A CONSTITUTIONAL PERCEPTION OF ANTI-TERROR PROVISION IN THE UNLAWFUL ACTIVITIES PREVENTION ACT, 1967

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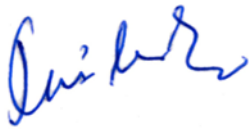
CERTIFICATE

It is to certify that TARALI NEOG is pursuing Master of Laws (LL.M.) from National Law University and Judicial Academy, Assam and has completed his dissertation titled **"A CONSTITUTIONAL PERCEPTION OF ANTI-TERROR PROVISION IN THE UNLAWFUL ACTIVITIES PREVENTION ACT, 1967"** under my supervision. The research work is found to be original and suitable for submission.



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DECLARATION

I, TARALI NEOG, pursuing Master of Laws (LL.M) from National Law University and Judicial Academy, Assam, do hereby declare that the present dissertation titled **"A CONSTITUTIONAL PERCEPTION OF ANTI-TERROR PROVISION IN THE UNLAWFUL ACTIVITIES PREVENTION ACT, 1967"** is an original research work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

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Serial No.	Abbreviation	Explanation
1.	AIR	All India Reporter
2.	AFSPA	Armed Forces (Special Powers) Act
3.	ART.	Article
4.	CSPSA	Chhattisgarh Special Public Security Act
5.	Cri. L.J.	Criminal Law Journal
6.	Cr.p.c	Criminal Procedure Code
7.	IPC	Indian Penal Code
8.	KCOCA	Karnataka Control of Organized Crime Act
9.	MCOCA	Maharashtra Control of Organized Crime Act
10.	MISA	Maintenance of Internal Security Act
11.	NCTC	National Counter Terrorism Center
12.	NIA	National Investigation Agency
13.	NSA	National Security Act
14.	PDA	Preventive Detention Act
15.	POTA	Prevention of Terrorism Act
16.	POTO	Prevention of Terrorism Ordinance
17.	S	Section
18.	SC	Supreme Court
19.	SCC	Supreme Court Cases
20.	SCR	Supreme Court Reporter
21.	TADA	Terrorism and Disruptive Activities (prevention) Ac

22.	USA PATRIOT	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism
23.	UAPA	Unlawful Activities (Prevention) Act
24.	V	Versus

CHAPTER 1

INTRODUCTION

According to contemporary constitutional practice, the Constitution of India from 1950 is a constitutive document that is essential to the nation's governance. The Constitution is viewed as a living constitution that responds to the demands of modern life, and it cannot, shall not, and has not been a dormant instrument.

The Constitution of India guarantees "rule of law" and calls for the country to be governed by its three main pillars: the legislature, the executive, and the judiciary. Therefore, upholding the "rule of law" is a compulsory constitutional framework and is crucial to the sustainability of a democracy. We should consider ourselves fortunate that, despite the size and scope of our population, the complexity of our issues, and the variety of our philosophies, democracy has established strong roots in this nation and democratic institutions have flourished to the point where it will be challenging for any of our neighbours to undermine the same. It is the sacred duty of the judiciary to ensure that the "rule of law" is upheld, and it shall be understood as a constitutional requirement for the judiciary to take all reasonable steps to uphold the "rule of law," including not only interpreting the relevant legal provisions but also giving directives and orders to the relevant authorities.

Part III of the Indian Constitution enshrines the idea of the rule of law. It guarantees the people's fundamental rights, which include their inalienable right to basic human dignity one of the most important requirements for leading a respectable life. The principle of defending each person's civil liberties impartially is embodied in the Constitution. The Constitution's Articles 14, 19, and 21 uphold the spirit of the Rule of Law and place both a positive and a negative duty on the State to safeguard each person's fundamental right to life and personal freedom. In India, the judiciary has been instrumental in broadening the scope of Article 21 of the Constitution and holding the State accountable for its enforcement. The terms "life," "personal liberty," and "procedure established by law" have all been construed quite broadly. “The right to life and personal liberty guaranteed by Art. 21” is one of the most remarkable aspects of the rights afforded by Part III. Without following a method outlined in a statute or one mandated by state law, a person's right cannot be restricted. Art. 21's

scope was initially interpreted narrowly; it wasn't until the case[1] that it was given a broader interpretation. The Supreme Court only construed the phrase "procedure established by law" in Art. 21 to mean that a legislation must be proper, just, and fair and not arbitrary, fantastical, or oppressive in this particular case. This usually means that the state can only take away someone's personal freedom if there is a law, and that “law must be just, fair, and reasonable”. This might be seen as a check on the government's unchecked power, respecting the principles expressed in the Indian constitution.

The residents' experiences, however, show that this is not always the case. Individuals' fundamental rights are frequently violated by those in positions of political power. The state violates these fundamental liberties in order to advance its political objectives. Only in the core of a democracy can fundamental rights, the rule of law, the absence of arbitrary rules, and the protection of life and liberty have precedence. Rights and liberties of the people are so crucial to a parliamentary democracy that the Parliament should not use its ability to make laws to trample on or suppress them. This basis for the “rule of law and democracy”, however, is undermined when the government approves unaccountable laws that give the state autocratic and incomprehensible powers and endanger the freedoms and rights of the populace.

More frequently, this infraction is committed under the guise of national security. There are moments when it seems like national security and human rights are at odds[2]. When government representatives discuss national security, their arguments are based mostly on the idea that, on occasion, safeguarding national security must take a backseat to safeguarding human rights and civil freedoms. The Indian government has implemented strict rules defending national security and countering terrorist threats, yet these same laws fall short when put under the microscope for their impact on human rights. India has made considerable efforts over the past 50 years since gaining independence to develop the legal, institutional, and constitutional framework to safeguard, advance, and institutionalize human rights.

[1] Maneka Gandhi v Union of India [1978] SC 597

[2] Emanuel Gross, “Democracy’s Struggle Against Terrorism: The Powers of Military Commanders to Decide Upon the Demolition of Houses, the Imposition of Curfews, Blockades, Encirclements and the Declaration of an Area as a Closed Military Area” (2002) 30 Georgia Journal of International & Comparative Law

“The Unlawful Activities Prevention Act of 1967” is one of the strict laws implemented so as to safeguard the national security of India. The ability of the system to command with actions that undermine India's integrity and sovereignty was the main motivation behind the passage of this law. It was approved, granting Parliament the power to impose reasonable limitations on people's freedoms of speech and association as well as their right to peacefully assemble without the use of force. It evolved into an anti-terror law after several amendments. Later on, though, these laws were being utilized to achieve secret goals. There are also situations where these strict laws are followed so often that they violate the citizens' fundamental rights, which are protected by the constitution.

It is absurd to assume that when the Indian people adopted the constitution, they ceded to the state, on whose mercy these rights would be dependent, the three things most valuable to the human persona: life, liberty, and freedom. Instead, it was planned for India to establish itself as a democratic nation whose core values include liberty, freedom, and the maintenance of the rule of law. When the government implements anti-terror law modifications that subtly prioritize obtaining political allegiance over the rights and liberties of the populace, these democratic pillars are severely shaken. The paper aims to clarify how these revisions are intended to strengthen the executive's vigour and give the government broad powers in ways that promote violations of human rights. National security is implemented to save citizens from danger rather than to put them in danger by abusing their human rights.

1.1 Statement of Problem

In an effort to protect the country's sovereignty, security, and integrity, the Indian Parliament has repeatedly passed a number of anti-terror laws. Along with India's standard substantive and procedural criminal codes, some "security laws" are in effect. Governments in favour of security laws contend that some threats are outside the scope of conventional criminal law, necessitating a special response. These security laws aim to protect, among other things, public order, religious harmony, and national security. Laws from the past and present often fail to define the boundaries or scope of their claimed core aims because they tend to assume that these goals' meanings are self-evident.

The administration's power and activities under security laws have not been constrained by the traditional constitutional checks on the executive, including electoral democracy, legislative oversight, judicial review, and constitutional rights. Executive powers have been supported by the Indian legislature and judiciary in theory but not in practice. In turn, constitutional restraints, particularly regarding constitutional rights, have been severely undermined by repeated endorsement and regulatory failure. We have chosen the sections of the Unlawful Activities Prevention Act as our study area in order to analyse their influence on citizens' lives and the constitutionality of these laws. This is done in order to better understand how national security laws are misused.

1.2 Review of Literature

1. MP JAIN, INDIAN CONSTITUTIONAL LAW (7th ed. Lexis Nexis, Gurgaon 2014).

A study on the preventive detention laws along with its effect would be incomplete without referring to this book. The book is a must read for anyone who needs to get a brief understanding of the laws related to preventive detention along with a descriptive analysis of the various judgments of the Courts in which they have read into the provisions of law to provide rights and safeguards to the people detained under preventive detention so as to protect them for arbitrary processes of the detaining authority in complete violation of the rule of law. The book also succinctly explains the meaning of preventive detention along with the provisions in Constitution regarding preventive detention. The book also very comprehensively explains the meaning of personal liberty and how it has been evolved over time in India especially by means of a creative interpretation of Art. 21. The book begins with the *AK Gopalan* case and moves towards the *Maneka Gandhi* case to show the change in the attitude of judiciary as regards the interpretation of Art. 21. Further, the book shows how the judiciary has after the *Maneka Gandhi* case led to a creative interpretation of Art. 21 to provide various rights and liberties to people. Towards the end, the book suggests measures that can be undertaken to ensure that the rigorous procedures involving preventive detention can be somewhat diluted in favour of the detained person.

2. **PRITI SAXENA, PREVENTIVE DETENTION AND HUMAN RIGHTS (2007 ed. Deep & Deep Publications (P). LTD., New Delhi).**

The book describes the concept of preventive detention in India in a very comprehensive manner. The author suggests that the human rights activists are not much concerned about the relevancy or continuity of preventive detention laws which are in any case are constitutionally sanctioned. The main contention of such activists is the misuse of such laws by the executive. The book begins by tracing the development of preventive detention laws in India. The book then moves towards the provisions of preventive detention as well as certain safeguards as available to the detained persons within the Constitution of India, 1950 such as the provisions under Part III as well as Schedule VII, etc. Further, the book examines the attitude of the judiciary as regards preventive detention and the evolution of the judiciary from a very literal interpretation to the liberal interpretation of human rights and how the judiciary attempts to strike a balance between national security and personal liberty. The book then moves towards the National Security Act, 1980 and provides a detailed analysis of its various provisions as well as the judicial response towards such provisions. Finally the book provides suggestions to make such preventive detention laws more effective so as to prevent any probability of its abuse and misuse by the executive authorities.

3. **MP Singh, VN Shukla's Constitution of India (11th Ed, Eastern Book Company, Lucknow 2008)**

This particular book is one of the most well-known and referred book in the area of Indian constitutional law. The expositions of Articles 14, 19, 21 of the Indian Constitution and the inter relationship amongst them were cited by the researcher in this particular work. The author demonstrates the broad applicability of the right to life, which is not limited to animal existence or even survival but also includes life that is based on dignity.

The broad and liberal interpretation of the right to life and civil freedoms should be used as the yardstick for evaluating national security laws. The dignity of a citizen may be negatively impacted by any arbitrary national security law provision giving the administration broad discretionary authority

3. **Anil Kalhan, Gerald P. Conroy, Mamta Kaushal, Sam Scott Miller, And Jed S. Rakoff, Colonial Continuities: Human Rights, Terrorism, And Security Laws In India, 20(1)Columbia Journal Of Asian Law, 93 (2006)"**

This journal comprehensively analyses the events that led to framing of TADA, POTA, UAPA, NSA, PDA etc. and portrays blatant violation of human rights. It posits the ineffectiveness of special antiterrorism laws with low conviction rates and persistence of terrorism despite these draconian laws. The journal helps us to understand better the root behind the enactment of such legislations and also helps in how often these legislation are being weaponised to violate the human rights which is a quintessential element of a human being.

4. **Amartya Sen, The Argumentative Indian: Writings on Indian History, Culture and Identity, (3rd ed., Farrar, Straus and Giroux, New York 2005)**

In this book, Nobel Laureate and eminent economist Amartya Sen celebrates the rich culture of reasoning, arguments, debates and discussions that have always been present in India. He chooses to focus on four major aspects of India i.e. politics, culture, reason and voice. In the present times, where divisions across various lines as well as narrow ideas have become the norm, the book is a reminder that an unbiased look at the history of India will help in finding solutions to the problems that are being faced by the country.

The book becomes relevant for the present study for its exposition on public reasoning. Public reasoning is based on the idea of active involvement of the public in governance and finding solutions to problems that concern the nation as a whole. The idea is being used by the researcher to argue for a robust national security framework which will be based on rights and inclusiveness.

5. **Unlawful Activities (Prevention) Act; Article by Asish Gupta and Kranti Chaitanya – Economic and Political Weekly.**

This article published in the Economic and Political Weekly opines relating to the arbitrary nature of the act, and provides recommendations to make the act less arbitrary. The article helps us to understand the reason behind the enactment of the act

and the legislative intent behind it. It helped us to form a detailed analysis on the various provision of this contentious act and how this act in present time has shifted its focus from the mainstream purpose for which it was brought into force. This article not only helped me to decipher the provision of the act but has also helped me to form an inference about it.

1.3 AIM & OBJECTIVES

To make an analyse on the application of the Unlawful Activities Prevention Act 1967 and the purpose for which it was created is the aim on the basis of which the dissertation work has been carried out. As a result, it is necessary to thoroughly study different provisions of the act as well as its numerous amendments in order to successfully conclude the analysis.

The objective are as follows:

At first the paper tries to analyse the background of anti- terrorism legislation in India. Meanwhile the researcher proceeds towards by analysing various anti-terrorism legislations which enacted by the parliament of India at various time period under several circumstances. While doing this the researcher studies in depth of the various anti –terrorism provisions of those legislations and tries to understand the reason behind the enactment and downfall of certain legislations. After analysing the various provisions of the acts, the researcher then proceeds to evaluate the constitutionality behind those acts.

Secondly the researcher shifts its direction to critically examine the provisions of the Unlawful Activities Prevention Act (UAPA). The provisions which often raises questions as to the validity of the act and its provisions being used arbitrarily have been studied. While doing so various case study has also been done to examine the conflicting provisions in practical use. The researcher tries to find the loophole in this particular security legislation and how this piece of law is used by the government in order to satisfy their political interest. The case study also reveals how not only the common people but even the human rights activists, academics students, journalists have also faced the consequences of the debatable act.

Thirdly the researcher tries to examine the constitutionality of the particular security legislation in consonance with the interpretation of the golden triangle i.e. Article 14, 19, 21 of the Indian Constitution. These articles are of vital importance and breathe vitality in the concept of rule of law. At last, the researcher even compares the contradictory clauses to certain international laws to which India is a signatory and has to comply with those principles while enacting any laws in India.

1.4 SCOPE & LIMITATION

The scope of this paper extends to evaluating the contradictory clauses of the Unlawful Activities Prevention Act 1967, along with the amendments made to the act. It also includes a detailed analysis of various other national security legislation as well as certain individual state's security laws such as Armed Forces Special power Act (AFSPA)1958 , Maharashtra Control of Organized Crime Act, 1999 (MCOCA) , Punjab Disturbed Areas Act, 1983 , "The Chandigarh Disturbed Areas Act, 1983 , Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983 ,Karnataka Control of Organized Crime Act, 2000 (KCOCA) , Chhattisgarh Special Public Security Act, 2005 (CSPSA)which calls for the anti-terror provision within it. The paper also studies certain cases which are associated with the efficacy of the instant legislation. However, the limitation of the paper is that it studies the key provision which are in conflict with the scheme of the constitution and how these provisions are to be judicially reviewed so as to detach those provisions and make the security legislation well-structured for the purpose for which it was originated.

1.5 RESEARCH QUESTION

1. What were the objective behind the enactment of the Unlawful Activities Prevention Act 1967 as a national security legislation by the parliament of India?

2. Whether the provision of the UAPA 1967 are violated of the fundamental rights guaranteed to the citizens of India thereby deeming it to be unconstitutional?

3. What is the approach of judiciary towards the implementation of the provisions of the UAPA?

1.6 RESEARCH METHODOLOGY

The method used for the purpose of this research is analytical and descriptive in character. The researcher has chosen to conduct doctrinal research in light of the topic's character. The researcher heavily consulted main legal sources, including statutes and case laws. To further her comprehension gained from studying the core material, the researcher has also used secondary sources like journal and newspaper articles. The researcher has developed research questions based on the analysis of the previously covered information, which she attempts to address in the next section of her work. Where available, the document also references important court rulings related to the relevant legislation.

1.7 CHAPTERISATION

In order to carry out an effective study on the topic titled **"**A Constitutional Perception of Anti- terror Provision in the Unlawful Activities Prevention Act, 1967" the present work has been divided into five chapters which has been summarised below:

Chapter I provides a general introduction to the subject matter under study in the present dissertation in the form of scope and limitations, objectives, research questions, research methodology, etc.

Chapter II provides an understanding as to the various anti- terrorism legislation that has been enacted in order to fight the menace of terrorism in India. This chapter provides a brief to those various legislation and also helps in finding the constitutionality behind them.

Chapter III mainly deals with discussing the various contentious provisions of the Unlawful Activities Prevention Act which is the primary anti-terror legislation in India. In this chapter several cases has also been studied in order to grasp the contentious provisions of the act in a more efficient way.

Chapter IV mainly deals with finding the constitutionality of the UAPA and in this regard a comprehensive analysis has been done with Article 14, 19 and 21 of the Indian Constitution. To demonstrate that it does not even adhere to the international

standard that must be followed when making legislation in a nation, a brief comparison with the international system has also been made.

Chapter V finally provides the conclusion which after detailed analysis of the work the researcher has come up to. In this regard the researcher has mentioned the findings of the research question which was framed from the study of the topic in hand. At last the researcher has also provided some suggestions which in the opinion of the researcher can aid in overcoming with the contentious issues regarding the act.

CHAPTER 2
ANTI-TERRORISM LEGISLATION AND CONSTITUTIONAL PERSPECTIVE

2.1 Background of Anti-terrorism legislation

Since terrorism causes legitimate security concerns, the state takes a variety of steps to address them. One such measure is the deployment of anti-terrorism laws. Antiterrorism laws are passed in an effort to combat terrorism. Many nations have passed suitable and strict anti-terrorist laws in response to the increase in terrorism over the past few years. India has also passed a number of anti-terrorism laws, some of which stem from the country's colonial background and others of which were passed in especially after 1980. However, several of these laws were abandoned or overturned because they had been applied improperly. These laws were intended to be passed and implemented until the situation got better. Making these extremely harsh actions a permanent part of the law of the land was not the objective. However, the statutes have been reintroduced with the required amendments due to ongoing terrorist activity. Since terrorism has long been an issue in our nation, the Indian government has implemented a number of legal measures to combat terrorist and separatist activities.

These legislative measures may be divided in two categories –

I. Preventive Detention Laws and

II. Punitive Laws to control Terrorism

2.1.1 Preventive Detention Laws

Essentially the term "Preventive Detention" appeared in the legislative lists of the Government of India Act, 1935, and has been used in Entry 9 of List I and Entry 3 of List III in the Seventh Schedule to the constitution[3], there is no authoritative definition of the term in Indian law. Actually, it is a preventative action and has nothing to do with a crime. When compared to the word punitive, the word "preventive" is employed. Instead of punishing a man for what he has done, the goal is to stop him in his tracks before he even starts. Therefore, the primary goal of preventive detention is

[3] Priti Saxena, *Preventive Detention and Human Rights*(first published 2007, Deep & Deep Publications 2007)

to stop him from harming society in any way and to defend the state against sabotage, violent operations planned in secret with the intention of causing public commotion.

The East India Company Act, passed in 1780, contains the earliest known case of preventative detention of a person by presidential order, but an Act with the same name passed in 1784 was more thorough. The Governor General was authorized to secure and detain any person or persons suspected of carrying on correspondence or activities prejudicial to or dangerous to the peace and safety of the British settlements or possessions in India, in addition to using preventive detention for those whose activities endangered the security of the state Nevertheless, the aforementioned Act gave the detenue the chance to learn what was being charged against him within five days[4].

Several later Acts, including the Bengal Regulation of 1812, the Bengal State Prisoners' Regulation of 1818, the Madras State Prisoners' Regulation II of 1819, the Bombay State Prisoners' Regulation XXV of 1827, and the State Prisoners' Act of 1850, included provisions for the right to be detained and arrested without a warrant. According to these rules, a prisoner was not permitted to ask the court for a writ of habeas corpus. Despite this, the detenue had the right to present evidence in his defence, and in 1882, section 491 of the Criminal Procedure Code also recognized the right to habeas corpus[5].

The current Article 22 of the Constitution, which addresses the protections afforded to those who have been arrested and those who have been imprisoned under rules governing preventive detention, was the subject of extensive dispute at the time the Constitution was being drafted. Preventive detention laws can be passed in India under the pretexts of "national security" and "maintenance of public order," according to the constitution.

However, the central and provincial governments were given the authority to create laws for preventive detention once the Government of India Act, 1935, was adopted as the temporary constitution. In order to ensure the defence of British India, the public safety, the maintenance of public order, the effective conduct of war, or the

[4] Chatterjee, Dr. S. S. (2003). Control of Political Offences in India Through Laws (p. 226). Kolkata: Kamal Law House

[5] Ghosh, S.K. (2005). Terrorism: World Under Siege (pp. 397-398). New Delhi: Ashish Publishing House

maintenance of supplies and services essential to the community's life, a second Defence of India Act was passed in 1939, at the start of the Second World War.

Shortly after the Constitution took effect, Parliament passed the Preventive Detention Act of 1950, which established detention as a means of preventing anyone including foreigners from acting in a way that would be detrimental to India's defence, its relations with other countries, its security, the maintenance of public order, and the upkeep of supplies and services that are vital to the community. The Maintenance of Internal Security Act, which was passed in 1971 and effectively reinstated the PDA's powers after it expired in 1969, replaced the Preventive Detention Act. On December 4, 1971, Parliament passed the Defence of India Act, 1971. This Act granted the super powers of indefinite "preventive" detention of individuals, search and seizure of property without warrants, and wiretapping in the quelling of civil and political disorder in India, as well as countering foreign-inspired sabotage, terrorism, subterfuge, and threats to national security. The Act was passed in light of the serious emergency that had been declared by the President at the time, and it included provisions for exceptional measures to guarantee public safety and interest, the defence of India and civil defence, the prosecution of certain offenses, and issues related thereto.

The National Security Act of 1980 was passed by the Parliament in 1980 after the Congress regained control, and it is still in force today. Numerous PDA and MISA provisions were reinstated by this Act. It gives security forces the right to detain someone without a warrant if they're suspected of doing something that threatens public safety, economic vitality, or national security. The procedural criteria are virtually the same as those under the PDA and MISA, and it also permits preventative detention for a maximum of 12 months. The Act also grants immunity to the security personnel who participated in putting an end to the violence. The only statute allowing for preventive detention to combat terrorism in India is this one. The Act gives the Central Government or the State Government the authority to detain a person in order to prevent him or her from acting in any manner detrimental to the security of the State, detrimental to the maintenance of Public order, detrimental to the maintenance of supplies and services essential to the community, or in any other manner for which it is necessary to do so. The length of any detention order issued

under this act must not exceed 12 days[6], and it may be carried out anywhere in India. Twelve months[7] is the maximum detention time. A detention order can be changed or removed at any moment[8].

2.1.2. Punitive Laws to control Terrorism

There are various anti-terrorism laws in India, which are punitive in nature, but some of them were already repealed in different points of time. At present, the legislations in force to check terrorism in India are the National Security Act, 1980, National Investigation Agency Act, 2008 , Unlawful Activities (Prevention) Act, 2012 , Unlawful Activities (Prevention) Act, 2008 , Unlawful Activities (Prevention) Act 2004 and the Unlawful Activities (Prevention) Act, 1967 , Armed forces special powers Act 1958 .

Let us now discuss few of the anti- terrorism acts along with their provisions:

2.1.2.1 Unlawful Activities Prevention Act, 1967 (UAPA)

India adopted its Constitution on November 26, 1949, and on January 26, 1950, it went into effect. The Constitution gave its citizens a wide range of rights, and it was quickly apparent that if these rights were not governed, the state's functioning would become seriously unbalanced. As a result of this exigency, the Indian Constitution underwent its first revision in 1951, replacing clause (2) in Article 19, which set appropriate limitations on the exercise of such rights. On the recommendation of the Committee on National Integration and Regionalism, which was appointed by the National Integration Council to impose reasonable restrictions in the interest of India's sovereignty and integrity, Article 19(2) was further amended in 1963 by the Constitution (Sixteenth Amendment) Act, 1963. Additionally, the Unlawful Activities (Prevention) Bill was introduced in the Parliament in order to carry out the provisions of the aforementioned Constitutional Amendment. It was approved by both Houses of Parliament and received the President of India's assent on December 30, 1967, after which it became the Unlawful Activities (Prevention) Act, 1967[9]. The original statute was intended to establish a process for gathering information, and the accused were to

[6] National Security Act 1980, s 3
[7] National Security Act 1980, s 13
[8] National Security Act 1980, s 14
[9] Unlawful Activities (Prevention) Act 1967

be tried in accordance with the guidelines set forth in the Criminal Procedure Code, 1973[10]. According to the original act's declaration of goals and justifications, it aims to stop any illegal activity that might be carried out by both people and groups.

After the 9/11 attack[11], there was a marked increase in the severity of anti-terrorism laws in all liberal democracies. Countries that were worried by terrorist activity in one of the most industrialized nations saw this as a chance to enact punitive legislation. As nations were appalled by this tragedy, there weren't many oppositions to it at the time. Similar was the case after September 26, 2001, in India[12]. While the State must defend its residents from those who could infringe upon their rights, it should not do so at the expense of the rights of the nation's minority. Older anti-terrorism laws were removed because they granted the executive branch enormous power without offering any effective safeguards[13]. The UAPA still reflects the same, and as a result, public disgust with this law grows with each amendment. Parliamentarians debated the need for and potential abuse of UAPA at the time of its first formation, during which the opposition parties raised concerns[14]. The government responded that the Act's requirement that it bear the burden of proof in order to establish an organization's prohibition[15]will prevent an arbitrary ban on the association from occurring at that time.

Thus, while the original Act contained constitutional protections[16], its modifications and ongoing restrictions on specific minority organizations made it the subject of public and academic inquiry.

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[10]Anjana Prakash , 'It's Time for the Government to Redeem Itself and Repeal the UAPA' (2023) <https://thewire.in/law/its-time-for-the-government-to-redeem-itself-and-repeal-uapa> accessed 10 June 2023

[11] Mark Pearson & Naomi Busst, 'Anti-terror laws and the media after 9/11: Three models in Australia, NZ and the Pacific' (2006) 12(2) Pacific Journalism Review <https://www.researchgate.net/publication/27826847 Antiterror laws and the media after 911 Three models in Australia NZ and the Pacific accessed 23 June 2022.>

[12] Maeen Mavara Mahmood, 'The Conundrum of the Unlawful Activities (Prevention) Act, 1967: A Comparative Analysis with Analogous Legislations' (2021) 26 Supremo Amicus 214.

[13] Bhamati Sivapalan & Vidyun Sabhaney, 'In Illustrations : A Brief History of India's National Security Laws' (The Wire, 27 July, 2019) <https://thewire.in/law/in-illustrations-a-brief-history-of-indias-national-security-laws>accessed 25 June, 2022

[14] Maeen Mavara Mahmood(n 15)

[15] Ibid

[16] Sneha Mahawar, 'Terror of Unlawful Activities Prevention Act, 1967 (UAPA)' (2020) 21 Supremo Amicus 103

- **Key Amendments**

The UAPA has undergone a number of revisions, and in 2004 anti-terror clauses were included. It was revised again in the years 2008, 2012, and 2019, which was the most recent. Let’s talk about the key clauses that these revisions implement.

A) Unlawful Activities (Prevention) Amendment Act, 2004

In order to give the Parliament the authority to impose reasonable restrictions in the interest of India's sovereignty and integrity, the Unlawful Activities (Prevention) Act, 1967 was passed. Freedom of speech and expression, the right to peacefully assemble without weapons, and the ability to organize associations or unions are all subject to limitations. Additionally, it gives authorities to deal with actions that threaten India's integrity and sovereignty, putting a stop to terrorist activities. The Prevention of Terrorism Act, 2002, which many people viewed as being severe, was repealed along with the amendment in 2004. The Unlawful Activities (Prevention) Act, 1967 was revised by the new administration to address the country's current terrorism problem by repealing the Prevention of Terrorism Act. The definition clause of the Act defines a terrorist act but not the term "terrorist."

The definition of a "terrorist act" should be used to define the term "terrorist." This definition is already covered in the chapter on terrorism definitions. The 1967 Act omitted a definition of a "terrorist act." The prior Act merely addressed and identified illegal behaviour. Any activity that promotes the cession of a portion of Indian territory or the secession of a portion of Indian territory from the Union, or that encourages an individual or group of individuals to do so, is considered illegal[17]. The same goes for any activity that challenges the sovereignty and territorial integrity of India, or that fosters or promotes hostility toward India. The Central Government shall declare any association to be unlawful and shall set forth the reasons therefor. The Tribunal will then be consulted to determine if there is enough evidence to deem the association illegal. According to this Act, "unlawful activity" in connection to an individual or association refers to any action conducted by said individual or

[17] Unlawful Activities Prevention Act 1967, s 2(o)

association (whether through committing an act or by speaking or writing words, by posting signs or other visual representations, or by any other means)[18].

B) Unlawful Activities (Prevention) Amendment Act, 2008

In order to enable the National Investigation Agency Act of 2008 to respond to terrorism-related actions effectively and decisively, the Unlawful actions (Prevention) Amendment Act of 2008 makes a number of substantive and procedural amendments. The Act does include some of the provisions of the earlier anti-terrorism laws (such as TADA, POTA, etc.), such as the 30-day police detention limit and a 180-day charge-filing deadline if the court is pleased with the Public Prosecutor's report on investigation-related delay.

The procedural adjustments made by the Unlawful Activities (Prevention) Act of 2008 are more substantial than any proposed substantive reforms. When weapons, explosives, or other items listed in Section 15 are discovered in the possession of the accused and there is cause to suspect that items of a similar nature were used in the commission of the offense, Section 43E establishes the presumption of guilt in relation to a terrorist act. Similar to this, when fingerprints or any other suggestive evidence regarding the accused is discovered at the scene of an offense, presumption is raised. This Act modifies Section 15 and defines "Terrorist Act" (which is already mentioned in the Chapter relating to Definition of Terrorism) as Persons who commit any act with the intent to endanger or likely to endanger the unity, integrity, security, or sovereignty of India or with the intent to sow terror in the people or any section of the people in India or in any foreign country. A number of substantive and procedural modifications are made by the Unlawful Activities (Prevention) Amendment Act, 2008, to enable the NIA to respond to terrorism-related activities quickly and decisively. This Act of 2008 doesn't actually present a new strategy; rather, it just copies certain clauses from earlier anti-terror laws.

Section 16 A was added to the law, making it illegal to demand radioactive material, radiological, biological substances, or nuclear devices in order to carry out or assist in carrying out a terrorist attack[19]. This was done in response to the widespread concern that terrorist organizations could acquire control of the world's expanding nuclear

[18] Unlawful Activities (Prevention) Amendment Act 2004, s 2(o)
[19] Unlawful Activities Prevention (Amendment) Act 2008, s 5

arsenal and use it for indiscriminate mass murder. Two new sections, 18 A and 18 B, were added with the intention of going after the handlers and agents who operated covertly and recruited[20], brainwashed, and trained young individuals[21] to join terrorist organizations. The addition of additional sections 43 A to 43 F is the 2008 Amendment's most notable aspect. Officers of designated authority are granted the right to arrest or authorize the arrest of individuals based on personal knowledge or other information under Section 43 A. The overriding effect of the Act over the 1973 Code of Criminal Procedure is confirmed in Section 43 C. The Act's Section 43 D addresses the topic of bail rules. According to Section 43D (a), all offenses committed in violation of the Act must be cognizable. The time frames stipulated in section 167 of the Code of Criminal Procedure, 1973, are doubled by section 43 D (2)(b).

In addition, the court has the discretion to extend police detention up to a total of 128 days after hearing from the public prosecutor. The provision of anticipatory bail for those who are charged under the Act is eliminated by Section 43 D (4). According to Section 43(5), a person accused under Chapters IV or VI of the Act is not eligible for bail if the court determines, after reviewing the case diary, that there is a prima facie case against the accused. A particular provision is made for aliens who crossed the border illegally under Section 43 D (5).

Only under extreme conditions and for reasons that must be stated in writing will they be granted bail. According to Section 51 of the 2008 Amendment Act, the central government has the authority to restrict a person's freedom of movement or to seize their financial assets based solely on suspicion.

C) Unlawful Activities (Prevention) Amendment Act, 2012

The Unlawful Activities (Prevention) Amendment Act, 2012, which expanded the definition of terrorism to include economic offenses, further revised this statute in 2012. The following are some of the key provisions:

I. Extending the time period under section 6's definition of an association's declaration of unlawfulness from two years to five years.

[20] Unlawful Activities Prevention (Amendment) Act 2008, s 18 A
[21] Unlawful Activities Prevention (Amendment) Act 2008, s 18 B

II. Modifying Section 15 of the aforementioned Act, which described a terrorist act, to add-

(a) Economic security and harm to India's monetary stability caused by the production, smuggling, or circulation of high-quality counterfeit Indian paper currency, coins, or any other material, as the aforementioned Act's current provisions do not cover actions taken with the intent to jeopardize or render likely to jeopardize India's economic security or the counterfeiting of Indian paper currency or coins.

(b) Any international or intergovernmental organization, as the current law does not specifically name such an international or intergovernmental organization, against which any person engages in the conduct listed in clause (c) of section 15.

III. Extending the purview of Section 17 of the aforementioned Act, which deals with the penalties for raising money or providing money for terrorist acts, to include both legal and illegal fund-raising by terrorist groups, terrorist organizations, and terrorist individuals.

IV. Adding new sections 22A, 22B, and 22C to the aforementioned Act to include offenses committed by businesses, organizations, or trusts within its purview and to establish a sanction therefore.

V. Adding a new section 24 to the aforementioned Act to expand the definition of "proceeds of terrorism" to encompass any assets intended for use in terrorism.

VI. Adding subsections (3) to (5) to Section 33 of the aforementioned Act to give the court the authority to:

(a) Attach or forfeit property equal to the counterfeit Indian currency involved in the offense, including the face value of such currency that is not defined as being of high quality but is included in the common seizure with the high quality counterfeit Indian currency.

(b) For the attachment or forfeiture of property equal to or the value of the associated proceeds of terrorism.

(c) When the trial cannot be completed due to the death of the accused, the accused being designated as a proclaimed offender, or for any other cause, confiscation of movable or immovable property may be ordered based on the material evidence.

VII. The main Act's Chapter VI covers terrorist organizations. The Central Government is given the authority to add to, remove from, or alter the Second Schedule or Third Schedule (inserted presently pursuant to Section 14) by notification under Section 35, which deals with amendment of the Schedule (containing terrorist groups). Each House of Parliament shall receive and consider any notification issued pursuant to subsections

(1) and (4). The First Schedule is now the renamed version of the current Schedule. The Third Schedule, which deals with security aspects defining high grade counterfeit Indian currency notes, and the Second Schedule, which contains nine international conventions and protocols, have both been added.

D) THE UNLAWFUL ACTIVITIES PREVENTIONS (AMENDMENT) ACT, 2019

The UAPA, 1967, has undergone the latest and most contentious change to date. The Indian Parliament has empowered the central government to label people as terrorists by this amendment from 2019 (herein after 2019 Amendment)[22]. The Act now has a fourth schedule[23], to which the federal government may add the names of anybody it considers to be terrorists. The Act is changed to reflect this modification in sections 35 and 36. The central government may, in accordance with Sections 35(1)(a) and 35(1)(d) of the Act, add or delete a person's name from the fourth schedule. This option, which was previously only available to organizations, has been made available to people as well. The government's suspicion that the person is participating in terrorism is the goal outlined in Section 25 (2) for the use of the aforementioned power. Section 35 (3) of the Act specifies the requirements for the use of the aforementioned power. The requirements include planning, supporting, and otherwise participating in terrorism.

It is obvious that the requirements for advancement and preparation are ambiguous and allow for considerable executive discretion. But even if they are attempted to be justified on the basis of national security, the allocation of residual power under subsection (d), which allows nearly unfettered discretion, is difficult to justify in a liberal democracy, not only for that specific person but also for his or her family.

[22] Unlawful Activities Prevention (Amendment) Act 2008, s 5

[23] Unlawful Activities Prevention (Amendment) Act 2008, s 12

Even if the person is de-notified, the person and his family will always be socially stigmatized and find it very difficult to reintegrate into society.

2.1.2.2 Terrorism and Disruptive Activities (Prevention) Act, 1985 and 1987 (Repealed/ Lapsed)

- BACKGROUND

To address a serious situation, the TADA (Terrorist and Disruptive Activities (Prevention) Act) of 1987 was passed as a temporary measure. A law known as the TADA (Terrorist and Disruptive Activities (Prevention) Act, 1987) was implemented largely to combat terrorism, secessionist, and separatist sentiments, particularly in Punjab[24]. With this action, the Khalistan Movement, a form of religious terrorism prevalent in Punjab, was to be stopped. Later, the statute expanded its purview to include additional states[25]. TADA was implemented in part as a reaction to the assassination of Prime Minister India Gandhi in 1984 by ferocious Sikh radicals. The Terrorist and Disruptive Activities (Prevention) Act, 1985, which gained the President's approval on May 23 and Extra, was published in the Indian Gazette. Part II, Section 1, dated May 23, 1985, went into effect for a two-year period on May 24, 1985, throughout all of India. The proviso to sub-Section (2) of Section 1 originally stated: "Provided that the State of Jammu and Kashmir shall not be subject to such provisions of this Act as relate to terrorist acts." Act 46 of 1985 removed this proviso, making the provisions of this Act applicable to the State of Jammu and Kashmir as of June 5, 1985. This was the first anti- terror law that the Indian government passed following independence. The terrorists have been committing wanton killings, arson, property looting, and other terrible crimes mostly in Punjab and Chandigarh, according to the Statement of Objects and Reasons for the introduction of this Act. Since the 10th of May 1985, the terrorists have increased their attacks in Delhi, Haryana, Uttar Pradesh, and Rajasthan, causing many innocent people to lose their lives and sustain terrible injuries. It is obvious that the purpose of placing explosive devices on buses, trains, and other public transportation is to scare people, instil fear and panic in the minds of onlookers, and disturb communal peace and tranquility.

[24] Rahul Tripathi, 'TADA to UAPA, What Does India's terror law says' The Indian Express (New Delhi,30 August 2018) <https://indianexpress.com/article/explained/tada-to-uapa-what-indias-terror-laws-sayelgaar-parishad-probe-5331777/> accessed 05 May 2023

[25]'TADA Act: Anti-Terrorism Laws in India' (Getlegal India, 11 October 2021) <https://getlegalindia.com/tada- act/> accessed 18 May 2023.

This is a brand-new, overt form of terrorism that needs to be addressed seriously and dealt with quickly and properly. It is also extremely concerning that disruptive behaviours are increasing at an alarming rate.

The Terrorist and Disruptive actions (Prevention) Act, 1987, Act 28 of 1987, was passed to prevent terrorist and disruptive actions as the Terrorist and Disruptive Activities (Prevention) Act, 1985, was scheduled to expire on May 23, 1987. It was believed that it was essential to both maintain and strengthen the aforementioned law. The President issued the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 (2 of 1987) on May 23, which went into effect on May 24, because both Houses of Parliament were not in session and quick action was required. According to their preambles, Act 31 of 1985 and Act 28 of 1987 have the identical structure. The specific provisions of these two Acts were/are designed to prevent and respond to terrorist and disruptive activities, as well as for matters related to or incidental to such activities.

- SALIENT FEATURES

Two new offenses were established by this Act: "Terrorist Act" and "Disruptive Activities." This Act defines a "terrorist act" but does not specify who is a terrorist. Accordingly, someone is considered to be involved in terrorism if they act with the intent to intimidate the government, sow fear among some groups of people, or undermine social cohesion. They may also use dangerous weapons or chemicals that endanger human life or cause property damage or destruction[26]. Finally, they may engage in any other behaviour that prevents the provision of services.

Acts that directly or indirectly impair the sovereignty and territorial integrity of India or support demands for the secession or cession of any portion of India are also considered disruptive behaviour[27]. Accordingly, a wide range of deeds, whether public or private, aggressive or nonviolent, whether by act or by speech, or through any other means, could be included in its vast purview under these conditions.

According to this law, a suspect may be detained in police custody for up to 30 days and in court custody for up to 6 months before formal charges are brought against

[26] Terrorist and Disruptive Activities (Prevention) Act 1987, s 3
[27] Terrorist and Disruptive Activities (Prevention) Act 1987, s 4

them. Sections 18(5) and (6) specify strict restrictions on bail. The judge must have a reason to believe the accused is innocent before granting bail.

Confessions made to the police by the accused are typically not admissible against the accused under the Indian Evidence Act[28]. However, if the confessions are voluntary, made before a police officer not below the rank of superintendent of police, and recorded by that officer either in writing or on any mechanical device, they will be admissible in the trial of that person or co- accused, abettor, or conspirator for an offense under this Act or rules made there under, provided the police make sure the accused is not under any obligation to make such confessions[29]. This is an appeal for brutal inmate treatment and forced confessions.

The case of Kartar Singh v. State of Punjab[30] called into question the legality of TADA. The petitioners in that action claimed that TADA infringes the basic rights protected by Part III of the Indian Constitution. The SC ruled that TADA is within the parameters allowed by the Indian Constitution. It stressed the significance of considering current socioeconomic conditions while analysing the legitimacy and utility of security legislation. According to the court, terrorism is a threat that affects everyone, including India. A law with rigorous requirements is required in this situation in order for peace and tranquility to rule the society.

- ANALYSIS

According to the act's very broad definition of "disruptive activities," anyone can be detained for exercising their right to free speech in relation to issues that are regularly debated in democracies, and if found guilty, they will be subject to a mandatory minimum sentence of five years in prison. As a result of Section 4 of TADA's extensive restrictions, the right to free speech[31] as provided by the Indian Constitution can be easily restricted.

A person who has been arrested under criminal law procedure is required to be informed of the reason for his arrest as well as the charges brought against him. However, TADA does not contain such provision which clearly can be seen to be

[28] Indian Evidence Act 1872, s 125
[29] Terrorist and Disruptive Activities (Prevention) Act 1987, s 15
[30] Kartar Singh v. State of Punjab [1994] SCC 569
[31] The Constitution of India 1950, a 19(1)(a)

violating the rights of the accused to be informed of their ground of arrest as well as the charges pressed against them.

The provisions of TADA increased the authority of the federal government to deal with those whom the act designated as terrorists. Trials of alleged terrorists might, for instance, be conducted behind closed doors at the judge's discretion[32]. Additionally, the Act assumed suspects of terrorism were guilty and required them to prove their innocence[33]. A person could also be detained by the state for up to a year without bail on the mere suspicion that they were involved in terrorist activity[34].

The obligation on the State to thoroughly review the accuracy of the conviction and sentence is imposed by the rights to be presumed innocent until proven guilty, the right to be informed of charges brought against oneself, the right to a speedy trial, and the right to a public and impartial hearing. Furthermore, testimony obtained by torture or other forms of cruel, inhumane, or humiliating treatment or punishment is not admissible in court. But TADA regulations blatantly breached these key legal safeguards for a fair trial.

TADA occasionally presume guilt rather than innocence, however this is not always the case. The presumption of innocence until proven guilty is violated by some of these exceptions to the standard rules of evidence, which include definitions that allow for the simple conviction of innocent people.

A person's possession of a firearm is assumed to be connected to "terrorist" or "disruptive" activity if they are found to be in illegal possession of one in a "notified area" as defined by TADA[35]. This presumption cannot be disputed. As a result, a crime that would normally be tried under the Arms Act is now being tried in accordance with the TADA's unique provisions, where offenders have less legal rights and are subject to harsher punishments. Once more, this demonstrates how an accused persons right has been clearly violated.

[32] Terrorist and Disruptive Activities (Prevention) Act 1987, s 16
[33] Terrorist and Disruptive Activities (Prevention) Act 1987, s 21
[34] Terrorist and Disruptive Activities (Prevention) Act 1987, s 20(4)
[35] Terrorist and Disruptive Activities (Prevention) Act 1987, s 5

2.1.2.3 Prevention of Terrorism Activities Act, 2002 (Repealed/Lapsed)

- BACKGROUND

There was no statute of a peculiar character that could be utilized as a weapon against the escalating terrorist activities in India when TADA expired in the year 1995. There was no anti- terror law in India after the TADA expired in 1995, and the Ministry saw the need for a proper piece of legislation to combat terrorism and other anti-national actions as urgent. The new BJP- led government asked the Law Commission of India to conduct a study in 1999 to evaluate the need for the new anti-terrorism legislation. In response, the Commission put out a fresh Prevention of Terrorism Bill that was substantially based on the 1995 Criminal Law Amendment Bill. Based on this idea, the administration worked to pass a new antiterrorism law throughout 2000 and 2001, expressly using antiterrorism legislation from the US and the UK to support its efforts. Political parties, human rights organizations, and the NHRC all vigorously opposed the new bill, still remembering the atrocities of TADA.

Like in other nations, India's political climate was impacted by the terrorist attacks of September 11, 2001. Immediately following this incident, many nations passed anti-terrorism legislation. The Prevention of Terrorism Ordinance (POTO), which serves to temporarily postpone full parliamentary consideration of the plan, was quickly enacted into law by the government. Two significant terrorist attacks “one on the legislative assembly complex in the state of Jammu & Kashmir in October 2001 and another an assault on the Indian Parliament building in December 2001” occurred in the middle of the debate over the proposed bill, giving the government's proposal additional momentum. The proposed legislation was the subject of a heated dispute. The government quickly passed the act following the promulgation of POTO. The act kept some of TADA's most contentious clauses and added new authorities not included in the previous law.

- SALIENT FEATURES

The Act provided guidelines for investigations and punishments as well as a definition of "terrorist". The Act included a number of safeguards to preserve the discretion of the executive, even though it gave the executives the power to question and detain any suspect. A suspect however may be detained up to 180 days under this Act without a charge sheet being presented before the court. Preventative detention, which is when

someone is imprisoned to prevent them from committing new crimes or to maintain public order, is another significant aspect of this law.

POTA allows the use of such admissions to the police as evidence against a criminal, despite the fact that the Code of Criminal Procedure, 1973, Section 161 typically forbids them.

According to the Act, the High Court of the appropriate jurisdiction may hear any appeals against decisions issued by the POTA special court or decisions on the suspect's bail petition. In accordance with POTA laws, confessions had to be verified before a magistrate within 48 hours, and if there was an allegation of torture, the magistrate was required to refer the accused to a doctor for a checkup.

The Act also stipulates that law enforcement officials who abuse their authority may be prosecuted. The POTA gave victims the option of receiving compensation in addition to the possibility of going to jail. The act also required the creation of review panels at the state and federal levels.

- ANALYSIS

The law defines punishment for, and measures for dealing with, terrorist activities and declares membership in a terrorist gang or terrorist organization to be a crime[36]. The Act is vague, however, on how the government must demonstrate that a person is actually a member of such a terrorist group. In fact, unless a person can demonstrate that they have not engaged in terrorist activities and that the organization was not already illegal when they joined, the Act presumes that a person accused of belonging to a terrorist organization is a terrorist[37]. The state inadvertently discourages those peaceful people who might want to join a non- mainstream organization but worry that doing so could result in them being arrested or, at the very least, the trouble of having to prove their innocence[38]. This is because the state places this type of onus on the individual.

The ambiguous concept makes discriminatory use possible. Despite the fact that POTA explicitly states that anyone convicted of a crime shall be punished[39], no

[36] Prevention of Terrorism Act 2002, s 3

[37] Prevention of Terrorism Act 2002, s 20(1)

[38] 'India: Briefing on the Prevention of Terrorism Ordinance' (Amnesty International15 November 2001) <https://www.amnesty.org/en/documents/asa20/049/2001/en/> accessed 2 June 2023

[39] Prevention of Terrorism Act 2002, s 1(2)

military officials, Hindu nationalists, or police officers have ever been brought to justice under the Act.

Additionally, the statute also specifies that the accused is not entitled to have a lawyer to represent him throughout the entire process of police interrogation[40] despite the arrestee being promised the right to contact a lawyer and to have his family member informed of his arrest.

Sections 52(4) and 14 may be argued to be consistent with Article 22 of the Indian Constitution, which prohibits the state from providing legal representation to someone kept in "preventive detention" and implicitly imposes some restrictions on the confidentiality of the attorney-client relationship[41]. Regarding the latter, the Indian Supreme Court stated that attorneys do not have an unqualified, "sacrosanct right" to maintain the confidentiality of all client contacts, particularly those concerning POTA-related offences. However, as was already mentioned, police abuse of suspects is common and well-known[42]. The Court has developed specific standards to ensure the humane treatment of those who are being detained[43], including the right of detainees to obtain legal representation[44], in recognition of this fact.

However, as numerous observers have highlighted, the police frequently disregarded the Court's warnings[45] and, in particular, continue to prevent many people who are being held from seeing legal counsel. Furthermore, as section 32 of POTA replicates TADA's language in section 15 permitting unrepresented detainees to be pushed into confessing[46] to terrorist crimes they have not done, detainees may be forced to make false confessions. Additionally, the possibility increases that POTA might be utilized to continue disregarding individual personal liberties because the police are permitted to acquire blood, DNA, or other physiological samples without the accused's consent[47].

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[40] Prevention of Terrorism Act 2002, s 52(4)
[41] The Constitution of India 1950 , a 22(3)-(7)
[42] Tukaram v.State of Maharashtra [1979] SCC 143
[43] D.K.Basu v. State of West Bengal [1997] SCC 416
[44] M.H. Hoskot v. Maharashtra, [1978] SC 1548
[45] S.R. Sankaran, 'Criminal Justice System: A Framework for Reforms' ECON. & POL. WKLY (May 29, 1999) 1316, 1319.
[46] Prevention of Terrorism Act 2002, s 32
[47] Prevention of Terrorism Act 2002, s 27

The Indian government established Special Courts following the attack on the Indian Parliament in December 2001 to check cases booked under the act[48]. But the mere existence of these Special Courts draws attention to a significant structural issue that has dogged the Indian legal system for years. The "regular" Indian courts, including the Supreme Court, state High Courts, lower criminal and civil courts, all have one of the greatest backlogs of cases in the entire world[49]. Relevant for our purposes is the fact that Indian officials have chosen for years to create alternative judicial institutions that seek to circumvent the traditional courts[50], rather than addressing the basic problems inherent in the legal system. These alternatives, including POTA's Special Courts, are meant to operate better than the regular courts, or at the very least more effectively.

However, the little empirical studies that have been done on the effectiveness of alternative forums show that they share many of the same problems that traditional courts do: backed up dockets, delays, unaccountable judges, insufficient remedies, and ultimately frustrated, disgruntled litigants[51]. Constitutional issues are also brought up by these Special Courts. The judiciary is not considered to be supreme but it is the Central Government that has the last word in deciding which cases the Special Courts shall have jurisdiction over in accordance with section 23 of POTA. This Act's clause thus demonstrates that, contrary to the Constitution's fundamental structural premise, the judiciary was allegedly regarded to lack independence and be under the influence of the Executive.

2.1.2.4 National Investigation Agency Act, 2008 (In Force)

- INTRODUCTION

The National Investigation Agency Act of 2008 was passed with the intention to investigate and prosecute individuals for offenses affecting the sovereignty, security, and integrity of India, as well as offenses relating to state security, friendly relations

[48] Prevention of Terrorism Act 2002, s 23

[49] Jayanth K. Krishnan, 'The Rights of the New Untouchables: A Constitutional Analysis of HIV Jurisprudence in India' (2003) 25 HUM. RTS. Q. 791.

[50] Marc Galanter & Jayanth K. Krishnan, '"Bread for the Poor": Access to Justice and the Rights of the Needy in India' (forthcoming 2004) HASTINGS L.J.

[51] Catherine S. Meschievitz & Marc Galanter, 'In Search of Nyaya Panchayats: The Politics of a Moribund Institution', in THE POLITICS OF INFORMAL JUSTICE: COMPARATIVE STUDIES 47-77 (Richard Abel ed., 1982)

with foreign states, and offenses under laws enacted to carry out international treaties, agreements, conventions, and resolutions of the United Nations, its agencies, and other international organizations[52].

The National Investigation Agency (NIA) Act, 2008 was passed by the Parliament in the wake of the recent spike in terrorist attacks, including the attack on the British Parliament and the Mumbai attacks, with the aim of increasing professionalism in the investigation of terrorist acts For the first time, a national investigation agency with the authority to look into matters over the entirety of India's territory has been envisioned by the NIA Act. It is the shared obligation of the federal, state, and local governments to combat terrorism. It is crucial to develop tactics, precise intelligence, and current databases on terrorists to counter terrorist actions.

Only an empowered central organization with regional and local field offices and quick communication can complete this multi-agency coordination and time-bound action. Similar to this, a committed group of officers that are highly motivated, trained, and totally professional may move quickly to confront terrorism when given the necessary power, resources, and equipment. For this reason, the National Agency Act was passed. Center-State collaboration is envisioned in the investigation of terrorism situations. It restricts the new agency's authority to a select list of scheduled offenses covered by seven Central Acts that address nuclear energy, illegal activities, anti-hijacking, civil aviation safety, marine safety, weapons of mass destruction, and commitments under the SAARC Terrorism Convention. Offenses against the State[53] and offenses involving money and bank notes[54] are included in the scheduled offenses under the jurisdiction of the National Investigation Agency in the Indian Penal Code.

- SALIENT FEATURES

The National Investigation Agency Act of 2008 applies to the whole of India, Indian citizens living outside of India, and passengers on ships and aircraft with Indian registry. During investigation of a crime the NIA personnel is attributed with the same rights as that of a police officers. The NIA looks into a crime only when the central government believes the crime is related to terrorism and requests that the NIA look

[52] "Amendment to the National Investigation Agency Act, 2008: An Act of Violation" (Amendment to the National Investigation Agency Act, 2008: An act of violation - Frontline, August 5, 2019) <https://frontline.thehindu.com/the-nation/article28758410.ece> accessed on 27 April 2023

[53] Indian Penal Code 1860, s 121-130

[54] Indian Penal Code 1860, s 489A-489E

into it. It can look into additional offenses related to terrorism. The State Government provides the NIA with full support in conducting criminal investigations. The Act's investigation-related provisions have no bearing on the State Government's authority to look into and prosecute any terrorism-related crimes or other offenses. For the trial of offenses related to terrorism, special courts established by the center may meet anywhere. The High Court may transfer such matters to any other special court within the state, and the Supreme Court of India may transfer any case that is ongoing with the Special Court to another Special Court in the same State or any other State. For the trial of any offense under the Act, the Special Courts would have all the authority granted to the court of sessions under the Criminal Procedure Code (Cr.P.C).

Such cases' trials would take precedence over those for other offenses. One or more special courts may be established at the discretion of the State Governments. After the first 90 days have passed, no appeal will be considered in such situations. Terror-related acts have been specifically referred to and addressed in the NIA Act. Terrorist acts include using bombs, dynamite, poisons, different gases, biological, radioactive, and nuclear substances. One very distinct distinction between the National Investigation Agency and the Central Bureau of Investigation is that the NIA Act of 2008 makes no mention of bail. If an accused person is in custody, he cannot under any circumstances be given bail. Additionally, there is no possibility for bail if the accused is not an Indian citizen and entered the country unlawfully.

When looking into specific offenses, the NIA disregards the Police Act of 1861's requirements. Although the states have been informed since the NIA Act of 2008 gives them the authority to alert the NIA when they discover such offenses, such as offenses related to terrorism, being committed, the NIA can also act Suo Motto to deal with any of the scheduled crimes. This is a departure from the CBI's practice, which called for the State's consent before the agency could take over the case. The Federal Bureau of Investigation in the United States served as a model for the NIA. The NIA's goal is to make the judicial system stronger so that the Central Government can successfully combat terrorism. The NIA is also intended to combat cybercrime and insurgency.

- NATIONAL INVESTIGTION AGENCY

The National Investigation Agency (hence referred to as NIA) was formed under the NIA Act. The Central Government established, ran, and oversaw the NIA to look into and prosecute scheduled offenses[55]. Any FIR or information pertaining to a crime on the list must be sent by the state to the central government[56]. Within fifteen days of receiving the report, the Central Government will decide whether the offense is related to a scheduled offense or not based on reports from State governments or other sources. If the findings are positive, it will then be decided if the case is appropriate for NIA investigation by taking into account the seriousness of the offense[57]. Without awaiting a State Government's report, the Central Government may order the NIA to conduct the scheduled offense inquiry on its own initiative[58]. The State Government must offer all cooperation and hand over all papers and evidence to the NIA once the NIA assumes control of the inquiry.

- SPECIAL COURTS

To try scheduled offenses, the Chief Justice of the High Court may recommend that the Central Government establish a Special Court and appoint a judge[59]. When a Special Court is established but a judge is not nominated, the NIA is also permitted to request that the Chief Justice of the High Court appoint a judge to the Special Court[60]. Along with the planned offenses committed by the accused, a special court has the authority to trial extra offenses[61].

- OTHER PROVISION

Similar to POTA, the requirements relating to summary procedure, holding the trial without the accused, giving the planned offense trial priority, protecting the witnesses, and appeal procedures[62]. The Special Court's ruling may be appealed to the High Court by the party who feels aggrieved[63].

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[55] National Investigation Agency Act 2008, s 3 4
[56] National Investigation Agency Act 2008, s 6(1) 6(2)
[57] National Investigation Agency Act 2008, s 6(3) 6(4)
[58] National Investigation Agency Act 2008, s 6(5)
[59] National Investigation Agency Act 2008, s 1
[60] National Investigation Agency Act 2008, s 11(4)
[61] National Investigation Agency Act 2008, s 13 14
[62] National Investigation Agency Act 2008, s 16 17 19
[63] National Investigation Agency Act 2008, s 21

Besides, the individual states also have their own version of security laws. Notable among them are as follows:

2.1.2.5 Armed Forces Special Powers Act, 1958 (In Force)

- BACKGROUND

One of the harshest pieces of legislation ever approved by the Indian Parliament is the Armed Forces (Special Powers) Act of 1958 (AFSPA). The statute gives the military forces unique authority in what it refers to as "disturbed areas" and only has six provisions. In 1972, it was revised to include all seven states in India's north-eastern area. Originally, it only applied to the north-eastern states of Assam and Manipur[64]. The Armed Forces (Special Powers) Act of 1948 is where the Armed Forces (Special Powers) Act of 1958 got its start. The Indian government passed four ordinances in response to the situation that developed in some areas of the country as a result of the country's 1947 division.

In order to put an end to the Quit India Movement started by M. K. Gandhi during the colonial era, Lord Linlithgow, the viceroy of India, enacted the Armed Forces Special Powers (Ordinance) on August 15, 1942. Police shootings at Indian protesters resulted in thousands of deaths and many more arrests. The Naga insurgency, however, started in the modern era in1954, following independence. The Armed Forces (Special Powers) Act was passed in 1958 by Nehru's administration in order to stifle this movement. As vicious as the British troops in India were the atrocities committed by Indian soldiers in Nagaland. Since then, AFSPA has been implemented in all of the North Eastern states, as well as in Punjab and Jammu & Kashmir.

- SALIENT FEATURE

The major purpose of the act is to make it possible for military personnel to be granted special authority in troubled areas of the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura. According to the Act, the Governor must declare a certain area to be a disturbed area before AFSPA can be implemented there[65].

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[64] "Explained: What Is AFSPA, and Why Are States in Northeast against It?" (The Indian Express, December 7, 2021)<https://indianexpress.com/article/explained/nagaland-civilian-killings-indian-army-repeal-of-afspa-northeast-7661460/>accessed on 29 May 2023

[65] Armed Forces Special Powers Act 1958, s 3

Definitions pertaining to this Act are provided under Section 2 of the Act. The statute specifies that the phrase "armed forces" refers to both armed forces and air forces, which are regarded as armed forces on land[66]. Any other Union armed forces could also be included in it. A "disturbed area"[67] is further defined as a region that has been identified as a disturbed area under Section 3of the Act.

Accordingly, the Governor must declare a certain area to be a disturbed area before AFSPA can be implemented there. The Hon'ble Supreme Court of India, however, ruled that section 3 cannot be read to give the authority to make a declaration at any time. Before the term of six months has passed, the declaration should be periodically reviewed[68].

The provision of the act that has generated the most debate is section 4, which establishes some specific authorities for the military services. The act's section 4 gives the armed forces the authority to forbid groups of five or more people from congregating in a given location. If they believe that someone or several persons are breaking the law, they have the right to start shooting after issuing a proper warning. If the authorities have a good faith suspicion that a vehicle may be carrying weapons of any type, they have the authority to stop and search the vehicle. In the event that a cognizable offense has been committed, the army may arrest the suspect(s) without a warrant if there is reasonable doubt. The Act provides the military with a right to enter a location without a search warrant and conduct a search there[69].

"The Naga People's Movement for Human Rights v. Union of India"[70] case, where the Act's legality was contested through a writ petition, was decided by the Supreme Court of India in 1997. It was claimed that the Act had created a sort of imbalance between military personnel and civilian, as well as between the Union and State authorities, and that it had breached constitutional rules governing the procedure for issuing proclamations of emergency. These arguments were dismissed by the court. It determined that the Act's various sections were being complied with the pertinent provisions of the Indian Constitution and that the Parliament had the authority to adopt the Act.

[66] Armed Forces Special Powers Act 1958, s 2(a)
[67] Armed Forces Special Powers Act 1958, s 2(b)
[68] Naga People's Movement of Human Rights v. Union of India [1998] SC 413
[69] Armed Forces Special Powers Act 1958, s 4
[70] Ibid n 68

- ANALYSIS

Although the government and military forces fully support the AFSPA, there are a number of issues surrounding it, including the following:

Human rights violations: According to many critics, the Armed personnel Special authority Act of 1958 gave armed or security personnel enormous authority and protection that frequently resulted in human rights crimes, including staged encounters. Exploitation of Absolute Powers: Certain powers granted to security personnel, such as the ability to shoot suspects or rebels on sight, are in violation of the fundamental right to life. It places soldiers in position to determine the value of various lives, and individuals are only subject to an officer's opinion.

Fundamental rights are violated by the military's ability to arbitrarily detain and arrest anyone under the AFSPA, which is prohibited by Article 22 of the Indian Constitution. Immunity from Penalizing Action: Under the AFSPA statute, the security forces in unrest- prone areas are shielded from prosecution, lawsuits, and other legal actions. The central government should only have previously approved the introduction of this immunity.

In a utopian scenario where peace reigns supreme, it might be preferable to repeal the act in order to sustain a peaceful aura. However, a state without a sufficient legal concept of "legitimate violence" might become exceedingly hazardous in a scenario where violent challenges to the state persist. Because the state can therefore be expected to start responding in a lawless vacuum through fiats and ordinance initially, and later when things get more desperate, false encounters, covert killings, and intimidation, etc.

2.1.2.6 Maharashtra Control of Organized Crime Act, 1999 (MCOCA)

- INTRODUCTION

In an effort to overthrow both organized crime and terrorism, the Maharashtra Control of Organized Crime Act, 1999 (MCOCA), was passed by the state of Maharashtra in 1999. The threat of organized crime was growing, as stated in the declaration of object and reasons, and the Maharashtra State lacked any effective legislation to effectively control the organized crimes. It was necessary to pass laws along the lines of the current law to deal with them. The Act itself contains provisions to prevent the

misuse of the law. The passage of this law is expected to significantly reduce the propagation of fear in society and allow for significant control of the criminal groups supporting terrorism[71]. The present legal framework, that includes the penal and procedural legislation and the adjudicatory system, seems rather to be inadequate to curb or control the menace of organized crime, according to the preamble of MCOCA. In order to combat the threat of organized crime, the government has decided to enact a special law with strict and dissuasive provisions, including the ability to intercept wire, electronic, or oral communication under certain conditions.

- PROVISIONS

Only the Special Court whose local jurisdiction the offense was committed in or, as the case may be, the Special Court established for trying offenses may trial any offense under the MCOCA[72]. In MCOCA cases, the police have ability to file a charge sheet within 180 days as opposed to the usual 90 days. In MCOCA proceedings, an apprehended person may be held in police custody for 30 days rather than the usual 15 days after the accused is produced in court within 24 hours, as opposed to regular criminal cases[73].

The Act permits the interception of wire, electronic, or oral communications[74], makes the intercepted information admissible as evidence against the accused in court, mandates that every order issued by the authority with the necessary authority to authorise the interception[75]be reviewed by a review committee, and places certain restrictions on the interception[76].

If the Special Court requests it, the proceedings under this Act may be conducted behind closed doors[77]. On a request made by a witness in any process before it, by the Public Prosecutor in connection to that witness, or on its own initiative, a Special Court may take whatever steps are necessary to protect a witness' identity and address.

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[71] 'Maharashtra Control of Organized Crime Act, 1999 Explained by Adv. Ravi Drall, Delhi High Court' (Lawstreet.co) <https://lawstreet.co/vantage-points/maharashtra-control-organized-crime-ravi-drall> accessed on 29 March 2023

[72] Maharashtra Control of Organized Crime Act 1999, s 9(1)

[73] The Code Of Criminal Procedure 1973, s 167(2)

[74] Maharashtra Control of Organized Crime Act 1999, s 14

[75] Maharashtra Control of Organized Crime Act 1999, s 15

[76] Maharashtra Control of Organized Crime Act 1999, s 16

[77] Maharashtra Control of Organized Crime Act 1999, s 19

Without limiting the generality of the requirements of subsection (2), a Special Court may take the following actions under that subsection.

1. Proceedings to be held at such location as determined by the Special Court;

2. Names and addresses of the witnesses in its orders or judgments or in any records of the case available to the public need to remain anonymous

3. the issuing of any directives to ensure that the identification of the witnesses are not disclosed; and 4. All proceedings pending before the court shall not be made public.

Anyone who disobeys a direction given under subsection (3) faces a period of imprisonment that may last up to a year and a fine that may amount to one thousand rupees.

For the safety of the witness, it is stipulated that the witness need not be produced in court if they are not willing. There is no danger of victimization under such a judicial system. It is recommended that a Deputy Commissioner or higher rank officials supervise the case, especially in MCOCA instances. Only in MCOCA cases can a Deputy Commissioner of Police or an officer of higher rank record the voice of an apprehended gang member who wishes to confess, and the confession will be admissible in court[78]. However, the case shouldn't be under investigation or supervised by the Deputy Commissioner of Police or any higher ranking official who would record the confession.

- ANALYSIS

MCOCA was the first law passed in India with the explicit purpose of intercepting communications in order to gather evidence of criminal activity. The Act's goal was to make it such that law enforcement and the administration of justice could not function without the assistance of intercepting such communications in order to gather evidence of crimes being committed or to stop them from being committed[79]. In order to combat the threat of organized crime, the government decided to adopt a special law with strict and deterrent restrictions, including the ability to intercept wire, electronic, or oral communications under certain conditions.

[78] Maharashtra Control of Organized Crime Act 1999, s 23 (1)(b)

[79] 'AN ANALYSIS of the MAHARASTHRA CONTROL of ORGANIZED CRIME ACT, 1999' (2021) <https://thelawbrigade.com/wp-content/uploads/2021/06/Parth-Chaturvedi-JLSR.pdf>accessed on 25 April 2023

Similar to section 16 of TADA[80], section 19(1) of the MCOCA gives the Court the authority to order closed-door hearings if it so chooses, and sections 19(2) and (3) provide the Court the authority to take whatever steps are necessary to protect the identity and whereabouts of any witnesses. Because the Act deals with such incorrigible organized criminals whose activities cannot be regulated and who are typically impossible to bring to justice under the regular law of the land, these broad powers and "stringent" clauses have been justified.

It appears that provision 21(2) of MCOCA, which is quite similar to section 43D (2) of UAPA[81], has been read in the same way. Cases involving terrorism have frequently been decided under MCOCA. The law may be effective as of right now, but transparent examination suggests that it is also a poisonous tool used to take advantage of the public, including occasionally innocent people who are falsely accused due to compelling but unreported circumstances. “The Maharashtra Control of Organised Crimes Act, 1999 was passed around 22 years ago, and yet the authorities have yet to apprehend the so-called organisers of the "syndicate" or the initial controllers of the "syndicate," proving the act's failure.

2.1.2.7 Punjab Disturbed Areas Act, 1983

With better provisions for the repression of disorder and the restoration or maintenance of public order in Punjab's troubled districts, the aforementioned Act was passed.

The purpose of the Act is to give the State Government the authority to declare all or a portion of any district in Punjab to be in a disturbed state[82]. Any magistrate or police officer not below the rank of sub-inspector or havildar of the armed branch of the police, once an area has been declared to be disturbed, will have the authority to fire upon, or otherwise use force, even to the point of causing death, against any person who is acting in violation of any law or order currently in force in such disturbed area, prohibiting the gathering of five or more people, or the carrying of weapons, fire-

[80] Terrorist and Disruptive Activities Prevention Act 1987
[81] Unlawful Activities Prevention Act 1967
[82] Punjab Disturbed Areas Act 1983, s 3

arms, or ammunition. The use of force or firing, however, could only be resumed after issuing the appropriate warning that the relevant officer felt was necessary[83].

Any magistrate or police officer with a rank higher than sub-inspector has the authority to demolish any arms cache, fortified position, or shelter from which armed attacks are likely to be launched or attempted, if they believe that doing so is necessary. Similar to that, any building used as a training ground for armed volunteers or as a hideout by armed gangs or fugitives sought for any crime may also be demolished[84]. Without the prior approval of the State Government, an officer acting in line with sections 4 and 5 will not be liable to any legal action or prosecution[85].

2.1.2.8 The Chandigarh Disturbed Areas Act, 1983

The provisions of the aforementioned Act are almost identical to those of the Punjab Disturbed Areas Act of 1983, with the exception that the Administrator of the Union Territory of Chandigarh now possesses the authority granted to the State Government under the earlier Act. The Administrator has the authority to designate any portion in the Chandigarh Union Territory as a disturbed area under the latter Act.

Officers of the same rank, i.e., any Magistrate or police officer not below the rank of sub- inspector or havildar, have been given the authority to use force, even to the point of causing death, against anyone acting in violation of any law or order currently in effect in the troubled areas[86]. They may also destroy arms dumps, fortified positions, training camps, etc. in the same way that was allowed under the previous Act of 1983[87]. Last but not least, the Administrator of the Union territory must first approve any lawsuit, prosecution, or other legal actions that are brought against someone who behaved in accordance with sections 4 and 5.

2.1.2.9 Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983

The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983, which went into effect on October 15th with the intention of replacing an ordinance with the same

[83] Punjab Disturbed Areas Act 1983, s 6
[84] Punjab Disturbed Areas Act 1983, s 5
[85] Ibid n 83
[86] Punjab Disturbed Areas Act 1983, s 4
[87] Punjab Disturbed Areas Act 1983, s 5

title and the same year, has very similar goals to those of the Chandigarh Disturbed Areas Act, 1983, and the Punjab Disturbed Areas Act, from the same year.

This Act grants exceptional authority for maintaining public order to members of the armed forces of the Union, including the military, air forces that are acting as ground forces, and any other armed forces[88].In either case, the Central Government and the Governor or Administrator of the State of Punjab and the Union territory of Chandigarh, respectively, have the authority to declare all or a portion of the State or Union territory to be a disturbed area if, in their judgment, the situation there is so seriously disturbed or dangerous that the use of armed forces is deemed necessary[89]. Any person acting in violation of any law or order currently in effect in the disturbed area prohibiting the assembly of five or more people or the carrying of weapons or fire-arms, ammunition, or explosives may be subject to orders to use force, even to the point of causing death, by a commissioned officer, warrant officer, non-commissioned officer, or other person of equivalent ranks posted within the disturbed area. However, such use of force will be constrained by the requirement that the appropriate warning be given[90].

Any one of the officers in the aforementioned ranks has the authority to destroy any arms cache, prepared or fortified position, or shelter from which armed attacks are made, are likely to be made, or are attempted, as well as any building serving as a training ground for armed volunteers or a haven for armed gangs or fugitives who are wanted for any crime[91].The aforementioned officers have the authority to make arrests without a warrant of anyone who has committed a crime, is reasonably suspected of having committed one, or is suspected of being someone who is likely to commit one. They may also use whatever force is necessary to make the arrest[92]. Again, officers of the aforementioned ranks have the authority to enter and search any premises without a warrant in order to make any of the aforementioned arrests, recover any person believed to have been wrongfully detained or imprisoned, recover any property reasonably suspected to be stolen property, or recover any weapons, ammunition, or explosive substances believed to have been unlawfully kept in such premises. They

[88] Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, s 2
[89] Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, s 3
[90] Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, s 4(a)
[91] Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, s 4(b)
[92] Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, s 4(c)

may also use whatever force is necessary for that purpose in order to seize any such property, weapons, ammunition, or explosive substances[93].

The aforementioned officers also have the authority to stop, search, and seize any vehicle or vessel that is allegedly carrying a proclaimed offender, a person who has committed a non- cognizable offense, a person against whom a reasonable suspicion exists that he has committed or is about to commit a crime involving a substance believed to be illegally held by him, and may, for that purpose, use such force as may be necessary to effectively carry out the search or seizure[94].

The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983 grants the right to search anything, including breaking open locks on doors, almirahs, safes, cabinets, drawers, packages, and other items if the key is not provided[95].

However, any individual detained under this Act, as well as any property, weapons, ammunition, or explosives, as well as any vehicle or vessel, must be immediately turned over to the officer in charge of the closest police station. Along with the aforementioned, a report of the events leading to an arrest and the confiscation of weapons, ammunition, a vehicle, a vessel, etc. must be submitted[96].Except with the prior approval of the Central Government, no individual may bring a prosecution or lawsuit against an officer operating in good faith in accordance with the requirements of this Act[97].

2.1.2.10 Karnataka Control of Organized Crime Act, 2000 (KCOCA)

The Karnataka Control of Organized Crime Act, 2000 (KCOCA) is a law that was passed by the state of Karnataka and received presidential approval on the 22nd day of December 2000. This Act included special provisions for dealing with organized crime syndicate or gang criminal activity, as well as matters related to or incidental to such activity, prevention, control, and management. It is a duplicate of the Maharashtra Control of Organized Crime Act (MCOCA), which was passed in 1999. The act defines "organized crime" as any ongoing illegal activity by an individual, singly or jointly, either as a member of an organized crime syndicate or on behalf of

[93] Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, s 4(d)
[94] Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, s 4 (e)
[95] Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, s 5
[96] Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, s 6
[97] Armed Forces (Punjab and Chandigarh) Special Powers Act 1983, s 7

such syndicate, using violence or the threat of violence, intimidation or coercion, or other unlawful means, with the aim of obtaining financial benefits, obtaining an unauthorized advantage in the economy or in any other way, or promoting insurgency"[98]. "The statute also outlines the establishment of one or more special courts for the trial of the listed offenses[99]. A judge to be chosen by the State Government would preside over the special court, with the approval of the Chief Justice of the High Court of Karnataka.

The KCOCA also permits the police to listen in on electronic communications like phone calls. Evidence that is on tape has always been accepted as evidence. Sections 14, 15, 16, 17 and 28 of the KCOCA offer comprehensive provisions to stop unauthorized invasions of privacy.

In accordance with the Indian Evidence Act, the accused's police confessions are typically not admissible as evidence against them. However, if the confessions are voluntary and made in front of a police officer with at least the rank of superintendent of police (equivalent to deputy commissioner of police in cities), they are admissible under the KCOCA and can be used against both the confessing offender and the other accused parties in the same cases[100]. According to Section 22, anyone accused of committing a KCOCA offense is not eligible for anticipatory bail. The sole conditions under which a court may give bail to an accused person are that "the court is satisfied that there are no reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. If the Court learns that the defendant was out on bail for an offense under this Act or another Act on the day of the alleged offense, it should not grant bail to the accused.

A person can be prosecuted for presumption as to an offence for an organized crime offense punishable by Section 3 if it is proven that unlawful weapons and other materials, including documents or papers, were recovered from the accused's possession or by expert testimony, that the accused's finger prints were discovered at the scene of the offense or on anything, including unlawful weapons and other

[98] Karnataka Control of Organized Crime Act 2000, s 2(e)
[99] Karnataka Control of Organized Crime Act, 2000, s 5
[100] Karnataka Control of Organized Crime Act 2000, s 19

materials, including documents, or if the accused's fingerprints were found on anything, including unlawful arms and other materials, including documents[101].

2.1.2.11 Chhattisgarh Special Public Security Act, 2005 (CSPSA)

A law in the state of Chhattisgarh was passed by the Chhattisgarh assembly in December 2005 and is known as the Chhattisgarh Special Public Security Act, 2005 (CSPSA), or Chhattisgarh

Vishesh Jan Suraksha Adhiniyam, 2005. The Bill was signed into law by the President of India and became effective on April 12, 2006, according to a notification. The act defines unlawful activities as any act, words, signs, or visible representation by an individual or organization that endangers public order, peace, or tranquility, hinders or tends to impede the administration of justice, maintains public order, or overwhelms any public official, including the force of the State Government or the Central Government[102].

The law also allows for the declaration of a group as illegal. If the government believes that a particular group is or has become illegal, it may notify the public and declare it to be so[103].The act also creates a bar of jurisdiction, which makes sure that no actions taken by the government, the district magistrate, or any officer authorized in this regard by the government or the district magistrate under the act will be contested in any court in any suit, proceeding, application, appeal, or revision, and no injunction will be granted by any court or other authority in relation to any action taken or to be taken in accordance with any policy[104].

All offenses under this Act must be prosecuted in court and are not subject to a bail requirement. A police officer with the level of Inspector or above must conduct the investigation. An offense under this Act may not be registered after it has been committed, assisted, attempted, or planned to be committed without the written agreement of the district's superintendent of police. A court cannot hear a case

[101] Karnataka Control of Organized Crime Act 2000, s 23
[102] Chhattisgarh Special Public Security Act 2005, s 2 (e)
[103] Chhattisgarh Special Public Security Act 2005, s 3
[104] Chhattisgarh Special Public Security Act 2005, s 14

involving this offense unless the district magistrate for that area or district files a report[105].

Various Provisions in different statutes which may be invoked to control the terrorist activities are:

2.1.2.12 Indian Penal Code, 1860

Crimes against the state are covered in Chapter VI of the Indian Penal Code, 1860. The next two sections deal with conspiracy and preparation to conduct such an offense by gathering arms, etc., while Section 121 specifies the punishment for those involved in waging war against the Government of India. Disguising with the intent to aid acts intended to wage war is prohibited under Section 123. An expansion of section 121A, section 124 provides a deterrent penalty for assault, wrongful restraint, etc. intended to intimidate or prevent the President or the Governor of any state from acting within the scope of their constitutionally granted authority. Sedition is defined by Section 124A as the commission of certain acts that will incite hatred, contempt, or strong feelings against the legal government of India. Such deeds may be carried out by the use of spoken or written words, signs, or other audible or visual representations.

2.1.2.13 Criminal Procedure Code, 1973

Any Executive Magistrate or official in charge of a police station (not below the rank of a sub inspector) has the authority to issue a directive to disperse any unlawful assembly or any assembly of five or more people that is likely to disturb the public peace[106]. The aforementioned magistrate or police officer may employ whatever amount of force is required to disperse the unlawful assembly or to apprehend and confine its participants[107]. If the Executive Magistrate is unable to disperse the unlawful assembly using ordinary means, he is further authorized to utilize armed forces to do so[108]. Any commissioned officer of the armed forces may disperse such a gathering with the assistance of the armed forces under his command when the public security is obviously threatened by such an assembly and no Magistrate can be

[105] Chhattisgarh Special Public Security Act 2005, s 16
[106] The Code of Criminal Procedure 1973, s 129(1)
[107] The Code of Criminal Procedure 1973, s 129 (2)
[108] The Code of Criminal Procedure 1973, s 130 (1)

reached[109]. Additionally, under section 144 of the Criminal Procedure Code, 1973, the District Magistrate, Sub Divisional Magistrate, or any other Executive Magistrate, specially empowered by the State Government, may order a specific person or the public at large to cease from doing something or to refrain from congregating in a public place in order to prevent immediate harm or danger to human life, health, or safety, a disturbance of the public tranquillity, a riot, or an affray. Although the aforementioned clause is not specifically directed against terrorism, it may nonetheless serve to indirectly restrain terrorist activities in certain areas where it is forbidden for any citizens to leave their homes. If a terrorist chooses to emerge in such an area, he will be easily recognized if police are effectively patrolling the area.

2.2 Constitutional validity of Anti-Terrorism Legislations

Anti-terrorism laws are special laws that have occasionally been passed to address unique circumstances. The judiciary has consistently maintained the legitimacy of these legislation. Through a number of cases, the legislative authority of the Parliament to pass various anti- terrorism laws has been contested.

Since anti-terrorism laws are special laws, they are consistent with the jurisprudential history of other special laws that have occasionally been passed to address unique circumstances. India is not an exception to this rule. The British only intended to arrest those who were seen as a threat to the British settlement in India when they passed the first preventive detention law in 1793. The Bengal State Prisoner's Regulation was afterwards passed by the East India Company in Bengal, and it survived for a long time as Regulation III of 1818.Regulation III, an extra-Constitutional regulation contradicting all fundamental liberties, allowed for the indefinite detention of anyone against whom no legal action would be taken for lack of sufficient grounds. The British's most effective weapon for putting an end to political violence was Regulation III. Regulation III of 1818, which was gradually extended to other regions of British India, was heavily employed during the first two decades of the 20th century to quell revolutionary terrorist operations in Bengal. The Regulation permitted the "personal restraint" of people against whom there might not be sufficient grounds to initiate any legal proceedings for the prevention of tranquillity in the territories of native princes entitled to its protection and the security

[109] The Code of Criminal Procedure 1973, s 131

of British dominions from external hostility and from internal commotion. The beginning of the 20th century saw the emergence of numerous covert organizations seeking independence through violent means, which led to the observation of the revolutionary movement in India. During this time, various laws were passed to halt the rising tide.

The judiciary has played a variety of roles in relation to anti-terrorism laws. On the one hand, the courts have typically upheld the legality of security, emergency, and special laws. Even when a person's human rights are being infringed, courts have a tendency to recognize the existence of particular circumstances and settings as justifications for a less strict interpretation and implementation of the law.

Before the Indian Constitution of 1950, India was administered by the Government of India, and the distribution of legislative power between the Federation and the Provinces followed a similar pattern. In accordance with Entry 1 of List II of the seventh schedule to the Government of India Act, 1935, those subject to such custody are those who are subject to preventive detention related to the maintenance of public order. The creators of our Constitution believed that the need for drafting such preventative detention legislation would be seldom and should only be applied sparingly and cautiously in a free India with a democratic and representative government. However, the Preventive Detention Act, which was passed by the Parliament in 1950 to stop the "violent and terrorist" activities of the communists in the states of Madras, West Bengal, and Hyderabad, was a wise decision. A.K. Gopalan v. State of Madras[110] was the first case to be heard by the Indian judiciary after the Indian Constitution was enacted. The Preventive Detention Act is not subject to the declaration of an emergency under Part XVIII of the Constitution or to the occurrence of any war with a foreign power. Therefore, Preventive Detention was accepted by our Constitution as separate from emergency laws. Preventive detention being included in the Constitution is a novel element.

The Armed Forces (Special Powers) Act of 1958 (AFSPA) was challenged through a writ petition before the Supreme Court of India in Naga People's Movement for Human Rights v. Union of India[111]. The petitioner claimed that the Act had upset the

[110] A.K. Gopalan v. State of Madras [1950] SC 27

[111] Naga People‘s Movement for Human Rights v. Union of India [1998] SC 431

balance between military and civilian, as well as the Union and State authorities, and that it had breached constitutional rules governing the procedure for issuing proclamations of emergency. These arguments were dismissed by the court. It determined that the Act's various sections were compliant with the relevant provisions of the Indian Constitution and decided that the Parliament had the authority to adopt the Act.

The petitioner argued that the AFSPA was unconstitutional because it gave the armed forces complete control over preserving public order in a volatile area, even though the Constitution only allows Parliament to enact laws relating to the use of the Armed Forces in aid of civil power. The Court specifically rejected this argument. However, the Supreme Court decided that the "in aid of civil power" phrase required the continuous existence and significance of the authority to be assisted in rejecting this claim. Therefore, the AFSPA prohibits the military forces from "supplanting or acting as a substitute" for a state's civilian authority in maintaining public order, and mandates that they work in close coordination with them.

An important MISA case is ADM Jabalpur v. Shivakant Shukla[112]. In this case, the interpretation of MISA's Section 16A (9) was in question. The declared emergency from 1975 is a topic of the case. This case involved more than 100,000 persons who were detained during the emergency under the MISA, including journalists, activists, intellectuals, and politicians. The constitutionality of such arbitrary detentions was under question. The Supreme Court's majority decision upheld MISA as legally valid and ruled that petitions for habeas corpus to challenge unlawful detention during an emergency cannot be filed in any High Court or the Supreme Court. The Indian judiciary had one of its worst periods during this time. Justice HR Khanna, in a fair dissent, opined that no citizen's right to life and personal liberty under Article 21 of the Indian Constitution can be violated, not even in times of emergency[113].

The Supreme Court has heard appeals regarding the laws TADA and POTA. In Kartar Singh v. State of Punjab (referred to as "Kartar Singh"), the petitioners argued that TADA was unlawful on two grounds: first, the Central Legislature lacked the authority to enact the laws, and second, some of the provisions (particularly 15, which

[112] ADM Jabalpur v. Shivakant Shukla [1976] AIR 1207

[113] 'Revisiting the Emergency: A Primer – the Leaflet' (theleaflet.in25 June 2020) <https://theleaflet.in/revisiting-the-emergency-a-primer/> accessed 15 June 2023

permitted the admission of confessions made to police officers as evidence) were in violation of the fundamental freedoms outlined in Part III of the Constitution. Furthermore, it claimed that TADA was in violation of humanitarian law and universal human rights, lacking impartiality, and woefully failing the fundamental justice and fairness test, which is the cornerstone of law. The Supreme Court heard the petition and noted that the petitioners made a bitterly severe attack seriously asserting that the police are engaging in a 'witch-hunt' against innocent people and suspects by misusing their arbitrary and un analysed power under the impugned Acts and branding them as potential criminals and hunting them constantly and overreacting thereby unleashing a reign of terror as an institutionalized terror perpetrated by Nazis on Jews. The Peoples' Union for Civil Liberties (PUCL) objected to POTA with nearly identical concerns.

However, the claim that these laws had "the vice of unconstitutionality" was rejected in favour of constitutionality because none of their provisions violated the fundamental right to a fair trial by violating established evidentiary rules and allowing the admission of confessions, secret witnesses, extended detention, etc. TADA's constitutionality was confirmed by the Kartar Singh decision, whilst POTA's was defended by the Supreme Court in PUCL. Since terrorism, in the court's opinion, dealt neither with "law and order" nor "public order," but rather with the "defence of India," the Supreme Court supported the legislative competence of the Parliament to adopt these legislation in both instances. In both rulings, the court overruled concerns about civil liberties by invoking the threat of terrorism. In Kartar Singh, the Supreme Court supported the constitutional soundness of TADA by recommending a quarterly review of cases and adding certain safeguards to the recording of confessions.

The Court noted that terrorism affects the security and sovereignty of nations and should not be equated with the law and order or public order problem that is confined to State alone when responding to the question of the legislative competence of the Parliament to enact anti- terrorism legislations. The Court maintained the Parliament's authority to establish and implement this Act because it recognized the need for collective worldwide action. The court even went so far as to suggest that a statute cannot be declared unconstitutional based only on misuse of the law.

It has also been questioned in the past whether the National Investigation Agency (NIA) is constitutionally valid in this regard and whether it is able to conduct investigations under the National Investigation Agency Act, 2008. It is possible to use Entry 8 of List I (the Union List) as proof that the Central Government established the NIA, but there is no connection between Entry 8 of List I and Entry 2 of List II. The phrase Central Bureau of Intelligence and Investigation appeared in Entry 8 of List I (Union List) of the Seventh Schedule. This phrase effectively prohibited the Central Government from conducting an investigation into a crime because it would only be constitutionally possible for a police officer to conduct an investigation under the Cr.P.C. because police are solely a State subject. Although this power is subject to the limitations under Articles 249 and 252 of the Constitution, Entry 2 of List II is about "police," which is a state topic. The center has no authority to legislate on this subject other than as stated in Entry 2A of List I. A matter on the state list that is in the national interest may be the subject of legislation by the Parliament for a year only, as stated in Article 249 of the Constitution. By agreement and the approval of such legislation by any other state, Article 252 allows for the creation of laws that apply to two or more states. In addition, Entry 93 of List I lists legal violations related to any of the items on this list. Therefore, by establishing NIA, the center may also pass the NIA Act.

Entry 1 of list I, which deals with the defence of India, and Article 355 of our constitution give the center the authority to pass laws in this area. This pertains to the defence of India and every part of it, including preparation for defence, as well as all acts that may be conducive in times of war to its prosecution and after it ends to effective demobilization, as well as the obligation of the Union to protect states against external aggression and internal disturbance.

CHAPTER 3

THE UNLAWFUL ACTIVITIES PREVENTION ACT:

A CRITIQUE

3.1 Case Studies on application of UAPA

We must read over some of the act's provisions and gain a thorough comprehension of them in order to conduct a thorough study of how the act should be applied. Along with it, certain case studies will undoubtedly aid in our understanding of it.

3.1.1 Declaration of Association as Unlawful – Check on Government Powers

The government may declare any association to be an unlawful association under Section 3 of the UAPA[114]. Any organisation that has an unlawful purpose, encourages or assists someone in engaging in an unlawful action, or whose members engage in any unlawful activity, including that which is prohibited by sections 153A and 153B of the IPC, is considered to be unlawful[115]. Unlawful activity is defined as any act or presentation made by an individual, group, or organization with the intention of supporting or inciting the cession of a portion of Indian territory; denying, challenging, or disrupting the unity of India; or causing or intends to cause disaffection against India[116]. A part of India's territory may secede if a foreign Country asserts a claim against it or if it is decided that the area will remain a part of India's territory[117].

The government is restricted in how it can use its authority while outlawing all associations. The official gazette must be notified of the declaration of government. Except for information that is contrary to the public interest, this notification must include the justification for its issuance as well as any additional information the government deems relevant. The pronouncement won't take effect until the tribunal confirms it, and that order must be made public[118]. Within 30 days of the date of

[114] Unlawful Activity Prevention Act 1967, s 3(1)
[115] Unlawful Activity Prevention Act 1967, s 2 (p)
[116] Unlawful Activity Prevention Act 1967, s 2 (o)
[117] Unlawful Activity Prevention Act 1967, s 2 (i)
[118] Unlawful Activity Prevention Act 1967, s 3 (2) (3)

publication, the government must refer the notification to the tribunal for decision[119]. A copy of this notification must be attached to a conspicuous location in the office, given to the association's principal bearer, or broadcast using a loudspeaker or any other method that may be prescribed in order to serve it to the association. It must also be published in at least one daily newspaper[120].

The tribunal must notify the concerned association that it must provide justification for its continued existence within 30 days of receiving the reference, or it will be deemed unlawful. The tribunal may conduct an investigation in accordance with the provisions[121], and after receiving a response from the association and, if necessary, requesting more information from

the government, it may affirm or revoke the declaration made in the notification. If the tribunal upholds the government's notification that the association is unlawful, it will be in effect for five years[122] unless it is revoked[123]. By granting the tribunal power that was sin quo non for giving effect to the notification, the government is also granted the exceptional authority to declare an association to be unlawful with immediate effect after publication in the official gazette. A court order of this nature may be followed by action[124].

3.1.2 Power and Function of Unlawful Activities (Prevention) Tribunal

The central government is permitted to establish a "Tribunal" with the name "Unlawful Activities (Prevention) Tribunal, presided over by a judge of the High Court and with sufficient staff to carry out its duties[125]. The tribunal has the authority to determine whether there was adequate justification for the government to declare associations unlawful, and as a result, by order, it may affirm or reject the government's notification within six months of the date of such notification[126].

[119] Unlawful Activity Prevention Act 1967, s 4 (1)
[120] Unlawful Activity Prevention Act 1967, s 3 (4)
[121] Unlawful Activity Prevention Act 1967, s 4(2) (3) (4)
[122] Unlawful Activity Prevention(Amendment) Act 2012, s 3
[123] Unlawful Activity Prevention Act 1967, s 6
[124] Unlawful Activity Prevention Act 1967, s 3 (3)
[125] Unlawful Activity Prevention Act 1967, s 6(1) (3)
[126] Unlawful Activity Prevention Act 1967, s 4 (3)

The tribunal has the authority to set its own rules for all aspects of operation, including the location of its meetings[127]. The tribunal has the same authority as a civil court to conduct an investigation for this purpose[128], including the right to compel the attendance of witnesses, question them under oath, discover and produce evidence, receive testimony on affidavits, request public records from courts or offices, and issue witness examination commissions. For the purposes of section 195 of the IPC, the tribunal's proceedings are deemed to be civil court proceedings because they are judicial in nature[129]. The tribunal's judgment is definitive[130].

3.1.3. Effect of Declaration of Unlawful Association

In the event that an association is declared illegal, it is against the law for anyone to join or remain a member, participate in meetings, give or receive money for the association's purposes, or help run the organization. Violations can result in a fine and/or a two-year prison sentence. If a person joins or remains a member of an unlawful association, does anything to further the association's goals, and is in possession of weapons of mass destruction or ammunition, and commits any act that results in a death, serious bodily injury, or damage to property, they will be punished with either death or life in prison, a fine, or both. In all other cases, they will be sentenced to five years in prison[131]. The government may forbid a person from paying, delivering, transferring, or engaging in any other type of transaction with money that they are in possession of that is being used or intended to be used for the purpose of an unlawful association. He might face up to three years in prison, a fine, or both for breaking the order[132].

Following a declaration of an unlawful association, the authorities may notify any buildings, homes, tents, or vessels used for such associations and forbid anybody from using them or entering them. If this prohibition order is broken, the offender faces up to a year in prison and a fine[133]. Anyone who engages in criminal behaviour may face up to seven years in prison and a fine. This includes those who actively participate in

[127] Unlawful Activity Prevention Act 1967, s 6 (5)
[128] Unlawful Activity Prevention Act 1967, s 3 4 5 9
[129] Unlawful Activity Prevention Act 1967, s 6(6) (7)
[130] Unlawful Activity Prevention Act 1967, s 9
[131] Unlawful Activity Prevention Act 1967, s 10
[132] Unlawful Activity Prevention Act 1967, s 7 11
[133] Unlawful Activity Prevention Act 1967, s 8 12

it. If someone participates in any illegal conduct for an illegal organisation as stated, they could face up to five years in prison and a fine.

3.1.4. Notification and De-notification of Terrorist Organisation

Terrorist organization is not defined specifically under Section 2(m) other than to imply an organization that is included in the schedule or that is operating under the same name as an organization that is so listed in the schedule[134]. If a group plans for, supports, or otherwise engages in terrorism, conducts an act of terrorism, participates in an act of terrorism, or otherwise engages in it, the central government may add that group to the list of organizations. All terrorist organizations that the UN Security Council recognized to be such have also been included to the calendar[135]. It also has the authority to change or eliminate the timetable. The affected organization or any individual who has been negatively impacted by the organization's inclusion in the schedule may submit an application to the Secretary of the Government of India setting forth the reasons for the organization's removal from the schedule.

The government must resolve the issue within 45 days of receiving the application. If the application is approved, the organization will be removed from the schedule; however, if it is denied, the applicant may appeal the decision to the review committee within 30 days. The review committee's judgment will be binding on all parties. Although the government has the authority to designate any organization as a terrorist organization, the law does not require the government to provide justification for this designation. Therefore, until the review committee issues an order contravening it, the government is free to exercise its authority and include any organization in the schedule. The government has frequently abused its authority just for political advantage or conflict. A Sikh organization sued the federal government, requesting that it label the RSS as a foreign terrorist organization. The court issued a summons to US Secretary of State John Kerry, requiring him to answer to the lawsuit within 60 days[136].

[134] Unlawful Activity Prevention Act 1967, s 2 (m)

[135] Unlawful Activity Prevention Act 1967, s 35

[136] 148 'Designate RSS as a Foreign Terrorist Organisation: Sikh Group Files Case in US-World News , Firstpost' (Firstpost22 January 2015) <https://www.firstpost.com/world/designate-rss-foreign-terrorist-organisation- sikh-group-files-case-us-2058693.html> accessed 29 May 2023

3.1.5 Membership & Support Terrorist Organisation

An offense related to membership in a terrorist organization is stated to be committed by someone who knowingly supports the operations of a terrorist organization while also identifying themselves as or claiming to be linked with a terrorist organization. Being a member of a terrorist organization is a crime that carries a maximum 10-year prison sentence, a fine, or both. The accused's sole chance of escaping is to demonstrate that the group was not listed as a terrorist organization when he joined or started claiming membership. Second, despite its inclusion in the program, he has not participated in any of the organization's events[137]. It is significant to emphasize that ignorance of the declaration of a terrorist organization was not considered an adequate defence.

Additionally, it is illegal to belong to a terrorist organization, but it is not clear what exactly qualifies as membership. The police can only detain someone who claims to be a member on the basis that he was connected to or claimed to be connected with a terrorist organization. The mens rea portion of Section 38 and the association clause will only be defended in court, and until then, the government, which has created a legal vacuum to exercise its power to further its own interests, may restrict that person's freedom. As a result of their membership in a terrorist organization, Kabir Kala Manch members were detained. The allegations submitted showed that they were sympathetic to the Maoist doctrine but not active members of the Maoist organization, and the Mumbai High Court granted bail in light of this. The court ruled that "drastic provisions" added to the UAPA rendered "passive membership" insufficient for prosecution since they demanded that membership in an illegal organization be understood in light of basic freedoms such the rights to free speech and expression. Mrs. Sathe, who is eight months pregnant, was denied bail by a lesser Sessions court in Mumbai. Doctor and human rights advocate Dr. Binayak Sen was found guilty of sedition for allegedly working as a courier for a jailed Naxalite leader. Later, Jonathan Mann for Global Health and Human Rights was given to him. The Supreme Court freed him, stating that while he might be a sympathizer, that does not render him guilty of sedition[138].

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[137] Unlawful Activity Prevention Act 1967, s 38

[138] Meenakshi Ganguly, "India's Counterterrorism Laws being widely misused - Says Human Rights Watch Release".

When someone intends to encourage support for the terrorist organization's operations, that individual is considered to be providing that organization with support. Such assistance is not limited to giving money or other material goods. A person who organizes, manages, helps organize, or assists in organizing a meeting with the intent to support or further the activities of a terrorist organization and who knows that the meeting's purpose is to do so, or whose address was given by someone claiming affiliation with the terrorist organization, is guilty under the Act[139]. The UAPA does not provide a clear definition of the phrase "support," so it is difficult to give a meaning to it. Both the Indian Penal Code and the Code of Criminal Procedure do not address the definition of it. Even if it is interpreted in an economic sense, the phrase "support "is already covered by a number of sections of the Act, and repeating it has led to content confusion and duplication, which has increased the likelihood that it would be misused. When terminology like "abet," "advocates," "attempt," "incite," etc. are used in various contexts, especially in Section 18, the willingness to employ those terms opens the door for police to act on the orders of political leaders seeking retribution.

3.1.6 Cognizance of Offence

According to Section 45 of UAPA 2008, all courts are prohibited from taking cognizance of any of the offenses listed in Chapter III of the Act regarding offenses and penalties, such as participating in an unlawful assembly, handling funds from an unlawful assembly, disobeying an order made in respect of a notified area, and engaging in unlawful activities, unless prior approval from the central government or another authorized party is obtained. The clause further specifies that unless prior approval from the federal or state governments is obtained, the court cannot take cognizance of an offense listed in chapters IV and VI regarding the punishment of terrorist actions and terrorist organizations[140]. According to the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008, the authority has seven working days after receiving the evidence it gathered to submit a report containing recommendations to the Central or State government, as

[139] Unlawful Activity Prevention Act 1967, s 39

[140] Unlawful Activity Prevention Act 1967, s 45 (1)

applicable[141]. Within seven working days of receiving the authority's recommendation, the federal or state government must decide whether to sanction prosecution[142]. State law enforcement authorities are in charge of the offense up until a decision is made by the federal or state government. The UAPA does offer far less time and rapid action on terrorist-related matters at the disposal of authority of government, in comparison to the law commission's suggestion in clause 31(1) for a ten-day time period for the DGP and a 30-day time period for the review committee. However, there is no deadline set for the investigating officer to submit their report to the relevant body for further action.

3.1.7 Adverse Inferences and Presumptions of Guilt

When weapons, explosives, or other substances listed in section 15 are found in the possession of the accused and there is cause to suspect that similar weapons, explosives, or other substances were used in the commission of the offence, there is a presumption of guilt regarding a terrorist act. Similar to this, a presumption is raised when finger prints or other unmistakable evidence implicating the accused is discovered at the scene of the crime, on the tools of the crime's commission, or on the vehicles or weapons involved[143]. The criminal justice system's "golden rule," which states that no one can be found guilty unless and until they are legally proven guilty, is violated by Section 43E, which allows thousands of offenders to go free while no innocent person is punished.

The right to a fair trial is one of the core protections of human rights and the rule of law, according to the UN special rapporteur on the promotion and preservation of human rights and fundamental freedoms while battling terrorism[144]. Article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which India is a signatory, protects the right to a fair trial. The right to the presumption of innocence and the right to remain silent are just two of the rights that are protected by Article 14 and are thought to be essential for a fair trial. The Indian government is required by

[141] Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules 2008, Rule3

[142] Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules 2008, Rule4

[143] Unlawful Activities (Prevention) Amendment Act 2008 s 43(E)

[144] Special Rapporteur, 'Protection of Human Rights and Fundamental Freedoms while Countering Terrorism' (2008)

Article 51 of the Constitution to "endeavour to foster respect for international law and treaty obligations."[145] Therefore, no anti- terror law may remove the presumption of innocent or reverse the burden of proof without also violating the right to a fair trial. Because the presumption of innocence is a basic human right, the burden of proving guilt rests with the prosecution, which must demonstrate it conclusively.

In the Kartar Singh case,[146] the court determined that section 3 of the TADA is in effect when someone uses weapons and ammunition that results in death or is likely to result in death, damages property, or attempts to overthrow the government. Rights and obligations are interrelated. A person may commit an offense if they violate their positive commitment, which requires them to speak the truth, help the court find the truth, and present evidence in their own defence. After terrorism and organized crime shook their political, social, economic, and legal systems, the Common Law nations accepted the adverse inference and shifting of burden to the accused. Drawing a negative inference and assumption of guilt is acceptable in cases involving terrorism in order to strike a balance between the constitutional rights of the accused, the rights of the victims, and the security of the country.

Additionally, such a presumption is not definitive in nature and can be disproven by the accused by providing opposite evidence.

3.1.8 Regular and Anticipatory Bail

The provision for anticipatory bail is not accessible to a person accused of terrorist activity if the literal rule of interpretation is employed, which means that Section 438 of the Cr.P.C. will not apply to UAPA[147]. According to the Kerala High Court's application of the Purposive method, the High Court only has appeal authority and the NIA Special Court has original jurisdiction over bail and anticipatory bail. By making this ruling, the session court's authority over the granting of bail is revoked. Additionally, Section 43D (5) states that a person who is in custody and has been charged with terrorist activities under Chapter IV and terrorist organization under Chapter VI is not eligible for release on bail or his own bond unless the Public

[145] M.P. Jain, Indian Constitutional Law, 5th edition (Wadhwa and Co., Nagpur 2003).
[146] Kartar Singh v.State of Punjab [1961] SCR (2)395
[147] Unlawful Activities (Prevention) Amendment Act 2008, s 43 (D) (4)

Prosecutor has had a chance to be heard regarding the application for such release[148]. The court must determine that there is no reasonable cause for thinking that the allegations against the defendant are true on the basis of the police case diary or police report submitted in accordance with section 173 of the Criminal Procedure Code before granting bail.

The restriction on the grant of bail imposed under subsection 5 of section 43D is in addition to the restrictions imposed under the Criminal Procedure Code and other laws in effect for the grant of bail, according to section 43D(6). Foreign nationals who are charged under UAPA who are found to have entered India illegally or without permission are not eligible for bail[149]. Since bail is a legal privilege, it must be generously given unless it can be demonstrated that it will harm the administration of justice or the pursuit of the truth[150]. Investigation agencies have argued that those accused of terrorism are not regular criminals, and as a result, witnesses are reluctant to testify against them. Furthermore, acquiring evidence against them is challenging and time- consuming, and if such people are released on bond, the investigation is certain to suffer as a result. Giving the public prosecutor a chance to present their case comes first, and the court must be satisfied that a terrorist act was not committed before granting bail. The terrorist attack victim or their family have not been given the chance to object to the bail instead, they and society must rely on the public prosecutor's expertise and motivation to object to the accused's bail application. The prosecution has a tendency to routinely oppose bail without considering whether keeping the accused in custody is indeed necessary or not. In order to hold the investigating agencies and the public prosecutor accountable for failing to perform their duties, there must be a safeguard if an act was performed in good faith. The second implemented procedural check is also far too rigid. If several acts of terrorism result in the same sentence, the severity of the allegations brought against the accused may dictate a different punishment. The severity of the fear caused or the causality done, the commission of the act by hard core under trials, and direct or indirect involvement of the accused in the commission of the act or threat to commit the act must all be taken into consideration by the court before granting bail for terrorist offenses. The anti-terrorist legislation must not be enforced arbitrarily, rendering the

[148] Unlawful Activities (Prevention) Amendment Act 2008, s 43 (D) (5).
[149] Unlawful Activities (Prevention) Amendment Act 2008, s 43 (D) (7).
[150] Krishnan (n 49) 25

very provision for bail worthless. According to the facts and circumstances of each case, the court must handle each person accused of terrorism differently. It must also take into account the classification mentioned above.

3.1.9 Period of Police Remand/Detention

The NIA has the authority, under Section 43-D of the UAPA, to hold the accused for a lengthy period of 180 days. With the modification that if the investigating authority does not complete the investigation within 90 days and the court is satisfied with the public prosecutor's report outlining the status of the investigation and the justification for the extension of detention, the court may extend the detention period up to 180 days[151]. In its seventh Report, the Second Administrative Reforms Commission made a similar recommendation[152].

If the investigation takes longer than 24 hours, according to Section 167, the individual who was arrested must appear before the magistrate. When an accused person is produced, the magistrate may order police remand for a maximum of 15 days after which he must be held in judicial custody for a maximum of 90 days or 60 days, depending on the type of the crime. Instead of following this general rule, the TADA was given far longer detention of 60 days, 180 days, and 180 days[153] as opposed to POTA's 30 days, 90 days, and 90 days[154] as opposed to the 15 days, 90 days, and 60 days as allowed by the Cr.P.C. Similar provisions were not included in the UAPA 1967 after POTA's repeal by the 2004 amendment, but they were by the 2008 amendment.

In comparison to other democratic states' maximum permitted incarceration, India's 180-day duration is significantly longer. 28 days of pre-charge detention are allowed under the U.K. Terrorism Act[155]. Under the Australian Crimes Code, the maximum pre-charge detention is 24 hours, which does not include "dead time" when the subject is not being questioned. In the United States, pre-charge detention is limited to 48

[151] Unlawful Activities (Prevention) Amendment Act 2008, s 43 D (2) (a) (b).
[152] Second Administrative Reforms Commission, 'COMBATTING TERRORISM' Protecting by righteousness, Eighth Report (June 2008) para 4.4.5, 58.
[153] Terrorist and Disruptive Activities (Prevention) Act 1987, s 20.
[154] Prevention of Terrorism Act 2002, s 49.
[155] UK Terrorism Act 2006

hours[156], except for aliens suspected of committing a terrorist act, who may be detained for seven days under the PATRIOT Act[157].

This clause violates Article 21 of the Indian Constitution, which guarantees not the right to an animal existence but rather the right to a life of dignity. The use of force and a violation of human rights follow an arrest. As a result, law enforcement agencies must closely adhere to the procedures set forth for the arrest[158].

3.1.10 Interrogation and Judicial Custody to Police Custody

The police officer conducting the investigation has the authority, under the UAPA's Section 43D (2)(b) proviso, to file an affidavit with the court asking for police custody of the individual who is already in judicial custody and to explain why the request was delayed. The concept of "substantive due process" was adopted in India through the Maneka Gandhi Case[159] ruling, which suggests that any government action, even in extraordinary circumstances, must follow the norms of reasonableness, non-arbitrariness, and non-discrimination.

It was demonstrated during the interrogation of Kasab, one of the 26 November 2008 Mumbai Attack suspects, that humane treatment of the accused yields more accurate information than torture and coercive interrogation techniques. During the investigation, Kasab was not responding to any of the questions, but when a police officer from his village struck up a friendly conversation, he confessed thus which shows interrogation with a bit leniency helps in retrieving information better then through torture and coercion methods[160].

3.1.11 Admissibility of Confessions to Police Officers

The admissibility of a police officer's confession was not included in the UAPA's 2004 or 2008 amendments, despite the fact that it existed in TADA[161], POTA[162], and

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[156] Ari D Mackinnon, "Counterterrorism and Checks and Balances: The Spanish and American Examples" (2007) 82 NYUL Rev 602.

[157] USA PATRIOT Act 2001

[158] Monica Hakimi, "International Standards for Detaining Terrorism Suspects: Moving Beyond the Armed Conflict-Criminal Divide" (2008) 33 Yale J Int'l L.

[159] Maneka Gandhi Vs. Union of India 1978 SC 597

[160] K.G. Balakrishnan, "Terrorism, Rule of Law and Human Rights" The Hindu (Tuesday, December 16, 2008) 8

[161] Terrorist and Disruptive Activities (Prevention) Act 1985, s 15

[162] Prevention of Terrorism Act 2002, s 32

MACOCA's[163] previous legislation. The Evidence Act prohibits the admission of a confession made to a police officer unless it results in the discovery of a fact that was deposed by him and relates to a crime to which it is connected[164]. The admissibility of confessions to police officers for counterterrorism laws has been proposed by the Law Commission in a number of its reports (the 48th, 69th, 173rd, and 185th Reports). The majority of terrorist-related offenses are planned and carried out in secret, and because there are rarely any eyewitnesses or other incriminating pieces of evidence, the accused are often found not guilty, which undermines public confidence in the legal system.

It is also a well- known fact that the accused person is likely to know details about how the act of terrorism was carried out and who the enabler, instigator, facilitator, and other participants were. These details are extremely important and must be uncovered in order to administer the criminal justice system and maintain national security. In a situation where science and technology have altered the nature of terrorism, it is hoped that these advancements will be used in conjunction with procedural safeguards to ensure the admissibility of voluntary statements made by the accused or witnesses and that they will find application in both the context of terrorism-related confessions and general legal proceedings. The Second Administrative Reform Commission recommended in its Fifth Report on "Public Order"[165] that confessions made before police officers should be admissible if recorded in video or audio (electronic) mode, and the accused should be informed on the recorded tape that any statement he makes may be used against him. He should also be entitled to the presence of his lawyer or family members while making such a confession, which must be later confirmed by the magistrate about the facts. The Madhava Menon committee report[166] and Second Administrative Reforms' eighth report[167] both endorsed the admissibility of confessions made by witnesses and defendants in front of police officers by using technological advancements and procedural safeguards. The government did not fully consider any of the

[163] Maharashtra Control of Organised Crimes Act 1999, s 18

[164] Indian Evidence Act 1872, s 25

[165] Second Administrative Reform Commission, 'PUBLIC ORDER' (5th Report) (Government of India, New Delhi, June 2007) para 7.5.4.10, 186.

[166] Committee on Draft National Policy on Criminal Justice, Report (Ministry of Home Affairs, Government of India, July 2007) para 6.5, 26.

[167] Second Administrative Reforms Commission, 'COMBATTING TERRORISM' Protecting by righteousness, Eighth Report (June 2008) para 4.5.10, 62.

recommendations made by the various committees, so at the moment, the only option left is to rely on section 164 of the Criminal Procedure Code[168], which specifies the process for recording confessions before a judge rather than a police officer.

3.2 Analysis on the basis of certain cases that are registered under the UAPA

According to the UAPA, acts that undermine the maintenance of harmony and promote hatred between various groups based on factors such as religion, race, place of birth, domicile, language, etc. are considered terrorist activities.

The decision to use the UAPA, IPC, or both for the same offenses is in fact up to the executive/prosecution. As a result, the UAPA has evolved into a tool for silencing human rights advocates, journalists, scholars, and critics.

3.2.1 UAPA cases against HRDs and activists

Under the UAPA, human rights advocates and defenders were specifically targeted, and the UAPA has frequently been used to criminalize the right to free speech and the exercise of the right to association and assembly as acts of terrorism.

Case 1. Arrest & detention of Anti-CAA protesters in Delhi

Numerous people were detained by the Delhi Police during the nationwide COVID19 lockdown in 2019, and many of them were charged under the harsh UAPA for allegedly inciting protests against the Citizenship Amendment Act of 2019 and the National Register of Citizens[169]. They were also detained in connection with the infamous Delhi riots cases, which erupted in north east Delhi in February 2020, and were booked in FIR 59/2020. The charges in this FIR are under Sections 147 (punishment for rioting), 148 (rioting, armed with deadly weapon), 149 (unlawful assembly), 120B (punishment of criminal conspiracy), 302 (punishment for murder), 307 (attempt to murder), 124A (sedition), 153A (promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc.), 186 (obstructing public servant in discharge of public functions), 353 (Assault or criminal force to deter public servant from discharge of his duty), 395 (Punishment for dacoit), 427 (Mischief causing damage to the amount of fifty rupees), 435 (Mischief by fire or

[168] The Code of Criminal Procedure 1973, s 164

[169] 'Delhi Riots: More than 50 Members of Jamia Coordination Panel Get Police Notice' (The New Indian Express) <https://www.newindianexpress.com/cities/delhi/2020/apr/15/delhi-riots-more-than-50-members-of-jamia-coordination-panel-get-police-notice-2130296.html> accessed 7 June 2023

explosive substance with intent to cause damage to amount of one hundred), 436 (Mischief by fire or explosive substance with intent to destroy house, etc.), 452 (House-trespass alter preparation for hurt, assault or wrongful restraint), 454 (Lurking house-trespass or house-breaking), 109 (Punishment of abetment), 114 (Abettor present when offence is committed) of the Indian Penal Code (IPC); Section 3 (Mischief causing damage to public property) & 4 (Mischief causing damage to public property by fire or explosive substance) of Prevention of Damage to Public Property Act 1984 and Section 25 (Punishment for certain offences) & 27 (Punishment for using arms, etc.) of Arms Act"[170]. "The UAPA, 1967's provisions 13 (Punishment for Illegal Activities), 16, 17 (Punishment for Terrorist Act), and 18 (Punishment for Conspiracy, etc.) were added to FIR 59/2020 on April 19, 2020.

Out of the 18 persons booked under the above mentioned charges, eight are student activists from Jamia Milia Islamia University and Jawaharlal Nehru University, who included: Meeran Haider, Jamia Millia Islamia Ph.D. students and member of Jamia Coordination Committee, who was booked on 1 April 2020[171]; Safoora Zargar, a M Phil student at Jamia Millia Islamia University and member of Jamia Coordination Committee, who was booked on 13 April 2020[172]; Gulfisha Fatima, an MBA student from a private university, who was booked on 18 April 2020[173]; Sharjeel Imam, a student of Jawaharlal Nehru University, who was booked on 29 April 2020[174]; Asif Iqbal Tanha, a third-year student of Persian at Jamia and member, Jamia Coordination Committee, who was booked on 21 May 2020[175]; Natasha Narwal, a student of Jawaharlal Nehru University and member of Pinjra Tod, a feminist organization, who

[170] Order dated 26.05.2020 in FIR No.59/2020 dated 06.03.2020 P.S Crime Branch (State versus Khalid & Ors.), Court of Additional Sessions Judge Dharmendra Rana, Patiala House Courts, New Delhi.

[171] Delhi Riots: "Vague" FIR Names Umar Khalid, Police Arrests Jamia Student' (The Wire) <https://thewire.in/rights/delhi-riots-fir-meeran-haider> accessed 3 June 2023

[172] Delhi Riots: How the Police Is Using FIR 59 to Imprison Students and Activists Indefinitely' (HuffPost16 June2020)<https://www.huffpost.com/archive/in/entry/delhi-police-riots-students-anti-caa-activists-arrest_in_5ee7ab99c5b651a404b0591a?utm_hp_ref> accessed 3 June 2023

[173] Taskin B, 'Umar Khalid Not Alone, 7 More Students Were Arrested under Anti-Terror Law for Delhi Riots' (ThePrint16 September 2020) <https://theprint.in/india/umar-khalid-not-alone-7-more-students-were-arrested-under-anti-terror-law-for-delhi-riots/503185/> accessed 3 June 2023

[174] 'Sharjeel Imam Booked under Stringent UAPA' (Hindustan Times29 April 2020) <https://www.hindustantimes.com/delhi-news/sharjeel-imam-booked-under-stringent-uapa/story-fdpJMsFdcXG8yZrkLdtmeL.html> accessed 3 June 2023

[175] Ibid n 175

was booked on 29 May 2020[176]; Devangana Kalita, an MPhil student at JNU and member of the Pinjra Tod, who was booked on 6 June 2020[177] and former JNU student and Umar Khalid, co- founder of the activist group United Against Hate, who was booked on 7 September 2020.The Delhi Police filed a 17,500 page charge sheet in FIR No. 59/ 2020, commonly known as the "infamous" Delhi riots conspiracy case, before the Patiala House Courts Additional Sessions Judge on September 16, 2020. The extensive charge sheet outlines the accusations and supporting documentation against 15 of the 21 people who were detained in FIR 59/2020[178]. A second charge sheet was submitted in the case FIR No. 59/2020 after the first one, which alleged violations of Section 120 B of the Indian Penal Code, Sections 13, 16, and 18 of the UAPA, Sections 124A, 153A, 302, 307, Sections 109, 114, 147, 148, and 149 of the IPC, Sections 25 and 27 of the Arms Act, and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984 In connection with the disturbances in north-east Delhi in February 2020, the Court of Additional Sessions Judge Amitabh Rawat took cognizance of a sedition complaint against 18 people on March 2nd, including the student activists mentioned above. The court noted that the "requisite sanctions under Section 196 CrPC against all 18 accused persons has been received" before taking cognizance of the offenses under sections 124 A (sedition), 153-A (promoting enmity on the grounds of religion, language, caste, etc.), 109 (abetment), and 120-B (criminal conspiracy) of the IPC[179]. After the Delhi government submitted that the case's defendants are free to obtain a complete hard copy of the charge sheet from the trial court, a single judge bench of the Delhi High Court lifted its stay on the trial in the UAPA case on March 25, 2021[180]. On the prosecution's appeal against a trial court judgment directing that hard copies of the charge sheet be provided to all of the accused, the High Court had already stayed the trial in the case under the UAPA. Vide

[176] 'Now, Pinjra Tod Activist Natasha Narwal Booked under UAPA' (The Wire) <https://thewire.in/government/delhi-riots-natasha-narwal-uapa-pinjra-tod> accessed 3 June 2023

[177] Delhi Riots: Days after Being Granted Bail, Pinjra Tod Activist Devangana Kalita Booked under UAPA' (India Today) <https://www.indiatoday.in/india/story/delhi-riots-pinjra-tod-activist-devangana-kalita-booked-under- uapa-1686307-2020-06-06> accessed 3 June 2023

[178] Lalwani V, 'Backgrounder: What Is Delhi Police's Riots Conspiracy Case?' (Scroll.in8 October 2020) <https://scroll.in/article/974904/backgrounder-what-is-delhi-polices-riots-conspiracy-case> accessed 3 June 2023

[179] Agarwal S, 'Delhi Riots : High Court Vacates Stay on Trial of "Larger Conspiracy" Case under UAPA' (www.livelaw.in24 March 2021) <https://www.livelaw.in/news-updates/delhi-riots-high-court-vacates-stay-on- trial-of-larger-conspiracy-case-under-uapa-171684> accessed 4 June 2023

[180] Delhi Riots: Court Takes Cognisance of Sedition Charge against 18 People' The Hindu (2 March 2021) <https://www.thehindu.com/news/cities/Delhi/delhi-riots-court-takes-cognisance-of-sedition-charge-against- 18-people/article33974809.ece> accessed 4 June 2023

order and judgment dated 15 June 2021, a division bench comprising Justice Siddharth Mridul and Justice Anup Jairam Bhambhani released Asif Iqbal Tanha, Natasha Narawal and Devangana Kalita on bail in FIR 59/2020 registered at Crime Branch Police Station, New Delhi registered under sections 147/148/149/120-B IPC along with Sections 13/16/17/18 of the Unlawful Activities (Prevention) Act, 1967.

Case 2. Rights activists charged in the Bhima Koregaon case were detained and imprisoned.

At Shaniwar Wada in Pune, Maharashtra, on December 31, 2017, a group of activists, political figures, and retired judges gathered to plan a program called the "Elgar Parishad" (Congress for Speaking Aloud). Justice P.B. Sawant, a former justice of the Supreme Court, and Justice B.G. Kolse-Patil, a former justice of the Bombay High Court, were among the organizers. At the occasion, remarks were given on a variety of topics, including the rights of Dalits and criticism of the Narendra Modi administration[181]. Every year on January 1, Ambedkarite Dalits congregate in Bhima Koregaon to pay their respects at the Vijay Sthamb (victory pillar) and commemorate the Battle of Bhima Koregaon under the banner of Elgar Parishad. The British army's Dalit soldiers, predominantly Mahars, defeated the Brahmin troops of the region's ruler, Peshwa Bajirao II, in this fight in 1818. 2018 marked the 200th anniversary of the fight on January 1. However, there were violent fights between the Dalit and Maratha groups that year, which led to at least one fatality and numerous injuries. According to eyewitness accounts, two Hindutva Right-wing leaders, Milind Ekbote and Sambhaji Rao Bhide, were responsible for the violence. On January 8, Tushar Ramesh Damgude filed a FIR under Sections 153A, 505(1)(b), and 117 of the Indian Penal Code (IPC) accusing "Leftist groups with Maoist links" who spoke at Elgar Parishad of starting the riots. The Kabir Kala Manch members Sudhir Dhawale, Sagar Gorkhe, Harshali Potdar, Ramesh Gaychor, Dipak Dhengale, and Jyoti Jagtap were also identified in the FIR. Since then, authorities have been actively pursuing the latter[182].

[181] Mandhani A, '2 Years, 3 Charge Sheets & 16 Arrests — Why Bhima Koregaon Accused Are Still in Jail' (ThePrint31 October 2020) <https://theprint.in/india/2-years-3-charge-sheets-16-arrests-why-bhima- koregaon-accused-are-still-in-jail/533945/> accessed 4 June 2023

[182] Ibid

Five social activists from around the nation were detained by the Maharashtra police on June 6 on suspicion of inciting caste violence at Bhima Koregaon, Maharashtra, in January 2018. They detained Surendra Gadling, a lawyer, Mahesh Raut, a Nagpur activist, Sudhir Dhawale, a Mumbai activist, Rona Wilson, a Delhi activist[183], and a Nagpur scholar. Relevantly, Justice P.B. Sawant, a former justice of the Supreme Court, and Justice B.G. Kolse Patil, a former justice of the Bombay High Court, were not made parties. On August 28, 2018, police raided the homes of 10 people, and five of them were arrested: P. Varavara Rao, a renowned Telugu poet and co- founder of the Viplava Rachayitala Sangham (Revolutionary Writers' Association, Hyderabad), Sudha Bharadwaj, a human rights and labour rights lawyer from Chhattisgarh, Arun Ferreira, a political activist and lawyer from Maharashtra, and Gautam Nav For the five activists who were detained on June 6th, the Pune Police filed a charge sheet with more than 5,000 pages detailing their claimed affiliations with the banned Communist Party of India (Maoist) and the 1 January violence in Bhima-Koregaon.

The Unlawful activity (Prevention) Act [UAPA] and other sections of the Indian Penal Code, including Sections 124A and 153, were the subject of an indictment for seditious activity that was filed in the UAPA Court presided over by Judge K.D. Vadane[184]. Five additional defendants were listed on the charge sheet as alleged undercover suspects. They are Prashant Bose, secretary of the Eastern Regional Bureau and well-known senior politburo member of the CPI Marxist-Leninist, Comrades Manglu and Deepu, and Milind Teltumbde, an alleged Maoist living in Yawatmal for whom the Gadchiroli police has announced a reward of Rs. 50,000,000 lakh for any information about him; Ritupan Goswami, a JNU student allegedly recruited to the CPI Marx In connection with the Bhima Koregaon case, the Pune police filed a supplemental charge sheet on February 21 against Sudha Bharadwaj, Varavara Rao, Arun Ferreira, Vernon Gonsalves, and outlawed Communist Party of India (Maoist) leader Ganapathy. To the dismay of the Maha Vikas Aghadi government in Maharashtra, the Bhima Koregaon case was transferred to the National Investigation Agency (NIA) on January 24, 2020, by Prime Minister Modi and the

[183] Johari A, 'A Poet, a Lawyer, a Professor: These Are the Five Activists Held for Sparking Bhima Koregaon Clashes' (Scroll.in8 June 2018) <https://scroll.in/article/881849/a-poet-a-lawyer-a-professor-these-are-the- five-activists-held-for-sparking-bhima-koregaon-clashes> accessed 5 June 2023

[184] Chari M, 'Among Those Raided in Bhima Koregaon Case: A Poet, a Management Professor, a Business Journalist' (Scroll.in29 August 2018) <https://scroll.in/article/892284/among-those-raided-in-bhima-koregaon- case-a-poet-a-management-professor-a-business-journalist> accessed 5 June 2023

Bharatiya Janata Party government at the Centre. Father Stan Swamy, a Jesuit priest and tribal rights campaigner from Jharkhand, was detained by a team of NIA agents from the Mumbai office on October 8, 2020, in Ranchi.

They then flew him to Mumbai, where he appeared before a judge and was ordered to be held in judicial custody[185]. Anand Teltumbde, Hany Babu, Gautam Navlakha[186], Milind Teltumbde, Stan Swamy, and members of the Kabir Kala Manch—Jyoti Jagtap, Sagar Gorkhe, and Ramesh Gaichor—were named in the NlA-led second supplemental charge sheet in the 2018 Bhima Koregaon violence case[187] on October 9, 2020. In its 10,000-page charge sheet, the NIA claimed that senior leaders of the CPI (Maoist), an organization that is prohibited under the Unlawful Activities (Prevention) Act, had contact with the activists and academics who organized the Elgar Parishad event on December 31, 2017 in Pune in order to promote the Maoist and Naxal ideologies and encourage illegal activities[188]. Varavara Rao, an activist and poet, was one of the 16 people detained in the Elgar Parishad case and released on interim bail for six months on February 6, 2021. Sudha Bharadwaj was released on December 9, 2021, after the Supreme Court upheld the Bombay High Court's default bail decision from the previous day[189].

Case 3: NIA witch hunting on human rights activists in Andhra Pradesh and Telangana

The National Investigation Agency reportedly searched at least twenty activists' homes in Telangana and Andhra Pradesh on March 31 and April 1, 2021. In connection with the Munchingiputtu case, raids were undertaken against activists who are members of the civil rights organization Human Rights Forum, the Andhra

[185] Charge Sheet Filed against Five Activists in Bhima-Koregaon Case' The Hindu (15 November 2018)<https://www.thehindu.com/news/cities/mumbai/charge-sheet-filed-against-five-activists-in-bhima-koregaon- case/article25510671.ece> accessed 5 June 2023

[186] NIA Files 10,000-Page Supplementary Chargesheet in Elgar Parishad Case' (The Wire) <https://thewire.in/rights/nia-elgar-parishad-supplementary-chargesheet> accessed 5 June 2023

[187] NIA Files Supplementary Charge Sheet in Bhima Koregaon Case' The Economic Times (9 October 2020)<https://economictimes.indiatimes.com/news/politics-and-nation/nia-files-supplementary-charge-sheet-in- bhima-koregaon-case/articleshow/78579054.cms?from=mdr> accessed 5 June 2023

[188] 'NIA Files Supplementary Charge Sheet in Bhima Koregaon Case' The Economic Times (9 October 2020)<https://economictimes.indiatimes.com/news/politics-and-nation/nia-files-supplementary-charge-sheet-in- bhima-koregaon-case/articleshow/78579054.cms?from=mdr> accessed 5 June 2023

[189] 'Lawyer-Activist Sudha Bharadwaj Released after 3 Years in Jail' (NDTV.com) <https://www.ndtv.com/india-news/sudha-bharadwaj-released-from-jail-in-elgar-parishad-bhima-koregaon-case-2643670> accessed 5 June 2023

Pradesh Civil Liberties Committee, Virasam (Revolutionary Writers' Association), and others. The case concerns a single individual named Pangi Naganna, a purported Maoist 'courier' who was apprehended in November 2020 by the Visakhapatnam Rural police in Andhra Pradesh. Naganna allegedly mentioned a number of activists after his detention who are supposedly serving as front groups for the banned Maoist party[190]. The Munchingputtu FIR was filed in accordance with the following sections: 120 B (punishment for criminal conspiracy), 121 (waging, or attempting to wage war), 121A (conspiracy to commit offences punishable by section 121), 143 (punishment for unlawful assembly), 144 (whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence), 124A (Sedition) read with 149 of the Indian Penal Code.

The NIA took over the investigation from the Andhra Pradesh Police on March 7, 2021, and filed a FIR in Hyderabad. Raghunath Verose, an attorney with the Telangana High Court who is affiliated with the Andhra Pradesh Civil Liberties Committee, Dappu Ramesh, a member of the Jana Natya Mandali, V.S. Krishna of the Human Rights' Forum, Paani, Varalakshmi, and Arun of the Revolutionary Writers' Association, Devendra, Shilpa, Swapna, Rajeswari, and Pad VS Former journalist Krishna is a well-known human rights advocate who is well-liked in both Telangana and Andhra Pradesh[191]. The Vakapalli Adivasi rape survivors were given legal representation by Krishna, who was charged with being a "Maoist" in the Munchingiputtu FIR filed by the Vishakhapatnam Rural police. Krishna was also accused of pressuring the rape survivors into "falsely testifying" against the 13 Greyhounds members accused of committing gang rape on 11 Kondh tribal women under Nurmati panchayat in Visakhapatnam in 2007. Krishna and other civil rights activists battled for the justice of the rape survivors. The SC/ST Special Court in Visakhapatnam is now hearing evidence in the heinous incident trial, which began in 2019.

[190] NIA Raids Residences of Rights Activists in Telangana and Andhra' (The News Minute1 April 2021)<https://www.thenewsminute.com/article/nia-raids-residences-rights-activists-telangana-and-andhra- 146296> accessed 5 June 2023

[191] NIA Raids Residences of over 25 Rights Activists in Telangana, Andhra Pradesh' (The Wire) <https://thewire.in/rights/nia-raids-residences-of-over-25-rights-activists-in-telangana-andhra-pradesh> accessed 5 June 2023

Case 4 Arrest of Assamese peasant leader Akhil Gogoi and his associates under UAPA

In the midst of demonstrations against the Citizenship Amendment Act, 2019 in the state, Right to Information activist and peasant leader Akhil Gogoi was brought into preventive detention by Assam police from the Jorhat area on December 12, 2019[192]. Gogoi, a Krishak Mukti Sangram Samiti (KMSS) advisor, was transferred by the Assam Police to the National Investigation Agency on December 17 of this year, where he was subsequently charged with violating the Unlawful Activities (Prevention) Act as modified. Student leader Manas Konwar was detained on January 23, 2020, while KMSS leaders Bittu Sonowal and Dharjya Konwar were detained on January 7 and booked by the NIA under the UAPA[193]. The NIA accused the KMSS and student leaders of being on-the-ground agents of the banned CPI (Maoist) and filed charges against them for sedition and violating the UAPA.

The NIA accused Gogoi and others of using the passage of the Citizenship Amendment Bill (CAB) in Parliament as an opportunity to promote animosity between various groups on the basis of religion, race, place of birth, residence, and language, and of acting in a way that was harmful to maintaining harmony through spoken and visible acts, endangering the security and sovereignty of the State and being harmful to national interests. In addition, the FIR charged that they intentionally assisted, conspired, supported, and incited the actions leading up to the conduct of terrorist activities. The Special NIA Court granted bail to Gogoi on March 17, 2020 since the investigating body did not submit a charge sheet against him within the allotted 90 days[194]. The bail was then postponed by the Gauhati High Court, though. For their alleged involvement in violent protests against the CAA, the NIA charged Gogoi and three of his coworkers on May 29, 2020 with sedition and terrorist activities. The Special NIA Court did, however, award bail to Manash Konwar on

[192] 'NIA Arrests RTI Activist Akhil Gogoi amid Assam Unrest, Charges Him under Amended UAPA' (ThePrint15December 2019) <https://theprint.in/india/nia-arrests-rti-activist-akhil-gogoi-amid-assam-unrest-charges-him- under-amended-uapa/335484/>accessed on 25 May 2023

[193] NEWS NN, 'Assam: KMSS Leaders Sent to Judicial Custody Again' (NORTHEAST NOW27 January 2020)<https://nenow.in/north-east-news/assam/assam-kmss-leaders-sent-to-judicial-custody-again.html> accessed 25 May 2023

[194] NEWS NN, 'CAA Protests: Akhil Gogoi Linked to Maoists, Claims NIA' (NORTHEAST NOW16 December 2019)<https://nenow.in/top-news/caa-protests-akhil-gogoi-linked-to-maoist-claims-nia.html> accessed 26 May 2023

July 13, Bittu Sonowal on July 15[195], and Dharjya Konwar on July 17[196]. On October 1, 2020, the Special NIA Court granted Gogoi bail in one of the two cases being investigated by the NIA in connection with his alleged involvement in the violent protests against the CAA (FIR registered at Chabua PS and later transferred to NIA), while his bail petition was denied in the case registered at Chandmari police station in Guwahati. The Gauhati High Court rejected his appeal of the special NIA court's ruling on January 7, 2021[197]. On February 11, 2021, a bench consisting of Justices N.V. Ramana, Surya Kant, and Aniruddha Bose denied his appeal of the Gauhati High Court's decision. However, the bench informed his attorney that once the trial began, Gogoi petitioner might apply for bail at the Supreme Court. He is presently incarcerated at Guwahati Central. Akhil Gogoi was cleared on June 22, 2021, in case number 3/2020 involving the Chabua police station in the Dibrugarh district of upper Assam. Additionally, Jagajit Gohain and Bhupen Gogoi were found not guilty. Gogoi ran for the state assembly in the April–May 2021 elections while incarcerated and won the Sibsagar constituency, becoming a member of the legislative assembly. Akhil Gogoi had to serve roughly 18 months in prison until his charges in the most recent case involving anti-CAA violence in Assam were dropped by an NIA court on July 1, 2021[198].

Case 5. Ms. Hidme Markam's arrest and confinement in Dantewada, Chhattisgarh

Hidme Markam, a 28-year-old anti-mining and tribal rights activist, was kidnapped from the International Working Women's Day program in Sameli, Dantewada, on March 9, 2021. The event was held to honour Nande and Kawasi Pande, two young women who were forced to commit suicide after experiencing physical and sexual abuse while being held by the Chhattisgarh police and paramilitary forces. Markam,

[195] Today NE, 'Spl NIA Court Grants Bail to KMSS Leader Bittu Sonowal' (Northeast Today15 July 2020)<https://www.northeasttoday.in/2020/07/15/spl-nia-court-grants-bail-to-kmss-leader-bittu-sonowal/> accessed 5 June 2023

[196] Assam: NIA Court Grants Bail to KMSS Leader Dharjya Konwar' (The Wire) <https://thewire.in/rights/assam- nia-court-grants-bail-to-kmss-leader-dharjya-konwar> accessed 6 June 2023

[197] Gauhati High Court Rejects Bail Plea of Peasant Leader Akhil Gogoi' (India Today) <https://www.indiatoday.in/india/story/gauhati-high-court-rejects-bail-plea-peasant-leader-akhil-gogoi-1756942-2021-01-08> accessed 6 June 2023

[198] Assam Anti-CAA Violence: NIA Court Clears Akhil Gogoi of Charges in One Case' (The Indian Express22 June 2021) <https://indianexpress.com/article/north-east-india/assam/akhil-gogoi-jail-uapa-nia-7370718/>accessed 6 June 2023.

the daughter of Podiyam Markam, was later identified as having been detained in four cases involving serious allegations, including those brought under the Unlawful Activities (Prevention) Act. Burgum village, Dantewada district. 300 villagers and activists, including members of the Jail Bandi Rihai Committee (JBRC)[199], of which she is the president, and the Chhattisgarh Mahila Adhikar Manch (CMAM), peacefully assembled there when she was taken away.

On March 8 and 9, 2021, a number of human rights organizations and activists for indigenous peoples attended the two-day program in Sameli village. The authorities arrested Markam, the convener of the Jail Bandi Rihai Committee and the primary organizer of the event, on the final day of the event, or on March 9, 2021. She was allegedly dragged into the police car, according to eyewitnesses to her detention. When her activist coworkers, including lawyers, approached the police as she was being carried into the police vehicle, they neither displayed any warrant of arrest nor did they provide any explanation for why she was arrested. She was presented to a magistrate the same day, who incarcerated her until the next date of hearing on her bail petition, which is 19 March 2021[200]. The police offer a completely different narrative of her arrest in a news statement that was issued on March 10, 2021. They asserted that Markam was discovered by police officers coming home after a search operation in the Palnar region. They recognized her as the head of the local Janatana Sarkar, the civilian village government of the outlawed CPI (Maoist), according to the note. She was described by the police as an evading Maoist rebel who was wanted for questioning in five instances that were filed between 2016 and 2020 and who was also wearing a reward of Rs. 1.10 lakh on her head[201].

The four incidents he named were two from 2016 (FIR numbers 07/2016 and 09/2016) and two each from 2020 (FIR numbers 03/2020 and 04/2020), according to the police, in which Markam was allegedly implicated. Out of the four cases stated by

[199] People's Union of Civil Liberties, 'Harassment and Arrest of Human Rights Defenders' (2021) 56(11) Econ. Political Weekly <https://www.epw.in/journal/2021/11/letters/harassment-and-arrest-human-rights-defenders.html>accessed 20 May 2023.

[200] Chhattisgarh: Civil Society Members Demand Release of Tribal Rights Activist Arrested under "NaxalCharges"' (NewsClick10 March 2021) <https://www.newsclick.in/Chhattisgarh-Civil-Society-Members-Demand- Release-Tribal-Rights-Activist-Arrested-Under-Naxal-Charges> accessed 6 June 2023.

[201] Chhattisgarh: Civil Society Members Demand Release of Tribal Rights Activist Arrested under "NaxalCharges"' (NewsClick10 March 2021) <https://www.newsclick.in/Chhattisgarh-Civil-Society-Members-Demand- Release-Tribal-Rights-Activist-Arrested-Under-Naxal-Charges>.

Dantewada SP, she was only detained in one, according to her attorney Kshitij Dubey. Apart from four offenses under the Indian Penal Code (rioting, rioting with a deadly weapon, unlawful assembly, and attempted murder) and two under the Arms Act, Markam also has charges pending against him under the harsh anti-terror law known as the Unlawful Activities Prevention Act, which has a high bar for bail. The police failed to show up for Markam's bail hearing in Dantewada on March 19, 2021, citing security precautions for a cricket match in the state capital Raipur as their excuse. Seven UN Special Procedures mandate holders intervened on India's behalf on April 8, 2021, in relation to Hidme Markam, a Chhattisgarh Adivasi rights campaigner, being detained and facing serious charges. She continues to be detained.

3.2.2 UAPA cases against journalist

The UAPA was also regularly invoked against the journalists merely for performing their duty.

Case 1: Unlawful detain and imprisonment of Journalist Santosh Yadav

Santosh Yadav, a journalist who worked as a reporter for the Hindi newspaper Navbharat in the Darbha block of the Bastar region, was detained by Chhattisgarh police on September 29, 2015, at his house shortly after he recorded statements from villagers who claimed the police had unlawfully detained five youths. The police asserted that Yadav was involved in the Maoist guerillas' August 21, 2015, ambush, which resulted in the death of one police officer and the injury of another. He was accused of rioting with a lethal weapon, unlawful assembly, wrongful restraint, attempted murder, public mischief, and criminal conspiracy, among other serious offenses. He was also charged with violating anti-terrorism laws such the Chhattisgarh Special Public Security Act and the Unlawful Activities Prevention Act[202]. The cops took a full year to submit the complaint against Yadav. When Yadav demanded changes in the food and reading material provided to detainees when he was in Jagdalpur prison, he claims he was beaten and placed in solitary confinement. The correctional staff accused him of criminal intimidation. Later, Yadav was sent to the 160 km away Kanker prison, making it difficult for his wife and three children to

[202] Malini Subramaniam, 'Charged with Aiding Maoist Ambush, Bastar Journalist Is Acquitted Four Years Later' (Scroll.in4 January 2020) <https://scroll.in/article/948660/charged-with-aiding-maoist-ambush-bastar- journalist-is-acquitted-four-years-later> accessed 10 June 2023.

visit him[203]. In the National Investigation Agency court in Jagdalpur and once in the High Court in Bilaspur, his bail was twice denied. In February 2017, the Supreme Court ultimately granted him bail, with the stipulation that he appear at the Darbha police station each day. Yadav claimed that the staff made fun of and embarrassed him while he was reporting to the police station, and the demand that he do so every day left him with little room to pursue his career as a journalist in its entirety. In the end, Yadav and the other eighteen defendants in the case were all found not guilty. The security guard whose allegation led to the police filing the FIR was unable to recognize Yadav during the identification parade. Yadav's attorney, Arvind Chaudhary, claims that the court questioned nearly 50 witnesses in the case, 90% of them were security force representatives and whose testimony was invalid.

Case 2: Arrest and detention of photo-journalist Kamran Yousuf in Kashmir

The National Investigation Agency (NIA) took custody of freelance photojournalist Kamran Yousuf (age 23) on September 6 after he had been detained by the Jammu and Kashmir police on September 4 on charges of stone-pelting. He was relocated to Delhi and kept in Tihar prison[204]. Yousuf and 11 other people were arrested on January 18, 2018, on suspicion of stone-throwing and planning to carry out terrorist and separatist operations in Jammu and Kashmir in order to wage war against the Indian government. Yousuf and another stone-thrower, Javed Ahmad Bhat, were charged by the NIA with developing strategies and action plans for launching violent protests and communicating these to the public in the form of protest calendars distributed by religious leaders, newspapers, and social media, thereby instilling terror and fear in the state of Jammu and Kashmir[205].

Yousuf was granted bail by Special NIA Court of Additional Sessions Judge Tarun Sherawat on March 12. The accused, a journalist, was not sufficiently present at the scene of the occurrence to be held responsible for the offenses that were allegedly committed there during that time, the court observed. The prosecutor was unable to present any proof to support its assertion that Yusuf had contact with any of the other

[203] Ibid

[204] 'In Granting Bail to Kashmiri Photojournalist, Court Picks Holes in NIA's Claims' (The Wire) <https://thewire.in/media/in-granting-bail-to-kashmiri-photojournalist-court-picks-holes-in-nias-claims> accessed 10 June 2023

[205] NIA Is Framing Young Kashmir Photojournalist as Stone-Pelter, Says Family' (The Wire) <https://thewire.in/media/kamran-yousuf-arrest-nia-kashmir-photo journalist#:~: text=Jan%2024%2C%202018-> accessed 10 June 2023.

defendants in the case, the court added. He claimed that since the NIA had not brought charges against "Party B" in the case, their allegation that the journalist had contact with an unnamed "Party B" was immaterial.

Case 3: Arrest & detention of journalist Asif Sultan in Kashmir

Journalist Aasif Sultan (33 years old) was detained on August 27, 2018, following a joint police and paramilitary raid on his home in Srinagar's Batamaloo neighbourhood. Aasif was taken to the police station after the raid, which lasted for hours, and his phone and laptop were taken away. Aasif had previously completed a piece titled "Rise of Burhan" for the weekly journal he was employed with. His family claims that once the article was published, the police and other security organizations began contacting him[206]. Asif authored a well-regarded article about Burhan, whose passing sparked months of unrest in Kashmir, while working as an assistant editor for the monthly magazine Kashmir Narrator[207].

In an encounter with militants who managed to break the cordon in Batamaloo on August 12, 2018, one police officer was murdered and four other CRPF soldiers were injured. Asif's father Mohammad Sultan, a retired government worker, claimed that the incident in which Asif is allegedly involved happened not far from their house. Police issued a charge sheet against him in February 2019 accusing him of harboring militants. He is being held at the Central Jail in Srinagar[208].

Case 4: FIR filed against editor N Venugopal Rao in Hyderabad

The editor of the Telugu weekly publication Veekshanam Collective, N Venugopal Rao, was charged in November 2019 with violating a number of IPC, UAPA, Telangana Public Security Act, and other laws. In a case involving an alleged plot against the state with Maoist ties, he was identified as the seventh accused. Venugopal was identified as a member of the Viplava Rachayitala Sangham, also known as

[206] 1,000 Days and Counting: How Long Will Kashmiri Journalist Aasif Sultan Remain in Jail?' (The Wire)<https://thewire.in/media/kashmir-journalist-aasif-sultan-1000-days-jailed> accessed 10 June 2023.

[207] Jailed Reporter Asif Sultan Gets Support from Kashmir's Journalist Community; Father Questions Conduct of Forces-India News , First post' (Firstpost12 September 2018)<https://www.firstpost.com/india/jailed-reporter- asif-sultan-gets-support-from-kashmirs-journalist-community-father-questions-conduct-of-forces-5166021.html> accessed 10 June 2023.

[208] News Desk, 'Journalist Asif Sultan Completes 1000 Days in Jail' (The Kashmir Walla23 May 2021) <https://thekashmirwalla.com/journalist-asif-sultan-completes-1000-days-in-jail/> accessed 10 June 2023

"Virasam," which was founded by Varvara Rao and detained by Pune police on November 17, 2018, on suspicion of plotting to kill Prime Minister Modi, according to the remand case diary presented before the LB Nagar II Metropolitan Magistrate by the Telangana police on November 13, 2019, in Hyderabad. Venugopal was identified by the police as an evader as well[209]. After Narla Ravi Sarma, 52, and his wife B. Anuradha, 56, were detained by the state police on November 12 for allegedly having ties to the outlawed Communist Party of India (Maoist), Venugopal's name as a suspect emerged. Sarma, a degree in agriculture, was initially detained by Jharkhand police in 2009 for allegedly taking part in Maoist activities. After being granted bail in 2016, he and his wife have been residing in Hyderabad. A collection of poems by Varavara Rao and "three laptops, pen drives, and memory cards" were among the "revolutionary literature" that the police claim to have recovered during the raids and seized along with "incriminating" evidence against the pair[210]. Venugopal petitioned the Telangana High Court for an anticipatory bail on November 21, 2019. Mr. Venugopal said in court that he had no connection at all to the allegations made against the arrested couple. There was nothing prima facie in the record that would link him to the arrested couple. The petitioner criticized the police for labelling him a member of Virasam and portraying him as evading arrest. He claimed that the accusations were baseless and unfounded. Additionally, he denied any connection to the Varavara Rao-led Virasam since 2009, when he was expelled from the group as a result of an uproar over an article he had written at the time. Venugopal has been a harsh critic of both Telangana Rashtra Samithi (TRS) government as well as the majority-leaning policies of the Modi government. He was a crucial voice in the civil society who argued in favour of a Telangana state that was independent[211].

Case 5: FIR filed against photojournalist Masrat Zahra in Kashmir

Masrat Zahra, a freelance photojournalist based in Srinagar, was detained by the Jammu and Kashmir Police for allegedly praising anti-national actions on social media in violation of the Unlawful actions Prevention Act (UAPA). The Cyber Police

[209] Daily hunt' (m.dailyhunt.in) <https://m.dailyhunt.in/news/india/%20english/the+logical+indian-epapertlogin/telangana+journalist+critical+of+govt+charged%20+for+conspiring+against+state+with> accessed 10 June 2023.

[210] Telangana: Journalist Critical of Central, State Govts Charged under UAPA' (The Wire) <https://thewire.in/media/telangana-journalist-critical-of-central-state-govts-charged-under-uapa> accessed 10 June 2023.

[211] Ibid

Station (Kashmir Zone) accused Zahra of publishing "anti-national" posts with the criminal purpose to incite youth and encourage offenses against public tranquility in a statement released on April 20, 2020. "Cyber Police Station received information from credible sources that one Facebook user, Masrat Zahra, is uploading anti-national posts," the statement read. On April 19, 2020, Zahra received a call asking her to come to Cargo, the headquarters of the J&K Special Operation Group (SOG), in Srinagar. She was told she was not compelled to go after the intervention of top police officers, civil administration officials, and fellow journalists. But that evening, a FIR was filed, and the following day, she learned that she had been arrested on 18 April 2020 for violating sections 505 and 13 of the Indian Penal Code for sharing a picture of a woman named Arifa Jan that Zahra had taken for a story back in December 2019. The Indian Army is accused of killing Arifa's husband in 2000[212].

Case 6: Arrest of journalist Siddique Kappan in Uttar Pradesh

On October 5, 2020, the Manti police station in the Mathura district of Uttar Pradesh issued an arrest warrant for Siddique Kappan, a journalist from Malappuram in Kerala, along with three other people. Atiq-ur-Rehman, Masood, and Alam, three additional individuals from Muzaffar Nagar, Bahraich, and Rampur, respectively, in Uttar Pradesh, were traveling with Kappan to Hathras, the location of a young Dalit lady who had allegedly been killed after being subjected to gang rape there in September 2020. The four were detained after it was claimed that while they were traveling to Hathras, a laptop and some offensive literature about "Justice for Hathras Victim" were found in their possession. The four were initially held in preventive detention, but on October 7, 2020, a police report was filed in Maant police station under section 153-A of the Indian Penal Code (promote enmity between two groups), section 295A of the IPC (deliberate and malicious act intended to outrage feelings), section 124 (A) (Sedition), section 17 and 14 of the Unlawful Activities (Prevention) Act 1967, and sections 65, 72, and 76 of the Information The four were allegedly traveling in a car from Delhi to Hathras while affiliated with the Popular Front of India's (PFI) Campus Front of India (CFI), according to the police. The FIR accuses

[212] Azaan Javaid, 'I'm Speechless, Says J&K Journalist Masrat Zahra after Being Booked for "Anti-National" Posts' (ThePrint20 April 2020) <https://theprint.in/india/im-speechless-says-jk-journalist-masrat-zahra-after-being- booked-for-anti-national-posts/405195/> accessed 10 June 2023.

them of trying to provoke riots in Hathras and stoking caste conflict while soliciting donations from individuals working for the Carrd.co website[213].

The Supreme Court gave journalist Kappan a five-day temporary release on bail on February 15, 2020, so he could visit his sick 90-year-old mother in Mallapuram, Kerala. After Solicitor General Tushar Mehta raised fears that Kappan would exploit the opportunity to gain public support, a bench presided over by the ex-Chief Justice of India granted temporary bail and set various bail conditions on him. Kappan should only travel to Kerala to meet his mother, according to the court, and "he shall not give any interview to any media, including social media.[214]" After being flown to Kozhikode, Kerala, on February 17, 2021, where he visited his family members after which Kappan was returned to prison on later days of February. The Special Task Force alleged in the charge sheet that Siddique Kappan did not write quality materials on his article and his facts were described as such which would provoke the feeling of Muslims community[215].

Siddique Kappan's articles were used as proof by the police. The articles cover a variety of topics, such as the Nizamuddin Markaz mosque in Delhi, which was implicated in thousands of coronavirus infections across the nation during the first few weeks of the March 2020 national lockdown, reports on the anti-citizenship law protests and the subsequent Delhi riots in February 2020, the chargesheet against activist Sharjeel Imam in a case involving violence in the nation's capital, etc. The chargesheet states the following about Kappan's article on the protests against the citizenship law, which for the first time included a religious requirement for citizenship: The article mentions that the incident similar to that of the assassination of the father of the nation was repeated by a Hindu man named Kapil Gurjar during the CAA protest at Shaheen Bagh. The piece also berates the Delhi Police department for how it operated the demonstrations.

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[213] Journalist, 3 Others on Way to Hathras Arrested, Charged with Anti-Terror Law' (Hindustan Times7 October 2020) <https://www.hindustantimes.com/india-news/journalist-3-others-on-way-to-hathras-arrested-charged- with-anti-terror-law/story-gGbbUrAfd1OAeRDxZ2EgkI.html> accessed 10 June 2023.

[214] Apoorva Mandhani, 'SC Gives Siddique Kappan Interim Bail to Meet Ailing Mother in Kerala, Bars Media Interaction' (ThePrint15 February 2021) <https://theprint.in/judiciary/sc-gives-siddique-kappan-interim-bail- to-meet-ailing-mother-in-kerala-bars-media-interaction/> accessed 10 June 2023.

[215] Scroll Staff, 'Siddique Kappan Did Not Write like a "Responsible Journalist", Says up Police in Chargesheet' (Scroll.in1 October 2021) <https://scroll.in/latest/1006758/siddique-kappan-did-not-write-like-a-responsible- journalist-says-up-police-in-chargesheet> accessed 10 June 2023

Case 7: Arrest of two editors in the state of Manipur

Sadokpam Dhiren who was the editor in chief and Paojel Chaoba who was the Executive Editor of The Frontier Manipur were detained on January 17, 2021 for violating the Indian Penal Code's Sections 124A (sedition), 120B (criminal conspiracy), 505(b) (causing alarm to induce offense against the state), and 34 (common intention), as well as Section 39 (supporting terrorist organizations) of the Unlawful Activities (Prevention) Act. M Joy Luwang, one of the news portal's authors, wrote the piece titled "Revolutionary Journey in a Mess." It was released on January 8th, 2021[216].

After writing a letter of apology to the chief of police explaining that the story was "unverified" and that it was a "oversight" to have published it by them, the two editors were freed on January 18, 2021[217].

3.2.3 Cases which are registered against the academics

UAPA was such an act which even didn't spared the academics. As previously mentioned, professors Shoma Sen, Vernon Gonsalves, Anand Teltumbde, and Hany Babu were detained among other human rights advocates in the Elgar Parishad case. Several other professors were also detained as a result of the UAPA legislation.

Case 1: Detention of Abdul Bari Naik (Asst. Professor) in Kashmir

Dr. Abdul Bari Naik, an assistant professor at the government-run Degree College Udhampur in Jammu and Kashmir, was taken into custody by the Jammu and Kashmir police on March 5, 2021, within the college. His brother Rauf Naik, an attorney, claims that his brother was detained in the Kulgam district after being arrested in connection with an old case that was filed in Police Station Kulgam[218]. The complaint concerns alleged stone-throwing in 2018 when armed personnel stormed the grounds of the Government Degree College in Kulgam and fired tear gas and smoke shells there. The Jammu Kashmir Police arrested Dr. Bari at the time while he

[216] Scroll Staff, '"Frontier Manipur" Editors Released a Day after They Were Arrested under UAPA, Sedition Charges' (Scroll.in18 January 2021) <https://scroll.in/latest/984375/frontier-manipur-editors-released-a-day- after-they-were-arrested-under-uapa-sedition-charges> accessed 11 June 2023.

[217] Ibid

[218] News Desk, 'Kashmiri Assistant Professor Booked under UAPA, Arrested' (The Kashmir Walla7 March 2021) <https://thekashmirwalla.com/kashmiri-assistant-professor-booked-under-uapa-arrested/> accessed 11 June 2023.

was employed at the college for "inciting violence" there. Actually, it was Dr. Bari who convinced the students to refrain from throwing stones and advised them to always engage in non-violent conflict resolution[219]. According to Dr. Bari's brother Rauf, who was mentioned by the Kashmiriyat, his brother has been outspoken in his opposition to corruption and other problems that have an impact on society as a whole. Dr. Bari was booked in another case registered against him under various section of the Ranbir Penal Code (RPC) read with Sections of UAPA Act for allegedly posting a video on social media where it was shown that that the act of vandalizing a mosque was committed by Army soldiers and allegedly disrespecting the Holy Quran at a local mosque followed by a public protest against the construction of an Army camp[220].

Case 2: Arrest of Osmania University Professor Ch Khasim

Telangana police detained Osmania University Professor Ch Kasim on January 18, 2020, in his home on the university's campus in Hyderabad for a three year old case under the UAPA act. With a court-issued search order in hand, a team from the Mulugu police station of Siddipet commissioner went to Khasim's official residence on the university campus and searched it as well. In a case from 2016, the police asserted that they had discovered damning evidence against Professor Kasim, including some electronic evidence, and charged him with having ties to the outlawed CPI (Maoists)[221]. In addition to Sections 120B (punishment of criminal conspiracy) , 121A (punishment for waging, attempting to wage, or aiding waging of war against the government of India) , and 124A (sedition by words, either spoken or written, or by signs, or by visible representation) of the IPC , Kasim was charged under Sections 10 (being a member of an unlawful association) and 18 (punishment for conspiracy) of the UAPA .the wife of the professor claimed that since her husband spoke out against and raised awareness of social injustice, caste prejudice, and unemployment in Telangana, he was falsely accused. After spending over four

[219] Implicated due to activism': Assistant Professor booked under Anti-Terror law, (The Kashmiriyat, 7 March 2021) < https://freepresskashmir.news/2021/03/07/ implicated-due-to-activism-assistant-professor-booked-under-anti-terror-law/> accessed 11 June 2023

[220] 'Sacked for "Going against Security of State", Kashmiris See Attempt to Spread Fear' (The Wire) <https://thewire.in/rights/jammu-and-kashmir-manoj-sinha-teacher-terminated-state-security> accessed 11 June 2023

[221] Hyderabad: Osmania University Professor Arrested in UAPA Case' The Times of India (18 January 2020)<https://timesofindia.indiatimes.com/city/hyderabad/hyderabad-osmania-university-professor-arrested-in- uapa-case/articleshow/73354998.cms> accessed 11 June 2023.

months behind bars, Professor Kasim was granted conditional bail and released from Cherlapally jail on May 20, 2020.

3.2.4 Tripura: The poster child for UAPA abuse

Tripura saw riots on October 20, 2021, primarily as a result of "mosques" being vandalized. After the Vishwa Hindu Parishad (VHP) disrupted a number of demonstrations on October 21 and 26, the situation escalated. Invoking UAPA rather than Section 153 of the IPC was the answer. The Tripura police sent letters to the social media platforms requesting that they block certain social media account holders, including Twitter handles, for posting allegedly inaccurate news about communal violence in the state in violation of the Act, among other charges against them. Under various sections of "the Indian Penal Code" and Section 13 of the Unlawful Activities Prevention Act, a case was opened at the West Agartala Police Station in this respect[222]. A group of journalists and attorneys who visited the State to gather information were also targeted by the Police under the UAPA. The act's provisions were being used against two lawyers when a notice was issued by the Supreme Court to the Tripura police on November 17, 2021, ordering them to refrain from using coercive measures against attorneys Mukesh Kumar and Ansarul Haq Ansari, as well as journalist Shyam Meera Singh. The appeal questions the Tripura Police's intention to use UAPA against journalists Singh and Kumar for tweeting "Tripura Burning" and for their social media posts and utterances[223].

[222] Tripura Police Book 102 Social Media Accounts under UAPA after Violence' (Hindustan Times6 November 2021) <https://www.hindustantimes.com/india-news/tripura-police-book-102-social-media-accounts-under-uapa-after-violence-101636223313873.html> accessed 11 June 2023.

[223] Srishti Ojha, 'Supreme Court Restrains Tripura Police from Coercive Steps against 2 Lawyers & 1 Journalist Booked under UAPA' (www.livelaw.in17 November 2021) <https://www.livelaw.in/top-stories/supreme-court- orders-no-coercive-steps-against-2-lawyers-1-journalist-booked-under-uapa-by-tripura-police-185707>accessed 11 June 2023

CHAPTER 4

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 ANDARTICLES 14, 19 AND 21 OF THE CONSTITUTION OF INDIA vis-à-vis INTERNATIONAL LAWS

There are certain inalienable rights that are bestowed upon every person at birth and which cannot be violated in any way. One of every person's most fundamental rights is equality, followed by the rights to life and personal freedom. In addition, it is difficult to envisage a decent society without the freedom of speech and expression, which includes the right to disagree, to voice one's viewpoint, and to dissent. The Indian Constitution specifically guarantees these rights. However, it is also true that these rights are subject to some restrictions. The 1967 Unlawful Activities (Prevention) Act is one of these potential restrictions. The UAPA was originally intended to address illegal acts, but with a 2004 revision, anti-terror clauses were added as well. The UAPA has undergone a number of revisions throughout the years, the most recent being the amendment of 2019 that gave the Central Government the authority to designate someone as a terrorist. The aforementioned amendment has come under fire for violating both Article 14 of the Indian Constitution and Article 19(1) (a), which guarantees freedom of speech and expression, on the grounds that it gives the government unrestricted, discretionary, and unbounded powers that are easy to abuse. There has also been criticism that the aforementioned amendment violates an individual's right to life and personal liberty, which is protected under the Indian Constitution and also includes the right to reputation. Let's talk about the Indian Constitution's Articles 14, 19, and 21, which must be taken into account prior to putting the UAPA's provisions into effect.

4.1 Article 14 – Right to Equality

In Article 14 of the Indian Constitution, it is stated that "The State shall not deny to any person within the territory of India, equality before the law or the equal protection of the laws." The conventional definition of equality refers to the idea that no individual or group of individuals can be distinguished from another group belonging to the same category. This conventional idea forbade class regulation but permitted

fair classification. As a result, the idea of sensible classification was created. The apex court of India i.e. the Supreme Court established[224] the following criteria for fair classifications such as: (i) intelligible differentia must serve as the basis for classification. This implies that individuals who are being distinguished for any reason must be understandable. (ii) Reasonable linkage to the desired outcome is required for intelligent differentiation.

The same laws would be applicable to all men, according to Seervai, if they were all equally created and continued to be so throughout their lives[225]. But since men are known to be unequal, a right bestowed upon someone that they shall not be denied the same protection under the law cannot be interpreted to suggest that everyone will be protected by the same rules. The notion of classification enters the picture at this point and offers the promise of equal protection under the law context and meaning. All people in identical situations must be given the same legal protection under the law. The Constitution places a strong focus on the principle of equality serving as its cornerstone. This implies that any modification to the Constitution that violates the right to equality will be declared unlawful. The concept of equality was upheld in the case of Kesavananda Bharati[226],and neither the parliament nor any state legislature can violate it.

Equality with the advent of time has evolved into the idea known as arbitrariness, which runs counter to the right to equality guaranteed by Article 14. So any governmental action that violates Article 14 by being arbitrary or unreasonable cannot be referred to as constitutional. The Honourable Supreme Court stated[227] that equality is a dynamic notion with various sides and dimensions and cannot be cribbed, cabined, or kept within traditional and doctrinaire confines in the case. According to a positivist, equality is the antithesis of arbitrariness. Actually, equality and arbitrariness are known to be sworn enemies; one is associated with the rule of law while the other is associated with the whim and fancies of an absolute monarch.

Even if ex facie evidence of arbitrariness cannot be established, it can nevertheless be inferred from a careful reading of the act and any rules, regulations, orders, or notices

[224] State of West Bengal v Anwar Ali Sarkar 1952, SC 75
[225] H. M. Seervai, Constitutional Law of India
[226] Keshavananda Bharati v. State of Kerela 1973, 4 SCC 225
[227] E. P. Royappa v. State of Tamil Nadu 1974, SC 555

issued there under. Unreasonable decisions made by the State or one of its agents may be considered arbitrary and subject to challenge. In Mc Dowell and Co., the Supreme Court ruled that an act that is discriminatory may also be characterized as arbitrary. Accordingly, it has been determined that if the categorization is unreasonable, the contested legislative or administrative action would be arbitrary and in violation of Art. 14; nonetheless, the content and reach of Art. 14 must not be confused with the doctrine of classification. The goal of Article 14 is more expansive and is to guarantee fairness and equality of treatment. In the matter of Indian Express News Papers(p) Ltd., granting a benefit to one class of establishments while refusing it to another class listed in the same paragraph of an Act was arbitrary and improper.

In order to achieve justice or equality as the end goal, the doctrine of categorization facilitates the reasonable selection and application of legal inequality upon factual inequality. Due to the unique demands of various classes or groups of people, all people are not created equal by nature or circumstance. This results in categorization of various human groupings and differentiation within these classes. In order to practically enforce the concept of equality, the courts have developed the rule that if a law is founded on a logical classification, it is not considered discriminatory.

To pass the test of permissible classification, two requirements must be met: (a) the classification must be based on an intelligible differential that separates those who are grouped together from those who are left out of the group; and (b) that differential must have a rational relationship to the goal that the in question statute seeks to achieve. What is required, however, is that the classification must have a substantial basis and that there must be a connection between that basis and the statute's intended purpose. The Hon'ble Supreme Court further observed that, Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be inconformity with Article 14[228].

[228] Maneka Gandhi v. Union of India 1978, SC 597.

4.2 Provisions of UAPA which is in conflict with Article 14

The central government revised the act to incorporate the provision of labelling a person as a terrorist under Section 35 of the UAPA and in support of India's Zero Tolerance Policy towards terrorism. Earlier only organizations may be classified as terrorist organizations prior to the amendment which later includes individuals within its purview. 53 people were labelled as terrorists by the federal government by using the aforementioned amendment provision[229]. Section 35 gives the government the authority to list any person as a terrorist in the UAPA's Fourth Schedule. Without a complex procedure, the government can proclaim and notify based just on belief. No opportunity for a fair hearing has been required. The criteria used to label someone a terrorist are nebulous and imprecise. It is unclear whether the declaration would be made upon the filing of a FIR or upon a trial court conviction.

The Association for the Protection of Civil Rights (APCR) petitioned the court, arguing that the new Section 35 permits the Center to identify an individual as a terrorist and add his name to Schedule 4 of the Act, when in the past only organizations could be declared terrorist organizations. Although conferring of such a discretionary, unfettered and unbound powers upon the Central government is antithesis to Article 14, the amendment makes no mention of the criteria for labelling someone a terrorist.

The contested Section does not offer guarantees against the significant possibility for discretionary power. Although the process for alerting a company to a terrorist group has significant protections, it is inappropriate for an individual. The way in which an individual is treated is excessive and unreasonable because there is no discernible reason for the distinction between an organization and an individual. This does not pass Article 14's "reasonable classification" criteria. Additionally, the rule of fair hearing and the Audi alteram partem postulate of natural justice were disturbed by the lack of a fair trial. The petition cites Union of India v. Tulsiram Patel (1985), arguing that a breach of natural justice leads to arbitrariness and undermines Article 14.

The petition also resulted in the 2004 case People's Union for Civil Liberties v. Union of India. The ruling in the case held that it would be futile to violate human rights in

[229] 'Designation of Organisations/Individuals as "Terrorist Organization"/ "Terrorist" under the Unlawful Activities (Prevention) Act, 1967 (UAPA)' (pib.gov.in) <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1900222> accessed 2 June 2023

the name of fighting terrorism. The inhabitants of a well civilized society places adherence to the principle of natural justice at the foremost position Giving everyone a fair chance to be heard is the core goal of the natural justice principle. Fairness as a concept, to close legal gaps and flaws, safeguard fundamental rights, and uphold constitutional principles, No injustice was done. The UAPA also imposes extraordinarily onerous restrictions on liberty through its remand and bail rules in cases filed under its protections for the right to a fair trial and the presumption of innocence. These include extended police detention for a period of thirty days (instead of fifteen days under CrPC), prolonged pre-trial detention for filing of chargesheets lasting up to a period of 180 days under Section 43D(2) (instead of sixty or ninety days under Section 167 CrPC), and most significantly, the effective ban on bail under Section 43D(5). The UAPA prohibits bail based on prima facie satisfaction of charges for Chapter VI offenses involving terrorist organizations and individuals and instead calls for indefinite detention of the accused. Regardless of the accused's ultimate acquittal or conviction, this detention still exists. This manifestly contravenes the rule of natural fairness.

The UAPA also prohibits all foreigners charged under the Act from receiving bail. As a result, the UAPA expressly forbids granting bail to non-Indian citizens who have illegally entered the country, "except in very exceptional circumstances and for reasons to be recorded in writing." This exposes individuals to even harsher punishments. The clause clearly violates Article 14 of the Indian Constitution, which guarantees equality for all people "within the territory of India" regardless of national background. This suggests that a person who entered the nation illegally would continue to act illegally, and that the release of an accused during the course of the trial would now be contingent on citizenship. It is recommended that bail be granted with no other considerations, such as the accused's nationality, other than a promise to show up for the trial.

4.3 Article 19 – Right to Freedom

Article 19 of the Indian Constitution entitles the right to freedom to its citizens. Freedom of expression is guaranteed by Article 19(1)(a). The first section of liberty is freedom of speech. Freedom of speech and expression is a fundamental right in a democratic society that gives everyone the chance to voice their thoughts and

opinions, which is a prerequisite for any society's growth. The phrase "freedom of speech and expression" refers to the ability to speak or express one's inner thoughts and feelings. It is a means of explaining one's beliefs and thoughts to the audience. It also serves as a means of expressing worry and expressing disagreement with others over particular problems. It is sometimes used to critique ideas that are impractical and do not serve the individual's or society's overall interests. It also involves the right to express an opinion on certain matters.

The Honourable Supreme Court stated[230] that to express oneself freely is undoubtedly a cornerstone of a democratic society. The fundamental signs of a free society are the open interchange of ideas, unrestricted information distribution, knowledge dissemination, the airing of opposing viewpoints, debate and the formulation and expression of one's own opinions. People when they have the freedom to form their own thought process and opinions may only then they be able to exercise social, economic, and political rights. As a result, the courts have closely monitored any restrictions on this privilege. The freedom of speech and expression includes freedom of dissent, freedom of thought, and freedom of disagreement. For the benefit of the growth of the country, these rights provide every person the chance to suggest, advocate for, and fairly criticize the government's policies.

“The Supreme Court Bar Association organized a lecture wherein Hon. Justice Mr. Deepak Gupta mentioned, the right to express freely and the freedom of conscience by themselves contain the essential “right to disagree”. Every citizen of the nation would naturally possess the right to disagree, to dissent from the majority, and to adopt a different point of view[231]. The Hon. Supreme Court stated in that “this Court must be ever vigilant in guarding perhaps the most precious of all the freedoms guaranteed by our Constitution”[232]. A democratic constitution that allows for the possibility of changing the make-up of legislatures and governments places utmost weight on the freedom of speech and expression.

[230] Union of India v. Motion Picture Association 1999, 3 SCR 875

[231] Hon’ble Mr. Justice Deepak Gupta, Democracy and Dissent, Held at Indian Society of International Law, New Delhi on February 24, 2020<https://images.assettype.com/barandbench/2020-02/28f4cb42-ea4a-4f36-9864-17ba9415a2ba/SCBA_SPEECH Justice_Deepak_Gupta 24_02_2020.pdf> accessed 28 May 2023

[232] Sakal Papers v. Union of India 1962, SC 305

In a speech delivered at the Gujrat High Court by Hon'ble Justice D. Y. Chandrachud where he said , "A liberal democracy is one that makes sure whether or not their citizens enjoys the right to express their views and opinion in the most credible way, along with the right to protect and dissent the existing oppressive law[233]. In addition, he claimed that restricting the right to ask questions hinders political, economic, cultural, and social progress, and that destroying spaces for dissent and questioning damages the foundation of all growth, including political, economic, cultural, and social growth. Dissent is the democracy's safety valve in this regard. Beyond violating personal freedoms and upholding constitutional ideals, the stifling of dissent and the instillation of fear in people's minds strike at the basic foundation of a democratic society built on conversation and treating every person with respect and attention[234].

The Hon'ble High Court of Delhi stated[235] that "the right to dissent is the hallmark of a democracy". In a true democracy, the dissident must feel at home and should not be nervously glancing over his shoulder out of dread of being taken captive, suffering physical violence, or facing monetary or social repercussions for holding unusual or critical ideas. The freedom to think whatever we want should be allowed. If there is no subsequent freedom, the right to free expression is meaningless. The degree of freedom and adaptability that democracy offers serves as a yardstick for its effectiveness.

The meaning of free speech has always been up for debate, especially when it comes to criticism of the government's policies. Because people are naturally very desirous and if their desires are not controlled, it may lead to a severe imbalance in society as each individual might exercise his right while putting the rights of others on the line. As a result, the desire of each individual is required to be controlled. However, sometimes free speech leads to threat to the nation, which challenges its sovereignty and integrity. As a result, as stated in Article 19(2) of the Indian Constitution, freedom of speech and expression has a broad scope and can be controlled with justifiable limitations.

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[233] Dhananjaya D and Chandrachud Y, 'THE HUES THAT ARE INDIA: FROM PLURALITY to PLURALISM'<https://www.asiaconverge.com/wp-content/uploads/2020/01/2020-02-15_Full-speech-Justice_DY_Chandrachud Justice_PD_Desai_Memorial_Speech.pdf> accessed 28 May 2023

[234] Ibid

[235] Maqbool Fida Husain v. Raj Kumar Pandey 2008 ,Cri L.J. 4107

4.3.1 Article 19(1)(b) - Right to Assemble Peaceably And Without Arms

Article 19(1)(b) of the Indian Constitution, people have "the right to assemble peacefully and without arms." The freedom to assemble encompasses the freedom to march or process peacefully, to conduct meetings in peace, and to engage in peaceful protest. It is an essential right for the advancement of every country, including India. This right seem to be observed from the time when India was under the domain and control of the British where many freedom fighters actively took over to protest against the oppressive and harsh policies of the British. Since then, it has been believed that these rights are a necessity for a democratic nation like India that monitors the government's policies. In the case, the Supreme Court had ruled that[236] "citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action." The citizens do not, however, have a complete right under Article 19(1)(b). Nothing in subclause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from enacting any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of rights guaranteed under Article 19(1)(b).

The blocking of public spaces during protests has been a topic of discussion in the Indian judiciary. The Honourable Supreme Court has consistently expressed concern over obstruction of public spaces and expressed the view that no disturbance to the public is acceptable and that there needs to be certain specified areas for holding protests[237]. Holding rallies and demonstrations is an established right, but no one has the right to insist that they only have the right to do so in a specific location, the Hon. Supreme Court stated that certain places can be designated while controlling such demonstrations in the public interest. The Hon'ble Court noted that, in light of the inconvenience to the general public, certain categories of peaceful protests in a well regulated environment could be allowed so as to enable the protestors to exercise their right. Democracy and dissent goes along with one another, but then the protests expressing dissent have to be in designated places alone[238].

[236] Ramlila Maidan Incident v. Home Secretary 2012, 5 SCC 1
[237] Mazdoor Kisan Shakti Sangathan v. Union of India 2018 SC 3476
[238] Amit Sahni v. Commissioner of Police 2020, 10 SCC 439

4.3.2 Article 19(1)(c) - Right to Establish an Association or Union

Every citizen has the right to establish their own associations, unions, participation opportunities, and associations with any groups of their choosing. According to Article 19(1)(c) of the Indian Constitution, "All citizens shall have the right to form associations or unions," the freedom of association is guaranteed. Under Article 19(4), which states that Nothing in subclause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India. Some reasonable restrictions may be imposed upon exercising such rights, the right to freedom of association or union is not absolute by nature. Regarding Article 19(4), the Hon'ble Supreme Court stated[239] that reasonable restrictions to be imposed only in the "interests of the sovereignty and integrity of India", or in the interests of public order or morality.

4.4 CONFLICTING PROVISION OF UAPA WITH ART 19

Curbing dissent which is an essential element of freedom of speech and expression:

In addition to criminalizing the rights to association, free speech, and equality, the unlawful activities prevention act further obfuscates the distinction between political protest and criminal conduct by declaring particular ideologies, works of literature, and ideas to be prohibited. As a result, certain organizations and organisations affiliated with the governing classes are outlawed politically. The freedom to dissent has become a crucial part of each and every fundamental right that every Indian individual, whether they reside in India or abroad, is granted in the largest democracy in the world. UAPA unquestionably encourages executive overreach, and there are numerous examples to back up this allegation.

The UAPA regulations prohibit a disproportionately broad range of expressive actions because of how ambiguously they are phrased. These restrictions may be arbitrarily applied to a variety of circumstances, provided that the targeted words do not advocate, encourage, or promote violence. Furthermore, rather from being specifically tailored to the goals of security, sovereignty, or integrity, the UAPA act's restrictions on the right to freedom of speech and expression threaten unacceptable wide swaths

[239] Damyanti Naranga v. Union of India 1971 SC 966

of protected speech. These anti-terrorism legal frameworks improve the state's capacity for coercion. The case for stronger abilities comprises two parts. On the one hand, it is derived from the masculinist logic of protection, where a strong state is desired for the protection of citizens, and it is founded on the justification of compelling necessity unprotected by law.

An examination of specific UAPA cases in India illustrates how the masculinist security state is run in accordance with the ideas of the development of submissive people and the extended legal authority of coercion. Activists like Meeran Haider, Safoora Zargar, and Umar Khalid are charged with breaking various rules of the arbitrary UAPA. The democratic rights movements that have grown out of opposition to the CAA's strong communal overtones are being cursed by the state. Journalists like Masrat Zahra, Mushtaq Ganaie, and Gowhar Geelani who attempted to chronicle the challenges the Kashmiri people had faced, particularly during the Covid-19, drew the ire of the state and were detained under the UAPA law. It is a frightening indictment of our day that even performing out journalistic duties is regarded as a terrorist act.

4.5 RIGHT OF ASSOCIATION

The passage of the 16th amendment in 1963 marked a significant step in the restriction of the rights to free expression, assembly, and association. Article 19 (2) was also modified to include "reasonable restrictions in the interest of the sovereignty and integrity of India." This change was made as soon as the Indian army lost the Sino-Indian War and as a result of the DMK's threat to run in the Tamil Nadu elections with a platform that included secession from India. The UAPA was passed in response to the Indian state's desire to label organizations that called for secession from India as "illegal." In this approach, the UAPA granted the central government the authority to impose associational prohibitions over all of India. The government may simply declare organizations to be "illegal" and hence prohibited as a means of outlawing them.

Due to the nature and construction of the Act, the government can virtually immediately book someone for violating the UAPA. A ban may be imposed if the central authority deems a particular individual or group to be illegal or terrorist. In accordance with Section 3 of the Act, a tribunal must first provide its consent before a

ban can be imposed; however, Section 35 eliminates this requirement. It is concerning because while the prohibition imposed by Section 35 can be made eternal, the prohibition imposed by Section 3 is in effect for only two years. An implicated organization that wishes to seek restitution for the lifting of the ban must first appeal to the government, and if that appeal is denied, it moves on to a review committee, which is unmistakably a branch of the government.

The organization is not given any room to present its case. It is a despised practice that the same authority designates a group as a terrorist organization, bans it, hears an appeal, and designates the body that will evaluate the second round of appeal. The repercussions are substantially worse if an organization is designated as a "terrorist" group. A person who "associates himself, or professes to be associated with a terrorist organization with intention to further its activities" is defined as a member of any such organization under Section 38. According to that definition, a doctor who treats a person who belongs to a prohibited organization may also be held accountable under the UAPA. A distinction between a criminal association and a legal association is not made.

The Unlawful Activities Prevention Act, 1967 (UAPA), Section 10(a)(i), and its three legal precedents were overturned by a three-judge Supreme Court panel, which decided that even passive membership in an unlawful group so designated by the government will result in punishment. This overturned a 2011 ruling[240] from the Supreme Court that stated a person's membership in an illegal organization would not implicate them unless they used violence, incited others to use violence, or committed an act meant to disturb the peace of the community by using violence.

Since the term "membership" is so broad and ambiguous, the State is able to establish utterly unfounded accusations and imprison people for years without a trial. As a result, they raised the threshold. Now, all of that protection is gone. As stated in the ruling, section 10(a)(i) only applies to those who are members and remain so even after the organization has received a notification under section 3 and cannot be used to punish only those who are members of illegal organizations. This demonstrates a desire to join and remain a member of an organization that has been deemed illegal and hostile to India's integrity and sovereignty. If the individual still desires to remain

[240] Arup Bhuyan vs. state of Assam 2011, 3 SCC 377

a part of this organization, this indicates an intentional choice on their behalf and puts them at risk of punishment. However, this decision has a fault that can be identified: unintentional membership in a prohibited organization can nonetheless subject a person to the strict provisions of the statute and keep him imprisoned with nearly unachievable bail requirements. The pronouncement is founded on fallacious logic, weakening the constitutionally given fundamental rights.

4.6 Article 21 - Right to Life and Personal Liberty

According to Article 21 of the Indian Constitution, "No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law." Every other right comes before the right to life. It is the most fundamental need that every person must have, one that cannot be compromised in the slightest and whose violation renders existence meaningless and lacking. Compared to other Constitutional clauses, the right to life has been the subject of the broadest interpretation rather than life being just a mere existence. The Honourable Supreme Court has ruled numerous times that the right to life is more than just an animal existence[241].

According to a more thorough reading of Article 21, the phrase "procedure established by law" is implied, but it is important to remember that the restrictions must not be unjust, unfair, or arbitrary. The Hon'ble Supreme Court expanded upon Article 21 by stating that "the procedure established by law must be fair, just, and reasonable, not fanciful, oppressive, or arbitrary." The Hon'ble Supreme Court made a very similar statement Mithu v. State of Punjab[242], noting that the court has power to see that the substantive law prevailing in the country is just, fair, and reasonable.

"Keep your feet on the ground, but keep your eyes on the stars." The government's concentration of power has caused it to be "head in the clouds," oblivious to any potential practical effects on the ground. Ironically, law-abiding persons are disproportionately affected by such policies because of the restrictions they impose on personal freedoms. A democratic state's citizens don't expect their governments to

[241] Kharak Singh v. State of Uttar Pradesh 1963 SC 1295; Charles Sobraj v. The Suptd. Central Jail, Tihar 1978, SC 1514; Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble 2003 7 SCC 749; Munshi Singh Gautam v. State Of M.P 2005, 9 SCC 631; Samatha v. State of Andhra Pradesh 1997, SC 3297; Sunil Batra v. Delhi Administration 1980 SC 1579

[242] 1983, SCR(2) 690

pass legislation that serves only as a "scarecrow" for "birds of prey" to use as a "perch"[243]. Even before a court finds him guilty, the government's designation of someone as a terrorist causes him to be stigmatized in society as such, leaving a lifelong stain on his reputation.

A citizen's right to life also includes the right to reputation. But for the person who was the victim of the government's naming and shaming scheme, this right would become meaningless. What will happen if this person later turns out to be innocent? How will the government make up for it? His family has already suffered social exclusion. What will be done about the life time stigma that comes with being labelled a terrorist?

It takes more than just an enabling law to limit personal freedom. Additionally, such a law must be "just, fair, and reasonable."21 The court established the "golden triangle" of the constitution, ruling that legislation restricting "personal liberty" must also pass the tests of Articles 14 and 19 in addition to Article 21.The UAPA amendment bill amends Section 35 (2), which permits the government to designate someone as a terrorist only if it thinks they have ties to terrorism. One of this bill's most absurd clauses is this one. This means that a person will be labelled as a terrorist solely because the government "believes" that he is connected to terrorism; there will be no formal investigation, charge sheet, court trial, or conviction.

This provision is not "just, fair, and reasonable" because it does not meet the requirements of the trinity articles and seriously jeopardizes individual rights. When this provision is contested in court, the honourable judges will immediately invalidate it because the Indian judiciary has a longstanding institutional conscience for protecting individual liberties from capricious and unjustified government actions. A basic procedural concern once more arises: At what point will the government label someone a terrorist? Our criminal justice system has a credo that says a person is "innocent until proven guilty." If the answer is known before the trial, the government is committing a grave mistake. Therefore, labelling someone a terrorist before they have been adjudged guilty of doing so by a court would go against the fundamental tenets of the legal system and be unlawful. The right to reputation has been consistently upheld by the courts in S. Nambi Narayanan v. Siby Mathews & Others

[243] Judicial Response Towards Terrorism (May12, 2020,11:10PM), https://shodhganga.inflibnet.ac.in/bitstream/10603/93639/6/chapter%205.pdf

Etc. as a crucial component of the right to life under article 21. The right to one's reputation is violated by the government when it labels someone as a terrorist through an open notification in the official gazette. It is acknowledged that a "convicted terrorist" need not maintain their good name, but the issue is that now, even without a proper trial, the government is able to label anyone as a terrorist. What would be the course of action if it later turned out that this person was innocent? How is his damaged reputation going to be repaired by the government? Who is accountable for the violation of his article 21 guaranteed "personal liberty"?

Responsible answers must be given to these queries, which directly contest the very legitimacy of this revised article. The administration appears to have forgotten that POTA was not completely overturned when it was repealed due of egregious abuse. The UAPA Act of 1967 (Chapters IV, V, and VI) took over its terrorism-related provisions, and the remaining clauses that were the principal contributors to the horrifying destruction of civil and political rights were permanently overturned. Now, the government is simply rendering the UAPA Bill, 2019, unconstitutional, just like its forerunners (TADA and POTA), by putting such anti-democratic clauses yet another time into an anti-terrorism law. As a result, it won't be long until this act's constitutionality is questioned, at which point the parliament will regrettably have to rescind it.

4.7 UAPA FAILS TO CONFIRM WITH INTERNATIONAL LAW PRINCIPLE OF LEGAL CERTAINTY

The principle of "legal certainty," which calls for criminal law to precisely define what constitutes an offense in order to prevent any arbitrary application or abuse, is enshrined in both article 11 of the Universal Declaration of Human Rights (UDHR) and article 15(1) of the United Nations International Covenant on Civil and Political Rights (ICCPR).

However, under the UAPA, the definition and well its description of “terrorist act” is vague. The use of unlawful force in an effort to "overawe any public functionary" is also included in this very broad term, as is any conduct intended to coerce the government or any other person to do, or refrain from doing, any act. It is important to note that the term includes any action that is "likely to threaten" or "likely to strike fear in people," allowing the government the authority to label any activist or common

person a terrorist without these actions actually having taken place. This includes a number of fundamental human rights and creates a serious possibility for wilful abuse. The Special Rapporteurs noted that "in a society governed by rule of law and abiding by human rights principles and obligations, non-violent criticism of state policies or institutions, including criticism of the judiciary, should not be made a criminal offence under counter-terrorism measures."

The right to freedom of expression is protected by both Article 19 of the UDHR and Article 19 of the ICCPR. State recognition of the right to practice freedom of expression as one of the fundamental tenets of a democratic society is demanded by Human Rights Council Resolution 12/16. Article 19(1)(a) of the Indian Constitution also recognizes this right.

According to article 14(2) ICCPR and article 11(1) UDHR, every accused has the inalienable right to be presumed innocent unless proven guilty. The shifting of the burden of proof in the UAPA violates this right.

4.7.1 PRE-TRIAL DETENTION AND BAIL

Pre-trial custody is only permitted under the ICCPR as a last option when it is required, reasonable, and appropriate to the prosecution's goal. However, unlike the typical 60-90 days under Indian criminal law, imprisonment under UAPA is permitted for 180 days without being charged. A person accused of a crime has the right to a speedy trial, which is guaranteed by Article 14(3)(c) of the ICCPR. This is a well-established principle of international law. The person must be released if there is an excessive wait.

Police detention under the UAPA may be prolonged for up to 30 days, which raises the risk of violence while an individual is being held. This makes it possible for someone to be held against their will for a long period of time with little chance of being released on bail. The legal principle that "bail is the rule, jail is an exception" is broken. UAPA is blatantly at odds with established international human rights norms in this regard.

A photojournalist from the state of Jammu and Kashmir named Masarat Zahra was unjustly charged under the UAPA for allegedly "uploading anti-national posts with criminal intention to induce the youth and promote offenses against public

tranquillity." Journalists and activists from around the world strongly condemned this intimidation attempt.

A 27-year-old Jamia Milia University student named Safoora Zargar was detained under the UAPA for allegedly instigating violence during the Citizenship Amendment Act (CAA) protests. She was imprisoned during the COVID-19 pandemic despite her being three months pregnant. After being denied three times, the court finally approved her release on "humanitarian grounds" after 70 days. The UN Guidelines for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the "Bangkok Rules") make it clear that pregnant women should, whenever possible and appropriate, be given the preference when choosing pre-trial sanctions.

4.7.2 THE RIGHT TO PRIVACY

UAPA also violates articles 12 and 17 of the UDHR, which forbid arbitrary and unlawful intrusions into a person's home and personal space, respectively. The modifications permit searches, seizures, and arrests based on police officers' "personal knowledge" without a formal authorization from a higher legal authority, or in other words, without a magistrate's warrant.

Additionally, UAPA allows authorities the authority to go into a person's books, look through their credit history, and inquire about them. Additionally, they have the authority to listen in on someone's communications without that person's previous consent or independent oversight. This was demonstrated in the case of Anand Teltumbde, a Dalit activist who was detained under the UAPA for his alleged involvement in a plot to incite caste conflict, which resulted in bloodshed and fatalities. In an open letter, he claimed that his phone had been tapped without his knowledge and that this had led to an incorrect accusation against him.

Therefore, the UAPA may be employed to seriously encroach upon someone's privacy. They can also have their reputation and honour attacked, which is a fundamental right protected by article 21 of the Indian Constitution. UAPA, whose primary intention was to combat terror along with recognized terrorist organizations, has turned into "an instrument of oppression," as the Human Rights Council correctly noted. The current administration is arbitrarily targeting those who disagree with its

policies, including human rights advocates, attorneys, artists, dissidents, civil society organizations, and religious minorities.

In light of this, arrest and subsequent detention under this harsh law sends an alarming message to the populace that any form of opposition to the government will not be accepted in any way possible and will instead result in punishment. This is intolerable given that it conflicts with the Indian Constitution as well as the global system for safeguarding human rights and is causing irreversible harm to a democracy that is already on the verge of collapse.

CHAPTER 5

CONCLUSION, FINDINGS AND SUGGESTIONS

5.1 CONCLUSION

Both laymen and professionals have frequently argued that all laws are open to "misuse"—that is, that laws are neutral and objective by themselves but only become instruments of discrimination or harassment when used by dishonest police and prosecutors.

India's democracy is on the verge of a major catastrophe, as evidenced by numerous international analyses and research. India's reputation as a democratic nation is rapidly deteriorating due to a growing practice of administrations using harsh anti-terror laws to arbitrarily muzzle dissenting voices and the judiciary's apathy to such flagrant abuses of freedom. The Constitution of India, which has the best track record when it comes to envisaging the rights and freedoms of citizens, perfectly adheres to the Rule of Law premise, which assumes that the judicial process is straightforward and honest. However, in the UAPA case, the legislative body, executive branch, and judicial branch blatantly ignored the Constitution in favour of rule of law. The UAPA creates a different type of criminal justice system where the Criminal Procedure Code does not apply and the accused is not given much protection. According to the Act, a charge carries the same weight as a conviction, enabling the State to punish individuals without subjecting them to a fair trial. The fundamental freedom to associate is criminalized, yet there is little to no distinction between legitimate political disagreement and hate speech that is illegal. A higher level of caution must be used when implementing laws this comprehensive as the UAPA, leaving little to no room for unauthorized usage. The nation has a long history of abusing security legislation to repress people who disagree with the majority, severely violating their fundamental rights and isolating them from society in the process.

Political dissent is a basic human right. It is well known that when it comes to combating terrorism, there are no opposing viewpoints. The nation's billion citizens stand united in opposition to terrorism. Our nation's national security strategy has always aimed for "zero tolerance" for terrorism and the implementation of procedural

safeguards to reduce the infringement on rights and increase the strength of the rule of law. However, occasionally governments adopt laws that give them the authority to "tag a person as a terrorist" without even following due procedure. Such changes to anti-terror laws directly contradict the principles of a democratic state. Because "the prevention of terrorism depends on the protection and advancement of human rights under the rule of law."

Given the intricacy of terrorism, it is understandable that severe, occasionally arbitrary measures are being implemented, which is required. However, passing legislation that allows the government complete, unchecked discretion over how to handle political dissidents is not the best course of action. They cannot protect national security using the approach they prefer. Although fighting terrorism is a noble goal, policymakers are erring by prioritizing it over human rights. Since India's experience with these laws shows that what they truly safeguard is the power of the ruling regime to ignore human rights, it is necessary to conceptualize these anti-terror laws in terms of what they actually combat rather than what they profess to do so. These changes will eventually result in a sombre requiem for liberty if they are not corrected.

The most recent revision has made the UAPA, 1967 more arbitrary than it has ever been. There are a number of issues with the most recent modification, and the newly added clauses have the potential to more severely restrict individual fundamental rights than they have in the past. This amendment's main goal was to give the Government sole discretion over any issues that might cause controversy. The act can be used to silence political voices and viewpoints that the center-left party finds disagreeable. Due to the possibility of state disaffection, it restricts the freedom to express any political disagreements with the government. The severe terms of the act prevent opposition politicians, including left-wing media people, from choosing to publicly express their thoughts, which is a violation of Article 19(1)(a). Any political retaliation that germinates in the minds of individuals in positions of control is therefore a guarantee of abuse of power. The act has also made sure that foreigners will face trials when they visit or return to India.

Since those who are arrested may be detained for up to 180 days without a charge being brought against them, Article 21 is likewise broken. The proposed

modifications go against the obligations of both the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. Unquestionably, the sovereignty and integrity of the nation come first, but this cannot be supported by laws that promotes fundamental rights violation. The low UAPA conviction rate in 2019 reflects the number of defendants who were cleared but nevertheless had to endure a damaged reputation and protracted prison terms without the benefit of the law. The law that was previously passed into the system in the name of national security has supplanted the common man's right to freedom of expression and dissent. To strike a balance between the essential nature of national security and the citizens' right to dissent, the law needs to be reviewed and scrutinized closely. In order to keep democracy in India active, dissent has always been the way. If it doesn't promote violence or aim to illegally overturn the current administration, it cannot be suppressed. Undoubtedly, the former has taken precedence in the conflict between national security and dissent as India has consistently been the target of numerous external aggressions in addition to internal unrest brought on by radical groups. Detractors of the current administration are free to be angry, outspoken, yell slogans, hold peaceful demonstrations, and air their grievances. However, given that charges of arrests and detentions under security regulations are still made based on the speech's consequence, current events have placed some responsibility on those who disagree to exercise some caution over the speech's content and intended audience.

The Criminal Law (Amendment) Act of 1908 and The Rowlatt Act of 1919, laws from colonial periods, have been brought back to life by the Central Government's passage of the amendment act. A federal state where the centre has total liberty to determine, legislate, and make laws for the security of the policies they seek to pursue serves no useful purpose. The government, however, continues to insist that they have no ill intent and merely wish to preserve the nation's unity in the face of existential dangers. However, it is evident that, in the name of security, this rule can be used as a weapon against the opposition and undercuts the entire significance of speech in a democracy. At this point, it is important to note that while India does not actively discourage dissent, this utopian notion has been abandoned in favour of constant use of national security laws, leaving the majority of dissenters at the mercy of the executive.

The hegemonic tendencies that have crept into the democratic framework of our legal system and society, as well as the way we allow the dominant government to choose what is best for its citizens, are burdens from the past. It's also necessary to criticize the ways in which the government restricts certain of its citizens' basic liberties and designates them, at times unfairly, as "political prisoners".

5.2 FINDINGS

After a detailed analysis following are findings arrived at for the research questions which was sought for:

1. **What were the objective behind the enactment of the Unlawful Activities Prevention Act 1967 as a national security legislation by the parliament of India?**

The legislation's main goal was to fight against things like language chauvinism, casteism, regionalism, and communalism. It was intended to address organizations involved in separatist actions hostile to the integrity and sovereignty of the country. However, following the 9/11 terrorist attack, it was thought necessary to make the UAPA appropriately amended in order to criminalize various aspects of terrorism. Following that, it started to be regarded as a national anti-terror statute. These changes caused UAPA to shift from being a preventive law to a substantive law that added new offenses and penalties. Later on, though, the same legislation was employed to quell dissent. Therefore, any speech or behaviour that runs counter to the ideologies and principles of those in a dominant position is something that the country and its people need to be protected from. The state seemingly suppresses any views that are opposed to its absolutism and authoritative power under the guise of defending its subjects' interests.

Although the Act was introduced with a goal that is different from what we see today, the UAPA has evolved through time into a deadly weapon to crush dissent and has been utilized by succeeding governments to justify nefarious intentions under the tired cliche of "procedure established by law." Every time the government has intended to suppress the authority of anyone who has made an effort to oppose the systems and beliefs of the government, the UAPA statute has come to their help. One can view as to how, over time, the UAPA did not develop into a legislation against those who engage in terrorist acts and do harm to communities; rather, the definition of what

constitutes a "terrorist" grew to include any voice of dissension. As can be observed, this provision has undergone numerous revisions since 1967, and at various points in time, these amendments have only served to reinforce the governments' hegemonic impulses.

2. Whether the provisions of the UAPA 1967 are violative of the fundamental rights guaranteed to the citizens of India thereby deeming it to be unconstitutional?

A typical conundrum is where to draw the line between individual freedom and the state's obligation to guarantee security. Striking a balance between constitutional freedom and the requirement to fight terrorism is the responsibility of the state, the courts, and civil society. These laws are extremely vague and poorly written. In politics, they have been employed as a tool against critics, legalizing "thought crimes." The government's acceptance of the Act's intention has broken human rights. Arguments support the claim that the amendment imperils citizens' fundamental rights by putting them at risk and undermining opposition's ability to exist. The government has imprisoned people who are demanding their rights and justice as well as journalists who are carrying out their jobs under the cover of such legislation.

It takes more than just an enabling law to limit personal freedom. Additionally, such a law must be "just, fair, and reasonable."21 The court established the "golden triangle" of the constitution, ruling that laws restricting "personal liberty" must also pass the tests of Articles 14 and 19 in addition to Article 21.

The UAPA Act violates Article 19(1)(a) of the Constitution by providing the executive branch sweeping authority to stifle any kind of expression that differs from or expresses opinions hostile to the current administration. Furthermore, the attack gives the government broad and ambiguous authority to detain anyone in connection with illegal behaviour or a terrorist attack without requiring the existence of mens rea. Due to its arbitrariness and unjustified constraints on personal liberty, this is a breach of Articles 14 and 21. Article 21 is also broken since those detained under this Act can stay in jail for up to 180 days even if no charges have been brought against them. Through intimidation and harassment, this conduct may be utilized to stifle the ideas of individuals. It puts numerous activities in danger, including discussions, any form of free expression, and freedom of the press. It makes speech, which is a fundamental

and necessary part of a democracy, illegal. India's sovereignty and integrity are always top priorities, but they cannot be protected at the expense of the country's citizens' violated fundamental rights.

In order to safeguard a nation and its citizens from the horrors of terrorism and other national security threats, it becomes crucial to address such unforeseen crises. The government must act in any way that seems suitable to deal with such circumstances. In such cases, only the legislature has the authority to enact legislation. When such power is exercised without restraint and without supervision, it becomes corrupt. But as corruption spreads, it frequently results in a disrespect for the core principles of the Constitution. Similar clauses can be found in the stringent UAPA law. A law that flagrantly breaches a country's inhabitants' fundamental human rights prompts questions about the democracy of the nation and calls for more examination. It is time to re-examine this Indian anti-terror statute and safeguard fundamental liberties while repealing the UAPA's illegal clauses.

3. What is the approach of judiciary towards the implementation of the provisions of the UAPA?

In recent years, the judiciary has taken a lot of heat over instances involving UAPA. The judiciary is the most important institution for safeguarding and providing prompt redress of violations of fundamental rights. A number of Supreme Court retirees have expressed their shock at the upper courts' shocking apathy to flagrant abuses of civil freedoms under the new UAPA regime. Additionally, there is a solid foundation for this interpretation's criticism of the courts. Even in cases when there has been little progress in the investigation by the police or the prosecution, the Supreme Court, high courts, and subordinate courts have not demonstrated a great deal of hurry to issue bail. Because of the selective character of the UAPA's rules, the court must determine whether the case is real or untrue at first glance before he can approve or deny the bail. Due to this, the entire process is very subjective and frequently advantageous to the affluent groups of society that have more clout in society. The judiciary nearly fails to perform its duties in such critical circumstances, when it should step in to protect the residents of the democratic nation. The Indian legal system has been afflicted by an uneducated and careless attitude, and as a result, it is unable to carry out its responsibilities, which include defending the democracy of the Indian state.

The lagging system, with its enormous case backlog, is one of the primary causes of this.

The courts make the legal procedure more taxing for those who are imprisoned with an extremely delayed approach and issues with accountability. In certain cases, it becomes clear that the courts, rather than actively aiding in the liberation of the populace, are hampered by red tape and encourage the improper implementation of such harsh laws, as is the case in the case of Father Stan Swamy. It must make sure that laws like the UAPA do not turn into instruments of oppression against innocent people and that the court actively participates in the creation of a just and equitable society for all.

5.3 SUGGESTIONS

The UAPA, 1967 has not done much harm and an order to restrain the future consequences be curtailed. Following suggestions can be implemented to bring in a safer environment for individuals dissenting against the policies of the Government:

1. Judicial review of the amended provision

Judicial review is a fundamental right granted by the Indian Constitution to every person of the country. Judicial review and access to justice are intertwined, as was already mentioned. It is crucial to acknowledge that the Indian judiciary has adopted a proactive stance to safeguard the right to judicial review, which is the only channel available to the average citizen to challenge administrative excess. Protecting judicial review, however, only functions when it is applied to provide the public with justice. As a result, the court in instances involving security laws must rigorously assess executive actions in addition to defending the right of judicial review. Aspects of the Act that are unconstitutional are on hold. It is the responsibility of the judiciary to intervene and restore faith in democracy when such heinous legislation violates and infringes upon the rights of individuals. In order to temporarily halt the unconstitutional provision, the Supreme Court may alternatively use the Doctrine of Severability or the Doctrine of Eclipse.

2. Access to the judicial system

Access to court and access to justice definitely has a strong backing that is given to us by the Constitution of India. It involves a bundle of rights which makes one’s life

worth living and denying a person his access to courts and access to justice becomes difficult when one is detained under legislation involving national security. However person who are detained under certain national security legislation are hindered from accessing this mechanism of justice and the right and liberty of such individuals are under immediate threat. Having efficient access to justice has both fundamental and utilitarian effects. The main reasoning is that the person whose freedom is being sought to be restricted will have the opportunity to present his case before a court with the appropriate jurisdiction.

3. Modifying certain terminologies to avoid uncertainty

The ambiguous phrases in the legislation can be effectively modified or amended to reduce abuse to some extent. Changing the phrase to "affecting the interests of India" since the term "interests of India" is poorly defined and subject to serious abuse. The words "affecting the national security of India" and "affecting the sovereignty of the country" are only two examples of many that might be used. Avoid using language like "if the government believes," which lacks a clear emphasis and results in the grant of unrestricted powers to the government. Only if the government 'believes' that a protest or dissent is against India's 'interests' can it bring legal action, even if it stays silent.

4. Enactment of Victim Compensation Scheme

There have been a number of cases where this law's provisions have been abused and persons have been wrongfully accused. Health suffers the most in these circumstances in terms of both physical and emotional welfare, but it hardly ever enters public discourse. The majority of charges that are brought against community or group members are designed to instil terror so that they would stay quiet or suffer the repercussions of being implicated in bogus cases. As a result, despite their desire, the community tends to keep a distance out of fear of retaliation from the government or hostile parties. They have major repercussions as a result of the developing paranoia. Because severe injustice will affect the victim for the rest of his or her life, mental health is just as vital, if not more so. Their families and their own children's life will be permanently affected by this. The best way to handle this scenario is accountability, namely financial accountability, where those who are wrongfully imprisoned must receive adequate compensation.

Apart from the above mentioned suggestion certain other changes which can be done are:

a) That there must be a tremendous effort made to reform the police, which should involve raising community and religious awareness and working to reduce the enormous arbitrary authority that the police wield.

b) To accurately define what constitutes and does not constitute political dissent, legislation pertaining to the protection of political dissent should be passed.

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