



## UAPA in Jammu and Kashmir: A Functional Analysis

Arvind Jasrotia\*  
Preetinder Pal Sodhi†

### Abstract

The preservation of individual liberty and freedom depends on each nation's ability to maintain its sovereignty and integrity. A democratic country like India must balance the preservation of its sovereignty and integrity with the essential freedom of her inhabitants to freely express themselves. This paper delves into the practical applications of the provisions of the Unlawful Activities (Prevention) Act, 1967 (UAPA) which was passed to address terrorism, threats to national security, maintenance of peace, and protection against civil liberties' invasion and abuse by individuals in power. A comprehensive analysis of the UAPA's legal framework is provided with an emphasis on its key provisions, the authority granted to law enforcement organizations, and the accompanying threats to constitutional rights and due process inherent in its application. The paper begins by examining the legislative purpose of the UAPA and its historical development, emphasizing the necessity of having all-encompassing counter-terrorism legal measures. The necessity of having adequate safeguards, oversight mechanisms, and routine reviews of the UAPA's implementation in order to balance the concerns about national security and the concerns about the defence of basic rights has been emphasized. The paper provides a snapshot of the assessment of the awareness and grasp of the common people in J&K about the UAPA and what it entails for them. There is also a voicing of the fears and suggestions for the UAPA's potential for abuse and enhancing its accountability. These recommendations cover changes in the law to improve compliance with international human rights standards, such as clearer definitions of 'terrorist activities', increased judicial review, protection against arbitrary imprisonment, and clauses for recourse and compensation in the event of abuse.

---

\* Professor, Department of Law, University of Jammu, J&K, India.  
email: arvind\_jasrotia@yahoo.co.in

† Research Scholar, Department of Law, University of Jammu, J&K, India.

**Keywords:** Terrorist Activity, National Security, Unlawful Activities Prevention Act, Awareness, Potential for Misuse of Law

## **1. Introduction**

The Government of independent India inherited a criminal justice system put together by the 200 years old British rule. However, the government continues to enact many clauses in their entirety without making the necessary adaptations, modifications, or changes to reflect the needs of a country that had just gained independence from British rule. This was not in any way due to the lack of efforts by the lawgivers of the county but more due to the colonial yoke that misted the eyes and senses of those at the helm of the justice system. The lack of time and urgent need for having a legal system in place forced the hands of many framer of the future justice of the country to adapt and modify the already available laws on the subject and to redefine them to a somewhat variant applicability. This does leave a lot of room for discussion on the subject, especially regarding the changed circumstances in the county over the past century as well as the requirements of the evolved population structure of the nation. Along with these considerations, there is also the very relevant aspect of the changed territorial and ethnic presence of various communities inhabiting particular geographical niches of the country.

The Criminal Law Amendment Act, 1908 paved the way for establishing the concept of 'unlawful association' which was primarily done to advance British colonial aspirations and apparently laid the foundation for UAPA. The amendment's primary goal was to criminalize the Indian freedom movement and outlaw any organizations that posed a threat to public peace. When India attained Independence in 1947, the Government retained the provisions of the Criminal Law Amendment Act, 1908 which were used by the then Government to suppress Anti-Government voices.<sup>1</sup>

---

<sup>1</sup> The Indian Criminal Law Amendment Act, 1908 (Act 14 of 1908).

Soon after the partition of India and the establishment of Pakistan and the subsequent exodus of populations across geographical terrain put India in a precarious position where she faced a multitude of challenging situations and fissiparous tendencies, including violence and displacement. To address these issues, the Preventive Detention Act, 1950 was enacted by the Parliament, as a temporary measure, subject to annual review by the Parliament. The Act permitted the detention and imprisonment of those whom the government saw as a threat to stability in society and economic expansion. For nineteen years, the Preventive Detention Act, 1950 was periodically extended with/ without modifications until 1969, when it was allowed to expire due to the diminished Congress majority in the Parliament.<sup>2</sup>

## **2. Defining Terrorism: Varied Facets and Derivations**

The definitions of terrorism suggest that terrorism act involves violence of the highest nature and it is to achieve political ends. It has been observed that internationally there is no uniform definition of terrorism, as for some it is a freedom struggle and right of self-determination, while for others it is a case of sabotage and mass destruction of property and loss of human life. In the wake of the French Revolution, modern terrorism emerged, characterised by acts of random violence, evolved after the conclusion of World War II.<sup>3</sup> The global incidence of terrorist attacks skyrocketed in the 1970s and 80s. Terrorism, however, has always been linked to the bloodshed. There have been several shifts in the definition of terrorism throughout history. During the early period, terrorism was used by the rulers of the state against the citizens to maintain their

---

<sup>2</sup>. Preventive Detention: Law, Meaning, PD Act, Significance, available at: <https://byjusexamprep.com/upsc-exam/preventive-detention> (visited on Dec. 20, 2023).

<sup>3</sup>. Imrana Begum, "The War on Terrorism and NATO's Role in Afghanistan" *25 Journal of European Studies* 71(2019).

supremacy.<sup>4</sup> Gradually citizen groups used terrorism as a mode to overthrow dictatorship and the obsessive violence of tyrant rulers.<sup>5</sup> In the present century, terrorism is being used as a tool to achieve religious and political ends to a much greater degree than ever before. The religion and ethnicity-based terrorist groups continue to be active. One could cite the Irish Republican Army (IRA) of the UK and the Christian separatist groups of Southern Sudan as examples of Christianity-based groups and the various terrorist groups of Egypt, Algeria, West Asia and the Gulf, the sectarian and 'jihad' groups of Pakistan, the 'Taliban' of Afghanistan and the Islamic groups of Bangladesh.<sup>6</sup> The Central Asian Republics (CARs) and Chechnya and Dagestan in Russia are examples of active Islam-based terrorist groups.<sup>7</sup>

The scenario of terrorism is an ongoing process in several parts of the country. There are several ethnicity-based groups currently active in India's North-eastern states while the Pakistan militancy continues to threaten the peace process in Jammu and Kashmir and other parts of India. There have been several international agencies responsible for and being associated with terrorism, for instance, Liberation Tigers of Tamil Ealam (LTTE) in Sri Lanka and the Basque groups of Spain.<sup>8</sup> The 9/11 terrorist attacks on the United States, carried out by the Islamic terrorist group al-Qaeda, on September 11, 2001, resulted in the deaths of 2,996 people, injuries to over

---

4. Katarzyna Czornik & Monika Szynol, "Between the Fourth and Fifth Waves: The Evolution of Modern Terrorism" 50 *StudiaPolityczne* 139-162 (2022).

5. Introduction to International Terrorism, 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 Dec. 19, 2023).

6. Shaibal Das, "The Issue of Terrorism: The Prospect of Security in South Asia" 23 *Journal of University of Shanghai for Science and Technology* 85-89 (2021).

7. Ahmed Rashid, *Taliban: Militant Islam, Oil and Fundamentalism in Central Asia* (Yale University Press, New Haven & London, 2<sup>nd</sup> edn., 2000).

8. Cyber Terrorism and Cyber Warfare in Sri Lanka, available at: [https://www.researchgate.net/publication/370629845\\_Cyber\\_Terrorism\\_and\\_Cyber\\_Warfare\\_in\\_Sri\\_Lanka](https://www.researchgate.net/publication/370629845_Cyber_Terrorism_and_Cyber_Warfare_in_Sri_Lanka) (visited on Dec.18, 2023).

6,000 others, and damage to property and infrastructure amounting to at least USD10 billion. The total cost of the attacks exceeded USD 3 trillion. The Taliban of Afghanistan, which is seen as an offshoot of Pakistan's Inter-Services Intelligence (ISI) Community, provides crucial motivation and assistance to the different Islamic terrorist organisations, and the networking and solidarity among these groups remain unwavering.<sup>9</sup>

It may be noted that over the time, terrorism has taken on several forms.<sup>10</sup> The derogatory connotation of the word makes terrorism a tough concept to pin down. The fact that the definition of terrorism varies depending on the era and society is one of the main reasons for the difficulty in putting it into words.<sup>11</sup>

### 3. Legal Response to Terrorism

The devastating terrorist attack on the World Trade Centre Twin Towers in 2001, now referred to as 9/11 in the USA, shook the international security systems. The United Nations voiced concern over the rise in terrorist attacks and mandated that all States take steps to stop and check terrorist funding by all means possible. Their additional responsibility was to detect and immobilise any suspicious accounts with the aim of prosecuting any forms of financial assistance to terrorists and terrorist groups. The primary goal was to halt the clandestine movement of funds towards terrorist acts that were oppressive and callous, often devoid of purpose.<sup>12</sup>

---

<sup>9</sup> See, Britannica, "*September 11 Attacks*", information available at: <https://www.britannica.com/event/September-11-attacks> (visited on Dec. 20, 2023).

<sup>10</sup> Mădălina Strehie, "Forms of Terrorism in Ancient Rome" 25 *International conference Knowledge-Based Organization* 161-168 (2019).

<sup>11</sup> Sergey A. Lantsov, "*Terrorism in the Middle East: Main stages of evolution*" 16 *Political Expertise: Politex* 188 (2020).

<sup>12</sup> Philip M. Taylor, "*Munitions of the Mind: A History of Propaganda From the Ancient World to the Present Day*". 3rd ed. Manchester, UK: Manchester University Press, (2003).

In India, during that same period, there were two significant terrorist attacks. One was on the Indian Parliament in 2001 and the other one was on the Jammu and Kashmir State Legislative Assembly Complex in the same year. These added further impetus to the government's resolve to enact stringent anti-terrorism laws. Indian Parliament passed the Prevention of Terrorism Act, 2002 (POTA)<sup>13</sup> to authorize powers to the police, to restrict the right to an attorney, and to allow police confessions to be used as evidence. The POTA was seen as a severe piece of legislation at that time and was repealed in 2004. With certain changes, it was reinforced as the UAPA to tackle the terrorist threats and subversive activities in the country that compromised the national security.<sup>14</sup>

#### **4. UAPA: Genesis and the J&K Scenario**

Following the 2008 Mumbai terrorist attacks, that shook the nation to the core and had drastic international repercussions, the UAPA was amended by the Parliament in 2008. A month after the attacks, the National Investigation Agency Act of 2008 (the NIA) was established as a central organization to handle terrorism-related issues. The NIA procedures require confidentiality of witness names, which prevents cross-examination in favour of defendants. The UAPA Amendment Act of 2008 encompasses a variety of substantive and procedural changes to better equip the NIA to deal with terrorism-related activities.<sup>15</sup>

There has been an increase in the number of cases throughout India due to the extension of police powers under the UAPA. Information presented to the Lok Sabha by the Ministry of Home Affairs reveals that the number of UAPA arrests increased by more than 7% in 2019 compared to 2015. Among the States of India, Jammu and Kashmir has the third-highest number of UAPA cases in 2019. The number of

---

<sup>13</sup>. The Prevention of Terrorism Act, 2002 (Act 15 of 2002).

<sup>14</sup>. Samvel Kochoi & Ron Kochoi, "International Terrorism: Attributes and Forms" *17 Russian Journal of Criminology* 81-89 (2023).

<sup>15</sup>. R. Bhanu Krishna Kiran, "The Role of NIA in the War on Terror: An Appraisal of National Investigation Act, 2008" *4 Journal of Terrorism Research* 52 (2013).

UAPA cases in Jammu and Kashmir has been steadily increasing, according to statistics from the National Crime Records Bureau. In 2015, there were fewer than 60 instances each year.

The most recent year for which data is available is 2019, when there were 255 cases.<sup>16</sup> The police in Jammu and Kashmir were making more UAPA bookings as well as increasingly resorting to taking assets under Section 25 of the Act. With the goal of 'restricting terror operations', the Jammu and Kashmir police, in February 2020 claimed to have obtained authorization to seize and attach 61 cars, five residences, six stores, land, and cash belonging to persons arrested in 46 instances.<sup>17</sup> According to some of the lawyers interviewed, there was a common perception that there is a larger trend in Kashmir of the interpretation and use of UAPA. As per interaction with the legal attorneys, many of the anti-terror laws were being invoked on the flimsiest of grounds. As per them, the main reason the police often employ the UAPA statute is because it allows them to hold the accused for the extended durations without a trial. Unlike regular criminal law, which only allows 60 to 90 days to investigate a case, UAPA grants investigators 180 days to do so. This implies that the six-month mark is the cut-off for an accused person to be able to request bail. They allege that this is a component of the police's concerted attempts to silence criticism.<sup>18</sup> The researcher was not allowed to interview the relatives of the Kashmiri youngsters who were detained and charged under the legislation. This may be due to genuine concern for the well-being of their loved ones and avoidance of any more unpleasantness.

---

<sup>16</sup> Natural Justice vis-a-vis UAPA: Death Blow to UAPA is must, available at: <https://osf.io/preprints/socarxiv/fzn98> (visited on Dec. 19, 2023).

<sup>17</sup> Tariq Hussain, Khizra Rana & Syed, Ahmed, "Corruption, Terrorism And Institutions Among Selected Countries Of The World" 5 *Pakistan Journal of Social Research* 210-222 (2023).

<sup>18</sup> The Criminal Investigation Process Volume III: Observations and Analysis, available at: <https://www.ojp.gov/pdffiles1/Digitization/148118NCJRS.pdf> (visited on Dec. 20, 2023).

## 5. The UAPA Amendments: Giving Teeth to Those in Power and Disempowering Others

A number of significant revisions to the Unlawful Activities Prevention Act (UAPA) have been made in the most recent round of modifications, the crucial one being the way in which terrorism has been conceptualised. Prior to these changes, the Act offered two categories for groupings. An 'unlawful association' is defined as one that engages in criminal behaviour, which include offences like endorsing or attempting to spark the independence of any region of India or undermining the country's sovereignty. Organisations that engage in illegal acts of terror are referred to as 'terrorist organisations' in legal contexts. These revisions undermine the constitutional structure that safeguards liberty by removing the prerequisite that a person might be considered a criminal until the legal processes have been fulfilled. The legislative process has taken over a responsibility that rightfully belongs to the courts and placed it within the purview of the executive branch. The administration has maintained that the changes were necessary to bring local legislation in line with global standards.<sup>19</sup>

The primary grounds for a person's conviction under the statute were their membership in a banned organisation and any illegal or terroristic acts committed by that organization's members.<sup>20</sup> However, the specified sections in the anti-terrorism part of the legislation have been changed because of the recent modifications. No longer is membership in a banned terrorist organisation a prerequisite for an individual's designation as a terrorist. The Act has established a new schedule to list these people. The First Schedule includes the names of all groups that are officially classified as terrorist organisations. The consequence of this new categorization is directly on the people who are part of such groups to be labelled as a terrorist which is contrary to the maxim 'innocent until proven guilty'. Thus, a member of a terrorist organisation is already

---

<sup>19</sup>. *Supra* note 17 at 6.

<sup>20</sup>. Anmol Goyal, "Analysis of Section 35 & 36 of the UAPA after the 2019 Amendment" 8 *Indian Politics & Law Review Journal* 45 (2023).

presumed a terrorist since the presumption of innocence is inapplicable in such circumstances.

It is pertinent to mention that basic rights are enjoyed by individuals, not by organisations. The State has no business granting a person freedom after he/she has been labelled a terrorist. In the short term, people will be locked up, which is counter-productive to the law's goal of combating terrorism. Second, there is no more personalised, sensitive remedial process that has been created by the modifications. The designated person is expected to adhere to the same evaluation procedure as the organisation. Here, the issue arises that a group may have more means to challenge the classification, however, the person may be incarcerated at the time they are supposed to undergo the review process to clear their name, these services may not be accessible to them.

An appeal to the original Central agency that originally labelled the person as a terrorist is the first stage in the denotification procedure. At the second tier of appeal, a review committee is established, with a member selected from the higher court serving as chairperson. While doing all of this would need substantial financial backing, the revisions also provide central authorities the authority to seize an individual's assets and render their finances inoperable. The already arduous procedure might become much more so if freedom and financial resources are gone. It is alleged that the administration might use this legislation to target specific opposition voices. Designation as a terrorist has far-reaching personal and societal consequences as the stain of terrorism will be extremely difficult to get rid of and the accusation damages his reputation in society. Further, the judges would have a hard time granting bail to someone who is tagged as a terrorist, even though the government has maintained that the bail laws have remained unchanged.<sup>21</sup>

---

<sup>21</sup> Sruthisagar Yamunan "Why Changes To India's Anti-Terror Law Letting Individuals To Be Designated Terrorists Are A Problem" Scroll, July 29, 2019 available at: <https://scroll.in/article/931987/why-changes-to>

## 6. Looking into Constitutionality of provisions

To align India's anti-terror legislation with international laws and treaties, the government has said that the modifications were essential. For instance, since 1999, the UN Security Council has issued a minimum of ten resolutions requiring member states to take specific legal actions to reduce the actions of terrorists and terrorist organisations, such as seizing the assets and limiting the mobility of individuals designated as terrorists. Organisations often alter their identities, organisational structure, and membership in order to evade sanctions. This is one of the reasons advanced in the international arena for designating people as terrorists. Recent examples of such measures taken by the UN include those imposed on Hafeez Saeed, the founder of Lashkar-e-Taiba. *Amnesty International* assert that this compliance with international standards has been selective as continual protections for a fair trial are outlined in the International Covenant on Civil and Political Rights, to which India is a signatory.<sup>22</sup> However, it is not clear whether the local constitutional rights are upheld or ignored and undermined when complying with International norms.

The Judgements on important legal questions may be required in the event of a challenge to the legislation. Could the legislature be infringing on the judiciary's domain and upsetting the constitutional balance by permitting a person to be labelled as a terrorist without a trial? Tragically, judges have already given their stamp of approval to preventative detention statutes that label a person as an anti-social element prior to the trial's conclusion. Nevertheless, in light of the gravity of being labelled a terrorist, the UAPA's modifications push such restrictions to their logical conclusion.<sup>23</sup>

---

indias-anti-terror-law-letting-individuals-to-be-designated-terrorists-are-a-problem (visited on Dec 25, 2023).

<sup>22</sup> Myo Aung Myanmar, "Myanmar Villages burned, civilians injured and killed as Rakhine State conflict escalates *Amnesty International*" *Amnesty International*, Oct. 12, 2020.

<sup>23</sup> Ritesh Mishra, "120 tribals in jail under anti-terror law for 3 years, trial yet to begin", *Hindustan Times*, Sep. 22, 2020, available at: <https://www.hindustantimes.com/india-news/120-tribals-in-jail-under>

The issue of arbitrary and harsh penalties becomes apparent in this context. Because of the far-reaching consequences of terrorist designation, the present review processes could not be enough to refute claims that this amounted to a conviction in advance of trial. Liberal democracies around the world, particularly in the US and UK, have fought against Bills of Attainders and Bills of Pains and Penalties, laws that bypass judicial trial and punishment directly. The Indian judiciary looks to these countries for guidance.<sup>24</sup>

### **7. Need for Reconsideration; Redefining the Amendments and their Applicability**

How a country handles its own residents is becoming a burning topic on a global scale. Even if terrorists are evil, the people who oppose them may be just as vicious. Their fighting style may also make or break the situation. The efficiency of the many international structures put in place to combat terrorism falls far short of expectations. Terrorist organisations with official backing have proliferated in several regions. Governments throughout the world are failing to provide their populations' most fundamental safety. Even though several laws have been passed to address this issue, the threat is still there. The fact that almost no one can agree on what causes or how to stop international terrorism further contributes to this problem. There is seldom any rush to develop workable legal processes and establish efficient legal regulations, despite the fact that we all agree that dealing with terror violence is necessary.<sup>25</sup>

In the absence of a penalty for disobedience, a statute cannot be deemed a law as it lacks legal integrity and cannot be enforced. Thus, it is true that the world is now devoid of international law, which explains why there has been a dramatic uptick in acts of

---

[anti-terror-law-for-3-years-trial-yet-to-begin/story-uRDQr8ClO5XhjXysqZJbnL.html](https://www.anti-terror-law-for-3-years-trial-yet-to-begin/story-uRDQr8ClO5XhjXysqZJbnL.html) (visited on Dec 23, 2023)

<sup>24</sup> Oliver Mac Donagh, "The last bill of pains and penalties: the case of Daniel O'Sullivan, 1869" 19 *Irish Historical Studies* 136-155 (1974).

<sup>25</sup> Arlan Siddha & Renaldo Benarrivo, "Counter Cyber Terrorism Governance In Indonesia" 5 *KhazanahSosial* 359-367 (2023).

international terrorism. Violence, whether between nations or across the globe, is not an option for combating international terrorism, the need for enforced international law has grown in recent years.<sup>26</sup>

## 8. Conclusion

In conclusion, the examination of visibility under the Unlawful Activities (Prevention) Act in the Jammu and Kashmir region reveals a complex and nuanced landscape. The UAPA, while ostensibly designed to counter unlawful activities, has raised significant concerns about its impact on individual rights, particularly in a region with a history of political volatility. The visibility of the UAPA in Jammu and Kashmir reflects not only the legal framework but also the broader socio-political context. It is imperative for policymakers, legal experts, and civil society to engage in a constructive dialogue to ensure that counter-terrorism measures are effective without compromising the democratic values that underpin a just and equitable society.

Ongoing scrutiny, review, and potential reforms are essential to navigate the challenges posed by the UAPA in the Jammu and Kashmir region and to uphold the principles of justice, transparency, and human rights. Furthermore, the visibility of the UAPA in the J&K region underscores the importance of ensuring accountability and transparency in the application of anti-terrorism laws. Instances of potential misuse or overreach must be addressed to safeguard the rule of law and protect the rights of individuals. Striking the right balance between security concerns and civil liberties necessitates a nuanced approach that considers the unique circumstances of the region. The research also brings attention to the need for a comprehensive understanding of how counter-terrorism measures impact various communities within Jammu and Kashmir. The differential impact on different sections of the population, coupled with the historical context, emphasizes the importance of context-

---

<sup>26</sup> Prabhaskar K. Dutta, "Decoded Spotlight on terror law UAPA after Stan Swamy's death", *India Today*, July 6, 2021.

specific analyses in shaping legal frameworks. A one-size-fits-all approach may not adequately address the multifaceted challenges posed by terrorism and insurgency in the region.

In moving forward, stakeholders must engage in inclusive dialogues that involve representatives from diverse communities, legal experts, and human rights advocates. Collaborative efforts should focus on refining the UAPA and associated practices to align them with international human rights standards. Such an approach will not only enhance the effectiveness of counter-terrorism measures but will also reinforce the commitment to justice and democratic values.<sup>27</sup>

In conclusion, the visibility of the UAPA in the Jammu and Kashmir region demands a holistic and adaptive response. It is not merely a legal question but one that involves the complexities of security, human rights, and historical grievances. Through continuous dialogue and thoughtful reforms, it is possible to navigate these complexities and ensure that counter-terrorism measures contribute to lasting peace, security, and justice in the region.

---

<sup>27</sup> Radha Ranjan, "Unravelling the Shadows of Terrorism as A Crime In India" 2 *International Journal For Legal Research And Analysis* 16 (2023).