

**“Case Law Review:
Kartar Singh vs. State of Punjab”**

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Introduction

Terrorism's issue is at its peak in most part of the world today. People all over the world are suggesting various measures to the government in order to curb that problem. It gave rise to various issues. Firstly, definition of terrorism is yet not clear as to what types of activities will fall under the ambit of terrorism. Second issue is related to the problem in context to human rights. In order to curb terrorism, various governments have made strict legislations which infringes human rights and due process of law. It as a result became a fight between human rights and terrorism. After inclusion of (POTA)¹ and Terrorist and (TADA)² and very new one is Unlawful Activities Prevention Act (Amendment), 1967. The above-mentioned legislations prescribed stringent penalties and procedure and also infringed mechanisms of due process in order to curb the problem of terrorism.

This issue is not confined to India. People's detention in UK, Spain's terrorist laws and also the US's measures are instances of developed legal systems which are not giving adequate importance to civil rights and liberties in national security's interests. It is considered that national security is of utmost importance. In case of “Kartar Singh v. State of Punjab” validity of anti-terrorist laws was upheld urging it's the state's interests. Those laws were very to be brought in context of social circumstances which were going on in country and was also held valid by a 5-judge bench.

This paper examines the validity of conviction of accused on the basis of above-mentioned Acts and in furtherance of it; it will examine the summary of validity of those acts which will provide a clear idea about the application of provisions of Constitutional law. Finally in conclusion part all the above discussions would be summarized.

Facts of the Case

In the Court of- Honorable Supreme Court of India

Case name- Kartar Singh v. State of Punjab³

¹ Prevention of Terrorism Act

² Disruptive (Prevention) Act

³ 1994 SCC (3) 569

Citation- 1994 SCC (3) 569

Bench- Raghubar Dayal, Raghubar Subbarao and K. Mudholkar, J.R.

Parties involved in the case

1. Petitioner- Kartar Singh

2. Respondent- State of Punjab

Date of judgment- 26/04/1961

Laws involved in this case- Article 21 in The Constitution of India 1949, Article 226⁴, Arms Act, 1959, section 25 and section 313 of Code of Criminal Procedure, 1973, section 5 of Terrorist and Disruptive Activities⁵

Hamela, Kartar Singh and Daya Ram went for cultivation in a land which was disputed, where a fight took place among 2 parties. Nand Lal and Darshan Lal were sitting on a well where Nand Lal challenged his companions and him on account of Daya Ram. Therefore, both parties suffered injuries and due to severe injuries Darshan Singh was killed. As there was no proof to support the allegations made against Kartar Singh and his associates, they were given the benefit of the doubt. The session's court deemed Hamela, Daya Ram, and Kartar Singh to be accused as well as offenders, and they were punished in accordance with Section 302 in conjunction with Section 149. All three of the convicted individuals took their case to the Supreme Court, which rejected their request for a right to private defense on the grounds that both sides were engaging in a free battle. As a result, the court dismissed their appeal.

Background

In the 1980s, the nation was befuddled by a variety of actions that are instances of significant law and order conditions. These activities caused widespread disruption. Terrorists have been implicated in wanton murders and arson in Punjab, and their actions have also been investigated in other states, including Uttar Pradesh, Delhi, Rajasthan, and Haryana. Due to explosion many innocent people have lost their lives and it also caused public property's damage. People started becoming fearful as disruption of communal harmony and peace was taking place. As the situation was worsening, Central Government enacted the Terrorist & Disruptive Activities (Prevention) Act, 1985⁶ and the Terrorist affected areas (special courts) Act, 1984⁷. In the country, to prevent terrorist activities both acts were in place for providing for grave measures.

⁴ The Constitution of India 1949

⁵ (repealed)

⁶Terrorist and Disruptive Activities (Prevention) Act, (31 of 1985)

⁷Terrorist Affected Areas (Special Courts) Act, (61 of 1984)

Creation of new offences, “disruptive activities” and “terrorist act” took place. Reasons and objects of the Act mentioned that overt and new terrorism’s phase which require special attention to be taken must be dealt with expeditiously and effectively. The unexpected increase in cases reported of disruptive activities should also be taken seriously into consideration.

As T.A.D.A 1985 lasted for only 2 years duration. During expiration of that duration, Centre made a new legislation named Terrorist & Disruptive Activities (Prevention) Act, 1987⁸. Many section of the Act were synonymous to its previous act. The act was initially valid for two years before being extended for four years, then six, and finally eight years. It remained in effect until the year 1995.

Part I

Judgment of Kartar Singh v. State of Punjab

I. Whether the right to speedy trial fall within the ambit of article 21 of Constitution

Article 21 of the Constitution⁹ guarantees an individual's life and liberty, and it is also one of the provisions that covers the right to a speedy trial. As restriction is imposed on a person by way of arrest and that individual’s right to speedy trial begins from that moment. The "Justice Delayed Is Justice Denied" principle serves as the foundation for the speedy trial concept. It is right of every accused and if any delay is caused in this, his right to life and personal liberty is infringed which is mentioned under part III which is fundamental rights enjoyed by every individual. Innocence or guilt of an accused person must be determined speedily as it is in public interest and also societal interest is involved in it. So, court must fix a time limit for trial of offences. Accused persons must be made aware about their rights as 80% of the prisoners are waiting in their prisons for trials to begin and end in country. In case of speedy trial infringement scrutinization must be done against the party who delayed the process and in majority of the cases burden of proof is on prosecution in cases of unreasonable delay prejudices of the prosecution. So, ultimately responsibility is on court to weight and balance the factors that are relevant for denial of speedy trial and the person who is responsible for it.¹⁰

II. Whether the social context of T.A.D.A trump its infringement of any Part III enumerated rights

In the particular instance, the court didn’t mention this issue. Nevertheless, in other situations the courts have concluded that such authority existence is not sure, and the precedence must be taken

⁸Terrorist and Disruptive Activities (Prevention) Act, (28 of 1987)

⁹ The Constitution of India 1949

¹⁰ Madhurima Dhanuka, Undertrial Prisoners And The Criminal Justice System, HRI (June 05, 2023), <https://www.humanrightsinitiative.org/download/1457162682Undertrial%20Prisoners%20and%20the%20Criminal%20Justice%20System.pdf>.

in respect of Fundamental Rights. One loophole in this ruling is the court's belief that the social context and legislative aim of the Act must always be considered, regardless of whether it violates any part III constitutional rights. In a landmark decision involving the United States, it was determined that state security cannot be used as an excuse for the use of strict procedures and techniques, such as illegal imprisonment, in the fight against terrorism.¹¹ For instance it was alleged that unless and until the offence against which accused can be defined in spirit and text as a “terrorist act” he will not be charged under that particular act and be tried under conventional laws which are penal in nature rather than the terrorist act by the regular courts. Court also stated that for a person to be guilty of terrorist or becomes a terrorist, so 3 elements must exist together, i.e., consequence, intention, and action.¹² Court also ruled that T.A.D.A didn't grant blanket power for indefinite period of detention without trial; therefore, bail should be granted in case if police fail within 6 months to conclude the process of investigation and it is extended for a period of 1 year with consent of proper court.

Part II

Analysis from perspective of Constitutional Law

In this section, we will examine the case from the point of view of constitutional law. The following are some important topics that have emerged as a result of this decision: -

1. Proper trial was not done

As per Article 21 of the Constitution of India, Fair trial is essential part of right to life and if it is abused individual's inherent right guaranteed by the Constitution is lost. As section 22 of Code of Criminal Procedure, 1973 violated article 21 of Indian Constitution, so that section is unconstitutional and invalid because it allowed identification of an accused based on the idea of his photograph. Article 21 has its wide ambit and in that ambit fair trial is also included, if an accused would be identified through his photograph fair trial is not possible.¹³

2. Legislative Competency of the State

The legislative competency of the Centre was challenged for enactment of the legislation on grounds which is neither mentioned in list III nor list I which is read with article 246 of the

¹¹Hamdi v. Rumsfeld, 542 U.S. 507 (2004)

¹² International Law Aspects of Countering Terrorism, UNODC (June 05, 2023), <https://www.unodc.org/documents/terrorism/Publications/FAQ/English.pdf>

¹³ R.S. Saini, Custodial Torture In Law And Practice With Reference To India, JSTOR (June 11, 2023), <https://www.jstor.org/stable/43951530>.

Indian Constitution.¹⁴ They insisted that it failed under list III namely, ‘Public order’ and can’t fall under the scope of list III entry I.

3. Doctrine of pith and substance

As per the court sections or provisions of the particular act should not be looked in isolation in order to ascertain the legislature’s competence but the pith and substance must be taken into consideration. This doctrine is mainly applied when competency of a legislature in context to particular enactment which was subject to challenge in reference to various lists mentioned in the Constitution of India¹⁵. In light of this doctrine court held that impugned legislations fall under not under list II or III but under entry 1st of list I of Schedule VII of Indian Constitution¹⁶.

4. Violation of the Natural Justice Principle.

The rights listed in part III of the Indian Constitution are violated by the activities in question that are detailed in the case. It included right speedy and fair trial, the right of fair hearing, presumption of innocence as per the procedure established by law. Court said that deviation from ordinary laws procedure is permitted for which court will have to remove burden of proof and an individual will be presumed innocent until proven guilty.¹⁷

5. The legality of confessions to a police officer

Court said that confessions made to a police officer is reasonable and just and it is not violating article 21 and article 20(3) of the Constitution¹⁸. Protection of an accused against self-incrimination is the most important principle of criminal justice system as it guarantees article 20(3) protection which is also mentioned under 5th amendment of USA Constitution. If any law is found to be direct then the doing of any act which is prohibited by our Constitution, then the performance of that act would be not permitted under Indian Constitution and is liable to be struck down. As a result, it is essential that the legislation be in accordance with the requirements of the Constitution of India that are stated in part III.

Conclusion

Lastly, this case also set an exception for fair trial. Justice Krishna Iyer urged that an individual’s right must be preserved primarily. If terrorism is not continued the procedure which do not violate due process must be given proper consideration. The verdict of this case was followed in

¹⁴Bare act of Constitution of India, 1950

¹⁵ Constitution of India, 1950

¹⁶ Constitution of India, 1950

¹⁷ Swati Mishra, Right to speedy trial : an inalienable right under Article 21 of the Indian Constitution, IPLEADERS (June 06, 2023), <https://blog.ipleaders.in/right-speedy-trial-inalienable-right-article-21-indian-constitution/>.

¹⁸ The Constitution of India, 1950

one the most famous case “PUCL vs. Union of India”¹⁹, in which court upheld the validity of Prevention of Terrorism Act (POTA). This was also pointed out in UN Resolution with regard to terrorism in which it stated that terrorism’s prevention is one of the fundamental rights of human beings and should not be compromised at any cost.²⁰ If we want democracy to survive, individual rights must not be compromised. In the context of state’s security rights of individuals can’t be ignored in any legislation. Court also said in this case that strict measures are very necessary to be taken if country demands in terrorism like situation even if it infringes part III of the Constitution, i.e., fundamental rights. Given that we live in a democratic nation, it stands to reason that if a government is established by the people and for the people, then it is imperative that the rights of all individuals, and not just those of the majority, be safeguarded. Shackling of the foundation in which we are fighting since past years would be major victory against terrorism. Therefore, the decision of Court in Kartar Singh v. State of Punjab is not correct as for sake of security of state individual rights can’t be jeopardized by legislation. Due to this country’s position made it compulsory to impose harsh measures. It is evident from this case that the 3 accused were guilty and court was correct in its decision to deny their right to private defense and to condemn them to prison.

¹⁹(2004) 9 SCC 580

²⁰GA Resolutions 1373/2021