India's UAPA: Jail, not bail, is the rule

ACHR ASIAN CENTRE FOR HUMAN RIGHTS
India's UAPA: Jail, not bail, is the rule.
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<td>CAA</td>
<td>Citizenship Amendment Act</td>
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<tr>
<td>CAB</td>
<td>Citizenship Amendment Bill</td>
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<tr>
<td>CFI</td>
<td>Campus Front of India</td>
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<tr>
<td>CMAM</td>
<td>Chhattisgarh Mahila Adhikar Manch</td>
</tr>
<tr>
<td>CPI (M)</td>
<td>Communist Party of India (Maoist)</td>
</tr>
<tr>
<td>CrPC</td>
<td>Code of Criminal Procedure</td>
</tr>
<tr>
<td>CRPF</td>
<td>Central Reserve Police Force</td>
</tr>
<tr>
<td>CSPS</td>
<td>Chhattisgarh Special Public Security Act</td>
</tr>
<tr>
<td>FIR</td>
<td>First Information Report</td>
</tr>
<tr>
<td>IPC</td>
<td>Indian Penal Code</td>
</tr>
<tr>
<td>JBRC</td>
<td>Jail Bandi Rihai Committee</td>
</tr>
<tr>
<td>J &amp; K</td>
<td>Jammu and Kashmir</td>
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<tr>
<td>LWE</td>
<td>Left Wing Extremism</td>
</tr>
<tr>
<td>MCOCA</td>
<td>Maharashtra Control of Organised Crime Act</td>
</tr>
<tr>
<td>MHA</td>
<td>Ministry of Home Affairs</td>
</tr>
<tr>
<td>NCRB</td>
<td>National Crimes Record Bureau</td>
</tr>
<tr>
<td>NDPS</td>
<td>Narcotics and Psychotropic Substances Act</td>
</tr>
<tr>
<td>NIA</td>
<td>National Investigation Agency</td>
</tr>
<tr>
<td>PFI</td>
<td>Popular Front of India</td>
</tr>
<tr>
<td>PSA</td>
<td>Public Safety Act</td>
</tr>
<tr>
<td>POTA</td>
<td>Prevention of Terrorism Act of 2002</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
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<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>RPC</td>
<td>Ranbir Penal Code</td>
</tr>
<tr>
<td>TADA</td>
<td>Terrorist and Disruptive Activities (Prevention) Act</td>
</tr>
<tr>
<td>TPSA</td>
<td>Telangana Public Security Act</td>
</tr>
<tr>
<td>TRS</td>
<td>Telangana Rashtra Samithi</td>
</tr>
<tr>
<td>SOG</td>
<td>Special Operation Group</td>
</tr>
<tr>
<td>UAPA</td>
<td>Unlawful Activities (Prevention) Act of 1967</td>
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<tr>
<td>VHP</td>
<td>Vishwa Hindu Parishad</td>
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1. Executive Summary

“The basic rule is bail, not jail” is a doctrine laid down by the Supreme Court of India in the landmark judgment of State of Rajasthan vs Balchand alias Baliya.\(^1\) India’s anti-terror law, the Unlawful Activities (Prevention) Act of 1967 (UAPA), however has made “jail, not bail” the rule.

There is no doubt that India has been facing formidable challenges of terrorism. However, each counter-terrorism measure resulted in the massive abuse of the law and violations of human rights. In 1985, the Government of India enacted the Terrorist and Disruptive Activities (Prevention) Act, commonly known as TADA\(^2\) to address the insurgency in Punjab. It was allowed to lapse in 1995 following outcry against its abuse.\(^3\)

In wake of the 1999 Indian Airlines flight IC-814 hijack and 2001 Parliament attack, India enacted the Prevention of Terrorism Act of 2002 (POTA) in March 2002. The POTA too was repealed with effect from 21.09.2004\(^4\) because of its abuse.

The United Progressive Alliance Government repealed the POTA and amended the UAPA for dealing with “terrorist activities” with effect from 21.9.2004\(^5\). Following the Mumbai terror attack in 2008, it went on to amend the UAPA to bring the same draconian features of the POTA. The UAPA was further amended in 2012 and 2019.

The National Crimes Record Bureau (NCRB) under the Ministry of Home Affairs began recording the cases registered under the UAPA 1967 under a separate head from 2014. It provides testimonies to the abuse of the UAPA.

First, cases under the UAPA have been rising while admittedly terror incidents are reducing as per the Ministry of Home Affairs. The number of cases registered under the UAPA were 976 cases in 2014, 897 cases in 2015, 922 cases in 2016, 901 cases in 2017, 1182 cases in 2018, 1226 cases in 2019 and 1321 cases in 2020. On the other hand, it is the case of the Ministry of Home Affairs that “there has been an overall 41% reduction in violent incidents (1136 to 670) and 49% reduction in Left Wing Extremism (LWE) related deaths (397 to 202) in 2019 as compared to 2013”. In the North East India, from 2014 to 2019-2020 “insurgency incidents declined by 70%, casualties of security forces personnel by 78% and civilian deaths by 80%” while Tripura, Sikkim and Mizoram are completely free from insurgency. In 2019, insurgency related violence declined by 87% in
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Meghalaya, 39% in Assam, 3% in Arunachal Pradesh and 1% in Manipur as compared to 2018.6

Second, as per the NCRB, from 2015 to 2020 a total of 9,334 persons were arrested in 5,934 cases under the UAPA across the country. The maximum number of the UAPA cases were reported from Manipur (1965) followed by Jammu and Kashmir (1163), Assam (923), Jharkhand (501) and Uttar Pradesh (385). However, the maximum number of arrests under the UAPA have been reported from Manipur (2,383) followed by Uttar Pradesh (1758), Assam (1052), Jammu and Kashmir (851) and Bihar (606).

That Uttar Pradesh with no State specific designated banned organisation under the UAPA has arrested more people under the UAPA than Jammu & Kashmir, Assam, Bihar and Jharkhand indicates that the UAPA is not being used against the designated terror organisations but those who allegedly committed the offences of causing or intending to cause disaffection against India i.e. sedition and offences punishable under section 153A (45 of 1860) or section 153B of the Indian Penal Code (IPC) which have been included as offences under the UAPA. Further Uttar Pradesh has the highest ratio of arrest per case with about five persons being arrested in each case in comparison to arrest of about two persons in each case in other States.

Uttar Pradesh is not the exception. In Tamil Nadu despite no known terror activity, about 420 persons were arrested in 281 cases during 2015-2020 with the arrest of 308 persons in 270 cases in 2019 alone.

The UAPA has been turned into an instrument to silence human rights defenders, journalists, academics and critics.

Third, the executive/prosecution decides whether to invoke the UAPA or IPC or both for the same offences not necessarily on the terror activities but to deny bail as “jail, not bail” is the rule under the UAPA.

Out of the 10,552 persons arrested under the UAPA, only 253 persons or 2.39% were convicted, 516 persons or 4.89% were acquitted and 133 persons or 1.26% were discharged from 2014 to 2020. About 94% of the detainees have been facing prosecution and often denied bail under stringent provisions of the UAPA.

Section 43D(2) of the UAPA extends the maximum period of detention of a person accused under this law to 180 days against the statutory period of detention of 90 days provided under Section 167 of the Criminal Procedure Code (CrPC). Therefore, a person cannot get bail for a period
of minimum 180 days. Further, sub-section (5) of Section 43D takes away the discretion provided to the Court or Judge under Chapter XXXIII of the CrPC with regard to the grant of bail as it makes a statutory duty on the part of the UAPA Special Court not to release an accused on bail without giving the Public Prosecutor an opportunity of opposing the bail application. Further, the proviso to sub-section (5) casts a statutory duty on the court or judge not to release an accused booked for offences of terrorist activities or terrorist organisations on bail, if on a perusal of the case diary or the report submitted by the police under section 173 of the Criminal Procedure Code makes an opinion that reasonable grounds for believing that the accusations against such accused is prima facie true.

The death of 84-year-old Jesuit priest Father Stanislaus Lourduswamy's popularly known as Father Stan Swamy in Mumbai on 5 July 2021 is the most emblematic case of abuse of the UAPA and how an accused booked under the UAPA suffers protracted incarceration because of the denial of bail. Swamy, the oldest prisoner to be accused of terror offences, suffered from worsening health conditions including Parkinson's disease and many other ailments had been held in judicial custody in Taloja jail since October 2020. He was refused bail on medical conditions as the NIA vehemently opposed, leading to his death in custody.7

On 2 December 2021, the Supreme Court held that an undertrial cannot be indefinitely detained in prison if there is a delay in concluding the trial while granting bail to 74-year alleged senior Maoist leader Asim Kumar Bhattacharya being tried by the NIA under various provisions of the IPC and the UAPA. His bail plea was rejected by the trial court and the Calcutta High Court. He had been in jail since 6 July 2012. The chargesheet was filed in 2012 but charges were framed in 2019. Though the NIA Act provides for day-to-day hearing, it was not being followed in this case, causing delay in proceedings. The court noted there is no likelihood of wrapping up the trial as the statement of only one out of more than 100 witnesses has so far been recorded in the case.8

The apex Court held that “the liberty guaranteed in Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial is imperative and undertrials cannot indefinitely be detained pending trial. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge him on bail”. The court further stated, “Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21 of the Constitution of India. While deprivation of personal liberty for some period may not be avoidable, period of
deprivation pending trial/appeal cannot be unduly long. At the same time, timely delivery of justice is part of human rights and denial of speedy justice is a threat to public confidence in the administration of justice”.

Those who are granted bail under the UAPA are indeed the lucky one. The process becomes the punishment in itself.

India needs to repeal the UAPA.

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2. India’s declining terror incidents but rising UAPA cases

India faces formidable security challenges especially in the Union Territory of Jammu and Kashmir, the Naxalite affected States and North Eastern region. The insurgency has reduced significantly with the exception of Jammu and Kashmir.

On the Left Wing Extremism, the Ministry of Home Affairs in its 2019-2020 states, “The last six years have seen a significant decline in LWE violence as well as the geographical spread of LWE. The declining trend which started in 2011 continues in 2019 as well. There has been an overall 41% reduction in violent incidents (1136 to 670) and 49% reduction in LWE related deaths (397 to 202) in 2019 as compared to 2013. In comparison to 2018 also, the year 2019 saw a decline of 19% (833 to 670) in incidents of violence and 15% in the number of resultant deaths (240 to 202). The casualties to Security Forces declined by 22% (67 to 52) and the number of LWE cadres eliminated also declined by 35% (225 to 145)”. In 2019, Chhattisgarh with 263 incidents and 77 deaths, remains the worst affected State followed by Jharkhand (200 incidents and 54 deaths), Maharashtra (66 incidents and 34 deaths), Bihar (62 incidents and 17 deaths), and Odisha (45 incidents and 11 deaths).

In the North East India, the MHA further states, “The security situation in the North Eastern States has improved substantially since 2014. The last six years have seen a significant decline in insurgency incidents by 70%, casualties of security forces personnel by 78% and civilian deaths by 80% in the region. The year 2019 recorded the lowest insurgency incidents and casualties among civilians and security forces during the last two decades since 1997. Compared to 2018, insurgency incidents have registered a decline of 12% in the year 2019 (2018: 252, 2019: 223). Similarly, there has been a huge reduction of 71% in Security Forces (SF) deaths (2018-14, 2019-4) and 9% in civilian deaths (2018-23, 2019-21) in 2019. Counter Insurgency Operations led to neutralization of 12 militants, arrest of 936 militants and recovery of 312 weapons in 2019, in the region. A total of 158 cadres of militant outfits of NE States surrendered with 67 weapons in 2019 and joined the mainstream society.”

Among the North Eastern States, Tripura, Sikkim and Mizoram are completely free from insurgency. In 2019, insurgency related violence declined by 87% in Meghalaya, 39% in Assam, 3% in Arunachal Pradesh and 1% in Manipur as compared to 2018.

In Jammu and Kashmir has been affected by terrorist and secessionist violence that is sponsored and supported from across the border. Since the advent of militancy in Jammu and Kashmir in 1990, 14,054 Civilians
and 5,294 personnel of Security forces have lost their lives till December, 2019. The trends of terrorist violence in Jammu and Kashmir remained the same.

India has banned 49 organisations under the Unlawful Activities (Prevention) Act of 167 as given below:¹⁰

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Organisation</th>
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<tbody>
<tr>
<td>1</td>
<td>Babbar Khalsa International</td>
</tr>
<tr>
<td>2</td>
<td>Khalistan Commando Force</td>
</tr>
<tr>
<td>3</td>
<td>Khalistan Zindabad Force</td>
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<tr>
<td>4</td>
<td>International Sikh Youth Federation</td>
</tr>
<tr>
<td>5</td>
<td>Lashkar-E-Taiba/Pasban-E-Ahle Hadis</td>
</tr>
<tr>
<td>6</td>
<td>Jaish-E-Mohammed/Tahrik-E-Furqan</td>
</tr>
<tr>
<td>7</td>
<td>Harkat-Ul-Mujahideen or Harkat-Ul-Ansar or Harkat-Ul-Jehad-E-Islami or Ansar-Ul-Ummah (AUU).</td>
</tr>
<tr>
<td>8</td>
<td>Hizb-Ul-Mujahideen/ Hizb-Ul-Mujahideen Pir Panjal Regiment</td>
</tr>
<tr>
<td>9</td>
<td>Al-Umar-Mujahideen</td>
</tr>
<tr>
<td>10</td>
<td>Jammu and Kashmir Islamic Front</td>
</tr>
<tr>
<td>11</td>
<td>United Liberation Front of Assam (ULFA)</td>
</tr>
<tr>
<td>12</td>
<td>National Democratic Front of Bodoland (NDFB) in Assam</td>
</tr>
<tr>
<td>13</td>
<td>People’s Liberation Army (PLA)</td>
</tr>
<tr>
<td>14</td>
<td>United National Liberation Front (UNLF)</td>
</tr>
<tr>
<td>15</td>
<td>People’s Revolutionary Party of Kangleipak (PREPAK)</td>
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<tr>
<td>16</td>
<td>Kangleipak Communist Party (KCP)</td>
</tr>
<tr>
<td>17</td>
<td>Kanglei Yaol Kanba Lup (KYKL)</td>
</tr>
<tr>
<td>18</td>
<td>Manipur People’s Liberation Front (MPLF)</td>
</tr>
<tr>
<td>19</td>
<td>All Tripura Tiger Force</td>
</tr>
<tr>
<td>20</td>
<td>National Liberation Front of Tripura</td>
</tr>
<tr>
<td>No.</td>
<td>Group Name</td>
</tr>
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<td>----------------------------------------------------------------</td>
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<tr>
<td>21</td>
<td>Liberation Tigers of Tamil Eelam (LTTE)</td>
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<td>22</td>
<td>Students Islamic Movement of India</td>
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<td>24</td>
<td>Communist Party of India (Marxist-Leninist) -- People’s War, all its formations and front organizations</td>
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<td>Al Badr</td>
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<td>Jamiat-ul-Mujahideen</td>
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<td>Al-Qaida/AI-Qaida in Indian Sub-continent (AQIS) and all its manifestations.</td>
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<td>29</td>
<td>Dukhtaran-E-Millat (DEM)</td>
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<td>30</td>
<td>Tamil Nadu Liberation Army (TNLA)</td>
</tr>
<tr>
<td>31</td>
<td>Tamil National Retrieval Troops (TNRT)</td>
</tr>
<tr>
<td>32</td>
<td>Akhil Bharat Nepali Ekta Samaj (ABNES)</td>
</tr>
<tr>
<td>34</td>
<td>Communist Party of India (Maoist) all its formations and front organizations.</td>
</tr>
<tr>
<td>35</td>
<td>Indian Mujahideen, all its formations and front organizations.</td>
</tr>
<tr>
<td>36</td>
<td>Garo National Liberation Army (GNLA), all its formations and front organizations.</td>
</tr>
<tr>
<td>37</td>
<td>Kamatapur Liberation Organisation, all its formations and front organizations.</td>
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<tbody>
<tr>
<td>38</td>
<td>Islamic State/Islamic State of Iraq and Levant/Islamic State of Iraq and Syria/Daish/Islamic State in Khorasan Province (ISKP)/ISIS Wilayat Khorasan/Islamic State of Iraq and the Sham-Khorasan (ISIS-K) and all its manifestations.</td>
</tr>
<tr>
<td>39</td>
<td>National Socialist Council of Nagaland (Khaplang) [NSCN(K)], all its formations and front organisations</td>
</tr>
<tr>
<td>40</td>
<td>The Khalistan Liberation Force (KLF) and all its manifestations</td>
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<td>Tehreek-ul-Mujahideen (TuM) and all its manifestations</td>
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<tr>
<td>42</td>
<td>Jamaat-ul-Mujahideen Bangladesh or Jamaat-ul-Mujahideen India or Jamaat-ul-Mujahideen Hindustan and all its manifestations</td>
</tr>
</tbody>
</table>

In addition, following 41 persons have been declared as individual terrorists under the UAPA:

1. Maulana Masood Azhar @ Maulana Mohammad Masood Azhar Alvi @ Vali Adam Issa.

2. Hafiz Muhammad Saeed @ Hafiz Mohammad Sahib @ Hafiz Mohammad Sayid @ Hafiz Mohammad @ Hafiz Saeed @ Hafez Mohammad Saeed @ Hafiz Mohammad Sayeed @ Mohammad Sayed @ Muhammad Saeed.

3. Zaki-ur-Rehman Lakhvi @ Abu Waheed Irshad Ahmad Arshad @ Kaki Ur-Rehman @ Zakir Rehman Lakhvi @ Zaki-Ur-Rehman Lakhvi @ Zakir Rehman.

4. Dawood Ibrahim Kaskar @ Dawood Hasan Shiekh Kaskar @ Dawood Bhai @ Dawood Sabri @ Iqbal Seth @ Bada Patel @ Dawood Ebrahim @ Sheikh Dawood Hassan @ Abdul Hamid Abdul Aziz @ Anis Ibrahim @ Aziz Dilip @ Daud Hasan Shaikh Ibrahim Kaskar @ Daud Ibrahim Memon Kaskar @ Dawood Hassan Ibrahim Kaskar @ Dawood Ibrahim Memon @ Kaskar Dawood Hassan @ Shaikh Mohd Ismail Abdul Rahman @ Dowood Hassan Shaikh Ibrahim @ Dawood Bhai Low quality @ Ibrahim Shaikh Mohd Anis @ Shaikh Ismail Abdul @ Sheikh Farooqi @ Iqbal Bhai.
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5. Wadhawa Singh Babbar @ Chacha @ Babbar, S/o Amar Singh
6. Lakhbir Singh @ Rode S/o Jagir Singh
7. Ranjeet Singh @ Neeta
8. Paramjit Singh @ Panjwar, S/o Kashmir Singh
9. Bhupinder Singh Bhinda
10. Gurmeet Singh Bagga, S/o Paramjit Singh
11. Gurpatwant Singh Pannun, S/o Late Mohinder Singh Pannun
12. Hardeep Singh Nijjar S/o Piara Singh
13. Paramjit Singh @ Pamma
14. Sajid Mir @ Sajid Majeed @ Ibrahim Shah @ Wasi @ Khali @ Muhammad Waseem
15. Yusuf Muzammil @ Ahmad Bhai @ Yousuf Muzammil Butt @ Hurreira Bhai.
16. Abdur Rehman Makki @ Abdul Rehman Makki
17. Shahid Mehmood @ Shahid Mehmood Rehmatullah
18. Farhatullah Ghori @ Abu Sufiyan @ Sardar Sahab @ Faru.
19. Abdul Rauf Asghar @ Mufti @ Mufti Asghar @ Saad baba @ Maulana Mufti Rauf Asghar.
20. Ibrahim Athar @ Ahmed Ali Mohd. Ali Shaikh @ Javed Amjad Siddiqui @ A.A. Shaikh @ Chief
21. Yusuf Azhar @ Azhar Yusuf @ Mohd. Salim.
22. Shahid Latif @ Chota Shahid Bhai @ Noor Al Din.
23. Syed Mohammad Yusuf Shah @ Syed Salahudeen @ Peer Sahab @ Buzurg
24. Ghulam Nabi Khan @ Amir Khan @ Saifullah Khalid @ Khalid Saifullah @ Jawaad @ Daand
25. Zaffar Hussain Bhat @ Khursheed @ Mohd. Zafar Khan @ Moulvi @ Khursheed Ibrahim
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26. Riyaz Ismail Shahbandr @ Shah Riyaz Ahmed @ Riyaz Bhatkal @ Md. Riyaz Ahmed @ Rasool Khan @ Roshan Khan @ Aziz

27. Md. Iqbal @ Shabandri Mohammed Iqbal @ Iqbal Bhatkal.

28. Shaikh Shakeel @ Chhota Shakeel.

29. Mohammad Anis Shaikh.

30. Ibrahim Memon @ Tiger Memon @ Mushtaq @ Sikander @ Ibrahim Abdul Razak Memon @ Mustafa @ Ismail

31. Javed Chikna @ Javed Dawood Tailor

10. https://www.mha.gov.in/node/91173

3. The Unlawful Activities (Prevention) Act, 1967 and its provisions

In 1967, India enacted the Unlawful Activities (Prevention) Act (UAPA) of 1967 “to provide for the more effective prevention of certain unlawful activities of individuals and associations” and for matter connected therewith.

In 1985, the Government of India enacted the Terrorist and Disruptive Activities (Prevention) Act, commonly known as TADA, as an Indian anti-terrorism law. Because of its abuse, the TADA was allowed to lapse in 1995. and replaced by the Prevention of Terrorism Act of 2002 which too was repealed with effect from 21.09.2004 after the government of India brought amendment to the UAPA for dealing with “terrorist activities” with effect from 21.9.2004.

In wake of the 1999 IC-814 hijack and 2001 Parliament attack, India enacted the Prevention of Terrorism Act of 2002 (POTA) in March 2002. POTA too was repealed with effect from 21.09.2004 because of its abuse.

The Unlawful Activities (Prevention) Amendment Act of 2004 brought sweeping changes into the UAPA 1967, among others, by inserting new chapters, prominent among them being the incorporation of a new “Chapter IV Punishments for Terrorist Activities” with nine Sections i.e. 15 – 23 and the First Schedule. The 2004 amendment to the UAPA for the first inserted and defined “terrorist act” in Section 15 while prescribed punishments for terrorist acts in Section 16; Section 17 for raising funds for terrorist acts; Section 18 for conspiracy etc; Section 19 for harbouring etc; Section 20 being member of terrorist gang or organization; Section 21 for holding proceeds of terrorism; 22 punishment for threatening witness and Section 23 provided for enhanced penalties.

In 2008, the government of India of the United Progressive Alliance brought another amendment to the UAPA (35 of 2008) to make it more stringent in the wake of the Mumbai 26/11 terror attack. The prominent amendments included: the definition of courts in clause (d) of Section 2 to include a Special Court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008 besides the criminal court having jurisdiction under the CrPC to try offences under this Act. The changes inter alia included substitution of Section 15 incorporating a heading “Terrorist Acts” occurring in the provision; inserted a new Section 16A to provide for Punishments for demands of radioactive substances.
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nuclear devices etc; substituted Section 17 incorporating “punishments for raising funds for terrorist act”; amended Section 18 by incorporating “incites, directs or knowingly facilitates.” The 2008 amendment also added six new Sections 43A – 43F, drastically changing the cardinal principles of criminal justice system in India as provided in the Criminal Procedure Code. The 2008 UAPA Amendment Act inserted Section 43A “Power to arrest, search, etc” while Section 43C introduced statutory prohibition on the application of the relevant provisions of the CrPC in respect of “all arrests, searches and seizures made under this Act” and Section Section 43D (1) made all offences punishable under this Act “cognizable offence.” Section 43D (2) (a) extended the statutory pre-trial detention of a person arrested under the Act from fifteen days to thirty days and from sixty days to ninety days while Section 43 D (2) (b) empowered the Court to extend the detention of the accused from ninety days to one hundred eighty days if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reason for the detention and Section 43D (5) took away the discretion provided to the Court or Judge under Chapter XXXIII of the CrPC with regard to bail. Section 43E reversed the burden of the Prosecution to prove the guilt of the accused provided under the UAPA to prove his/her innocence with respect to certain offences. The presumption of guilt of the accused is a statutory requirement until proven innocent on conclusion of the trial.

In 2012, the government of India introduced another amendment to the UAPA in 2012 by way of the Unlawful Activities (Prevention) Amendment Act, 2012 (No.3 of 2013). The prominent changes brought by this amendment, among others, included the insertion of new Sections 22A (Offences by companies); 22B (Offences by societies or trusts) and 23 (Enhanced penalties).

The current Bharatiya Janata Party government enacted the Unlawful Activities (Prevention) Amendment Act 2019 to effect amendments to Chapter VI of the Act to include “individuals” with “Terrorist Organisations”. It empowers the government to designate individuals as terrorists, merely if it believes so, leaving little to no recourse for them to protest their designation. Further, the Director-General, National Investigation Agency (NIA) was empowered to grant approval of seizure or attachment of property when the case is under investigation by the agency and vesting powers on the officers of the NIA, of the rank of Inspector or above to investigate cases of terrorism in addition to those conducted by the DSP or ACP or above rank officer in the state.
B. Jail, not bail is the rule

Prior to the 2004 amendments, the “unlawful” activities were distinctly different from the “terrorist activities”. However, once the unlawful activities such as sedition or promoting enmity between different groups or acts prejudicial to maintenance of harmony made into terrorists activities, it had chilling effects on the right to freedom of opinion and expression. Further, a number of protections applicable such as the period of detention, bail conditions, discretion of the judge to grant bail, presumption of innocence under the CrPC were no longer available to those booked under the UAPA.

Table 1: Comparison of the same offences under the UAPA and IPC

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<th>SL No.</th>
<th>UAPA</th>
<th>Indian Penal Code</th>
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<td>1</td>
<td>2(O) “unlawful activity”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),— (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the</td>
<td>Section 124A in The Indian Penal Code 124A. Sedition.—Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine. Explanation 1.—The expression “disaffection” includes disloyalty and all feelings of enmity. Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means,</td>
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</tbody>
</table>
secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such secession or secession; or without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.]

2(p) unlawful association” means any association,—

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153A (45 of 1860) or section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility. 2[or] 2[[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that
the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Section 153B(1)(c) in The Indian Penal Code
(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.
Section 43D (2) of the UAPA lengthens the period of pre-trial detention of a person accused under the law. The provision extends the maximum period of detention of a person accused under this law to double against the statutory period of detention provided under Section 167 of the CrPC.

Section 43D (2) (a) provides that the period of detention occurring in Section 167, for instance “fifteen days”, “ninety days” and “sixty days” shall be construed respectively as references to “thirty days”, “ninety days” and “ninety days”. The first proviso empowers the Court to extend the detention of the accused from ninety days to one hundred eighty days if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reason for the detention. As the maximum period of statutory detention pending investigation is extended to 180 days as opposed to 90 days provided under Section 167 CrPC, a person booked and detained under the UAPA cannot get avail the benefits of statutory bail provided in Section 167 (2) (a) (ii) of the CrPC. Because of the extension of the detention pending investigation, an accused can avail statutory bail only on the expiry of 180 days.

However, sub-section (5) of Section 43D takes away the discretion provided to the Court or Judge under Chapter XXXIII of the CrPC with regard to grant of bail. The use of the non-obstante clause “Notwithstanding anything contained in the Code ......” and “shall” in sub-section (5) of Section 43D of the UAPA makes it a statutory duty on the part of the UAPA special court not to release an accused booked under offences of terrorist activities or terrorist organizations on bail without giving the Public Prosecutor an opportunity of opposing the bail application. The proviso to sub-section (5) further casts a statutory duty on the court or judge not to release an accused booked for offences of terrorist activities or terrorist organizations on bail, if on a perusal of the case diary or the report submitted by the police under section 173 of the Criminal Procedure Code makes a opinion that reasonable grounds for believing that the accusations against such accused is prima facie true. Therefore, the exclusion of discretion of the court which is provided under the CrPC, while considering a bail application of a person accused of offences of alleged terrorist activities and terrorist organization makes it impossible to obtain bail in most cases under the UAPA.

The combined application of sub-sections (2) and (5) of Section 43D makes it extremely difficult for any person booked under offences of terrorist activities and terror organization to get released on bail. While sub-section (2) of Section 43D lengthen the period of detention pending
investigations to a maximum of 180 days as against 90 days and deprive the benefit of statutory bail on the expiry of 90 days, sub-section (5) raises the bar for bail so high by taking away discretion of the court with to bail that it becomes near to impossible to get pre-trial bail. In view of this, the UAPA had become the most sophisticated weapon in the armoury of the government of the day to target dissenters and critics of the government because of the extended period of pre-trial detention provided under section 43 (D) (2) (a) as well as the rigorous conditions of bail provided under section 43 (D) (5) of the 1967 Act.

It is despite numerous rulings of the Supreme Court that prolong incarceration of accused persons without trial constitutes violation of fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution.

In Kartar Singh v. State of Punjab [(1994 (3) SCC 569)], a five judge constitution bench held: “The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted.”

In Shaheen Welfare Association vs. Union of India [(1996) 2 SCC 616], a bench headed by Chief Justice of India A.M. Ahamadi, while considering a PIL seeking release of TADA détentes against whom proper evidence is not with the prosecution and where proper procedure prescribed under law was not followed, held: “…. when the release of undertrials on bail is severely restricted as in the case of TADA by virtue of the provisions of Section 20(8) of TADA, it becomes necessary that the trial does proceed and conclude within a reasonable time. Where this is not practical, release on bail which can be taken to be embedded in the right of a speedy trial may, in some cases, be necessary to meet the requirements of Article 21.”

However, in National Investigation Agency Versus Zahoor Ahmad Shah Watali, a bench Justices A.M.Khanwilkar and Ajay Rastogi of the Supreme Court deviating from Shaheen Welfare Association vs. Union of India set aside the order passed by the Delhi High Court granting bail to the respondent Zahoor Ahmad Shah Watali holding that there is degree of difference between the satisfaction to be recorded by the Court that there are reasonable grounds for believing that the accused is not guilty of such offence under the TADA, MCOCA and NDPS Act and the satisfaction
to be recorded for the purposes of the UAPA 1967 that there are reasonable grounds for believing that the accusation against such person is “prima facie” true. The bench held: “By virtue of the proviso to sub-section (5), it is the duty of the Court to be satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true or otherwise.” It further held that “….there is a high burden on the accused in terms of the special provisions contained in Section 43D(5) to demonstrate that the prosecution has not been able to show that there exists reasonable grounds to show that the accusation against him is prima facie true….” The respondent Watali (Accused No.10) was charged with offences punishable under Sections 120B, 121 and 121A of the Indian Penal Code and Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967.\(^{21}\)

Overruling the Zahoor Ahmad Shah Watali ruling that bail proceedings under the UAPA were distinct and the Courts are duty-bound to refuse bail where the suspect is prima facie believed to be guilty, a three judge bench comprising Justice (as he then was) N.V.Ramana, Justice Surya Kant and Justice Aniruddha Bose in Union of India vs. K.A. Najeeb [(2021) 3 SCC 713] refused to interfere with the decision of the Kerala High Court that directed released of the respondent Najeeb on bail. The bench held thus: “It is thus clear to us that the presence of statutory restrictions like Section 43-D (5) of UAPA per se does not oust the ability of Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statute as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

The death of 84-year-old Jesuit priest Father Stanislaus Lourduswamy’s popularly known as Father Stan Swamy at Holy Family Hospital in Mumbai on 5 July 2021 is the most emblematic case of how a person accused under the UAPA suffers because of the denial of bail invoking Sections 43D(2) and (5) of the UAPA even in cases of life threatening medical conditions. Swamy was India’s oldest prisoner charged under the UAPA for his alleged role in what the National Investigative Agency contends was an alleged Maoist conspiracy that led to caste clashes near
the Bhima Koregaon village four years ago. Swamy’s health had worsened considerably since he was held in judicial custody in Taloja jail from October 2020. He suffered from Parkinson’s disease, a progressive nervous condition and had also contracted Covid-19 during his stay in the jail. His lawyers had repeatedly moved the NIA special court for bail which the NIA opposed and the special court refused. On 28 May 2021, he was finally admitted to a charitable hospital in Bandra on the orders of the High Court. He died on 5 July 2021 while in judicial custody.

17. 43E. Presumption as to offence under section 15.—In a prosecution for an offence under section 15, if it is proved— (a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or (b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence, the Court shall presume, unless the contrary is shown, that the accused has committed such offence.
4. Cases registered under the UAPA

The National Crimes Record Bureau (NCRB) under the Ministry of Home Affairs began recording the cases registered under the UAPA 1967 under a separate head from 2014. It provides testimonies to the abuse of the UAPA.

4.1 Uttar Pradesh has the highest number of arrest per case under UAPA

Table 2: List of cases registered (CR) and persons arrested (PAR) from 2015 to 2020

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India’s UAPA : Jail, not bail, is the rule

The above data shows that from 2015 to 2020 a total of 9,334 persons were arrested in 5,934 cases under the UAPA across the country. The maximum number of the cases under the UAPA were reported from Manipur (1965) followed by Jammu and Kashmir (1163), Assam (923), Jharkhand (501) and Uttar Pradesh (385).

The maximum number of arrests under the UAPA have been reported from Manipur (2,383) followed by Uttar Pradesh (1758), Assam (1052), Jammu and Kashmir (851) and Bihar (606). In fact, Uttar Pradesh has the highest ratio of arrest per case with about five persons being arrested in each case in comparison to arrest of about two persons in each case in other States.

The fact that Uttar Pradesh with no State specific designated banned organisation under the UAPA has arrested more people under the UAPA than Jammu & Kashmir, Assam, Bihar and Jharkhand exposes the abuse of the UAPA. It raises questions as to whether the designated terror organisations are being targeted in the country or those who allegedly committed the offences of causing or intending to cause disaffection against India or offences punishable under section 153A (45 of 1860) or section 153B of the Indian Penal Code (IPC).

The fact that 420 persons were arrested in 281 cases in Tamil Nadu during 2015-2020 with the arrest of 308 persons in 270 cases in 2019 alone further establishes that there is no link between the invoking of the UAPA and the designated terror organizations.
4.2 Uttar Pradesh has the highest percentage of cases registered under the UAPA in the country

The NCRB recorded a total of 7,425 UAPA cases during 2014-2020. Manipur with 2651 cases topped the tally of states/UTs accounting for 35.70% of the total cases; followed by Jammu and Kashmir with 1267 cases (17.06%); Assam with 1044 cases (14.06%); Uttar Pradesh with 704 cases (9.48%); Jharkhand with 511 cases (6.88%); Tamil Nadu with 370 cases (4.98%); Bihar with 283 cases (3.81%); and Kerala with 199 cases (2.68%). The number of cases registered in each of the states and Union Territories and percentage out of the total cases registered across India are stated in the table below:

Table 3: State/UT wise percentage of UAPA cases registered during 2014 - 2020

<table>
<thead>
<tr>
<th>State / Union Territory</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>State total</th>
<th>% of total cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>22</td>
<td>1</td>
<td>4</td>
<td>4</td>
<td>31</td>
<td>0.41</td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>6</td>
<td>25</td>
<td>3</td>
<td>36</td>
<td>0.48</td>
</tr>
<tr>
<td>Assam</td>
<td>148</td>
<td>103</td>
<td>216</td>
<td>133</td>
<td>308</td>
<td>87</td>
<td>49</td>
<td>1044</td>
<td>14.06</td>
</tr>
<tr>
<td>Bihar</td>
<td>41</td>
<td>57</td>
<td>48</td>
<td>52</td>
<td>34</td>
<td>12</td>
<td>39</td>
<td>283</td>
<td>3.81</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>5</td>
<td>2</td>
<td>3</td>
<td>1</td>
<td>10</td>
<td>2</td>
<td>27</td>
<td>50</td>
<td>0.67</td>
</tr>
<tr>
<td>Goa</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Gujarat</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Haryana</td>
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<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>3</td>
<td>0.04</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>0</td>
<td>0</td>
<td>1</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0.01</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>45</td>
<td>59</td>
<td>161</td>
<td>156</td>
<td>245</td>
<td>255</td>
<td>346</td>
<td>1267</td>
<td>17.06</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>27</td>
<td>44</td>
<td>77</td>
<td>52</td>
<td>137</td>
<td>105</td>
<td>69</td>
<td>511</td>
<td>6.88</td>
</tr>
<tr>
<td>Karnataka</td>
<td>4</td>
<td>7</td>
<td>6</td>
<td>1</td>
<td>1</td>
<td>7</td>
<td>2</td>
<td>28</td>
<td>0.37</td>
</tr>
<tr>
<td>Kerala</td>
<td>30</td>
<td>35</td>
<td>36</td>
<td>4</td>
<td>17</td>
<td>53</td>
<td>24</td>
<td>199</td>
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<td>Madhya Pradesh</td>
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<td>6</td>
<td>2</td>
<td>0</td>
<td>9</td>
<td>0.12</td>
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<tr>
<td>Maharashtra</td>
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<td>1</td>
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<td>0</td>
<td>7</td>
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<td>Manipur</td>
<td>630</td>
<td>544</td>
<td>327</td>
<td>330</td>
<td>289</td>
<td>306</td>
<td>225</td>
<td>2651</td>
<td>35.70</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>7</td>
<td>10</td>
<td>5</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>26</td>
<td>0.35</td>
</tr>
<tr>
<td>Mizoram</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0.01</td>
</tr>
<tr>
<td>Nagaland</td>
<td>0</td>
<td>4</td>
<td>10</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>7</td>
<td>45</td>
<td>0.60</td>
</tr>
</tbody>
</table>

(29)
India’s UAPA: Jail, not bail, is the rule

<table>
<thead>
<tr>
<th>States/UTs</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Odisha</td>
<td>1</td>
<td>4</td>
<td>5</td>
<td>0.14</td>
</tr>
<tr>
<td>Punjab</td>
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<td>0.90</td>
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<tr>
<td>Rajasthan</td>
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<td>0</td>
<td>1</td>
<td>0.01</td>
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<tr>
<td>Sikkim</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.0</td>
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<tr>
<td>Tamil Nadu</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0.01</td>
</tr>
<tr>
<td>Telangana</td>
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<td>0.0</td>
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<td>Tripura</td>
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<td>0</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Uttarakhand</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>West Bengal</td>
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<td>13</td>
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<td>0.55</td>
</tr>
<tr>
<td>Andaman &amp; Nicobar Islands</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0.0</td>
</tr>
<tr>
<td>Dadra &amp; Nagar Haveli</td>
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<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Daman &amp; Diu</td>
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<td>0</td>
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<td>0</td>
<td>0</td>
<td>0.0</td>
</tr>
</tbody>
</table>

4.3 Uttar Pradesh has the highest arrests under 30 years from 2018 to 2020

<table>
<thead>
<tr>
<th>States/UTs</th>
<th>2018</th>
<th>2019</th>
<th>2020</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>0</td>
<td>5</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Arunachal Pradesh</td>
<td>6</td>
<td>14</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>Assam</td>
<td>71</td>
<td>34</td>
<td>17</td>
<td>122</td>
</tr>
<tr>
<td>Bihar</td>
<td>19</td>
<td>20</td>
<td>30</td>
<td>69</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>1</td>
<td>2</td>
<td>12</td>
<td>15</td>
</tr>
<tr>
<td>Goa</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
India’s UAPA: Jail, not bail, is the rule

<table>
<thead>
<tr>
<th>State</th>
<th>Under 30</th>
<th>Above 30</th>
<th>Total</th>
<th>Total Arrest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gujarat</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Haryana</td>
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<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Jharkhand</td>
<td>50</td>
<td>133</td>
<td>35</td>
<td>218</td>
</tr>
<tr>
<td>Karnataka</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Kerala</td>
<td>0</td>
<td>2</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>Madhya Pradesh</td>
<td>9</td>
<td>4</td>
<td>0</td>
<td>13</td>
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<td>Maharashtra</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Manipur</td>
<td>169</td>
<td>217</td>
<td>113</td>
<td>499</td>
</tr>
<tr>
<td>Meghalaya</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mizoram</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Nagaland</td>
<td>1</td>
<td>10</td>
<td>5</td>
<td>16</td>
</tr>
<tr>
<td>Odisha</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Punjab</td>
<td>0</td>
<td>15</td>
<td>22</td>
<td>37</td>
</tr>
<tr>
<td>Rajasthan</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sikkim</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Tamil Nadu</td>
<td>0</td>
<td>136</td>
<td>33</td>
<td>169</td>
</tr>
<tr>
<td>Telangana</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Tripura</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Uttar Pradesh</td>
<td>340</td>
<td>386</td>
<td>205</td>
<td>931</td>
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<tr>
<td>Uttarakhand</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>West Bengal</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>A&amp;N Islands</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>D&amp;N Haveli and Diu+</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Delhi</td>
<td>0</td>
<td>2</td>
<td>5</td>
<td>7</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir*</td>
<td>89</td>
<td>111</td>
<td>166</td>
<td>366</td>
</tr>
<tr>
<td>Ladakh</td>
<td>-</td>
<td>-</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lakshadweep</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Puducherry</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL (ALL INDIA)</td>
<td>755</td>
<td>1096</td>
<td>650</td>
<td>2501</td>
</tr>
</tbody>
</table>

Out of 2,501 persons below 30 years arrested under the UAPA from 2018 to 2020, Uttar Pradesh arrested 931 persons i.e. about 37% of the total arrest followed by Manipur with 499 persons, Jammu and Kashmir with 366 persons, Jharkhand with 218 persons, Tamil Nadu with 169 persons and Assam with 11 persons.
4.4 High rate of charge sheet (53%), very low rate of convictions (5.5%) & overwhelming pendency (95.4%)

The NCRB reports from 2014-2020 reveals that a total of 10,552 persons were arrested under various sections of the UAPA in the past seven years from 2014 to 2020. These included 2,181 cases in 2014; 1,128 cases in 2015; 999 cases in 2016; 1,554 cases in 2017; 1,421 cases in 2018; 1,948 cases in 2019 and 1,321 cases in 2020. Chargesheets were submitted in the court against a total of 5,794 persons during the corresponding period. Comparison of the number of persons against whom chargesheets were filed and the total number of persons arrested show that the rate of charge sheet was 53.7% in 2014, 16.6% in 2015, 36.9% in 2016, 68.3% in 2017, 60.0% in 2018, 58.5 in 2019 and 76.3% in 2020 while the average rate of charge sheet in the past seven years was 52.9% which suggests that the police and the National Investigation Agency had been very aggressively pursuing the cases registered under the UAPA.

Table 4: Year wise rate of chargesheeting and conviction under UAPA

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of persons arrested</th>
<th>No. of persons charged-sheeted</th>
<th>Charge sheet rate in %</th>
<th>Persons convicted</th>
<th>Persons acquitted</th>
<th>Persons discharged</th>
<th>Conviction Rate in %</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>2181³⁰</td>
<td>1173³¹</td>
<td>53.7</td>
<td>18³²</td>
<td>123³³</td>
<td>0</td>
<td>1.5</td>
</tr>
<tr>
<td>2015</td>
<td>1128³⁴</td>
<td>188³⁵</td>
<td>16.6</td>
<td>23³⁶</td>
<td>84³⁷</td>
<td>0</td>
<td>12.2</td>
</tr>
<tr>
<td>2016³⁸</td>
<td>999³⁹</td>
<td>369</td>
<td>36.9</td>
<td>24</td>
<td>19</td>
<td>8</td>
<td>6.5</td>
</tr>
<tr>
<td>2017³⁹</td>
<td>1554³⁰</td>
<td>1062</td>
<td>68.3</td>
<td>39</td>
<td>42</td>
<td>2</td>
<td>3.6</td>
</tr>
<tr>
<td>2018⁴⁰</td>
<td>1421³¹</td>
<td>853</td>
<td>60.0</td>
<td>35</td>
<td>117</td>
<td>23</td>
<td>4.1</td>
</tr>
<tr>
<td>2019⁴¹</td>
<td>1948³²</td>
<td>1141</td>
<td>58.5</td>
<td>34</td>
<td>16</td>
<td>92</td>
<td>2.9</td>
</tr>
<tr>
<td>2020⁴²</td>
<td>1321³³</td>
<td>1008</td>
<td>76.3</td>
<td>80</td>
<td>115</td>
<td>8</td>
<td>7.9</td>
</tr>
<tr>
<td>Total in 7 years</td>
<td>10552³⁴</td>
<td>5794</td>
<td>370.3</td>
<td>253</td>
<td>516</td>
<td>133</td>
<td>38.7</td>
</tr>
<tr>
<td>Average</td>
<td>1507.4</td>
<td>827.7</td>
<td>52.9</td>
<td>36.1</td>
<td>73.7</td>
<td>19</td>
<td>5.5</td>
</tr>
<tr>
<td>Overall arrest, acquittal and conviction</td>
<td>10552</td>
<td></td>
<td></td>
<td>2.39</td>
<td>4.89</td>
<td>1.26</td>
<td></td>
</tr>
</tbody>
</table>

As stated in the Table above, a total of 253 accused persons were convicted during 2014-2020 with 18 in 2014, 23 in 2015, 24 in 2016, 39 in 2017, 35 in 2018, 34 in 2019 and 80 in 2020 while a total of 516 accused persons were acquitted with 123 in 2014, 84 in 2015, 19 in 2016, 42 in 2017, 117 in 2018, 16 in 2019 and 115 in 2020 and a total of 133 accused persons were discharged with none in 2014 and 2015.
in 2016, 2 in 2017, 23 in 2017, 92 in 2019 and 8 in 2020. The average rate of conviction was mere 5.5% in comparison to average chargesheeting rate of 52.9% each year during 2014-2020.

The high rate of charge sheets vis-à-vis the very low rate of conviction as well as considerably good number of acquittals and release on discharge by the court suggests that a large an overwhelming majority of those arrested and chargesheeted on frivolous grounds or insufficient/without evidence leading to acquittal or release on discharge by the court.

Table 5: Year wise volume of cases sent for trial and rate of pendency at trial

<table>
<thead>
<tr>
<th>Year</th>
<th>No. of cases sent for trial during the year</th>
<th>No. of cases pending from previous years</th>
<th>Total cases pending trial during the year (Cl. 2+3=4)</th>
<th>Cases pending trial at the end of the year</th>
<th>Pendency Rate</th>
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</thead>
<tbody>
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<td>106</td>
<td>1144</td>
<td>1250</td>
<td>1217</td>
<td>97.3</td>
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<tr>
<td>2015</td>
<td>121</td>
<td>1209</td>
<td>1330</td>
<td>1253</td>
<td>94.2</td>
</tr>
<tr>
<td>2016</td>
<td>232</td>
<td>1256</td>
<td>1488</td>
<td>1455</td>
<td>97.8</td>
</tr>
<tr>
<td>2017</td>
<td>257</td>
<td>1492</td>
<td>1764</td>
<td>1691</td>
<td>95.8</td>
</tr>
<tr>
<td>2018</td>
<td>317</td>
<td>1691</td>
<td>2008</td>
<td>1876</td>
<td>93.4</td>
</tr>
<tr>
<td>2019</td>
<td>485</td>
<td>1876</td>
<td>2361</td>
<td>2244</td>
<td>95.0</td>
</tr>
<tr>
<td>2020</td>
<td>398</td>
<td>2244</td>
<td>2642</td>
<td>2500</td>
<td>94.6</td>
</tr>
</tbody>
</table>

The NCRB Annual Reports further reveal that rate pendency of trial of UAPA cases during the past seven years during 2014-2020 was overwhelming 97.3% in 2014, 94.2% in 2015, 97.8% in 2016, 95.8% in 2017, 93.4% in 2018, 95.0% in 2019 and 94.6%. The average rate of pendency of trial during the said period was 95.4%.

23. UAPA Cases (Statewise/Headwise) – 2014 https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%201.13_2014.pdf
24. UAPA Cases (Statewise/Headwise) – 2015 https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%201.13_2015.pdf
25. UAPA Cases (Statewise/Headwise)–2016 https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%201A.5.pdf
26. UAPA Cases (Statewise/Headwise)–2017 https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%201A.5_1.pdf
27. UAPA Cases (Statewise/Headwise)–2018 https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%201A.5_0.pdf
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28. UAPA Cases (Statewise/Headwise) - 2019: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%201A.5_2.pdf


30. TABLE 12.5 Disposal of Persons Arrested under SLL by Police During 2014: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2012.5_2014.pdf

31. TABLE 12.5 Disposal of Persons Arrested under SLL by Police During 2014: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2012.5_2014.pdf

32. TABLE 12.6 Disposal of Persons Arrested under SLL Crimes by Courts During 2014: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2012.6_2014.pdf

33. TABLE 12.6 Disposal of Persons Arrested under SLL Crimes by Courts During 2014: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2012.6_2014.pdf

34. Table 12.5 Disposal of Persons Arrested under Special & Local Laws by Police During 2015: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2012.5_2015.pdf

35. Table 12.5 Disposal of Persons Arrested under Special & Local Laws by Police During 2015: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2012.5_2015.pdf

36. Table 12.6 Disposal of Persons Arrested under Special & Local Laws Crimes by Courts During 2015: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2012.6_2015.pdf

37. Table 12.6 Disposal of Persons Arrested under Special & Local Laws Crimes by Courts During 2015: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2012.6_2015.pdf


41. TABLE 10A.7 Disposal of Persons Arrested under Offences against State (Crime Headwise) – 2019: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2010A.7_1.pdf


43. Table 4.7: Court disposal of UAPA Cases - 2014, available at: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%204.7_2014.pdf

44. Table 4.7: Court disposal of UAPA Cases - 2015, available at: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%204.7_2015.pdf

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46. **TABLE 18A.3 Court Disposal of SLL Crime Cases (Crimehead-wise) - 2017**: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2018A.3_4.pdf

47. **TABLE 18A.3 Court Disposal of SLL Crime Cases (Crimehead-wise) - 2018**: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2018A.3_0.pdf

48. **Table 10A.5 Court Disposal of Offences against State (Crime Head-wise) - 2019**: https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2010A.5_1.pdf
5. The UAPA: An instrument to silence human rights defenders, journalists, academics and critics

The UAPA made offences of sedition or promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony made terrorists activities. It is indeed the discretion of the executive/prosecution whether to invoke the UAPA or IPC or both for the same offences. The UAPA therefore has turned into an instrument to instrument to silent human rights defenders, journalists, academics and critics.

5.1 UAPA cases against HRDs and activists

Human rights defenders and activists were specific targets under the UAPA and the UAPA has been repeatedly invoked for criminalizing the freedom of opinion and expression and the exercising the right to association and assembly as terror offences.

Case 1. Arrest & detention of Anti-CAA protesters in Delhi

The Delhi Police arrested scores of people during the nationwide COVID-19 lockdown in 2019 and many of them were booked under the draconian UAPA for alleged involvement in instigating protests against the Citizenship Amendment Act, 2019 and National Register of Citizens and booked them in FIR 59/2020 registered in connection with the infamous Delhi riots cases that raged north east Delhi in February 2020. The charges in this FIR are under Sections 147 (punishment for rioting), 148 (rioting, armed with deadly weapon), 149 (unlawful assembly), 120B (punishment of criminal conspiracy), 302 (punishment for murder), 307 (attempt to murder), 124A (sedition), 153A (promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc), 186 (obstructing public servant in discharge of public functions), 353 (Assault or criminal force to deter public servant from discharge of his duty), 395 (Punishment for dacoity), 427 (Mischief causing damage to the amount of fifty rupees), 435 (Mischief by fire or explosive substance with intent to cause damage to amount of one hundred), 436 (Mischief by fire or explosive substance with intent to destroy house, etc), 452 (House-trespass alter preparation for hurt, assault or wrongful restraint), 454 (Lurking house-trespass or house-breaking), 109 (Punishment of abetment), 114 (Abettor present when offence is committed) of the Indian Penal Code (IPC); Section 3 (Mischief causing...
damage to public property) & 4 (Mischief causing damage to public property by fire or explosive substance) of Prevention of Damage to Public Property Act 1984 and Section 25 (Punishment for certain offences) & 27 (Punishment for using arms, etc) of Arms Act. On 19 April 2020, sections 13 (Punishment for unlawful activities), 16 (Punishment for terrorist act), 17 (Punishment for raising funds for terrorist act) and 18 (Punishment for conspiracy, etc.) of UAPA, 1967 were added to FIR 59/2020.

Out of the 18 persons booked under the above mentioned charges, eight are student activists from Jamia Millia Islamia University and Jawaharlal Nehru University, who included: Meeran Haider, Jamia Millia Islamia Ph.D. students and member of Jamia Coordination Committee, who was booked on 1 April 2020; Safoora Zargar, an M Phil student at Jamia Millia Islamia University and member of Jamia Coordination Committee, who was booked on 13 April 2020; Gulfisha Fatima, an MBA student from a private university, who was booked on 18 April 2020; Sharjeel Imam, a student of Jawaharlal Nehru University, who was booked on 29 April 2020; Asif Iqbal Tanha, a third-year student of Persian at Jamia and member, Jamia Coordination Committee, who was booked on 21 May 2020; Natashal Narwal, a student of Jawaharlal Nehru University and member of Pinjra Tod, a feminist organization, who was booked on 29 May 2020; Devangana Kalita, an MPhil student at JNU and member of the Pinjra Tod, who was booked on 6 June 2020 and former JNU student and Umar Khalid, co-founder of the activist group United Against Hate, who was booked on 7 September 2020.

On 16 September 2020, the Delhi Police submitted a 17,500 page charge sheet before the court of an Additional Sessions Judge in Patiala House Courts in FIR No.59/2020, also called the ‘infamous’ Delhi riots conspiracy case. The voluminous charge sheet details the charges and evidence against 15 of the 21 people arrested in FIR 59/2020. The first chargesheet in case FIR No.59/2020 alleged commission of offences under Section 120 B of the Indian Penal Code read with Sections 13, 16, 17, 18 of the UAPA and Sections 124A, 153A, 302, 307, 109, 114, 147, 148, 149, 186, 353, 395, 201, 341, 212, 295, 427, 435, 436, 452, 454, 341, 420, 468, 471, 34 IPC; as well as Sections 25 and 27 of the Arms Act and Sections 3 and 4 of the Prevention of Damage to Public Property Act, 1984, a second charge sheet was submitted against Umar Khalid and Sharjeel Imam.

On 2 March 2021, the Court of Additional Sessions Judge Amitabh Rawat took cognisance of sedition charge against 18 persons, including
the above named student activists in connection with the north-east Delhi riots of February 2020. The court took cognisance of the offences under sections 124 A (sedition), 153-A (promoting enmity on the grounds of religion, language, caste etc), 109 (abatement) and 120-B (criminal conspiracy) of the IPC noting that the “requisite sanctions under Section 196 CrPC against all 18 accused persons has been received”.62

On 25 March 2021, a single judge bench of the Delhi High Court vacated its stay on the trial in the case under the UAPA after the Delhi government made submission that the accused in the case are at liberty to collect a complete hard copy of the chargesheet from the trial court. The High Court had earlier stayed the trial in the case under the UAPA upon the prosecution’s appeal against a trial court order which had directed for hard copy of the charge sheet to be supplied to all the accused.63

Vide order and judgment dated 15 June 2021, a division bench comprising Justice Siddharth Mridul and Justice Anup Jairam Bhambhani released Asif Iqbal Tanha64, Natasha Narwal65 and Devangana Kalita66 on bail in FIR 59/2020 registered at Crime Branch Police Station, New Delhi registered under sections 147/148/149/120-B IPC along with Sections 13/16/17/18 of the Unlawful Activities (Prevention) Act, 1967.

Case 2. Arrests and incarceration of rights activists accused in the Bhima Koregaon case

On 31 December 2017, a group of activists, political leaders and retired judges came together at Shaniwar Wada in Pune, Maharashtra to organize a program called the ‘Elgar Parishad’ (Congress for Speaking Aloud). The organisers included former Supreme Court judge, Justice P.B. Sawant, and former Bombay High Court judge, Justice B.G. Kolse-Patil. The event saw songs, street plays and speeches on various issues, including Dalit rights and criticism of the Narendra Modi government.67

Every year on 1 January, Ambedkarite Dalits gather at Bhima Koregaon to pay their respect at the Vijay Stamb (victory pillar) under the banner of Elgar Parishad to celebrate the ‘Battle of Bhima Koregaon. In 1818, it was during this battle that Dalit soldiers of the British army, mostly Mahars, trounced the troops of the local ruler, Peshwa Bajirao II, a Brahmin. 1 January 2018 was the 200th commemoration of the battle. However, that year saw violent clashes between Dalit and Maratha groups resulting in the death of at least one person and injuries to several others.68

Two FIRs were filed — one filed by Dalits on 2 January 2018 blamed two Hindutva Right-wing leaders Milind Ekbote and Sambhaji Rao Bhide
for the violence based on an eye-witness account and the other filed on 8 January 2018 by Tushar Ramesh Damgude under Section 153A, 505(1)(b), and 117 of the Indian Penal Code (IPC) blaming “Leftist groups with Maoist links” who spoke at Elgar Parishad for instigating the violence. The FIR had named 6 members of cultural organisation Kabir Kala Manch — Sudhir Dhawale, Sagar Gorkhe, Harshali Potdar, Ramesh Gaychor, Dipak Dhengale and Jyoti Jagtap. It is the latter that has since been vigorously pursued by the authorities.69

On 6 June 2018, the Maharashtra police arrested five social activists from across the country on charges of instigating caste violence in Bhima Koregaon in Maharashtra in January 2018. They arrested Surendra Gadling (Lawyer), Mahesh Raut (Activist) from Nagpur, Sudhir Dhawale (Activist) from Mumbai, Rona Wilson (Activist) from Delhi70 and an academic from Nagpur. Pertinently, former Supreme Court judge, Justice P.B. Sawant, and former Bombay High Court judge, Justice B.G. Kolse-Patil were not made parties. On 28 August 2018, the police raided homes of 10 people, and the arrest of five of them - Sudha Bharadwaj (Human rights and labour rights lawyer in Chhattisgarh), Arun Ferreira (Political activist and lawyer, Maharashtra), former college professor in Maharashtra, P. Varavara Rao [noted Telugu poet and a co-founder of the Viplava Rachayitala Sangham (Revolutionary Writers’ Association, Hyderabad)] and Gautam Navlakha (human rights activist, journalist and founder of the People’s Union for Democratic Right, Delhi).71

On 15 November 2018, the Pune Police submitted a charge sheet of over 5,000 pages against the five activists arrested on 6 June their alleged links with the outlawed group, Communist Party of India (Maoist), and the Bhima-Koregaon clashes on 1 January. The indictment under a number of Sections like 124A and 153 of the Indian Penal Code as well as the Unlawful Activities (Prevention) Act [UAPA] for seditious activities was filed in the UAPA Court of Judge K.D. Vadane.72 The chargesheet named five others as accused who it said were underground. They are Milind Teltumbde, an alleged Maoist living in Yawatmal, for whom the Gadchiroli police has announced a reward of Rs 50,00,000 lakh for any information about him; Ritupan Goswami, a JNU student allegedly recruited to the CPI Marxist-Leninist by GN Saibaba, but who could also reportedly be leading a civilian life in Assam; Comrades Manglu and Deepu, both aliases; and Prashant Bose, secretary of the Eastern Regional Bureau and known senior politburo member of the CPI (Maoist).73

On 21 February 2019, the Pune police filed a supplementary chargesheet against Sudha Bharadwaj, Varavara Rao, Arun Ferreira, Vernon Gonsalves
and banned Communist Party of India (Maoist) leader Ganapathy in connection with the Bhima Koregaon case.\textsuperscript{74}

On 24 January 2020, Prime Minister Modi led Bharatiya Janata Party government at the Centre transferred the Bhima Koregaon case to the National Investigation Agency (NIA) to the chagrin of the Maha Vikas Aghadi government in Maharashtra.\textsuperscript{75}

On 8 October 2020, a team of NIA officials from Mumbai office arrested 83-year-old Jharkhand-based tribal rights activist and Jesuit priest Father Stan Swamy in Ranchi and flew Swamy to Mumbai where he was produced in a court which sent him to judicial custody.\textsuperscript{76}

On 9 October 2020, the NIA led second supplementary charge sheet in the 2018 Bhima Koregaon violence case, naming Anand Teltumbde, Hany Babu, Gautam Navlakha, Milind Teltumbde, Stan Swamy and members of Kabir Kala Manch – Jyoti Jagtap, Sagar Gorkhe, and Ramesh Gaichor. In its 10,000-page charge sheet, NIA alleged that senior leaders of CPI (Maoist), a banned organisation under the Unlawful Activities (Prevention) Act, were in contact with the organisers of Elgar Parishad event of December 31, 2017 in Pune as well as the accused academicians and activists to spread the Maoist and Naal ideology and encourage unlawful activities.\textsuperscript{77}

Among the 16 people arrested in the Elgar Parishad case, activist and poet Varavara Rao, who was granted interim bail for six months on 6 February 2021. On 9 December 2021, Sudha Bharadwaj, was released following the confirmation of the default bail granted to her by the Bombay High Court on 1 December by the Supreme Court.\textsuperscript{78}

Case 3: NIA witch hunting on human rights activists in Andhra Pradesh and Telangana

During 31 March – 1 April 2021, the National Investigation Agency carried out searches in the residences of reportedly at least twenty activists in Telangana and Andhra Pradesh. The raids were conducted against activists who are members of Human Rights Forum, a civil rights organisation, Andhra Pradesh Civil Liberties Committee, Virasam (Revolutionary Writers’ Association) and others, in connection with the Munchingiputtu case. The case pertains to one person identified as Pangi Naganna, an alleged Maoist ‘courier’ who was arrested in November 2020 by the Visakhapatnam Rural police in Andhra Pradesh. Following his arrest, Naganna allegedly named several activists who are allegedly working as frontal organisations for the outlawed Maoist party.\textsuperscript{79} The sections
under which the Munchingputtu FIR was lodged were: 120 B (punishment for criminal conspiracy), 121 (waging, or attempting to wage war), 121A (conspiracy to commit offences punishable by section 121), 143 (punishment for unlawful assembly), 144 (whoever, being armed with any deadly weapon, or with anything which, used as a weapon of offence), 124A (Sedition) read with 149 of the Indian Penal Code; Unlawful Activities (Prevention) Act Sections 10, 13 and 18; Andhra Pradesh Public Security Act; and Section 25 of the Arms Act. 80

On 7 March 2021, the NIA took over the case from Andhra Pradesh Police and registered an FIR in Hyderabad.

Among those raided in two Telugu states include Raghunath Verose, a Telangana high court advocate who is associated with Andhra Pradesh Civil Liberties Committee, Dappu Ramesh who is a member of the Jana Natya Mandal, V.S. Krishna of the Human Rights’ Forum, along with Paani, Varalakshmi and Arun of the Revolutionary Writers’ Association, Devendra, Shilpa, Swapna, Rajeswari and Padma of the Chaitanya Mahila Sangam, Raghunath, Chilika Chandra Shekhar and Chitti Babu of the Andhra Pradesh Civil Liberties Committee, Anjamma and Sirisha of the Amarula Bandhu Mitrula Sangham, and advocate K.S. Chelam. 81

V S Krishna, a former journalist, is a prominent human rights activist, well-known in both Telangana and Andhra Pradesh. In the Munchingiputtu FIR registered by the Vishakapatnam Rural police, Krishna who was providing legal aid to the Vakapalli Adivasi rape survivors was accused of being a “Maoist” and coercing the rape survivors into “falsely testifying” against the 13 Greyhounds personnel accused of committing gang rape on 11 Kondh tribal women under Nurmati panchayat in Visakhapatnam in 2007. Several civil rights activists, including Krishna, fought for the justice of the rape survivors. The trial in the heinous incident commenced in 2019 and is currently under trial in the SC/ST Special Court, Visakhapatnam. 82

Case 4: Arrest of peasant leader Akhil Gogoi and his colleagues under UAPA in Assam

On 12 December 2019, Right to Information activist and peasant leader Akhil Gogoi was taken into preventive detention by Assam police from Jorhat district amid protests against the Citizenship Amendment Act, 2019 in the state. 83 On 17 December 2019, the Assam Police transferred Gogoi, an advisor of the Krishak Mukti Sangram Samiti (KMSS), to the National Investigation Agency which booked him under the amended Unlawful Activities (Prevention) Act. KMSS leaders Bittu Sonowal and
Dharjya Konwar were arrested on 7 January 2020 and booked under the UAPA by the NIA while student leader Manas Konwar was arrested on 23 January 2020.84

The NIA accused the KMSS and student leaders as overground workers of the proscribed CPI (Maoist) and charged them for sedition and under provisions of the Unlawful Activities (Prevention) Act (UAPA). Accusing him of being involved in terrorist activities, the NIA accused Gogoi and others of using passage of the Citizenship Amendment Bill (CAB) in Parliament as an opportunity to promote enmity between different groups on grounds of religion, race, piece of birth, residence, language and done acts prejudicial to maintenance of harmony, using visible representations and spoken words, thus endangering the security and sovereignty of the State and which is prejudicial to national Integration. The FIR also accused them of being part of the Maoist conspiracy and that they knowingly abetted, conspired, advocated, and incited the acts preparatory to commission of terrorist acts.85

On 17 March 2020, the Special NIA Court granted bail to Gogoi as the investigating agency failed to file a charge sheet against him within the specified period of 90 days. However, the Gauhati High Court later stayed the bail. On 29 May 2020, the NIA filed the charge sheet against Gogoi and three of his colleagues for sedition and terror activities for their alleged role in violent protests against the CAA. However, the Special NIA Court granted bail to Manash Konwar on 13 July 2020; to Bittu Sonowal on 15 July 202086 and to Dharjya Konwar on 17 July 2020.87 On 1 October 2020, the Special NIA Court granted bail to Gogoi in one (FIR registered at Chabua PS and later transferred to NIA) of the two cases being probed by the NIA in connection with his alleged role in the violent protests against the CAA while his bail petition was rejected in the case registered at Chandmari police station, Guwahati.88 He challenged the order of the special NIA court before the Gauhati High Court, which dismissed it on 7 January 202189. He again challenged the order of the Gauhati High Court in the Supreme Court where a bench comprising Justices N.V. Ramana, Surya Kant and Aniruddha Bose dismissed his plea on 11 February 2021. The bench, however, told his lawyer that Gogoi petitioner may approach the top court for bail once the trial starts. He is currently lodged at Guwahati Central jail.90

On 22 June 2021, a special NIA court acquitted Akhil Gogoi in case number 3/2020, related to the Chabua police station in upper Assam’s Dibrugarh district. Two others, Jagajit Gohain and Bhupen Gogoi, were also acquitted. In April-May 2021, Gogoi fought the state assembly
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Elections from jail and was elected as a Member of Legislative Assembly from Sibsagar constituency. On 1 July 2021, Akhil Gogoi was released from prison after an NIA court cleared his charges in the last case related to anti-CAA violence in Assam but he had to spend about 18 months in jail.

Case 5. Arrest and detention of Ms. Hidme Markam in Dantewada, Chhattisgarh

On 9 March 2021, Hidme Markam, a 28-year-old anti-mining and tribal rights activist, was abducted from the programme marking the International Working Women’s Day in Sameli, Dantewada, held to commemorate Nande and Kawasi Pande, two young women forced to take their lives after custodial physical and sexual violence by the Chhattisgarh police and paramilitary forces. Markam, daughter of Podiyam Markam, Burgum village, Dantewada district, was later shown as arrested in four cases involving serious charges, including charges under the Unlawful Activities (Prevention) Act. She was dragged away in front of 300 villagers and activists who had peacefully gathered there, including activists from the Chhattisgarh Mahila Adhikar Manch (CMAM) and Jail Bandi Rihai Committee (JBRC) of which she is the president. Several indigenous peoples’ right organisations and human rights activists attended the two day program at Sameli village on 8 - 9 March 2021. On the last day of the event i.e. on 9 March 2021, the police picked up Markam, who is Convener of the Jail Bandi Rihai Committee and the main organiser of the event. Eyewitnesses of her arrest allege that the police personnel dragged her into the police vehicle. They neither show any warrant of arrest shown nor did give any reason for her arrest when activist colleagues, including lawyers confronted the police when she was being dragged into the police vehicle. The same day she was produced before a Magistrate who sent her to jail till next date of hearing of her bail petition i.e. 19 March 2021.

In a press note released on 10 March 2021, the police present an altogether different account of her arrest. They claimed Markam was spotted by police personnel returning from a search operation in the Palnar area. She was identified by them as the president of the area’s Janatana Sarkar, the village level civilian government of the banned CPI (Maoist), the note said. The police claimed she was an absconding Maoist insurgent who faces serious charges in five cases registered between 2016 and 2020 and she carried a reward of Rs 1.10 lakh on her head. He listed four cases: two from 2016 (FIR numbers 07/2016 and 09/2016) and another two from 2020 (FIR numbers 03/2020 and 04/2020) in which police claimed
Markam was involved. According to her lawyer Kshitij Dubey, she was arrested in just one case from 2016 out of the four listed by Dantewada SP. Apart from four charges under the Indian Penal Code—rioting, rioting armed with deadly weapon, unlawful assembly, attempt to murder—and two charges under the Arms Act, Markam faces charges under the Unlawful Activities Prevention Act, India’s draconian anti-terror law which has a high legal bar for bail.95

On 19 March 2021, Markam’s bail petition could not be heard in Dantewada as the police failed to produce her in the court citing security measures for a cricket match in state capital Raipur.96 On 8th April 2021, seven United Nations Special Procedures mandate holders intervened with India on the arrest and detention of Chhattisgarh Adivasi rights activist Hidme Markam and the stringent charges against her.97 She remains under detention.

5.2 UAPA cases against journalists

The UAPA was also regularly invoked against the journalists merely for performing their duty.

Case 1: Illegal arrest and imprisonment of journalist Santosh Yadav in Chhattisgarh

On 29 September 2015, Chhattisgarh police arrested journalist Santosh Yadav, who worked as stinger for the Hindi newspaper Navbharat in Darbha block of Bastar district, from his home soon after he recorded testimonies of villagers accusing the police of detaining five boys illegally. The police claimed that Yadav had taken part in an ambush laid by Maoist guerillas on 21 August 2015, in which one policeman was killed and another injured. He was slapped with a slew of serious charges: rioting with a deadly weapon, unlawful assembly, wrongful restraint, attempt to murder, public mischief and criminal conspiracy. He was also charged under anti-terrorism laws like the Unlawful Activities Prevention Act and the Chhattisgarh Special Public Security Act.98

It took the police one year to file the chargesheet against Yadav. While in Jagdalpur prison, Yadav said he was beaten up and subjected to solitary confinement when he demanded improvements in the food supplied to inmates as well as reading material. He was charged with criminal intimidation by jail authorities. Yadav was later shifted to Kanker prison, 160 km away, making it difficult for his wife and three children to visit him.99
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His bail was rejected twice in the National Investigation Agency court in Jagdalpur and once in the High Court in Bilaspur. He was finally granted bail by the Supreme Court in February 2017 on the condition that he report every single day to the Darbha police station. Yadav said the personnel taunted and humiliated him during his reporting to the police station and the requirement of reporting to the police station on daily basis left him hardly any scope to continue his journalistic vocation in a full-fledged manner.100

Finally all the eighteen accused in the case, including Yadav, were acquitted. The security officer based on whose complaint the police registered the FIR, subsequently unable to identify Yadav in the identification parade. According to Yadav’s lawyer Arvind Chaudhary, the court examined close to 50 witnesses in the matter, 90% of whom represented the security forces and therefore their testimonies did not hold ground.101

Case 2: Arrest and detention of photojournalist Kamran Yousuf in Kashmir

On 4 September 2017, freelance photojournalist Kamran Yousuf (23 years) was arrested by the Jammu and Kashmir police and his custody was transferred to the National Investigation Agency (NIA) on 6 September with the accusation stone pelting leveled against him. He was transferred to Delhi and lodged in Tihar jail.102

On 18 January 2018, Yousuf, along with 11 others, was booked under the charge of stone pelting and conspiring to wage war against the Government of India by carrying out terrorist and secessionist activities in Jammu and Kashmir. The NIA chargesheet accused Yousuf and another stone pelter Javed Ahmad Bhat of forming strategies and action plans to launch violent protests and communicate the same to the masses in the form of protest calendars released through newspapers, social media and religious leaders, creating an atmosphere of terror and fear in the state of Jammu and Kashmir.103

In the chargesheet, the NIA listed the “moral duty of a journalist” and observed: “Had he been a real journalist/stringer by profession, he may have performed one of the moral duty of a journalist which is to cover the activities and happening (good or bad) in his jurisdiction. He had never covered any developmental activity of any Government Department/Agency, any inauguration of hospital, school building, road, bridge, statement of political party in power or any other social/developmental activity by state government or Govt of India.” The chargesheet also mentioned the social work by the Army and para-military forces in Kashmir such as organising “blood-
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donation camps, free medical check-up, skill development program or Iftar party” among others. “Kamran Yusuf had hardly taken any video of such activity and video or image of any such activity can rarely been seen in his laptop or mobile which clearly show his intention to only cover the activities which are anti-national and earn money against such footages,” said the chargesheet. Another observation made by the NIA in the chargesheet was that Yusuf was not a “professional” because he did not receive training from any institute.104

On 12 March 2018, the Special NIA Court of Additional Sessions Judge Tarun Sherawat granted bail to Yousuf. In the bail order, the judge debunked the NIA charge against Yusuf and said that in his considered view his “presence on the sites of stone pelting incident etc is intrinsic notwithstanding the fact/contention that he was not a permanent employee of any media organisation”. The court noted that it was apparent that mere presence of the accused at the site of the incident is not sufficient to implicate such accused, who is a journalist, for the offences that allegedly occurred during that period at that site. The judge further said that the “NIA has not placed on record any single photo/video showing that the applicant/accused was indulging in stone pelting activities at any site”. The judge also noted that the prosecution could not provide evidence to back its claim that Yusuf had been in touch with any of the other accused persons in the case. He said that its charge that the journalist had been in touch with an unnamed “Party B” was irrelevant since the NIA had not charged “Party B” in the case.105

Judge Sehrawat also noted that “the prosecution has not levelled any specific allegations against the present accused/applicant that he has been a member of any particular banned organisation as per the first schedule annexed to the Unlawful Activities (Prevention) Act.”106

Case 3: Arrest & detention of journalist Asif Sultan in Kashmir

Aasif Sultan (33 years), journalist, was arrested on 27 August 2018, after a night raid at his house in Batamaloo area in Srinagar by a joint team of police and paramilitary forces. The raid continued for hours and Aasif was whisked away to the police station, his phone and laptop confiscated. Prior to his arrest, Aasif had written a story titled ‘Rise of Burhan’ for the weekly publication he worked with. According to his family, when the story was published he started getting calls from the police and other security agencies.107 Aasif worked as an assistant editor with Kashmir Narrator, a weekly magazine and wrote a widely-acclaimed piece on Burhan, whose death led to months of protests in Kashmir.108
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Showkat Ahmad Motta, Editor of Kashmir Narrator, questioned the timing arrest. Motta said that Asif was “booked in the same case that was registered in an encounter at Batamaloo earlier”. On 12 August 2018, one policeman was killed and four members of CRPF personnel were injured in an encounter with militants, who managed to escape from the cordon in Batamaloo. Asif’s father Mohammad Sultan, who is a retired government employee, stated that the encounter in which Asif has been implicated took place nearly a kilometre from their home.109

In February 2019, police filed a charge sheet accusing him of harboring militants. He is detained at the Srinagar Central Jail.110

Case 4: FIR against editor N Venugopal Rao in Hyderabad

In November 2019, N Venugopal Rao, the editor of a Telugu weekly journal Veekshanam Collective, was booked under various sections of the IPC, UAPA, Telangana Public Security Act and others. He was named as the seventh accused in a case of alleged conspiracy against the state with Maoist connections. In the remand case diary presented before the LB Nagar II Metropolitan Magistrate by the Telangana police on 13 November 2019, Venugopal was described as member of Viplava Rachayitala Sangham popularly known as “Virasam” founded by Varavara Rao, who was arrested by Pune police on 17 November 2018, citing his involvement in a conspiracy to kill Prime Minister Modi. The police also showed Venugopal as an absconder.111

Venugopal’s name as an accused emerged after the state police arrested two persons – Narla Ravi Sarma, 52, and his wife B. Anuradha, 56 – with alleged connections with the banned Communist Party of India (Maoist) on 12 November 2019. Sarma, an agriculture graduate, was first arrested in 2009 by Jharkhand police for allegedly participating in Maoist activities. He was released on bail in 2016, and since then he along with his wife have been staying in Hyderabad. During the raids, the police claims to have found “incriminating” evidence against the couple and seized “revolutionary literature”, which included collection of poems written by Varavara Rao, “three laptops, pen drives and memory cards”.112

On 21 November 2019, Venugopal moved Telangana High Court seeking an anticipatory bail. Mr. Venu Gopal submitted to the court that he was not even remotely connected to the charges framed against the arrested couple. There was no material on record prima facie to connect him with the arrested couple. The petitioner condemned that the police had described him as member of Virasam and showed him as absconding. He said that the charges were false and frivolous. He also denied having any
relationship with Varavara Rao led Virasam since 2009 as he suspended from the organization following a controversy on an article he wrote at that time.\textsuperscript{113}

Venugopal has been a severe critic of the majoritarian leanings of the Modi government as well as of the K. Chandrashekar Rao-led Telangana Rashtra Samithi (TRS) government in the state. He was one of the most important civil society voices advocating for a separate Telangana state. However, since the formation of the state, he has emerged as one of the strongest critics of the TRS establishment and its alleged “anti-people policies”.\textsuperscript{114}

Case 5: FIR registered against Masrat Zahra in Kashmir

Masrat Zahra, a Srinagar-based independent photo journalist was booked by the Jammu and Kashmir Police under the Unlawful Activities Prevention Act (UAPA) for allegedly glorifying anti-national activities on social media. In a statement issued on 20 April 2020 by the Cyber Police Station (Kashmir Zone), the police accused Zahra of uploading “anti-national” posts with the criminal intention to induce the youth and promote offences against public tranquility. The statement said that “Cyber Police Station received information through reliable sources that one Facebook user namely Masrat Zahra is uploading anti-national posts ... Facebook user is also believed to be uploading photographs which can provoke the public to disturb law and order. The user is also uploading posts that tantamount to glorify anti-national activities and dent image of law enforcing agencies besides causing disaffection against the country.”\textsuperscript{115}

Zahra was initially contacted on 19 April 2020 to visit the J&K’s Special Operation Group (SOG) headquarters, Cargo, Srinagar. After the intervention of journalist colleagues, civil administration officials and senior police officers, she was informed that she was not required to go. However, the same evening, the FIR was filed and next day she found out that she was booked under section 13 of the Unlawful Activities (Prevention) Act and section 505 of the Indian Penal Code on 18 April 2020 for Zahra sharing a photograph of one Arifa Jan whose picture she had taken for a story back in December 2019. Arifa’s husband was allegedly killed by the Indian Army in 2000.\textsuperscript{116}

In her post on the facebook she wrote: “Arifa Jan suffers frequent panic attacks nearly 2 decades after her husband was gunned down by Indian army in 2000, she can still hear the gunshots and sees her husband’s blood-soaked body when she thinks of him.”\textsuperscript{117}
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Case 6: Arrest and detention of journalist Siddique Kappan in Uttar Pradesh

On 5 October 2020, Uttar Pradesh police arrested Siddique Kappan, a journalist from Malappuram in Kerala, along with three others under Maant police station limits in Mathura district of Uttar Pradesh. Kappan and three others identified as Atiq-ur-Rehman from Muzaffar Nagar, Masood from Bahraich and Alam from Rampur in Uttar Pradesh, were heading towards Hathras, where a young Dalit woman had died after being allegedly gang-raped in September 2020. The four were arrested after a laptop and some objectionable literature relating to ‘Justice for Hathras Victim’ was allegedly recovered from their possession while they were en route to Hathras. According to police, the four were initially placed under preventive detention but an FIR was registered under section 153-A of IPC (promoting enmity between two groups), 295A of IPC (deliberate and malicious act intended to outrage feelings) 124 (A) (Sedition) beside section 17 and 14 of Unlawful Activities (Prevention) Act 1967 and Sections 65, 72 and 76 of Information Technology Act in Maant police station on 7 October 2020 and subsequently they were presented before a court. The police alleged the four are linked with Popular Front of India’s (PFI) student wing Campus Front of India (CFI) and were coming from Delhi and moving towards Hathras in a car. The UP government has maintained that there is a conspiracy to whip up caste and communal violence in the state and the Hathras police are now investigating a conspiracy angle in the case. The FIR blames them for attempting to incite riots in Hathras and fuelling caste violence for which they were collecting donations through those working for website Carrd.co.118

On 15 February 2020, the Supreme Court granted five-day interim bail to journalist Kappan to visit Mallapuram, Kerala to his ailing 90-year-old mother. Granting the interim-bail, a bench headed by Chief Justice of India S.A. Bobde imposed several bail conditions on Kappan after Solicitor General Tushar Meha expressed concerns that he may use the time to garner public support. The court said that Kappan should visit Kerala only to see his mother, and that “he shall not give any interview to any media, including social media.”119 On 17 February 2021, Kappan was flown to Kozhikode, Kerala where he met his ailing mother and other relatives, including his wife and brought back to Mathura prison on 21 February.120

In the chargesheet filed in September 2021, the Special Task Force claimed that Siddique Kappan did not write like a “responsible journalist” and reported events to “incite Muslims”.121 The chargesheet stated:

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“During a riot, when you take the name of only a particular community and publish incidents related to that community, members of that community get enraged. Responsible reporters do not indulge in such communal reporting, but Siddiqui Kappan’s journalism was only meant to incite Muslims and to further the agenda of the PFI that wants to provoke riots and communal feelings.”

The chargesheet also said that Kappan’s articles were the result of “a collaboration with members of SIMI [Student’s Islamic Movement of India] and an attempt to legitimize the banned outfit’s agenda”.

The police cited articles written by Siddique Kappan as evidence. The articles include one on the Nizamuddin Markaz mosque in Delhi, blamed for thousands of coronavirus infections around the country in the initial weeks of the nationwide lockdown in March 2020, reports on anti-citizenship law protests, the February 2020 Delhi riots that followed them and the chargesheet against activist Sharjeel Imam in a case related to violence in the national capital etc. On Kappan’s article on the protests against the citizenship law, which introduced a religious criterion for citizenship for the first time, the chargesheet reads: “The article talks about the firing by a Hindu man Kapil Gurjar during the Shaheen Bagh protests [against CAA] and compares this incident to the assassination of Mahatma Gandhi. The article also criticises the way the Delhi Police handled the protests.”

Case 7: Arrest of editors Sadokpam Dhiren and Paojel Chaoba in Manipur

On 17 January 2021, Editor-in-Chief Sadokpam Dhiren and Executive Editor Paojel Chaoba of The Frontier Manipur were arrested under Sections 124A (sedition), 120B (criminal conspiracy), 505(b) (causing alarm to induce offence against the state), and 34 (common intention) of the Indian Penal Code as well as Section 39 (supporting terror organisation) of the Unlawful Activities (Prevention) Act for publication of an article on their online news portal. The article, “Revolutionary Journey in a Mess,” was written by one the news portal’s contributors M Joy Luwang. It was published on 8 January 2021.

According to the suo moto FIR registered by the Manipur Police which named Luwang and the editors as the accused, “the author... endorsed revolutionary ideologies and activities and expressed... dismay at the deteriorating character of the armed revolutionary leaders of Manipur in the recent decade.”
It further stated that “His article clearly expressed sympathy and support to the ideologies and activities of the armed revolutionary groups and outrightly called the rule of law of the Union and State government as colonial law...”

The two editors were released on 18 January 2021 after they issued an apology addressed to the superintendent of police of Imphal West district stating that the article was “unverified” and it was an “oversight” on their part to have published it.

5.3 UAPA against the academics

The UAPA was also invoked against the academics. As stated, in the Elgar Parishad case, Prof. Shoma Sen, Prof. Vernon Gonsalves, Prof. Anand Teltumbde and Prof. Hany Babu were arrested with along with other human rights defenders. In addition, a number of other academics too were arrested under the UAPA.

Case 1: Arrest of Assistant Professor Abdul Bari Naik in Kashmir

On 5 March 2021, the Jammu and Kashmir police arrested Dr. Abdul Bari Naik, an assistant professor at government Degree College Udhampur in Jammu and Kashmir under the UAPA from the college itself. According to his brother Rauf Naik, an advocate, his brother was booked and arrested in an old case lodged in Police Station Kulgam under FIR NO. 191/2018 U/S 153, 353, 13 under the UAPA and was kept in detention in Kulgam district. The case relates to alleged pelting of stones at a group of armed forces after they entered the premises of Government Degree College in Kulgam and fired tear smoke shells inside the college premises in 2018. Dr. Bari was posted at the college at that time and he was booked for “inciting violence” on the college campus by the Jammu Kashmir Police. Infact, it was Dr. Bari who persuaded the students not to pelt stone and counseled them to always fight through non-violent means.

The Kashmiriyat quoted Dr. Bari’s brother Rauf saying that his brother has been vocal against corruption and other issues that affect the society at the large. Dr. Bari was booked in another case in registered against him under the FIR No. 83/2019 U/S 252, 427 of the Ranbir Penal Code (RPC) read with Section 13, 18, 19, 38, 39 UAPA Act P/S Yaripora in Kulgam district for allegedly posting a video on social media purportedly showing Army soldiers vandalising a mosque and allegedly desecrating the Holy Quran at a local mosque following a public protest in Kulgam against the construction of an Army camp.
**Case 2: Arrest of Osmania University Professor Ch Khasim**

On 18 January 2020, Telangana police arrested Osmania University Professor Ch Kasim in a three-year-old Unlawful Activities Prevention Act (UAPA) case from his house in university campus in Hyderabad. In the morning a team of Mulugu police station of Siddipet commissionerate reached Khasim's official residence at the University campus with a search warrant issued by the court and also carried out search at his house. The police accused Professor Kasim of having connections with the banned CPI (Maoists) and claimed that they found incriminating evidence including some electronic evidence against the professor in a case of 2016. Kasim was booked under Section 10 (being member of an unlawful association) and 18 (Punishment for conspiracy) of the UAPA, along with Sections 120B (Punishment of criminal conspiracy), 121A (Punishment for waging, or attempting to wage war, or abetting waging of war against the government of India) and 124A (Sedition by words, either spoken or written, or by signs, or by visible representation) of the IPC.

Professor Kasim’s wife Snehalata said that police forcibly entered into their house early in the morning by breaking the rear door open. She said her husband was implicated in false charges because of speaking against and creating awareness about disparity in the society, caste discrimination and unemployment in Telangana.

On 20 May 2020, Professor Kasim was released from the Cherlapally jail on conditional bail on after spending nearly four months in prison by the Rangareddy district court.

**5.4 Tripura: The emblematic case of abuse of the UAPA**

On 20 October 2021, riots mainly triggered by the vandalisations of "mosques" took place in Tripura. The situation deteriorated after a number of rallies were taken out by the Vishwa Hindu Parishad (VHP) on 21th and 26th October.

The response was to invoke UAPA and not Section 153 of the IPC. The Tripura police booked at least 102 social media account holders, including 68 Twitter handles, under the Unlawful Activities Prevention Act (UAPA) along with other charges for posting allegedly distorted news regarding communal violence in the state and also sent letters to the social media platforms to block them. A case was lodged in this regard at West Agartala Police Station under Section 153A, 153B, 469,471,503,504,120B of...
the Indian Penal Code and Section 13 of the Unlawful Activities Prevention Act.\textsuperscript{136}

The Police also invoked UAPA against a team of journalists and lawyers who visited the State for fact finding. On 17 November 2021, the Supreme Court issued a notice to the Tripura police challenging its action to invoke Unlawful Activities (Prevention) Act (UAPA) provisions against two lawyers directed the police not to take any coercive action against lawyers Mukesh Kumar and Ansarul Haq Ansari and journalist Shyam Meera Singh. The petition has challenged the Tripura Police's decision to invoke UAPA against Kumar and Ansari over their social media posts and statements and journalist Singh for tweeting "Tripura Burning".\textsuperscript{137}


\textsuperscript{50.} Order dated 26.05.2020 in FIR No.59/2020 dated 06.03.2020 P.S Crime Branch (State versus Khalid & Ors.) passed by the Court of Additional Sessions Judge Dharmendra Rana, Patiala House Courts, New Delhi

\textsuperscript{51.} Order dated 26.05.2020 in FIR No.59/2020 dated 06.03.2020 P.S Crime Branch (State versus Khalid & Ors.) passed by the Court of Additional Sessions Judge Dharmendra Rana, Patiala House Courts, New Delhi

\textsuperscript{52.} Delhi Riots: ‘Vague’ FIR Names Umar Khalid, Police Arrests Jamia Student, Thewire.in, 4 April 2020; https://thewire.in/rights/delhi-riots-fir-meeran-haider

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ANNEX-1: The Unlawful Activities (Prevention) Act of 1967

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

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THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

ACT NO. 37 OF 1967

[30th December, 1967.]

An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith.


AND WHEREAS Resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1735 (2006) and 1822 (2008) of the Security Council of the United Nations require the States to take action against certain terrorists and terrorist organisations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory, and prevent the direct or indirect supply, sale or transfer of arms and ammunitions to the individuals or entities listed in the Schedule;


AND WHEREAS it is considered necessary to give effect to the said Resolutions and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto.]

BE it enacted by Parliament in the Eighteenth Year of the Republic of India as follows—

CHAPTER I

PRELIMINARY

1. Short title, extent and application.—(1) This Act may be called the Unlawful Activities (Prevention) Act, 1967 (37 of 1967).

(2) It extends to the whole of India.

(3) Every person shall be liable to punishment under this Act for every act or omission contrary to the provisions thereof, of which he is held guilty in India.

(4) Any person, who commits an offence beyond India, which is punishable under this Act, shall be dealt with according to the provisions of this Act in the same manner as if such act had been committed in India.

(5) The provisions of this Act apply also to—

(a) citizens of India outside India;

(b) persons in the service of the Government, wherever they may be; and

(c) persons on ships and aircrafts, registered in India, wherever they may be.

2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(a) "association" means any combination or body of individuals;

(b) "cession of a part of the territory of India" includes admission of the claim of any foreign country to any such part;

1. Ins. by Act 29 of 2004, s. 2 (w.e.f. 21-9-2004).
2. Ins. by Act 35 of 2008, s. 2 (w.e.f. 31-12-2008);
3. Subs. by Act 29 of 2004, s. 6, for sections 1, 2, 2A (w.e.f. 21-9-2004).
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(c) “Code” means the Code of Criminal Procedure, 1973 (2 of 1974);

(d) “court” means a criminal court having jurisdiction, under the Code, to try offences under this Act [and includes a Special Court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008];

(e) “Designated Authority” means such officer of the Central Government not below the rank of Joint Secretary to that Government, or such officer of the State Government not below the rank of Secretary to that Government, as the case may be, as may be specified by the Central Government or the State Government, by notification published in the Official Gazette;

(f) “economic security” includes financial, monetary and fiscal stability, security of means of production and distribution, food security, livelihood security, energy security, ecological and environmental security;

(g) “Order” means the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007, as may be amended from time to time;

(h) “prescribed” means prescribed by rules made under this Act;

(i) “proceeds of terrorism” means—

(i) all kinds of properties which have been derived or obtained from commission of any terrorist act, or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found; or

(ii) any property which is being used, or is intended to be used, for a terrorist act or for the purpose of an individual terrorist or a terrorist gang or a terrorist organisation.

Explanation.—For the purposes of this Act, it is hereby declared that the expression “proceeds of terrorism” includes any property intended to be used for terrorism;

(j) “property” means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents, deeds and [instruments in any form including but not limited to electronic or digital, evidencing title to, or interest in, such property or assets by means of bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, cash and bank account including fund, however acquired;]

(k) “Schedule” means the Schedule to this Act;

(l) “secession of a part of the territory of India from the Union” includes the assertion of any claim to determine whether such part will remain a part of the territory of India;

1. Ins. by Act 55 of 2008, s. 3 (w.e.f. 31-12-2008).
2. Ins. by Act 3 of 2013, s. 2 (w.e.f. 1-2-2013).
3. Clause (oa) renumbered clause (eb) thereof by s. 2, ibid. (w.e.f. 1-2-2013).
4. Subs. by s. 2, ibid., for clause (eb) (w.e.f. 1-2-2013).
5. Subs. by Act 35 of 2008, s. 3, for clause (eb) (w.e.f. 31-12-2008).
6. Subs. by Act 3 of 2013, s. 2, for “instruments in any form including” (w.e.f. 1-2-2013).
"State Government", in relation to a Union territory, means the Administrator thereof;

"terrorist act" has the meaning assigned to it in section 13, and the expressions "terrorism" and "terrorist" shall be construed accordingly;

"terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act;

"terrorist organisation" means an organisation listed in the Schedule or an organisation operating under the same name as an organisation so listed;

"Tribunal" means the Tribunal constituted under section 5;

"unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;

"unlawful association" means any association,—

(i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or

(ii) which has for its object any activity which is punishable under section 153A (45 of 1860) or section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (i) shall apply to the State of Jammu and Kashmir;

words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(3) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

CHAPTER II

UNLAWFUL ASSOCIATIONS

3. Declaration of an association as unlawful. —(1) If the Central Government is of opinion that any association is, or has become, an unlawful association, it may, by notification in the Official Gazette, declare such association to be unlawful.

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary:

Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette:

Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that Government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.
(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less than one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association in such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely:

(a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association;

(b) by serving a copy of the notification, where possible, on the principal office-bearers, if any, of the association;

(c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or

(d) in such other manner as may be prescribed.

4. Reference to Tribunal.—(1) Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification to the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.

(2) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the association should not be declared unlawful.

(3) After considering the cause, if any, shown by the association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office-bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or cancelling the same.

(4) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.

5. Tribunal.—(1) The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the “Unlawful Activities (Prevention) Tribunal” consisting of one person, to be appointed by the Central Government:

Provided that no person shall be so appointed unless he is a Judge of a High Court.

(2) If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.

(3) The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.

(4) All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.

(5) Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

(a) the summoning and enforcing the attendance of any witness and examining him on oath;
(b) the discovery and production of any document or other material object producible as evidence;
(c) the reception of evidence on affidavits;
(d) the requisitioning of any public record from any court or office;
(e) the issuing of any commission for the examination of witnesses.

(7) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code.

6. Period of operation and cancellation of notification.—(1) Subject to the provisions of sub-section (2), a notification issued under section 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made under section 4, remain in force for a period of five years from the date on which the notification becomes effective.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, either on its own motion or on the application of any person aggrieved, at any time, cancel the notification issued under section 3, whether or not the declaration made therein has been confirmed by the Tribunal.

7. Power to prohibit the use of funds of an unlawful association.—(1) Where an association has been declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section and the Central Government is satisfied, after such inquiry as it may think fit, that any person has custody of any moneys, securities or credits which are being used or are intended to be used for the purpose of the unlawful association, the Central Government may, by order in writing, prohibit such person from paying, delivering, transferring or otherwise dealing in any manner whatsoever with such moneys, securities or credits or with any other moneys, securities or credits which may come into his custody after the making of the order, save in accordance with the written orders of the Central Government and a copy of such order shall be served upon the person so prohibited in the manner specified in sub-section (3).

(2) The Central Government may endorse a copy of the prohibitory order made under sub-section (1) for investigation to any gazetted officer of the Government it may select, and such copy shall be a warrant whereverunder such officer may enter into or upon any premises of the person to whom the order is directed, examine the books of such person, search for moneys, securities or credits, and make inquiries from such person or any officer, agent or servant of such person, touching the origin of any dealings in any moneys, securities or credits which the investigating officer may suspect are being used or are intended to be used for the purpose of the unlawful association.

(3) A copy of an order made under this section shall be served in the manner provided in the Code, for the service of a summons, or where the person to be served is a corporation, company, bank or other association, it shall be served on any secretary, director or other officer or person concerned with the management thereof, or by leaving it or sending it by post addressed to the corporation, company, bank or other association at its registered office, or where there is no registered office, at the place where it carries on business.

(4) Any person aggrieved by a prohibitory order made under sub-section (1) may, within fifteen days from the date of the service of such order, make an application to the Court of the District Judge within the local limits of whose jurisdiction such person voluntarily resides or carries on business or personally works for gain, to establish that the moneys, securities or credits in respect of which the prohibitory order has been made are not being used or are not intended to be used for the purpose of the unlawful association and the Court of the District Judge shall decide the question.

1. Subs. by Act 29 of 2004, s. 5, for “Chapter XXXV” (w.e.f. 21-9-2004).
2. Subs. by s. 3, ibid., for “Code of Criminal Procedure, 1898 (5 of 1898)” (w.e.f. 21-9-2004).
3. Subs. by Act 3 of 2013, s. 3, for “two years” (w.e.f. 1-2-2013).
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(5) Except so far as is necessary for the purposes of any proceedings under this section, no information obtained in the course of any investigation made under sub-section (2) shall be divulged by any gazetted officer of the Government, without the consent of the Central Government.

(6) In this section, “security” includes a document whereby any person acknowledges that he is under a legal liability to pay money, or whereunder any person obtains a legal right to the payment of money.

8. Power to notify places used for the purpose of an unlawful association.—(1) Where an association has been declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section, the Central Government may, by notification in the Official Gazette, notify any place which in its opinion is used for the purpose of such unlawful association.

Explanation.—For the purposes of this sub-section, “place” includes a house or building, or part thereof, or a tent or vessel.

(2) On the issue of a notification under sub-section (1), the District Magistrate within the local limits of whose jurisdiction such notified place is situate or any officer authorised by him in writing in this behalf shall make a list of all movable properties (other than wearing-apparel, cooking vessels, beds and bedding, tools of artisans, implements of husbandry, cattle, grain and food-stuffs and such other articles as he considers to be of a trivial nature) found in the notified place in the presence of two respectable witnesses.

(3) If, in the opinion of the District Magistrate, any articles specified in the list are or may be used for the purpose of the unlawful association, he may make an order prohibiting any person from using the articles save in accordance with the written orders of the District Magistrate.

(4) The District Magistrate may thereupon make an order that no person who at the date of the notification was not a resident in the notified place shall, without the permission of the District Magistrate, enter, or be on or in, the notified place:

Provided that nothing in this sub-section shall apply to any near relative of any person who was a resident in the notified place at the date of the notification.

(5) Where in pursuance of sub-section (4), any person is granted permission to enter, or to be on or in, the notified place, that person shall, while acting under such permission, comply with such orders for regulating his conduct as may be given by the District Magistrate.

(6) Any police officer, not below the rank of a sub-inspector, or any other person authorised in this behalf by the Central Government may search any person entering, or seeking to enter, or being on or in, the notified place and may detain any such person for the purpose of searching him:

Provided that no female shall be searched in pursuance of this sub-section except by a female.

(7) If any person is in the notified place in contravention of an order made under sub-section (4), then, without prejudice to any other proceedings which may be taken against him, he may be removed therefrom by any officer or by any other person authorised in this behalf by the Central Government.

(8) Any person aggrieved by a notification issued in respect of a place under sub-section (3) or an order made under sub-section (3) or sub-section (4) may, within thirty days from the date of the notification or order, as the case may be, make an application to the Court of the District Judge within the local limits of whose jurisdiction such notified place is situate

(a) for declaration that the place has not been used for the purpose of the unlawful association; or

(b) for setting aside the order made under sub-section (3) or sub-section (4),

and on receipt of the application the Court of the District Judge shall, after giving the parties an opportunity of being heard, decide the question.

9. Procedure to be followed in the disposal of applications under this Act.—Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid
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CHAPTER III
OFFENCES AND PENALTIES

10. Penalty for being member of an unlawful association, etc.—Where an association is declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section,—

(a) a person, who—

(i) is and continues to be a member of such association; or

(ii) takes part in meetings of such association; or

(iii) contributes to, or receives or solicits any contribution for the purpose of, such association; or

(iv) in any way assists the operations of such association,

shall be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine; and

(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any arms, ammunition, explosive or other instrument or substance capable of causing danger or committing any other act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,—

(i) if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;

(ii) in any other case, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

11. Penalty for dealing with funds of an unlawful association.—If any person on whom a prohibitory order has been served under sub-section (1) of section 7 in respect of any moneys, securities or credits pays, delivers, transmits or otherwise deals in any manner whatsoever with the same in contravention of the prohibitory order, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both, and notwithstanding anything contained in the [Code], the court trying such contravention may also impose on the person convicted an additional fine to recover from him the amount of the moneys or credits or the market value of the securities in respect of which the prohibitory order has been contravened or such part thereof as the court may deem fit.

12. Penalty for contravention of an order made in respect of a notified place.—(1) Whoever uses any article in contravention of a prohibitory order in respect thereof made under sub-section (3) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

(2) Whoever knowingly and wilfully is in, or effects or attempts to effect entry into, a notified place in contravention of an order made under sub-section (4) of section 8 shall be punishable with imprisonment for a term which may extend to one year, and shall also be liable to fine.

13. Punishment for unlawful activities.—(1) Whoever—

(a) takes part in or commits, or

1. Subs. by Act 29 of 2004, s. 6, for section 10 (w.e.f. 21-9-2004).

(70)
(b) advocates, abets, advises or incites the commission of, any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India.

14. Offences to be cognizable.—Notwithstanding anything contained in the [(Code), an offence punishable under this Act shall be cognizable.

15. Terrorist act.—[(J) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security [1], economic security,] or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

[(d)] damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [1] an international or inter-governmental organisation or any other person to do or abstain from doing any act; or]

commits a terrorist act.

[Explanation.—For the purpose of this sub-section,—

(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;]
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(6) “high quality counterfeit Indian currency” means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.

[(2) The terrorist act includes any act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.]

16. Punishment for terrorist act.—(1) Whoever commits a terrorist act shall,—

(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

16A. [Punishment for making demands of radioactive substances, nuclear devices, etc.] Omitted by the Unlawful Activities (Prevention) Amendment (Repealing and Amending) Act 2013 (3 of 2013), s. 5 (w.e.f. 1-2-2013).

17. Punishment for raising funds for terrorist act.—Whoever, in India or in a foreign country, directly or indirectly, raises or provides funds or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Explanation.—For the purpose of this section,—

(a) participating, organising or directing in any of the acts stated therein shall constitute an offence;

(b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of high quality counterfeit Indian currency; and

(c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under section 15 shall also be construed as an offence.

18. Punishment for conspiracy, etc.—Whoever conspires or attempts to commit, or advocates, abets, advises or “instructs directly or knowingly facilitates” the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18A. Punishment for organising of terrorist camps.—Whoever organises or causes to be organised any camp or camps for imparting training in terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

18B. Punishment for recruiting of any person or persons for terrorist act.—Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

19. Punishment for harbouring, etc.—Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with...
imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life; and shall also be liable to fine:

Provided that this section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

20. Punishment for being member of terrorist gang or organisation.—Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

21. Punishment for holding proceeds of terrorism.—Whoever knowingly holds any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

22. Punishment for threatening witness.—Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness, or any other person in whom the witness may be interested, or does any other unlawful act with intent to cause any of the said acts, shall be punishable with imprisonment which may extend to three years, and shall also be liable to fine.

22A. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person (including promoters of the company) who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person (including promoters) liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised reasonable care to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any promoter, director, manager, secretary or other officer of the company, such promoter, director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

22B. Offences by societies or trusts.—(1) Where an offence under this Act has been committed by a society or trust, every person (including the promoter of society or settlor of the trust) who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised reasonable care to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any promoter, director, manager, secretary, trustee or other officer of the society or trust, such promoter, director, manager, secretary, trustee or other officer shall be punishable with imprisonment which may extend to imprisonment for life, and shall also be liable to fine.

1. Ins. by Act 3 of 2013, s. 7 (w.e.f. 1-2-2013).
officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) "society" means any body corporate registered under the Societies Registration Act, 1860 (21 of 1860) or any other State Act governing the registration of societies;

(b) "trust" means any body registered under the Indian Trusts Act, 1882 (2 of 1882) or any other State Act governing the registration of trusts;

(c) "director", in relation to a society or trust, means a member of its governing board other than an ex officio member representing the interests of the Central or State Government or the appropriate statutory authority.]

22C. Punishment for offences by companies, societies or trusts.—Where any offence under the Act has been committed by a company or a society or a trust, as the case may be, every person (including promoter of company or trust or settler of the trust) who at the time of the offence was either in charge or responsible for the conduct of the business shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable with fine which shall not be less than five crore rupees and which may extend to ten crore rupees.

23. Enhanced penalties.—(1) [If any person with intent to aid any terrorist or terrorist organisation or a terrorist gang contravenes] any provision of, or any rule made under the Explosives Act, 1884 (4 of 1884) or the Explosive Substances Act, 1908 (6 of 1908) or the Inflammable Substances Act, 1952 (20 of 1952) or the Arms Act, 1959 (54 of 1959), or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare or high quality counterfeit Indian currency, he shall], notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) [Any person who with the intent to aid any terrorist, or a terrorist organisation or a terrorist gang, attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years"].

CHAPTER V
FORFEITURE OF PROCEEDS OF TERRORISM [OR ANY PROPERTY INTENDED TO BE USED FOR TERRORISM]

24. Reference to proceeds of terrorism to include any property intended to be used for terrorism.—In this Chapter, unless the context otherwise requires, all references to "proceeds of terrorism" shall include any property intended to be used for terrorism.

24A. Forfeiture of proceeds of terrorism.—(1) No person shall hold or be in possession of any proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist organisation or terrorist gang or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

1. Subs. by Act 35 of 2008, s. 9, for "If any person with intent to aid any terrorist contravenes" (w.e.f. 31-12-2008).
2. Subs. by Act 3 of 2013, s. 8, for "chemical substance of warfare, he shall" (w.e.f. 1-2-2013).
3. Subs. by Act 35 of 2008, s. 9, for "Any person who, with the intent to aid any terrorist" (w.e.f. 31-12-2008).
4. Ins. by Act 3 of 2013, s. 9 (w.e.f. 1-2-2013).
5. Subs. by s. 10, ibid., for section 34 (w.e.f. 1-2-2013).
(2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production:

Provided that an opportunity of making a representation by the person whose property is being seized or attached shall be given.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(a) it is intended to be used for the purposes of terrorism; or

(b) it forms the whole or part of the resources of a terrorist organisation:

Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, “cash” means—

(a) coins or notes in any currency;

(b) postal orders;

(c) traveller’s cheques;

[(ca) credit or debit cards or cards that serve a similar purpose;]

(d) banker’s drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

26. Court to order forfeiture of proceeds of terrorism.—Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person

1. Ins. by Act 35 of 2008, s. 11 (w.e.f. 31-12-2008).
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from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

27. Issue of show cause notice before forfeiture of proceeds of terrorism.—(1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a bona fide transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the court to make an order in respect of property seized or attached,—

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the court.

28. Appeal.—(1) Any person aggrieved by an order of forfeiture under section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the court, which passed the order appealed against, is situated.

(2) Where an order under section 26 is modified or annulled by the High Court or where in a prosecution instituted for any offence under Chapter IV or Chapter VI, the person against whom an order of forfeiture has been made under section 26 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefor as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.

29. Order of forfeiture not to interfere with other punishments.—The order of forfeiture made under this Chapter by the court, shall not prevent the infliction of any other punishment to which the person affected thereby is liable under Chapter IV or Chapter VI.

30. Claims by third party.—(1) Where any claim is preferred or any objection is made to the seizure or attachment of any property under section 25 on the ground that such property is not liable to seizure or attachment, the Designated Authority before whom such property is produced, shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Designated Authority considers that the claim or objection is designed to cause unnecessary delay.

(2) Where an appeal has been preferred under sub-section (1) of section 25 and any claimant or objector establishes that the property specified in the notice issued under section 27 is not liable to be forfeited under this Chapter, the said notice shall be withdrawn or modified accordingly.

31. Powers of Designated Authority.—The Designated Authority, acting under the provisions of this Chapter, shall have all the powers of a civil court required for making a full and fair inquiry into the matter before it.

32. Certain transfers to be null and void.—Where, after the issue of an order under section 25 or issue of a notice under section 27, any property referred to in the said order or notice is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited, the transfer of such property shall be deemed to be null and void.
33. Forfeiture of property of certain persons.—(1) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, if not already attached under this Chapter.

(2) Where a person has been convicted of any offence punishable under Chapter IV or Chapter VI, the court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Central Government or the State Government, as the case may be, free from all encumbrances.

(3) Where any person is accused of an offence concerning high quality counterfeit Indian currency, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to the value of such high quality counterfeit Indian currency involved in the offence including the face value of such currency which are not defined to be of high quality, but are part of the common seizure along with the high quality counterfeit Indian currency.

(4) Where a person is accused of an offence punishable under Chapter IV or Chapter VI, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to or the value of the proceeds of terrorism involved in the offence.

(5) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the property, movable or immovable or both, belonging to him shall, where the trial under the Act cannot be concluded on account of the death of the accused or being declared a proclaimed offender or for any other reason, be confiscated on the basis of material evidence produced before the court.

34. Company to transfer shares to Government.—Where any share in a company stand forfeited to the Central Government or the State Government, as the case may be, under this Chapter, then, the company shall, on receipt of the order of the court, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or the articles of association of the company, forthwith register the Central Government or the State Government, as the case may be, as the transferee of such share.

CHAPTER VI
TERRORIST ORGANISATIONS

35. Amendment of Schedule, etc.—(1) The Central Government may, by [notification], in the Official Gazette,

(a) add an organisation to the [First Schedule];

(b) add also an organisation to the [First Schedule], which is identified as a terrorist organisation in a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations, to combat international terrorism;

(c) remove an organisation from the [First Schedule];

(d) amend the [First Schedule] in some other way.

(2) The Central Government shall exercise its power under clause (a) of sub-section (1) in respect of an organisation only if it believes that it is involved in terrorism.

(3) For the purposes of sub-section (2), an organisation shall be deemed to be involved in terrorism if it

(a) commits or participates in acts of terrorism, or

(b) prepares for terrorism, or

(c) promotes or encourages terrorism, or

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1. Subs. by Act 4 of 2013, s. 11 (w.e.f. 1-2-2013).
2. Subs. by S. 12, ibid., for "order" (w.e.f. 1-2-2013).
3. Subs. by s. 12, ibid., for "Schedule" (w.e.f. 1-2-2013).
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(d) is otherwise involved in terrorism.

1[(4) The Central Government may, by notification in the Official Gazette, add to or remove or amend the Second Schedule or Third Schedule and thereupon the Second Schedule or the Third Schedule, as the case may be, shall be deemed to have been amended accordingly.

(5) Every notification issued under sub-section (1) or sub-section (4) shall, as soon as may be after it is issued, be laid before Parliament.]

36. Denotification of a terrorist organisation.—(1) An application may be made to the Central Government for the exercise of its power under clause (c) of sub-section (1) of section 35 to remove an organisation from the Schedule.

(2) An application under sub-section (1) may be made by—

(a) the organisation, or

(b) any person affected by inclusion of the organisation in the Schedule as a terrorist organisation.

(3) The Central Government may prescribe the procedure for admission and disposal of an application made under this section.

(4) Where an application under sub-section (1) has been rejected, the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of section 37 within one month from the date of receipt of the order of such refusal by the applicant.

(5) The Review Committee may allow an application for review against rejection to remove an organisation from the Schedule, if it considers that the decision to reject was flawed when considered in the light of the principles applicable on an application for judicial review.

(6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order to such effect.

(7) Where an order is made under sub-section (6), the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the Schedule.

37. Review Committees.—(1) The Central Government shall constitute one or more Review Committees for the purposes of section 36.

(2) Every such Committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

(3) A Chairperson of the Committee shall be a person who is, or has been, a Judge of a High Court, who shall be appointed by the Central Government and in the case of appointment of a sitting Judge, the concurrence of the Chief Justice of the concerned High Court shall be obtained.

38. Offence relating to membership of a terrorist organisation.—(1) A person, who associates himself, or professes to be associated, with a terrorist organisation with intention to further its activities, commits an offence relating to membership of a terrorist organisation:

Provided that this sub-section shall not apply where the person charged is able to prove—

(a) that the organisation was not declared as a terrorist organisation at the time when he became a member or began to profess to be a member; and

(b) that he has not taken part in the activities of the organisation at any time during its inclusion in the Schedule as a terrorist organisation.

(2) A person, who commits the offence relating to membership of a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

1. Ins. by Act 3 of 2013, s. 12 (w.e.f. 1-2-2013).
39. Offence relating to support given to a terrorist organisation.—(1) A person commits the
offence relating to support given to a terrorist organisation,—

(a) who, with intention to further the activity of a terrorist organisation,—

(i) invites support for the terrorist organisation; and

(ii) the support is not or is not restricted to provide money or other property within the
meaning of section 40; or

(b) who, with intention to further the activity of a terrorist organisation, arranges, manages or
assists in arranging or managing a meeting which he knows is—

(i) to support the terrorist organisation; or

(ii) to further the activity of the terrorist organisation; or

(iii) to be addressed by a person who associates or professes to be associated with the terrorist
organisation; or

(c) who, with intention to further the activity of a terrorist organisation, addresses a meeting
for the purpose of encouraging support for the terrorist organisation or to further its activity.

(2) A person, who commits the offence relating to support given to a terrorist organisation under
sub-section (1) shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or
with both.

40. Offence of raising fund for a terrorist organisation.—(1) A person commits the offence
of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist
organisation,—

(a) invites another person to provide money or other property, and intends that it should be used,
or has reasonable cause to suspect that it might be used, for the purposes of terrorism; or

(b) receives money or other property, and intends that it should be used, or has reasonable cause
to suspect that it might be used, for the purposes of terrorism; or

(c) provides money or other property, and knows, or has reasonable cause to suspect, that it
would or might be used for the purposes of terrorism.

1[Explanation.—For the purposes of this sub-section, a reference to provide money or other property
includes—

(a) of its being given, lent or otherwise made available, whether or not for consideration; or

(b) raising, collecting or providing funds through production or smuggling or circulation of high
quality counterfeit Indian currency.)

(2) A person, who commits the offence of raising fund for a terrorist organisation under
sub-section (1), shall be punishable with imprisonment for a term not exceeding fourteen years, or with
fine, or with both.

CHAPTER VII
MISCELLANEOUS

41. Continuance of association.—An association shall not be deemed to have ceased to exist by
reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long
as any actual combination for the purposes of such association continues between any members thereof.

42. Power to delegate.—The Central Government may, by notification in the Official Gazette, direct
that all or any of the powers which may be exercised by it under section 7, or section 8, or both, shall, in
such circumstances and under such conditions, if any, as may be specified in the notification, be exercised

1. Subs. by Act 3 of 2013, s. 13, for the Explanation (w.e.f. 1-2-2013).
also by any State Government and the State Government may, with the previous approval of the Central Government, by order in writing, direct that any power which has been directed to be exercised by it shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised by any person subordinate to the State Government as may be specified therein.

43. Officers competent to investigate offences under Chapters IV and VI.—Notwithstanding anything contained in the Code, no police officer,—

(a) in the case of the Delhi Special Police Establishment, constituted under sub-section (j) of section 2 of the Delhi Special Police Establishment Act, 1946 (25 of 1946), below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (j) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;

(c) in any case not relatable to clause (a) or clause (b), below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank,

shall investigate any offence punishable under Chapter IV or VI.

43A. Power to arrest, search, etc.—Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

43B. Procedure of arrest, seizure, etc.—(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

43C. Application of provisions of Code.—The provisions of the Code shall apply, in so far as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act.

43D. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

1. Ins. by Act 35 of 2008, s. 12 (w.e.f. 31-12-2008).
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(b) after the proviso, the following provisos shall be inserted, namely:—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government";

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

43E. Presumption as to offence under section 15.—In a prosecution for an offence under section 15, if it is proved—

(a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or

(b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Court shall presume, unless the contrary is shown, that the accused has committed such offence.

43F. Obligation to furnish information.—(1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, with the prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or authority of the Central Government or a State Government or a local authority or a bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in his or its possession in
relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act.

(2) The failure to furnish the information called for under sub-section (7), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

(3) Notwithstanding anything contained in the Code, an offence under sub-section (2) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of section 262] shall be applicable thereto.

44. Protection of witnesses.—(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the court so desires.

(2) A court, if on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of the provisions of sub-section (2), the measures which a court may take under that sub-section may include—

(a) the holding of the proceedings at a place to be decided by the court;

(b) the avoiding of the mention of the name and address of the witness in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and address of the witness are not disclosed;

(d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3), shall be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine.

45. Cognizance of offences.—(1) No court shall take cognizance of any offence—

(i) under Chapter III without the previous sanction of the Central Government or any officer authorised by the Central Government in this behalf;

(ii) under Chapter IV and VI without the previous sanction of the Central Government or, as the case may be, the State Government, and where such offence is committed against the Government of a foreign country without the previous sanction of the Central Government.

[(2) Sanction for prosecution under sub-section (7) shall be given within such time as may be prescribed only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation, within such time as may be prescribed, to the Central Government or, as the case may be, the State Government.]

46. Admissibility of evidence collected through the interception of communications.—Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 (13 of 1885) or the Information Technology Act, 2000 (21 of 2000) or any other law for the time being in force, shall be admissible as evidence against the accused in the court during the trial of a case:

Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other

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1. Section 45 renumbered as sub-section (1) thereof by Act 35 of 2008, s. 13 (w.e.f. 31-12-2008).
2. Ins. by s. 13, ibid. (w.e.f. 31-12-2008).
proceeding in any court unless each accused has been furnished with a copy of the order of the competent authority under the aforesaid law, under which the interception was directed, not less than ten days before trial, hearing or proceeding:

Provided further that the period of ten days may be waived by the judge trying the matter, if he comes to the conclusion that it was not possible to furnish the accused with such order ten days before the trial, hearing or proceeding and that the accused shall not be prejudiced by the delay in receiving such order.

47. Bar of Jurisdiction.—(1) Save as otherwise expressly provided in this Act, no proceeding taken under this Act by the Central Government or the District Magistrate or any officer authorised in this behalf by the Central Government or the District Magistrate, shall be called in question in any civil court in any suit or application or by way of appeal or revision, and no injunction shall be granted by any civil court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

(2) Notwithstanding anything contained in sub-section (1), no civil court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to the matters referred to in section 36.

48. Effect of Act and rules, etc., inconsistent with other enactments.—The provisions of this Act or any rule or order made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

49. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against—

(a) the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorised in this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder, and

(b) any serving or retired member of the armed forces or para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

50. Saving.—Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the navy, army or air force or other armed forces of the Union.

51. Impounding of passport and arms licence of person charge sheeted under the Act.—Notwithstanding anything contained in any other law for the time being in force, the passport and the arms licence of a person, who is charge-sheeted for having committed any offence under this Act, shall be deemed to have been impounded for such period as the court may deem fit.

51A. Certain powers of the Central Government.—For the prevention of, and for coping with terrorist activities, the Central Government shall have power to—

(a) freeze, seize or attach funds and other financial assets or economic resources held by, on behalf of or at the direction of the individuals or entities listed in the Schedule to the Order, or any other person engaged in or suspected to be engaged in terrorism;

(b) prohibit any individual or entity from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism;

(c) prevent the entry into or the transit through India of individuals listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism.

1. Ins. by Act 35 of 2008, s. 14 (w.e.f. 31-12-2008).
52. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:

(a) the service of notices or orders issued or made under this Act and the manner in which such notices or orders may be served, where the person to be served is a corporation, company, bank or other association;

(b) the procedure to be followed by the Tribunal or a District Judge in holding any inquiry or disposing of any application under this Act;

(c) determination of the price of the forfeited property under sub-section (2) of section 28;

(d) the procedure for admission and disposal of an application under sub-section (3) of section 36;

(e) the qualifications of the members of the Review Committee under sub-section (2) of section 37; and

(f) the time within which sanction for prosecution and recommendation to the Central Government shall be given under sub-section (2) of section 45, and

(g) any other matter which is required to be, or may be, prescribed.

53. Orders and rules to be laid before both Houses of Parliament.—(1) Every order and every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or rule or both Houses agree that the order or rule should not be made, the order or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order or rule.

(2) The Order referred to in entry 33 of the Schedule and every amendment made to that Order shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions.

1. Ins. by Act 55 of 2008, s. 15 (w.e.f. 31-12-2008).
2. Section 55 renumbered as sub-section (1) thereof by s. 16, ibid. (w.e.f. 31-12-2008).
3. Ins. by s. 16, ibid. (w.e.f. 31-12-2008).
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THE FIRST SCHEDULE
[See sections 2(f)(m) and 35]
TERRORIST ORGANISATIONS

1. BABBAR KHALSA INTERNATIONAL.
2. KHALISTAN COMMANDO FORCE.
3. KHALISTAN ZINDABAD FORCE.
4. INTERNATIONAL SIKH YOUTH FEDERATION.
5. LASHKAR-E-TAIBA/PASBAN-E-AHLE HADIS.
6. JAISH-E-MOHAMMED/TAHRIR-E-FURQAN.
7. HARKAT-UL-MUJAHIDEEN/HARKAT-UL-ANSAR/HARKAT-UL-JEHAD-E-ISLAMI.
8. HIZB-UL-MUJAHIDEEN/HIZB-UL-MUJAHIDEEN PIR PANJAL REGIMENT.
9. AL-UMAR-MUJAHIDEEN.
10. JAMMU AND KASHMIR ISLAMIC FRONT.
11. UNITED LIBERATION FRONT OF ASSAM (ULFA).
12. NATIONAL DEMOCRATIC FRONT OF BODoland (NDFB).
13. PEOPLE’S LIBERATION ARMY (PLA).
14. UNITED NATIONAL LIBERATION FRONT (UNLF).
15. PEOPLE’S REVOLUTIONARY PARTY OF KANGLEIPAK (PREPAK).
16. KANGLEIPAK COMMUNIST PARTY (KCP).
17. KANGLEI YAOL KANIBA LUP (KYKL).
18. MANIPUR PEOPLE’S LIBERATION FRONT (MPLF).
19. ALL TRIPURA TIGER FORCE.
20. NATIONAL LIBERATION FRONT OF TRIPURA.
21. LIBERATION TIGERS OF TAMIL EELAM (LTTE).
22. STUDENTS ISLAMIC MOVEMENT OF INDIA.
23. DEENDAR ANJUMAN.
24. COMMUNIST PARTY OF INDIA (MARXIST-LENINIST)—PEOPLE’S
    WAR, ALL ITS FORMATIONS AND FRONT ORGANISATIONS.
25. MAOIST COMMUNIST CENTRE (MCC), ALL ITS FORMATIONS AND FRONT
    ORGANISATIONS.
26. AL-BADR.
27. JAMIAT-UL-MUJAHIDEN.
28. AL-QAIDA.
29. DUKHTARAN-E-MILLAT (DEM).

1. The Schedule renumbered as the First Schedule thereof by Act 3 of 2013, s. 14 (w.e.f 1-2-2013).
30. TAMIL NADU LIBERATION ARMY (TNLA).
31. TAMIL NATIONAL RETRIEVAL TROOPS (TNRT).
32. AKHIL BHARAT NEPALI EKTA SAMAJ (ABNES).

THE SECOND SCHEDULE
[See section 15(2)]

(i) Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
(ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
(iii) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973);
(iv) International Convention against the Taking of Hostages (1979);
(v) Convention on the Physical Protection of Nuclear Material (1980);
(vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988);
(viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988); and

1. Ins. by Act 3 of 2013, s. 14 (w.e.f. 1-2-2013).
THE THIRD SCHEDULE
[See clause (b) of Explanation to section 15(1)]

Security features to define high quality counterfeit Indian currency notes

(a) watermark;

(b) latent image; and

(c) see through registration in the currency notes.]
Asian Centre for Human Rights is dedicated to promotion and protection of human rights and fundamental freedoms in the Asian region by:

- providing accurate and timely information and complaints to the National Human Rights Institutions, the United Nations bodies and mechanisms as appropriate;

- conducting investigation, research, campaigning and lobbying on country situations or individual cases;

- increasing the capacity of human rights defenders and civil society groups through relevant trainings on the use of national and international human rights procedures;

- providing input into international standard-setting processes on human rights;

- providing legal, political and practical advice according to the needs of human rights defenders and civil society groups; and

- by securing the economic, social and cultural rights through rights-based approaches to development.