

An Analysis on the Unlawful Activities (Prevention) Act

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I. Introduction:

Post-Independence, different enactments have been sanctioned to counter terrorism in India. These rules have managed to deal with knowledge, preventive detention, worry, search, seizure, examination, preliminary, rule of proof and punishment. Enactments, for example, the Maintenance of Internal Security Act (MISA), the Terrorist and Disruptive Activities (Prevention) Act (TADA), and the Prevention of Terrorism Act (POTA) have been blamed for being lopsidedly draconian, severe and inclined to abuse for political additions. One mutual element between these laws have been the wide and clearing meaning of Terrorism or Terrorist Act. This has brought about boundless abuse of these laws by law authorization offices against resistance, legislators, columnists and activists who are only practicing their entitlement to challenge the arrangements of the public authority¹. Quoting Christopher Hitchens, "Terrorism is the tactic of demanding the impossible, and demanding it at gunpoint" which brings us to the first and foremost concern of every government that is the security of the nation. Security laws are a need of the hour for a country like India as it has been the most affected by terrorism. India has been facing a lot of serious threats to its integrity including the Indian Parliament Attack 2001, the Mumbai Attack 2008, the URI Attack 2016 and the most recent one being the Pulwama attack of 2019². Security laws in India are not known to be confined to just one or two laws, but a series of National Security Laws which govern the provisions of terrorist activities in the country and their main objective is to safeguard national security and national interest. The drafting of security laws began immediately post-independence whilst the Constitution of India was also being drafted. The Unlawful Activities Prevention Act, along with governing terrorism that is spreading across the country, it turned out to be an anti-human rights legislation. This legislation focuses on dealing with unlawful activities and it has been amended a several times now with the recent amendment being made in the year 2019. The amendments were being made looking at the rapid changing patterns of terrorism spreading across the country. The other security laws that existed or still exist in the country apart from the UAPA include the Maintenance of Internal Security Act (MISA), Preventive Detention Act (PDA), Armed Forces Special Powers Act (AFSPA), National Security Act (NSA), Terrorist and Disruptive Activities Act (TADA) and the Prevention of Terrorism Act (POTA)³.

*Key Words:*UAPA, anti-terror, human rights, national security, legislation.

Analysis:

National security laws in India

In the year 1947, to secure the freedoms of the Indian citizens, the Constitution of India was being drafted. Simultaneously, we were sanctioning one such amazing law which was crushing the privileges of the residents for example the Preventive Detention act, 1950 (PDA) which stayed in power till 1969.

Under the Preventive Detention Act, the government could detain people with no charge for 1 year⁴. The primary point of the Preventive Detention Act was to control the unrest and violence which happened because of the partition of the country into India and Pakistan. This was a temporary enactment as it contained a dusk statement which implied that it was established for a particular reason and when the goal is accomplished these laws just lapse.

¹<https://www.ijlmh.com/paper/countering-terrorism-or-suppressing-dissent-a-critical-analysis-of-the-uapa/>

²India - United States Department of State

³<https://allindialegalforum.in/2020/10/05/a-brief-analysis-of-anti-terror-of-legislation-uapa/>

⁴Section 11A, Preventive Detention Act, 1950

The Preventive Detention Act lapsed within two years of its enactment⁵ and the Maintenance of Internal Security Act, 1971 (MISA) was ordered which stayed in power until 1977. This legislation was authorized to arrest and detain people who were contradicting the public authority during the hour of crisis. Majority of the powers of the Preventive Detention Act were fused into the MISA. The reason for MISA was to force more limitations on people confined under this legislation⁶.

After Preventive Detention and before upkeep of the internal security act, one more demonstration was authorized in the year 1958 which is in force till date. Armed Forces Special Forces Act, 1958 (AFSPA). Because of the separatist movement in Nagaland and expanding brutality in northeastern states this act was instituted⁷. Arrangements of this legislation gave capacity to the public authority to announce any region as a disturbed region and once the region is pronounced as a disturbed region; the act gives exceptional powers to the armed forces to keep everything under control⁸.

In 1980, National Security Act (NSA) was established which is an impression of the PDA and MISA. As of this year in April, when the country faced a lockdown due to Covid, four individuals in Indore were booked under this act because they used force against health workers⁹. National Security Act gives capacity to the state or the central government to confine any individual to defend public safety and public request¹⁰. The maximum time frame for restriction under this legislation is a year. Fundamental freedoms, for example, the right to be informed and the right to legal aid won't be accessible to people charged under NSA¹¹.

To control separatist and terrorist activities in Punjab, the Terrorist and Disruptive Activities Act 1985 (TADA) was established but was repealed in the year 1995. This legislation superseded the Constitution and also the Criminal Procedure Code. Under TADA new offenses were made, powers of police were expanded and safeguards of arrested people were decreased and because of this maltreatment, cases were increasing¹².

Twenty years ago, because of the Kandahar hijack and parliament attack, to reinforce the anti-terror laws of the country, Prevention of Terrorism Act, 2001 (POTA) was authorized. Under the Prevention of Terrorism Act any suspect could be detained for 180 days. The issue emerged when the goals and provisos of POTA were similar to TADA. Because of the wide-scale abuse of POTA, it was revoked in the year 2004 using its sunset clause¹³.

Another anti-terror legislation was the Unlawful Activities Prevention Act (UAPA) which was established in the year 1967 after PDA and AFSPA yet before MISA, NSA, TADA and, POTA.

Background of UAPA

The time span from 1962 to 1975 is extraordinary due to the India-China war of 1962, India-Pakistan war of 1971, and the burden of crisis on the grounds of emergency in 1975. Aside from these three significant lime lights, various issues were arising during this stage. In the year 1962, CN Annadurai proposed a different Tamil country in his Rajya Sabha discourse. Later due to the 1962 Indo-China war, he let go of his interest for a different Tamil country¹⁴.

Thinking about the Central government's position, on one hand, there is external hostility which brought about a war with China, and then again, there was an inner aggravation that led to an interest for a different Tamil country. Although we had Article 352 of the Constitution to take care of the emergency situation but it was also equally important to cater to the domestic issue which would involve curtailing the freedoms of the citizens. This was the significant explanation which brought about the legislation of the Unlawful Activities Prevention Act of 1967 (UAPA) which came into power during the continuous time of crisis.

Anti-Terror Legislation

A panel for national integration and regionalization was set up by the National Integration Council. On the proposal of this board of trustees, the sixteenth constitutional amendment act was passed by the parliament. This revision was the Central government's transition to limit the opportunities of the residents to deal with domestic emergencies. The sacred sixteenth amendment act forced sensible restrictions on three crucial rights which were the right to freedom of speech and expression, freedom to assemble peacefully, and the freedom to

⁵Section 16, Preventive Detention Act, 1950

⁶<https://www.hindustantimes.com/india/the-emergency/story-MjWhlVu626B2Sse0D9vrKO.html>

⁷https://www.jstor.org/stable/26351073?seq=1#metadata_info_tab_contents

⁸Section 3, Armed Forces (Special Powers) Act, 1958

⁹<https://timesofindia.indiatimes.com/city/indore/four-held-for-attack-on-doctors-in-indore-10-booked/articleshow/74945890.cms>

¹⁰<https://www.thehindu.com/news/national/what-is-national-security-act/article26292232.ece>

¹¹<https://www.thehindu.com/news/national/what-is-national-security-act/article26292232.ece>

¹²<https://www.jstor.org/stable/4409076>

¹³https://www.bc.edu/content/dam/files/schools/law/lawreviews/journals/bctwj/25_1/09_FMS.htm

¹⁴<https://www.ijalr.in/2020/10/unlawful-activities-prevention-act-1967.html>

form unions or associations¹⁵. The UAPA act is an anti-terror legislation and the authorization body is the National Investigation Agency (NIA) which is India's Central counterterrorism office.

UAPA act essentially manages unlawful exercises. Unlawful action implies any activity taken by any association or a person who means to bring cession or results into detachment or which upsets or questions the power and regional honesty of India¹⁶. 2004 is a significant year as important amendments of the UAPA were presented. Parliament through the 2004 revision in the UAPA act acquainted some chapters against terrorist activities and the vast majority of the arrangements which were prior administered under POTA were embedded¹⁷.

Because of fast change in the procedure and the new emerging patterns of terrorism, the UAPA 1976 is revised a few times and the latest amendment was brought about in the year 2019.

Analysis of UAPA Amendment of 2019

The Present Act gives outright capacity to the Government of India to pronounce any action as they consider suitable as unlawful and publish something similar in the gazette. Since the start, the Act has experienced a great deal of reactions from the resistance groups and the overall population. The meaning of the word Terrorist act under the Act is extremely ambiguous. The Act allows the detainment of any individual viewed as occupied with unlawful exercises without being given any legitimate security for 180 days which is totally against the freedom of an Individual. This gives the public authority tremendous ability to abuse the Act.

The significance of a terrorist act in UAPA is dark. Amendments to UAPA in 2019 have empowered the Union government to announce an individual as a terrorist without allowing him a reasonable opportunity to address himself before the legal executive. Police authority under UAPA can moreover be connected for 30 days, expanding the chance of custodial brutality.

Under UAPA, the best determined period for filing a charge sheet is 90 days, which may be connected by the court to 180 days. The 2019 Watali judgment of the Supreme Court made getting bail under UAPA significantly more irksome. Grave bail conditions can effectively put the faulted under various years for confinement without preliminary. While 317 charge sheets were recorded under UAPA in 2018, police required 1-2 years to file the charge sheets in over 16% of cases¹⁸.

While passing the 2019 amendment act, the resistance led to a solid criticism that there are high possibilities of this legislation being abused by the person who is in power. The amendment of 2019 straightforwardly gives capacity to the public authority that any kind of dissent can be checked upon. The 2019 UAPA change was rotating around one inquiry which was "who can be called a terrorist"?

Before the year 2019, the UAPA was simply pertinent to associations or terrorist organizations. However, after the 2019 amendment, multitude of changes can be seen in Chapter 6 (Section 35 and 36) of the UAPA Act. Consequently, the new amendment has enabled the Central government to assign an individual or an association as a terrorist if: – They participate or commit acts of terrorism, prepares or promotes terrorism, or are otherwise involved in the activities of terrorism¹⁹. These were the grounds on which people and associations were pronounced as terrorists. This change was vital on the grounds that it was seen that at whatever point an association was pronounced as a terrorist organization by the Central government, the individuals from such an association either start the development of new associations or start to work exclusively.

The subsequent change presented by this amendment was with regard to the detention provisions. Considering the criminal law in India, there exist provisions for a time of detainment which is covered under Section 167 of the Criminal Procedure Code which recommends a maximum time of confinement as long as 90 days and after such a period right to bail can be claimed for. The most terrifying arrangement of the 2019 amendment act is under Section 43-D of the UAPA Act which provides that if the investigation isn't finished inside a specified time span an individual can be detained for a period of 180 days without filing of a charge sheet and such time of 180 days can be further increased and till then his entitlement to bail will not emerge²⁰.

The third significant difference in the amendment was the inclusion of the fourth schedule to the legislation. As the UAPA act gives capacity to the public authority to proclaim anybody as a terrorist, the public

¹⁵<https://legislative.gov.in/constitution-sixteenth-amendment-act-1963#:~:text=article%20in%20the%20interests%20of%20the%20sovereignty%20and%20integrity%20of%20India.&text=the%20sovereignty%20and%20integrity%20of%20India.,-2.&text=interests%20of%22%2C%20the-words%20%22the%20sovereignty%20and%20integrity,India%20or%22%20shall%20be%20inserted.>

¹⁶Section 3 (o), UAPA, 1967

¹⁷<https://www.hindustantimes.com/analysis/the-uapa-amendments-what-it-really-means/story-9gOsDNk1syqxyYd0iFeHDN.html#:~:text=In%202004%2C%20anti%2Dterror%20provisions,available%20to%20E2%80%9Cunlawful%20%20associations.>

¹⁸<https://theguardian.com/unlawful-activities-prevention-act-1967-an-analysis/>

¹⁹<https://prsindia.org/billtrack/the-unlawful-activities-prevention-amendment-bill-2019>

²⁰https://main.sci.gov.in/supremecourt/2018/40223/40223_2018_Judgement_13-Feb-2019.pdf

authority can add the name of the person in the fourth schedule yet there is no as such perceived fair treatment of adding the name of a person to the fourth schedule²¹. The person whose name has been added is furnished with the cure that within a period of 45 days he can make a claim to the government that his name ought to be taken out from the fourth schedule and to follow up on such an appeal a committee will be set up with to review comprising of a retired/sitting judge as its head and 3 other members.

Criticism:

Majority of the national security laws passed are called evil in the light of the fact that apart from these laws being fundamental for security, they contain unregulated and unchecked powers that reduce or contrarily influence citizens social equality. The 2019 amendment examined above was acquainted to put a stop to the terrorist activities and to secure the sovereignty of the country²². But if observed the legislation has certain loopholes post the amendment. Considering the loopholes, once an individual is reserved under UAPA he is to invest 180 days period in prison only after which he is eligible to apply for a bail. Another important thing is that if the individual chooses to appeal, then they have to approach the same authority that has put them behind bars in the first place. Also, if an individual has been pronounced as a terrorist and his name has been added to the fourth schedule, he will be left with no right in light of the fact that announcing a person as a terrorist implies curbing all his social liberties and he will be left with no extension or opportunity²³.

The Ministry of Home Affairs (MHA), in its report for 2019 gave the statistics which showcased that Manipur registered the highest number of cases (306) under UAPA. Many other states such as Tamil Nadu (270), Jammu & Kashmir (255), Jharkhand (105), also registered above 100 cases in the year. The last two years witnessed many more renowned activists, social workers even students, such as GautamNavalkhe, Varavara Rao, Vernon Gonsalves, Father Stan Swamy, falling prey to the provisions of UAPA. The statistics become more appalling after compiling it in the last five years which gives a total of 5,128 cases under UAPA.²⁴The misuse of this legislation can be seen when three students, Devangana Kalita, Natasha Narwal and Asif Iqbal Tanha were arrested under this act for protesting against the recently passed law of CAA without any valid grounds and hence were soon granted bail²⁵. The individuals fighting for the rights of tribals in the Bhima-Koregaon case are still languishing in jail because of being arrested under this act based on suspicious grounds²⁶. The conviction rate of people charged under the UAPA is way too less as the individuals are being arrested on invalid grounds with just suspicion.

All things considered, the primary reasoning of the government behind this amendment was to ensure privileges, give security, and a protected environment to its citizens. However, in a nation where human rights are given the greatest possible level of significance, is removing social equality to give security legitimate? UAPA's objective is to control terrorism and warfare, yet as of late it is being utilized as a device to startle the residents who go against the government approaches. This Act is seen as a draconian law which is not supposed to have a place in a country like in India which is considered to be the largest democracy in the world.

²¹http://164.100.47.4/billtexts/lbills/PassedLokSabha/130_C_2019_Eng.pdf

²²<https://www.jurist.org/commentary/2020/06/bhandari-pokhriyal-uapa-free-speech/>

²³<https://www.thehindu.com/news/national/uapa-amendment-supreme-court-asks-govt-to-respond-to-pleas/article29349629.ece>

²⁴<https://theguardian.com/unlawful-activities-prevention-act-1967-an-analysis/>

²⁵<https://www.nyoooz.com/news/delhi/1586420/3-students-arrested-under-uapa-released-from-tihar-jail/>

²⁶<https://www.thehindu.com/news/cities/mumbai/repeal-uapa-free-accused-in-bhima-koregaon-case/article35289252.ece>