



CRITICAL ANALYSIS OF UNLAWFUL ACTIVITIES PREVENTION ACT, 1967

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Abstract

The Unlawful Activities Prevention Act, 1967 is often criticised and termed as a draconian rule against the essence of democracy which criminalises political dissent by removing the distinction between criminal acts and political dissent. The 2019 Amendment to the Act has especially paved way for more atrocities as it gives excessive powers to the Central Government, facilitates subjective interpretation of the provisions therein and brings individuals into the ambit of 'who can commit terrorism'. The constitutional validity of the Unlawful Activities Prevention Act and especially Section 35 and 36, have been repeatedly challenged as violative of Article 14, 19 and 21 of the Constitution.

The paper seeks to evaluate whether instead of repealing the Act in its entirety, modifications to the Act can resolve the tension between providing better safeguards for national security and keeping rights of the citizens intact. For this, the paper takes into account certain factors including the

historical perspective which necessitated such law, the efficacy of the Act, the views and decisions of the Honourable Courts and the cases booked under UAPA.

Introduction

India's security law scheme has witnessed a considerable evolution since the pre-independence period. A significant threat to the national security during the post-independence era was chiefly because of many internal conflicts like the political uprisings in Punjab, militant activities in Jammu and Kashmir, insurgent groups in the north-eastern states and the Naxalite movement in central India. Such domestic crisis necessitated the existence of anti-terror laws for upholding the sovereignty and integrity of India.¹ Under such a scenario, it was clear that unbridled freedom of citizens could tantamount to security threats. Therefore, a balance between providing better safeguards for national security and keeping the rights of citizens intact is a *sine qua non* element in a democratic setup like India.

While safeguarding the State's territorial integrity and sovereignty as well as the security of citizens, the government has to be mindful not to slip into repression and authoritarianism.² Ironically, some anti-terror laws like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), the Prevention of Terrorism Act, 2002 (POTA) were eventually termed as notorious

¹ Radhika, N., SPRF. (2020). Evaluating the Unlawful Activities (Prevention) Amendment Act, 2019. [online] Available at: <https://sprf.in/evaluating-the-unlawful-activities-prevention-amendment-act-2019/> [Accessed 20 Oct. 2021].

² Manoharan, N. (n.d.). Counterterrorism Legislation in Sri Lanka: Evaluating Efficacy East-West Centre Washington. [online] Available at: <https://scholarspace.manoa.hawaii.edu/bitstream/10125/3495/PS028.pdf> [Accessed 20 Oct. 2021].



Acts because of their wide misuse and had to be repealed.

The Unlawful Activities Prevention Act, 1967 has also often been criticised and termed as a draconian rule, against the essence of democracy and violative of fundamental rights. It is argued that it criminalises political dissent by removing the distinction between criminal acts and political dissent. While most critics have argued that the Act should be repealed, incorporating measures which provide better transparency to the system and requires more accountability of the government can actually increase the efficacy of the safeguards for national security.

A Historical Backdrop

Enacted in 1967 against the backdrop of Naga rebellion, the UAPA was amended several times keeping in mind the changing patterns of terrorism. Eventually, the Act came to recognise two main kinds of activities which were criminal under the meaning of the Act viz “*unlawful activities*” under Section 3 and “*terrorist act*” under Section 15. The first amendment took place in 2004, when POTA was repealed and some provision of the repealed Act relating to ‘terrorist activities’ were incorporated in the UAPA.

In 2008, the Act was amended again, immediately after 26/11 Mumbai terror attacks. The said amendment incorporated the definition of a ‘Terrorist Act’ under Section 15 and listed specific offences to be prosecuted as terror offences under the Act.³ However, it also gave excessive power to the government to construe any act as a terrorist act and prove it without much difficulty in the courts. The Amendment stated that not only the acts which were carried out with the intention to “*threaten the unity, integrity, security or sovereignty of India or... to strike terror... in the people*” were terrorist acts but any act “*likely to threaten the unity, integrity, security or sovereignty of India*” or any act “*likely to strike terror in the people...in India or in any foreign country*” were also under the ambit of terrorist acts.⁴

To cater to the need of the time, the 2013 Amendment to the Act incorporated economic and financial offences relating to terrorism. Further, it provided for a transnational approach to curb the international financing of terrorism within India. This helped in running the prosecution of the Mumbai Terror strike case.⁵ The latest Amendment i.e., the 2019 Amendment added to the controversy by paving way for subjective interpretation and conferring even wider powers to the Central Government.

The 2019 Amendment – Provisions and Problems

3 Garge, R. (2019). Vivekananda International Foundation Jurisprudence of Anti-Terrorism Laws An Indian Perspective. [online] Available at: <https://vifindia.org/sites/default/files/jurisprudence-of-anti-terrorism-laws-an-indian-perspective.pdf> [Accessed 10 Sept. 2021].

4 The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes. (2015). Economic and Political Weekly, [online] pp.7–8. Available at:

<https://www.epw.in/journal/2009/04/commentary/unlawful-activities-prevention-amendment-act-2008-repeating-past-mistakes> [Accessed 20 Oct. 2021].

5 Garge, R. (2019). Vivekananda International Foundation Jurisprudence of Anti-Terrorism Laws An Indian Perspective. [online] Available at: <https://vifindia.org/sites/default/files/jurisprudence-of-anti-terrorism-laws-an-indian-perspective.pdf>.



The most recent Amendment took place in 2019 and it brought about many controversial changes. The Amendment was also termed by many as India's McCarthyism moment. Some of the main points of the 2019 Amendment are categorically enumerated under along with the problem(s), if any, that the new provisions entail.

- **Absolute power to declare individuals as terrorists.**

Perhaps the most contentious change that the 2019 Amendment brought about was through the amendment in Section 35 of the Act. The Amendment, *inter alia*, expanded the definition of "terrorist" by including individuals under Section 35 and 36 of Chapter VI of the Act. Before this, only organisations could be notified as terrorists. The Centre reasoned that to tackle the menace of terrorism, it was essential that even the 'lone wolves' who did not necessarily function under any particular organisation were also brought into the ambit of these two sections.⁶

The repercussions of the amended provision:

The problem with this amended provision is, firstly, that it gives immense and arbitrary powers to the Central government by giving them the power to designate individuals as terrorists. This, in turn, makes the provision prone to misuse. Such provisions can infringe an individual's right to due process of law, right to dissent, and right to reputation (*S. Nambi Narayanan v Siby Mathews & Others*

*Etc*⁷). Secondly, it raises questions as to whether there is some real exigency which necessitates the grant of such wide powers to the Centre. It is important to note here that the Act already had provisions under Sections 16 to 24A for punishing "lone terrorists" or "members of a terrorist organization" separately.

Therefore, two petitions viz., *Sajal Awasthi v. Union of India*⁸ and *Association for Protection of Civil Rights v. Union of India*⁹ were filed soon after the Amendment, challenging its constitutional validity. The primary arguments laid down in both the cases were that since the provision did not provide any detailed grounds based on which an individual may be identified as a terrorist, does not specify anything about judicial scrutiny and allows notifying individuals under Schedule IV as a 'terrorist' even before the commencement of a trial, the amended provision is against the principles of natural justice, manifests arbitrariness and is violative of Article 14, 19 and 21.

It is evident that the present provisions do have some inherent lacunae and may be used to stifle the voice of the non-conformists. There have been innumerable controversial arrests under the Act, like arrests of journalists, social workers *et cetera*. While many of such entities are still undergoing trial, like *Siddique Kappan*, the Malayalam journalist who has been accused by the Uttar Pradesh police of instigating unrest after the death of a Dalit teenager in Hathras, certain

6 Team, L.W. (n.d.). An Analysis of Unlawful Activities Prevention (Amendment) Act, 2019 through the prism of Constitutional Values | Law Wire. [online] Available at: <https://lawwire.in/an-analysis-of-unlawful-activities-prevention-amendment-act-2019-through-the-prism-of-constitutional-values/> [Accessed 20 Oct. 2021].

7 *S. Nambi Narayanan v Siby Mathews & Others Etc.*, (2018) 10 SCC 804.

8 *Sajal Awasthi v. Union of India.*, WP (C) 1076/2019.

9 *Association for Protection of Civil Rights v. Union of India*, WP (C) No. of 2019.



other cases have witnessed acquittal of the accused entities. As per the National Crime Records Bureau, between 2014 and 2016, over 75 per cent of cases under the UAPA ended in either acquittal or discharge.¹⁰

However, on considering the global instances like the Christchurch Mosque shooting in New Zealand and the London bridge attack, where the proprietors were mainly individuals, the amendment in a way appears to be a progressive step towards curbing the issue of terrorism. Hence, if it is ensured that unbridled powers are not possessed by the government, the Amendment can solve the purpose of creating stricter laws for the security of the nation.

- **Large degree of unbridled power to the National Investigation Agency (NIA)**

a. Investigation by the NIA: The 2019 Amendment authorised the NIA officers, of the rank of Inspector or above, to investigate terrorism related cases. Earlier, investigation of such cases could only be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above.

b. Seizure of property by NIA: The Amendment also modified Section 25 of the UAPA and mandated the approval of Director-General of National Investigation Agency (NIA) for seizure of property in cases where the investigation is conducted by an officer of the NIA. Considering there have been numerous instances of states refusing to

attach property in cases of investigation that were referred to NIA by the state itself, it seems plausible that for effective results and uninterrupted performance, NIA maintains its individuality as a national agency. For this, the Centre reasoned that it was essential to give some degree of unhampered power to the entity.

The problem with the altered provisions

While this *prima facie* is an unproblematic alteration, on a detailed evaluation it can be understood that the amended provision is opposed to the foundations of democracy since it centralizes the power of policing. As per Seventh Schedule, 'Police' is a State subject under the Constitution, and has the primary responsibility of prevention, detection, registration, investigation and prosecution of crimes.¹¹ However, as a result of this alteration, the state authorities are entirely excluded from their own domain. This provision can, therefore, be said to be anti-federal to a substantial extent. Hence, instead of excluding the state authorities entirely, a more collaborative approach by the Centre can help keeping the federal foundations intact.

- **Addition to schedule of treaties:**

The UAPA defines terrorist acts to include acts committed within the scope of any of the treaties listed in a schedule to the Act. The Amendment added another treaty to the list viz., International Convention for the Suppression of Acts of Nuclear Terrorism

10 The Wire. (n.d.). Mathura Court Quashes UP Police Plea to Interrogate Siddique Kappan Again. [online] Available at: <https://thewire.in/law/mathura-court-uttar-pradesh-police-siddique-kappan> [Accessed 20 Oct. 2021].

11 GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS. (n.d.). [online] Available at: <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2013-pdfs/ls-050313/LSQ.1354.Eng.pdf> [Accessed 20 Oct. 2021].



(2005) and by doing so increased the scope of the Act.¹²

The 2019 Amendment: In a Gist

To summarize therefore, the main problems that the 2019 Amendment brought about lies in the provisions which authorized the Centre to notify individuals as terrorists and increased the powers of the NIA. These provisions, without checks and balances, are prone to get misused. However, the 2019 Amendment alone is not problematic. In fact, the overall legal framework consists many questionable provisions which need modifications.

The Overall Legal Framework – Problems and suggested solutions

The UAPA, through repeated amendments, can be said to have assumed an entirely different identity when compared to the Act which originally came into existence in 1967. Although the most recent and controversial Amendment was that of 2019, the entire Act carries many persisting grey areas which pose myriads of challenges and need to be addressed. An attempt is being made to not only mention the shortcomings in the Act which ultimately render the purpose of providing safeguards for better security ineffective but also provide suggestions as solutions to the problems that arise. It is only through a system of proper checks and balances that the aim can be achieved.

- ***Extremely Broad and Ambiguous definition of terrorism***

The UAPA lacks any clear, specific, and precise definition of what exactly constitutes

‘terrorism.’ According to Section 15 of the UAPA, certain offences specified therein may be construed as ‘terrorist acts.’ Without a definite meaning of the word, this gives the investigating agencies a wide discretion to decide what can be seen as a terrorist offence. Similarly, Section 35 of the Act gives the Central Government immense discretion to decide which individuals can be deemed to be “involved in terrorism.”

Suggested Solution:

i. A precise, clear, and definite definition of the word ‘terrorism’: For this, the UN’s Special Rapporteur on the Promotion and Protection of Human Rights may be considered. It mentions that while countering terrorism, “*at the national level, the specificity of terrorist crimes is defined by the presence of three cumulative conditions: (i) the means used (ii) the intent and (iii) the aim, which is to further an underlying political or ideological goal.*” On similar lines it was observed in the case of *Kartar Singh v. State of Punjab*¹³ that “*A person becomes a terrorist or is guilty of terrorist activity when his intention, action, and consequence all the three ingredients are found to exist together.*” These three elements help distinguish terrorist acts from ordinary criminal acts. The UAPA fails to define ‘terrorism.’ while incorporating these elements.

Further, the anti-terrorism laws of Britain, Canada, and Australia, for instance, recognises the multifaceted nature of terrorism and distinctive reasons behind terrorist attacks by defining terrorism as an act carrying out for the purpose of advancing

12 Deccan Herald. (2019). UAPA bill passed in RS: All you need to know. [online] Available at: <https://www.deccanherald.com/national/national->

politics/uapa-bill-passed-in-rs-all-you-need-to-know-749528.html.

13 *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.



political, religious, or ideological objectives. This again helps in separating terrorist acts from other criminal acts. Therefore, these elements should be incorporated in the definition of ‘terrorism’ under UAPA.

- ***Unreasonably broad and vague terms in the Act***

The UAPA comprises many unreasonably broad and vague terms and phrases which give immense and unfettered powers to the Centre. Certain phrases in the Act like, “*affecting the interests of India*,” where the term ‘*interests*’ is not clearly defined, leaves scope of subjective interpretation and therefore, gross misuse of the provisions. Further, usage of some other terms like “*If the government believes*”, in the Act leaves entire discretion in the hands of the Centre.

Suggested solution

ii. Amendment of certain phrases in the Act:

Phrases such as those mentioned above may be amended and certain phrases like “*affecting the national security of India*” or “*affecting the sovereignty of the country*” should be used in the place of “*affecting the interests of India*”.

iii. Removal of certain phrases from the Act:

Certain phrases do not have any specific focus and excessively broaden the powers of the government like, ‘*if the government believes*.’ This gives the government the power to suppress even the slightest of dissent and therefore, such phrases should be removed from the Act.

- ***Wide powers of the Centre unchecked by judicial review***

The UAPA not only confers unbounded and unreasonable discretionary powers to the Centre but also fails to provide any mechanism for judicial review. The central government is solely empowered to notify or de-notify an individual as terrorist.

Ironically, as per the provisions of the Act, in effect, the only avenue for an aggrieved person is to file an appeal with the very same government which notifies him as a ‘terrorist.’ There is no reasonable mechanism where the accused can demand for restitution or justice. A three-member Review Committee is established for the purpose and all members of the committee are appointed by the central government. Even though this committee is headed by a sitting or retired judge of a High Court, and comprises two other members whose qualifications are not defined, there is no assurance of a due process or judicial review. As per some reports, in the ten years of its existence the Review Committee has never given any decision against the central government.

These unchecked powers have unarguably paved way for misuse of the provisions. As per the statistics, the year 2019 witnessed over 72% rise in number of cases registered under UAPA.¹⁴ It is necessary to note here that as per a reply by the government in the Lok Sabha, only 2.2 % of cases registered under the UAPA between 2016-2019 ended

¹⁴ Special Correspondent (2021). Parliament proceedings | Over 72% rise in number of UAPA cases registered in 2019. The Hindu. [online] 9 Mar. Available at:

<https://www.thehindu.com/news/national/parliament-proceedings-over-72-rise-in-number-of-uapa-cases-registered-in-2019/article34029252.ece>.



in convictions by court.¹⁵ This emphasises that there is an urgent need to ensure that the application of the provisions goes through judicial scrutiny.

Suggested solutions:

iv) Establishment of a separate committee for checking whether a case falls under UAPA:

The problem can be addressed by establishing a separate committee, the members of which are not solely appointed by the Centre itself. The Committee may consist more members to ensure fairer functioning, headed by a sitting or retired judge of the High Court. One member may be from the National Human Rights Commission. For the other members, the qualifications and criteria should be specifically mentioned. Further, instead of the members being appointed by the Centre, a recommendation committee can be set up to lessen the influence of the Centre. This committee can be made responsible for checking whether a particular case falls under the Act and for overseeing the human rights violations of an accused, during the prosecution, in such cases.

v) Establishment of fast-track courts for dealing with the cases relating to UAPA:

Considering the enormous number of cases booked under the UAPA, and the potential threat to the violation of rights on the misuse of the provisions, separate fast-track courts may be set up across the nation to deal with the cases relating to UAPA. One can also file

an appeal with these courts instead of the government itself.¹⁶

- ***Provisions of the Act against the principle of Presumption of innocence***

As per one of the central tenets of the criminal justice system, the presumption of innocence has to lie in favour of the accused, until proven guilty. However, under the UAPA, this principle is reversed and the burden of proof is on the accused to prove that the allegations against him are false. In furtherance of this, there is also a reversal of presumption in favour of grant of bail, which has been dealt under the next point. This reversal of presumption of innocence again tilts the provisions of the Act in favour of the government and puts the rights of the accused at the risk of being violated.

Suggested Solution:

vi. Presumption of innocence should be maintained until sufficient evidence is produced: Considering terrorism is a grave issue, the laws dealing with offences relating to terrorism must be strict. This also indicates that universal application of the rule of presumption of innocence in cases relating to terrorism may cause unwanted and irreversible consequences. However, total reversal of the rule may also violate the rights of the accused. Therefore, maintaining presumption of innocence until sufficient evidence is produced to reasonably indicate

15 Outlook India (n.d.). UAPA A Tool Of Repression, The Amendment Just Makes It Worse. [online] Available at: <https://www.outlookindia.com/blog/story/india-news-uapa-a-tool-of-repression-the-amendment-just-makes-it-worse/4118> [Accessed 20 Oct. 2021].

16 Shaheen, F. (2019). Power to Misuse: UAPA Bill 2019 is Left Vague For A Reason. [online] The Quint. Available at: <https://www.thequint.com/voices/opinion/uapa-bill-amendment-terrorist-individuals-lack-of-clarity-amit-shah#read-more> [Accessed 20 Oct. 2021].



the possibility of guilt, if not prove the guilt beyond doubt, may help solve the problem.

- ***Grant of bail - virtually impossible***

Under Section 43D (5) of UAPA, bail can be refused if the accusations are *prima facie* true. The language used under the section focuses on denying bail rather than granting bail and provides no exception to the rule. This Section was challenged by Stan Swamy, who had himself been booked under the Act in the Bhima Koregaon – Elgar Parishad caste violence case, just two days before his death, in the Bombay High Court. He termed the provision “illusory”, which made the grant of bail virtually impossible and left almost no scope for judicial reasoning.¹⁷ He argued in his petition that the statute by making the grant of bail virtually impossible, is actually denying bail and hence, it is against the right to life and personal liberty enshrined under Article 21 of the Constitution.¹⁸

To understand this particular provision and the underlying problem, it is necessary to deal with this point in a relatively detailed manner. The interpretation of how the courts will ascertain what cases are *prima facie* true have differed largely. The Delhi High Court in 2018, in the case of *Zahoor Ahmed Watali*¹⁹ while granting bail to the accused observed that examination of evidences was crucial in determining whether a *prima facie* case existed. It specifically stated that the

courts must “*scrutinise the material with extra care.*”

However, when the case was appealed in the Supreme Court in 2019, it held that the courts must look at the “*totality of the case*” presented by the State and must not analyse evidences or circumstances. The provision requires the judge to consider the guilt or innocence of the accused at the bail hearing itself which is inappropriate. It is also very improbable at such an early stage of proceeding that the prosecution will have adequate evidences to prove the case against the accused. Nevertheless, by holding that the courts must not go into the question of whether evidence is admissible or inadmissible, it denies bail to the accused based on even such evidences produced by the prosecution that will be inadmissible as evidence during the trial.

Undoubtedly, the Supreme Court ruling makes the grant of bail under UAPA virtually impossible. However, there have still been a few cases where the bail was granted by the courts. The Supreme Court, for example, upheld the grant of bail to the accused in the case of *Union of India v KA Najeeb*²⁰ where the accused had spent four years in jail under the Act and the trial had not begun. The court recognised that right to speedy trial is a fundamental right and it cannot be denied even under the Act and hence, the accused was granted bail. The Kerala High Court as well granted bail to more than 115 accused who were charged under the Act for the 2020

17 Joshi, N. (n.d.). [BREAKING] “Bail under UAPA illusory:” Bhima Koregaon accused Father Stan Swamy moves Bombay High Court challenging Section 43D(5) of UAPA. [online] Bar and Bench - Indian Legal news. Available at: <https://www.barandbench.com/news/litigation/bhima-koregaon-stan-swamy-bombay-high-court->

challenging-validity-section-43d5-uapa [Accessed 20 Oct. 2021].

18 INDIA CONST. art. 21.

19 National Investigation Agency v. Zahoor Ahmad Shah Watali, 2019 SCC OnLine SC 461.

20 Union of India v KA Najeeb, (2021) 3 SCC 713.



East Bengaluru riots. It stated that since the NIA had extended the time of investigation without even hearing the accused, their fundamental right to be treated fairly was violated and hence, they had to be granted bail. Yet, it would not be wrong to state that the general tendency has been to refuse bail, despite lack of evidence as the courts do not wish to appear lenient on the issue of terrorism.²¹

Suggested Solutions:

vii. Burden of proof on the State to give reasons for detention: A similar pattern of reversal of presumption in favour of grant of bail was witnessed in Australia when under Section 15AA of the Anti-Terrorism Act, 2004, the court permitted bail only under exceptional circumstances. Addressing the issue, the United Nations Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism observed that in cases further offences are committed or evidences are suppressed, bail may be denied. However, it emphasised that “*Each case must be assessed on its merits with the burden upon the State for establishing reasons for detention.*” Instead of the provision favouring the Centre, there should be a strict burden of proof on the State to mention reasons for detention.

viii. Examination of evidences should be essential: The reasoning of the Delhi High Court that examination of witnesses is a crucial step in determining whether a case against an accused is *prima facie* true may help in better protecting the rights of the accused, especially so when the tilt is usually

towards denying bail in the cases related to terrorism.

- ***180 days Pre-charge detention period***

The provisions relating to detention under the UAPA grant a huge leeway to the State in terms of how the investigation has to be conducted and allows pre-charge detention up to a period of 180 days in case even after the expiry of 90 days, the investigation process is not complete and more time is needed. The provision making grant of bail virtually impossible along with the provision of 180-day detention period raises many problems.

As per the observation made by the Council of Europe Parliamentary Assembly, “*lengthy pre-charge detention may have detrimental effects... on private and family life... freedom of movement and the employment situation of the person detained. This can amount to, effectively, a “sentence” on a person who may never be charged with any crime.*” Similarly, Fair Trials International has also argued that “*holding people with-out charge for lengthy periods, based on the assumption that evidence will be found to prove their guilt, is a disproportionate violation of the right to liberty and presumption of innocence*”.

Suggested solution:

ix. Reduction of the maximum pre-charge detention period: 180-day period is much longer than the permitted maximum period of detention in other democratic countries. The Australia’s Crime Code, for example allows

21 The Indian Express. (2021). Reading Section 43D(5): How it sets the bar for bail so high under UAPA. [online] Available at:

<https://indianexpress.com/article/explained/section-43d5-how-it-sets-the-bar-for-bail-so-high-under-uapa-7390673/> [Accessed 20 Oct. 2021].



maximum pre charge detention for just 24 hours, excluding the ‘dead time’ when the suspect is not questioned. Under the UK Terrorism Act, 28-day judicially authorised pre-trial detention is permitted. This pre-charge detention in the United States is limited to 48 hours. The aliens suspected of committing a terrorist act can be detained for seven days under the PATRIOT Act. Therefore, the reduction of the pre-charge detention period may help solve this problem.²²

x. Requirement for adequate evidence for extension of pre-charge detention period: The sole consideration for extension of the detention period is whether the investigation is progressing and more time is needed, which is problematic. In such cases, it should also be considered whether there is adequate evidence against the accused to justify such extension and the decision for extending detention beyond 90 days should be recorded in writing.

- **No provision for compensation to those wrongfully charged under the Act**

The Act does not provide any scheme of compensation for those who are wrongly incarcerated. The provision of compensation is extremely essential, especially in cases where the accused entities have had to suffer

for long periods merely because they were wrongly implicated by the Centre.²³ For example, Mohammad Irfan Gaus and Ilyas Mohammad Akbar were acquitted in a nine-year-old UAPA case in Nanded, Maharashtra, by a special NIA court, for lack of evidence. In cases such as these, the provision for compensation is all the more essential.²⁴

Suggested solution:

xi. Provision for compensation: A scheme for compensation should be constituted for those wrongly implicated under the Act to ensure proper justice. The accused entities should also have a right to seek compensation if detained but not charged because such detention would, in effect, amount to preventive detention without trial. In this context, as aptly observed by Justice HR Khanna in the case of ADM Jabalpur²⁵, “preventive detention without trial is an anathema to all those who love personal liberty. Such a law makes deep inroads into basic human freedoms which we all cherish and which occupy prime position among the higher values of life.” Hence, if such a detention does happen, compensation must be granted and it can only happen if right to

22 The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes. (2015). Economic and Political Weekly, [online] pp.7–8. Available at: <https://www.epw.in/journal/2009/04/commentary/unlawful-activities-prevention-amendment-act-2008-repeating-past-mistakes>.

²³ Tyagi, P. and Yadav, I. (n.d.). The Spirit of Democracy and Rule of Law in India: An Analysis of the UAPA and NIA Amendment Bills (2019) with Context to Misuse of Power under the Garb of Anti-

Terror Legislations. Indraprastha Law Review, Summer 2020: 1(1).

²⁴ The Indian Express. (2021). Nanded arms haul: 3 held for LeT links convicted, 2 acquitted. [online] Available at: <https://indianexpress.com/article/cities/mumbai/nanded-arms-haul-3-held-for-let-links-convicted-2-acquitted-7360935/> [Accessed 20 Oct. 2021].

²⁵ ADM Jabalpur vs Shivkant Shukla (1976) 2 SCC 521.



seek compensation is provided to the accused.²⁶

Additional suggestions:

In addition to the above suggested solutions, incorporating certain other changes may help in increasing the efficacy of the Unlawful Activities Prevention Act.

xi. Compulsory Periodic Review of the Act: The chances of callous usage of the provisions of UAPA and the abuse of extensive powers by the Centre will decrease to a considerable extent if periodic review of the Act and provisions therein is made compulsory. This review model is already being followed in several countries to ensure an effective mechanism for monitoring the provisions of terrorist legislations. For example, under the UK Terrorism Act, 2000, annual review of the Act is compulsory and the report of the same has to be presented before the parliament. Similarly, the Anti-Terrorism Act in Canada also mandates the setting up of a parliamentary committee for the purpose within three years of the enactment of the legislation. This periodic review may help in evaluating what provisions can encroach upon the human rights of the individuals and doing away with such provisions. Considering the UAPA leaves little scope for judicial oversight of the proceedings, grants excessive immunity to the Centre and limited capacity to challenge

the treatment under the Act, this review mechanism is even more essential.²⁷

xii. Limiting the life of the Act: As per the recommendation of the UK's Joint Committee on Human Rights, "All terrorism legislation should have a life limited to five years maximum, and require renewal by primary legislation not ministerial order." The repeated amendments can be said to have removed the distinction between ordinary criminal acts and terrorist acts and have given a permanent life to the UAPA, unless repealed or amended again. If the life of the Act is limited, and provisions for renewal if certain conditions are met are laid down, it may result in a more effective mechanism and better protection of the human rights.²⁸

xiii. Establishment of a Police Complaints Authority: The UAPA gives wide scope to the police to abuse their power and make arbitrary arrests and detentions. For example, in the case of the Delhi riots of 2020, where three student activists from JNU – Asif Iqbal Tanha, Devangana Kalita, and Natasha Narwal (*Asif Iqbal Tanha vs State of NCT of Delhi*²⁹) — were booked under the UAPA, the Delhi High Court held that the police had tried to build a case on inferences and conjectures and that it failed to show its accusations were *prima facie* true. To solve this problem, as advocated by several commissions, Police Complaint Authorities may be established in each state as a safe-

26 Mustafa F., VC, NALSAR University of Law, Hyderabad, (n.d.). UAPA amendment is a law that terrorises. [online] Tribune India News Service. Available at: <https://www.tribuneindia.com/news/archive/comment/uapa-amendment-is-a-law-that-terrorises-819911> [Accessed 20 Oct. 2021].

27 The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes. (2015). Economic

and Political Weekly, [online] pp.7–8. Available at: <https://www.epw.in/journal/2009/04/commentary/unlawful-activities-prevention-amendment-act-2008-repeating-past-mistakes>.

²⁸ *ibid.*

²⁹ *Asif Iqbal Tanha vs State of NCT of Delhi*, 2021 SCC OnLine Del 3253.



guard against police brutality, corruption, and discrimination. The citizens may also file complaints against the police, with this authority, in case the police actions are not in accordance with the law or there is abuse of power.³⁰

Conclusion and The Way Forward

The Unlawful Activities Prevention Act, as it stands today, inarguably fails to effectively resolve the problems it originally aimed to address. Instead of strengthening the security of the nation, it raises serious complexities merely because the Centre has been endowed with excessively wide powers which are prone to get misused. On the other hand, undeniably, there should be zero tolerance towards terrorism. Therefore, it has to be ensured that the measures and provisions to combat terrorism are not more drastic than necessary in the interest of justice and security.

While the common view tilts towards repealing the Act, the suggestions provided in this paper, if incorporated can prevent misuse, increase the efficacy of the Act, strike a balance between ensuring security of the nation and upholding the fundamental freedoms of individuals and prevent establishment of an autocratic regime. For this, constant evaluation and compulsory periodic review of the provisions and identification of the lacunae is necessary. In addition to this, providing a clear definition of the word 'terrorism', usage of specific terms, establishing a separate committee for checking which cases fall under UAPA, establishing separate fast track courts to deal with the cases under UAPA, following the principle of presumption of innocence,

ensuring that the burden of proof is on the State to give reasons for detention, stressing on examination of evidence, reducing the maximum pre-charge detention period, providing for compensation, establishing Police Complaints Authority and proper judicial review may help in preventing misuse of the provisions contained in the Act.

The Unlawful Activities Prevention Act, 1967 holds the potential to create a more secure future for this country and its people only if properly channelized and utilised and this can only be achieved through a balanced and rational approach.

³⁰ *ibid.*