

# SEDITION LAWS IN INDIA: A CRITICAL REVIEW

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## ABSTRACT

The Unlawful Activities (Prevention) Act of 1967 (UAPA) evolved as an anti-terrorism statute that stops unlawful activities associations and people from engaging in unlawful activities while upholding India's integrity and sovereignty. It has been revised to serve the basic purpose of the act and to ensure its successful application. However, it violates and undermines a few basic human rights because the term "terrorist" has not been given an appropriate definition, creating a vacuum and a question about the authority for the grounds of an Individual's detention under the UAPA and ending up with a troublesome nature for citizens. The Unlawful Activities (Prevention) Act has been the subject of numerous petitions from people who claim that it breaches several key articles of the Indian Constitution. They are asking for the act's provisions to be declared unconstitutional. The jailed person must deal with serious consequences when their bail request is denied. There are many debates over its nature and incidents where many human rights activists were held for years without being tried in court. Laws like the UAPA are blatant violations of the constitutional guarantees of freedom that are necessary for democracy to flourish. These freedoms grant people the right to express themselves through rallies and protests and also permit the public to mobilize their thoughts, whether or not these choices are critical of the government. By reviving colonial policies intended to stifle freedom movements, this Amendment makes a retrograde. In the majority of circumstances, the Act makes actions that are motivated by ideology or association illegal. Therefore, an effort has been made to examine the 1967 Unlawful Activities (Prevention) Act through this paper.

**Keywords-** unlawful activities, violation, unconstitutional, and freedom of speech.

## I. INTRODUCTION

The Indian Constitution guarantees its citizens the right to freedom of thought, expression, and speech. and, freedom of assembly without arms, to all its citizens hence, no citizen must be excluded from performing any of these if they are peaceful and unarmful. The 19th article of the Indian Constitution's essential rights chapter states that these liberties may be subject to reasonable limitations. However, the government must often strike a balance between citizens' freedom and appropriate limits, which causes disagreement and results in constraints on one's entitlement to liberty. Sedition is challenging because it involves balancing the right to opinion and speech with the need to protect the authority and the established order of society. The offense of sedition is often used by governments to suppress dissent and criticism, and it can be difficult to determine when speech crosses the line from legitimate criticism to incitement of violence or public disorder. The offense of sedition is also controversial because it can be used to target political opponents and minority groups, and free communication and opinion may be stifled as a result.

Often the chasm between the reasonable restrictions and freedom of citizens, leads to the misuse of power, through section 124A<sup>1</sup>. According to subsection (a) of article 19 of the Indian Constitution, a person's liberty of thinking and expressing oneself encompasses the right to express one's dissatisfaction opinions, and disagreeable views. Taking this into consideration, the Supreme Court held that "sedition shall refer only to activities intended to make chaos or disrupt the public peace by turning to violence." The court also held that the right to freedom of speech and expression is subject to reasonable restrictions under Article 19(2) of the Constitution, which includes restrictions on speech that incites violence or leads to public disorder<sup>2</sup>. However, as these terms are ambiguous, they frequently lead to the misuse of sedition law and disregard the guidelines of the Supreme Court. The current state of affairs in the biggest democracy on earth is marked by blatant violations of people's democratic rights caused by the intrusive state violence authorized by laws pertaining to national security. Over time, the UAPA has become a deadly tool for putting an end to dissent and has been exploited by various governments to justify evil intentions through the legalized process.

## II. UNLAWFUL ACTIVITIES PREVENTION ACT (UAPA) UNDERMINE HUMAN RIGHTS GUARANTEES?

Legislations like UAPA are in direct contravention of the element of freedom guaranteed by the constitution that is indispensable for the functions of democracy. Regardless of whether these possibilities are critical of the authority in question, these freedoms grant people the right to articulate themselves through rallies and protests and enable the public to mobilize their thoughts.

A remarkable law like the UAPA, for instance, has its origins in colonial times. The Criminal Law Amendment Act of 1908, which created the term "unlawful association," made the Indian national movement illegal. Paradoxically, after independence, the government still has the authority to impose laws like the UAPA in an attempt to quell political dissent. The Constitution guarantees its citizens certain fundamental freedoms as mentioned in Article 19, but there have been efforts by the state to curb these freedoms. However, the judiciary has taken a pro-liberal stand and upheld these fundamental freedoms in the three landmark cases in the decades following the independence. In three verdicts it has been argued that laws that restrict fundamental rights<sup>3</sup> are basically unconstitutional and that fundamental freedoms<sup>4</sup> are typically only restricted in the most desired circumstances. All three judgments decided against the state prompting a requirement for an amendment to the constitution that might allow it to counter movements questioning the established order<sup>5</sup>.

The CDRO report<sup>6</sup> makes a thorough analysis of the UAPA in an effort to uncover a counterpart. It aims to comprehend and reveal how laws such as the UAPA serve as a symbol of the colonial mindset and tactic of outlawing and criminalizing dissent. The UAPA is a groundbreaking law that makes it illegal for people to exercise their fundamental right to associate and assemble by enabling the government to forcibly disband political groups that disagree with the status quo. It permits the executive to exercise undue power in order to restrict citizen's freedom to organize and engage in democratic agitation.

The evolution of democracy of India offers striking examples of how the UAPA enables the executive to infringe on citizen's democratic rights and hold them accountable for being involved members of society. Such an attempt is represented by Soni Sori's arrest and detention under the UAPA 1967 and sections of the IPC, 1860, including 124A, etc. the CPI(M) member of Bagchi's politburo, whose arrest under the act of UAPA signifies an equivalent attempt by the executive branch to suppress dissent, even though no weapons were taken from him during his incarceration. The indictment against him was justified by the literature found on him, which proved beyond dispute that he was a member of an illegal organization. While the UAPA is invoked in the name of national security to combat left-wing extremism, right-wing terrorism committed by Hindus is exempt from prosecution under the Act because the government does not view its actions as "organized" or as a threat to "national security". It is very clear that the goal of laws such as these is to keep things as they are.

Under the UAPA, it has also been done to target journalists and human rights activists who criticize official government policies. The authorities of Jammu and Kashmir recently invoked the UAPA on Zahra under section 13 of the UAPA in response to reports that "journalist Masrat Zahra shared intolerant posts on the social network as well as Peer Zada Ashiq wrote stories on the "diversion of COVID testing kits," signalling the authorities' attempt to curtail the right to liberty of expression." The police confirmed, claiming that their actions may incite the public to disrupt law and order. In addition, the Jammu and Kashmir police have used section 13 of the UAPA to prosecute individuals who were using VPNs to circumvent the government's longest-lasting internet ban- which resulted from the state's removal of Article 370 of the constitution and division into two union territories under the central government control. "To curb the misuse of the sites by miscreants for propagating false rumours," the government said, was the reason behind the action. To be charged under this provision, a person must, however, pose a genuine threat to India's

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<sup>1</sup> the Indian Penal Code, 1860

<sup>2</sup> Kedar Nath Singh vs the State of Bihar, 1962 AIR 955, 1962 SCR Supl. (2) 769

<sup>3</sup> Romesh Thapar vs. the State of Madras AIR 1950 SC 124: 1950 SCR 594

<sup>4</sup> V G Row vs. the State of Madras AIR 1951 Mad 147, (1951) IMLJ 628

<sup>5</sup> A K Gopalan vs. the State of Madras AIR 1950 SC 27

<sup>6</sup> Report on "The Fear of Law: UAPA and the Myth of National Security."

security, and statements made on social media that “cause or is intended to cause disaffection against India” should not be treated equally.

### III. WHY IS UAPA A PROBLEMATIC LEGISLATION?

UAPA is a sort of “safety or protection legislation” that means that citizens who may commit the crimes listed under it may be arrested by the government. For a number of reasons, this legislation is problematic. It forbids dissent, to start. It makes thinking about things like political protection and “disaffection” with the states illegal. The UAPA primarily targets this right, which is an attack on citizen’s freedom of expression, which is also a collective right for organizations to spread their opinions. Secondly, it is easy to circumvent basic rights and protocols. For instance, people who are arrested under the UAPA frequently spend up to 180 days behind bars without having a chargesheet filed. The creation of “special courts with the capability of using confidential testimony and to conduct closed-door hearings” is also permitted and it grants the government extensive discretionary powers.

It is becoming more common to use intimidation and harassment as a means of repressing dissent, endangering press freedom, public discourse, and the exercise of civil liberties. In order to safeguard “India’s sovereignty and integrity,” the UAPA gives the parliament the authority to restrict citizen’s rights and freedoms. The government argued that the amendment was necessary because terrorist acts are committed by individuals, and it would be useless to have the authority to label organizations as terrorist groups. Ultimately, those people could carry on with their endeavours using a different moniker. However, the question still stands as to whether the legislature can, in any case, label someone a terrorist simply because it thinks they are involved in terrorism without conducting any kind of investigation or trial. Although RSS was deemed illegal in 1992 according to UAPA, individual members were not detained just for living in the organisation’s surrounding area. In 1933, Vajpayee expressed his belief that “all opposition would be declared unlawful” in a speech. But the government continues to insist that it has no malicious intentions and that its only goal is to keep the nation united against the opposition. In the name of security, it even attacks the fundamental right to free speech in a democracy.

Section 43D of the UAPA restricts bail to the “court,” but it does not say which court. Because of this, it disregards its standing in the hierarchy and believes that it applies consistently to all courts. The irony of the current situation is that all three courts- the Supreme Court, High Courts, and designated courts, have roughly the same amount of discretion, and a properly designated court may be used in place of either a “High Court or the Supreme Court”. If the defendant faces the “death penalty or life in prison”, the magistrate is not allowed to grant bail. Higher Courts and sessions courts have more latitude.

Under the UAPA, numerous individuals have been imprisoned for making harmless public remarks and have been detained for up to 11 years on nebulous conspiracy charges that include “engrossing the state’s interest.” Sixty-six percent of all people booked under the UAPA are charged with conspiracy alone, without any recidivism. Only seventy-four of the three-hundred-and eighty-six cases that the NIA is in charge of are not UAPA: the remaining three hundred and twelve cases are UAPA and in about fifty-six percent of cases, a sheet has not been provided for longer than two years. The main issue is the denial of the bail, which is covered by section 43 (d)(5) of the UAPA. This section forbids the release of any accused person on bail if the police have filed a charge sheet stating that there are reasonable grounds to believe the allegations made against them are true in the first place.

Our procedural framework was drastically altered as a result of these resolutions. First, according to section 43E, the accused was presumed to have committed the crime by the court unless and until proof to the contrary was presented. In criminal cases, the burden of proof is with the prosecution to establish its case beyond a reasonable doubt, For the defence, a much lower standard of proof is required. The defence just needs to plant a reasonable doubt in the judge’s mind. No more than that. The phrase “unless the contrary is shown” in this context signifies that both the prosecutors and the defendant’s defence have an equal burden of proof.

Accordingly, an accused person has the right not to testify for self as stated in Article 20(3) of the Indian Constitution, which prohibits forcing someone to testify themselves. In accordance with “Article 11 of the UDHR”, every person who is accused of a crime “has the right to be presumed innocent until proven guilty in a public trial, where he has all the guarantees necessary for his defence.” Analogously, the prosecution is responsible for providing evidence. under our evidence act. A few stand-up comedians that have gained popularity recently are Munawar Faruqui, a stand-up comedian, writer, and rapper, and Kunal Kamra, an Indian stand-up comedian renowned for his comedy about life’s inconsistencies. The Indian airlines barred Kunal from travelling after he invited Arnab Goswami to a debate. This decision was met with criticism because it was deemed excessive and in violation of the Directorate General of Civil Aviation regulations. According to the police, Munawar Faruqui was detained on suspicion of violating *sections 295-A, 298-299, 269, 188, and 34*<sup>7</sup>. Both instances involved violations of the right to free speech that were also justified.

### IV. PETITIONS AGAINST THE UNLAWFUL ACTIVITIES PREVENTION ACT 1967.

Most of the petitioners seek “*provisions 35 and 36*” of UAPA to state unconstitutional on grounds of violating<sup>8</sup>. “Section 35” empowers the government to declare any person tagged as a terrorist according to the fourth schedule of the UAPA and lack of Substantive and Procedural Due Process. The grounds on which an individual has declared a terrorist is too vague and unclear whether it is being filed by an FIR or conviction of trial court is still a question! “While section 36” allows an individual to be notified of his grounds of arrest and make an appeal to the government, The subject is not notified of the reasons for the arrest, and there is no provision for an oral hearing at the state of appeal, making it quite difficult to operate. These provisions violated the due process requirement, and only the legal system may enact restrictions on people’s rights to life and personal freedom.<sup>9</sup>

While the procedure to designate an organization as a terrorist organization has necessary safeguards that are inadequate for an individual, the UAPA is bigoted because it fails to protect against the high potential of discretionary power. The “reasonable classification” requirement of Article 14 is not met when an individual is subjected to disproportionate and unreasonable

<sup>7</sup> the Indian Penal Code, 1860.

<sup>8</sup> Articles 14, 19(1)(a) and 21 of the Indian Constitution, 1950.

<sup>9</sup> Puttaswamy v. Union of India AIR 2017 SC 4161

treatment. The fundamental idea was broken. The petition claims that Article 14 is broken and that a failure to uphold natural justice leads to arbitrariness<sup>10</sup>. Dissent is a fundamental component of the right to speech, which is interpreted in<sup>11</sup> for Indirect infringement of free speech.

India has ratified several international treaties, yet this change violates them. The amendment expressly transgresses the legal precepts outlined in the International Covenant on Civil and Political Rights and the Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms in Retaliation against Terrorism of the United Nations. A petition was also submitted by the Association for the Protection of Civil Rights (APCR). When JNU students Umar Khalid, Meeran Haider, and Safoora Zargar were detained by the Delhi police under the draconian UAPA for allegedly plotting a plot to stir racial disturbance over the Citizenship Amendment Act, it was another instance of the harsh UAPA in action. This was described by the authorities as “premeditated conspiracy.”

## V. RECENT CONTROVERSIAL CASES RELATED TO UAPA

The *Bhima Koregaon violence* tested the application of UAPA before the “Supreme Court” involving the arrests of certain activists. Raids were carried out by the Maharashtra police in different areas of India on the date 28<sup>th</sup> of August 2018, resulting in the first round's arrest of campaigners Rona Wilson, Sudhir Dhawale, Surendra Gadling, Mahesh Raut, and Shoma Sen. Later, Vernon Gonsalves, Sudha Bharadwaj, who had just received bail after serving three years in prison, Arun Ferreira and Varavara Rao were all taken into custody. Subsequently, NIA also arrested academician Anand Teltumbe and Gautam Navlakha on 14<sup>th</sup> April 2020, and in July anti-caste activist Hanybabu Trail. Stan Swamy was arrested on 8<sup>th</sup> October 2020 and charged by the National Investigation Agency under the UAPA, for the violence linked with the CPI (M). The UAPA got into controversy on its grounds of non-bailable restrictions on the individual arrested which became the major cause for the death of Stan Swamy who was 84 years of age, applied for bail on medical grounds but the interim bail was denied owing to the nature of the charges on him. Thus, it violates one Fundamental Right to life and liberty

Three activists who were imprisoned for more than a year without a trial due to their alleged involvement in the Delhi riots have received bail. The charges were brought under the UAPA, which is criticized by the public as being incompatible with the right to free speech, the rule of law, and a fair trial. This gave the judgement significance. A total number of 5107 UAPA cases have not yet been resolved as of 2018, according to the NCRB report, which also states that 3920 UAPA cases from previous years are still being investigated and that 1182 new cases have also been reported<sup>12</sup>. This shows that trials can drag on for years even after an accused person is charged under the UAPA, with a large number of cases from 2014 still waiting.

In a statement, Delhi police stated that 763 FIRs, including 51 cases under the Arms Act, were filed in connection with the 2020 riots. These cases also involved 3,300 suspects. The Delhi High Court and the trial court granted bail to many of them. In five years, from 2013 to 2019, only 2% of those arrested under this law were found guilty, according to the Times of India newspaper. Based on data gathered by the NCRB, this information. Only 155 of the 7,840 people who were detained on suspension of terrorism were found guilty by the trial court. In Manipur in 2019 a total of, three-hundred-eighty-six people were detained by the UAPA while in Uttar Pradesh four hundred ninety-eight suspects were detained and 81 cases were registered out of them.<sup>13</sup>

After 567 days in prison, the NIA court cleared Akhil Gogoi of all charges and dismissed both UAPA cases on July 1, 2021.<sup>14</sup> In the case brought by ED under the PMLA, Siddiqui Kappan received bail from Allahabad High Court on December 23, 2022.<sup>15</sup> After being released from custody, he claimed that the police had tortured him while he was being held in order to coerce confessions. After being expelled from Manali on May 19, 2023, Arshdeep Singh Dhalla with the “Khalistan Tiger Force”, terrorists from Canada was detained at the Indira Gandhi airport under UAPA. After the eighth-day remand period had ended, the accused were brought before the court, and custody was extended until June. The question of how the accused’s constitutional rights can ever be upheld in light of this information must be carefully considered.

## VI. CONCLUSION

When such dreadful legislation violates and takes away the rights of citizens, it’s the responsibility of the Supreme Court to step in and restore faith in democracy. This Amendment throws back the intentions of the colonial regime to restrain freedom movements. The Act for most of the cases criminalizes acts on the groundwork of ideology and association. Thus, it can be considered that the above are the hints of moving from democracy to autocracy. The 2019 Amendment Act is at its preparatory stage with the union yet to classify its reply. Nonetheless, given the nature of the past criticisms and challenges of the legislation as draconian, it is set to provide a good trial ground for the extent of the government’s discretion in anti-terror legislation.

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<sup>10</sup> Union of India v. Tulsiram Patel 1985 AIR 1416, 1985 SCR Supl.

<sup>11</sup> Maqbool Fida Husain v. Raj Kumar Pandey 2008 CrLJ 4107 (Del)

<sup>12</sup> The National Crime Report Bureau, 2018.

<sup>13</sup> The National Crime Report Bureau, 2019.

<sup>14</sup> The National Crime Report Bureau, 2021.

<sup>15</sup> The National Crime Report Bureau, 2022.