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UAPA: A Critical Appraisal

Vareny Chaudhary[a]

[a]Rajiv Gandhi National University of Law, Patiala, India

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The British left behind the Unlawful Activities (Prevention) Act, which is still present in our postcolonial liberal democratic society. Simply put, this colonial act meant that anyone who spoke out against the colonizer would face jail. In the past, it can be argued that anyone who spoke out against the colonial order was, in the perspective of the law, a political dissident destined for incarceration. But even though we have been free from our colonial overlords for 75 years, our state still places value in laws that stifle any dissenting opinions. The widespread and unquestionable political incarceration in our nation raises a number of significant issues, starting with the question of why dissent in a democracy is met with such opposition. By definition, a democracy is a form of government in which representatives are chosen by a varied group of voters, each of whom has the freedom to have differing views and pursue their own interests. Then why does the state believe it has the right to protect some beliefs over others when it feels threatened by other people, ideologies, and opinions? What room is there for dissent in a democracy? What does a democratic state anticipate from its citizens when it asserts that maintaining the elected officials in check and criticising the government is fundamental to what democracy is all about? These are some significant issues that are essential to the debate over political dissent and jail in India right now.

Keywords: *uapa, democracy, dissent.*

INTRODUCTION

Many laws were created by the colonisers to stifle any opposition to their control. The word "unlawful association" was first used to criminalise the Indian national movement in 1908 under the Criminal Law Amendment Act. Ironically, the government now, after independence, employs the same authority to quell political dissent through the implementation of legislation like the UAPA.[1] The Prevention of Seditious Meetings Act [2] was one of the draconian laws that the colonisers enacted. It was continued in the Indian democracy's legislative system as the Maintenance of Internal Security Act[3], the National Security Act[4], the Terrorist and Disruptive Activities (Prevention) Act [5], the Prevention of Terrorism Act[6], and then the amendments to the Unlawful Activities (Prevention) Act[7].

CONFLICT BETWEEN NATIONAL SECURITY AND DISSENT

The intention, effect, and result of such laws are a direct amalgamation of—legitimate acts of terrorism that hurt the nation's citizens and any voice of dissent that is purported to put the "sovereignty" of a nation in great danger. Therefore, any speech or behaviour that runs counter to the values of those in political power becomes something that the country, its sovereign identity, and its people need to be protected from. Therefore, the state conveniently suppresses any views that are opposed to its absolutism under the guise of defending its subjects' interests. The idea here is that democracies are, in theory, supported by the authority that their legislative, electoral, judicial, economic, and other similar extensions are given. In her book The Democratic Paradox, Chantal Mouffe discusses building a truly liberal democratic society that would allow opposing viewpoints equal airtime, preserving the right to expression of those viewpoints inside a democracy that are dissident and contending.[8] In reality, a democracy like that of India has

[1] Anushka Singh, 'Criminalising Dissent: Consequences of UAPA' (2012) 47(38) Economic and Political Weekly <https://www.jstor.org/stable/41720156> accessed 22 September 2022
[2] Prevention of Seditious Meetings Act 1911
[3] Maintenance of Internal Security Act 1971
[4] National Security Act 1980
[5] Terrorist and Disruptive Activities (Prevention) Act 1985
[6] Prevention of Terrorism Act 2002
[7] Unlawful Activities (Prevention) Act 1967
[8] Chanatal Mouffe, *The Democratic Paradox* (first published 2000, Verso Books)

flaws that allow the hegemonic tendencies of those in authority to prevail and successfully maintain legislation like the UAPA. Therefore, the main argument is that postcolonial democracies fall short of the normative ideal of democracy. [9] First, why do laws like the UAPA still exist? Second, why does someone who committed treason by posing a threat to colonial power and was labelled a "terrorist" end up as a political prisoner in modern-day India, where we theoretically and fundamentally have the freedom to expressly live the lives we choose and criticise those in authority for a variety of reasons? "Treason in today's liberal democracy is the act of either making efforts or actively waging war against the state represented by the prevailing administration," argues Anushka Singh in her book Sedition in Liberal Democracies.[10] It is crucial to realise that although UAPA was first intended to be an anti-terror statute, over the years it has increasingly merged with other laws, such as the sedition code, to become an anti-dissent law. As a result, several academics have argued that the UAPA is a political impasse from which there is no clear way out once one is accused of breaking it. The Bombay terror attacks in 2008 led to a change to Section 43D (5) of the UAPA that makes it even more difficult for the accused to request bail. The amendment added Section 43D (5), which required a court to refuse bail if it had a good faith belief that the evidence against the accused was strong enough to convict him or her. Due to the requirement that the Court determine guilt only by reviewing the charge sheet created by the National Investigation Agency, the clause made it impossible to get bail (NIA). Any evidence offered by the accused in support of their defence must be contained in the charge sheet. (Observer of the Supreme Court). The act's structure and intent enable the government to exercise "unremitting power," as Anushka Singh writes in her EPW piece. As it expands the authority of the police to make arrests, conduct searches, and seize the property (Sections 43A and 43B), makes all offences punishable (Section 14, 43D [1]), lengthens the period of detention (Section 43D [2]), limits the ability of the court to require that defendants appear for trial (Section 43D [3]), prohibits anticipatory bail (Section 43D [4]), tightens the restrictions on (Section 46). These provisions give the executive branch enormous powers.

[9] Chatterjee Partha, *The Curious Career Of Liberalism In India* (first published 2011, Cambridge university Press)
[10] *Ibid*

Therefore, the UAPA statute has aided the government each time it has sought to crush the authority of anyone who has tried to oppose the systems and beliefs of the government. One can see how, over time, the UAPA did not develop into legislation against those who engage in terrorist acts and do harm to communities; rather, the definition of what constitutes a "terrorist" grew to include any voice of dissension. As can be observed, this provision has undergone numerous revisions since 1967, and at various points in time, these amendments have only served to reinforce the governments' hegemonic impulses.

AMENDMENTS TO UAPA

It can be claimed that after 2004, significant changes to the UAPA statute began to occur. In place of the abolition of POTA, which the then-UPA government had promised to do during the election campaign, a modification was made in 2004. The definitions of "terrorist act" and "terrorist organisation" from the POTA that was repealed were included in the updated UAPA, and the idea of a "terrorist gang" was also introduced (Wire 2017). Although it appeared that punitive laws like the POTA and TADA were being done away with, it was discovered that many of their clauses were immediately copied into the UAPA amendment. However, the terrorist attack in Mumbai in November 2008 enraged the populace and highlighted how harsh the legislation is in situations of terrorism. Due to this specific incident, several of the most oppressive aspects that were mentioned in POTA and TADA and for which those statutes were originally repealed have been reinstated. The 2008 amendment expanded the definition of the "terrorist act," expanded the pre-charge detention period to 180 days, and gave courts the authority to deny bail if they found any evidence to be "prima facie" true. It also denied accused people their constitutional rights to a fair trial and the presumption of innocence, as well as their right to a trial, under section 51A of the criminal code.[11] The UAPA amendments of 2008 were passed despite the fact that all of these sections directly contravened the UN's report on terrorist legislation, the International Covenant on Civil and Political Rights (ICCPR), as well as some of the fundamental rights in the Indian Constitution.

[11] Ravi Nair, 'The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes' (2009) 44(4) Economic and Political Weekly <https://www.epw.in/journal/2009/04/commentary/unlawful-activities-prevention-amendment-act-2008-repeating-past-mistakes> accessed 21 September 2022

The advancement of exploitative legislation that was conveniently handy and partisan to all governments was caused by the elected leaders' lack of inventiveness in a dynamic democracy like India's. Additionally, on February 3, 2012, the central government announced the establishment of a specialised organisation named the National Counter Terrorism Centre in an effort to violate people's rights once more (NCTC). It permits the UAPA to use its authority to conduct searches, make arrests, and other actions without first contacting the state governments. The 2012 Amendment strengthened the law, reducing the likelihood of acquittal to almost none. In order to combat money laundering and terrorist financing, India joined the Financial Action Task Force in 2010. By 2012, India intended to put this task force's laws into effect. The Bill specifically alters the UAPA to extend the time until judicial review of a group's ban and to allow the government to take away people's property even if they have not been found guilty of any of these offences. Additionally, it might be readily abused to authorise the prosecution of mass organisations or non-governmental organisations (NGOs) operating in areas where they are purportedly linked to prohibited organisations. This Bill had serious weaknesses that cannot be overlooked for the sake of security.

It is crucial to realise that identical provisions to those of the POTA and TADA, which were at one point repealed because of their hegemonic inclinations, were being reinstated through this period through these modifications to the UAPA. Numerous incidents involving individuals accused under the UAPA highlight the oddities and extremes of this law as well as the kind of pain experienced by those who are awaiting trial.

The most recent modification to the UAPA, which took effect in 2019, empowers the DG, and NIA to seize assets obtained from profits of terrorism. The measure broadens the definition of a terrorist and gives the government the authority to label anyone as a terrorist. The most important modification made by the Amendment was to Section 35, which provided the Central Government with the authority to designate someone as a "terrorist" under Schedule IV of the Act. Before the Amendment, individuals were not covered and could only be identified in this manner by organisations. The 2019 revision strengthened the centre’s authority even more and muddied the definition of what constitutes a terrorist attack.

We can see that several administrations have attempted to weaponize the UAPA throughout many regimes to their ends. We can see how this has been used to further marginalise specific communities and isolate marginalised populations. UAPA has also been utilised more frequently to make arrests based just on suspicion and to permanently deny bail when there isn't any solid proof.

CONSTITUTIONALITY OF UAPA

The Court is hearing two separate challenges to the constitutional validity of the 2019 amendments to the Unlawful Activities (Prevention) Act, 1967 in *Sajal Awasthi v Union of India. The overarching argument of both Petitioners is that an individual is identified as a terrorist without any judicial scrutiny and even before the commencement of a trial is against the principles of natural justice. Thus, they challenge the Amendment Act as being violative of the right to equality before the law (Article 14), free expression (Article 19), and personal liberty (Article 21).*[12]

CONCLUSION

The hegemonic inclinations that have crept into our democratically constructed legal system and society, as well as the way we allow the dominant government to decide what is best for its population, are thus burdens from the past. It is also time to challenge the strategies the government uses to restrict some of its citizens' basic rights, whom it occasionally arbitrary labels "political prisoners." In addition to criminalising the fundamental right to association, the UAPA further blurs the line between political opposition and criminal activity by criminalising dissident voices and actions, as Anushka Singh correctly notes.

[12] *Association for Protection of Civil Rights v Union of India* [2011] Writ Petition (Civil) No. 195/2011