

**LEGISLATIVE AND LEGAL STUDY ABOUT UAPA
ACT, 1967**

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37 (2021)**ABSTRACT**

This research paper is aimed at highlighting about UAPA ACT, 1967. UAPA was originated from a constitutional amendment which was enacted in 1963. UAPA was not all considered as a terror law between 1967 and 2004. It was by the Manmohan Singh Government who introduced UAPA Amendment Act, 2004. By the end of 2019 much more amendments were introduced in order to expand the scope and ambit of this act. At presently this act covers terrorism also, this act restricts Right to Bail too. The main agenda regarding the enactment of Unlawful Activities (Prevention) Act, was made to introduce powers available against those activities which are directed against the integrity and sovereignty of India. Commission of this unlawful activity can lead to imprisonment for that can extends to seven years also even liable for the fine, this is defined under Section 13 of Unlawful Activities (Prevention) Act, 1967.

KEYWORDS: Sovereignty, Integrity, Amendment, Terrorism, Unlawful Activities (Prevention) Act.

I. INTRODUCTION

In ⁷⁶1967, Unlawful Activities (Prevention) Act came into force, during the time Indira Gandhi was the ruling Prime Minister. Till ⁷⁷2019 Unlawful Activities (Prevention) Act has undergone different amendments. At the time of enactment UAPA or Unlawful Activities (Prevention) Act

was not all considered to include terror law. ⁷⁸Terrorist and Disruptive Activities Prevention Act, 1987 (TADA) it was the first terror law in India was enacted. All India bans on associations were formulated by the form of conferring powers to Central Government by Unlawful Activities (Prevention) Act. Even in the recent judgement, Honorable Supreme Court held that, when there occurs the denial of speedy trial bails can be granted to those accused. In Manekha Gandhi v Union of India, it was held that “the procedural law must be just and fair and reasonable” but none of the guidelines matches the Unlawful Activities (Prevention) Act. The definition of terrorist act seems vague in Unlawful Activities (Prevention) Act or UAPA.

II. OBJECTIVE OF STUDY

This research paper stress upon following objectives and they are:

- To study the impact of UAPA Act
- To estimate the level of frequency of unlawful activities
- To analyses the societal impact over the act
- To focus on the reduction of unlawful activities
- To understand the introduction of various amendments under this UAPA Act.

III. RESEARCH QUESTION

Whether the provisions of UAPA is a tool for the government to curb the freedom of citizens?

IV. HYPOTHESIS

The hypothesis made by the researcher about the possible outcome is:

Despite the fact that many reports and statistics have shown that rise in the level of cases under Unlawful Activities (Prevention) Act, 1967 was mainly due to the reason of mishandling functioning from both the Central government as well as State government. Thus, resulting in the misuse of

⁷⁶ Unlawful Activities (Prevention) Act, 1967

⁷⁷ Unlawful Activities (Prevention) Act, 2019

⁷⁸ Terrorist and Disruptive Activities Prevention Act, 1987

UAPA Act, 1967. Section enlisted under act must be mandatorily followed in order to avoid the misuse.

V. METHODOLOGY

This research is based on secondary method of writing mainly. This research paper has undergone government reports, law journals and also the bare act for specifying the appropriate sections also. Through the secondary source of method estimations and also percentages are also well specified in this research paper.

VI. REVIEW OF LITERATURE

1. A Critical Review on the ⁷⁹Unlawful Activities (Prevention) Act, 1967 (Caesar Roy) here the author gives more stress and emphasis upon UAPA Act provisions. Mainly UAPA Act was introduced to prevent the unlawful activities. Author focuses upon the subject depth and detailed structure of the act. Various chapters emphasized in his book were related to the subject areas like- features, its amendments, subject matter of provision etc. It's a much more comprehensive way of structuring. Also, it ends with observations as well as various anti- terrorism legislations of various countries.
2. Unlawful Activities (Prevention) Act, 1967 (Lawmann's Series) – it just focuses mainly on the subject matters which include unlawful association, penalties and punishments, terrorist organizations, prevention of terrorism activities and further amendments of Unlawful Activities (Prevention) Act, 1967 or UAPA Act.
3. Commentaries on the Unlawful Activities (Prevention) Act, 1967 by S. Abdul Khader Kunju it really brings the readers to a detailed point of view. National Investigation Agency Act of 2008 and other special laws and acts were also listed and they were given detailed note. Even the amendments which were brought up in the varied

laws were also given due recognition. It is forward by Honorable. Mr. Justice Kurian Joseph, (Retd.) Judge of Supreme Court of India. Even international conventions were also given due recognition in it.

VII. PETITIONS QUESTIONING THE UAPA'S CONSTITUTIONALITY

Different petitions were filed by questioning the constitutionality of Unlawful Activities (Prevention) Act. One of the petitions filed by the Association for protection of Civil Rights (APCR) claimed that the new Section 35 allowed the Centre to designate a person as a terrorist also his identity was added in the new Section 4 of the said act. Also, in the case of ⁸⁰Sajal Awasti v Union of India, the newly inserted provisions were also challenged. But the similarity exists in both petitions filed are cases are still pending and also even the person continued to be tried under the law. It is very clear that this law can be used as a tool against the opposition and attacks the very importance of speech in a democracy in the name of security. Another issue which resolved around was regarding JMI (Jamia Milia Islamia University)

VIII. INTRODUCTION OF TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT (TADA) AND PREVENTION OF TERRORISM ACT (POTA)

An amendment of the Indian Constitution can only be made by the introduction of a Bill in either House of Parliament and they are Lok Sabha and Rajya Sabha. The said Bill must be passed in each House by a majority of the total membership of that particular pass and also not a less than two by third majority of present and voting. Thus, the existence of an amendment comes into force.

⁷⁹ Unlawful Activities (Prevention) Act, 1967

⁸⁰ Sajal Awasti v Union of India, WP (C) 1076/2019

Terrorist and Disruptive Activities (Prevention) Act i.e. (TADA) came into force on 1985. Section 20(8) specifies about granting of bail under (TADA). Prevention of Terrorism Act (POTA) came into force in 2002. POTA was enacted after 9/11 attack in USA also the attack in Parliament in India. Terrorist and Disruptive Activities (Prevention) Act or (TADA) and Prevention of Terrorism Act or (POTA) were repealed during 2004, by that UAPA became stronger enough to include all the provisions. Even the ambit of UAPA or Unlawful Activities (Prevention) Act made to include unlawful activities as well as terrorist acts.

IX. DETAILED DISCUSSIONS AND SOCIETIAL IMPACT OF AMENDMENTS

Even after the enactment of UAPA Act of 1967, various amendments came into force. It was on 30 December 1967, the bill was passed in both Houses also by receiving the assent of the president, this 1967 act came into application. Herein below are the detailed study about the various amendments. The most noticeable fact that deals regarding the latest amendments is they are in violation Part 3 that deals with (Fundamental Rights) also the basic structure. In a well-known case *Kesavananda Bharti v State of Kerala*⁸¹, it was held that basic structure of Indian Constitution cannot be damaged through any amendments made by the Parliament of India. The main agenda regarding the enactments of amendments was to increase the power within the central government. The term “terrorist” was considered as vague term, it was one among the issue which were raised mainly. Various petitions were filed regarding the questioning of Section 35 as well as Section 36. It was raised that it was in violation of Article 14, Article 19(1)(a), Article 21 of the Indian Constitution. Even arbitrary power under Section 35 can take away right to reputation. Questioning of amendments was made on the grounds of not following “due

process”. There were also many noticeable cases which were also registered under UAPA acts. Even the misuse of UAPA act by Central Government were revealed too. Introduction of various amendments were in violation of Fundamental Rights. It was mainly concerned with the misuse than being benefitted. Thus, indiscriminately violating human rights. Even the statistics revealed that humans were locked behind the bars because of various amendment procedures. Earlier amendments gave power to the police to interrogate. But the actual purpose was to enhance the power within the Central government.

One of the main issues curbed regarding the said act (UAPA) moved against the federal structure. Other issue was it was against the principle of “Speedy and fair trial” envisaged under Article 21 of the Indian Constitution. In the absence of trial that person is entitled to consider as “terrorist”. Grounds of arrest are not mentioned in any of the provisions of the act. Even the law stress upon that, procedure laid down should be just, fair and reasonable in accordance with the Article 19⁸², 14⁸³ and 21⁸⁴ of the Indian Constitution. But the UAPA act and various provisions are silent regarding it. Without conducting fair and speedy trial, the person will be designated as “terrorist”. Society would consider him/her as an evil -minded person, losing of their reputation, dismissal from the job, discarding from ceremonies and functions.

X. WAY FORWARD

Petitions are still pending before the court regarding the violation of Article 14, 19, 21. Judicial review must be given recognition where judiciary must play the role of removing the misuse of human rights. But the fact exist is that TADA and PODA acts have been challenged on the grounds of legislative competence whereas UAPA till now have not been challenged.

⁸¹ *Kesavananda Bharti v State of Kerala*, (1973) 4 SCC 225; AIR 1973 SC 1461

⁸² Const. art. § 19

⁸³ Const. art. § 14

⁸⁴ Const. art. § 21

XI. SIGNIFICANCE OF ARBITRARY POWER

Terrorism in UAPA ACT was considered as a vague definition. Under this UAPA ACT more powers are given to police officers. Power of police officer to arrest the person makes the offence cognizable. Enactment of act introduced special courts, also given wide discretion to in camera proceedings (closed - door-hearings). Moreover, they are in violation of the principle "Fair Trial". In the absence of reasons, a person should not be locked behind the bars. Suspicion and doubt must not be the sole ground for arrest and detention under this act. The amendment passed in the act is clear violation of "innocent until proven guilty". Introduction of this amendment even violates the basic structure. Laws enacted must be always crystal clear, only then it can preserve the human rights.

XII. MISUSE OF UAPA ACT

Our law of land considers a person, innocent until they are proven guilty. Even the statistic and data have revealed that there is huge spike in the number of cases being reported under UAPA Act. Infringement of Fundamental Rights of the citizens are also resulting from the side of UAPA Act. From both the side of Central government and State government the act is being misused. Section 15 of UAPA Act specifies about the term "terrorist" by committing any form of criminal force or by the way of blackmail towards government. Such persons who indulge in these forms of commission can only be termed as terrorist under ⁸⁵Section 15 of UAPA Act. But the situations have reversed. In many reports it has shown that people who were arrested under UAPA Act, they were not the actual terrorist as specified under the Section 15 of the said act. During 2020 also there were huge rate of cases which were registered under the act. Also, infringement to Fundamental Rights were one of the issues which is still prevailing. So, it's time for the government to bring new enactments or appropriate amendment in the said act. So that such misuse of the act can

be minimized, even the innocent can be rescued from locking behind the bars.

XIII. WHAT IS TERRORISM AND WHO IS A TERRORIST

Parts of Jammu and Kashmir and other north eastern parts are mostly affected by terrorist attack. Dated February 14 2019, there occurred terrorist attack in Pulwama (Jammu and Kashmir). In simpler terms, terrorism can be defined as – targeting a specific group, community or even a country by the means of violence and threat. There can be terrorist attack by focusing on religious aspects, or even by the means of political aspects. All over the world we can see as well as hear about the breath- taking incidents regarding terrorism. Millions of people are being killed by the way of terrorism. Governments of the nations must strengthen the borders as well as they must be equipped in every minute. Nowadays religious attacks are highly recognized thus leading into splitting of communities. Indo- Pak war was one of the most highly debated war that ever had seen. But it's a fortunate for all the citizens of the nation to have strong, dedicated and selfless soldiers who are ready to work in day and night for the Nation.

Constituting violence alone cannot be termed as terrorism. Even though accurate definition cannot be traced for the terrorism. There occurs both state governmental groups as well non state governmental terrorism. In state terrorism the government use force as well as violence that is terrorism attack against their own people directly. Such forms of clashes resulting in terrorism between the countries are a form of challenging ones. There requires much need in order to reduce these forms of violence against the country people. Thus, strengthening of country borders are the only way to reduce half a portion of terrorism. We must always remember 'without unity nothing can be saved or achieved'; that is "Unity is Strength".

⁸⁵ Unlawful Activities (Prevention) Act, §15, 1967

XIV. SIGNIFICANT PROVISIONS UNDER UNLAWFUL ACTIVITIES (PREVENTION) ACT (UAPA)

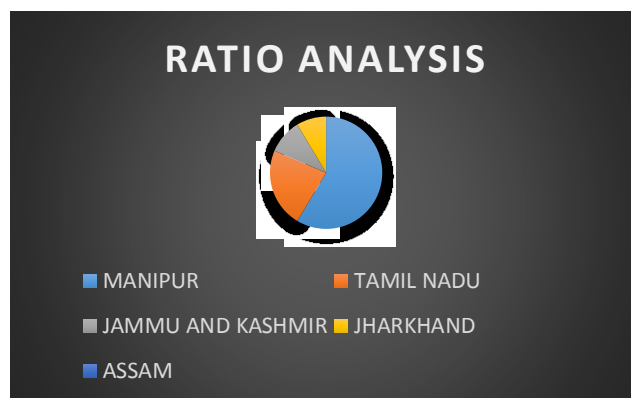
- By the introduction of Unlawful Activities (Prevention) Amendment Act, 2004 “the terrorist act” was inserted in the category of the term “offences”.
- As per the provisions death penalty as well as life imprisonment were regarded as the most offensive and highly strong punishments under the UAPA ACT.
- This act applies to both the foreigners as well as Indian nationals. Even penalty occurs and offers as same even in the foreign land or Indian citizen.
- Overall powers rest in one sole body that is Central Government, Central government is personally liable as well as responsible for the taking up of actions.
- It’s also mandated that Unlawful Activities (Prevention) Act authorizes an investigation agency as a specific body. After the procedure of arresting of the person they are made liable to file charge sheet within the maximum level of 180days.

XV. IS THERE ANY URGENCY NEED FOR THE REPEAL OF UAPA ACT

Let’s see this as a reformative stage in bringing up new clauses, new provisions also further amendments. So that misuse regarding the UAPA Act from the side of central government as well as state government can be reduced to an extent. Its still a debated issue whether the Unlawful Activities (Prevention) Act comes within the ambit as well as framework of Indian Constitution. Even in many judgements it has stated that basic structure of the Indian Constitution by the way of Article 368 (that is Amending power of the constitution) should not damage. So even the main issue concerning with the UAPA Act is, violating the fundamental rights of the citizen. By taking all these matters into consideration there requires the urgency need in bringing a revolutionary change in the said act, i.e. UAPA

ACT. Introduction and formation of amendments transformed UAPA from being a preventive law to a substantive law. By the way of 2008 amendments, enactment of Resolution came into force, especially United Nations Resolution. Even some of the provisions were borrowed from Terrorist and Disruptive Activities (Prevention) Act (TADA) as well as from Prevention of Terrorism Act (POTA). Analyzing and by the way conducting of survey it was concluded that there requires the need of amendment in the UAPA ACT. It is a must when considering from the stand point view as a citizen without any violation of our basic fundamental rights.

XVI. 2019 RATIO DEPICTING THE NUMBER OF CASES REGISTRATION FROM HIGHEST TO LOWEST



Manipur state is recorded for the highest case registration under the UAPA ACT in 2019. From the survey as well as analysis it was stated clearly that, rise number of cases were recorded and investigated by State Police also by National Investigation Agency (NIA). Such other 48 Special Courts were also set up for ensuring right to speedy trial. Thus, this right is violated no more. Later the ratio when to Tamil Nadu then Jammu and Kashmir and second last position were reserved for Jharkhand. Finally, the lowest number of cases registered in the state of Assam. Terrorism as well as criminals were less in assam as compared to other remaining states. But there occurred many views when there was abolition of Article 370, it was stated that reduction in the huge number of terrorism and other cases under UAPA ACT

in Jammu and Kashmir was spotted, and that was mainly due to the repeal of Article 370. Article 370 is no more as it mainly emphasized in giving autonomy status to Jammu and Kashmir.

XVII. CRITICISM ABOUT THE UAPA ACT

India Government pointed out that the introduction of the bill gave the power to probe terror attacks on India. By the presentation of Bill in the Lok Sabha there rise many objections from the opposite party pointing out that the Bill did not give rise to misuse especially the provisions enshrined under the said act that is UAPA ACT. Also, in the absence of declaring the innocent person even as guilty and accused under the provisions of the act by not following the accurate procedure was also questioned and highlighted. One of the former Supreme Court Judge he once raised about the case of Father Stan Swamy a well -known happened in Kerala. He was charged offence under UAPA Act in the absence of trial. Later he was died due to Covid 19 in the prison itself. The former judge also pointed out that the UAPA ACT did not possess any stability in its true nature. They are a means of flexible in nature.

XVIII. SUGGESTIONS AND CONCLUSIONS

In this current scenario, the UAPA ACT has become an obstacle for those who practice Freedom of Speech and Expression as enshrined under Article 19(1)(a) of the Constitution of India. Let it be any speech which is given by the JNU student or any other Activist they all comes under the offence category of UAPA ACT. The Legislature also realized that the act has disregarded the basic human rights of the citizen as well as rejection of bails also the absence of trials is still a unresolved question before all. So, it rests upon the state, judiciary, as well as civil society to bring a balance between constitutional freedom as well as anti- terror activities. To conclude as well as my suggestion is that by the way of strict amendment only a new revolution can be brought also, they are a means of nuisance and hampering also works against the public policy. All matters have to be resolved and let the justice be served to all.

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