

**UAPA: A BAR TO RIGHT OF DISSENT**

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**Abstract**

Unlawful Activities (Prevention) Act is a counter-terrorism law framed by the Indian legislature in 1967, since then it has been amended many times, but in the year 2019 when the latest amendment took place, it was the most debatable and had many heated arguments in the parliament. The present article covers all the aspects one must know about UAPA. Firstly, we should discuss the basic introduction and then what are the objectives of bringing such a strict law into existence. There was an utter need for such a law and it has a deep history which is also covered here. History covers a period from 1963 to the year 2019. This statute depicts that there is very little scope for any one's personal opinions hence it is mostly misused, which can be seen in the draconian provisions of this law. Later this article shall revolve around the most notable amendment of 2019 and discuss the argument in favour as well as against. Citing some of the examples of the person arrested under this law. Lastly, discussing the ways to lessen the adverse effect of this law. In toto, this article talks about how the provision of this law being amended by the government over time has gone slowly towards building a sense of fear in the mind of people.

**UAPA: A Bar to Right of Dissent****What is UAPA ACT 1967?**

Unlawful Activities (Prevention) Act is a law focusing on the effective prevention of unlawful activities association in India. Its main aim is to curb activities and make powers available for dealing with activities directed against the sovereignty and integrity of India. This act will solely deal with the discretion of the central government and it will be in the power of the government to charge anyone or any organization under the UAPA Act.

**OBJECTIVES OF UAPA ACT**

The objective of UAPA in 1967 was to prescribe any organization which is involved in any unlawful activities and to punish and penalize those who are the members of these unlawful organizations or try to support them by any means. The objective was also to punish those who fund these unlawful activities or organizations. But with time the scope of UAPA ACT also expanded and it merged "terrorist acts" along with the unlawful activities in 2004 amendment of UAPA and its definition kept expanding in further amendments as the country started to witness many terrorist attacks and activities which created havoc in the country. So it became necessary for the government to have a stringent and comprehensive law that can tackle such acts and have punishment for the same. So there were amendments repeatedly in this act from 1967 to the last year to make it comprehensive and compliant with the current situation and can act as deterrence for the perpetrators.

Yes, there is a difference between the unlawful activities and terrorist act although we use it likewise.

**Unlawful activities** which are defined in sec 2 (o) of the UAPA ACT refers to the action taken by such organizations or persons by words, either written or spoken, by signs or through pictorial representation like cartoons and placards which are against the integrity, sovereign and unity of India.

**Terrorist act** is also similar in the sense that if anyone is acting against the integrity, sovereignty and unity of India but by use of arms and ammunition and because of such acts it leads to death or injury to any individual or persons, destruction of any property of state or individual than it

will be considered as a terrorist act. Sec 16 of UAPA act deals with the punishment for the terrorist act.

There was a considerable amendment in UAPA last year in 2019 which changed few intrinsic components of UAPA and makes it more powerful than ever before and which was found debatable and arbitrary by many. There are many arguments in favour and against UAPA which we will mention further.

### **History of UAPA**

When India got independence in 1947, we were already working on the constitution to be made to make India republic and have its own set of laws and codified rules. The constituent assembly took ideas from the constitution of different nations and framed the Constitution of India, which came out to be the lengthiest constitution in the world. The fundamental rights which were given to the citizens and also to the strangers residing in the nation were absolute to some extent and there were only a few restrictions. In the very first amendment of the constitution, in article 19 the word “reasonable” was prefixed before the restriction and the word public order was added as one more ground.

Coming back to the topic of the history of the Unlawful Activities Prevention Act. There was an utter need to put some restriction in the further prevention of the sovereignty and integrity of India, so the National Integration Council set up a committee to look into national integration and regionalism for the same purpose. After this in the 16th amendment, the reasonable restrictions were imposed to protect the sovereignty and integrity of the state, later introducing the Unlawful Activities Prevention Bill in 1963<sup>1</sup>.

Later in the year 1967, the bills got president’s assent and turned into Unlawful Activities (Prevention) Act, 1967. It is extended to the whole territory of India. It had a purpose of penalizing the doers of unlawful activities and the terrorists to protect the integrity and sovereignty of the state. The authorities under this act had powers to declare an organization as a terrorist organization and people who were acting their part in such an organization were to be

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<sup>1</sup> The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967 (India)

penalized for doing so. At the time when this bill was passed it was a hard time for the nation as we just had a war with the Republic of China and amidst all this during the elections in Tamil Nadu DMK in their manifesto had point which stated that they will withdraw themselves from the Union of India and form a different state, then there was need of declaring all such institutions seeking to separate themselves from the Union as 'Unlawful'. Such institutions were banned and it was done by declaring such institutions as unlawful under sec 3 of the UAPA<sup>2</sup>.

### **Amendment of 2004**

In the year 2004, there was the misuse of the Prevention of Terrorist Activities (POTA) Act, so eventually, the government had no other choice but to repeal it and thereby amending the UAPA at the same time and modifying it for the good. The government thought that there shall be the inclusion of the provisions from the POTA act and the TADA act i.e. the Terrorist and Disruptive activities (Prevention) Act, into the UAPA itself. This very amendment of this act defined terrorism as a crime and provided powers to authorities to declare such organizations as unlawful and 'terrorist' and ban should be imposed against them. Section 2(0) which defines unlawful activity under the 2004 amendment, is marked with great ambivalence: It covers spoken and written words, along with any visual representation "which causes or is intended to cause disaffection against India<sup>3</sup>". This turned out to be a nightmare was any dissenting view, belief or a person as they were termed as 'Unlawful' and they were interrogated and harassed by the police as it had the special powers under this act. Along with this the amendment also added the words like 'terrorist organization' and 'terrorist act' and later inculcated a new concept that was 'Terrorist Gang'. Acts which were said to be unlawful could be any spoken or written format, or any visual representation of the same, as such resulting in promoting hatred against the nation.

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<sup>2</sup> Arun Ferreira et al, *Fifty Years of Unreasonable Restrictions under the Unlawful Activities Act*, The Wire (May 16, 2020, 09:02 PM) <https://thewire.in/rights/uapa-anti-terrorism-laws>

<sup>3</sup> Neoram Anuja, *the Unlawful Activities (Prevention) Amendment Act* (May 16, 2020, 09:15PM) <https://www.readersdigest.in/odds-and-ends/story-quickipedia-the-unlawful-activities-prevention-amendment-act-125599>

**Amendment of 2008**

In the year 2008, India witnessed something too awful to forget and this incident shook the nation from inside. It was the most deadly and vicious terrorist attack on India, the day of November 26, 2008, created a fear in the minds of the Mumbaikars and fellow Indians too. After this incident, the government realized what all things we fell short of and we must learn from our mistakes. The main reason was that we were not prepared for an attack that was this big, we did not have Anti-terrorism Squad in Mumbai at that very time, they were sent later on to the site. After this incident government realized that we have to establish anti-terrorism squad at every state to counter such terrorist activities. The anti-terrorism law UAPA was again in question and some changes were to be made for more strict provisions. Provisions like a longer period in police custody, detention without charge sheet and much strict procedure for bail all such things were added in the UAPA 2008 amendment. After this, UAPA became the most important anti-terrorism law in India. The National Investigation Agency (NIA) Act was also passed, it was done without any debates, and made the draft law public.

UAPA 2008 replaced Prevention of Terrorism Act (POTA) of 2002 and Terrorist and Disruptive Activities Act (TADA) (1985-95), these were repealed in the year 2004. They were repealed as they were widely criticized in the nation as well as in the world, they were termed as inhuman by many human rights organizations, each had facilitated serious human rights abuses by government forces during counterterrorism operations, including arbitrary arrests, torture, extrajudicial killings and enforced disappearances. The abuses under POTA were so widespread and serious that the then-opposition Congress Party called for the repeal of the law in the 2004 general election campaign and swiftly moved to do so once in office<sup>4</sup>.

**Amendment in 2012**

Ministry of Home Affairs in 2011, proposed a bill Unlawful Activities (Prevention) Amendment Bill, the main purpose for this amendment was to tackle the terrorism funding and making this act furthermore effective. In this amendment, the already vague definition of 'terrorist act' was further expanded including all such activities threatening the nation's economic security. It

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<sup>4</sup> Back to the future, <https://www.hrw.org/report/2010/07/27/back-future/indias-2008-counterterrorism-laws> (Last visited on May 17, 2020)

replaces many definitions; ‘people’ shall include an individual, any agency, a Hindu undivided family, any firm, any association and any group. Further an association to be declared as unlawful from the original period of 2 years to the new 5 years. New power conferred upon the Courts related to forfeiture and attachment of property.

### **Amendment of 2019**

This amendment is the latest to date and it is this amendment that is quite controversial. This amendment and the very arguments raised in the parliament are discussed in a detailed manner further in the paper. Introduced in the Lok Sabha on 8 July 2019 and cleared by the Rajya Sabha on 2 August, the law sailed through—it was neither referred to a select committee nor was it subjected to rigorous debate. Says Dave, “What happens now is, when these laws are amended, there is no serious debate in Parliament. Our parliamentarians don’t debate legislation without their party’s politics in mind. They should remember that they are representatives of the people.” Dave reminds us that even during the constituent assembly debates in 1947, members had expressed very serious reservations about giving such absolute powers to the government<sup>5</sup>.

### **No room for a Dissenting thought**

Any organization having a view against the government is named as ‘unlawful’ a mere possession of any literature which shows any unlawful agenda of the organization is punishable. Being a member of such an organization or even having any sort of contact with such an organization can put any person in suspicion and can be arrested for interrogation. We can easily see that the right of dissent is nowhere protected here.

In its 2019 amendment, it started to designate not only the organization but also the individuals as terrorists. Though the individuals possess some fundamental rights this amendment seems outrightly ignoring them. Dushyant Dave said that this is violative of right to liberty enshrined under article 21 and it designates everyone as a terrorist who talks anything against the ruling power. The definition of terrorism is too vague and it is given that the centre and the designated authorities shall decide what all acts can be included in terrorism. If we look at the recent events

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<sup>5</sup> Supra note 3

many were booked in the CAA-NRC protest under this act, two students from Jamia Millia Islamia University were arrested, Umar Khalid JNU student was also detained under the same, he posted something on social media and after this he was arrested. Many other names are booked under this draconian law, just because they had a dissenting view from the government in power. Dave adds, “The whole purpose appears to be to put pressure on several individuals of certain ideologies. Though, under Section 36 and 37, the individual booked under the UAPA can make an application to the government, stating that he has been wrongly included. The government then refers it to a review committee, headed by a retired judge. The committee has the power to remove his name. But, these are all theoretical provisions. Once his name is in it, it causes tremendous damage to the individual’s personality, his character, his standing in society.” This, experts believe, raises legitimate concerns about its possible misuse to silence any dissenting opinion, by branding them as terrorists.

Rajiv Dhawan, senior advocate and a Commissioner of the International Commission of jurists, questions the new amendments. “There was no need for amending the UAPA. What exactly is an individual “terrorist” apart from one who is part of a group, conspiracy or who aids and abets others who form the group, who were already covered by the statute before its amendment? True, the amendment enabled symbolically targeting Pakistani terrorists globally. But, in this misdirected legal imagination, it is India's citizenry that is put at risk.” “The Act enables the Indian Government to target its citizens. [Under the new provisions] Investigation before the arrest is not required and bail is impossible. This is a new species of defamation by statute which can never be lived down,” he adds<sup>6</sup>.

With acts like UAPA, people have lost the right to form associations and organizations which were supposed to help the economic and socially backward people and question the government policies which were to be framed for their upliftment. Government unhappy with them, recognizes such associations as ‘unlawful’ and prosecutes all the members’ thereon. In 2015, 72.7% of cases were such that the accused were acquitted later, so we can decipher here that most of them were detained and prosecuted for the offences they did not even commit. The police can arrest us without any warrant, detain us and question us without giving any chance to

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<sup>6</sup> Supra note 3

be presented before the magistrate. It seems unrealistic but this is the harsh reality of UAPA. In 2011 members of Kabir Kala Manch were arrested without any specific reasons and any evidence. Later they said they had links with Maoist groups. Just because they spoke against the Rashtriya Swayamsevak Sangh (RSS) they were arrested under UAPA. Any action that is in disagreement with the government policies is criminalized and mere intention to support such cause, like supporting the Kashmiris may bring one under scrutiny<sup>7</sup>.

In this new regime, there's a neo-liberalism, one cannot hold any personal opinion and cannot be the one who can question any economic or social policy of the government. This has been a major concern since the BJP has come into power. The government is so intolerant that they consider any such person against them as a Maoist and can detain him/her under UAPA. In May 2015 Kerala High Court said that being a Maoist is not a crime and no one can be detained under such circumstances. In 2011 Supreme Court said that mere membership of a banned organization is not a crime unless involved in actual violence or inciting people, this was in the case of Binayak Sen an activist when he was awarded life imprisonment by Chhattisgarh sessions court<sup>8</sup>. When there are no answers to the people who are waiting for the rights to be fulfilled then the present regime terms them as Naxalite, Maoist, terrorist or separatist. Manipur is highest in no. of UAPA cases and after Manipur it is Assam. These are violative of right to life and personal liberty (Art. 21) and right to freedom of speech and expression and to form union and associations (Art. 19)<sup>9</sup>.

### **Cruel provisions of UAPA**

We have already discussed that in most of the cases the accused is given a clean chit and he is not proven guilty. The same was said in the debates in the parliament for the 2019 amendment of UAPA. Now when the bill is passed the government can declare an individual as a terrorist and

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<sup>7</sup> Countercurrents, <https://countercurrents.org/2018/09/repeal-uapa-uphold-the-right-to-dissent/>, (last visited May 21, 2020)

<sup>8</sup> ibid

<sup>9</sup> GroundXero, <https://www.groundxero.in/2018/09/11/repeal-uapa-uphold-the-right-to-dissent/>, (Last visited, May 21, 2020)



has also given the power to NIA i.e., National Investigation Agency can also order for attachment and seizure of property of the accused during the trial<sup>10</sup>.

Mere membership of an organization is also punishable under this law, even when the organization is itself banned by the law. No one can now raise their voices against the inequality and injustice happening to them; it appears more of a personal vendetta thing than a full-fledged law to counter-terrorism. We understand that this is the need of the hour as the whole world is facing the issue of terrorism and there must be a strict law to fight against this problem. But that doesn't mean that under any suspicion we get to ruin anyone's life. As we have a principle in the adversarial system of law 'innocent until proven guilty' but here we can see that once anyone is labelled as a terrorist or accused under UAPA they are no more seen as they were seen earlier.

Detention without any charge sheet and not even presented before any judicial magistrate, there lies no difference between punishing any individual and an unlawful organization<sup>11</sup>. To be very precise the police get the power to arrest, search and seize without any warrant. Detention for up to 180 days and custody for 30 days. Bail is a matter of right but in UAPA it was very difficult rather nearly impossible to get bail. Making it possible in all sense to allow misuse of this law. Crime is undefined and one can be arrested only on the suspicion and under one's belief<sup>12</sup>.

## BRILLOPEDIA

### **ARGUMENTS (Amendment of UAPA, 2019)**

UAPA has been very controversial and in the news most of the time after its last amendment that took place last year in 2019. Before 2019 it was less publicized as it was opposed by very few but after last year's amendment it came into limelight and many started to find it arbitrary and against human rights. According to the central government, this amended law is viable and has now become comprehensive and this decision of the central government was upheld by many.

<sup>10</sup> Times of India, <https://timesofindia.indiatimes.com/india/alert-in-kashmir-would-be-about-something-very-different-omar-abdullah/articleshow/70495855.cms>, (Last visited, May 21, 2020)

<sup>11</sup> Times of India, <https://timesofindia.indiatimes.com/india/parliament-approves-amendment-to-uapa-amendment-bill/articleshow/70495866.cms>, (Last visited, May 21, 2020)

<sup>12</sup> Supra note 9

**Arguments in favour of UAPA**

1. **Shifting to a new organization** – It was seen earlier that only organizations were designated as a terrorist organisation but after 2019 amendment it was held that along with the organizations the individuals can also be designated as a terrorist by the central government which according to many was the right thing to do as in past it was noticed that organizations were banned by the government but their leaders or members were not designated as terrorist and hence not convicted so what they do was they shift or start new organizations with different names and all the funds and members of the last banned organization were transferred to the new organization and start functioning again. So to stop this cycle and loopholes this amendment was very necessary.

2. **Deterrence effect** – This stringent law will act as a deterrence effect for many individuals who might be involved in any such activities or planning to initiate one as after this law people will think more than once before committing such acts as now rather than the organization they can also be designated as terrorist, their property can be seized, ban on movements etc.

3. **Present in other countries** – Such acts are already present in other countries like the United States of America in which they can declare an individual as a global terrorist then why not our country. The USA declared Hafiz Saeed and Masood Azhar as a global terrorist and now India has also joined other countries in making their anti-terror law more stringent.

4. **Investigation** – Before 2019 amendment in UAPA the investigation shall be done by the officers of the rank of Deputy Superintendent or Assistant Commissioner of Police of the NIA but after the amendment, the investigation can be done by officers of Inspector rank of NIA which was found arbitrary by critics as they claimed Inspector may overuse and misuse these powers but was found vague and non-justifiable as the Inspector who is investigating will not take the decision on its own and after investigation, the file will be sent to the Director-General of the NIA for further corroboration and confirmation. So there may not be any misuse and abuse of powers by NIA inspectors.

5. **No political upholding** – It is sometimes seen that there is political support and impediments from the state government side to the upheld individual of their state to safeguard them. But now after the recent amendment, the NIA investigating officer can do investigation in any state without taking the permission of the Director-General of police of that state which would lead to less and less political support to unlawful organizations or individuals committing unlawful acts.

### **Arguments against UAPA**

1. **Human rights violation** – According to critics, this act is arbitrary as the exclusive powers are given to the central government to designate or label anyone as a terrorist without the judicial process as there will be no FIR or Charge sheet against the one designated and maybe sometimes an innocent can be convicted.

2. **Right to life violated** – Critics believe that when a person is charged under the UAPA the person right to life is violated because when anyone is designated as a terrorist there is no imminent judicial procedure and procedure is very long as initially, that person has to file an appeal to the central government then if central govt. reject it then the person has to file another appeal within 30 days then there will be the appointment of the committee regarding this matter which is also appointed by the central government and if the committee rejects then the person can knock on the door of the judiciary. This is a very long and procrastinated procedure which will affect the reputation of the person and social boycott against him. This may destroy anyone's reputation which is an intrinsic part of the Right to Life (Article 21 of the constitution).

3. **Misuse and Overuse of Power** – It is held that in the past there are instances in which many innocent people like a human right activist are put behind bars and are equated with a terrorist like Hafiz Saeed and other designated global terrorists. The burden of proof is also shifted to the person accused rather than the prosecution which happens in all criminal cases.

4. **Denial of bail** - If police present the charge sheet or case diary to the judiciary and the judiciary finds out there is a prima facie case against the accused then his right of bailor anticipatory bail will be suspended. Now most will think if the case diary and charge sheet designated any person guilty then there's nothing left to justify but as all these documents are the

documents of the state, so people are reluctant to trust the charge sheet, case diary and other documents of the state designating a person guilty under the UAPA.

### **Noteworthy arrests made under the act**

**Ajmal Amir Kasab** - Ajmal Amir Kasab, the lone terrorist that was caught alive of the 26th November/2011 terrorist attack that shocked the whole nation was found guilty under the UAPA and other offences under various sections of the Arms Act, the explosives act, the passport act, the customs act, the railways and foreigners act and other minor cases. Under the Unlawful Activities (Prevention) Act (UAPA), the court found him guilty of “being a member of the terrorist organization Lashkar-e-taiba.” Kasab was held culpable for “committing terrorist acts under section 15 of the UAPA. Kasab was sentenced to death by the trial court and the decision was upheld by the Bombay High court and the Supreme Court of India. Kasab was hanged on 21st November 2012 and buried at Yerwada Jail in Pune<sup>13</sup>.

**Binayak sen** – Binayak sen, vice president of the People’s Union of Civil Liberties had been in jail for two years after the so-called draconian Unlawful Activities (Prevention) Act was clamped on him because he was allegedly accused of being a courier for an alleged Naxal leader lodged in a Chattisgarh jail while on a visit as a doctor. According to many, his charges were all bogus and his conviction was arbitrary. Sen was a famous personality and a man of honour, he worked for the upliftment of poor and tribal communities and his unwavering commitment to civil liberties and Human rights can never be challenged for which he was accoladed with the prestigious Jonathan Mann Award for Global Health and Human rights<sup>14</sup>. Sen never lost hope in justice and was given bail by the Supreme Court Of India, walked free from Raipur jail after two years of imprisonment. Coming out of Jail was a big threshold of his life and when asked by a journalist is there anything he fears or threatened from, Sen told, “I am still threatened by the Chhattisgarh government.” Intellectuals, Rights groups and many doctors from all over the world have signed the petition for his release and even Nobel laureates join the campaign. According to Sen, they have different agendas to maintain the peace, they used to protest for all kinds of military

<sup>13</sup> BBC, <https://www.bbc.com/news/world-south-asia-12369352>, (Last visited May 22, 2020)

<sup>14</sup> Amnesty International, <https://www.amnestyusa.org/sure-binayak-sen-is-free-but-what-about-kartam-joga/>, (Last visited May 22, 2020)

interventions whether that of Maoists or the state administration or structural violence that aid poverty to prevail<sup>15</sup>.

**Umar Khalid, Meeran Haider and Safoora Zagar** - The police booked Jawaharlal Nehru University student leader Umar Khalid and two other Jamia Millia Islamia students Meeran Haider and Safoora Zagar under Unlawful Activities (Prevention) Act which left the Student Community in Shock<sup>16</sup>. All these students were accused of instigating the Delhi riots through their speeches at Anti- CAA rallies and allegedly planning a conspiracy to incite communal violence. According to students and many activists, this is completely arbitrary and fascism as many activists are starting to get targeted and raising voices against injustice, inequality and against the government is not a right anymore and such draconian laws are affecting the democracy and fundamental right like Article 19 and Article 21 of the constitution<sup>17</sup>. According to the news that was published recently claims that a senior police officer said that it is not clear whether Umar Khalid has been charged under this act or not and the investigation is still on. This is a shame if a person, especially a student, is labelled as a terrorist without proper investigation and faces social boycott situations, which is why according to many this law is draconian and should be repealed<sup>18</sup>.

**Sudhir Dhawale**— Sudhir Dhawale, a Dalit activist, a writer and journalist were incarcerated on 2nd January 2011 under Sections 17, 20 and 39 of the Unlawful Activities (Prevention) Act. These sections relate to raising funds for terrorist acts, being a member of the terrorist organization and providing support to the terrorist organization<sup>19</sup>. After more than 40-month imprisonment in May 2014 RG Asmar, Judge presiding over UAPA special court – acquitted

<sup>15</sup> Ejaz Kaiser, *Binayak Sen is free but fears for his life*, Hindustan Times (May 22, 2020, 7:34 PM), <https://www.hindustantimes.com/india/binayak-sen-is-free-but-fears-for-his-life/story-QjD0PT8xoAThPjLI2LI10K.html>

<sup>16</sup> Johanna Deeksha, *This is an attack on us all: Student leaders shocked after Umar Khalid charged under UAPA*, deliver, (May 22, 2020, 7:39 PM), <https://www.edxlive.com/news/2020/apr/23/this-is-an-attack-on-us-all-student-leaders-shocked-after-umar-khalid-charged-under-uapa-11525.html>

<sup>17</sup> The Hindu, [https://www.thehindu.com/news/cities/Delhi/charge-against-former-jnu-student-leader-umar-khalid-not-yet-clear/article31403509.ece/amp/#aoh=15901558972435&referrer=https%3A%2F%2Fwww.google.com&amp\\_tf=From%20%251%24s](https://www.thehindu.com/news/cities/Delhi/charge-against-former-jnu-student-leader-umar-khalid-not-yet-clear/article31403509.ece/amp/#aoh=15901558972435&referrer=https%3A%2F%2Fwww.google.com&amp_tf=From%20%251%24s), (last visited May 22, 2020)

<sup>18</sup> The Print, <https://theprint.in/india/delhi-police-books-umar-khalid-jamia-students-under-uapa-for-northeast-delhi-violence/406259/>, (last visited May 22, 2020)

<sup>19</sup> Kractivism, <https://kractivist.org/political-prisoners-2/sudhir-dhawale-2/>, (last visited May 22, 2020)

Dhawale and other eight of all charges. The Judge chastised heavily the state police for its investigation and said, “The agency investigating has failed in corroborating and following the procedural aspects making arrest, seizure, complying with all the formalities and collection of shreds of evidence<sup>20</sup>.”

**Anand Teltumbde** – He is an Indian Dalit scholar and civil activist who was charged under the Unlawful Activities (Prevention) Act and is now fighting to stay out of imprisonment<sup>21</sup>. He was arrested on 14th of April, 2020 for his alleged links to Communist Party of India (CPI) which is a banned Maoist organization and in the caste violence that broke out in Bhima Koregaon, a small village in Maharashtra. He knew that Police raided his house after the search happened without having any search warrant which is quite arbitrary and his right of anticipatory bail was also denied by the Supreme Court of India and his plea for temporary bail by the special court was also denied. He mentioned, “Police are targeting all intellectuals and activists who are raising voices and trying to suppress and terrorize people into silence through this draconian law<sup>2223</sup>.”

### **Suggestions for a better application of UAPA**

The Unlawful Activities (Prevention) Act is undoubtedly one of the most controversial acts which existed in our country for more than 50 years now and its recent amendment that took place last year in 2019 made it more contentious and brought it into the spotlight once again. This is also true that we need such stringent acts as we have encountered repeated terrorist attacks like URI terror attack, Pulwama attack from various terrorist organizations like Jaish-e-Mohammad, Lashkar-e-taiba etc. But all these acts should be framed in a way that they do not strike the innocents like activists or intellectuals who are taking a stand and raising their voices

<sup>20</sup> Frontline defenders, <https://www.frontlinedefenders.org/en/case/sudhir-dhawale-arrested>, (last visited May 22, 2020)

<sup>21</sup> The new Indian Express, <https://www.newindianexpress.com/nation/2018/aug/29/uapa-being-misused-to-terrorise-people-into-silence-rights-activist-anand-teltumbde-1864560.html>, (last visited May 22, 2020)

<sup>22</sup> The wire, <https://thewire.in/rights/anand-teltumbde-arrest-open-letter>, (last visited May 22, 2020)

<sup>23</sup> Revathi Krishnan, *‘India being ruined’ to Redemption Song: Teltumbde, Navlakha’s open letters before the surrender*, The Print, (May 22, 2020, 8:04 PM), <https://theprint.in/india/india-being-ruined-to-redemption-song-teltumbde-navlakhas-open-letters-before-surrender/401700/>

for people in distress and regarding other social causes. Provisions should be made keeping in mind that it does not violate any human rights and should be made more comprehensive with every successive amendment rather than making it more and more disputable or draconian. There are many instances in which social and Dalit activists are charged under UAPA act and more innocents are convicted and put behind bars rather than the guilty ones.

The main issue with this act is that more than necessary power is provided to the central government to designate anyone as a terrorist without proper investigation and judicial procedures. So instead of repealing this act, there should be necessary alterations made to this act like -:

1. **Fundamental Rights not denied** – The provisions of this act should be made in a way that it does not infringe any fundamental rights and fundamental rights like Article 21 in which no person shall be deprived of his life or personal liberty which also include the right to reputation as its intrinsic part should not be taken from anyone. And also, Article 22 which is also a fundamental right which says that every person who is arrested or detained shall be produced before the nearest magistrate within twenty-four hours should be given to the one charged under UAPA for a fair trial.

2. **Check and balance** – Rather than giving all the power to the central government the power should be divided between the government and the judiciary so that the judiciary can intervene and aid in maintaining the system of check and balance resulting in fewer doubts and unbiased convictions.

3. **Audi Alteram Partem and Locus Standi** – Anyone charged under UAPA act should have the right or capacity to bring an action or to appear in a court and no person should be judged without a fair hearing in which each party should be allowed to respond to the evidence produced against him.

4. **Bail** – If there is not enough evidence against the one accused under UAPA then provisions related to bail or anticipatory bail should be eased as it was made clear by the Supreme court that release individuals on bail as much as possible with certain provisions like if he is not a threat to

the public property if the individual cannot tamper with the evidence, cannot run away from the country or threaten any witness.

5. **More comprehensive** – The Provisions of this act should be made clearer than ever before in the sense that proper and unequivocal guidelines should be given that on what basis anyone can be designated as a terrorist or which act will be considered as terrorist acts.

With making few such changes in UAPA, this act can prove to be a required one and can act as a shield for our country against all terror-related activities and prove to be deterrence in future for everyone who all is planning and are involved in Unlawful or terrorist activities.



**BRILLOPEDIA**