



Long Article

UAPA 2019 Amendment: A Tool for Government to Curb Freedom of Citizens and to Violate their Rights

Parul¹

¹Banasthali Vidyapeeth University, Rajasthan

Published on: September 19, 2021

Page No.: 30 – 39

Manuscript No.: 2021/LNLR/19030

Editors: Anushka Chaturvedi, Nivedita Chaudhary

Cite as: Parul, UAPA 2019 Amendment: A Tool for Government to Curb Freedom of Citizens and to Violate their Rights (2021) 1(2) LKO. L. REV. 30

Find here: <https://www.lucknowlawreview.org/parul>

Abstract: *India has achieved independence in the year 1947 after a long battle. Since then, the country has vowed to strengthen its security laws. From time-to-time various issues came forward and amendments had been done in these various acts. Some of them are really controversial while some are not. The main aim of this research paper is to aware everyone about the latest amendment being made in the UAPA. The research paper starts by detailing first about the history of the UAPA and then it's background, various amendments which are being done. Beginning with the introduction, the paper first gives a wide description and background about the latest amendment to the act. The next part of the body of the paper presents problems arising out of this arbitrary amendment and then it further explains how it affects the security and rights of the citizen. It has also been elucidated as to how the amendment in question does not stand the test of Article 14 and 21 and proceeds to answer the research question framed by the Author. Key changes which have been brought out by the amendment have been critically analyzed by the author in the later section of the paper. The paper ends with the suggestions of the author to rectify the problems presented by the amendment followed by some concluding remarks. It is not disputed that one of the burning issues today is terrorism and allied acts, but arbitrary actions of the State, like the present amendment, in the name of maintaining and ensuring security of the state, cannot be allowed as the same are against the most basic constitutional principles. The aim of the paper is to let everyone know that security concerns should never jeopardize the citizen's rights. Through this paper and study the author aims to present a comprehensive picture of that how UAPA operate in India.*

Copyright © 2021, Lucknow Law Review.

This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

Keywords: UAPA, Article 19, Constitution of India, Terrorism, Anti-Terrorist Law, Fair Trial.

1. Introduction

The Indian Constitution provides for three organs of State *i.e.*, Executive, Legislature and judiciary. It is undisputed that doctrine of separation of power is not applicable in India, in *stricto sensu*, but separation of functions.¹ Our Indian constitution also vests the power of judicial review and scrutiny of laws framed by legislature with the judiciary. These powers are essential to keep a check on activities of both the other branches and to ensure that their actions are in conformity with the constitutional principles and Part III of the Constitution, to be specific. Since independence, India has faced several kinds of challenges ranging from child marriage to bonded labour, at internal level and from cross-border infiltration to terrorism, at international or external level. Security of the nation has always been a topmost challenge and priority for every sovereign nation. Article 2(4) of the UN charter² emphasis on the principle of non-use of force which states that one nation should not interfere in the domestic affair of any other nation except few stipulated situations. The importance of security of nation from Indian perspective can be gathered from the wording of Article 352.³ From the point of view of security of nation, terrorism, internal rebellion has topped the list of challenges. The Indian government to regulate such issue had framed many security laws, different laws are made to protect the security of the nation such as National Security Act⁴, another being Unlawful Activities Prevention Act (or ‘UAPA’)⁵. It was one of the most primary anti-terrorism laws which was brought out by the Indian government. The original Act came with the purpose to redress the issue of terrorism as evident from the statement of object and reasons to the Act⁶. Apart from UAPA, two other acts were also enacted. They were Terrorist and Disruptive Activities Act⁷ (or ‘TADA’) and Prevention of Terrorism Act⁸ (or ‘POTA’). POTA, however repealed and replaced TADA Act. They came into force to cope up with the issue of terrorism but they ended ultimately being misused at the hands of the governments for extraneous and ulterior objectives. These acts were made with an object to deal with the issue of terrorism. The act was made with the intent to preserve the integrity and sovereignty of India. But with each passing amendments, government is coming with different ways to curb the freedom of the citizens.

¹ *Indira Nehru Gandhi v Raj Narain & Ors.* [1975] Supp SCC 1

² The Charter of the United Nations 1945

³ Constitution of India 1950, art 352

⁴ National Security Act 1980

⁵ Unlawful Activities (Prevention) Act 1967

⁶ Unlawful Activities (Prevention) Act 1967, Statement of Objects

⁷ Terrorist and Disruptive Activities (Prevention) Act 1987

⁸ Prevention of Terrorism Act 2002

The validity of these acts has been challenged numerous times. The purpose for which they were being implemented has now been wiped up with time. Now they are just used to detain citizens that too without any reasonable justification. The Unlawful Activities Prevention Act originally came in the year 1967 while suffering recent amendment under question in 2019. The misuse of the provisions of the act has always been known to the public at large and owing to the protests and agitations staged by public, the act was amended twice in 2002 and 2008. The Court of records have been called several times to examine the validity of the provisions of the act as they were allegedly violating certain fundamental rights.

2. Object Of the Act

The sole purpose for which the act was originally enacted was to integrate our nation.⁹ But somehow, when we see it, the whole purpose still remains unattained. It is interesting to note that prior to the latest amendment only organisations could be labelled as ‘terrorists’. But now, power has been vested with the government to label any ‘individual’ as a ‘terrorist’.

2.1. What the amendment is all about?

The question of validity of latest amendment being brought up in the year 2019 is related with Section 35 of the act. Though many changes have been brought up in the Unlawful Activities Prevention Act, the focal debatable point is Section 35.

The changes which have been introduced in the latest act are that it gives wide discretionary power to the government in adding someone in the list of terrorists and that too without any justification, *iota* of reason and without any rhyme.¹⁰ The second major change brought it in the act is that it gives huge discretionary power to the National investigation agency of the India in conducting any of its affairs.¹¹ At the outset, it is submitted that all these changes brought by the latest amendment are in utter violation of Part III and basic structure of the Constitution. The act empowers the central government to designate a person as a ‘terrorist’ if he is found indulged in any form of ‘unlawful activity’. One of the factors which makes this power problematic is the excessively wide definition of the term ‘unlawful activities’¹². It is startling to note that the act has empowered an officer having rank that of an inspector or above to investigate the matter especially when the UAPA has been constantly classified as a ‘draconian law’. It would not be wrong to suggest that this

⁹ Unlawful Activities (Prevention) Act 1967 (n 6)

¹⁰ Unlawful Activities (Prevention) Act 1967, sec 35

¹¹ Unlawful Activities (Prevention) Act 1967, sec 25

¹² Unlawful Activities (Prevention) Act 1967, sec 2(o)

amendment clearly manifests that how legislature vide an amendment can erode a citizen's fundamental right in an utmost arbitrary manner.

2.2. Problem with the latest Amendment

The act includes broad list of offences under its ambit while defining the word, terrorist¹³, terrorist activities¹⁴ etc. Further, the act is against the principle of 'Speedy and fair trial' as has been envisaged under Article 21¹⁵. This purpose of speedy trial is defeated as it gives wide power to the police officer to investigate the matter and the person. A wide power of detaining the person who is suspected of any criminal activity has also been given to the police officer.

Giving designation to a person as a 'terrorist' will actually hamper his growth in the society. Even the society would not consider that person as good. Is this our law? That without a trial we are giving a designation to a person which has the potential to severally hamper his growth in the society? We are actually holding him guilty without any trial being conducted against him. There are certain ill effects of this amendment such as that the person will lose his job, he will be harassed by each member of the society. The act is becoming a threat, a source of misuse. The present government is repeating the same mistake which has been earlier done. All the provisions of the act are made in such a way that they will be misused only rather than of any use. The Act gives wide excessive power to the Government which ultimately hampers people fundamental rights. The Act is silent on various provisions wherever it does violation. People of our country has great faith in government actions. The issue of terrorism is real, it cannot be solved without the efforts of all people.

The Section 35 of the Act does not mention about the reasons of arrest. That why such a person is arrested? The bill gives wide power to an inspector level officer. Such wide power is against the very spirits of our Indian constitution.

The evolution of the act can be seen as being a progressive act to an unprogressively act. The terms and phrases used in the act are so vague and broad that it includes even minor offences to be within the spectrum of the 'acts of terrorism'. The act has been criticised many times in various debates and meetings owing to its misuse and the anti-terrorist laws which have been made. The act contains many arbitrary powers. One of such power is to give a designation of terrorist to any person without any reasonable and just cause. For

¹³ Unlawful Activities (Prevention) Act 1967, sec 2 (k); *See also*: Unlawful Activities (Prevention) Act 1967, sec 15

¹⁴ *Ibid*

¹⁵ *D K Basu v State of West Bengal* [1997] 1 SCC 416

detaining any person under the provision of this arbitrary act, the government only needs to show that the concerned person is trying to terrorise the people of the country. This huge power which is given to the government that it need not give any form of reasonable rationale justification for the arrest of any individual is a clear violation of the concerned person's rights. The act is criticised as it leaves no chances for Judicial Review. Further, there is no mention of any remedy which can be provided to the person arrested and who is designated as a terrorist.

Though the act is a contravention of the basic principles enumerated in the Constitution of India. But there are some judgments which had played a very important role. In case of, *Romesh Thapar v. State of Madras*¹⁶ it was held that freedoms given by the Constitution of India can be curbed only in exceptional cases.

In *Maneka Gandhi v. Union of India*¹⁷, it has been clearly laid down that every procedure laid should be just, fair and reasonable. But the UAPA act follows nothing. When the law itself says that the procedure should be just, fair and reasonable enough and only with the accord of Article 14, 19, and 21 of the Constitution of India. Then why is UAPA the only act which follows none of the procedure? It has been laid down several times that every act must follow the procedural requirements which has been laid down. The Constitutionality of the act is itself in a doubt. Article 21 of the Constitution of India provides citizen with many rights, one of which is 'Right to Reputation'. Reputation is an asset for every citizen. It is well known for everyone that Dignity matters the most for every human being. And it is the duty of the State also to preserve the same. But the Latest amendment of UAPA, even violates this basic fundamental right of citizen. Designation of a person as 'Terrorist' and that too without any proper investigation and trial is clearly a violation. Such discretionary power is a violation of a citizen Article 14 and 21 of the Indian Constitution. Such arbitrary designation of an Individual as terrorist is violative of fundamental rights which are enshrined under the Part III of Our Indian Constitution. The designation of a person as a 'terrorist' and that too without any trial is a violation of Right to Reputation, fundamental right enshrined under Article 21 of the Constitution of India. The present act is totally in contravention with all the very principles of the law. Article 21 of the Indian Constitution even enumerates that, every person has a right to live life with dignity and not merely an animal existence.

Article 22 of the Indian Constitution mentions that the person arrested for any offence has some rights. These rights are the right to be informed as soon as of the arrest, the right to consult, to be produced within 24 hours of the arrest to the magistrate, freedom from detention. Our Constitution provides this right to citizens

¹⁶ *Romesh Thapar v State of Madras* AIR [1950] SC 124

¹⁷ *Maneka Gandhi v Union of India* AIR 1978 SC 597

as well as non-citizens. In *Romila Thappar v. Union of India*¹⁸, one can see that how the Unlawful Activities Prevention Act had eroded the citizen fundamental right. This can be used to show that how power in the hands of officer is used to stifle demographic principles.

The biggest issue which is coming is that the person doesn't even get the opportunity of being heard. The Act doesn't give any opportunity to the person arrested. The Act provides such a huge power to government that they are not even bound to hear that person view, and that is a clear violation of the doctrine of 'Audi Alteram Partem'. The act contains many lacunas one of which is that there is no proper way of declaring and clarifying the involvement of the person. The crux of this paper is too aware everyone that not only one or two provisions of act are disastrous but the whole Act is. The various violation of principles by the Act induces people to check its Constitutionality. The oppression which governments is doing by making democracy and its citizens as victim is unappreciable. The act gives open power to the government to do things according to their will.

3. Criticism of the Amendment

The amendment has been criticized because of many lacunas that it contains such as that several provisions are ambiguous which ultimately is contrary to the purpose of the act for which it has come for. The amendment has defined the word 'terrorist' in a very vague and that is where the main issue lies. This vagueness creates a lot of problem to the judiciary in interpretation. This amendment is more prone to misuse than of any use. It has been criticized due to the violation it causes to the humans. Just take an example how would a person feel when he will be designated as a terrorist and that too without any trial? Is the main purpose of the UAPA amendment? From time to time, the amendments which are occurring on this is held violative of fundamental rights. The earlier amendments gave power to the police to interrogate. The sole purpose of the amendment is to increase power within the central government.

3.1. Wide Arbitrary Powers

The nature and the designing of the act gives more power to the police officers. Power of police officer to arrest the person make the offence cognizable. The wide Unremitting power given to the act is against the very ethics of Indian Constitution, that is violation of Principle of 'Fair Trial'. When the Criminal Procedure Code itself allows that maximum period of detention is ninth days. But under the UAPA even the pity acts

¹⁸ *Romila Thappar v Union of India* [2018] 10 SCC 802

attract 90 days detention. The procedure for designation of a person as 'terrorist' in the act is flawed and is away from all proper procedure by the Constitution of India.

3.2. Indiscriminate use of UAPA by the Government

There are many data which shows that there is a high increase in the number of cases filed under UAPA. But these statistics also reveal that most of the people are indiscriminately put behind the bars. The act is misused by the state as well by the central government. There is a huge spike in the number of cases coming under UAPA.

3.3. Violation of principle “Innocent until Proven Guilty”

The amendment passed in the act is clear violation of the principle which is ‘innocent until proven guilty’. Our criminal law is based on this very basic principle that a person will be considered innocent until proven guilty. This very principle of presumption of innocence of person until proven guilty is our base for a fair trial to provide justice to the person. But this amendment violates this very basic principle. It has been laid down in our Constitution that 'Bail is a Rule and Jail is an exception. A person can't be kept in jail without any reason. Only suspicion and doubt can't become the sole criteria of putting the person behind the bars. Only apprehension that the accused is involved in any Unlawful activity can't be the reason for a person detention.

3.4. Powers given by Unlawful Activities Prevention Act (UAPA)

Everyone is aware of the right to freedom given to citizens. Article 19 of the Indian Constitution give us freedom to assemble anywhere and to form associations. If our constitution clearly provides us the power to assemble. Then why such an anti-law has been made? Then why government is trying to curb the freedom rights given to us by the Constitution? The evolution of the UAPA act can be traced through Article 19 of the Indian Constitution. Many powers were given to the Centre because of only this UAPA. One such power given to the state was the power of the Central government to impose ban on all types of associations. Though if the government wanted, it could have simply abolished the act or could simply declare it unlawful. But the government did not do this. Because in the act there was a power of review by the Tribunal as well. With passage of time, many amendments occurred in the act giving many powers to the Central government and amendments in the definition as well. There are numerous nasty provisions in the act which are very vague and till now no proper interpretation has been given. The problem is not only in the act, the problem lies in the provisions as well in the ideology of the Government. The Act provides drastic powers to the government which ultimately becomes the source of its misuse. Just take an example that power of the government to

declare any organisation as a ‘terrorist’ and ultimately the power of banning it, without any examination and investigation. Though it can be said that as government did not find any sort of solution to tackle the problem of terrorism. They made this type of act. Terrorism is that activity which countries like India are facing from a huge long time. The way our government is trying to deal with the issue of terrorism is not correct. Unless and until a proper legislative framework is made, the problem of terrorism cannot be curbed.

3.5. Are Sections 35 and 36 of UAPA Constitutionally Valid

The amendment is not constitutionally valid as it violates the citizen fundamental right and it does not follow due process. Declaring a person as terrorist without even giving him chance of being heard is unfair. Once an individual gets the tag of a terrorist, that tag would remain with him forever his life, and ultimately this vanishes the person reputation. It is unclear that why the legislature had passed such a law. The amendment is unfair and it needs to be declared unconstitutional. By bare reading of Section 35 of the act, one can conclude that how vague all the provisions are. There is no procedure stipulated for designating any person as a ‘terrorist’ as to what all actions would entail the tag of ‘terrorist’ and absence of such procedure is itself arbitrary.¹⁹

4. Urge and Suggestions

Citizens call for either an amendment in the existing act or to declare the present act as unconstitutional. The call is made on the ground that the act is anti-terrorist and they contain various provisions violating the citizen rights. The need of the hour is to make such a law that helps in securing the lives of people. The act presents a wide and broad definition of terrorism. So, even minor offences which provide harm to the people or strike terror in the mind of people, is also considered ‘acts of terrorist’. When it is especially provided by the constitution that all people have a right to be informed of the ground of their arrest, then why the concerned act do not follow up this requirement? All these arbitrary provisions of the act affect the vulnerable citizens. Though some petitions are being filed up in the Supreme Court of India to check the constitutionality of the Act. But what is surprising is that no such decision has now been passed.

Suggestions to improve the existing law are such that. First, the vague definition of terrorism should be amended. When the Act is all about terrorist and terrorism, then why the word ‘terrorist’ is not properly defined. And why such a general interpretation is given to the definition. Second, the wide powers provided to the Central government should be removed as they are the only source of the misuse of the act. The Act

¹⁹ *Indira Nebru Gandhi* (n 1)

gives wide discretionary power to the Government to declare any person as ‘terrorist’. This needs to be change. So, the purpose of the act was only to give wide powers to the government. The act does not mention about the consequences of such designation. The Act is silent on the expulsion of the concerned person from his job, his society etc. Transparency is the base to examine any act. In simple words, transparency can be related to the word ‘Opaqueness’. Every act should be transparent. Being transparent helps in decision making. Being transparent helps citizens to recognise and differentiate between whether the concerned act is fair enough or not? Third, the present Act does not have any reliable safeguards which ensure us that there will be no misuse of such discretionary power. Proper scrutinization of the provisions of the act is a must need of the hour.

The Constitution has come up with all sorts of solutions. The Indian constitution has proper check and balance of power provision. All branches, whether be legislature, executive, or judiciary. All comes on a same line. But the wide power given under the present act is anathema to Rule of law.

4.1. Way Forward

Amazing thing is that till now two petitions have been filed against the UAPA. These petitions have been filed, one by an NGO and other by Sajal Awasthi. The grounds which are raised in the petition are, first, designation of a person as a terrorist before the commencement of the trial, challenging the Article 14 and 21 of Indian constitution. Further, it has been stated that the Act is made arbitrarily violating almost all the governing principles of the Indian constitution. Though both the TADA and PODA act have been challenged on the grounds of legislative competence but the UAPA till now have not been challenged.

5. Conclusion

Though now the Amendment Act has been passed. What needs to be done now is to revise each provision carefully. The present amendment provides huge centralisation of power. It needs to be changed immediately. The legislation made by the government is actually violating the very principles of a democratic nation. It is eroding the basic fundamental rights of a citizen. The concern of the citizen is that the provisions contained in the act clearly violate their rights. The amendments brought in the act is ‘murder of judicial equity’. There are many reasons for opposing the UAPA. The amendment is indeed dangerous as by that the government will get all powers to designate a person as ‘terrorist’ and that too without following the due process. Is the arrest of the person only by the knowledge of the police officer and that too without any valid order from the superior authority is valid? The best possible way to deal with the latest amendment is to approach the Supreme Court. The Act has eroded basic human rights. Now comes the foremost role of the Supreme Court.

it's high time that Supreme Court must come forward to deal with this issue. Citizens of India have great faith in the Supreme Court of India and it's the duty of the Court to maintain that faith. And its high time that Supreme Court should come forward to redress this issue and try to solve the unregulated power issue problem as well. The act needs to be reviewed, if that is not done, then it will be a clear miscarriage of justice. To protect the values of Justice and Equality, the Act need to be revised or either be declared unconstitutional. The violative principles of the UAPA needs to be struck down as they are violative of fundamental rights of citizens. A reconsideration of the purpose of the act is suggested, so that we can come to know that whether we really need such an act.

To eradicate the issue of terrorism people of the country needs to have faith in the government. And this faith should be built up and it should be built up by the government. Cooperation and trust are the only key to deal with the issue of terrorism. To deal with menace of terrorism and to protect the country from any threat, we need strict and appropriate laws. Now there is a dire need of a good Act. Either the existing Act should be amended or a new law should be framed. The existing provisions of the act are repugnant to our provisions of a democratic state.