

## **ANTI-TERRORISM ACT (UAPA)**

**Author: Rahul Goswami**

### **ABSTRACT**

*Anti-terrorism laws in India are the result of reactionary measures taken in the aftermath of a terrorist attack that resulted in violence, loss of life, liberty, threat to individual and community safety, social disorder and fear, and, most importantly, a challenge to the nation's autonomy, unity, and integrity. To effectively prevent and fight all forms of terrorism, a set of regulations would be written within the confines of democracy's rule of law. Such a body of law serves as a roadmap for counterterrorism and counterinsurgency activities. The government determined that traditional laws were insufficient to deal with the threat posed by terrorism, and in order to bring terrorists to justice, it relied on strict special laws that included regulations that went against accepted principles of the criminal judicial system. To be effective, a legislative framework must be well defined, with things clearly expressed, comprehensive procedural law, and executed in a non-abusive manner, in accordance with the rule of law and human rights. Before enacting anti-terror laws, the legislature must consider all viewpoints. No hasty reactionary legislation that boosts law enforcement while reducing civil liberties should be enacted.*

### **INTRODUCTION**

There are extremely limited nations that have been untouched by the ill-effects and repercussions of terrorism, since it has spread around the world to every nook and cranny. With the increase in terrorist actions over the last few decades, terrorism has risen to one of the most concerning issues facing society in modern times. In today's world, terrorism has risen to the top of the list of concerns that directly affect people and governments all over the world, with nearly every country suffering at the hands of these criminals. The significance of terrorists in shaping and reversing international relations has been well-documented during the previous three decades in the international arena. These terrorist organizations are involved in a wide range of acts that draw the public's attention to their causes. For example, their involvement in assassination, kidnapping of diplomats, politicians, and their close relatives, bombing crowded places, embassies, business

establishments, and places of worship, hijacking and piracy, and the threat of nuclear terrorism have caused widespread fear and uncertainty in the public.<sup>1</sup>

Terrorism has also seen a facelift as a result of globalization and modern technologies, having previously been contained inside national borders but now extending its wings to encompass worldwide domains. There is no commonly recognized definition of terrorism on a global scale, which continues to be a weakness in the system. Terrorism, in its most basic definition, is the use of violence, or the threat of violence, to terrify people in order to attain a political, social, or religious objective<sup>2</sup>. It is an act that has an impact on the audience in addition to the immediate victims. The primary goal of such terrorist actions is to generate fear in the minds of the general people, which results in an overreaction, as well as to demonstrate the ineffectiveness of the government in combating such operations. Such acts are designed to have a psychological impact on the general population rather than to achieve the aims of terrorist actions in the first place. Terrorists typically engage in a psychological game with the government of any given country, infringing on the rights of the general people and pushing the government to comply with their demands. With the passage of time, the face of terrorism has undergone a significant transformation, and countries all over the world have fallen prey to terrorist attacks, with just a few of countries remaining unaffected.<sup>3</sup> In this context, the current research will explain the history and specifics of terrorism; evaluate the laws pertaining to terrorism, especially the TADA, POTA, and UAPA; and examine the circumstances under which each of these laws was repealed or modified in some way. The National Institute of Justice Act, which is now in effect, will be scrutinized in order to determine its effectiveness in combating terrorism in the country. Additionally, an examination of the laws dealing to terrorism in the international system, as well as the laws related to the United States, will be conducted. The impact of terrorism in the form of violations of human rights will provide a more comprehensive perspective on the subject matter. Against the backdrop of a changing world in which wars and terrorist actions are on the rise, this

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<sup>1</sup> Ravi Nair. "The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes." 4 *EPW* 44 (2009).

<sup>2</sup> Biologic, Chemical, and Radiation Terrorism Review available at: <https://pubmed.ncbi.nlm.nih.gov/29630269/> (Visited on July 26, 2021).

<sup>3</sup> Terrorist: United Nations Office on Drugs and Crime available at: [https://www.unodc.org/documents/e4j/18-04932\\_CT\\_Mod\\_01\\_ebook\\_FINALpdf.pdf](https://www.unodc.org/documents/e4j/18-04932_CT_Mod_01_ebook_FINALpdf.pdf) (Visited on July 26, 2021).

research will provide a springboard for better understanding of the problem of terrorism and the methods and tactics that may be used to resist such crimes.<sup>4</sup>

The evolution of the world's political environment during the late 1960s of the twentieth century is credited with the emergence of terrorism as a worldwide problem in modern times. Terrorism as a worldwide problem but it is not a new phenomenon; it has existed since the days of ancient Greece and has been practiced in mediaeval Italy since the middle Ages.<sup>5</sup> The Sinai War of June 1967, during which Israel destroyed the military forces of many Middle Eastern nations in a matter of days and conquered a substantial portion of their territory, may be regarded as the birth of modern-day terrorism.<sup>6</sup> Since then, the Arab world has been boiling with fury and resentment, which culminated in the commencement of the "contemporary wave of terrorism" in the Middle East, which began in 1968. The capture of an American airline by a Palestinian sympathizer was the first evidence of a shift away from the conventional conflict and confrontation between the Israelis and the Arabs. It is no longer just a method of protest; it has evolved into a worldwide infrastructure designed to confront the number one superpower in the unipolar world order. What had not been anticipated was the way in which religion would become intertwined with political ambitions in the coming years.<sup>7</sup>

The acceptance of terrorism in civilization depends on whether terrorism is seen as a viable form of protest and thus is strongly related to the degree of support that a group may hope to get from their community as a whole. This does not necessarily imply that terrorists would abandon violence because it is counter-productive if they do not have backing from the general public. Part of their dilemma stems from the fact that terrorist organisations frequently have difficulty transitioning away from violent tactics. Terrorism, as an efficient weapon, has therefore emerged as a real threat to the international order that cannot be ignored or swept under the rug. This "spectrum of issues" must be addressed in a "multi-dimensional manner," according to R. Venkatraman, the former President of India. In his inaugural presentation at the Indian Society of International Law's 21st Annual Conference, he emphasized the "necessity of mobilizing the processes of ratiocination that

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<sup>4</sup> Anushka Singh "Criminalizing Dissent: Consequences of UAPA." 56 *EPW* 44 (2012)

<sup>5</sup> Ibid.

<sup>6</sup> 1967 war: Six days that changed the Middle East available at: <https://www.bbc.com/news/world-middle-east-39960461> (Visited on July 26, 2021).

<sup>7</sup> B D Singh, "Judicial Analysis of the Constitutional and Procedural Safeguards Against Arbitrary Arrest and Detention" 2 *Christ University Law Journal* 45 (2013).

have assumed the form of legal investigation." He made the following statement: "Legophilosophic minds have the ability to halt the progression of the world by organizing or organizing human affairs in such a way that they are consistent with the growth of collective human thinking. What is involved in the process is not only the preservation of state powers or the preservation of "order," but the preservation of "order" in conjunction with "law." Maintaining equilibrium within the confines of a state is not a tough task to do. However, while dealing with international matters, the work becomes more complex."<sup>8</sup>

Terrorism, fueled by religious fanaticism, has become the most potent threat to world security and it is doubly so. Terrorism, which strikes at the very heart of tolerance, the bedrock of civil society in a free world, has targeted pluralist and open democracies as its primary objectives. For many years, India has struggled with an increase in terrorism, which has been fueled by religious fanaticism. The motivation for every terrorist attack is political in nature, with a political purpose that cannot be attained or expressed by normal tactics of protest and agitation. It is suffering, frustration, and a sense of injustice that are at the foundation of terrorism, and these feelings are fueled by a neglected cause and political ambitions, which terrorists bring to public attention through symbolic acts of violence, which are almost always intended at innocent people.<sup>9</sup>

### **CONCEPT OF TERRORISM**

According to the definition of terrorism, it is "the use of violence that results in the bodily and mental injury of the immediate victim, as well as the psychological influence on someone else." Terrorists' emotions and motivations are also taken into consideration. As a result of terrorism, people were killed or injured; property was destroyed; and liberty was taken away."

The term "terrorism" has been used to signify "terrorism," which implies "terrorism" in Latin (to cause to tremble). When the Jacobin clubs were in power in 1795, this phrase was employed to justify their activities to the public. After the Revolution, France was known as the "Region of Terror," which referred to the time after the Revolution. It was alleged that Jacobins told them that they were "terrorists." "Terrorism refers to a strategy of use of violence, societal threats, or

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<sup>8</sup> Ibid.

<sup>9</sup> Mahesh Chandra, *Socio-Economic Crimes* 69 (N.M.Tripati Pvt. Ltd, Bombay, 1979).

organized assaults for fear, disrupting and eventually fulfilling certain political, religious or ideological objectives."

"Terrorism" was defined by the European Union as the "destabilization or destruction of a country's basic political, constitutional, economic or social framework."

Terrorism, according to the Federal Bureau of Investigation's United States Code, is defined as "the unlawful use of force and violence against persons or property in order to scare or intimidate a nation, the local infrastructure, or any segment thereof, in furtherance of political or social goals."

Domestic terrorism is classified as such by the FBI, based on the country of origin, the location of the terrorists' base of operations, and their aims. Terrorism is, in fact, a "ism," as the term implies. It is a method of employing various techniques in a systematic manner that is fundamentally based on the belief that creating fear or danger in the minds of others would help achieve certain specific goals and objectives. Terrorism is defined as the creation of intense terror and the employment of gruesome means for the purpose of leading, or withstanding, government or government operations in common parlance.

Terrorism is a mixture of warfare and theatre, a staging of the primarily agreed-upon type of violence; it must be perpetrated on innocent and youthful victims with the intent of causing risk, menace, and terror in order to achieve a political goal. Terrorism's goal is to attack and endanger government officials as well as people. Terrorism has always posed a threat to the security, safety, integrity, and sovereignty of all countries across the world, no matter where they are located.<sup>10</sup>

### **EFFICACY OF UNLAWFUL ACTIVITIES PREVENTION ACT**

#### **Designating an Association as Illegal:**

The section 3 of the UAPA authorizes the government to designate any organization unlawful. An unauthorized association is one whose sphere of creation is unconstitutional behavior one whose members engage in unlawful activity one whose members encourage or aid others in engaging in unlawful activity and one whose members engage in any unlawful activity including activity punishable under sections 153A and 153B of the Indian Penal Code. When an individual or organisation commits a lawful act or makes a presentation, whether through words spoken or

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<sup>10</sup> Kenny, *Outline of Criminal Law* 80 (Cambridge University Press, 1966).

written, or by sign or visual mode, with the intent of supporting or inciting the cession of a part of India's territory, it is said to be engaging in unlawful activity. It also includes activity that disclaims, questions, or otherwise disrupts the sovereignty and integrity of India, as well as activity that causes or intends to cause disaffection against India. The declaration of any foreign country's claim to a portion of Indian territory, as well as the determination of whether or not that portion of Indian territory would remain a part of India's territory, are all examples of secession.

### **The Unlawful Activities (Prevention) Tribunal's authority and function:**

To carry out its responsibilities, the federal government is allowed to establish a "Tribunal" to be called as the "Unlawful Activities (Prevention) Tribunal," which will be presided over by a judge of the High Court and fully equipped to carry out its duties. The tribunal has the authority to determine whether there was sufficient justification for the government's declaration of an association as unlawful, and it can do so by issuing an order that confirms or rejects the government's notification within six months of the date on which the notification was issued, whichever is later.

This includes the ability for the tribunal to determine its own process for all subjects, including the location where it will hold its meetings. For this purpose, the tribunal has the same powers as a civil court in respect of summoning and enforcing the attendance of witnesses and interrogating them under oath; exploration and production of any document or other content as proof; receipt of affidavit evidence; seizing any official records from a court or office; and authorizing any committee for the investigation of witnesses. To the extent that the tribunal's action is judicial in nature, it will be treated as a civil court for the purposes of Section 195 of the Indian Penal Code. The tribunal's judgment is final and conclusive.<sup>11</sup>

### **Terrorist Organization Notification and De-Notification:**

Home Secretary Sri R.P.N Singh addressed Lok Sabha that the government discovered 65 terrorist organisations operating in the nation, of them 37 were outlawed as a terrorist organisation and put in the schedule. Except for stating that a terrorist organisation is one that is included in the schedule or that operates under the same name as a terrorist organisation that is listed in the schedule, Section 2(m) fails to provide a specific definition of what a terrorist organisation actually is. The

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<sup>11</sup> James Lutz & Brenda Lutz, *Terrorism* 11 (Palgrave Macmillan, New York, 2005).

central government may add any institution to the list if it commits, participates in or plans, supports and otherwise facilitates acts of terrorism. It has also included in the timetable any terrorist organisations that have been designated as such by the United Nations Security Council.

In addition, it has the authority to withdraw or alter the timetable. The affected organisation or any individual who has been adversely impacted by the inclusion of the organisation in the schedule may submit an application to the Secretary to the Government of India, setting out the reasons for the organization's removal from the schedule. Following receipt of such an application, the government has 45 days to decide whether or not to proceed with the issue. If the application is approved, the organisation will be removed from the schedule; however, if the application is rejected, the applicant may file an appeal with the review committee, whose judgment will be final and binding on all parties. Despite the fact that the government has the authority to name any organisation a terrorist organization, the legislation does not require the government to provide a justification for such a proclamation of terror. As a result, the government is free to use its authority and include any organisation in the schedule as long as the review committee does not issue an order that is in conflict with it. Many times, the government has abused its authority only for the purpose of gaining political advantage or causing division. A Sikh organization submitted a complaint in federal court requesting that the court label the R.S.S. a foreigner terrorist group. As a result, the court sent a subpoena to US Secretary of State John Kerry, requiring him to reply to the complaint within sixty days.<sup>12</sup>

### **LOOPHOLES IN UAPA**

Following is a discussion of some of the flaws of the Unlawful Activities (Prevention) Act, 1967, as revised to the present day.

#### *1. Penalty for harboring a fugitive:*

A person who voluntarily harbors or conceals, or makes an attempt to harbor or conceal any person knowing that the person is a terrorist is punishable by imprisonment for a term of not less than three years, but which may extend to life imprisonment, as well as a fine under Section 19 of the

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<sup>12</sup> Krishna Iyer, *Perspectives in Criminology, Law and Social Change* 89 (Allied Publishers Pvt Ltd, New Delhi, 1980)

United Arab Emirates Anti-Terrorism Act. However, it provides no indication as to who has the authority to classify someone as a terrorist for the purposes of this part of the law.

*2. Infringement of the right to association freely:*

Even though membership in a "terrorist gang" or a "terrorist organisation" is criminalized under Section 20 of the UAPA, the definition of these terms is not defined explicitly in the statute. Evidence that the accused individual was participated in a criminal act such as a murder, for example, is not required under this provision; the crime is deemed complete upon proof of membership, which is not specified. In this case, persons may be performing a criminal conduct without being conscious of the fact that they are engaging in illegal activity. As a result, the Uniform Anti-Terrorism Act (UAPA) makes it illegal to simply associate or communicate with suspected terrorists or to express political ideas without having criminal purpose punishable by law. As a result, the provision may be in violation of the right to freedom of association guaranteed by Article 22 of the International Covenant on Civil and Political Rights.<sup>13</sup>

*3. Sanctions for making a threat against a witness:*

Those who threaten any person who is a witness or any other person in whom such witness may be interested with violence, or who wrongfully restrains or confines a witness or any other person in whom such witness may be interested, or who commits any other unlawful act with intent to cause any of the foregoing acts shall be punished with imprisonment, which may extend to ten years in some cases. The threat of police making false allegations will rise as a result of this provision.

*4. Provisions Regarding Adverse Inference:*

The possession of an illegal weapon in a notified area qualified as an offence under Section 5 of the TADA; the provision had been reinserted in POTA as Section 4 and it also forms a part of the Unlawful Activities Prevention Amendment Act, 2004, where it is found in Section 23 of the Act (1). The important point to remember here is that the mere possession of a firearm does not infer the owner's participation in an offence unless and until the prosecution can establish such involvement. Because the categories are so wide, the offences plainly overlap with those that are

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<sup>13</sup> N.C Asthana, *Terrorism, Insurgencies and Counterinsurgency operations* 99 (Jaipur, Pointer Publishers, 2000).

subject to ordinary criminal proceedings. It is worth noting that this section of the Arms Act of 1959 has provisions that are identical to those in this section, making it a blatant violation of Article 14 of the Indian Constitution.

## CONCLUSION

In particular, the Unlawful Activities (Prevention) Act, 1967 as amended in 2008 and 2012, as well as the National Investigation Agency Act, 2008 and the rules framed thereunder, represent the government's commitment to combating and preventing terrorism in all its forms, as well as to fulfilling the promise made at various international and regional conventions, treaties, and agreements to combat terrorism. These two pieces of legislation constitute the overall existing laws in India on terrorism at the present time, and they are stringent special laws with features that deviate from the established principles of the criminal justice system, with the exception of the conventional provisions of the Indian Penal Code (IPC). The National Investigation Agency (NIA) and the Special Court established under the NIA Act have authority to investigate violations of the Uniform Anti-Terrorism Act (UAPA) and other special legislation, as well as certain articles of the Indian Penal Code (IPC) specified in the NIA Act's schedule. Many other pieces of legislation, including as the Information Technology Act of 2000 and the Human Trafficking Act, which criminalize acts that have cross-border ramifications and are connected to the conduct of terrorism, are not covered by the NIA Act.<sup>14</sup>

Currently enacted legislation such as the UAPA and NIA do have effective measures to combat terrorist activity (as a cognizable crime), but there are also flaws and shortcomings that must be rectified in order to make the law as effective as possible in preventing and combating terrorism. It is within the authority of the central government to declare any association unlawful, as well as to ban and penalize anybody who is a member of the unlawful association, participates in its meetings, makes or receives any donation, or provides any help to the unlawful association. Terrorist organisations have been identified by the government as operating in India, and 37 of them have been outlawed, however the UAPA has not offered a specific definition of the word "terrorist organisation" other than presenting a schedule of those who have been identified. Sections 35 and 36 of the Uniform Anti-Terrorism Act (UAPA) and sections 2 and 3 of the

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<sup>14</sup> H.O. Aggarwal, *International law and human rights* 79 (Central Law Publication, Allahabad, 2016).

Procedure for Admission and Disposal of Application Rules, 2004 provide the government the authority to notify or denotify any terrorist organisation, but do not need it to provide a justification for doing so.

With this research, it is hoped that it might bring to light how governments from all political stripes are using the UAPA, a harsh and draconian legislation, to crush political opponents and dissidents. For example, one of the reasons in favour of the implementation of a legislation such as this one is that it is in accordance with the Directive Principles of State Policies and is done in the name of "national security." According to the critics of the act, every legislation or statutes must be in compliance with the country's fundamental rights before they can be implemented. However, the UAPA not only criminalizes the basic right to association, but it also draws little or no distinction between political protest and criminal sedition. This act, on the other hand, does all in its power to undermine political disagreement, which is a basic right that must be safeguarded by the state.<sup>15</sup>

### **SUGGESTIONS**

The above research could be summed up with following suggestions:

Immediate revocation of the bill for illegal activities (prevention). A statute which permits a degree of openness and judicial examination should replace such an act. As can be seen in the preceding contributions, significant effort must be made to reform the Police, including community, religious awareness and to strive towards a decrease of the vast arbitrary powers held by the Police.

Legislation should be established to correctly define what constitutes and does not constitute political dissent in relation to the protection of political dissent. Compensation must be paid for those persons who were held and found innocent for a considerable period of time under the UAPA.

NIA Staff may expand its approved personnel and extend its branch office in Kolkata, Manipur, Jammu & Kashmir, and Bihar. The NIA should be given powers to investigate a case on the basis of a sue-moto cognition of the planned offence. NIA shall prepare the data of arrested people, names, sex, age, location of arrest, date and time of arrest, date of custody and custody by the court. NIA shall prepare the person disclosed in Bail. NIA must have a proactive intelligence wing

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<sup>15</sup> Suchatita Basu, History and Civics Class 79 (Frank Brothers & Company, Noida, 2011).

comprising RAW and IB officers. Transfers of cases to NIA by the sole deciding authority of the DG of NIA shall be made and free from intervention by the government, political involvement and subordination.

