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**THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT BILL,**  
**2019**

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**ABSTRACT**

Our country India, a developing country that has faced many problems and challenges before and after getting independent. Terrorism is one such problem in India, not only national but is an international problem. It affected the growth and development to a great extent. So there was a need for a tough law with the help of which the nation could fight against terrorism. Many activists aforementioned that Terrorism has no religion, they are not against any person or government. They are against humanity". The word 'unlawful activity' refers to any action taken by an individual or an association, whether by committing an act or by words, either spoken or written or by signs to questions, disclaims, disrupts or is intended to disrupt the territorial integrity and sovereignty of India. Unlawful Activities (Prevention) Amendment Act, 2019 is the seventh amendment under this act. It was enacted after the withdrawal of the Prevention of Terrorism Act, 2002 by the Parliament.

Keywords: Terrorism, Law, Territory, Unlawful Activity, Integrity, Sovereignty, etc.

**INTRODUCTION**

As Noam Chomsky<sup>2</sup> stated, "One way for us to reduce worldwide terrorism is to stop engaging in it." The prima facie objective of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as 'UAPA') is to prevent certain unlawful activities of individuals and associations

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<sup>2</sup> A United States philosopher, historian, social critic, and political activist.

and to deal with terrorist activities, and other related matters. This act is applied to the whole of India, enacted by the parliament of India and enforced on 30<sup>th</sup> December 1967.

Recently, a new amendment bill is passed and assented by the House of Parliament and the President which was one of the fundamentals of present government's zero-tolerance policy against terrorism. The aim of the amendment is to enable a quick investigation process against the offenses related to terrorism. This amendment bill was introduced by Minister of Home affair, Mr. Amit Shah on 8<sup>th</sup> July 2019 in Lok Sabha. It was passed in Lok Sabha with the majority of 287 votes and Rajya Sabha with the majority of 147 votes on 24<sup>th</sup> July 2019 and 2<sup>nd</sup> August 2019 respectively. Subsequently, the Parliament received President's assent for the amendment on 8<sup>th</sup> August 2019 and was notified by the official gazette dt.14<sup>th</sup> August 2019. This amendment was enacted when the Prevention of Terrorism Act, 2002 (POTA) was withdrawn by the House of Parliament.

### **CHANGES BROUGHT BY THE AMENDMENT**

The Unlawful Activities (Prevention) Amendment Act, 2019 brought certain changes in the Unlawful Activities (Prevention) Act, 1967. Following are certain changes made by the amendment (UAPA, 2019):

- It allows that if an individual or an organization is designated as a terrorist then the personal or financial information can be shared with western agencies.
- Under Section 43 of this act, the power is given to the officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above to investigate the cases. The Amendment also empowers the National Investigation Agency (hereinafter referred to as 'NIA') officers, officers in the rank of inspectors or above, to investigate the cases.
- The amendment proposes that the prior permission or approval of the Director-General of NIA would be required if the investigation is done by an officer of the NIA, for the seizure of property.
- It provides power to NIA to conduct raids without the permission of state government, and raids can be done anywhere in the territory of India.
- A person or an individual who has been designated as a terrorist can appeal to the home secretary, who will have to dispose of the appeal within 45 days. An individual can appeal against the inclusion of his/her name in the terrorist activities and seek a hearing before the review committee formed by the centre.
- The committee formed by a centre would consist of at least two retired secretaries of the central government and headed by a sitting/retired judge of a high court. If in case, an individual is not

satisfied with the decision of the Home Secretary, the person can move to the review committee.

- Under the Act after the recent amendment, the central government may designate an organization as a terrorist organization or an individual as a terrorist if:
  1. Commits or participates in acts of terrorism;
  2. Prepares for terrorism;
  3. Promotes terrorism; or
  4. Is otherwise involved in terrorism.
- The word individual is added as according to Amit Shah “declaring individuals as terrorists are required as they float different organizations once an institution is banned” and said, “terrorist acts are committed not by an organisation but by individuals.”
- Earlier, this act defined terrorist acts, it included the acts which were committed within the scope of any of the treaties listed in a schedule of the act. The Second Schedule included nine treaties and after the amendment, one more treaty is added which is International Convention for Suppression of Acts of Nuclear Terrorism (2005).
- Sections amended in the act are:
  1. Section 2(1)(d) which is the definition of court.
  2. Section 25(1) which says that who can conduct the investigation.
  3. Heading of Chapter VI is substituted as “Terrorist Organisation And Individuals”.
  4. Marginal Heading of Section 36 is changed as now it is “De-notification terrorist organization or individual”.
  5. Amendment in Section 38 (1)(b), section 43 & 43 (c), and section 45 (1) (ii) and addition of fourth schedule.

### **NEED AND REASON FOR THE AMENDMENT**

The recent amendment in UAPA can be used as a sword to uproot the arising terrorism. With the increase in terrorist activities, it deemed necessary to eliminate the increasing terrorism as it is harmful to the nation’s security and sovereignty. So there was a need for strict laws to be made. The bill empowered the government to designate an individual as a terrorist because the organization is opened by the person, not by its constitution. If an organization is banned then those people will again form another association.

The activity of a terrorist is not executed by an organization, it is executed by persons or individuals. So by just changing the name of an organisation, they can again form a new organization. In many countries and the United Nations, the individual is declared as the

terrorist. Like Hafiz Saeed, the 26/11 mastermind and JeM chief Masood Azhar are the examples of individual as a terrorist, they are the first individuals to be designated as terrorist by not only India but also by the United States, the United Nations and the European Union. Now, the inspectors of NIA have acquired sufficient proficiency to investigate the offenses under the act and the senior officers are required to be better utilized for the supervision of investigation of the acts which will help in facilitating speedy investigation in the cases.

### **OPPOSITION OF THE AMENDMENT**

The House of Parliament passed the amendment bill after a heated debate in Rajya Sabha. It is the strictest law to remove terrorism. The Amendment Bill was passed by Rajya Sabha with 147 votes in favor and 42 votes against. Opposition members in the house argued that the amendment will infringe an individual's right to liberty<sup>3</sup> and said that the amendment is unconstitutional. The parties like the Bahujan Samaj Party and Congress supported the bill. According to Chidambaram, the real mischief is done under section 35 (2) which says that "The Centre shall exercise its power under section 35 (1)(a) in respect of an organization or an individual only if it believes that such organization and individual is involved in terrorism." According to him just by Centre governments believe an individual will be named as a terrorist, without any FIR, charge sheet, trial, conviction. Kapil Sibal alleged the centre government that they are using their brute majority in Lok Sabha and manufactured the majority in Rajya Sabha to push the unfair amendments.

Whereas Prof. Manoj Kumar Jha also showed his serious concern and said that there are many cases in which an individual is released after 15-16 yrs if found guilty and the system cannot return this much big span of life to him. He concluded that this amendment can be a harsh law. Danish Ali, citing the examples of TADA and POTA said that this law also is misused. V N Borlakunta said that the provision of this bill is taking away the rights of states. Mahua Moitra also opposed the bill saying that when the NIA is in a cloud, there is also an apprehension of an agency being misused for political purposes. Shri P. Wilson said that this is a discriminatory law and is violative of fundamental rights. Stated that the officers of centre government are not judicial authority and the opportunity of hearing is also not provided under it. Similarly, many members opposed the bill.

Replying to all the discussion the Minister of Home Affairs, Amit Shah stated that many cases related to these acts are pending and the punishment is also not awarded, so this amendment

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<sup>3</sup> Article 21 of the Indian Constitution: No person shall be deprived of his life or personal liberty except according to procedure established by law.

will help in the speedy investigation. Talking about declaring an individual as the terrorist is that the organization is formed by individuals, not by its constitution unless an individual is declared as terrorist it is impossible to stop their unlawful activities. The process of designating an individual a terrorist will be if he participates in terrorist activities helps in preparing or spreading terrorism and makes a plan for it, then only the person will be declared as a terrorist. Later, after the debate and further discussion the bill passed with the majority and later also assented by President Ram Nath Kovind on 8<sup>th</sup> August and was notified by the official gazette on 14<sup>th</sup> August 2019.

### **PLEA CHALLENGING AMENDMENT**

After the enactment, this amendment was challenged by two petitions to date in the Supreme Court. The first petition was filed by a Delhi resident Sajal Awasthi who claims to be a public-spirited individual and good Samaritan, filed Public Interest Litigation and then by an NGO called Association for Protection of Civil Rights (APCR). The petition filed by Delhi resident Sajal Awasthi contended about the inclusion of individuals as a terrorist. According to this petition, the only organization could be so notified as a terrorist. Later, another NGO also challenged the UAPA 2019. According to the petitions filed Section 35 of UAPA 2019 does not specify the detailed grounds or basis for determining an individual as a terrorist and it is an arbitrary and unfettered power of central government, without any limits which consequently amounts to the violation of Article 14<sup>4</sup> of Indian constitution. It was further argued that it directly affects the fundamental right under Article 19 (1)(a)<sup>5</sup>.

The right to dissent is a part of a fundamental right that cannot be infringed in any circumstances except in expressly mentioned conditions under Article 19(2). The petition has also stated that it is violative of Right to Reputation which is an integral part of Article 21<sup>6</sup>. NGO moved the court to declare section 35 and 36 as void as they violate the fundamental rights. A bench led by Chief Justice of India Ranjan Gogoi issued notice to the central government after the petitions; this notice will also be received by ministries of law and home. These ministries will put their views on it, keeping in mind the security and sovereignty of the nation.

### **CONCLUSION**

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<sup>4</sup> *Article 14 of the Indian Constitution*: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>5</sup> *Article 19 (1)(a) of the Indian Constitution*: All citizens shall have the right to freedom of speech and expression.

<sup>6</sup> *Supra Note 2.*

The word 'terrorism' is defined nowhere in the law, many scholars and activists attempted to define it but those were not sufficient to substantiate the concept. This concept of terrorism differs on several grounds such as religion, political motives, nation, territory etc. Even the UAPA uses the 'terrorist activity' terminology and not 'terrorism'.

The recent amendment brought in the act will considerably help in investigating the case and by this amendment, the whole act will now apply to an individual. The new law would be used sparsely. This new law will prevent terror masterminds or individuals to form an association. There was a great need for tough law to uproot terrorism from India. By enforcing the act on an individual, that person will have a fear of engaging in the unlawful activity. So, it can be considered a healthy law that may stop an individual to engage in this kind of activity and may reduce the arising terrorist acts. But the petitions filed by Sajal Awasthi and Association for Protection of Civil Rights NGO also questioned loopholes in it. However, the amendment seems somehow arbitrary because it gives power to the government to declare an individual a terrorist whereas this power should be in the hands of judicial authority. The objective of the amendment is to facilitate speedy investigation and preventing the terror activities in the future.

