

BALANCING NATIONAL SECURITY AND SECURING HUMAN RIGHTS: A CRITICAL ANALYSIS OF THE HONG KONG NATIONAL SECURITY LAW

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ABSTRACT

National Security and State sovereignty are the two subjects that eternally have remained fundamentally intrinsic for any state. Towards that purpose, the legislature of many nation-states has legislated legislation to preserve their sovereignty, integrity and security, internal and external. The intrinsic nature of these factors has even obliged the legislature of democratic nations, which considers the idea of fundamental freedom and human rights of cardinal value, to enact laws restricting the sphere of human rights and fundamental freedoms to defend state sovereignty and security. However, in the current times, many of us come across occasions and occurrences where measures adopted by the State on the ground of national security are not even remotely related to it and ironically violate the human rights of individuals. Therefore, the premise of such measures, at times violating the civil liberties of individuals, appears to be subservient to the goal of maintaining national security. Consequent to this determination, this research article attempts to study the Hong Kong National Security Law.

Keywords: Human Rights, Free Speech, Common Law System, National Security, Sino-British Treaty, Judicial Independence, Hong Kong

I. Introduction

II. National Security Law of Hong Kong: An Overview

III. Critical Analysis and Examination of the Law

IV. Conclusion

I. Introduction

WHILE STABILITY in governance and effectiveness for the security of the state subsist essentially for any state,¹ rule-based legal order protecting human rights and civil liberty erects

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¹ Stable Governance United States Institute of Peace, *available at*: <https://www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/stable-governance> (last visited on June 25, 2023); Leon Hurwitz, 'Democratic Political Stability: Some Traditional Hypotheses Re-examined', 4 (4) *Comparative Political Studies* 476-490 (1972); Yi Feng, 'Democracy, Political Stability and Economic Growth' 27(3) *Journal of Political Science* 391-418 (1997).

the foundation of the governance mechanisms within the State.² Consequently, balancing between national security and human rights remains innate.

Further, without ensuring the internal and external security of the state, a rule-based legal order cannot be installed within the society. It is consequent to this notion only that national security remains the foremost preference of most governments.³ The arena of national security has widened today.⁴ Though the subject in its classical context remained an exclusive realm of the military where it exercised its superior control yet; it has vastly expanded itself. The notion of national security today includes, maintenance of stable public order, stability of domestic markets including state finances and strong economy, friendly relations with foreign states and neighbours in particular, etc.⁵ Therefore, in light of new conspicuous developments in the society national security cannot be easily excluded from subjects of economy, misinformation, public order, cybernetworks, public health (pandemic threats), political stability, community and others.⁶ Thus, unlike the past, threats to national security today not only emanate from physical military attacks but also involve other diversified areas of threat. Consequently, causing reference points of national security range from individual, institutional, regional, national and international levels.⁷

² K Wiesner, A Birdi, *et.al.*, Stability of democracies: a complex systems perspective 40(1) *European Journal of Physics* (2019).

³ National Institute of Open Learning, "Peace and Security" available at: <https://www.nios.ac.in/media/documents/SecSocSciCour/English/Lesson-27.pdf> (last visited on June 25, 2023); Tony Peake, Egon de Haas, *et.al.*, "Achieving safety and security in an age of disruption and distrust" *PricewaterhouseCoopers*, (October 16, 2019), available at: <https://www.pwc.com/gx/en/industries/government-public-services/public-sector-research-centre/achieving-safety-security.html> (last visited on June 25, 2023); Raunak Shukla, "Can Human Rights Be Violated in The Interest of National Security?" *Legal Services India*, (2021) available at: <https://www.legalserviceindia.com/legal/article-6135-can-human-rights-be-violated-in-the-interest-of-national-security-.html> (last visited on June 25, 2023). See also, Paul D Williams and Matt McDonald (eds.), 3 *Security Studies*, London: Routledge, 1 (2018).

⁴ See Segun Osisanya, "National Security versus Global Security" *UN Chronicle, United Nations*, available at: <https://www.un.org/en/chronicle/article/national-security-versus-global-security> (last visited on June 25, 2023).

⁵ Office of the Director of National Intelligence, "2021 Annual Threat Assessment of the U.S. Intelligence Community" *United States of America*, 4-27 (2021).

⁶ World Economic Forum, "The Global Risks Report 2022" 17 Geneva: World Economic Forum, 33-89 (2022); Ministry of Justice and Security, Government of Netherlands, "National security: Counterterrorism and national security" *Government of Netherlands*, available at: <https://www.government.nl/topics/counterterrorism-and-national-security/national-security> (last visited on June 25, 2023); Dr. Paul Cornish, Dr. Rex Hughes and David Livingstone, *Cyberspace and the National Security of the United Kingdom: Threats and Responses*, London: A Chatham House, Royal Institute of International Affairs (2009).

⁷ Ministry of Electronics and Information Technology, "National Cyber Security Policy -2013" *Government of India Policy Document*, 22 (2013); Lucia Retter, Erik Frinking, *et. al.*, "Relationships between the economy and national security: Analysis and considerations for economic security policy in the Netherlands" *RAND Publication*, (2020) available at: https://www.rand.org/pubs/research_reports/RR4287.html (last visited on June 25, 2023). Eastern Kentucky University, Threats to National Security and How Government Protects its Citizens" *EKU Online*, available at: <https://safetymanagement.eku.edu/blog/threats-to-national-security/> (last visited on June 25, 2023).

National Security Legislations and Human Rights Concerns

The widened scope of national security threats involving subjects of provisional governments, local-district administration and its expanded reference points involving individual citizens has brought general masses closer to the regulations of national security threats. Which potentially results in extensive restrictions on the human rights of ordinary citizens on national security grounds.

Further, concepts of human rights and national security are traditionally adjudged as opposed to each other.⁸ Laws concerning national security, referred to as harsh laws, generate severe strains upon the system of constitutional liberties by transgressing upon civil liberties and human rights of individuals.⁹ Even though depriving constitutional protections to detainees charged under such security laws, the State may strive to protect the constitutional freedoms of the majority; however, occasions where such restraints on the pretext of national security not being remotely related to it ironically infract the sacrosanct principles of constitutionalism and the rule of law. Consequently, the premise of such measures sometimes appears subservient to the goal of maintaining national security. Therefore, the desirability of national security laws and their constitutionality stands distinct to each. While constitutionality refers to the compatibility and compliance of the law with grundnorm, the desirability of security legislation is driven by factors like public order, security against terrorism or even espionage, among others. The assessment of such desirability involves establishing a balance between the security interests of the state and the state obligation towards human rights. Hence, such acts causing unauthorised interferences with fundamental freedoms must be deterred in all forms and manifestations to appropriately balance social and individual interests. Since any democracy which seeks to defend itself by forfeiting individual freedoms soon discovers itself to be not the kind of State, it purposes to be.

II. National Security Law of Hong Kong: An Overview

The Standing Committee of the National People's Congress (NPCSC) of the People's Republic of China (PRC) passed "The Law of the People's Republic of China on Safeguarding National

⁸ C. Raj Kumar, "Human Rights Implications of National Security Laws in India: Combating Terrorism While Preserving Civil Liberties" 33(2) *Denver Journal of International Law & Policy*, 196 (2005).

⁹ Javier C. Hernández, "Harsh Penalties, Vaguely Defined Crimes: Hong Kong's Security Law Explained" *The New York Times* (June 30, 2020) available at: <https://www.nytimes.com/2020/06/30/world/asia/hong-kong-security-law-explain.html>, (last visited on June 25, 2023); Lydia Wong and Thomas E. Kellogg, Hong Kong's National Security Law: A Human Rights and Rule of Law Analysis, *Centre for Asian Law Georgetown Law, Georgetown University*, 6-27 (2021).

Security in the Hong Kong Special Administrative Region” (herein referred to as the Act or Law) popularly known as the National Security Law of Hong Kong on 30 June 2020.¹⁰ The proposed law was kept secretive until the central legislature of China did not approve it.¹¹ Article 1 of the legislation states five fundamental reasons for its enactment.¹²

Under the new law, while Hong Kong authorities will be tasked with enforcing the law, the newly established local Committee will make the policies and laws for Safeguarding National Security” (herein referred to as the Committee). Chaired by the Chief Executive (Hong Kong's top leader), the Committee will also develop a legal system and enforcement mechanisms for the city's new law. Article 14 mandates that no institution or organisation will be allowed to interfere with its work. Moreover, Article 12 edicts the Committee as accountable and under the supervision of the Central People's Government of China (herein referred to as Central Government). Thereby raising concerns over its lack of accountability since it will not be subject to judicial review. Further, Article 15 mandates that the Committee have its National Security Advisor appointed by the Central Government and entitled to sit in committee meetings

Furthermore, the Act directs the police force under Article 16 to establish a department for safeguarding national security with law enforcement capacity and the Department of Justice under Article 18 for a specialised prosecution division. This provision has, therefore, enabled Hong Kong's police force to set up a unit dedicated to investigating national security cases. The unit is vested with the power to demand that suspects surrender their travel documents, which

¹⁰ Tracy Wut, Grace Tso, *et.at.*, “National Security Law in Hong Kong” *Baker Mckenzie*, (July, 2020) available at: <https://www.bakermckenzie.com/en/insight/publications/2020/07/national-security-law-in-hong-kong>, (last visited on June 25, 2023).

¹¹ Grace Tsoi and Lam Cho Wai, “Hong Kong security law: What is it and is it worrying?” *BBC News* (June 30, 2020) available at: <https://www.bbc.com/news/world-asia-china-52765838>, (last visited on June 25, 2023).

¹² The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, Article 1. It states:

This Law is enacted, in accordance with the Constitution of the People’s Republic of China, (...) for the purpose of:

- i. ensuring the resolute, full and faithful implementation of the policy of One Country, Two Systems under which the people of Hong Kong administer Hong Kong with a high degree of autonomy;
- ii. safeguarding national security;
- iii. preventing, suppressing and imposing punishment for the offences of secession, subversion, organisation and perpetration of terrorist activities, and collusion with a foreign country or with external elements to endanger national security in relation to the Hong Kong Special Administrative Region;
- iv. maintaining prosperity and stability of the Hong Kong Special Administrative Region; and
- v. protecting the lawful rights and interests of the residents of the Hong Kong Special Administrative Region

previously needed a court order.¹³ The unit is also authorised to tap phone communications with the chief executive's permission rather than requiring court approval. It is also authorised to search homes without a warrant.

The Act also created a new agency, 'Office for Safeguarding National Security' (herein referred to as the office) from the Chinese mainland to oversee the operational work of the police and the Hong Kong government.¹⁴ The agency monitors how Hong Kong authorities enforce the new law and work with local authorities to manage foreign companies, NGOs, International Organizations and foreign news agencies operating in the city.

The office is crucial in formulating and advising significant policies and strategies for safeguarding national security. It collects and analyses intelligence and handles cases endangering national security. The 66 Article National Security law also criminalises any act of:

- secession - breaking away from the country under Articles 20 and 21
- subversion - undermining the power or authority of the central government under Articles 22 and 23
- terrorism - using violence or intimidation against people under Articles 24-28
- collusion with foreign or external forces under Articles 29 and 30

Moreover, the Act also authorises the state to extradite the accused to mainland China for the administration of criminal justice as per the Chinese criminal procedural law,¹⁵ in cases where:

- 1) the case is complex due to the involvement of a foreign country or external elements, thus making it difficult for the Region to exercise jurisdiction over the case;
- 2) A serious situation occurs where the Government of the Region is unable to enforce this Law effectively; or
- 3) a major and imminent threat to national security has occurred¹⁶

¹³ Natalie Lung and Jason Scott, "Hong Kong Grants Police Sweeping New Powers Under National Security Law" *TIME*, (July 7, 2020) available at: <https://time.com/5863577/hong-kong-police-security-law-new-powers/>, (last visited on June 25, 2023).

¹⁴ The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, Chapter V, Article 48. It states:

"The Central People's Government shall establish in the Hong Kong Special Administrative Region an office for safeguarding national security. The Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region shall perform its mandate for safeguarding national security and exercise relevant powers in accordance with the law. The staff of the Office shall be jointly dispatched by relevant national security authorities under the Central People's Government."

¹⁵ The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, Article 55, 56 and 57.

¹⁶ The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, Article 55.

III. Critical Analysis and Examination of the Law

The Hong Kong National Security law enacted by the Chinese state stands as a stringent piece of legislation having the potential to be misused to curb instances of peaceful protest and suppress the freedom of speech and expression of the people of that region. The implementation of the law reflects Beijing's intent to exert greater control over the autonomous Hong Kong administration.¹⁷ The arrest of Roman Catholic cleric, Cardinal Joseph Zen and others in Hong Kong reflected that it could be misused to violate the civil liberties assured to the people of Hong Kong within their domestic laws.¹⁸

Hong Kong during the colonial regime was the port city of the British empire.¹⁹ However, pursuant to the 1984 Sino-British Declaration the region was handed back to China. The 1984 joint declaration, an international treaty is legally binding between the two countries which guarantees the special region of Hong Kong to retain its autonomy from the mainland including politico-economic status like, common law legal system, capitalistic market economy, etc for 50 years from the year 1997.²⁰ Pursuant to this treaty Hong Kong is run under a different set of rules to the rest of China known as One Country Two Systems, where the city enjoys its own political and economic freedom. It has its own currency, an independent legal system, and a quasi-democratic government that in theory at least operates under a high degree of autonomy. The people of Hong Kong thus, easily enjoyed rights and freedoms that are seldom available in the mainland, such as freedom of speech, expression, association, assembly, and protection from unlawful and arbitrary arrest.²¹

¹⁷ Robert Delaney, "National security law's effects undercut Hong Kong freedoms, says US government report, citing arrests of Cardinal Zen and Jimmy Lai", *The South China Morning Post* (April 1, 2023) available at: <https://www.scmp.com/news/china/article/3215648/effects-national-security-law-undercut-hong-kong-freedoms-says-us-government-report> (last visited on June 25, 2023).

¹⁸ Primrose Riordan, Chan Ho-him, *et.al.*, "Hong Kong police arrest Cardinal Zen under national security law", *The Financial Times* (May 12, 2022) available at: <https://www.ft.com/content/dfd89968-8d5e-4449-b023-35540a8425ae> (last visited on June 25, 2023); Jonah McKeown, "Cardinal Zen and Jimmy Lai among Hong Kongers nominated for Nobel Peace Prize" *Catholic News Agency* (Feb. 3, 2023) available at: <https://www.catholicnewsagency.com/news/253548/cardinal-zen-and-jimmy-lai-among-hong-kongers-nominated-for-nobel-peace-prize> (last visited on June 25, 2023).

¹⁹ Desmond Hok-Man Sham, "Hong Kong as a Port City", in Yiu-Wai Chu (ed.), *Hong Kong Culture and Society in the New Millennium*, 4 Singapore: Springer Nature, 91-110 (2017); John M. Carroll, "Colonial Hong Kong as a Cultural-Historical Place" 40(2) *Modern Asian Studies*, 517-43 (2006).

²⁰ National Legislative Bodies/ National Authorities, "Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong", *UNHRC*, (December 19, 1984) available at: <https://www.refworld.org/docid/3ae6b525c.html>, (last visited on June 25, 2023); Hualing Fu and Richard Cullen, "National Security Law in Hong Kong: Quo Vadis – A Study of Article 23 of the Basic Law of Hong Kong", *Pacific Basin Law Journal*, 191 (2002); Aarshi Tirkey, Nandini Sarma, "Hong Kong's National Security Law: Implications for India" *ORF OCCASSIONAL Paper*, 2 (2020).

²¹ Human Rights Watch, "Dismantles a Free Society: Hong Kong One Year after the National Security Law" *Human Rights Watch*, available at: <https://www.hrw.org/feature/2021/06/25/dismantling-free-society/hong-kong-one-year-after-national-security-law>, (last visited on June 25, 2023); Michael F. Martin, Susan V. Lawrence,

However, the current National security law is a significant threat to the social realities and lawful assurances of fundamental freedoms and liberty to the citizens of Hong Kong. It gives to the central government sweeping powers not seen before since the transfer of sovereignty to China. The Act enacts some stringent and draconian provisions in this regard.

Offences and Punishments

The offences provisioned under the law are vaguely drafted, raising legitimate concerns for potential abuses and politically motivated criminal prosecutions. The vagueness in law opens up doors for broader interpretations, thereby granting excessive discretion to executive authorities to interpret and enforce the law, which, if misused, can undermine civil liberties and, eventually, blur the distinction between exercising individual freedoms and jeopardising national security.

Endangering national security can virtually mean everything under the law; notably, Article 24 of the Act categorising damaging public or even property and also violence with a person as a terrorist act; while questioning the proportionality of measures also exemplifies the problematic vagueness that pervades the act.²² Further, attacking or damaging property or even the facilities used by the government is also considered as subversion under Article 22(4) punishable with life imprisonment in some cases.²³ The overly broad definition of offences provided by the law creates an alarming situation where they can be easily applied as catch-all charges in politically motivated prosecutions, with potentially severe sanctions.²⁴ Article 20 makes people even planning to organise or participate in acts aimed at splitting the republic liable to be charged under the stringent provision of succession, regardless of the involvement of violence. Article 22 outlays such a broad definition that even includes the mere threat of force as an offence of

“China’s National Security Law for Hong Kong: Issues for Congress” *US Congressional Research Service* (2020) 2-10.

²² Al Jazeera, “Details of China’s national security law for Hong Kong unveiled” *Aljazeera*, (July 1, 2020) available at: <https://www.aljazeera.com/news/2020/7/1/details-of-chinas-national-security-law-for-hong-kong-unveiled>, (last visited on June 25, 2023); UK Parliament Publication, “The introduction of the national security law in Hong Kong, and its consequences” *Parliament.uk*, (July 7, 2021) available at: <https://publications.parliament.uk/pa/cm5802/cmselect/cmhaff/191/19104.htm>, (last visited on June 25, 2023).

²³ Jessie Yeung, “China has passed a controversial national security law in Hong Kong. Here’s what you need to know” *CNN News*, (July 1, 2020) available at: <https://edition.cnn.com/2020/06/25/asia/hong-kong-national-security-law-explainer-intl-hnk-scli/index.html>, (last visited on June 25, 2023); See also Felicity Lewis, “Protest or dangerous subversion: what China’s proposed national security laws mean for Hong Kong” *The Sydney Morning Herald* (July 1 2020) available at: <https://www.smh.com.au/world/asia/peaceful-protest-or-dangerous-subversion-what-china-s-proposed-national-security-laws-mean-for-hong-kong-20200526-p54wgy.html>, (last visited on June 25, 2023).

²⁴ “Hong Kong’s national security law: 10 things you need to know” available at: <https://www.amnesty.org/en/latest/news/2020/07/hong-kong-national-security-law-10-things-you-need-to-know/> (last visited on June 25, 2023).

subversion. Moreover, activities intended to pressure authorities into pursuing a political agenda could also be considered terrorist acts under Article 24. The above provisions demonstrate the far-reaching implications the law can have to inhibit or restrict the fundamental freedoms assured to the people of Hong Kong under their Basic Law (mini-constitution of Hong Kong).

The broad definition results into lack of clarity and precision about what actions or expressions may be regarded as threats to national security. Such obscureness can sooner or later result in arbitrary or selective enforcement, potentially enabling misuse of state machinery to suppress any form of political dissent or target political opponents in the future. It can further cause chilling effects on people's liberty of free speech and expression. Individuals uncertain about the permissible limits over speech and expression may self-censor or inherently refrain themselves from expressing their views out of fear of attracting uncalled legal sanctions. This can erode the open exchange of ideas and stifle the democratic discourse in Hong Kong city. Legitimate activities, like political protests criticising the actions of the state, public dissent which obstructs public transport system, among others could also be regarded as threats to national security, resulting in restrictions on civil liberties and freedoms.

Therefore, the Act manifests pervasive presence of critical vagueness in terms of definition and scope of applicability of offences, which widens the scope to include varieties of acts to be held as offences within the law.²⁵ Henceforth, on the pretexts of national security, terrorism and sedition, the act enables the state to stifle the exercise of individual liberty and freedom as is evident from actual incidents.²⁶ The trail of 47 democracy advocates in Hong Kong is a reflection of the above troubling crisis.²⁷

The law imposes severe penalties, including maximum punishment of life imprisonment, for committing offences falling under all four categories, which surprisingly encompasses acts of

²⁵ Jean-Pierre Cabestan and Laurence Daziano, "Hong Kong: The Second Handover" *Fondation Pour L'innovation Politique Report*, 18-30 (2020).

²⁶ ANI, "Arrest of pro-democracy activist in Hong Kong serious concern, says rights experts" *ANI* (October 13, 2021) available at: <https://www.aninews.in/news/world/asia/arrest-of-pro-democracy-activist-in-hong-kong-serious-concern-says-rights-experts20211013213507/>, (last visited on June 22, 2023); *Fionnuala Ní Aoláin, Clément Nyaletsossi Voule, Ms. Irene Khan, Mary Lawlor*, "Hong Kong: Arrests under security law are serious concern, UN experts call for review" *UN Human Rights Office of the High Commissioner* (October 12, 2021) available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27648&LangID=E>, (last visited on June 25, 2023).

²⁷ "Hong Kong: Case against 47 pro-democracy figures must be dropped as politically motivated trial begins" *Amnesty International* (February 6, 2023) available at: <https://www.amnesty.org/en/latest/news/2023/02/hong-kong-case-against-47-pro-democracy-figures-must-be-dropped-as-politically-motivated-trial-begins/> (last visited on June 25, 2023).

peaceful dissent and criticism.²⁸ Such punishments are disproportionately harsh since they even cover acts that may be considered simple expressions of dissent, peaceful protests or exercising free speech for criticism. It further, bars the convicted persons from standing in Hong Kong elections.²⁹

Jurisdiction of Chinese Criminal System and Transfer of accused to mainland for Prosecution

One of the most controversial provisions in the Act is authorising the Chinese mainland to take over the administration of the criminal justice in some serious cases upon the request of the national security agency or Hong Kong administration.³⁰ Though, legal provision over the transfer of criminal cases from one place to another to ensure complete justice in a case, have always existed in criminal laws of many countries. However, the position of the act in the current dynamics of Hong Kong are completely different. Hong Kong follows the common law system while, the mainland China follows the civil law system where laws mean statutes and excludes case laws.³¹ The Hong Kong judicial system is more open, transparent and independent in terms of its operations than the other. In the opaque judicial system of mainland China, criminal cases typically have a conviction rate of over 99 percent and acquittal rate remains less than 1 percent.³²

The provision advances the fear of potential misuse by the central government to take over & transfer politically motivated criminal prosecutions to mainland China and deny innocent accused a fair hearing and an open trial. Thereby raising alarming apprehensions concerning

²⁸ The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, Article 20, 22, 24, 25, 29. The law also provides for lower quantum of punishment in certain cases as well.

²⁹ *Id.* at art. 35.

³⁰ *Id.* at art. 55.

³¹ CJO Staff Contributors Team, "Does China Have Common Law? - China Law in One Minute" *China Justice Observer*, (Nov. 9, 2020) available at: <https://www.chinajusticeobserver.com/a/does-china-have-common-law>, 4w.

³² Terrence McCoy, "China scored 99.9 percent conviction rate last year" *The Washington Post* (March 11, 2014) available at: <https://www.washingtonpost.com/news/morning-mix/wp/2014/03/11/china-scored-99-9-percent-conviction-rate-last-year/>, (last visited on June 25, 2023). The article read: of the 1.16 million people put on trial last year, Chinese courts returned a guilty verdict for all but 825 of them. (...) That's a 99.93 percent conviction rate (...) The pronouncement taps into a wider debate occurring inside China over the future of the nation's judicial branch, which has historically been marred by corruption and political infighting. (...) Indeed, the report comes amid widespread condemnation of the Chinese judicial system, which rights groups assert is nothing more than a pipeline to conviction. The U.S. State Department says the courts often hand down guilty verdicts without any deliberation, which wildly inflates their conviction rates. Police routinely browbeat defendants into offering confessions that may not be truthful. (...) The acquittal rate: less than 0.1 percent.

AFP, "Hong Kong national security law: five key facts you need to know" *The Hindu*, (July 1, 2020) available at: <https://www.thehindu.com/news/international/hong-kong-national-security-law-five-key-facts-you-need-to-know/article31959413.ece#>, (last visited on June 25, 2023).

the deliberate statutory abuse for undermining sacrosanct principles of justice, liberty, equity, fairness, and the right to a fair hearing. This resultantly emerges as a severe threat to foundational values that uphold the integrity of any legal system, risking the erosion of basic rights and subversion of justice itself.

Moreover, the rigorously harsh nature of the interrogations in criminal cases in mainland China also raises questions over the levels of torture and human rights violations administered to the accused during his detention in the jails. It seems convincing to comprehend that another reason for transferring criminal cases to the mainland could be to ensure prolonged extra-legal detention or even torture while awaiting the trial to slay the spirit of liberty and freedom within the human rights activist falsely framed under the law.

Independence of Legal and Judicial System

The National security law attempts to erode the fundamental character of independence and impartiality of the judicial administration in the region. It authorises specific categories of cases to conduct secret trials behind closed doors without the jury, which directly violates Article 85 of the Hong Kong Basic Law that provisions for the principle of trial by the jury. Such authorisation by the act may not do much aid to the mighty state than it may harm an individual accused and the criminal justice system. Even a loose reading of the legal provisions contemplates that the legal system under this legislative scheme marches away from the fundamental and cardinal principle of criminal adjudication viz favouring the accused, also provided under Article 87 of Hong Kong Basic Law. In a trial concerning national security issues, courts are usually reluctant to counter the facts, arguments and reservations of the state; thus, in such critical situations conducting a closed-door trial and that too, in the absence of an independent jury, would mean conducting trial without fairness.

Chapter IV of the Act, particularly Article 43, grants far-reaching powers to the executive to conduct evidence collection, tap communications and spy on suspects without due process of law. Additionally, it authorises the police to remove online content, encroaching upon the space for free debate and discussion within civil society in the city. These provisions not only diminish avenues for open discourse but correspondingly blatantly infringe upon the freedom of speech protected under Article 27 of the Hong Kong Basic Law. Furthermore, Article 44 of the Act empowers the Hong Kong Chief Executive with extraordinary power to appoint judges for national security cases, with a limited tenure of one year. This provision directly contradicts Article 88 of the city's Basic Law, which mandates for appointment of judges by an

independent commission. The reliance on the Chief Executive, an executive authority for appointing judges, raises questions about the separation of powers and the potential for undue influence or political considerations in appointments. Such a departure from established procedures raises concerns about the independence and impartiality of the judiciary.

Additionally, the law deviates from the standard principle of “presumption of bail” and restrains the court from granting bail “unless the judge has sufficient reason to believe they will not continue to commit acts that endanger national security”. The threshold limit for Bail mandated under Article 42 stands uncommonly so stringent that it becomes virtually impossible for the court to grant bail to suspects. The Hong Kong Court of Final Appeal in *HKSAR v Lai Chee Ying*,³³ also ruled that Article 42 of the Act, “reversed the common law presumption of bail and set a high threshold for the granting of bail in national security cases”. Such legal provisions particularly, of judges appointment and presumption against bail attempts to cut the core of the independence of judicial system and civil liberties in Hong Kong. Independent and impartial judiciary stands as the inherent and indispensable institution to protect civil rights, sustain rule of law and protect democracy in the society. However, no institution can act fearlessly to protect and uphold the rule of law in absence of necessary institutional and legal safeguards which includes, secured tenure. It is widely accepted around the world that one of the most important structural elements of any independent oversight institutions is a basic guarantee of tenure and a fixed salary.³⁴ There remains a strong nexus between the independence of an institution and the fixity of tenure. Fixed tenure is one of the essential aspects of institutional independence.³⁵ Therefore, laws have traditionally provided specific safeguards in terms of tenure, appointment and others to maintain the integrity and independence of the institution and ensure unbiased fulfilment of crucial judicial functions by judges. Empowering the executive to appoint judges, particularly with a limited tenure of one year, amounts to severe transgression on all boundaries of judicial independence and impartiality. The Act raises concerns about the potential for political considerations to detriment judicial decision-making, compromising the fairness and impartiality of the trial of people charged under the law. By impacting the very essence of judicial independence, fairness and impartiality in trials, the law undermines the rule of law, causing a devastating impact on the common law legal system of Hong Kong.

³³ FACC 1/2021; [2021] HKCFA 3

³⁴ Dr. Sashi Tharoor, “Dr. Shashi Tharoor on the Right to Information (Amendment) Bill, 2019” *YouTube*, (July 22 2019) available at: <https://youtu.be/UAdYUayeRSk>, (last visited on June 25, 2023).

³⁵ *Union of India v. R.Gandhi*, (2010) 11 SCC 1

A Business Operations and Financial Sustainability of Foreign Companies in Hong Kong

The regional autonomy accorded to the Hong Kong and the presence of strong rooted spirit of democracy aided in the economic growth of the region which acted as a catalyst in its creation as the global trade and financial centre. The common law legal system enforceable in the city further enabling the growth of open, free and liberal atmosphere provided the best ecosystem for the growth of international trade, business and globalisation of the region. More fundamental to this discussion is the free movement of capital in the city in this regard. Hong Kong follows a free trade policy with all applied tariff rates at zero.³⁶ The city's economy is dominated by external sector with a trade to GDP ratio of 375 percent.³⁷ The Hong Kong city being the financial trade centre, has significant presence and investments from international business community.³⁸ However, the current Act enforceable in the city resulting in erosion of institutions and freedoms while simultaneously muzzling the capital market with an ever-growing dependence on Beijing, shall be an outcome that may not seem all that unpalatable to multinational firms that have already been forced to do business with the Chinese government. In this context the Act has far-reaching implications over Hong Kong's status as the region of financial hub.

The stringent provisions enacted under the law in the context of commercial operations and businesses can make potential investors fearful of their investments and may even thwart the region's economic development in the long run.³⁹ To analyse the critical nature of the subjected discussion and place issues into relevant context, we must comprehend the extraordinary and unusual nature of the Act in commercial contexts. The law applies to all businesses registered in Hong Kong. As per the legislative framework, a company could be fined or have its business suspended over a national security offence.⁴⁰

³⁶ "Hong Kong's Trade Policy" available at: <https://research.hktdc.com/en/article/MzM0NDk2NTI4>, (last visited on June 25, 2023).

³⁷ Read *Id.* 17; "Hong Kong, China: Growth, Structural Change, and Economic Stability During the Transition" *International Monetary Fund* available at <https://www.imf.org/external/pubs/nft/op152/chap1.htm>, (last visited on June 25, 2023); "Trade Policy Review: Hong Kong, China" *World Trade Organisation* available at: https://www.wto.org/english/tratop_e/tp_r_e/tp480_e.htm, (last visited on June 25, 2023).

³⁸ "2021 Investment Climate Statements: Hong Kong" *US Department of State* (2021) available at: <https://www.state.gov/reports/2021-investment-climate-statements/hong-kong/>, (last visited on June 25, 2023).

³⁹ Jen Kirby, "Will China's national security law break Hong Kong as a business hub?" *Vox*, (August 5, 2021) available at: <https://www.vox.com/22605703/hong-kong-national-security-law-china-finance>, (last visited on June 25, 2023).

⁴⁰ The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, Article 31.

If delved further, the legislative scope of Articles 37 and 38 enacts for extraterritorial application of the Act. The relevant enactments in this regard thus, institute criminal liability over individuals as well as companies for any work, documents, or any activity committed beyond the territorial jurisdiction of Hong Kong, which endanger the national security of the Chinese republic. The designated enactments have broad scope of applicability, resultantly they can entail aspects like receiving information about meetings that are within a key industry, purchasing documents that later become classified as state secrets or hosting a website or server outside Hong Kong that contains content violative of the Act. Further, given the broad list of industries being subjected to the constraints of law on the ground of national security, a mere IPR dispute over a technology or its small segment could lead to concerns of the Central government or amount to national security or state secrets.

Enactment of such harsh and terrifying provisions under the law can instil a fear within the minds of the investors and foreign company operators which shall not only deter them to make additional investments in the city and supplementarily incentivise to shift their business operations to other parts of the world. This proposition is quite convincing as evident from the staggering fall of Hong Kong in the Economic Freedom Index 2020 and later its ousting as a separate assessor and merger with the Chinese mainland from the subsequent index. Furthermore, pursuant to the enactment of the Act several significant instances of Brain drain of talented people who do not want the kind of restrictions which the central government has imposed under the banner of national security have been observed in the city.⁴¹

Therefore, the act certainly adds to the complexity of the working business operations in the city. Since, international firms and investors have significantly attractive alternative options in other vibrant Asian economies like,⁴² India, Singapore and others or they may be based out of the Hong Kong markets instead of being within the Hong Kong market's operational framework.

Erosion of High Degree of Autonomy to Hong Kong

⁴¹ CNBC "Can Hong Kong Survive as Asia's Financial Hub?" *CNBC YouTube Channel*, (July 1, 2020) available at: <https://youtu.be/SHm5YBDp2oE>, (last visited on June 25, 2023)

⁴² Lokeshwarri SK, "Are investors shifting from China to India?" *The Hindu Business Line*, (Oct. 6, 2021) available at: <https://www.thehindubusinessline.com/opinion/are-investors-shifting-from-china-to-india/article36863410.ece>, (last visited on June 25, 2023); Sara Hsu, "Which Asian Nations Can Benefit From the 'China Plus One' Strategy?" *The Diplomat*, (June 11, 2021) available at <https://thediplomat.com/2021/06/which-asian-nations-can-benefit-from-the-china-plus-one-strategy/>, (last visited on June 25, 2023).

The Act establishes the Office for Safeguarding National Security by the central government to oversee the execution of national security activities in the city. It empowers the body to recommend transferring cases from Hong Kong to mainland China. Even though the Chief Executive is empowered to appoint key individuals in the affairs of security governance, the Act warrants the concurrence of the central government in this regard. Moreover, it provisions to appoint security personnel outside Hong Kong in several institutions involved in national security affairs. Indicating personnel deployment from mainland China to deal with the security-related affairs of Hong Kong.⁴³ It vests final authority within the Standing Committee of the National People's Congress and not in any judicial or other body of Hong Kong for the purpose of interpretation of statutory provisions.⁴⁴ The Act under Article 62 even provides supremacy to itself over all local laws of Hong Kong.⁴⁵ The Hong Kong's highest court ruling in the HKSAR v. Lai Chee Ying case,⁴⁶ reflects the deleterious damage done to the institution of Judiciary and erosion of high degree of autonomy of Hong Kong by the Law. The court while unprecedentedly restricting its constitutional authority to review the law ruled:

“The NSC is specifically created by NSL 12 to be responsible for affairs relating to and assume primary responsibility of safeguarding national security in the HKSAR. NSL 12 subjects it under the supervision of and accountability towards the CPG directly. The supervisory power over the NSC is reserved to the CPG exclusively. The HKSAR courts are not vested with any role or power over such matters of the CPG because they clearly fall outside the courts' constitutional competence assigned to them under the constitutional order of the HKSAR (§§34-35).(…) the NSL has not vested the HKSAR courts with any jurisdiction over the work of the NSC under NSL 14 in the exercise of their judicial function, and NSL 14 enjoins in clear and unqualified terms the HKSAR courts from doing so, which prescribes the jurisdictional limit on the HKSAR courts' exercise of their judicial function in national security cases under the NSL (§39).”

The 1984 treaty legally obligates the Chinese Republic in all its manifestations to preserve a high degree of autonomy for Hong Kong. Authorising deep involvement and interference of the mainland Chinese administration in its internal affairs, including the administration of criminal justice, amounts to pervasive intervention into the autonomous character of the city. Rather, with the overarching authority to supervise and decide on matters of national security

⁴³ The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, Article 16.

⁴⁴ *Id.* at art. 65.

⁴⁵ *Id.* at art. 62.

⁴⁶ (2021) HKCFA 3.

fully vested in the Central Government under the new law, the jurisdiction for Hong Kong courts to independently decide on national security issues is highly limited. Analytical study of the law provides that under the framework of the Act, issues concerning national security shall be treated much in the same way that of national Defense and foreign affairs do; that is, matters of national security are outside the authority and jurisdiction of Hong Kong (save for most criminal offences committed in Hong Kong) and are exclusively within the power and authority of the central government.

The existing domestic laws of Hong Kong adequately empower the local administration to take necessary measures for upholding the security interests of the autonomous region and mainland. Therefore, the Act persist as an undesired piece of legislation passed by the Central Legislature of China, as a direct contravention to the legally binding obligation for the one country two system rule promised under the 1984 Sino-British treaty. Delimiting the central government's power unswervingly damages the high degree of autonomy guaranteed to Hong Kong under the treaty. The Chinese Republic, therefore, must not violate the treaty obligation on the pretext of national security and must stay within its obligation.

The Act and the Constitution

The constitutional structure of Hong Kong restricts the central legislature's authority to subjects of foreign policy and defence. Whereas the Act deals with national security affairs, it is imperative to note that defence and national security are not always coterminous. In relevance to Hong Kong, the term national security primarily relates to internal security within the region. While the Chinese legislature invoked the defence clause to legislate the Act, invoking this clause to institutionalise the suppression of dissent in society indisputably stands unconstitutional and against the fabric of morality. The defence clause should have been invoked strictly over matters concerning external security threats and not to contradict the constitutional guarantee to liberty and freedom.

Hong Kong domestic law duly balanced diverging forces of civil liberties and state imperatives of preserving internal security and order. However, the current Act emphatically disbalances this delicate equilibrium and undermines the guarantee of civil liberties. Hong Kong, formerly a British colony, had been a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 39 of the Hong Kong Basic Law enacts express provisions to adopt and incorporate the

two covenants within the domestic legal order of the city.⁴⁷ Consequently, to give effect to the constitutional directive “Hong Kong Bill of Rights Ordinance 1991” was enacted for express legislative incorporation of covenants into the domestic statutory scheme of enforceable laws. This ensured that any law transgressing the domain of fundamental freedoms was declared unconstitutional by the courts in the city.

ICCPR provisions enforceable in Hong Kong, as also reiterated under Article 4 of the Act,⁴⁸ restrain the State authority from suppressing the people’s civil liberties even on the ground of national security by limiting the scope of the subject. For instance, the Johannesburg principles on the ICCPR provide that to qualify as a national security threat, the act must incite a violent overthrow of the government.⁴⁹ It goes on to explain that nothing below such restraint must be regarded as a threat to national security.⁵⁰ Though, these principles under the band of ICCPR severely restrains the authority of the State to suppress civil liberties on national security grounds yet, contrarily the Act imposes criminal sanctions on national security grounds even in cases where there is no violent overthrow of the government.

Although Article 4 of the Act provides for the continued application of the provisions of ICCPR and other human rights instruments yet, at the same time, by enacting vaguely drafted criminal sanctions, restricting judicial review, and stringent provisions for bail, among others, the law grants an open ground for the security forces to undermine the guarantee of rights and liberty under the said charters. Therefore, while contradicting the basic law, it inherently includes several contradictory and opposing provisions. Furthermore, given that the ultimate power of interpretation does not lie with the judiciary, the courts shall have less role in remedying or curbing such problems. The Act, resultantly, controverts the existing legal order of Hong Kong, including the Basic law established to protect the rights and liberties of people.

Suppression of Dissent and Peaceful Protest

⁴⁷ The Basic Law of The Hong Kong Special Administrative Region of The People’s Republic of China, art. 39. It states: The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.

⁴⁸ The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, 2020, art. 4.

⁴⁹ Aarshi Tirkey Nandini Sarma, “*Hong Kong’s National Security Law: Implications for India: ORF Occasional Paper, New Delhi: Observe Research Foundation*, 7 (2020); United Nations, “The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information”, U.N. Doc. E/CN.4/1996/39 (1996); University of Minnesota, “The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information U.N. Doc. E/CN.4/1996/39 (1996)” *Human Rights Library, University of Minnesota*, available at <http://hrlibrary.umn.edu/instree/johannesburg.html>, (last visited on June 25, 2023).

⁵⁰ *Ibid.*

The Act, as a direct assault on the cardinal principles of liberty and autonomy, dismantles the democratic ethos of society devoiding freedoms traditionally enjoyed by Hong Kong residents. As noted by Amnesty international, the Act virtually creates a situation of no less than that of human rights emergency in Hong Kong.⁵¹ It has been used to target dissent, justify censorship and arrest the dissenters.⁵² In no better analysis, it could be described as a sweeping crackdown over the freedoms of the people of Hong Kong, promised under the 1984 Sino-British declaration.⁵³ Thereby categorising the Act as nothing short of an all-out effort to outlaw the virtual guarantee of rights and autonomy under the one country two systems agreement.

Premising national security to sanction stringent provisions, the Act ostensibly transforms the traditional character of Hong Kong of common law principles with the deep-rooted pervasive presence of liberty, freedom, autonomy and protection against dissent, virtually into a police state. The State cannot legislate laws by invoking the national security or defence clause (as the case may be), which, though on paper and within textual restraints of legislative terminologies, reflect the intention to uphold national security issues yet, realistically, on the counts of practicality, deter the actual realisation of civil liberty, fundamental freedoms and Human Rights protection.

Enacting harsh and stringent provisions under the Act for cases not involving violence and peaceful protest outrightly amounts to an institutional and state-sponsored suppression of dissent and peaceful protests. It inherently limits the space for open and constructive criticism of state policies and actions.

Implications for Other States

⁵¹Amnesty International, "Hong Kong: National Security Law has created a human rights emergency" *Amnesty International*, (June 30, 2021) available at: <https://www.amnesty.org/en/latest/news/2021/06/hong-kong-national-security-law-has-created-a-human-rights-emergency/>, (last visited on June 25, 2023).

⁵²Associated Press, "Hong Kong security law being used to 'eliminate dissent' say US, UK, Australia and Canada" *The Guardian*, (Jan. 10, 2021) available at: <https://www.theguardian.com/world/2021/jan/10/hong-kong-security-law-being-used-to-eliminate-dissent-say-us-uk-australia-and-canada>, (last visited on June 25, 2023); "Hong Kong Security Law: What Is It and Is It Worrying?" *BBC News*, (June 30, 2020) <https://www.bbc.com/news/world-asia-china-52765838>, (last visited on June 25, 2023); Angeli Datt, "The Impact of the National Security Law on Media and Internet Freedom in Hong Kong" *Freedom House* (Oct. 19, 2021) available at: <https://freedomhouse.org/article/impact-national-security-law-media-and-internet-freedom-hong-kong>, (last visited on June 25, 2023).

⁵³Javier C Hernández, "Harsh Penalties, Vaguely Defined Crimes: Hong Kong's Security Law Explained" *The New York Times*, (July 1, 2020) available at: <https://www.nytimes.com/2020/06/30/world/asia/hong-kong-security-law-explain.html>, (last visited on June 25, 2023).

Hong Kong, being a global trading hub,⁵⁴ has conspicuous strategic relevance for the entire globe. In this context, the Act also has a catastrophic impact on other states including, India. One of the most consequential provisions is the extraterritorial jurisdiction ordained under Article 38 of the Act of implicating criminal sanction against the person.

Part 6 of the Act, defining the scope of the law, opens the frontiers of its applicability, including sanctioning of criminal liability over individuals irrespective of their nationality or residency.⁵⁵

The said extraterritorial jurisdiction can have severely critical implications amounting to unreasonable interferences into the domestic, territorial and sovereign legal jurisdiction of other sovereign states.⁵⁶ Since after a close understanding of the Act, one can postulate an example that if an individual (irrespective of nationality or residency) outside the territory of Hong Kong advocates for its right of self-determination and encourage people to achieve the said target by forming a group, then the individual can be prosecuted under the Act whenever he comes under the territorial jurisdiction of the law like travelling or during transit in the city.⁵⁷

Instituting such wide extraterritorial and harsh provisions which endanger the civil liberties of people outside the territory of Hong Kong inevitably amounts to censorious interventions in the freedom and speech of such people who though distantly yet, are connected with the Hong Kong society and their free culture.

More interesting is the anomalous departure of the Act from the criminal jurisprudence of dual criminality followed in Chinese mainland in prosecuting foreigners.⁵⁸ The concept postulates that in order to establish criminal culpability over any foreigner, then such act must be punishable in both the countries, that is, the country to which the person belongs (or was

⁵⁴ Daye C and Jingjing M, "Over Past 25 Years, HK's Status as Global Trade and Shipping Hub Is Being Consolidated - Global Times" *Global Times* (June 30, 2022) available at: <https://www.globaltimes.cn/page/202206/1269457.shtml> (last visited on June 25, 2023); Corre PL, "20 Years on, Is Hong Kong the International Hub It Was Hoped to Be?" *Brookings* (June 30, 2017) available at: <https://www.brookings.edu/blog/order-from-chaos/2017/06/30/20-years-on-is-hong-kong-the-international-hub-it-was-hoped-to-be/> (last visited on June 25, 2023).

⁵⁵ Daniel Pascoe, "Hong Kong's National Security Law: A Socialist Legal Transplant?", *The Chinese Journal of Comparative Law*, 1-28 (2022).

⁵⁶ Natalie Wong, "Hong Kong national security law: legal experts see pitfalls ahead when it comes to exercising jurisdiction in foreign countries" *South China Morning Post*, (July 18, 2020) available at: <https://www.scmp.com/news/hong-kong/politics/article/3093774/hong-kong-national-security-law-legal-experts-see-pitfalls> (last visited on June 25, 2023).

⁵⁷ Carole J Peterson, The Disappearing Firewall: International Consequences of Beijing's Decision to Impose a National Security Law and Operate National Security Institutions in Hong Kong 50(2) *Hong Kong Law Journal*, 633 (2020); Carole J Peterson, A Primer on Hong Kong's National Security Law 4(4) *US Asia Law Institute Perspective*, 3 (2020).

⁵⁸ Jun Mai, "National security law: double criminality should apply, China law expert says" *South China Morning Post*, (July 17, 2020) available at: <https://www.scmp.com/news/hong-kong/law-and-crime/article/3093520/national-security-law-double-criminality-should-apply>, (last visited on June 25, 2023).

present) and the Chinese republic where the criminal proceedings are initiated.⁵⁹ However, the wide and expansive definitions of criminal acts under the Act are not part of the common law legal systems like India, United Kingdom or others.⁶⁰ Consequently, administering criminal punishment to any foreigners for offences not culpable in his home state shall be a blatant violation of the principle of dual criminality duly followed in the Chinese mainland criminal system.

Considering the severity and dreadful impact of the law on people outside the city, the world must take necessary steps to safeguard the exercise of free speech and expression of their subjects. Therefore, the world must use diplomatic channels to reform the underlined provisions, which could implicitly amount to a sweeping crackdown on the freedoms of people even beyond Hong Kong's territory.

IV. Conclusion

The balance between state powers and the rights of citizens is a symbol of democracy. Society flourishes when its citizens are guaranteed opportunities to enjoy fundamental manifestations of human life: individual liberty, free speech and expression. Every state instrumentality must ensure actual realisations of fundamental freedoms and liberty for effective governance and development of the society. People in Hong Kong traditionally enjoyed fundamental freedoms and individual liberties like freedom of speech, expression, association, assembly, and protection from unlawful and arbitrary arrest. However, these are the significant considerations that the Hong Kong security legislation attempts to erode from society fundamentally.

The Act blurs the distinction between exercising individual liberty or free speech and national security threats at the expense of civil liberty. The vague and broad definition of endangering national security virtually leads to blanket restrictions over rights and freedoms. It capacitates the State to dictate the contents of civil rights and determine the quantum of its exercise by the citizens of Hong Kong, a practise which is a critical threat to a healthy democracy. Broad definitions enabling scope for expansive interpretation by police and executive machinery authorise them even to punish individuals speaking against the tyrannical acts of the state of intruding on the liberty of people.

⁵⁹ Jun Mai and Sarah Zheng, "Hong Kong national security law's long-arm jurisdiction extraordinary and chilling" *South China Morning Post* (July 2, 2020) available at: <https://www.scmp.com/news/china/politics/article/3091428/hong-kong-national-security-laws-long-arm-jurisdiction>, (last visited on June 25, 2023).

⁶⁰ *Supra* note 49.

It attacks all the institutions necessary to safeguard the freedom and liberty of the people in Hong Kong. It tries to corrode the notion of a fair trial in national security cases. Grant of extensive powers to police authorities under the law enables them to transgress the rights and liberties of the people. By simultaneously disrupting Judicial independence and restraining its power, the law precludes the institution from protecting the civil liberties and rights of the people framed under the law, even by political motivation. The Act erodes the High degree of autonomy guaranteed to the special administrative region of Hong Kong under the one country two system principles.

The Act inherently manifests the contumacious and wilful disobedience to the legally binding Sino-British treaty; accordingly, mainland China must be held accountable. Further, while the Act is full of inherent contradictions where specific sections are the antithesis of each other, it concurrently also corrodes the provisions of the Basic Law of Hong Kong.

The above evaluations reflect that enacting the National Security Law appears to be subservient to the goal of maintaining national security. This incidentally indicates that it is passed to frustrate the region's autonomy and defeat the ideals of liberty, freedom and respect for dissent practised in Hong Kong. Legislations on the pretext of national security must not bulldoze the sacrosanct principles of liberty, freedom and the right to dissent. Further, national security cannot be a breeding ground for human rights abuses. Therefore, the mainland Chinese Republic must consider repealing the law and letting the autonomous region of Hong Kong govern its affair of internal security as per local laws.