
UAPA AND CIVIL LIBERTIES VIOLATION

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ABSTRACT

The Unlawful Activities (Prevention) Act (UAPA) represents a complex intersection between national security and civil liberties in India, often sparking debates about its implications for democratic rights. This paper critically examines the UAPA of 1967, its controversial provisions, and its impact on civil liberties in India. It discusses how the Act, originally aimed at countering terrorism and safeguarding national security, has been increasingly criticized for its broad and vague definitions that allow for potential misuse, often resulting in the suppression of dissent and violation of fundamental rights such as freedom of speech and expression. The study analyses specific provisions of the UAPA that reverse the burden of proof, limit bail rights, and enable arbitrary detention without trial, thus contravening the principles of natural justice and due process. Through a review of landmark judicial decisions and literature, the paper highlights the need for a balanced approach that ensures both national security and the protection of individual rights within a democratic framework. It calls for legal reforms to enhance accountability, transparency, and alignment with constitutional safeguards.

CHAPTER I: INTRODUCTION

The trajectory of India's security laws has undergone a significant transformation since the pre-independence era. The country has faced various internal conflicts, such as political revolts in Punjab, militant activities in Jammu and Kashmir, rebellious groups in the north-eastern states, and the Naxalite movement in Central India, posing a considerable threat to national security post-independence.¹ To safeguard the sovereignty and integrity of the nation, anti-terror laws have become a necessity. It is evident that unchecked liberty of citizens can lead to potential security risks. Therefore, striking a delicate balance between ensuring robust national security measures and protecting the rights of citizens is imperative in a democratic society.

As the government works to protect the nation's borders and its citizens, it must also be careful to avoid slipping into oppressive and dictatorial practices. Paradoxically, certain anti-terror legislation, such as the Terrorist and Disruptive Activities (Prevention) Act of 1987 (TADA) and the Prevention of Terrorism Act of 2002 (POTA), were eventually branded as infamous due to their widespread abuse and had to be revoked.

The issue surrounding the UAPA is nothing new. Laws targeting terrorism, such as the UAPA, have constantly faced criticism from the general public, scholars, and experts due to their inherently contentious nature. It is a widely accepted truth that such laws have been subject to scrutiny in various jurisdictions, with focus on their non-conventional procedure, limited protection for the accused, and unchecked actions of state officials justified in the name of "national security". In the aftermath of the 9/11 attacks, the stringency of anti-terrorism laws has been particularly evident in liberal democracies.² It is the responsibility of the State to ensure the safety and protection of its citizens from potential violators of their rights. However, this should not come at the cost of violating the rights of minority groups within the country. In the past, anti-terrorism Acts have been repealed due to concerns over their extensive powers granted to the executive branch without adequate safeguards in place. Unfortunately, similar concerns remain with the UAPA, leading to growing disapproval of this legislation among the public with each amendment.

¹ Tanishk Gautam & Josheca Mukerji, *Critical Analysis of Unlawful Activities (Prevention) Act, 1967*, 26 SUPREMO AMICUS 524, 524-535 (2021).

² Pankaj Singh, *A Weapon to Stifle Dissent: Unlawful Activities (Prevention) Act, 1967*, 6(3) J. POSITIVE SCH. PSYCHOL. 9896, 9896-9902 (2022).

The UAPA was initially created after much deliberation among parliamentarians, with opposition parties raising questions about its necessity and potential for misuse by those in authority. At that time, the topic of imposing an arbitrary ban on the association was also being discussed. The government attempted to assure the public that this would not occur, citing that the Act already placed the burden of proof on the government to justify the ban of an organization. However, despite the original Act having constitutional safeguards in place, subsequent amendments and repeated bans on specific minority organizations have sparked public and academic scrutiny. Critics of the Unlawful Activities Prevention Act, 1967 have relentlessly condemned it as a tyrannical regulation, contradicting principles of democracy and infringing upon fundamental rights. This law has been accused of blurring the line between criminal actions and legitimate political dissent, effectively silencing dissident voices. Calls for its repeal have been fervent, but perhaps a more effective approach would be to introduce amendments that promote transparency and demand greater accountability from the government. Such measures could greatly enhance the safeguarding of national security.

This seminar paper focuses upon the controversial provisions of the Unlawful Activities (Prevention) Act, 1967 and how it encroaches upon the civil liberties granted by the Constitution of India. The paper also elaborates upon the stand of judiciary on the arbitrary provisions of UAPA through different landmark judgements.

CHAPTER II: CIVIL LIBERTIES: MEANING AND CONCEPT

*"Liberty is itself the gift of the law and may by the law be forfeited or abridged."*³

The term 'civil liberty' is often read synonymous to 'human rights'. However, both these terms differ in their meaning. The notion of human rights encompasses essential rights that are deemed to apply to all individuals, whereas civil liberties pertain to the specific rights and liberties acknowledged by a particular nation. Essentially, civil liberties serve as safeguards against violations of one's fundamental human rights.⁴

Civil liberties are the bedrock of a democratic society, ensuring individuals' rights and freedoms are protected by law and safeguarding them from government interference or abuse. These

³ ADM Jabalpur v. Shivakant Shukla AIR 1976 SC 1207 (A.N. Ray, C.J.)

⁴ 2 EUGENE ALLEN GILMORE, *MODERN AMERICAN LAW: SYSTEMATIC AND COMPREHENSIVE COMMENTARY ON THE FUNDAMENTAL PRINCIPLES OF AMERICAN LAW* (Blackstone Institute 1929)

fundamental rights are essential for upholding the autonomy, dignity, and general well-being of citizens.

Some most common examples of civil liberties include:

- Freedom of Speech, which guarantees the unrestricted expression of opinions, thoughts, and beliefs, free from any form of censorship or government restraint. This freedom also extends to the open criticism and dissenting views on political issues.
- Freedom of the Press, which upholds the rights of journalists and media outlets to report news and information without any form of censorship or government control. It promotes the free flow of information within society, ensuring an informed and engaged citizenry.
- Freedom of Religion, which guarantees the right to practice any religion or no religion at all. This freedom allows individuals to exercise their beliefs without fear of persecution or discrimination.
- Freedom of Assembly, which grants individuals the right to peacefully congregate for various purposes such as protests, meetings, and public demonstrations. This fundamental right allows people to collectively express their opinions and voices without fear of government intervention.
- Freedom of association ensures that individuals can freely join or establish organizations, associations, or clubs without any interference from the government, as long as they operate within the legal boundaries.
- Right to privacy guarantees individuals the protection of their personal privacy, which includes safeguarding their homes, personal data, and communications from unnecessary intrusion by the government or other entities.
- Right to due process guarantees individuals a just and equitable legal process when facing legal action. This includes the presumption of innocence, the right to legal representation, and the right to a fair trial.

The principle of equal protection under the law upholds that all individuals should be treated equally by the law and not be subjected to discrimination based on characteristics such as race, gender, religion, or sexual orientation.

In addition to these fundamental rights, the right to vote allows individuals to actively participate in the democratic process by casting their vote in elections and having their voice heard in government decision-making. Moreover, citizens have the right to petition the government, providing a means for addressing grievances and concerns through formal requests and petitions.

These principles of civil liberty originate from the laws created by the constitution, authorized specifically for this purpose. The Constitution of India guarantees to uphold its commitment to safeguard the civil liberties of its citizens through the protection of their fundamental rights.

Civil liberty refers to the part of our inherent freedom that is safeguarded by the laws of our nation. It encompasses the protection of our rights that are granted to us through the governance of our society.

The Constitution of India, specifically Article 21, guarantees every individual the fundamental right to life and liberty. This means that no one can be denied these basic rights without following the proper legal procedure. Through a variety of landmark judgement, the Supreme Court has expanded the scope of Article 21 to encompass many rights that we hold dear today. Amongst such rights, the right to a speedy trial has gained great significance in safeguarding due process and individual freedom.

In the case of *Hussainara Khatoon v. Home Secretary, State of Bihar*⁵, Justice P.N. Bhagwati stated:

“The State has a Constitutional obligation to provide speedy trial. The State is under a Constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State.”

Justice V. Krishna Iyer in the case of *Bhut Nath Mete v. The State Of West Bengal*⁶ stated:

⁵ *Hussainara Khatoon v. Home Secretary, State of Bihar* 1979 AIR 1369, 1979 SCR (3) 532

⁶ *Bhut Nath Mete v. The State of West Bengal* 1974 AIR 806, 1974 SCR (3) 315

“Civil liberty, a constitutional guarantee, is a strange bed-fellow with detention without trial, a British bequest.”⁷

CHAPTER III: PREVENTIVE DETENTION AND THE CONSTITUTION

In India, the Constitution explicitly empowers Parliament to enact laws allowing for preventive detention in cases pertaining to state security, public order, or maintenance of supplies or services essential to the community.⁸ These laws are not bound by the fundamental rights guaranteed under the Indian Constitution, granting the government greater flexibility in maintaining law and order. National security laws in India provide for certain types of detention in order to protect the sovereignty and integrity of the nation. The type of detention which is anticipatory in nature is known as preventive detention which involves detaining individuals without a criminal trial wherein no crime has been proven, and no charges have been formally brought forth. Departing from conventional criminal procedures, preventive detention laws confer "special powers" that allow for the apprehension of individuals deemed as risk to public order or national security.

The Supreme Court of India, in *Union of India v Paul Nanickan and Anr*⁹, explaining the relevance of Preventive Detention law stated:

“The object of preventive detention is not to punish a man for having done something but to intercept him, before he does it, and to prevent him from doing it. No offence is proved, nor any charge formulated; and the justification for such detention is suspicion or reasonable probability and not criminal conviction, which can only be warranted by legal evidence.”

The primary goal of preventive detention laws is not to simply detain someone for committing a crime, but rather to prevent them from committing a crime that could pose a threat to public order or the security of the State. This measure is taken with the intention of safeguarding the well-being of the community. Clause 1 and Clause 2 of Article 22 of the Constitution grants protection against arrest and detention in normal circumstances. However, it is explicitly mentioned in Clause 3 that these rights are not applicable “to any person who is arrested or detained under any law providing for preventive detention”.

⁷ PRITI SAXENA, PREVENTIVE DETENTION AND HUMAN RIGHTS (Deep and Deep Publications 2007).

⁸ P.K. Tripathi, *Preventive Detention: The Indian Experience*, 9 AM. J. COMP. L. 219 (1960).

⁹ *Union of India v Paul Nanickan and Anr*, Appeal (Crl) 21 of 2002 (13th October 2003)

The Parliament holds the power to pass legislation for preventive detention under Entry 9 of List I in the 7th schedule, solely for reasons pertaining to defence, foreign affairs, or the security of India. Additionally, Entry 3 of the Concurrent List grants both the Parliament and State Legislatures the ability to concurrently create a law for Preventive Detention, encompassing reasons such as security of a state and the maintenance of essential supplies and services for the community. Hence, the Parliament has an expansive jurisdiction in relation to preventive detention, encompassing all six categories listed under List I and List III. Furthermore, through its residuary power, the Parliament may enact preventive detention laws on any grounds it deems necessary.

Article 22, clauses (4) to (7), outline the rules for preventive detention as well as certain measures for protection. As per the constitution, the government can detain someone for a maximum period of 3 months. Should they wish to extend the detention, a report from the Advisory Board is necessary to determine if it is necessary. Additionally, the individual must be promptly given the reasons for their detention, with the exception of any information deemed confidential by the detaining authority in the interest of the public.

Furthermore, it is essential that the individual being detained is given the immediate chance to represent against the detention order. Any law that fails to adhere to these conditions, outlined in Article 22, can be deemed null and void. Additionally, a court can overturn a detention order and release the individual if it is found to be in violation of these requirements. It is within the jurisdiction of Parliament to enact laws specifying the maximum duration of preventive detention for an individual.

CHAPTER IV: SECURITY LEGISLATIONS IN INDIA

The security laws in India encompass more than just one or two regulations; in fact, they are often employed as a recurrent tactic to target minority groups and individuals who voice opposition to the ruling government and its decisions.

While it may appear that these laws have been put in place to safeguard national security, their true consequences are far more concerning. These laws grant the police unrestricted authority to disregard due process, a fundamental safeguard designed to ensure that citizens receive a fair trial. Moreover, these laws shift the burden of proof onto the accused, a clear violation of natural justice.

PREVENTIVE DETENTION ACT, 1950

The introduction of the Preventive Detention Act (PDA) was a response to the tumultuous events during the partition of India, which resulted in widespread violence and displacement. This temporary measure granted the government the authority to detain individuals without charge for up to a year. In fact, the then Minister of Home Affairs acknowledged the need for further examination of permanent preventive detention powers before enacting more permanent legislation, thus limiting PDA to a provisional, twelve-month version. Surprisingly, PDA remained in effect for almost two decades, with annual reviews by Parliament and multiple renewals, before finally being discontinued in 1969.¹⁰

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

The Indian government greatly expanded the powers of the PDA's preventive detention measures by enacting the UAPA which allowed them to label certain associations as "unlawful" and closely monitor their members. The term "unlawful" was loosely defined, giving the government the ability to criminalize a wide range of activities that they deemed inconvenient. Obtaining bail under the UAPA is extremely difficult, with accused individuals facing the possibility of being held in custody for up to six months without even being charged. In contrast, those accused of murder may secure bail within three months if not all evidence is presented to them. However, the UAPA has been widely misused as a tool for politically motivated detentions, resulting in numerous civil liberties violations.

MAINTENANCE OF INTERNAL SECURITY ACT, 1971

Following the expiration of the PDA in 1969, MISA swiftly came into existence. With the implementation of a fresh title, the law bestowed the government with the power to detain individuals even prior to the commission of any illegal actions. As the emergency situation worsened in 1975, Indira Gandhi's regime solidified the powers of MISA. Sadly, this led to a period of rampant abuse, as political rivals, labour unions, and social organizations that dared to question the government were targeted. In the wake of Congress's downfall in 1977, MISA was finally abolished.

¹⁰ Bhamati Sivapalan and Vidyun Sabhaney, *In Illustrations: A Brief History of India's National Security Laws*, THE WIRE (October 10, 2023, 10:00 AM), <https://thewire.in/law/in-illustrations-a-brief-history-of-indias-national-security-laws>

NATIONAL SECURITY ACT, 1980

In 1980, the NSA was introduced as a unique law, bearing similarities to PDA and MISA in its power to prevent detention and echoing UAPA's lack of a mandatory review process - a worrisome aspect for human rights advocates. This law authorizes both the Central and State governments to hold individuals in custody for a duration of 12 months. Shockingly, individuals can be detained for up to 10 days without any knowledge of the reasons behind their detention. The government is also given the liberty to conceal vital information in the name of "public interest," and individuals in custody are not granted access to legal representation. This law, known for its harshness and susceptibility to abuse, stands out as one of the most oppressive laws in our country.¹¹

TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1987

During a time of growing separatist movements, the Terrorist and Disruptive Activities (Prevention) Act was established in the 1980s, particularly in Punjab. The definition of "disruptive activities" under TADA was quite vague and could encompass a wide range of actions, including non-violent protests. In order to prosecute those accused of terrorist acts in designated "terrorist affected areas," special TADA courts were established. This law introduced new criminal offenses and gave the police more power, while simultaneously reducing protections for those accused. One concerning aspect of TADA was that confessions made to police officers were admissible as evidence, leading to an increase in custodial abuse and torture. Unfortunately, the law was often misused under the guise of fighting terrorism.

PREVENTION OF TERRORISM ACT, 2002

Following the terrorist attacks on the World Trade Centre in America, the ruling National Democratic Alliance introduced Prevention of Terrorism Act as the new anti-terror legislation. Despite facing heavy opposition from civil society, the Bill was passed in a Joint Session of Parliament. POTA's implementation reinstated many provisions from the previous TADA law, leading to the continued misuse of security laws. One of these provisions included granting enhanced powers to the police, as well as limiting the rights of the accused and allowing confessions made under police custody to be used as evidence. POTA also established Special

¹¹ *Id.*

Courts for trying terrorism cases. Like its predecessors, POTA's definitions of "terrorist" and "terrorist activities" were left open to interpretation, leading to discriminatory enforcement.¹²

AMENDED UNLAWFUL ACTIVITIES (PREVENTION) ACT

The revocation of POTA in 2004 sparked widespread criticism due to its abuses. However, instead of replacing it with a new law, the government chose to amend the existing 1967 UAPA to handle preventative detention cases. These revisions included incorporating the definitions of 'terrorist act' and 'terrorist organisation' from POTA, thereby effectively reinstating its controversial provisions. Following the tragic terrorism incident in Mumbai on November 26, 2008, additional measures resembling POTA and TADA, such as prolonged police custody, detention without charges, and bail restrictions, were also introduced into the UAPA. By including a sunset clause in legislation, the need for prolonged use of extraordinary measures would be eliminated once the perceived threat diminishes. However, unlike the NSA, the UAPA lacks such a clause.¹³

CHAPTER V: UNLAWFUL ACTIVITIES (PREVENTION) ACT

The UAPA, or the Unlawful Activities (Prevention) Act of 1967, was one of India's earliest measures against terrorism. Following independence, the challenge of governing a diverse population was not an easy one. Various separatist movements arose, such as the DMK party in Tamil Nadu advocating for a separate nation while India was in the midst of the Sino-Indian war. The government of the time faced immense pressure to keep India united and capable of effectively governing itself, leading to the enactment of this Act.

The UAPA, while enacting its purpose was set out to prevent unlawful activities carried out by individuals or associations. Yet, over the years, the legislation has undergone significant transformations. In 2004, an amendment expanded the scope of the UAPA to include Chapter IV, which pertains to "terrorist activities". The Act was significantly strengthened in response to the ongoing threat of terrorism, resulting in the introduction of the 2008 UAPA Amendment Act (hereinafter referred to as the 'Amendment Act of 2008'). This crucial amendment, implemented after the devastating Mumbai terror attacks of 2008, aimed to bolster the national

¹² *Id.*

¹³ *Id.*

security against such heinous acts. These revisions granted authorities more power to arrest and search individuals, and also made all the offenses under the Act cognizable.

The Indian government's implementation of the 2004 amendments to the Unlawful Activities Prevention Act has failed to effectively address terrorism. This can be attributed to the integration of controversial clauses from prior legislations such as TADA and POTA, which greatly depart from the country's established criminal laws. A troubling instance is the denial of fundamental legal principles, such as the presumption of innocence and the right to remain silent, for individuals accused under UAPA. Moreover, the statute sets a low threshold for the executive to label certain activities as terrorism, further heightening the potential for misuse of power. The stringent conditions for granting bail, as outlined in the law, also increase the likelihood of unjustifiable detention without a fair trial.

In addition, subsequent amendments in 2012 and 2019 have further increased the executive power granted by the UAPA. In 2012, the UAPA (Amendment) Act was further revised to encompass any criminal activity that poses a threat to the economic stability of the country within its definition of a 'terrorist act'.

In a bid to widen the applicability of UAPA, the Act underwent its latest revision in 2019. Known as the UAPA (Amendment) Act of 2019, this update empowered the central government to designate individuals as "terrorists" instead of confining the label only to organizations. Additionally, the amendment also authorizes a National Investigation Agency (NIA) officer to confiscate the assets of the designated individual, subject to approval from the NIA Director General.¹⁴

It is worth noting that the evolution of anti-terror laws in India has followed a distinct path. The two laws that preceded the current Unlawful Activities Prevention Act (UAPA) were the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) and the Prevention of Terrorism Act, 2002 (POTA). Both of these laws had a sunset clause, with TADA having a duration of two years and POTA having a duration of three years. TADA gave the executive branch more procedural advantages, and the accused under this law were not granted the same rights as those under regular criminal laws. POTA, on the other hand, had even stricter provisions similar to those of TADA. However, it was evident that the government misused

¹⁴ P.K. Roy, *An Analysis of Unlawful Activities Prevention Act, 1967 in the Light of Constitutionalism in India*, 5 INDIAN J. L. & LEGAL RESEARCH 1, 1-18 (2023).

POTA, as it was selectively enforced by the administration with a bias towards the minority Muslim community, often aligned with extremist Hindu beliefs.

CONTROVERSIAL PROVISIONS OF UAPA

• UNLAWFUL ACTIVITY

According to Section 2(o) of the Act¹⁵ ‘unlawful activity’ is *“any action taken by an individual or association (whether by committing an act or by words, either spoken or written, 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”*

According to the above definition, it is evident that "unlawful activity" does not pertain to any sort of physical violence. The primary goal of this definition is to criminalize both the act of cessation or secession of Indian territory as well as any discourse or deliberation surrounding the issue.¹⁶ The enormity and complexity of this crime permits punishment towards any perspective, ideology, or individual deemed troublesome to those in authority. This is especially evident when examining the term disaffection, which encompasses everything from a mere resentment to a full-fledged uprising. The vague wording of the law allows for the condemnation of even unintended or unintentional expressions of disaffection. However, the law is not always applied to stifle all forms of disaffection, but rather to specifically target the dissenting voices that the government seeks to silence.¹⁷

¹⁵ The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India).

¹⁶ Reet Balmiki, *The Misuse of the UAPA and the Approach Taken by the Courts*, 2 JUS CORPUS L.J. 299 (2021).

¹⁷ M.M. Mahmood, *The Conundrum of the Unlawful Activities (Prevention) Act, 1967: A Comparative Analysis with Analogous Legislations*, 26 SUPREMO AMICUS 214 (2021).

- **TERRORIST ACT**

The UAPA law also prohibits another form of activity, labelled as a "terrorist act," which can be identified by its purpose according to Section 15. It states that *"whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in people or any section of the people in India or in any foreign country."* The current provision utilizes vague and subjective language, such as "likely to threaten" or "likely to strike terror in people," to eliminate the requirement of criminal intent i.e. mens rea for any actions labelled as terrorism. Additionally, the definition is so broad that it encompasses any action that could potentially cause harm or death to individuals. This vagueness allows for the possibility of peaceful protests to be unjustly classified as "terrorist acts" under the false pretence of potentially causing harm or death if the protests turn violent.¹⁸

The State has granted itself broad authority to arrest and hold accountable individuals who dissent or speak out against its policies, actions, or lack of accountability. It is regrettable that there is a lack of distinction between the right to express dissent and the illegal act of using violence against the government. This creates a dangerous situation where individuals may be punished for peacefully protesting their grievances.¹⁹

The criteria for what constitutes terrorist activity stretches beyond the commonly held belief of it being solely the massacre of innocent civilians or perpetration of war crimes in times of peace. It also encompasses actions such as causing harm or death to any individual, destruction of property, use of criminal force to intimidate public officials, and any efforts to coerce the government or individuals into specific actions or inactions.²⁰

The scope and ambiguity of the offense outlined in this Act ultimately restricts people's freedom to protest or exert pressure on the government for their demands. Communal violence, an act of terror in its own right, is not recognized as such under this Act, yet damaging property is. Shockingly, atrocious events like the anti-Muslim pogrom in Gujarat are granted immunity under the UAPA, furthering the agenda of majoritarian nationalism without any regard for national unity. The blatant targeting and persecution of those who do not belong to the majority

¹⁸ *supra* note 15.

¹⁹ *Id.*

²⁰ BHAMATI, *supra* note 10.

community, solely based on their identity, blatantly violates the fundamental principle of equality before the law.

Breaking the law can lead to a harsh punishment of up to seven years and a fine. However, engaging in a terrorist act could have even more severe consequences such as a death sentence or life imprisonment with a fine. As for the minimum punishment for a terrorist act, it is a sentence of five years in prison.

It is crucial to recognize that the UAPA has the power to penalize the mere act of attempting to engage in what is deemed unlawful or terrorist activity. This means that an individual can face a life sentence for a crime that they haven't even committed yet. Additionally, the UAPA allows for the possibility of harsher punishment if the accused is found to have violated any other laws in addition to the UAPA. Unfortunately, the police often exploit this provision by charging the accused under multiple laws, thereby prolonging their time behind bars.

• PROCLAMATION OF AN ASSOCIATION AS ILLEGAL

According to the UAPA, the Central Government has the authority to prohibit any organization by virtue of Section 3 and Section 35²¹. As outlined in Section 3(1), the Government has the power to categorize an organization as unlawful if it believes that the organization has transformed into an illegal association. While the Government is required to provide justification for its decision through a notification, it may choose to keep the reasons confidential if it deems that disclosing them would not be beneficial to the public. Moreover, according to Section 35 of the Act, the Government holds the authority to label any organization as a terrorist group based on its belief. It is not required for the Government to provide any justification for its decision under this section.

One notable aspect under Section 3 of the Act is that organizations banned can be listed for up to two years, while those listed under Section 35 have no set time limit. Although a banned terrorist organization can request removal through Sections 36 and 37, these sections do not specify the government's procedure for handling such requests. This contradicts the fundamental right to association²² assured by the Constitution, as banning an organization for life, even if it is no longer involved in unlawful activities, goes against the principles of the

²¹ *supra* note 15.

²² INDIA CONST. art. 19, cl. 1(c).

Constitution. When an organization is labelled as "terrorist", the repercussions are incredibly severe. According to Section 38, an individual is considered a member of such an organization if they "associate themselves or claim to be associated with a terrorist group with the intention of aiding its actions." This means that even a doctor providing medical treatment to a member of a banned organization could potentially face charges under the UAPA.²³

The Act provides an avenue for appeal to a Review Committee in the event that an application to remove a name from the list is rejected. However, concerns arise regarding the impartiality of the process as the members of this Committee are selected by the Central Government. It raises questions about whether a fair hearing can truly be achieved when those who initially rejected the application are the ones making the final decision on the fate of the organization. Additionally, there are no requirements for the Committee to provide reasons if they choose to deny the appeal, making the procedure extremely obscure and unjust.

• ARREST, DETENTION AND RIGHT TO BAIL

In the ground-breaking case of *Joginder Kumar v State of UP*²⁴, the Supreme Court tackled the complex issue of the laws of arrest and the extent of executive power in enforcing them. With much deliberation, the court established that the mere existence of the power to arrest does not automatically justify its exercise. However, the recent implementation of the UAPA act blatantly disregards this precedent, as it allows the government to make arrests without providing substantial justification. This is a clear violation of the principles set forth by the Supreme Court.

According to the Unlawful Activities Prevention Act, 1967, an individual who is charged may be detained for up to 180 days (6 months) without a charge sheet. However, Section 167 of the Code of Criminal Procedure, 1973 outlines a maximum detention period of 90 days (3 months) for such circumstances. After this point, the accused has the Right to Bail and cannot be held for any longer. Unlike the above provision of CrPC, Section 43D of the Unlawful Activities Prevention Act, 1967 provides that if an investigation is not yet finished, an individual labelled as a terrorist can be held in detention for up to 180 days, and possibly even longer, without

²³ Anushka Singh, *Criminalising Dissent: Consequences of UAPA*, 47 ECONOMIC & POLITICAL WEEKLY, 14, 14-18 (2012).

²⁴ *Joginder Kumar v State of UP* 1994 AIR 1349, 1994 SCC (4) 260

being charged. This means that the accused's right to bail is not applicable in such cases.²⁵ This measure is implemented in order to allow for the investigating authorities to have sufficient time to thoroughly conduct their inquiries without any discrepancies. However, it has been extensively abused, leading to the wrongful imprisonment of individuals waiting for their charges to be filed. In many cases, routine extensions have been requested by the investigating agencies for simple procedures, with repeated attempts to justify their delays under supposed exceptions in the law.²⁶ This flagrant disregard for procedural fairness and disregard for the freedom of individuals, a right protected under Article 21 of the Constitution, is evident.

The UAPA offers two types of bail provisions: regular bail and default bail, which mirror those outlined in the Code of Criminal Procedure, 1973, with some minor modifications. Although the decision to grant bail in non-bailable offenses under the CrPC lies with the court, it can only be refused if deemed necessary. However, the UAPA's Section 43D (5) introduces a slight deviation from this standard procedure when it comes to "terrorist acts," as it restricts the scope of judicial discretion in granting bail. Despite being intended to allow for longer-term confinement of suspected terrorists, the inclusion of this provision has led to the abuse and misuse of the definition of 'terrorist' in order to unfairly target individuals involved in violent riots, protests, and other peaceful demonstrations, as well as innocent students, activists, and lawyers who dare to question the current government's policies. Section 43D (5) of the Act only applies to offences outlined in chapters IV and VI, specifically those related to 'terrorist activities' and 'terrorist organizations.' The proviso of this Section sets out two vital conditions under which bail may be denied by the courts. Firstly, in order to proceed with the case, the court is tasked with carefully reviewing the case diary, as documented in the report filed under Section 173 of the Criminal Procedure Code. Further, this critical examination must be grounded in the determination that there are valid reasons to believe the allegations against the accused are, in fact, *prima facie*, or inherently true.

According to the initial condition, a charge sheet must be submitted and reviewed by the court before bail can be considered. However, the investigation process is often drawn-out and plagued by lengthy delays, causing the 180-day limit set by the Act to be exceeded. As a result, the accused is denied bail based solely on the information contained in the case diary. What

²⁵ Sneha Mahawar, *Terror of Unlawful Activities Prevention Act, 1967 (UAPA)*, 21 SUPREMO AMICUS, 103, 103-108 (2020).

²⁶ *Gautam Navlakha v National Investigation Agency* 2021 (3) Bom CR(Cri) 103

makes this problematic is that the case diary or report does not allow for a thorough evaluation of the evidence, potentially skewing the presumption of the accused's guilt and strongly favouring the State's case. This repeatedly results in the accused being denied bail and deprives them of a fair trial.²⁷

The second requirement for the denial of bail, as stated in the UAPA, sets it apart from other statutes in terms of regular bail provisions. In normal circumstances, the court must be convinced that there are reasonable grounds to believe the accused is innocent of the alleged crime. According to the UAPA, the court is required to diligently establish whether there exists sufficient basis to deem the allegations against the accused as "prima facie" valid. This condition implies that the evidence gathered by investigative bodies must demonstrate the accused's involvement in the crime. Therefore, if the evidence presented is deemed sufficient to establish a possible case against the accused, bail will be denied unless the accused is able to successfully refute that evidence. This burden of proof, known as prima facie, is lower and therefore easier for the prosecution to meet compared to other laws. As a result, obtaining bail in cases involving the Unlawful Activities (Prevention) Act (UAPA) is nearly impossible, leading to long periods of incarceration for the accused while awaiting trial. This goes against the general principle followed by courts that bail is the rule and jail is the exception, and also violates the fundamental right to liberty guaranteed under Article 21.

*"The basic rule is bail, not jail."*²⁸

However, it is evident UAPA believes in the contrary. Under this Act, a court has the discretion to refuse bail to someone who has been apprehended if there are valid reasons to believe that the charges against them are justified. Additionally, Section 43(D)(4) of the Act does not include any provision for anticipatory bail.

• REVERSE BURDEN OF PROOF

The tenet of presumption of innocence is a fundamental aspect of the right to a fair trial, which must not be infringed upon under any circumstances. However, the UAPA blatantly disregards this principle by presuming the accused to be guilty unless they themselves can prove their innocence. This is evident from Section 43A of the Act, which states that if there is definitive

²⁷ REET, *supra* note 16.

²⁸ State of Rajasthan, Jaipur vs Balchand @ Baliy 1977 AIR 2447, 1978 SCR (1) 535

evidence against an individual, the authorised officer has the authority to arrest such individual. Further, Section 43E of the Act assumes an arrested individual for offence under Section 15 to be guilty until proven innocent. This not only goes against the universal criminal law principle that the prosecution carries the burden of proof, but also poses immense challenges for the accused to gather evidence in their defence at this stage.

CHAPTER VI: CIVIL LIBERTIES VIOLATION

The implementation of the UAPA has allowed for individuals suspected of involvement in terrorist activities to be prosecuted without hindrance from the usual checks and balances of the criminal justice system. Furthermore, the scope of the UAPA has significantly expanded over the years. Its reach now extends to criminalizing seemingly innocuous activities such as giving public speeches and participating in public meetings, where intent carries more weight than the actual action. In India, the foundation of criminal law is built upon the fundamental principle of "innocent until proven guilty". This means that individuals are presumed innocent unless proven otherwise, and are entitled to a fair and timely trial, while also being given the opportunity to present their case. However, the UAPA serves as a striking example of these basic tenets being disregarded in the name of efficiency and national security. As a result, civil liberties are being sacrificed for the perceived greater good.

According to UAPA, any activity deemed 'unlawful' encompasses not only physical or verbal actions, but also written or visual expressions that aim to stir discontentment towards the nation.²⁹ Any activities falling under the definition of 'unlawful activity' also encompass any acts that may potentially threaten the sovereignty and territorial integrity of the nation.³⁰ The terms used to define 'unlawful activity' are excessively vague and seem to encompass any form of criticism against the government or the nation, leaving little room for interpretation. As a result, the fundamental rights of individuals to freely express themselves, question and critique governmental actions, and legally challenge arbitrary policies are at risk of being diminished by the federal government under this legislation. According to Section 2(p)³¹, individuals or groups who may not actively participate in protests or criticism, but still play a role in encouraging or supporting those who do, can also be deemed as an unlawful association. This

²⁹ The Unlawful Activities (Prevention) Act, 1967, § 2(o)(iii), No. 37, Acts of Parliament, 1967 (India)

³⁰ The Unlawful Activities (Prevention) Act, 1967, § 2(o)(ii), No. 37, Acts of Parliament, 1967 (India)

³¹ *supra* note 15.

expands the scope beyond just citizens who are directly involved and holds others accountable for their contribution to such activities.

Hence, the broad terminology of 'unlawful activity' and 'unlawful association' allows the Central Government to easily label any group or person as unlawful under Section 3 of the Act³². Additionally, Section 7³³ empowers the Central Government to cut off the flow of funds to such unlawful associations. Furthermore, Section 13³⁴ imposes stricter penalties, including a prison sentence of up to 7 years and fines, on any individual who engages in, commits, assists, or incites unlawful activities as defined in Section 2(o)³⁵. Thus, it is evident that the Act suppresses the basic civil liberties i.e. the right to assemble peacefully and protest, freedom of speech and expression as provided by the Constitution of India.³⁶ It appears that the current ruling government is using this Act not as a means to effectively combat terrorism, but rather as a tool to suppress those who advocate for participatory democracy and establish a false sense of democracy in their own self-interest. It is evident from various cases that the government in power uses this Act not as a means to effectively combat terrorism, but rather as a tool to suppress those who advocate for participatory democracy and establish a false sense of democracy in their own self-interest.³⁷

According to the Constitution of India, Article 22 serves as an important safeguard for protecting the rights of individuals against arbitrary arrest and detention. This critical provision ensures that any individual who is arrested or detained is promptly informed of the reasons for their apprehension. Additionally, the Police are required by law to present the accused before a Magistrate within 24 hours of their arrest. Moreover, in cases where an individual is arrested without a warrant, Section 50 of the CrPC³⁸ mandates that the Police must inform them of the charges and offences for which they are being detained. However, it is concerning that the UAPA allows for arrests to be made without providing justifiable reasons to the accused. This

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Shreya Rawat, *National Security Laws in India against Freedom of Speech and Expression*, 30 SUPREMO AMICUS 341 (2022).

³⁷ Namrata Chakraborty & Ashish Deshpande, *Assessing the Unlawful Activities (Prevention) Act, 1967 (UAPA) and Its Impact on India's Prison Justice System*, 4 INT'L J. L. MGMT. & HUMANITIES 3401, 3401-3409 (2021).

³⁸ The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

undermines the fundamental rights guaranteed by Article 22 and raises questions about the proper implementation of the law.

In the landmark judgement of *DK Basu vs. State of West Bengal*³⁹, it was laid down as a guideline that the relatives of an arrested individual shall be promptly notified about the arrest. However, in cases where the Unlawful Activities (Prevention) Act is applied, it is necessary for the officer making the arrest to notify the suspect of the charges, with no specific time frame stated in the Act. This leaves room for potential delays and raises concerns about upholding the rights of the accused.

The Supreme Court, in *Union of India v K.A. Najeeb*⁴⁰, ruled that Section 43D (5) does not limit the power of constitutional courts to grant bail when fundamental rights have been violated. Furthermore, the court stated that in cases where an accused's right to a speedy trial has been disregarded, the legislative intent behind the statute can be disregarded and bail can still be granted.⁴¹ This was reiterated by the High Court of Bombay in *Dr. P.V. Varavara Rao v National Investigation Agency*⁴², where it was declared that bail restrictions must align with the jurisdiction of constitutional courts. The court also declared that it was well within its power under Article 226 of the Indian Constitution to grant bail to the accused based on health reasons, even if bail had been previously denied on merit.

One of the most significant and highly debated changes made to the UAPA in 2019⁴³ was the amendment to Sections 35 and 36 of the Act⁴⁴, granting the government the authority to label individuals as terrorists. Prior to this amendment, the government only had the authority to declare organizations as terrorist for engaging in unlawful activities. This amendment allows for the punishment of individuals involved in the commission, funding, or support of terrorist acts. Even acts as seemingly innocuous as questioning India's territorial integrity or causing disaffection towards the country can be classified as terrorism under the UAPA. This broadness and ambiguity in the definition of terrorism has raised concerns, as it gives investigative authorities the ability to label someone as a terrorist without sufficient evidence or justification.

³⁹ *DK Basu vs. State of West Bengal* (1997) 1 SCC 416: 1997 SCC (Cri) 92

⁴⁰ *Union of India v K.A. Najeeb*, Criminal Appeal No. 98 of 2021

⁴¹ Mannat Gaiind, *Union of India v. K.A. Najeeb*, 3 JUS CORPUS L.J. 20 (2022).

⁴² *Dr. P.V. Varavara Rao v National Investigation Agency*, Criminal Appeal No. 52 OF 2021

⁴³ The Unlawful Activities (Prevention) Amendment Act, 2019, No. 28, Acts of Parliament, 2019 (India).

⁴⁴ *supra* note 15.

To combat these loopholes, two separate petitions were filed in the Supreme Court, namely, *Sajal Awasthi v Union of India*⁴⁵ and *Association for Protection of Civil Rights v Union of India*⁴⁶, challenging the constitutional validity of the amendments made to Sections 35 and 36. The petitioners argued that these amendments violate the fundamental rights enshrined in Article 14, Article 19 and Article 21 of the Indian Constitution. The main contention in both cases was that labelling an individual as a terrorist without any judicial inquiry, and before the trial even begins, would lead to severe injustice and would violate the principles of natural justice.

The act in question contains certain provisions that go against the fundamental principle of natural justice i.e. *audi alteram partem*. These provisions fail to allow an individual to defend themselves before being unjustly labelled as a terrorist by the investigating authority. Additionally, Section 43E places the burden of proof on the accused to prove their innocence, which goes against the core principles of criminal law. Moreover, the act grants the investigative authority excessive power to search, seize, and arrest individuals solely on the basis of suspicion.

According to UAPA, securing bail requires individuals to establish their innocence during the bail hearing, which goes against the traditional principle of bail. This presents a challenge, as it can be difficult to prove that there was no wrongful intent when a case is still under investigation. This becomes even more challenging when one is already viewed with prejudice by the State based on their actions. The Indian Constitution upholds the principle of presumption of innocence in its Article 20. This essential notion of being considered innocent unless proven guilty is globally acknowledged and is also included in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). The National Human Rights Commission emphasizes the importance of this concept, stating that violating fundamental principles of a fair trial, such as the presumption of innocence, is strictly prohibited at all times.

Under the UAPA the presumption of guilt rather than innocence has made it increasingly challenging for accused individuals to obtain regular bail. However, in *Aseem Kumar Bhattacharya vs National Investigation Agency*⁴⁷, the Supreme Court has acknowledged that

⁴⁵ *Sajal Awasthi v Union of India*, WP (C) 1076/2019

⁴⁶ *Association for Protection of Civil Rights v Union of India*, WP (C) No. of 2019

⁴⁷ *Aseem Kumar Bhattacharya vs National Investigation Agency* AIR 2021 SC 697

while temporary curtailment of personal liberty may be necessary, it should not be prolonged during the trial or appeal process.

In *National Investigation Agency vs Zahoor Ahmad Shah Watali*⁴⁸, the Supreme Court adopted a narrow interpretation of the already limited provision for granting regular bail under UAPA. This added an additional limitation to the role of the judiciary, as the Court ruled that they cannot conduct a thorough analysis of the prosecution's case to assess whether the evidence given by prosecution is adequate or not when considering bail under the UAPA. This severely restricts the ability to grant bail, depriving the accused of their right to fair trial and their right to seek release from pre-trial detention. This restrictive provision, combined with the Court's narrow approach, heavily restricts the accused's right to bail and puts an unreasonable restraint on individual liberty.⁴⁹

In a notable departure from the narrow stance taken in the Watali⁵⁰ case, the Court in *Union of India vs K.A. Najeeb*⁵¹ embraced a more rational and just approach towards granting bail. In this landmark ruling, the Court affirmed the power of constitutional courts to grant bail in cases of fundamental rights infringements, even when there are statutory constraints. The Court also acknowledged that strict bail provisions in specialized laws such as UAPA are mainly meant to expedite trials and safeguard innocent civilians. Putting the constitutional guarantees enshrined in Part III at the forefront, the Court upheld the supremacy of fundamental safeguards over statutory limitations, solidifying their importance in our judicial system.

However, the Court approached this case with a liberal mind-set and bail was granted to the accused. The ratio court gave for this decision was the prolonged period of time the accused had spent in incarceration and the unlikely chance that the trial would be completed in the near future. In doing so, the Court recognized the accused's right to a fair and speedy trial, as guaranteed by Article 21 of the Indian Constitution. This means that in the early stages of the proceedings, the Courts are expected to take into consideration the legislative policy against granting bail, but also acknowledge the constitutional guarantees when determining bail. Specifically, bail can only be granted in cases where there is no possibility of the trial being completed within a reasonable timeframe and when the period of detention has already

⁴⁸ National Investigation Agency vs Zahoor Ahmad Shah Watali (2019) 5 SCC 1

⁴⁹ REET, *supra* note 16.

⁵⁰ National Investigation Agency vs Zahoor Ahmad Shah Watali (2019) 5 SCC 1

⁵¹ Union of India v K.A. Najeeb, Criminal Appeal No. 98 of 2021

exceeded a significant portion of the prescribed sentence. This approach restricts the utilization of constitutional rights to solely remedying gross violations that have already taken place in the case. This approach, while more lenient compared to the Watali decision, falls short in safeguarding the fundamental rights of the accused. It merely offers protection against further violation in cases where the accused has already endured lengthy pre-trial detention. Despite recognizing the flawed implementation of Section 43D (5) and the resulting egregious infringement of rights, the Court only offered a remedy to the accused and failed to establish a safeguard in line with the Constitutional requirement.⁵²

In *Fakhrey Alam v. State of Uttar Pradesh*⁵³, the Apex Court addressed a case involving Section 18 of the UAPA. The detainee was granted default bail under Section 167 of the Code of Criminal Procedure. The Court upheld that the detainee's right to default bail under Section 167 is a fundamental right and must be applied to those arrested under the UAPA Act. This decision serves as a safeguard against the misuse of the 180-day extension period for filing supplementary charge sheets by state authorities.⁵⁴

In light of this, courts have adopted a more lenient stance when considering bail requests under the UAPA and have made efforts to protect the rights of the accused despite the Act's restrictive nature. However, it is still widely acknowledged that the decision to grant bail under the UAPA is largely based on the court's discretion, leaving room for potential abuse by the government and limited intervention from the judiciary. This leaves the fate of citizens to the mercy of the court's ability to prevent misuse of the law.

Although the courts acknowledge the rights of the accused, their approach primarily revolves around providing a solution. In other words, the courts can only intervene and safeguard the rights of the accused if a fundamental right violation has already occurred. This means that the courts are limited to protecting the accused from further violations and cannot effectively prevent the misuse of the UAPA. Thus, it is crucial to repeal the UAPA as its provisions leave room for blatant misuse, and the existing judicial safeguards offer little protection to citizens.

⁵² REET, *supra* note 16.

⁵³ *Fakhrey Alam v. State of Uttar Pradesh*, Criminal Appeal No. 319 of 2021 (arising out of SLP(Crl.) No.6181/2020).

⁵⁴ NAMRATA, *supra* note 37.

CHAPTER VII: CONCLUSION

Recent events have sparked a need for India and its authorities to take a step back and thoroughly evaluate significant legislation to ensure its alignment with the constitution. It is crucial for democracy to maintain a proper balance of power and prevent it from deteriorating into an oligarchy. As history has shown, laws like MISA, PDA, and TADA were nullified due to their infringement on civil liberties. Laws that do not uphold the rights of citizens should either be repealed or updated to reflect current societal norms. Furthermore, it is imperative to establish a precise and specific structure for the provisions of these laws instead of leaving them open to broad interpretation. This will help limit the potential abuse of power.

In order to ensure a fair and just legal system, it is imperative that laws are crafted with precision and clarity. Unfortunately, the current Unlawful Activities (Prevention) Act (UAPA) lacks this necessary specificity. Its general and ambiguous language allows governments to exploit loopholes in their favour, ultimately leading to arbitrary rule. Additionally, the vague definitions and discretionary provisions, such as those pertaining to securing bail, create an environment that is ripe for constitutional violations. Moreover, the recent Amendment Act of 2019, which allows individuals to be labelled as terrorists, further highlights the potential for abuse within the UAPA. This alarming development raises serious concerns about the compatibility of this Act with the principles of justice and fairness. In fact, a closer examination of the UAPA and its similarities to previously repealed Acts, such as the Prevention of Terrorism Act (POTA) and the Terrorist and Disruptive Activities (TADA) Act, reveals a recurring pattern of misuse and violation of civil liberties.

The recent rulings of various courts in India have shed light on the unjust and inconsistent aspects of the UAPA, underscoring the loopholes that can result in the misuse of this legislation. Supporters of the Act often argue that it serves to place reasonable limitations on individuals to prevent them from infringing upon the rights of others while exercising their own. However, it must be noted that Article 19(2) of the Constitution already exists to determine the reasonableness of such restrictions on the freedom of individuals. Ultimately, it is the responsibility of the courts to fairly evaluate the reasonableness of any restrictions imposed after a thorough trial.

It is imperative that the Act must be thoroughly examined to check the constitutional validity and make any necessary changes to its framework in order to address any deficiencies in the

current laws. It must be ensured that these changes adhere to the rights of our citizens, without any indirect or direct violations.

FINDINGS

- Several provisions within the Unlawful Activities (Prevention) Act (UAPA) have been criticized for their potential to violate the civil liberties of individuals. These provisions raise concerns about due process, the presumption of innocence, and the protection of fundamental rights. The broad and vaguely defined concept of "unlawful activities" in the UAPA allows for a wide range of actions to be classified as such. Also, Section 15 of the UAPA allows confessions made to police officers to be admissible in court under certain conditions. This provision has been criticized for potentially incentivizing coercion and undermining the right to remain silent and the protection against self-incrimination. Critics argue that the process for designating organizations as terrorist can lack transparency, and proscription may impact the right to freedom of association without adequate safeguards. Section 43-D of the UAPA imposes stringent conditions for granting bail, making it difficult for individuals to secure release pending trial. This can lead to prolonged pre-trial detention, affecting the right to liberty and a fair trial. These provisions collectively raise concerns about the potential infringement on civil liberties and underscore the importance of a careful balance between national security imperatives and the protection of individual rights. Ongoing scrutiny and evaluation of the UAPA's application are essential to address these concerns.
- The UAPA in India grants the authorities significant powers in the interest of national security. The extent to which it empowers authorities to curtail civil liberties is a complex and debated issue. It places restrictions on bail and imposes a higher standard for granting bail in certain cases. This can limit the ability of individuals to challenge their detention, potentially affecting the right to a fair trial. The Act has been used to stifle political dissent, as individuals engaged in peaceful protest or expressing dissenting opinions have been charged under its provisions. It also allows the government to ban organizations it considers terrorist. This power raises questions about the criteria for such designations and the impact on the right to freedom of association.
- The enforcement of the Unlawful Activities (Prevention) Act (UAPA) in India has raised concerns about its impact on the right to freedom of speech and expression, a fundamental right guaranteed by the Constitution of India. The perception that the UAPA could be used against

those advocating for marginalized or dissenting voices may act as a deterrent to activism and advocacy work. Individuals may fear legal consequences, leading to self-censorship and a dampening of robust public discourse. The broad scope of the UAPA may impact academic and artistic freedom, as scholars, writers, and artists may hesitate to explore or express ideas that could be interpreted as supporting or sympathizing with causes deemed unlawful. This may impede the free exchange of ideas and creative expression. In conclusion, the enforcement of the UAPA has sparked concerns about its potential impact on the right to freedom of speech and expression in India. Balancing national security considerations with the protection of constitutional rights remains a crucial challenge, requiring ongoing scrutiny and evaluation of the law's application.

SUGGESTIONS

- Clarify and narrow down the definition of "unlawful activities" to ensure that the law targets specific, well-defined activities that pose a genuine threat to national security. A precise definition can help prevent misuse and arbitrary application of the law.
- Introduce robust safeguards to prevent the misuse of the UAPA. This could include stringent penalties for false or frivolous accusations, as well as mechanisms for legal redress and compensation for individuals wrongfully accused under the act.
- Implement time-bound investigations to prevent prolonged detentions without trial. Setting specific time frames for completing investigations can help balance the need for thorough examination with the right to a speedy trial.
- Establish clear and transparent criteria for designating organizations as terrorist entities. The process should include checks and balances to prevent arbitrary designations and provide avenues for organizations to challenge their proscription.
- Regularly review and update the UAPA to ensure its relevance and alignment with evolving legal standards and societal expectations. Consider convening a multi-stakeholder committee to assess the law's effectiveness and propose amendments as needed.