

EVALUATING THE IMPLICATIONS OF THE COMPREHENSIVE JURISDICTION UNDER THE HONG KONG NATIONAL SECURITY LAW 2020

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Abstract

In June 2020, People's Republic of China (Hereinafter, PRC) implemented the National Security law (Hereinafter, NSL) for the Special Administrative Region of Hong Kong (Hereinafter, HKSAR). The NSL has gathered momentous notoriety over its ability to criminalize numerous activities owing to the broad ambit of the offences established under it. The NSL has significantly undermined Hong Kong's Basic law and further clenched PRC's hold over its justice system. This paper is a detailed analysis of the transitional upending of the independence wielded by HKSAR through the governance norms established under the PRC made legislation. To substantiate the argument, the paper briefly traces the history of Hong Kong's surrender and the various attempts of the PRC at damaging its semi sovereign status. Furthermore, the paper details the effects and developments of the sweeping implications of the legislation on individuals and as well as businesses. The fifth segment of the paper attempts at appraising and rationalizing the responses and concerns countered by the legislation since its inception. Lastly, the paper concludes by surmising the intention of the PRC for enacting the said legislation and also asserts the need for India to reassess its position with regard to the law and its extensive implications.

Keywords: extra territorial jurisdiction, freedoms, business, extradition, travel, trade, responses, concerns, HKSAR, NSL, PRC, Central People's Government.

Introduction

In 2020 the PRC enacted the National Security law aimed at protecting the sovereignty and security interests of the territory and to also secure the indelible stability of the region. The National Security law has been widely criticized over its ability to alter the autonomy possessed and exercised by the territory and its populace.

Since 1997, Hong Kong has enjoyed political and legal sovereignty under the Sino-British Joint declaration of 1984. Hong Kong was previously the port city of Britain which gained a separate culture and legal system following its surrender to the PRC. The legally binding Joint

declaration along with Article 31 of the Constitution of the PRC, enabled Hong Kong's preservation of a capitalist economy, common law system and guaranteed the territory a different economic and political status for 50 years from 1997. Since the 1980's, Hong Kong has operated under the 'One Country Two Systems' (Hereinafter OCTS) rule with a different charter from PRC known as the Basic Law, its mini Constitution.¹ Albeit undeniably a part of PRC, it exercises sovereignty over its separate executive, independent judiciary and legislative system. Except in the cases of defense and external relations, Hong Kong exerts autonomous power in matters such as trade, development, communications, finance, etc. It has been observed that the newly effected National Security Law has tremendously weakened the OCTS policy of the territory and with its extraordinary and extra territorial features, casts wide ranging implications over rights, liberties, operations of individuals, groups and International as well as domestic businesses.

Hong Kong's prosperous political and economic standing is based upon the existence of rule of law and due process in the territory. Human rights of the citizens are secured through the Basic Law and other rights-based legislations operating in the region. By virtue of its former status as a dependency, it is a signatory to the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural rights.² The region integrated these Human rights concords by enacting a Bill of Rights Ordinance in its legal system. Hong Kong has perpetually preserved its rule of law by repealing acts that erode the civil liberties of its citizenry.

In light of the above settled description, it is crucial to evaluate the erosion of these freedoms that are well wedged within the electorate of HKSAR.

Forerunners leading up to the PRC made HKSAR National Security Law 2020

Since the surrender of HKSAR, PRC has slowly yet steadily tried to weaken the OCTS policy of the region and recurrently the promises for progressive reforms have been deferred.³ HKSAR has witnessed several social uproars in the past decade such as the Anti National Education Movement 2012, Occupy Central Movement 2014, Anti Extradition movement

¹ Rana Mitter, *One Country, Two Systems?*, 166 *RSA Journal* 2 (2020), available at <https://www.jstor.org/stable/10.2307/27008583>.

² Article 39 of The Basic Law of The Hong Kong Special Administrative Region of The People's Republic of China. See also, Peter K. Yu, *Succession by Estoppel: Hong Kong's Succession to the ICCPR*, 27 *Pepp. L. Rev.* 53 (1999), available at <https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1410&context=facscholar>.

³ Michael C. Davis, *Constitutionalism under Chinese Rule: Hong Kong after the Handover*, 27 *Denv. J. Int'l L. & Pol'y* 275 (1999), available at <https://digitalcommons.du.edu/cgi/viewcontent.cgi?article=1543&context=djilp>. &

2019 etc. Propaganda in the name of political education in schools, vetting and dissuasion of pro-democracy candidates proposed for the elections of Chief Executive, plights regarding Universal suffrage, etc., have been some of the many matters that have kept the populace of Hong Kong discontent.⁴

Given below is the brief account of the attempted legislations before the uncountable advent of infamous National Security Legislation.

A. National Security (Legislative Provisions) Bill

Formerly in the year 2002, the HKSAR government had under Article 23 of its Basic Law proposed a National Security (Legislative Provisions) Bill. It possessed similar provisions as enumerated in the National Security Law 2020 such as secession, subversion, theft of trade secrets, etc. In the succinct consultation held over the many extraordinary features of the Bill, it was observed that the enactment would encumber the present governance system of HKSAR famously distinct from that of the PRC. The Bill was swiftly moved regardless of the objections made against it by most of the referees. The action resulted in a pandemonium. Therefore, after much resistance by several activists and business factions, the promulgation of the Bill was halted in the interest of free speech, association, press and statutory requirements for disclosure of information.

B. Hong Kong Extradition Bill 2019

Establishing a stable extradition mechanism with HKSAR has perpetually been on the agenda of the Mainland. A smooth extradition process would help the Mainland in establishing a firm grip over the legal and political system of HKSAR and would aid in diluting the OCTS principle even further.

Prior to its surrender to PRC in 1997, Transfer of fugitives operated through a chain of Extradition legislations and orders enacted by the British Parliament. Extradition between several commonwealth dominions and Hong Kong took place as per the said Extradition statutes, however there was no mechanism for extradition between Hong Kong and the Mainland. Due to the wary state of the legal system in PRC and to preserve the freedoms

⁴ Michael C. Davis, *The Basic Law, Universal Suffrage and the Rule of Law in Hong Kong*, 38 *Hastings Int'l & Comp. L. Rev.* 275 (2015), available at https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1828&context=hastings_international_comparative_law_review.

assured under the OCTS formula, extradition was barred to the Mainland right before the transfer. The Fugitive Offenders Ordinance was enacted in 1997 in accordance with the rules and standards of the United Nations Model Treaty on Extradition and the London Scheme on Extradition Within the Commonwealth nations.⁵ Concerns of various nations regarding the handover centred around whether Extradition relations should be continued with Hong Kong after its relinquishment to the Mainland. It seemed highly desirable for Hong Kong to enjoy maintaining extradition arrangements with democratic nations for its potential to become the economic engine for the PRC in the coming times. A robust extradition mechanism with nations would be greatly beneficial for the country as a whole.⁶ Countries like USA maintained that the relations with Hong Kong will remain to exist based on Hong Kong's ability to provide due process to the accused sought and its capacity to act independently from the legal and governmental system of the Mainland.⁷ Regardless of their reintegration, unlike the Mainland, Hong Kong enjoyed legally binding extradition arrangements with many of its western counterparts but did not have an extradition mechanism with the PRC. Beijing mostly relied on extraordinary measures to pursue and extract suspected individuals from Hong Kong.⁸

The appropriate moment for bringing in measures to enable transfers of offenders from HKSAR to the mainland came in 2018 when a Hong Kong resident murdered his girlfriend in Taiwan and returned to Hong Kong.⁹ Despite the admission of the crime by the accused it was not possible to extradite him to Taiwan due to the lack of an extradition treaty between Taiwan and the HKSAR. Motivated by the said affair, the Hong Kong government introduced a Bill consisting several amendments to the Fugitive Offenders Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance in 2019.¹⁰ The amendments were brought in to facilitate case by case transfers of fugitives where the condition of obtaining permission from the legislative council of HKSAR to consider requests of extraditions would be circumvented.

⁵ Grace Wang, *Hong Kong's Extradition Bill: Implications & Ramifications*, 46 *Brook. J. Int'l L.* 573 (2021), available at <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1976&context=bjil>.

⁶ Janice M. Brabyn, *Extradition and the Hong Kong Special Administrative Region*, 20 *Case W. Res. J. Int'l L.* 169 (1988), available at <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1700&context=jil>.

⁷ Erik Alexander Rapoport, *Extradition and the Hong Kong Special Administrative Region: Will Hong Kong Remain a Separate and Independent Jurisdiction after 1997*, 4 *Asian L. J.* 135 (1997).

⁸ Bing Ling, *Applicability of the PRC Criminal Law in Hong Kong and the Prospect of a Rendition Agreement between Hong Kong and the Mainland*, 29 *Hong Kong L.J.* 393 (1999).

⁹ Dapiran, Antony, "Hong Kong's Reckoning" *China Dreams*, edited by Jane Golley et al., ANU Press, 2020, pp. 50–68. *JSTOR*, <http://www.jstor.org/stable/j.ctv12sdxmk.9>. Accessed 9 Jan. 2023.

¹⁰ Dapiran, Antony, "Hong Kong's National Security Law" *Crisis*, edited by Jane Golley et al., ANU Press, 2021, pp. 59–66. *JSTOR*, <https://doi.org/10.2307/j.ctv1m9x316.11>. Accessed 9 Jan. 2023.

Requests for extradition would be considered from Mainland China, Taiwan, and Macau, meaning the jurisdictions with which HKSAR does not currently have any extradition arrangement.¹¹ The changes under the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Bill 2019 would have allowed any foreign citizen living in or travelling to HKSAR, to be transferred to the Mainland. The Bill would have compellingly strengthened the grasp of the Mainland over the region.

The PRC enacted National Security law in Hong Kong after the furor and withdrawal of the much contested Hong Kong Extradition Bill of 2019.

C. The National Security Law

Under the Basic Law, the Hong Kong Legislative council has the authority to enact legislations regarding the security of the nation prohibiting acts relating to treason, sedition against the CPG, etc.¹² Through the Basic law, power to legislate in the region does vest in the Standing Committee of the National People's Congress (Hereinafter, NPCSC), the legislative body of the PRC, as well, in a sense. It can promulgate its law pursuant to foreign and defence affairs of the region by amending Annex III of Article 18 of the Basic Law of HKSAR. Moreover, under the Basic Law, the judiciary of the PRC has the power to adjudicate over matters of defence and foreign affairs of the region.¹³ The PRC NPC did just that in the case of NSL. It directly floated the law circumventing the power reserved by the Hong Kong Legislative council and did not discuss over the repercussions of the legislation on the prevailing democratic system of the territory.

The National Security Law comprises of sixty-six articles and six chapters. The Act makes provisions for establishing institutions in HKSAR for shielding National security in the region.¹⁴ Further, it also makes provisions for creating establishments of the Central People's Government within HKSAR for securing National security.

¹¹ Micheal F. Martin, *Hong Kong's Proposed Extradition Law Amendments*, 1 U.S.T. 1 (2019), available at <https://sgp.fas.org/crs/row/IF11248.pdf>.

¹² Article 23 of The Basic Law of The Hong Kong Special Administrative Region of The People's Republic of China.

¹³ Article 19 of The Basic Law of The Hong Kong Special Administrative Region of The People's Republic of China.

¹⁴ Aarshi Tirkey and Nandini Sarma, *Hong Kong's National Security Law: Implications for India*, (2020), available at <https://www.orfonline.org/research/hong-kongs-national-security-law-implications-for-india/>.

The three administration and control structures established under the National Security Law are the Committee for Preservation National Security¹⁵, the Departments for Preservation national security¹⁶ and the Office for Preservation National Security¹⁷.

The Chief Executive would be the head of the Committee for Safeguarding National Security and will be directly answerable to the Central People's Government (Hereinafter, CPG). He has also been assigned the task of submitting annual reports to the CPG on matters of National Security.¹⁸

The committee secretariat would be commanded by the Secretary general appointed by the CPG and the Security advisor for operations of the committee would also be selected by the CPG. In addition to the role of the CPG in the committee, the functions of the agency would not be under the purview of judicial review or subject to disclosure to any authority.¹⁹

The CPG also has the control to advise on the appointment of the Chief of the Department for Safeguarding National Security established under the statute by the Police force and Justice Department of HKSAR. This department has the option of recruiting members externally and not mandatorily from within HKSAR. Insinuating therefore, that appointments can also be made from the Mainland.²⁰ The CPG has been given a vital role to form policies to tackle security issues, scrutinise information and communication through an office established within the region. The Office of Safeguarding National Security comes directly under the rule of the CPG. By the year 2021, it was mostly supervised by officials from the security bureaus of the Mainland.²¹

¹⁵ Article 12 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

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

¹⁷ Article 48 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

¹⁸ Article 3 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

¹⁹ Article 14 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

²⁰ Carole J. Petersen, *The Disappearing Firewall: International Consequences of Beijing's Decision to Impose a National Security Law and Operate National Security Institutions in Hong Kong*, 50 Hong Kong L.J. 633 (2020), available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/honkon50&div=36&id=&page=>.

²¹ Tony Cheung, *National security law: Beijing appoints tough-talking party official Zheng Yanxiong to lead powerful new agency in Hong Kong*, South China Morning Post July 03, 2020, <https://www.scmp.com/news/hong-kong/politics/article/3091664/beijings-top-hong-kong-official-luo-huining-will-be-city>.

The key crimes enumerated under the law are secession, subversion, terrorism and collusion with foreign forces which have punishments ranging from fines, seizure of assets and incarceration for life.²²

In addition to the widely worded provisions of the NSL, HKSAR has jurisdiction in matters of National security except if the criminal issues are related to interference of a foreign government or if HKSAR is not able to successfully implement the NSL or the matter is especially of immediate concern.²³ The matters can be then sent to the Mainland and tried under the judicial system of the PRC.

The most critical and noteworthy feature of the Act is that it comprehensively applies to acts accomplished against the National Security of Hong Kong; within the territory of HKSAR or by individuals who are permanent residents of HKSAR, outside of the region or also by individuals who are non permanent residents of HKSAR outside of the region.²⁴ The NSL also declares that it will predominate the existing legislations of the regions. Lastly, via the Security law, the ultimate power to construe the law is reposed with the NPCSC of the PRC.²⁵

Effects on Media, Digital Freedoms and Businesses operating in HKSAR under the National Security Law

A. Effect on Media Freedoms

Unlike the Mainland, media in HKSAR operates independently without excessive interference from the government in their reporting and general setup.²⁶ Journalism in Hong Kong does not get rummaged through and newspersons are allowed to write critically of the government officials, attend forums and present freely in the territory. It is believed that no line of propaganda thought is impressed upon the media like in the Mainland and private media outlets continue to exist in the region which cover sensitive as well as issues critical of the larger system.²⁷ Foreign media newspersons continue to operate in the territory and licenses of

²² Articles 20 to 30 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

²³ Article 55 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

²⁴ Articles 36 to 38 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

²⁵ Article 62 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

²⁶ Joshua Wong, *Hong Kong's International Front Line*, 73 *Journal of International Affairs* (2020), available at <https://www.jstor.org/stable/10.2307/26939983>

²⁷ Eyal Propper, *The National People's Congress 2020: The Hong Kong National Security Law and China's Enhanced Presence* Institute for National Security Studies, Insight No. 1329 (2020), available at <https://www.jstor.org/stable/resrep25547>.

journalists are seldom revoked by the media regulating authorities albeit complained against by the pro-Beijing factions.²⁸

The 2019 Extradition Bill protests began the numerous accounts of threats against the once relatively open and free media system of Hong Kong. Essentially, the primary targets of the new Security legislation have been journalists, news executives, human rights activists, political opponents and individuals advocating critically regarding the Party regime, its various policies and instances of police transgressions in the Mainland and the HKSAR. Under the NSL, journalists have been barred, jailed or exiled on charges of hindrance of police conduct, fighting arrest and making false statements. Freedom of speech online as well as offline has been under constant inspection with political expression being continually muzzled.

Since 2019 there have been several prominent instances of the imposition and prosecution under the NSL on activists involved in various pro-democracy activities and demonstrations.²⁹

NSL is also obliging Pro Beijing periodicals, who, after its implementation, have called out for bans and prosecutions of newspersons, unions, dissenters throwing them under the bus for reporting accurately of the excesses in the region.³⁰

School teachers and academics are more alert due to the new regulations in the new dawn. Curriculums of Institutions have been overhauled to bring in new politically motivated learning. Circulation of books, documentaries and films are being controlled and most pro democracy literature is being removed from institutions and libraries. Individuals are also being caught under the offences such as “sedition” for undertaking unerring activities like writing a books for children, etc.

Making matters worse, dissenters are being arraigned with offences under the extant colonial era legislations of Hong Kong along with the new Security Law. When coupled with the NSL offences, the severity of charges increase, creating an array of harsh punishments ranging from heavy fines to incarceration for life.

²⁸ Atlantic Council, *Targeting the Anti-Extradition Bill Movement*, *Report China's Hong Kong Messaging Proliferates on Social Media Report*, Atlantic Council Report (2020), available at <https://www.jstor.org/stable/resrep30702.7>.

²⁹ Angeli Datt, *The Impact of the National Security Law on Media and Internet Freedom in Hong Kong*, Freedom House Sept 08, 2021, https://freedomhouse.org/article/impact-national-security-law-media-and-internet-freedom-hong-kong#footnote76_66wnzdz.

³⁰ Raksha Kumar, *China's latest weapons against dissidents in Hong Kong – its own newspapers*, Reuters Institute Oct 26, 2021, <https://reutersinstitute.politics.ox.ac.uk/news/chinas-latest-weapons-against-dissidents-hong-kong-its-own-newspapers>.

A million-dollar fund has been ascribed for the implementation of the Security Legislation and information regarding the arranged fund is being guarded as a war secret.³¹ Circulating word pertaining to the negative affects of the National Security Legislation has also invited indictments, with several being booked over promoting fake news.³²

Following are the various trends operating in the aftermath of the law that harm the long possessed liberties of the region.

- **Cracking down the Press**

The post NSL era has been the most tumultuous for critical new channels with freedom of press at its lowest ever since the roll out of the critical law.³³ Journalists covering infamous content are being routinely arrested and charged with harsh offences. The most significant being the raid and shut down of the newspaper Apple daily, its parent company and related publications.³⁴ The owner of the pro democracy tabloid along with his other staff were charged with the offence of “colluding with foreign forces”. Raids were conducted in their offices all across Hong Kong. In the Lai case, the Hong Kong Court of Final Appeal declared that it does not have the authority to decide on cases of infringement of HKSAR’s Basic Law by the NSL. This case further illustrated a tough framework of attaining bail in matters pursuant to the law. Ahead of this event, the reporters of various other newspapers from within the region, such as Epoch times have also been attacked, investigated, interrogated for their controversial pro democracy line under the NSL by the Hong Kong Police. Attacks on the media have generally been on the pieces written by them prior to the roll out of the NSL. This movement indicates that the law is being implemented retroactively as well. Several newspapers publications

³¹ Mary Hui, *In just one year, Beijing enveloped Hong Kong in a massive national security complex*, Quartz June 25, 2021, <https://qz.com/2012306/hong-kong-now-has-a-massive-national-security-complex>.

³² Lydia Wong and Thomas E. Kellogg, *Hong Kong’s National Security Law: A Human Rights and Rule of Law Analysis*, Centre for Asian Law (2021), available at <https://www.law.georgetown.edu/law-asia/wp-content/uploads/sites/31/2021/02/GT-HK-Report-Accessible.pdf>.

³³ Brendan Clift, *Hong Kong’s Made-in-China National Security Law: Upending the Legal Order for the Sake of Law and Order*, (2020), available at <https://deliverypdf.ssrn.com/delivery.php?ID=805083115115087070003080098122096124020009058049034037091092008006029075088000027124013048012118102116115018095106001001030077026033071081039080109021117118116105077003020092089078091068107095102012101113007007099090103065116124121104022024072090017&EXT=pdf&INDEX=TRUE>.

³⁴ Johannes M M Chan, *Judicial Responses to the National Security Law: HKSAR v Lai Chee Ying*, 51(1) Hong Kong Law Journal (2021), available at <https://deliverypdf.ssrn.com/delivery.php?ID=872119091124113016031101003118091087049073070064025021111114068102071090101119120000120032062006006027002112096108107068022002000029026049019123069081018092088011034006054124065096005066106122065076018002113079070120107113074116097076127100066116086&EXT=pdf&INDEX=TRUE>.

operating in the area, such as Initium news and Stand News have since relocated their businesses and removed their content entirely out of fear of the new law.

- **Generating Economic Pressure on Tabloids**

The passage of the NSL has generated immense economic pressure on tabloids in the past two years. Strident raids have been conducted in various headquarters of news channels for allegedly violating the NSL. Subsequently, news outlets have declared bankruptcy without paying their employees and have eventually closed their offices.³⁵ A number of pro-democracy news channels operating with the support of public funding have also been booked with charges like money laundering under the security law.³⁶

- **Impeding access to Information**

Accessibility of information has helped the Hong Kong media in the past to reveal corruption and various other malpractices in the region. Stringent measures have been adopted after the NSL, to contain information and thus, impede media liberty.³⁷ These strictures are being imposed in the garb of protecting people's privacy. A journalist Bao Choy, was prosecuted and penalized beyond NSL charges in 2021 over accessing information. To compliment the NSL, newer Legislations are being rolled out to restrict access to information that ought to be available publicly. Public databases such as birth and death records, data related to companies, information about electoral rolls, etc. are also being concealed closely.³⁸

- **Restricting assemblies and unions**

Restrictions on assemblies and associations have been flagrant under the reign of the NSL. Permissions for conducting annual vigils, trade unions and pro-democracy protests are being commonly denied. Some of the unions in Hong Kong have been banned at the hands of the Hong Kong Police and some have themselves disbanded out of fear of the law. Criminal

³⁵ Kanis Leung, Natalie Wong and Lilian Cheng, *Workforce in turmoil at Hong Kong's largest pay TV operator i-Cable as lay-offs, resignations hammer news department*, South China Morning Post Dec 01, 2020, <https://www.scmp.com/news/hong-kong/hong-kong-economy/article/3112036/hong-kongs-largest-pay-tv-operator-i-cable-lay-40>.

³⁶ Peter Lee, *One year after its closure, Hong Hong media outlet Citizen News removes all online content as firm winds up*, Hong Kong Free Press Jan 04, 2023, <https://hongkongfp.com/2023/01/04/one-year-after-its-closure-hong-hong-media-outlet-citizen-news-removes-all-online-content-as-firm-winds-up/>.

³⁷ Candice Chau, *Explainer: The decline of Hong Kong's press freedom under the national security law*, Hong Kong Free Press Dec 10, 2022, <https://hongkongfp.com/2022/12/10/explainer-the-decline-of-hong-kongs-press-freedom-under-the-national-security-law/>.

³⁸ *Beijing-imposed national security law in Hong Kong completes one year*, Business Standard June 20, 2021, https://www.business-standard.com/article/international/beijing-imposed-national-security-law-in-hong-kong-completes-one-year-121063000497_1.html

charges of the NSL are also being imposed on individuals participating in the said assemblages.³⁹

- **Transforming Editorial lines**

Hong Kong's most prominent news broadcaster, Radio Television Hong Kong (RTHK) has completely renovated its editorial coverage after the review of its practices and administration as per the NSL. The journalistic independence is long gone with the former employees of the newscaster being laid off and being substituted with a new set of personnel. Pro Beijing officials with no prior experience in journalism have been appointed and propaganda shows are being recurrently aired. There is strict scrutiny of the material that is being broadcasted and prior permissions are to be obtained for airing protests or vigils. Employees are being threatened with fines and punishments under the NSL, if they violate these latest rules.⁴⁰

Along with this, various longstanding private newspaper publications in Hong Kong are now being acquired by Chinese stakeholders.⁴¹ Subsequently the United States Department of Justice has ordered their ancillaries located in their country to register under the Foreign Agents Registration Act. Several newspapers have also been coerced into reviewing their pro democracy standpoint in line with the NSL.⁴²

- **Intimidating Foreign Media**

Foreign telecasters and their reporters centered in Hong Kong operate in the vicinity of the Mainland without being subjected to its controls. In this way, they remain in proximity to the Mainland without being exposed to its strict structures. Under the tenet of the NSL, currently some International reporters are being investigated by the HKSAR executives. Unprecedented exit embargos are being cast on foreign correspondents who are being instructed to not leave the region. The editor of the renowned newspaper, New York Times had written about the NSL and its consequences in 2019. Scared in the wake of the law, the tabloid has decided to move its Hong Kong office to South Korea.

- **Restricting visas**

³⁹ Joseph Tse-Hei Lee, *International Lobbying for Hong Kong*, 33 *Indian Journal of Asian Affairs* (2020), available at <https://www.jstor.org/stable/10.2307/27003438>.

⁴⁰ Angeli Datt, *Hong Kong Is Unrecognizable After 2 Years Under the National Security Law*, *The Diplomat* June 20, 2022, <https://thediplomat.com/2022/06/hong-kong-is-unrecognizable-after-2-years-under-the-national-security-law/>.

⁴¹ *Hong Kong Media Fall to Pro-Chinese Owners*, *Asia Sentinel* April 23, 2021, <https://www.asiasentinel.com/p/hong-kong-media-fall-to-pro-chinese>.

⁴² *Supra* note 27.

Imitating a common trait of the Chinese authorities, Hong Kong immigration authorities are rejecting and delaying visas of media correspondents in another sturdy blow to the freedom of expression in the region. In 2020, a USA based journalist along with the reporter of the Hong Kong Free Press were denied visa by the HKSAR officials.⁴³ Tighter border controls in the region are going to severely clout the standard of reportage in the territory.

- **Weakening Pro Democracy Representation**

Another dramatic onslaught to the political system have been the alterations made to the electoral system of Hong Kong to weaken the political participation of the pro democracy nominees. In a 2020 incident, a number of Pro-democracy activists and politicians were charged with the offence of subversion under the Security Law for conducting a moot election for the office of the Legislative Council of HKSAR.⁴⁴ Also in 2021, a young demonstrator was held under the offence of secession for displaying a politicized flag in HKSAR. Since these occurrences, the perilous reach of the law has been evident in the low turnout and notable withdrawals of pro democracy candidates in the local elections of the province.⁴⁵

B. Effect on Digital Freedoms

Unlike the online firewall in the PRC that monitors and blocks all content outside the purview of its ideology, HKSAR enjoys free internet access allowing the media to function securely in the region. There have been many disturbing instances of police surveillance and shadowing in the PRC in the past. Now with the NSL administering HKSAR, content published over the internet within the region, critical of the PRC's belief, is also at the risk of being intercepted.⁴⁶ Under Article 9 of the Act, the state is given the power to take required steps to regulate the

⁴³ *Ibid.*

⁴⁴ Kin-Man Chan, *Occupying Hong Kong*, 21 Sur- Int'l J. On Hum Rts. 1 (2015), available at <https://deliverypdf.ssrn.com/delivery.php?ID=741072022102024084079112121101086026016056000029024069069123108076083089009065089108016120111006027011049007068018117100007099123042042011081092088101002021014095070001052041101121092085119101001004108116029004079004081081068106124085070076006099025029&EXT=pdf&INDEX=TRUE>.

⁴⁵ Sonny Lo, *The consequences of China's "Comprehensive Jurisdiction" over Hong Kong*, University of Melbourne Asia Link July 08, 2021, <https://asialink.unimelb.edu.au/insights/the-consequences-of-chinas-comprehensive-jurisdiction-over-hong-kong>.

⁴⁶ Stuart Hargreaves, *Past as Prologue: Intercept & Surveillance Rules under Hong Kong's National Security Law*, 20 Santa Clara J. Int'l L. 48 (2021), available at <https://deliverypdf.ssrn.com/delivery.php?ID=684088071004065001104111097083006109026012051033042091108125103074072019068074105121101122062000122051045126009100016079077066005049095084082025092126118016125096019019005046078006006015011119127064094102114088120029126093072089117086102090121085123065&EXT=pdf&INDEX=TRUE>.

content over the internet aimed towards protecting the security of the territory.⁴⁷ The NSL structure authorizes clandestine monitoring, scrutinizing and censoring of online communication and activities of the people of HKSAR under the order of the Chief Executive.⁴⁸

In 2019 a protestor Joshua Wong was arrested and he asserted that his activities and devices were hacked and examined by the authorities. They were also further presented as proof in his trial. Enlisted the various tactics employed by the authorities under the NSL to subdue and control online conducts of the entities in the region.

- **Self Regulation of content**

Authorities empowered under the NSL can control, gather and direct to remove, information and communication of businesses as well as individuals.⁴⁹ Infringement can accrue fine as well as imprisonment. However, most of the erasure of the content has been done by individuals as well as businesses out of fear of the law, on their own accord. Certain news channels such as Apple daily, Stand news and RTHK have contained and deleted several years of their data and coverage. The new legislation had triggered Apple and google to remove applications that traced and located police maneuvers and activities of demonstrators. Pages of pro democracy campaigners have been removed by Facebook as a corollary of the law.

Various tech companies have branched out as a means to avoid the reach of the law. In 2020, a search engine company shifted its center from the region to Singapore. Some corporations uprooted their operations from the territory completely and expanded it to a different location solely because of the unusual surveillance features of the law.⁵⁰ A company Oursky, relocated its center from HKSAR because its allied enterprise was deeply apprehensive of the new legislation.⁵¹

Companies operating within the vicinity of the region mostly abided by all kinds of data requests made by the government before the NSL. Forestalling the unwarranted harms of the

⁴⁷ Article 9 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

⁴⁸ Article 43 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

⁴⁹ Article 17 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

⁵⁰ Felix Tam, *Startups are already moving data and employees out of Hong Kong over its new security law*, Fortune July 21, 2020, <https://fortune.com/2020/07/21/startups-data-employees-hong-kong-security-law/>.

⁵¹ Human Rights Watch, *Dismantling a Free Society*, 2021, <https://www.hrw.org/feature/2021/06/25/dismantling-free-society/hong-kong-one-year-after-national-security-law>.

law, companies like Facebook, Zoom, Twitter, Microsoft, Google, LinkedIn and Telegram have denied demands of data and information from the government under the NSL. Each company concerned for the privacy of their users, cited that they would assess and observe the impact of law before conclusively evaluating the requests.

One of the first social media companies to exit HKSAR has been Bytedance, the parent company of TikTok. It assuredly stated that its data is stored in its servers at USA and Singapore therefore out of the jurisdiction of HKSAR or the PRC.

- **Obstruction of online content**

The first instance of blocking web content by HKSAR authorities was in 2019 after the implementation of the NSL. The frozen website, HK Chronicles, covered news about police transgressions and exposed pro Beijing syndicates within HKSAR.⁵² This action was seemingly warranted under the law for the protection of National Security of the region. Access to some websites based in the Taiwan region, tracking and supporting activities of protestors have also been blocked under the NSL. Using the extra territorial jurisdiction of the NSL, the authorities of HKSAR in 2021, directed a network provider based in Israel to block access to a website with a democratic angle.

- **Arrests over online content**

Individuals have been incriminated under the crimes enshrined in the NSL for presenting and documenting their views on the internet. An activist recording and archiving protests, was arrested and punished in 2021, for the offence of “sedition” and “conspiracy to commit arson” under this repressive legislation. Another individual was booked under the offence of “collusion” for campaigning through various posts on Facebook.

- **Cyber breaches**

Hacking and other forms of virtual invasions are an added outcome of the dread of the security legislation. Websites used by campaigners to communicate and unify have been hacked by hosts based out of the Mainland. The Hong Kong Amnesty International organization was hacked by a virus whose centre was discovered to be in the Mainland. Businesses based in HKSAR or abroad using online platforms to write with respect to the government of the

⁵² Karishma Malhotra, *Explained: What China security law means for Hong Kong and the global Internet*, Indian Express July 12, 2020, <https://indianexpress.com/article/explained/what-china-security-law-means-for-hong-kong-and-the-global-internet-6499907/>.

Mainland or HKSAR, should be aware and cautious of the reach of the law as well as these malicious attacks occurring obscurely through the web.

- **Projected Legislations**

The clamp down on expression will continue with new Legislations coming into the landscape of HKSAR. A Bill has been laid out that will monitor, penalise and punish handling of national flag and emblems online and well as offline.⁵³ Further, amendments are being brought in the existing laws that will punish leaving electoral ballots blank or even inciting to leave the ballots blank.⁵⁴ Another amendment is being laid out in the Privacy Ordinance that would curtail doxing online.⁵⁵ These laws could go either way, with their deliberate broad language and excessive policing powers imparted to the authorities of the region.

Effect on Domestic and International Businesses operating in HKSAR

The far-reaching features of the NSL put businesses conducting their operations inside as well as outside of HKSAR, at the risk of attracting its draconian provisions.⁵⁶ Recognizing the extra territorial reach of the domestic and well as foreign laws, International companies in a foreign land employ and adjust their compliance programs accordingly. These programs are attuned in a manner where they do not directly come into conflict with cooperation of laws of the host as well as the home country.⁵⁷ As part of their course of investigation or their international enforcement procedure, various administrative bodies like the Department of Justice or the Securities and Exchange Commission of the home country request information and dossiers from foreign companies operating their businesses abroad.⁵⁸ NSL has radically altered the smooth dispensation of information previously enjoyed by businesses concerning HKSAR. Presently, with the NSL in place, if a foreign authority seeks information from a company that

⁵³ The National Flag and National Emblem (Amendment) Bill 2021.

⁵⁴ Peter Lee, *Hong Kong's ban on urging blank votes is 'unconstitutional' and limits freedom, lawyer tells court*, Hong Kong Free Press Dec 02, 2022, <https://hongkongfp.com/2022/12/02/hong-kongs-ban-on-urging-blank-votes-is-unconstitutional-and-limits-freedom-lawyer-tells-court/>.

⁵⁵ Pablo Sbuttoni, Marcia Lee, Jacqueline Wong, *Hong Kong: Personal Data (Privacy) Ordinance amended to introduce "anti-doxing" provisions*, Global Compliance News Feb 28, 2022, <https://www.globalcompliance.com/2022/02/28/hong-kong-personal-data-privacy-ordinance-amended-to-introduce-anti-doxing-provisions140222/>.

⁵⁶ Article 31, 37, 38 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

⁵⁷ Akum K. Singh, *China's Passing of the National Security Law in Hong Kong and Its Effect on Global Business*, 17 Rutgers Bus. L.J. 89 (2021), available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/rutgblaj17&div=8&id=&page=>.

⁵⁸ Wade Weems, Calvin Koo, and Abigail Chen, *Hong Kong's National Security Law, Five Months In*, China Business Review Nov 25, 2020, <https://www.chinabusinessreview.com/hong-kongs-national-security-law-five-months-in/>.

has operations even remotely related to the PRC or HKSAR, notwithstanding it being backed by a court order, can invite a criminal offence under the NSL. Businesses can invoke the offence of “collusion with foreign state”⁵⁹ under the NSL or could be charged by the host country for not complying with its laws.

The Security Law does not just stop at disrupting compliance. Entities can be embroiled in other kinds of civil disputes affecting this infamous law. The Legislation can be used by a party in a civil dispute or arbitration as a defense to refuse the disclosure of evidence stating that it could be in violation of the said law on the basis of the information being “state secrets or intelligence”.⁶⁰ On the other hand, a PRC enterprise can threaten an opposing party that releasing information to a foreign court or government can invite prosecution under the Legislation. Being mindful of the provisions of the law, arbitral tribunals in International commercial arbitrations will be in a bind when it comes to allowance or discounting the deployment of evidence rendered as “compelling or a state secret” by a certain government. In certain Investment treaty arbitrations, either the state themselves can refuse to furnish information on the basis of it being related to National security or refusal to release information can be allowed as per the treaty signed between the states. Arbitral tribunals are then rendered the task of determining the fate of such actions. NSL would particularly come into play here, as determining what constitutes as breach of national security law would be then saddled upon the HKSAR courts when an application for the enforcement of these arbitral awards would be made. Additionally, mergers and acquisitions in association with Hong Kong entities can also give rise to commercial disputes involving National security.

Besides limiting the civil and criminal jurisdiction of the Hong Kong courts, the Security Law also creates a structure for the final authority of the Central People’s Government to decide and supervise in both civil and criminal spheres pertaining to National security. According to the Basic Law Hong Kong courts are conferred with jurisdiction regarding civil as well as criminal matters.⁶¹ Contrastingly, the Security Law clearly states that the courts possess jurisdiction in

⁵⁹ Article 29 of The Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

⁶⁰ Dennis W. H. Kwok and Elizabeth Donkervoort, *The Risks for International Business under the Hong Kong National Security Law*, Harvard Kennedy School Ash Centre for Democratic Governance and Innovation (2021), available at https://ash.harvard.edu/files/ash/files/the_risks_for_international_business_under_the_hong_kong_national_security_law_7.7.21.pdf?m=1626968393.

⁶¹ Article 80 of The Basic Law of The Hong Kong Special Administrative Region of The People’s Republic of China.

criminal matters except if the matters are crucially alarming or relating to a foreign state, which the Hong Kong courts are incapable of tackling successfully.⁶²

There is a lack of noteworthy discourse on the impact of NSL over the civil jurisdiction of the Hong Kong courts as well as the impact of the Security Law on International businesses concerning PRC corporations. The explanation afforded by the State council should instructively help in construing if Hong Kong courts possess jurisdiction to try civil matters relating to National Security. The State council of Hong Kong while making a statement with regard to the interpretation of the Basic Law has affirmed that only if the CPG explicitly relays power to any organ of Hong Kong, it would have the ability to exercise such authority. In the case of the NSL, it however gives authority for the Hong Kong courts to decide over criminal matters but stays silent with regard to civil disputes. Therefore, it seems most plausible to assume that the power is retained by the CPG. This notion is strengthened with the mechanism provided under the legislation. Art 47 of NSL expounds that the courts of HKSAR will have to attain an endorsement from the Chief Executive on matters pertaining to National Security. The Chief Executive who is answerable to the Central People's Government in matters concerning National Security will be the ultimate decision maker at that juncture. This would largely benefit a PRC Corporation or HKSAR entity which can conveniently turn to the government of HKSAR to obtain a certificate in its favour. The final call with respect to such issues would be of the National Security Committee.⁶³ The Act clearly dictates that the conclusive elucidation authority lies with the NPCSC. That being said, with the ultimate clout of the CPG, the evaluation would be predominantly influenced by political winds. Since there is no description of the term "National security" within the PRC framework or the NSL and for what its worth, PRC considers all its key fiscal sectors within the ambit of "National Security", the term therefore can expand to include technology security, investment security, resource security, etc. As the PRC magnifies its authority in the region all kinds of disputes can be converted into an issue of political and national sensitivity. Therefore, the PRC's definition can pose a considerable challenge to the statutory disclosure obligations of International business communities in multiple jurisdictions. With the NSL in place, it could be a higher

⁶² Article 55 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

⁶³ Surya Deva, *Threats to Hong Kong's Autonomy from the NPC's Standing Committee: The Role of Courts and the Basic Structure Doctrine*, 50 *Hong Kong L.J.* 901 (2020), available at <https://deliverypdf.ssrn.com/delivery.php?ID=776114008100075124094088004098115014038018014015006038127118106011069090076116014007106099010022103035124021027119012109080019126008014016039096091000124114107099123041011057120101124102076115006026066123094126083094114015096002124098098075084114117069&EXT=pdf&INDEX=TRUE>.

likelihood that the jurisdiction in an array of commercial matters could be considered out of the sphere of Hong Kong courts and within the domain of the courts of the PRC.

Previously, there have been few illustrations of Hong Kong courts reading and applying PRC's own NSL in commercial contexts. In *SFC v. Ernst & Young*,⁶⁴ the company contended that releasing their correspondence with a PRC based company albeit required to be furnished to the HK Securities and Futures Commission was violating PRC's National security law. The contention was that the information to be deployed was 'state secrets' as per PRC NSL and therefore disclosing the documents would amount to an offence. The Court negated the said argument presented by the company stating that the documents did not constitute as 'state secrets' under the relevant law. Similarly, the US courts have also dabbled at interpreting the PRC NSL definition of NS in certain contexts. In the case, *BDO China Dahua CPA Co., Ltd., et al.*,⁶⁵ a PRC affiliated enterprise also contended that non production of documents was due to them being sensitive and a violation under the PRC State Secrecy Law. The judges rejected the argument made by the defendants and further persuasively recognized the expansive purview of the term "State Secrets" or "National security" under the PRC laws. The NSL has toppled set precedents giving fresh impetus to future illustrations of private commercial disputes. These cases can be helpful for businesses to understand how NSL can modify the situation for commercial disputes in the region.

Not to mention, Article 44 of the NSL gives unbridled power to the Chief Executive of Hong Kong to prepare a roll of judges from the lower courts of HKSAR to the Court of Final Appeal to adjudicate on issues encompassing National Security.⁶⁶ The Committee for Safeguarding National Security chaired by the Chief Executive would examine the list.⁶⁷ The tenure of the judges would be short with the possibility of removal if their conduct is not in accordance with the NSL. The powers of the judiciary of HKSAR are gradually being sapped through the procedure established under the NSL. The law is pushing the agenda of politically induced selections within the judicial system of HKSAR. As matters stand, the judges of HKSAR have been facing immense pressure by the PRC media to implement the NSL effectively in and around the region. Two foreign judges customarily appointed in the territory's Court of Final

⁶⁴ [2015] 5 HKLRD 293

⁶⁵ <https://www.sec.gov/litigation/opinions/2014/34-72140.pdf>.

⁶⁶ Article 44 of The Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

⁶⁷ Michael Blanchflower S.C., *Hong Kong's National Security Law and Judicial Independence*, (2022), available at https://the-advocate.ca/emag/issues/2022/March/page_26.html.

Appeal resigned following the launch of the NSL. This jolt to the tradition signals at the damaged faith of the International community in the legal system of the region.

Ultimately, escalating trade rows between the PRC and its fellow nations have put businesses in a spot at evaluating their operations between the two countries. Recently the EU halted its decision of signing its market access treaty with PRC.⁶⁸ Furthermore, PRC has intensified its scrutiny and assessment of mergers and acquisitions and foreign investments on the basis of National Security.⁶⁹ This dismaying trend suggests that more businesses in the PRC and HKSAR could be engaged in disputes involving National Security. The newly adopted legislations in PRC which contain provisions regarding illegally sharing data/state secrets, corporate espionage, etc. certainly imply bleak prospects.⁷⁰ Companies while trying to evade the NSL should be careful of not transferring sensitive data to a foreign government while complying with their laws which can put them in a fix in the long haul.

Global responses and Potential concerns of the Comprehensive Jurisdiction

The steady political structure of Hong Kong along with its open exchange policy and low tax duties have aided in preserving its standing as the commercial capital of the world. A huge segment of the populace in the region is employed in the trade and finance sector. Already stumbling with the effects of Covid-19, supply chains are currently disordered and unemployment is upheaving in the territory. Assessments held by the different International Media freedom and Commerce organizations have affirmed that most of the people and business sections are nervous regarding the talons of the law.⁷¹ On top this, NSL has fractured the region's relations with its international counterparts vis-à-vis its trade, travel and bilateral ties.

A. Suspension of Extradition Arrangements

The extraterritorial features of the law have intimidated nations into assessing their mutual arrangements with Hong Kong. Besides recognizing fact that the law tempers the democratic system of the region, countries are afraid that a functioning extradition agreement would make

⁶⁸ *Supra* note 58.

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ Yen Nee Lee, *Amcham finds 42% of members surveyed are planning or considering leaving Hong Kong*, CNBC May 12, 2021, <https://www.cnbc.com/2021/05/12/hong-kong-security-law-amcham-finds-42percent-of-members-surveyed-plan-to-leave.html> and *see also*, Chen Zifei, *Hong Kong press freedom index hits new low under draconian national security law*, Radio Free Asia Sept, 26, 2022, <https://www.rfa.org/english/news/china/hongkong-media-09262022154359.html>.

HKSAR justifiably eligible to request the extradition of a person of any nationality or residence. One of the more shared concerns is that once an accused person under the new law enters HKSAR, he or she under the provisions of the law can be sent for trial to the Mainland. This unreasonable extension of its criminal law goes past that basic tenets of International criminal cooperation that bind nations with formal covenant obligations.

An International development to the law has been that various nations like Canada, United Kingdom, USA, Australia and New Zealand have taken steps to suspended their extradition agreements with Hong Kong.⁷² Although the arrangement's of Canada, United Kingdom and New Zealand mention a suspension clause, the Extradition treaty Hong Kong has with Australia and USA does not provide for the same. Nonetheless, the two countries invoked general law on treaties citing "fundamental change of circumstances" to suspend the arrangement with HKSAR.⁷³ For the sake of stability of treaty relations, the aforesaid clause can only be invoked in certain exceptional situations where the "essential basis of consent of the parties and, in changing, radically altered the extent of the obligations still to be performed" as cited in the Gabčíkovo-Nagymaros Project case.⁷⁴

Extradition treaties facilitate the surrender of a requested person on a statutory basis. An active Extradition treaty between consorts signifies the confidence in independence of the justice system partnered countries. Suppression of freedoms of individuals, expansive offences, politically motivated appointments and the possibility of cases being tried in the Mainland have driven nations to amend their mutual assistance relations with the territory. There has been a belief in the rule of law of HKSAR which was the reason most of the democratic nations have had operational Extradition arrangements with the region and not with the Mainland.⁷⁵

The enactment of the NSL has created a framework which serves a purpose similar to that of the Hong Kong Extradition Bill of 2019. The destabilization of the autonomy of Hong Kong has circuitously placed the territory in the same spot as the Extradition Bill of 2019.⁷⁶ It is

⁷² Kiara van Hout, *A Loss of Faith in One Country, Two Systems: The Legality of Suspending the Australia-Hong Kong Extradition Agreement*, Australia Institute of International Affairs Dec 25, 2020, <https://www.internationalaffairs.org.au/australianoutlook/a-loss-of-faith-in-one-country-two-systems-the-legality-of-suspending-the-australia-hong-kong-extradition-agreement/>.

⁷³ Vienna Convention on the Law of Treaties, 1977, Article 62.

⁷⁴ [1997] ICJ Rep 7

⁷⁵ Holly Cullen, *Suspending the Australia-Hong Kong Extradition Treaty After the National Security Law*, Australia and New Zealand Society of International Law, <https://anzsilperspective.com/suspending-the-australia-hong-kong-extradition-treaty-after-the-national-security-law/>.

⁷⁶ Liam MacAndrews, *Further Thoughts on Australia/Hong Kong Relations on Extradition and Other Matters in Transnational Criminal Law*, Australia and New Zealand Society of International Law,

important to note that countries have suspended their agreements and have not entirely terminated their treaties.⁷⁷ Termination signifies a permanent end to the relationship as compared to suspension which signifies persuasion and a belief that the Mainland will take measures to reform the laid out law. PRC has conversely alleged that suspending the said arrangements has been an interference in its internal affairs but seeing how it already questions the jurisdiction of the International Court of Justice, it is doubtful that the country will ever challenge it.⁷⁸

B. Easing of visa/migration policies and issuing transit warnings

Countries in response to the law have amended their visa and immigration policies to ease the changeover for the citizens of HKSAR. Canada decided to alter its immigration policy, making it convenient for students to avail visas for studying and joining a profession. Australia on the other hand, extended its migration policy to further help HKSAR residents. It is motivated the citizens of the territory to move to the country and decided to observe HKSAR's NSL implementation closely. The European union stated that it would examine the absence of protections under the law and would devise a plan regarding its migration, visa, etc. policies concerning HKSAR residents. Nations have commented on the situation in the province as well as taken precautions so as to build coordinated international pressure on the authorities.

The authorities in HKSAR have had a duty to report regarding the Joint Declaration to the UK every year. This makes the territory fairly more worried about the NSL. The UK declared that it would launch a new type of pathway visa for permanent residence and citizens to HKSAR residents who hold their unique Hong Kong British Nationals visa. USA on the contrary has tightened its visa approval scheme for HKSAR nationals.⁷⁹ Under the Hong Kong Human Rights Act 2019 and the Hong Kong Autonomy 2020, USA enforced sanctions against senior authorities of HKSAR and the Mainland.⁸⁰

<https://anzsilperspective.com/further-thoughts-on-australia-hong-kong-relations-on-extradition-and-other-matters-in-transnational-criminal-law/>.

⁷⁷ Kiara van Hout, *Strength in Numbers: The Politics of Suspending the Australia-Hong Kong Extradition Agreement*, Australia Institute of International Affairs Aug 06, 2020, <https://www.internationalaffairs.org.au/australianoutlook/strength-in-numbers-the-politics-of-suspending-the-australia-hong-kong-extradition-agreement/>.

⁷⁸ *Ibid.*

⁷⁹ Justine Yu, *The United States' Ineffective Response towards Hong Kong's National Security Law*, 73 *Hastings L.J.* 161 (2022), available at https://repository.uchastings.edu/cgi/viewcontent.cgi?article=3959&context=hastings_law_journal.

⁸⁰ Jason Bui, *America's New Covenant with Hong Kong: The Hong Kong Human Rights and Democracy Act of 2019*, 55 *Tex. Int'l L. J.* 269 (2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3718497.

C. Affect on trade arrangements

USA and PRC have had turbulent trade relations in the recent years.⁸¹ The PRC consulate in Houston and Chengdu were persuasively shut in the year 2020 indicating the waning relationship between the two countries.⁸²

Economic relations between USA and Hong Kong have further embittered ever since the lay out of the Law. USA afforded favored treatment to Hong Kong under the USA-Hong Kong Policy Act 1992.⁸³ It allowed for USA to treat Hong Kong differently than Mainland China with respect to export controls, customs, investments, etc. The preferential exemptions were subject to Hong Kong being autonomous in its economic and political affairs. In 2020, the US Department of State and Commerce announced its decision of removing the privilege extended to Hong Kong. The duties and restrictions afforded to the Mainland are now being extended to Hong Kong as well with a presumption of denial standard. Goods from Hong Kong are being labelled “Made in China” after the revocation of the special treatment. United Kingdom, Germany, Canada, Australia and USA have put regulations in to scrutinize and prohibit exports of dual use goods, defense equipment and sensitive technology to the region.

Most enterprises have relocated to Singapore considering their long term goals in the proximate region. Some have even decided to opt for Singapore as their Asia dispute resolution center.

India and the NSL

India has an active Extradition arrangement with Hong Kong in the form of a 1997 treaty. HKSAR hosts and accommodates a large Indian origin diaspora many of whom hold Indian passports. It is also a prevalent location for higher studies amongst the Indian students.

As the implications of the NSL are gradually surfacing, India should also form a plan to assess its visa, work, migration and travel rules and strategize accordingly. There are no safeguards in the legislation regarding academic dialogues and discourse. India should therefore devise a contingent plan with the MEA in case any person gets implicated under the law for their political comments regarding the legislation or its effects. The process of extradition is complicated and largely lined with many safeguards for the accused. However, the decision to

⁸¹ Maddy White, *Hong Kong “collateral damage” in US-China trade*, Global Trade Review June 06, 2020, wargtreview.com/news/asia/hong-kong-collateral-damage-in-us-china-trade-war/.

⁸² Zhao Huanxin, *Expert stresses mutual trust in Sino-US ties*, China Daily Dec 26, 2022, <https://www.chinadaily.com.cn/a/202212/26/WS63a8dafa31057c47eba60d3.html>.

⁸³ Raj Bhala, *Hong Kong's Democracy, Human Rights, and America's Trade Sanctions*, 30 Kan. J.L. & Pub. Pol'y 307 (2021), available at https://lawjournal.ku.edu/wp-content/uploads/2021/10/3_Bhala_V30_I3.pdf.

suspend the Extradition treaty with Hong Kong also reinforces substantial uncertainties and motivations.

Hong Kong's sour trade relations with countries also affect India due to Hong Kong being a significant re-export location for Indian products.⁸⁴ The disparity between exports and imports to the region is higher than ever. The worldwide discontent over the situation in Hong Kong has its domino effect on India's trade with the rest of the world. India will have to consider a new re-export location in the new environment created by the NSL.

There is also a large gap in trade relations between India and PRC. It is amplified by the emerging boundary frictions of India with the country. Following India-PRC frontier dispute in 2020, India has tweaked its foreign investment policy. Investments into India from PRC will now have to go through a screening process and would also have to pursue government authorization. The process will be the same for Hong Kong. These latest adjustments will be much more damaging for HKSAR, given its significantly higher number of investments in India than the Mainland.⁸⁵ Hong Kong has been the passage for India to end the trade discrepancy with the Mainland, instead, now with imports and investments from Hong Kong under greater inspection by India, that seems highly unlikely.

The region is also a lucrative and accessible location for startup businesses. It levies less tax than its comparable counterparts and acts as an entryway for businesses to reach the PRC without engaging with its stern laws. India has a Dual Tax Avoidance Agreement with HKSAR, signed in the year 2018, which facilitates its investments in the country.

In 2020, majority of nations favored the PRC's decision to enact the law in the territory. Hence, India also needs to visibly state its position with regard to its visa, migration and travel policy in light of the new legislation. It needs to closely observe the developments surrounding the new law and assess measures in lieu of the milieu residing in the region.

Conclusion

The general public and businesses both, are alarmed at the ambiguous prospects of the law. Prior to the introduction of the law, judges of HKSAR and important economic officials bolstered the public's confidence in the legal system of the territory. The judges essentially assured the international community that cases under the NSL would be tried according to the

⁸⁴ *Supra* note 14 at 19.

⁸⁵ *Id.* at 20.

principles of natural justice.⁸⁶ It was assured that rule of law, due process, presumption of innocence would continue to be the pillars in resolution of matters regarding National Security. However, reality caught on and the red flags became visible soon enough. The Monetary Association of Hong Kong and the Securities and Finance Commission had a different story to convey. After the application of the law, the same aforementioned financial authorities, directed banks to report suspicious transactions they considered were acts of money laundering or terror financing.⁸⁷ Preceding to the launch of the law, various firms had estimated the adverse effects of the Act and restructured most of their capital outside of the region.

PRC has stated that the reason for the implementation of the Security law is purely the the unrest in the region, the violent actions of independent organizations and meddling of foreign powers. Though narrative is pushed by the authorities, it cannot be denied that dissent is purely the reason for the application of the law. Even the safeguards under Article 4 of the present law seem incapable of protecting entities against the dangers of the law.

It would be a reckless postulation to imagine that these laws would only affect the liberties of individuals. HKSAR has consistently linked the PRC globally, by providing a reliable and secure commercial and political environment. Fresh operational risks have alarmed both individuals as well as organizations. Following the NSL, not just individuals but businesses will also have to think twice before taking officially particular political stance. Businesses will have to seek out unique solutions seeing as HKSAR by way of the NSL, has closely aligned itself with the agenda of the Mainland.

The unbridled powers of the NSL will unnecessarily expose companies to, and further complicate adhering to contradictory or inconsistent cross border judicial directives giving rise to multiple kinds of disputes. It will in turn beget higher costs and consume even more time. Businesses will have to calculate and strategize and accordingly devise novel mechanisms to circumvent the law. Negotiation and resolution of matters arising out of the complex Security law can be sorted out with the help of cross border counsel. Eventually either companies will have to sacrifice their values or will have to relocate because of the new legal landscape created by the law.

⁸⁶ Doug Bandow, *Hong Kong's National Security Promises Were All Hollow*, First Post, Sept 23, 2021, <https://foreignpolicy.com/2021/09/23/hong-kong-national-security-law-promises/>.

⁸⁷ *National Security Law in Hong Kong*, July 2020, available at https://www.bakermckenzie.com/-/media/files/insight/publications/2020/07/hong-kong-national-security-law-summary_160720.pdf.

There are yet some differences between HKSAR and the PRC. Authorities empowered by the NSL can regulate individuals and organizations to a certain extent but the situation is not yet as pervasive and ingrained like in the PRC. One such example is that most of the regulation is done by individuals themselves and various social media websites are also available in the region contrasting the Mainland. The NSL has crumbled the legal and political environment in HKSAR but the transformation has not however changed the region entirely. It is important to recognize the dissimilarities of the structures to be on the lookout to safeguard from further attritions.