



SC Verdict on NewsClick: Adherence to Due Process

This editorial is based on the article "[SC verdict on NewsClick shows adherence to due process is much more than a procedural requirement](#)" which was published in The Indian Express on 17/5/2024. The article discusses the Supreme Court's verdict in the case of NewsClick founder-editor Prabir Purkayastha, emphasizing the critical importance of due process of law as a time-tested yardstick for judging the maturity of a civilization.

For Prelims: [Unlawful Activities Prevention Act, 1967](#), [Article 22\(1\)](#), [Due process of law](#), [Prevention of Terrorism Act \(POTA\), 2002](#), [A K Gopalan Case\(1950\)](#), [Maneka Gandhi Case\(1978\)](#), [National Crime Records Bureau \(NCRB\)](#), [World Press Freedom Index](#)

For Mains: Supreme Court Verdict in Purkayastha's Arrest Case, Unlawful Activities Prevention Act (UAPA), 1967 and Concerns Regarding the Due Process of Law

Last year, the Special Cell of Delhi Police arrested NewsClick founder Prabir Purkayastha, alleging his attempt to "disrupt the sovereignty of India" through his news portal, purportedly funded by China.

In a recent development, the Supreme Court ordered the release of Purkayastha from custody after concluding that his arrest and remand under the [Unlawful Activities Prevention Act, 1967 \(UAPA\)](#) by the Delhi Police are "invalid in the eyes of law".

The [Supreme Court](#) affirmed that the requirement to communicate the grounds in writing applies equally to detentions. It emphasized that the communication of grounds of arrest or detention by the investigating agency or police in writing is "sacrosanct and cannot be violated under any circumstances."

The ruling emphasizes the need for law enforcement agencies to adhere to proper procedure and due process, especially, in stringent UAPA cases where there is a reverse burden of proof on the accused.

Why was Purkayastha's Arrest Invalidated by the Supreme Court?

▪ Grounds of Arrest were Not Provided :

- The court said that the **grounds of arrest were not provided**, which vitiates the arrest and the appellant is entitled to release from custody after the **Pankaj Bansal case(2023)** in which the top court had held that grounds of arrest must be provided in writing to the accused.
- The court also said that the "right to be informed about the grounds of arrest flows from [Article 22\(1\)](#) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand."

▪ Copy of Reasons for Arrest- a Fundamental Right :

- The verdict said, "There is no doubt in the mind of the Court that any person arrested for an allegation of commission of offenses **under the provisions of the UAPA or for that**

matter any other offense(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing, and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest."

▪ **Procedure Adopted is Clandestine :**

- Stating the facts of the case, the bench noted that the copy of the FIR was not shared with the appellant until after the remand order was passed.
- The judgment stated, "Apparently, this entire exercise was done in a **clandestine manner** and was nothing but a **blatant attempt to circumvent the due process of law**; to confine the accused to police custody without informing him of the grounds on which he has been arrested; deprive the accused of the opportunity to avail the services of the legal practitioner of his choice to oppose the prayer for police custody remand, seek bail and also to mislead the Court."

▪ **FIR Not an Encyclopaedia:**

- The judgment also states that, "The law is well settled that the **FIR is not an encyclopedia and is registered just to set the process of criminal justice in motion**. The Investigating Officer has the power to investigate the matter and collect all relevant material which would form the basis for filing of a charge sheet in the Court concerned."
- "The **grounds of arrest informed in writing must convey** to the arrested accused all basic facts on which he was being arrested so as **to provide him with an opportunity of defending himself against custodial remand and to seek bail**."
- Thus, the **'grounds of arrest'** would invariably be personal to the accused and cannot be equated with the **"reasons of arrest"**, which are general in nature."

What is Due Process of Law?

▪ **Meaning :**

- [Due process of law](#) is application by the state of all legal rules and principles pertaining to a case so all legal rights that are owed to a person are respected.
- Due process balances the power of law of the land and protects the individual person from it. When a government harms a person without following the exact course of the law, this constitutes a due process violation, which offends the rule of law.

▪ **Significance:**

- It involves **the right to fairness, reasonableness, justness, and non-arbitrariness**.
- Any inequality involved in the procedure of law will stand invalid.
- The court incorporates its legislative mind while passing any statute on this ground.
- The due process of law gives weightage to individual rights.
- If the apex court found any law as biased, it will declare it null.
- The law that got the assent of the state must be passed by following the basic process.
- The term Due Process of Law is nowhere defined in the Constitution of India, 1950 (COI).

▪ **Historical Background:**

- The expression "due process" was used for the first time two centuries later in the statute of **British King Edward III**.
- But it was the Fifth Amendment to the **American Constitution (1791)** that introduced the concept of "due process" in a constitution.
- In 1918, the Indian National Congress asked the colonial government to revoke all laws that allowed state authorities to arrest or detain people without due process. [Balgangadhar Tilak](#) and [M K Gandhi](#) invoked due process in their defence against unjust laws.
- On March 17, 1947, the Assembly received a note from K M Munshi, a member of the fundamental rights sub-committee. It included a draft provision: "No person shall be deprived of his life, liberty or property without due process of law".
- It was however B N Rau, who proposed to replace due process with the narrower expression "procedure established by law".

▪ **Evolution through Case Laws:**

- After independence, starting from its regressive judgment in [A K Gopalan \(1950\)](#) to [ADM Jabalpur \(1976\)](#), the SC contributed to undermining the due process by overemphasising the literal meaning of procedure established by law.
- The court did change its stand in the **Bank Nationalisation case (1970)** and extended

the due process to the right to property.

- Subsequently, Justice Fazal Ali's dissent in Maneka Gandhi (1978) became a majority opinion and due process was judicially recognised as part of the right to life and personal liberty. Every law must now be reasonable, just, fair and non-arbitrary.

How Does the UAPA 1967 Raise Concerns Regarding the Due Process of Law?

▪ UAPA Provisions Differ From Regular Criminal Law :

- A remand order can be for **30 days** instead of the **usual 15**, and the maximum period of judicial custody before the filing of a chargesheet is extendable from the usual **90 days to 180 days**.
 - In **Pramod Singla (2023)**, the SC termed preventive detention laws as a colonial legacy with great potential of abuse. It said that every procedural requirement must be rigidly followed.

▪ Controversy About Bail Provisions :

- Under **Section 43D(5) of the Act**, bail cannot be granted to a suspect if the court is of the opinion that there are reasonable grounds to believe that the charges are prima facie true.
- The onus is on the accused to show that the case is false but without inviting the court to evaluate the available evidence. This is why human rights defenders feel that the provision is draconian, virtually rendering it impossible for anyone to obtain bail until the completion of the trial.

▪ Scope Expanded Over The Years :

- In its present form, the Act, after the amendments in 2004 and 2013, **covers the declaration of associations as unlawful**, punishment for terrorist acts and activities, acts threatening the country's security, including its economic security (a term that covers fiscal and monetary security, food, livelihood, energy ecological and environmental security), and provisions to prevent the use of funds for terrorist purposes, including money laundering.
- The ban on organisations was initially for **two years**, but from 2013, the period of proscription has been extended to **five years**.
- After the [Prevention of Terrorism Act \(POTA\), 2002](#), was repealed, the UAPA was expanded to include what would have been terrorist acts in earlier laws.

▪ Pendency of Cases:

- As per the [National Crime Records Bureau \(NCRB\)](#) over 12,000 people were in prisons in 2021 under such laws and 76 % of prison inmates were under trial in 2022
- Only 18 % of the UAPA cases end up in conviction and the pendency of UAPA cases in courts is 89 %.

How to Balance State Security within the Framework of Due Process of Law?

▪ Clear Legal Framework:

- Establish laws that clearly define the limits and procedures for state actions in the name of security. These laws should be precise to prevent misuse and ensure accountability.
- Constitute a parliamentary committee to oversee and recommend changes to security legislation.

▪ Judicial Oversight:

- Strengthen judicial oversight mechanisms to review and check arbitrary actions by state authorities. Courts should have the power to scrutinize the legality of detentions and other security measures.
- Establish a judicial review committee to assess cases of detention under laws like UAPA.

▪ Independent Monitoring Bodies:

- Establish independent bodies to monitor the implementation of security laws and investigate abuses. These bodies should have the authority to hold state actors accountable.
- Strengthen the role of independent bodies like the [National Commission for Minorities](#) and

[NHRC](#) in monitoring security operations.

▪ **Human Rights Training:**

- Train law enforcement and security personnel in human rights standards and the importance of protecting individual liberties while maintaining security.
- Develop comprehensive training programs for law enforcement in collaboration with the National Police Academy.

▪ **Public Participation:**

- Engage civil society and the public in discussions about security policies and their impact on rights. This can help create more balanced and widely accepted policies.
- Facilitate public consultations and forums on security policies through platforms like [MyGov](#).

▪ **International Cooperation:**

- Collaborate with international organizations, such as [UNESCO](#) and international press freedom groups, to promote press freedom and share best practices.
- The **UN Plan of Action on the Safety of Journalists** aims to create a free and safe environment for journalists and media workers.

Conclusion

As India progresses, it must continually strive for ensuring that laws, especially stringent ones like the UAPA, do not overshadow the fundamental rights of individuals. Moving forward, India's legal and constitutional ethos must embody a harmonious balance between state security and individual liberties. This equilibrium is essential not only for the protection of personal freedoms but also as a testament to the maturity and integrity of our democratic civilization.

Drishti Mains Question:

Critically examine that the continued existence and use of preventive detention laws in India pose a significant risk to due process of law and individual freedoms in the country.

UPSC Civil Services Examination Previous Year's Questions (PYQs)

Prelims:

Q. With reference to India, consider the following statements: (2021)

1. Judicial custody means an accused is in the custody of the concerned magistrate and such accused is locked up in a police station, not in jail.
2. During judicial custody, the police officer in charge of the case is not allowed to interrogate the suspect without the approval of the court.

Which of the statements given above is/are correct?

- (a) 1 only
- (b) 2 only
- (c) Both 1 and 2
- (d) Neither 1 nor 2

Ans: B

Mains

Q. Indian government has recently strengthened the anti-terrorism laws by amending the Unlawful Activities(Prevention) Act, (UAPA), 1967 and the NIA Act. Analyze the changes in the context of prevailing security environment while discussing scope and reasons for opposing the UAPA by human rights organizations. **(2019)**

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