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**A Detailed Analysis of the Unlawful Activities (Prevention) Amendment
Act, 2019**

Abinand Lagiseti

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1. ABSTRACT

This project aims to undertake a thorough analysis of the Unlawful Activities (Prevention) Amendment Act 2019,¹ which amended the Unlawful Activities Prevention Act of 1967.² The author shall undertake this analysis, primarily, through the lens of the parliamentary debates that had taken place in both the Houses of Parliament regarding the aforementioned legislation. This shall provide the readers with a unique perspective of the legislation and help them develop a clear understanding regarding the reasoning for the introduction of this amendment and the Opposition's criticism towards the same. Furthermore, the author shall also rely upon the public response to the legislation and expert analysis of the legislation to understand and analyze the legislation in a detailed manner. The author shall then express his own viewpoint upon the Amendment after a thorough analysis of the other methodologies used. Through the course of this paper the author intends to comprehend the Centre's reasoning behind the enactment of this amendment legislation and the opposition to the same. Moreover, the author aims to simplify the implications of the provisions of this Amendment for the general public and spread awareness regarding the same.

¹ Unlawful Activities (Prevention) Amendment Act, 2019, No. 28, Acts of Parliament, 2019.

² Unlawful Activities (Prevention) Amendment Act, 1967, No. 37, Acts of Parliament, 1967.

2. INTRODUCTION

The Unlawful Activities (Prevention) Amendment Act, 2019,³ is an important amendment to the Unlawful Activities Prevention Act which was enacted in 1967.⁴ It amended sections 35 and 36 of the Unlawful Activities (Prevention) Act, 1967,⁵ which refer to addition of terrorist organizations to the Schedule and the de-notification of the same if required. It included individual terrorists mentioned under Schedule 4 to be defined as a terrorist organization under the ambit of the aforementioned sections. The Central Government justified the same by invoking zero tolerance to terror and lone wolf terrorists. However, there was large furor over the enactment of this legislation, with many people from the Opposition terming it as a draconian law that confers unlimited power upon the Centre. Furthermore, it was contended that the legislation had certain ambiguous provisions which would lead to procedural imbalance of power. The author has chosen this particular legislation due to its widespread implications on the security laws of India and the power vested in the Centre with regards to the same. Moreover, the public dissent to this legislation and the debate surrounding it was also intriguing and extremely relevant. The author would also like to confess towards a slight bias in favor of the criticism of the Amendment due to its objectively arbitrary provisions and the absolute power it vests in a rather impulsive Central Government.

³ *Supra*, note 1.

⁴ *Supra*, note 2.

⁵ § 35 and 36, Unlawful Activities (Prevention) Amendment Act, 2019, No. 28, Acts of Parliament, 2019.

3. CORE CHAPTER

The Unlawful Activities (Prevention) Act, 1967,⁶ was enacted pursuant to the Sixteenth Constitutional Amendment in 1963⁷ for effective prevention of unlawful activities association in India. Its primary objective was to make powers available dealing with activities directed against the integrity and sovereignty of India. It has been amended on multiple occasions, including the 2004 amendment which incorporated certain provisions of the previously repealed and highly controversial Prevention of Terrorism Act, 2002,⁸ and the 2008 amendment which further strengthened the provisions of this Act in light of the Mumbai terror attacks. In 2019, the Bharatiya Janata Party led Central Government passed the previously mentioned Unlawful Activities (Prevention) Amendment Act, 2019,⁹ which shall be further referred to as the UAPA Amendment 2019 for the remainder of this paper. This transformed into a burning issue of national importance due to the unfettered power the newly amended provisions of this Act vests in the Central Government and the possible abuse of criminal and judicial procedure. The debate surrounding this issue was perfectly encompassed in the parliamentary debates in both the Houses between the members of the Congress led Opposition and the members of the Central Government.

a. Parliamentary Debates on UAPA Amendment 2019

Mr. G. Kishan Reddy, Minister of State for Home Affairs, on behalf of Mr. Amit Shah, the incumbent Home Minister, introduced the Bill to amend the UAPA, 1967, by invoking the zero terror tolerance of his government and by stating the need to quicken the process of convicting a terrorist. He further asserted the need for the investigative agencies to be four steps ahead of the terrorists and assured his fellow parliamentarians that the absolute power vested upon the Centre through this amendment shall not be misused.¹⁰ However, unsurprisingly, the members of the Opposition were not entirely reassured by Mr. Reddy's statements and still had certain strong premonitions of their own. This amendment received criticism in the Lok Sabha from varied members of the Opposition, most famously and rather appropriately from Mr. Shashi Tharoor. Mr. Tharoor was deeply troubled by the power of the Central Government to designate individuals as a terrorist without the rather fundamental benefit of a trial. Moreover, he questioned the very need for the inclusion of individual terrorists under the ambit of the UAPA

⁶ *Supra*, note 2.

⁷ The Constitution (Sixteenth Amendment) Act, 1963, No.5, Acts of Parliament, 1963.

⁸ Prevention of Terrorism Act, 2002, No. 15, Acts of Parliament, 2002.

⁹ *Supra*, note 1.

¹⁰ G. Kishan Reddy, Minister of State for Home Affairs, Lok Sabha Debate (Jul. 8, 2019), <http://164.100.47.194/Loksabha/Debates/Result17.aspx?dbsl=939>.

as it is a legislation specifically designed for terrorist organizations and not individuals and that lone-wolf terrorists could be prosecuted through various other mechanisms. Lastly, he critiqued the decision of the Centre to table an amendment of this magnitude without a pre legislative public discussion on the same.¹¹

Further criticism towards this bill arrived from other non-Congress Opposition members too, specifically from Mr. Asaduddin Owaisi. He questioned the intention of the Centre behind the complete erasure of due process of law with respect to suspected individual terrorists. He further questioned the compatibility of this enactment with Articles 14 and 21 of the Indian Constitution¹² and the provisions of the International Covenant on Civil and Political Rights and the International Conference on Human and Constitutional Rights which have both been signed and ratified by India.¹³ In spite of such criticism, the amendment was passed with ease in the Lok Sabha due to the sheer majority that the Bharatiya Janata Party commands in the House at this moment.

When the same Bill was introduced in the Rajya Sabha, Mr. Chidambaram, in response to this Bill, questioned the decision of the Centre to bestow upon itself such absolute power and the implications of the same. As previously mentioned, this amendment allows the Centre to declare any individual as a terrorist under Sections 35 and 36 of the legislation.¹⁴ Mr. Chidambaram asserted that this would effectively mean that the person suspected of being a terrorist shall not face the due process of law through the provisions of this amendment as there is no requirement of an F.I.R or even a charge sheet to be filed for a person to be termed a terrorist, the only requirement is the mere suspicion of the Centre. He also established his concern regarding this amendment establishing a presumption of guilt upon the suspected individual and termed the same to be unconstitutional. Furthermore, he distrusted the Centre's power in this scenario and questioned them on when this power shall be exercised and how often.¹⁵

In response to the apparent distrust and premonitions voiced by Mr. Chidambaram on behalf of the Opposition, Mr. Shah took this as an opportunity to debunk and clarify certain questions regarding this amendment. He stated that the current state of judicial affairs and criminal procedure tend to give rise to various opportunities for terrorists to escape the grasp of the

¹¹ Shashi Tharoor, Member of Parliament, Lok Sabha Debate (Jul.8, 2019), <http://164.100.47.194/Loksabha/Debates/Result17.aspx?dbsl=939>.

¹² INDIA CONST. art.14 & 21.

¹³ Asaduddin Owaisi, Member of Parliament, Lok Sabha Debate (Jul.8, 2019), <http://164.100.47.194/Loksabha/Debates/Result17.aspx?dbsl=939>.

¹⁴ *Supra*, note 5.

¹⁵ P. Chidambaram, Member of Parliament, Rajya Sabha Debate (Aug.2, 2019), http://164.100.47.5/newsynopsis1/Englishsessionno/249/Synopsis%20_E_%20dated%20%2002.08.pdf.

security agencies. Moreover, he repeatedly stated the dire need for exercise of absolute state power to counter the looming prospect of terrorism in a nation such as ours. Interestingly, Mr. Shah said that any person declared to be a terrorist under the relevant provisions of this Act shall have the right to appeal to a standing committee that shall be constituted by retired High Court judges.¹⁶ There has not been any such committee constituted till date, which showcases the nature of the power vested upon the Centre by these provisions. The general position of most of the non BJP members on the UAPA Amendment was to have it referred to a standing committee with legal experts who could analyze the compatibility of this legislation with the Indian Constitution and other relevant laws.¹⁷ However, in a reenactment of what happened in the Lok Sabha, the UAPA Amendment was passed in spite of the heavy and constructive criticism due to the sheer majority that the Central Government currently commands.

b. Public Response, Media Coverage and Judicial Scrutiny

After the UAPA Amendment 2019 was passed on the 2nd of August, it has received large public backlash from varied sources with some even calling it a draconian law. Various peaceful protests were held across the country with respect to the absolute power this Act grants to the Centre. The aforementioned concern has been the principle storyline of a lot of media coverage on the issue. Nitika Khaitan, writing for The Frontline, questioned the ambit of the applicability of the newly amended definition of terrorist organization as it could be used to link innocent middlemen to nefarious terror activities.¹⁸ Furthermore, there is no regulation on the exercise of state power under this legislation and the same cannot be reviewed. Amal Sethi, writing for Firstpost, aptly describes the purpose of the UAPA Amendment. He stated that it was designed to brand a person and expose them to the political and social consequences.¹⁹ He further established that this shows the change in thinking about criminal laws as an instrument of public shame rather than an instrument for providing justice.²⁰ Moreover, the Ministry of Home Affairs refused to disclose more relevant information regarding the UAPA Amendment when a Right to Information query was filed for the same by The Wire.²¹

¹⁶ Amit Shah, Minister of Home Affairs, Rajya Sabha Debate (Aug.2, 2019), http://164.100.47.5/newsynopsis1/Englishsessionno/249/Synopsis%20_E_%20dated%20%2002.08.pdf.

¹⁷ *Supra*, note 14.

¹⁸ Nitika Khaitan, New Act UAPA: Absolute power to state, Frontline (Oct.25, 2019), <https://frontline.thehindu.com/cover-story/article29618049.ece>.

¹⁹ Amal Sethi, UAPA Amendment: Draconian Law, Firstpost (Aug.1, 2019), <https://www.firstpost.com/india/ amit-shah-to-table-uapa-amendment-bill-in-rajya-sabha-today-more-police-powers-with-centre-might-be-a-bad-idea-heres-why-7076461.html>.

²⁰ *Id.*

²¹ Dheeraj Mishra, RTI query on UAPA Amendment, The Wire (Oct.18, 2019), <https://thewire.in/rights/mha-refuses-to-provide-information-on-uapa-amendment-citing-national-security>.

The contentious nature of this Amendment also led to some judicial proceedings in opposition to the same. The Association for Protection of Civil Rights, an NGO, questioned the validity of the Amendment and the implications it has on right to dissent that is an intrinsic part of free speech guaranteed under Article 19(2) of the Indian Constitution. It contended that the UAPA Amendment empowers the Central Government to impose indirect restriction on right of dissent which is detrimental for our developing democratic society.²² Another petition was filed by a Delhi resident named Swathi Awasthi, who argued that the lifelong stigma that will be attached to a person once they're suspected to be a terrorist shall continue to subsist even if they have been denotified and that the same is violative of a citizen's right to reputation which flows from Article 21 of the Indian Constitution.²³

c. Scholarly and Academic Analysis of the UAPA Amendment 2019

The contentious nature of this Amendment also led to a plethora of scholarly response from various lawyers and academicians. Mr. Abhinav Sekhri, a practicing advocate at the Hon'ble Delhi High Court and an alumnus of Harvard Law School, asserted that this amendment treated Indian citizens as subjects of a colonial sovereign.²⁴ His criticism of this Amendment is threefold. Firstly, the ambiguity with regards to which actors in the Central Government shall have the power to declare someone to be a terrorist and on what grounds. Secondly, the declaration of a person as a terrorist is through a public announcement and does not even require the authorities to contact the suspect or their family. The implications of public shaming such as this was aptly addressed, as mentioned earlier, by Mr. Amal Sethi.²⁵ Lastly, the Amendment does in no way address the procedure which follows once an individual is labeled as a terrorist. This further showcases the scope for exercise of absolute power by the authorities in question.

Mr. Gautam Bhatia, a Constitutional Law expert, commented upon the legislative intent of this Amendment and the scope of the unlawful activities it seeks to penalize. He establishes the possibility of the undefined scope of this legislation and states that the scope of the Unlawful Activities Prevention Act, post the 2019 Amendment, shall not extend to economic security and circulation of counterfeits.²⁶ He further argues that the critical sections of the UAPA such as

²² Nihal Arora, UAPA Amendment: Respond to pleas, *The Hindu* (Sep.6, 2019), <https://www.thehindu.com/news/national/uapa-amendment-supreme-court-asks-govt-to-respond-to-pleas/article29349629.ece>.

²³ *Id.*

²⁴ Abhinav Sekhri, UAPA Amendment treats Indians as subjects of a colonial sovereign, *The Caravan* (Sep.10, 2019), <https://caravanmagazine.in/law/the-uapa-amendment-treats-indians-as-subjects-of-a-colonial-sovereign>.

²⁵ *Supra*, note 18.

²⁶ Gautam Bhatia, UAPA: interpretative issues, *Indian Constitutional Law and Philosophy Blog* (Sep.24, 2019), <https://indconlawphil.wordpress.com/?s=Unlawful+Activities&search=Go>.

section 15 which defines a terrorist act are criminally ambiguous as they establish a very large scope for misunderstanding.²⁷ Lastly, a journal article published in *The Economic and Political Weekly* further validates the claims of the members of the Opposition by claiming that the 2019 UAPA Amendment is an oppressive and draconian legislation.²⁸ It debunks the justification of the Centre that the United Nations Security Council contains similar absolute power with respect to blacklisting terrorists and that thereby; the provisions of the 2019 UAPA Amendment are valid. However, the democratic proceedings of the UNSC and the regulations placed on it by the UN Charter restrict this absolute power, unlike the scenario with the UAPA. All in all, there has been staunch criticism of the provisions of this Amendment from every corner of the academic community.

d. Author's Perspective on the Amendment and surrounding issues

John Dalberg-Acton once famously said, "Power tends to corrupt and absolute power corrupts absolutely."²⁹ In the current political scenario with the backdrop of the recently enacted amendment to the UAPA, this quote becomes increasingly relevant. As mentioned previously, this amendment vests absolute power upon the Central authorities. The Centre has the power to declare any citizen as a terrorist upon their own suspicion; it has the power to establish the procedure for convicting the suspect and it also has the power to define which activity shall be deemed to be a terror activity or an unlawful activity. The author contends that vesting such absolute power upon the Centre with no regulations governing the same shall give rise to arbitrary, unreasonable and sometimes personal exercise of these special provisions on behalf of the Centre. The author would also like to shine some light upon the brute majority that the current Bharatiya Janata Party led government commands in both the Houses of Parliament and the impact of the same. This amendment provides the perfect platform for us to witness the Centre's dependence on their majoritarian politics to get their own way, in spite of such valid, justified and unified criticism of this Amendment from all parts of the not so unified Opposition.

Furthermore, the lack of any established procedure for the prosecution of the suspects in the provisions of this amendment is astonishing. A penal statute such as the UAPA is required to have a narrow interpretation and application with clearly described procedure under its

²⁷ §15, Unlawful Activities (Prevention) Amendment Act, 2019, No. 28, Acts of Parliament, 2019.

²⁸ Venkat Ramakrishnan, Designating Individuals as Terrorists, *The Economic and Political Weekly* (Aug.10, 2019), <https://www.epw.in/journal/2019/32/editorials/designating-individuals-terrorists.html>.

²⁹ David Anderson, Lord Acton on Power Corrupts, *The Library of Economics and Liberty* (Feb.18, 2013), https://www.econlib.org/archives/2013/02/lord_acton_on_p.html.

provisions, as per the current legal standard.³⁰ Moreover, on a principled note, this legislation sacrifices the rights of the citizens of due process and procedure established under law for the purpose of protection from certain unlawful activities. However, for a legislation with such a purpose to be arbitrary, ambiguous and misleading is an abuse of the power the citizens of the country bestow upon the lawmakers in a democratic society.

³⁰ *Supra*, note 25.

4. CONCLUSION

Through the course of this paper, the author aimed to elucidate the provisions of the 2019 UAPA Amendment and analyze the same primarily through the parliamentary debates, public response, media coverage and academic engagement. A thorough analysis of the parliamentary debates on this legislation showcased the reasoning behind the Central Government for the introduction of this amendment and the flaws and loopholes pointed out by the Opposition. The major narrative on part of the Centre was their zero terror tolerance policy and absolute power is the most efficient method of achieving the same. However, the Opposition's contention was the nature of power this legislation vests in the Centre and the complete lack of regulations over the same. In spite of there being an abundance of justified criticism towards this Amendment in both House of the Parliament, it was passed with ease due to the sheer majority commanded by the Central Government. After the passage of the Amendment, it received widespread public backlash from various quarters of the society. The major media storyline was of the absolute power this legislation bestows upon the Centre and the lack of procedure established by the legislation. Moreover, there were also multiple petitions with regards to the constitutionality of this Amendment on the grounds that it violates Articles 14 and 19 of the Indian Constitution. Multiple academicians and lawyers offered constructive criticism towards the provisions of this Amendment. In conclusion, the ambiguous and arbitrary provisions of this Amendment and the impacts of the same reflect the dangers and implications of majoritarian politics on the lawmaking process in a democratic society.