



Lawfare in India: The Strategic Misuse of Criminal Law as a Tool of Political Suppression

Dr. Santosh Kumar

Advocate

High Court of Judicature at Allahabad

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Keywords : <i>Lawfare, Preventive Detention, UAPA, NSA, Human Rights, Judicial Oversight, Political Suppression, Civil Liberties, Freedom of Speech, Democracy</i>	<i>The Indian Constitution enshrines the ideals of liberty, equality, and justice. Yet, throughout its democratic journey, India has witnessed the repeated misuse of criminal law as a tool of political suppression. Popularly referred to as lawfare, this phenomenon involves the weaponization of legal instruments by the state to intimidate, harass, and silence dissent. From colonial-era sedition law to modern anti-terror legislation like the Unlawful Activities (Prevention) Act (UAPA), the state has deployed statutes not only for maintaining public order but also to suppress political opposition, curtail free speech, and deter activism. This paper critically analyzes the concept of lawfare in India, tracing its historical evolution, examining case studies, and assessing its implications for democracy, rule of law, and fundamental rights. It argues that while criminal law is essential for ensuring justice and security, its politicized misuse undermines democratic governance. The paper concludes by proposing legal, institutional, and societal reforms to check the misuse of law and to restore the balance between state power and individual liberty.</i>

Introduction

Democracy thrives on the rule of law, which is meant to be a shield protecting citizens from arbitrary power. However, when laws are twisted into instruments of intimidation, they become weapons of



suppression rather than tools of justice. This phenomenon, where the state strategically uses criminal law to target opponents, journalists, and activists, is increasingly described as lawfare.

In India, lawfare is not a new phenomenon. During colonial rule, the British enacted laws like Section 124A of the Indian Penal Code (sedition) to criminalize dissent. Post-independence, despite constitutional guarantees under Articles 19 and 21, successive governments—irrespective of political affiliation—have misused preventive detention laws, sedition charges, and stringent anti-terror provisions to suppress critics. The misuse of these laws erodes public trust in democracy and raises a pressing question: Is the Indian state drifting from constitutionalism toward authoritarian legalism? This paper seeks to explore this question in depth.

Historical Background of Lawfare in India

Colonial Legacy

The colonial state perfected the art of lawfare. The Indian Penal Code (IPC), 1860, and laws such as the Criminal Law Amendment Act of 1908 were deployed against freedom fighters. Leaders like Bal Gangadhar Tilak, Mahatma Gandhi, and Jawaharlal Nehru were prosecuted under sedition for their speeches and writings. Law thus functioned as a political weapon long before independence.

The Emergency (1975–1977)

The period of Emergency declared by Indira Gandhi remains the most vivid post-independence example of lawfare. Preventive detention under the Maintenance of Internal Security Act (MISA) was extensively misused to silence opposition leaders, journalists, and civil society members. Over 100,000 people were detained without trial. The judiciary, through the infamous *ADM Jabalpur v. Shivkant Shukla* (1976) judgment, failed to safeguard fundamental rights, effectively legalizing state repression.

Contemporary India

In the present day, laws like the Unlawful Activities (Prevention) Act (UAPA), National Security Act (NSA), and provisions like sedition continue to be invoked against journalists, student leaders, protestors, and political opponents. The continuity of lawfare from colonial times to contemporary India reveals its systemic entrenchment.

Conceptual Understanding: What is Lawfare?

The term *lawfare* was originally coined in international law, referring to the strategic use of legal systems to achieve military or political objectives. In domestic politics, lawfare refers to:



1. Weaponization of legal provisions to target political opponents.
2. Criminalization of dissent under broad and vague laws.
3. Use of police and investigative agencies as instruments of partisan politics.
4. Harassment through prolonged trials, even when conviction is unlikely.

Thus, lawfare is less about the actual punishment and more about the process being the punishment. The filing of charges, denial of bail, and years of litigation achieve the state's objective of suppression.

Major Laws Used as Tools of Political Suppression

1. Sedition (Section 124A IPC)

- Originally enacted in 1870, sedition criminalizes words or actions that bring “hatred or contempt” against the government.
- Despite judicial restrictions in *Kedar Nath Singh v. State of Bihar* (1962), sedition has been repeatedly invoked against journalists, students, and activists.
- It is noteworthy that it has now been abolished in the new *Bharatiya Nyay Sanhita*.

2. Preventive Detention Laws

- The National Security Act (NSA) allows detention for up to 12 months without trial.
- Often used against protestors and minority communities, the NSA exemplifies preventive lawfare.
- Judicial scrutiny is minimal, making it prone to misuse.

3. Unlawful Activities (Prevention) Act (UAPA)

- Widely regarded as one of India's most draconian laws.
- Allows prolonged detention without bail and vague definitions of “terrorist acts.”
- Activists such as Sudha Bharadwaj, Father Stan Swamy, and Gautam Navlakha have been incarcerated under UAPA with trials dragging on for years.

4. Defamation and IT Laws

- Criminal defamation under Section 499 IPC has been used against journalists and opposition politicians.

- The **Information Technology Act (2000)**, particularly Section 66A (struck down in *Shreya Singhal v. Union of India*), exemplifies how vague cybercrime provisions were misused to silence online dissent.

Case Studies of Lawfare in India

1. Emergency Detentions (1975–77)

The use of MISA to detain opposition leaders like Jayaprakash Narayan, Atal Bihari Vajpayee, and L.K. Advani without trial illustrates lawfare par excellence.

2. Bhima Koregaon Case (2018–present)

Sixteen activists, lawyers, and intellectuals were arrested under UAPA for alleged Maoist links. Most spent years in prison without trial; Father Stan Swamy died in custody in 2021. The case is widely criticized as an example of criminal law being misused to stifle dissent.

3. Farmers' Protest (2020–21)

Protest leaders were charged with sedition, UAPA, and other criminal laws. Internet shutdowns and mass detentions further demonstrated the state's reliance on legal tools to suppress peaceful movements.

4. Targeting of Journalists

Journalists like Siddique Kappan (detained en route to Hathras) and Kashmiri reporters such as Fahad Shah have faced repeated charges under UAPA and PSA, reflecting how lawfare is used to control narratives.

Implications of Lawfare for Democracy and Rule of Law

1. Erosion of Fundamental Rights

The most direct and visible consequence of the misuse of criminal laws is the erosion of fundamental rights guaranteed under the Constitution of India. Article 19, which protects the right to freedom of speech and expression, and Article 21, which guarantees the right to life and personal liberty, are the first casualties when laws like sedition, UAPA, or preventive detention provisions are invoked. Individuals are arrested not for proven acts of violence, but merely for words, associations, or peaceful protests that challenge government policies. Such practices shrink the scope of fundamental freedoms, replacing democratic space with fear and coercion. Over time, this erosion undermines the very spirit of constitutional democracy, as rights that were designed to empower citizens against state excesses are systematically hollowed out.



2. Chilling Effect on Dissent

The misuse of criminal laws also creates a profound chilling effect on free expression and dissent. When journalists, students, activists, and ordinary citizens witness others being jailed or harassed for voicing criticism, they become reluctant to speak out themselves. The fear of facing criminal charges, prolonged trials, or imprisonment without bail deters citizens from exercising their democratic right to question authority. This chilling effect is perhaps more damaging than direct censorship because it breeds self-censorship, where individuals voluntarily silence themselves to avoid state persecution. As a result, the public discourse becomes impoverished, dissenting voices fade, and democracy is reduced to a hollow ritual devoid of genuine debate and accountability.

3. Undermining Judicial Process

Another serious outcome of lawfare is the undermining of the judicial process itself. In cases involving “national security” or “anti-state” charges, the normal legal principle of bail as a rule and jail as an exception is reversed. Courts often show excessive deference to the state, hesitating to grant bail even when evidence is weak or trials are unlikely to conclude soon. Trials under draconian laws frequently drag on for years, and during this time, the accused remain incarcerated without conviction, effectively suffering punishment before being found guilty. This not only erodes faith in the justice system but also distorts the very purpose of law: instead of protecting rights, it becomes a mechanism of prolonged punishment and intimidation.

4. Weakening of Political Opposition

The misuse of criminal law disproportionately targets opposition leaders and political rivals, thereby distorting the playing field of democratic politics. High-profile cases have shown how opposition figures are booked under sedition, corruption, or anti-terror laws, while ruling party members facing similar allegations are spared. Such selective targeting undermines the fairness of elections and democratic competition, as opposition leaders are forced to spend time and resources fighting legal battles instead of campaigning or engaging with the public. Over time, this weakens the institution of opposition itself, reducing it to a fragmented and beleaguered force unable to provide effective checks on the government. The deliberate use of lawfare against opposition leaders transforms the criminal justice system into a political weapon, corroding the principle of equality before the law.

5. Loss of International Credibility

Finally, the misuse of suppressive laws has a significant impact on India's international credibility. As the world's largest democracy, India is often held up as a model for other developing nations. However, when global human rights organizations, international media, and foreign governments repeatedly highlight the misuse of laws such as sedition, UAPA, and preventive detention, India's democratic image suffers. Persistent reports of journalists, academics, and activists being jailed or silenced attract global criticism and affect India's soft power on the world stage. Moreover, such practices raise concerns among international investors and multilateral bodies about rule of law and institutional stability. Thus, the domestic misuse of laws not only weakens democracy at home but also diminishes India's standing as a credible defender of democratic values abroad.

Judicial Responses

The judiciary has played a mixed role.

- **Protective Judgments:**

- *Kedar Nath Singh v. State of Bihar (1962)* limited sedition to incitement of violence.
- *Shreya Singhal v. Union of India (2015)* struck down Section 66A of the IT Act.
- *Maneka Gandhi v. Union of India (1978)* expanded the scope of personal liberty.

- **Failures:**

- *ADM Jabalpur v. Shivkant Shukla (1976)* upheld suspension of rights during Emergency.
- Courts have been criticized for granting prolonged remands and delaying bail under UAPA.

Thus, while the judiciary occasionally acts as a guardian of liberty, it often enables lawfare through deference to executive power.

Comparative Perspective

The phenomenon of lawfare, or the strategic misuse of law as a political weapon, is not confined to India. Across the world, states have historically deployed vague, overbroad, or draconian legal provisions to silence dissent, suppress opposition, and consolidate authority. What distinguishes India, however, is the persistence of colonial-era laws like sedition alongside newly enacted legislation such as the UAPA, creating a layered framework of suppression. A comparative analysis of countries such as Pakistan, China, and the United States reveals that while the methods and justifications may differ, the underlying pattern of leveraging law for political control is global.



Pakistan: Misuse of Blasphemy and Anti-Terror Laws

In Pakistan, blasphemy laws and counter-terrorism provisions have been repeatedly used as tools of political and ideological suppression. While blasphemy charges are often framed in religious terms, in practice they are frequently used to target political opponents, minority communities, and human rights defenders. The Anti-Terrorism Act has similarly been invoked not only against violent extremists but also against protestors and political workers, blurring the line between legitimate dissent and unlawful activity. These practices have entrenched a culture of fear where criticism of the state, especially its military establishment, is fraught with danger. In this sense, Pakistan exemplifies how vaguely defined laws become instruments of both political repression and social control.

China: “Subversion” and the Criminalization of Dissent

China offers another stark example, where the state relies on vaguely worded provisions such as laws against “subversion of state power” and “picking quarrels and provoking trouble.” These laws enable the detention and prosecution of activists, journalists, lawyers, and even ordinary citizens who challenge government policies or call for democratic reforms. Unlike India and Pakistan, where democratic frameworks formally exist, China’s authoritarian system institutionalizes legal suppression, using courts and police as extensions of state ideology. The vagueness of the laws allows the Chinese state to criminalize virtually any form of dissent, ensuring that opposition is not only marginalized but made legally invisible.

USA (Post-9/11): The Patriot Act and Expanded Surveillance

Even in established democracies such as the United States, the post-9/11 era demonstrated how security laws can be weaponized against civil liberties. The Patriot Act, passed in the aftermath of the September 11 attacks, expanded state surveillance powers and authorized indefinite detention of non-citizens suspected of terrorism. Critics argue that the law disproportionately targeted Muslim and immigrant communities, creating a climate of profiling and discrimination. Although framed as a necessary response to terrorism, the Patriot Act exemplifies how fear and crisis can justify erosions of liberty, often with long-term implications for marginalized groups. This illustrates that the misuse of law as a political and security tool is not unique to authoritarian regimes but can also emerge in liberal democracies.

India’s Case: A Particularly Stark Example

While these international examples highlight the global nature of lawfare, India’s case is particularly stark because of its democratic pretensions combined with colonial legal hangovers. The continued use of



Section 124A (sedition), a British-era provision designed to crush anti-colonial movements, symbolizes how the postcolonial state has inherited and adapted tools of repression from its colonial predecessor. Unlike the USA, where suppressive laws were framed as emergency responses to terrorism, or China, where authoritarian control is systemic, India's reliance on both colonial and contemporary draconian laws exposes a paradox: the world's largest democracy continues to criminalize dissent using the very laws once used to suppress its own freedom struggle. This contradiction underscores why India's misuse of law resonates more profoundly in global discussions on democracy and rights.

Reforms and the Way Forward

1. Repeal or Reform of Draconian Laws

The first and most urgent reform lies in repealing or reforming laws that have consistently been misused for political suppression. Section 124A of the Indian Penal Code (sedition) is a colonial relic that criminalizes dissent and has no place in a modern democracy. Its vague wording has allowed successive governments to target activists, journalists, and opposition leaders merely for criticism of state policies. Similarly, the Unlawful Activities (Prevention) Act (UAPA), while framed as an anti-terror law, suffers from overbroad definitions and excessive powers of detention, making it prone to misuse. Instead of outright abolition, the UAPA requires narrower definitions of "unlawful activity" and "terrorism" and must include judicial safeguards at every stage. Only through such legal reform can the balance between security and liberty be restored.

2. Judicial Accountability and Speedy Trials

A major reason why lawfare succeeds is because the judicial process itself becomes a punishment. Prolonged incarceration, endless adjournments, and denial of bail often break the spirit of those accused, even if they are later acquitted. To prevent this, fast-track courts should be established for political and protest-related cases, ensuring that trials are concluded within a fixed timeframe. Judicial officers must also be held accountable for undue delays or excessive deference to the state in bail matters. By enforcing judicial accountability and expediting trials, the courts can reclaim their constitutional role as protectors of liberty, preventing the state from exploiting slow procedures as a tool of suppression.

3. Strengthening Safeguards Against Preventive Detention

Preventive detention laws such as the National Security Act (NSA) grant sweeping powers to detain individuals without trial, often on flimsy grounds. Such laws are inherently susceptible to misuse, especially against minorities, protestors, and political opponents. To prevent abuse, independent review

boards with sitting or retired judges must be made mandatory to scrutinize every detention order. These boards should be empowered to strike down detentions lacking sufficient evidence. Additionally, periodic judicial oversight should be institutionalized to ensure that preventive detention remains a measure of last resort, not a tool of routine political convenience.

4. Political Accountability

Legislative oversight is crucial to curb lawfare. Presently, once laws like UAPA or NSA are invoked, their implementation remains largely shielded from democratic scrutiny. To change this, Parliamentary committees must be mandated to review the application of suppressive laws annually. These reviews should include data on the number of arrests, convictions, and acquittals, thereby exposing patterns of misuse. Publicly available reports will hold the executive accountable and ensure that laws intended for national security are not converted into instruments of political intimidation. Strengthening parliamentary oversight would reaffirm the principle that the legislature, as the representative of the people, must guard against executive overreach.

5. Civil Society and Media Vigilance

Finally, beyond legal and institutional reforms, the role of civil society and the media is indispensable in resisting lawfare. Independent journalism, human rights organizations, and public advocacy serve as watchdogs that expose cases of misuse and mobilize public opinion against state excesses. However, both media and civil society themselves face harassment through defamation suits, tax raids, and foreign funding restrictions. Protecting their independence is therefore vital for democracy. A vigilant civil society and free press not only challenge authoritarian tendencies but also provide victims of lawfare with platforms for visibility and solidarity. Their role ensures that misuse of law does not remain hidden but is continuously contested in the public sphere.

Conclusion

Law is intended to protect the people from the excesses of the state. However, in India, it has too often been inverted into an instrument of state oppression. The practice of *lawfare*—whether through sedition, preventive detention, or anti-terror laws—reflects a dangerous trend where legality masks authoritarianism. While governments justify these measures in the name of security or order, their frequent targeting of dissenters exposes the political motivations behind them.

To safeguard Indian democracy, it is imperative to reclaim the spirit of the Constitution. Repealing draconian laws, enforcing judicial independence, and empowering civil society are essential steps.



Without such reforms, India risks normalizing lawfare as a permanent feature of governance, where the rule of law becomes rule by law, and the promise of liberty remains unfulfilled. Criminal laws are undoubtedly essential for maintaining public order and protecting society from genuine threats such as terrorism, violence, and organized crime, yet their misuse raises the fundamental question of whether such laws should exist at all. The problem lies not in their existence but in their vague wording, excessively broad definitions, and weak safeguards, which grant the state unchecked discretion. For instance, the Unlawful Activities (Prevention) Act (UAPA) is frequently invoked even in cases where no direct terrorist activity is proven, leading to prolonged incarceration of accused individuals without trial. Similarly, the National Security Act (NSA) has often been used not for extraordinary threats to national security but for minor disturbances or administrative dissent, thereby curtailing civil liberties in an arbitrary manner. In recent years, several activists, students, and journalists have been booked under these stringent provisions, suggesting that such laws have become powerful tools to suppress dissent and silence critical voices. This demonstrates that while the intent of these laws may be to safeguard the state, their actual application often undermines the very democratic freedoms they claim to protect. Therefore, instead of abolishing all such laws outright, the democratic principle requires that those laws which are inherently repressive or obsolete be scrapped, while others must be carefully reformed with clear definitions, independent judicial oversight, and robust safeguards. Any law that causes more harm through misuse than the good it achieves through protection has no legitimate place in a constitutional democracy.

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