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Overwhelming Legislative Intervention and its Impact on NE State of Manipur

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ABSTRACT: Law maker occupies a significant status and position in a state. The very purpose of legislation is not only to serve for the welfare and happiness of the people but also to harmonize the relation between the state and its citizens. Every legislation ought to be the expression of the will of general masses. An ideal state requires just, fair and reasonable law that essentially aims to promote and protect the rights and freedoms of citizens of this country. On the other hand, such law shall not overstep its legitimate boundary because the ultimate end of the law in a democratic country is to render justice to all the needy people without discrimination. Law is an instrument of social change and it invariably occupies a significant position in every human society. It always aims to harmonise the relation between the rulers and their subjects, as it happens to be the connecting link between the two entities. It also facilitates to construe a good governance *inter alia* a friendly atmosphere between the state and its citizens for which observance of due respect to the principles of rule of law and constitutionalism remains yet to be realized, especially for maintaining peace, harmony and development in the NE state of Manipur.

KEYWORDS: Prerogative, Constitutionalism, Harsh laws, Loyumba Silyen, Constitutional monarchy, Legitimate government, Political executive, Proclaimed area, Repressive measures, Infamous legislation, Progressive interpretation, Black letter law tradition, Resilience, Conditional legislation, Judicial scrutiny.

ROLE OF LEGISLATURE

Legislatures have the prerogative to make and unmake laws. There is a huge space for them to serve the citizens and also the opportunity to deprive of the rights and freedoms of citizens and individuals. One may also take into account the other flip sides of the legislatures' role, where they are often circumscribed by the political considerations and other influencing factors. As a result, they are often found socially and politically in a disadvantaged position, therefore, it is also equally significant to analyse the actual process of law making in India. Enacting and amending of legislation is one of the main functions of the parliament, the actual practice of law making process, adopted in India, shows that the compliance of democratic norms of consultation and transparency is yet to realise as per the common perception of the masses, this could be easily understood by analysing the enactment and invocation of those preventive detention and other special legislations in India. Universally accepted ways in making legislations always insist on the makers to take all the concerned stakeholders on board; however, on the contrary, such processes are normally found to be closely linked and associated with the bureaucratic set of functioning. It is not that the law makers always enact good laws for the people but they may also be circumscribed to make bad and harsh laws that may, unfortunately remain in the statute book of India for years together even for a century. On other hand, one of the basic responsibilities of the state is to promote and protect the lives and properties of citizens but not to deprive of them.

INVOCATION OF PREVENTIVE DETENTION LAWS

In the context of the state of Manipur, a written constitution was found enacted and adopted from the early period of eleventh century by the king *Meidingu Loiyumba* of Manipur in 1078 A.D, which was called *Loyumba Silyen*. Such legislation recognised and guaranteed certain fundamental rights and liberty of individual, and as such, the king was also placed under the law. Therefore, the very concept of the rule of law was followed and maintained in the state of Manipur even in the past. Thereafter, a constitutional monarchy was established under the Manipur State Constitution Act, 1947, that had recognised and guaranteed fundamental rights and duties of the citizens, such as, the right to life and liberty, right to equality, right to judicial remedy, right to reside, freedom of expression, freedom of religion and freedom of association, among others. When Manipur became a part of the union of India, the enactment and adoption of the constitution of India has again reinsured and reaffirmed the protection of citizen's rights and freedoms in the region. It is evident from the embodiment of the fundamental rights and directive principles of state policy incorporated in the parts III and IV of the constitution which are considered to be the conscience of the Indian constitution. Surprisingly, the constitution also contains the enabling provisions for the state to enact and invoke preventive detention laws. As such, preventive

detention is justified under Article 22 of the constitution by citing the rationality of maintaining the law and order and security of the state. The reason being is that the law of the land empowers the legitimate government with extraordinary power to arrest and detain any person on the very subjective satisfaction of the political executive of state. Whereas in some western countries like in UK and USA, the laws of preventive detention are applicable only during the war like situation but not during the peace time. In this regard, the preventive detention laws are found to be different from the other general criminal laws, especially in case of their objectives and jurisdictions, and as a matter of fact, the preventive detention laws are not primarily for punishing the alleged offender for the commission of a particular crimes but for intercepting and preventing him from committing such crimes.

The actual enactment and invocation of such preventive detention laws, which created serious impact on the citizens' rights and freedoms, began to roll out from the time of the British rule in India, and a deep rooted culture of arresting and detaining the individuals by the state on mere subjective satisfaction was put in place as a general rule rather than an exception. The republic of India has also been following the same suit either by allowing to continue such colonial nature of preventive laws or by enacting similar legislations in the name of national security, integrity and maintenance of law and order. Such culture of overwhelming intervention in the affairs of individuals' lives and liberties on the mere flimsy grounds have become the serious concern for both the contemporary democratic rulers and their subjects as well. Soon after the constitution of India came into force, the Preventive Detention Act, 1950 was enacted by the parliament of India with a view to preventing any person from acting in a manner prejudicial to the defence of India, the relation of India with foreign powers, the security of India or a state and also for the maintenance of supplies and services of essential commodities to the community, however, the said Act was heavily criticised from different quarters and later, it was scraped from the statute book of India. In the aftermath, the Maintenance of Internal Security Act (MISA), 1971 was passed by the parliament, which came into force from the 2nd July, 1971. The Act was again amended in July1975 during the national emergency and the power of judicial scrutiny was also taken away by the said Amendment Act. In addition, the grounds of arrest and detention of individual under the Act were not to be communicated to the detainee, and as such, the result was that the Act could not be challenged in any court of law. Union of India repealed the MISA in August 1979.

However, a similar preventive detention law was again put in place by the government on 22nd September 1980 by promulgating the National Security Ordinance of 1980. The object of enforcing the Ordinance was to deal with the emerging situation of communal disharmony, social tension, external activities and industrial unrest among others.

Another emerging debatable issue is that of sedition laws which relate to the prescription of boundaries of right to freedom of speech and expression of citizens of this country. Such law of sedition was one of the bonds of contention between the British government and the people of India, more particularly during the pre-independent period. Incorporation of provisions dealing with offence of seditious in the IPC of 1860 and enactment of the Prevention of Seditions Meetings Act, 1911 by the British parliament with the objectives of preventing the freedom of speech and expression *inter alia* freedom movement of Indian people against the British government are the clear testimonies of the past. Under the 1911 Sedition Act the district civil authority including the civil police has the power to decide on its own whether a particular meeting is a seditious or not. This particular Act can be imposed in any part or whole of state by a legitimate government. Even today such colonial nature of statutory Act has neither been repealed nor amended. The concerned legitimate government is empowered to declare certain area as the proclaimed area and also authorised to lift the same according to its subjective satisfaction, government of Manipur has declared under the Prevention of Seditions Act, 1911, two districts namely, Bishnupur and Thoubal as the proclaimed areas in the state. Similarly, the same proclamation was also extended by the government of Manipur to four districts namely, Churachandpur, Chandel, Ukhrul and Senapati with effect from 5th June, 2000.

CONSOLIDATING THE AFSPA, 1958

In the past human history, repressive measures were the usual practice adopted elsewhere in the world with the object to subjugate and quell down the people movements; however, after the end of colonial era, such anti-people measures have no place, especially in the democratic society. And on the top, such man made repressive measures, either they might be legislative or administrative, had never succeeded in resolving any kind of deep-rooted human problem. Surprisingly, new version of such legislations like the Armed Forces Special Powers Act, 1958 (AFSPA), which contains the colonial versions of the Armed Forces Special Powers Ordinance of 1942 of British India, and such law has also been often termed as the re-incarnation of the 1942 Ordinance, is still in the law book of India. Enactment and invocation of the AFSPA was basically to quell down the issue uprising in the Naga Hills of North east India, which might, in other word, be assumed for legitimizing the continuation of colonial measures within the free Indian territory. Mr. G.B. Pant, then the Home Minister of India, while discussing the matter in House, assured in the parliament that the AFSPA was enacted and invoked purely as a temporary measure. There was no much debate on the issue in the parliament except the two MPs from Manipur who had strongly resisted against the passing of such repressive Act.

The legislative intention of the 1958 Act was, primarily to content the ethnic uprising issue which was taken place in a small part of the republic of India. However, during the passage of invocation, the actual legislative intention of the Act seems to be overthrown, and it is also evident that there is a nuclear chain-reaction in the whole N.E. states almost in a perpetual manner ever since the Act has been invoked in the region. In a way, it is a kind of resilience of the past infamous conditional legislation of the

British rulers. The existing criminal laws of India are also found to be quite adequate to deal with such uprising issue of law and order, peace and tranquillity in the region even without resorting to the AFSPA which is itself an additional legislation. The AFSPA confers unbridled powers on the armed forces personnel with virtual immunity and impunity. It may not be an exaggeration to say that the mightier the state repression measures, the wider the discontent and proliferation of insurgency movement would, obviously unfold countless springs of violence in the region. Eventually, unwarranted things are also really happening in the region as a counter-productive result of such measures. The constitution of India is a unique in its nature and contents. All the constitutional authorities not only obtain their legitimate powers from the constitution but they are also obliged to follow and function in accordance with the written and unwritten constitutional mandates. Indeed, AFSPA is neither a martial law, preventive detention law nor an emergency legislation as per the constitutional law of India, but it is found to be a unique special legislation which undoubtedly contravenes the doctrines of rule of law and constitutionalism. Article 21, the core provision of the constitution, is no more an enabling proviso for promotion and protection of life and liberty of citizen, but it is certainly an enabling proviso of the state to enact and invoke laws which can take away one's life and liberty under the pretext of the term "procedure established by law". Apparently, it is immaterial for the state to determine whether the AFSPA is a just law or an unjust law for the simple reason is that the Act has been enacted in compliance with the doctrine of procedure established by law set forth in the Article 21 of the constitution.

JUDICIAL RESPONSES

Progressive interpretation of Article 21 of Indian constitution by the apex court of India in Maneka Gandhi's case (1978) has proved that the procedure established by law shall not be unfair, arbitrary or unreasonable, and it shall be just, fair and reasonable; therefore, it clearly indicates that even the legislative action shall not be out of the judicial scrutiny.

The court, as a promoter, protector and guarantor, is certainly expected to discharge what is generally expected to do by the general public. People normally go to the court for getting just and fair justice, believing that the court will readily response to the litigants beyond any reasonable doubt. The apex court judgement of 1997 pertaining to the constitutionality of AFSPA, which was delivered after a period of 17 years of pending in the same court obviously needs to be revisited in the light of various dimensions and dynamics. Deprivation of avenues for the victims of AFSPA seems to be overlooked by the court which cannot be accepted by any civilized legal system in the world; besides, the principles of just, fair and reasonable procedure established by law, as laid down in Maneka's case in 1978 by the same court, has not been reflected at all in the 1997 judgement. The court also sidelined the international obligations of India, set forth in the international multilateral treaties to which the union of India had acceded. It apparently shows the testimony of applying the doctrine of black letter law tradition that was often adopted by the court during the colonial era. The apex court did not mention, advertently or inadvertently the international obligations of government of India in its deliberation of 1997 judgement, instead, it had confined on the literal interpretation of statutory provisions by following its traditional formalities within the limited legal framework. Surprisingly, the court had also referred to many provisions of the international human rights laws in many of its related verdicts even before 1997. As a matter of fact, change itself is the life of law, the existing statutory bodies like the NHRC under the Protection of Human Rights Act, 1993 can also adopt the same method for facilitating to repeal the AFSPA, the way what the NHRC had done to the deletion of the TADA,1987. Indian judicial system allows the aggrieved individual of the court verdict to file review petition or even curative petition against the 1997 judgement in a larger constitutional bench of the same court, but it may not be so easy as it is commonly believed to be, simply because the common apprehension is that even the larger constitutional bench would also likely to follow the same suit of the 1997 judgement by upholding the national issue rather than by upholding the citizen's life and liberty of the region. Hopefully, thing may change in near future when such a pro-active judicial intervention begins to prefer the true sanctity of life and liberty of individual, as inviolable in any circumstances rather than a mere state affair, interestingly, this may also lead to override the doctrine of black letter law tradition.

Binding international obligation of the government of India arises not only from the codified international laws but also derives from its own national constitution. The AFSPA blatantly violates the basic tenets of international human rights documents to which government of India has been one of the signatory states. Since it is found incompatible in many respects with the provisions of the national well as the international legal documents, the recommendations of the Justice Jeevan Reddy Committee, the Administrative Reforms Committee and Santosh Hedge Committee among have, apparently revealed the need and essentiality of repealing the Act. In a similar manner, the international human rights bodies, such as the U.N. Human Rights Committee, UN Rapportuers and Amnesty International among others have also been making such observations consistently for repealing the Act. Reality is that despite of having people resistance movements against the retention of such colonial legacy, the Act is still found intact in the statute book and also found to be rigorously enforced in the region.

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