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UAPA: WHERE ANTI-GOVERNMENT AND ANTI-NATION ARE SYNONYMOUS

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ABSTRACT

An Indian law called the UAPA - Unlawful Activities (Prevention) Act aims to stop groups engaged in illicit activities within the country. Its principal aim was to create authorities to deal with actions aimed at undermining India's sovereignty and integrity. With the most recent legal modification, the Unlawful Activities (Prevention) Amendment Act, 2019 (UAPA 2019), the Union Government can now label people terrorists without going through the formal judicial process. Through this amendment, the UAPA is being misused by the present government. This research paper focuses on how the Act is misusing by the Indian Government arbitrarily. Human Rights are violated wilfully by the government. This paper is also aimed to focus about the need of repealing or reforming the Act. It concludes with the opinion that it must be revoked totally.

KEY WORDS: *UAPA, illicit activities, terrorists, Human Rights, Revoked.*

1. INTRODUCTION

The draconian "Unlawful Activities Prevention Act" (UAPA) in India is a security measure that gives the government the power to detain persons for offences they may commit in the future. UAPA makes it easier for the government to circumvent a number of essential freedoms and rights that shield people from governmental abuses of authority, as well as civil liberties that are protected by the Constitution. Acts that promote terrorism or other similar components are covered under the Unlawful Actions (Prevention) Act of 1967, which was enacted in order to effectively repress unlawful acts by individuals and groups. It works everywhere throughout the nation. Any Indian or foreign individual who is charged under the UAPA faces consequences, regardless of the offence they are accused of committing. Should someone conduct the aforementioned offence abroad, they will be held equally accountable under this statute.

Over time, terrorism-specific laws like the Prevention of Terrorism Act, 2002 (POTA) and the Terrorist and Disruptive Activities (Prevention) Act (TADA) were repealed due to legal concerns.

And the UAPA emerged as the main anti-terror law in India. The UAPA has undergone many amendments since 2004 in order to expand its scope of terror-related acts and strengthen the rights of the accused.

2. WHAT IS UAPA

Indian journalists' predicament is no longer hidden, as they are now placed 142 on the World Press Freedom Index 2020. The government has repeatedly enacted new laws intended to restrict freedom and infringe upon individuals' rights. In order to prohibit unlawful actions and uphold India's sovereignty and integrity, the Unlawful Activities (Prevention) Act 1967 (UAPA) was created as an anti-terrorism statute. It was initially passed in 1967 in response to anti-national and separatist movements. It was revised many times to better fulfil the act's main purpose and ensure that it is applied effectively, the most recent one in 2019 to add sections on cyberterrorism, individual designation, funding of terrorism, and property confiscation. It gives the National Investigation Agency (NIA) the authority to look into and prosecute UAPA cases nationwide. It permits the imprisonment of suspects for up to 180 days without accusation or trial, and it permits the accused to be denied bail until the court is certain that they are innocent. Any conduct that challenges or disregards India's sovereignty and territorial integrity, or that encourages the cession or secession of any portion of the country, is considered criminal behaviour. Any act that threatens the unity, security, or economic stability of India or any other nation, or that results in or aims to result in the death, injury, or destruction of any property, is classified as terrorism.

3. BACKGROUND OF THE ACT

A National Integration Conference was called in 1961 by the then-prime minister Jawaharlal Nehru in an attempt to tackle linguistic chauvinism, regionalism, communalism, and casteism, among other issues. To provide advice on issues pertaining to national integration, a National Integration Council was established. In 1966, the Unlawful Activities (Prevention) Bill was subsequently introduced. It was supposed to address groups involved in separatist endeavours hostile to the country's integrity and sovereignty. It called for the formation of a powerful tribunal chaired by a high court judge who was either serving or had retired, together with two other competent high court justices. Its purpose was to find these associations that were engaging in the aforementioned illegal activity and then ban them. Any individual who persisted in illegal activity and identified with the banned organisation was subject to a trial by the tribunal under the Code of Criminal Procedure (CrPC), which carried a potential three, seven, or ten-year penalty. As a fact-finding body, the original statute was therefore more analogous to a Commission of Inquiry.

But when it expired, a new bill was submitted, and in 1967 it was eventually enacted with some modifications to the goals but with the same provisions. Because the government had been passing other preventative legislation in the meantime, such as MISA 197, NSA 1980, TADA 1987, MCOCA 1999, POTA 2002, etc., it was seldom ever employed.

As everyone is aware, the terrorist attacks in the US on September 11, 2001, altered not just the global order but also the way that people perceived one another. Every Muslim and Asian started to seem suspicious. The United Nations Security Council led the UN's adoption of Resolution No. 1373/2001, which addressed risks to international peace and security resulting from terrorist activities, after learning of the US assault. In response to the rise in terrorist attacks, the UN decided in Chapter VII of its Charter that all States must stop and prevent the financing of terrorist acts, criminalise wilful provision or collection of funds through any means, freeze accounts connected to terrorists directly or indirectly, and forbid providing financial support to them. It demanded that nations follow the procedures of previous agreements and improve their information sharing.

India responded by passing the UAPA Amendment Act, 2004 in 2004. It observed with interest that throughout the previous two years, POTA provisions were being abused. However, the government believed that it was important to criminalise different aspects of terrorism by making the required adjustments to the UAPA since it was steadfast in its mission to combat terrorism and in light of the UN's responsibilities in accordance of Resolution 1373. Next, it added Chapters V and VI to cover the forfeiture of terrorist organisations' income and the former miscellaneous Chapter IV, which was replaced with "Punishment for terrorist activities." Terrorist activities, their financing, their confiscation, and their freezing therefore became crucial components of the Act. Additionally, it stipulated more severe penalties, up to and including life in jail or death. It effectively combined the definitions of "terrorist" from POTA, which was being abolished due to abuse, and TADA, whose definitions had expired in 1995.

Still, there was not much of a wait. The UAPA Amendment Act, 2008 was approved in that year. The UN Resolution No. 1373/2001, which served as justification for the inclusion of terrorist acts in our domestic legislation, was cited in a preamble that was included. It did, however, list several other resolutions. Upon closer inspection, it was seen that nearly every resolution had to do with the Middle East. Resolutions Nos. 1267/199, 1333/2000, and 1363/2001 concerning Afghanistan and the Taliban, as well as 1390 and 1455/2003 regarding sanctions on Osama bin Laden, Al-Qaeda, and the Taliban, and 1526/2004 about sanctions on Afghanistan, further reinforce the

preceding resolutions. In addition, resolution 1566 calls for carrying out resolution 1373 and restating previous resolutions related to counterterrorism. States are required by law to take prior action against Al-Qaeda, Osama bin Laden, and the Taliban. 1822/2008 for extending the monitoring team in charge of managing sanctions against Laden, Al-Qaeda, and the Taliban, as well as maintenance of the unified list of individuals to whom sanctions were to apply. 1735/2006 evaluation of ISI, Al-Qaeda, and related individual groupings. Additionally, all states were required to impose a mix of penalties on those listed in 1267/1333/1390.

The Unlawful Activities (Prevention) Amendment Act, 2019 (UAPA, 2019) was the most recent update to address the concept of “terrorist,” extending its scope to encompass those covered by Sections 35 and 36 of Chapter VI of the Act. It permits the DG of NIA to seize assets derived from terrorist gains under Section 25 and grants officials ranking as inspectors and higher the authority to look into cases under UAPA Section 43. The Central Government also establishes a Review Committee to “denotify” the person reported as a terrorist, eliminating any possibility of an institutional procedure for judicial review.

4. CONSTITUTIONALITY OF THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2019

First off, free reign to conduct searches, seizures, and arrests in any state of the union without prior notice to the state government or local authorities is granted to the National Investigative Agency (created by the NIA Act, 2008). As per the legal experts' view, this modification was beneficial instead of the conflict with the Maharashtra government, which required prior notification (to the state's director general of police) of the arrival and activities of the National Investigation Agency. The demand was unreasonable since it was always difficult for the NIA to carry out operations and searches in secret and with confidentiality.

The amendment's second modification unleashed a torrent of debates. Wherein Section 35 (1) was altered and a fourth schedule to the parent act was introduced. This was purported to grant the Union Government unrestricted authority to add or remove anyone who would be classified as a terrorist and to detain them for up to two years without providing a means of judicial appeal. Shortly afterward, the Indian Supreme Court received a few applications contesting the recently inserted clauses, arguing that they violated Article 19(1) and Article 21 of the Indian Constitution. The Supreme Court was asked to apply the temporary Eclipse Doctrine while the act's amendment's constitutionality was being investigated.

The 1967 International Covenant on Civil and Political Rights, which acknowledges the aforementioned concept as a universal human right, is violated by the new Amendment, which also runs counter to the idea of "innocent until proven guilty." Because the amendment stipulates that labelling someone a terrorist would not result in a conviction or any consequences, it is being used to suppress rather than fight terrorism. Lastly, the government is empowered to designate someone as a terrorist with "unfettered powers," and no objective standard has been established for classification.

5. PETITIONS CONTESTING THE CONSTITUTIONALITY OF THE UAPA

The constitutionality of Sections 35 and 36 of the Unlawful Activities (Prevention) Act, 1967 (UAPA), as revised in 2019, is being contested in two cases. The non-profit civil rights organisation Association for Protection of Civil Rights (APCR) files the initial petition. Indian citizen Sajal Awasthi has filed the second petition.

The government can now designate certain people as "terrorists" under Sections 35 and 36. The petitioners contend that this provision grants the government the arbitrary authority to silence critics and dissenting voices. In addition, Article 14's guarantees of equality, Article 19(1) (a)'s freedom of speech, and Article 21's guarantees of a dignified existence are all violated by Sections 35 and 36.

The petitioners are requesting the invalidation and declaration of Sections 35 and 36 as unconstitutional. On the grounds that these portions contravene the Indian Constitution of 1950's Articles 14, 19(1) (a), and 21.

➤ Grounds for the petition-

- Absence of Substantive and Procedural Due Process:

The government may designate any person as a terrorist under Section 35 of the UAPA's Fourth Schedule. Without a complex procedure, the government can proclaim and notify on the basis of mere belief.

No requirement for a fair hearing has been made. It's unclear what constitutes a conviction in a trial court or the filing of a formal FIR for someone to be labelled a terrorist. Although S. 36 gave someone who has been designated as a terrorist the right to appeal to the government, it is not always easy to use. The reason for an arrest is not disclosed to the subject. Oral hearings are not permitted at the state of appeal.

In *Puttaswamy v. Union of India*¹, the Supreme Court reaffirmed that the only way to restrict someone's right to life and personal freedom is through the proper legal channels. The due process criterion is not met by Sections 35 and 36.

- The Law Violates Equality and Is Arbitrary:

There are no protections against the huge possibility of discretionary authority in the contested portion. Although there are significant protections in place when designating an organisation as a terrorist organisation, it is wrong for an individual. The treatment of a person is excessive and inappropriate when there is no obvious purpose for making the distinction between them and an organisation. According to Article 14, this does not pass the "reasonable classification" criteria.

Furthermore, the *audi alteram partem*, or rule of fair hearing, is a natural justice principle that was broken by the lack of a fair hearing. The petition cites *Union of India v. Tulsiram Patel*², to argue that the petitioner's breach of natural justice leads to arbitrariness and breaches Article 14.

- Indirect Violation of Free Speech:

According to *Maqbool Fida Husain v. Rajkumar Pandey*³, dissent is a crucial component of the right to free expression under Article 19(1) (a). The challenged Sections target critical speech against the government while posing as anti-terrorism laws.

The amendment goes against the international agreements that India has accepted. The Amendment in question violates certain legal standards outlined by the United Nations Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and the International Convention on Civil and Political Rights.

6. RAPID MISUTILIZATION OF UAPA

There are several examples of flagrant misuse of UAPA by the Indian Government. Indian journalists' predicament is no longer hidden, as they are now placed 142 on the World Press Freedom Index 2020. The government has repeatedly enacted new laws intended to restrict freedom and infringe upon individuals' rights.

Varvara Rao, Sudha Varadwaj, Devangana Kalita, Safoora Zargar, Mahesh Raut, numerous students and activists have been accused of crimes and charged under laws that make it immaterial

¹Puttaswamy v. Union of India (2017) 10 SCC 1, AIR 2017 SC 4161

²Union of India v. Tulsiram Patel (1985) 3 SCC 398

³ *Maqbool Fida Husain v. Rajkumar Pandey* 2008 Cri LJ 4107 : (2008) 2 CCR 392

to prove their innocence or guilt. The Delhi Police used the harsh UAPA once more when they arrested Umar Khalid, a student leader at Jawaharlal Nehru University (JNU), as well as two other Jamia Millia Islamia (JMI) University students, Meeran Haider and Safoora Zargar. The police described the JMI students' alleged plot to stir community unrest over the CAA as a "premeditated conspiracy," leading to their detention. In response to reports that the Jammu and Kashmir police had invoked the UAPA against journalist Masrat Zahra for uploading anti-national posts on Social media with criminal intentions to induce the youth and promoting anti-national activities and journalist Peerzada Ashiq for stories on "diversion of COVID testing kits," Amnesty International Executive Director stated that this "signals the authorities' attempt to curb the right to freedom of expression." The attempt to confront the COVID-19 epidemic is put at risk by this intimidation of journalists. In order to avoid the longest internet ban ever enforced by the government—which abolished Article 370 of the constitution and divided the state into two UTs under central administration—the Jammu and Kashmir police had also cited Section 13 of the UAPA against individuals who were accessing social media using VPNs.

Notably, for many years to come, the passing of Father Stan Swamy will grate on the conscience of our criminal justice system. Swamy, an undertrial, did not receive the proper treatment from a number of authorities that were in charge of his confinement and his prosecution in the biggest democracy in the world, where even prisoners serving sentences are entitled to certain rights. In October 2020, Swamy was taken into custody under the Unlawful Activities (Prevention) Act (UAPA) due to his suspected involvement in the 2018 violence at Bhima Koregaon and his affiliation with Maoists. Prior to this, he gained notoriety as an activist for indigenous rights. The investigation authorities had retrieved all essential papers and information from him after many rounds of interrogation prior to his detention. They had also taken his computer and other pertinent documents. Because of this, the National Investigation Agency (NIA) did not even attempt to obtain his custody following his arrest. Stan Swamy requested medical bail, but the prosecution consistently refused to grant it, casting doubt on the veracity of his sickness. Finally, due to his ancient age and severe condition, the courts were unable to give him the bail that he so richly deserved. The country now faces a lot of pressing concerns as a result of Swamy's passing. The purpose of UAPA 1967 was to combat terrorism. Can couriers, poster walas, sympathisers, propagandists, and even rioters be classified as terrorists, though? The UAPA was used to make 7,840 arrests between 2015 and 2019. Are we making the public aware of how many suspected terrorists we have in the nation? Why were just 155 people found guilty? Police chiefs should be concerned about the extremely poor results of the law's casual application—less than 2% of cases

result in convictions. There were 1,948 arrests in 2019 alone, with just 34 convictions. Human rights campaigners are uneasy about the circumstances surrounding Father Stan Swamy's death before to a bail hearing. According to media reports, India may come under further pressure from the international community as UN human rights director Michelle Bachelet expressed worry about the death of the Jesuit priest. In the meantime, India's human rights record has already been degraded by the US Commission for International Religious Freedom (USCIRF).

7. REPEAL OR REFORM? A CONCLUSION

Over time, UAPA developed as a result of a slow but consistent restriction of Article 19, which upholds the essential liberties of assembly and speech. The only path ahead is a total repeal. But just bringing up its abuse or low conviction rate might eventually trigger another eyewash, like the one that occurred in 2004. Thus, it should be very evident that any movement opposing the UAPA would also want to see the removal of all other state anti-terror statutes that have comparable provisions. In addition to civil liberties and democratic rights groups around the nation, the "Peoples' Movement against UAPA" is an umbrella group that was founded in January 2014. A broad definition of terrorism is introduced by the Act, encompassing political protest and other non-violent political activities. It gives the government the authority to outlaw a group and label it as "terrorist." Being a member of an organisation that has been outlawed alone becomes illegal. BJP government backed by RSS is incessantly misusing this Act. Although the RSS was deemed illegal in 1992 according to the UAPA, individual members were not detained just for belonging to the group. In his 1993 address, Vajpayee expressed his belief that "the Government would declare all the opposition as unlawful." And now BJP is doing so.

These laws have been utilised as political instruments against opponents who suggest a shift towards "thought-crimes," owing to their ambiguous wording and excessive scope. In order to accomplish the goals of this Act, the legislature has compromised human rights. Additionally, the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights are violated by the Amendment. The aforementioned arguments have demonstrated how the amendment jeopardises the citizens' fundamental rights and threatens the very existence of opposition. The government has arrested people for exercising their right to free speech and for standing up for justice and their rights under the pretence of these laws. The Supreme Court has a duty to intervene and restore trust in democracy when such heinous legislation breaches and takes away citizens' rights. This Amendment reflects the goal of the legislation passed during the colonial era, which aimed to stifle various freedom movements under the pretence of maintaining

public order. The Act primarily makes activities based on “ideology” and “association” illegal. It is clear from this that the aforementioned are indicators of a shift from democracy to dictatorship. Thus, this Act must be repealed, otherwise democracy will suffer a lot.

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