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CRIMINALISING DISSENT: CRITICAL ANALYSIS OF THE UAPA'S BAIL REGIME AND ITS IMPACT ON CIVIL LIBERTIES

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ABSTRACT

This research paper critically discusses the Unlawful Activities (Prevention) Act, 1967 (UAPA), and speculates specifically on its bail regime in Section 43D(5)¹³⁰² and its effects on the civil liberties in India. The research methodology utilized in the study is doctrinal legal research by examining the statutory provisions, judicial interpretations, and comparative structures. The results disclose that the restrictive bail clauses of UAPA have completely changed the nature of criminal justice into a system where the absence of bail is the rule and not the exception. The conviction rate of the act, with only 2.4 percent between 2014 and 2020, and 95.4 percent pending trial, has turned the process into a punishment.¹³⁰³ The study shows that UAPA has been used in an organized manner to criminalize opposition, attack human rights activists, and curtail legal democratic demonstrations. The paper has come out with a conclusion that UAPA, as it is, does not comply with the basic constitutional principles as outlined in Articles 14, 19, and 21, and that it requires extensive reforms to meet the needs of constitutional safeguards without necessarily jeopardizing the national security interests.

Keywords: Bail jurisprudence, Civil liberties, Constitutional rights, Counter-terrorism legislation, Dissent criminalization, UAPA

GRASP - EDUCATE - EVOLVE

¹³⁰² Unlawful Activities (Prevention) Act, 1967, § 43D(5) (India).

¹³⁰³ Nat'l Crime Records Bureau, *Crime in India 2020: Statistics* (Gov't of India 2021).

INTRODUCTION

Initially passed with an intention of dealing with unlawful activities that have been threatening the sovereignty and territorial integrity of India, the Unlawful Activities (Prevention) Act, 1967¹³⁰⁴, has in the present day become one of the most controversial laws in modern India. What started as an anti-secessionist law has, over the years, particularly in 2004, 2008, and 2019, changed into an anti-terrorism law with unparalleled detention and prosecution powers. The progress of the Act, from a fairly harmless act concerning unlawful associations to a draconian anti-terror statute, indicates the evolving situation in India regarding security. The amendment of 2004 came in with Chapter IV addressing terrorist activities, and the 2008 amendment, which came as a reaction to the 2008 terror attacks in Mumbai, came in with the infamous Section 43D(5) that highly limits bail provisions.¹³⁰⁵ The latest 2019 amendment provided government authority to declare individuals terrorists, which increases the scope of the Act beyond the organizational label.

The underlying research question will be the conflict between the need to guarantee national security and the constitutional rights to liberty. The bail regime in UAPA and specifically Section 43D(5) has established a legal system whereby the presumption of innocence, which forms the basis of criminal jurisprudence, has been inverted. This section obliges the courts to refuse to offer bail when it is proved by the court that there are reasonable grounds to believe that the charge against such an individual is prima facie true, which places an almost insurmountable obstacle to the liberty before trial. The statistical data demonstrate the disturbing pattern of the Act: among 10,552 individuals who were arrested in accordance with UAPA, 253 were found guilty, which is a 2.4 per cent conviction rate.¹³⁰⁶ At the same time,

95.4 percent of the cases await trial, and many accused spend numerous years in custody, and their cases have not been decided. The second vital issue becomes the systematic abuse of the Act as a weapon in relation to the civil society activists, human rights defenders, political dissenters, and as a political tool. The third serious issue consists of the fact that the UAPA implementation violates the Constitution and especially collides with Articles 14, 19, and 21 of the Constitution, which assure equality, freedom of expression, and life and liberty, respectively.

The study aims at four major goals:

- 1.** To critically examine the constitutionality of the bail regime of UAPA and, more specifically, Section 43D(5) and its effect on the fundamental right provided by the Constitution.
- 2.** To investigate how UAPA has been interpreted by the courts through landmark cases and measure the impact of the Act implementation on civil society, dissent, and democratic politics.
- 3.** To contrast the anti-terrorism laws in India with the international practices and laws, and finally suggest far-reaching reforms to strike a balance between national security and constitutional provisions.

The paper tries to address three basic research questions. What impact has Section 43D(5) of UAPA had on the conventional jurisprudence of bail in India, and to what extent does the present system of bail breach the constitutional principles of liberty and due process? How has the implementation of UAPA affected civil liberties and democratic dissent, and, more specifically, is there an impact on the targeting of activists and minorities? What are the ways in which the anti-terrorism laws of India are aligned with the international norms of human rights, and what are the reforms that need to be made towards the UAPA to meet the constitutional provisions and ensure the goals of security?

The study is based on the doctrinal methodology of law, examining such primary materials as statutes, constitutional clauses,

¹³⁰⁴ Unlawful Activities (Prevention) Act, 1967 (India).

¹³⁰⁵ Unlawful Activities (Prevention) Act, 1967, § 43D(5) (India).

¹³⁰⁶ Nat'l Crime Records Bureau, *Crime in India 2020: Statistics* (Gov't of India 2021).

judicial rulings, and parliamentary documents. Secondary sources include the articles of scholars, the reports of human rights organizations, governmental statistics, and comparative legal research. The paper follows a critical analytical perspective and evaluates the nexus between the counter-terrorism law and the constitutional rights based on the analysis of the case law, statistical assessment, and comparative jurisprudence. The study concentrates more on the bail regime of UAPA and the constitutional interpretation of the same, and more specifically, Section 43D(5). Although the present paper takes into account the wider range of problems the UAPA addresses, it does not refer to other aspects of it and focuses solely on the aspect of bail and the way it affects civil liberties. The scope of time is 2008 to 2025, and the important judicial pronouncements and case studies are examined in detail. The weakness involves the use of the available official data, which might not present the entire scope of UAPA implementation in all states. Moreover, the concentration on bail provisions, even though exhaustive, does not cover other problematic issues related to the Act, like surveillance authorities or standards of evidence.

CHAPTER 1: CONCEPT AND HISTORY

1.1. Origin and Legislative Evolution of the UAPA.

The Unlawful Activities (Prevention) Act came into existence in 1967 at a time when the newly independent Indian state was confronting great internal security issues. The development of the Act is possible to trace back to the Constitution (Sixteenth Amendment) Act, 1963¹³⁰⁷, which gave the Parliament the authority to enforce rational limitations on basic rights in the interest of sovereignty and the integrity of India. This amendment made to the Constitution gave the legislative basis for the enactment of UAPA.

At the beginning, the Act was developed as a tool to counteract acts that target the territorial

integrity and sovereignty of India, especially in secessionist acts in different regions of the country. The original Act referred to an unlawful activity as activities that were intended to cause cession or secession of Indian territory, and the state was given the means to declare associations as unlawful and prescribe the consequences of membership in such organizations.

The changing security paradigm of India is reflected in the changes to the Act through several amendments. In 2004, the new amendment was a landmark, as it brought a new Chapter IV of the act, named Punishment of Terrorist Activities. This amendment was made after the repeal of the Prevention of Terrorism Act (POTA) in 2004; the majority of the rules of the POTA found their way to the UAPA. Integration has made UAPA cease to be a law on unlawful associations in India, but it has become the main anti-terrorism law.

1.2. The Amendment of 2008: Birth of Section 43D(5).

The amendment of 2008, which came about due to the 2008 Mumbai terror attacks, gave a number of rigorous provisions, with the most notable being Section 43D(5). This clause essentially changed the jurisprudence of bail in cases involving terrorism by establishing a presumption to the contrary. This is unlike in the normal criminal law, where the rule is bail, and the exception is jail, whereas with UAPA cases, the rule is jail, and the exception is bail.

According to the provision, in case the court, after reading the case diary and chargesheet, has any rational reason to believe that the accusation is prima facie true, the accused cannot be released on bail. This posed a near-insurmountable obstacle to convicted individuals, as they are unable to produce exculpatory evidence and question prosecution witnesses before the bail hearing.

1.3. The 2019 Amendment: Individual Terrorist Designations.

¹³⁰⁷ The Constitution (Sixteenth Amendment) Act, 1963 (India).

The latest notable amendment was made in 2019, which gave the government more authority to include not only organizations but also individuals as terrorists. This was created by the Unlawful Activities (Prevention) Amendment Act, 2019, in which the central government is authorized to include persons in the Fourth Schedule of the Act, should it believe that they engage in terrorism.

This amendment has acquired immense disapproval as it may be aberrantly infringing on basic rights as stipulated in Articles 14, 19, and 21. Critics claim that it offers undisciplined authority to the executive to declare anybody a terrorist without judicial checks and balances, which probably violates the right to reputation and dignity. Bail Restrictions Conceptual Framework.

The conceptual basis of the bail limits established by the UAPA is based on the evaluation of the legislature that crimes involving terrorism should be treated exceptionally, because of their seriousness and the possible effects they could have on national security. The philosophy behind this is that normal bail provisions do not meet the special needs that may arise with regard to the terrorism issue.

But this theoretical construct has been disputed on several fronts. The generalized meaning of the term terrorist act provided in Section 15 of UAPA includes those acts that would otherwise be uncharacterized as terrorism, such as acts that are likely to purport to the unity, integrity, or security of India. Such a broad definition, coupled with restrictive bail policies, makes the system such that a vast amount of actions may lead to extreme repercussions.

1.4. History of Anti-Terror Laws in India.

The formulation of UAPA is to be taken in the context of the overall experience of anti-terrorism laws in India. Terrorist and Disruptive Activities (Prevention) Act (TADA) was enacted in 1985¹³⁰⁸, and this was the first anti-terrorism

law in India. TADA was heavily criticized because of its abuse by minorities and political dissidents, which contributed to the end of its renewal in 1995.

The successor of TADA was the Prevention of Terrorism Act (POTA), which came into effect in 2002¹³⁰⁹ and was criticized like its predecessor. It was repealed in 2004. The trend of formulating and abusing laws against terrorism and the eventual repeal of these acts is symptomatic of the undue clash between the security demands and civil liberties in the Indian democratic system. The permanence of UAPA and the multiple amendments imply another strategy, that is, the state has opted to establish a permanent law with additional powers and scope. This means that UAPA cannot be affected by the periodic review that saw TADA and POTA being repealed, which could be the reason why UAPA has continued to grow despite being reported to be abused.

CHAPTER 2. STATUTORY FRAMEWORK

2.1. Architecture of Section 43D(5).

The UAPA section 43D(5) is one of the most restrictive provisions of bail in the Indian criminal law.¹³¹⁰ It also provides a two-level test to grant bail applications wherein the court should first investigate whether there is a reasonable doubt that the accusation is prima facie accurate, by reference to the case diary and chargesheet; and in case this test is failed, then only can traditional bail considerations be applied by the court.

The statutory text of the Section 43D(5) is as follows: "Despite anything in Code of Criminal Procedure, 1973, no person charged with an offence subject to penalty under this Act shall, in case of his detention, be released on bond or bail without the Public Prosecutor having been afforded an opportunity of opposing the request, and where the Public Prosecutor opposes the request, the court shall be satisfied that there is in existence reasonable cause to

¹³⁰⁸ Terrorist and Disruptive Activities (Prevention) Act, 1985 (India).

¹³⁰⁹ Prevention of Terrorism Act, 2002 (India).

¹³¹⁰ Unlawful Activities (Prevention) Act, 1967, § 43D(5) (India).

believe that such person has not committed such offence and that he is unlikely to repeat the commission of.¹³¹¹

This is a provision that practically overturns the burden of proof on applications of bail. Whereas normal criminal law demands that the prosecution prove why the accused should not be given bail, Section 43D(5) demands that the accused prove innocence and that he or she is unlikely to commit future offenses. This change is the ultimate reversal of the principle of presumption of innocence, which forms the basis of the criminal justice system.

2.2. Comparative Study on Bail Provisions.

The restrictions of UAPA are especially harsh when compared with the provisions of bail in the other special legislations. There are similar twin conditions placed in the Prevention of Money Laundering Act (PMLA), though discretion of the judicial system has been allowed in extraordinary cases. There are also restrictive bail provisions of the Narcotic Drugs and Psychotropic Substances Act (NDPS), although there is a greater clarity on the use of conditions.

Section 43D(6) of UAPA further impairs by saying that the limitations imposed in Section 43D(5) are supplementary to limitations imposed by the Code of Criminal Procedure or any other law.¹³¹² This builds up an effect in which accused individuals have to meet the conditions of UAPA as well as the general bail conditions in the law.

2.3. Explanation of the Terrorist Act and Its Connotations.

Section 15 of UAPA defines the term terrorist act, which is a broadly phrased sentence that includes acts that are likely to pose a threat to the unity, integrity, security, or economic security of India or are likely to cause terror to the people.¹³¹³ This definition is so broad that it forms a large net that may possibly include all

types of protests, dissent, and civil disobedience. The fact that economic security is included as a safeguarded interest has special consequences for the labor movements, environmental demonstrations, and economic activism. The kind of action that interferes with economic activity even temporarily, but peaceably, may possibly fall under this definition, and as a result, may expose the participants to the harsh conditions of UAPA.

2.4. Procedural Safeguards and Their Adequacy.

UAPA offers some procedural protection, such as the necessity of prosecution by the government in a sectional case, and the creation of special courts to hear cases. The safeguards have, however, been found to be insufficient to thwart abuse. Other government sanction requirements, rather than acting as a check, have, in many cases, been a device of political control of prosecutions.

The special courts provision was aimed at providing quick trials, which were overdue due to the fears of long-term imprisonment. But a review of statistics reveals that special courts have not kept this promise, as 95.4% of the cases are yet to be tried.¹³¹⁴ Lack of special courts and judges has added to the pendency of colossal proportions, and this has been a defeat of expedited justice.

2.5. Overlapping with the Constitutional Provision.

The legal framework of UAPA overlaps with some of the provisions of the Constitution, becoming a source of possible tension. Article 21 guarantees life and personal liberty, and also has the right to a speedy trial, which is defeated by the implementation of the Act. The safeguard against arbitrary arrest and detention of Article 22 is undermined by the long periods of detention provided by UAPA that can extend to a maximum of 180 days without a chargesheet.

¹³¹¹ Unlawful Activities (Prevention) Act, 1967, § 43D(5) (India).

¹³¹² Unlawful Activities (Prevention) Act, 1967, § 43D(6) (India).

¹³¹³ Unlawful Activities (Prevention) Act, 1967, § 15 (India).

¹³¹⁴ Nat'l Crime Records Bureau, *Crime in India 2020: Statistics* (Gov't of India 2021).

The subjective requirements and general definitions of the Act also pose a concern in the context of the equality requirement of Article 14 of the Constitution, since it offers an option to its discriminatory implementation. The ambiguous language makes it possible to selectively enforce, which can be used to attack certain communities or ideological groups, but leave other people who do the same activity without punishment.

2.6. Administration of the Law and Law Enforcement Agencies.

UAPA gives various agencies the authority to investigate, such as state police, National Investigation Agency (NIA), and central agencies such as the Central Bureau of Investigation (CBI). Since the creation of the NIA in 2008, it has been the major investigating body of UAPA cases, with 95.54% of the cases investigated by the NIA being found guilty.

Nevertheless, such a large conviction rate on the cases investigated by NIA compares with the general UAPA conviction rate of 2.4. This lack of consistency implies that there might be problems with the selection of cases and the quality of investigations, or the prosecution standards of various investigating agencies. The NIA also creates issues of federalism because it centralizes the investigation process, making state governments less in control of prosecutions in their area.

2.7. Amendment Process and Parliamentary Directorate.

The amendment of UAPA has generally been preceded by significant security incidents, and there has been minimal parliamentary discussion and questioning. The 2008 amendment came in a few months after the attacks in 2008 at Mumbai, and the 2019 amendment was enacted even amidst high opposition issues. Such a reactive style in legislation has led to laws that are based on short-term security issues rather than the long-term constitutional consequences. There are no sunset provisions of the UAPA amendments,

and this implies that emergency provisions have become permanent aspects of the law. Through its permanency as compared to TADA and POTA, which had expiry date mandates that necessitated periodical review, UAPA has made it hard to assess the need and effectiveness of the law.

CHAPTER 3: JUDICIAL APPROACH

3.1. Historical Supreme Court Interpretations.

- **NIA v. Zahoor Ahmad Shah Watali (2019): The Restrictive Standard.**¹³¹⁵

The case of NIA v. the Supreme Court. The first binding interpretation of Section 43D(5) was made by Zahoor Ahmad Shah Watali, which provided a limiting structure of bail under UAPA. The Court decided that the level of satisfaction necessary to establish the accusations as prima facie true is lighter than that of other special enactments, and it is even harder to secure bail.

Justice Khanwilkar, who wrote this case on behalf of the Court, clarified that the prosecution should be believed in court when it comes to the setting of bail without a thorough scrutiny of the evidence presented before the court. Such interpretation abolished judicial discretion in the consideration of the strength of the prosecution's case, to such an extent that the cash hearing in most cases is a mere formality.

Watali's judgment produced what academics have called a jurisprudence of suspicion, in which accusations become all that is necessary to deny bail. The observation by the Court that the material gathered by investigating agencies be taken as true until proven otherwise in essence turns the burden of proof against the suspect in a bail hearing.

- **Union of India v. K.A. Najeeb (2021): The Constitutional Exception.**¹³¹⁶

In the case of K.A. Najeeb, the Supreme Court made a significant exception to the Watali

¹³¹⁵ Nat'l Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1 (India).

¹³¹⁶ Union of India v. K.A. Najeeb, (2021) 3 SCC 713 (India).

regime when it acknowledged that extended detention in the absence of trial might contravene Article 21 rights. It was concluded that Section 43D(5), per se, does not deprive the power of the Constitutional Courts to grant bail based on the violation of Part III of the Constitution.

The Najeeb case defined that trial delays that pass beyond the limits of reasonableness and persons accused of a crime who have already suffered significant portions of their possible sentences did not deny constitutional courts the ability to set bail. This provided a time-out on the otherwise straining bail limitations under UAPA.

The practical effect of the Najeeb precedent has, however, had little effect. The Court limited this constitutional authority to the High Courts and the Supreme Court and left out special courts that deal with most cases of the UAPA. This has curtailed access to the precedent by most of the accused individuals who cannot afford to carry out appellate litigation.

- **Thwaha Fasal and Other Cases: The Development of Jurisprudence.**

More recent rulings in cases such as Thwaha Fasal have started using aspects of mens rea in their decision to regard bail under UAPA.¹³¹⁷ These rulings will indicate a gradual movement toward the need to demonstrate actual intent as opposed to some form of association with the activities that are prohibited. Nevertheless, such developments are not uniform, and an extreme reliance is placed on individual factual situations.

3.2. Inconsistency and Variations in the High Courts.

Various High Courts have taken different positions on UAPA bail applications, which have brought about inconsistencies in the application of Section 43D(5) across jurisdictions. The Delhi High Court has strongly adhered to a restrictive position, especially in cases that happened as a result of the 2020

riots. Other High Courts have, however, been more amenable to review of the quality of evidence in bail proceedings.

The Karnataka high court ruling in the Saleem Khan case is an example of a more liberal approach, as the court concluded that, in order to invoke Section 43D(5) there must be a prima facie connection between the organization and proscribed organizations.¹³¹⁸ According to this approach, the courts are allowed to participate in the substantive analysis of accusations, instead of taking them at face value.

3.3. Special Courts and Trial Court Practices.

The restrictive approach that was set in Watali has often been adhered to in special courts that are set to hear UAPA cases. The small jurisdiction of these courts and the large caseloads, with insufficient resources, have led to perfunctory bail hearings, which hardly produce positive results on behalf of accused persons.

The management of special courts was to be concentrated on UAPA cases to bring about expertise and efficiency. The specialization has also, however, created the institutional capture where the judges have become used to denying bail as a norm. It has become customary to pre-trial detain in UAPA cases, and it is deemed the norm instead of an extraordinary move.

3.4. Review of Government Designations in the Judiciary.

In the determination of organizations and individuals as terrorists under UAPA, courts have been quite lenient to executive decisions. Judicial review of such designations has been mostly procedural, meaning that it has concerned itself with adherence to statutory demands as opposed to reviewing evidence.

This narrow judicial review is indicative of the Court being cautious against the second-guessing of the executive judgment with regard to security threats. It has practical implications

¹³¹⁷ Thwaha Fasal v. Union of India, (2021) 7 SCC 1 (India).

¹³¹⁸ Saleem Khan v. State of Karnataka, 2022 SCC OnLine Kar 3456 (India).

for the applications of bail, though, because being linked with the specified bodies is practically a death sentence as far as bail under Section 43D(5) is concerned.

3.5. Challenges to Constitutional Approaches and Their Results.

A number of constitutional issues against the bail provisions of UAPA have been taken to court, but have not been resolved satisfactorily. The future petitions in Sajal Awasthi¹³¹⁹ and Association of Protection of Civil Rights v. Union of India.¹³²⁰ The challenge against the amendments of 2019 is that they violate Articles 14, 19, and 21.

The recent ruling by the Supreme Court to permit the High Courts to listen to constitutional challenges against UAPA would worry that these issues are complex and significant. Nevertheless, the fact that the High Courts are somehow fragmented in their approach could result in contradictory interpretations, which would only be solved by the Supreme Court in the future.

3.6. Judicial Comparative Approaches.

The policy of Indian courts in relation to anti-terrorism laws may be compared with the policies of other democracies. The UK judicial system has continued to have a stronger questioning of anti-terrorism actions and demanded a clear demonstration of need and relevance. Although US courts have been very accommodating to the executive authority in matters relating to national security, there have been procedural protections that have existed in the UAPA cases.

The European Court of Human Rights has further put in place definite criteria when it comes to pre-trial detention in the cases of terrorism, which entail revision by the judicial system after every turn and evidence of the ongoing necessity. These global precedents imply other ways that create a balance between the

security issues and individual rights in a better manner than the Indian system currently in place.

CHAPTER 4: COMPARATIVE AND CRITICAL ANALYSIS

4.1. Global Standards and Human Rights Structures.

The bail regime of UAPA is highly problematic when compared to the international human rights standards. The International Covenant on Civil and Political Rights (ICCPR) of which India is a signatory under Article 9, ensures that no one can be arbitrarily arrested or detained, and provides that whenever an arrest is made, the person arrested must be taken before a judge as soon as possible.¹³²¹

Article 11 of the UDHR provides the presumption of innocence as the central concept: "Every accused person has the right to innocence before guilt is proved, in penal matters."¹³²² Section 43D(5) of UAPA directly runs counter to this principle when the accused persons are supposed to demonstrate their innocence when placed on bail.¹³²³

Article 17 of the ICCPR forbids any form of arbitrary or unlawful intrusion of privacy, whereas UAPA permits search and arrest on the basis of personal knowledge of officers without judicial warrants. This clause is against international rules where investigative measures of intrusion require a judge's sanction.

4.2. Comparison with the UK Anti-Terrorism Laws.

In order to assess the provisions of UAPA, the Terrorism Act 2000 of the United Kingdom could be of useful comparison.¹³²⁴ Although both laws are concerned with the same security issues, their pre-trial detention approaches differ to a great extent. The UK law initially provided 28

¹³¹⁹ Sajal Awasthi v. Union of India, W.P. (C) No. 1076/2019 (India).

¹³²⁰ Ass'n for Protection of Civil Rights v. Union of India, W.P. (C) No. 1083/2019 (India).

¹³²¹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

¹³²² Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

¹³²³ Unlawful Activities (Prevention) Act, 1967, § 43D(5) (India).

¹³²⁴ Terrorism Act 2000, c. 11 (U.K.).

days of pre-charge detention, but it was later cut to 14 days after judicial and parliamentary pressure.

UAPA, on the contrary, allows detention of 180 days without a charge sheet, almost thirteen times as much as the existing UK provisions. Under the UK system, there should also be a regular judicial review of the detention, as magistrates hear on a regular basis to determine the need to keep a prisoner in custody. UAPA has no such protections, which means that prolonged detention is not accompanied by any significant judicial attention.

The UK model of handling cases involving bail in the context of terrorism upholds the discretion of judges offered with means by which a prosecutor may argue against release due to security considerations. The courts also have powers to give conditional bail with necessary safeguards, which UAPA does not have, once the charges are framed, which have almost no bail.

4.3. Due Process Protections and USA PATRIOT Act.

The USA PATRIOT Act, which was adopted as a result of the 9/11 attacks, increased surveillance and detention authority and did not violate the constitutional rights of U.S. citizens and legal residents.¹³²⁵ Suspected terrorists who are not citizens may be imprisoned for up to a period of seven days without trial, much less than the UAPA's 180 days.

The US system does not deny habeas corpus rights, and as such, any arrested individual can question his or her detention in federal courts. Due process is a guarantee in the Constitution, even when it comes to national security issues, and the courts retain their power to review executive decisions on detentions. Though flawed, these protections offer greater protection in comparison with the UAPA framework.

¹³²⁵ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, Pub. L. No. 107-56, 115 Stat. 272 (2001).

4.4. Violation of Conjunctural Rights and Basic Rights Constitutional Analysis.

- **Article 14: Freedom from Discrimination and Equality before the Law.**¹³²⁶

The discriminatory nature of UAPA is of a concern in the case of the guarantee of equality before law in Article 14. The statistical analysis indicates that religious minorities (especially Muslims) and marginalized populations (Dalits and Adivasis) are disproportionately targeted. The loose definitions and subjectivity of the Act make it possible to selectively enforce on certain groups whilst causing exemption of other groups that might be carrying out the same activities.

The example of the Delhi riots is a glaring demonstration of discriminatory usage. As hate speech by political leaders is clear and preceded the violence, the prosecutions have been almost entirely against student activists and protesters against the Citizenship Amendment Act. This is a discriminatory pattern of prosecution that contravenes the equal protection provisions under Article 14.

- **Article 19: The Freedom of speech and expression.**¹³²⁷

The effect of UAPA on the freedom of speech goes beyond the explicit limitations to have a chilling effect on legitimate democratic engagement. The wide definition of terrorist activity that comes as a result of the Act includes speech that could encourage a feeling of hostility among various groups, and therefore could make political criticism and social comment illegal.

The examples of journalists, activists, and academics charged with UAPA prove that the law becomes an instrument for challenging the freedom of expression. The very fact that UAPA charges can be leveled has made many hesitate to attend the protests or voice their opposing opinions, contributing to the fact that the democratic discourse is, in fact, narrowed.

¹³²⁶ India Const. art. 14.

¹³²⁷ India Const. art. 19.

The international human rights law is aware that any limit to the expression should be necessary, proportional, and limited by law with adequate specificity. These tests are not met with UAPA undefined language and severe punishments, which results in the situation where the freedom of speech is likely to be labeled as a crime because of the arbitrary interpretation of state power.

- **Article 21: Right to life and personal liberty.**¹³²⁸

The most basic objection to UAPA is that it contravenes the right of life and personal liberty of Article 21. The Supreme Court has identified that this right provides the right to a speedy trial, which is being systematically denied in UAPA cases. Having 95.4% of the cases pending trial and

an average jail time longer than the possible sentences, the process has turned into the punishment itself.

The killing of Stan Swamy in custody is the best example of the human price of the harsh provisions of UAPA. The 84-year-old tribal rights activist was killed while awaiting trial after being refused the basic amenities and medical care. His case is the worst implications of a system where detention is more important than due process.

The procedural due process requirements contained in Article 21 require that fair and reasonable procedures be used when one is being deprived of liberty. The inversion of the burden of proof during the bail process in UAPA contravenes these standards since it places the accused persons on the burden to demonstrate their innocence without the knowledge of the prosecution's evidence and without the right to cross-examine the witnesses.

4.5. Dissent and Civil Society Targeting.

Systematic abuse of UAPA against human rights defenders, civil society, and political dissenters is empirically supported. Companies such as

People's Union for Civil Liberties (PUCL) and human rights groups have reported a tremendous amount of evidence of the weaponization of the Act on legitimate democratic practices.

The Bhima Koregaon case is no exception, and 16 activists were arrested on allegations of promoting violence during a Dalit commemoration. The suspects are leading thinkers, attorneys, and social workers who have decades of experience serving the marginalized communities. The prosecution has never been able to come up with credible evidence to implicate these people in violence or terrorism despite several years of investigation.

The case studies show a pattern: the UAPA charges are pressed against activists and critics at a time when political tension is considered, and they help get influential voices out of the discussion without bearing the examination, which would have been provided by regular crime prosecution.

4.6. Caste-Based and Communal Targeting.

The disproportionate effect of UAPA on religious minorities and marginalized communities is proven by statistical analysis. The Delhi riots case shows that of 18 suspects, 16 are Muslims, although it is very evident that the riots were created by majority community groups and had political ties.

Its implementation in tribal regions has been especially troublesome, as the indigenous people have been prosecuted on the grounds of claiming land rights or opposing displacement initiatives. This confusion between the lawful tribal activism and the so-called Maoist activism has resulted in a volume of UAPA misuse in such states as Chhattisgarh, Jharkhand, and Odisha.

4.7. Economic and Social Impact.

- **Effect on Social Life and Community.**

The radical provisions of UAPA have devastating effects on the families of accused individuals. The rejection of the bail implies that the breadwinners are stripped of their families for a

¹³²⁸ India Const. art. 21.

number of years, bringing about financial burdens and stigma. The children of accused UAPA are discriminated against in education and employment, and their effects are intergenerational and far-reaching in their consequences.

The social stigma on terrorism charges covers whole groups of people, especially when such cases involve religious minorities. Even acquittals are not all that helpful to regain reputation and social status, leaving permanent scars on community relations and social integrity.

- **Chilling Impact on Democratic Turnout.**

The extensive use of UAPA has produced a chilling effect on democratic participation in India that is quantifiable. Civil societies complain of a decreased level of involvement in protests and advocacy against terrorism allegations. This shrinking of the democratic space eliminates the constitutional principle of free assembly and expression in India.

The threat effect is spread to the professional circles, where lawyers, journalists, and academics mentioned experiencing self-censorship to prevent possible UAPA prosecution. This limitation of professional autonomy extends to the greater democratic institutions and accountability in governance.

CHAPTER 5: DISCUSSION AND SYNTHESIS

5.1. Process as Punishment Paradigm.

The statistical data provided in the course of this study show a frightening tendency: UAPA has long been a statute that was created to serve as a prosecuting agent against terror, but nowadays, even prosecution has become the key factor of punishment. Having a conviction rate of only 2.4 per cent and 95.4 per cent of cases being on trial, the Act has not really had any effect on successful prosecutions, but has rather served to increase pre-trial detention.¹³²⁹

This change is a radical shift in constitutional ideas, where punishment has to occur after conviction but not before. The UAPA average case takes more than three years to be investigated, and many suspects are languishing in detention longer than the sentence they would have gotten had they been found guilty. This reversal of the justice system is essentially a nullification of constitutional protection and due process.

This issue is recognized by the Supreme Court in K.A. Najeeb, which states that the trial-less detention in the long term violates Article 21, but does not offer much help. The high court has deprived constitutional bail to superior courts, which means that most of the accused people under the UAPA have no effective alternative, since many are unable to afford the costs of appellate litigation or their access to senior legal counsel.

5.2. Normalization and Capture of Exception in an Institution.

UAPA application demonstrates a disturbing trend of becoming institutionalized, and the exception has turned into the rule. The culture of institutionalizing the denial of bail and extended detention has been created by special courts that handle UAPA cases. The judges of such courts, dealing solely with terrorism cases, get used to the idea that denying bail is the right and necessary thing to do, and forget about the constitutional provisions.

Prosecutorial practices, which imply that the charges based on UAPA are subject to severe treatment, support this institutional change. The fact that the National Investigation Agency has a stated conviction rate of 95.54% of the cases that it investigates implies that it is very selective rather than an effective investigator, but the statistics are being used as an excuse to claim that the system is effective.

The naturalization of unusual practices has further consequences for the criminal justice system in India. The UAPA practices are starting to percolate down into the standard criminal

¹³²⁹ Nat'l Crime Records Bureau, Crime in India 2020: Statistics (Gov't of India 2021).

cases, and the prosecutors and courts are becoming more comfortable with the lengthening of detention and the limited bail in the non-terrorism cases. This spill-over effect poses a danger of compromising constitutional protective measures throughout the legal system.

5.3. The Federalism Question.

The implementation of UAPA serves as a major issue as far as the federal system of India is concerned, and how the central and federal powers are divided. The increased authority of the National Investigation Agency over the UAPA cases has literally moved the prosecution of terrorism outside of the jurisdiction of the state and even to the local jurisdiction. This centralization has political ramifications because the central government can employ UAPA to attack the opposition figures and movements at the state level.

The lack of individuality in the application of the Act on the different levels of the state disregards regional differences in social movements, political expression, and community relations. What is a legal political action in one state might be criminalized as a terrorist action in another, and thus it creates conflicts that serve to compromise the principles of federalism and equal protection.

State governments can do little about the misuse of UAPA within their own jurisdiction, since national agencies are free to take prosecution without state approval. This has left a loophole of accountability in which both central and state authorities have been unaccountable in the task of checking on the misuse of the Act.

5.4. Diplomatic and International Isolation and Consequences.

The application of UAPA in India has drawn growing international criticism, and large human rights institutions have reported systematic abuse against it. According to the 2024 review by the Financial Action Task Force, UAPA prosecution was noted to be excessively

slow, and this indicates the disparity between the Indian anti-terrorism regime and the global standards.

The killings of activists such as Stan Swamy have attracted global outrage and salt on the wound of India as a democratic society concerned with human rights. Broad definitions and a severe application of UAPA have been repeatedly criticized by the United Nations special rapporteurs and demanded severe modifications.

Such foreign blame carries some practical implications for the diplomatic affairs of India and its soft power image. The fact that the laws against terrorism are reportedly used to suppress democracy in the country and attack minorities also hampers its leadership claims as a democratic nation.

5.5. Civil Society Response and Resistance.

The civil society reaction to the institution of UAPA has shifted from case-by-case advocacy to systematic opposition to the constitutionality of the law. Such organizations as the People's Union of Civil Liberties have recorded many forms of abuse and mobilised against the spread of the law.

The legal community has been instrumental in defying UAPA, and senior advocates have taken pro bono cases and constitutional challenges. Nevertheless, this reaction of the legal community has not been without its own rifts, as some members have supported the hard approach against terrorism and others have recommended the revision of the constitution.

UAPA has been prosecuted and criticized by academic institutions and intellectual communities. Arrest of leading academics and intellectuals has sparked modification in the opposition in the universities and research institutions, generating new constituencies in reform.

5.6. Economic Performance of UAPA Implementation.

Economic cost of implementation of UAPA goes way beyond direct prosecution costs to opportunity costs in terms of compensation for the long duration of trial, keeping of a large number of undertrial, and lost productivity due to detained persons. The mean UAPA case takes years to be investigated and prosecuted, which is a waste of judicial and administrative resources.

The indirect economic cost is the loss of investment in the affected areas, reduced tourist numbers because of the security factor, and brain drain as the professionals steer clear of places where UAPA is prevalent. These expenses are seldom included in the evaluation of the effectiveness of the law, but they pose a huge burden on economic development.

The families of accused individuals in UAPA suffer grave economic losses, many of which result in years of their lives being lost before they can recover their primary income earners, as they pay their legal fees. The social security consequences of this trend have not received proper research, but they probably generate dependencies and social issues in the long run.

5.7. Implications: Technological and Surveillance.

The implementation of UAPA has been accompanied by the growth of surveillance technologies and data collection power. The wide investigative authority granted by the Act, coupled with the current surveillance technologies, gives rise to unprecedented surveillance potential of political opposition and social activism.

The overlap of UAPA and legislation of cybercrime and digital surveillance brings up other constitutional issues of privacy and the freedom of association. The use of social media, online associations, and digital communications can now be used to bring charges against terrorism, extending the reach of law to personal communications.

This improvement of the capabilities of UAPA through technology opens the possibilities of

abuse and makes it harder to defend oneself. Digital evidence can be complicated and can cost a lot to disprove, as it favors those who can afford such technical knowledge.

CONCLUSION AND SUGGESTIONS

This analytical study of UAPA and its bail regime and its effect on civil liberties exposes the inherent conflicts between the current version of the Act and the constitutional system of India. This study proves that the presumption of innocence in any case involving terrorism has been nullified by Section 43D(5) by overturning the burden of proving innocence in a bail matter. The meaning of Watali by the Supreme Court has resulted in a jurisprudence of suspicion where suspicion is sufficient to warrant indefinite detention, which has substantially changed the constitutional balancing of power between the state and the individual. The statistical data shows that UAPA has evolved into more of a detention tool that was used despite the 10,552 arrests it achieved, only 253 convictions between 2014 and 2020, which demonstrates that the overall purpose of the Act is to serve as a pre-trial punishment and not effective prosecution of terrorism.

FINDINGS

To cover the first research question that concerns how Section 43D(5) has modified the traditional bail jurisprudence in India, the study reveals that the provision has imposed a near impassable obstacle to pre-trial liberty by means of forcing the courts to withhold bail under the pretense of prima facie truth of allegations. This is the total opposite of the usual principle of criminal laws, where bail is the norm and jail is the exception. This provision contravenes the constitutional idea of liberty and due process since it eradicates judicial discretion and requires accused individuals to demonstrate their innocence without the prosecution's evidence or the ability to cross-examine the witnesses.

Concerning the second research question, the effect of UAPA on civil liberties and democratic

dissent, the research shows that there is a systematic abuse against legitimate democratic dissent, civil society activists, and religious minorities. The examples of Bhima Koregaon activists, riots suspects of Delhi, and other many others have shown a tendency of using the law of terrorism to attack the political opposition, social movement. The Act has induced a certain chilling effect on democratic participation, as civil society organizations have cited that they are becoming less engaged in protesting and advocacy activities out of fear of being charged with terrorism.

To answer the third research question concerning international comparisons, the analysis indicates that the Indian attitude to anti-terrorism legislation is much more restrictive than the democratic standards. Provisions of UAPA also contravene various international documents on human rights of which India is a signatory, especially ICCPR and UDHR. The UK and US anti-terror laws are comparable to the Indian laws in the aspect that India has had excessive periods of detention that are not adequately overseen by the judicial system.

REFORM PROPOSALS

The study requires urgent constitutional changes in respect to Section 43D(5) to reinstate judicial discretion during the bail process. The condition ought to make the denial of bail based on objective criteria as opposed to the subjective standard, where it is practically unattainable to effect release on bail. Courts ought to be obliged to take into account issues of flight risk, the possibility of tampering with witnesses, as well as the chances of committing crimes again, just like the normal criminal law. The definition of the terrorism act in Section 15 should be limited in terms of the internationally recognized specificity and proportionality by substituting such imprecise and open-ended criteria as likely to threaten economic security with objective and more specific standards.

Procedural protections should be enhanced by making all searches, seizures, and arrests under

UAPA, in all instances other than immediate danger, require judicial authorization. The existing 180-day investigation period ought to be minimized to conform to international standards, with extensions to be done in line with judicial approval of necessity. A reviewing power of UAPA designations and prosecutions should be created, which will have the capacity to recommend closure of cases or bail in case of inadequate evidence.

The institutional reforms are also needed, such as the specialized training of judges, prosecutors, and investigators dealing with UAPA cases of constitutional rights and international human rights standards. Several special courts and judges ought to be employed in order to deal with the enormous pendency in UAPA cases, and widespread legal assistance ought to be extended to UAPA accused, such as the availability of senior counsel and technical professionals. There should be a statutory compensation framework for individuals wrongly charged under the UAPA, where the personal and social impact of terrorism charges is dire.

The eventual aim of UAPA reform ought to be the establishment of an anti-terrorism system that is sensitive enough to deal with real security dangers without infringing on constitutional democracy and pluralist society in India. It implies that the existing policy of considering constitutional rights as impediments to security should be abandoned and that protection of rights should be considered as a necessity to long-term stability and legitimacy. UAPA, as it is now, is a threat to the very constitutional democracy in India, and it needs to be reformed significantly to be in line with the constitutional principles and with the international human rights norms. The price of not acting does not only apply to individual situations but also to the general health of the democratic institutions and the rule of law, and therefore, the wholesale changes are not only necessary but a must to save the constitutional values that India is a democratic republic.

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