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The "State of Exception" in the World's Largest Democracy: A Critical Analysis of India's National Security Initiatives through the lens of International Human Rights Law

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ABSTRACT

The work raises a fundamental question concerning India's national security apparatus; specifically, whether its labelling of internal dissent and its principal anti-terror statute remain consistent with its International Human Rights Law (IHRL) obligations, despite formal treaty compliance. Using doctrinal analysis of the ICCPR, IHL classification criteria (the Tadić test), and India's own reservations/declarations, alongside case analysis of UAPA jurisprudence (including Watali and recent Supreme Court bail decisions) and UN Working Group on Arbitrary Detention findings, the paper develops a three-tiered argument. First, India's Article 1 self-determination declaration, while doctrinally defensible, is treated as dispositive of questions (NIAC classification) it cannot resolve. Second, the UAPA's detention and bail provisions structurally depart from Articles 9 and 14(2) ICCPR. Third, India's non-accession to the Optional Protocol insulates these practices from binding individual scrutiny. Drawing on Schmitt and Agamben, the paper contends these are not isolated departures but a single phenomenon; a "state of exception" normalised through ordinary legislative and procedural choices rather than declared emergency.

INTRODUCTION

The entire understanding of national security, when viewed from varying perspectives, results in differing modes of its application, and that very application, ideally, is not absolute and comes with its own constraints that are considered vital for maintaining a balance; in this application, a balance with human rights.

Nationalist or Realist perspectives, that put State's internal interests over other considerations, are primarily taken into consideration when a nation's external and internal security is in question and this very perceptive undertaking results in, what we have theorised as a "State of Exception", wherein the State power, provisions and decisions might remain unchecked but more importantly are legitimised by placing the very notion of "security" over any other obligations.

This paper attempts to move beyond such a perspective by analysing the fundamental human rights obligations of the State of India, in the context of International Human Rights Law and to what extent India adheres to the same. Moving beyond the general works in this field, it also attempts to establish those obligations by clearing out the blurry lines created by legal complications and then further establishing the extent to which the State is bound by those obligations so as to limit the scope for "exceptions" in this regard. We do this by presenting legal arguments to every obligation and provision that we shall highlight in a manner that explains how and why it applies to the State, how the State does not comply with it and most importantly why the State's justification, if any, of non-compliance might not be the apt legal justification. A purpose of this paper is to establish the fundamentals of State accountability in the light of clarifying a State's responsibilities.

This work shall touch upon the crucial aspects of how India would designate its "internal security threats" while observing the lapses in those designations. And further how these designations are then used by the State to legitimise their conduct, which might be unjust in a larger context, and which conduct in itself would have actions that are inconsistent in a larger legal framework.

It must be noted that the paper is not intended to justify or comment on the right or wrong of conduct of any groups, individuals or actors but instead upholds the maintenance of the higher legal standard that calls for the existence of just and justified legal practices, even in a domestic jurisprudence.

LABELLING "INTERNAL SECURITY THREATS"

The critical juncture of investigation would stem from India's approach to managing its 'internal security threats', specifically regarding organised armed efforts of dissent against the State. The first juncture would go on to study the legal and normative basis of determining and labelling such internal security threats that further determine the way in which the State engages with such 'threats'.

In both historical and contemporary times, we come across numerous armed modes of dissent against the State, such as the "Khalistan Oriented Militancy", in the Northern and North Western region of the State (in operation around the 1980s and 90s) or the Insurgency Movements operating in the North-eastern region of the State. Such movements have key derivative characteristics such as a relatively organised armed conduct against the State or its machineries, operating in a specific region, having historically engaged in dialogue with State actors and such. When we observe these conflicts from the purview of International Humanitarian Law (IHL), one can fundamentally argue how this conflict can constitute a 'Non-International armed conflict'; the determination of which is based on the factual thresholds as discussed in detailed; thereby further attributing certain rights, responsibilities and duties for both the parties engaged in a conflict; regardless of whether the State has chosen to formally acknowledge the conflict's existence.

We shall now turn to a separate question and delve deeper into the basis of recognition of such armed groups operating within the State and how that navigates in accordance with the International Human Rights Law (IHRL).

One basis for such recognition, and historically the most discussed under IHRL, stems from the principle of 'Right to self-determination ', a principle that is understood in essence of the United Nations Charter and is explicitly enshrined in Article 1.1[1] of the International Covenant of Civil and Political Rights (ICCPR), a key International Human Rights instrument, where the instrument asserts,

[1] International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 171.

"*All peoples have the right of self-determination*."

The further understanding of this text gives way for individuals residing in States that have ratified the said document and the given provision to determine their individual identities within the larger conduct of a State. It gives them the right to assert their own identities, beyond what the State employs de facto, and the lawful right to engage in conduct in line with the same determination. This is to say that individuals, by virtue of this principle, can take part in activities, armed or non-armed, to assert, uphold and preserve their identities.

This does not mean that all and every act by such entities shall be permissible under international law, but, in practice, it gives the entities a way to conduct their activities in a manner where the acts shall be lawfully recognised under international law. This is to say that, for example, an entity that is engaged in an armed conflict, post recognition by the same principle, shall still be bound and to a greater extent, by the laws and customs of engaging in the said armed conflict.

INDIA'S TREATMENT OF 'SELF-DETERMINATION'

The way this pans out in the Indian context is a case study in itself, wherein firstly it is to be noted that India does both ratify the treaty document and the said Article that formulates a basis for this principle; however, it has **"Declared"** this article in a specific sense, where it asserts to the International community, that while accepting the said article it interprets it in its own way, that might or might not be different than what the usual State practice is.

India has declared,[2]

"The words `the right of self-determination' apply <u>only to the peoples under foreign domination</u> and that these words do not apply to sovereign independent States or to a section of a people or nation--which is the essence of national integrity."

[2] U.N. Treaty Collection, Declarations and Reservations, International Covenant on Civil and Political Rights, India, https://treaties.un.org (declaration made upon accession, Apr. 10, 1979).

The essence of this declaration is India's interpretation of "all peoples" to be "peoples under foreign domination". To explain this "case of exception" by the Indian State, it must be noted that the principle of self-determination was formulated, primarily, keeping in mind the nature of foreign rule in a colonial State in the time in which it was formed, and also the acts that a foreign domination at times conducted which, at times, were significantly contrary to the IHRL norms. When the general state practice relating to this principle is observed, this form of declaration is seen in practice by the States of India and Indonesia, wherein when we observe Indonesia's declaration as being to not allow any actions *"which would dismember or impair, totally or in part, the territorial integrity or political unity"*,[3] we can also see India's viewpoint in this declaration to not allow for any such actions and most importantly to completely negate the scope for any International legitimacy for such actions.

It becomes necessary here to distinguish between what international legal scholarship generally treats as the external and internal dimensions of self-determination. The *external dimension*; carrying an entitlement to independence, secession, or a change in sovereign status; has, in the dominant reading of State practice since decolonisation, been confined to peoples under colonial rule, alien subjugation, or racist regimes denying them any meaningful participation in government; which is often traced to the "safeguard clause"[4] within the 1970 Declaration on Friendly Relations, that reserves the territorial integrity of States "conducting themselves in compliance" with the principle of equal rights and self-determination and possessing a government representing the whole people without distinction. The *internal dimension*, by contrast, concerns a people's right to genuine political participation and self-governance within an existing State, without extending to a right of unilateral secession. Understood this way, India's Declaration is not an isolated or self-serving departure from Article 1; it mirrors declarations made by a number of post-colonial States; Bangladesh,

[3] U.N. Treaty Collection, Declarations and Reservations, International Covenant on Civil and Political Rights,Indonesia, https://treaties.un.org

[4] Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States, G.A. Res. 2625 (XXV), U.N. Doc. A/RES/2625(XXV) (Oct. 24, 1970).

Myanmar, Indonesia and Iraq among them; and sits within what is, in practice, the majority reading of the provision. This complicates the argument that follows; the weakness in the Indian State's position lies elsewhere.

LEGAL UNDERTAKING OF THIS DECLARATION

When delving deeper into the legal validity of this declaration and India's conduct in regards to the said principle, we come across the understanding that the Principle, under Article 1 of ICCPR does not limit itself to colonial rule but actually expands further to include free determination of people's political status, free pursuance of their economic, social and cultural development and free disposition of their natural wealth and resources. Further, we see declarations and various comments by States such as France, Germany, the Netherlands and various other reports objecting to similar interpretations by States, as in the case of India. This is regarded as a highly convenient interpretation and is then put to action by the way certain groups are treated under Indian Domestic jurisprudence.

It must further be noted that in a treaty document, "declarations" do not constitute a direct legal effect like a reservation and instead are considered primarily as unilateral statements used to clarify the state's position by a method of interpretation and do not purport to exclude or modify the legal effect of a treaty.[5] This results in the understanding that India's declaration would not change the general legal effect or consequences deriving from that legal effect, thereby creating a sphere where the declaration would not be considered as the state's legal backing in its application of the stated article and thus the legal provision shall apply in its intended way and context.

It is not just textual basis that allows for this right to be exercised but it having the status of *jus cogens* i.e. a peremptory norm of general international law which is a norm accepted and recognised by the international community of States as a whole as a norm from which no

[5] Vienna Convention on the Law of Treaties art. 2, May 23, 1969, 1155 U.N.T.S. 331

derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. The jus cogens nature can be derived from the International Court of Justice (ICJ)'s works in the East Timor and Barcelona Traction cases,[6] where it terms it as having erga omnes status**,** making it an essential principle of contemporary international law. The jus cogens nature allows for such principles to still be applicable despite a State's rejection of the said principles, since it transcends State consent.

This concession, however, does not exhaust the inquiry this paper is concerned with; that is even granting that India's Declaration correctly narrows the external dimension of self-determination, and even granting that movements such as those referenced above may not qualify as National Liberation Movements in the strict, colonial-era sense of that term, neither conclusion answers a separate and factually contingent question: whether the conduct between the Indian State and these movements meets the threshold of a Non-International Armed Conflict under International Humanitarian Law. That question does not turn on self-determination, sovereignty, or the legitimacy of any group's political claims; rather it turns on facts on the ground, and it is to that factual and legal threshold that the argument now turns.

INTERNATIONAL LEGAL ENTITY TO ARMED DISSENTS

The way this principle allows for armed groups to operate under the aegis of international law is to provide them with a legal entity status, that is relatively definitive, as "National Liberation Movements" wherein it is loosely referred to as non-state actors engaging in armed conflict against the State or their authority, having the primary objective of political independence of autonomy and represents the self determined nature of peoples.

This is to say that the principle would give a status of an international legal entity to such

[6] Case Concerning East Timor (Port. v. Austl.), 1995 I.C.J. 90, ¶ 29 (June 30); Barcelona Traction, Light & Power Co. (Belg. v. Spain), 1970 I.C.J. 3, ¶ 33 (Feb. 5).

movements that comes with certain rights and privileges, including, but not limited to; legitimacy and representation, access to International bodies such as the United Nations or regional bodies, such as in the case of the Organisation of American States, treaty participation and most importantly, recognition under International Humanitarian Law. For a non-state armed actor, this means that, if recognised as an NLM, they could have legitimate international status and representation, thereby allowing the entity the ability to raise claims before international courts or bodies and to invoke the right of self-determination as a source of jus cogens norms.

This can be illustrated by the case of the Palestinian Liberation Organisation (PLO), which remains the clearest example of a movement attaining this status: recognised by the United Nations as the authentic representative of the Palestinian people, granted full membership in the Organisation of Islamic States, and eventually acceding to the Geneva Conventions as a party in its own right following its 2012 observer-status upgrade[7] at the UN. The PLO's trajectory illustrates what NLM recognition looks like where a movement does meet the colonial or alien-domination threshold; but, as the following section argues, it is not the only legal pathway by which a State's obligations can be triggered, and it is unlikely to be the operative one in India's case.

It is at this point that the argument's centre of gravity shifts from the law of self-determination to the law of armed conflict wherein; International Humanitarian Law does not condition the existence of a Non-International Armed Conflict on the political status, ideological programme, or self-determination claims of the parties involved; it conditions it on two factual criteria, developed most influentially in the International Criminal Tribunal for the Former Yugoslavia's Tadić jurisprudence[8] and furthered by the ICRC works, namely; the intensity of the violence and the degree of organisation of the non-State party. Where an

[7] G.A. Res. 67/19, U.N. Doc. A/RES/67/19 (Nov. 29, 2012)

[8] Prosecutor v. Tadić, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, ¶ 70 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 2, 1995)

armed group possesses a command structure, the capacity to plan and sustain military operations, and the ability to enforce some measure of discipline over its members, and where hostilities with the State exceed the level of internal disturbances or sporadic violence, Common Article 3[9] to the four Geneva Conventions applies of its own force. Crucially, this obligation attaches automatically and does not require recognition, negotiation, or acknowledgement by the State that a conflict exists; nor does it depend on whether the non-State party has, or could ever attain, National Liberation Movement status. This reframes the stakes of India's labelling practice; that is whatever the correct answer to the self-determination question, the State's characterisation of these movements as purely domestic criminal or terrorist actors cannot, by itself, extinguish obligations that arise the moment the factual threshold of organised armed conflict is met. It is this evasion and not merely the underlying self-determination dispute that constitutes the paper's central concern.

POST-LABEL

The entire derivative nature of this principle has more substantive consequences, which are often less discussed, and which actually allow the State to “label” the armed groups in the domestic territory. Which for India, means that by creating a condition of a form of exception, it can then label such movements and their actions as “terrorist activities" or “unlawful acts” and then incorporate them into their national security initiatives; which creates further more implications as are discussed further; and creates a scope for the State to attempt to disregard the international rules applicable in such a conduct but still does not, as this paper has argued, actually relieve the State of the obligations that arise independently of that label.

To understand the practical application of this “exception”, we see how the state has consistently referred to and labelled many movements for self liberation in a manner which

9 Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 (cite representatively; all four 1949 Conventions share Art. 3)

constrains their identity to something similar to a domestic terror group and if not just the political identity but legally, at times without using any phrase related to "terror", such movements are allotted categories that are consistent with their domestic security initiatives and prohibitions. This then allows the State to treat the movements and their actions, often *completely*, under their own domestic laws; which substantially forecloses any scope for a form of recognition that has characteristics aligning with international norms; even as the underlying legal obligations, being fact-dependent rather than recognition-dependent, remain unaffected by this domestication; yet still results in their entire conduct being domesticated at large. Therefore, states assert that they are not bound to any international obligation or scrutiny, and any conduct of such movement is entirely within its domestic capacity to take action against, in a way that the State might unilaterally decide.

Why this distinction or "exception" becomes important is when we understand how the international obligations are present, exist and have due weightage to limit a State machinery's conduct, especially in matters relating to Human rights, in order to ensure that States do not engage in activities that might not be in the best interests of the individuals, general population and the international community at large. Therefore, the existence and continuous reiteration of such obligations become very essential to ensure that States do not exploit or misuse their sovereign character and engage in activities that are restricted by the international community. It must be noted that such obligations do exist despite the fact of how such groups are termed by the State; the terming just further adds another layer to the legal complexities, of which the State might take advantage when it deals with such groups.

THE QUESTION OF 'INTERNATIONAL OBLIGATION'

While expanding this, it is imperative to address an often questioned perspective in relation to *what constitutes an international obligation or prohibition and why and how a sovereign character might be bound to this.*

Not presenting an exact question but an interrogative perspective, which can be summed up in this form and is certainly crucial to answer when we present a perspective that rests upon the very nature of such obligations. It is easier to track the enforceable nature of certain international obligations, especially in the case of written treaties by analysing the nature of their ratification and other relevant criteria. However, in discussing larger international obligations, lines are often blurred, which acts as a "loophole" for States to exploit. Let us break this down and firstly understand that not all obligations are written in nature and as mentioned earlier, many exist in a customary capacity. To determine this customary nature we look toward both the technical legal criteria and the general conduct of other States, international organisations and civil societies, that as a whole would be understood in order to understand the normative nature and applicability of any provision. There certainly lie very limited ways in which this thing can be quantified, and there again remains a room for doubt; in which case we then shall refer to the derivation, reasoning and the very nature of any such norm to understand and evaluate its applicability. Such as, when a state enforces or refuses to enforce some international obligation, we can analyse both the state's reasoning, clarifications, limitations, etc. (in both legal and political capacities) and the provisions to understand to what extent that state's conduct can be questioned and the state can be held accountable.

This perspective of questioning a State's obligation does seem to be lengthy, qualitative and subjective to some extent. However, while putting it to practical application, the qualitative nature of such obligations or legal ambiguities must be understood in a wider context that takes all of the above-mentioned parameters into consideration. If not done, it gives States an incentive to engage in ambiguous conduct; since it would then be sidelined or disregarded for being subjective; thereby resulting in further exploitation of the gaps in the international legal order.

An argument can be presented in contrast to the presented approach, as done by India, which is its justification (when labelling the organisation) to preserve its territorial integrity; however it must be noted that, as previously iterated, the applicability of International Humanitarian law is not contingent on how the States chooses to recognise a movement as NLM, terrorist groups or otherwise; but on whether the conflict meets the required threshold. This understanding allows for such movements to not solely exist within a “democratic environment”, to ensure that the group’s conduct within the State and its conduct with the State can be both recognised and further scrutinised to create a cordial environment that preserves Human Rights, as is the duty of both the State and the International Community. This completely rules out the legal scope for the Indian State to cite it entirely as its domestic matter and then to wrongfully “label” these groups, completely in its own State interest, that is often political in nature, while ignoring its larger obligations.

This is also precisely the difficulty the fundamental emphasis on the factual-threshold approach to Non-International Armed Conflict classification, discussed above, is designed to avoid; that is, by anchoring the applicability of IHL to organisation and intensity rather than to a State's own characterisation, it attempts to remove exactly the kind of interpretive ambiguity that allows States to exploit blurred customary lines

POST RECOGNITION CONSEQUENCES

Building further on this very recognition, we can evaluate what might happen if NLMs were to gain recognition and then engage in conduct (even armed) with or against the State; irrespective of whether they attain NLM recognition; where, based on the factual thresholds of specific provisions and criteria, it can be categorised under Non-International armed conflict and in rare cases even International armed conflict. This categorisation, both in theory and practice, could then trigger the application of laws of armed conflict or laws of war, involving treaty provisions such as the Geneva Conventions or relevant Additional Protocols and customary provisions. This categorisation would bind the parties of the conflict by some rules during their armed conduct, which is essential to regulate their conduct, ensuring limited catastrophes and just war practices. One of the reasons for states, like India, to bypass such obligations is to refrain from following such rules, which would curtail their conduct, and so it would be difficult for them to take extreme measures or “any measures possible” in this entire conduct. Such a restraint becomes imperative for States to be kept in check so they might not be able to act arbitrarily or unlawfully.

THE INTRICACIES OF NATIONAL SECURITY INITIATIVES

Having established that India's obligations persist independent of how it labels these movements, the paper now turns to the specific domestic mechanism through which the practical evasion of that scrutiny is operationalised.

It must be noted that while the earlier analysis has primarily concerned itself with organised armed movements, it is worth noting that the application of certain domestic legislation is not merely confined to that grouping; but operates in a similar manner, while incorporating individuals, who might not have direct links to an armed conduct; wherein the same statutory architecture built to manage the “exceptions of armed conflict” has become a mechanism to create similar effects across spectrum of dissents against the State.

At first, we refer to the initiatives such as the Unlawful Activities (Prevention) Act, 1967[10] (herein referred to as UAPA), which was brought in with the intent for more effective prevention of unlawful activities of individuals and associations. The Act has primarily had an increase in scope after the repeal of the Prevention of Terrorism Act, 2002, to significantly broaden the UAPA by making it the primary “anti-terror law” in the State.

The recent upheaval in relation to the judicial proceedings under this legislation, most recently being denied bail by the Hon’ble Supreme Court, dated 5 January 2026,[11] is widely recognised as an application of legislation contrary to India’s International Human Rights obligations.

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[10] Unlawful Activities (Prevention) Act, No. 37 of 1967, India Code (1967)

[11] Shalom Gauri & Kruthika Senthil Kumar, 2026 Supreme Court mid-year review: Bail, Supreme Court Observer (June 19, 2026), https://www.scobserver.in/journal/2026-supreme-court-mid-year-review-bail/.

The first concern shall be in relation to the provision of Extended detention without charge (up to 180 days) wherein as per Section 43D[12] of the UAPA, the period of investigation may extend up to 180 days before filing a chargesheet which provides for exigent circumstances, usually exercised as a norm, for accused to stay in custody past the general 60-90 day limit in Indian criminal law. Herein we can observe it being contrary to both the general principles of international law and India's obligations, as the State is bound by Article 9[13] of the ICCPR (despite declaring that its provisions shall be applied in consonance with Article 22, clauses 3 to 7 of the Indian Constitution[14]), which prescribes protection from arbitrary arrest and detention and a further entitlement to trial within a reasonable time**.** The UN Human Rights Committee, in General Comment No. 35,[15] further clarifies how the term "promptly" shall mean within days, not weeks or months; that Pre-trial detention must be the exception, necessary and proportionate; which we when observe in the case of UAPA in practice, we see pre-trial detention being practised as a norm and also sidelining the individualised assessment nature of such practices, where such "exceptional" cases shall be judged on stringent criteria and with optimum legal justifications and not arbitrarily, which is often understood as injustice and lack of being proportionate.

Another significant concern is how the UAPA works "exceptionally" to general criminal law where, as often stated, the accused is "guilty until proven innocent" and not "innocent until proven guilty", as in general criminal law. This undermining of the presumption of innocence as a punitive measure can be seen as being contrary to Article 14(2)[16] of ICCPR, stating *"Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law"* and also resulting in the process to trial itself acting as a punishment where the onus to prove innocence largely shifts. Since India has not reserved or declared any part of the said article, the principle is directly applicable to all criminal charges,

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12 id. § 43D(5).

13 International Covenant on Civil and Political Rights, supra, art. 9 (short-form after first full cite).

14 INDIA CONST. art. 22, cls. 3–7.

15 U.N. Human Rights Comm., General Comment No. 35, Article 9 (Liberty and Security of Person), ¶¶ 12, 33, 38, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014)

16 id. art. 14(2)

irrespective of the nature of the offence. Furthermore, despite the fact that ICCPR allows for derogations in certain circumstances, namely public emergency, the derogation has to be officially proclaimed and must also be strictly proportional in its application. The UN Human Rights Committee also clarifies how the presumption of innocence imposes on the prosecution the burden of proving the charge. And all public authorities must refrain from prejudging the outcome of a trial**.**

We would then refer to stringent bail conditions (a provision under wide discussion in recent times) under Section 43D(5), which asserts that bail shall not be granted if the court finds reasonable grounds for believing that the accusation is "prima facie true", which was the reason for the Supreme Court's denial of bail on 5 January 2026. The further interpretation such as stemming from the 2019 Supreme Court judgement of National Investigation Agency v. Zahoor Ahmad Shah Watali,[17] which established pro-prosecution guidelines for granting bail under the UAPA. It established that courts must accept the National Investigation Agency (NIA)'s evidence at "face value", avoiding any deep analysis or "mini trials". This results in the bail-denial provision being justified solely on the *seriousness of the charge* instead of specific risks such as flight risks, evidence tampering or reoffending**.** This provision further limits judicial scrutiny, wherein WhatsApp chats, speeches and witness statements were accepted at face value and specifically without cross-examination i.e. when the defendant gets a chance to evaluate the credibility and viability of the witnesses, which acts as an important feature of a criminal trial. Herein, the court only evaluated the prosecution material, which, when accepted as true, established a prima facie case, therefore resulting in bail denial.

The provisions examined above are not merely theoretical departures from India's international obligations; they have been the subject of a recurring and largely consistent international response. The UN Working Group on Arbitrary Detention, mandated to examine individual cases of detention alleged to violate international law, has repeatedly found

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[17] Nat'l Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 (India); parallel cite 2019 SCC OnLine SC 461

UAPA-based detentions to be arbitrary;[18] a finding it has reached, on separate occasions and in unrelated cases, in respect of academics, students, and human rights defenders alike. What is significant for the purposes of this paper is not any single opinion but the pattern across them wherein; successive Working Group findings return to the same structural features identified above such as; extended pre-trial detention exceeding what General Comment No. 35 permits, the practical reversal of the presumption of innocence, and bail frameworks that make release contingent on accepting the prosecution's case at face value rather than testing it. This convergence suggests that the concerns raised in this section are not incidental to any one prosecution but arise from the statutory architecture of the UAPA itself. It should be noted that India has, in each instance as referenced above, declined to act on the Working Group's findings or to provide the Working Group with a substantive response. This non-engagement is itself instructive as it indicates that the "State of Exception" this paper identifies operates not only through the design of domestic legislation, but through the State's capacity to treat even a sustained, repeated, and cross-case pattern of adverse international findings as generating no binding obligation to reform.

While attempting to understand the redressal mechanisms, it becomes worth noting that India has ratified the ICCPR but has not ratified the First Optional Protocol[19] to the ICCPR, which houses a specific mechanism; wherein, it allows individuals to bring complaints of violations of the covenant rights to the Human Rights Committee, established under the ICCPR. While the opinions of the Working Group, as stated above, are merely authoritative and non-binding in nature; which a State can employ to its advantage; however, had India acceded to this Protocol, a UAPA detainee who had exhausted domestic remedies would, in principle, have access to a treaty-body mechanism capable of producing a considered, quasi-judicial finding on the specific violation alleged; a materially different proposition from a Working Group

[18] Human Rights Council, Working Group on Arbitrary Detention, Opinions Adopted by the Working Group on Arbitrary Detention at its 104th Session, Opinion No. 66/2025 (concerning India), U.N. Doc.

[19] Optional Protocol to the International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

opinion, however carefully reasoned. This is not merely a gap in India's engagement with the UN human rights system; it brings out a structural feature of how the State, alongside many others, manages its own accountability. What the paper wishes to argue is narrower and specific; that the very mechanism capable of translating the recurring UAPA findings discussed above into a binding-adjacent individual determination is one India has consistently declined to accept, leaving the Working Group's repeated, cross-case findings of arbitrariness as the ceiling, rather than the floor, of available international scrutiny.

In a larger context, such a provision could allow for the State to pursue its other interests in the guise of legally legitimate conduct, since the actions, despite seeming to be reasoned, could have arbitrary or unjust backing; are then scrutinised under the State's own domestic system; and thereby result in a larger democratic obligation being sidelined, which is to hold the utmost accountability.

THE CONSEQUENCES

The three strands of this paper's argument; the treatment of self-determination and its bearing on Non-International Armed Conflict classification, the specific statutory design of the UAPA, and India's calibrated non-accession to individual-complaint mechanisms under the ICCPR; are not three separate critiques that happen to share a subject. They are the same phenomenon operating at three different scales, namely, treaty interpretation, domestic legislative design, and procedural accession to international oversight. What connects them is not that India has misunderstood its obligations, but that at each level, the State has structured its position so as to remain formally compliant while practically insulated from the binding scrutiny. This is, in the fullest sense, what this paper has termed a "State of Exception"; not in the sense of a declared emergency, of the kind International Human Rights Law expressly contemplates and regulates through derogation clauses, but in the sense theorised by Carl

Schmitt[20] and later Giorgio Agamben,[21] wherein the exception is normalised precisely by never being formally declared. India has not derogated from the ICCPR; it has instead absorbed the logic of exception into ordinary legislation, ordinary bail jurisprudence, and ordinary treaty accession choices, such that no single decision presents itself as extraordinary enough to invite the scrutiny a declared emergency would attract. It is this diffusion of the exception into the ordinary that this paper has sought to make visible.

It is worth noting, further, that this critique survives even where the State's underlying legal position has genuine doctrinal weight; as this paper has conceded in respect of India's Article 1 Declaration, which sits within a defensible and widely-shared reading of self-determination doctrine; the failure identified here is not a failure of legal interpretation at the level of self-determination; it lies in what follows from that interpretation being treated as dispositive of questions it does not, in law, resolve. Even India's own Supreme Court, the highest judicial organ of the State, has at various points recognised that international obligations bear on the interpretation of domestic legislation; the inconsistency lies not in the absence of this principle from Indian jurisprudence, but in its selective invocation; applied where convenient to the State's position and set aside where it is not. A State cannot, consistent with the rule of law it otherwise claims to uphold, treat its international obligations as available for citation but not for constraint.

This paper has not sought to resolve whether India's conduct amounts to a breach that could be established before any adjudicative body; India's own non-accession to the mechanisms that might make such a determination possible is, as this paper has argued, part of the problem it identifies. What it leaves open, instead, is a narrower and perhaps more tractable question of whether a State's consistent non-acceptance of the individual-complaint mechanisms attached to the human rights treaties; it has otherwise ratified; should itself be treated as a relevant factor in assessing that State's good-faith compliance with those treaties;

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[20] Carl Schmitt, Political Theology: Four Chapters on the Concept of Sovereignty (George Schwab trans., Univ. of Chicago Press 2005) (1922)

[21] Giorgio Agamben, State of Exception (Kevin Attell trans., Univ. of Chicago Press 2005).

not as a violation in itself, but as a structural choice that shapes how any other alleged violation can subsequently be tested. India is not alone in having made this choice, and the same architecture of formal compliance and structural insulation identified here may well describe other States confronting comparable questions of internal security. Whether it does, and what consequences that pattern should carry, is a question this paper leaves for further inquiry.