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Assessing The Unlawful Activities (Prevention) Act, 1967 (UAPA) And Its Impact on Human Rights

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Abstract

The Criminal Law Amendment Act was passed by the British Raj in 1908, which is when the British Raj-era UAPA first appeared. In independent India, it was presented as a bill in 1966, and it was made into law in 1967. The 1967 amendment to the Act was made to handle organisations that supported separatist movements opposed to the integrity and sovereignty of the nation. The UAPA was the primary item of legislation to reduce the frequency of terror acts.

The present study analyses the UAPA and its effect on Human Rights. The researcher has discussed the statutory provision of UAPA and how they are interfering with Human Rights. According to government figures, there have been 72% more arrests made under the UAPA in 2019 than there were in 2015. Since the Act's terms are stiffer and non-bailable than those of other criminal offences, it imposes unfair and unjustifiable restrictions on a person's human rights. It cannot be disputed that anyone who opposes the existing government system may be subject to this act.

The researcher further concludes that National security is of the utmost importance in preserving a nation's sovereignty and integrity. A sovereign nation's government must create

strong anti-terror legislation that might defend the nation and its people against such attacks. To combat terrorist forces or external aggression perpetrated by any insurgency, the government of a sovereign nation must develop effective anti-terror legislation capable of defending the state and its people. The fundamental human rights protected by our Constitution and the Universal Declaration of Human Rights cannot be compromised by the unrestrained exercise of authority.

1. Introduction

"We don't believe in putting people behind bars unnecessarily," the Supreme Court said on Tuesday while hearing the Delhi Police's appeal against the bail granted to three student activists in connection with the 2020 North East Delhi riots¹¹¹⁶.

A bench led by Justice S K Kaul stated that hearing the bail applications in the case for hours was a "complete waste" of the Delhi High Court's time. During the case's hearing in July 2021, the Supreme Court expressed reluctance to discuss the issue of cancelling the bail granted to the three activists, who were charged under the terms of the tough anti-terror law – Unlawful Activities (Prevention) Act (UAPA). It had been described as alarming that the bail applications were being debated for an extended period of time, arguing the provisions of the legislation¹¹¹⁷.

Although the definition of a "terrorist act" in section 15 of the UAPA is "wide and somewhat vague," the High court had ruled that it must have the fundamental characteristics of terrorism and that the term "terrorist act" cannot

¹¹¹⁶ Anurag Tiwary, 'we don't believe in unnecessarily putting people behind bars': Supreme Court expresses surprise at lengthy bail hearings in Delhi riots case Live Law (2023), <https://www.livelaw.in/top-stories/we-dont-believe-in-this-unnecessary-putting-people-behind-bars-supreme-court-expresses-surprise-at-lengthy-bail-hearings-in-delhi-riots-case-219193> (last visited Jan 18, 2023).

¹¹¹⁷ Id

be applied "cavalierly" to criminal acts that directly violate the Indian Penal Code¹¹¹⁸.

The aforementioned ruling is a step toward reviving the debate over the constitutionality and ambiguity of the UAPA, and as a result, a careful examination of the 1967 Unlawful Activities (Prevention) Act as well as its clauses have indeed been made in order to determine the degree of arbitrariness.

2. Analysing the UAPA

The UAPA is entirely different than it was when it was first passed, both in terms of structure and the goals behind its enactment. Particularly when evaluated from the perspective of evaluating the criminality and prosecutions occurring under this statute, it has undergone a significant change. It is the outcome of the Act's transformation brought about by a number of contentious amendments that were put forth over a period of years by various governing entities with their own unique sets of political motives but one shared objective, namely to silence dissenters in the interest of the nation's integrity and security.

The UAPA may be traced back to the colonial era in 1908 when the British Raj enacted the Criminal Law Amendment Act¹¹¹⁹. However, the Act was filed as a bill in independent India in 1966 and became law in 1967. The 1967 revision of the Act was not intended to combat terrorism, but rather to address organisations that participated in separatist actions hostile to the integrity and sovereignty of the country¹¹²⁰.

¹¹¹⁸ Press Trust of India, We don't keep people behind bars unnecessarily: SC on 2020 Delhi riots Business Standard News (2023), https://www.business-standard.com/article/current-affairs/we-don-t-keep-people-behind-bars-unnecessarily-sc-on-2020-delhi-riots-123011700729_1.html (last visited Jan 18, 2023).

¹¹¹⁹ Priyanka Sinha, The constitution of India versus The Unlawful Activities (Prevention) Act, 1967 The constitution of India versus the unlawful activities (prevention) act, 1967 | International Journal of Current Research (2021), <http://www.journalcra.com/article/constitution-india-versus-unlawful-activities-prevention-act-1967> (last visited Jan 14, 2023).

¹¹²⁰ Anjana Prakash, It's time for the government to redeem itself and repeal the UAPA The Wire (2021), <https://thewire.in/law/its-time-for-the-government-to-redeem-itself-and-repeal-uapa> (last visited Jan 14, 2023).

a. The Unlawful Activities (Prevention) Amendment Act, 2004

The Prevention of Terrorism Act, 2002 (POTA), a famously unpopular anti-terror law, was overturned by the UPA administration, which was in power at the time, in the year 2004. Now, the Government's decision to repeal this Act was not their only action; they also included many of its key sections in UAPA, making it a more comprehensive law while giving the Government enormous power. Through this amendment, phrases like "terrorist act"¹¹²¹, "terrorist organisation"¹¹²², and "terrorist gang"¹¹²³ were imported from the prior statute. The amendment act made these important modifications, but it's important to note that, unlike TADA and POTA, this specific law did not include a sunset provision. This change clearly increased the legislation's scope and reach.

b. The Unlawful Activities (Prevention) Amendment Act, 2008

In this year of 2008, the terrorist group *Lashkar-e-Taiba* organised a terrorist attack that resulted in the deaths of numerous innocent people. The group entered the Indian border by sea and attacked in the heart of Mumbai. This catastrophe occurred in our nation's financial capital. Given that the UAPA replaced the TADA and the POTA as the primary anti-terrorism law, the government amended it in response to this, or maybe we should say to prevent any future terrorist activity of this nature from occurring. The inclusion of phrases like "any other means of whatever sort"¹¹²⁴ in the definition of "terrorist activity"¹¹²⁵ provides the government with a lot of leeway to label an act as a terrorist activity, which might have major consequences for a person's civil rights if he is erroneously accused. The rules relating to arrest and detention are the second significant change introduced by this Act. The designated authority has the

¹¹²¹ The Unlawful Activities (Prevention) Amendment Act, 2004, §4(2)(k)

¹¹²² The Unlawful Activities (Prevention) Amendment Act, 2004, §4(2)(m)

¹¹²³ The Unlawful Activities (Prevention) Amendment Act, 2004, §4(2)(1)

¹¹²⁴ The Unlawful Activities (Prevention) Amendment Act, 2008, §4

¹¹²⁵ Id

jurisdiction under Section 43A of the amended Act based on his own belief or suspicion that a person has violated this Act, information obtained from another, lastly any document or other piece of proof just supporting the same, whether from a person or another source.

Thus, the 2008 amendment brought about some significant modifications that might potentially jeopardise an individual's human rights depending on the Government's whim.

c. The Unlawful Activities (Prevention) Amendment Act, 2019

The UAPA has undergone a number of substantial revisions in the past, but the 2019 amendment¹¹²⁶ is by far the most contentious one since it made alterations of a kind that directly interfere with individuals' basic rights. The amendment made to section 35¹¹²⁷ of the parent act gives the government the authority to label "individuals" as "terrorists," whereas before this amendment, an organisation could only be labelled as a "terrorist organisation". If the government "believes" that a person is participating in terrorism, it may classify that person as a terrorist.¹¹²⁸ According to the statute, a person is considered to be involved in terrorism if the government determines that they "participate or commit terrorism," "encourage terrorist activities," "prepare for terrorism," or are otherwise involved in terrorism.¹¹²⁹

Not only is the process of labelling someone as a terrorist arbitrary, but so is the unreasonable solution offered to allow that person to try to be un-labelled as a terrorist. According to the amended section 36¹¹³⁰, an individual must apply to the Central Government directly to have his name removed from the Fourth Schedule. If that application is turned down, the person may next make a request for review to

the Review Committee, which was also created by the Government. Because of this, there has been no court involvement up until this point, which negates the core principle of due process of law.

As a result, if we look closely, we can see that the discretion provided to the government has far-reaching effects in terms of disrupting the Human rights of people who even attempt to express a legitimate protest against any arbitrary exercise of authority by the government.

2. The Universal Declaration of Human Rights (UDHR)

Human rights are privileges that we enjoy simply because we are human; no state has the authority to offer them. We all have these universal rights, regardless of our nationality, gender, ethnicity, race, colour, religion, nationality, or any other position. The right to life is the most fundamental of all, followed by the rights to food, nutrition, education, employment, health, and liberty.¹¹³¹

The first text to identify the essential human rights that need to be universally maintained was the Universal Declaration of Human Rights (UDHR), which was approved by the UN General Assembly in 1948.¹¹³² All international legislation relating to human rights is based on the Universal Declaration of Human Rights (UDHR), which celebrated its 70th anniversary in 2018. Its 30 articles serve as the foundation for all upcoming and existing human rights conventions, treaties, and other legal agreements.¹¹³³

The International Bill of Rights is made up of the UDHR as well as the two agreements, the

¹¹²⁶ The Unlawful Activities (Prevention) Amendment Act, 2019.

¹¹²⁷ The Unlawful Activities (Prevention) Amendment Act, 2019, §5

¹¹²⁸ Id

¹¹²⁹ Id

¹¹³⁰ The Unlawful Activities (Prevention) Amendment Act, 2019, §6.

¹¹³¹ What are human rights?, OHCHR, <https://www.ohchr.org/en/what-are-human-rights> (last visited Jan 15, 2023).

¹¹³² History of the declaration, United Nations, <https://www.un.org/en/about-us/udhr/history-of-the-declaration> (last visited Jan 15, 2023).

¹¹³³ The foundation of International Human Rights Law, United Nations, <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law> (last visited Jan 15, 2023).

International Covenant for Civil and Political Rights and the International Covenant for Economic, Social, and Cultural Rights¹¹³⁴.

3. Examining UAPA : Intersection of Human Rights

Since the UAPA was the primary item of legislation to reduce the frequency of terror acts, the Act's terms are stiffer and non-bailable than those of other criminal offences.¹¹³⁵

A number of clauses also go against the fundamental constitutional protections and the natural justice concept.¹¹³⁶ However, it cannot be disputed that anyone who opposes the existing government system may be subject to this act.¹¹³⁷ In these situations, the strict and unyielding rules present a deadly trap for an innocent person who has been falsely accused under the Act. This imposes unfair and unjustifiable restrictions on a person's human rights.

a. AMBIGUITY IN THE DEFINITION OF "TERRORIST ACT"

The first fault that allows the exploitation of the tough anti-terror law is the arbitrary definition of a "terrorist act" under Section 15 of the Act. The successful implementation of the law depends on this section, which defines what actions may be regarded as terrorist activities and whose violators may be subject to the Act's severe penalties. The clause employs imprecise and arbitrary terms like "likely to threaten" or "likely to strike terror in people" in order to get past the need for men's rea, which is a precondition to carrying out terrorist operations. The clause continues by stating that any behaviour "likely to result in the death of, or harm to, any person

or people" is further justification for proving the likelihood of a terrorist attack.

However, there is no difference made between the crime of engaging in violent acts against the government and the right to free speech and protest.¹¹³⁸ As a result, the State is given enormous jurisdiction to imprison and jail anybody who criticises its policies, practises, or calls for any kind of accountability.

The basic rights of people to free speech and expression, the freedom to demonstrate, the right to liberty and unrestricted movement, and the right against arbitrary imprisonment are all violated by this.¹¹³⁹

b. Excessive Scope of 'Unlawful Activity'

According to Section 2(o), "unlawful activity" is defined as any conduct that has the intention of inciting discontent with the government, whether it be done physically, vocally, in writing, visually, or otherwise.¹¹⁴⁰ The defining phrase states that "unlawful conduct" refers to any behaviour that calls into question the sovereignty and territorial integrity of the country.¹¹⁴¹ The terms used to characterise "illegal behaviour" in the previous section are ambiguous and, given their incredibly broad definition, include nearly any criticism of the government or the nation. Additionally, Section 2(p) allows individuals or any other group of individuals to be deemed an unlawful association for no other reason than that they indirectly support or encourage the first category of individuals in engaging in the

¹¹³⁴ International bill of human rights, OHCHR, <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights> (last visited Jan 15, 2023).

¹¹³⁵ Kanishka Vaish, 'UAPA Act: A Black Letter or a Necessary Evil' (LexLife India, 30 October 2021) <<https://lexlife.in/2021/10/30/uapa-act-a-black-letter-or-a-necessary-evil/>> accessed 15 January 2023

¹¹³⁶ Pragya Barsaiyan, Death Sponsored by the State: How the UAPA toys with Personal Liberty' (BarandBench, 10 August 2021) <<https://www.barandbench.com/columns/death-sponsored-by-the-state-how-the-uapa-toys-with-personal-liberty>> accessed 15 January 2023

¹¹³⁷ Ibid

¹¹³⁸ Former Supreme Court judges raise concerns over misuse of UAPA' (The Hindu, 25 July 2021)

< <https://www.thehindu.com/news/national/former-supreme-court-judges-raise-concerns-over-misuse-of-uapa/article35516005.ece> > accessed 15 January 2023

¹¹³⁹ Aakar Patel, 'UAPA A Tool Of Repression, The Amendment Just Makes It Worse' (Outlook, 10 January 2021)

<<http://www.outlookindia.com/blog/story/india-news-uapa-a-tool-of-repression-the-amendment-just-makes-it-worse-4118>> accessed 15 January 2023

¹¹⁴⁰The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India), § 2(o)(iii).

¹¹⁴¹ The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India), §. 2(o)(ii).

aforementioned activities. This includes citizens who actively participate in lawful protests or criticism.¹¹⁴²

As a result, the Act makes sure that the ruling government in power does not repress the rights to peacefully assemble and protest as an outcome of **Re: Ram Lila Maidan Incident v. Home Secretary Union of India**¹¹⁴³ and the freedom of assembly and expression, including any criticism, as guaranteed by Article 19(1)(a).

¹¹⁴⁴

c. Restricting the Application of Right to be released on bail

While the maxim "bail and not jail" is acknowledged in **State of Rajasthan v. Balchand**¹¹⁴⁵ and occasionally reaffirmed in several decisions by the Apex Court and High Courts, Section 43(D)(5) of the Act¹¹⁴⁶ gives the court the discretion to restrict bail requests and deny them altogether. A cursory reading of Section 43(D)(5) reveals a special exaltation of "bail rejection" above the granting of bail, which, in turn, expressly grants the Court an unrestricted degree of authority.

With a few exceptions, the UAPA offers both regular and default bails, similar to the 1973 Code of Criminal Procedure ("CrPC"). The courts have the power to grant bail in cases where the CrPC prohibits it, and bail can only be denied if the judges believe it essential. However, the UAPA's Section 43D (5) somewhat modifies the standard process, which restricts the extent of the judge's authority in granting bail in situations of "terrorist activities"¹¹⁴⁷. Despite the fact that this clause was added to create a law allowing for the detention of terrorists for longer

periods of time, it has been used to target innocent students, activists, and lawyers who are questioning the government's policies as well as those who have been accused of violent riots and protests.

4. The rise in the number of arrests made under the Act

Between 2014 and 2020, 6,900 UAPA instances were registered, according to crime records. This indicates that 985 instances were reported on average per year. In the seven years, 2019 had the most instances (1,226), followed by 2018.¹¹⁴⁸ (1,182 cases). In 2020, this figure will have reduced by 35% to 796. The number of cases under inquiry is steadily increasing at a 14.38% annual rate. The number of cases awaiting investigation was 1,857 in 2014, increased by 37% (the greatest one-year spike) to 2,549 in 2015, and is currently expected to be 4,021 in 2020, according to the most recent data. During the seven-year period (2014-2020), an average of 1,834 cases were put to trial, accounting for 40.58% of the average yearly cases up for inquiry (4,250)¹¹⁴⁹. However, just 4.5% of them complete their studies each year. In these circumstances, the accused might be found guilty, released, or acquitted. If an accused is released, they can be re-arrested after additional investigation since release typically signifies there is no prima facie evidence against the accused¹¹⁵⁰. In the cases that went to trial between 2014 and 2020, on average, 72.4% were dismissed or found not guilty, while 27.5% were found guilty. In these seven years, 253 people have been found guilty, 57 cases have been dropped, and 493 people have been cleared of all charges.¹¹⁵¹

¹¹⁴² The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India), §. 2(p)(i).

¹¹⁴³ Re: Ramlila Maidan Incident v. Home Secretary, Union of India & Ors., (2012) 5 SCC 1

¹¹⁴⁴ INDIA CONST. art. 19(1)(a).

¹¹⁴⁵ State of Rajasthan v. Balchand, AIR 1977 SC 2447

¹¹⁴⁶ The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India), § 43D(5).

¹¹⁴⁷ Ankit Yadav, 'Bail under UAPA: A tough task'(IndianJournalofLaw andPublicPolicy, 08 September 2021) <<https://ijlpp.com/bail-under-uapa-a-tough-task>> accessed 16 January 2023

¹¹⁴⁸Gautam Doshi, In seven years, 10,552 Indians have been arrested under UAPA – but only 253 convicted Scroll.in (2021), <https://scroll.in/article/1010530/in-seven-years-10552-indians-have-been-arrested-under-uapa-and-253-convicted> (last visited Jan 18, 2023).

¹¹⁴⁹ National Crime Records Bureau, <https://ncrb.gov.in/en> (last visited Jan 18, 2023).

¹¹⁵⁰ Gautam Doshi, In seven years, 10,552 Indians have been arrested under UAPA – but only 253 convicted Scroll.in (2021), <https://scroll.in/article/1010530/in-seven-years-10552-indians-have-been-arrested-under-uapa-and-253-convicted> (last visited Jan 18, 2023).

¹¹⁵¹ Gautam Doshi, In seven years, 10,552 Indians have been arrested under UAPA – but only 253 convicted Scroll.in (2021),

5. Stand of court on UAPA

Since 2017, the Supreme Court and High Courts have shown an increasing trend of judicial activism in an effort to stop the serious human rights breaches brought on by the many severe provisions of UAPA Legislation. The possibility that the totalitarian statute will be overturned soon has grown, even if there are still a number of cases being tried under the Act that are beyond the jurisdiction of Constitutional Courts. This is because of the judicial efforts made in several UAPA cases.

In the recent case of **Fakhrey Alam v. State of Uttar Pradesh**¹¹⁵², the Apex Court addressed a case under Section 18 of the UAPA¹¹⁵³ and granted default bail to the arrestee under Section 167 of the Code of Criminal Procedure¹¹⁵⁴, holding that the right to default bail under Section 167 is a fundamental right and as such, shall apply to those detained under the UAPA Act. Therefore, the states are prohibited from abusing their right to submit further chargesheets during the 180-day extension period. The Supreme Court also disregarded the provision in **Union of India v. K.A. Najeeb**¹¹⁵⁵, as was already noted. It addressed the strong limitations on statutory bail under Section 43D(5)¹¹⁵⁶ and ruled that bail granted by constitutional courts based on basic rights was preferable.

However, in the National Investigation **Agency v. Zahoor Ahmad Shah Watali**¹¹⁵⁷ case, the UAPA's already constrained provision for regular bail was given a limited interpretation by the Supreme Court. When deciding bail under UAPA

<https://scroll.in/article/1010530/in-seven-years-10552-indians-have-been-arrested-under-uapa-and-253-convicted> (last visited Jan 18, 2023).

¹¹⁵² Fakhrey Alam v. State of Uttar Pradesh, Criminal Appeal No. 319 of 2021 (arising out of SLP(Crl) No. 6181/2020).

¹¹⁵³ The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India), § 18.

¹¹⁵⁴ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India), s. 167(2).

¹¹⁵⁵ Union of India v. K.A. Najeeb, 2021 SCC Online SC 50

¹¹⁵⁶ The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India), § 43(D)(5)

¹¹⁵⁷ National Investigation Agency v Zahoor Ahmad Shah Watali (2019) 5 SCC 1

and evaluating whether the evidence presented by the prosecution is adequate or not, the Court held that it is not even permitted for courts to engage in a thorough analysis of the prosecution case. This created another obstacle for the judiciary to overcome.¹¹⁵⁸ An almost de facto restriction on the granting of bail under the UAPA would result from this, depriving the accused of their right to a fair trial, the ability to ask for release, and the freedom from lifelong pretrial incarceration. Due to the limited nature of the clause and the Apex Court's restrictive position, it is thus very impossible for the accused to get bail and there is an unjustly tight restriction on their freedom.

6. Conclusion

In order to preserve a country's sovereignty and integrity, national security is of the highest significance. The government of a sovereign nation must build efficient anti-terror legislation that could defend the state and its population from such attacks in order to battle terrorist forces or external aggression committed by any insurgency. The fundamental human rights protected by our Constitution and the Universal Declaration of Human Rights cannot be compromised by the unrestrained exercise of authority (UDHR). Additionally, the International Covenant on Civil and Political Rights and other multilateral international accords fundamentally uphold these rights (ICCPR).

It is more evident than ever that the authorities are using UAPA against religious minorities, activists, nonviolent demonstrators, and those who are calling for accountability and decent governance. According to government statistics, there have been 72% more arrests made under the UAPA in 2019 than there were in 2015¹¹⁵⁹. The key concern being addressed here

¹¹⁵⁸ Murali Krishnan, 'UAPA restricts role of courts in grant of bail; Supreme Court judgment in Watali case has tied hands of defence: Justice Gopala Gowda' (Bar and Bench, 24 July 2021)

<<https://www.barandbench.com/news/litigation/uapa-restrict-courts-grant-of-bail-supreme-court-judgement-watali-case-justice-gopala-gowda>> accessed 16 January 2023

¹¹⁵⁹ Bilal Kuchay, 'With 2% convictions, India's terror law more a 'political weapon' (Aljazeera, 02 July 2021) <<https://www.aljazeera.com/news/2021/7/2/india-terror-law-convictions>>

is the extent and scope of the authority used by the government to invoke UAPA regulations.

Due to its strict provisions, the presumption of guilt, difficulty in obtaining bail, the lengthy period for filing the charge sheet, and restricted judicial intervention, the harsh UAPA law is the perfect tool for suppressing free speech and dissent by imprisoning innocent people for lengthy periods of time before the trial. In such circumstances, "justice" is not served by the defendant's final acquittal after several months, years, or even decades.

As *Justice Lokur* correctly stated o, the issue of extended trials culminates in the process itself becoming the penalty¹¹⁶⁰. The legislature must finally replace the arbitrary and pseudo-democratic provisions to revive the spirit of rule of law and democratic justice as promised by the Indian Constitution, regardless of the higher judiciary's emphasis on the harsh nature of UAPA legislation.

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¹¹⁶⁰ Abhilasha Chattopadhyay, 'Long Trial Process Tends to Become Punishment'(News Click, 06 July 2021) <<https://www.newskin/long-trial-process-ends-become-punishment-justices-critique-ailfi-UAPA>> accessed 18 January 2023



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