

BEYOND THE ECHO CHAMBER: A FRESH LOOK AT UAPA'S CONSTITUTIONALITY & NEED

Vedendra Prasad*

INTRODUCTION

The Unlawful Activities (Prevention) Act, 1967 (referred to as UAPA hereafter), stands as a constitutional law that plays a vital role in protecting the fundamental rights of the people by restricting the fundamental rights of some. It maintains a delicate balance between national security and fundamental rights. However, UAPA has not been a stranger to the limelight of controversies. It is claimed to be a law that is violating the Indian Constitution as it is impeding the fundamental rights that are enshrined in it. It is important to recognize that the scope of the issue at hand transcends naïve legal arguments about the protection of fundamental rights, the arguments touch upon the very safety of our nation and the essence of humanity. Terrorism, unlike any other crime, poses a grave threat to our collective security and well-being. This article delves into the significant need of the UAPA in safeguarding our nation and how UAPA stands as a constitutional law despite all the heavy criticisms that it finds itself surrounded with. Most of the controversial sections of the act are dealt with in this article to present heavily backed arguments about its constitutionality. An analysis of India as a state is done to understand why it is inherently critical to have a stringent anti-terror law like the UAPA in this country.

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BACKGROUND AND HISTORY OF THE UAPA

The Unlawful Activities (Prevention) Act (UAPA) was enacted in 1967 by the Indian government in response to the increasing concerns regarding unlawful activities and the pressing need for a robust legal framework to combat terrorism. At the time of its enactment, India was facing numerous internal security challenges, including insurgencies, separatist movements, and extremist ideologies. The UAPA aimed to provide law enforcement agencies with the necessary tools and powers to prevent and effectively respond to such unlawful activities. UAPA empowers law enforcement agencies to take preventive measures to counteract terrorism and unlawful activities.¹ One of the key provisions of the Act is the designation of organizations as unlawful. This allows authorities to identify and target

*AMITY UNIVERSITY, PATNA.

¹An Overview : UAPA and The Concerns (Civils Daily February 18, 2023)

<<https://www.civildaily.com/news/uapa-and-its-misuse/>> accessed on 18July 2023

organizations that are involved in or support terrorism and other unlawful activities. By designating an organization as unlawful, the government can take action against its members, curtail their activities, and cut off their funding sources. It grants law enforcement agencies the authority to arrest individuals suspected of being involved in unlawful activities. This power of arrest enables the authorities to apprehend potential terrorists and prevent them from carrying out their nefarious plans. The Act provides provisions for the admissibility of confessions made to police officers, which can be used as evidence during trials. However, these provisions have been subject to criticism due to concerns about potential misuse and abuse. It is a law that has also seen many major amendments².

In 2004, the UAPA was amended to align with global counter-terrorism efforts and to provide additional powers to law enforcement agencies. The amendments expanded the definition of terrorist acts, enhanced the punishment for terrorist activities, and facilitated international cooperation in counter-terrorism efforts. The amendments also strengthened provisions related to the freezing and seizure of funds used for unlawful activities, making it more difficult for terrorist organizations to access financial resources. However, despite its intentions and subsequent amendments, the UAPA has been a subject of controversy. Critics argue that the Act infringes upon the fundamental rights guaranteed by the Indian Constitution. They contend that certain provisions of the Act, such as the broad and ambiguous definition of "unlawful activities," give excessive powers to law enforcement agencies, which can potentially lead to arbitrary arrests, curtailment of free speech, and stifling dissent. Journal of Legal Research and Juridical Sciences

The Act has also faced criticism for its potential for misuse and abuse. There have been instances where the UAPA has been used to target political dissenters, activists, and marginalized communities rather than solely focusing on combating terrorism. Prolonged detention without trial and allegations of torture have raised concerns about the Act's potential for misuse and its impact on individual rights. However, to address these concerns, the UAPA includes certain safeguards. The Act requires the prior approval of the government for the declaration of an organization as unlawful, providing a measure of oversight to prevent arbitrary designations. The Act also provides for judicial oversight through the

² NitikaKhaitan, The UAPA amendments: What it really means. (Hindustan Times 9 August)-<<https://www.hindustantimes.com/analysis/the-uapa-amendments-what-it-really-means/story-9gOsDNk1syqxyYd0iFeHDN.html>>accessed on 18July 2023

requirement of periodic review and the provision for individuals to challenge their designations or arrests before a court of law.

SECTION WISE ANALYSIS

Many sections of this act have come under the limelight as the act came into effect. It is alleged that these sections violate the fundamental rights protected by the Constitution. The sections we will discuss by virtue of this article are 2(O), 45, 43D (5), 43E, 46, 28, and 38.

However, before we dive into the specific sections of this act we need to also shed some light upon the reasonable restrictions provided under **Art.19 (a)** and which are imposed in the interests of public order and the security of the State. Terrorism is something that needs to be mitigated with the utmost sincerity and urgency. There is no bigger threat to the safety of a country's citizens than these terror mongers.

In the words of, **vJ. Durga Das Basu**³: *“Social interest in individual liberty may well have to be subordinated to other greater social interests.¹ Indeed, there has to be balance between individual rights guaranteed under art.19(1) and the exigencies of the state which is the custodian of the interest of the general public, public order, decency or morality and of the other public interests which may compendiously be described as social welfare.”* *“Preventive detention is resorted to in such circumstances that the evidence in possession of the authority, is not sufficient to make a charge or to secure the conviction of the detenu by legal proofs but it may still be sufficient to justify his detention on the suspicion that he [or she] would commit a wrongful act unless he [or she] is detained.”*

Something worth remembering is that in the judgement of the **KedarNath**⁴ case, The Supreme Court firmly established that reasonable restrictions on freedom of speech and expression are not in contravention of the Constitution, as long as they serve the purpose of ensuring the security of the state and preserving public order. We must also not forget that *‘It is both natural and rational for individual to surrender some freedoms in order to achieve security and protection’*, This is the widely accepted theory of Social Contract by Hobbes.

³ Durga Das Basu, commentary on the constitution of India, (edn. 9th 2014, Lexis Nexis).

⁴ KedarNath Singh vs State of Bihar; 1962 AIR 955, 1962 SCR Supl. (2) 769.

SECTION 2(O)

One of the key arguments made by the critics is that Section 2(o) of the UAPA, which defines "unlawful activities," is overlapping Section 124A (sedition law). However, when understood carefully we find that while the sedition law deals with terms such as hatred, contempt, and disaffection towards the government, the UAPA has been enacted specifically to prevent and punish acts of terrorism. These two laws have distinct subjects and should not be conflated.

The preamble of the Indian Constitution establishes India as a sovereign, socialist, secular, and democratic republic. The term "unlawful activities" within the UAPA is carefully defined to encompass any act that poses a threat to these essential features of the nation. UAPA's provisions focus on acts that jeopardize the security and sovereignty of India. It is crucial to recognize that the strength of India's constitution lies in its ability to adapt and evolve over time. The dynamism of the legal framework is essential to ensure that it remains consistent with the rapidly changing needs of society. Overly rigid laws, incapable of accommodating new developments or unforeseen circumstances, risk becoming ineffective and outdated, leaving room for loopholes to emerge. India's constitution has been hailed as one of the most successful in the world precisely because it allows for the continuous adaptation and development of laws. This adaptability ensures that the legal system remains relevant and responsive to the evolving social, political, and economic landscape of the country. As society progresses, new challenges and complexities arise, requiring the formulation of laws that effectively address emerging issues. The need for adaptable laws is particularly evident in areas such as technology, cybercrime, and terrorism, where the nature of offences constantly evolves and necessitates timely and targeted legal responses. By embracing the principle of adaptability, India's legal system can effectively respond to emerging threats and safeguard the rights and interests of its citizens. Flexibility allows for the identification of loopholes and shortcomings in existing laws, prompting necessary amendments or the introduction of new legislation to address prevailing concerns.

Moreover, a dynamic legal framework encourages innovation, growth, and progress. It creates an environment that fosters creativity, entrepreneurship, and the development of new ideas. By providing legal support and protection to emerging industries and sectors, India can nurture innovation and attract investment, thereby boosting economic growth and development. Adaptability in law is vital for maintaining societal harmony and social justice. It allows for the recognition and rectification of any imbalances or inequities that may arise.

As the needs and aspirations of the population evolve, the law must evolve accordingly to ensure equal opportunities and protection for all individuals, regardless of their backgrounds or circumstances.

In the landmark judgement of the **Shreya Singhal**⁵ case, the court observed that vagueness cannot be ground to hold a law unconstitutional. It was held that:

- i. *“Vagueness is not a ground to declare a statute unconstitutional.”*
- ii. *“Mere possibility of abuse of a provision cannot be a ground to declare a provision invalid.”*

Also, we must understand the core nature of this law, as it is a precautionary law first and a punitive law second.

SECTION 20 AND 38:

Section 20 and Section 38 of the Unlawful Activities (Prevention) Act (UAPA) are two provisions that hold significant importance in addressing different aspects of terrorism-related offences in India. These provisions aim to combat terrorism by targeting individuals involved in the commission of terrorist acts and those associated with terrorist organizations, respectively.

Section 20 of the UAPA focuses on punishing individuals directly involved in the commission of terrorist acts. It states that any person who is a member of a terrorist gang or a terrorist organization and is involved in a terrorist act shall be liable for imprisonment, which may extend to life imprisonment and a fine. This provision specifically targets those who actively participate in planning, executing, or supporting terrorist activities. By imposing severe penalties, Section 20 aims to deter individuals from engaging in acts of terrorism and ensure that those responsible for such acts are held accountable.

This provision establishes the link between membership in a terrorist group and the commission of terrorist acts. It recognizes that individuals who actively participate in terrorist activities pose a grave threat to national security and the safety of the public⁶. The inclusion of the term "terrorist act" in Section 20 further emphasizes the seriousness of the offences

⁵ Shreya Singhal v. Union of India; AIR 2015 SC 1523.

⁶ MRITYUNJAY BHARDWAJ, UAPA ACT: A BLACK LETTER LAW OR A NECESSARY EVIL (Lexlife India30 October) <<https://lexlife.in/2021/10/30/uapa-act-a-black-letter-law-or-a-necessary-evil/>>accessed on 18July 2023

covered by this provision. A "terrorist act" refers to any act committed with the intention to threaten the unity, integrity, security, or sovereignty of India, or to strike terror in the people or a section of the people. This broad definition encompasses a range of activities, including bombings, hijackings, assassinations, and any other act intended to cause harm or incite fear among the population. By imposing severe punishments, including the possibility of life imprisonment, Section 20 aims to deter individuals from engaging in acts of terrorism. The intention is to create a strong disincentive for individuals to join or actively participate in terrorist organizations and to discourage any support or facilitation of terrorist activities. These stringent penalties serve as a deterrent by sending a clear message that involvement in terrorism will not be tolerated and will be met with severe consequences.

On the other hand, Section 38 of the UAPA deals with offences related to membership in a terrorist organization. This provision targets individuals who associate themselves or profess to be associated with a terrorist organization to further its activities. The term "membership" in this context is broadly defined to include both active association and professing association with the organization. According to Section 38, individuals found guilty of this offence can face imprisonment for a term not exceeding ten years, a fine, or both. The primary objective of this provision is to discourage individuals from joining or supporting terrorist organizations, as their association contributes to the facilitation and perpetuation of terrorist activities. Under Section 38 of the UAPA, individuals found guilty of membership in a terrorist organization can face imprisonment for a term not exceeding ten years, a fine, or both. The objective of this provision is to discourage individuals from joining or supporting terrorist organizations, as their association contributes to the facilitation and perpetuation of terrorist activities. By criminalizing membership in a terrorist organization, Section 38 recognizes the significance of the support network and infrastructure that sustains terrorist activities. Individuals who associate themselves with such organizations provide them with resources, manpower, and assistance, which enables the organizations to carry out their nefarious acts. The provision aims to disrupt and dismantle these networks by holding individuals accountable for their involvement.

It is important to note that membership in a terrorist organization is not limited to active participation in its activities. The provision also encompasses those who profess to be associated with a terrorist organization and recognizes the potential influence and support individuals can provide, even if they do not directly engage in terrorist acts. By targeting both active and professing members, Section 38 aims to discourage any form of association with

terrorist organizations, thus reducing their support base. The punishment for membership in a terrorist organization is imprisonment for a term not exceeding ten years, a fine, or both. The severity of the punishment reflects the serious nature of associating oneself with a terrorist organization and contributing to its activities. By imposing significant penalties, the provision intends to create a strong deterrent effect, dissuading individuals from joining or supporting such organizations. It also emphasizes the responsibility of individuals to disassociate themselves from terrorist organizations. It places the burden of proof on the accused, requiring them to prove that the organization was not declared as a terrorist organization at the time of their association and that they have not participated in its activities during its inclusion as a terrorist organization. This requirement ensures that individuals cannot escape liability by claiming ignorance or dissociation after the organization has been recognized as a threat.

It is important to recognize the distinctive roles played by Section 20 and Section 38 in combating terrorism. Section 20 primarily focuses on punishing individuals directly involved in the commission of terrorist acts, while Section 38 addresses the issue of membership in terrorist organizations. These provisions collectively aim to disrupt and dismantle terrorist networks by targeting both the perpetrators and supporters of terrorism. Moreover, the distinction between these provisions is essential in ensuring a comprehensive legal framework that addresses various aspects of terrorism-related offences. By specifically identifying and penalizing individuals involved in the commission of terrorist acts, Section 20 serves as a deterrent and reinforces the gravity of such offences. Simultaneously, Section 38 tackles the issue of association with terrorist organizations, recognizing the role played by individuals who support and facilitate the activities of these organizations.

SECTION 43D (5):

One provision that has notoriously drawn attention and debate itself is Section 43D (5) of the UAPA. This provision, despite being subject to scrutiny, plays a vital role in upholding the constitutional integrity of the UAPA and ensuring its effectiveness in addressing the grave threat of terrorism. This article delves into the constitutional justification and necessity of Section 43D (5) in the UAPA. It plays a significant role in maintaining the delicate balance between individual rights and the broader interests of society, particularly when it comes to cases related to terrorism. This provision acts as a stringent safeguard that prevents the indiscriminate granting of bail to individuals accused of terrorist activities.

Terrorism is a grave threat to national security and public safety. It often involves acts of violence, the destabilization of society, and the endangerment of innocent lives. Recognizing the severity and unique nature of these offences, the legislature has implemented measures to effectively combat terrorism while upholding the principles of justice. Section 43D (5) of the UAPA imposes a higher threshold for granting bail to individuals accused of terrorist activities. It places the burden of proof on the accused to demonstrate that there are reasonable grounds to believe that the accusation against them is not prima facie true. This means that the accused must provide substantial evidence to rebut or contradict the materials and evidence collected by the investigating agency. By imposing such a stringent requirement, Section 43D (5) ensures that bail is not granted indiscriminately in terrorism-related cases. It aims to prevent potential risks to national security and public safety by thoroughly scrutinizing the involvement of the accused in terrorist activities. This provision helps prevent individuals who may pose a genuine threat from being released into society, where they could potentially continue or facilitate their illicit activities. Moreover, Section 43D (5) aligns with the legislative intent of the UAPA, which seeks to effectively combat terrorism. It recognizes the need for a higher level of scrutiny and caution when dealing with cases involving terrorism. The provision aims to strike a balance between protecting individual rights and preventing the misuse of bail provisions that could compromise national security. While it is essential to uphold the principles of justice, including the presumption of innocence and the right to a fair trial, it is equally crucial to prioritize the safety and security of society as a whole. Section 43D (5) ensures that the process of granting bail in terrorism-related cases involves a thorough assessment of the evidence and the potential risks posed by the accused.

According to the landmark verdict in the **Dr. P. Varavara Rao**⁷ case, the Supreme Court made it clear that the presence of statutory restrictions, including Section 43-D (5) of the UAPA, does not automatically strip the constitutional courts of their power to grant bail when there are violations of Part III of the Constitution. The court emphasized the compatibility of both statutory restrictions and constitutional powers, highlighting the need to strike a balance. While the courts should acknowledge the legislative policy against granting bail at the beginning of proceedings, the strictness of such provisions should diminish if the trial is unlikely to be completed within a reasonable time and the accused has already served a

⁷ Dr. P. V. Varavara Rao v. National Investigation Agency; Cri. Appeal No. 1206 of 2022 (Arising out of SLP(crl.) No. 5913 of 2022) and Cri. Appeal No. 1207 of 2022 (Arising out of SLP (crl) No. 5931 of 2022).

significant part of the prescribed sentence. This approach safeguards against Section 43-D (5) of the UAPA being used as the sole basis for denying bail or violating the constitutional right to a speedy trial.

“It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of the UAPA per se does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution.”

The inclusion of the term '*prima facie true*' in the Terrorism and Disruptive Activities (Prevention) Act (UAPA) is a vital aspect of its provisions regarding preventive detention. This expression plays a crucial role in ensuring the effectiveness of the law. In situations where individuals are detained on preventive grounds, it can be challenging to immediately gather substantial evidence to establish their involvement in terrorist activities. Hence, it becomes imperative to deny bail when the court is convinced that there are reasonable grounds to believe that the accusation against the person is *prima facie true*. Preventive detention allows authorities to detain individuals to prevent them from engaging in activities that may pose a threat to national security or public order. Unlike ordinary criminal cases where evidence is typically gathered before an arrest, preventive detention often relies on intelligence and initial information to assess the potential threat posed by an individual. In such circumstances, it may not be feasible to gather concrete evidence right away due to the nature of terrorist activities, their clandestine nature, and the need to protect sensitive sources and methods. By using the expression '*prima facie true*,' the UAPA recognizes the challenges in collecting immediate and conclusive evidence in preventive detention cases. It acknowledges that the evidence gathered by the investigating agency, at the stage of initiating proceedings, holds significant weight. The evidence must be strong enough on its face to establish the accused's complicity in the alleged offence unless it is effectively rebutted or contradicted.

When interpreting S. 43-D (5) of the UAPA the SC of India, in the case of **SudeshKedia**⁸, held that: *“The expression “prima facie true” in 43-D(5) would mean that the materials/evidence collated by the investigating agency in reference to the accusation against the accused concerned in the first information report must prevail until contradicted and overcome or disproved by other evidence.”*

⁸ SudeshKedia v Union Of India; AIR 2021 SC 1892 : 2021 CriLJ 2396 : (2021) 4 SCC 704.

Similarly, **J. N.V.Ramana, J. Surya Kant and J. Aniruddha Bose, in Union Of India vs. K.A. Najeeb**⁹ refused to interfere in the decision of the Hon'ble Kerala HC that directed the release of the respondent Najeeb on bail. The bench held: *"It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution."* and in the **Zahoor Ahmad Shah**¹⁹ case, it was held that: *"By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise."*

SECTION 43E:

Section 43E of the Terrorism and Disruptive Activities (Prevention) Act (UAPA), when read in conjunction with Section 15, establishes a presumption of guilt against the accused if they are found to be in possession of weapons or any evidence linking them to the offence. This provision states that unless the contrary is shown by the accused, they will be presumed to be guilty. The rationale behind this provision is to address the serious nature of terrorism-related offences and the inherent danger associated with the possession of illegal arms. Possessing illegal weapons or evidence connecting an individual to a criminal act is considered an offence in itself. It demonstrates both the guilty intention (*mens rea*) and the wrongful act (*actus reus*) of the individual. In such cases, granting the accused the benefit of the doubt regarding their intentions becomes highly unreasonable. The presumption of guilt under Section 43E ensures that the burden of proof is shifted to the accused to provide evidence to the contrary.

This principle of reversing the burden of proof is not unique to terrorism-related offences. In cases involving heinous crimes like rape or terrorism, where the accused is in possession of information or has knowledge of every incident committed, the burden of proof may shift to the accused once the prosecution has established a *prima facie* case. This concept is often referred to as a *"reverse onus clause."* The application of Section 43E, with its presumption of guilt, serves as a powerful deterrent against various offences. It provides protection to the public and helps maintain morality within society. By placing the burden on the accused to

⁹ Union of India v. K. A. Najeeb; [(2021) 3 SCC 713]; See Also, Jagjeet Singh v. Ashish Mishra , CRIMINAL APPEAL NO.632 of 2022, [Arising out of Special Leave Petition (Crl.) No. 2640 of 2022]; See Also, Babba v. State of Maharashtra, (2005) 11 SCC 569 : (2006) 2 SCC (Cri) 118; See Also, Paramjit Singh v. State (NCT of Delhi), AIR 2000 SC 3473 B, 2000 CriLJ 3184, (1999) 9 SCC 252.

prove their innocence, the provision contributes to the promotion of a fair trial and ensures that those involved in terrorism-related activities are held accountable.

The constitutionality of Section 43E can be upheld based on the objective of combating terrorism, protecting public safety, and maintaining social order. It recognizes the gravity of possessing illegal weapons and the inherent risks associated with such actions. By establishing a presumption of guilt, the provision strikes a balance between the rights of the accused and the interests of society. In summary, Section 43E of the UAPA, coupled with Section 15, creates a presumption of guilt against individuals found in possession of weapons or evidence linking them to the offence. This provision addresses the seriousness of terrorism-related offences and shifts the burden of proof to the accused. It acts as a deterrent, protects public safety, promotes fair trials, and maintains social morality. Considering its purpose and objectives, Section 43E can be deemed constitutionally valid. A similar view was held in the supreme court case of **State of West Bengal v. Mohd. Omar (2000)**¹⁰: *“When the court is satisfied with the proof provided by the prosecution, then the burden of proof shifts to the accused as it is observed that it is only the accused who knows every incident that has been committed. This is also known as the reverse onus clause.”*

The decision supports the notion that in exceptional cases, like terrorism-related offences, where the accused is in possession of critical information or has direct involvement in the crime, the burden of proof can shift to the accused. This approach ensures that those involved in serious offences are held accountable and that the interests of public safety and national security are protected. The relevance of this case lies in its affirmation of the constitutionality of the ‘reverse onus’ clause and the validity of provisions like Section 43E. It further highlights the importance of placing the burden of proof on the accused in certain circumstances, where their knowledge and involvement in the offence can significantly impact the outcome of the trial. Overall, the State of West Bengal v. Mohd. Omar's case reinforces the significance of the reverse onus clause and supports the constitutionality and relevance of Section 43E of the UAPA. It provides legal precedent for the shifting burden of proof in cases involving serious offences like terrorism, emphasizing the need to ensure accountability and protect public safety.

¹⁰ State of West Bengal v. Mir Mohd. Omar, Criminal Appeal No. 467-468 of 1989.

SECTION 45:

Section 45 of the Terrorism and Disruptive Activities (Prevention) Act (UAPA) is a significant provision that plays a crucial role in maintaining the integrity and proper administration of the act. This section addresses the sensitive nature of terrorism-related offences and acknowledges the potential for misuse if the power to file cases under UAPA is not regulated effectively. Terrorism is a grave threat to national security and the sovereignty of a nation. Recognizing the need for a specialized investigation agency, the National Investigation Agency (NIA) was established to investigate and prosecute offences that affect the sovereignty, security, and integrity of India. The formation of agencies like the NIA demonstrates the commitment to addressing terrorism-related activities at the national level. Section 45, thus, empowers the central government or the state government, accountable to the legislative bodies, to file cases under UAPA. This provision ensures that the power to initiate legal proceedings under the act is entrusted to entities that can be held responsible for their actions. By vesting this power in the government, the aim is to prevent the potential misuse of UAPA and safeguard against arbitrary or unfounded charges being brought against individuals.

If Section 45 of the Terrorism and Disruptive Activities (Prevention) Act (UAPA) did not exist, the Magistrate would have to take cognizance and the **S.190 of the Code of Criminal Procedure** states that, *Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under subsection (2), may take cognizance of any offence-*

- (a) upon receiving a complaint of facts which constitute such offence;*
- (b) upon a police report of such facts;*
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*

This would create the possibility for anyone to file a case under the act, which could lead to misuse and abuse of its provisions. It would undermine the integrity of the legal process and could result in harassment and wrongful prosecution of individuals. The absence of restrictions on who can file a case under UAPA would create a situation where individuals or

organizations with malicious intent could exploit the act for personal vendettas, political motives, or to settle personal scores. This would not only violate the principles of justice and fairness but also jeopardize the rights and freedoms of individuals. Moreover, the absence of proper regulations regarding the initiation of cases under UAPA could result in a flood of frivolous or baseless cases, overwhelming the already burdened judicial system. This would not only impede the efficient administration of justice but also divert resources and attention away from genuine cases that require thorough investigation and prosecution. It is crucial to exercise caution and ensure that the provisions of UAPA are not subjected to abuse. The stringent nature of the act necessitates responsible and accountable action. The power to file cases under UAPA should be wielded judiciously, with due regard for the rights and liberties of individuals. This approach safeguards against the misuse of the act and upholds the principles of justice and fairness.

Therefore, Section 45 of the UAPA, which entrusts the power to file cases to the central government or the state government, plays a vital role in ensuring the proper administration of the act. By placing accountability on these entities, the risk of misuse or arbitrary use of UAPA provisions is mitigated. It is essential to exercise caution and responsibility in wielding the power to file cases under UAPA, thereby safeguarding the integrity of the act and protecting the rights of the individuals involved. The existence of Section 45 in UAPA serves as a safeguard against the potential misuse and abuse of the act by placing restrictions on who can file cases. By entrusting this power to accountable entities, the act maintains its integrity and ensures that cases are pursued based on sound legal grounds. This protects individuals from unwarranted harassment, upholds the principles of justice, and maintains public trust in the legal system.

SECTION 46:

Section 46 of the Terrorism and Disruptive Activities (Prevention) Act (UAPA) is a crucial provision that allows for the admissibility of evidence collected through the interception of wire, electronic, or oral communication. The admissibility of such evidence in the court has been a topic of debate, but it is argued that this section is constitutional and necessary in the context of combating terrorism.

What is needed to be understood by many is that the right to privacy does not extend to individuals who have an agenda to cause acts of terrorism. In the interest of national security and public safety, evidence obtained through interception should be admissible in a law like

UAPA. It is not unprecedented for such evidence to be accepted in courts for various other offences. Precedents exist where recorded conversations have been allowed as evidence to support witness testimony or establish the occurrence of certain events. In cases like **S. Pratap Singh v. State of Punjab**¹¹ and **Yusufalli Esmail Nagree v. State of Maharashtra**¹², the courts have upheld the admissibility of intercepted conversations as evidence.

The early common law position also emphasized the relevance of the evidence itself rather than the manner in which it was obtained. The principle was established that the admissibility of evidence is determined by its relevance, regardless of how it was obtained.

In the case of **R v. Leatham**¹³, we find the often-quoted statement of **Judge Crompton**: "It matters not how you get it; if you steal it even, it would be admissible".

The claims of Section 46 violating the fundamental right provided under Article 21 of the Indian Constitution are also unsubstantiated. It serves as a cornerstone of individual rights, protecting the right to life and personal liberty in the face of the threat posed by terrorism, which undermines life and liberty, UAPA provides a necessary and effective means of maintaining public order and security. By granting the state the power to take proactive measures against individuals or organizations involved in terrorist activities, it enables the fulfilment of the state's obligation to protect citizens and uphold their rights. It establishes a legal framework for preventing, investigating, and prosecuting acts of terrorism, thereby ensuring the protection of life and personal liberty as guaranteed by the Indian Constitution. It allows for the admissibility of intercepted evidence and serves as an important tool in combating terrorism. It strikes a balance between national security and individual rights, considering the exceptional nature of terrorist activities. The provision aligns with the principles of relevance in evidence and the necessity to protect the fundamental rights enshrined in Article 21 of the Indian Constitution.

WHY IS UAPA INDESPENSIBLE

This issue of the safety of our nation goes beyond the bounds of simple legal arguments and speaks to the very essence of our collective security and well-being. It is not just an ordinary issue affecting the public, it's a matter of life and death for humanity itself. Murder may be a crime against the state, but terrorism is an assault on the very soul of humanity. Punishing the

¹¹ S. Pratap Singh vs The State Of Punjab; 1964 AIR 72, 1964 SCR (4) 733; See Also, State Of Punjab v. Khemi Ram, 1970 AIR 214, 1970 SCR (2) 657

¹² Yusufalli Esmail Nagree v. State of Maharashtra; 1968 AIR 147, 1967 SCR (3) 720.

¹³ R v. Leatham; (1861) 8 Cox CC 498.

perpetrators alone will not deter their evil intentions. These terrorists, hell-bent on destroying the fabric of our nation, will not stop until they are met with unwavering force and brought to justice. Their actions leave a trail of destruction, shattered lives, and broken families. The fear they instill and the pain they cause is beyond comprehension. They threaten the very essence of our existence, our freedom, and our way of life. The fight against terrorism is a fight for the soul of our nation and the future of our world.

That is exactly where UAPA comes in, it is the demonstration of balancing national security with individual freedoms. The law allows the government to take necessary action against those who pose a threat to the country, while also protecting the fundamental rights of citizens. The provisions of this law provide a balanced approach to addressing the threat of terrorism and maintaining the security of the nation. UAPA enables the Indian government to act effectively in protecting the nation, while also ensuring that the rights and freedoms of citizens are respected. This law should not be looked at with the same lens that every other law is looked at. Between 2004 to 2018 (up to 31.07.2018) around 7907 people have been killed by the LWE in different parts of India¹⁴. The majority of the civilians killed are tribal people, often branded as ‘Police informers’ before being brutally tortured and killed. The tribal and the economically underprivileged sections, whose cause the Maoists claim to espouse, have been the biggest victims of the so-called ‘protracted peoples war’ of the CPI (Maoist) against the Indian state. The Bastar event is yet another example of a well-planned and ruthlessly executed attack in a long line of similar attacks in the Maoist-infested regions of central India. Nearly 22 jawans were martyred in the attack. Such brutal and gruesome people who defy every definition of humanity and see themselves above the law have no sense of fear.

This is the reason why the UAPA Act is the only law that has had a positive effect against LWE. The Ministry of Home Affairs states, *“There has been an overall 41% reduction in violent incidents (1136 to 670) and 49% reduction in LWE-related deaths (397 to 202) in 2019 as compared to 2013. In comparison to 2018 also, the year 2019 saw a decline of 19% (833 to 670) in incidents of violence and 15% in the number of resultant deaths (240 to 202). The casualties to Security Forces declined by 22% (67 to 52) and the number of LWE cadres eliminated also declined by 35% (225 to 145)”*

¹⁴Annual Report (2021- 2022), Ministry of Home Affairs, Government of India.

Even in the Northeast, the MHA has stated that, *“The last six years have seen a significant decline in insurgency incidents by 70%, casualties of security forces personnel by 78% and civilian deaths by 80% in the region. The year 2019 recorded the lowest insurgency incidents and casualties among civilians and security forces during the last two decades since 1997.”*

Insurgent activities, such as acts of terrorism and rebellion, are detrimental to a country for various reasons. They disrupt the peace and stability of the nation, causing harm to civilians and damaging the economy. These activities also erode the trust of the people in the government, making it difficult for the government to govern effectively. UAPA is a law that aims to prevent and combat terrorism and other subversive activities in the country. The infamous Batla House Encounter¹⁵ is something this nation has witnessed with its own eyes. The incident took place a week after five serial blasts on 13 September 2008 that hit Delhi which left at least 30 people dead and over 100 injured. It was truly a commendable job by the Police, but it still took over 30 people's lives before they took action. This is where we truly see the magnitude of UAPA's need in India.

CHANAKYA'S VIEW ON NATIONAL SECURITY

We can see that UAPA is not alien legislation' to a country like India, historically we have seen various versions of laws much like UAPA. What is imperative to understand here is that the irregularities and inconvenience of this law is not a ground to advocate for its repeal¹⁶. For the same, we can look at the works of Chanakya, also known as Kautilya. He was an eminent figure in Indian history during the 4th Century BCE. He served as the esteemed teacher, advisor, and guru to Chandragupta, the first Mauryan emperor. One of Chanakya's most significant contributions to Indian political thought was his renowned book 'Arthashastra.'¹⁷ This text, regarded as a true gem, holds a paramount position as a cornerstone of classical Indian political theory. It provides comprehensive guidelines for the administration of a kingdom, offering invaluable insights into diplomacy, war, and governance. His impact on Indian history cannot be overstated. His teachings continue to resonate and shape contemporary legal issues in the country. His astute understanding of

¹⁵ All You Need To Know About Batla House Encounter And Ariz Khan's Conviction (Outlook India 16 MAR 2021) <<https://www.outlookindia.com/website/story/india-news-all-you-need-to-know-about-batla-house-encounter-and-ariz-khans-conviction/377332>> accessed on 18July 2023

¹⁶ Sanjeev Verma 'Misuse of UAPA doesn't mean there's no need for stringent laws' (Times of India 21 July 2020) <<https://timesofindia.indiatimes.com/city/chandigarh/misuse-of-uapa-doesnt-mean-theres-no-need-for-stringent-laws/articleshow/77081015.cms>> accessed on 18July 2023

¹⁷ Kautilya, The Arthashastra (Penguins Classic) (1992)

statecraft and governance remains highly relevant, and his perspectives continue to inform the thinking and decision-making processes of policymakers, politicians, and legal experts.

The Arthashastra offers invaluable advice on various aspects of governance, including law and justice. Chanakya recognized the importance of a well-functioning legal system and emphasized the need for fair and impartial administration of justice. His emphasis on the rule of law, ethical conduct, and accountability continues to be of immense significance in contemporary legal debates. His impact on contemporary legal issues, from governance and diplomacy to law and justice, is undeniable. In his book, he has written: *“Treason, treachery, revolt, and rebellion were ever-present dangers for the King. Because he was the embodiment of the state, eliminating him was the best means of capturing the state.”*

In the modern sense, the agenda behind revolt and rebellion is to overthrow the democratic system that was duly created by our constitution. the goal of rebels has always been the same, tyranny. There is a very minute yet imperative difference between protests and rebellions. Rebels can hide behind the masquerade of a protest *“Everyone posed a threat. The people of the countryside might rebel. A commander of a frontier region might want to carve out a kingdom for himself; tribal chiefs and vassal kings might seek to escape the authority of the king. All these potential traitors may act on their own, collude with each other or be instigated by the enemy king.”*

It is crucial for those in power to be alert and cautious of what is transpiring in the country. Maintaining law and order and protecting citizens is a fundamental responsibility. Being vigilant helps detect and address potential threats to national security in a timely manner. In a democracy, those in power are accountable to the people for it. *“A particular cause of the rebellion was discontent in the population. The king is advised to anticipate discontent and take steps to prevent them from becoming worse.”*

Chanakya's views shed light on the constant dangers faced by a ruler and the importance of preserving the state. In the modern context, rebellions often aim to overthrow the democratic system established by the constitution, with the rebels' ultimate goal being tyranny. It is crucial to differentiate between protests and rebellions, as rebels can disguise their actions under the guise of peaceful demonstrations. According to Chanakya, everyone poses a potential threat to the king's authority. The people of the countryside, regional commanders, tribal chiefs, and vassal kings all have the potential to rebel, either acting independently, colluding with each other, or being incited by external forces. Therefore, those in power must

remain vigilant and attentive to the affairs of the nation. Maintaining law and order and protecting the well-being of citizens are essential responsibilities. By being alert, rulers can detect and address potential threats to national security in a timely manner. In a democratic system, those in power are accountable to the people they govern.

One of the significant causes of rebellion highlighted by Chanakya is discontent among the population. He advises the king to anticipate such discontent and take proactive measures to prevent its escalation. By addressing the root causes of dissatisfaction, the king can prevent the situation from worsening and potentially leading to rebellion. This suggests the importance of understanding and empathizing with the concerns and grievances of the people, as well as implementing measures to address them effectively.

Drawing upon Chanakya's insights, the relevance of the Unlawful Activities (Prevention) Act (UAPA) in modern times can be understood in light of the constant dangers posed by treason, revolt, and rebellion. Chanakya emphasized the importance of maintaining law and order, protecting citizens, and being alert to potential threats to national security. In this context, the UAPA serves as a legal framework aimed at combating unlawful activities that pose a threat to the sovereignty and integrity of India. Chanakya's views align with the UAPA's objective of addressing both internal and external sources of unrest. The Act recognizes that rebels and extremists can attempt to hide behind the guise of protests or dissent, using these as a masquerade to carry out their nefarious activities. By empowering the government to take action against such individuals or organizations, the UAPA helps to differentiate between legitimate expressions of dissent and unlawful activities that endanger national security. Additionally, Chanakya's advice to anticipate discontent and take steps to prevent it from worsening resonates with the UAPA's focus on preventive measures. The Act allows for pre-emptive action, such as surveillance, investigation, and detention of individuals involved in activities that pose a threat to national security. By proactively addressing potential sources of discontent, the UAPA aims to prevent the escalation of such grievances into acts of violence or rebellion.

CRITICISMS & CONCLUSION

The Unlawful Activities (Prevention) Act, of 1967 (UAPA) stands as a constitutional law that plays a crucial role in safeguarding the nation and protecting the fundamental rights of its citizens. While the Act has faced controversies and criticisms, it remains an essential tool in combating terrorism and maintaining national security. The history and background of the

UAPA highlight the pressing need for a robust legal framework to address the increasing concerns regarding unlawful activities and terrorism. India, being a diverse nation with various internal security challenges, requires a stringent anti-terror law like the UAPA to effectively respond to these threats.

While critics argue that the UAPA infringes upon fundamental rights guaranteed by the Indian Constitution¹⁸, it is important to recognize that reasonable restrictions are provided under Article 19(a) in the interests of public order and the security of the state. Terrorism poses a grave threat to the safety and well-being of the nation, and addressing it requires urgent and sincere measures. Critics play a vital role in highlighting potential flaws, concerns, and instances of misuse or abuse. Their perspectives contribute to a broader understanding of the law's impact on individual rights and freedoms. Instead of simply dismissing the UAPA¹⁹, we should encourage dialogue and open discussions between lawmakers, legal experts, human rights advocates, and the general public. Such discussions can lead to meaningful amendments that address the shortcomings of the law and enhance its effectiveness while safeguarding constitutional rights. It is crucial to approach the process of amending the UAPA with a constructive mindset, focusing on rectifying any provisions or practices that may infringe upon fundamental rights. By engaging with legislators, civil society organizations, and legal experts, we can contribute to the creation of a more balanced and robust legal framework that ensures national security without compromising individual liberties²⁰. It is important to remember that legislation is not static; it can evolve and adapt to changing societal needs and concerns. The UAPA has undergone amendments in the past to align with global counter-terrorism efforts and enhance its effectiveness. Similarly, future amendments can be made to address the concerns raised by critics.

The UAPA empowers law enforcement agencies to take preventive measures, designate unlawful organizations, and arrest individuals suspected of involvement in unlawful activities. These provisions enable authorities to apprehend potential terrorists and prevent them from carrying out their destructive plans. Additionally, the Act provides for the

¹⁸ Arkadeep Pal, 'An Analysis on the validity of the Unlawful Acts (Prevention) Act' Volume 3, Issue 1 (2019) IJLMH <<https://www.ijlmh.com/wp-content/uploads/2020/02/An-Analysis-on-the-validity-of-the-Unlawful-Acts-Prevention-Act.pdf>> accessed on 18July 2023

¹⁹Anjana PrakashIt's Time for the Government To Redeem Itself and Repeal the UAPA (The Wire 25 July 2021)<<https://thewire.in/law/its-time-for-the-government-to-redeem-itself-and-repeal-uapa>> accessed on 18July 2023

²⁰ShinanD'leema, 'UAPA ITS CONSTITUTIONALITY' VOL. 1 ISSUE 3 (2022) jlrjs<<https://jlrjs.com/wp-content/uploads/2022/03/28.-Shinan-Dleema.pdf>> accessed on 18July 2023

admissibility of confessions made to police officers, further aiding in the investigation and prosecution of terrorist activities. Despite concerns about potential misuse and abuse, the UAPA includes safeguards such as the requirement of government approval for the designation of organizations as unlawful and provisions for judicial oversight and review. These measures ensure oversight and prevent arbitrary designations or arrests. The significance of this law extends beyond legal arguments about the protection of fundamental rights. Terrorism is a menace that poses a threat to the collective security and well-being of our nation. It strikes at the very essence of humanity, causing destruction, fear, and suffering. Upholding the values of justice and safeguarding the nation requires a balanced approach that prioritizes both national security and individual freedoms.

Drawing upon the wisdom of Chanakya, a prominent figure in Indian history, we understand the constant dangers faced by rulers and the importance of preserving the state. Chanakya's teachings emphasize the need for a well-functioning legal system, fair administration of justice, and proactive measures to address discontent among the population. The UAPA aligns with these principles by providing a legal framework that addresses both internal and external sources of unrest, differentiating between legitimate expressions of dissent and unlawful activities that endanger national security.

In conclusion, the Unlawful Activities (Prevention) Act, despite its controversies, remains an indispensable law that strikes a delicate balance between national security and fundamental rights. It demonstrates the commitment of the Indian government to protect its citizens from the grave threat of terrorism while upholding the values of justice, democracy, and the rule of law. Safeguarding the nation against terrorism is not just an ordinary issue affecting the public; it is a matter of preserving the soul of humanity and securing the future of our world.