

LAWFOYER INTERNATIONAL
JOURNAL OF DOCTRINAL LEGAL
RESEARCH
(ISSN: 2583-7753)

Volume 2 | Issue 2

2024

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THE UNLAWFUL ACTIVITIES PREVENTION ACT (UAPA) AND THE INDIAN CONSTITUTION: AN ANALYSIS OF THE CONSTITUTIONAL FRAMEWORK AND THE IMPACT ON INDIVIDUAL RIGHTS

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I. ABSTRACT

A committee appointed by the National Integration Council recommended an Act be approved by the Central Government in 1967 in order to prevent individuals or organizations from acting illegally in a way that might compromise the integrity and sovereignty of the nation. Both the POTA (Prevention of Terrorism Act), 2002, and the TADA (Terrorist and Disruptive Activities (Prevention) Act, 2002, have been superseded by the Act. The history of India makes it abundantly evident that there have been numerous acts of terror throughout the years. The terrorist assaults on the Parliament in 2002 and the Mumbai attacks are two examples of them. An attack of this kind would surely cause dread among India's populace, given the country's size. Many Activists, minorities, and people from marginalized sections were arrested under the label of the Act and recently the writer and activist Arundhati Roy was arrested under the Unlawful Activities (Prevention) Act of 1967. The criticism against the Act is that since the definition of unlawful activities is vague the freedom to dissent and criticize the government is also challenged under the Act. The Government can use the provisions of the Act against those who speak against it and this may negatively impact the democratic principles of the country. The Act allows prolonged detention and obtaining bail is a very difficult task for the accused and this violates the right to a speedy trial. The Constitutional validity of the Act and the amendments made to it need to be discussed and the cases regarding are still pending.

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II. KEYWORDS

Unlawful activities, sovereignty, integrity, fundamental rights, terrorism, marginalized people

III. INTRODUCTION

India's anti-national and secessionist activities were addressed in 1967 with the creation of the Unlawful Activities (Prevention) Act (UAPA). The Act has undergone numerous revisions over time, resulting in its current configuration. First inspired by resolutions from the UN Security Council pertaining to combating terrorism, these components were added to the Act's Preamble in the 2008 Amendment. The Act was developed in response to suggestions made by a committee that Nehru's administration established in 1962 to combat casteism, regionalism, communalism, and other dividing factors. The Indo-China War of 1962, in which certain Communist parties in India allied with China, caused the NIC to propose actions to protect India's sovereignty, which resulted in the UAPA's formation.

Later revisions strengthened the UAPA by incorporating definitions of "terrorist act" and "terrorist organization" from the defunct Prevention of Terrorism Act (POTA). The Act imposed longer detention times and more stringent bail requirements in reaction to the 2008 Mumbai attacks. 2019 saw the Act amended to allow the government to label some people as "terrorists," in an effort to make it more responsive to emerging threats. It raises concerns about how to strike a balance between civil liberties and national security because critics contend that the UAPA's expansive definitions and powers jeopardize India's democratic values and fundamental freedoms.

IV. RESEARCH OBJECTIVES

1. To research the Unlawful Activities (Prevention) Act of 1967's historical evolution.
2. To evaluate the UAPA's impact on fundamental rights.

3. To investigate the role of UAPA in addressing political dissent, government criticism, and its impact on marginalized communities in modern India.
4. To assess the effectiveness of UAPA in fighting terrorism.
5. To analyze the legal and judicial interpretation of UAPA.
6. To research how the UAPA's centralization of authority affects state and federal autonomy and the federal structure.

V. RESEARCH QUESTIONS

1. What major modifications have been made to the 1967-established Unlawful Activities (Prevention) Act (UAPA)?
2. How have bail requirements and the suspect detention procedure been affected by UAPA amendments, particularly those made following significant terrorist incidents like the 26/11 Mumbai attack?
3. What impact does UAPA have on fundamental rights such as freedom of speech, expression, and assembly?
4. How successful has UAPA been in achieving convictions for terrorist activities, and what do statistics reveal about its implementation and effectiveness?
5. What are the socio-political consequences of UAPA's provisions, particularly regarding political dissent, criticism of the government, and marginalized communities?
6. How have judicial and legal interpretations reconciled UAPA's strict measures with fundamental rights?

VI. RESEARCH HYPOTHESIS

The Unlawful Activities (Prevention) Act (UAPA) amendments have progressively strengthened the government's ability to fight terrorism. Meanwhile, grave concerns have been expressed about the potential exploitation of political opposition, the infringement of fundamental rights, and the negative effects that these changes may have on marginalized communities.

VII. RESEARCH METHODOLOGY

This paper utilizes a strictly doctrinal research approach. Doctrinal research, known as library-based research, primarily involves the study and analysis of legal statutes, case law, and academic writings. This method is ideal for exploring the theoretical and conceptual dimensions of law. It systematically presents legal doctrines and principles.

In doctrinal research, primary sources include statutory materials, judicial decisions, and authoritative literature. Secondary sources like commentaries, articles, and legal summaries are also essential. The research process entails identifying, gathering, and critically evaluating these sources. The goal is to form logical conclusions and provide insights into the legal questions being studied. This paper aims to deliver a thorough and unified view of the legal structure relevant to the topic addressed.

VIII. LITERATURE REVIEW

"Unlawful activity" is defined as any act or expression—verbal or symbolic—that promotes the secession of any region of India, questions the nation's sovereignty, or sows disenchantment with it in Section 2(o) of the Unlawful Activities (Prevention) Act (UAPA). India's extensive legal system, known as the UAPA, was developed to counteract acts that endanger the integrity and sovereignty of the nation.

This section targets activities deemed a threat to India's integrity. Section 2(p) defines an "unlawful association" as any group involved in or promoting unlawful activities, including those listed under sections 153A and 153B of the Indian Penal Code, with an exception for activities in Jammu and Kashmir.

Section 3(1) grants the Central Government the authority to declare any association unlawful if it perceives the association's activities as threatening. Section 15 outlines "terrorist acts," encompassing a variety of activities, from the use of explosives to economic sabotage and political kidnappings. Section 24A requires the forfeiture of any proceeds derived from terrorism, ensuring

that individuals involved do not benefit financially. Section 43D imposes strict bail conditions for those accused under Chapters IV and VI of the Act, particularly limiting bail for non-citizens or illegal entrants.

Important case law, such as *Angela Harish Sontakke vs. the State of Maharashtra* (2016), *K.A. Najeeb vs. Union of India* (2021), and *Bikramjit Singh vs. the State of Punjab* (2020), have interpreted these provisions, balancing the gravity of UAPA charges with the need to avoid undue detention and protect constitutional rights.

Additionally, cases like *Sadique vs. State of Madhya Pradesh* clarify that only Sessions Courts or Special Courts can extend investigation timelines under UAPA. *Thwaha Fasal and Anr v. Union of India* (2021) is a case that demonstrates the power of Constitutional Courts to grant bail in circumstances involving prolonged detention without a trial, ensuring the defense of fundamental rights.

IX. HISTORICAL BACKGROUND

Act No. 67 of 1967 dealt with the anti-national and secessionist movements in India through the Unlawful Activities (Prevention) Act. Many revisions were made to the Act before it became its current form. A number of resolutions adopted by the UN Security Council to combat terrorism had an impact on the first version of the Act, and the 2008 Amendment added this to the Act's Preamble which states that "WHEREAS the Security Council of the United Nations in its 4385th meeting adopted Resolution 1373 (2001) on 28th September, 2001, under Chapter VII of the Charter of the United Nations requiring all the States to take measures to combat international terrorism; AND WHEREAS Resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1735 (2006) and 1822 (2008) of the Security Council of the United Nations require the States to take action against certain terrorists and terrorist organizations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory, and prevent the direct or indirect supply, sale or transfer of arms and

ammunitions to the individuals or entities listed in the Schedule; AND WHEREAS the Central Government, in exercise of the powers conferred by section 2 of the United Nations (Security Council) Act, 1947 (43 of 1947) has made the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007; AND WHEREAS it is considered necessary to give effect to the said Resolutions and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto.”²

The Act was enacted based on recommendations made by the National Integration and Regionalism Committee, which was appointed by the National Integration Council (NIC).³ The NIC was established in 1962 by the Jawaharlal Nehru Government in opposition to regionalism, casteism, communalism, and narrow-mindedness.⁴ Several Communist organizations in India participated in anti-national protests that resulted in secession threats and supported China during the 1962 Indo-China War.

To address this issue, a commission on national integration and regionalism was established by the National Integration Council. Article 19, which guarantees freedom of speech, expression, assembly, and association, may have reasonable restrictions imposed by the Parliament for the protection of India's sovereignty and integrity. This power was granted by the committee's recommendations.

The 2001 Parliamentary attack led to the NDA administration passing the Prevention of Terrorism Measure (POTA) in 2002. However, the measure was criticized for impairing civil freedoms and was later abolished by the UPA government in 2004. In addition to adding the idea of a terrorist gang, the government modified the Unlawful Activities (Prevention) Act by incorporating the terms "terrorist act" and "terrorist organization" into the list of unlawful activities from the POTA that was repealed.

² ('The Unlawful Activities (Prevention) Amendment Act, 2008', n.d.)

³ (*The Economic Times* 2023)

⁴ ('BACKGROUND NOTE ON NATIONAL INTEGRATION COUNCIL', n.d.)

Following the 26/11 Mumbai incident, the Act was amended to include harsher bail requirements and to permit the prolonged detention of suspects without trial. The 2013 Amendment expanded the definition of a "terrorist act" to encompass offenses that endanger the security and prosperity of the nation. The 2019 amendment gave the government the authority to label people as well as organizations as "terrorists" under the UAPA.⁵

X. THE UNLAWFUL ACTIVITIES (PREVENTION) ACT AND FUNDAMENTAL RIGHTS

The committee on national integration and regionalism made the suggestion to acceptable limits on basic rights.⁶ Section 2(o) of the Unlawful Activities (Prevention) Act defines unlawful activities as anything that is intended to undermine India's sovereignty and territorial integrity, whether through an act, words spoken or written, signs, visible representation, or some other means. This is concerning because it could go after dissent and legitimate criticism of the government.⁷ *"According to the Union Home Ministry, only 2.2% of the cases registered under the UAPA between 2016 and 2019 ended in conviction by courts."*⁸

If the Central Government believes an association is involved in terrorism, it may declare the association illegal under Section 3 of the Act.⁹ 2019 saw an amendment to the UAPA that gave the Central Government the power to declare someone a terrorist without allowing them to face trial if it believed they were involved in terrorist activities.¹⁰ The judgment in Arup Bhuyan vs. State of Assam has established that mere membership in a banned organization is punishable under the Act, without the need for further criminal activities or mens rea.¹¹

The Act also grants authorities the authority to refuse bail unless the court is certain that the accused is innocent and to hold suspects without charge or trial

⁵ ('The Unlawful Activities (Prevention) Act, 1967 (UAPA) And It's Analysis', n.d.)

⁶ (*The Economic Times* 2023)

⁷ ('UAPA 1967', n.d.)

⁸ ('Assessing the Unlawful Activities Prevention Act', n.d.)

⁹ ('UAPA 1967', n.d.)

¹⁰ ('The Unlawful Activities (Prevention) Amendment Bill, 2019', n.d.)

¹¹ ('Arup Bhuyan vs The State Of Assam Home Department on 24 March, 2023', n.d.)

for up to 180 days.¹² The Bombay High Court struck a compromise between the severe bail requirements under Section 43D(5) of the UAPA and the basic right to a prompt trial protected by Article 21 of the Indian Constitution in the case of National Investigation Agency v. Areeb Ejaz Majeed (2021).¹³

In the 2016 case of Angela Harish Sontakke v. State of Maharashtra, the court emphasized the use of bail as a remedy to avoid unjustified incarceration and guarantee the accused's protection of their rights until the trial.¹⁴ The Supreme Court and the High Court, as the Constitutional Courts, have the authority to issue bail in cases when the accused's fundamental rights are violated by extended incarceration without trial, as the Court noted in Thwaha Fasal and Anr v. Union of India (2021).¹⁵

XI. ESSENTIALS OF (UAPA)

In order to combat unlawful acts and deal with terrorism, India passed the Unlawful Activities (Prevention) Act (UAPA), which is an essential legislative framework. It has two main goals: first, to stop and suppress illegal activities that are carried out by people and groups; and second, to successfully fight acts of terrorism. The UAPA seeks to protect public order, safeguard national security, and make communities safer by giving law enforcement authorities more authority. In order to combat the threats posed by terrorism and extreme ideas, the UAPA is essential because of its provisions that define unlawful associations, grant investigative powers, and permit preventative detention.¹⁶

A thorough definition of "unlawful activity" is provided under the Act. This law classifies as such any action taken by an individual or entity with the specific intention of undermining the territorial integrity and sovereignty of India. Moreover, the Act gives the government the power to declare an

¹² ('Assessing the Unlawful Activities Prevention Act', n.d.)

¹³ ('The National Investigation Agency vs Areeb Ejaz Majeed on 23 February, 2021', n.d.)

¹⁴ ('Angela Harish Sontakke vs State Of Maharashtra on 4 May, 2016', n.d.)

¹⁵ ('Thwaha Fasal vs Union Of India on 28 October, 2021', n.d.)

¹⁶ ('Unlawful Activities (Prevention) Act, 1967' 1967a)

organization "illegal" if it participates in actions that endanger the integrity and sovereignty of the country. The UAPA provides a framework for the law to protect public order and strengthen national security.¹⁷

The UAPA includes provisions enabling the arrest of anyone accused of involvement in illegal acts or terrorism. Under this statute, authorities have the ability to hold such individuals without formal charges for up to 180 days. This clause aims to prevent potential risks to national security and ensure public safety.¹⁸

The Unlawful Activities (Prevention) Act (UAPA) empowers the National Investigation Agency (NIA) to investigate and prosecute terrorism and other illegal actions.¹⁹

XII. ARGUMENTS IN FAVOR OF UAPA

The UAPA provides an essential legislative framework for safeguarding the security and interests of the country. Preventing attacks from the inside or outside that could jeopardize India's integrity and sovereignty is its main goal. The second is granting the federal government the power to proactively fight threats from people or groups engaged in activities that endanger the security of the country. The Act permits preventive actions, which ensures quick and effective safety responses.²⁰

Protecting national security requires the implementation of counterterrorism measures that make it easier to investigate, prosecute, and prevent acts related to terrorism. These include the categorization of specific individuals as terrorists and organizations as terrorist affiliations, in addition to the preemptive imprisonment of suspects. Preventive detention should be applied to suspects who represent a risk to the safety of the country. *“According to a statement issued by the Ministry of Home Affairs (MHA) to the Rajya Sabha on Wednesday, Jammu and Kashmir witnessed 761 terrorist incidents between 2018 and*

¹⁷ (Editor 2018)

¹⁸ ('UAPA 1967', n.d.)

¹⁹ ('NIA and Its Power', n.d.)

²⁰ ('UAPA 1967', n.d.)

2022. *All these attacks have accumulated to 174 civilian deaths.*"²¹ It is necessary to prevent potential threats before they materialize, especially in cases where there may not be enough evidence for a formal trial.

Forfeiture of proceeds of terrorism weakens the financial infrastructure that funds terrorism. ²²*"Like all criminal activities, counterfeiting can be a way of financing terrorism. Subject to fewer crackdowns than other forms of trafficking, it provides an immediate source of cash that is untraceable."*²³ Attaching the proceeds of terrorism ensures that funds and resources, which could otherwise fuel future terrorist activities, are redirected away from potential use, thereby preventing subsequent attacks.²⁴

The process of attaching the proceeds of terrorism serves multiple crucial purposes. First, it establishes legal accountability by directly targeting the financial assets of individuals and organizations involved in terrorism. By doing so, it ensures that those who fund or participate in terrorist activities face consequences. Second, this approach acts as a strong deterrent, dissuading potential actors from engaging in such activities due to the risk of losing their resources.

Overall, it contributes significantly to national security and the prevention of future attacks.²⁵ Disrupting the financial networks of terrorists through the attachment of proceeds plays a crucial role in enhancing national security and public safety. By concentrating on their financial assets, we lessen the threat that terrorist organizations pose and make it more difficult for them to launch additional attacks.²⁶ By giving law enforcement agencies the legal means to locate, seize, and freeze assets connected to terrorism, this clause greatly

²¹ (Standard 2023)

²² ('The Unlawful Activities (Prevention) Amendment Bill, 2011', n.d.)

²³ (dLewis 2023)

²⁴ ('The Unlawful Activities (Prevention) Amendment Bill, 2011', n.d.)

²⁵ (Mahawar 2022)

²⁶ (Admin 2023)

strengthens their authority. They improve their capacity to successfully oppose and avert terrorist acts by doing this.²⁷

The 2019 Amendment grants the central government the power to officially designate individuals as terrorists. This allows law enforcement agencies to proactively stop potential terrorist activities by officially identifying and designating individuals as terrorists.²⁸ This can involve surveillance, asset freezing, and restricting the movements of these designated individuals.²⁹ The official designation serves as a deterrent for individuals who might be considering involvement in terrorist activities.

The significant repercussions linked to being labeled a terrorist can dissuade them from engaging in such harmful actions.³⁰ Labeling individuals as terrorists aids in disrupting terrorist networks by isolating crucial figures within these networks. This impedes their capacity to coordinate and carry out attacks.³¹ It enables global collaboration in the fight against terrorism. Once identified, other nations and international bodies can implement comparable measures against these individuals, resulting in a coordinated worldwide endeavor to counter terrorism.³²

²⁷ ('Unlawful Activities (Prevention) Act, 1967' 1967b)

²⁸ ('The Unlawful Activities (Prevention) Amendment Bill, 2019', n.d.)

²⁹ ('Can the State Declare an Individual as a Terrorist?', n.d.)

³⁰ ('The Unlawful Activities (Prevention) Amendment Bill, 2019', n.d.)

³¹ ('Designation of Organizations/Individuals as "Terrorist Organization"/ "Terrorist" under the Unlawful Activities (Prevention) Act, 1967 (UAPA)', n.d.)

³² ('India Code: Section Details', n.d.)

XIII. IMPORTANT PROVISIONS OF UAPA

1. Section 2(o)

“unlawful activity”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),— (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India.”

2. Section 2(p)

“Unlawful association” means any association,— (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or (ii) which has for its object any activity which is punishable under section 153A (45 of 1860) or section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity: Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir.”

3. Section 3(1)

“Declaration of an association as unlawful.—(1) If the Central Government is of the opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.”

4. Section 15

“Terrorist act.—

[(1)] Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [, economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country, – (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause – (i) death of, or injuries to, any person or persons; or (ii) loss of, or damage to, or destruction of, property; or (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or [(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or] (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes the death of any public functionary or attempts to cause the death of any public functionary; or (c) detains, kidnaps, or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organization or any other person to do or abstain from doing any act; or] commits a terrorist act.

[Explanation. – For the purpose of this subsection, –

(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;(b) “high quality counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorized or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.]

[(2) The terrorist act includes an act which constitutes an offense within the scope of, and as defined in any of the treaties specified in the Second Schedule.]”

5. Section 24A

“Forfeiture of proceeds of terrorism.—(1) No person shall hold or be in possession of any proceeds of terrorism.”

6. Section 43D

“(5) Notwithstanding anything contained in the Code, no person accused of an offense punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) are in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offense punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.”

XIV. IMPORTANT CASE LAWS

i. Angela Harish Sontakke vs. State of Maharashtra (2016)

The Court stressed that the gravity of the allegations under UAPA must be weighed against other pertinent considerations, such as the length of the detention period and the anticipated length of the trial. It also emphasizes the

use of bail as a precaution against wrongful imprisonment and for the protection of the accused's rights until the start of the trial.³³

ii. **K.A. Najeeb vs. Union of India (2021)**

The Unlawful Activities (Prevention) Act (UAPA), Section 43-D(5), and other legal limitations do not preclude Constitutional Courts from awarding bail in cases involving violations of Part III of the Constitution, the Court said. The stringent bail provisions in special statutes like UAPA become less rigid when there is no reasonable likelihood of completing the trial within a timely manner, and the period of incarceration has already exceeded a significant portion of the prescribed sentence. This approach prevents provisions like Section 43-D(5) of UAPA from being the sole basis for denying bail or violating the constitutional right to a speedy trial. The Court must balance legislative policy with the accused's constitutional rights, particularly their right to personal liberty and a speedy trial. Considerations against extended pre-trial imprisonment include the seriousness of the charges, the possibility of tampered evidence, the impact of witnesses, and the possibility of the accused fleeing.³⁴

iii. **Bikramjit Singh vs. The State of Punjab (2020)**

The Court ruled that in the event that the investigating agency is unable to conclude the investigation within the allotted time, the accused is absolutely entitled to be freed on bail. Even if the prosecution files the charge sheet after the accused offers to post bail, they cannot deny this privilege. An oral application for default bail, made before the charge sheet is filed, is sufficient to invoke this indefeasible right. The accused does not lose this right merely because the application wasn't heard before the charge sheet was filed. The right to default bail accrues once the statutory period for filing the charge sheet expires and it remains intact even if the charge sheet is subsequently filed before considering the default bail application. Even if the accused hasn't

³³ ('Angela Harish Sontakke vs State Of Maharashtra on 4 May, 2016', n.d.)

³⁴ ('Bail Under UAPA: Court in Review', n.d.)

invoked this right when the charge sheet is submitted, it still exists unless they willingly waive it. The infeasible right that the accused had previously acquired during the interim does not vanish with the simple filing of the charge sheet.³⁵

iv. **Sadique vs. State of Madhya Pradesh (2023)**

The Supreme Court the magistrate does not have the jurisdiction to extend the time for investigation of a case that comes under UAPA. Only the Sessions Court or the Special Court has the jurisdiction to grant such an extension as per Section 43D (2)(b) of UAPA.³⁶

v. **Thwaha Fasal and Anr vs. Union of India (2021)**

The Court stressed that even in cases where the accused's Fundamental Rights may be jeopardized by lengthy incarceration without trial, Constitutional Courts have the authority to grant bail notwithstanding the strict requirements under Section 43D(5) of the UAPA.³⁷

XV. **STATISTICAL ANALYSIS**

There were 8371 UAPA arrests between 2015 and 2020, although just 2.8% of those individuals were found guilty.³⁸ Between 2016 and 2019, convictions occurred in only 2.2% of all UAPA cases.³⁹ 97.5% of individuals who are detained are not found guilty, according to data released by the NCRB, demonstrating that the UAPA penalizes the arrest procedure itself.⁴⁰ It's obvious that the UAPA makes obtaining bail extremely difficult if just 23% of people arrested between 2018 and 2020 were given it.⁴¹ 4862 since 2018, 5645 since 2019, and 6482 since 2020 are among the inmates awaiting trial, according

³⁵ ('Bikramjit Singh vs The State Of Punjab on 12 October, 2020', n.d.)

³⁶ ('Sadique vs The State Of Madhya Pradesh on 8 December, 2023', n.d.)

³⁷ ('Thwaha Fasal vs Union Of India on 28 October, 2021', n.d.)

³⁸ (Staff 2022)

³⁹ ('Govt. of India', n.d.)

⁴⁰ ('UAPA Case Data Suggests That Process Is Indeed the Punishment', n.d.)

⁴¹ (Staff 2022)

to the data. Between 2016 and 2020, 24134 persons were charged under the Act, according to the Union Home Ministry, for a total of 5027 cases.⁴²

The biggest number of incidents—1226—occurred in the seven years between 2014 and 2020. Then came 2018, with 1182 cases, and 2020, with 796 cases. The percentage of UAPA cases reported in 2015 that were in Manipur was 61.3%, Assam was 11.34%, and Jammu & Kashmir was 0.8%.⁴³⁴⁴⁴⁵

XVI. FUTURE IMPLICATIONS

Civil rights have been weakened by the growing use of the Unlawful Activities (Prevention) Act (UAPA) as a weapon to silence marginalized populations' voices, political opposition, and official criticism. Its vague and expansive definitions of "terrorist act" and "unlawful activity" give authorities carte blanche to use it any way they like, frequently misapplying it to people who voice opposition. This abuse seriously jeopardizes India's democratic system by undermining fundamental rights including freedom of expression, association, and due process.⁴⁶ The UAPA threatens people's rights to engage in political action and constructive criticism while undermining democracy's fundamental tenets by making peaceful expression illegal and suppressing dissent.⁴⁷

Minorities, activists, and political opponents of the governing party are among the marginalized groups disproportionately affected by the Unlawful Activities (Prevention) Act (UAPA). Even in the absence of a conviction, those charged under this statute frequently face lengthy incarceration, loss of employment, and social shame. This circumstance worsens these populations' marginalization and disenfranchisement while also suppressing opposition and civic involvement. By further alienating already disadvantaged populations, the selective application of the UAPA erodes social fairness and cohesiveness, undermining the democratic fabric and eroding confidence in the legal and

⁴² ('UAPA Case Data Suggests That Process Is Indeed the Punishment', n.d.)

⁴³ ('Data Dive: In Last 7 Years, 10,552 People Arrested Under UAPA, 253 Convicted', n.d.)

⁴⁴ ('Govt. of India', n.d.)

⁴⁵ ('Arrest Under UAPA', n.d.)

⁴⁶ (maniyar 2022)

⁴⁷ (Bajoria 2016a)

political processes. The fundamental tenets of democracy and broad civic engagement are endangered by such actions.⁴⁸

Without first contacting state governments, the National Investigation Agency (NIA) is now able to make arrests, carry out searches, and make seizures under the 2012 modification to the Unlawful Activities (Prevention) Act (UAPA). This loss of state autonomy due to power concentration might erode India's federal system and result in confrontations between the federal and state administrations. The federal system's power balance is further upset by the central government's abuse of the UAPA, which it uses to target political rivals in the state.

UN Special Rapporteurs contend that the 2019 amendments to the Unlawful Activities (Prevention) Act (UAPA) violate several sections of the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, and they have received strong criticism for these alterations. Civil rights are thought to have been diminished by these alleged crimes, and further abuse by the government may result in more scrutiny from across the world. Along with considerable criticism, this might harm India's standing internationally and reduce its soft power, which is crucial for its foreign policy and strategic goals. It may become more difficult for India to build partnerships, draw in foreign investment, and promote its ideals abroad if the world perceives it as a society that stifles dissent and limits fundamental liberties. As such, these human rights issues might have a big impact on India's power and ability to negotiate diplomatically.⁴⁹

XVII. CONCLUSION

A committee established by the National Integration Council made recommendations that eventually resulted in the Unlawful Activities (Prevention) Act of 1967 being passed in order to protect the nation's sovereignty and integrity. The Act places the interests of the nation above those

⁴⁸ (Bajoria 2016b)

⁴⁹ ('UN Special Rapporteurs Express Concerns over UAPA - The Leaflet', n.d.)

of any one person. If the authorities think that an individual or an organization has engaged in or has the potential to engage in "unlawful activity," they have the authority to prohibit an organization or place someone in detention without charge or trial for a maximum of 180 days. This is quite concerning since it infringes upon basic rights protected by Articles 14, 19, and 21 and because the conviction rate is so low. The Constitutional Validity of the Act is still in discussion and the judgment of *Sajal Awasthi vs Union of India* is pending where many concerns were raised regarding the 2019 amendment such as “1) *whether the amendment places a fetter on the right to dissent and thus violates the right to freedom of speech and expression, under Article 19(1)a*; 2) *whether the power to categorize someone as a terrorist without a trial and without any judicial application of mind goes against the settled canons of criminal jurisprudence*; 3) *whether the unilateral power of the executive under Section 35 of the Act to categorize an individual as a terrorist and include them as such in Schedule IV goes against the principles of rule of law, natural justice and the person’s fundamental right to reputation*; and 4) *whether the 2019 amendment (‘Amendment’) to the Unlawful Activities (Prevention) Act, 1967 (‘Act’) is manifestly arbitrary and violative of Articles 14 and 21 of the Constitution.*”⁵⁰

Documents indicate that the Indo-China War in 1962 was the abrupt catalyst for the Unlawful Activities (Prevention) Act (UAPA) to be passed. Many citizens were supporting China because of ideology and the need to curb the anti-national activities by them was necessary. In the future, there is a possibility of happening such things and it is the duty of the Government to protect the sovereignty of the nation in such situations national interest overwhelms the individual interest. The probability of misusing the provisions of the Act is high but the constitutional validity of the UAPA should not be determined based on chances.

⁵⁰ (‘Constitutionality of UAPA Amendment - Supreme Court Observer’, n.d.)

The need to reform by making amendments to UAPA is necessary. It should include the narrowing down of the definition of “unlawful activities” and “terrorist acts” so that the right to dissent and fair criticism against the government will not come under the Act. There should be a proper check and balance so that the Government may not get the chance to misuse the provisions of the Act.

XVIII. REFERENCES

1. https://www.business-standard.com/india-news/761-terror-attacks-174-civilian-deaths-in-j-k-in-last-5-yrs-home-ministry-123080900498_1.html
2. <https://www.pib.gov.in/www.pib.gov.in/Pressreleashere.aspx?PRID=1883063>
3. <https://www.drishtias.com/daily-updates/daily-news-editorials/assessing-the-unlawful-activities-prevention-act>
4. https://www.mha.gov.in/sites/default/files/2022-10/NATIONALINTEGRATIONCOUNCIL_26082022_1%5B1%5D.pdf
5. <https://www.scobserver.in/journal/bail-under-uapa-court-in-review/>
6. <https://www.scobserver.in/journal/can-the-state-declare-an-individual-as-a-terrorist/>
7. <https://www.drishtias.com/daily-updates/daily-news-analysis/controversies-surrounding-uapa>
8. <https://www.visionofhumanity.org/counterfeiting-an-abc-of-terrorist-financing/>
9. <https://p39ablog.com/2023/09/criminal-law-bills-2023-decoded-7-analysing-the-terror-offenses-framework-under-2023/>
10. https://www.factchecker.in/data-dive/seven-years-uapa-cases-arrests-786935#google_vignette
11. <https://pib.gov.in/Pressreleashere.aspx?PRID=1900222>

12. <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/RS03082022/183.pdf>
13. https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00001_196737_1517807318055&orderno=42
14. <https://scroll.in/latest/1033009/less-than-3-arrests-under-uapa-resulted-in-conviction-between-2015-and-2020-shows-report>
15. https://www.drishtias.com/daily-updates/daily-news-analysis/national-investigation-agency-3/print_manually
16. <https://legal-wires.com/lex-o-pedia/overview-of-uapa-the-unlawful-activities-prevention-act-1967/>
17. <https://cjp.org.in/petitions-challenging-stringent-provisions-of-uapa-to-be-heard-by-the-sc/>
18. <https://cjp.org.in/ready-reckoner-to-the-unlawful-activities-prevention-act-1967/>
19. <https://www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india>
20. <https://legalserviceindia.com/legal/article-15752-the-unlawful-activities-prevention-act-1967-uapa-and-it-s-analysis.html>
21. https://www.mha.gov.in/sites/default/files/UAPA-1967_0.pdf
22. <https://prsindia.org/billtrack/the-unlawful-activities-prevention-amendment-bill-2011>
23. <https://prsindia.org/billtrack/the-unlawful-activities-prevention-amendment-bill-2019>
24. <https://thewire.in/rights/uapa-bjp-terrorist-amit-shah-ria>
25. <https://www.mha.gov.in/sites/default/files/A1967-37.pdf>
26. <https://thewire.in/government/uapa-case-data-process-punishment-home-ministry-rajya-sabha>

27. <https://economictimes.indiatimes.com/news/india/uapas-main-objective-to-make-powers-available-for-dealing-with-activities-against-indias-integrity-sovereignty-sc/articleshow/98977845.cms>
28. <https://theleaflet.in/un-special-rapporteurs-express-concerns-over-uapa/>
29. <https://blog.ipleaders.in/unlawful-activities-prevention-act-uapa-1967/>
30. <https://www.indiacode.nic.in/handle/123456789/1470>
31. <https://www.indiacode.nic.in/handle/123456789/1470>
32. <https://www.scobserver.in/cases/sajal-awasthi-union-of-india-constitutionality-of-uapa-amendment-case-background/>
33. <https://indiankanoon.org/doc/126797204/>
34. <https://indiankanoon.org/doc/42981709/>
35. <https://indiankanoon.org/doc/10807134/>
36. <https://indiankanoon.org/doc/85484387/>
37. <https://indiankanoon.org/doc/13080892/>