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ANTI TERRORISM LAW IN INDIA: AN OVERVIEW

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ABSTRACT

Terrorism is that reality from which no country can escape, as terrorists find one or other way to fulfill their target. It becomes more important for India to form anti-terrorism law as we share our border from various countries, among which few are considered as the home of terrorism and they also try to increase terrorism in India for there own benefit. For this reason, India has to always keep its anti-terrorist laws up to date. But as India is a democratic country governed by the Constitution of India which provides for various basic rights based on the universal declaration of human rights not only to its citizens but also to foreigners. In view of such fundamental rights, there always exists a question as to the constitutional validity of these laws and there are people on both sides but the ultimate decision is based on the constitutional framework of our country. The most important question which is tried to be answered is whether powers given to NIA with the amendment of UAPA in 2019 violates the quasi federal structure of India. There is also a procedure provided in the Act to declare an organisation or individual as a terrorist which is also discussed and all the remedies provided to them against such an order are also discussed. The most organisation point of the classification of the term terrorist Act is also pointed out and how it is conflicting in itself and how because of it India has to face criticism not only in itself but also internationally.

Terrorism and anti-terrorism both are very vast concepts with daily updates in its methodology and the following paper aimed at understanding it with the formation of procedure of Act and its constitutional point of view.

INTRODUCTION

The right to life and liberty considering the heart and soul of the Constitution, declares: "No one shall be deprived of his life or personal freedom, except in the manner prescribed by law.[1]" The Supreme Court in various cases held that no right is absolute.[2] In view of which various Acts are made by the parliament where the fundamental right of the person is compromised but for a broader benefit that is for safety and security of the sovereignty and integrity of India and the same was also valid as constitutional by the Supreme Court in various cases. The foremost threat to any country is not only its border conflicts but terrorism which has no place, no religion, no ethics of fight, etc; their only motive is to disturb security, unity and integrity of the country which they are attacking. In India, the formation of anti-terrorism law has a long history since the British era and the same is still in practice. There exists both need and criticism for the same, as everything has two sides it also has. In order to keep it in check, there is always a question as to the constitutional validity of the same and there exists both who speak against the motion and who speak in favor. The final decision is always based on the intelligence of the judges, who are the ultimate guardians of the rights of the citizens in our country as made to them by the constitution of India. It is also a point of consideration that whether the power is given to NIA in the latest amendment in the UAPA, 2019 violates the basic structure of the constitution or not as it is said that the powers given to NIA violate the quasi-federal structure of the country. In reality, criticism exists but in end, all decisions are based on the constitutional framework of our country. The procedure to declare an organisation or individual as a terrorist in the present situation is discussed and the remedies and rights available to such organisations and individuals are with them other than one in the proper trial in the court. The difficulty in minds of judges and government is pointed out on the basis of which they decide then as terrorists.

[1] Maneka Gandhi v.Union of India AIR 1978SCR(2) 621
[2] Kesavananda Bharti vs. State of Kerala, AIR 1973 SC 1461

HISTORY OF ANTI TERRORIST LAW IN INDIA

Indian security laws are not limited to one or two laws. These laws place the burden on the accused to prove innocence, which is a violation of natural justice. These laws have been shown to be biased, and those who are impressed by their insight will always remain in their domain for the rest of their lives. The Indian Supreme Court did this in **Kartar Singh v. State of Punjab**[3], where it found that the country was escalating from terrorist violence and caught between deadly harassment from interfering activities. Aside from numerous skirmishes in different parts of the country, there have been countless serious and terrible events that have showered many cities with bloodshed, gunfire, looting and crazy murders, without sparing women and children and reducing these areas to cemeteries, causing brutal atrocities, shook and shocked the whole nation. Unfortunately, determined young people, attracted by hard-nosed criminals and underground extremists and attracted to the ideology of terrorism, commit serious crimes against humanity. In view of this, the following laws are being legislated to keep terrorism under control since the British era:

- The history of the Terrorism Act in India began in the 1818 period of taper. The Bengali regulations were one of the first detention laws in colonial India. In the name of safeguarding state security, there was the power to place individuals "under personal constraint" even though "there was insufficient reason to initiate legal proceedings." The 1818 settlement was eventually extended to all of India and remained in force until at least 1927. It was used to hold nationalist sympathizers in pre-independent India. Today, all pretrial detention laws in India reflect this rule in its principles of criminalizing dissent. In **1908 Criminal Law Amendment (CLA)** Act defined “unlawful association” to ban those organisations who worked for the freedom of our nation.
- The British later passed the Anarchic and Revolutionary Crimes Act, commonly known as the Rowlatt Act (1919-1922). Rowlatt's law has empowered people to be placed on custody for up to two years on suspicion, particularly in parts identified by the government as "affected areas". However, the law does not define what "anarchic and revolutionary movements" it wants to fight.

[3] 1962 SCR (2) 395

- **Preventive Detention Act (PDA) 1950-1969**

  In post-independent India, the PDA was one of the first detention laws to contain terrorism in the country. The law was passed temporarily to meet the challenges of violence and displacement during the division of India. The law allowed the government to detain people for up to a year without charge. When the PDA was introduced as a temporary 12-month version, the Home Secretary said that long-term detention powers "require further investigation" before more permanent laws can be passed. However, the law was revised annually by parliament and renewed several times for almost two decades before it was finally allowed to expire in 1969.

- **Unlawful Activities (Prevention) Act (UAPA)-1967-Present**

  Although it was introduced in the third and fourth Loksabha, it was not accepted due to strong opposition in the house. While in the fifth Loksabha, amid high-voltage debates marked by the need to defend the sovereignty and integrity of India, the 1967 Act on Illegal Activities (Prevention) (UAPA) was born. UAPA, 1967 mainly and mainly deals with "illegal activities". Section 2 (f), in layman's terms, defines the illegal activity as any act by a person or association wishing to bring about the surrender/secession, or measures that could interfere with or compromise India's sovereignty and integrity. The preventive detention powers of the PDA at UAPA gave him powers to declare organisations and individuals "illegal". , then largely restrict and control members.

- **Terrorist and Disruptive Activities (Prevention) Act (TADA)/1985-95**

  On May 23, 1985, the 1985 Law on Terrorist and Disruptive Activities to Combat Terrorism in Punjab and other parts of the country was prominently enacted. The term "disruptive activity" means that "through action or speech or through other media" was a vague definition, according to TADA, that encompassed a variety of activities, including any form of protest. Under the law, special TADA courts have been set up to prosecute those accused of terrorist activity in areas identified by the national government as "areas affected by terrorism". According to TADA, confessions to the police were admissible as evidence. Given the widespread allegations of abuse of the law and its very low conviction

rates, TADA was allowed to expire under a forfeiture clause, However, on December 24, 1999 IC-814 was kidnapped and on December 13, 2001, the Indian Parliament was attacked and in connection with these two events, it was considered necessary to strengthen the anti-terrorism law in the country.

- **Prevention of Terrorism Act (POTA)-2001-2004**

  In addition, after the terrorist attacks on the World Trade Center on September 11, 2001, the ruling National Democratic Alliance in America proposed POTA as a new anti-terrorism law. The bill was adopted at a joint session of Parliament. Despite strong opposition from civil society, the law to prevent terrorism was passed by parliament on March 28, 2002. POTA has restored many of the provisions of TADA, thereby ensuring a continuum of abuse of terrorism laws. POTA included TADA's expanded police powers, the limits of defense rights, confessions that were allowed as evidence in police custody, and the establishment of special courts. According to POTA, the law was finally repealed on December 21, 2004.

- **POTA reinvented – The UAPA (Amendment) Act, 2004**

  With the adoption of TADA and POTA, Parliament left no doubt that UAPA does not cover acts of terrorism. In 2004, these two laws were repealed. The state believed that there could be a potential emptiness and therefore designed terrorist offenses according to these laws in UAPA. In its current form, UAPA deals with two qualitatively and fundamentally different types of crime - "illegal activities" and "terrorist acts". Between 1967 and 2018, the UAPA was changed six times: for citizens. In 2004 the law was further amended to incorporate most of the provisions of POTA that have since been repealed. In 2008 the definition of a "terrorist act" was expanded. The 2019 law on changing the Unlawful Activities Prevention (Amendment) Act 2019 is progressing. According to the law, the then Union government could call everyone "terrorist". It also empowers the NIA to investigate in areas other than previous laws.

NEED FOR ENACTING AN ANTI-TERRORISM LAW [4]

Terrorism is usually described as a low-intensity war with war-intensive weapons. The loss our country has suffered from increasing terrorist activity in the past two decades has been huge, and the most related example is the attack on Mumbai on November 26. Almost six lakhs in the country have become homeless due to terrorism. Aside from the cost of our armed forces to maintain all means to fight the insurgency and fight cross-border terrorism, the economic cost itself was 45,000 rupees. The budget has increased 26 times over the past 15 years due to counter-terrorism or counter-insurgency measures. We have no records of the explosives used in different parts of the country. We have a criminal record. But the explosives that were seized by our security agencies weigh 48,000 kilos. If our security forces had not been vigilant enough to seize these explosives, they would probably have been enough to take care of every inch of Indian soil. Which regions are affected: It's not just cashmere; Punjab also suffered. Also Mumbai, Delhi and other parts of the country like the northeast. Development suffered, the economy suffered. You now have a sign of Maoist terrorism; People's war group and other groups. Much of Andhra Pradesh, Orissa, Madhya Pradesh, Chattisgarh and Jharkhand up to the border with Nepal are affected. We had riots and terrorism in Tamil Nadu. We lost two of our former Prime Ministers to this type of terrorism.

CRITICISM OF ANTI-TERRORISM LAW IN INDIA [UAPA, 2019]

- Terrorism correlates strongly with the existence of human rights violations, weaknesses in the rule of law and major political grievances. When governments violate human rights efforts to fight terrorism, they "effectively give moral terrorism to the terrorist" and "cause tension, hatred and distrust of the government, precisely among the segments of the population, in which terrorists are most likely find recruits. In this context, respect for human rights is not simply an independent moral or legal obligation that is divided and referred to as institutions that deal exclusively with "human rights". On the contrary,

[4] Siddharth - Law student, Anti-terrorism laws in India and the need of POTA,Author of the article, http://www.legalserviceindia.com/articles/anti_pota.htm

respect for human rights is itself a strategic imperative, an integral part of any "global strategy" to combat terrorism.[5]

- The latest amendment to the 1967 UAPA law violates the Supreme Court rule in the Tulsa Singh case against the state of Haryana. The reasons for detention must not be vague or inadequate or irrelevant, vague or inadequate. The detainee has the right to be released. In the last change, a person can be declared a terrorist first and then have the opportunity to prove their innocence before the judiciary. This power not only violates the rule that applies in this case, but also the principle of natural justice, ie Audi Alteram Partem under Article 21 of the Constitution.
- The law grants the NIA more powers over the 2019 Amendment Act. This is the same violation of the quasi-federal character of our country that the constituent assembly has thus incorporated into the constitution of India and the Supreme Court has ruled in various cases that India follows a quasi-federal system in the country and the state and the center have their own sphere and, on Esholud, do not harm the other's sphere by entering the other's skin.
- There is a famous saying: "Once a man's reputation is ruined, he has nothing left", and the right to redress is also considered a fundamental right under Article 21 of the Constitution. In the current change to UAPA 2019, the process by which the government declares an organisation or individual terrorist is controversial, partisan, and is not based on facts and evidence, but only on the government's suspicions.
- The Supreme Court ruled in the case of **Nirmal Singh Kahlon v. State of Punjab** that "the fair investigation and free trial go hand in hand with protecting the fundamental rights of the accused under Article 21 of the Constitution." Under applicable law, the accused was not given the opportunity to conduct a fair investigation while disposing of property, the detention process, and the manner in which an individual terrorist was declared. The Supreme Court in **Rattiram v. The MP**[6] said that "a fair trial for those charged with a crime is the cornerstone of democracy". A "fair trial" is at the heart of criminal justice and,

[5] Anil Kalhan, Gerald p.conroy, Mamta Kaushal, Sam Scott Miller and Jed s.rakoff, Colonial continuities: human rights, terrorism, and security laws in India, http://hrsjm.org/wp-content/uploads/2017/03/human-rightsterrorism-and-security-laws-in-india-2006.pdf

[6] (2012) 4 SCC 516

in a way, an important facet of a constitutional democratic regime. By law, the accused is first identified as a terrorist and then given the opportunity to prove his innocence, which itself shows government discretion and is not a due process before becoming a terrorist person.

- This law violates Article 14 of the Indian Constitution, which provides for the right to equality and equal protection of the law not only for ordinary citizens but also for prisoners, terrorists and even foreigners, if that is the case, ensuring equality in relation to the violation of fundamental rights. There is a violation in the 2019 UAPA Amendment Act because the person does not have the ability to prove their innocence like the others, but on the contrary, they were first proven to be terrorists and later they have the opportunity to prove their innocence, and it is also against criminal justice, which states that **"the man is innocent until his guilt is established".**
- This law also violates the freedom of expression and expression guaranteed in Article 19 (1) (a) of the Constitution, since the law has not given anyone the opportunity to present their case to anyone. " There is a procedure in sections 27 and 28 of the law, but not before the judiciary, but before government officials, who form the majority in the committee itself and have the decision-making power to decide the committee. This partisan procedure does not guarantee the accused to exercise the fundamental right granted to him by Article 19(1) (a).
- Neither the scope nor the provision of the law on bail provides for a bail. In accordance with section 2 (c), the word code means the **1973 Criminal Procedure Code**, but as stated in Article 43D under sections 5 and 6, no one may be released on bail if he is required to commit an offense under Chapters IV and VI of the Act. Simply put, we can say that there is no way that a person accused under this law can get a deposit even if they are entitled to do so under the 1973 Criminal Code.

CONSTITUTIONAL VALIDITY OF UNLAWFUL ACTIVITIES PREVENTION (AMENDMENT) ACT, 2019

The constitutional validity of the present Act can be based on two approaches one in favour and another against.

ARGUMENTS IN FAVOR OF MOTION

"The fundamental right of a citizen is also not absolute."[7]

- The foremost defence in the favor of the Act is that it is not arbitrary, unfair or unreasonable as laid down by the apex court in the case of **Maneka Gandhi v.Union of India**[8]**.** The law was promulgated and passed by both chambers of parliament and was also approved by the president. It is not arbitrary, unjust and reasonable, because after a person has been declared a terrorist, the scale a gave section 4 an opportunity to refer the matter to the court and to section 37, which authorizes that person to refer the matter to a review panel, which is formed by a presiding judge who is a Supreme Court judge and other members at most as determined by the central government. Given these arguments, it can be said that the current law does not violate Articles 21, 14 and 19 of the Indian Constitution, as the Maneka Gandhi case has decided.
- Regarding the possibility of abuse and bias under Section 14, the Supreme Court cannot review and consider the "need" of POTA. It is a question of politics. Once the law is passed, the government is required to exercise all available options to prevent terrorism within the confines of the constitution. Furthermore, the mere possibility of abuse cannot be considered a reason for refusing to delegate a power or for declaring unconstitutional status in **Kartar Singh v. State of Punjab**[9]
- The survival led by the NIA is also controversial because it is pointed out that it violates a person's right to privacy (Article 21). In this case, the Supreme Court ruled that police surveillance is a confidential document. Neither another person whose name is entered in the register nor any other member of the public can access it. In addition, the Court found

[7] Justice K.S. Puttaswamy vs. Union of India (2017) 10 SCC 1
[8] AIR 1978SCR(2) 621
[9] 1994 (2) SCR 375

that compliance with the principles of natural justice in such a situation may run counter to the very purpose of surveillance and that it may well be that the ends of justice are served.[10]

- The present Act itself is the procedure established by law, as held in the case **People's Union for Civil Liberties v. Union of India,**[11] the apex court ruled that 'telephone conversation is an important facet of a man's private life'. The right to make a phone call and the privacy of one's own home or office without interference can certainly be called the "right to privacy". Eavesdropping is a serious violation of privacy. This means that the eavesdropping would violate Section 21 unless it is approved in accordance with the statutory process. The process must be "fair, fair and appropriate". In the process that UAPA is legally correct in accordance with Article 48B of the Act, the arrest of the person without a warrant does not constitute a violation of the right to privacy and Article 21 such as this concerned with the security and integrity of public order in the country.
- The law does not deprive people of the right to be heard; Audi alteram partem principle of natural justice in accordance with Article 21, as in accordance with the 2019 Law amending the UAPA Act, the individual and the organisation have the full right to be heard under section 37 and 38 of the Act by submitting an application at the central government and the central committee must be established and the case forwarded to the court within 30 days of this notice.
- The detention period of a person under the Act is 90 days which is well within the framework of **Article 22(4**) of the Indian Constitution.

ARGUMENTS AGAINST THE MOTION

"No man shall be deprived of his right to life and liberty."[12]

- The Supreme Court of India, in **Shreya Singhal v. Union of India**[13]**,** had identified 'vagueness' as one of the grounds for striking down **Section 66A in India's Information Technology Act**. The law has inappropriately restricted online language. Likewise, the

[10] Malak Singh V. State Of Punjab And Haryana AIR 1981 SCR (2) 311

[11] AIR 2003 2 SCR 1136

[12] Maneka Gandhi v.Union of India AIR 1978SCR(2) 621

[13] (2013) 12 S.C.C. 73

proposed amendment can have a dissuasive effect on freedom of expression and expression, which is enshrined in Article 19 (1) (a) of the Indian Constitution as a fundamental right. In this case, the NIA has the authority to intercept a person's online history without notifying or warning them, so that the same violates a person's privacy rights.

- In the case of **K.S. Puttuswamy v. Union of India**[14], The Supreme Court recently recognized the right to privacy as an integral part of Article 21 of the Constitution, which guarantees the right to life and personal freedom. Under applicable law, the additional powers that have been granted to the NIA to survive individual data, without informing them and without the judge's approval, show that they are arbitrary, unfair and clear and not only violate the provisions of Article 21 but also Articles 14 and 19 of the Indian Constitution.
- The fight against terrorism is a primary goal, but the legislature has clearly made a mistake in persecuting it at the expense of human rights erosion. The proposed change violates the mandate of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Indian Supreme Court has often used these international instruments to reinvigorate the constitutional rights chapter. In 2018, the judiciary played an admirable majority role in reading a colonial-era provision of the **Indian penal Code of 1860** that criminalized homosexual acts. Since the constitutional foundations of the law appear weak, any challenge to its constitutionality should allow the Indian judiciary to examine it and go the same way. The 2019 Law on the Change of Unlawful Activities (Prevention) Act 1967 picks up on the laws passed under the colonial regime to smash the movement of freedom and ensure public order. On the contrary, India's constituents envisioned a transformative role for the Indian constitution to create an environment in which civil rights are protected and not subject to the supremacy of the executive.

- *Conducting a fair trial for those who are accused of criminal offences is the cornerstone of democracy. A fair trial is the heart of criminal jurisprudence and in a way an important facet of a democratic policy that is governed by rule of law.*[15] Every accused has a right to

[14] (2017) 10 SCC 1
[15] Rattiram vs. state of MP (2012) 4 SCC 516

a fair trial under Article 21 clubbed with the principle that '**Justice may not only be done it must also seem to be done.'** *In the UAPA without giving the person a proper chance of being heard by the competent judicial authority, he is directly designated as a terrorist, in this sense the person so designated as the terrorist cannot be said to have a free trail.*

- *No power has been left with the Court to decide on the request judicial involvement from a suspect person sought whether investigating office is reasonable or not, no power has been given to the court to refuse the request of the investigating officer, that it is not obligatory for the Court to record any reason while allowing the request and that the Act is a gross violation of Article 20(3) because it amounts to compel a person to give evidence against himself*[16] *and the same also violates the power of judiciary as a separate organ free from legislative interference.*

POWERS GIVEN TO NIA UNDER UAPA VIOLATE THE BASIC STRUCTURE OF THE CONSTITUTION

Our Constitution would be both unitary as well as federal as per the prerequisites of time and circumstances"

- , Dr. Ambedkar

- The federal government is a government in which all administrative powers are divided by the constitution between the central government and the state governments. **Both are outstanding in their respective spheres of influence.** The state governments are not agents or under the authority of the central government. In fact, both derive their authority from the same source - the Constitution. In an emergency, however, the Constitution gives the central government extensive powers to intervene in government affairs.
- The authors of the Indian constitution have designed the constitution in such a way that it is federal in nature and form, but can be regarded as uniform. That is why it is called "quasi federalist". The Indian constitution is not really federalist; States are assigned issues of

[16] State of Bombay v. KathiKaluOghad 1961CriLJ856

local importance and the Union has the other powers specifically responsible for economic, industrial and commercial unity.[17]

- In India, there is a division of powers between the center and the states, and each level of government is paramount in its own sphere. There are 3 lists, namely the Union list, the State list and the simultaneous list in the seventh calendar of the constitution. The Union is empowered to legislate on the issues listed in the Union List, the State is empowered to legislate on the topics in the State List, and the Union and the State are empowered to legislation the simultaneous list in the Schedule 7 of Indian Constitution. The reason for this lack of uniformity is that it cannot be decided beforehand what is of national importance and what is local.[18]
- Distribution of Legislative powers between the center and state regions is the most important characteristic of a federal constitution. The whole structure of the federal system revolves around this Center.[19] Three important ingredients of the classification of federalism in our country:-

1. An exclusive area for the center
2. Exclusive area for the state
3. A common concurrent area in which both the center and the state may operate simultaneously, subject to overall Supremacy of the centre.

- Article 246 of the constitution provides that both state and the central government are empowered, independent and intrupted to make laws in their respective field but when it comes to concurrent lists under Article 276 both are empowered to make laws in that area. There being a division of powers between the center and the states, none of the government can step out of its field, if it is done so, the law passed by it becomes on constitutional questions constantly arises whether a particular matter falls within the Ambit of one or the other government it is for the courts to decide such matters for it is their function to see that no government exceed its power.[20] The court that if the matter is within the Exclusive

[17] State of West Bengal V Union of India AIR 1962 SC 1241
[18] Prof.Yashpal vs. State of chattisgarh,(2005) 5 SCC 420
[19] Dharma Dirt vs. UOI (2004) 1 SCC712
[20] General Manager, north Western Railway V. Chandrima Devi (2005) 2 SCC 108

competency of the state legislature enlists two, then the union legislature is prohibited from making any law with regard to the same.[21]

- The police come under entry 1 of list 2 that is state list, so it can be said that the powers given to NIA under the Act come within the sphere of the ambit of the state. But further can be said that it is the matter of **defence of India** and NIA is a central agency so the central government is also empowered to make law on the same as per entry 1 of list 1 that is union list. The laws related to Preventive detention for reasons connected with the security of a state, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention is given in entry 3 of the list 3 of concurrent list. That if your status is related to a concurrent subject is attributed to a union law relating to that subject, whether the union law prevailing or later in time the union law will prevail and the state law shall, to the extent of such repugnancy, be void.[22]

HOW TO DECLARE AN INDIVIDUAL TERRORIST UNDER THE UAPA

The latest amendment of the Act does not provide any new process to declare an individual or organisation as a terrorist one. The amendment in the Act provides only for the minor changes in the same Act by substituting two mains words in the previous Act, these words are **fourth schedule** and **Individual**. Earlier chapter VI name was "Terrorist Organisations" which was changed by the latest amendment to "**Terrorist Organisations and Individuals**." Also in section 2(ha) which was as "schedule means the schedule to the Act" which is now made as "schedule means a schedule of this act." In section 2(m) from "the schedule", it was made as "the first schedule."

Earlier the section 35 of the Act was used by the central government to declare an organisation as a terrorist organistation, but after the latest amendment of the Act the same process is being used and only difference is that in the provisions of this section with terrorist organisations the word individual is added to make use of the same procedure for declaring an individual as a terrorist.

[21] Hindustan Lever v. State of Maharashtra(2004) 9 SCC
[22] Hoechst Pharma Limited v. state of Bihar in 1983 SC 1019

The procedure by which an individual or in that case an organistaion is being declared as a terrorist one is that:-

1. Add the name in the respective schedule, if terrorist organisation then in the first schedule and if it is an individual then in the fourth schedule.
2. Add all the names of the organisations or individuals in the respective schedule if adopted by UNSC as terrorist organisation or individual in chapter VII of the United Nations, to combat international terrorism.
3. Once the name of such individual or organistaion is put in its respective schedule it has to be notified in the official gazette by the central government to bring it into effect.
4. Section 35, sub-clause 3 provides for 4 types of categories in which an organisation or an individual can be proved as a terrorist, these four categories are:-
   a. Commits or participates in act or terrorism
   b. Prepares for terrorism
   c. Promotes or encourages terrorism
   d. Is otherwise involved in terrorism

REMEDIES GIVEN IN THE ACT TO THE ORGANISATION OR INDIVIDUALS DECLARED AS A TERRORIST

It is the principle of the natural justice and Article 21 of the Indian constitution that **"no man should be should be punished without giving a chance to be heard**" so to keep the same in mind various remedies other than the trial is given to the organisation or an individual to prove their innocence and to get their name removed from the same. The remedies are as follows:-

1. The foremost remedy is given in section 4 of the Act to refer the case to the tribunal. The right to approach the tribunal is available within **30 days** of the date of issue of notification in the official gazette. The tribunal on receipt of a reference under section 4 sub-clause 1, the tribunal shall issue a notice in writing to showcase, within 30 days of the service of the notice, for the purpose of why not to declare the association as a terrorist. The tribunal should inquire about the manner as given in section 9 and call for more information from

the central government and as possible to pass an **order within 6 months** from the date of issue of the notification.

2. By making an application to the central government under section 36 and on such application the central government will form a review committee consisting of a chairman who is a judge of the high court, who shall be appointed by the central government and it should not exceed three members and other two members other than chairman may be one or two as the central government may prescribe.
3. As per section 6 of the Act, the central government can on its own motion or on the basis of application, can cancel the notification at any time.

Who can make an application to the central government for under section 6 and section 36 are:-

A. The organisation
B. Any person affected by the inclusion of the organisation
C. The individual whose name so notified as a terrorist in the fourth schedule

DIFFERENCE IN PROVING TERRORIST BY JUDICIARY AND THE GOVERNMENT

Whenever a case of UAPA is tried by a special court under NIA, 2008 which is from the latest National Investigation (Amendment) Act 2019 is a court of sessions, the court decides that whether the order of government notifying a person as a terrorist is valid or not, is based on the definition of a terrorist act as given in section 15 of the Act. Which provides various acts to declare an organisation or individual as terrorist? Some of these acts are:-

1. Who intent to threaten the unity, integrity, security, or sovereignty of the state.
2. Does any act by using bombs, dynamite or poisons, or other explosive substances in any foreign country?
3. Strike terror or likely to strike terror in the people of India or any foreign country
4. Disruption of any supplies or service of essential to the life of the community in India or any foreign country.

5. Uses criminal force or cause the death of the government machinery\damage or destruction of any property of India or any foreign country used or intended to be used for defence purposes, etc.

But the central government while declaring any individual as terrorist only considers 4 points as mentioned above, also those are only based on presumptions and not on any fact or evidence.

The difference is clear and the way of defining terrorist Acts is also difficult. This irrelevant discretion by the legislature of what actually constitutes terrorist Acts has created doubts not only in the mind of judges but also in the minds of the people of the country. Also for such an irrelevant dissection Indian anti-terrorism law is also criticized in various parts of the world and even also by the United Nations.

CONCLUSION

The issue of terrorism is both old and focused. The most important time which an anti-terrorism law should have is not only to punish a terrorist but try to reform in from the base root problem and fundamental rights plays a very important role in the as if a person is enjoying his life freely and with ample of opportunities then he will not be diverted from his path and will not end up screwing his/her life by becoming a terrorist. India has a framework of many laws but most important of which is UAPA, which not only defines but also provides for punishment for such terrorist acts. But it also has both criticism and favors but in reality, what matters is its implementation in the real-world situation. The same Act is also backed by various previous anti-terrorism laws and is based on the learning of those Acts. But the thing which those Acts as well the present UAPA lacks is the appropriate definition of the term terrorist act which needs to be solved by the legislature. The additional powers handed in the hands of NIA need not violate the quasi-federal structure of the country as our countries system in union centric and union is more powerful than state and the same not only the question of security, sovereignty and integrity of the country but also the defence of the nation. In view of which the additional powers vested with NIA is both rightful and well within the constitutional framework. And also the Act should be made applicable to upcoming forms of terrorism like cyber terrorism and it should also provide for the

reformative methods to protect the young generation from being attracted to it and ending up as a failure in life not to themselves but also to the country.