

# The Legislative Framework of Anti Terrorism and Fundamental Rights in India

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## ABSTRACT:

The legislative framework governing anti-terrorism measures in India has faced substantial scrutiny regarding its compatibility with fundamental rights enshrined in the country's constitution. This paper aims to elucidate the intricate interplay between anti-terrorism laws and fundamental rights, highlighting the complexities inherent in balancing national security imperatives with individual liberties. The paper further outlines the evolution of anti-terrorism legislation in India, such as the enactment of key laws such as the Terrorism and Disruptive Activities (Prevention) Act (TADA) 1987, the Prevention of Terrorism Act (POTA) 2002, and the Unlawful Activities Prevention Act (UAPA) 1967. Fundamental rights are the cornerstone of India's democratic ethos, safeguarding the dignity and freedom of its citizens. By guaranteeing the right to life and personal liberty, freedom of speech and expression, and the right to privacy, the Constitution empowers individuals to participate actively in democratic processes, voice dissent, and hold the government accountable. These rights are not absolute but are subject to reasonable restrictions in the interest of public order, morality, and national security. Despite their crucial importance, fundamental rights often find themselves at odds with the exigencies of national security, particularly in the context of anti-terrorism laws. The paper provides a comprehensive overview of the constitutional bedrock of fundamental rights in India and highlight the tension between anti-terrorism laws and these rights, highlighting the importance of maintaining a delicate balance in upholding democratic principles.

**Keywords:** anti-terrorism laws, Indian Constitution, Fundamental Rights, India, Freedom, Citizens

## INTRODUCTION:

The legislative landscape surrounding anti-terrorism efforts in India has been significantly shaped by key laws such as the Terrorism and Disruptive Activities (Prevention) Act (TADA) 1987, the Prevention of Terrorism Act (POTA) 2002, and the Prevention of Terrorism Ordinance (POTO) 2001. These laws were enacted in response to the escalating threat of terrorism, particularly in regions like Punjab and Jammu and Kashmir, and aimed to equip law enforcement agencies with robust tools to combat terrorist activities.

TADA, enacted in 1985, granted extensive powers to law enforcement agencies, including provisions for preventive detention, enhanced interrogation methods, and the establishment of special courts for speedy trials of terrorism-related cases. However, its broad and ambiguous definitions of terrorism drew criticism for potential misuse and human rights violations.

In the aftermath of the 2001 terrorist attack on the Indian Parliament, the government introduced POTA in 2002 to address perceived shortcomings in TADA and strengthen counter-terrorism capabilities.

POTA expanded the definition of terrorism and conferred sweeping powers upon authorities for detention and investigation. Yet, similar to its predecessor, POTA faced criticism for its potential abuse and infringement of fundamental rights.

Amid mounting concerns over the abuse of anti-terrorism laws and human rights violations, both TADA and POTA were eventually repealed. TADA lapsed in 1995 due to widespread criticism of its draconian provisions and allegations of misuse by law enforcement agencies. Similarly, POTA, enacted in 2002, was repealed in 2004 by the newly elected United Progressive Alliance (UPA) government, citing similar concerns about potential abuse and erosion of civil liberties.

The repeal of POTA marked a significant turning point in India's legislative approach to counter-terrorism, reflecting a shift towards a more balanced strategy that prioritizes human rights and due process. However, the imperative for effective anti-terrorism legislation remained. Consequently, the Unlawful Activities (Prevention) Act, 1967 (UAPA) emerged as the primary legislative instrument for combating terrorism in India.

The UAPA, initially enacted to address secessionist activities, has undergone several amendments to broaden its scope and enhance effectiveness in countering terrorism. Under the UAPA, organizations and individuals engaged in unlawful activities, including terrorism, are subject to stringent legal measures, including preventive detention and asset forfeiture.

In addition to the UAPA, complementary statutes such as the National Investigation Agency (NIA) Act, 2008, and amendments to existing laws like the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC), provide legal mechanisms to investigate and prosecute terrorist activities. The establishment of the NIA as a specialized agency with extensive powers of investigation and jurisdiction further strengthens the state's counter-terrorism capabilities.

However, the broad powers conferred upon law enforcement agencies under these laws raise concerns about potential infringements upon fundamental rights guaranteed under the Indian Constitution. Provisions allowing for preventive detention, warrantless searches, and extended periods of remand without charge have been criticized for undermining due process and the right to a fair trial.

Moreover, the use of special courts and tribunals with relaxed evidentiary standards and limited appellate review raises questions about the right to a fair and impartial trial. Such expedited procedures, while aimed at expediting the adjudication process, may compromise the accused's ability to present a robust defense and challenge the prosecution's case effectively.

### **TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT (1987-1995):**

TADA can be considered as the first specific anti-terror legislation which was brought in the wake of secessionist activities that emerged after the assassination of then Prime Minister Mrs Indira Gandhi on October 31, 1984<sup>1</sup>. This act is based upon the Terrorist Affected Areas (Special Courts) Act, 1984 (TAAA), which administered setting up of special courts to adjudicate upon only scheduled offences in 'terrorist affected areas'. The Terrorist and Disruptive Activities (Prevention) Act, 1987, falls within the legislative authority of the Parliament, and the Central Legislature possesses the jurisdiction to enact it, as per Article 248 in read with Entry 97 of List I. Additionally, it falls under the scope of Entry 1 of List I, specifically, 'Defence of India.' The Supreme Court affirmed that the Central Government holds the authority, as outlined in Section 3(1) of the Terrorist Affected Areas (Special Courts) Act, 1984, to

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<sup>1</sup> RAMANAND GARGE, JURISPRUDENCE OF ANTI-TERRORISM LAWS 20 (Vivekananda International Foundation, 1st ed. 2019)

designate any area as a 'terrorist affected area,' and such designation is not deemed invalid<sup>2</sup>. On the contrary, in contrast to the TAAA, TADA, upon its enactment in 1985, extended its reach beyond 'terrorist affected areas' to encompass the entire country. This broad applicability granted law enforcement agencies the authority to detain individuals whom they could establish a reasonable suspicion against, allowing for their prosecution under the provisions of this act.

With the introduction of TADA, it became a crime to (1) commit a "terrorist act," (2) conspire attempt to commit, advocate, abet, advise or incite, or knowingly facilitate the commission of a terrorist act or "any act preparatory to a terrorist act," (3) "harbor or conceal, or attempt to harbor or conceal any person knowing that such person is a terrorist," or (4) hold property that has been "derived or obtained from commission of any terrorist act" or that "has been acquired through the terrorist funds."<sup>3</sup> Addressing the argument that Sections 3 and 4 of the Terrorist and Disruptive Activities<sup>4</sup>. (Prevention) Act should be struck down because they encompass offenses defined under ordinary laws, without clear criteria for determining when a person should be prosecuted under these sections, the Supreme Court deemed this contention untenable. The court upheld the constitutional validity of Section 8 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, stating that it does not violate Articles 18 and 21 of the Indian Constitution.

The Act is also renowned for its stringent approach to bail and detention, notably outlined in Section 15. This section stipulates that bail can be denied if there isn't sufficient substantial evidence proving the accused's innocence, thereby contradicting Article 21 of the Indian Constitution, which asserts that the right to bail is intrinsic to the right to life and personal liberty. Furthermore, Section 15 of TADA permits confessions made by the accused to a police officer during interrogation to be admissible in legal proceedings. However, this stands in opposition to Sections 25 and 26 of the Indian Evidence Act, which render such confessions irrelevant and inadmissible. This apparent alignment with Article 20 of the Indian Constitution, safeguarding an accused against self-incrimination due to concerns that confessions may be made under pressure, is evident. The presence of a specific provision within TADA raises concerns regarding its compatibility with key articles in the Indian Constitution. It potentially violates Article 14 by leading to unequal treatment or discrimination against individuals facing charges under TADA. Moreover, Article 20(3)'s protection against self-incrimination may be compromised, as the provision may coerce individuals into making confessions during interrogation that could be used against them later. Lastly, concerns are raised about Article 21, which guarantees the right to life and personal liberty, as the provision in TADA allowing prolonged detention without filing formal charge sheets might infringe upon individuals' right to personal liberty. Collectively, these potential violations challenge the constitutional validity of TADA, emphasizing the importance of upholding fundamental rights in the application of anti-terrorism laws and calling into question the validity of the act.

TADA penalized various activities related to terrorism, including committing a terrorist act, conspiracy, attempt to commit, advocate, abet, advise or incite, or knowingly facilitate commission of a terrorist act or any act preparatory to a terrorist act. It also penalized harboring or concealing any person knowing

<sup>2</sup> Katar Singh v. State of Punjab, 1961 AIR 1787

<sup>3</sup> Anil Kalhan et al, Colonial Continuities: Human Rights, Terrorism, and Security Laws in India 20 COLUM.J. ASIAN L. 93, 145 (2007).

<sup>4</sup> Michael L. Jackson, The Perversion of Democracy in India: The Indian Government's Handling of Dissent in the Punjab, 9 IN PUB. Interest, 12, 14 (1989)

that such person is a terrorist, and holding property that has been derived or obtained from commission of a terrorist act or disruptive activity.

The aim of TADA was to provide law enforcement agencies with the necessary tools to combat terrorism and maintain law and order in the affected regions. However, TADA's provisions were misused, and it led to human rights violations, including illegal arrests and detentions, torture, and extrajudicial killings.

Despite the suspension of TADA, government officials continued to seek ways to increase the state's anti-terrorism powers. The same year that TADA was suspended, the central government's Law Commission proposed the Criminal Law Amendment Bill (CLAB), an initiative that contained many provisions identical to those found in TADA.<sup>5</sup> In 2000, the government replaced this bill with the Prevention of Terrorism Ordinance (POTO).

### **PREVENTION OF TERRORISM ACT, (2002-2004):**

The terrorist attacks of September 11, 2001 sent shockwaves of fear and insecurity far beyond the borders of the United States. India in particular had reason to be afraid, and its fear was not merely for the 250 Indian citizens who were trapped in the burning towers of the World Trade Center<sup>6</sup>. Since gaining independence fifty years ago, India has seen the assassination of its most prominent civil rights leader, a prime minister, a former prime minister, and a retired Army chief<sup>7</sup>.

Moreover, for over ten years, India has been fighting insurgents in Kashmir, including Islamic radicals from Pakistan and Afghanistan<sup>8</sup>. As of the fall of 2001, terrorists in Kashmir had killed thousands of civilians, policemen, and Indian soldiers, and violence raged on<sup>9</sup>. Add to these concerns the continued separatist violence in India's northeast, the potential threat of the Tamil Tigers in the south, and the existence of an organized, international crime network distributing weapons and explosives to all of the above, and it is unsurprising that government officials felt compelled to act swiftly and forcefully in the wake of Al Qaeda's assault on the United States<sup>10</sup>. India's Union Cabinet issued the Prevention of Terrorism Ordinance (POTO) in October 2001<sup>11</sup>.

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<sup>5</sup> Guatam Navlakha, POTO: Taking the Lawless Road, *ECON. & POL. WKLY.*, Dec. 8, 2001, at 4520.

<sup>6</sup> His Excellency Kamlesh Sharma, Permanent Representative of India to the United Nations on Measures to Eliminate Terrorism (Agenda Item 166) Statement at the Plenary of the Fifty-sixth Session of the General Assembly 3 (Oct. 3, 2001), at <http://meaindia.nic.in/disarmament/dm03oct01.htm> [hereinafter Measures to Eliminate Terrorism]

<sup>7</sup> ROBERT PAYNE, *THE LIFE AND DEATH OF MAHATMA GANDHI* 624, 634 (1969) ; M.C. Jain, Introduction: Interim Report on the Jain Commission of Inquiry on the Assassination of Shri Rajiv Gandhi, Former Prime Minister of India on 21st May, 1991 at Sriperumbudur, 1 (Aug. 1997), available at <http://www.indiatoday.com/jain/vol5/chap14.htm>

<sup>8</sup> The Current Crisis in South Asia: Hearing Before the Subcomm. on the Middle East and S. Asia of the Comm. on Int'l Relations H.R., 107th Cong. at 10 (2002)

<sup>9</sup> K. SANTHANAM ET AL., *JIHADIS IN JAMMU AND KASHMIR: A PORTRAIT GALLERY* 32 (2003) (showing timeline of terrorist activities following September 11, 2001); Navnita Chadha Behera, Kashmir: Redefining the U.S. Role, 110 *BROOKINGS INST. FOREIGN POL'Y STUD. POL'Y BRIEF* 2, 2-4 (2002), available at [http://www.brookings.edu/comm/policy\\_briefs/pblO.htm](http://www.brookings.edu/comm/policy_briefs/pblO.htm) (discussing terrorist activity post-September 11)

<sup>10</sup> LAW COMMISSION OF INDIA, 173RD REPORT ON PREVENTION OF TERRORISM BILL, 2000 § H 1.5-.9 (2000), reprinted in L.K THAKUR, *ESSENTIALS OF POTA AND OTHER HUMAN RIGHTS LAWS* 58-60 (2002) (citing over 2000 militant-related deaths in the northeast region of India during the late 1990s); 2001 PATTERNS OF GLOBAL TERRORISM 10-11

<sup>11</sup> TAKUR, *supra* note 6, at xii.

The Prevention of Terrorism Ordinance (POTO) was enacted as a response to the increasing threat of terrorism in India, particularly in the wake of several high-profile terrorist attacks, including the 1993 Bombay bombings and the 2001 Indian Parliament attack. POTO aimed to provide law enforcement agencies with enhanced powers to combat terrorism effectively and to strengthen the legal framework for prosecuting and detaining individuals suspected of involvement in terrorist activities. The enactment of POTO was a response to the growing threat of terrorism in India, as evidenced by a series of terrorist attacks targeting various parts of the country. The government perceived a need for a comprehensive anti-terrorism law to address this threat effectively. POTO sought to provide law enforcement agencies with additional legal tools and powers to investigate, prosecute, and prevent terrorist activities. It included provisions for preventive detention, expanded powers of arrest and interrogation, and measures to strengthen the prosecution of terrorism-related offenses. POTO aimed to serve as a deterrent to potential terrorists by imposing harsh penalties for terrorist activities and enhancing the government's ability to disrupt terrorist networks and plots before they could be carried out. However, despite its intentions, POTO faced significant criticism from various quarters, including human rights organizations, legal experts, and civil society groups. Critics raised concerns about the potential for misuse and abuse of the law, violations of fundamental rights, and lack of adequate safeguards against arbitrary detention and abuse of power by law enforcement agencies.

POTO was criticized for its provisions allowing for prolonged detention without trial and the potential for abuse by law enforcement agencies. Critics argued that these provisions undermined the principles of due process and fair trial, leading to human rights violations. POTO lacked sufficient safeguards to prevent misuse of its provisions and to protect the rights of individuals detained under the law. There were concerns about the absence of adequate judicial oversight and the potential for arbitrary detention based on vague or overbroad definitions of terrorism-related offenses. POTO faced strong opposition from political parties, civil society organizations, and human rights activists, who campaigned for its repeal on the grounds that it violated democratic principles and fundamental rights. The repeal of POTO became a contentious political issue, with critics calling for its replacement with a more balanced and rights-respecting anti-terrorism law.

To some, POTO bore an ominous resemblance to the notorious Terrorist and Disruptive Activities (Prevention) Act (hereinafter TADA), which lapsed in 1995 after years of abuse<sup>12</sup>.

Despite some initial criticism, however, events in India soon made POTO an apparent necessity to the ruling coalition and many other legislators<sup>13</sup>. On December 13, 2001, Muslim terrorists, allegedly backed by Pakistan, attacked the Indian parliament in a failed attempt to assassinate legislators<sup>14</sup>. The Cabinet condemned the attack as targeting "the very heart of our system of governance, on what is the symbol and the keystone of the largest democracy in the world." Three months later, during a rare joint

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<sup>12</sup> SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE, *supra* note 8, at 15; THAKUR, *supra* note 6, at 4; TADA in New Garb, TRIBUNE (India), Oct. 18, 2001, 1, available at <http://www.tribuneindia.com/2001/20011018/edit.htm#1>

<sup>13</sup> SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE, *supra* note 8, at 2-3; 11 Killed in Attack on Parliament, TRIBUNE (India), Dec. 13, 2001, available at <http://www.tribuneindia.com/2001/20011213/main8.htm> (reporting terrorist attack on India's Parliament on December 13, 2001)

<sup>14</sup> H.E. Lal Krishna Advani, Indian Home Minister, Statement on the Terrorist Attack on Parliament House, 1, 2 (Dec. 18, 2001), at [http://www.indianembassy.org/new/parliament dec 13 01.htm](http://www.indianembassy.org/new/parliament%20dec%2013%2001.htm); Parliament Suicide Attack Stuns India, BBC NEWS (Dec. 13, 2001), at <http://news.bbc.co.uk/1/hi/world/south-asia/1708853.stm>.

session convened at the Prime Minister's request, the temporary ordinance became the Prevention of Terrorism Act (POTA)<sup>15</sup>.

POTA aimed to facilitate the charging of individuals involved in terrorist activities, providing law enforcement agencies with expanded powers to address terrorism. Nevertheless, the implementation of POTA became controversial, revealing instances of alleged misuse and abuse of power. For instance, in 2002, the state government in Gujarat filed charges under POTA against 62 Muslims for their supposed involvement in the Godhra train burning. This sparked public outcry, and although the charges were initially withdrawn, they were later reinstated against 121 individuals.

Moreover, POTA faced criticism for being utilized as a tool for political vendettas and suppression in states like Andhra Pradesh and Jharkhand. Studies indicated that the application of charges under POTA in these states was associated more with political activities, caste, and tribal status than actual involvement in criminal activity. By 2004, over 280 individuals had been charged under POTA in Gujarat, the majority of whom were Muslim.

The contentious and allegedly discriminatory implementation of POTA led to widespread criticism and concerns about its alignment with constitutional safeguards and human rights principles. Consequently, after the United Progressive Alliance (UPA) government assumed power in 2004, POTA was repealed, fulfilling its commitment to abolish the law. The enactment and subsequent repeal of POTA highlights the intricate and disputed nature of anti-terrorism legislation in India, highlighting tensions between addressing national security concerns and safeguarding fundamental rights and civil liberties.

#### • DEFINITION OF 'TERRORISM':

The Prevention of Terrorism Act, 2002 (POTA) faced criticism primarily due to its notably expansive definition of terrorist under Section 3 of the Act, raising concerns about its potential infringement on fundamental rights, especially the right to free speech and expression. The act's definition of terrorism was perceived as overly broad and comprehensive, prompting questions regarding its constitutionality.

In particular, POTA's provisions were subject to scrutiny for their potential impact on the fundamental right to free speech and expression, as guaranteed by Article 19 of the Indian Constitution. The language employed in the act, including terms like 'advocate' and 'incite,' for they implicated issues of free speech and political expression<sup>16</sup> was viewed as having the potential to encroach upon the right to free speech and expression. The same problems arose under section 21 of POTA, which made it an offense for one to "invite support for a terrorist organization" or "address a meeting for the purpose of encouraging support for a terrorist organization . . ."<sup>17</sup> POTA did more, however, than create broad new crimes under the rubric of terrorism. Like the PATRIOT Act, POTA defined terrorist acts in generalized terms that encompassed ordinary cases of murder, robbery, theft, and comparable offenses<sup>18</sup>. Thus, its violators could have been subject to improperly severe penalties and overzealous law enforcement officials attempting to circumvent constitutionally-mandated procedural safeguards<sup>19</sup>. This generated

<sup>15</sup> Two Pak-Backed Outfits Banned Under POTA, TRIBUNE (India), Apr. 1, 2002, available at <http://www.tribuneindia.com/2002/20020402/nation.htm#1>.

<sup>16</sup> Supreme Court Upholds POTA, Vaiko May Get Some Relief HINDU (India), Dec. 17, 2003, available at <http://www.hindu.com/2003/12/17/stories/2003121704620100.htm>

<sup>17</sup> Prevention of Terrorism Act, § 21 (1), (3), reprinted in THAKUR, supra note 6, at 21-22.

<sup>18</sup> Heath H. Galloway, Note, Don't Forget What We're Fighting For: Will the Fourth Amendment Be a Casualty of the War on Terror?, 59 WASH. & LEE L. REV. 921, 967-70 (2002)

<sup>19</sup> Prevention of Terrorism Act, §§ 3, 4, reprinted in THAKUR, supra note 6, at 10-13; SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE, supra note 8, at 5.

apprehensions that individuals engaging in public rallies or expressing certain opinions could be targeted under the act, even if their actions did not meet traditional criteria for involvement in terrorist activities. The expansive and ambiguous language used in defining terrorism under POTA raised significant concerns, as it could pave the way for the misuse of the act to suppress legitimate forms of expression and dissent. Critics contended that the act's provisions lacked sufficient safeguards to protect the fundamental rights of individuals, and the broad definition of terrorism could be exploited to quash political opposition and legitimate activism.

- **ARREST AND DETENTION:**

The Prevention of Terrorism Act, 2002 (POTA), introduced a provision granting the police the authority to detain a suspect for up to six months, extending the duration beyond the three months stipulated in the Criminal Procedure Code. This extension in the period of detention raised significant concerns regarding the potential for prolonged confinement without the filing of a charge sheet, thereby posing a potential infringement on the rights of the accused.

Section 49(2) of POTA allowed police to detain a suspect for up to 180 days without a formal charge, far exceeding the limit under ordinary Indian criminal law<sup>20</sup>. Although the Indian Constitution requires police to promptly inform a person of the grounds for his or her detention and to provide the "earliest opportunity to make a representation" before a magistrate<sup>21</sup>, and Indian case law identifies a speedy trial as "an integral and essential part of the fundamental right to life and liberty enshrined in the Constitution,<sup>22</sup>" POTA managed to dramatically undermine these safeguards against the arbitrary and punitive detention of innocents<sup>23</sup>.

The extended detention period permitted by POTA was perceived as problematic due to its potential implications for prolonged confinement without adequate evidence or justification. This sparked apprehensions about the possibility of law enforcement authorities abusing their power, thereby impacting the fundamental rights of the accused, including the right to a fair trial and the right to personal liberty.

The provision for extended detention under POTA was viewed as a departure from established legal procedures and safeguards designed to protect the rights of the accused. Critics argued that this provision was inconsistent with the principles of a democratic society, as it could be exploited to target individuals without sufficient evidence or justifiable cause.

Connecting this with the Indian Constitution, the concerns about prolonged detention without filing a charge sheet under POTA were seen as potentially infringing on the constitutional rights of the accused. Fundamental principles enshrined in the Constitution, such as the right to personal liberty and a fair trial under Article 21, were deemed at risk due to the extended detention powers granted by POTA, fueling debates about the act's constitutionality and its alignment with democratic principles.

- **REPEAL OF POTA:**

On 26 March 2002, the very arguable anti-terror law, the Prevention of Terrorism Act (POTA) was

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<sup>20</sup> See *id.* § 49(2), reprinted in THAKUR, *supra* note 6, at 43-44; SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE, *supra* note 8, at 87

<sup>21</sup> INDIA CONST., pt. I, art. 22(2), (5); SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE, *supra* note 8, at 87

<sup>22</sup> *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 S.C.C. 81

<sup>23</sup> Prevention of Terrorism Act, § 49(2), reprinted in THAKUR, *supra* note 6, 43-44; SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE, *supra* note 8, at 87.

passed with a gross 425 votes for the Act and 296 against the Act, soon after a 10-hour discussion within the parliament. the intensity of the consequences of the bill can be seen clearly by the rejection of the bill in the upper house of the Indian Parliament, resulting in a joint session of Parliament<sup>24</sup>.

A step has been taken place solely the third time in the past. The Indian Ministry of Home Affairs even after the initial ordinance after the September 11, 2001 terror attacks, claimed an upsurge of terrorist activities, an increase of cross border acts of terrorism, and insurgent teams in numerous parts of the country, despite the very fact that the state of Jammu and Kashmir witnessed within the terrorist incidents happening in the state<sup>25</sup>.

The primary rationale behind the repeal of the Prevention of Terrorism Act (POTA) lies in its frequent misuse, particularly in singling out individuals as terrorists, often targeting those who express dissent against the government. This reflects a clear instance of arbitrariness, violating the human rights of innocent people and encroaching upon their fundamental rights. Following the enactment of POTA, a review committee assessed its impact and received feedback, ultimately determining that the Act was highly problematic, continuously infringing upon the rights of individuals.

#### **UNLAWFUL ACTIVITIES PREVENTION ACT, 1967:**

Earlier anti-terrorism Acts were repealed for the reason that they gave immense power to the hands of the executive without providing any efficient safeguards<sup>26</sup>. The origin of the UAPA is often traced back to the colonial era during 1908 when the British Raj implemented the Criminal Law Amendment Act<sup>27</sup>. Enacted in 1967, the UAPA has been subject to multiple amendments, with the most recent occurring in 2019. As the UAPA was the primary legislation to reduce the number of terror attacks, the provisions under the Act are more stringent and non-bailable as compared to other criminal offenses<sup>28</sup>. The word "unlawful association" was first used to criminalize the Indian national movement in 1908 under the Criminal Law Amendment Act. Ironically, after independence, the government now employs the same authority to quell political dissent through the implementation of legislation like the UAPA<sup>29</sup>. This Act grants the Central Government the authority to designate an organization as unlawful if it believes the association "has become an unlawful association." Several provisions are also against the principle of natural justice and fundamental constitutional guarantees<sup>30</sup>.

Between 2016 and 2019, the period for which UAPA figures have been published by the National Crime Records Bureau (NCRB), a total of 4,231 FIRs were filed under various sections of the UAPA, of which

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<sup>24</sup> M .Shivya Lakshmi, Ms. Jaya Preethi: "A critical analysis on repeal of Prevention of Terrorism Act"120 IJPAM 4756-4757 (2018)

<sup>25</sup> *ibid.*

<sup>26</sup> Bhamati Sivapalan & Vidyun Sabhaney, 'In Illustrations: A Brief History of India's National Security Laws' (The Wire, 27 July 2019) accessed 25 June 2022

<sup>27</sup> Priyanka Sinha, 'The Constitution of India versus the Unlawful Activities (Prevention) Act, 1967', (International [www.journalcra.com/sites/default/files](http://www.journalcra.com/sites/default/files) Journal of Current issue df/41526.p Research, 21 May 2021) accessed 22 December 2021

<sup>28</sup> Kanishka Vaish, 'UAPA Act: A Black Letter or a Necessary Evil' (LexLife India, 30 October 2021) accessed 22 December 2021

<sup>29</sup> Anushka Singh, 'Criminalising Dissent: Consequences of UAPA' (2012) 47(38) Economic and Political Weekly accessed 22 September 2022

<sup>30</sup> Pragya Barsaiyan, 'Death Sponsored by the State: How the UAPA toys with Personal Liberty' (Bar and Bench,10 August 2021) accessed 22 December 2021



Records Bureau (NCRB), a total of 4,231 FIRs were filed under various sections of the UAPA, of which 112 cases have resulted in convictions<sup>31</sup>.

The UAPA's provisions have been the subject of scrutiny and debate, with critics expressing concerns about the potential misuse of the Act to target legitimate political activities and the impact of its broad and vaguely defined language on civil liberties and fundamental rights. However, the Act's implementation and its compatibility with constitutional safeguards and human rights principles have been points of contention, leading to legal challenges and criticisms from human rights organizations and civil society groups.

- **DECLARATION OF UNLAWFUL ASSOCIATIONS:**

Section 3(1) of the Unlawful Activities (Prevention) Act, 1967, grants the Central Government the authority to take action against organizations involved in activities deemed unlawful. This includes activities related to secessionist movements or those that promote enmity between different groups based on factors such as religion, race, or place of birth. The provision empowers the Central Government to proscribe such organizations and impose penalties on individuals associated with them.

Furthermore, Section 4 of the UAPA mandates the establishment of a tribunal within 30 days of the declaration of an organization as unlawful. This tribunal is tasked with adjudicating the matter and providing a forum for the affected organization to present its case and challenge the government's decision. The tribunal's role is to ensure procedural fairness and review the government's declaration, thereby serving as a check on the executive's power to proscribe organizations.

Section 15 of the act in question employs vague and arbitrary language such as "likely to threaten" or "likely to strike terror in people" to eliminate the need for establishing mens rea, a crucial element in determining terrorist actions. Additionally, the definition encompasses all actions "likely to cause the death of, or injuries to, any person or persons" as sufficient grounds to establish the likelihood of a terrorist act. This ambiguity within the provision's text could potentially be exploited to categorize lawful protests by citizens, students, and activists as "terrorist acts" under the pretext that these activities, even if initially peaceful, might escalate into violence and cause injuries or deaths. This broad interpretation raises concerns about the provision's potential to stifle legitimate dissent and undermine the right to peaceful assembly.

No distinction, however, is made between the right to dissent and free speech, and the crime of committing violent acts against the state<sup>32</sup>. This gives the State vague powers to arrest and detain any individuals that protest against its policies, actions or demand any form of accountability. This violates the citizens Fundamental Right to Freedom of Speech and Expression, Right to Protest, Right to Liberty and Free Movement, and Right against Illegal Detention<sup>33</sup>.

- **INVESTIGATION AND PROSECUTION:**

The Unlawful Activities (Prevention) Act, 1967 (UAPA) grants extensive powers to law enforcement

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<sup>31</sup> Prerna Dadu, 'Analysis of use of UAPA from NCRB Data' (Centre for Law & Policy Research, 1 July 2020) accessed 23 June 2022

<sup>32</sup> Former Supreme Court judges raise concerns over misuse of UAPA' (The Hindu, 25 July 2021) <<http://www.thehindu.com/news/national/former-supreme-court-judges-raise-concerns-over-misuse-of-uapa/article35516005.ece>>accessed 22 December 2021

<sup>33</sup> Aakar Patel, 'UAPA A Tool Of Repression, The Amendment Just Makes It Worse' (Outlook, 10 January 2021) <<http://outlookindia.com/website/story/opinion-clause-by-clause-taking-liberties-with-human-liberty/380672>>accessed 22 December 2021

agencies for the investigation and prosecution of individuals and organizations involved in unlawful activities. These powers are aimed at strengthening the government's ability to combat terrorism and other unlawful activities that pose a threat to national security.

Section 43D(2) of the UAPA provides a further extension to the 'extended period' under the ordinary law and provides for the accused to be detained for a period of 180 days. This is done to grant the investigating agencies additional time to conduct the investigation without any inconsistency. However, this provision has been misused widely to detain the accused in jails denying them their right to bail due to huge delays in the filing of charged sheets. In several instances, routine extensions for simple investigating procedures have been demanded and the investigating agencies have time and again tried to justify their own delays claiming privileges under exceptions in the law<sup>34</sup>.

Under the UAPA, law enforcement agencies are empowered to conduct thorough investigations into suspected unlawful activities, including acts of terrorism and support for terrorist organizations. This includes the authority to gather evidence, conduct surveillance, and take necessary measures to prevent and counter unlawful activities.

In addition to investigative powers, the UAPA also provides for the establishment of special courts for the trial of UAPA-related cases. These special courts are dedicated to handling cases related to unlawful activities, including terrorism and other threats to national security. The establishment of special courts is aimed at ensuring the swift and efficient administration of justice in cases related to terrorism and unlawful activities. These courts are empowered to handle cases involving offenses such as membership of an unlawful organization, conspiracy, and support for terrorist activities. The UAPA mandates that these cases be tried by special courts, which are designated by the state government in consultation with the Chief Justice of the High Court.

The establishment of special courts is a crucial aspect of the UAPA's framework for addressing terrorism and unlawful activities. By designating specific courts to handle these cases, the Act aims to ensure that they are dealt with expeditiously and efficiently, without undue delay or interference. However, the implementation and impact of these provisions have been the subject of scrutiny and debate, particularly regarding their potential implications for the right to a fair trial and due process.

#### • **RESTRICTIONS ON GRANT OF BAIL:**

Bail, in law, means procurement of release of a person awaiting trial or an appeal from prison, by the deposit of security to insure his submission at the required time to legal authority<sup>35</sup>. Section 43D(7) of the Unlawful Activities (Prevention) Act, 1967 (UAPA) imposes restrictions on the grant of bail to individuals accused of committing or conspiring to commit unlawful activities. Additionally, it allows for the detention of accused persons for extended periods without the filing of a charge sheet.

Regarding the grant of bail, the UAPA imposes restrictions that can result in the denial of bail to individuals accused of unlawful activities. This means that individuals arrested under the UAPA may face challenges in obtaining bail, even if they have been detained without formal charges being filed against them. The Act's provisions regarding bail are stringent and can lead to prolonged detention for the accused individuals.

<sup>34</sup> Gautam Navlakha v National Investigation Agency 2021 (3) Bom CR(Cri) 103

<sup>35</sup> Sreenu, 'Bail, Anticipatory Bail, Mandatory Bail & Bail after Conviction' <<http://districts.ecourts.gov.in/sites/default/files/6-bail%20Anticipatory%20bails%20-%20Sri%20M%20Sreenu.pdf>> accessed 22 December 2021

Furthermore, the UAPA allows for the detention of accused persons for extended periods without the filing of a charge sheet. This means that individuals arrested under the UAPA can be held in custody for significant periods before formal charges are brought against them. The Act's provisions regarding detention without the filing of a charge sheet can result in prolonged pre-trial detention for the accused individuals.

These restrictions and provisions under the UAPA are aimed at addressing the challenges posed by unlawful activities, including terrorism, and are intended to prevent individuals accused of such activities from being released on bail or from evading prosecution. The restrictions on bail under the UAPA may raise questions about the right to personal liberty, as individuals accused of unlawful activities could face challenges in securing their release on bail.

Additionally, the provision allowing extended detention without filing a charge sheet may impact the right to a fair trial, as individuals could be held in custody for significant periods before formal charges are brought against them. The constitutional principle of justice and fairness requires that any limitations on personal liberty and procedural safeguards are balanced to ensure the protection of individual rights.

The misuse of UAPA by the authorities to target religious minorities, activists, peaceful protestors and others demanding accountability and good governance is more apparent than ever. As per the government data, there has been a 72 percent increase in the number of arrests made under the UAPA in 2019 compared with the number made in 2015. The conviction rate of around 2% has also been disclosed with only 149 members being convicted out of the total 4690 members arrested between 2018-20.