



**THE CONUNDRUM OF THE
UNLAWFUL ACTIVITIES
(PREVENTION) ACT, 1967: A
COMPARATIVE ANALYSIS WITH
ANALOGOUS LEGISLATIONS**

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**“If we desire respect for the Law, we must
first make the Law respectable”**

- Louis D. Brandeis

ABSTRACT

The passing of the Citizenship Amendment Act of 2019 brought with it a series of nationwide protests. These protests brought to the fore one such legislation that appeared in almost every arrest made in connection to these protests. It was the Unlawful Activities (Prevention) Act, 1967. Through this article it will become apparent that this law has been in persistent and active use since its inception, especially in the past two decades. Today, this Act remains to be the sole anti-terror law in India. What does this legislation entail? What is its history and how did it develop as a law since its inception? What is its constitutional validity? Where does it stand when compared to preceding anti-terror laws? Why has it been so actively used?. These are some of the questions that this paper aims to confront and find a conclusion to.

Keywords: Unlawful Activities, Terrorist Act, Violation of Fundamental Rights,

Constitutionality, Challenges to the Act, Reviewing the Act.

I. INTRODUCTION

The Citizenship Amendment Act of 2019¹ (hereinafter “CAA”) and the accompanying civil society opposition to it along with several arrests made in 2020 in connection with protests against passing of the CAA, raised pertinent questions with division of public opinion on matters such as freedom of expression and right to peaceful protest. In a recent turn of events, starting from bail granted to Safoora Zargar, charged under the Unlawful Activities (Prevention) Act, 1967² (hereinafter “UAPA”), in 2020 up until the release of Pinjara Tod activists Devangana Kalita and Natasha Narwal on bail and the acquittal of Ilyas Mohammed Akbar and Mohammed Irfan Gaus under the UAPA by a special court, among many other such similar incidences, brought into focus various aspects of the UAPA law. What is the UAPA law and what do its provisions entail? What is its constitutional validity? Does it lay down absolute power in the hands of the government or not? What is the history attached to this law that has been so widely challenged in the Apex Court of this country? This article aims at analysing the contentious provisions of this law by taking a closer look at the several amendments it has been subject to and draw out a comparative analysis between the UAPA and similar laws in the past such as the Terrorists and Disruptive Activities (Prevention) Act, 1987³ (hereinafter “TADA”) and the Prevention of Terrorism Act, 2002⁴ (hereinafter “POTA”) that stand repealed as of today, to achieve a

¹ The Citizenship (Amendment) Act, 2019, No. 47, Acts of Parliament, 2019 (India)

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

³ Terrorist and Disruptive Activities (Prevention) Act, 1987, No. 28, Acts of Parliament, 1987 (India)

⁴ Prevention of Terrorism Act, 2002, No. 15, Acts of Parliament, 2002 (India) (Repealed)



holistic understanding and answers to the questions posed above.

II. WHAT IS THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967?

1. HISTORICAL ANTECEDENTS

The first traces of law that appear to have been established against unlawful activities was the Constitution (Sixteenth Amendment), Act 1963. It was introduced in the Parliament upon the recommendation of the Committee named National Integration and Regionalisation appointed by the National Integration Council (NIC). It would be imperative to note that the NIC was convened in the year 1962 by the then Prime Minister Pt. Jawaharlal Nehru for the main purpose of combating the evils of communalism, casteism, regionalism, linguism and narrow-mindedness.⁵ The purpose of the amendment was to impose by law reasonable restrictions upon the Right to Freedom for the protection of sovereignty and integrity of India. This amendment provided the state with powers to legislate laws in furtherance of protecting the integrity and sovereignty of India. Like many other laws, the UAPA was introduced in 1967 with the intention of protecting the integrity of the nation by imposing reasonable restrictions to combat communalism, regionalism etc. With

time, however, through several amendments as will be highlighted further in this paper, the UAPA law as it stands today bears a very different character.

In the mid-1960s due to Indo-China tensions the nation came to face several secession uprisings. In lieu of curbing these uprisings the then Union Government looked to implement stringent anti-secession laws. In 1962, the then government announced a National Emergency in order to curb the Chinese incursions across the northern borders of the nation.⁶ During the emergency the President suspended several fundamental rights of the citizens including the right to life and liberty, right to freedom of speech, assembly and right to form associations among other such rights. However, the Emergency was not the only executive action that suspended the rights of the individuals. Both houses of the Parliament also ratified a series of rules called the Defence of India Rules, 1962 (DIR) which was an addition to the colonial law Defence of India Act, that made it possible to ban associations.⁷

In 1966, a specific peasant uprising in Naxalbari imparted major urgency that eventually culminated in the promulgation of the Unlawful Activities (Prevention) Ordinance by the President on June 17, 1966. The intention of the Ordinance was to “to provide for the more effective prevention of unlawful activities of individuals and associations”.⁸ This Ordinance however,

⁵ *Background Note on National Integration Council*, Ministry of Home Affairs, <https://www.mha.gov.in/sites/default/files/NICBackG-171013.pdf>, (Aug 03, 2021)

⁶ See Jaya Nandita Kasibhatla, *Constituting the Exception: Law, Literature and the State of Emergency in Postcolonial India* (2005, PhD Dissertation, Duke University) (the 1962 Emergency was never formally revoked. It was extended in 1963 for another 3 years and the 1965 Indo-Pak war

provided a reasonable justification for the emergency to stay in place. In 1967, the Emergency was revoked by default when the government did not renew it.)

⁷ Defence of India Rules, 1962, Rule 32, Associated Law Reports, 1963 (India).

⁸ K. Venkataramanan, *Explained | What makes the UAPA so stringent?*, THE HINDU, (Jul 11, 2021), <https://www.thehindu.com/news/national/explained-what-makes-the-uapa-so-stringent/article35257856.ece>.



faced strong opposition within the Parliament due to its stringent nature and was therefore not passed. Following this, the Unlawful Activities (Prevention) Act, 1967, was then passed by the parliament that had a very different character from the preceding Ordinance.

2. BIRTH OF THE ACT:

The Unlawful Activities (Prevention) Act, 1967 was framed at its inception for the prevention of “unlawful activities” and aims to lay down reasonable restrictions on the fundamental right to freedom under Article 19⁹. Before the introduction of the UAPA, the pioneering law providing for unlawful activities and associations was introduced by the British Regime titled the Criminal Amendment Act, 1908. This colonial law was in existence and in practice even in the post-independence era. It was, however, repealed on grounds of unconstitutionality in the landmark *V.G. Row vs. State of Madras* case¹⁰.

The UAPA Bill was then introduced in the Parliament in 1967 which was assented to after much deliberation. During such deliberations several Opposition members of the Parliament questioned the necessity of the proposed legislation and expressed their concerns. They feared the Bill could be

misused in the hands of the government just as the colonial Act of 1908¹¹ which targeted any political opposition or organisations. The then Home Minister Mr. Yashwantrao Chavan stated in response that although the power to ban associations was ‘drastic’, ‘exceptional’ and ‘radical’ still nonetheless was necessary. Several MPs of the then ruling government reasoned that unlike the Act of 1908 that arbitrarily banned associations, the proposed UAPA Bill placed the burden on the government to provide reasons for banning an organisation. Thereby, the new law ensured that the exceptional power of declaring organisations as unlawful was checked by procedural and evidential safeguards.

Eventually, the drafters of the law assented to the Bill while taking into consideration the judgement passed by the Supreme Court of India in the *V.G Row* case¹² that termed the Act of 1908 as unconstitutional. The court held that upon the banning of an association if the association is neither provided with reasons for such ban by the government nor is given the opportunity to be heard before an impartial tribunal, then it does not fall within constitutionally permissible limits.¹³

Therefore, the Act of 1967¹⁴ provided the government with the power to ban associations or individuals within

⁹ INDIA CONST. art. 19, cl. 1.

¹⁰ *V.G. Row v. State of Madras*, 1952 AIR SC 196

¹¹ The Indian Criminal Law Amendment Act, 1908, no. 14, Acts of Parliament, 1908 (India).

¹² See *V.G. Row v. State of Madras*, 1952 AIR SC 196, (the Secretary of the PES, VG Row challenged the validity of the 1908 law on the grounds that it violated his right to freedom of association, in the then newly adopted constitution. The Supreme Court agreed and held that the 1908 Act was unconstitutional. It held that ‘the right to form association or unions has such wide and varied scope

for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields, that the vesting of authority in the executive government to impose restriction on such right without allowing the grounds of such imposition both in then factual and legal aspect to be duly tested in a judicial inquiry, is strong element which, in our opinion, must be taken into account in judging the reasonableness of the restriction’)

¹³ *Id.*

¹⁴ *supra* note 2



constitutionally approved limits as defined by the Supreme Court. The Act ensures that the government can declare an association as unlawful only if it (1) does anything that which supports or intends to support the cession or secession of any part of India, or (2) does anything that disclaims or questions the 'sovereignty and integrity' of India, or (3) violates India's hate speech laws. The Act of 1967 aims to ensure non-arbitrariness through the compulsory establishment of an impartial Tribunal to adjudicate on matters under the Act.

However, in the popular series of bans against the organisation Students' Islamic Movement of India (SIMI) by the central government, the role the Tribunals established under the Act came into question at each instance of ban. That such Tribunals were not truly impartial and mainly catered to the states convenience instead.¹⁵

3. DEVELOPMENT OF THE ACT:

The original Act of 1967, however, has come to experience several changes to its initial frame and structure. Since its inception, the Act of 1967 has encountered four major Amendments in its lifetime. The very first major amendment to the Act was the UAPA (Amendment) Act, 2004¹⁶ (hereinafter 'Amendment Act of 2004') which added a new character to the Act. The Amendment Act of 2004 inserted Chapter IV to the Act titled 'Punishment for Terrorist Activities' along with all terrorism related provisions. This amendment was the first to make the UAPA an anti-terror law as we know it today.

¹⁵ Peoples Union for Democratic Rights, Rehearsed Truths: Eight Successive Bans on SIMI by UAPA Tribunals, (2020).

Therefore, at its inception, the Act was formed to supplement the powers of the then existing Preventive Detention Act (PDA), where the UAPA was permitted to declare organizations "unlawful". However, in recent years due to the rise in national and international terrorism its purpose also became to prevent terrorist activities pursued by resolutions passed by the United Nations Security Council on international terrorism. This was the purpose that the Amendment Act of 2004 aimed to serve. Prior to these amendments, there was an existence of several anti-terror laws. These include laws such as the Preventive Detention Act (PDA), Terrorist and Disruptive Activities (Prevention) Act (TADA) and the Prevention of Terrorism Act (POTA). However, these acts stand repealed due to their unconstitutional natures and the UAPA is the sole anti-terror law in India today.

The Act henceforth was made more stringent to combat terrorism, with the second major amendment made in 2008 known as the UAPA (Amendment) Act, 2008¹⁷ (hereinafter 'Amendment Act of 2008'). This second major amendment was introduced post the infamous 2008 Mumbai terror attacks in order to increase security of the nation against terrorist activities. This was followed by the UAPA (Amendment) Act, 2012 that further included in the definition of a 'terrorist act' any offence that may threaten the economic security of the country.

The most recent amendment to the Act was made in 2019 in order to further expand the scope of UAPA. The UAPA (Amendment) Act, 2019 (hereinafter 'Amendment Act of

¹⁶ The Unlawful Activities (Prevention) Amendment Act, 2004, No. 24, Acts of Parliament, 2004 (India).

¹⁷ The Unlawful Activities (Prevention) Amendment Act, 2008, No. 35, Acts of Parliament, 2008 (India).



2019') gave the central government the authority to term individuals as "terrorists" which formerly extended only to organizations. Furthermore, it states that an investigating officer of the National Investigation Agency (NIA) can seize the property of the said individual upon approval of the Director General of the NIA.¹⁸

Petitions made to the Supreme Court, in response to the Amendment Act of 2019, contend that Sections 36 and 35¹⁹ are in violation of Article 14 (Right to Equality)²⁰, Article 19(1) (Freedom to Speech and Expression)²¹ and Article 21 (Right to Life)²².

A second petition filed to the Supreme Court suggests that Section 35²³ is a violation of Article 14 since it does not lay down valid reasons or conditions based on which an individual can be termed a terrorist. This is viewed as an unfettered and arbitrary power laid into the hands of the government. It takes away an individual's right to dissent and criticize the government which is integral to the development of a democratic nation and is part and parcel of the right to freedom of speech and expression provided it does not violate the reasonable restrictions imposed under Article 19(2)²⁴. Moreover, an individual can be termed a terrorist without any trial and can be stripped off of all property before a fair trial can take place which violates an individual's right to life and dignity. It is also in violation of one's right to reputation and a fair trial, since it is conducted in a prejudiced view. This is a

gross violation of the principles of natural justice.

An overview of the several amendments made to the Act of 1967 indicate that the nature of the Act has been changed in order to predominantly provide protection against terrorist activities. However, it is observed that an Act which was established to ensure the prevention of unlawful activities in the country has changed its aim and focusses at culminating it into an anti-terror law placing an unlawful activity and a terrorist activity on the same ground. Although, it can be argued that the two activities differ on the lines of gravity of matter. While the former may include broader activities that may be less grievous in nature the latter refers to specific acts of terror and are of a more grave nature.

III. PROVISIONS UNDER CONTENTION

As per the Act "unlawful activities" are defined under Section 2(o)²⁵ as any activity by someone that promotes or intends to promote secession of any territory or disclaim, question or disrupt the sovereignty and integrity of the nation and to cause any disaffection against India. Further a "terrorist act" is defined under Section 15²⁶ of the Act to mean any act committed by someone that intends to threaten the unity, integrity, security, economic security or sovereignty of the nation by means such as bombs or explosives, using criminal force, detention, kidnap etc.

Time and again it has been contended that the definitions to "unlawful activities" and

¹⁸ The Unlawful Activities (Prevention) Amendment Act, 2019, No. 28, Acts of Parliament, 2019 (India)

¹⁹ *supra* note 2

²⁰ INDIA CONST. art. 14.

²¹ INDIA CONST. art. 19, cl. 1.

²² INDIA CONST. art. 21.

²³ *supra* note 2

²⁴ INDIA CONST. art. 19, cl. 2.

²⁵ The Unlawful Activities (Prevention) Act, 1967, § 2(o), No. 37, Acts of Parliament, 1967 (India)

²⁶ The Unlawful Activities (Prevention) Act, 1967, § 15, No. 37, Acts of Parliament, 1967 (India)



“terrorist act” appear to be vague leaving room for misinterpretations of the terms. A similar stance was held in a recent judgement passed by the Delhi High Court while granting bail to students charged under the UAPA. The court redefined the boundaries of the meaning of a terrorist act defined under Section 15 of the Act.²⁷ It ruled that a terrorist activity cannot be broadly defined to include ordinary penal offences and hence raised the bar for the state to charge an individual for terrorism under the UAPA. It went on to state that a terrorist activity should be considered beyond the effect of an ordinary crime and must not be evoked due to mere disturbance of law and order. The act must be of such a nature that it goes beyond an ordinary crime that cannot be dealt with under ordinary penal law. Further while criticising the definitions under Section 2(o) and Section 15 of the Act, the court warned that officials must be careful in employing the words of the definitions and must make a clear differentiation between what constitutes as a terrorist activity as opposed to a heinous or grave crime.²⁸ Citing the judgement in the case of Kartar Singh vs State of Punjab²⁹, the court referred to how the Apex Court of India also shared similar concerns of misuse of another anti-terror law called the Terrorist and Disruptive Activities (Prevention) Act, 1987.³⁰

Various sections of the Act have also been challenged for their constitutional validity on the grounds of violation of various

constitutional and basic human rights. Such sections include the provisions with regards to bail. The Act is contended to restrict the right to bail. Under Section 43D(5) courts can, upon mere perusal of the case diary or a report filed under Section 173 of the Code of Criminal Procedure (CrPC)³¹, deny granting bail to an accused if the court has reasonable grounds to believe that the case against the accused is *prima facie* true. Under the UAPA, bail is considered as an exception unlike the doctrine laid down by the Supreme Court in the landmark judgement State of Rajasthan v Balchand alias Baliya³² where it was stated that ‘Bail is a rule and jail is an exception’. Even the United Nations Human Rights Committee has observed in the case *M. and B. Hill v. Spain*³³ that dealt with issues under Article 9(3)³⁴ of the International Covenant on Civil and Political Rights, that pre-trial detention must always be considered an exception and bail should be granted if it is clear that a person is unlikely to flee or tamper evidence. However, under the UAPA, even for a bail to be considered, it is for the accused to demonstrate that the prosecution has failed to prove beyond reasonable doubt that the allegations made against him are *prima facie* true. It is commonly argued that this provision violates several constitutional rights and can be considered as the one of the most frequently challenged provisions under the Act.

²⁷ Devika Sharma, *Delhi HC | Crucial Aspects of ‘Terrorist Act’ and Right to Protest | Everything about Asif Iqbal Bail Order*, SCC Online, (June 19, 2021),

<https://www.sconline.com/blog/post/2021/06/19/terrorist-act/>

²⁸ Asif Iqbal Tanha vs. State of (NCT of Delhi), CRL.A. 39/2021

²⁹ Kartar Singh vs. State of Punjab, 1961 AIR 1787

³⁰ *id* at 28

³¹ The Code of Criminal Procedure, 1973, § 173, No. 2, Acts of Parliament, 1974 (India)

³² State of Rajasthan vs. Balchand alias Baliya, AIR 1977 2447

³³ Michael and Brian Hill v. Spain, Communication No. 526/1993, U.N. Doc. CCPR/C/59/D/526/1993 (2 April 1997).

³⁴ International Covenant on Civil and Political Rights art. 9(3), Dec. 16, 1966, U.N.T.S., vol. 999, p. 171.



However, in a recent judgement passed in February 2021 by the Supreme Court in the case *Union of India vs. K.A. Najeeb*³⁵, the court dismissed the Centre's appeal against an order of bail passed by the Kerala High Court. While dismissing the appeal the 3 judge bench observed, "Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against the grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like section 43-D (5) being used as the sole metric for denial of bail or for wholesale breach of the constitutional right to a speedy trial,". On similar grounds, the Supreme Court bench had previously granted bail as well under the UAPA notwithstanding the provisions under Section 43D(5) of the Act in the case of *Angela Harish Sontakke vs. State of Maharashtra, 2016*³⁶. The 2021 order of the Supreme Court is viewed by many as the first few steps towards changes in the current provisions of the UAPA.

Further, individuals charged under the Act can be held in detention for more than 180 days,³⁷ which is much more than what international standards permit. Article 9(3)³⁸ of the International Covenant on Civil and Political Rights (hereinafter 'ICCPR'), to which India is a party, clearly states that "*Anyone arrested or detained on a criminal*

charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." Further, Article 14(3)(c)³⁹ of the ICCPR states that being tried without undue delay is the 'minimum guarantee'. The UAPA doubles the amount of time an accused can be reprimanded under police custody (i.e. up to 30 days) according to Section 43D⁴⁰ and the accused can be reprimanded in judicial custody for over 90 days for offences which would in normal circumstances be only up to 60 days. It has been contended over the years that the Act does not clearly lay down the procedures to be followed in the case of pre-trials nor does it lay down any safeguards against their ill treatment.

Essentially, in order to be charged under the Act, the police need only prove that the accused has committed a criminal offence on the face of it. Once charged, the impossibility of getting a bail plea granted makes it an indefinite imprisonment for life for the accused without even a trial. Moreover, due to the large number of pending cases with the courts and number of charges that are applied, these take a very long time to be heard.

However, in recent instances, several courts across the country have raised concerns with regards to the provisions of the act, especially with regards to the practice of overusing the Act to book individuals in the past decade. In a recent ruling, the Karnataka High Court⁴¹

³⁵ *Union of India vs. K.A. Najeeb*, CRL.A. 98/2021

³⁶ *Angela Harish Sontakke v. State of Maharashtra SLP (Cr.). 6888/2015*, Order dated 04.05.2016.

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

³⁸ *supra* at 34

³⁹ International Covenant on Civil and Political Rights art. 14(3)(c), Dec. 16, 1966, U.N.T.S., vol. 999, p. 171.

⁴⁰ *id* at 37

⁴¹ *Muzammil Pasha vs. National Investigating Agency*, W.P.No.1417/2021



granted bail by default to 115 individuals charged under the Act on the grounds that the accused were not provided with a notice or chance to be heard. Further, the Delhi High Court in a verdict passed in June 2021 granted bail to three activists - Deavangana Kalita, Natasha Narwal and Asif Iqbal Tanha in connection with the Delhi Riots 2020 - while flagging the misuse of the provisions prescribed under the UAPA⁴².

IV. HISTORY OF ARRESTS UNDER THE UAPA

As per the data provided by the Ministry of Home Affairs from the Crime in India Report⁴³ compiled by the National Crime Records Bureau (NCRB), a total of 1948 individuals were arrested under the UAPA in 1126 cases that were filed in the year 2019 which is a sharp rise from 897 cases registered in the year 2015, almost a 72% increase in just 4 years.⁴⁴ Furthermore as per the same data, conviction rates under the UAPA were shown to be as low as 2.2% up to this date. These figures have raised claims against the UAPA and its misuse. It has been complained that the low conviction rates and lengthy trials prove that the procedures in itself pose as punishments and cause a gross violation of constitutional and human rights.

The UAPA has been brought to the forefront in recent times due to the several arrests that have been made under it in recent times. In August 2018 several civil society members were arrested and charged under the UAPA for allegedly instigating violence in the

Bhima Koregaon case. Some arrests linked to the Bhima Koregaon Violence were continued to be made even in the year 2020 under alleged violation of UAPA provisions. Advocates such as Sudha Bhardhwaj and Arun Ferreira, activists Fr. Stan Swamy, Gautam Navlakha, Sudhir Dhawale and Vernon Gonsalves as well as poet Varavara Rao were taken into custody.

In 2019, country wide protests against the passing of the Citizenship (Amendment) Act, 2019 (hereinafter 'CAA'), also attracted several arrests of students, lawyers and activists such as Natasha Narwal, Akhil Gogoi and Asif Iqbal Tanha among many others. However, it was observed by the Delhi High Court⁴⁵ that the Right to Protest is a constitutionally guaranteed right and that protests against governmental and parliamentary actions are legitimate. It went on to state that the line between the constitutional guarantee to protest and a terrorist activity is somewhat getting blurred.

While some of the above mentioned cases have resulted in acquittals or granted bails, others are still pending. The mental and physical stress, especially in those imprisoned for long periods of time has, according to the World Health Organizations (WHO) a major negative effect on one's mental health. Causes may include overcrowded prisons, various forms of violence, lack of privacy etc.⁴⁶ It could be considered as a violation of constitutional rights of liberty, freedom, and dignity. For example in the case of Sudhir Dhawale,

⁴² *supra* note 28.

⁴³ Ministry of Home Affairs, National Crime Records Bureau, Crime in India Report (2019).

⁴⁴ Parliament Proceedings| Over 72% rise in number of UAPA cases registered in 2019, The Hindu, (Mar 10,2021),<https://www.thehindu.com/news/national/parliament-proceedings-over-72-rise-in-number-of-uapa-cases-registered-in-2019/article34029252.ece>

⁴⁵ *supra* note 28.

⁴⁶ *supra* note 28.

⁴⁶ World Health Organization, Mental Health and the Prison, 1 (2017)



arrested as a suspected conspirator in the Bhima Koregaon violence, although acquitted was kept in prison for up to 40 months before his case was heard and was granted an acquittal.

The lengthy trials and investigations increase the detention period of the accused, thereby increasing their time inside prison. This causes considerable damage to the reputation of the accused in the society as well. It has been observed that almost 75% of the cases charged under the UAPA are discharged or acquitted.⁴⁷ In a considerable number of cases the UAPA has been used by authorities to hush down voices of dissent and has been used as a tactic of distraction from the main points of contention. In recent times, the Act has been used against students, lawyers, journalists and activists for protests against the passing of the Citizenship Amendment Act.

V. UAPA AND PREVIOUS ANTI-TERROR LAWS: A COMPARISON

Prior to UAPA donning on the character of an anti-terror law, other anti-terror laws were in place. Out of these laws, the most prominent ones to exist were the Terrorist and Disruptive Activities Act, 1987 (TADA)⁴⁸ and Prevention of Terrorism Activities Act, 2002 (POTA).⁴⁹

1. TADA AND UAPA:

TADA was introduced for the purpose of

dealing with and preventing any terrorist and disruptive activities. It was initially enacted for a temporary period of 2 years in the backdrop of militant groups engaging in guerrilla warfare in Punjab, Kashmir, Andhra Pradesh and in parts of Northeast. It was allowed to be renewed until 1993 before it was allowed to be lapsed in the year 1995 due to growing disaffection and increasing allegations of misuse of the Act by authorities.⁵⁰ It aimed to set up a parallel criminal justice process and established special courts for speedy trial. During its lifetime, the TADA act was challenged for its arbitrary provisions. Under TADA, the burden of proof lay on the defendants in certain cases, unlike the norm followed under criminal law where the burden of proof lay in the hands of the prosecution. Similarly, as rules of evidence did not allow confessions procured in police custody to be admitted as evidence as a protection against custodial violence, TADA altered this protection as permitted the admissibility of confessions made to senior police officials as evidence. Further, the Act also laid down strict provisions of bail such as neglecting the right to apply for an anticipatory bail and also laying down stringent procedures for securing a bail after arrest.

In the book titled “The Cases that India Forgot”, the author points out that “...the years after it was enacted, TADA became an instrument of oppression in the hands of the police and state authorities...TADA was also frequently invoked in states that lacked a

⁴⁷IndiaSpend, *Bhima Koregaon arrests: UAPA has poor conviction rate; roughly 75% cases end in discharge or acquittal*, (Sept. 14, 2018), <https://www.firstpost.com/india/bhima-koregaon-arrests-uapa-has-poor-conviction-rate-roughly-75-cases-end-in-discharge-or-acquittal-5142711.html>.

⁴⁸ *supra* note 3

⁴⁹ *supra* note 4

⁵⁰ Anil Kalhan, *Colonial Continuities: Human Rights, Antiterrorism, and Security Laws in India*, 20 Colum. J. Asian L. 93 (2006).



consistent history of terrorist violence, including Gujarat and Maharashtra. Despite the odds being stacked against the accused, conviction rates were embarrassingly low, with estimates ranging from 1 per cent to 4 per cent. This implied that only a small minority of those detained under TADA were ever proven, on evidence, to be terrorists. Especially because of its strict provisions on bail, under TADA, the process was the punishment. Those that were ultimately acquitted had often spent many years in prison, sacrificing their family lives, reputations and careers.”⁵¹

It can be inferred from the history and development of the TADA Act that there exists a nexus between the natures of several provisions of the TADA and UAPA. Especially with regards to the challenges brought before several courts. It was similarly challenged on grounds of very strict bail provisions that violated individuals’ rights and were used in an arbitrary manner. It was due this increasing unpopularity towards the Act on allegations of it being unconstitutional that TADA was allowed to be lapsed eventually. Therefore, looking at the similarity in the alleged flaws, a similar decision to bring the Act to an end is sought by critics of the UAPA.

2. POTA AND UAPA:

POTA, 2002 was enacted with the intention to fill the vacuum arising out of the absence of an anti-terror law in the country after the lapse of TADA, 1987.⁵² POTA was enacted after much opposition through a joint session

of the Parliament in 2004. It reinstated most provisions from its preceding law (TADA) such as enhanced police powers, limited rights of defence, making confessions made in police custody admissible as evidence and the establishment of Special Courts. POTA, much like its predecessor, encountered immense opposition on similar grounds as that of TADA. Two years after the enactment of POTA various cases of misuse of the Act on communal and minority lines along with arbitrary use against political opponents began to crop up.⁵³ It was criticised for the mass arrests that took place under the Act mainly on communal and minority lines and for the vague definition of the term “terrorism” giving room for widespread arbitrariness and misinterpretation.

For the reasons mentioned above, the existence of the Act was short lived and was eventually repealed by the Prevention of Terrorist Activities (Repeal) Act, 2004.

Similar inferences can be drawn between the grounds for challenges against both the UAPA and POTA. UAPA (Amendment) Act, 2004 as mentioned before, was introduced for the purpose of creating an anti-terror law in the absence of one. It went on to include provisions similar to those in POTA where questions of vague definition of the terms “unlawful activities” and “terrorist activities” along with various other stringent provisions have also arisen in recent times.

⁵¹ Chintan Chandrachud, *The Cases that India Forgot*, Juggernaut Publication 2019.

⁵² Law Commission of India, Report No. 173: Prevention of Terrorism Bill, 2000 (2000).

⁵³ Christopher Gagné, *POTA: Lessons Learned From India’s Anti-Terror Act*, 25 B.C. Third World L.J. 261 (2005).



VI. CONCLUSION

Owing to recent events, India and its authorities need to step back and consider reviewing major legislations passed and verify their constitutional validity. A true balance of power must be achieved and ensure that a democracy should not degenerate into an oligarchy. History is proof that laws such as MISA, PDA, TADA were repealed due to a violation of human rights. Laws in violation of citizen's rights must be repealed. If not repealed, then they must be updated to suit the changing times and truly protect the rights of its citizens. A more precise and clear structure of the provisions of the Act must be adopted instead of being broad and vague. Room for abuse of power must be limited.

Laws need to be made more specific. The vague nature of UAPA allows governments to use loopholes in their favor giving way to arbitrary rule. Its unclear definitions and the arbitrary nature of several provisions such as one for securing a bail, coupled with the Amendment Act of 2019 where even individuals can be termed as terrorists, provides clear grounds for its unconstitutionality. Furthermore, at the outset, looking at the similarities between the provisions of the existing UAPA and the previously repealed POTA and TADA Acts on grounds of abuse of law, indicates that a review of the existing law should be considered as a need of the hour.

Considering recent judgments passed by several courts across the country, indicating the arbitrary nature of the provisions of the Act, showcases the inherent lacunae in the UAPA leaving room for abuse of the law. One common argument in its defense has been that it imposes reasonable restrictions

on individuals from violating rights of another while exercising their own right. However, firstly, Article 19(2) is already in existence laying down reasonable restrictions to exercise the right to freedom. Secondly, the reasonableness of imposing a restriction must be for the courts to decide after a fair trial.

The constitutional validity of the Act must be reviewed. Its framework must be restructured to cover up any lacunae in the laws, one that does not violate any rights of the citizens indirectly or directly.
