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Comparative analysis of human rights violation

By

The stringent Indian laws

Sidharth Sethunath

ABSTRACT

Human Rights as a concept developed recently, however its roots lie in traditions and documents of several cultures. World War II acted as a catalyst to properly document and ratify conventions that promote and protect human rights ascertain inalienable rights that every member of the human society is entitled to.

Throughout much of history, people acquired rights and responsibilities through their membership in a group—a family, indigenous nation, religion, class, community, or state. Most societies have had traditions similar to the "golden rule" of "Do unto others as you would have them do unto you." The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the Oldest written sources which address questions of people's duties, rights, and Responsibilities. In addition, the Inca and Aztec codes of conduct and justice and an Iroquois Constitution were Native American sources that existed well before the 18th Century. Infact, all societies, whether in oral or written tradition, have had systems of propriety and justice as well as ways of tending to the health and welfare of their members.

In India, human rights defenders faced huge challenges, including arbitrary arrest, detention and prosecution as a means of silencing them while freedom of expression was censored with draconian laws. Millions of indigenous forest dweller families were threatened with forced eviction. Women were not adequately protected from sexual and domestic violence, harassment and discrimination. There was a serious lack of accountability for murders and other attacks carried out by vigilante mobs against Hundreds of people based on their religious, ethnic, caste and gender identities. In my work, I hope to offer better clarity of the state of human rights in India.

INTRODUCTION

Human Rights violation laws have been enacted and came to be seen from the establishment of East India Company and there for these acts that created the authority not accountable for their basic human rights are often derived back from the colonial era from ‘Bengal Regulation III, of 1818, ‘Defense of India Act’ 1915, ‘Anarchical and Revolutionary Crimes Act, is popularly known as *Rowlatt Act* and Section 124 A of Indian Penal Code the seditious infringement charges that have its root from ‘Treason Act 1795’. However, because of these acts, the colonial rule all over India was able to have an authoritarian power on the citizens. These legislations always had to constantly face high levels of criticism, but they were never had been taken into account of the officials who wanted to continue the relentless powers and wanted to dictate the nation. By the end of World War II, the establishment of the United Nations ‘UN’ and the Universal Declaration of Human Rights ‘UDHR’ was adopted by the *General Assembly* to provide the fundamental right to individuals during the after math of *World War II* which witnessed the *Holocaust* the catastrophic human rights violation of the 20 the century.

For the first time in the history, the world came together and agreed for a document and a forum globally, that marked out all humans as being free and equal, regardless of sex, color, creed, religion, or other characteristics. The thirty rights and freedoms set out in the ‘UDHR’ include the right to be free from torture, the right to freedom of expression, the right to education, and it includes civil and political rights, like the rights to life, liberty, and privacy. It conjointly includes economic, social, and cultural rights, like the rights to social insurance, health.¹

The constitution of the Republic of India while framing its constitution ensured these rights were ensured to its citizen who was facing a protracted amount of suppression by the colonial rule and through fundamental rights it had been projected and enforced through *Fundamental Rights*. Although these were enforced and amended in times the impact has been hardly satisfactory. And their implementation of new legislation which was the new born of these parent laws.

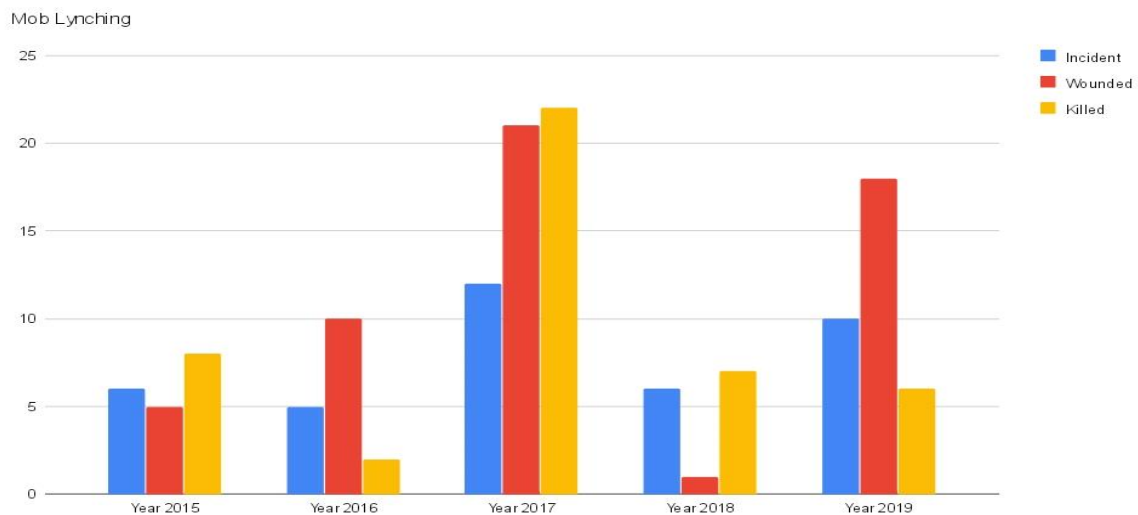
“Commit yourself to the noble struggle for human rights. You will make a greater person of yourself, a greater nation of your country and a fine world to live in”.

- Martin Luther King, Jr

¹ UN History of the Document <<https://www.un.org/en/sections/universal-declaration/history-document/index.html#:~:text=The Universal Declaration of Human Rights, which was%20Adopted by, of the Second World War>> accessed 1 October 2020.

HUMAN RIGHTS VIOLATION

Human Rights defenders faced *Brobdignagian* challenges to pursue their activities, including whimsical arrest detention, and prosecution as a method of silencing them. The revocation of Article 370 and 35A of the Constitution then, there has been a regular upward shove in human rights violations, however, Kashmiri no longer the only instance of this through the Republic of India.² Over 19 lakhs of the population from Assam are removed and were in the catastrophe of statelessness, as a result, they all were alienated been from the (NRC)³, To add to the current catastrophe scenario the Citizenship Amendment Act (CAA), which has been criticized for its exclusion of Muslims led to a nationwide protest. Immeasurable hate crimes against Muslims and other religious groups ethnic groups, including Dalits and Adivasis as well as caste and gender-based crimes occurred in the country and several were carried out by vigilante groups and mobs. Violent attacks included persecution and also the statistics of the rate of execution extremely high.



The marginalized society is the ones who are being got targeted at the hands of the offenders and the officials being mere spectators. The crime pattern shows that the marginalized society is in grave danger as there is no proper maintenance of law and order to ensure their human rights and to up bring them. Then there are set laws which are being used for various motives but all of these are clamping down the basic human rights and violating and putting them in a grave dangerous manner.

² Rifa Fareed 'ALJAZEERA' (www.aljazeera.com 8 July 2019) accessed 1 October 2020.

³ THE INDIAN EXPRESS (THE INDIAN EXPRESS, New Delhi 19 September 2019) accessed 1 October 2020.

But these current trends in cracking down of human rights is not a modern India. Violation of these civil liberties can be seen from the very beginning of the newly independent India and these were rigorously and timely wielded by the government in power whom so ever by means of new legislation and amendments.

PREVENTIVE DETENTION ACT, 1950, (PDA)

CRITICISM

The (PDA), 1950, was legislation which was the first of its kind stringent to being Inducted in Free Independent India after a century long colonial era which infringed millions of vital human rights. The law had an enormous role to play throughout the country to preserve law and order in the state. However, the law was scarcely used as a means to preserve law instead it was used as a means to deter political dissent by those in power and have led to massive police brutality throughout the country the judiciary has always been in support of the law, where most of the civilized countries across the globe never enacted such laws or gave assent to such legislation.

ARMED FORCE (SPECIAL POWER) ACT, 1958, (AFSPA)

CRITICISM

In the late sixties, there was a movement been taking place in the eastern part India popularly known as *Separatist Movement* due to the blooming *Naga* insurgency government had to implement new legislation called (AFSPA), It gave the security forces an immense amount of powers which violated the human rights of the people and this has led to innumerable cases of rape, murder and torture of naive human souls. The law had many basic issues like it did not define the distributed area and cannot be under judicial review once it has been declared as a distributed area. The law bluntly overrides Section 41 CrPC and also Article 21 of the constitution. The act merely paved the way for more inducts to the militant group as the law was not able to give it's the true essence and to maintain peace and stability. A serious percentage of violation and crimes was reported from the part of security forces and was observed by the Supreme Court in the *Naga Peoples Movement of Human Rights vs Union of India* and the committee report *Jeeven Reddy Committee* and *Santosh Hegde Committee* According to the report of the committee “five out of six kings were encounters fabricated by both the Assam Roles and the Manipur Police The committee also reported the use of disproportionate force and intron of

security forces in areas which are not notified as deathbed areas Even the local en found to be encroaching its domain in using lethal force thus mitting the unity granted to security forces”.

MAINTENANCE OF INTERNAL SECURITY ACT, 1971. (MISA)

CRITICISM

The draconian law has already been taken its inception and been incredibly helped the government to subdue the voices. As the (PDA), got lapsed and new law came into the force with just a name change and more power to detention (MISA), 1971 was legislated after the lining of the (PDA), Misuse and authoritarian implementation of force were used by the government in power all around the nation by horse human rights denial.

There were massively repressed around the nation and activist, students, political leaders across the nation were put behind the bars without trial and brutally tortured for protesting against the government.

Censorship was imposed by the government on the press due to which the reports of the acts were very much scrambled, there was an immense restriction on major political patient. cineraria and other forms of arts. The loss of millions of went unreported and the tortured by the security personnel were piled up high as there was no one to question it up and the violation of human right was at its peak after the Independence of Republic India.

JAMMU AND KASHMIR PUBLIC SAFETY ACT, 1978, (PSA)

CRITICISM

The law was introduced by the former chief minister of Jammu and Kashmir Mr. Sheik Abdulla in 1978 to curb the excessive timber smuggling. The (PSA), which was as soon ostensibly brought us an outstanding measure to detain humans who pose a severe and impending chance to security, continues to be used as a choose to the crook justice system. Authorities use the PSA to detain humans suspected of criminal offences towards whom does no longer have enough admissible tools to detain people.

(PSA), continues to violate numerous of India's obligations underneath, international human rights law standard, which include respecting free trail to the detainees to be at once knowledgeable for the reasons for their arrest to the judicial evaluation of the detention, to a free and fair trial, and to remedy for abuses.

Further, regressive amendments to the Act in 2018 have additionally led to detainees being held in prisons far from their homes, in violation of worldwide human rights standards. Detainees are frequently no longer provided with all applicable substances involving their detention, and shroud of secrecy surrounds the functioning of the Advisory Board, which is mandated to assess the instances of administrative detention below the (PSA), Unlawful detention and torture and different ill-treatment additionally continue to be enabled with the aid of the (PSA),⁴

Supreme Court Bench headed by Justice Sanjay Lai "*You should address us on two issues What is the maximum period for which a person can be detained and what is your proposal and how long do you propose to continue the detention*" the court was hearing the *Habeas Corpus* petition filed by the daughter of *Mehabooba Mufti*.⁵

Many other prominent leaders were under house arrest and detention for more than 6 months when the bifurcation of Jammu and Kashmir took place. Internet was shut for more than a year due to security reasons and still, the authority hasn't taken any major steps to bring things back to normal. Severe violation of human rights has been taking place in the valley since years and the 40% youth which comprise the population in the valley is facing severe mental and physical torture and are alienated from the rest of the world and media restriction is also being prevailing.⁶

NATIONAL SECURITY ACT, 1980, (NSA)

CRITICISM

(NSA), the detention orders are ambiguous and do not honestly communicate the crime As a result, like a violation of (UAPA), this imprecise definition approves the government to arrest protesters and human rights defenders in India delaying the giving sincerely cause. The detained person not entitled to any legal aid.⁷

To create matters worse, the grounds of detention are frequently no longer communicated to the person or woman detained in violation of Article 22(5) of the Constitution of India and additionally the International Covenant on Civil and Political Rights, to which India is additionally a signatory.⁸

⁴ Gorky Bhakshi, 'Jagrangosh' (m.jagranjish.com 7 February 2020) accessed 1 October 2020.

⁵ A Vaidyanathan, 'NDTV' (www.ndtv.com 29 September 2020) accessed 1 October 2020.

⁶ Rifa Fareed, 'ALJAZEERA' (www.aljazeera.com 17 August 2019) accessed 1 October 2020.

⁷ Simran Kashyap, 'oneindia' (www.oneindia.com 19 January 2020) accessed 1 October 2020.

⁸ICCPR (www.treaties.un.org) accessed 1 October 2020.

Moreover, the National Crime Records Bureau (NCRB), which collects crime data in India, doesn't include cases under the National Security Agency as no FIRS are registered in Jan 2019, Uttar Pradesh 3 persons beneath NSA were arrested in connection with an alleged cow-slaughter case.⁹

Dr Kafeel Khan who was booked under IPC 153A 1538 and 505 (2) by (NSA), for hate speech in Aligarh University during the (CAA), protest and was kept in detention for around 7 months without any proper evidence against him. The Allahabad High Court quashed his detention and said "*Neither detention of Kaleel was under (NSA), 1980 nor extension of detention are sustainable under the eyes of the law*".¹⁰

(NSA), has been used as a tool by those in the power to shut the mouth of those who speak against the regime. The dilemma has turned into an awful manner in the last 6 years. As of (NCRB), report of 2017 and 2018, there have been more than 1500 people detained under the act were 563 are still in custody and the rest of them were released Madhya Pradesh and Uttar Pradesh makes up 90% of these cases. Detention laws like (NSA), are adopted so sparingly without any sufficient proof to curb the liberty of the accused.¹¹

TERRORIST AND DISRUPTIVE ACTIVITIES ACT, 1987. (TADA) **CRITICISM**

Due to the growing insurgency in Punjab popularly known as Khalistan Movement, a new law was enacted. The law gave the government and the security forces enormous power to suppress the agitators across the nation.¹²

The legislation violated the international standard of fair trial as the trails were done in secretive manner and identity of the witness secret Instead of the judicial magistrate, the detainees can be brought before the executive magistrate who is an administrative officer or an official of the police.

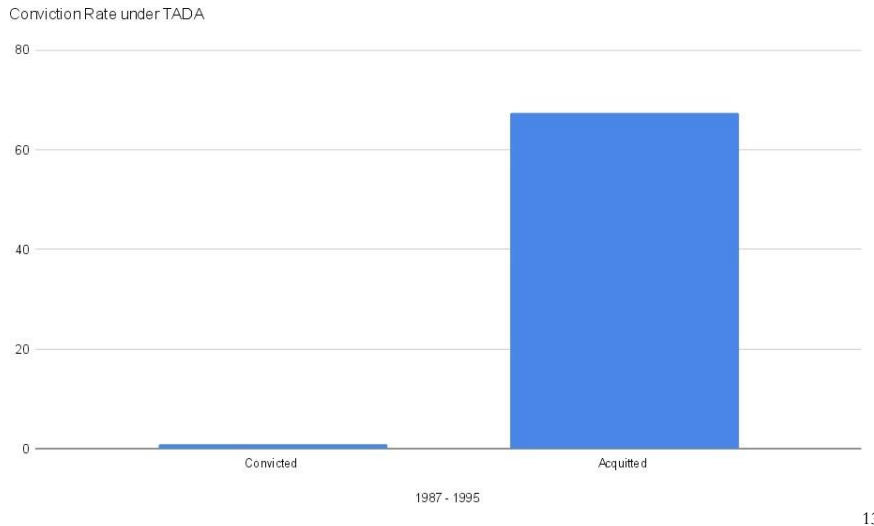
The law was widely manipulated by the security officers and weaponized against the minorities across the nation and massive amount of violation was reported and the statistic of the conviction rate tells us the legislation was failure to maintain peace. The percentage of conviction was merely 1% and the rest of the were acquitted.

⁹ Saurab Sharma, 'Reuters' (www.reuters.com 11 September 2020) accessed 1 October 2020.

¹⁰ Omar Rashid, 'THE HINDU' (www.thehindu.com 2 September 2020) accessed 1 October 2020.

¹¹ Rana Sakil, 'THE NEW INDIAN EXPRESS' (www.newindianexpress.com 21 September 2020) accessed 1 October 2020.

¹² Unlaw Activities Prevention Act (www.mha.gov.in) accessed 2 October 2020.



UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967, (UAPA) AND SEDITION LAW CRITICISM

According to the legislation, any unlawful activity is an act of terrorism. Broad discretion in the law had made quite a variety of types of legit public protests towards authorities excesses or inactions over the years are represented as terrorist things beneath below this legislation.

Unlike the traditional legal guidelines of India, humans can be held in detention except for the cost for up to a hundred and eighty days or perhaps greater below the UAPA, below the worldwide standard of the period of detention. Until 2019, only membership to both unlawful associations and terrorist organizations was a criminal offence beneath the (UAPA).

This was once challenged during a series of instances before the Supreme Court of India, which noted that “*criminalization of mere membership of an organization constitutes an unreasonable limitation on the right to freedom of association, till such membership leads to or incites violence*”.

In July 2019, in an unprecedented flip of events, the ambit of (UAPA), was expanded and it was amended for permitting the authorities to designate a character as a terrorist besides trial.¹⁴

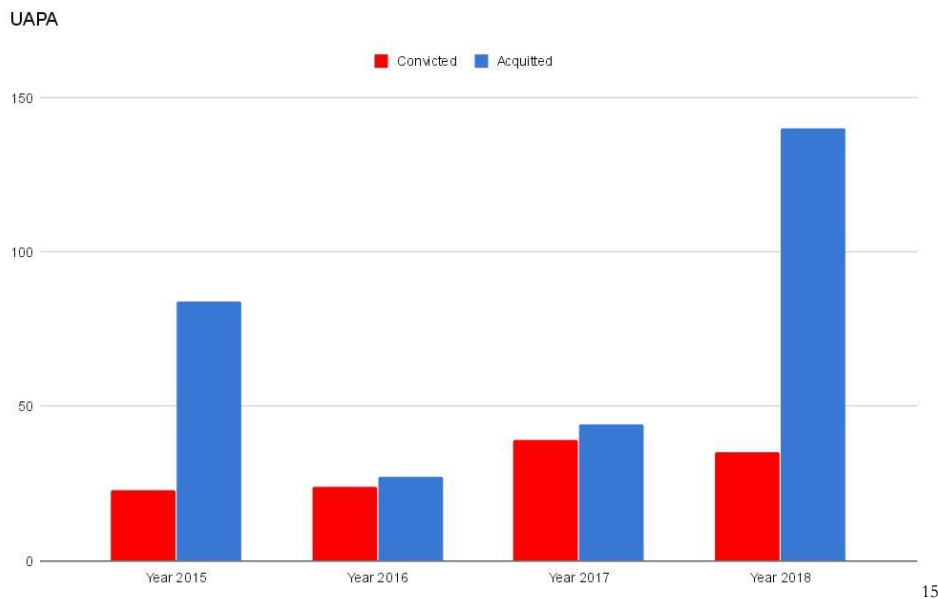
Besides being in absolute violation of worldwide human rights regulation and also the Constitution of India, this modification opened the floodgate to more harassment of human rights defenders and activists.

(UAPA), has turned out to be a tool for the government to keep the suspect in jail for a protracted period of time. According to the National Crime Records Bureau, in 2018, over 93 of

¹³ National Crime Record Burea (www.ncrb.gov.in) accessed 2 October 2020.

¹⁴ Ruchi Taneja, 'NDTV' (www.ndtv.com 2 August 2019) accessed 2 October 2020.

cases under (UAPA), has been pending before the courts whereas the conviction rate only 27% this means that anti-terror trials seldom outcome not often convicted. Add to this, the strict bail provisions below the (UAPA), and sluggish investigatory method the law even more draconian.



(UAPA), in recent time has been subjected to creating panic among people who speak against the government. In the recent 4 years, (UAPA), has been charged on various scholars and students across the nation whoever speaks or raise voice against the government. This stringent law is used as a spear by the government to halt the actions of the agitators. One of the major shortcomings shows that in the reason time the conviction rate is very low as it's been used to charge people without proper evidence.¹⁶

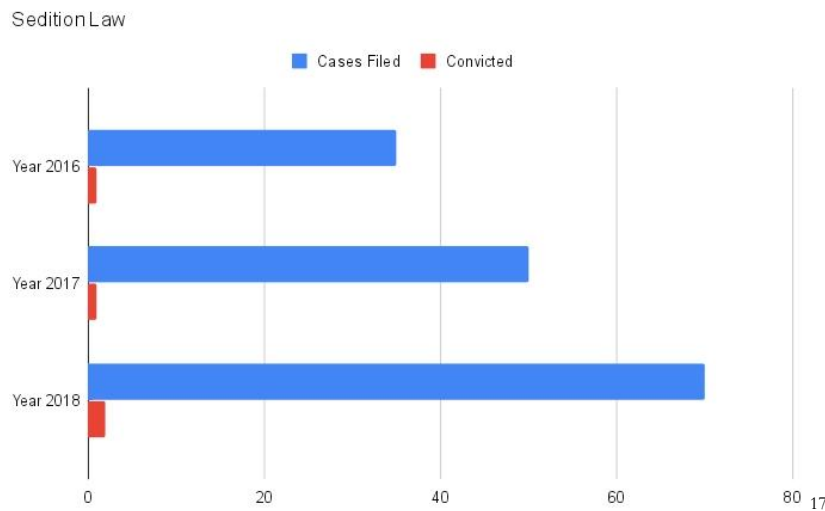
Sedition was inducted to repress the independence struggle movement the dark contrast of the law is that, though it was abolished in Britain in 2009 country and the legislation still prevails in a country who fought against these laws and colonial regime. The purpose of the law is still used to subdue the voice against a regime whether it was pre independence or in the present, scenario around nation remains the same.

The National Crime Records Bureau data shows that the seditious charge is being manipulated to impose the draconian law on the human rights activist, political leaders and students who are being vocal and protesting against the regime. Here the media is also influencing and falsifying the citizen by portraying the activist and which hunting them for mere sensationalism or other political motives.

¹⁵ National Crime Record Bureau (www.ncrb.gov.in) accessed 2 October 2020.

¹⁶ THE WIRE (www.thewire.in 27 April 2020)

From the pre independence case of *The Queen-Empress vs. Bal Gangadhar Tilak* till the *Kanhaiya Kumar* case the dilemma lingers with injustice and freedom of expression.



This is despite the judiciary's consistent upholding of every citizen's right to fairly and justly criticize the inactions and inadequacies of the Government. The Supreme Court of India, in a landmark judgment of *Kedar Nath Singh v. State of Bihar (1962)*, had ruled that citizen has a right to say or write whatever he likes about the Government or its measures, by way of criticism or comment so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.

Mahatma Gandhi in 1922, after being charged with sedition by the British Government for an article published in the local magazine had said "*Section 124A under which I am charged is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of a citizen*".

Jawaharlal Nehru India's first Prime Minister, had termed the draconian law as "obnoxious" and "highly objectionable" and had observed that "the sooner we get rid of it the better".

Aseem Trivedi vs State of Maharashtra (2012), the court observed that "*A citizen has right to say or write whatever he likes about the Government, or its measures by way of criticism or comments, so long as he does not incite people to violence against the Government established by law or with the intention of creating public order*".

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Sedition laws or laws, in general, are legislation which has to be evolved over time and the laws cannot be stick on to the past for mere benefits India even after being independent for 73 years has don't repeal the law on sedition as ruling parties still use it as a weapon of suppressing

¹⁷ NCRB

¹⁸ Sara H 'HOMEGROWN' (homegown.co.in 18 February 2016) accessed 2 October 2020.

dissent. There are several discussions relating to the removal of the act as its Colonial Law that was utilized by the British on Indians throughout the independence struggle India has been a recent witness to the unprecedented use of the violation law throughout lockdown once the law was accustomed to mute voices questioning the failure of the government and lack of preparation whereas, imposing internment.¹⁹

ATTACK ON INSTITUTION: SUPPRESSION OF TRUTH

Organization and Institution which bring out the bitter truth of human rights violation are being strictly scrutinized over their works and being tormented by the government with the help of central law enforcement departments across the nation. There has been a recent onslaught of NGOs and other human rights organization for critiquing the government stance on human rights issues and disclosing the humiliating violation of human rights in Kashmir and Delhi Riots.²⁰ There has been a recent shutting down of major human rights organization in India due to frequent intervene by the law enforcement departments and other central forces By the legislation of 'FCRA Law', the operation of human rights organization would be into tremendous deterioration as the clauses in the legislation makes it impossible for the functioning of such institutions.²¹

CONCLUSION

Human Rights violation through the legislation of draconian laws can be seen in India a country which is a member of the United Nations and the international regulation is never been maintained by the authorities in power. Though the repressive and detention laws were introduced by the British in India the dark contrast is these laws are still prevailing and the government in power have relentlessly used it throughout its course of action with innumerable times. The evils which we tried to broom out from the nation is getting embedded in the minds of people and are creating a sense of ha te towards others and leading to a basic denial of rights. The government in power is using all the authoritarian legislation to quell reality, Immediate action by civil society through acknowledgement and awareness programs should be a way out of this. If a law is not able to provide Justice it has to be wiped out the nation in order for a better civilized free nation. Human Rights are the basic principle of the country and it has to

¹⁹ THE HOOT (asu.thehoot.org 18 March 2015) accessed 2 October 2020.

²⁰ Sameer Hasir "The New York Times" (www.nytimes.com 29 September 2020) accessed 2 October 2020.

²¹ Haripriya Suresh "The NEWS Minute" (www.thenewsminute.com 22 September 2020) accessed 2 October 2020.

been maintained as it paves the basic structure of the constitution. A prosperous environment with healthy legislation, equal freedoms, the patience to listen to the critique and also to discuss out the problem to accomplish a promising outcome is the part of a healthy modern democracy.

"No one is born hating another person because of the color of his skin or his background or his religion. People must learn to hate, and if they can learn to hate, they can be taught to love for love comes more naturally to the human heart than its opposite"

- Nelson Mandela