

RESEARCH ARTICLE

“The Trial Process becomes very Alien”: Lawyers’ Imagination of the Legal Process in Contemporary Delhi

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Abstract

How do lawyers understand legality in contemporary India? We examine the experiences of lawyers in Delhi, who defend people accused under the Unlawful Activities (Prevention) Act (UAPA) and Prevention of Money Laundering Act (PMLA), statutes increasingly deployed to target dissent and minority groups. Drawing on in-depth interviews, these trials produce a sense of normlessness—where foundational assumptions about rules, processes, and institutional roles collapse. Lawyers describe an “alien” legal world marked by unpredictability, an absence of established procedure, and blurred boundaries between judges, prosecutors, and police. While ordinary cases retain a sense of normality, UAPA and PMLA cases destabilise imaginations of the legal process, compelling lawyers to speculate on motives and majoritarian influences. We explore how lawyers respond through insistence on procedural norms and strategies to mitigate harm to clients. These narratives illuminate the transformation of legality into a contingent, shape-shifting form of power, challenging deterministic accounts of authoritarian legality

Keywords: criminal law; autocratic legality; normlessness

1. Introduction: authoritarian legality as the production of an alien legal world

There are two ways in which the story of India’s “democratic backsliding” (Waldner and Lust, 2018, p. 94) has been told. One, through autocratic legalism, charting the figure of the electoral strongman acceding to himself more powers and undermining state institutions. Scheppele (2018) described it as “killing the constitution with a thousand cuts” (Khaitan, 2020, p. 49). Other scholars (Bajpai and Kureshi, 2022) de-centre the executive, describing institutional capture and the exclusion and delegitimisation of competing ideological frameworks. This has led to descriptions of India as “driving itself towards authoritarianism” (Repucci and Slipowitz, 2021, p. 2) and as an “electoral autocracy” (Nord et al., 2024, p. 13). The second and complementary story is the encoding of majoritarian Hindutva discourse into laws and practices of the state targeting religious minorities (Muslims, Dalits, and Christians), human rights activists, and journalists. Ethnic and religious groups have been excluded from political and social life, transforming India into a “de facto ethnic democracy” (Jaffrelot, 2021, p. 157), a religious ethnocracy (Shahid and Lee, 2024;

Kaiser, 2024), and “slouching towards a totalitarian future” (Narain, 2021, p. 139). These accounts present a top-level view of the state.

In this article, we explore law as experienced in the everyday life of criminal trial courts. Here, while things largely look the same—the same courts and personnel—some lawyers feel a profound change in how certain types of trials are conducted. We argue that one experience of legality today is the confusion of being in a different legal world, where norms, rules, and processes that the lawyers imagined to be fundamental and well-established no longer matter.

The lawyers discussed in this article are criminal defence lawyers whose clients are accused under two laws: India’s anti-terror law known as the Unlawful Activities (Prevention) Act, 1967 (UAPA) and The Prevention of Money Laundering Act, 2002 (PMLA), weaponised today to target political opposition and minority groups (Ellis-Peterson and Hassan, 2021; Ganguly, 2023; Mukherji, 2024; Vanaik, 2024).

Drawing upon extended interviews with them, we argue that the experience of practising law in these two areas is marked by uncertainty and unpredictability about fundamental aspects of the legal process. While in ordinary cases—murder or theft, for example—rules matter (even if they are not followed), in trials under the PMLA or UAPA, it is the experience of normlessness that prevails. This normlessness is not the uncertainty that is implicit in ordinary legal interpretation or the arbitrariness that marks any legal system, including the Indian one. Rather, this is a more fundamental uncertainty as to what the legal system’s rules, processes, and values are. As we will demonstrate, this takes several forms: through the denial of the existence of certain basic rules; the evacuation of fundamental legal meanings that the lawyers took for granted; the fusion of the role of the judge on the one hand, with the prosecution and police on the other. In their narratives, the lawyers repeatedly drew distinctions between “ordinary,” yet serious cases—such as murder, theft, and sexual assault—and cases under the UAPA and the PMLA. In the former, legal meaning is relatively stable, and the process proceeds as expected. In the latter, the existence of rules, ordinary processes, and legal meanings is repeatedly thrown into doubt. Or, as one of the lawyers put it, “words no longer mean what they mean.” They articulated the idea of two legal systems—one where the legal process is certain (even if not followed) and the other where it is marked by a normlessness. In the final section of the paper, we look at how lawyers responded to these issues in their interactions with clients and through their in-court tactics.

In articulating that, they seem to be in a different legal world; the lawyers are not saying that the legal meaning has, *only now*, become unclear or that the processes are *now* unpredictable, because this has always been a part of the legal system (Baxi, 1982). Rather, they say that things that were taken for granted have come undone in PMLA and UAPA cases, and they fear that this normlessness may spread to other areas of criminal practice.

For example, they are confronted by police officials who deny the existence of particular rules. They encounter prosecutors who refuse to acknowledge hitherto accepted courtroom processes, and judges who no longer proclaim their independence making their alignment with the police a badge of honour. How do defence lawyers respond in these situations? It is as if, to quote one lawyer, “the trial process has become very alien.”

In using the word “alien,” the lawyers are not saying that the legal process has been replaced by something else entirely. This “alien” legal process has the same judges and court personnel, the same police officers, the same lawyers, and the same courtroom performances. Yet this familiar setting has suddenly become uncertain in UAPA and PMLA cases. According to one lawyer, nothing is certain and “everything is up for challenge.” Earlier, they could expect that legal norms, processes, and values would be acknowledged, if not followed. Now their fundamental assumptions about the law are perceived to be in the process of disintegrating. The normlessness of this alien legal world leads the lawyers

to question whether the law itself—its texts, norms, values, and institutions—still matters.

That is, how does one live in a world where one no longer shares a sense of its fundamental aspects with others—the judges, police officials, and prosecutors—who inhabit it? As Wittgenstein (1953) may assert, our ability to inhabit a world is based on the idea of agreement, that is, the assumption of shared meanings and practices. Even if we disagree on the content, we agree that we speak the same language. There are also certain things which are unargued “certainties,” things which are “beyond being justified and unjustified” (Wittgenstein, 1969, §359). Our ability to comprehend the words and actions of another depends not just on explicit rules or logic, but on a deeper, lived agreement—an attunement—between one and others (Cavell, 1979). This is “our common world of background” where our place in the world is dependent on shared assumptions about the world, and hence our place in it is rendered vulnerable when these are no longer shared (Cavell, 1990, p. 72). For example, we agree that the Sun exists but may disagree on whether it is more orange or yellow in colour. But what happens if we are put into a world where the existence of the Sun is denied by others?

The lawyers we discuss in this paper have lost this sense of a common world of background. They can no longer rest on the idea that statutes and court orders ought to be followed, or that judges and prosecutors would behave in certain ways. Therefore, they felt as if the world that they shared with the rest of the legal system was coming undone. Through our fieldwork across India, lawyers we have spoken to have articulated this in different ways: one lawyer in Assam said that legal practice was now a question of political power, not rules; another lawyer in Assam said that the practice of law had become “rural” because local prejudices trumped his imagination of institutional norms. A lawyer in Delhi described the law as “being bent out of shape,” while a lawyer in Mumbai says that since the “last ten years,” the legal system has become a “lottery system.”

The lawyers we spoke to sometimes compared legal practice to a game based on rules, where, in an ideal world, they could use the rules of this game to their strategic advantage. In the game of ordinary cases, legal meaning is clear, the rules are predictable, and cases proceed according to a well-understood process. They are attuned to the legal world, and their common world of background is stable. They know how to engage with the other team (the prosecution) and the referees (the judges). While they may disagree about the interpretation or application of the rules, they still know the rules matter and the referees will act accordingly. They know what game they are playing.

In terror or money-laundering cases, however, the lawyers suggest that the rules of the game do not apply. They are unsure if they are playing the same game, as if they are thrust into a situation where the existence, let alone the interpretation, of rules is in doubt. In this different game, they do not know if there will be a coin toss or if the referee will be neutral. They are no longer attuned to the life worlds of the law. What was once considered “beyond being justified and unjustified” (Wittgenstein, 1969, §359)—for example, that the defence lawyer has a right to copies of documents, or that judges would give reasons for their actions—is in doubt.

The lawyers voice a deep apprehension about the law and the values that underpin it. As we will show, they seek to return the legal process to the common world of background that they believed characterised it in the past. They simultaneously call into question the legitimacy of the law, as they knew it. Here, we depart from the idea that lawyers are emissaries of a particular legal ideology buttressing the legitimacy of the law (Ballakrishnen, 2021; Williams, 2020; Krishnan, 2005; Wilkins *et al.*, 2017; Krishnan, 2013; Rowe, 1969; Galanter, 1969). In contrast, the lawyers we spoke to question the value of the law and their own futures as lawyers.

Some may point out that “uncertainty” is endemic to the experience of any legal system, including the Indian one. People interacting with the legal system highlight the

law's opacity, irrationality, and contradictions, where personalities, rather than rules, matter (Cooper, 1995; Jauregui, 2016). Further, lawyers have always thought of the legal system in negative terms (Sarat and Felstiner, 1989), and that the law has an "inherent tendency towards indeterminacy" (Rasulov, 2023; Kennedy, 1986; Tushnet, 1984) and contains inherent inconsistencies stemming from contradictions in local political-economic milieus (Calavita, 2001). However, here the lawyers express a more profound feeling—that the very foundations of their understanding of the criminal process no longer matter.

While the lawyers are expressing their anxieties about the present state of law, they also acknowledge that the normlessness of laws like the UAPA and PMLA predates the present government. Vagueness in defining crimes under the UAPA leads to all dissenting activity being classified as terrorist acts (Nair and South Asia Human Rights Documentation Centre, 2009; Singh, 2012). Under anti-terror laws, the legal process becomes a screen to obscure the violence by the state (Kannabiran, 2003, p. 10), complicating the idea that authoritarianism in India "began" with the election of 2014.

That said, the lawyers we interviewed spoke of changes in the atmosphere of legal practice today: the displays of overt Hindu nationalism inside courtrooms, by police, judges, and other lawyers; rumours about political influence in the appointment of judges; conjecture that the police are taking orders from politicians in certain cases. The normlessness of the UAPA and PMLA, coupled with the change in the atmosphere of legal practice, gives lawyers the feeling that they are in an alien legal world where rules no longer matter. The aim of this article is to contextualise their experience while also interrogating their conceptions of law.

2. The context: cases under "special" laws in Delhi

This paper is part of a larger research project started in 2023 on how lawyers across India understand legality in the current moment. We have interviewed lawyers in Assam, Bangalore, Mumbai, and Delhi, and will continue to do so across other cities and towns. Here, for reasons of space, we engage with our interviews with three lawyers in Delhi. These recorded interviews were conducted in December 2023. We had periodic, less-structured conversations with them before and after these interviews.¹ We explore the social life of contemporary legalism in its everyday forms, not the politics of the bar and bench or what authoritarian leaders and states do with law. The three lawyers show us granular, experiential shifts in their understanding of law, and how "small matters" impact their capacity to profess their craft, forcing them to question their vocation.

In narrating their experiences, all three lawyers echoed scholarly and popular critiques of the UAPA and PMLA, saying that both laws deviate from ordinary law. The UAPA, for instance, allows extended periods of pre-charge detention, with bail being virtually impossible to get. The PMLA also has strict bail provisions and upends the presumption of innocence, a fundamental tenet of criminal law. Additionally, if criminal law is premised on the idea that the definitions of crimes ought to be precise and narrow, both laws define crimes in expansive and vague ways. This enables investigative agencies, according to the lawyers, to prosecute a greater number of activities, keeping people in prison for years pending a final judicial verdict. Offences under these laws are investigated by special agencies, the PMLA by the Enforcement Directorate (ED), while the UAPA—in Delhi at least—by the Special Cell of the Delhi police, or a federal police force called the National Investigation Agency (NIA). In the imagination of these three lawyers, prosecutions under these two statutes were marked by a profound normlessness.

¹ On the use of interviews in socio-legal research, see Starr and Goodale (2002) and Mulcahy et al. (2021).

Recent cases under these laws show the absence of norms. For example, Umar Khalid, a student union leader who was arrested under the UAPA for protesting government policies, has spent more than five years in prison, while his trial is yet to begin. His bail applications to the Supreme Court have been pending since 2022 (Supreme Court Observer, 2024; Raj, 2024). A bail hearing for another student union leader arrested under the UAPA saw the government's senior-most lawyer fabricating facts, and the court's refusal to allow the defence lawyers to rebut the government's conjectures (Sharma, 2025). A lawyer faced investigation under the PMLA for merely advising his clients (Bar and Bench, 2025). The absence of procedural norms in the PMLA has enabled it to target civil society groups and journalists (Patel, 2023).

Delhi, being India's capital, is the site of many high-profile prosecutions under these laws. In 2019, the central (i.e., federal) government's plans to amend the citizenship laws to disallow Muslims from neighbouring countries from applying for Indian citizenship led to widespread protests across the country, including Delhi. The Delhi police arrested protestors under criminal law sections such as rioting and under the UAPA (Aljazeera.com, 2020). The PMLA has also been used to target political opposition, with 75% of all prosecutions under the PMLA occurring after this government came to power (Kumar, 2024). The greatest number of prosecutions took place in Delhi (*ibid*), imprisoning the former chief minister and deputy chief minister of Delhi while they were in office.

The three lawyers in this paper—Hari Singh, Supriya Vaidyanathan, and Kushal Verma (names changed)—undertake criminal cases involving both these statutes. Vaidyanathan and Verma are both defending people accused under the UAPA for protesting the citizenship amendment laws (known as the “Delhi Riots” cases). Verma and Singh have also defended other people accused under the UAPA. Vaidyanathan and Singh have also defended people accused under the PMLA and have advised people who fear prosecution under the PMLA. None of them described themselves in political terms, i.e., aligned with India's civil liberties movements, the left, or with dominant Hindu right-wing ideology. If anything, they appeared to be invested in the ideology of the criminal justice system.

Of the three, Hari Singh is the most experienced with 20 years of practice. He has a two-storey office in an elite neighbourhood in South Delhi and employs many junior lawyers and support staff. Verma has been in practice since 2010, working in the office of a senior lawyer, and began his own practice in 2020. We met him in his office, a *barsati*—a single room on a roof. Vaidyanathan has the least experience as a criminal lawyer. She graduated in 2012, worked for four years in a corporate law firm and then joined a senior criminal lawyer in 2018, in whose office we met. In the sections below, we explore their articulations of law and experiences litigating cases under special laws.

3. Losing one's legal world

Here, we discuss how the lawyers find themselves in a new, normless, legal world: rules are irrelevant; legal meaning is unstable; and boundaries are blurred among judges, prosecutors, and police.

3.1. The loss of a shared legal language

As Wittgenstein and Cavell may remind us, in any language—and within legal language—there is a shared understanding of the meanings of words and phrases in a particular context, or what a particular arrangement of words is supposed to convey. What happens when there is not just an uncertainty around meaning, but the loss of a shared language? Wittgenstein would perhaps call this the loss of agreement. Not only did the lawyers feel

that legal meanings that they had taken for granted became unstable, but also that a shared legal language itself was suddenly denied.

Supriya Vaidyanathan observed that in her practice of cases under the UAPA “the words are there, but the words don’t mean what they are intended to mean.” She says:

The Code of Criminal Procedure simply says that every person has a right to talk to their family members and have the right to be informed of the grounds of your arrest. You are also allowed other constitutional safeguards such as to have a lawyer, and the client is allowed to have interviews with their lawyer.

She describes the process she had to go through to speak to her client (accused under the UAPA), in private, while he was in police custody. She said the police officer told her “you get me a court order.” In reply, she told him, “I don’t have to get you a court order, this is section 41D of CrPC, Article 22 of the Constitution. Every person has a right to be defended by a defender of their choice. And I am of choice because I have a *vakalatnama* [a power of attorney].” She had a tone of incredulity in describing the officer’s refusal. She also expressed disbelief at the fact that the officer is not just disagreeing about the interpretation of a rule, but its very existence.

Despite her citing the law, the officer refused her permission to meet her client and insisted that she first obtain a court order. Reflecting on this back-and-forth, she implied that it was pointless to argue these points of law with the officer:

He knows the law. And I know he knows the law, because a lot of these police officers are extremely senior police officers. They have seen lawyers over the last 25 years, so they know the position of the law. These are Special Cell officers.

Ultimately, the court granted her this request. However, she says, “After getting the court order, while I’m talking to my client, I see that the investigating officer is sitting there.” The officer refused to leave the room, saying that there is no right for the client to have a private meeting with their lawyer. She said she told the officer, “Sir, you cannot sit here. You know the law is very clear.” According to her, “it is embarrassing to have that conversation with a police officer because he knows the law is clear.” Here again, she is taken aback, because in her narration of this incident, the officer appears to doubt the existence of the rule, a rule that she repeatedly says is “clear.”

She returned to court the next day to get another court order to direct that the officer cannot be within “earshot” of the conversation between her and her client. She says,

The court agrees with me. I am then allowed a legal interview with my client, and the court says that the police officer cannot be within earshot. While interviewing the client, he stands at the edge of the door and doesn’t shut the door, and says to me that he can’t hear us. He said he is not listening.

Notice here Vaidyanathan’s repeated invocation of the phrase “the law is clear.” Her frustration is evident: what she understands as settled legal rule, that she believes is known by her and the officer, is repeatedly met with his refusal to acknowledge the existence of the rule. Her efforts in going back to court and obtain an order to meet her client indicate an effort to establish the existence of a rule allowing her to meet her client in private. We explore this effort to return certainty to legal meaning later in this paper.

Verma also peppers his narrative with sudden shifts in meaning. In one case, he requested the court for permission for his client (a university student charged under the UAPA) to write his exams while the trial was pending, which the court allowed. “He used to

go with security, do his exam, come back to jail,” Verma tells us. Several months later, when Verma again requested permission from the court for the same reason, the court refused this request. Verma tried to reason with the judge and says, “look, look, look—what is there, we have been getting this relief, and the client has been going to the university to give his exams.” The judge denied permission, citing the severity of the charges—the same charges that existed when permission was previously granted. Implicit in Verma’s confusion is that the rule of precedent—that if something has been decided one way in the past, then if the facts are the same, there should be a similar decision in the future—is now unreliable. Here, Verma struggled to understand why the judge seemingly went against their previous decision. He indicates that some of these decisions are based on caprice and not reason. The judge did not feel the need to justify their change of interpretation: “Everything is up for challenge now, something maybe allowed and then again taken back.” What is the point of rules like precedent, Verma implicitly wonders, if judges can rule one way on a particular day, and another way on the next?

3.2. Changing role of police, prosecutors, and judges

Together with loss of shared legal meaning, they described the seemingly limitless and unpredictable power of the investigative agencies, with the permission—or even collusion—of the judges. In the lawyers’ imagination of the “ordinary” legal world, there were limits on police power to arrest and investigate; the prosecution had to respect defendants’ rights; and judges would act as independent arbiters. Yet under these special laws, the police and agencies had unlimited power, unlike in investigations for ordinary crimes. The judiciary, which was supposed to act as a check, did not do so, enabling the special police forces to act with impunity.

In one example, Hari Singh told us that in ordinary crimes, there used to be an endpoint in the investigation. But now, he describes PMLA investigations for money laundering in the following manner:

Police agencies always have the power to conduct investigation through the life of the trial on the condition that there is fresh information available. That used to be a power that is widely recognized but rarely exercised, because investigations are done, chargesheets are filed. If something comes up, great. Mostly nothing really would come up. That power has now, morphed into a forever investigation. So, the moment ED says that this is money that has gone outside the country, we’re going to keep looking for it, forever.

Singh and his clients struggled with the uncertainty that these limitless investigations brought with them: clients would never know when or even *if* the investigations would conclude, if they would *ever* actually be charged, or if they would be arrested. They lived their lives under a cloud of suspicion. Singh says that it was “never the case that investigation into economic offence will take five years, and no questions will be asked.” But now, agencies carry out endless investigations only to assert their power over defendants, by never letting the case proceed.

If charges are filed, he points out that the notionally independent prosecutors will prolong the case using “small matters” such as the “supply of documents,” for instance. This is a crucial phase before the trial, which ensures that the defence has all the evidence that the prosecution intends to rely upon. Now, the police and prosecutors will delay the proceedings: from outright refusal to supply the evidence, denying that the defendant has a right to know the evidence against them, to only partially supplying the evidence. Again, the lawyers narrated these steps as basic, taken-for-granted aspects of the trial process.

They never thought they would have to do research—finding case law and statutory authority—to bring certainty back to such elemental features of the trial process.

Vaidyanathan similarly speaks of the ED as an agency with unchecked power, because of its ability to treat all manners of crimes as a “money laundering case.” Referring to the ED as a “nightmare,” she says,

Even if you are booked in a general forgery case or a cheating case, it will be only a few years before the ED comes knocking at your door. We see that this agency has become untrammelled in its power, and they are able to charge you for anything. For example, if someone has stolen a chain made of gold and made money out of it by selling it – it could be framed as money laundering years later. That is the logic that is used by them.

She gives another example highlighting the expansiveness of the ED’s power,

Similarly, another example is that if I came to India on a forged passport which technically should be an offense under the Passports Act. But 20 years down the line if I become very rich, [...], every single rupee that I have no longer belongs to me [because I came into the country illegally 20 years ago].

According to the lawyers, the special police are unpredictable in what and for how long they will investigate. This means that neither the client nor the lawyer can anticipate on how they will deal with any potential charges. Their apprehension is based on the idea that in ordinary cases, there are some rules and practices that limit what the police can do. But in these special laws, these rules and practices do not exist. Further, this normless behaviour of the special police extends to how they conduct the more mundane aspects of the trial: Will the defence get all the documents?²

Ordinarily, where the police do not follow established rules and practices, Singh would have expected the judges to call the police and prosecutors out on their tactics. But he says in proceedings under special laws,

[t]he role of the judge and the prosecution in these cases is getting fused. So, you’re facing, as a defense lawyer, a unified cohort. The judge is not playing a role as a referee as he would in other cases. So, the process of trial becomes very alien. The court seems to weigh in almost overwhelmingly in favor of the prosecution. And if you’re not ready for that, then it is a very unnerving process.

This is the part of criminal law that Hari Singh feels most frustrated and anxious about. Criminal law, he says,

should be based on a more objective set of events, that should be more predictable. So, it’s the unpredictability of the system under these special laws. That is creating a lot of uncertainty.

² There has been an increasingly public criticism of the normlessness of the PMLA and the free reign it gives to the Enforcement Directorate. In a recent hearing of a PMLA case, a Supreme Court judge, pointing to the “crook” like actions of the Enforcement Directorate, asked if the “difference between law-enforcing authorities and law-violating bodies” still made sense (Pradhan, 2025). In the hearing of another PMLA case, a Supreme Court judge pointed out that a case against an opposition politician appeared to be a result of a “political battle,” not an infraction of the law (Rajgopal, 2025).

According to Singh, refusals to acknowledge what he imagined were hitherto established rules and practices creates a lack of predictability in the process of special trials. In this “alien” world of special trials, the police do what they want, and judges who are supposed to be an independent check on the police, instead appear as an extension of the special police.

4. Why has the law lost its “common world of background”?

Faced with a refusal to acknowledge the existence of rules or what they imagined as a shared legal meaning, the lawyers try to find a rationale behind this. They articulate two reasons for these changes: the first, that the legal processes serve as a screen behind which political power operates; and second, that they feel participants in the legal process—especially the judges—have bought into or are fearful of the Hindu right. It is important to note that these are the lawyers’ ideas as to *why* there has been the creation of a different legal world when it comes to special laws. They imagine that the courtroom process becomes a façade for political machinations and right-wing discourse. In articulating these ideas, they are trying to discern the *real* reason for shifts in the legal terrain.

Detective fiction and spy novels speak of a façade of reality behind which there is a *real* real to be discovered through inquiry (Boltanski, 2014). The spy or criminal reveals a crack in this façade, and the detective exposes this as a façade. Reality is thrown into crisis: the world is no longer easily readable and needs to be constantly decoded (Boltanski, 2014, p. 173). Scholarship on conspiracy theories says that in seeking to uncover the reality behind what is taken to be real, an imagination of what is really behind the real is produced (Göpfert, 2020), destabilising and remaking the world (Mathur, 2015; Saglam, 2024).

In a similar way, the lawyers’ world is destabilised by the idea that the legal process is a façade. Why did a police officer say what he did? Why did a judge get transferred? They believe that behind these everyday interactions lies something else. In this way, the new legal world becomes a world that hides things and hence needs to be decoded.

4.1. The legal process as hiding “real” power

Recall Vaidyanathan’s narrative of the police official refusing her a private meeting with her client. This refusal to acknowledge what she believed was previously shared meaning led her to speculate on the *real* meaning behind the official’s refusal. She conjectures that “instructions would have come from the top.” Meaning police officials merely follow informal orders from their superiors. In her mind, his refusal to acknowledge the existence of the law on this point is confected on the orders of his superiors.

Verma makes a similar point when he provided a narrative about a judge he considered “good.” This judge was presiding over a UAPA case that Verma was involved in and gave several good orders in similar other cases. In one case, the judge granted bail to a person accused of terror crimes. Verma then filed a similar bail application on behalf of his client before this judge. On the next hearing however when Verma expected the bail hearing to be heard, the judge was transferred to a different court.

Transfers are routine in lower courts and as this judge’s transfer occurred along with that of other judges, it did not look suspicious. On the face of it, at least. However, Verma had heard rumours that the transfer was because he was an independent-minded judge. Verma believed that his transfer took place so that he would be unable to grant bail to people accused under the UAPA. While Verma had no way to be sure of this, “2 plus 2 equals 4,” he said.

Verma believes that pliant lower-court judges are being appointed in UAPA and PMLA cases:

How [judges] are being appointed and put in places, especially in high stakes matters [...] [which involve] people in political classes [like our Deputy Chief Minister]. So, they are in the courts. It is interesting to see who is actually deciding on bail applications and what are they doing. How [does] it happen that [a high-profile politician] in the lower court doesn't get bail, on a very fictitious, hypothetical ground. And bail is granted in the Supreme Court. Right? It's not like something new has been said in that case. [What has changed] is [...] who is deciding that matter.

While Vaidyanathan's explanation is premised on conjecture, and Verma's centres on a rumour, both narratives imagine the legal process as a façade, behind which the true machinations of power operate. In Verma's telling, the judge was transferred because he gave bail to UAPA defendants; Vaidyanathan feels that "orders from the top" is the only way to understand the police's intransigence to accept what was a shared understanding of the law. In both narratives, there is an attempt to see where true power lies behind the façade of courtroom processes.

4.2. Hindutva discourse in the legal process

Another reason the lawyers believed the legal terrain had shifted was because of how Hindu majoritarianism enters the courtroom. Sometimes, this may be covert (as in Verma's next narrative) or overt (in Verma's subsequent one). Socio-legal scholars have long pointed out that courts are not independent of but are firmly situated within society, and that social hierarchies and discourses permeate "official" legal language and processes (Cohn, 1965; Galanter, 1969; Berti, 2011). Yet, what these lawyers are saying is that they believe that Hindu majoritarian discourse influences how judges interpret words, and how courtroom processes are conducted.

According to Verma, sometimes Islamophobia hides behind legal language. His client was a senior political leader from Jammu & Kashmir, a Stage-4 cancer patient in need of immediate medical treatment. Verma approached the court asking that his client be taken to a hospital. The judge refused this request on the grounds that it posed a security risk, but did not elaborate on why it was a risk. According to Verma, hidden under the phrase "security risk" was that the hospital was situated in a "Muslim dominated area." Implied in the words "security risk," Verma said, "my client who was a Muslim cannot go to a hospital in a Muslim area because all Muslims are brothers and sisters, and all are potential terrorists." Eventually, his client died. To Verma, it was not only the cancer, but the court and its prejudice that were equally responsible for his death.

In another example, he elaborated on the overt ways in which Hindu majoritarianism enters the courtroom. In 2008, a series of bomb blasts occurred in a city in North India. Verma was the defence lawyer for one of the many accused who were Muslim. He narrated an interaction in court between the judge and the prosecutor.

The prosecutor dramatically opened with "The bomb blast happened in front of the temple for [the Hindu god] Hanuman, at 7 pm when a set of sacred rituals were happening. The judge re-emphasised, "This was on Tuesday, in front of the Hanuman temple?"

Tuesday is a special day of worship for the Hindu god, Hanuman. In Verma's telling, the judge found this particular day to have the bomb blast in front of this temple to be an especially egregious act. After that opening dialogue, Verma says "there was no hope in

that case” because he believed that these appeals to Hindu-outrage would sway the judge towards the prosecution, disregarding rules of evidence and procedure. He expressed that the verdict would be given on prejudice alone. Majoritarian discourses outside the courtroom were a force that perceptibly influenced every stage of a case. Every lawyer we spoke to, spoke of this narrative as an amorphous, yet overpowering entity that “judged” the client before they were heard.

What surprised these lawyers is how effortlessly social discourses enter legal spaces, destabilising and making uncertain legal meaning and institutional roles. Verma articulates a classically liberal idea of the legal process in which a good judge is someone who confines themselves to the law and does not get influenced by “these things,” meaning the atmosphere outside the courtroom. But Verma notices how “these things” seep through even the smaller interim reliefs that he needs for his clients, for instance, medical treatment, request for books, or even a meeting with the family. “Every time I have argued, there is always in the backdrop, a ‘long live Mother India’ poster, an extra muscular nationalism sentiment present, that every judge or every person inside the court feels that they are defending their country.”

All three lawyers imagined that judges were influenced by what they read on social media, leading them to fear whether judges would acknowledge or follow the law. According to Verma, “religious majoritarianism is very pronounced and [is] reflect[ed] in court. All you need is a visit to a court to see how a judge who is consuming his news from WhatsApp gets reflected in the court.” According to Vaidyanathan, judges will obviously refer to things that they have seen on legal news on social media.

Hari Singh points out that social media and legal blogging have had the effect of “democratizing of opinions on the criminal process.” He said:

So, people who have no business commenting about the law, and do not have the understanding to be able to pronounce ideas about criminal law issues, have opinions on what happens in court. You can have an opinion on issues arising out of an offence. But now we have people deciding to have a strong opinion on whether the document should be handed over, or for the lay person to have an opinion on whether bail should be granted or not, and for the idea that those opinions ought to have weight in court. I think that hardens the status quo and makes it more and more difficult for a judge to decide the matter.

He sympathises with the judges, by saying that they are in their 30s and 40s with families and “no one needs that kind of vitriol to spread” against them. This fear of social media means that judges, according to Singh, abide by the popular prejudices, regardless of the rules of the legal process. But at the same time, he points out to the shift to the right in the bar and amongst professional associations for lawyers. Inside and outside courtrooms, he says, “there have been five steps to the right.”

The lawyers imagine an ideal world where all participants in the legal process are immured from “outside” influences, and where legal knowledge is a domain of specialised knowledge. While they are fully aware that judges are social creatures, they remain surprised by the extent to which judges are influenced by things they read and hear. In articulating these ideas about judges, they also say that they do not know how to respond to these influences. They felt on more certain ground if the judge was ruling on a point of law. But how could a lawyer respond to the judge’s outrage at setting off a bomb on a Tuesday? Or respond to a judge having received a message forwarded on WhatsApp? In giving us these examples, the lawyers are expressing a deep uncertainty about how to engage with a seemingly rule-bound system, where referees in the game (i.e., the judges) can shrug off rules so easily.

5. The creation of two legal worlds

The three lawyers spoke about the legal system through different themes: they expressed their frustrations about the process; they were angry about what they saw as injustice that was endemic to the system. Singh described it as a system that was messy, “disturbingly subjective,” sometimes malicious and often unfair.

That said, however, they all drew a distinction between trials under the UAPA and PMLA, and other areas of criminal law. This distinction was not between how cases functioned before the election of the present government and after. Rather, it was based on the type of case: trials for “ordinary crimes” and those under the UAPA and PMLA. While they know that the present government has targeted their clients for dissent or protest, their focus remains on the legal processes, not on the government that instituted the cases.

In their understanding, there were almost two logics at play. While in ordinary criminal laws, they could expect that all participants in the trial process—the judge, the court staff, the police, and the prosecution—would understand they ought to follow certain set processes, either set by statute or in the practice of the courts. This is not to say that the processes would be followed, or that there were no violations. But rather all conduct was done in reference to those legal processes.

For example, when Vaidyanathan spoke of ordinary crimes—say a cheating case—there was relief at the idea that things would proceed with a certain degree of predictability, or in her words, “I was like, oh, great. Just cheating. Normal.” When she speaks as acting as a prosecutor in a child sexual abuse case, she speaks with a confidence that even if the special evidentiary rules that apply in these cases are not followed, she can refer to legal texts to argue that these special rules ought to have been followed. In these “ordinary cases,” the lawyers assumed that, even if these procedures were violated, they still had to be respected.

In the realm of special laws, however, none of the things that these lawyers took for granted in ordinary laws could be relied on. Special laws were marked by their normlessness. In the realm of ordinary cases, their common world of background was more or less secure and they felt fully attuned to those legal spaces. In the realm of special laws, however, they could not rely on this common world of background. In trials under the UAPA or PMLA, they felt there was no predictability, there was no certainty, and fundamental assumptions could no longer be relied on.

Commenting on “ordinary” trials, Vaidyanathan says:

The principles in procedure really turn on fairness, really turn on trying to give the accused persons a fair right, right up until the end of trial. So, even if you were to find yourself getting stuck in trying to understand a particular provision it always is helpful to come back to what the basis of all of it was, which is to understand that there is a presumption of innocence, which is to understand that you are innocent until proven guilty.

She goes on to list other fundamental principles of an ordinary criminal trial: that the defendant ought to know the charges and evidence against them, challenge the prosecution’s evidence, and equally participate in the trial process. According to her, these principles were embedded in the procedures that framed criminal investigations and trials.

Vaidyanathan, like the other lawyers, acknowledged that such characterisations of the ordinary legal system were idealised, and that the principles she outlined were regularly violated. But at least in ordinary cases, she argued, the rules and the principles still had to

be referred to. If a police official or a judge violated a procedural rule, they still had to find a justification or excuse.

By contrast, when representing clients arrested under the UAPA, Vaidyanathan says “procedure is really flying out the window.” She narrates that officials involved in the legal process—the police, the prosecutor, or the judge—only occasionally felt the need to follow the processes established in relevant statutes and rules. First, her clients had been illegally detained for 4 days without being produced before a magistrate, whereas both the procedural code and the constitution state that a person must be produced before a magistrate within 24 hours of their arrest. Then she filed an application before the magistrate claiming that her client had been in illegal custody for four days. In response, she says the police forged paperwork showing that her client had been arrested only 24 hours earlier. At that first hearing, Vaidyanathan said that the defendant is ordinarily given a copy of the complaint, but that the police had refused to give a copy of this complaint to the defendant. Further, at this hearing, the prosecution argued that her client be remanded to the police for further investigation but had refused to give a copy of the application requesting remand. She says,

At that stage, as a lawyer, unless you give me the reasons [for requesting remand into police custody], there’s no way I can explain why those reasons do not meet the threshold of law. I think, four rounds of litigation just to get a copy of a remand application, on the simple premise that it is mandatory to provide it under the [Code of Criminal Procedure, 1973]. So at every stage, I think you faced a resistance, which normally you did not see in other kind of trials.

Similarly, Singh notes a difference between how judges act in trials involving ordinary laws versus trials involving these special laws. In an example to test the validity of a search warrant, he says that the court will, rightly in his opinion, presume that a search by the police is conducted legally, unless shown by the defence that it was illegal. If the search was conducted by the ordinary police, then he says courts are willing to entertain challenges to the validity of that search. If, however, the search was conducted by the special police forces under the UAPA or PMLA, then the courts take the presumption of validity of a search to “absurd lengths” and will refuse any challenge that claims otherwise.

The lawyers felt as if there are two legal systems at play. In the case of ordinary trials, processes, rules, and values had a role to play and could be relied upon by defence lawyers. This common world of background is absent, according to the lawyers, in UAPA or PMLA trials. In their narratives, criminal process was constructed around ideas of predictability, defined roles, and a respect for that process, even if not adhered to. In the realm of special laws, normlessness was the norm: statutory norms, established procedures, and legal meaning were rendered uncertain. The judge could become a prosecutor; a rule that says the defence is entitled to a particular document may be taken to mean something else. The investigating agencies could mostly do what they wanted. And the lawyers had to scramble to figure out how to respond.

Commenting on the social life of anti-terror laws, scholars have argued that these statutes have created a parallel system of law, a “law for enemies,” where if some people are seen as a threat, then the ordinary tenets of law no longer hold (e.g., there is no longer a presumption of innocence) and one’s rights are determined by one’s membership to a social community (Eckert, 2009; Schiffauer, 2009). In an ethnography of legal systems in the Nazi state, Fraenkel (1941) argues that the Nazi legal system was characterised by two state systems—one, the normative state guided by principles of law, and the other, the prerogative state, governed by ideas of reasons of state. Any norms applicable to the prerogative state were not systematic, but rather “wanton and senseless.”

In his reading of Frankel's work alongside the contemporary workings of the Indian legal system, Narrain (2021) looks at the expansion of executive power (in the form of police, local administration and state and federal governments) with the simultaneous diminution of judicial power. In the context of security legislations (such as the UAPA), he argues that judges have allowed executive officials unlimited power. This is a prerogative power, in the words of Frankel, where "there is no legal regulation of official bodies" (Fraenkel, 1941, p. 3).

The lawyers here are articulating a similar sensibility. They say that in the realm of ordinary law, everyone acknowledges that the rules still apply, even if they do not follow them. Whereas, in UAPA and PMLA cases, the lawyers are unsure if the existence of rules will be acknowledged, if the established rules apply, or if there are different rules then what those rules are. Recall how the lawyers described trials under the UAPA and PMLA. According to Vaidyanathan, when reference is made to the text of procedure, "Now the words are there, but the words don't mean what they are intended to mean." Or when Verma refers to the fundamental principles of the legal system, "Everything is up for challenge now." They describe the process, as Frankel might, as "wanton and senseless." In the previous section, while they seek to discern a logic behind the seemingly senseless acts of officials, this very act of trying to find a reason or motive behind mundane acts of officials, also itself renders the process uncertain.

The two logics of legality are not sealed off from one another. The uncertainty of these special laws can seep into ordinary trials. Indeed, there is a constant fear—a "paranoia" in the words of Hari Singh—of ordinary crimes turning into crimes under the UAPA or PMLA. He gives the example of a person who is accused of cheating: Section 420 in the then extant Indian Penal Code, 1860. He says in those cases of "simple prosecutions" he has a sense of what to tell his client: the prosecution's inquiries, how the evidence may be adjudged, and what the outcome of the case could be. But lurking in the back of Singh's mind is that this simple cheating case could be read as a "money laundering" case under the PMLA. He says that if his client was summoned for interrogation for a cheating case by the police, he would be on surer ground, because the ordinary process ensures that there is a different treatment between a witness and a defendant. Therefore, he could tell his client what to expect during the interrogation. But if his client is summoned by the ED in the same case, he says he is at a loss: he is not sure if his client is being summoned as a witness or as a defendant. He knows that even if his client is only a witness, there is every possibility that he may become the defendant. Singh is unsure of the ED's motivations to investigate a particular transaction, as he knows of instances where ED officers have abused their powers to extort money. He is therefore confronted with these questions: Is it a case under the ordinary penal code? Can it become an investigation conducted by the ED? If the ED is involved, is it a legitimate investigation or a front to extort money from his client? Do they think the client is a defendant or a witness?

There is also a fear that the logics of the PMLA and UAPA will spread into ordinary criminal law. Singh feels that the government will extend the same normlessness that characterises the PMLA and the UAPA, to ordinary criminal cases as well:

You know, in the military there is a concept of reducing the distance between sensor and shooting. So, the time between you identifying a threat and the time you're able to extinguish it. You're trying to reduce that decision making process. I think the government would want the time taken between identifying when a target is identified and that threat is dealt with through the courts. There is going to be a radical reduction in the time taken in these cases. And that means, taking away of processes that we think today are essential to protecting the rights of people, I don't think the time is very far when there is going to be the idea that these processes can be done away with.

He imagines the future of the law in military terms, not as guaranteeing rights and due process, but identifying threats and “extinguishing” it. In this imagination, law is not grounded in the certainty of processes, but in the uncertainty of normless authority to eliminate threats.

Yet the lawyers implicitly suggest a limit to this normless power. While they fear the wantonness of this power spreading to other areas of law, in their understanding this has not yet happened. What this suggests is an idea of a dominant power that has still not colonised all areas of legal life.

6. Responding to the loss of a legal world

In the face of this deep uncertainty about the legal process, the lawyers appear to respond in two ways: One, in their advice to clients facing cases under these special laws, where the lawyers seemed resigned to the injustice caused by the uncertainty of the process. Two is in their in-court tactics, where they attempt to bring back some predictability in the process. They focus on the small wins or measures that lessen the burden on their clients.

6.1. Being a lawyer and responding to clients

In ordinary cases, the lawyers would advise their clients with some degree of confidence, aiming to work towards a complete acquittal or the minimum punishment. In cases under special laws, their view of what they could do for their clients becomes more circumspect. They follow their clients’ desires to shorten the length of the trial process or make the trial process more bearable. They concede to the senselessness of the process and try to minimise the client’s contact with it.

According to Verma, “client expectations in UAPA cases can be backbreaking to manage.” Most of Verma’s clients accused under the UAPA have no criminal record. Often, the first case that they are arrested in is a UAPA case. Therefore, he carries the double weight of having to explain first the basic legal processes, and then why these processes are ignored in a “national security case” under the UAPA.

He recounts one case in which charges were framed against his client ten and a half years after his arrest. The “framing of charges” stage—akin to an indictment in the United States and English criminal trial process—is where a defendant is officially charged with offences. For more than a decade, his client was in jail waiting to be charged, because bail is virtually impossible to obtain. Up to that point, the case had been marked by delays in filing the documents, un-reasoned adjournments issued by the judge, and requests by the prosecutors for deferral of proceedings. In these cases, Verma says, he faces the impossible task of providing a rationale for these “absurdities” to his clients. In this particular case, rather than face the uncertainty of the legal process and endless wait for a final verdict, one client preferred to plead guilty and be transferred to a prison close to where his family was based. There at least, his family and two young children, he had not seen for years, would be able to visit him.

The hardest part of the job, Verma says, is also having no answers to questions such as “when will I get bail?,” “when will I be able to see my family again?,” or “will you save my child, his life is in your hands.” This weighs heavily on Verma. He says that the stress caused by this uncertainty may force him to become “disillusioned and leave” litigation altogether.

Hari Singh recounted to us that sometimes a client’s primary request is simply to “explain what is happening to us.” According to Singh, trials under the UAPA and PLMA are becoming “less and less understandable.” In the context of this unpredictability, his main focus is to ensure that his clients can “endure the process.” He gave examples of

getting them exemptions from attending every hearing or permission to appear through a video conference, rather than travelling for a hearing.

According to Singh, laws like the PMLA and the UAPA indicate that the criminal justice process will become a system where “it is easier for people to undergo the sentence rather than actually fight the system. Or disincentives are created for people to seek acquittals. Or a system where acquittals are just not given.” In this system, says Singh, the lawyer’s role is “a question of trying to settle for the least prison time that you can manage.” The efforts of the lawyers seem to be not on working towards an acquittal, but to help their client negotiate, as far as possible, the legal process as a way of helping them maintain their dignity (Batesmith and Stevens, 2019).

6.2. In-court tactic and strategies

In the face of the absence of a common world of background when dealing with PMLA or UAPA cases, the lawyers have had two responses.

One response has been to double down on insisting what the process should be. Here, they force the system to return to the common world of background, that they imagined the legal system to previously be. They try to ensure that rules are acknowledged by all participants in the trial, that legal meaning is returned to legal texts, and the institutions fulfil what the lawyers imagined as their proper roles. Verma and Vaidyanathan, for example, argue that if the defence is entitled to certain documents, then they ensure that the prosecution hands over the documents, as well as fight in court until it does. According to Vaidyanathan, “fight more in lower courts, and fight the small things on procedure.” This is because, as Verma says, “these small fights actually are fights for your constitutional guarantees which are diluted because of the idea of national security.”

According to Verma, smaller decisions—such as relinquishing the right to documentary evidence—may have outsized impacts. As a defence lawyer, he plans his cases from the point of view that the client will get convicted and that he has to argue the appeal. In an appeal, raising new grounds is not permissible and therefore, it is before the trial courts where these fights must take place, because the opportunity will not come again. As he says, “there are no small issues.”

Hari Singh takes another approach. He says fighting pre-trial issues enables the prosecution to lengthen the proceedings and delay the trial—something that it wants to do. Instead, his emphasis has been to force the state to proceed to trial. He does this by giving up fighting the minor points and instead hastening the process to the actual trial where the prosecution must reveal its evidence against the defence. In this way, Singh forces the prosecution to show its hand.

Both strategies attempt to return a common world of background to the legal process under PMLA and UAPA. Where the police, prosecution, and even courts have whittled away at established legal meanings, things that the lawyers took for granted, Verma and Vaidyanathan’s attempts are to return meaning to these same words. Singh’s strategy, even while radically different and according to him unpopular, creatively uses an aspect of the legal process that has not yet been fundamentally changed.

7. Conclusion: towards an understanding of a normless law

In 2016, a popular student leader, Kanhaiya Kumar, was assaulted by lawyers in Delhi’s Patiala district court (BBC, 2016). He was being produced before the court on criminal charges for having shouted “anti-India” slogans in a university in Delhi. The lawyers did not care they should not commit acts of violence against an accused person, or indeed, anyone. In 2020, two bar associations in the state of Karnataka passed resolutions against

representing three Kashmiri students charged with sedition for allegedly supporting Pakistan in a televised cricket match (Dharmadhikari, 2020), ignoring the fact that everyone has a right to fair trial. In 2021, the Delhi police raided the offices of the lawyer representing the students in the Delhi Riots cases (Salam, 2021), attacking the idea that every accused has a right to a defence. As recently as June and July 2025, one lawyer in Gujarat and two senior advocates in Delhi were summoned by the ED to question their involvement in a client's transaction (Venkatesan, 2025), undermining the idea of lawyer-client privilege.

These incidents speak to a future of majoritarian legality that is marked by normlessness, blurring clear lines between the judge and prosecution, the legal and the illegal, or even the lawyer and their client. As Singh, Vaidyanathan, and Verma articulate, fundamental ideas (even if not followed) are being erased from the legal process. When individual identities are recast as being “for” or “against” the nation, as indicated in the introduction to this special issue, the lawyers are aware that their repeated attempts to bring back the legal process to a common world of meaning, while shorn of overt ideological commitments, may be perceived as threatening to the state. The protection offered to them by a system marked by norms is now absent. This suggests that the idea of law itself is undergoing a radical transformation.

This issue questions deterministic categories such as authoritarian and democratic, or liberal and illiberal. Calling a law autocratic distracts from the democratic, majoritarian base underlying it. Instead, the issue calls attention to “experiments” that lead to the production of new forms of legality.

We suggest, therefore, that Singh, Verma, and Vaidyanathan speak of the law as being understood as what is its opposite. The law can appear in the form of a staid courtroom hearing, where suddenly police officers deny the existence of rules, and the judge and prosecutor become indistinguishable from one another. Instead of being a stable system, the law becomes a shapeshifting form of power, aimed at keeping any opposition to it in a state of confusion (Pomerantsev, 2011).

The lawyers turn to conjecture and rumour to find rationales behind seemingly senseless decisions, destabilising any idea of law as a predictable system of rules. They have an awareness that perhaps the structure of the law, as they understand it, has changed into a screen for other political expediencies.

In the present moment, they continue to go through the legal process to return it to its previous state, where they recognise the common world of background. As Vaidyanathan recounts her strategy on filing bail applications, “We will try . . . we’ll file it once, we’ll file it twice, we’ll file it thrice. Come to the High Court. No problem. We’ll do that.” This insistence on returning the law to its past norms comes with the acknowledgement that the present and the future of law look radically different from its past.

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