

DE JURE NEXUS LAW JOURNAL

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1st Year, BBA LL.B.**ANALYSIS OF THE UNLAWFUL ACTIVITIES (Prevention) Amendment Act,
2019****ABSTRACT:**

The Unlawful Activities Prevention Amendment (UAPA) act is an anti-terror legislation that seeks to designate an individual as a “terrorist”. In section 15 of UAPA, “terrorist act” has been defined as any act committed with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country. The act seeks to empower the central government to designate an individual a “terrorist” if they are found committing, preparing for, promoting, or involved in an act of terror. Through this amendment, the Indian government has gained arbitrarily power. Individuals can get arrested under this act without any charge sheet. Moreover, this act violates the fundamental rights provided to each and every Indian citizen. A life of an individual can get finished if he is wrongly declared as a terrorist. As we know that the Indian government already has excessive power which won't make the misuse of this amendment act a shocking news.

KEYWORDS:

Anti-terror legislation, terrorist, sovereignty of india, arbitrarily power, act of terror

INTRODUCTION:

The Unlawful Activities Prevention Amendment (UAPA) act is an anti-terror legislation that seeks to designate an individual as a “terrorist”. It was introduced in Lok Sabha by the Minister of Home Affairs, Mr. Amit Shah, on July 8, 2019. On July 24, Lok Sabha cleared the changes to the existing law, but Opposition parties and civil liberties lawyers have criticised the act, arguing it could be used to target dissent against the government, and infringe on citizens' civil rights. On August 2, the Rajya Sabha passed the bill paving the way for it to become law. The act amends the Unlawful Activities (Prevention) Act, 1967. The Act provides special

procedures to deal with terrorist activities, among other things.¹ Under the Act, investigation of cases may be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above. The act additionally empowers the officers of the NIA, of the rank of Inspector or above, to investigate cases.

Who is a “terrorist” in the UAPA Act?

Words like “terror” and “terrorism” aren’t defined in UAPA act but in section 15 “terrorist act” has been defined as any act committed with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country.² The act originally dealt with “unlawful” acts related to secession; anti-terror provision were later introduced in the year 2004.

The act seeks to empower the central government to designate an individual a “terrorist” if they are found committing, preparing for, promoting, or involved in an act of terror. A similar provision already exists in Part 4 and 6 of the legislation for organisations that can be designated as a “terrorist organisation”. Home Minister Amit Shah, during a debate on the Bill in Lok Sabha, stressed on the need to designate individuals as terrorists to root out terrorism.

The government is not required to give any opportunity to an individual to be heard before designating him/her as a terrorist through a notification in the official gazette and add his/her name to the schedule that is supplemented to the UAPA act. At the moment, an individual convicted in a terror case is officially referred to as a terrorist, while those suspected of being involved in terrorist activities are referred to as terror accused, in accordance with the legal presumption that an individual is innocent until proven guilty. The act does not specify the level of proof required to prove that a person is involved or is likely to be involved in terrorist activities.

What happens when an individual is declared a terrorist?

The designation of an individual as a global terrorist by the United Nations is accompanied by sanctions such as travel restrictions, financial sanctions, and an embargo on the acquisition of arms. The UAPA act, on the other hand, makes no such provision. The act also does not necessitate the filing of cases or the arrest of those who have been designated as terrorists. If the government rejects an application made by an individual designated as a terrorist, the act grants him the right to request a review within one month after the application's rejection.

The central government would establish the review committee under the amendment act, which will consist of a chairperson (a retired or sitting judge of a High Court) and three other members. If the review committee believes the order is faulty, it will have the authority to demand the government to remove the individual's name off the list of "terrorists."³

¹ Prs India, AVAILABLE AT: <https://prsindia.org/billtrack/the-unlawful-activities-prevention-amendment-bill-2019> (last visited Feb. 21, 2022)

² Egazette India, AVAILABE AT: <https://egazette.nic.in> (last visited Feb. 21, 2022)

³ Indian Express, AVAILABLE AT: <https://indianexpress.com/article/explained/uapa-amendment-bill-terrorist-designating-individual-as-terrorist-5864906> (last visited Feb. 21, 2022)

HUMAN RIGHTS CONCERNS AROUND UAPA:

Prior to the 2019 amendment, the UAPA required organisations to be designated as terrorist organisations and identified participation in such organisations, as well as financing of such organisations, as penal offences. Given the broad boundaries of the definition of a terrorist act and the lack of adequate legal safeguards within the Act itself, the exercise of executive power in notifying an individual as a terrorist risk being utilised arbitrarily.

The Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms in the Context of Terrorism's report also includes three cumulative characteristics that can help authorities define terrorism. Acts designed to cause death or significant physical harm, motivated by political, philosophical, ideological, racial, ethnic, religious, or other similar motivations, and falling within the scope of international terrorist treaties are included (UN Commission on Human Rights 2006). The second aspect of the UAPA definition is the ideological reason or purpose underlying the actual or intended terrorist attack.

The amended provision means that any anyone linked with a terrorist act or a terrorist organisation can now be labelled and publicly identified as a terrorist. In such a case, arguments may be made about the problems in labelling people as terrorists. Existing criticism for anti-terrorism laws includes the concept of 'guilt by association,' in which the concept of membership is deemed ambiguous and criminalises the right to the group itself. The Supreme Court of India rejected the concept of guilt by association in 2011, ruling that the punishment for participation in a terrorist organisation under the UAPA violates basic rights.

It is maintained that the Central Government's designation of an individual as a terrorist, without a rigorous trial before a court of law or any other competent body, is fundamentally a method of profiling individuals (Poddar 2019). Due to the specific character of anti-terror laws, several procedures differ from those used for other criminal offences in terms of investigation, arrest and detention power, bail, admissibility of evidence, and sentence. The National Investigation Agency Act of 2008 (NIA Act), adopted at the same time as the 2008 UAPA, authorises the Central Government to appoint the NIA to investigate UAPA-related offences (and various other acts). The NIA conducts terrorism cases through 'in-camera' proceedings in special courts and can even refuse to disclose the identity of key witnesses.

Furthermore, the UAPA's detention rules allow for pre-trial detention for up to 180 days, which contradicts the accused's statutory entitlement to be released from custody after 90 days if the inquiry is not concluded. According to the rules acquired by the UAPA from POTA, bail can be denied if the case is found cognisable and the accusations appear to be 'prima facie' accurate. The burden of proof is on the accused to establish that the allegations against him are untrue under the UAPA, which reverses the common law norm of the assumption of innocent.

Over the years, the State has been chastised for utilising the UAPA to quell public dissent, such as by targeting academics and activists with omnibus FIRs in order to arrest people involved in grassroots activity, academic or journalistic activities. When detention can be based solely on suspicion, as in the case of Kanchan Bala, who was arrested under the UAPA on the basis of a letter recovered from her that belonged to another person charged under the Act for

membership in a terrorist organisation, the harsh provisions of the Act are sufficient punishment. Only a list of books was included in the damaging letter.⁴

Main issue with the UAPA Act:

Despite the lack of agreement on a globally accepted definition of terrorism, it cannot be denied that terrorism poses a serious threat to a state's national security. State policies must preserve and develop human rights while also fostering security and countering the threat of terrorism. Scholars have frequently proposed two opposing ways to responding to terrorism and maintaining internal security: the utilitarian approach and the justice approach. According to the utilitarian perspective, protecting innocent citizens necessitates limiting certain rights and liberties, which will eventually benefit all citizens in the long term. In contrast, the justice approach emphasises the rule of law, social justice, and the value of human dignity. This strategy prioritises democratic ideals and human rights basic values. Because the utilitarian approach tends to legitimise specific state acts in the name of preserving overall interests, there is a growing concern that civil rights and fundamental freedoms may be suppressed as routine state practises.

National security laws have been adopted in India on occasion as a result of violent political confrontations dating back to the British colonial period. Although Indian criminal laws, particularly counter-terrorism legislation, protect fundamental rights, coercive colonial-era regulations meant to impose British rule remain a part of the current national security framework. As a result, India's legal institutions are currently struggling to reconcile the country's colonial heritage with its commitments to preserve the rule of law, human rights, and democratic values.

CONCLUSION

Anti-terrorism laws are unique, but it does not operate in isolation. Their enforcement necessitates the aid of the same institutions as in conventional criminal law procedures - the police, prosecuting agency, and the judiciary. Current criminal legislation is frequently criticised for failing to address serious national security concerns, owing to a lack of authority granted to law enforcement officers to effectively combat terrorism and other acts that endanger territorial integrity. Furthermore, special laws enable effective and time-bound investigation, prosecution, and adjudication of terrorism-related offences, sending a strong political message to perpetrators of such actions. At the same time, the use of special laws may raise human rights concerns about the efficacy and legitimacy of the current criminal justice system.

At the moment, the UAPA proposes far more drastic measures than are necessary in the interests of justice, by having overly broad and ambiguous definitions of terrorism; failing to satisfy the principle of legality; having bail and detention provisions that violate due process and the right to a fair trial; lacking oversight by the police and prosecution; discriminatory and uneven application; and providing broad immunities to officials for failing to protect the public. Furthermore, unlike TADA and POTA, which both included either a periodic review or a sunset provision, the UAPA does not include any such clauses or review mechanisms to ensure its successful implementation.

⁴ SRPF, AVAILABLE AT: <https://sprf.in/evaluating-the-unlawful-activities-prevention-amendment-act-2019> (last visited Feb. 21, 2022)

In terms of the Indian counter-terrorism rhetoric, it is critical that, rather than continuing to use extraordinary legislation to confront threats to the country's unity, integrity, and security, the conventional criminal justice system be improved and reinforced. Special anti-terrorism legislation should be reviewed on a regular basis and only be in effect for a limited time, and more attempts should be made to achieve political resolution of problems.



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