Page 664 - 676 **DOI:** *https://doij.org/10.10000/IJLMH.11574*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

Examining UAPA and NIA: Intersection of Human Rights and National Security

MAITREYA SHARMA[1] AND SHIVANSH AGRAWAL[2]

ABSTRACT

In the beginning, the article shall provide a preliminary introduction to the Unlawful Activities Prevention Act, 1967 and the National Investigation Agency. The article shall then talk about the evolution of the Unlawful Activities Prevention Act, 1967 through successive amendments, which have led to broadening the horizon of the executive control and its subsequent impact. Further, the article shall establish how the political dissenters are held culpable by the successive Governments in power and how by criminalising dissent, the fundamental rights of the critics or dissenters are violated. The article shall then talk about the evolution of the National Investigation Agency, taking into account the recent amendment and how the body, through its functioning, has impacted the fundamental rights of the people. Finally, the article shall be concluded by encapsulating the whole discussion and attempting to provide pragmatic solutions to alleviate the current situation in a holistic manner as much as possible.

I. INTRODUCTION

The Unlawful Activities Prevention Act, 1967 ("UAPA") enactment took place in the backdrop of the Indo-China and the Indo-Pak wars of 1962 and 1965, respectively. Amidst all the chaos, another internal event took place, giving rise to severe unrest in the country that is the 1962 Rajya Sabha speech given by the DMK leader and the then Chief Minister of Tamil Nadu, Late Shri C N Annadurai, in which he raised a demand of separating the state of Tamil Nadu from India and making it a different country.

On account of this, a committee was set up for National Integration and Regionalization by the National Integration Council, which recommended certain enthralling amendments in the Constitution of India. In pursuance of that Constitution (Sixteenth Amendment) Act, 1963 was enacted, which added restriction of "in the interest of sovereignty and integrity of India" to three forms of freedoms available under Article 19(1)(a) of the Constitution of India. As a

[1] Author is a LL.M. Candidate at the West Bengal National University of Juridical Sciences (NUJS), Kolkata.
[2] Author is a LL.M. Candidate at the West Bengal National University of Juridical Sciences (NUJS), Kolkata.

 [ISSN 2581-5369]

result of this Constitutional Amendment, UAPA was introduced as an anti-terror legislation, which was widely criticized by the political parties in the opposition for being archaic in nature. It aimed to maim the ambition of regional parties to secede from the Indian union and form separate states.

The fundamental purpose of the legislation is to uphold the sovereignty and integrity of India, which, according to the Government, was in danger. The enactment of this Act gave the Government unbridled powers to put reasonable restrictions on unlawful associations. The Act bestowed powers upon the Central Government to declare an organisation as unlawful and its work as unlawful activities.

The passing of the National Investigation Agency Act, 2008 on the 31st of December, 2008, in the aftermath of the dreadful 26/11 Mumbai attacks, led to the establishment of the National Investigation Agency ("NIA"). It was set up as the principal counter-terrorism agency of the Government of India. It empowers the agency to take *suomoto* cognizance of any terror-related activities throughout the territory of India and file a case regarding the same. The Act gives unfettered powers to the agency to enter into the territory of any state, without prior approval from the State Government, to carry on investigations and even arrest people if required.

II. CLOAK OF NATIONAL SECURITY OVER EXECUTIVE HIGH-HANDEDNESS

One of the fundamental flaws of the UAPA is that it functions with the presumption of guilt of the accused. It puts an apprehension on the mind of the Courts that the granting of bail to the accused can be a threat to society in general and the sovereignty and integrity of India at large. This concept overall seems to be a sham as it is contrary to the legal principle 'Bail is rule, jail is an exception' laid down by the Supreme Court in the case of *State of Rajasthan, Jaipur v. Balchand @ Baliay, 1978*[3]. The Act does not provide for anticipatory bail, and a simple bail is granted in the rarest of rare cases.

The modus operandi of the UAPA seems contrary to the principle of natural justice '*audi alteram partem'* as the period of detention for even the most minuscule offence is ninety days under the UAPA. The duration of detention can be extended for up to one hundred and eighty days even without filing a charge sheet, provided there is evidence to prove the connection of the accused and the Act. It is contrary to the conditional application of preventive detention under Article 22 of the Constitution and provisions of the Cr.PC which entails detention of sixty days in standard cases and a maximum of ninety days, in cases of offences prescribing

[3]State of Rajasthan, Jaipur v. Balchand @ Baliay,1977 AIR 2447

the punishment of ten years or more.[4]

Even though the provisions of the Prevention of Terrorism Act ("POTA") and the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA") were inculcated by the Government in the UAPA, but the Government very wisely omitted safeguards provided under Sec 58 of POTA, which considered malicious prosecution an offence and held the police liable for it.[5] This provides immunity to the police brazenly.

Another peculiar problem with the UAPA is the absence of a sunset clause. UAPA is a permanent statute, unlike the POTA and the TADA, which had a sunset clause, and was required to be renewed every two years by the Parliament; otherwise, they would lapse automatically. It makes the Act more oppressive and difficult to remove.

The 2019 Amendment of the UAPA, which allows the Government to designate an individual as a terrorist, violates the right to life and liberty of an individual provided under Article 21 because an individual, unlike an organisation, has fundamental rights enshrined by the Constitution and this provision of the UAPA strikes at the root of it.[6]

The constitutionality of the formation of the NIA in itself is a contentious issue. Both 'Public Order' and 'Police' are mentioned in List II of the Seventh Schedule of the Constitution; hence they are state subjects and entirely within the jurisdiction of the State Governments. The NIA has been provided with *suomoto* powers of cognizance, unlike the Central Bureau of Investigation ("CBI") which in spite of being a national police agency, is empowered to do so only at the plea of or with the permission of the State authorities.

III. Evolution of UAPA: Broadening the Horizon of Executive Control and its Impact

The UAPA, as it stands today, is completely different from when it was enacted and not only in structure but the objective with which it was enacted. It has seen a drastic shift, especially when viewed from the angle of determining the culpability and prosecutions taking place under this legislation. It is the effect of the transformation done in the Act through various debatable amendments that have been brought in over several years by different ruling governments with their own different sets of political agendas but one common object, i.e., to curb the voice of dissenters in the name of national security and integrity of the country.

[4]ANUSHKA SINGH, *Criminalising Dissent: Consequences of UAPA*, 47 Economic and Political Weekly 14–18 (2012).
[5]599 Comment, https://www.india-seminar.com/2009/599/599_comment.htm (last visited Jan 5, 2021).
[6]The Unlawful Activities (Prevention) Amendment Act, https://www.readersdigest.in/odds-and-ends/story-quickipedia-the-unlawful-activities-prevention-amendment-act-125599 (last visited Jan 6, 2021).

 [ISSN 2581-5369]

The Unlawful Activities (Prevention) Amendment Act, 2004

It is in the year 2004 that a hugely un-famous anti-terror legislation, namely Prevention of Terrorism Act, 2002 (POTA), was struck down by the then ruling UPA government. Now, the repealing of this Act was not the only move made by the Government, but they incorporated the major provisions of the above-mentioned Act into UAPA, making it more comprehensive legislation while granting excessive powers in the hands of the Government. The terms like 'terrorist act'[7], 'terrorist organisation'[8], and 'terrorist gang'[9] were imported from the predecessor legislation through this amendment. Apart from these definitions, certain extra chapters with headings 'punishment for terrorist activities'[10], 'forfeiture of proceeds of terrorism'[11], and 'terrorist organisations'[12] were also included. Lastly, a schedule of 'terrorist organisations'[13] was also added. These were some significant changes made by the amendment act; what is noteworthy here is that, unlike TADA and POTA, the sunset clause was not included in this particular legislation, and there was no justification provided by the Government as to why such inclusion has not been made. This amendment very clearly broadened the scope and ambit of the legislation under which the Government possesses unbridled powers, and it almost failed the object of repealing the previous legislations, which were in effect and were repealed as they were archaic in nature. But now, when such provisions are included in UAPA and that too without a sunset clause, there is nothing left to say on this point.

The Unlawful Activities (Prevention) Amendment Act, 2008

It was in this year of 2008 that our country had witnessed a dreadful incident which claimed many innocent lives in the financial capital of our country where a terrorist attack was orchestrated by the terrorist outfit popularly known as Lashkar-e-Taiba, which transgressed the Indian borders through sea route and attacked at the heart of the Mumbai city. As a reaction to this, or we can say to counter any such terrorist activity from happening in the future, the Government came up with certain amendments in UAPA since it became the prime anti-terrorism legislation after the TADA and the POTA were repealed.

Now, as we review the amendments tabled up by the Central Government, we can observe that the provisions which were labelled as archaic and as a result of which they were repealed were

[7] The Unlawful Activities (Prevention) Amendment Act, 2004, §4(2)(k).
[8] The Unlawful Activities (Prevention) Amendment Act, 2004, §4(2)(m).
[9] The Unlawful Activities (Prevention) Amendment Act, 2004, §4(2)(l).
[10] The Unlawful Activities (Prevention) Amendment Act, 2004.
[11] *Id.*
[12] *Id.*
[13] *Id.*

 [ISSN 2581-5369]

again included in disguise as Unlawful Activities (Prevention) Amendment Act, 2008. Firstly, talking about the definition of the "terrorist activity"[14], the inclusion of words like "any other means of whatever nature"[15] gives a wide ambit of scope to the Government to brand an act as a terrorist activity which would have serious repercussions on the civil rights of a person involved if he is wrongly implicated. The second big change brought in this legislation is in the provisions related to arrest and detention. Section 43A of the amended Act gives power to the designated authority on his personal belief or a hunch that a person has committed a crime under this Act or from the information received by any other person regarding the same or finally from any document or any other piece of evidence merely suggesting the same. As far as detention is concerned before the charges are framed, the present amendment has exceeded the maximum time limit to 180 days, which would be a very serious violation of the human right to liberty and even the right to dignity of any person who is wrongly implicated and has to remain in custody for such a long time period. Lastly, another very important principle of criminal law, i.e., the burden of proof which lays on the state under general criminal law, but after this amendment, the burden of proof has been shifted to the accused to prove that he is innocent, but however here there is a condition, i.e., if a "definitive evidence" is found and can be connected to the accused, then the presumption of culpability formed by the Court will be against the accused. Therefore, these were some major changes brought by the 2008 amendment, which can easily hinder the fundamental rights of a person based on the Government's discretion.

The Unlawful Activities (Prevention) Amendment Act, 2019

Previously we have observed extensive changes that have been brought in the UAPA, but the amendment done in 2019[16] is by far the most debatable one as it had introduced changes in the nature that directly encumber with the fundamental rights of the citizens, which lacks the efficacy of being a reasoned law, and is colorable in its exercise. Even upon skimming through the changes made by this amendment act, we observe substantial changes like the first one we come across is the amendment done in section 35[17] of the parent act in which the Government now wields power to designate an "individual" as a "terrorist," which prior to this amendment an organisation could only be designated as a "terrorist organisation." The procedure mentioned in the provision by which the Government exercises this power is quite arbitrary on the face of it as according to the plain reading of the provision, the Government can categorise

[14] The Unlawful Activities (Prevention) Amendment Act, 2008, §4
[15] *Id.*
[16] The Unlawful Activities (Prevention) Amendment Act, 2019.
[17] The Unlawful Activities (Prevention) Amendment Act, 2019, §5.

 [ISSN 2581-5369]

an individual as a terrorist if it "believes" that they are involved in terrorism.[18] Now, the clause succeeding the above clause provides that "an individual will be deemed to be involved in terrorism if on the belief of the Government that person "participates or commits terrorism," "encourages the acts of terrorism," "prepares for terrorism," or by any other means is involved in terrorism.[19] Therefore, if we carefully observe the above two provisions, we find that the discretion given in the hands of the Government has far-reaching consequences towards the disruption of the fundamental rights of the citizens who even try to raise a fair objection against any arbitrary exercise of power by the Government.

Not only the process of notifying an individual as a terrorist is arbitrary but also the whimsical remedy provided for that individual to make an attempt to get de-notified is arbitrary in nature. According to the amended section 36[20], if an individual in order to get his name removed from the Fourth Schedule has to file an application to the Central Government itself, and if that gets rejected, then a review can be filed before the Review Committee, which is also constituted by the Government itself. Therefore, there is no judicial intervention till this stage, which in itself fails the whole premise of the due process of law. The justification presented for bringing this provision is that the individuals are capable of deconstructing the sovereignty of the country by involving single-handedly in the acts of terrorism or are capable of influencing other individuals/groups to join them in furthering their cause.

IV. CULPABILITY UPON THE POLITICAL DISSENT: IMPACT ON FUNDAMENTAL RIGHTS

"Our recent decisions reiterate the value of individual dignity as essential to a democratic way of life. But lofty edicts in judicial pronouncements can have no meaning to a citizen unless the constitutional quest for human liberty translates into securing justice for individuals whose freedom is under threat in specific cases. The role of the Court involves particularly sensitive balances when the state seeks to curb the freedom to investigate perceived breaches involving offenses against the state. Custodial interrogation involves the balancing of diverse and often conflicting values: the effective administration of the criminal justice, an impartial investigation and the liberty and reputation of the individual."[21] This particular extract is taken from the dissenting opinion given by Dr. D.Y. Chandrachud. J in a very debatable pronouncement given by the Apex Court which was stemmed from a very contentious tragedy

[18] *Id.*
[19] *Id.*
[20] The Unlawful Activities (Prevention) Amendment Act, 2019, §6.
[21] RomilaThappar and others v. Union of India and others, (2018) 10 SCC 753.

that occurred at Bhima-Koregaon, where a violent attack took place against the people of Dalit Community on the 1st of January, 2018 as result of which there were mass protests in the State of Maharashtra. In the following matter, a FIR was registered, and all the search and seizure took place. The investigation agencies booked five human rights activists after linking them with the Communist Party of India, which is a banned organisation, and therefore invoked the provisions of IPC and UAPA.

In pursuance of the above events, a case was filed by one Ms. Romila Thapar along with five other petitioners who are eminent academicians and made huge contributions in their respective fields. The only prayer that was made by the petitioners to the Court was to conduct an investigation, which is monitored by the Court, or to form a special investigation team to do the same.[22] But the Court by 2:1 majority dismissed the petition without valuing the liberty and dignity of the ones arrested without being proven guilty of anything.[23] It was not the only case where the majoritarian Government, by the exercise of this draconian legislation, tried to silence the dissent. There are other such infamous cases also where the civil liberties of the concerned citizens involving student leaders, human rights activists, journalists, and opposition party leaders are being abrogated, which shows the steady rise of the fascist rule in our country.

After the arrest of these above mentioned five human rights activists and renowned scholars, the next very contentious arrest that was made by the NIA was that of a very aged Jesuit priest Father Stan Swami.[24] He is a tribal rights activist and has been effortlessly serving the Adivasi Community for decades; he has always worked towards their rights and for a better standard of living in the forest lands.[25] He, on multifarious occasions, expressed his critical views against the Government for not adhering to the Schedule VI of the Indian Constitution.[26] He was arrested from Ranchi, was detained and interrogated for long hours amidst the ongoing pandemic.[27] There was an upsurge by the general public and the political opponents speaking against his arrest and throttling his very basic human right of living with dignity.[28]

[22]*Id*.
[23]*Id.*
[24]NIA Arrests 83-Year-Old Tribal Rights Activist Stan Swamy in Elgar Parishad Case, https://thewire.in/rights/stan-swamy-arrested-elgar-parishad-case (last visited Jan 30, 2021).
[25]*Id.*
[26]*Id.*
[27]Stan Swamy: The oldest person to be accused of terrorism in India, BBC News, October 12, 2020, https://www.bbc.com/news/world-asia-india-54490554 (last visited Jan 30, 2021).
[28]*Id.*

 [ISSN 2581-5369]

Another such incident that caught the limelight was the arrest of a Jawahar Lal Nehru University student Umar Khalid, who is also a famous student activist.[29] He was booked under various sections of UAPA as well as IPC but what is pertinent to mention here is that he was taken into Police custody on the pretext of ongoing investigation without even a proper trial, which is the courtesy of the stringent provisions of this archaic legislation.[30] He was alleged to be actively involved in the protests against the Citizenship Amendment Act, 2019, wherein according to the Police, the evidence suggested that he conspired against the Government and staged a mass communal riot by provoking the people through his speeches to protest against the newly passed citizenship laws with a deeper motive to enrage a revolt against the Government.[31] Also, it was his prerogative to coincide these protests with the visit of the then US President Donald Trump just to paint a negative picture at the international level, of our country's administration, portraying that they vitiate the rights of the minorities.[32]

Now, while we are discussing the arrest of Umar Khalid, one more name which was related to the CAA protests and had surfaced during the time when our country was already combating the menace created by the global pandemic was that of Ms. Safoora Zargar, who was also a student more precisely pursuing M Phil. from Jamia Milia Islamia.[33] She was arrested and detained under the provisions of UAPA, and at the time of her detention, she was pregnant.[34] She was accused of being one of the leading conspirators behind the North-East Delhi riots. She was being detained at Tihar Jail, and the condition of that jail due to overcrowding was not at all viable to detain pregnant women that too on a mere accusation.[35] A lot of criticism was presented against her detention by the activists all around the country. Thankfully she was granted bail on humanitarian grounds by the Delhi High Court, which is otherwise impossible in a regular case under the provisions of UAPA.[36] We are specifically

[29]Umar Khalid arrested under UAPA in Delhi riots case: What is this tough anti-terror law?, The Indian Express (2020), https://indianexpress.com/article/explained/umar-khalid-uapa-in-delhi-riots-arrest-jnu-pota-tada-6597705/ (last visited Jan 28, 2021).
[30]*Id.*
[31]Delhi riots case: Former JNU student Umar Khalid arrested under UAPA, The Indian Express (2020), https://indianexpress.com/article/india/delhi-riots-case-jnus-umar-khalid-arrested-under-uapa-6594837/ (last visited Jan 28, 2021).
[32]*Id.*
[33]SafooraZargar was one of main conspirators, pregnancy no ground for bail: Delhi Police tells court, Hindustan Times (2020), https://www.hindustantimes.com/india-news/safoora-zargar-was-one-of-main-conspirators-pregnancy-no-ground-for-bail-delhi-police-tells-court/story-4mY5SWUL4vW1P2EBmpjLiI.html (last visited Jan 28, 2021).
[34]*Id.*
[35]SafooraZargar: Bail for pregnant India student blamed for Delhi riots, BBC News, June 23, 2020, https://www.bbc.com/news/world-asia-india-53149967 (last visited Jan 28, 2021).
[36]*Id.*

 [ISSN 2581-5369]

mentioning the term “regular” since it has now become a regular practice of the Government to book their dissenters under the provisions of this legislation.

V. EVOLUTION, FUNCTIONING AND IMPACT ON HUMAN RIGHTS OF THE NIA

Evolution

Even though the NIA was established in the year 2009, the requirement of such an agency was felt from the past several decades. The draft bill enabling the creation of a distinct law for the CBI, which would give it powers to investigate into 'federal crimes' was created in the years 1986-89, hinting at the need of such an agency.[37]

Committees like the Padmanabhaiah Committee on Police Reforms, 2000 and the Justice V.S. Malimath Committee on Reforms in the Criminal Justice System, 2003 felt the need for the creation of a nodal agency to have the power to investigate and prosecute for offences relating to inter-state and international jurisdictions.[38]

The terrorist activities in the country were prevalent, and the need was felt for the creation of a nodal agency for investigation of activities related to terrorism. Terrorism which does not restrict itself to the territorial jurisdictions of the State Governments and has a pan India effect cannot be subject to the intricacies of the State Governments. The State Government lacked the resources and the manpower to investigate into activities relating to terrorism. The overburdened Police departments of State Governments had a lackadaisical approach in dealing with such matters requiring time, money, machinery and men.

The Mumbai attacks of 26/11 acted as the trigger for the establishment of the NIA. The attacks showed the dire helplessness of the Indian authorities and the failure of the existing mechanism to deal with threats of terrorism. The NIA was created as India's central counter-terrorism organisation, which has complete jurisdiction with matters related to terrorism and does not require the permission of the State Governments in matters relating to the same.

Critical Changes via Amendment of 2019

The 2019 amendment brings vital changes in respect of three things which are the following:

(i). Constitution of Courts: The 2008 NIA Act provides for Special Courts to conduct trial regarding matters under the NIA Act's jurisdiction. Before the amendment, the Executive had the power to 'constitute' special courts under Sec 22 of the NIA Act, which has been changed

[37]National Investigation Agency: A Good Start but not a Panacea | ManoharParrikar Institute for Defence Studies and Analyses, https://idsa.in/idsastrategiccomments/NationalInvestigationAgency_PDas_120109 (last visited Jan 6, 2021).
[38]*Id.*

 [ISSN 2581-5369]

to 'designate' a Court of Session for the same purpose, via the 2019 amendment. Sessions Courts have the powers to impose even death penalties for criminal acts. The problem with the designation of the Sessions Court as Special Courts is that it will increase the workload of the Sessions Court, in spite of the fact that they are already highly overburdened with a number of cases.

But what is still prevailing is the influence of the Executive in the matters of the Judiciary, thus striking at the independence of the Judiciary. The concept of separation of powers forms a fundamental part of the basic structure doctrine. Judiciary has the power to decide whether it is competent to resolve a particular case or not. The Executive should not have the final say regarding the jurisdiction of a particular Court.

(ii). Wider ambit of powers under the NIA: The amendment has widened the scope of the NIA's investigation powers. It has been conferred the powers to investigate offences related to human trafficking, sexual exploitation of the trafficked persons; malpractice of counterfeiting notes or currency; possession, production, sale, repair, transfer of prohibited arms and ammunition; cyber terrorism and various offences under the Explosive Substances Act, 1908.

The amendment brings human trafficking and their exploitation into NIA's ambit by adding Section 370 and Section 370A of the IPC into the schedule. Even though these are serious offences, but the correlation of such offences with countering terrorism is difficult to establish.[39]

The illegal Act of counterfeiting notes and manufacturing of arms is not something which is entirely unheard of. These acts have been existing for a long period of time. Still, the inclusion of these offences under the NIA Act gives the Central Government the jurisdiction to decide whether it will be the State Government or the NIA that will investigate the case. The increasing nature of offences under the NIA strikes at the independence of the State Governments and at the core principle of federalism.

Another problematic area is the inclusion of offences relating to cyber terrorism, but the core concern is that India does not have a data protection law currently and the word terrorism has nowhere been defined anywhere in the Act.

(iii). International Jurisdiction: The NIA Act of 2008 restricted the power of the NIA to investigate cases within the territorial jurisdiction of India. The amended Act increases its jurisdiction by granting it the powers to investigate cases beyond India, in other countries. The

[39] V. Venkatesan, *Amendment to the National Investigation Agency Act, 2008: An act of violation*, FRONTLINE , https://frontline.thehindu.com/the-nation/article28758410.ece (last visited Jan 27, 2021).

 [ISSN 2581-5369]

investigation shall take into account the obligations under international conventions and treaties and the country's domestic law in which the offence is being investigated. It grants the jurisdiction to the NIA special court in Delhi to handle such cases.

(iv). Ambiguity in the subject of the crime: The addition of Section 1(d) through the amendment which includes the term "affecting the interests of India", is highly problematic as the term has nowhere been defined anywhere in the Act and can be used by the agency to curb dissent and critics of the Government in power.

Impact on Human Rights

In the recent times, the crackdown by the NIA on the human rights activists, journalists and civil society groups in the Union Territory of Jammu and Kashmir has been seen by many as the use of the agency to curb dissent in the valley. It is perceived by the people, as a rebuttal by the Government for raising voices against the communication blockade, by the activists. Amnesty International shut down its India operations, after it released a report on the deterioration of human rights in the Kashmir valley, due to which it had become a target of the Central Government.[40] The office of the newspaper Kashmir Times was sealed by the Central Government as a retaliatory measure against Anuradha Bhasin, the Executive Editor who filed a petition in the Supreme Court challenging the indefinite internet shutdown in the newly created Union Territory of Jammu and Kashmir.[41]

In the light of the prevalent human right violations that take place in the office of the investigation agencies, the Supreme Court while disposing of the Special Leave Petition (SLP) filed by Parmavir Singh Saini held that the victims of human rights violations have a right to obtain a copy of the CCTV footage of the interrogation which was held in the office of the investigation agencies.[42] It held that the person whose human rights have been violated could make a complaint to the National Human Right Commission (NHRC), State Human Right Commission (SHRC), Court of Human Rights and the Superintendent of Police (SP) or any other authority that has the power to take cognizance of the same.[43] The investigation agencies, including the NIA, have to keep a record of the CCTV footages for a minimum period of six months and the victim can ask the investigation agency for a copy of the same. It said that the

[40]Global Human Rights Groups Raise Serious Concerns on NIA Raids in J&K, The Wire , https://thewire.in/rights/nia-raids-jammu-kashmir-human-rights-groups (last visited Jan 29, 2021).
[41]India: Counterterrorism Raids Targeting Peaceful Critics, Human Rights Watch (2020), https://www.hrw.org/news/2020/10/30/india-counterterrorism-raids-targeting-peaceful-critics (last visited Jan 29, 2021).
[42]Paramvir Singh Saini v. Baljit Singh [SLP (Criminal) No.3543 of 2020]
[43]*Id.*

 [ISSN 2581-5369]

provision for recording has to be made in all the places that have the power of interrogation, along with the power of keeping the accused at the same place, which even covers a single police station.

VI. CONCLUSION

In order to uphold the sovereignty and integrity of a nation, national security is of paramount importance. For countering the terrorist forces or external aggression carried out by any rebellion, there is an inherent need for Government of a sovereign nation to formulate effective anti-terror laws and anti-terror forces that could protect the state and its citizens against such attacks. In our country, similar incidents of such external aggressions happened in the past, which caused a massive loss of life and property. Therefore, such infiltration can only be counterbalanced by the implementation of anti-terror legislation.

We are not arguing against the existence of strict anti-terror legislation but against the arbitrary use of such law at the hands of the majoritarian Government to muzzle dissent by clogging the dissenters' personal liberty. The basic human rights that are guaranteed by our Constitution and which also form a fundamental part of multilateral international instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights(UDHR) cannot be eroded by the unbridled exercise of power. The critical issue that is being addressed here is the scope and ambit of the power exercised by the Government while invoking the provisions of UAPA and NIA. In order to mitigate the existing problems, firstly, excessive control should not be given in the hands of the Government. Secondly, the terminology present in the statutes mentioned above could be reconstructed into being more objective. Lastly, there should not be much detraction from the basic principles of criminal law, for example, the rule regarding the burden of proof, detention before trial, and right to bail, etc.

The existence of a counter-terrorism organisation is vital to protect the security and public order of the nation. We have witnessed in the past, how the State Governments have been ineffective in dealing with the issues of terrorism. For a pan India fight against terrorism, the existence of such an organisation becomes essential. But what is equivalently crucial is the maintenance of the quasi-federal structure in the country, protection of human rights of the accused and a fair trial to the accused without any inherent bias or prejudice prevalent. The organisation should not be used as a tool by the Centre to usurp the powers of the State Governments. It should not be used to suppress the critics and the dissenters, of the Government in power, as criticism of the prevailing Government is the very root of democracy. The organisation should work for

 [ISSN 2581-5369]

national security and not for the Government in power's political ideology and agenda.

*****

 [ISSN 2581-5369]