



UAPA:

A tyrannical law of the liberal India

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Abstract

The Constitution is considered the backbone of the legal framework of India. It ensures that any law which is violative of the fundamental rights enshrined in the Constitution for the citizen of India needs to be struck down at all cost, as no law invades through these rights. These rights are enshrined in the constitution with the object to ensure that human rights are celebrated, and the dignity of the individual as well as national integrity be upheld. The Judiciary has played a very active role previously and continues to play it. The same is expected when the government in the power makes such laws that are violative and have arbitrary provisions, and UAPA i.e., Unlawful Activities Prevention Act is a prime example of it. The act is considered very stringent and where the chances of getting bail are almost zero. UAPA has received massive criticism time and again from legal experts, as well as media houses stating its misuse and how the government is just trying to suppress the voices of the people. As controversial as all the law is, the recent amendment in the act questioned the fundamental right of the Right to protest. This paper tries to throw a light on what is wrong with the UAPA act, the amendments, the controversial cases under UAPA, the current standpoint of the judiciary on UAPA and why often it is referred to as the draconian anti-terror act .

Key Words; *Arbitrary, Arrest, Detention, Terrorism, Terrorist, Unlawful, UAPA*

1. Introduction

“When injustice becomes law, resistance becomes duty”

-Thomas Jeffersons

Recently three student activists,– Asif Iqbal Tanha, Natasha Narwal, and Devangana Kalita were given bail by the High Court of Delhi, who finally after spending one year in Tihar Jail, walked out to breathe into freedom. These three women were charged under the UAPA act. The court while granting bail to these women said” State is anxious to suppress dissent”. It means that the government is in a hurry not to let the voices of those who don't agree with the state to peak up. These women were arrested in Delhi Riots. Under the FIR filed in this case approx. 15 people were arrested. Delhi Police has appealed against this order of bail to the Supreme Court. The court believes that the line between terrorist activities and the right to protest has been blurred. Hence again the question relating to the validity of the UAPA act rises and why UAPA is under the wrath of criticism from activists, jurists, scholars, and the common people.

2. Historical Background

During the Indo-China war, many communist parties gave open support to China, and not to India. In the year 1962, at the Rajya Sabha Speech, Dravida Munnetra Kazhagam (DMK) leader demanded to make a separate Tamil country. It was mentioned in their manifesto that if in case they win the election, they will form a separate country from India. Hence a threat of cession was there. Apart from this, the government was facing some separatist elements in Nagaland and Mizoram. Along with that, the country was going through tug and war situations to decide the official languages. But later due to the 1962 Indo-China war, DMK let go of their demand of a separate country. The then government of Mrs. Indira Gandhi believed that to manage the external issues, they have Article 352, but to manage this internal crisis of the country, they wanted a way out. Hence it was decided to restrict the freedom of citizens, as all these anti nation

activities posed a threat to India leading to a danger of cession. Hence even before the emergency could end, The UAPA act, 1967 was introduced. When this bill was introduced in the Parliament, the then home minister, V.B Chauhan said, *“The bill was necessary because there were divisive forces in India and effective measures necessary to counter them. The objective of the bill was to make power available with activities directed against the integrity and sovereignty of India”*. Further the National Integration Council established a committee for the objective of the national integration and regionalization. By implementing the committee’s recommendations, the 16th Constitutional Amendment Act came, to control the internal disturbance, hence it was decided that the fundamental rights of citizens need to be controlled. From the 17th amendment act, onwards 3 fundamental rights, certain restriction was imposed. Their fundamental rights were

- **Freedom of speech of expression**
- **Right to assemble peacefully without arms**
- **Right to form associations and unions**

But this Bill could not pass due to the India -Pak war, a change in the ruling party. Later, on 30 Dec 1967, it got an assent and became an act

Hence UAPA became anti-terror Legislation National Investigation Agency(NIA) became its enforcement body which famously came to be known as India's Central Counter-Terrorism Agency.

3. The object of the act

UAPA mainly deals with unlawful activities. Unlawful activities mean any individual or organization, whose action is to bring a cession, or to bring separation, or question the sovereignty and territorial integrity, or tries to disrupt it. The government tried to defang it in the sense that the government tried to take out the teeth of these fundamental rights since 1951. Hence few changes were made like the word reasonable was added. Thus, if the government considers a thing reasonable, it had the authority to take away the right or put restrictions. They also added public order as a concrete ground for abridging fundamental rights. These words were added in the 1st amendment. It indicated that the govt had an attitude to act as a prohibitory body

to ensure, that country was free from such threats. UAPA gave power to the government to ban any organization which they declare unlawfully and even all India bans could be imposed on such association. Initially one could go to tribunal, but the major power was given to govt, to ban anything which they seemed to be unlawful or anti-national.

4. Other Anti-National Acts

Apart from UAPA, there were other acts such as the **Prevention of Terrorism Act, (1985-95)** **TADA to curb the insurgency in Punjab 2002** and **Terrorist and Disruptive Activities (Prevention) Act POTA**. It was brought in response to Parliament attack that took place in 2001. Both these acts were always in controversy and terrorist attack at Mumbai was dealt with TADA. Since POTA was introduced by BJP Govt, the Congress party opposed it stating that POTA is being misused. In their manifesto they mentioned that if they win, they will be struck down POTA. After Congress won the election, they struck down POTA as promised, but amended the UAPA. They kind of transferred what was already in POTA to UAPA.

5. Amendments in UAPA

- **2004 Amendment-** This amendment made significant changes in the definition of unlawful activity and thereby included the definition of “terrorist acts” and “terrorist organizations” from the previously repealed POTA, and further introduced the concept of a “terrorist gang”. Not only that, but immense powers were granted to the center government giving full authority to declare any organization as a terrorist organization. The central government could not cerement rule of evidence when it came to interception of communication. They could also declare any organization as a terrorist organization by enlisting them in a schedule, without a trial or requirement to show evidence. Some of the organizations are ISS, Communist Party of India(Maoist), Khalistan Liberation Force, Garo National Liberation Army, and India Mujahedeen.
- **2008 amendment-** This amendment was made after the deadly terror attack which took place in Mumbai. The 2008 amendments to the UAPA give Indian authorities immense powers to detain persons without charge, which imposes a threat to their lives, as there

are high chances that the arrested person will be tortured both mentally and physically. These kinds of arbitrary detention imposed a threat that the police may compel the accused to provide evidence and give confession. Under the amended UAPA, the period that an individual can be held in police custody was increased from 15 days to 30 days. Adding 15 days to the permissible period of police custody will increase the risk that detainees face. The 2008 UAPA law also permits a detainee to be held in judicial custody without charge for up to 180 days (including the 30 days in police custody). The amendment added sec 51A in the Act, the central government can “seize, freeze and prohibit the use of funds, financials, assets, or economic resources of the individuals suspected to carry out terrorist activities under the definition of this act.” When this amendment was introduced, various critics pointed out, the scope of such a provision is extremely broad, and that the government can destroy livelihoods by controlling the finances of an individual on mere suspicion. A court can authorize an initial period of 90 days pre-charge detention without special grounds of any kind. The courts are empowered to exceed the period of detention to more than 90 days if the state states that they require more time for the investigation” and the specific reasons for the continued detention of the suspect—a very low threshold to enable an additional three months of pre-charge detention. Apart from these, restriction from bail was also added.¹

- **2012 Amendment-**The 2012 act added the element of economic security in the definition of already ambiguous definition of terrorism act. The government justified this amendment to strengthen UAPA by its membership of the Financial Action Task Force (FATF) as India being a member of FATF, which is a government-based body whose task is to control the flow of finances for an offense like money laundering and terror funding. Another amendment Sec 2 was made to declare criminalization of the right to form associations by expanding the definition of person to include “an association of persons or body of individuals, whether incorporated or not. If one looks up at the internet, even in 2012, the media and the public highly opposed the 2012 amendment.
- **2019 amendment-** This bill was introduced by Mr. Amit Shah to overcome the difficulties faced by National Investigating Agency while investigating terrorism related

¹*Back-future/indias-2008-counterterrorism-laws*, <https://www.hrw.org/report/2010/07/27/>

cases. and it was passed on 24 July 2020 in Lok Sabha. This amendment allowed that even an individual or organization, under Sec 35 and 36 can be declared a terrorist to curb lone wolf terrorists. He stated that Yasin Bhatkal would have been arrested sooner if he was designated terrorist. It allowed an individual to be declared as a terrorist and enabled NIA, powers to investigate cases under UAPA. Another controversial amendment is that if an NIA officer is investigating, and if he feels to seize the property of the accused, he doesn't need to take permission from the Directorial General of Police of that particular state where the property is located. They have also widened the scope of officers who can investigate such cases. It also added a new treaty to the list of treaties relating to terrorism that is the International Convention for Suppression of act of Nuclear Terrorism 2005. The amendment also added the 4th schedule. Govt under UAPA has the power to declare a person as a terrorist and add his name under the 4th schedule. The problem lies that there is no due procedure for this.

6. What makes UAPA Draconian?

6.1 Vague Definition

The definition is extremely vast and ambiguous that also includes a wide range of non-violent political activities, including any sort of political protest. Martin Scheinin, the United Nations special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, has highlighted the risks of codifying vague and overly broad definitions of terrorism and related terms into law². He notes that in many countries, such overbroad definitions are used by government authorities “to stigmatize political, ethnic, regional or other movements they simply do not like,” even though United Nations Security Council Resolution 1456 confirms that states must ensure that measures adopted to combat terrorism “comply with all their obligations .under international law ... in particular international human rights, refugee and

² Martin Scheinin, "UN Commission on Human Rights, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, E/CN.4/2006/98, December 28, 2005, http://www.coe.int/t/e/legal_affairs/legal_cooperation/fight_against_terrorism/3_CODEXTER/Working_Documents/2006/Sheinin%20E-CN.4-2006-98.pdf (accessed June 1, 2010).

humanitarian law³. Terrorism is one of the manifestations of increased lawlessness and cult of violence... A ‘terrorist’ activity does not merely arise by causing disturbance of law and order or of public order. The fallout of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law,” the Supreme Court had said in *Hitendra Vishnu Thakur versus State of Maharashtra* case. In the same judgment, the Supreme Court said, “Every ‘terrorist’ may be a criminal but every criminal cannot be given the label of a ‘terrorist’ only to set in motion the more stringent provisions of TADA.⁴

It authorizes the government to ban unlawful organizations and terrorist organizations under sec 3, subject to judicial review where in front of the tribunal, the members of the organization can approach the tribunal and put their case there. But the ban does violate Article 19. In 2002, the govt banned SIMI(Student Islamic Muslim Student Union), and any member of SIMI, no matter has any connection with terrorism or not, can be charged and put into jail under UAPA. The Home Ministry can declare a group to be a “terrorist organization,” “terrorist gang,” or “unlawful association” with immediate effect. The government has wide powers to declare a group to be a "terrorist organization," "terrorist gang," or "unlawful association. Once a group is declared unlawful, the government has upto six months to establish the basis for this declaration before a specially constituted tribunal composed of a High Court justice nominated by the central government. The government has to prove that they have enough reasons and probable causes to declare an organization or association unlawful. They can hold back the evidence from the association though not from the tribunal because any kind of discourse will not be in favor of the public good. Generally, certain procedures are prescribed for those who are considered as unlawful groups, but sadly, under UAPA, those procedures are not available to those declared as terrorist groups or bodies. The only relief that these members of the organization get is that they can approach the review committee and prove their innocence. But what makes it more difficult is that they are not permitted to introduce new evidence or present witnesses in support of its non-connection to any sort

³ Ibid., para. 56; United Nations Security Council, Resolution 1456 (2003), S/RES/1456 (2003), <http://www.unhcr.org/refworld/docid/3f45dbdb0.html> (accessed June 1, 2010), para 6.

⁴*Hitendra Vishnu Thakur versus State of Maharashtra* 1994 AIR 2623, 1994 SCC (4) 602

of terrorism. Thus, if any organization or association has been declared unlawful or has been considered a terrorist organization, then attaining membership of such a group can lead to two years of punishment. If once it is found that an organization or group is involved in terrorist acts, all the members of the group are punished whether or not they had any involvement in the terrorist act or not. Because the declaration proscribing the group takes immediate effect, members (or suspected members) may be arrested and charged as soon as the group is so declared, without regard to the sufficiency of the evidence underlying the declaration.

6.2 Arbitrary Powers

The police get immense power as well. They have full right to search, seize, arrest a person and for that, no warrant is needed, if they suspect that one has a link with a banned organization. The accused can be kept in custody even without filing a charge sheet, for 6 months, and open to high chances of being tortured when they are in custody. The most horrifying element is that a person arrested under UAPA, can be held in police custody for 180 days, that is 6 months, without filing a charge sheet and till then he has no right to bail. Not only that, this time can also be extended if the investigation is not complete. While sec 167 of CrPC gives a max period of 90 days, after which a person gets his right to bail. The question of anticipatory bail is completely out of the picture. Getting any kind of bail, under UAPA is extremely rare. Special courts have been created to examine the accused. The right not to arrest before sunrise and after sunset, under CrPC, is not applicable here. Article 9 of the ICCPR provides that at the time of arrest, the person so arrested should be informed about the grounds of arrest. But Sec 43 B of UAPA, provided that the accused has to be informed about the ground of arrest "as soon as maybe". This means that the police can knock on your door, arrest you, and can take their own sweet time to tell the accused why he is arrested? The threshold present in CrPC, of reasonable suspicion, has been replaced with reason to believe or on the ground of personal knowledge of the police. This violates the right to privacy. The police arrested a person has to inform the person arrested on what grounds he has been arrested. Under UAPA, this provision has been replaced with as soon as may be. For individuals who are

charged, the 2008 UAPA requires a denial of bail where the court determines "that there are reasonable grounds for believing that the accusation against such a person is prima facie true."⁵ The application of this section is not limited only to those who have direct involvement in acts of violence but also included those who are involved in membership, arranging finances and planning of such activities, and providing shelter to them. A prima facie basis for the offense of membership may be relatively easy to establish, resulting in ineligibility for bail irrespective of factors, such as any threat posed by the detainee, or flight risk. Concerning the arrest by the police the Supreme court in the landmark judgment of *Joginder Kumar v/ State of UP*⁶ held that – “No arrest can be made because it is lawful for the police officer or the government to do so. The existence of the power of arrest is one thing and the justification for the exercise of such power is quite another.

6.3 Presumption of guilt

The act does not allow the accused to present evidence, while the police are free to bring a secret witness. It becomes a task for the prosecutor of the accused to examine a witness whose identity has not been disclosed by the police. Sec 43 of the act, states that if "definitive evidence" is found against the arrested individual, then the "court shall presume unless the contrary is shown, that the accused has committed such an offense. It is important to understand what this definitive means. It refers to the scrutiny which is made even before the charge sheet is made or the accused is taken before the court. In the case of *Kartar Singh vs the state of Punjab*⁷, the Supreme Court held that if the witness is unknown to the prosecutor affects the cross-examination process. Under Sec 43 E of UAPA, the court has to make a presumption that the accused is guilty if the following evidence is found-

(a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offense; or

⁵ UAPA, sec. 43D(5)

⁶ *Joginder Kumar v/ State of UP*, 1994 AIR 1349, 1994 SCC (4) 260

⁷ *Kartar Singh vs the state of Punjab* 1961 AIR 1787, 1962 SCR (2) 395

(b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offense were found at the site of the offense or on anything including arms and vehicles used in connection with the commission of such offense

If either of these two pieces of evidence is found, beyond a reasonable doubt, the accused is held liable, the problem lies that the defendant has to prove beyond that that he had no such intention to be involved in terrorism. Once the police can find the above evidence it becomes difficult to prove innocence and that there, he/she has no involvement in the act of terrorism.

India is a signatory of ICCPR. It is considered as the legal document that gave humans various rights to live a free and democratic life. Art 14(2) of the ICCPR, states that the person has the be presumed innocent, until and unless he is proved innocent beyond reasonable doubts. UAPA, completely violates this article, because once a person is arrested, he is presumed to have committed the offense. Not just ICCPR, even Indian Constitution through its Article 21 states that every person has the right to a fair trial. The Supreme Court in the case of Rattiaran v. State of Madhya Pradesh⁸, observed that the fair trial is the heart of criminal jurisprudence. A fair trial is a fundamental right that flows from Article 21 of the Constitution. Denial of the fair trial is the denial of human rights. the Human Rights Committee has stated that the presumption of innocence is "fundamental to the protection of human rights" and "imposes on the prosecution the burden of proving the charge" beyond a reasonable doubt. It cannot be derogated from, even during a public emergency or other declared state of exception. UAPA. Gives long extended powers which are not only limited to arrest or seizure. A police officer, the govt, etc. are nowhere held accountable if the court holds that the accused is not guilty of the said offense. Some people have lost their reputation, family lives, and no of years due to wrongful conviction, have so the source of compensating or holding accountability. Protection of action taken in good faith. —No suit, prosecution, or other legal proceedings shall lie against—the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorized in this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder; any serving or retired member of the

⁸Rattiaran v. State of Madhya Pradesh, AIR 2012 SC 1485

armed forces or para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism

7. Cases challenging UAPA

1. Sajal Awasthi v. Union of India and Association for Protection of Civil Rights v. Union of India⁹

The petitioner challenged that the 2019 amendment of declaring a citizen as a terrorist even before the investigation, treating him as accused is a sheer violation of articles 19,14, and 21. It was held that the provision is manifestly arbitrary. It was further added by the petitioner that the right to reputation is a fundamental right. Once a person is declared a terrorist, his reputation is destroyed.

2. Arup Bhuyan vs the State of Assam¹⁰

The court questioned Section 10 of UAPA and Section 3(5) of TADA, both of which made mere membership of a banned organization, criminal. The court held that merely being a member of a banned organization does not make a person terrorist unless he does any kind of violence, entices people, or disturbs the public peace. Anything broader than that would violate freedom of speech and association. But this ruling is patchy and arbitrary as few HC apply it, but few do. Hence the proper change in definition by passing an amendment is needed.

7.1 The controversial cases of UAPA

1. K.K Shahina

K.K Shahina was the first Indian journalist to be charged under UAPA. Back in the year 2011, She was working for a newspaper of a newspaper called “Tehelka” who was charged under UAPA, for manipulating the witness, even though all he did was take interviews of the two eyewitnesses of Bengaluru Blast.

⁹ Sajal Awasthi v. Union of India and Association for Protection of Civil Rights v. Union of India Order XXXVIII of Supreme Court Rules, 2013

¹⁰ Arup Bhuyan vs the State of Assam CRIMINAL APPEAL NO(s). 889 OF 2007

2. Arrest of Professor G.N Saibaba

Delhi University Professor, G.N Saibaba was arrested in 2014, to prevent him from doing anti-national activities. Sai Baba was 90% disabled. He along with 5 others was charged under UAPA by the district court of Maharashtra for political belief and Maoist sympathies, who was later granted bail by the HC. But he was re-arrested and currently is at Nagpur Central Prison.

3. Jyoti Balashab Chorgre

In 2011, Jyoti was arrested because she had certain Maoist literature and was friends with few people who were previously arrested, and was charged. Justice Thipsay, while granting Jyoti Balashab said that person is not made criminal because of the belief that they hold. They must have committed a crime to be held liable. He further added that arresting a person on the ground of the literature he/she possesses is a shocking proposition in a democratic country like ours. She had to spend 4 years in prison after which she was granted Bail.

4. Hubil Conspiracy Case, 2018

In 2008, 18 Muslim Students have arrested for possessing certain Jihadi Literature as per the police. In court, it was revealed that there were just copies of the Quran. After 6 years, all of them were finally acquitted by the trial court.

5. Bhima Koregaon violence case

It was back in the year 2018 when the celebration of the Bhima Koregaon battle was taking place, turned into a violent mod that injured many and caused the death of a person. When the investigation took place, police arrested many due to their alleged links with Maoists. The police stated it was Elgar Parishad who gave finances for the meeting where such speech was made that it led to violence. Later in 2019, Vaavara Rao, Sudha Bharadwaj, Vernon Gonsalves, Arun Ferreira, and Gautam Navlakha were arrested under UAPA. Allegations are that Stan Swamy who is an 83-year-old man still awaits his trial and Gautam Vavalkha, a 70-year-old woman is refused to give prescription glasses. This case is the hull of violation of basic human rights, as despite the court refusal in 2018, their houses were raided and all files, documents, CD, laptop etch has been confiscated. Police made arrests going beyond the jurisdiction no witnesses as there when the search

was made. Many of these people are suffering from the certain disease are not permitted to meet their families or even see their reports.

8. Latest UAPA Judgement

Ashifq Iqbal Tanha v State of NCT Delhi¹¹

The Delhi HC in its recent judgment on 15th June 2021, relating to UAPA, tried to narrow down the vague use of UAPA and held that UAPA only covers those matters which have a profound impact on the defense of India. Only such matters should be dealt with UAPA and nothing more, nothing less. This judgement is extremely important as it relates to the judicial viewpoint of UAPA, an act that has raised a lot of criticism to understand the judicial interpretation of the Indian courts on UAPA

The court while granting bail to the accused Tanha, Narwal, and Kalita who were charged under Sec15,17,18 of UAPA. While the court granted the bail also made it clear that the charges that were imposed on these accused are not correct as they do not mitigate the acts committed by the accused hence all limitations and restrictions that have been imposed regarding the grant of bail under section 43D(5) UAPA do not apply in this particular case; and the court may therefore fall back upon the usual and ordinary considerations for bail under the Cr. P.C

Following are the few notable points of the judgement

1. Terrorism different from a conventional heinous crime

The court pointed out the elaborative meaning of terrorist act under UAPA, and the words and phrases to be used in sec 15 of UAPA to be understood in a lighter sense. It was added that an offense like terrorism should not be trivialized which means to be taken lightly as terrorism is itself an extremely heinous crime. It has to be kept in mind that terrorism is very different from conventional heinous crimes.

2. Casual application of the terrorist act

The court brought in the preview of the wide and vague definition of sec 15. It was pointed out that the term "terrorism" should not be applied vaguely to the conventional

¹¹ Ashifq Iqbal Tanha v State of NCT Delhi ,CRL.A. 39/2021

offenses and criminal acts or omissions that fall within the definition of the Indian Penal Code.

3. *Beyond the penal laws*

The court cited the case *Hirtendra Vishnu Thakur v. State of Maharashtra*¹² as per which it was said that unless the terrorist act goes beyond to a certain effect of an ordinary crime, until then mere disturbance to public peace, law, and order does not lead to terrorist activity and such disturbance has to be dealt with ordinary penal laws and not UAPA. Every Terrorist May Be a Criminal, But Every Criminal Cannot Be Labelled "Terrorist" Once again relying on the *Hitendra Vishnu Thakur* judgment.

4. *No unnecessary stealth*

The court again tried to limit the scope of UAPA citing the infamous *Sanjay Dutt v State of Maharashtra* that extra care needs to be taken with such serious penal consequence to ensure that those to whom law does not extend are not held liable by expanding the scope of the law.

The bench elaborated, "It is therefore clearly the position in our jurisprudence that where a provision of law engrafting serious penal consequences.

5. *Grave offense not to be covered under UAPA*

The court emphasized that the intent of enacting UAPA was not to bring usual offenses, of serious, heinous nature, no matter how grave to be brought under UAPA since such conventional matters would have fallen within Entry 1 of List-II (State List) and/or Entry 1 of List-III (Concurrent List) of the Seventh Schedule.

6. *Striking difference between terrorism*

The Delhi HC cited the *PUCL vs Union of India*¹³ the judgement stated that there is a major difference in terrorism and other state problems. Terrorism aims to destabilize the nation by challenging its sovereignty and integrity, to raze the constitutional principles that we hold dear, to create a psyche of fear and anarchism among common people, to

¹²*Hirtendra Vishnu Thakur v. State of Maharashtra* 1994 AIR 2623, 1994 SCC (4) 602)

¹³ *PUCL vs Union of India*, Writ Petition (civil) 389 of 2002

tear apart the secular fabric, to overthrow the democratically elected government, to promote prejudice and bigotry, to demoralize the security forces, to thwart the economic progress and development and so on.

This cannot be equated with a usual law and order problem within a State. On the other hand, it is inter-State, international, or cross-border in character.

7. Presumption of offense only applicable if arms, ammunition, explosives, etc. substances are recovered

As per Section 43 E, a person will be prosecuted under section 15 only if certain kinds of evidence like fingerprints, weapons, ammunition are available with the accused. Then only the court will presume that the accused is guilty unless contrary evidence is shown. Evidence like a fingerprint, ammunition, arms suggest involvement t if accused in terrorist activities. But in the present scenario none of such articles was found with all 3 accused, hence no presumption of offense arises. In the present case, since there is not even a whisper of an allegation that any of the articles referred to above were even recovered from the possession or at the instance of the appellant, the question of any presumption arising under S. 43E does not arise."

8. State to show prima facie evidence to bring chapter 5 of UAPA

The court held that to make the accused liable under chapter 5 of UAPA, the state should present prima facie evidence that discloses some act of terrorism, or should involve some conspiracy or preparing to do terrorist attacks. But in this case, no such prima facie evidence was available from the side of the state, and thus it shall not be allowed to call upon the court to draw conclusions and speculations. the Court also held that the burden to demonstrate a prima facie case to apply the rigor against the grant of bail under Section 43D(5) of UAPA is on the prosecution.

9. Peaceful assembly is not a terrorist act

The court added that protection of FR given in the constitution and rights to assemble peacefully without arms under Article 19(1)(b) of our Constitution and hence such protest

cannot be called a terrorist act under UAPA. The court stated that they saw no such evidence that indicated that the government had prohibited the protest at that moment, or even that fact that the accused was anywhere involved in the conspiracy of any illegal activity.

9. Conclusion

On 15th June 2021, two men, Mohammed Irfan and Mohammed Ilyas, who were arrested under UAPA, finally stepped out after spending 9 years in jail, were cleared from all the charges due to lack of evidence. The fact that those 9 years which they lost cannot be brought back by any law. It cannot be denied that UAPA has had led to a massive increase in arbitrary arrest. The conviction rate comparatively is extremely low that is hardly 2.2%. It means that if 100 cases are registered, 97.8% of cases, are considered wrong by the courts, leading to a very low conviction rate. This indicates that UAPA is highly being misused to deal with the dissent or constructive criticism done by the public. In *Maneka Gandhi v/ The Union of India*, it was laid that - any procedural law must be just, fair, and reasonable; none of these principles are fulfilled in the UAPA act. UAPA is very broad and the terms used in the act cover a wide horizon, making it complex and unclear which is unfair for a law that is related to an offense like terrorism. The government has accepted the fact that the majority of the terror activities are funded from outside the country, and home-grown terrorism is very rare. If the case is so, then the question arises, if India really requires such a draconian act to curb terrorism?

The long period of detention without judicial scrutiny, conviction without FIR, question the very basic fundamental right. In the famous case of *A.DM Jabalpur v. Shrikant Shukla*, justice H.R Khanna said, "*The law of preventive detention, of detention without trial is an anathema to all those who love personal liberty. Such law makes deep inroads into basic human freedoms which we all cherish and which occupy a prime position among the higher values of life*¹⁴". UAPA violates the Constitution, various Articles of ICCPR, and human rights. UAPA empowers a state so much that it utterly overpowers an individual. The personal bias at no point should curb what opinion others have. India does need a strong law to deal with internal disturbances. But the fine

¹⁴ H.R.M KHANNA, *Making of India's Constitution*, Eastern Book Company, 2008

distinction between a terrorist and someone having a different set of ideologies has been blurred. Or maybe UAPA is like a barter system, you give away your freedom, we give you safety. But is this how a democratic country works and when will Apex Court intervene? remains the question of the hour.