Anatomization of the Draconian Unlawful Activities (Prevention) Act

Author: Abhishek Bhardwaj

Abstract

This research paper is a thorough investigation of Unlawful Activities (Prevention) Act of 1967. Its main purpose is to analyse and examine the constitutional validity of UAPA and its draconian provisions. The study will seek to establish whether the provisions of the UAPA Act of 1967 are constitutionally and ethically legitimate using historic case law. This study will compare and contrast the varied detention and terrorism laws of other sovereign governments. The article will also attempt to illustrate, via case studies, how the act suppresses free thought and criminalises criticism; and whether it is being used by government to silent dissent of people. The paper contains UAPA’s inception, historical background, NCRB data classification and landmark judgements of recent years.

Introduction

On August 2, 2019, the Rajya Sabha, gave its approval to The Unlawful Activities (Prevention) Amendment Bill. The Fourth Schedule planned to be added to the Unlawful Activities (Prevention) Act, 1967, would include the names of "terrorists." ¹ The law was passed in 1967 with the purported goal of promoting national integration. If a person conducts or participates in acts of terrorism, prepares for terrorism, promotes terrorism, or is otherwise involved in terrorism, he may be labelled a terrorist. The bill also gives the Central Government the right to convene a Review Committee to review and denotify someone who has been labelled a "terrorist." At its inception the grave cause of concern for Indian democracy was that without any institutional process for judicial review, the amendment is likely to empower the government to launch a witch hunt against political opponents or religious minorities.

There is no precise definition of terrorism in either the Amendment Bill or the original Act. This is the start of a Gordian knot. The sociological pariah includes stereotypes like - the executive's classification as a "terrorist" has major ramifications, such as social boycotts and job losses; executive labelling might create a spiral of intolerance and lead to vigilante mob lynching, a major problem that the Indian government is now dealing with; the proposed

law's constitutionality should be vigorously opposed, as it could be construed as colorable legislation with the potential for executive abuse.

In *Shreya Singhal v. Union of India*\(^2\), the Supreme Court of India cited "vagueness" as one of the reasons for striking down Section 66A of India's Information Technology Act. \(^3\) The law placed an unreasonably restrictive restriction on internet speech. Similarly, the proposed change may have a chilling impact on freedom of speech and expression, which is protected in India's Constitution as a basic right in Article 19 (1) (a). The Supreme Court had also upheld the US Supreme Court's difference between advocacy and incitement in *Brandenburg v. Ohio*\(^4\), holding that Article 19 (1) (a) protects free speech where there is only advocacy of viewpoint and no incitement to violence.

The Supreme Court recently acknowledged the right to privacy as an important aspect of Article 21 of the Constitution, which protects a right to life and personal liberty in *K.S. Puttuswamy v. Union of India*\(^5\). The right to be left alone, according to the Supreme Court, is a manifestation of the inviolable nature of the human self. The concern before the court here was that profiling by the executive is thus a violation of Article 21 because it infringes on an individual's personal autonomy.

Furthermore, there are established judicial precedents in India that condemn the practice of guilt by association based solely on membership in prohibited groups or the denial of bail for the possession of possibly seditious publications. While combating terrorism is a worthy goal, the legislature has certainly made a mistake by pursuing it at the expense of fundamental rights. The proposed change is against the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights' mandates.\(^6\) The Indian Supreme Court has frequently used these international instruments to revive the Constitution's basic rights provision. In 2018, the Indian judiciary shown commendable counter-majoritarian leadership by striking down a colonial-era clause in the Indian Penal Code that criminalised homosexual activities. Because the Bill's constitutional roots appear to be shaky, any challenge to its constitutionality should provide an opportunity for the Indian judiciary to thoroughly

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\(^2\) *Shreya Singhal v. Union of India* AIR 2015 SUPREME COURT 1523


\(^4\) *Brandenburg v. Ohio* 395 U.S. 444 (more) 89 S. Ct. 1827

\(^5\) *K.S. Puttuswamy v. Union of India* AIR 2017 SC 41

examine it and follow in its footsteps. The Unlawful Activities (Prevention) Amendment Act, 2019, is reminiscent of laws enacted during the colonial era of India to suppress the independence struggle under the guise of maintaining public order. On the contrary, India's constitution-makers envisioned it playing a revolutionary role in establishing an atmosphere in which civil rights are respected and not subject to executive dominance.

**Historical Background of Unlawful Activities (Prevention) Amendment, 2019**

The Unlawful Acts (Prevention) Amendment has its origins in colonial times, when the British Raj passed the Criminal Law Amendment Act in 1908. For the first time, the idea of "unlawful association" was introduced into the scope of the law by this statute. The statute was used to criminalise leaders of the Indian Freedom Struggle at the time.

When India gained independence in 1947, the government decided to preserve the provisions of the Criminal Law Amendment. On the other hand, the Nehru government began to employ the clause against its own citizens, namely dissidents who spoke out against the Indian National Congress's policies.

In subsequent years, the Indian judiciary, in cases such as *VG Row v. State of Madras*; *AK Gopalan v. State of Maharashtra*; and the *Romesh Thapar v/ State of Madras*, collectively held that citizens' fundamental rights can only be curtailed in the most extreme and rarest of circumstances; and that any statute, legislation, or executive decision aimed at curtailing said rights will be held unconstitutional. The judiciary ruled that Section 124A of the Criminal Law (Amendment) Act was unconstitutional because it imposed arbitrary and disproportionate restrictions on persons' ability to exercise their fundamental rights. The 1st amendment to the Indian constitution was introduced to overcome such restrictions imposed by the Indian judiciary. The language of Article 19 of the Indian constitution was significantly tweaked, and the phrases "public order" and "friendly relations with states" were

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7 VG Row v. State of Madras AIR 1954 MADRAS 240
8 AK Gopalan v. State of Maharashtra AIR 1950 SUPREME COURT 27
9 Section 124A—"Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."
added under the purview of "reasonable restrictions". As a result of such a modification, the administration began to employ the phrase "public order" in lieu of the now-repealed 124A section of the Criminal Law (Amendment), and dissidents of the government were rounded up. Much more damning is Michelle Bachelet's recent declaration as the United Nations High Commissioner for Human Rights (UNHCR), in which she expressed grave concern over the country's suppression of free speech and civil liberties. She drew international attention to the deterioration of human rights, particularly the arrests of a number of civil society activists and human rights defenders, as well as the government's restrictions on free speech and coercion of independent media. She drew attention to the widespread use of the anti-terror law, the Unlawful Activities (Prevention) Act of 1967, or UAPA— in rapidly coming instances. Similar concerns have been reported by other global bodies and democracy watchdogs. We do a quick stocktaking of the UAPA and the judicial response to such developments. Other international organisations and democratic watchdogs have expressed similar concerns. We take a quick inventory of the UAPA and the legal responses to such events.

**Statistical Data raising Questions of Indiscriminate use of UAPA**

The UAPA is primarily an anti-terror statute that is only designed to be used in exceptional circumstances. However, the UAPA's history implies that it is being used indiscriminately by the government - both the Union and the states — to varied degrees. The use of the Unlawful Activities Prevention Act of 1967 (“UAPA”) in recent years has been scrutinised, especially in light of the UAPA's growing popularity. The UAPA's validity has never been challenged in either of the High Courts or the Supreme Court, despite the fact that it was enacted in 1967. This amendment permits the government to classify people as well as groups implicated in terrorism.

To obtain an idea of how many cases have been filed under the UAPA since 2010, the National Crime Records Bureau (NCRB) records from 2010 to 2018 (which is the most recent NCRB report issued). Surprisingly, the NCRB discloses that no offences were reported.

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under the UAPA prior to 2014. From 2006 onwards, the number of offences registered under the Terrorist and Disruptive Activities Act, which was repealed, is “0.” It's possible that some UAPA cases were grouped together under the heading "other SLL offences," although this appears doubtful given that the UAPA was designated as a separate crime head in following years. The NCRB only registers offences under the UAPA since 2014, and the use of UAPA has increased since then. The overall number of UAPA cases filed increased from 976 in 2014 to 897 in 2015, 922 in 2016, 901 in 2017, and 1182 in 2018. (2018).

It is useful to examine at State-by-State application of the UAPA in addition to the overall numbers of cases under the UAPA throughout the country. The states of Manipur, Jammu & Kashmir, and Assam have the highest number of UAPA cases, owing to insurgency, Naxalite, and Maoist activities, which has resulted in increased use of UAPA accusations. Manipur saw 630 instances in 2014, 544 cases in 2015, 382 occurrences in 2017, and 289 cases in 2018. The number of cases in J&K climbed from 45 in 2014 to 59 in 2015, 161 in 2016, 156 in 2017, and 245 in 2018.12

In states where the BJP has been in power, the use of the UAPA has skyrocketed. In 2014, Jharkhand had 44 cases under the UAPA; in 2018, it had 137 cases. In 2014, there were 30 incidents in Uttar Pradesh, which grew to 107 in 2018. In Assam, 148 arrests were made in 2014, rising to 308 arrests in 2018.13

Kerala, despite having a left-wing government, has experienced a continuous increase in UAPA cases, with only 30 cases reported in 2014 and 185 arrests in 2018.

According to the 2018 NCRB report, 3920 UAPA cases remain pending inquiry from prior years, with the addition of 1182 new cases, bringing the total number of UAPA cases pending to 5107. This demonstrates that, once suspects under the UAPA are charged, trials take years to complete, with the majority of cases not having concluded trial even as recently as 2014.

12 Crimes in India Additional Table Chapter, 2017- https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%201A.5_1.pdf, 2018- https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%201A.5_0.pdf, 2014- https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%201.13_2014.pdf
13 Ibid.
With this information, it's vital to consider how the accused's constitutional rights can ever be safeguarded.\textsuperscript{14}

According to the National Crime Records Bureau (NCRB), the number of cases filed under the UAPA increased the most in 2019. The controversial anti-terror law has resulted in the detention of 1,226 persons, a 33\% rise from 2016. In just one year, the police closed up to 11\% of cases due to a lack of evidence. The UAPA is utilised indiscriminately by the police to harass and intimidate people, as evidenced by the low conviction rate.\textsuperscript{15}

The UAPA's history implies that it is being used indiscriminately by the government — both the Union and the states — to varied degrees.

Several prominent human rights defenders, civil society leaders, agitating leaders, and even protesting students have been arrested under the UAPA and sedition laws in the last two years, including Sudha Bharadwaj, Vernon Gonsalves, Arun Ferreira, Varavara Rao, Anand Teltumde, Gautam Navlakha, and Arun Ferreira. These activists were detained in relation to their alleged participation in the Bhima-Koregaon memorial event on January 1, 2018. Father Stan Swamy, an 83-year-old Jesuit priest and notable Adivasi rights activist from Jharkhand, is the most recent arrest under the UAPA.

Apart from these, a number of activists, academics, and right-to-information leaders have been arrested under the UAPA and sedition laws, including Assam’s Akhil Gogoi and Jamia Millia Islamia University’s Safoora Zargar and Pinjra Tod, who were involved in protests against the controversial Citizenship Amendment Act (CAA). Umar Khalid, a student activist, was recently detained for his alleged role in the Delhi riots earlier this year.

**Katzenjammer of UAPA**

While there has been a significant increase in UAPA cases in recent years, the law's abuse has been going on for far longer and across all regimes and government types (Centre and states).

\textsuperscript{14} Supra 15
\textsuperscript{15} Supra 15
In 1967, the UAPA was passed with the goal of encouraging and ensuring national integration. After the Congress-led United Progressive Alliance (UPA) government abolished the controversial and widely abused Prevention of Terrorism Act of 2002 (hereafter POTA), the UAPA was revised in 2004 to contain provisions to combat terrorism and other illicit activities. Many sections of TADA (Terrorist and Disruptive Activities Prevention Act), one of India's most draconian laws, were kept by the POTA, which was implemented by the BJP-led NDA (National Democratic Alliance) government in 2001 in the aftermath of the 11 September 2001 terrorist attacks on the United States. POTA, like earlier statutes, defined "terrorist" and "terrorist actions" in a hazy manner. This permitted police and security forces to use force indiscriminately. Many sections of the TADA, one of India's most harsh laws, were retained in the POTA, which was implemented in the aftermath of the terrorist attacks on the United States on September 11, 2001.

While TADA and POTA were repealed in response to widespread public outcry and harsh judicial rebukes, successive governments at the Centre (UPA and NDA) have found it convenient to expand this once-dormant law (the UAPA) to cover a wide range of issues, including some of the key features of the POTA that were repealed. For example, the UPA government changed the 1967 UAPA to make it an omnibus preventive detention law after repealing POTA in 2004. UAPA broadened the definition of "unlawful activity" to include crucial POTA derivatives such as "terrorist act" and "terrorist organisation." Following the 2008 Mumbai terror incident, the UPA administration amended the UAPA to include extra provisions comparable to POTA and TADA addressing the maximum length a person can be held in police custody and incarcerated without a charge sheet, as well as bail limitations.

In July 2019, the NDA administration changed the Act again, granting the state and its security services significantly more power. While the definition of a "terrorist" in this statute remains ambiguous, modifications made in 2019 have given the Central government more discretion to label someone as a "terrorist" without a trial. Individuals can also be labelled terrorists even if they have no link or association with the 36 terrorist organisations specified in the UAPA's First Schedule. What's more

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concerning is that the UAPA lacks a judicial procedure for persons or organisations designated as terrorists to contest their designation. A request for denotification must be filed to the Central Government.

A Review Committee is formed to finalise such an application. The Chairperson of this Committee is appointed by the Central Government, notwithstanding the fact that he is a High Court Judge. As a result, even the post-conviction review procedures that are intended to be part of a free and fair trial are merely extensions of the biased institutions that led to the arrest in the first place. The UAPA's main flaw is that it declares someone a terrorist without a trial and treats them as someone who cannot be released on bail because they are a threat to society.

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Furthermore, the UAPA gives police and state officials a long period of time to investigate and prosecute the arrested person, defeating the aim of a quick and fair trial. While the investigation is supposed to last 90 days, a person can be held for up to 180 days without even being charged. Extending detention must be based on the discovery of specific evidence that establishes a link between the detainee and the conduct committed, not on a simple indication of the investigation's progress. However, courts — both lower and higher — continue to reject bail to people like Varavara Rao, Stan Swamy, and Sudha Bharadwaj, among others, who are elderly and ill. This infringes on an individual's fundamental rights because the extension is based on "progress of investigation," which is a very ambiguous term with no defined minimum level of development.

The remaining issues with UAPA could be summarised as follows:

For the first point, the definitions of the terms "terrorist," "unlawful activity," "likely to threaten," and "likely to strike terror" in Sections 13, 16, and 17 of the Unlawful Activities (Prevention) Amendment Act, 2019 ("UAPA, 2019") read with the 4th Schedule are nebulous, expansive, and open to abuse by the Investigating Authorities (Special Cell). According to the Indian Ministry of Home Affairs, in the year 2019, 48 people were detained in 1226 cases across the country. In other words, the number of UAPA cases filed by Indian police increased by 72% in 2019. In comparison, from 2016 to 2019, the number of
convictions by the courts decreased to an awful low of only 2.2 percent. Massive powers are given to the state to play in and assess who a terrorist is (harbouring "disaffection" rather than just "dissent" as per the Kedar Nath test\(^{17}\) of sedition under Section 124A of the Indian Penal Code, 1860) without any concrete guidelines/criteria laid down by Parliament or the Hon'ble Courts. It raises a very fundamental question that is it true that dissent is considerably more difficult to voice, especially in a large democracy like India?

Second, the reverse burden of proof (a implicit presumption of guilt that hangs around the accused's neck like an albatross) exacerbates the situation. The practical detention time lines, the slow pace of proceedings in India, and a cursory reading of Section 43D of the UAPA's statutory bar, which requires an individual to be detained for at least 180 days without the filing of a chargesheet by the investigating agencies. If there are reasonable grounds to think that the accusations against him are prima facie true, the accused does not receive bail in situations falling under Chapters IV and V of the UAPA. A total limitation on an individual's constitutional right to seek bail assures that the accused has no access to the chargesheet, First Information Report (FIR), or any other investigation evidence gathered by the police. It should be noted that even in routine police investigations, let alone Special Cell investigations, a complete and legible copy of the charge sheet must be supplied with the accused in order for him to seek standard bail in a court of law, as per Section 207 of the Criminal Procedure Code, 1973.

Third, the UAPA, 2019 expands the Executive ("State"power )'s by allowing it to label persons as "terrorists" without having to go through any new, cogent procedure, and by giving the accused no plausible avenues of recourse, let alone a regular bail hearing (which is rare). Under the UAPA, police authorities have 180 days to file a chargesheet, confirming that they have exhausted all options. Such arbitrary rules must be ruled illegal since they are blatantly in violation of Articles 14, 15, and 21 of the Indian Constitution insofar as they seek to label individuals as "terrorists", establishing an extremely high barrier to obtaining, let alone receiving, bail. The lack of an appeals method to challenge placement in the 4th Schedule, even after being labelled a terrorist, makes a mockery of the so-called Wednesbury Principles of "reasonableness," "fairness," "due process of law," and "procedure established by law."

\(^{17}\) Kedar Nath Singh vs State Of Bihar 1962 AIR 955
An Insouciant Judiciary

The judiciary, which is the most important institution for protecting and redressing violations of fundamental rights, has taken a lot of heat in recent months over UAPA cases. Several retiring Supreme Court justices have expressed their displeasure with the upper courts' callous indifference to flagrant abuses of human freedoms under the new UAPA system. And there is a solid foundation for such an interpretation of the law in favour of the judiciary. Even in cases when there has been little movement in terms of police investigation or prosecution, the Supreme Court, high courts, and subordinate courts have shown little to no hurry in granting bail.

In the 2019 National Investigation Agency versus Zahoor Ahmad Shah Watali, the Supreme Court reversed its 2011 decision in Sri Indra Das vs State of Assam, which provided remedies for indiscriminate arrests and those mistakenly labelled as "terrorists". The Supreme Court ruled in the former case that Section 3(5) of TADA and Section 10 of UAPA, which indict simple members of a banned organisation, cannot be taken literally and must be interpreted in conjunction with Article 21 of the Constitution, and so must be read down. According to the highest court's opinion, a person's membership in a prohibited organisation does not automatically make him or her a criminal unless he or she uses violence or incites others to use violence. In the Sri Indra Das case, the concept of "guilt by association" was declared invalid by the court.

In UAPA cases, lower courts are exercising extreme caution while granting bail. However, in its 2019 decision, the same court made a complete 180-degree reversal by establishing a new theory that basically permits the state/police to hold an accused in jail throughout the duration of the trial. Justices Khanwilkar and Rastogi announced in their decision on bail applications that in UAPA cases, the court must assume that

20 Sri Indra Das vs State of Assam AIR SCW 1223

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every accusation contained in the FIR is true. Furthermore, bail would be granted on the condition that the accused produce papers or proof to refute the claims. As a result, the accused bears the entire burden of proof. By doing so, the court has effectively ruled out the issue of evidence admissible during the bail hearing. The Supreme Court's decision has a chilling impact on the amount of bail granted by lower courts to accused individuals.

In UAPA cases, lower courts are exercising extreme caution while granting bail. The best example is the Bombay High Court's refusal to give bail to individuals accused in the Elgar Parishad-Bhima Koregaon case after serving more than two years in prison. The Maharashtra police and the National Investigation Agency (NIA) have requested several extensions under the guise of obtaining fresh evidence, but the Bombay High Court has yet to make a decision on the accused's bail. Even individuals with major medical issues, such as Varavara Rao and Sudha Bharadwaja, have been denied bail, with the court citing various procedures as reasons. Those who file writ petitions under Article 32 of the Constitution, on the other hand, have been dealt a harsh blow, with the Chief Justice of India admitting the court's policy of discouraging Article 32 petitions in the Siddique Kappan case. Article 32 is a Fundamental Right, which B.R. Ambedkar once described as the constitution's "heart and soul".

To summarise, India's democracy is in serious trouble, as evidenced by several international assessments and research. In the absence of an effective political opposition, a powerful executive seeks to dominate every major democratic institution and control significant narratives in the new republic. An independent and functional court is the last line of defence against executive excesses. Governments' indiscriminate use of severe anti-terror laws to muzzle dissenting voices is weakening India's democratic credentials, as is judicial apathy to these flagrant abuses of freedom. India's and the judiciary's time to reclaim their hard-won credibility is running short.

**Landmark Cases**

- *NIA v Zahoor Ahmad Shah Watali*

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22 Union of India V. K.A. Najeeb AIR 2021 SUPREME COURT 712

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In the case of Angela Harish Sontakee v. State of Maharashtra\textsuperscript{24} and Sagar Tatyaram Gorakhe and Anr v. State of Maharashtra\textsuperscript{25}, The Supreme Court granted bail in terror-related cases under the UAPA without following Section 43D's rule (5). Both of these bails were granted after the charges were filed, and they were resolved by a bench led by Justice Ranjan Gogoi.

While deciding an appeal in NIA v Zahoor Ahmad Shah Watali\textsuperscript{26} against grant of bail in a UAPA case for terrorist activities in April 2019, the Supreme Court held as follows:

“A priori, the exercise to be conducted by the Court at this stage — stating grounds for the grant or non-grant of bail — is markedly distinct from evaluating the evidence’s merits or demerits. At this point, an in-depth review or dissection of the evidence is not required. The Court is only required to make a conclusion based on a high degree of probability that the accused was involved in the commission of the specified offence or not.”

NIA v. Zahoor Ahmad Shah Watali\textsuperscript{27}

It is here where the Court beat draconian law of UAPA to the punch. Bail is granted at the discretion of the judge. This discretion, however, must be exercised with caution. It is also generally established that having power, exercising that power, and the conditions under which that power is exercised are three distinct things. The designated court has the power to grant or deny bail in terrorism-related offences under UAPA. Section 43D(5), which establishes a lesser-degree test than the former TADA & POTA, governs the exercise of such power. The Supreme Court, on the other hand, has relieved the court of this burden by instructing the court to ‘merely' record a judgement based on 'broad probability regarding involvement in the conduct of the specified offence or otherwise. This does not work in the accused's favour.

“For that, the whole of the material obtained by the Investigating Agency and given together with the report, including the case diary, must be reckoned, not by analysing individual pieces of evidence or circumstance,” the Court added.

\textbf{Union of India V. K.A. Najeeb- The Test of Time}\textsuperscript{28}

\textsuperscript{24} AIROnline 2016 SC 16
\textsuperscript{25} 2013 CRI. L. J. 1147
\textsuperscript{26} AIROnline 2019 SC 1455
\textsuperscript{27} AIR 2021 SC (Criminal) 671
\textsuperscript{28} AIR 2021 SUPREME COURT 712
In cases involving identical offences, Justice AM Khanwilkar's ruling distinguishes between pre-charge and post-charge bail. If this statute had been in force in 2016, the two cases I gave above might not have been able to grant bail.

Professor TJ Joseph was attacked in Thodupuzha, Kerala, in 2010, and the respondent, K.A. Najeeb, a member of a fundamentalist group, was accused of instigating the crime. The National Investigation Agency (NIA) originally detained Najeeb in 2015 under the Unlawful Activities (Prevention) Act (UAPA).

After the Kerala High Court granted him bail in the case in 2019 due to significant delays in the trial, the NIA challenged the decision.

The NIA had filed a Special Leave Petition (SLP) in the Supreme Court, appealing the Kerala High Court's decision, because the NIA special court had previously denied bail based on UAPA regulations.

Even while the Supreme Court dismissed the NIA's appeal, citing the respondents' right to a speedy trial under Article 21 of the constitution, the Court avoided establishing a general criteria that could be applied in similar future cases.

In their decision, Justices NV Ramana, Surya Kant, and Aniruddha Bose affirmed constitutional courts' ability to issue bail to those prosecuted or jailed under the harsh UAPA. Regardless of the court's decision in this instance, there are various questions about the UAPA and bail jurisprudence in general that need to be addressed.

The current paper will concentrate on the case analysis for the current case while also offering an overview of UAPA in general and Section 43D(5) in particular.

According to the paper, the interpretation decisions made in this instance should raise concerns because they disrespect humanitarian bail conditions. The examination delves into Ujjwal Kumar Singh's concept of the "ordinary and exceptional laws," specifically the "overlapping" of the ordinary and extraordinary rules.29 Defending the over-reach of investigative agencies in order to promote convictions and the "creation of a suspicious community." As a result, the state's coercive characteristics are strengthened.

29 (2019) 5 SCC 1

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The Case's Details

K.A. Najeeb (hence referred to as the respondent), a member of the Popular Front of India (PFI), was arrested on suspicion of being one of the major conspirators in a pre-planned attack on Professor T.J. Joseph of Newman College, Thodupuzha.

When creating a question paper, the victim inserted a question that was considered offensive to a particular religion. The respondent, together with other members of an extremist Islamic organisation (Popular Front of India), agreed to attack the victim in order to avenge their religious beliefs.

A gang of persons with a common object attacked the victim while he was going home with his mother and sister on July 4, 2010, at 8 a.m. Members of the PFI forcefully intercepted the victim's car, detained him, and cut off his right palm using choppers, knives, and a small axe during the attack. Bystanders were also targeted with homemade bombs in order to instil fear and panic in their thoughts, preventing them from rushing to the victim's rescue. As a result, the victim's wife filed a police report against the perpetrators.

The incident was discovered to be part of a broader plot that allegedly entailed extensive preplanning, multiple failed attempts, and the use of lethal weaponry after the inquiry was completed. As a result, the provisions of the UAPA were used against him.

The accused was designated an absconder notwithstanding the fact that the majority of the respondent's co-conspirators had been convicted and found guilty by the NIA special court. The co-accused were each given a sentence ranging from two to eight years in prison.

The NIA eventually tracked down and detained Najeeb, who was held in judicial custody for nearly five years without ever being prosecuted or adjudicated by a court. Between 2015 and 2019, the respondent applied for bail six times, claiming parity with other co-accused who had been enlarged on bail or acquitted. His arguments were dismissed because the respondent had prima facie knowledge of the incident and had aided and abetted it.

Because regular bail procedures do not apply to an accused under the UAPA, he was ineligible for bail under Section 43D (5), which permitted courts to deny bail on the basis of reasonable
doubt. For the third time, the respondent went to the High Court, questioning the Special Court's order denying bail.

The respondent was freed on bail by the High Court in the impugned judgement, noting that the undertrial respondent could not be held in custody for an extended period of time. Especially because the trial was not going to begin anytime soon and failing to do so would cause him great pain.

The court, however, halted the execution of the aforementioned bail order, and the NIA filed an appeal, claiming that the High Court had erred. As a result, we have the current situation.

- **Issues raised**

  1. Can a violation of Article 21 override the statutory rigours imposed by Section 43D(5) of the UAPA?

  2. Whether the court has a legal obligation to deny bail when the suspect is presumed guilty.

  3. Is it possible to dispute the court's decision to grant bail without any particular grounds?

- **Contentions**

  On both sides, compelling arguments were made. The appellant was represented by the learned Additional Solicitor General, who claimed that the High Court erred in granting bail without considering the statutory rigours of Section 43D(5) of the UAPA.

  According to the decision in National Investigation Agency v. Zaheer Ahmad Shah Watali\(^{30}\), bail proceedings under the special enactment are distinct, and courts are required to deny bail where the defendant is prima facie guilty. It was also argued that the fact that the respondent had been missing for years made suspicions about his bail all the more valid.

  He said that the NIA had filed an additional affidavit to interrogate 276 witnesses, resulting in the trial's early conclusion. Simultaneously, the NIA planned to perform the experiment on a daily basis and finish it within a year.

  The experienced counsel for the respondent, on the other hand, emphasised that many of the co-accused had been acquitted, and those who had been found guilty had been sentenced to no more than eight years in prison.

\(^{30}\) Supra 16
Given that the respondent has already been imprisoned for over five and a half years without a trial, it would be a violation of his constitutional liberty and rights to have him serve the majority of his term without any court finding of guilt. He argued that once the High Court has granted bail, it should not be interfered with unless there are exceptional circumstances. He further claimed—citing Shaheen Welfare Association v. Union of India\(^{31}\)—that

“Such prolonged detention infringes on the respondent’s right to a timely trial and access to justice; in such scenario, Constitutional Courts could employ their powers to grant bail, regardless of special enactment limitations.”

It was reaffirmed that when determining on a bail application, reasons must be recorded, even if the evidence is not evaluated on its merits.\(^{32}\)

Counsel also argued that various judgements entrench the liberty protected by Part III of the Constitution, which provides access to justice and a prompt trial to all who fall within its protective purview.

The case where it was decided that undertrials cannot be held forever for a pending trial was mentioned. The counsel based on this argument contended—

“Due to the realities of real life, courts are entrusted with determining whether an individual should be released pending trial or not, in order to ensure an effective trial and reduce the risk to society if a possible criminal is left at large pending trial. When it is clear that a quick trial would not be possible and the accused has been imprisoned for a long period of time, courts are usually required to increase their bail.”

- **Obiter Dicta and Ratio Decidendi of Court**-

The Supreme Court confirmed the High Court’s ruling, aiming to strike a balance between the appellant’s ability to present any evidence it wants in order to prove the accusations beyond a reasonable doubt and the respondent’s rights provided under Part III of the Constitution.

As a result, the appellant’s SLP was deemed unmaintainable.

**Is it possible for a violation of Article 21 to override the legislative requirements of Section 43D(5) of the UAPA?**

\(^{31}\) (1996) 2 SCC 616

\(^{32}\) (2001) 6 SCC 338
The inclusion of statutory restrictions such as Section 43D (5) of the UAPA does not preclude Constitutional Courts from granting bail on the basis of a breach of Part III of the Constitution. It was decided by court-

“Courts are supposed to understand the legislative policy against bail, but the rigours of such laws will crumble if there is no chance of a speedy trial and the length of jail already served has exceeded a significant portion of the authorised sentence. Such an approach would prevent regulations like Section 43D (5) of the UAPA from being utilised as the primary criterion for denial of bail or wholesale violations of the constitutional right to a speedy trial.”

Is the court obligated to deny bail when the suspect is presumed guilty?

It was also stated that the statute's restrictions and the powers promised to the Supreme Court under constitutional authority can be appropriately balanced. Despite the fact that the accused was prima facie guilty, the judges, while recognising the severity of the offences, took into account the time the respondent had spent in custody. The High Court’s decision to grant bail was warranted, considering the "unlikelihood of the trial being finished anytime soon." The court held-

“An endeavour has been made to strike a balance between the appellant's ability to present evidence of its choosing in order to establish the charges beyond a reasonable doubt and the respondent's rights provided under Part III of our Constitution being effectively protected.”

Is it possible to dispute the court's decision to grant bail without any particular grounds?

Section 43D(5) of the UAPA, it was argued obiter dictum (in passing), is less harsh than Section 37 of the NDPS. Unlike the NDPS, where the competent court must be satisfied that the accused is not guilty prima facie and is unlikely to commit another crime while on bail, the UAPA has no such requirement.

Instead, Section 43D (5) of the UAPA simply adds another reason for a competent judge to deny bail. The court used this as an additional reason to enlarge the respondent on bond, and so did not appeal the High Court's decision.

- Additional Requirements Imposed by Court
In the best interests of society at large and to guarantee that the respondent would not engage in any more communal attacks, the Hon'ble bench put a few additional requirements on the respondent.

The respondent was required to report to the local police station every week on Monday at 10 a.m. to mark his presence and advise them in writing that he has not been involved in any new crimes.

In addition, the respondent is forbidden from engaging in any conduct that can inflame communal feelings. Any breach of the bail restrictions, tampering with evidence, or obstructing the trial will result in the respondent's release being immediately revoked.

Conclusion

The UAPA grants the government unrestricted authority and makes a person vulnerable in front of the government. The Constitutional ideals of freedom of speech, personal liberty, and the right to a fair trial are all harmed by this Act. There is no question that such strict rules are necessary to combat terrorism so that authorities do not feel powerless when prosecuting suspects, but there is no rationale for the Act's imprecise phrasing in many sections. The function of the court is crucial in maintaining a balance between such legislation, human rights, and constitutional ideals. Misuse of such legislation must be monitored by the judiciary.

The purpose of this research paper was to show how governments across the political spectrum exploit the harsh and draconian UAPA statute to suppress political opponents and dissidents. One of the reasons in favour of enacting such a statute is that it will advance the Directive Principles of State Policies in the name of "national security."

Critics of the statute, on the other hand, argue that any law, legislation, or statute must comply to the country's fundamental rights. The UAPA not only criminalises the right to associate, but it also blurs the line between political opposition and criminal sedition.

Political dissent is a fundamental right that the state must defend, but this statute does not do so as evident by the NCRB Data and recent landmark judgements on UAPA. It is understandable that, given the intricacies of terrorism, stringent and sometimes arbitrary
actions are required; nonetheless, having an act that allows any government to deal with political dissidents in whatever way it sees fit does not achieve the purpose of safeguarding national security.