

Harmonising equilibrium

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SC's judgement pertaining to Bhima Koregaon case indicates the urge to strike a balance between personal liberty and national security; write Abhinav Mehrotra & Amit Upadhyay

BY [Abhinav Mehrotra & Amit Upadhyay](#) 22 Aug 2023 5:44 PM



The debate around personal liberty and national security concerns has received renewed interest with the Supreme Court's recent ruling, which held that keeping literature on violence will not be considered a terror act. The two men, activists Vernon Gonsalves and Arun Ferreira, who have been accused in the Bhima Koregaon violence case, have been in jail since August 2018 and are facing charges under the Unlawful Activities (Prevention) Act 1967 (UAPA Act). The case pertains to the Elgar Parishad conclave held in Pune on December 31, 2017, commemorating the 200th anniversary of the Battle of Koregaon Bhima. In this context, important questions arise regarding what exactly terrorism is, the UAPA Act, and the rights violated and finally, the way forward.

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Supreme Court's action

The Supreme court granted bail to the accused while imposing certain conditions due to the pending criminal cases against Vernon Gonsalves involving similar allegations, including under the UAPA. The court also observed that the five-year-long incarceration of the activists made them duly eligible for bail. The Supreme Court stated that even though the offences they had been accused of were grave, that alone cannot be the sole ground to deny them bail and to justify their continued detention pending the trial.

Defining terrorism

In simple terms, terrorism is neither state-specific nor an ideology. Rather, it is a method through which the aim of inflicting violence is pursued by intimidating or terrorising the people on whom harm has been inflicted to secure compliance from groups, primarily political actors. The definitions adopted by the states for terrorism tend to define whom the proposed counter-terrorism measure captures, i.e., the subjects of the intended law, which means the range of individuals whose human rights will be restricted, as in this case were the activists Vernon Gonsalves and Arun Ferreira. The degree of such restriction on human rights and freedom is contingent upon the nature of the terrorism threat that the State has identified resulting from such an act. Several restrictions can be imposed in the garb of such measures that restrict fundamental human rights, such as indefinite detention and surveillance, as seen in this case, or treatment based on secret or classified information denied to the accused. However, there is a need to reflect upon the obstacles in bringing clarity on what exactly is the offense of terrorism, and how they are imposed. Since terrorist groups do not owe loyalty to any national flag, religion, or even ethnic community, attributing responsibility for the acts of terrorism has become next to impossible.

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The UAPA Act, 1967

Under the UAPA, the offence of committing a terrorist act includes, using force against a public official, using force against any individual to pressure the government, using violent means to kill, damage property, or to disrupt any supplies or services essential to the life of the community in India or any foreign country. Such wide powers of search, seizure, and arrest allow any officer of a Designated Authority under section 43 A of the UAPA to search any person or property and seize any property or arrest any such person. Thus, under the garb of such wide powers, any time a prisoner is subjected to an indefinite period of confinement, it can amount to torture or cruel, inhuman, and degrading treatment, which impacts an individual's dignity as understood under Article 21 of the Constitution that deals with the right to life and personal liberty. Furthermore, under laws like the UAPA, a person convicted or put in prison cannot claim all the fundamental rights available to an ordinary person. However, certain rights enumerated in Part III of the Constitution are available to a prisoner also because he remains a "person" inside the prison. There are several issues that exist with laws like UAPA which are also called security laws that operate alongside ordinary substantive and procedural criminal codes. Such laws are justified by the argument that ordinary criminal law cannot address certain national security threats, and such threats demand a separate mechanism. These

legislations aim to preserve, inter alia, national security, public order, public peace, and religious harmony to establish the rule of law. The terms 'state security' and 'public order' have not been defined under the Act, and the scope of offenses under anti-terrorism laws is very broad.

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The way forward

From now on, there is a need to argue for pressing reforms involving the right of defence by international legal standards, the redefining of extraordinary powers with the state to designate any area or situation as disturbed, alongside the powers to prosecute the concerned individuals and restricting the power with the law enforcement agencies like the police so that offences such as committing a terrorist act or disturbing public order are well-defined. Police and prosecutorial powers are required to be correspondingly more confined.

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