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**UNLAWFUL ACTIVITIES PREVENTION  
(AMENDMENT) ACT, 2019 DESIGNATING  
INDIVIDUAL AS TERRORIST: SECURITY VS.  
LIBERTY**

*Author –*

**Shweta**

B.A.LL.B., LLM

Maharashtra National Law University, Mumbai

## **ABSTRACT**

The amendment in Unlawful Activities Prevention (Amendment) Act, 2019 provides for the designation of individuals as a terrorist. The earlier only organization could be classified as a terrorist organization and the members associated with this could be prosecuted. So, this amendment will affect the rights of the individual. So here in this project, I dealt with the objective and history of UAPA. Then I talked about the amendments i.e. notifying individual as a terrorist and speedy investigation. Here we find mention of how this amendment leads to violation of some of the fundamental rights and also the unremitting powers provided to the executive under the Act. I also discussed the international position regarding the designation, what can be the procedure for designation and mentioned the relatively better provisions regarding the procedure in a different jurisdiction.

## **INTRODUCTION**

Laws giving more powers to security agencies and restricting individual liberty should be made after a well-considered thought and debate. National security legislation takes away our democratic rights i.e. right to associate and assemble, right to form an organization, right to speech and expression through protests and demonstrations.

UAPA, 1967 came with the objective to ban those organization which are deemed to be dealing with illegal activities mainly focusing on terrorism prevention. It empowers Parliament to restrict right and freedom in order to protect the sovereignty and integrity of India. UAPA also criminalizes the attempt to commit any unlawful or terrorist act. It allows the government to seize, freeze and attach the financial assets of the accused. For committing unlawful activity one can be imprisoned which may extend up to 7 years and fine and for the terrorist act death penalty or life imprisonment can be given and the minimum penalty is 5 years of imprisonment.

The definition of unlawful activity does not involve any physical act of violence, therefore, it can punish any view, belief of people. Disaffection included in definition can be a grudge or a rebellion and also it can be unintended.

## **HISTORY**

UAPA was not a concept that was introduced by the Indian parliament but was made on the same lines of colonial government i.e. Britishers. They used such law for banning and criminalizing the dissent shown by individuals to their government. ‘Unlawful Association’ was used for first time in Criminal Amendment Act, 1908 to criminalize Indian National Movement. But post-independence it is being used to suppress political dissent. ‘Public Order’ and ‘friendly relation with other states’ were added as a reasonable restriction in Art. 19 by 1<sup>st</sup> Amendment of the Constitution.<sup>1</sup> This was indirectly incorporating the sedition as a reasonable restriction which was done away with. During the 1962 war, there were many secessionist tendencies that were arising in India like threats from Tamil Nadu groups etc. So a committee on National Integration and Regionalism was appointed by the National Integration Council. This committee recommended for further restricting the Fundamental Rights. So in 1963, a new reasonable restriction was added that is-‘the Sovereignty and Integrity of India’, which was to restrict these secessionist movements. This 16<sup>th</sup> amendment paved the way for UAPA. UAPA bill was passed by parliament in 1967 giving the central executive power to ban organization which it thinks to be unlawful. It was amended in 2004 and 2008 just to incorporate the provisions from TADA and POTA. Now it is not only restricted to cases of the secessionist organization but extends to cases of terrorism also. Now UAPA allows the centre to ban any organization on two grounds: i) unlawful activity ii) terrorist act. The terrorist gang was also included in UAPA which implicates certain members of the organization as involved in a criminal activity instead of banning the whole organization. Recently, in 2019 it is amended which allows the central government to declare any individual as a terrorist.<sup>2</sup>

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<sup>1</sup> Anushka Singh, *Criminalising Dissent: Consequences of UAPA*, 47 (38) ECONOMIC AND POLITICAL WEEKLY, 14 (September 22, 2012), available at [https://www.jstor.org/stable/41720156?Search=yes&resultItemClick=true&searchText=UAPA&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DUAPA%26amp%3Bacc%3Don%26amp%3Bwc%3Don%26amp%3Bfc%3Doff%26amp%3Bgroup%3Dnone&ab\\_segments=0%2Fbasic\\_SYC-4631%2Ftest&refreqid=search%3A98b0815cdc0c257b8edb259dda0f5ee&seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/41720156?Search=yes&resultItemClick=true&searchText=UAPA&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DUAPA%26amp%3Bacc%3Don%26amp%3Bwc%3Don%26amp%3Bfc%3Doff%26amp%3Bgroup%3Dnone&ab_segments=0%2Fbasic_SYC-4631%2Ftest&refreqid=search%3A98b0815cdc0c257b8edb259dda0f5ee&seq=1#metadata_info_tab_contents), last visited on 09-10-2019.

<sup>2</sup> *Supra* note 1.



## **UNLAWFUL ACTIVITY**

It is defined in a very vague fashion which permits the government to consider any type of activity as unlawful. It is defined as “any action is taken...i) which is intended, or supports any claim on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or iii) which causes or is intended to cause disaffection against India.”<sup>3</sup>

## **TERRORIST ACT**

It is defined under section 15 of the Act as- whoever does any act with the intent to threaten or likely to threaten the unity, integrity, security and sovereignty of India or with intent to strike terror or is likely to strike terror in people or any section of people in India or in any foreign country.<sup>4</sup>

S. 38: provides for the **definition of a member of terrorist org.:** who associates himself, or professes to be associated with a terrorist org. with the intention to further its activities. So it does not differentiate between the criminal association and legitimate association (a doctor treating such member).

## **2019 AMENDMENTS**

Recently on 2<sup>nd</sup> August 2019, Rajya Sabha passed an Unlawful Activities Prevention (Amendment) Bill which received President’s assent, so making it an Act. The Bill was not referred to any select committee and was not much debated.

### **1. Notifying individual as terrorist:**

The earlier only organization could be notified as a terrorist organization and could be banned if it :(i) commits or participates in acts of terrorism, (ii) prepares for terrorism, (iii) promotes terrorism, or (iv) is otherwise involved in terrorism. But the individual members and active supporters of

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

these organization are not arrested solely on the ground of being a member of such an organization. This would lead the members-only vulnerable to prosecution. Consequences of this could be imprisonment and loss of property. The new Act additionally empowers the central government to designate individuals as terrorists on the same grounds if it believes him or her to be so and add their name in schedule 4 of the Act.

**a) Procedure or Redressal mechanism**

No rationality and only the government's opinion is considered for banning any organization. There is no hearing or procedure followed before designating any organization as a terrorist organization, only post-decisional hearing is done by a review committee which is headed by sitting or retired high court judge to determine the continuation of designation as such.<sup>5</sup>

The banned organization can make an appeal to government and if it is rejected then an appeal can be made to a review committee, an extended body of government. So same authority is categorizing the organization and same is imposing the ban, then hearing the appeal and also the second appeal.<sup>6</sup> This safeguard does not have any separation of power.

The 2019 amendment designating individuals as terrorist does not provide for any change in the procedure for such designation. So, the same procedure is to be followed. Individuals being classified as a terrorist should have a different mechanism and faster mechanism of redressal for the reason that an individual has fundamental rights protected under the constitution, unlike an organization. They may be arrested, detained and their movement may be restricted which leads to their violation of fundamental rights guaranteed under the constitution. But there is no change in the process of removing an entity listed as a terrorist.

**b) Government's contention:**

Union government said that the said amendment was needed because the present Act gives power only to designate an organization as a terrorist organization. It said that the terrorist acts are not committed by the organizations but by individuals. So present Act provides the individuals with an opportunity to circumvent the law and continue their terror activities under a different name.

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<sup>5</sup> *Designating Individuals as Terrorists*, 32 ECONOMIC AND POLITICAL WEEKLY, (August 10, 2019).

<sup>6</sup> *Supra* note 1

Another reason cited by the government for the amendment is that the United Nations Security Council (UNSC) designates an individual as terrorists and India being a signatory to the United Nations Charter is obligated to treat the individual as terrorists.<sup>7</sup>

**c) Fundamental rights:**

- Section 35 does not provide the detailed grounds and reasons on the basis of which an individual can be notified as a terrorist so giving the government arbitrary, unfettered and unbound power which violates directly Article 14.<sup>8</sup>
- The government cannot impose a restriction on the right of dissent in the garb of terrorism. Right of dissent is an integral part of the right to freedom of speech and expression which can be restricted only on the grounds mentioned under Article 19(2) of the constitution.
- By terming the individual as a terrorist before the commencement of trial causes irreparable damage to one's reputation which is an integral part of the right to life under Article 21.<sup>9</sup>

**d) Unremitting powers under the Act:**

Police power to arrest, search and seizure, making all offences cognizable, enhancing the period of detention, undermines the power of the court to demand the attendance of accused in their trials, disallows anticipatory bail, presumes the guilt of the accused, in-camera trials and withholding the identity of the witness and allowing intercepted communication to be used as evidence, this all gives overwhelming power to the executive. So it does not follow a fair trial. These unremitting powers are now applicable to an individual from the time he/she is designated as terrorist. Preventive detention is prohibited under Art. 22 of Constitution and CrPC. allows for 90 days in case of offences having punishment of

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<sup>7</sup> *Supra* note 5

<sup>8</sup> Plea in Supreme Court against UAPA provision to notify private individuals as terrorists (17/08/2019), available at <https://login.westlawindia.com/maf/wlin/app/document?&srguid=i0ad8289e0000016ded3e390e982792a8&docguid=I53E30290C35A11E984F3F5288A1F19C6&rank=78&spos=78&epos=78&td=486&crumb-action=append&context=49&resolvein=true>, last visited on 11 October, 2019.

<sup>9</sup> Second Plea in SC challenging amendments to UAPA Act, available at <https://economictimes.indiatimes.com/news/politics-and-nation/second-plea-in-sc-challenging-amendments-to-uapa-act/articleshow/70817752.cms?from=mdr>, last visited on 12 October, 2019.

10years or more and 60 days in other cases. The principle of presuming one innocent until proven guilty is disregarded under UAPA.<sup>10</sup>

## **2. Speedy investigation:**

It gives power to officers of the rank of inspector and above of NIA to investigate the offences under the Act. It empowers the NIA to conduct raid anywhere without the prior permission of the relevant state government. NIA can also grant approval for seizure and attachment of property when the case is being probed. So, overrides the powers of state government.

## **INTERNATIONAL POSITION**

Many countries and international organisations (UN, USA and EU) designate an individual as a terrorist and see this designation as necessary because the banned groups assemble under different names and continue to operate with terror activities. However, there should be a set procedure for designating an individual a terrorist. Parliament should consider whether an individual can be classified as a terrorist before his conviction by a court of law. The process of designating an individual a terrorist and an organization a terrorist should be different as the former enjoys the right to life and liberty. The tag of a terrorist can have far worse consequences for an individual than an organization.

Under this Act, the pre-charge detention is allowed for the maximum period of 180 days which is much longer than allowed in other democratic states. The UK Terrorism Act provides for 28 days of judicially authorized detention. In the US it is allowed for 48 hours except for aliens suspected of committing a terrorist act can be detained for 7 days under the PATRIOT Act. In Australia, it is 24 hours which exclude dead time, when the suspect is not questioned. Council of Europe Parliamentary Assembly noted that lengthy pre-charge detention acts as a sentence on a person who may never be charged with any crime. Fair Trials International argued that holding people for a lengthy period without charge is a violation of the right to liberty and presumption of violence.

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<sup>10</sup> *Supra* note 1

At the minimum judge while extending the period grounds and reason must be noted on the basis of which the extension is provided.<sup>11</sup>

Under the UAPA Act, anticipatory bail is denied to the suspects. The UN's special rapporteur on the promotion and protection of human rights stated that where there are essential reasons then the bail can be denied however each case must be assessed on its merits with the burden on the state to provide the reasons of such detention.<sup>12</sup>

Right to a fair trial is protected under Article 14 of the International Convention on Civil and Political Rights (ICCPR) to which India is a signatory. And this right to a fair trial includes a presumption of innocence. But UAPA is against this principle.

UK Terrorism Act 2000 provides for review of the legislation at least once in every year. This annual review report is to be laid before parliament. It helps in monitoring terrorist legislation and its impact on individual rights.<sup>13</sup> UN provides for the need to have annual reviews of the listed individuals through Security Council Resolution. EU also provides for reviewing the list at regular intervals and at least once every six months.<sup>14</sup>

There is no sunset clause mentioned under UAPA Act. The UK's joint committee on Human Rights recommended that all terrorism legislation must have a sunset clause of a maximum five years and should be renewed by primary legislation and not ministerial order.<sup>15</sup>

In Australia, the high court, the federal court and the federal magistrate's court all have the power to review the executive action. If any executive action is taken under anti-terror legislation then

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<sup>11</sup> South Asia Human Rights Documentation Centre and Ravi Nair, *The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes*, ECONOMIC AND POLITICAL WEEKLY, (Jan. 24-30, 2009) available at [https://www.jstor.org/stable/40278825?Search=yes&resultItemClick=true&searchText=UAPA&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DUAPA%26amp%3Bacc%3Don%26amp%3Bwc%3Don%26amp%3Bfc%3Doff%26amp%3Bgroup%3Dnone&ab\\_segments=0%2Fbasic\\_SYC-4631%2Ftest&refreqid=search%3A3a5e0851fda604c253772aa37c44c8a6&seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/40278825?Search=yes&resultItemClick=true&searchText=UAPA&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DUAPA%26amp%3Bacc%3Don%26amp%3Bwc%3Don%26amp%3Bfc%3Doff%26amp%3Bgroup%3Dnone&ab_segments=0%2Fbasic_SYC-4631%2Ftest&refreqid=search%3A3a5e0851fda604c253772aa37c44c8a6&seq=1#metadata_info_tab_contents), last visited on 12-10-2019.

<sup>12</sup> *Id.*

<sup>13</sup> *Supra* note 12.

<sup>14</sup> *Statewatch comparative analysis of the US, UK, UN and EU "terrorist lists"*, available at <file:///C:/Users/ROHIT%20RAWAL/Desktop/shwetarawal/llm/New%20folder/Statewatch%20comparative%20analysis%20of%20the%20US,%20UK,%20UN%20and%20EU%20terrorist%20lists.html>, last visited at 13-10-2019.

<sup>15</sup> *Id.*

review mechanism is provided by Australian common ombudsman also. India's anti-terror laws must empower the independent judiciary to supervise the application of the law.<sup>16</sup>

## **CONCLUSION**

UAPA borrows provisions from the repealed TADA and POTA Act which were repealed because of being anti-human rights and misused against the minority. TADA and POTA were having sunset clause in it but UAPA is not having any such clause. The UAPA criminalises not only the right to the association but also dilutes the political dissent with criminal activity and so outlawing the organizations, ideologies and beliefs which question the legitimacy of the state and ruling elite. It does not carry any safeguard against its misuse at an individual level. These unbridled powers given by UAPA to central government make fun of democracy in the name of a democratic nation. Police persons should be punished for maliciously charging a person under the Act. Many commissions have advocated that in every state, police complaints authority should be established so as to provide a forum to citizens for filing complaints against police abuse of power such as arbitrary arrest and detention. A state which relies on repressive laws is a weak state which attacks its weaker section and serves the powerful. A balance needs to be made between individual liberty and national security.

The members of these terrorist organization or who aided or abetted the acts of terrorism could have been prosecuted under the UAPA prior to the amendment, so what was the need of this amendment. Tough laws are needed to fight and combat terror, but these amendments can be misused. The government should preserve fundamental rights while enacting legislation on the issue of terrorism.

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<sup>16</sup> *Supra* note 12.