

UAPA ITS CONSTITUTIONALITY

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INTRODUCTION

The unlawful activities prevention act or the UAPA Act was passed in the year 1967 under the rule of the then Prime Minister Indira Gandhi. However, the law has endured a dozen of amendments. The last amendment was made in 2019. The UAPA Act aims to curb unlawful activities, associated with the sovereignty and integrity of India. In the year 2004, the Parliament added the chapter in context to punishing terrorist activities. The UAPA now includes terrorism, money laundering for terror financing. According to the Union Home Ministry, 2.2% of the cases registered between the periods 2016-2019 were under UAPA Act.

The act's amendment makes two changes to the UAPA Bill's original text. Firstly, it allows India's National Investigation Agency unlimited autonomy to conduct investigations in any way it sees fit. Without notifying the state or local authorities, the country's state has changed. Second, it provides the Central Government with a new source of revenue almost unrestricted authority to add or remove people's names from the terrorist watch list without due process justification. Under chapter IV of this act, any physical element is required to establish that any individual or organization is involved in terrorist activities that involves making use of bombs or other inflammable substances or any other means that causes harm to the population.

CONSTITUTIONALITY OF THE UAPA

The fundamental arguments against the Amendment in 2019 are under Section 35, which include:

- The new amendment is contradictory to the principle of innocent until proven guilty which infringes the International Covenant on Civil and Political Rights, 1967
- UAPA is part of security legislation that enables the government to arrest people who commit crimes therefore it is problematic legislation for various reasons.

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- It can be violative of fundamental rights as a person can be arrested without a charge sheet thus violating article 21 of the constitution.

PETITIONS FILED IN OPPOSITION TO THE UAPA

The constitutional legality of Sections 35 and 36 of the Unlawful Activities (Prevention) Act, 1967 (UAPA) as revised in 2019 has been challenged in two applications. An Association for the Protection of Civil Rights (APCR), a non-profit civil rights organization, filed the initial petition. The second was filed by Sajal Awasthi, an Indian national. Sections 35 and 36, according to the petitioners, should be repealed and declared illegal.

BOTH SUBSTANTIVE AND PROCEDURAL PROCESSES ARE DEFICIENT

Section 35 of the UAPA allows the government to identify anyone as a terrorist in the Fourth Schedule. Without going through a lengthy process, the government can claim and alert people based on mere suspicion. There is no requirement for a single hearing chance. The grounds for a person being labeled a terrorist are hazy and vague. While Section 36 allows a person who has been labeled a terrorist under the UAPA to appeal the label, its implementation is difficult. The grounds for arrest are unknown to the individual. At the state of appeal, there is no requirement for an oral hearing.

FREE SPEECH IS BEING VIOLATED IN AN INDIRECT WAY

According to *Maqbool Fida Hussain v. Rajkumar Pandey*, dissent is an essential component of the right to free speech under Article 19(1)(a) (2008). The challenged sections are designed to target major anti-government discourse under the guise of combating terrorism. The petitioners argue that this Amendment empowers the government to stifle or repress dissent and opposition voices. In addition, Sections 35 and 36 of the Indian Constitution infringe on Article 14's right to equality, Article 19(1) (a) right to freedom of expression, and Article 21's right to a dignified life.

TO DATE, CRITICAL ASSESSMENTS OF THE TOPIC HAVE BEEN MADE

The Court's opinion states that because the UAPA is intended to deal with terrorism-related offenses, its application must be limited to activities that can legitimately be classified as "terrorism." The Supreme Court held earlier this year in *Union of India v. K A Najeeb* (2021)

that, despite the UAPA's restrictions on bail, constitutional courts can nevertheless grant bail if they believe the accused's fundamental rights have been violated.

THE UNLAWFUL ACTIVITIES PREVENTION ACT (UAPA) IS A ROADBLOCK TO EXERCISING ONE'S RIGHT TO FREE SPEECH

There have been numerous instances in recent years where people's right to protest has been endangered. In connection with the CAA-NRC protests, around 1,100 protestors have been arrested and 5,558 have been held in preventative detention. The Unlawful Activities (Prevention) Act has also resulted in the arrest of the majority of them. The "foundations of our nation lay on a surer footing than those likely to be rocked by a protest, however violent, organized by college students operating from the walls of a university," according to a bench of justices led by Siddharth Mridul and Anup J Bhambhani.

SIGNIFICANCE OF BAIL IN CRIMINAL PROCEEDINGS

Bail dates back to the Middle Ages when the Magna Carta was drafted and recognized as the cornerstone of individual liberty. It has been constantly observed throughout India since then. Clause 39 of the Magna Carta Royal Charter stated that "No free man shall be seized, imprisoned, or deprived of his rights or property, or outlawed, banished, or deprived of his standing in any other way, nor will he be prosecuted with force unless by the valid judgment of his peers or by the law of the realm."

In *Asif Iqbal Tanha v. State of NCT of Delhi*, the Delhi High Court clarified that the prosecution bears the prima facie burden as specified in Section 43-D(5). For your convenience, relevant portions of the ruling are reprinted below. As a result, when compared to other special Acts such as the NDPS and PMLA, the bar for obtaining bail under UAPA is lower. However, according to the Act, bail can only be granted if the accused can show that there is no "prima facie" case against him.

In *Union of India v. K.A. Najeeb*, a three-judge bench of the Supreme Court, led by Chief Justice N.V. Ramana, upheld the accused's bail granted by the High Court of Kerala at Ernakulam under UAPA after he had been incarcerated for a significant period, even though it acknowledged that bail under UAPA was an exception.

The fundamental rights guaranteed to prisoners languishing behind four walls of prisons in Part III of the Indian Constitution could be asserted based on appropriate evidence showing that to recognize such rights, particularly the right guaranteed under Article 21 of the Indian Constitution, the prison walls would have to be breached, subject to the imposition of appropriate conditions. The imposition of restrictions would act as a safety net, ensuring that the under trial/accused is forced to appear in front of the trial court. The Supreme Court has explicitly declared in *K.A. Najeeb*, that if the trial court processes take years to complete, the rigors of rules about the issuance of bail provided in special legislation like the UAPA will meltdown. As a result, such a legal position is now well recognized and can be relied upon when a court concludes, based on facts, that continuing to incarcerate an accused, such as the under trial, in this case, would violate his right under Article 21 of the Constitution, given his precarious health condition. Despite this, the respondents have agreed that the prosecution will question at least 200 witnesses in the current case. The charge sheet itself is over a thousand pages long. Because the charge has not yet been framed, the trial has yet to begin, and even if it does, it may take a long time to finish because the prosecution expects to question at least 200 witnesses.

The court has ruled that if the court determines that an under trial's right to a speedy trial under Article 21 is being infringed, bail can be granted despite Section 43-D (5) of the UAPA. In this case, the accused had served approximately five years in prison, out of a maximum of eight to ten years for which he may be found guilty. Furthermore, when the case came before the SC, 276 witnesses had yet to be questioned. It decided that Section 43-D (5) does not apply when a defendant's right to a speedy trial is breached, and granted bail in this case.

Furthermore, in *Bikramjit Singh v. the State of Punjab*, the Supreme Court made important observations about the meaning of default bail granted to a person accused of violating the Act: A review of the preceding decisions reveals that, as long as an application for default bail is lodged before the 90-day period expires, it will be granted. The right to default bail becomes complete before a charge sheet is submitted. It makes no difference if the criminal court in question does not rule on the application before the charge-sheet is filed or rules incorrectly on the application before the charge-sheet is filed. Default bail, which is an indefensible right of the accused under the first proviso to Section 167(2), kicks in and must be granted if an application for default bail is made before the indicated timeframe expires before the time is further extended to a maximum of 180 days.

CONCLUSION

Drawing a line between individual liberty and the state's responsibility to provide security is a classic dilemma. It is up to the state, the judiciary, and civil society to strike a balance between constitutional freedom and the need to combat terrorism. These statutes are ambiguously worded and overly broad. They've been used as a weapon against critics in politics, legitimizing "thought-crimes." Human rights have been shattered by the government's recognition of the Act's intent. The preceding arguments demonstrate that the amendment jeopardizes citizens' fundamental rights by placing them in jeopardy and jeopardizing the very existence of opposition. Under the guise of such legislation, the government has jailed journalists performing their duties and individuals demanding their rights and justice. To successfully enforce the right to a speedy trial, the courts must take into account the delaying techniques used by investigating authorities. In conclusion, it is argued that we can only hope to effectively enforce the right to a speedy trial and repair the unfairness caused by UAPA if we have a defined basis based on which bail can be granted in UAPA cases.

