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# Categorising Terrorist in India: Scrutinising a Citizens' Violation of Human Rights

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## ABSTRACT

*The article "Categorizing Terrorists in India: Scrutinizing a Citizen's Violation of Human Rights" explores the complexities surrounding the classification of terrorists in India and its implications on citizens' human rights, particularly under the Unlawful Activities (Prevention) Act (UAPA). Terrorism has long plagued India, necessitating a robust approach to identify and counter such acts. The UAPA Act emerged as a governing body to address unlawful and terrorist activities, but its recent amendment in 2019 raised concerns about potential violations of fundamental rights.*

*This article critically examines the UAPA Act's provisions, especially the controversial 2019 amendment, which allows the government to designate individuals as terrorists without incriminating evidence, reversing the burden of proof and challenging the principle of "innocent until proven guilty." The article delves into the rights granted to normal accused individuals under Indian law and compares them with the lack of specific rights provided to designated terrorists.*

*The study highlights instances of misuse and arbitrary use of the UAPA Act, leading to wrongful detentions and acquittals. It addresses the constitutional principles of presumption of innocence and due process, arguing that the Act infringes on these rights. Furthermore, the article discusses the international standards of human rights, pointing out how the UAPA Act falls short of fulfilling them.*

*In conclusion, the article advocates for a balanced approach that upholds the rule of law, protects citizens' human rights, and ensures fair treatment of designated individuals. It calls for a comprehensive examination of the UAPA Act's provisions to rectify its shortcomings and prevent potential abuses of power.*

**Keywords:** Counter- Terrorism, Terrorists, Judicial oversight, Human Rights, UAPA Act.

## I. INTRODUCTION

When we hear the word terrorism, the first word that comes to our mind is unlawful and terrorist is involved in unlawful activities. They hamper the life of civilians in the pursuit of their political aims. India is a country which is well known with this term 'terrorist' since

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independence. There were several attacks and numerous incidents which are the witnesses of terrorism.

Terrorism is a complex topic so its definition varies from person to person and nation to nation. And as there are different definitions of terrorism in different countries, every country has its own distinct way of dealing with such terrorist acts. In India all the acts that are defined as terrorist acts are currently governed under the **UAPA Act, 1967**, which speaks about terrorism and the laws and punishments related to it. After the repeal of the POTA and TADA ACTS this act came into force as a governing body.

The UAPA act i.e., Unlawful Activities (Prevention) Act, 1967 came into force to govern all the activities which are termed as unlawful and terrorist activities. The act deals with all kind of terrorist activities and how such acts should be dealt with. The act also states who can designate associations or organisations as terrorist and punish and counter such terrorist activities. The UAPA act came into force to deal with domestic crisis which will restrict certain rights of the citizen. The national integration council setup a committee which recommended the 16<sup>th</sup> amendment in the constitution. This amendment act imposes reasonable restrictions on 3 fundamental rights of the citizen, those rights are –:

1. Fundamental speech and expression<sup>2</sup>
2. Right to assemble peacefully<sup>3</sup>
3. Right to form associations and unions<sup>4</sup>.

So UAPA mainly is an anti-terror legislation. Its main work is to deal with unlawful activities. An action of an individual/ organisation which results in cession or separation or that question or disrupt the integrity or sovereignty of India are held accountable under this act.

UAPA wasn't the 1<sup>st</sup> security law there were many laws regarding anti-terrorism which was enacted in India. In 2004 after the repeal of POTA<sup>5</sup> 1<sup>st</sup> amendment was made to UAPA act and after that recently in 2019 a new amendment was made which was in controversy.

In the year 2019, an amendment bill was introduced by the central govt in July 8<sup>th</sup> 2019 and passed on August 2<sup>nd</sup> 2019, which gives the power into the hands of central government to designate any individual as a terrorist without any incriminating evidence. The defining feature of this amendment act is the reverse onus clause. It puts the onus of proof on the accused, which

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<sup>2</sup> Article 19 (1) (a) of Indian constitution

<sup>3</sup> Article 19 (1) (b) of Indian constitution

<sup>4</sup> Article 19 (1) (c) of Indian constitution

<sup>5</sup> J.S. Rajput, Book Review, Curfewed Night by Basharat Peer, Journal of The National Human Rights Commission, India, vol.8, 2009, pp. 2012-13.

is contrary to the established principle of law i.e., “**innocent until proven otherwise**”.

This amendment has been passed and it mainly violates the basic human rights of an individual. Human rights are the basic rights we all have been granted only because we exist as human beings, it is not awarded to us by any state. These rights are universal and inherent to all of us regardless of our sex, colour, origin, nationality, language or any other status. So, individuals who have been accused of being a terrorist, they also have human rights just like any other accused, In the case of **D.K. Basu v. State of West Bengal**<sup>6</sup> certain rights of the accused have been stated and as an individual accused of being a terrorist, is also an accused. He should be granted with certain human rights. But in India, there are no laws regarding the human rights of such an individual and no one even talks about it.

## **II. LEGALITY OF UAPA 2019 AMENDMENT AND WHAT ARE THE RIGHTS THAT SHOULD BE PROVIDED TO A PERSON DESIGNATED AS A TERRORIST**

This act came into force after the repeal of POTA act. In 2019 there was an amendment made in chapter VI section 35 and 36 of the UAPA act. That, the govt. authorities have the power to designate an individual as a terrorist, previously it was only limited to organisation but as per the govt. if an organisation is banned then the members of such organisation create another organisation, so if they ban an individual then it will not be able to create any terrorist organisation.

But the main issue here is what grounds do the authorities designate an individual as a terrorist. As per the data provided the individual must be someone who commits or participate or prepare or promote or is involved in any kind of terrorist activity then he can be held liable. This provision has certain loopholes which are not discussed in any of the given literature that the researcher has gone through.

## **III. THE RIGHTS OF A NORMAL ACCUSED IN COMPARISON WITH THE RIGHTS PROVIDED TO A DESIGNATED TERRORIST**

The first among that is that the authorities without any incriminating evidence can designate an individual as a terrorist. When a person is designate as a terrorist it leads to their civil death, once a person is called as a terrorist there is no way he came out of that without any loss. There is loss of reputation, social life etc<sup>7</sup>. so when the authorities designate an individual as a terrorist without any incriminating evidence, they hamper that person's human as well as fundamental

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<sup>6</sup> D.K. Basu V. State of West Bengal (1997 (1) SCC 416)

<sup>7</sup> H. Ehard, The Nuremberg Trial against the major war criminals and international law, AJIL, vol. 43, 1949, p. 223.

rights (which the researcher has dealt with in the 3<sup>rd</sup> chapter).

In the 2019 amendment the changes were made in 4<sup>th</sup> schedule where the govt. can brand an individual as a terrorist and add their name to the 4<sup>th</sup> schedule which is made available to public. But there is no prescribed or due process through which a person's name is added to this list. Which is again a big loophole. Which again brings us to the question the legality of this amendment<sup>8</sup>. There is no incriminating evidence need nor there is any process that is been followed by the govt. to add their names to this schedule. The 2019 Amendment is criticised since it gives the Union Government uncontrolled and unrestricted powers to arrest an individual without following the due process involved.

In the case of **Justice KS Puttaswamy v. Union of India**<sup>9</sup>, the SC held that the right to life and personal liberty (Article 21 of the Indian Constitution) can only be curtailed with the proper way of following the due process involved.

The only remedy that has been provided to that person who as the same as no remedy. The person branded as a terrorist within 45day after his name has been added to the list can appeal Infront of the same authority that designates him as a terrorist to de-notify their name from the list. This again leads us to the same question of its legality where there is no remedy provided to a person accused of such an offense.

#### **IV. BAIL PROVISIONS UNDER CRPC FOR A NORMAL ACCUSED AND BAIL PROVISIONS FOR A DESIGNATED TERRORIST**

Secondly, the next gap that the researcher found is that the prescribed act gives the authorities to detain the person for almost 180days i.e., 6months without launching any charge sheet, and this period of detention can be extended until the investigation has been completed. And within this period the right to bail of that person does not arise.

In other laws when we look into the detention period of a normal accused person, this varies and contradicts that. In CrPc section 167 prescribe that an accused can be detained in custody for not more than15days which can be extended to 90days i.e., 3months. But sec.43D of the UAPA prescribes that the detention can be extended beyond 6 months. The right to be released on bail of a person under CrPc arise while under arrest and at any time during the proceeding is going on<sup>10</sup>.

But when we compare this to the UAPA provision a person's right to be released on bail does

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<sup>8</sup> ibid

<sup>9</sup> K.S. Puttaswamy and Anr. vs. Union of India ((2017) 10 SCC 1), (Puttaswamy I).

<sup>10</sup> Justice Y. K. Sabharwal, Meeting The Challenges of Terrorism - Indian Model (Experiments In India)

not even arise till 180 days of his detention in custody which again questions the legality of this provision. Taking into consideration the rights that have been provided to an accused under Indian laws. CrPc and the constitution provide a lot of laws regarding the rights of an accused person. Let us go through some of its provisions<sup>11</sup>.

Section 57 of CrPc “states that the police officer who arrests a person without a warrant shall not detain him in his custody for more than 24 hours without the special permission of a magistrate under section 167 of the CrPC.”

In the case of **R.K. Naba Chandra Singh v Manipur Administration**<sup>12</sup> by the Hon'ble High Court that if the police officer considers that the investigation cannot be completed within 24 hours, then it is his duty to produce the accused forthwith before the Magistrate.

## **V. THE RIGHTS OF AN ACCUSED PERSON ARE DISCUSSED IN DIFFERENT STATUTES OF INDIA**

In **Indian Constitution**<sup>13</sup> there are a few provisions that talk about the Indians of an accused which are<sup>14</sup>:

- Right to be released on bail<sup>15</sup>
- Right to have an advocate<sup>16</sup>
- Right to free legal aid<sup>17</sup>
- Right to be presented before the Magistrate<sup>18</sup>
- Right to appeal<sup>19</sup>

In **Evidence act**<sup>20</sup>:

The evidence act, 1872 says that an accused person has:

- Right to be presumed innocent
- The accused has the right to present a witness or cross-examination a witness to and

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<sup>11</sup> Dhiraj Kumar Mishra, Torture and Third-Degree Methods : Some Reflections, Nyaya Deep, Vol.12th issue 3, July 2011, pp.16-17

<sup>12</sup> R.K. Nabachandra Singh vs Manipur Administration on 1 August, 1963, 1964 CriLJ 307

<sup>13</sup> Constitution of India, J.N. Pandey

<sup>14</sup> Royal charter of Magna Carta act

<sup>15</sup> Indian constitution, Article 22

<sup>16</sup> Indian constitution, Article 22(1)

<sup>17</sup> Indian constitution, Article 39-A

<sup>18</sup> Indian constitution, Article 22(2)

<sup>19</sup> Indian constitution, Articles 132, 134 and 136

<sup>20</sup> Indian Evidence Act, Batuk Lal

encourage a decision in favour of him.

- Right to the confession of guilt
- Right to privacy of conversation

In **CrPc**: The Code of Criminal Procedure has many provisions expanding the rights of the accused. They are as follows:

- The case or the trial which is to be conducted has to be done in the presence of the accused. Section 273 and Section 279 of CrPC grants this right to an accused person in India<sup>21</sup>.
- An accused, in India, has the right to defend oneself
- Right that his case be conducted in an open court
- Right to remain silent
- Right relating to statements
- Right to be own witness
- Right to protection against double jeopardy
- Right that sanction be obtained before prosecution for certain offences
- Right to privacy of a woman accused
- Right not to be subjected to illegal arrest or detention
- Right to meet an advocate of his choice during interrogation
- Right to obtain a free copy of the judgment
- Right to have a fair trial
- Right to be released on probation
- Right to be released on bail

The rights of an accused person in India have been mentioned in many of the statutes that are followed in our country. All these laws talk about how a person who is accused of different crimes has the right to seek different remedies under different statutes and rights granted to them on those grounds. But no literature or book or act discusses the rights of a designated terrorist who is also in simple terms to be termed as an accused of a crime<sup>22</sup> against the state.

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<sup>21</sup> D.D.Basu, Criminal Procedure

<sup>22</sup> *supra*, note 10, at 4

There are laws and rights of terrorists under different international bills and charters (the researcher will discuss that in her next chapter) but no specific law or rule has been passed regarding the rights of a designated terrorist whose crime has yet to be proved. This is a big violation of human rights and this thing hampers the life of a person who hasn't been proven to be a terrorist. In 2012 there were 2 very important cases that showed us how the act of UAPA is full of big loopholes.

The 1<sup>st</sup> case was of 2012 was **Mohammed amir khan v. state**<sup>23</sup>, in this case amir was acquitted after spending 14yrs in jail for 18 terror case which has not even committed and was wrongly accused of.

Likewise in **Mohammed Irfan**<sup>24</sup>, he was arrested in august when he was 24yrs old under the UAPA and remained in jail for 9yrs and in June 2021 he was released because lack of evidence and the court held that he was wrongly jailed. The last statement Irfan gave to the media was "Those 9yrs were no less than a death sentence"

Since the amendment act came into force in 2019, the scenario didn't change much. The frequency of use of the act increases, but that doesn't lead to many convictions and trials.

According to the numbers, 1,948 persons were detained in accordance with the legislation in 2019 based on information from India's National Crime Records Bureau, a rise of about 37% over the previous year<sup>25</sup>. From 2016 to 2019, only 2.2% of cases reported in accordance with the law resulted in a court conviction. Police closed over 11% of cases due to a lack of evidence.

In *Union of India v. K.A. Najeer*<sup>26</sup>, "a three-Judge Bench of the Supreme Court headed by Chief Justice N.V. Ramana upheld the bail granted to the accused by the High Court of Kerala at Ernakulam under UAPA when the accused had undergone incarceration for a significant period even as it recognised that bail under UAPA was an exception."

The legality of the UAPA after the 2019 is very fragile and it hampers and contradicts many of the laws that have been prescribed and followed by the citizens of India and also violates their basic rights that have been given to normal people as well as to the accused but not to a person who is designated as a terrorist. Mohammed amir khan after his acquittal gave a statement that "people like them should be treated as other normal people by the society and it should change its perspective about it."

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<sup>23</sup> Mohammed amir khan v. state, 138 (2007) DLT 759

<sup>24</sup> 11 July, 2022

<sup>25</sup> Justice Y. K. Sabharwal, Meeting The Challenges of Terrorism - Indian Model (Experiments In India)

<sup>26</sup> *Union of India v. K.A. Najeer* (2021) 3 SCC 713



## **VI. UAPA ACT AND ITS IMPLICATIONS WITH REGARD TO FUNDAMENTAL OR HUMAN RIGHTS**

In the international bill of human rights, various provisions clearly state that a person should have basic human rights regardless of what he does or did or in whatever state he is in.

Following are some Articles of **UDHR**<sup>27</sup> that clearly states that a person should be entitled to basic human rights:

Article 3, Article 5, Article 6, Article 7, Article 8, Article 10, Article 11, Article 12, Article 19, Article 20 (1) (2), Article 28

The above articles clearly state that a person who falls under the definition of ‘Human’ has all the rights that have been prescribed under this declaration. But the UAPA 2019 Amendment clearly violates these Articles.

In the principal act, the amendment includes terrorist organisations and individuals. This amendment empowers the authority to designate any individual as a terrorist. This amendment also adds that there is no need for any incriminating evidence against the person.

The authorities can arrest anyone and keep them in custody if they assume that person to be a terrorist or involved in terrorist activities. Cases under the UAPA act are rising since 2015. The govt in parliament presented statistical data of people who are arrested and convicted under UAPA. This shows that around 4,690 people were arrested out of which only 149 people were convicted between 2018-2020<sup>28</sup>.

In 2018 1421 people were arrested and only 35 people were convicted, likewise in 2019 1948 people were arrested and only 34 people were sentenced and in the subsequent year i.e., 2020 the number of arrests was low in compared to the previous year but the conviction rate was comparatively high<sup>29</sup>.

The above data shows that as these number of arrests increase and decrease each year and the conviction rate is low as compare other heinous crimes. As the conviction rate is low and the rate of arrests are so high it clearly shows that somehow the UAPA has been misused by the authorities.

In many instances we can see that UAPA has been used in rightful manner and had helped in catching people who are involved in terrorist activities, but what about the people those who

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<sup>27</sup> Universal Declaration of Human Rights

<sup>28</sup> supra, note 25

<sup>29</sup> supra note 25

are acquitted but still they have to suffer the humiliation and consequences only because the authorities thought them to be a terrorist<sup>30</sup>.

All the article here states the rights that are awarded to a human from the day of his birth. But the UAPA violates most of the statutes and leads to the violation of the act. Similarly, there are a lot of rights that have been given to a citizen by the constitution of India.

These articles are as follows:

1. Right to equality (Article 14-18): These fundamental right states that every citizen has the right to.
  - a. Equality and equal protection before the law
  - b. No discrimination based on religion, race, sex, or place of birth
  - c. Equal opportunity in case of employment
  - d. Social equality – banning untouchability
  - e. Abolition of royal titles.
2. Right to Freedom (Article 19-22) guarantees numerous rights which also include that the person shall be informed of the ground of his arrest, he shall have a legal practitioner of his choice, and that he must be produced before the nearest magistrate within 24 hours of his arrest.
3. Article 13 makes all laws and administrative actions that abridge fundamental rights *ipso facto* null and void<sup>31</sup>.
4. Right to constitutional remedies (Articles 32 & 226)- Give a right to every individual to move the Supreme Court through various writs directly in case of violation of his fundamental rights.
  - These fundamental rights have been guaranteed to every citizen and have to be exercised and followed by everyone without any fail. But the UAPA amendment act where we designate a person as a terrorist put a negative comment on our constitutional rights. There are various cases under UAPA<sup>32</sup> that clearly shows that the fundamental right of a person who is just been accused and not yet proven guilty of terrorism have been violated in many ways. And as per the literature review, no law specifically talks about

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<sup>30</sup> Ranbir Singh, Critique of Recent Legislations on Terrorism in India from Human Rights Perspective-Do We Need Special Laws? Journal of the National Human Rights Commission, India, pp. 7-30.

<sup>31</sup> supra, note 30

<sup>32</sup> supra, note 5

the rights of a designated terrorist.

- If we consider the case of a national terrorist, in the case of **Ajmal Amir Kasab v. The State of Maharashtra**<sup>33</sup>, the SC took responsibility for his human rights, and even though Ajmal not being a citizen of India enjoyed all the rights that have been awarded to a normal accused in India. He got an attorney to fight his case, was treated fairly, and was provided with all kinds of legal aid. But when it comes to designating a person as a terrorist that the authorities think of as a terrorist, no law talks about the human rights that should govern it. Their right under Art. 22 is violated as they are detained in custody and until the police complete their investigation, they don't produce him before any court of law. The right to bail doesn't arise before the period of 180 days, they have to prove their innocence in the case to get bail which again violates another constitutional right (dealt with in the next chapter).

Case:- A three-judge bench of the Supreme Court comprising “Justices Rohinton Fali Nariman”, “Navin Sinha”, and “KM Joseph” has held in the case of **Bikramjit Singh v. State of Punjab**<sup>34</sup> “that the right to default bail is not merely a statutory right under the first proviso to Section 167(2) of the CrPC, but that it is part of the procedure established by law under Article 21 of the Constitution of India Therefore, it is a fundamental right granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2), CrPC are fulfilled”.

When the right to designate an individual as a terrorist lies in the hands of the govt. knowingly or unknowingly it is been misused in several ways. There are numerous cases we have witnessed when the govt. has designated individuals, groups, and organizations. But most or maximum of the time they have been acquitted. The govt. has also designated people who are involve in peaceful protests or even in protests as terrorists. When we all know that the right to protest comes under one of the fundamental rights under Art. 19 (1)<sup>35</sup> which gives the right of freedom of speech and expression and doing protest and raising their voice against certain things which a citizen thinks to violate their rights is not a terrorist act.

In a certain case, the court commented that “*the right to protest is not outlawed and cannot be termed a ‘terrorist act’ within the meaning of the UAPA*”<sup>36</sup>.

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<sup>33</sup> Ajmal Amir Kasab v. The State of Maharashtra (2012) 9 SCC 1

<sup>34</sup> **Bikramjit Singh v. State of Punjab**, SC CRIMINAL APPEAL NO. 667 OF 2020

<sup>35</sup> S.K. Sinha, Terrorism-An Assam and J & K Experience, Journal of the National Human Rights Commission, Vol. 8, 2009, p. 18.

<sup>36</sup> *ibid*

There was a case in 2018, **Mazdoor Kisan Shakti Sanghatan vs Union of India**<sup>37</sup>, the SC held that “that uprising against governmental and parliamentary actions are legitimate. Though such protests and assemblies are supposed to be peaceful and non-violent, it is not new for protestors to dangle with the limits of law and protests to take a violent turn”.

In the above case, it states how constitution protects an accused person’s rights but the such exercise of governing and protection isn’t provided to a person who has been designated as a terrorist.

We have also seen in the father stan Swamy’s case how an activist was held in custody and died in custody. Carolyn Nash, the Asia advocacy director at rights watchdog Amnesty International, said Swamy’s death in custody was “a chilling and tragic example of how the UAPA facilitates the government’s human rights abuses” and was evidence of its “disproportionate and abusive use”<sup>38</sup>.

These cases continuously portray misuse of the UAPA act and violation of the basic human and fundamental rights of a person who is a designated terrorist who can either turn into guilty or acquitted. When someone is guilty of this act, there are many provisions that specifies their punishments but when a person is acquitted of such crime then there are no prescribed remedies that are awarded to them by any law or statues that ensure them that their reputation and dignity that has been hampered due to false accusation will be restored.<sup>39</sup>

Once they are termed as a terrorist, they lead a life of shame and humiliation, and no amount of remedy can cure that. And that leads to their unemployment which effect their livelihood. They are treated in a very different way and discriminated on the basic of this. Which not only violates their fundamental rights but also violates their basic human rights and contradicts with numerous legal provisions prescribed in law.

## **VII. THE CONSTITUTIONALITY OF THE REVERSE ONUS CLAUSE OF THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 2019**

Article 20 of the Indian Constitution states the Principle of **Audi Altarem Partem**<sup>40</sup> which gets violated when the accused has not been given the right to present his arguments before a court. This article speaks about the basic principle that has been accepted worldwide i.e.,

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<sup>37</sup> Mazdoor Kisan Shakti Sanghatan vs Union of India, AIR 2018 SC 3479

<sup>38</sup> Sanjay Parikh, Understanding The Rule of Law: Domestic and International Law, Indian Journal of International Law, Vol. 49, No.2, Pub. Indian Society of International Law, New Delhi, p. 271.

<sup>39</sup> supra, note 35

<sup>40</sup> Y. Lakshmiand G Rao, Terrorism and its impact on Human Rights, All India Reporter Journal, 2002, pp. 183-187.

“Presumption of innocence” which means innocent until proven guilty which is not applied in the case of designated terrorist. Sec. 43D (5) of the UAPA puts liability on the head of the accused person to give reasonable grounds to be released on bail to the public prosecutor or else such bail cannot be granted if the PP doesn’t find such ground to be sufficient which is a big threat to the person’s liberty. If the prima facie case is believed to be true against the accused, then there is no provision to grant bail to the accused. So here the burden of proof lies on the head of the accused because he has already been presumed guilty.

In the International standards Article 14 of the International Covenant on Civil and Political Rights (ICCPR) in which India is a signatory, recognises the concept of Presumption of Innocence of the accused<sup>41</sup> which is another Principle of Natural Justice under the Indian Legal Criminal System<sup>42</sup>. In majority of the cases, the onus of proof is upon the prosecution to prove (beyond reasonable doubt) the guilt of the accused but under the UAPA, the above-mentioned principles and precedents are being violated. The rights of an accused are infringed even after there were numerous SC judgements which talks about Presumption of Innocence is one of the major rights of an accused. One of the examples of such a judgement is **Babu v State of Kerala and Ors**<sup>43</sup>.

The UAPA does not allow dissent. The provisions now act as a tool for the Government to penalise the individuals who speaks Disaffectionately against the state or the policies of the Government.

This turns out to be a violation of the Right to Freedom of Speech and Expression under Article 19 (1)(a) and it puts the individual under the critical observation of the govt. that believes the words of the individual to be inciting enough to disrupt the peace and security of the state. Because an individual cannot do anything about What the Government feels.

When the burden of proof lies on the hand of the accused then it minimises the burden from the heads of the prosecution.

Numerous significant precautions are included in the process for notifying an organisation of a terrorist organisation, which is not exactly appropriate in the case of an individual. The separation between an organisation and an individual lacks a discernible reason, and the way in which they are treated is excessive and unreasonable. This does not meet the requirements of Art. 14's "reasonable classification" test.

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<sup>41</sup> supra, note 40

<sup>42</sup> Y. Rao, G. Lakshmi, " Terrorism and its Impact on Human Rights " AIR (J) 2002 at 183 – 187.

<sup>43</sup> Babu v State of Kerala and Ors Criminal Appeal no. 104 of 2019

In the case of *the People's Union for Civil Liberties v. Union of India (2004)*<sup>44</sup>. "The Court had decreed that if human rights are violated in combating terrorism, it will be self-defeating."

Taking in account the Oakes Test, in the case of "**V.G. Row v. State of Madras**"<sup>45</sup>, the SC held that "the test of reasonability is to be examined with regard to each impugned statute, the extent of infringement of the fundamental right, and the object intended to be achieved".

The Supreme Court had affirmed in **Kartar Singh vs. State of Punjab**<sup>46</sup> that the assumption that the accused's trial would proceed without excessive delay allowed for the application of Sec. 20 (8) of the TADA Act, 1987, a highly strict provision for granting bail. To the contrary, When charged under UAPA, the accused typically serves a lengthy prison sentence while awaiting trial. Evidently, the Act's goal is being met at the majority of those accused under its provisions with unjustly.

The "presumption of innocence" is a fundamental right under Article 21 of the Constitution of India as held by the apex court in **Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra**<sup>47</sup>. Nevertheless, the significance of this principle has not been materialised yet.

**In Maneka Gandhi v. Union of India**<sup>48</sup>, the "process established by law" in Article 21 of the Constitution was extended to a new length. It was decided that for the process to be fair and reasonable, it had to meet a number of requirements. The process cannot be capricious, unjust, or irrational. The reversal onus of proof, however, runs counter to the ruling in this case.

## VIII. CONCLUSION

From the above findings and research work the researcher has concluded that the UAPA 2019 Amendment exhibits a lot of loopholes and violates already existing statutes. The UAPA, 1967 has become more arbitrary with the recent amendment than it ever was. As aforesaid, there is a list of problems with the recent amendment and the newly added provisions are capable enough to infringe fundamental rights of the individual to a greater extent than it ever was in the past. Starting from the beginning there is no literature that specifically talks about the rights of an individual designated a terrorist. There have been a lot of discussion on the rights of an accused person and how he must be treated but when it comes to the rights of a designated terrorist there is no such law. The UAPA only specifies how the person who is been designated as a terrorist

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<sup>44</sup> *The People's Union for Civil Liberties v. Union of India (2004)* 1952 AIR 196, 1952 SCR 597

<sup>45</sup> *V.G. Row v. State of Madras*, 1952 AIR 196, 1952 SCR 597

<sup>46</sup> *Kartar Singh vs. State of Punjab*, 1994 SCC (3) 569, JT 1994 (2) 423

<sup>47</sup> *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra*, AIR 1993 SC 1375, 1993 CriLJ 1804, 1992 (3) Crimes 853 SC, 1992 (3) SCALE 59, 1993 Supp (2) SCC 544

<sup>48</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; (1978) 1 SCC 248

should be punished and everything against that person. But the act doesn't talk much about the remedies that have been awarded to the individual. The only remedy as the act is that the accused has to prove himself innocent and request the government to remove his name from the 4<sup>th</sup> schedule which is very unfavourable on the part of the accused because it has to seek remedy from the authorities that designated him as a terrorist in the 1<sup>st</sup> place. There is different laws and statutes that speaks about the fundamental and human rights of a citizen and even of an accused, but those rights are not much applicable on the individual booked under UAPA. As we have seen there are numerous cases where the designated person had been acquitted, so being wrongfully accused of a crime and violation of their rights is all the individual get. The individual can also be held liable for peaceful protests if the govt. thinks it as a terrorist activity. This amendment act gives the govt. unreasonable and unethical power to book anyone under this act who goes against them. Which again violates the basic rights of an individual. This amended act mainly violates the constitutional principle of reverse onus clause which is the principle of natural justice and followed by each and every court of law. Under the guise of such legislation, the government has detained civilians who have requested their rights and justice as well as journalists who were merely performing their jobs. The most recent change to the UAPA has seriously jeopardised the ability to demonstrate. Democracies must include the freedom to protest. Recently, participating in anti-government demonstrations has resulted in sedition accusations and UAPA bookings. The Supreme Court must step in and restore faith in democracy when such horrifying laws violate and impinge on citizens' rights. This Amendment gives some indications of how laws were crafted during the colonial rule to stifle various liberation movements under the guise of maintaining public order.

In this case, the researcher wishes to draw the conclusion that even if the law is important and required at this moment, there shouldn't be any provisions that violate a person's human rights, which are guaranteed by the constitution or other laws of the nation. The state and the government should figure out how to make the UAPA laws work in harmony with other legislation, laws, and rights.

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