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**UNRAVELING THE GAPS AND MISUSE OF UNLAWFUL ACTIVITIES  
(PREVENTION) AMENDMENT ACT, 2019: A CRITICAL ANALYSIS**- Shaik Ishrath Sadiqua<sup>1</sup>**ABSTRACT**

To protect the national interest, maintain peace and integrity in the society every state enacted counter-terrorism laws. Over the years there has been evolution of these anti-terror laws which includes Terrorist and Disruptive Activities (Prevention) Act, 1987, Prevention of Terrorism Act, 2002 and Unlawful activities Prevention Act mainly There has been intense debate over these laws as the basic reasons for the contention is that they violated the fundamental rights of the citizens protected under Part-III of the Constitution of India. The constitutionality of all these laws is main focus over the years. The UAPA was initially created as a statute to stop illegal activity in India. Despite the fact that the Unlawful Activities (Prevention) Act has been in effect since 1967, the Parliament revised it in 2004 and added specific chapters to address terrorist activities in order to secure and safeguard India's sovereignty and integrity. Following that, the UAPA underwent three revisions in 2008, 2012, and 2016. The Unlawful Acts (Prevention) Amendment was passed by the NDA administration, which is led by the Bharatiya Janata Party, on July 24th, 2019. The provisions of this controversial act, according to its detractors, contravene both constitutionally established fundamental principles under Articles 19 and 21 of the Indian Constitution and the integrity of the country's federal system. This paper shall analyse how this UAPA, 2019 infringes the fundamental rights of the citizens and look at the validity of the act. It also point outs the gaps present in the act like unclear and absence of structured definitions of terrorism and how it has been misused.

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## I. INTRODUCTION

On the recommendation of committee setup by National Integration Council for National integration and regionalization the 16<sup>th</sup> Amendment Act was introduced. The central Government with an intention to co-operate with domestic violence imposed the reasonable restrictions on fundamental rights of Citizens like Freedom of Speech and Expression, Right to Assemble Peacefully and Right to form Associations and Unions<sup>2</sup>.

The Unlawful Activities Prevention Act (UAPA) initially passed in 1967 aims to prevent unlawful activity associations in India and combat unlawful activities and terrorism with the death penalty and life imprisonment as the severest punishments. This provision assigns absolute power to the Central Government through which the centre if deems an activity to be unlawful then they may declare it so by way of Official Gazette<sup>3</sup>.

India had to deal with the possibility of its army losing the Sino-Indian War, as well as the DMK running for office in Tamil Nadu with the goal of separating from India, in the 1960s. On December 30, 1967, the UAPA was passed in response to the Indian state's need to deem separatist organisations "illegal." In 2004, the government repealed the Prevention of Terrorism Act (POTA) in response to public outcry over its abuse and considered amending the Unlawful Activities Prevention Act<sup>4</sup>.

The Sixteenth Amendment's adoption of the phrases "Sovereignty and Integrity" as justifiable limitations to Article 19 of the Constitution in 1963 marked the beginning of a

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<sup>2</sup> *National Portal of India*. Available at: <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-sixteenth-amendment-act-1963> (Accessed: 24 October 2023).

<sup>3</sup> Pushkar, A. (2021) *Examining the constitutional validity of the Unlawful Activities (Prevention) Amendment Act, 2019, SSRN*. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3974648](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3974648) (Accessed: 24 October 2023).

<sup>4</sup>Id. at 2

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period of significant change <sup>5</sup>. Later the Unlawful Activities Prevention Act, 1967 was amended in 2004 to include Chapter IV (the chapter addressing punishments for engaging in terrorist activities), the Union Government used barbaric laws like the Terrorist and Disruptive Activities (Prevention) Act of 1987 and the Prevention of Terrorism Act of 2002 to punish violators of India's sovereignty and integrity<sup>6</sup>.

However, the 2004 and 2008 amendments changed the entire operation of the UAPA from being preventive to repressive in nature, elevating it to the same status as TADA<sup>7</sup> and POTA<sup>8</sup> by introducing arbitrary provisions, giving the investigating authorities excessive powers, and severely restricting the scope of reformation or rehabilitation for the detained individuals<sup>9</sup>. The minister of home affairs introduced the Unlawful Activities (Prevention) Amendment Bill in Lok Sabha to modify the UAPA 1967 and the UAPA 2019 came into force with President's acceptance, the fourth schedule to the parent act and changes made to Section 35 (1), which purportedly gave the Union Government unrestricted power to add or remove any person to be designated as a terrorist and detain the said person for up to two years without any provisions for a judicial appeal, however, flooded the gates of controversy. Later couple of petitions were filed in the Supreme Court of India challenging these new provisions were being in violation of Article 19(1)<sup>10</sup> and Article 21<sup>11</sup> of the Indian Constitution. This paper will look into the gaps of the act through which it has been misused infringing the rights of the citizens through chapters.

### 1.1 Research Problem

The Unlawful Activities Prevention Act was introduced in India to initially purview the concept of unlawful association. It has evolved through amendments and the recent amendment to the act in 2019 brought the designation of individuals as terrorists on certain grounds and also

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<sup>5</sup> Id. at 2

<sup>6</sup> Id. at 2.

<sup>7</sup> Terrorist and Disruptive Activities (Prevention) Act, 1987, No. 28, Acts Parliament (Repealed), 1987 (India).

<sup>8</sup> The Prevention of Terrorism Act, 2002, No. 15, Acts of Parliament (Repealed), 2002 (India).

<sup>9</sup> Id. at 2

<sup>10</sup> INDIA CONST. art.19 § (1)

<sup>11</sup> INDIA CONST.art .21

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empowered the NIA officers to investigate cases of terrorism. But the issue arises with the vagueness of the definition of terrorist act, denial of bail, and state overreach. The provision affects the fundamental right to free speech and expression protected under Article 19 (1) (a), and rights to life with dignity under Article 21 tagging an individual as a “terrorist” even before the commencement of trial. This paper will look at the act's validity and explore the potential for misuse of the provision.

## **1.2 Literature Review**

### **1. Kirti minhas<sup>1</sup> and Priyadarshini singh-Critical Analysis of UAPA:A Catalyst for Restoring National Security or Waiving the fundamental Rights,(2022)International Journal of Law Management & Humanities**

The author in this paper discusses the legislations that took place over the years with particular attention to UAPA and its 2019 amendment also its impact on the fundamental rights of the citizens. They further discuss how the amendments to these provisions are violating human rights while purporting to promote national security through critical evaluation that is amendment journey of UAPA and accounts of arrest that under UAPA.

### **2. Arkadeep Pal - An Analysis on the validity of the Unlawful Acts (Prevention) Act , (2019) International Journal of Law Management & Humanities**

In this paper the author focuses on examining and analyzing the validity of UAPA, 1967 along with discussion of the arbitrary provisions of the act. It also looks at the landmark cases associated with the legislation to determine the constitutionality and ethicality of the act. The paper attempts to throw the light on how government through the political spectrum misuses the statute to suppress political opponents.

### **3. Ms. Namrata Chakraborty<sup>1</sup> and dr. Ashish Deshpande - Assessing The Unlawful Activities (Prevention) Act, 1967 (UAPA) And Its Impact on India’s Prison Justice System, (2021) SSRN**

The authors in the present article make a critical analysis over the provisions of UAPA legislation in order to determine how they would affect India’s prison justice system in the long

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run. They discuss on the failure of anti- terror legislations which later got repealed because of their misuse of arbitrary provisions later a critical analysis of the act where the scope and current relevance of the act are looked into. Further the authors conclude that there is a need for replacemet of arbitrary and pseudo-democratic provisions associated with this act.

#### **4. Report No. 177-16<sup>th</sup> Law Commission Report on the Law of Arrest**

The necessity of an arrest and detention procedure that is not arbitrary and opaque in nature is made clear in the 177th Law Commission report on the laws of arrest. The commission, which is led by distinguished Indian jurists, bases its recommendations on the DK Basu Judgement and offers ways for the state and federal governments to improve the process' fairness, reasonableness, and justification.

#### **5. Report No. 279- 22<sup>nd</sup> Law Commission Report on the usage of the Law of Sedition**

This report focuses on Usage of Sedition law, the law commission considered the view of retainment of Section 124 A in the IPC headed by Justice Ritu Raj Awasthi The report makes a distinction between Section 124A of the IPC and the wording of the Unlawful Activities (Prevention) Act (UAPA), asserting that the latter is required despite the former's existence. The crucial issue is that any serious attempt to overthrow the elected government is effectively and genuinely covered by the sedition provisions of the IPC, which would then satisfy the state's real needs. The UAPA's measures are insufficient to deal with seditious activity. The report also says that the provisions of the UAPA are inadequate to address the seditious activities.

### **1.3 Scope and Objective**

The analysis of the UAPA in judicial decisions, research papers and peer-reviewed articles will be the limit of this research paper.

Whereas the objective of the paper is to analyze, evaluate the UAPA amendments constitutionality. And examine the scope, gaps of this provision and how it has been getting misused and need for the changes in the act.

### **1.4 Research Questions**

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1. How has the Unlawful Activities Prevention Act evolved through amendments along with other anti-terror laws in India?
2. What are the gaps of the Unlawful Activities (Prevention) Amendment Act, 2019 and how it can be misused?

### **1.5 Hypothesis**

The Unlawful Activities (Prevention) Amendment Act, 2019 is getting misused because of the gaps present in it and violates the fundamental rights of the citizens of India which are guaranteed under the Part-III of the Indian Constitution.

### **1.6 Research Methodology**

This research paper has adopted doctrinal method. Both primary and secondary data are used to complete this research paper. The primary sources include judicial decisions and pronouncements, enacted legislation. Whereas the secondary sources of information contains law review articles, scholarly legal writings, journals, books, bare acts and news.

## **II. HISTORY & EVOLUTION : ANTI-TERROR LAWS IN INDIA**

Before we look at the UAPA specifically it is important to understand the other anti-terror laws in India to understand the provisions that took place to combat terrorism and how the Unlawful Activities Prevention Act is difference and relation between these legislations.

After the partition between India and Pakistan there was massive communal violence occurring in the country and to tackle this violence a temporary measure was introduced in the form of Preventive Detention Act (PDA), 1950 whereas in the areas of North East regions the Armed Forces (Special Powers) Act that is AFSPA, 1958 was introduced which is even applicable till date with an aim to deal with separatist movements.

Later in the year 1967 the UAPA was taken as supplement to the PDA with extended powers where state can declare the organizations as 'unlawful' but this term was initially not appropriately defined and allowed the state to declare the activities to be unlawful at its discretion including acts like gatherings, rallies, etc. the application of bail under this act was

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also difficult. In 1980 National Security Act which is the reflection of PDA and MISA Maintenance of Internal Security Act which is applicable till now, this gives power to Central or state Government to arrest or detain individual in order to maintain public order and national security<sup>12</sup>.

The Terrorist and Disruptive Activities Act, 1985 well known as TADA was introduced to control separatist activities and especially terrorist activities in Punjab. This act had overriding power over CrPC and Constitution where new offences were there, police powers were increased and reduced the safeguards of arrested persons. Because of this there was increase in abuse and torture cases and allegations of misusing of powers which lead to the lapse of the act in 1995<sup>13</sup>.

Later considering the Kandhar Hijack, Indian Parliament Attack and especially 9/11 Attack in America the need to strengthen Anti-terror laws was there which lead to Prevention of Terrorism Act, (POTA) 2001. This acts objectives were similar to that of TADA along with the features and issues. Considering the misuse of this act for political purposes and other issues this act was repealed in the year 2004.

In the UAPA 2008 amendment the definition of 'terrorist act' and 'terrorist organization' was included which was as defined under TADA and POTA. It also included punishment for terrorist activities, forfeiture of proceeds of terrorism and terrorist organizations. Despite the failure of the legislations the amendment to UAPA included borrowings from repealed laws<sup>14</sup>.

## **II.1 Unlawful Activities (Prevention) Amendment Act , 2019**

When we look at the recent amendment to the parent act that is UAPA, 1967 the bill was passed in Rajya Sabha as the Unlawful Activities (Prevention) Amendment Bill, 2019 on 2<sup>nd</sup> August 2019. This law is brought against terrorism and uproot it from India. The Ministry of Home

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<sup>12</sup> *India's National Security Laws 2020* (2020) *YouTube*. Available at: <https://youtu.be/Eb9II6xnMzc?si=vsfqOk6RI2bMDGDU> (Accessed: 25 October 2023).

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 7.

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Affairs Shri Amit Shah said that terrorist acts not only committed by organizations but also individuals.<sup>15</sup>.

### Features of this Amendment:

- Giving the government the authority to label people as terrorists if they carry out or assist in terrorist acts, plan terrorist attacks, support terrorist causes, or engage in other terrorist-related activities. This was done because it has been observed that when a terrorist organization is banned, its members start a new organization to further their terrorist activities.
- Empowers the DG (Director General) and NIA (National Investigation Agency) This to attach the properties acquired from proceeds of terrorism.
- This empowers officers of NIA of the rank of inspector or above to involve in investigation of cases.
- There has been no modifications made regarding to the arrest or bail laws under this act. Additionally, nothing has changed regarding the clause that states that the investigating agency, not the accused bearing the burden of proof.
- Through the Amendment, the International Convention for Suppression of Acts of Nuclear Terrorism (2005) has also been incorporated into the Second Schedule<sup>16</sup>.

### III. CRITICAL ANALYSIS OF THE ACT

Though the act has been introduced to combat terrorism and protect the National interest and security it is necessary to limit the scope so that it doesn't violate the basic rights of the individuals. The amendments to the UAPA over the years with an aim to widen the scope of the Act include few gaps and challenges. This effects the constitutional validity of the act and misuse of the provision all these aspects will be discussed in this chapter.

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<sup>15</sup> *Parliament passes The Unlawful Activities (Prevention) Amendment Bill, 2019*. Available at: [https://pib.gov.in/newsite/PrintRelease.aspx?relid=192449#:~:text=Parliament%20passes%20the%20Unlawful%20Activities%20\(Prevention\)%20Amendment%20Bill%2C%202019&text=Rajya%20Sabha%20passed%20the%20Unlawful,%20Amendment%20Bill%2C%202019%20today](https://pib.gov.in/newsite/PrintRelease.aspx?relid=192449#:~:text=Parliament%20passes%20the%20Unlawful%20Activities%20(Prevention)%20Amendment%20Bill%2C%202019&text=Rajya%20Sabha%20passed%20the%20Unlawful,%20Amendment%20Bill%2C%202019%20today). (Accessed: 24 October 2023).

<sup>16</sup> The Unlawful Activities (Prevention) Amendment Act, 2019

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### A. Excessive scope of Unlawful Activity and Association

According to Section 2(o), "unlawful activity"<sup>17</sup> is defined as any action that is intended to incite discontent with the nation. This includes verbal, written, sign-related, and visible representation actions as well as other types of actions. The scope of this term is excessive, the words used to define the term appears to be vague as the action raising question to disrupt the territorial integrity, nation sovereignty as it can be criticism of the government or the nation. Here the right to free speech and expression promised under Article 19 (1) (a) of the Constitution to question or criticize the government are tend to be eroded under this act<sup>18</sup>. Similarly with Section 3 of the Act where the Government can declare any association of individuals as unlawful.

### B. Executive-led Adjudication:

According to Section 5<sup>19</sup> of the Act, the Central Government may nominate a high court judge as the sole member of the Unlawful Activities (Prevention) Tribunal. The provision that granted the authority to inquire into the legitimacy of a Central Government declaration attempted to create a transparent process, but it is also important to note that the Central Government ultimately has the authority to decide the composition of such a tribunal. This indicates that the judiciary is being represented by a Central government. This received a lot of criticism since it gives the Union Government unrestricted powers to arrest an individual without due process involved.

### C. Right to Bail under the act

The purpose of Section 43D (2)(b)<sup>20</sup> in essence, says that Section 167 of the Code of Criminal Procedure 1973<sup>21</sup> will be applied in cases of offences falling under UAPA, with modifications to the extent that the maximum period to conclude the investigation of the offence and secure the detention of the accused shall be 90 days, with the possibility of an extension to 180 days if the

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<sup>17</sup> Id. at s. 2(o)(ii).

<sup>18</sup> Chakraborty, N. (2022) *Assessing the Unlawful Activities (Prevention) Act, 1967 (UAPA) and its impact on India's prison justice system*, SSRN.

<sup>19</sup> Id. at s. 5.

<sup>20</sup> Id. at s. 43D (2)(b).

<sup>21</sup> The Code of Criminal Procedure, 1973, § 167

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Court is satisfied with the Public Prosecutor's report stating specific reasons without charge sheet filed. Here there has been delay of right to default bail.

#### **D. Violation of Fundamental Rights**

A Public Interest Litigation (PIL) was filed in the Supreme Court by Sajal Awasthi to declare the UAPA, 2019 as unconstitutional on the basis of violating basic rights of the citizens like right to freedom of speech and expression, right to life. The petitioner said that Right to reputation is part of the Article 21 that is Right to life with dignity as tag of terrorist to an individual even before the commencement of trial does not adhere to procedure established by law<sup>22</sup>.

Whereas another petition by Association for Protection of Civil Rights (APCR) contended that Section 35<sup>23</sup> of the Act allows Central Government to designate any individual as terrorist and amendment does not specify the grounds of terming them as terrorist, where the central Government is given arbitrary, unrestricted and unconstrained powers which is violation to Article 14 of the Indian Constitution<sup>24</sup>.

#### **IV. FINDINGS & CONCLUSION**

The act's primary aim is to safeguard the National interest and maintain public peace and order for which there have been amendments over the years as per the need for changes. But somehow in the meantime the act has lost its significance because of the vague provisions and potential for overreach. There have been borrowings in the UAPA from repealed provisions which weakens the validity of act. The instance of misuse and exceeding power given to the Government is concerning. The Unlawful Activities (Prevention) Amendment Act, 2019 includes many gaps which need to be modified. The primary issue arises when the opinion of the accusation against the person is prima facie considered as true and issuing of bail becomes hardly possible. The people booked under this law end up in jails for long time without proper legal aid. The high

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<sup>22</sup> Pokhriyal, D.B. and D. (2020) *The continuing threat of India's Unlawful Activities Prevention Act to free speech*, *Jurist*. Available at: <https://www.jurist.org/commentary/2020/06/bhandari-pokhriyal-uapa-free-speech/> (Accessed: 24 October 2023).

<sup>23</sup> Id. at s. 35.

<sup>24</sup> 'invocation of sedition laws, Uapa against CAA protesters illegal,' say activists (no date) *The Wire*. Available at: <https://thewire.in/rights/anti-cao-protesters-uapa-cao> (Accessed: 24 October 2023).

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chances of misusing of this law as political tool to stop or silence the critics is present and designating individuals as terrorist without proper evidence damages the reputation of those persons and makes the individuals to prove themselves innocent to be difficult. The legislature must ultimately replace the arbitrary and pseudo-democratic provisions in order to restore the spirit of the rule of law and participatory justice in accordance with the Indian Constitution, despite the higher judiciary giving the UAPA legislation a great deal of attention. So, there is a need to address and modify these flaws and loopholes through repealing them and amending it to prevent large-scale abuse and misuse of powers in the name of protecting national interest and security.



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