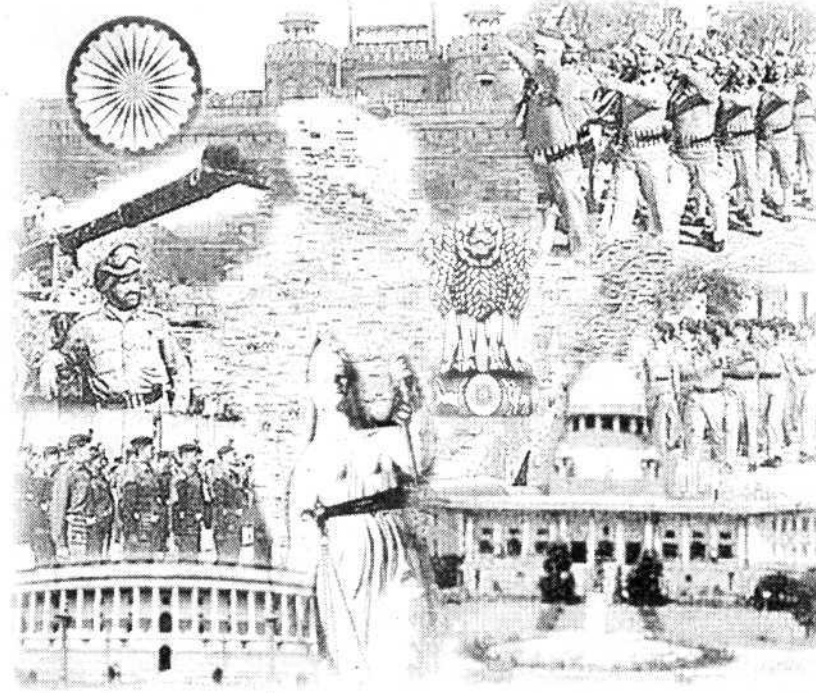
Some of these laws are not applicable to other parts of India. There are the Assam Maintenance of Public Order, 1953, Assam Disturbed Areas Act, 1955, Armed Forces (Special Powers) Act, 1958 (later amended to extend the area of operation), and the Nagaland Security Regulation Act, 1962. All these were initially promulgated to deal with Naga insurgency. The Assam Maintenance of Public Order, 1953, was promulgated about two months after Nehru's disastrous visit to Kohima with his Myanmar counterpart U Nu. It set the stage for harsher and inhuman measures in subsequent years.

Unimaginable atrocities have taken

place under cover of these laws and a person like SC Jamir, now governor of Maharashtra, felt compelled to use language like "concentration camps" in Naga areas. Former Lok Sabha speaker PA Sangma, described the AF(SP) Act as "more inhuman than any inhuman law" anywhere in the world. At the time of its introduction in Parliament, L Achtau Singh, an MP from Manipur, described AF(SP) Act as an "anti democratic measure, a lawless law".

What do these laws achieve? They empower the executive and the armed forces to exercise extraordinary and unimaginable powers over the general population in the name of dealing with "insurgency" in the North-east and Jammu and Kashmir. What stands out, in contrast, is that the Naxalite and other threats elsewhere, serious as they are, were obviously not perceived to be a threat to the nation-state as the above laws were never applied to them at any time. But let us try to summarise these laws:

- They empower the search of anyone and in any place, at any time of day or night, without warrant;
- They vest the executive (civilian authorities) and Army personnel with so much power that a person is considered guilty unless he/she can first prove his/her innocence;
- The right to private property is suspended as the state authorities can vacate, occupy and/or confiscate any community or private property or other rights at any time and may even impose discriminatory collective fines—a notion repugnant to modern jurisprudence;
- All movements of citizens, including any activities, are strictly regula-



ted;

- Entire villages have been burnt to ashes while the villagers themselves have been herded into open enclosures, sometimes far away from their original villages. "Village grouping" was the term used by the authorities but the conditions were more that of "concentration camps";
- These extraordinary laws empower the enforcing agencies/personnel, to use any kind of force, even to the extent of killing people on mere suspicion; and
- No person who has suffered under these laws can seek redressal in a court of law unless permission is first granted by the executive. Under these

laws the judicial pillar of democracy is missing.

Most people have become familiar with the AF(SP) Act because of the agitations in Manipur, a few years ago, and the wide publicity received in the regional and national media. For a while, it stirred the conscience of mainland India when Manipuri women took out a desperate nude protest march in the heart of Imphal and graphic photographs were splashed on media pages. Sadly, such "stirrings" proved fickle and shortlived as the law stays.

The Nagaland Security Regulation Act, 1962, is even more obnoxious than the AF(SP) Act. This Act contains all the same clauses as the AF(SP) Act

except that it empowers civil/police authorities. It regulates every activity of the people, freedom of movement is suspended, the right to private property can be taken away at any time, free trade is not available, collective fines are allowed, and people can be killed with impunity by civilian authorities. And without prior permission of the same authorities, no complaint can even be registered with or accepted by the judiciary! This law made possible the infamous "village groupings".

What is surprising is that although these extra-judicial laws contradict and negate the Constitution and raise issues about the Indian polity, few have raised their voices against such legislation! And these laws remain.

Consider the following:

■ The Preamble to the Constitution talks about a democratic republic, ensuring justice, liberty, equality and fraternity, assuring the dignity of the individual. These laws negate everything promised in the Preamble. How?

■ These laws are undemocratic as they remove the judiciary from their purview. No "victim" can seek redressal in a court of law unless first permitted by the executive.

■ There can be no justice when "justice" depends on the interpretation of the government and its empowered functionaries without any check from the judiciary. In criminal justice, a person is presumed innocent unless proven guilty. Under these laws, a person is presumed guilty unless he/she can prove his/her innocence before the empowered authorities.

■ How can there be liberty, as promised by the Constitution, when even fundamental human rights are removed/suspended?

■ There can be no question of equality when individuals have been empowered to shoot and kill fellow

citizens on mere suspicion! These laws are also not uniformly applied to all parts of India. Indeed, these laws provide societal structures for inequality among citizens.

■ How can there be fraternity under this legislation when the people over whom these laws are applied are denied their basic human dignity?

■ These extraordinary and extra-judicial laws disturb the federal structure of the Constitution and smack of 19th century colonial attitudes. Can India march into the future with its present abilities but with such archaic thinking and still hope to play a global role?

■ These extra-judicial laws betray the government of India's reluctance to seek solutions through dialogue and political process. But, today, everyone agrees that meeting across the table and political process are the only means to settle problematic issues.

■ These extra-judicial laws violate basic universal human values and human security. They also violate international covenants that India has entered into and is committed to uphold. They reduce India's image in the world.

■ These laws belittle and negate the values with which India fought for its independence. Human freedom was prized over human slavery that colonialism represented.

■ These laws are a great blemish and stigma on Indian civilisation and greatness.

On the positive side, one must mention that the Right to Information Act and the National Rural Employment Guarantee Act are the envy of every nation in the world. Others wonder how a country of India's size and complexity could do it?! One believes this is how India will play its global role.

(The author is a Kohima-based freelance journalist.)