Preventive Detention in India: History and Practice

Abstract

This paper critically examines the colonial and constitutional trajectory of the preventive detention measure and demonstrates its political nature beyond the principles of due process of law. Further, by critically profiling detention law and its practices in the recently formed state of Telangana, the research argues that the preventive detention law has a tendency to mainstream itself, making incursions into spaces of ordinary law in the name of public interest and public order. It argues that the recent developments of increasing deprivation of freedoms of citizens in India requires to be revisited in the background of already institutionalized methods of detentions without trial but applicable in principle only to certain classes of citizens under certain circumstances.

Keywords: Preventive detention, due process of law, arbitrary power, detenu, article 22 and Indian Constitution

Introduction

The Article 22 of the Indian Constitution primarily excludes the procedural rights to those who are arrested under preventive detention laws. Replacing the due process rights, available to citizens, it truncates legal defence against the state and empowers the parliament to make laws with a power to detain a certain classes of citizens without trial. Indian state has produced eight central legislations and 24 state legislations under preventive detention category. They legitimize the deprivation of freedom without trial on the grounds of threat to security of state and maintenance of public order. Of late, there is a general perception that the Indian state has

become more repressive on its citizens in an unprecedented manner. While the repression is more palpable than earlier, it is neither unprecedented nor sudden. To demonstrate the existence of institutionalized repressive measures, this paper captures the historical trajectory of the preventive detention laws and argues that the state has constitutionalized and legalized the deprivation of the freedom of the citizens without due process of law under extraordinary circumstances which are being normalized. This research in its first part argues that the concept of preventive detention has been political in nature by tracing its genealogy in the colonial state. In the second part, the paper tries to demonstrate how this exceptional measure has been making inroads into spaces of ordinary law by analyzing its recent political trajectory in Telangana and argues it is no long an exceptional measure but has a tendency to mainstream itself in practice.

Materials and Method

The material for the research has been collected from the internet sources and direct contact with the detenus from the field. The researcher interviewed detenus during and after their incarceration. The detention orders and judgments on the detentions are available in the websites and based on them the detenus and some police officers were interviewed. But mostly the written documents are used in this research since the detenus, both police and prison personnel wished to remain anonymous.

Macro Picture

In 2019, Indian governments have detained more than one lakh citizens without trial under preventive detention laws. 489 of them were detained under the National Security Act, 1980 and the rest on other laws for maintaining public order[1]. The perception that the Indian state is more repressive than before is primarily concerned with the first category of detenus, who are political dissidents. At the end of 2019, there were 14,843 detenus in *police custody*, but only

7332[2] of them were incarcerated in *prisons*. While there can be an increasing threat to freedom of citizens in general, this paper demonstrates how the pattern of detention of certain classes of citizens without trial has long been normalized. It contextualizes the historical trajectory of the power of detention in India and its contemporary manifestations in Telangana to make explicit the state's attitude towards the civil liberties of common citizens.

Part-One

The Indian state, more than its colonial predecessor, has been institutionalizing the power of detention[3] without trial. This power has a long colonial history, but it was exercised on grounds of threat to the security of the state and that of public order. It was constitutionalized by independent India in Article 22. The Constitution itself has created in the article various classes of cases for which the principles of due process of law are not applicable. The article 22 has enabled the creation of detention laws which have rendered procedural rights[4] for the accused non-existent. While the complaints of delay in criminal justice system continue, detention laws and their systematic practices have increased.

The Colonial Ground

Originally invented to occasionally "place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding,"[5] the power of detention without trial first appears in the Bengal State Prisoners Regulation of 1818 of the East India Company. Widened[6] and even given a racial turn[7] in law and practice in 19th century, it was turned into a legislative theme in the Government of India Act, 1919.[8] Earlier, detention without trial is the substance of the Defence of India Act, 1915. Since then, this power had transmuted into 'Public Order' in 1935,[9] 'Public Safety' in 1939,[10] 'Public Security' in 1947, 'Security of India'[11] and 'Security of State' in 1950.[12] Its species 'the threat to public

order' and 'essential services to the community' had gained momentum during Second World War. The Constitution granted legitimacy to this colonial concept and its abstract forms as themes of legislation. Deceptively metonymical, the concepts of 'public order' and 'security of state' surrogate for power without restraints. The nature and necessity of this power was blatantly defended by the nascent Indian state in the Constituent Assembly (CA). It was coerced into Indian Constitution as consensus was impossible because of the wounds of colonial repression still being fresh.

Preventive detention: supremacy of state over judicial Vagaries

Indian Constitution authorized the state through Article 22 to transcend due process of law for the detention of citizens accused of offences under certain category of cases and circumstances.[13] The CA[14] had witnessed bitter and unsuccessful fights against it. The key players of the state, including Nehru, Sardar Patel and Ambedkar, transformed the question of freedom of citizens against the arbitrary power into one of the supremacy of parliament over judiciary in democracy. In their defense, the way they framed the question was interesting. They seized the moment of Independence to portray the parliament as the embodiment of democracy. The myth of separation of powers between parliament and executive was still lingering at least in principle. The emerging state during the freedom struggle had promised to champion the economic cause of the masses and the working class. In this context, the question was framed as whether there should be any limits on the parliament's power to legislate. This appeared in Article 21 as a choice between adopting 'due process of law' and 'procedure established by law' while depriving the citizens of their life and liberty. The due process of law as a principle in jurisprudence had already established itself as a legitimate legal restraint on the power of the state to protect the rights of the citizens. The defenders of 'procedure established by law' argued that the

conservative Supreme Court of the USA, following the 'due process of law,' had for long stalled the laws of minimum wages, considering them to be invading the personal liberty of labourers to enter into contracts with employers. Alladi Krishnaswami Ayyar argued that such judicial vagaries made it difficult for the American state to make social legislations to protect workers' interests. Independent India required protective social legislations beyond the reach of judicial arbitrariness. He argued for the power to protect the rights of the working class and believed that the principle of due process of law poses a threat to parliamentary democracy from a conservative judiciary. He ignored the fact that the principle of due of process of law entails not only the power of the judiciary to review the validity of law but also to defend the freedom of citizens from arbitrary procedures established by law. As a result, Article 21 was framed without a due process of law and Article 22 allowed for detention powers without trial. The power of the state to make arbitrary laws triumphed over any commitment to defend the civil liberties of citizens. Initially, Ambedkar vociferously defended preventive detention powers and the formulation that deprived rights through any "procedure established by law," but when it was opposed with powerful arguments, he preferred to remain neutral.[15] However, no one argued that both parliament and judiciary are democratic institutions only so long as they protect the personal liberties as well as collective rights of citizens. Pitching personal liberties against collective rights of masses, power of the parliament against that of judiciary is a misdirecting the debate.

Besides, the political challenges from communists, Partition violence and recalcitrant princely states had provided the state the much-required justification for preventive detention laws.[16] Consequently, the majority in the CA had to recognize "the presence of alien enemy within; threat to security of state; and a threat to public order"[17] as extraordinary circumstances to invoke

this power. To restrict the scope of Article 22, the defenders of civil liberties moved 36 amendments but none were considered. They were prescient in imagining a grave threat to the freedom of citizens from the state.

Adapting the colonial law with lightning speed: The political significance of the detention power is clear from the lightning speed with which the new state adapted and adopted this colonial law. After Independence, the Government of India Act, 1935 became the Provisional Constitution. With the lapse of British suzerainty over princely states, Nehru's government had adopted, among other things, the detention provisions of the 1935 Act concerned with the 'relations with the acceding States.'[18] On the seventh day of the nation's freedom, it extended the Bengal Regulation, 1818[19] to the entirety of India. Sardar Patel extended the Public Safety Ordinance of East Punjab, 1948 to Delhi under which all the political dissenters in the princely states including Hyderabad were detained.[20] However the actual power to handle the detenus was with the provinces.[21] Moreover, fifteen provinces had already enacted Public Security Laws.[22] Consequently, detenus challenged Delhi's authority to transfer them from one state to another. In response, Sardar Patel sought from the CA the power to handle the detenus through an amendment to the 1935 Act. The CA approved it as a temporary measure during the political transition. Opposing the move, Thakurdas Bhargava reminded the CA that the British India government did not have this power. He declares that he did not want to see the provision in the permanent Constitution.[23]

However, this temporary measure became permanent when Ambedkar defended it while ignoring the promises made to the CA by the state.[24] Sardar Patel, even before the inauguration of the new Republic, moved the Transfer of Detained Persons Bill[25] in the Provisional Parliament. The next move of the state was even more ironic. As the Regulation of 1818 and the Public Safety

Ordinance, 1948 had lapsed on the intervening night of 25 and 26 January 1950, the first president of India issued a Presidential Order extending it the next morning. It was intended to continue, not very successfully,[26] the detentions of thousands of citizens. Determined on their detentions, Sardar Patel came before the provisional parliament with a full-fledged Prevention Detention Act, 1950 within a month. While justifying the need for the Act, he revealed that the largest majority of the detenus are communists, constituting a danger to the existence of the State. He equated the independence of the country with the security of the state and the preservation of the state with that of the liberties of the citizens.[27] Within three days of this enactment, in a grotesque drama, a member of parliament was arrested under a preventive detention law for fasting at Rajghat for the rights of labourers.[28] By then, 3000 communists had been detained in Hyderabad alone for allegedly being a threat to the security of the state.[29]

The debates in Parliament in August 1950 make a politically interesting read. Sardar Patel informs the parliament that 6342 persons were detained under the Preventive Detention Act, 1950. Some of them were released with undertakings to dissociate themselves from the Communist Party of India. The party's activities were under close watch but he refuses to be definitive on lifting the ban on it from participating in the first general elections. He concedes that a large number of them were released by the Bombay High Court. Answering a question on whether they were detained for subversive activities or for faith in communist ideology, he describes that many of them were bandits and murderers. When asked why then the dacoits were not tried, he replies that "[T]hey were not tried for the simple reason that they are detained under the Act which provides for detention."[30] Seizing the political moment, one member asks how many of them were arrested for black marketing. The minister was not certain. The debate clearly exposes the political motives of the detentions.

Post-colonial development to preventive detention: In 1950, the Supreme Court dismissed 13 cases which challenged the detention orders under the Preventive Detention Act 1950, and upheld its constitutional validity.[31] Parliament extended, once in three years, the presumed temporary law until 1967, when it lapsed. Every time the law came before the parliament for extension, the dissenting voices put up valiant fights but lost. It was replaced by the Unlawful Activities (Prevention) Act, 1967. It ensured longer detentions of the accused by effectively subordinating all the procedural rights of the accused through various amendments.[32] Thereafter, it appears there was no serious opposition to such laws.

The 44th Constitutional amendment[33] attempted, among other things, to delete clause 7(a)[34] of the Article 22. The clause authorizes the parliament to make laws to detain citizens even without the semblance of accountability. This amendment attempted to give a semblance of judicial character to the advisory boards in detention laws. As if to mock this amendment, the Congress government enacted the National Security Act, 1980. Copying the law verbatim, most of the states made detention laws on the grounds of threat to public order. At present, 25 legislations arm the governments with these powers.[35] They further deepened this power. Thus, the time tested modus operandi of colonial governance had gained traction permanently. As such, the colonial legacy deeply informs the present forms of threat to civil liberties and reflects the historical consistency in the nature of state power.

Part-Two

Analysis of the Telangana Detention Law

This part of the paper analyzes the working of a detention statute in Telangana, South India. The state has been detaining persons accused of certain offences in an unprecedented number of

cases. Since 2015, while its neighboring state, Andhra Pradesh has detained 152 persons, Telangana detained for the same period 1728[36] under the Telangana Prevention of Dangerous Activities Act, 1986.[37] The Act empowers the government to detain drug offenders[38] and certain offenders against body[39] and property. It invented the circumstances under which these offences became so extraordinary that they were deemed to be causing "public disorder." An amendment[40] to the statute in 2017 has substantially expanded its scope and brought 59 ordinary offences into its fold.[41] Thus this extraordinary law has made substantial inroads into the space of ordinary law.

This law follows a certain technique of enlarging the police powers apparently provided in the law itself. It claims to prevent dangerous activities prejudicial to the maintenance of public order. It construes that the resourceful offenders' attempts,[42] to commit offences are an attack on public order. Under the law, the public order is "deemed likely to be affected adversely if their activities are considered as calculated to cause directly or indirectly a feeling of insecurity among the public." Its conception of public order is considerably elastic to include "general public" or "a section of it."[43] This conceptual flux leaves abundant scope for its interpretation in the hands of the police and has adverse consequences to those accused of otherwise simple offences under the Indian Penal Code.

The law vests the district magistrates and the police with the power to detain an accused person for three months.[44] However, the Government has to delegate these powers to them for three months at a time, as and when an extraordinary circumstance exists. It implies that they cannot invoke this power just because it exists in the statute. These conditions are meant to check their power and reflect the extraordinariness of the law. However, in reality, this power has been extended uninterrupted since its inception.[45] The new state has brought a large part of the Telangana under the detention regime when it appointed eight more police commissioners[46] with

the power of detention. This surreptitious political measure has expanded the application of this extraordinary law as a permanent and normal technique of exercising the detention power.[47]

The detention orders of the police commissioners can remain in force only for 12 days unless the top bureaucrat of the government approves. This too is intended to be a restraint on the power of police. Yet, these orders are given a status equal to that of warrants of arrest[48] under the Criminal Procedure Code, 1973 and there is no jurisdictional bar on their execution. Even the property of the detenus can be attached by exercising all the powers of a competent court.[49] This is an appropriation of legitimate judicial powers by the executive to exercise arbitrary power.

As per the law, a detenu's failure to surrender is punishable under the ordinary law.[50] The paradox of this extraordinary law cannot be sharper, since it seeks the support of an ordinary law to enforce itself. To enable the detenu to represent[51] self before the government, the grounds and facts of detention have to be communicated. However this does not require disclosing the facts, which it considers are against the public interest.[52] This means "any police commissioner can detain any person without providing the facts of arrest in the name of public interest and he will decide what public interest is."[53] This fundamental right to representation is not informed to the detenus in Telangana.[54]

The law mandates the government to constitute an Advisory Board[55] to seek its opinion[56] on the sufficiency of cause for detentions. After hearing the detenu, the Board has to conclude whether there exists sufficient cause for detention. In consonance with the Constitution,[57] the law bars the detenu from engaging a lawyer. Its proceedings are confidential. If it feels there is sufficient cause, the government can continue the detention for up to one year.[58] If not, it has to revoke it.[59] However, these consequences to the detenu do not reflect the judicial nature of the Advisory

Board, as the law also permits the government to revoke detention at any time or detain the accused again under a new order.

Discussion: The Political Nature of the Detention Laws

Most the detention laws have the same structural features. The normative cast of these statutes is different from that of ordinary laws. Being simultaneously invasive over personal freedom and restrictive over the citizen's ability to defend oneself, they entrench an unequal relationship between the state and citizen and thus make fighting against an arbitrary detention almost impossible. The slippery slopes of procedures they prescribe foreclose a self-defense by the citizen. They arm the state with secrecy and isolate and individualize the citizen to render him defenseless. These are arbitrary political trenches from where state controls its citizenry. These strategies of arbitrariness without accountability underwrite the very structure of these laws. The ethic of these laws is not due process of law.

Legislative history: When the Act was introduced in 1986, the Opposition parties in undivided Andhra Pradesh had questioned the government's motives in the absence of an emergency or armed revolution.[60] While the government had justified the law on the fear of rising crimes, the legislators had argued that it was intended for the abuse of the power of detention.[61]

While amending the law in 2017, the government had explained that it would be invoked only against hardened criminals. Kishan Reddy, then a BJP legislator in the Opposition pointed out that the law rendered the Indian Penal Code and courts irrelevant and transferred the power of judiciary to the bureaucrats without accountability. In his assessment, the law makes the police both the accusers and the adjudicators.[62] In response, the government accused the Opposition parties of being supporters of the hardened criminals.

The narratives of two Telugu states, while introducing the Bills were brazenly punitive and not preventive of crimes. They have claimed that the ordinary laws were not deterring crime, but made no attempt to evaluate the adequacy and efficiency of the existing criminal justice system to deal with crimes. Echoing the debates in the Constituent Assembly on the supremacy of parliament verses arbitrary judiciary, they have implicitly accused the courts of liberally granting bails to the offenders and placed the judiciary and due process on trial. This strategy has enabled them to remove more offences from the applicability of due process of law. It is interesting to observe that in both states, new political regimes have attempted these incursions against due process.[63]

The trends in detention practices: Since 2014, more than 31,000 persons have been detained in India as per prison statistics. However, police statistics reflect fifteen times more detentions than this figure. The disproportionate presence of minorities and illiterate persons among detenus signals communal and class biases[64] in the detentions. The governments' claim that they pose a grave threat to the state and public order is not substantiated by the profile and the nature of their offences.

Table-1

Comparative statement of Detentions in Andhra Pradesh, Telangana, India

Year	Andhra Pradesh	Telangana	India
2015	53	359	5059
2016	31	225	5586

2017	34	203	4673
2018	20	434	7501
2019	14	507	7332
Total	**152**	**1728**	**30151**

Table: 7.5 Prison Statistics India: 2019: For the method of calculation per year see the end note: 32.

No socioeconomic and political upheavals exist to explain this surge in Telangana. The state is harsher in its practice of detentions than the rest of the country as 71% of its detenus are released only after the completion of their full terms.[65]

Experiences from the Ground: The details of 403 detenus in Hyderabad for 2015 to 2019 have been collected. The first striking fact is that 99 per cent of detentions are ordered by the police commissioner, and the rest by district magistrates. The government has revoked only 43 of them for lack of sufficient cause. This implies a sentencing rate of 90 per cent.[66] About 66 per cent of detentions are for chain snatching, theft of automobiles, cell phones, cattle or burglary, but these detenus are labeled as 'Goondas.' There are 41 chain snatchers but not a single jeweler[67] among them.

All the detenus have been previously booked for petty offences under the IPC, 1860. Most of them are shown to have been involved in more than one offence. In reality, many of them were involved in a single offence, but multiple counts of offences have been considered as multiple offences. An instructive instance is the detention of Shaik Javed:[68] first arrested for theft under the IPC, but detention orders were issued later under sections 379, 392 and 511 of the IPC to make the theft appear as robbery, and the recce as an attempt to commit offences. The multiple

counts of an offence under ordinary law are construed as multiple offences while invoking the extraordinary law. The government has been adopting this modus operandi.

Table-Two

The category of offences and the number of Detenus

S. No	Category of offences	Cases registered
1	Bootlegging	9
2	Dacoits	10
3	Drugs	17
4	Goondas Act (theft, chain snatching, burglary, property offences, criminal intimidation)	266
5	Immoral Traffic	9
6	Land Grabbing	6
7	Spurious Seeds	4
8	Insecticide	0
9	Fertilizers	0
10	Food Adulterators	0
11	Fake Documentation	8
12	Scheduled Commodities	2
13	Forest	3

14	Gaming	1
15	Sexual	25
16	Explosives	0
17	Arms	6
18	Cyber	4
19	Financial	14
20	Indian Penal Code	19
		403

It may be observed, however, that the government is liberal with the spurious seeds offenders. Similarly, influential persons engaging in food adulterations, insecticide and fertilizer offences are untouched. Likewise, the skilled offenders of fake documentation, gaming, cybercrime and land grabbing are left untouched. But in all sensational murder or rape cases (21), the government is unforgiving: mostly in the name of assuaging public anger. The media has sensationalized the details of such cases on the basis of selective leaks from the police. Paradoxically, the police cite such reports as the reason for invoking the law.

Based on Confessions: A number of detentions were based on voluntary confessions.[69] For instance, Mohmmad Yousuf, a bakery worker, was arrested for a theft of a Karbonn phone but later became a detenu. His confessions to the police of attempts to trespass became the grounds for his detention. He is a "Goonda and has been habitually engaging himself (in) unlawful acts

and indulging in acts of goondaism by acting as a leader/member of a criminal gang and committed property offences such as theft, robberies and house burglaries in the limits of Cyberabad Commissionerate and thereby causing harm, panic, a feeling of insecurity among the innocent general public of the locality and adversely affecting the public order and thus he has been acting in a manner prejudicial to maintenance of public order apart from disturbing the peace, tranquility, social harmony in the society."[70] This perceptive bounciness weaves a narrative: one is accused of a theft, he confessed to more offences; they indicate his criminal propensity, hence he is 'Goonda;' the goondas are generally part of criminal gangs and create the feeling of insecurity among the vulnerable public; the insecurity affects the public order, so he can be construed as acting against its maintenance; therefore his actions affect the social tranquility! This incursive flow of interpretation magnifies a simple infraction of law and makes it to appear as a deadly threat to social order. A Manichean dualism seems to inhabit the perception of threat.

Similarly, the detention order of Pradeep Sarkar,[71] accused of involvement in the flesh trade, is an interesting politico-cultural read: "His immoral activities are dangerous to family system, harmful to local inhabitants and lead to social unrest, spreads sexually transmitted diseases and endanger public health at large; affect the future of youth and thus are prejudicial to maintenance of public order." These assertions of self-evident truths remain secretive on the grounds of public interest. The states narratives deploy an overlapping registers of the real, the imaginary, and the symbolic categories of law and they quickly overwrite on one another giving seamless perception of threat.

Ritualized Proceedings: What are the truths underlying these tenacious narratives? A close scrutiny of these detention orders reveal that the detenus' names and category of offences are changed but they continue the same narrative. The interminable Advisory Board[72] endorses them

as proof of "sufficient cause for detention." Detenus say that the Board gives two minutes to represent their case. The law expects their illiterate wives and mothers to defend their cases, but they are only able to beg for leniency. These proceedings have no character of a public law to ensure the transparent arraignment of an offence. If challenged before a court, none of the grounds, confessions, inferences and conclusions might stand judicial scrutiny. Yet, the insouciant proceedings of detentions remain protected from judicial scrutiny.

The interplay of logic of public order and disorder is triangulated by its ritualized executive proceedings. The public order survives not because the law is principled but because of the acknowledgement of its need through ritual. Its meaning seems to lie where the needs of the public order and its rituals overlaps but not in how much of legal space is created for the detenu to defend himself. As such, the entire ritual process of detention does not even reflect the veneer of institutional propriety. But what manages to pass through the sieves of this symbolic process is the arbitrary power of the state. The detention law's shadowy existence seems to set the ultimate terms for survival of ordinary law and public it defends. And thus it constitutes the bulwark of the perceived public order. It is an anamorphic by an exceptional legal process in a democratic polity.

In Lieu of Prosecution: This no-questions-asked law permits the government to detain those "known"[73] to it as offenders. There are no clues about the process of their identification but the practice is clear: those who are already accused, or acquitted or convicted of certain offences are detained. Unambiguously, all orders justify their detentions on the grounds of courts granting them bails. For instance, Barkat Ali was arrested by the Hyderabad police[74] for five offences of cheating. After six months in prison, he initiated the bail process before the courts. But the

detention order claims that he committed ten offences of cheating and hence his release on bail is prejudicial to public order. By the time the High Court[75] set aside the order, he had completed a year in detention. Yet, he continued to be in prison as those cases under ordinary law too were pending for trial before regular courts.[76] The state ensured the certainty of punishment but not that of trial. Its contempt for due process of prosecution is obvious.

Punitive, Not Preventive: That spatial confinement of an individual is used as punishment has been a historically accepted fact. Yet the state's claim that these detentions are not punitive is justifying the detentions by other means. Material relaxations extended to the political detenus of the 1960s and 1970s in prisons distinguished their detentions from the punitive incarcerations. As per the Rules of the 1986 Act, detenus are civil prisoners and are entitled to a better standard of living.[77] This distinction was implicitly erased when the National Security Act, 1980 has provided for detenus' confinement in places of punishment. The Telangana Act, 1986 – modeled after the NSA, extended the same.[78] Consequently, they are practically treated in prisons worse than convicts. This is in consonance with the punitive objective of the government. Even worse, detenus suffer double jeopardy: after completing their detention period, they are tried by the regular courts for the same charges they were detained for! The police treat their acquittals both as proof of their criminal tendency and failure of the ordinary law, but not as a vindication of innocence by the due process of law. Consequently detenus are punished first before conviction and for a second time after acquittal. Illustratively, detenu Kunsothu Lingu, belonging to a scheduled tribe, was accused of 7 cases of chain snatching. The court has acquitted him in 3 cases and convicted him in one. The government invoked the acquittals and conviction as the grounds for his detention.[79]

Persuasively Arbitrary: Under the detention law, the state exercises an unbridled power that no court can. It can revoke or modify the detentions and re-detain the accused at any time.[80] The detention of Amraj is a classic example. The police cited 36 cases of burglaries as proof of his criminal tendency. However, the Advisory Board could not find sufficient cause[81] for his detention. Yet, he remained in prison until his conviction by the regular court and then was released. The police detained him again on nine new charges and implicitly challenged the earlier stance of the Board. The Board this time found sufficient cause for his detention.[82] In contrast to this, the detention of Baskar takes a different direction. An elected representative from the BJP, he was detained for 16 cases of rioting.[83] Within ten days, however, the government revoked his detention on health grounds[84] as influential politicians intervened.

Distorted conceptual orders: The narratives on detentions deploy the concepts of 'law and order,' 'public order' and 'security of state' interchangeably. These concepts are different from one another, but intertwined. Every infraction of law is of course a violation of legal order but not necessarily of public order. It may not always invariably disturb community life. If it creates a disorder in community life, it may be an issue of public order. The distinction is made succinct when the Supreme Court asks: "Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquility of the society undisturbed?"[85] It also said earlier that in order to understand their scope and extent, one should imagine concentric circles. "The largest of them represented law and order; next represented public order and the smallest represented the security order, just as an act might affect public order but not the security of the State."[86] The purported test of the threat of significant harm to the community is not the threshold for invoking detention laws in Telangana. No doubt, the concerns of public disorder should get significant attention, but

can it be at the expense of individual liberties and the legitimate legal order? In practice, the concerns of the state are converted into that of public order and security of the state, and are made unquestionable premises of detentions.

Corrosion of due process: The principle of presumption of innocence in criminal law is the result of a historical challenge to the arbitrary power of the state. In addition, procedural rights establish the primacy of liberty over the power of state. However, governments, with the responsibility of maintaining the legal order, have developed a culture of impunity. The routinized practices of illegal arrests of citizens are indicators of the state's contempt of the law. These moments of transgressions of due process can no longer be considered as aberrations, when we historically observe how systematically governments have legalized them. This research is an attempt to capture this political process in the socially less credible domain of everyday crime. Their historical trajectory and contemporary traction reveal them as a permanent technique of governance. It is only a matter of time before these practices appropriate more fields of ordinary law, endangering the freedoms of privileged citizens too.

Conclusion

This is a linear story of the detention power. Can the state never have legitimate grounds for invoking it whatsoever? The secrecy and unaccountability surrounding the law makes the state a suspect of abuse of power rather than a guardian of rights. Hullie Ludsin[87] believes that detention law establishes a parallel legal system. There exists no legal order for the detenus, however. They are moved from the imperfect legal order of due process to no legal order. The detention process is not a legal system of inferior quality. In the explicit detention laws and practices, there are a series of implicit prohibitions that force us how not to take certain explicit norms seriously and how to comply with a set of publicly unacknowledged prohibitions. It also appears that detention

power "sustains its authority if people hear in it the echo of an unconditional and absolute assertion of power.[88]" Thus, Indian democracy has always retained within itself the power to become a totalitarian state.

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Data Availability Statement

Data derived from Public domain resources: The data that support the findings of this study are available in National Crime Records Bureau, Government of Telangana and Indian Parliament. These data were derived from the following resources openly available in the public domain at https://ncrb.gov.in/en/crime-india-2019-0; https://goir.telangana.gov.in/about.aspx; https://eparlib.nic.in/ and https://ncrb.gov.in/en/prison-statistics-india. They sites provide basic data and accessible for public. The detenus were interviewed in person.

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7. Preventive Detention and Democratic State: 2014 (India, England and Britain) by Hallie Ludsin Cambridge University Press.

8. Zizek, Slovoj., The meaning of Right: The Philosophy and Social Theory of Human Rights., ed by Costas Douzinas, Conor Geerty; Cambridge University Press (2014)

[1] 106612 persons as detenus: The Crimes in India (CII) report, 2019, Page, 1211. https://ncrb.gov.in/en/crime-india-2019-0

[2] The actual detentions are calculated by deducting the number of detenus at the end of 2018 from the number of released in 2019 and adding the remaining in prison at the end of 2019. Prison Statistics 2019.

[3] Throughout this paper the 'detention' denotes the imprisonment of a person under extraordinary detention laws. It is distinguished from 'arrest' under ordinary law.

[4] They include the rights of the accused under due process of law: to know the charges, to hire a legal representative of choice, public trial, challenge the state evidence and the conviction.¨

[5] To detain Zamindars, Jagirdars, Taluqdars: Preamble and section 9 of the Regulation 1818.

[6] Through the Madras Regulation, 1819, the Bombay Regulation, 1827, the State Prisoners Act XXXIV of 1850, 1857 and 1858. The 'state prisoners' indicate detenus.

[7] Indians had no right against illegal detentions and the High Courts, were barred from hearing such cases: The Gazette of India 1867, page 36.

[8] Item 38 of Part II of the Schedules.

[9] Item 1: Preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention: Government of India Act 1935.

[10] The section 2(1): Preventive detention for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war or for maintaining supplies and services essential to the life of the community: Defence of India Act 1939.

[11] Item 9 of Union List of the Indian Constitution.

[12] Item 3 of Concurrent List, Ibid.

[13] Clause 7(a) of the article 22.

[14] Thakur Das Bargava, MV Kamath, Sibhan Lal Saxena, Nazeeruddin Ahmad and ZH Lari had bitterly opposed it.

[15] He did not rule out the possibility of legislatures making laws that violate the principles of personal liberty but he found it difficult to accept the fact that few judges deciding the validity of laws, CAD: 13 December 1948.

[16] In the centrally administered areas, the Indian government detained 6118 persons under Public Security Act in the first half of 1948. https://eparlib.nic.in/bitstream/123456789/760407/1/cald_03_10-08-1948.pdf#search=preventive%20detention%201948. Page 103.

[17] They are part of the Union List and Concurrent List.

[18] India (Adaptation of Existing laws) Order 1947

[19] Bengal State Prisoners Regulation (Adaptation) Order, 26th August 1947.

[20] Ministry of Defence Notification dated 18 September 1948; the Gazette of India. Gulab Singh, ex-Maharaja of Rewa too was detained in May 1948 under the Bengal Regulation 1818.

[21] Item 34 of Concurrent List of Government of India Act 1935

[22] The Assam Maintenance of Public Order Act 1947, The Bihar Maintenance of Public Order Ordinance (IV of 1946), The Bombay Public Security Measures Act 1947, The Madhya Pradesh Public Security Measures Act 1950 to name a few.

[23] Item 34 of Concurrent List of 1935 Act, 'Persons subjected to preventive detention under Federal authority' was changed into "Persons subjected to preventive detention under the authority of the Union". CAD: 18th May 1949.

[24] CAD: 29th August 1949.

[25] The Constituent Assembly of India: (Legislative) Debates: Vol. IV, 2nd December 1949.

[26] Issued under article 373 at ten o' clock on 26th January 1950. Patel laments that the lawyers did not forgive the legal vacuum that happened between midnight and next morning and they got many detenus released by challenging in high courts of Bombay and Calcutta. Parliamentary Debates: First Session of Parliament of India; Vol. II, 25th February 1950.

[27] Ibid: from page 874.

[28] Prof. Sibhanlal Sakshena was arrested under East Punjab Public Safety Act 1947: Ibid: page 971.

[29] Parliamentary Debate: Part 1, March 1, 1950: Page, 561.

[30] Parliamentary Debates, volume IV; Second Session, 8th August 1950: page 534.

[31] A.K. Gopalan vs The State Of Madras.Union of India: 1950 AIR 27, 1950 SCR 88.

[32] The Unlawful Activities (Prevention) Amendment Act of 1969, 1972, 1986, 2004 and 2008

[33] Section 3.

[34] (7) Parliament may by law prescribe— (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4).

[35] The Union statutes are the Goondas Act 1923, The National Security Act 1980, ESMA 1981, Prevention of Black Marketing Act 1980, The COFEPOSA 1974, PIT NDPS 1988 and FEMA 2000.

[36] Gujarat detained 2601, Tamilnadu 1883, Jammu and Kashmir 600 in 2019. Table 7.5, Prison Statistics India-2019.

[37] The Telangana Prevention of Dangerous Activities Of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders Land-Grabbers, Spurious Seed Offenders, Insecticide Offenders, Fertiliser Offenders, Food Adulteration Offenders, Fake Document Offenders, Scheduled Commodities Offenders, Forest Offenders, Gaming Offenders, Sexual Offenders, Explosive Substances Offenders, Arms Offenders, Cyber Crime Offenders And White Collar or Financial Offenders Act, 1986.

[38] The Excise Act, 1968 and NDPS Act, 1986

[39] Suppression of Immoral Traffic in Women and Girls Act, 1956

[40] Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers (Amendment) Ordinance, 3 of 2017, 17 June 2017

[41] Including 13 new offences: Spurious Seed offenders, Insecticide Offenders and Fertilizer offenders etc. and 40 offences under sections, 379 to 402 for theft and dacoit and sexual offences under sections 354-A, 354-B, 354-C, 354-D, 376, 376-A, 376-B, 376-D and offences punishable under Chapter XVI, XVII, XVIII and XXII of Indian Penal Code 1860.

[42] But *Non definitur in jure quid sit contus*- what an attempt is, is not defined in law.

[43] The explanation to the section 2 of the Act.

[44] Ambedkar considered this limitation on detentions under article 22 as the compensation for loss of due process of law under article 21. CAD: 15 September 1949.

[45] The bifurcation of the states did not bring a break in the law. The Government of Telangana, G.O. Rt. No. 276 General Administration (law & order) Department, 28.07.2014.

[46] Cyberabad, Karimnagar, Khammam, Nizamabad, Warangal, Siddipet, Rachakonda, Ramagundam

[47] State of Exception by Giorgio Agamben, translated by Kevin Attell; the University of Chicago Press: Chicago and London.

[48] Section 4 of the Act

[49] Under sections 82, 83, 84 and 85 of CrPC 1973

[50] It is cognizable offence punishable for one year through prosecution: sections 7 and 7(2) of the Act.

[51] Since Ambedkar initially did not agree for right to representation and right to know the grounds and facts of detention in article 15A, Bakshi Tek Chand attacks it as much narrower than the Rowlatt Act. CAD: 15th September 1949.

[52] Sub-section 2 of section 8 of the Act.

[53] Intervening on the same point in Preventive Detention Bill, 1950, RK Chaudary explains its implication: Parliamentary Debates: Vol II, 25th February 1950.

[54] Except the police commissioner of Rachakonda Commissionerate.

[55] The Defence of India Act 1915 first provided them as it created Commissioners to hear the Detenus.

[56] It is an opinion but not a judgment yet binding on the government.

[57] Article 22(3) (b)

[58] Section 13 of the Act

[59] Section 12(2) of the Act

[60] Andhra Pradesh State Legislative Assembly debates: 13th September 1985; page. 614-616.

[61] The MLAs of Hyderabad old city and the Naxal militancy affected areas raised these possibilities.

[62] Telangana Legislative Assembly Debate; November 9, 2017, page 44.

[63] Telugu Desam Party and Telangana Rashtra Samithi.

[64] Of the total detenus, 1241 are Hindus, 821 Muslims, 19 Sikhs, 189 Christians, and 36 others. 65 per cent are illiterates and school dropouts: Prison Statistics 2019.

[65] In 2019, 398 out of 557 were released after one year detention. Prison Statistic India 2019: Table 7.5

[66] It is only 30 per cent in the courts: Crime in India Report, 2017

[67] The destiny of most of the stolen gold is jeweler shops. Every Jeweler purchasing the stolen gold is an accomplice and cannot be let off every time for reasons of good faith.

[68] Detenu no. 664 Detention Order No. 22/PD/CCRB/CYB/2018, Office of the Commissioner of Police, Cyberabad Commisionerate, 12-06-2018

[69] 52 persons. .

[70] Detenu No. 648. Detention Order No. 9/PD/CCRB/CYB/2018, Office of the Commissioner of Police, Cyberabad Commisionerate, 16-04-2018.

[71] Detenu no. 679: Detention Order No. 27/PD-ACT/CCRB/RCKD/2018, Office of the Police Commissioner, Rachakonda Commissionerate; 05-07-2018

[72] Constituted with three members without a term; GO Ms. 32, GAD, Government of Telangana, 5-08-2014.

[73] The preamble of the Act 1986

[74] Detenu no. 1118, the Detention Order No. 60/PD-2/HYD/2018, Officer of the Commissioner of Police, Hyderabad City, 5th June 2018.

[75] Writ Petition no. 1912 of 2019, High Court for the State of Telangana. While the detention order cites ten cases against him, the government showed only 5 cases to the Court.

[76] He enters prison as UT, becomes DT (Detenu) and leaves as UT or (Convict) CT. Most detenus face these Kafkaesque absurdities.

[77] The Rules describe the detenus as special class prisoners with private kitchen and furniture of their own. The facilities are intended for political dissenters. The Government of Andhra Pradesh: Go Ms. No. 342, General Administration (General-A) Department, 27 June 1986.

[78] The section 5 of the Act was copied from the section 5 of National Security Act of 1980: 'the government can detain them in places and under conditions 'including conditions as to maintenance, discipline and punishment for breaches of discipline'.

[79] Detenu no. 680, Detention Order No. 28/PD-ACT/CCRB/RCKD/2018, Office of the Commissioner of Police, Rachakonda Commissionarate, 06-07-2018.

[80] Section 14 and 15 of the 1986 Act.

[81] G.O Rt No. 1869, dated 4.09.2017, General Administration (Spl (Law and Order) Department; Government of Telangana.

[82] G.O Rt No. 659, dated 7. 04.2018, General Administration (Spl. (Law and Order) Department; Government of Telangana.

[83] Proc. Rev/C1/LNO/0010/2017: Proceedings of Collector and District Magistrate, Mahbubnagar, 16-10-2017.

[84] G.O Rt No. 2256, dated 27. 10.2017, General Administration (Spl. (Law and Order) Department; Government of Telangana. Mr. Kishan Reddy gets him released: see The Telangana Legislative Assembly Debate, 17th June 2017.

[85] Nagendra Nath Mondal v. State of West Bengal, [1972]1 S.C.C. 498

[86] Dr. Ram Manohar Lohia V. State of Bihar, [1966] 1 S.C.C 709

[87] Preventive Detention and Democratic State: 2014 (India, England and Britain) by Hallie Ludsin Cambridge University Press.

[88] Zizek, Slovoj., The meaning of Right: The Philosophy and Social Theory of Human Rights., ed by Costas Douzinas, Conor Geerty; Cambridge University Press (2014)