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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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AN ANALYSIS AND RELEVANCE OF THE UNLAWFUL ACTIVITIES PREVENTION ACT 1967

AUTHORED BY - KRITAVIRYA CHOUDHARY

ABSTRACT

The Unlawful Activities Prevention Act 1967 is the principal anti-terrorism law in India. The main objective of the act is to deal with actions threatening the sovereignty and integrity of the country. While the supporters of the act have claimed that it is imperative to have the act in its current form or rather in a strengthened form to prevent terrorist attacks, the critics have argued that the law violates many of the fundamental rights enshrined under the Constitution of India as well as the international conventions signed and ratified by India. Concerns have also been raised about the increasing use of the Act especially against political dissidents. Persons charged under UAPA also find it extremely difficult to get bail due to the stringent nature of the act. It is important to note that the UAPA was not initially modelled to be an anti-terror law. It was only after the amendment made to the act in 2004 that it became an anti-terror law. The 2004 amendment incorporated many of the provisions of Prevention of Terrorism Act 2002. This research paper seeks to analyse the current provisions of the UAPA It also seeks to observe whether the provisions of the UAPA are compatible with the fundamental rights and will also look into the history of the UAPA. The paper will also make a comparative analysis of the UAPA with the American PATRIOT Act. Lastly, the paper aims to suggest various changes to the provisions of the UAPA to make it just, reasonable and compatible with human rights. The paper will look into the data of the NCRB to study the conviction rate under the act and it will also analyse various articles available on the internet for the purpose of this research.

KEYWORDS- UAPA, Terrorism, Fundamental Rights, Constitution, Dissidents, Bail

HISTORICAL CONTEXT OF THE UAPA

Though the Unlawful Activities Prevention Act was passed in 1967, it has its roots in British colonial period. The Criminal Law Amendment Act 1908[1] was enacted by the colonial government after the partition of Bengal had taken place in 1905. This law was enacted to curb the resistance to the partition. The law had for the first time used the term "Unlawful Association". The act had given unilateral powers to the government to ban organisations/associations without judicial interference. As a result of this law, various political organisations including the Congress party, RSS, Swaraj Party, Railway Workers' union were banned and members of these organisations were prosecuted[2]. Interestingly, none of the organisations were accused of committing any sort of violence. They were banned solely due to their participation in politics. The law had caused massive discontentment within the society but it not only remained in force during the British period also continued after independence. However, the Criminal Law Amendment Act, 1908 was struck down by the Supreme Court in the case of State of Madras v. V.G. Row [3] for being unconstitutional. The court held that the power of the executive to ban an organisation without judicial oversight amounted to the contravention of fundamental rights. The 1908 act was briefly restored by the government through the Defence of India Rules by using its emergency powers during the 1962 and 1965 wars against China and Pakistan respectively. The Unlawful Activities Prevention Act 1967[4] was then passed to protect the sovereignty and integrity of the country. The most immediate cause for the passing of the act was the Naxal insurgency which begun in Naxalbari, West Bengal around the same time. However, the act at that time was not intended to become an anti-terrorism law. In 1971, the Maintenance of Internal Security Act[5] (MISA) was passed by the Government to deal with terrorism, to maintain public order and to prohibit "anti-national" activities. The act was amended several times during the national emergency between 1975 and 1977 and was made more stringent. Critics accused the government for using the law to suppress dissent and attack political opponents. Also, the act was criticised by many for not having a proper definition of the term 'internal disturbances'. Under Section 16A of the act, the grounds of detention were also not required to be mentioned to a person and it was surprisingly held valid in the ADM Jabalpur v. Shivkant Shukla case[6]. The new government led by

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[1] Vareny Chaudhary, UAPA: A Critical Appraisal, 3 Jus Corpus L.J. 592 (2022)
[2] Mayur Suresh, The Law Invoked to Arrest Activists Has Its Roots in the Emergency, The Wire (Nov 04, 2023, 5:50PM), https://thewire.in/law/uapa-activists-arrests-emergency-supreme-court
[3] State of Madras v. V.G. Row, (1952) 1 SCC 410
[4] The Unlawful Activities Prevention Act, 1967, No. 37, Acts of Parliament, 1967(India)
[5] Maintenance of Internal Security Act,1971, No.26, Acts of Parliament, 1971 (India)
[6] ADM, Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521

Janata Party that came in after the 1977 election decided to repeal the act in 1978.

The next major law to deter terrorist activities was the Terrorist and Disruptive Activities (Prevention) Act[7]. It was enacted in the year 1985 in the backdrop of the Khalistan Separatist movement in the state of Punjab. The TADA was heavily criticised as it gave wide powers to the law enforcement agencies without proper recourse available to the accused. For instance, the police were not under the obligation to produce the accused before the magistrate within 24 hours. This was in violation of Article 22 of the Constitution. Unlike the usual common law practice, the burden of proof was shifted on the accused. Furthermore, the confessions made to the police officers were considered to be admissible in the courts. By 1994, more than 76000 people had been arrested under the act[8]. Furthermore, the conviction rate under the act was a mere 2%. The constitutionality of the law was challenged in the case of Kartar Singh v. State of Punjab[9], but it was upheld by the Supreme Court. Due to the high number of arrests and less conviction rate, the act sparked widespread condemnation. As a result, the government allowed the act to lapse in 1995, a sunset clause of ten years.

The Prevention of Terrorism Act 2002 (POTA)[10] was passed to replace the Terrorist and Disruptive Activities (Prevention) Act, 1985 as the main anti-terrorist legislation of India. Some of the provisions of POTA 2002 were similar to TADA. For instance, under both laws confessions made to the police was considered to be admissible in court. Similarly, under both laws a person could be detained up to a period of 180 days without the filing of a chargesheet. Soon after being enacted, the law was challenged before the court and finally in 2004 the new UPA Government repealed the law. Many of the provisions of POTA found itself in the UAPA through the UAPA (Amendment) Act, 2004[11]. The term 'unlawful activity' now included the definition of 'terrorist act' from the Prevention of Terrorism Act 2002. Another amendment to the UAPA was passed in 2008[12] which gave the Central Government the power to ban associations on grounds of being an 'unlawful association' and a 'terrorist organisation'.

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[7] Terrorist and Disruptive Activities (Prevention) Act, 1987, No. 28, Acts of Parliament, 1987 (India)

[8] Human Rights Watch, https://www.hrw.org/legacy/backgrounder/asia/india-bck1121.htm#:~:text=The%20government%20used%20TADA%20as,force%20from%201987%20to%201995. , (last visited Nov 4, 2023)

[9] Kartar Singh v. State of Punjab, (1994) 3 SCC 569

[10] The Prevention of Terrorism Act, 2002, No. 15, Acts of Parliament, 2002 (India)

[11] The Unlawful Activities (Prevention) Amendment Act, 2004, No. 29 Acts of Parliament, 2004(India)

[12] The Unlawful Activities (Prevention) Amendment Act, 2008, No. 35, Acts of Parliament, 2008 (India)

THE CONTROVERSIAL SECTIONS OF THE UAPA

While there has been considerable controversy regarding the UAPA as a whole itself, some provisions in particular have drawn more public condemnation than the others. Section 2(o) of UAPA, 1967 provides the definition of an "unlawful activity". It also states that an activity is unlawful if it intends to question, disclaim, disrupt the sovereignty and territorial integrity of India. Another sub clause of Section 2(o) states that an activity is unlawful if it intends to or causes disaffection against India. This definition is very vague as it not clear what constitutes 'disaffection'. There are fears that it might be used by the government to curtail free speech and dissent and bring them under the ambit of the said provision[13]. This could lead to the violation of the Fundamental Right to Free Speech and Expression guaranteed under Article 19(1)(a) of the Constitution. Like 'disaffection', there is no clear definition of what acts would constitute the disruption of "sovereignty" of the country. Since it is ambiguous and open to interpretation, it might be used to curb legitimate criticism of the government. Section 15 of the act provides the definition of a "terrorist act". It states that an act is a terrorist act if it is done with an intention to threaten the unity, integrity, security or sovereignty of the country or done with an intention to cause terror or likely to cause terror on any section of people in India. Section 15(a) to (c) specify the acts that would constitute a terrorist act. Here, the Act has gone a bit too far in determining a terrorist act. For instance, under Section 15(b), overawing by means of criminal force or show of criminal causing the death of a public functionary or attempting to cause death of a public functionary is considered to be a terrorist act. The addition is unnecessary as a bare reading of the provision states that it relates to criminal force. The usage of criminal force is already an offence under Section 350 of the Indian Penal Code. Furthermore, even criminal intimidation is considered to be an offence under Section 503 of the Indian Penal Code.

After the 2019 amendment to the UAPA[14], even an individual could be labelled as a "terrorist" under the Unlawful Activities Prevention Act 1967. Prior to the amendment, only organisations could be labelled as a terrorist organisation. The amendment could prevent lonewolf attacks who are not affiliated with any organisation. However, the issue with the amendment is that an individual would be branded as a terrorist even before the trial has begun. In case the accused is innocent, it could have serious repercussions and even impinge upon his reputation. The Right to Reputation is considered

[13] Anushka Singh, "Criminalising Dissent: Consequences of UAPA." Economic and Political Weekly, vol. 47, no. 38, 2012, pp. 14–18. JSTOR, www.jstor.org/stable/41720156.

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

to be an integral part of Article 21. In Sukhwant Singh v. State of Punjab[15], the Supreme Court had held that the right to reputation is a valuable asset of a person and is part of Article 21 of the Constitution. Similarly in the case of Subramaniam Swamy v. Union of India[16], the court had held that reputation of an individual is a basic element under Article 21 of the Constitution. Section 43D makes it extremely difficult for the accused to receive bail under the act. The regular provisions of the Criminal Procedure Code are not applied in case of this act. Under Section 43D, a person can be detained up to a period of 180 days if the investigation is not completed within a period of 90 days. This provision goes against the right to speedy justice/trial, which is considered to be a facet of Right to Life under Article 21 of the Constitution. This was held by the Supreme Court in multiple cases including the Hussainara Khatoon v. State of Bihar[17] case. The concept of Speedy Justice was also laid down by Justice Krishna Iyer in the case of Babu Singh v. State of UP[18]. Under Section 43D (5), bail cannot be granted to a person against whom the charges are "prima facie true". This provision limits the scope of granting of a bail to a person. In the case of State of Rajasthan v. Balchand[19], the Supreme Court had held that bail is the rule and jail is only the exception. However, Section 43D (5) makes it the opposite wherein jail seems to be the rule and bail is considered to be an exception. The granting of bail will be at the sole discretion of the court. Under Section 43E of the act, the presumption of guilt is on the accused rather than the prosecution. This goes against the common law practice wherein the burden of proof is on the prosecution and the accused is considered to be innocent until proven guilty. It goes against Article 14 of the International Covenant on Civil and Political Rights, wherein the accused is deemed to be innocent until proven guilty.

Under Section 49 of the UAPA, no person can file a suit against the central government or state government or any officer authorised on this behalf by the government provided that the action was done in good faith. An accused person will have no judicial recourse and cannot even demand compensation from the government if he has been falsely charged or imprisoned under the provisions of the UAPA. This particular section gives immunity to the government officials against any action taken by them under the provisions of this act. Under Section 51, the government has the power to freeze, seize or attach funds of persons who are even suspected of engaging in terrorism. This section gives unbridled power to the government to take over the assets and funds of those who are merely

[15] Sukhwant Singh v. State of Punjab, 1995 AIR 1380
[16] Subramaniam Swamy v. Union of India, AIR 2016 SC 2728
[17] Hussainara Khatoon (V) v. Home Secy., State of Bihar, (1980) 1 SCC 108
[18] Babu Singh & Ors v. State of UP, 1978 AIR 527
[19] State of Rajasthan v. Balchand, AIR 1977 SC 2447

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suspected and it may impinge upon their right to life under Article 21 of the Constitution.

CASE LAWS

The Supreme Court's stance on the UAPA has largely varied[20]. On certain occasions, it has taken a pretty restrictive interpretation of the UAPA while at other times, its interpretation has been quite liberal. In the case of Arup Bhuyan v. State of Assam[21], the Supreme Court had held that mere membership of a terrorist organisation would not lead to a conviction under Section 10 of the act. The state will have to prove that the accused was an active member of the organisation to attract conviction undern Section 10 of the UAPA. The Court held a similar ruling in the case of Indira Das v. State of Assam[22] and State of Kerala v. Raneef[23]. However, the Court overruled the three judgments in the recent case of Arup Bhuyan v. The State of Assam Home Department[24]. Following this judgment, even mere membership would attract conviction under Section 10 of the act. It held that if a person knowingly continues to be part of an unlawful organisation, they would be liable to be punished under Section 10 of the act. Furthermore, in the case of Angela Harish Sontakke v. State of Maharashtra[25], the Supreme Court had granted bail to the accused who was accused of spreading Maoist ideology inspite of the presence of Section 43D (5). The Supreme Court had declared that default bail under the proviso to Section 167(2) is a fundamental right and not merely a statutory right. The court held this while granting bail to a person accused under Section 18 of UAPA in the case of Fakhrey Alam v. State of UP[26]. In the case of Union of India v. K.A Najeeb[27], the court held that the constitutional courts have the power to grant bail to the accused in cases of violation of fundamental rights even if the statute limits the powers of the courts to do so. The Delhi High Court while granting bail to activists Natasha Narwal, Devangana Kalita and Asif Iqbal Tanha[28] had stated that protests against the government cannot be considered to be a "terrorist act" under the UAPA unless the essential factors that constitute it are present. In this case, the three students were Anti CAA activists who were arrested and charged under the UAPA for their role in the Delhi riots that broke out in February

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[20] Reet Balmiki, The Misuse of the UAPA and the Approach Taken by the Courts, 2 Jus Corpus L.J. 299 (2021
[21] Arup Bhuyan v. State of Assam, (2011) 3 SCC 377
[22] Indra Das v. State of Assam, (2011) 3 SCC 380
[23] State of Kerala v. Raneef, (2011) 1 SCC 784
[24] Arup Bhuyan v. State of Assam, (2023) 8 SCC 745
[25] Angela Harish Sontakke v. State of Maharashtra SLP (Cri.) No. 6888 of 2015
[26] Fakhrey Alam v. State of Uttar Pradesh, Criminal Appeal No. 319 of 2021 (arising out of SLP(Crl.) No. 6181/2020).
[27] Union of India v. K.A. Najeeb, (2021) 3 SCC 713
[28] Asif Iqbal Tanha v State of NCT of Delhi 282 (2021) DLT 121; Devangana Kalita v State of NCT of Delhi 282 (2021) DLT 294; Natasha Narwal v State of Delhi NCT 2021CriLJ 3108

2020. Section 43D (5) was challenged by three petitioners before the Supreme Court for being violative of the fundamental right of Freedom of Speech. The petitioners were booked for their social media comments on the religious violence in the state of Tripura. A three-judge bench led by the then Chief Justice of India, Hon'ble Justice NV Ramana had given orders to the Tripura Police to not take coercive action against the accused and had also sent a notice to the Central Government asking for clarification upon the validity of the said provisions[29]. The courts have also granted bail to the accused on humanitarian grounds. For instance, in the case of Surendra Pundalik Gadling v. Senior Inspector of Police[30], the Bombay High Court refused to strictly apply Section 43D (5) and had given to bail to accused on humanitarian grounds to attend his mother's final rites. Similarly in the case of Natasha Narwal v. State (NCT of Delhi)[31], the court granted bail on humanitarian grounds to the accused to attend her father's final rites.

However, in certain cases, the Supreme Court has taken a much narrower view with regard to the UAPA. For instance, in the case of NIA v. Zahoor Ahmad Shah Watali[32], the court held that bench cannot assess the merits and demerits of the bail during the stage of bail. What this means is that the court will have to accept only the NIAs findings since assessing evidence provided by the accused would be considered to be an inquiry of merits by the court. The Supreme Court had cancelled the bail provided by the Delhi High Court since it went beyond their statutory power of evidence against the accused being prima facie true under Section 43D (5). The degree of satisfaction for determining in case prima facie exists for bail is lighter in UAPA as compared to other criminal statutes. Similarly, the court had rejected the bail plea of Umar Khalid[33] as the allegations against him appeared to be prima facie true. An important point to note here is that the prosecution heavily relied on WhatsApp conversations in its arguments against the bail application of Khalid.

COMPARISON BETWEEN THE UAPA AND US PATRIOT ACT

At present, the primary anti-terrorism law in India is the Unlawful Activities Prevention Act 1967. However, as stated earlier the UAPA only became an anti-terrorism law in 2004. Previously, the TADA and POTA acted as the primary anti-terrorism laws in India. Both of them were immensely criticised for being in violation of human rights. TADA was allowed to lapse in 1995 while the POTA

[29] Mukesh v. State of Tripura WP (Crl) 470/2021
[30] Surendra Pundalik Gadling v. Senior Inspector of Police, NIA, Criminal Appeal No. 220 of 2021
[31] Natasha Narwal v. State (Delhi of NCT), 2021 SCC OnLine Del 1960
[32] NIA v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1
[33] Umar Khalid v. State (NCT of Delhi), 2022 SCC OnLine Del 3423

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was repealed by the new UPA Government in 2004. After POTA was repealed, many of its provisions found itself in the UAPA Amendment Act 2004. Following the 26/11 terrorist attacks in Mumbai, the UAPA Amendment Act 2008 was passed to strengthen the anti-terrorism laws in the country so as to prevent such an attack from happening ever again. Among various changes, the 2008 amendment made it difficult for the accused to get bail under the act.

In the United States, the primary law to deal with terrorism is the US PATRIOT act which stands for "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism". The law was passed soon after the 9/11 attacks which led to deaths of nearly three thousand people. The act allows intelligence investigations, the collection of financial, credit records and communications. The law also allows for the tracking of funds and communications of anyone who is suspected of being a national security threat. The PATRIOT Act also gave the power to the Federal Bureau of Investigation (FBI) to seek information without requiring a judge's sanction through the national security letters. Information regarding the consumers could also be collected through various sources such as the Telephone services, Internet Service Providers and financial institutions. The major goals of the PATRIOT Act are to expand the criminal law system to combat terrorism, allow state surveillance and urge private entities to share information with the law enforcement authorities. Lastly, the aim is to boost government to government information sharing at the local, state and federal level.

Section 213 of the PATRIOT Act is one of the controversial sections of the act. This provision allows for a delayed notification of the search warrants. However, under the Fourth Amendment of the American Constitution, the authorities are mandated to have a search warrant to search or take anything from a home or company. Under the PATRIOT Act, the government can imprison non-citizens for a period of seven days before pursuing immigration or criminal charges against them. The act also allows for indefinite detention of the accused in case their country of origin refuses to accept them. The trial of foreign terrorists would take place in specialised tribunals and not in the traditional criminal courts of the United States. These tribunals would consist of military commanders and officials of the executive branch of the government. The rules of evidence have been toned down and the identities of the witnesses will also remain hidden. Further, judicial review of the decisions of the tribunals would not be allowed.

There are various similarities between the UAPA and the US PATRIOT Act[34]. Both the laws permit

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[34] Chandrika M. Kelso, et. al, Unlawful Activities Prevention Act-UAPA (India) & U.S.-Patriot Act (USA): A Comparative Analysis, Vol 5 No.2, The Homeland Security Review,121, 127-130(2011)

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electronic surveillance of the terror suspects with very little safeguards left for the latter. The suspects could be imprisoned for longer periods before the charges have been filed. Both laws allow the government to seize, attach the financial assets of the suspects. Under both laws, the period of sentencing is higher as compared to the other criminal statutes. Furthermore, under both laws there are special designated courts to deal with matters relating to terrorism. In India, there are special courts to deal with matters linked to UAPA. On the other hand, the Foreign Surveillance Intelligence Court (FISA) deal with matters linked to terrorism in the United States. The powers of the FISA courts were significantly enhanced by the PATRIOT Act. The identity of witnesses can be concealed in both the UAPA and the PATRIOT Act. However, the PATRIOT Act has relaxed rules regarding the obtaining of communication, financial, credit and consumer information without requiring a formal search warrant from the courts. The act also facilitates the sharing of information among state agencies.

In July 2010, India and the USA signed the India – US Counter Terrorism Initiative. The initiative provides for setting up of procedure that would lead to mutual investigative assistance, boosting capabilities to combat money laundering, financing of terrorism etc. The initiative was considered to be an indication of the growing India – US ties in the field of countering terrorism.

RELEVANCE OF THE ACT

The UAPA was initially enacted to protect the sovereignty and integrity of the country. It became the primary anti-terrorism law of India after the 2004 amendment to the UAPA. The UAPA has faced criticism from various quarters of the country as the act is deemed to be draconian with very little safeguards provided to the accused. It is also seen as a tool for the government to curtail free speech and to silence dissidents[35]. One of the most concerning aspects of the act is the that the people booked under the UAPA have been steadily increasing. As per the NCRB 2019 records, a total of 1226 cases have been registered under the act[36]. When compared to 2015, there has been a 72% increase in the number of arrests made in 2015. Around 1148 arrests were made in 2015 while nearly 1948 arrests were made for about 1226 cases in 2019. During the same period, the conviction rate under the UAPA stands at a paltry 2.2%. This reiterates the criticism levied against the government that the act is used

[35] Namrata Chakraborty & Ashish Deshpande, Assessing the Unlawful Activities (Prevention) Act, 1967 (UAPA) and its impact on India's Prison Justice System, Vol 4 Issue 4, International Journal of Law Management and Humanities, 3401, 3406 – 3407 (2021)

[36] The Hindu, https://www.thehindu.com/news/national/parliament-proceedings-over-72-rise-in-number-of-uapa-cases-registered-in-2019/article34029252.ece , (last visited 4 Nov 2023)

to curtail dissent. Under the UAPA, it takes a long time for a trial to get completed. Very few cases have been disposed off and the majority of accused are either pending investigation by the police or pending trial. Between 2016 and 2018, more than 3000 cases under the UAPA were registered but chargesheets were filed within the stipulated period of 180 days in only 821 cases[37]. While it is true that the statistics pertaining to UAPA is disturbing, it would be wrong to say that the act must be completely repealed. The number of terrorist attacks in the world have been rising and it is imperative not only to have an anti-terrorism law but also coordinate with other nations to eradicate the menace of terrorism. Thus, the presence of an Anti-Terrorism law is required. However, at the same time there must be balance between these laws and the fundamental rights provided in the constitution. The anti-terror laws must be made compatible with the fundamental right/human rights so as to ensure that basic safeguards are provided to individuals and the innocent do not have to suffer.

SUGGESTIONS

The first and foremost change to UAPA should be about bringing a clear definition of "unlawful activity" under Section 2(o) of the act. Words such as "disaffection' and "sovereignty" must be clearly so as to make it unambiguous and clear of any room for vagueness and misuse of the law. A clear definition would also aid the judges in deciding the case. Under Section 15(b) the use of criminal force against a public functionary that causes injury or death is considered to be a "terrorist act". This provision should be repealed as it goes beyond the scope of the what a terrorist act is considered to be. Further the use of criminal force is anyway an offence under Section 350 of the IPC. To protect individuals declared as "terrorists" under Section 35 of the act, the names of such individuals should not be published or given to the media before the completion of the trial. The names should only be released once the trial is completed and the accused has been convicted under the act. If a person is declared as a "terrorist' under Section 35 and later found out to be innocent, it would take a massive toll on family and reputation, therefore care needs to be taken in dealing with such cases.

The maximum period of detention under Section 43D must be reduced to ninety days as mentioned in the Criminal Procedure Code. The present maximum detention period of 180 days under the act is too long and arbitrary. While terrorism is a serious offence, the current long period of maximum detention may impinge upon the accused's right to speedy justice. Similarly, Section 43D (5) must be repealed as it makes it very difficult for the accused to get bail. The bail may not be given if the

[37] India Today, https://www.indiatoday.in/india/story/anti-terror-law-mha-data-show-chargesheet-filed-in-less-than-half-of-uapa-cases-1722346-2020-09-16 , (last visited 4 Nov 2023)

accusations against the accused appear to be ‘prima facie true”. It gives huge discretionary powers to the courts and the principle of ‘Bail is the rule and Jail is the exception” would not be followed. Also, there needs to be a provision which should specifically mention that the act shall not apply to mere criticisms of the policies of the government.

Lastly, there needs to be some kind of a mechanism through the one wrongfully accused or arrested under this act would be able to receive compensation for the time they spent and the mental agony that arose from it. This does not only affect the accused but it also affects the family of such a person. The system of compensation would also ensure that the government use the powers given under this act more responsibly.

CONCLUSION

To conclude, the UAPA was brought out in 1967 in the backdrop of the beginning of the Naxal Insurgency. Initially, it was not supposed to be the primary anti-terror law in India and it became so after the amendment to the act in 2004. TADA and POTA had previously served the purpose of being India’s primary anti-terror laws. The UAPA has faced significant criticisms for violating the fundamental rights of the people and having arbitrary provisions relating to arrests and detentions. To further raise eyebrows, the number of cases filed under have significantly increased under the act but the conviction rate has remained at a paltry 2.2%. However, in recent few cases the courts have taken a more liberal view in deciding bail cases despite the stringent provision of bail under Section 43D (5) of the act. This has raised hopes that certain provisions of the act could be watered down in the future The article also looked at the provisions of US PATRIOT Act and made a comparison of it with the UAPA. Both the laws give wide ranging powers to the law enforcement authorities in dealing with matters relating to terrorism and also provide very little safeguards for the accused. The current relevance of the act has been discussed in this article. Further, suggestions to the current version of UAPA have been also been made. The suggestions aim to amend the law to make it more compatible with the fundamental rights provided under Part 3 of the Constitution. While the issue of national security is very important, it is imperative to find a balance of national security with human rights. The act must make try to distinguish between dissent and blatant acts of terrorism. Certain safeguards must be provided to the accused to ensure that they are not deprived of their basic human rights.

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