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Section 1: Introduction.

Extra-ordinary laws have played an important role in the governance and administration within the Indian State. Extra-ordinary laws, as the name suggests are legislations which are brought about in order to enable the State to deal with extra-ordinary situations, mostly such as those pertaining to terrorism. These laws differ from other routine laws in significant ways in terms of their provisions as well as in the manner in which they are implemented. From time to time, the Indian State has introduced different extra-ordinary laws to deal with contextually specific circumstances.

In the following chapter an attempt will be made to deeply engage with the concept of extra-ordinary laws and examine their functioning in the Indian context. The second section would examine contemporary understanding of extra-ordinary laws in the Indian and international contexts. It will also analyze the rationale of the Indian State for introducing these laws. Section three will enumerate briefly the working of extra-ordinary laws in India. Section four will seek to define extra-ordinary laws. Section five will discuss the limitations of relying extensively on extra-ordinary laws for administration in a democracy. Section six will provide a conclusion to the chapter.

Section 2: Engaging with Extra-ordinary laws: Indian and International Contexts.

In order to understand the peculiarities of security concerns in the 21st century, it needs to be pointed out that the terrorist attacks on USA in 2001 impacted the manner in which states across the world conceptualized security. It is argued that after the attacks on the World Trade Center and the Pentagon in USA in 2001, nation-states all over the world have realized that terrorism/threat of terrorist violence has disproportionately increased and hence the only way to avert terror threats is through the process of strengthening the security apparatus. In what will subsequently be summarized through a reading of proponents of this view, it will become clear that there is definitely merit in this argument though it isn't a sufficient explanation.

A trend can be observed internationally among states towards securitization through the medium of strengthening anti-terrorism laws and through militarization (in other words through strengthening their military apparatuses). A study has examined anti-terrorism laws in Australia, Canada, South Africa and the USA. The argument made by Kent Roach (2006) is that the UN Security Council Resolutions 1373 and 1624, as well as the Terrorism Act, 2000; have impelled states to make anti terrorism laws. For example, through Resolution 1373 (which was adopted by the United Nations Security Council on 28th September 2001) it was decided amongst the signatory states that they would take whatever actions possible to prevent and curb financing of terrorist activities. Roach (2006) suggests that the quickest responses to this Resolution in terms of enacting anti-terrorism legislation came from Australia, Canada, and the United Kingdom. Additionally, establishing a link in between problems incurred

during the process of immigration and abuse of refugee status by terrorists for seeking asylum, this Resolution requested signatory states to ensure that they would not let terrorists get away with such acts.

Resolution 1624 (which was adopted by United Nations Security Council on 14th September 2005) suggests that signatory states should work towards countering attempts by extremist groups to incite terrorist acts and to prevent the use of cultural, educational and religious organizations by terrorist groups. Roach (2006) has argued that after signing this Resolution, many Nation States (including Australia and Britain) have introduced new sedition laws restricting freedom of speech by criminalizing speech thought to be associated with terrorism.

Amnesty International India brought out a report on the comparative analysis between anti-terror laws, which had been implemented in USA, United Kingdom, European Union, the United Nations and India. The Report says; ' In the light of the events of 11th September and its aftermath it is particularly important that the international community recommits itself to justice and respect for human rights. The language of retribution, of secret assassinations and suspension of civil liberties, reminiscent of the Cold War, do not augur well for the protection and promotion of human rights. Several governments, including the Government of India also seem to be using the 'atmosphere of fear and insecurity' as an excuse to justify or enact legislation and introduce policies that marginalize human rights in the name of fighting terrorism' (Amnesty International India. 2001).

In the context of USA, the Amnesty International Report, based on the analysis of American Civil Liberties Union (ACLU), argues that the following features of USA Patriot Act restrict civil liberties and shrink the democratic space. These include, allowance of indefinite detention of people who are not citizens of the United States of America on pretext of being thought to be terrorists/prospective terrorists with out proof of the same, availability of minimal judicial supervision for the same, furthering internet surveillance over American citizens and non-citizen residents, expansion of governments ability to conduct secret searches, expansion in the powers of the Attorney General and Secretary of State in determining/labeling organizations as terrorist and banning them. The ACLU also argued that this Act was geared towards including forms of dissent into terrorism by making the definition of terrorism more and more expansive, curbing the right to speech and to formulate opposition to the government policies.

Dirk Haubrich (2003) in his comparative study of the anti-terror laws and the status of civil liberties in Britain, France and Germany suggests that the following categories of rights have been adversely affected by the anti-terror legislations. These include- Right to Privacy and Information Self-Determination; Freedom of the Person; Freedom of Expression; Right to Private Property; Freedom of Movement (Asylum/Immigration); Expansion in Jurisdiction of Secret Services; and burden of proving personal identity repeatedly through issuance of special identity cards

In the context of the United Kingdom, the Amnesty International Report analyses the provision of the Terrorism Act 2000, which was introduced in United Kingdom.

Issues concerning this legislation were as follows; creation of a system of arrest based on discrimination, provision for protracted detention of persons arrested as suspected international terrorists, violation of the right of all people to be equal before courts of law, reworking the definition of terrorism to make it expansive enough to include ordinary crime and making it open to subjective interpretation, pursuit of wide ranging arrests without issuing warrants, denying detainee's the right to legal aid, targeting immigrants as suspected international terrorists, shifting the burden of proof to the accused etc. The Report, whilst analyzing the provision of the Anti-Terrorism Act 2001, argued that it was built as a stricter version of Terrorism Act 2000, and ended up even more severely compromising legal and democratic procedures leading also to the criminalization of dissent.

Analyzing the proposal by the European Commission for a Council Framework Decision on combating terrorism, the Amnesty International Report condemned the inclusion of criminal offences into the ambit of terrorist acts and the increase in the intensity of punishments for the same. The Report also condemned the allowance for indefinite detention in case of suspected terrorists by the European Union.

In the Indian Context, the Amnesty International Report condemned the Prevention of Terrorism Bill 2000 on grounds that it could be misused much in the same way that TADA [Terrorist and Disruptive Activities (Prevention) Act 1987] and MISA [Maintenance of Internal Security Act] were misused and argued that existing laws were sufficient to tackle terrorism. On the basis of the work of People's Union of Democratic Rights, the Amnesty International Report suggests that anti terror laws compromise on people's fundamental rights, they put the burden on proof on the person under trial rather than on the prosecution, such laws allow for arbitrary application of legal procedures based on subjective analysis and these laws allow for crushing of dissenting voices in the political system.

It is important to examine the **Indian State's rationale** for enacting anti-terror/ extra-ordinary laws. It has been argued by the Indian State in Reports such as the Second Administrative Reforms Commission Repost (2008) that extra-ordinary laws are mainly put into place by the State to deal with the threats posed by terrorism. It has been argued that the State faces multiple challenges pertaining to internal security for which a legal framework is required. It has been stated that terrorism has acquired global dimensions and keeping in consonance with international norms, Security Council Resolutions, and anti-terror laws promulgated by other States, the Indian State has also formulated anti-terror laws. The State has lost lives of soldiers and citizens and loss to property in terror attacks.

Even prior to this in 2000, the Law Commission of India in the 173rd Report on the Prevention of Terrorism Bill, argued for a specific legislation to deal with terrorism. The draft of the Prevention of Terrorism Bill (2000) included definitions of terrorism, the proposed punishments for such acts, punishment for possession of arms, special powers for investigating officers of crimes of terrorism, protection of witnesses etc. It was acknowledged that an Act or law would not by itself

reduce terrorism but it would definitely enable the State to fight terrorism more effectively.

The 173rd Law Commission Report also stated that the Indian Penal Code was not designed to deal with acts of terrorism and hence, there was a need to create legislations to deal specifically with terrorism. Organized terrorist activities posed extra-ordinary situations for the Indian State, calling for creation and enactment of extra-ordinary laws. Given this context, it was important to revise the legal safeguards which were present for criminal suspects during normal times and revise them keeping the extra-ordinary nature of terrorism into the purview. It was imperative to create stricter provisions for arrest, detention and trial to deal with terrorists. Severe punishments were to be meted out to those individuals and/or groups who act/intend to harm the unity and integrity of the Indian Nation.

The Second Administrative Reforms Commission Repost (2008) also stated that the Constitutional validity of the anti-terror/extra-ordinary laws has been questioned in certain Court cases. The Supreme Court has upheld the validity of such laws stating that a strong legal framework is needed in order to respond to the threats posed by terrorism. When in 1987, the Terrorist and Disruptive Activities (Prevention) Act (TADA) was challenged in the Supreme Court, the Court upheld the law on these grounds simultaneously asking the government to provide certain safeguards against the misuse of the law.

The Second Administrative Reforms Commission Repost (2008) examines the extra-ordinary laws which were formulated and enacted prior to its inception. After a through examination of the laws and their provisions the Report (2008) has made some recommendations. It has been argued in the Report (2008) that a comprehensive legal framework must be created to deal with the multifarious aspects of terrorism and this should be incorporated in the National Security Act of 1980. It has been stated that there exists a need to clearly define terrorism and terrorist acts. The definition of these should include use of explosives of any kind with the intention of harming life and property, assassinations of public officials, intent of harming the security and sovereignty of the Indian State, detention of a person to blackmail the government to act a certain way, and any act of facilitating terrorist activities. It has been argued that the police should have to power to thoroughly investigate those suspected of being engaged in terrorist activities and the procedure for granting them bail should be made difficult in order to facilitate this. The Report (2008) also recommends that all efforts should be made to ensure that the anti-terror legislations are not misused.

Section 3: Working of Extra-ordinary laws in Indian Democracy.

The India State has enacted different extra-ordinary laws from time to time. With the change in the socio-political contexts in which these laws were formulated, the provisions present within the legislations have also gone through change. Thus, it becomes necessary to examine the changing patterns present in the extra-ordinary laws.

In this context, Singh (2012) has argued that three extra-ordinary laws including TADA, Prevention of Terrorism Act (POTA), and Unlawful Activities Prevention Act (UAPA) need to be seen as constituting three different legal regimes for dealing with terrorism. It has been suggested that each law needs to examined not just in terms of its bare provisions but in terms of its political and ideological dimensions and its discursive practices. In order to understand the extra-ordinary law, it is critical that the provisions mentioned in the laws and the practices which surround their implementation must be analyzed together.

Singh (2012) has termed the phase in Indian politics when TADA was enacted as a phase of securing the State. It has been argued that TADA (1985) was the first law which was enacted specifically by the Indian State to respond to terrorist activities. This law was introduced against the backdrop of the separatist Khalistan movement in Punjab. Initially, it was intended that the law would be in action for a period of two years since its inception and would be applicable in Punjab and a few adjoining states. TADA was extended in 1987 and in 1993, making it more stringent and widening its outreach. This law expanded the powers of the executive in the context of responding to terrorism, it also made provisions for creating special Designated Courts for trying suspects in TADA cases.

TADA had special provisions dealing with definition of terrorism, arrest of suspects, bail, remand etc. One of the provisions under its ambit provided for extension in the pre-trial remand period for a period of upto one year. Under its ambit, the grant of bail to those arrested was also made difficult. Most importantly, the provisions of the law called for treating confessions before the police as evidence in the process of the trial. This provision was challenged in Supreme Court but the law was upheld as constitutionally valid. The National Human Rights Commission (NHRC) reviewed the functioning of the law and suggested that it be repealed as it had draconian features which severely compromised normative legal standards. It was also observed that this was used in a communal and sectarian manner. TADA lapsed in 1995.

Singh (2012) argues that the phase in which POTA was applied, can be understood as a time when the Indian National Security State strengthened itself against the backdrop of global consensus on constituents of security in democracies. POTA was brought about in response to the recommendations of the 173rd Report of the Law Commission arguing for the enactment of an anti-terror legislation to replace TADA. As the Prevention of Terrorism Ordinance, this law was introduced in 2001 against the backdrop of the terror attacks on the World Trade Centre in USA in 2001. By 2002 the Ordinance was converted into a law. The provisions of POTA were more stringent than those of TADA. These provisions pertained to terms of arrest, detention, bail, including admission of confessions in front of police officers. The definition of terrorism was broadened

to include aspects of membership to banned organizations and financial assistance provided to banned organizations. These provisions added vagueness to the provisions of the law leading to misuse of the law itself.

Under the ambit of POTA, electronic communication (including provisions for tapping phones etc) could also be used as evidence in Court and organizations could be banned if they were deemed as 'terrorist'. Whilst POTA was in use, several organizations were banned and many of these were organizations associated with political movements. This can be seen as selective application of the law. Additionally, if the judgments administered under the ambit of this law are examined it can be ascertained that many times procedural frailties were not adequately addressed during the process of trial and judgments were granted in the quest for ensuring security of the Nation State. When POTA was challenged in the Supreme Court, it s constitutional validity was upheld in the PUCL vs the Union Of India Case (judgment passed in 2003). The Court argued that the government has the authority to legislate on matters pertaining to national security. The Court reiterated the need for requisite legislation for dealing with terrorism.

When the NHRC reviewed POTA, it argued that there was no need for such a law as all the aspects that it catered to were already addressed in the pre existing laws.it was proposed that the problem with the criminal justice system in India pertained to lack of proper investigation of crimes, lack of efficient prosecution of crimes, and delays in adjudication. POTA was finally repealed in May 2004.

Singh (2012) has argued that over a period of time the use of extra-ordinary laws has become normalized in Indian democracy. The contemporary anti-terror regime is characterized by the use of UAPA (amended in 2008) and the enactment of the National Investigating Agency Act 2008 (NIA). After the 2008 Mumbai terror attacks, UAPA was amended and made more stringent and NIA was formed to investigate offences pertaining to terrorism. Another change has occurred, various state (federating unit) and provincial extra-ordinary laws have been introduced to deal with state specific terror concerns. These include laws such as, the Disturbed Areas Acts, Chhattisgarh Special Public Safely Act 2006 etc.

The UAPA has not been subjected to legislative review or other forms of scrutiny by the State. It was initially brought about in 1967 as a law to deal with associations whose actions were deemed to be harmful for harmonious existence of different groups of people. This was brought about against the backdrop of the Naga rebellion but it was applicable in all parts of the Indian State. After the demolition of the Babri Masjid and the growth of the separatist movement in Kashmir, many organizations were banned under the ambit of UAPA. However, organizations were selectively banned, meaning that organizations with religious affiliations belonging to the minority religions in India were banned where as organizations with affiliations to the majoritarian religion were not banned. From 2004, UAPA has been expanding in scope. In 2008, with the amendment to the UAPA it was made possible to arrest and detain people on mere suspicion of a police officer. This provision has been misused to arrest several people belonging

to social movements, academics, and activists in India in order to silence dissent against the State.

To conclude, Singh (2012) suggests that not only has the continuous use of extra-ordinary laws become common place in Indian democracy, a distinctive pattern has emerged with the promulgation and use of these laws. Much of the extra-ordinary laws intertwine with ordinary laws and extra-ordinary laws are beginning to be accepted and their use is being normalized.

Section 4: Defining Extra-ordinary laws.

A peculiar trend observed in the functioning of modern democracies pertains to the temporary suspension of democratic governance, in the name of strengthening democracy in the long run, and the election of totalitarian governments through democratic processes. In the work 'State of Exception', Giorgio Agamben provides an analysis of these afore mentioned phenomenon. He argues that 'State of Exception' can be understood as a disjuncture between public law and political fact, implying a set of political circumstances wherein the legal apparatus is used to suspend the legally accorded rights and liberties of people. Agamben (2005) adds that one of the factors leading to the conceptual ambiguity associated with the 'State of Exception' is in its close relationship with civil war, insurrection and resistance. States understand civil war as 'opposed to normal conditions' and the framework of State of exception is used by States as a response to extreme internal conflicts in order to safeguard the continuity of State sovereignty. This leads to a situation wherein popular sovereignty (democracy) and due process of law are compromised in the name of upholding State sovereignty.

In the same vein then it becomes imperative to ask the following questions-What do we mean by extra-ordinary laws? How are they different from ordinary laws?

Singh (2007) proposes the following answers to these questions. Anti-terror laws have been deemed as extra-ordinary laws. Firstly, extra-ordinary laws are promulgated by the government with the intention of using them as instruments to respond to specific trying circumstances for the State. Secondly, such laws are introduced with a specified time frame for a temporary period. In other words since extra-ordinary laws are always brought about to respond to an extra-ordinary situation, their existence is expected to be as short-lived/ long-lived as the situation they are catering to. Thirdly, as these laws cater to extra-ordinary situations and respond to threats faced by the State, the laws contain extra-ordinary legal provisions pertaining to terms and conditions of arrest, investigation, detention etc.

What is distinctive about Extra-ordinary laws?

- State formulates them to use them as instruments to respond to specific trying circumstances.
- Such laws are introduced with a specified time frame for a temporary period.
- As these laws cater to extra-ordinary situations, the laws contain extra-ordinary legal provisions pertaining to terms and conditions of arrest, investigation, detention etc.

Further, Singh (2007) has argued that extra-ordinary laws have become the 'norm' in Indian democracy rather than being temporary in nature. The Indian State has justified the legislation and use of extra-ordinary laws by stating there perpetually exist internal threats to the sovereignty and integrity of the State. It is argued that these laws fill in the hitherto present legal vacuum and aid the State in dealing with these threats.

The Indian State has promulgated different extra-ordinary laws since its inception. These include, Arms Forces Special Powers Act 1958, Defense of India Act 1962, Unlawful Activities Prevention Act 1968, Maintenance of Internal Security Act 1971, Prevention of Terrorism Act 2001, etc. The provisions of these laws have been extended time and again making them routine features in governance in India. Even after some of these laws have been repealed, they continue to function in the cases which were registered under their ambit when they were in force.

Section 5: Limitations of using Extra-ordinary laws: Metamorphosis of a Democratic State into a Security State.

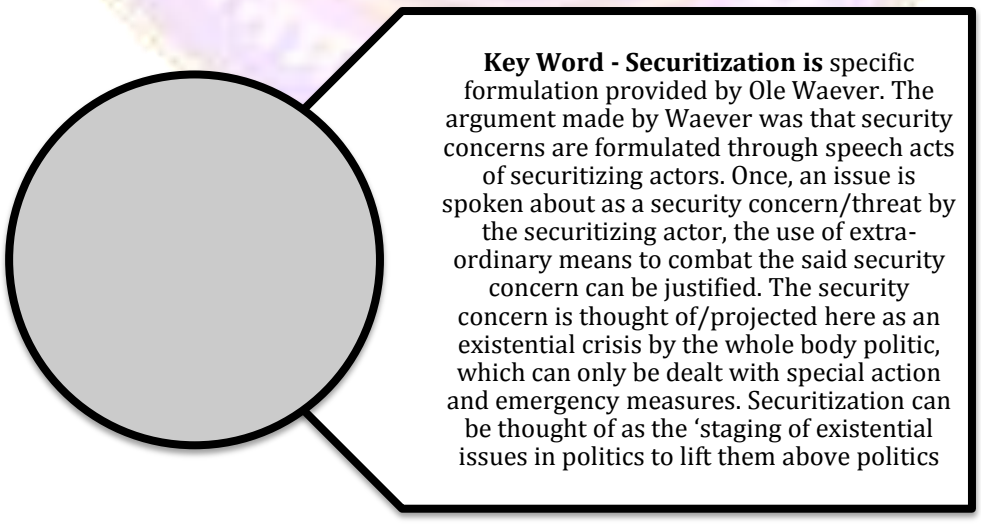
In order to understand what is problematic about the Security State in a democratic context, it is important to mention some key features of a democracy. Democratic governance, at the most basic level has come to mean an equal access for all members of the political community to certain rights and liberties. There exist rules for acquiring citizenship status in modern democratic Nation States but those who don't conform to these standards cannot participate in the political decision making process of the particular Nation State.

Democracy is based on the principle of power sharing through enabling members/citizens to participate in the decision making processes by exercising franchise and/or by participating actively in the election processes by standing for

political office etc. Those in charge of offices of political power are accountable to the members of the democratic political community. More often than not these are elected representatives of the people and are answerable to their electorate. Thus, a democracy builds itself upon principles of popular sovereignty (implying that ultimately the sovereign power of the State resides with the citizens of the State) and political equality (implying that from the perspective of the State and political power, each citizen equal to the other in terms of one person one vote). In a representative democracy, elected political representatives 'represent public opinion', technical experts may do the same but they are answerable to the entire body politic.

In other words, a State laying claims to democratic functioning is not only to ensure prevalence of security internally and externally. The State has to do so whilst securing individual and collective freedom, respect for human rights of citizens and non-citizens (refugees, immigrants etc), and democratic decision-making regarding security concerns. Linking this up with the current project, the manner in which security can be conceptualized from a feminist lens in India, would depend on an analysis of the changing nature of security concerns across the world. This has also been shaped by the peculiarities of the functioning of the liberal democratic modern Nation State in India vis a vies articulation of security concerns.

Securitization is an attempt at controlling and aiming at an exatitude- being able to map out every one's activities so as to predict violence/terror and prevent it. The justifications of the State securitization process never come easy in an age where democratization has reached at least a substantial point wherein the citizens and non-citizens 'expect' the State to at least mention and minimally explain its actions towards securitization. Then, what would be problematic about the State securitization process? It is that more often than not the fact that it takes away people's democratic rights and is done out of arbitrary acts of State in circumstances of fear and perceived threat.



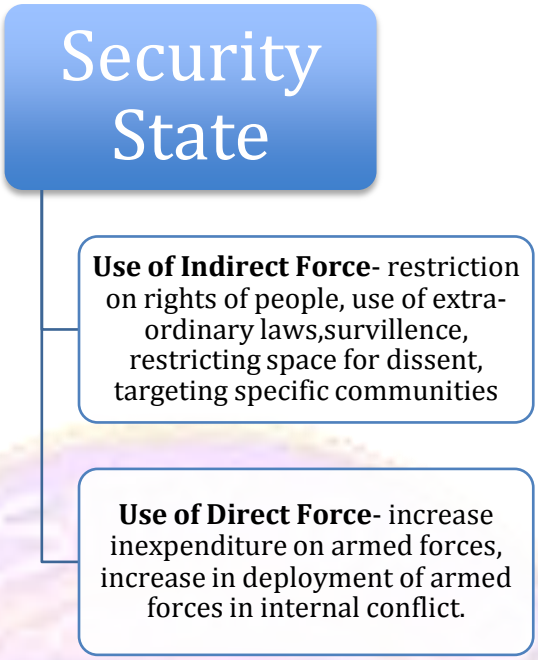
On the basis of the work done by Young (2003), Mohanty (2011) and Singh (2007), it can be argued that a security State can be thought of as one which is obsessed/deeply committed to the task of meticulously and continuously re-defining the constituents of 'security'. This task of redefinition leads to an ever-increasing ambit of activities, which the State carries out in the name of providing security to its inhabitants and towards securing its borders. These include a range of diverse actions including gathering increasing more information about inhabitants/populations often done at the cost of curbing freedoms, surveillance, silencing dissent, generation of consent for its policies on the basis of mobilizing fear, use of extraordinary laws and use of coercive force.

The conception of the Security State seeks to depart from the agreed upon norm of a modern Nation State working towards the security of its inhabitants. The task of providing security is the same for the modern State as well as for the security State though there is a difference in so far as the understanding of security becomes more expansive in the case of the latter, and there is a sense of obsession, which comes with the process of securitization.

How does a security state deviate from democratic norms?

- Due-process of law is compromised.
- Seperation of powers between different parts of the state is compromised and there is centralization of power in the hands of the executive.
- Potential for executive to take on dictatorial powers.
- Differentiated citizenship is created where certain communities are marked as 'suspects' .
- State information about citizens is mis-used for purposes of infringing on people's privacy and increasing survillence.
- Dissent and criticism from citizens is silenced by the state.
- People's democratic rights are restricted.
- Use of state violence against non-combatants.

Iris Marion Young whilst examining the U.S. after 9/11, has defined a Security State as 'one whose rulers subordinate citizens to ad hoc surveillance, search, or detention and repress criticism of such arbitrary power' justifying it as the duty of the State. Its external aspect includes collection of resources (political, economic and military) towards responding to a real or imagined outside threat. Whilst internally, it focuses on curtailing threats to its sovereignty by internal transgressors, seditionists and even dissenters.



Another dimension along securitization, from the feminist perspective needs to be understood is through analyzing the caricatures of 'good' and 'evil' in the constructs of the 'masculine' and the 'feminine'. Methodologically using gender as a tool for interpretation, Young (2003) has argued that a security State corresponds to the logic of Masculinist protection. This entails creating a hierarchy between the State and citizens similar to the one, which exists in between the seemingly self-sacrificing and courageous protector/patriarch and the protected/family members. This leads to a severe compromise on principles of democracy, due process of law, separation of powers, and equal citizenship in functioning of State. The security State acquires almost dictatorial powers, which are exercised by the State executives in the name of defending/protecting the State and its citizens.

Taking on from the work of Stiehm (1982), Young (2003) has agued that a distinction needs to be drawn between dominative masculinity and protective masculinity. Dominative masculinity is characterized by outright aggressive male behavior with explicitly exploitative overtones. Such domination also implies selfishness and a sexual desire to seize women. On the other hand protective masculinity is more closely associated with ideas of chivalry and protective behavior marked by notions of love, self sacrifice, courage, willingness to take responsibility of protecting women and family etc. Within the ambit of protective masculinity, a 'good man' is conceptualized as one who is willing to risk himself to protect his wife and family. Whilst a 'bad man' is construed as a selfish aggressor geared towards sexually exploiting women and attacking property.

The corresponding images of femininity in terms of constituents of a good woman vs bad woman, which Young (2003) draws up are insightful. From the perspective of protective masculinity, a good woman is one who unquestioningly surrenders her right to take care of herself to the protective male, additionally she feels gratitude towards him for protecting her and their family. The bad woman is one

who fights for her rights, questions notions of security and her subordinate position. Applying this to the working of the security State , it is expected by the protectionist patriarchal (acting like the good protective man in a family) State that all citizens should behave as subordinates (like good women in a family) and not question the State's decisions on matters of security.

Ashis Nandy, points out another important dimension to the manner in which global culture of common sense seems to have consolidated itself after the September 11, 2001 attacks on the U.S.. Nandy (2009) suggests that an examination of the global culture of common sense points to the conclusion that use of terror by non-State actors has come to be thought of as a terror, which challenges rationality and this terror is increasingly being identified to certain cultures. For instance, Muslims are commonly perceived as perpetrators of terrorist acts even in absence of concrete evidence. Further, going by the global responses to the September 11, 2001 attacks on the U.S., Nandy (2009) argues that there seem to have emerged two ways of linking culture and terror. The first way of linking culture and terror is based on the assumption that, the West and the values it supports (such as individualism, political and sexual freedoms, consumerism etc), have become a threat to many idealistic movements such as, the ones in the Islamic cultures. The way out of this impasse is thought of in terms of inculcating intercultural dialogues based on multicultural dialogues and firm international policing.

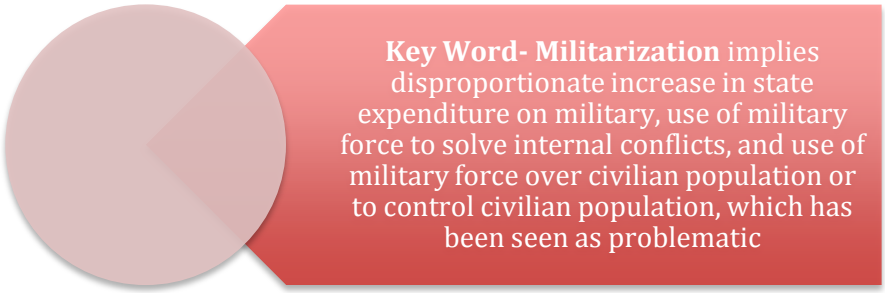
The second way, in which culture and terror seems to be linked globally, is based on the assumption that, certain cultures such as Islamic cultures are carriers of a 'political self that is inclined to use terror to achieve political ends'. Such identification lends to policy formulation aimed at exterminating the identified 'culprits'. In the short run, both these perspectives tend to come together towards formulation of hard line international policies based on tenets of realism. Putting these two perspectives together, Nandy (2009) argues that, according to the dominant global culture, in the realm of Statecraft the true antidote to terror can only be thought of in terms of counter-terror. To this extent, both, the killers who attacked the U.S. on September 11, 2001 and the U.S. itself, share common traits; these include- using terror/counter-terror and justifying it in the name of retributive justice; and believing that they are allowed to kill/let people live in the name of their own unique notion of righteous causes.

Features of a Security State
• Continued reliance on extra-ordinary laws for the purpose of governance, • In the context of State practices, an increase in the ambit and forms of survillence, • Use of force in dealing with individuals or groups who protest against the State policies and norms, • Intolerant attitude towards political dissent and towards those who seem to disagree with the government's understanding of national interest and national security, • Marking out groups of people based on religion or ethnicity or region, as potential threats to security, • Prevalence violence against non-combatants perpetrated by State actors on any of the above-mentioned pretexts.

In this context it is important to draw from the work of C. T. Mohanty (2011). Mohanty (2011) comparatively analyzes India, United States and Israel; and argues that they fall within the ambit of imperial democracies committed to securitization of State justified in the name of protectionism. She has argued that national security States, such as India, working as imperial democracy are characterized by militarization, criminalization, confinement and control over particular populations. Voices of criticism or dissent are silenced by these States using different mechanisms such extra-ordinary laws or use of force.

Securitization has something distinctive about it as a process related to mobilization of collective fear to provide justificatory ground for the installation/functioning of ever expanding mechanisms of security. This includes use of extra-ordinary laws, surveillance, expansion in military apparatus etc. It must be made clear that means of securitization seem to be operating on two registers; on one using direct force (use of military, police) and on the other hand indirect control (this includes surveillance techniques, mapping out of population etc. restrictions of rights and the shrinking of democratic spaces results from this securitization process making it contestable on many grounds).

Militarization of everyday life is a characteristic of such State's activities. There exist a connection between neo-liberal ideology in economics and the securitization of the State marked by an increase in State expenditure in domains of security and welfare.



Such States can be analyzed as working within the ambit of imperial, racist and capitalist patriarchies. In simple words these States seek to control certain sections of people and extract resources from them without acknowledging their rights. In such securitized regimes, it is always particular dispossessed bodies (indigenous, immigrant, muslim, raced, classed and gender marked), which become vulnerable to systemic violence inflicted by the State.

Mohanty (2011) points out two basic problems with the Security State, the first being that the distinction between civilians and soldiers collapses allowing for an abuse of the State monopoly over use of coercive force. Secondly and more troublingly, the Security State acts with impunity without the fear of punishment. This results in the normalization of State violence. Another dimention of the Securtiy State is the use of extra-ordinary laws.

Singh (2007), in his analysis of anti-terror laws in the Indian context has argued that the use of extra-ordinary laws is becoming a common practice in democracies such as India. The study suggests that the pretext on which these anti-terror laws are enforced include, existence of an extra-ordinary situation compelling the legislation of strong laws, 'temporariness' of extra-ordinary characteristics of these laws, allowance of extra-ordinary provision relating to terms of arrest/ detention, gathering evidence, trial and punishment. Singh (2007) suggests that these laws are devised by nation-States as a way of dealing with dissent, questions regarding legitimacy of the State and other movements arising out of lack of democratic functioning of the State.

Whilst analyzing the application of POTA (Prevention of Terrorism Act) in Gujarat (India) post 2002 Godhra train burning, the above-mentioned study points out that the application of this extra-ordinary law was used to create a category of 'suspect community' referring to stereotyping the muslim community as default suspected terrorists. This led to a series of activities including arresting, detaining and at times even killing muslims without much emphasis on finding proof for this

suspicion. Singh (2007) outlines the process of creation of 'suspect communities' in the context of Kashmir, Maharashtra, Jharkhand, and Uttar Pradesh. This process of creation of 'suspect community' implies severe curtailment of rights of people belonging to these communities.

From the perspective of democratic politics the most disturbing response of the State to demands of the human rights movement has been repression. According to Ashwini K. Ray, this can be observed in the following, 'increasing constriction of fundamental rights through formal constitutional amendments like the 1st, 4th, 16th, and the 42nd during national emergency; proliferation of new repressive legislations, often through repeated executive ordinances bypassing the legislature like MISA, TADA, POTA, etc; recurrent use of the preventive detention clause through the Armed Forces Special Powers Act; proliferation and modernization of new coercive instruments, as well as their frequent use without transparent accountability like BSF, ITBP, RAF, CPRF, CISF, etc' (Ray, 2003).

The use of repression by the State has been observed as a response to the challenges posed by the people's movements to the basic structure of the political economy of the State and in response to secessionist movements.

It becomes impossible to understand the continued necessity and use of extra-ordinary laws, which from the perspective of the State might be geared towards 'protecting and safeguarding the population and territory of India', but at the same time their use has been a medium towards violating basic rights of people. Lokeneeta (2011) has further argued that much against the theoretical argument that liberal democracies do not use torture within the functioning of the juridical system and in prison, the Indian State within the ambit of jurisprudence of interrogations pertaining to extra-ordinary laws, condones and camouflages the use of torture by police for purposes of interrogation.

In the Indian context, it can be argued that some parts of the Indian State have perpetually, from time to time, been functioning under the ambit of exceptional circumstances, or State of exception. These include spaces within the States of Jammu and Kashmir; Manipur, Nagaland, Assam, Meghalaya, Mizoram, Arunachal Pradesh and Tripura (also conveniently and erroneously homogenized as the 'north-east') and West Bengal, Bihar, Chhattisghar, Jharkhand, Andhra Pradesh, Maharashtra, and Odisha. On account of people's movements seeking liberation from the Indian State, movements seeking reform, these areas can be thought of as conflict zones facing sometimes heightened/visible and sometimes invisible violence on account of the Indian State as well as on account of those people's movements which use violent means towards achieving their goals. From the feminist perspective this has been extremely problematic, since violence against women in this context is invisiblized either in the name of collateral damage or is sanctioned under use of extra-ordinary laws such as the Armed Forces Special Powers Act (AFSPA).

Within the ambit of extra-ordinary laws such as AFSPA, POTA, TADA; men and women have been detained, physically violated and killed over a period spanning decades. A report by Coordination of Democratic Right Organizations, argues that ever since the inception of the Indian state, there has been a move within the

state towards restriction of civil and democratic rights and a simultaneous increase in the ambit of anti-terror laws. The Unlawful Activities (Prevention) Act came into force in 1968, and has subsequently been amended in 2004 and 2008.

The prevalence of these laws has led to blurring of boundaries between criminal activity and political dissent, whereby forms of expression of political dissent have been exceedingly criminalized. Increase in the arbitrary discretionary powers of armed forces and governments; and absence of due-judicial process and professional investigations have led to criminalization of dissident voices against the state. This selective use of anti-terror laws strengthens majoritarian religious masculinist violence; and it seems that the state institutions play an active role in this process by not reporting/checking such acts of violence.

The Armed Forces Special Powers Act came into effect in 1958 and was amended subsequently in 1972. From the perspective of the Indian state, this law was instituted to bring normalcy in areas disturbed by insurgency, by empowering the armed forces (including military, Air Force) with special powers (including the right to fire at will on someone suspected of being a terrorist, if the officer considers necessary; arrest with out warrant; enter and search premises without warrant; destroy arms shelters etc).

The Report by Committee for Repeal of the Armed Forces Special Powers Act, provides an account of the human rights violations, which have taken place at the hands of armed forces under the ambit of this law from 1970 till 2004 (the period that the report covers ends at 2004, though sadly the atrocities experienced by people under the ambit of AFSPA has not stopped). The Report argues; 'Armed Forces Special Powers Act.. has failed in its states objective of curbing hostility. When first conceived and implemented there was only one political organization that was deemed militant by the government, now by government's own admission there are close to eighty such organizations in the various areas of North East… Provisions of the Act provide special powers to the governor and the armed forces that undermines authority of the duly elected civilian government; leading to the regrettable consequences of underdevelopment of institutions of electoral democracy… Army is not only equipped with absolute power but also absolute legal immunity from the state governments. This has not only led to undermining of civil administration and consequent reduction of civil space but also a virtual imposition of military rule in the areas where the Act is in force' (Committee for Repeal of the Armed Forces Special Powers Act. 2004).

Section 6: Conclusion.

To conclude, it needs to be pointed out that anti-terror laws/ extra-ordinary laws have been promulgated to aid the State's fight against terrorism. But it needs to be understood that these laws can only serve as temporary solutions (Singh, 2012) to the problem. Terrorism is only a tactic to register dissent against the

State and unless that socio-economic and political dissent is understood and responded to, the problems associated with it will persist.

There exists a need to strengthen democratic values amongst citizens worldwide. It id important to participate in a struggle for holding the State accountable for its decisions on internal security as well as its actions with regard to other States like initiating/support international wars. It is critical to check centralization of power in the hands of any State body. It would not help to trade public responsibility for arbitrary State surveillance. Whilst, protecting national security, it is equally important that individual rights and community rights be safe guarded. And most importantly, it is critical to ensure that the constitutional norms do not get suspended.

Exercise

1. **What are extra-ordinary laws? Write an essay on the use of extra-ordinary laws in India.**

2. **In the international context, what are the debates surrounding the use of extra-ordinary laws in security states? Explain with reference to the Indian context.**

3. **What is a security state? What role do extra-ordinary laws play in governance in a security state? Give examples from the Indian context.**

4. **What are the limitations of using extra-ordinary laws in a democracy? Should the Indian State resort to the use of extra-ordinary laws?**

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