

UAPA, PMLA, AND SECTION 153A OF IPC: WHAT DO THESE LAWS HAVE IN COMMON?

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INTRODUCTION

The UAPA is India's major anti-terrorism law, but it makes getting bail more challenging. The UAPA also alters the Code of Criminal Procedure (CrPC)¹ to grant it more power, like other special laws dealing with narcotics and the long-gone legislation on terrorism. The Law was amended in 2019 to enable the government to label anyone as a terrorist. Laws like the Unlawful Activities (Prevention) Act (UAPA), the Prevention of Money Laundering Act (PMLA)², &, to a lesser extent, even sections 153A³ and 295a,⁴ make it simple for the accuser to suppress the accused. In contrast to other laws, UAPA and PMLA are regarded as being exceedingly serious, and as a result, getting bail is much more difficult. As a result, many people who are accused find themselves in jail for prolonged periods. The strict guidelines of the Unlawful Activities (Prevention) Act (UAPA) have recently come into prominence due to the recent demise of Stan Swamy, a Theologian and tribal rights campaigner, who passed away while being held in detention. One of the main causes of Fr. Swamy's mortality as a detainee in a hospital is thought to be the difficulty in getting bail, which violates fundamental rights. Thousands of people have been detained as a result of these three laws (UAPA, PMLA, and 153A IPC), the majority of whom are tangled up in the legal system's onerous machinery.

UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

The UAPA, which was initially passed in 1967, underwent amendments in 2004 and in 2008 to become a model anti-terror statute. The Unlawful Activities (Prevention) Amendment Bill, 2019⁵ was approved by Parliament in August 2019 and allows for the designation of people as terrorists on specific criteria specified in the Act. It departs from the standard legal procedure and establishes an extraordinary regime where the accused's constitutional protections are limited to address acts related to terrorism. Key elements of UAPA: The Act, among other

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¹ Code of Criminal Procedure 1973

² Prevention of Money Laundering Act 2002

³ Indian Penal Code 1860, s 153A

⁴ Indian Penal Code 1860, s 295a

⁵ Unlawful Activities (Prevention) Amendment Bill 2019

things, specifies unique procedures for dealing with terrorist acts. It tries to effectively deter organizations engaged in illegal operations in India. Any action conducted by a person or group with the intent to undermine India's territorial sovereignty and integrity is referred to as unlawful activity. National Investigation Agency (NIA) approval for property seizure: By the Act, any investigating officer must get the Director-General of Police's prior approval before seizing properties that may be related to terrorism. The Bill further states that the Director-General of said National Investigation Agency (NIA) must approve the seizure of such property if the investigation is being carried out by an officer of the NIA. The National Investigation Agency's (NIA) investigation: By the Act's provisions, officials with the level of Deputy Superintendent or Assistant Commissioner of Police or higher may investigate cases. The Bill also gives NIA officials with the rank of Inspectors or higher the authority to conduct investigations.

WHO ARE THE POTENTIAL TERRORISTS UNDER UAPA?

The Act states that the union government might declare or designate a group as a terrorist organization if it: engages in or supports terrorism; (ii) plans or encourages terrorism; or (iii) engages in any other aspect of terrorism. The Bill also gives the government the authority to label anyone as a terrorist for the same reasons. Punishment under UAPA: The death sentence and life imprisonment are the two highest penalties under UAPA. The Act grants the central government limitless authority; as a result, if it determines certain conduct to be illegal, it may declare it to be so in an official gazette. Under UAPA, charges may be brought against both foreigners and Indians. Whether the conduct was committed in a foreign country or anywhere outside of India, the offenders will face the same charges. In an open letter, the Constitutional Conduct Group (CCG) has received support from over 100 former civil servants who demand that such stringent Unlawful Activities (Prevention) Act (UAPA) be amended because of its numerous shortcomings and vulnerabilities, which allow for widespread abuse and misuse by some politicians and aggressive police officers. According to CCG, numerous retired Supreme Court justices concurred during a recent seminar that the UAPA should not be kept on the books in its current form. We agree with them that such a strict regulation appears out of place in a civilized society, particularly in a nation that proclaims itself the largest democracy in the world, the statement says. The opposition expressed their objection to the amendments, claiming that they violated the federal government established by the Indian Constitution. Before being found guilty in a court of law, a person cannot be labeled as a "terrorist." This

violates the legal maxim "innocent until proven guilty." A person's reputation, profession, and way of life will suffer permanent harm as a result of mistaken identification. Declaring someone 'a terrorist' poses difficult constitutional issues and the possibility of misuse.

According to the statement, two instances of misuse include the arrests of Devangana Kalita as well as Natasha Narwal, two students. As the "most startling of the arrests there under UAPA," it also refers to the detention of activists, lawyers, and scholars there in the Elgar Parishad case. The statement acknowledges that the 'severe stringency' of the law is the responsibility of both the UPA and NDA governments, but it emphasizes how much more people have been arrested under UAPA since 2015.

PREVENTION OF MONEY LAUNDERING ACT (PMLA)

To curtail money laundering in India, the Indian Parliament passed the Prevention of Money Laundering Act (PMLA) in 2002. The PMLA was passed into law in 2002, and it became effective in 2005. Three amendments to the PLMA have been made, in 2009, 2009, and 2012. The primary goal of this act is to combat money laundering or the process of transforming illicit money into white money.

Objectives: Preventing money laundering is one of the PMLA's primary goals. Taking care of any other issues related to or incidental to the conduct of money laundering. Preventing money from being used for economic crimes and criminal activities. Allowing for the forfeiture of assets connected to or obtained by money laundering. The Enforcement Directorate (ED) must oversee looking into violations of the PMLA. Furthermore, the Financial Intelligence Unit - India (FIU-IND) is the national organization responsible for collecting, processing, analyzing, and disseminating data about questioned financial transactions. The Schedules to the PML Act list several offenses (also known as scheduled offenses) that must be committed to ascertain whether the crime of money laundering is being committed. These include specific crimes listed under the Indian Penal Code (IPC),⁶ the Arms Act of 1959⁷ (relating to, among other things, the production and sale of weapons and ammunition in violation of the Arms Act), Wildlife (Protection) Act of 1972,⁸ the Immoral Traffic (Prevention) Act of 1956,⁹ the Narcotic

⁶ Indian Penal Code 1860

⁷ Arms Act 1959

⁸ Wildlife (Protection) Act 1972

⁹ Immoral Traffic (Prevention) Act 1956

Drugs and Psychoactive Substances Act.¹⁰ Moreover, the Black Money Act's section 51 offense of making a deliberate try to evade taxes becomes a scheduled crime under the PML Act if it has cross-border repercussions.

Punishments: People convicted of money laundering may face a variety of penalties:

Money laundering is penalized by a minimum of three years in prison and a maximum of seven years imprisonment or a Fine. Withholding, taking possession of documents, and/or confiscating assets obtained through criminal activity. Money laundering offenses are punishable by up to 10 years in prison and a fine under the Narcotic Drugs and Psychotropic Substances Act of 1985. Money laundering offenses are punishable under the PML Act for both natural and legal persons. As defined in the PML Act, "person" refers to people, businesses, associations of people (whether or not they are legally recognized as such), artificial juridical persons, as well as the offices and branches that belong to or are under the authority of any kind of natural or legal person.

SECTION 153A OF IPC

The IPC's Section 153A aims to penalize people who engage in inciting animosity between various groups based on language, caste, religion, race, or other factors. The clause imposes liability on individuals whoever— (a)promotes or seeks to promote discord or thoughts of enmity, hatred, or ill-will between various religious, racial, linguistic, or regional groups, castes, or communities through words, whether spoken or written, signs, or other visible representations, or based on birthplace, residence, language, caste, or community, or any other basis whatsoever, (b)commits any act that undermines the preservation of harmony between various castes, communities, or racial, linguistic, or regional groups and that upsets or if it is likely to disrupt public tranquility,(c) assist in the organization of certain movements, training drills that incite criminal force and violent acts against members of some of the other racial or religious groupings. The offense established by this section is certainly grave and of severe nature, because Section 153A makes persons who sow discord and hostility between a variety of groups through speech, comments, or even by using violence or illegal action, criminally liable. As a result, the violation of Section 153A constitutes a cognizable offense, enabling the

¹⁰ Narcotic Drugs and Psychoactive Substances Act 1985

arrest of the accused without the need for a warrant by the police. The defendant is tried by a magistrate of the first class, and the crime is non-bailable.

Punishments: The accused is eligible for a sentence of up to three years in prison, a fine, or both. It's intriguing to note that the same sentence, a maximum of five years in prison or a fine, or both, may apply when the offense is made in a religious place.

WHAT DO THESE LAWS HAVE IN COMMON?

According to the UAPA, a group of people or an association is considered "illegal" if they engage in behavior such as speaking, writing, or acting in any way that may be seen as supporting a demand for the "cession of a portion of the land of India" or its "secession," or if they do anything else that could endanger India's territorial integrity or sovereignty. The accuser does not need a lot of evidence to have been charged under UAPA. Being imprisoned is usually a certainty because it is regarded as such a serious offense. However, the fact that obtaining bail when facing charges under the UAPA, is essentially impossible, is a bigger problem. These laws are serving a different function than what was intended when these factors are combined with the slow-moving legal system.

To measure this, we'll examine three factors.

- 1) the number of arrests and charge sheeting rate
- 2) The rate of pendency
- 3) The conviction rates

The most recent information provided in the Lok Sabha shows that between 2018 and 2020, 4690 persons were detained under the UAPA, but just 149 of them were convicted. Every year, Uttar Pradesh topped the list with 1338 arrests and 83 convictions altogether. There was only one conviction out of the 1319 UAPA cases that were brought in the northeastern states between 2018 and 2020. With 943 cases and no convictions, Manipur stands out in particular. The problem in this state is that getting bail is difficult for those who are charged.

None of the 1338 individuals detained under the UAPA were granted bail. There are a few exceptions, though. In Tamil Nadu, of the 415 arrested, 358 got bail. And PMLA (Prevention of Money Laundering Act) is the most recent newsmaker. Let's examine the data provided by

the Finance Ministry. Since Financial Year 2020, when 562 cases have been booked, the total of PMLA cases reported has utterly exploded. The following year, there were 981 cases under PMLA, and by 2022, there were 1180. Thus, out of the 3985 cases that were reported throughout 10 years, 3555 have only been recorded since 2014. Nevertheless, just 23 persons have been convicted of money laundering in trial courts under the PMLA since 2014. What does this imply, then? The accused spends most of the interim term behind bars since the UAPA and PMLA make it particularly difficult to obtain bail. Similar trends were observed in cases reported over 153A, which is when someone encourages animosity based on race, religion, or place of birth. In the last three years, the number of cases over 153A has almost doubled. Although the government does not keep records on the number of arrests made under Section 295A, which includes intentionally offending religious sentiments, the two frequently overlap. 323 cases were filed in 2014, and 323 more in 2017. 934 cases were submitted in a burst, and by 2020, there had been 1804 cases. That's 749 more than the year before. Intriguingly, when it regards Section 153A, Tamil Nadu witnessed the highest number of complaints filed and the highest increase, going from 46 cases registered between 2015 and 2017 to 189 cases in the 2018 to 2020 timeframe.

Filing a charge sheet would be the following action.

The percentage of charge-sheeted cases compared to reported instances is known as the charge-sheeting rate. Only 27% of cases filed under Section 153A resulted in charge sheets in 2020, and with UAPA, that percentage is considerably lower at just 15.8%. When we look at the pendency rate¹¹, these figures now sort of flip from lowest to highest. With 85% of cases still pending an investigation, UAPA cases are at the top of the list, while Sec. 153A is right behind them with 64.3% of cases still unresolved. Then there is the conviction rate, which is determined by using the cases that result in conviction as a proportion of the cases that had their trials completed in 2020. So, let's look at Section 153A, and as you might expect, we're back at the bottom. Only 20.2% of the cases that went to trial resulted in a guilty verdict. The percentage for UAPA is slightly higher, at 21.1%. It should be noted that 153A bail is generally easier to obtain than UAPA bail. However, this does not indicate that the court's decision will be rendered any sooner. These three laws have seen the arrest of thousands of people, most of

¹¹ The police pendency rate measures the proportion of cases that are still under investigation at the end of 2020 compared to those that are scheduled for inquiry at the beginning of the year

whom are stuck in the slow-moving wheels of the justice system. The verdict is frequently delayed for months or even years.

CONCLUSION

Prevention of Money Laundering Act (PMLA), the Unlawful Activities (Prevention) Act (UAPA), & Section 153A of the Indian Penal Code (promote hatred amongst various groups based on religion, race, place of birth, or domicile) are all related. Recent days have seen an increase in cases brought under these statutes and sections, but conviction rates have remained low. A typical example of a moral dilemma is where to define the boundary between individual liberty and the state's duty to guarantee security. The state, judiciary, and civil society are responsible for finding a balance between constitutional freedoms and the necessity of counterterrorism efforts. Before being found guilty in a court of law, a person cannot be labeled as a "terrorist." This violates the legal maxim "innocent until proven guilty." The judiciary should play a bigger part in this situation by thoroughly reviewing the suspected misuse situations. Under PMLA, it has become the responsibility of the accused to establish their innocence. Without a question, terrorism poses a serious threat that needs to be addressed with strict anti-terrorist laws. Thousands of people have been detained as a result of these three laws (UAPA, PMLA, and 153A IPC), the majority of whom are tangled up in the legal system's onerous machinery. Prevention of the Money Laundering Act, the Unlawful Activities (Prevention) Act (UAPA), & Section 153A of the Indian Penal Code are all related. The commonality for all these laws is lower convictions.