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Weaponisation of Sedition and the UAPA to Curb Free Speech in India

TUSHAR NAIR¹

ABSTRACT

In recent times, the UAPA and Sedition laws have been used against journalists, politicians, and students who criticize the central government or its leaders. This article discusses the Unlawful Activities Prevention Act before and after the 2019 amendment, and the Section 124A of the Indian Penal code that criminalizes Sedition in India. This article throws light on how the central government under the UAPA has the power to (A) Label an INDIVIDUAL as a terrorist (B) How the REVIEW COMITEE (established under SECTION 37) for reviewing the decision of the Central government is constituted by the central government itself, and also about the abuse of Section 124 A by Private citizens against people who criticize the central government or its leaders through speeches, tweets, or other forms of social media posts. Most people charged under this section have no prior Criminal record and are often acquitted by the court. However, people are subjected to long pretrial custody and expensive legal battles.

Data from National crime records bureau have been cited as evidence. Recent cases after the NCB report of 2019 was published too have been cited. The article concludes with a quote from a Special Rapporteur criticizing the actions of the government, and how these laws could threaten democracy in the future.

Keywords: UAPA, Section 124A, Free Speech, Government

I. INTRODUCTION

This article discusses the Unlawful Activities Prevention Act and Section 124 A of the Indian Penal Code that criminalizes Sedition in India. Both these acts have been subject to criticism because of their apparent abuse by the government and private individuals to curb dissent against the ruling right-wing Bhartiya Janata party in India.

Section 124 A has been **invoked by private citizens** against a social media post, pictures, or something said in a public forum claiming it hurts the religious sentiments of a particular community in India.

¹ Author is a student at Vivekananda Institute of Professional Studies, India.

Similarly, the Unlawful Activities Prevention Act (hereafter called the UAPA) has been extensively **abused by the central government** to declare individuals as a terrorist, make arrests, and hold critiques of the government in Custody.

In recent news, the UAPA and Sedition laws were used against journalists and politicians who were protesting against the UP police following the abuse of power in Hatharas.

Though in most of the cases filed under the UAPA or Section 124 lead to Acquittal, **the long pretrial detention, the expensive and long drawn out trial**, has led to people indulging in **Self-Censorship**.

II. THE UAPA: THE UNLAWFUL ACTIVITIES PREVENTION ACT 2019.

The UAPA is India's Anti-terror law. The Central government introduced new amendments to the UAPA in the year 2019, which led to a lot of opposition from the opposition parties, students, and left-wing leaders.

The act **before the amendment** gave unfettered powers to the Central government to declare any association that the central government believed to be involved in Unlawful activities as a terrorist organization. The **2019 amendment under Section 35** extended this right to notify associations as well as Individuals who might not be associated with any terror groups as terrorists if the government has *reasons to believe so*.

The central government now has **the power to NOTIFY an individual as a terrorist**, and the power to **DENOTIFY** the same individual also lies with the central government.

Under **SECTION 36** of the UAPA, the individual who is labeled as a terrorist can make an application to a REVIEW COMMITTEE (established under **SECTION 37**) to review such a notification.

However, *This Review Committee also shall be constituted by the Central Government.*

The Central government and the central government-run National Investigating Agency have control over the whole trial process from Start to End. The **likelihood of abuse of power** increases substantially in such circumstances.

To add to this, the *burden of proof lies on the Accused and SECTION 43 E of the ACT presumes Guilt in certain cases.*

A person arrested under the UAPA under SECTION 43D read with Section 167 of the Criminal code states that such a person could be held under preventive detention for up **to 180 days even before a Charge sheet is filed against him.**

In KHALID v. STATE OF DELHI

UMAR KHALID was one of the key protestors who protested against the Controversial CITIZENSHIP AMENDMENT ACT (HEREAFTER CAA). He was arrested under the UAPA for allegedly plotting the violent protests that went down in Delhi in February 2020.

The lawyer appearing for Umar Khalid contended that ***PRINCIPLES OF NATURAL JUSTICE*** were violated in his case as he was never presented the application cum report.

Furthermore, **as per the State report**, he was arrested based on the word of a government informant who claimed to have information that Umar Khalid *allegedly* had a role to play in plotting the Mass protests. Umar Khalid allegedly delivered Hate speeches in different places.

The arrest under the Draconian UAPA was based on the word of a government informant and not on a private citizen's testimony against Khalid.

Khalid was arrested on 21.02.2020 and then his detention in custody was extended from time to time by the courts at the Public prosecutor's request.

A similar case, also related to the ANTI CAA protests, is ***FAIZAN KHAN v. STATE OF NEW DELHI***

Faizan Khan's advocate **Salman Khurshid submitted** that the investigating agency had *misapplied and wrongly invoked* the UAPA. In the case mentioned above, the sole allegation against FAIZAN was that he issued a sim card under fictitious documents. The sim card in question was issued in December and the riots concerning which Faizan was arrested under the draconian UAPA went down in February.

Moreover, there was **nothing other than this to connect FAIZAN to the protests**. He was not in the WhatsApp group, and he did not even participate in the said protests.

His only fault was that he sold a sim card under fictitious documents for a mere two hundred Indian rupees for which they charged him under UAPA along with various other sections of the Indian Penal code.

In a writ petition challenging the validity of the UAPA Sajal Awasthi states:

“Right to reputation is an intrinsic part of the fundamental right to life with dignity under Article 21 of the Constitution of India. Terming/tagging an individual as “terrorist” even before the commencement of trial or any application of judicial mind over it, does not amount to following of 'procedure established by law' and is, thus, violative of right to reputation of such an individual who is being categorized as terrorist and being added in Schedule 4 of the UAPA Act, 1967.”

The State report against Umar Khalid mentions that Umar Khalid gave:

"Provocation" speeches at various places and appealed to minority gathering to block roads and other public places during the visit of Mr. Donald Trump, Hon'ble President of USA on February 24/25, 2020, so that **propaganda may be flashed at the international platform** that the Minorities in India are being tortured."

The right to freedom of expression and by extension the right to protest at a national as well as an international stage against controversial laws have been given under both UDHR and PART III Fundamental rights of the Indian constitution under Article 19 of the respective documents.

One of the most controversial arrests made under the UAPA in recent times was the arrest of Safoora Zargar, a student of Jamia Millia Islamia amidst a nationwide lockdown during the COVID Pandemic. Safoora was in custody from **10th April 2020 until 24th June 2020** under the several sections for her involvement in the ANTI CAA PROTESTS. Safoora Zargar was pregnant when taken into custody.

Safoora Zargar **was released on bail** on 13th April but immediately rearrested on other charges.

As per **the NATIONAL PRISON MANUAL 2016**, a pregnant woman when being sent to prison must have the essential facilities for PRENATAL as well as post-natal care of both the prisoner and her child. Safoora Zargar was sent to Tihar Jail, one of the most crowded prisons in INDIA.

III. SECTION 124A OF THE INDIAN PENAL CODE

Sedition mentioned under section 124 A is a colonial-era law that was used to curb dissent against the British government. Sedition in India is **a non-bailable offense**, and **punishment** can vary from 3 years to life imprisonment.

In recent times, this law has been often abused by Private Individuals based on a statement, Facebook post, or a photograph posted by an individual.

Most people charged under this section have **no prior Criminal record** and are **often acquitted** by the court. However, similar to the UAPA persons accused under Section 124a are subject to judicial or police custody.

Section 124A has often been used by the right-wing supporters against those who speak or write against the BJP government or the Hindutva Ideology.

The **law commission report of 2018** suggested the scraping away of this law and The United Kingdom itself scrapped the provision on Sedition in the year 2009.

IN NAZIR HUSSAIN @ BITTU VS STATE OF U.P, The accused Nazir Hussain spent five months in prison for posting a flag of Pakistan on his Facebook page.

In **JASBIR @ JASVIR SINGH VS STATE OF PUNJAB**, the court acquitted the defendant after he spent six months and fourteen days in prison. Jasbir was arrested because he went live on Facebook and criticized the Modi government and the government of Punjab, criticizing how they were handling the whole COVID situation.

It was alleged that Jasbir's utterances were against the integrity of the nation and that his statements were aimed at causing communal disaffection. Examination of his utterances by the court proved otherwise, and Jasbir was released after spending six months and fourteen days in prison.

IV. CONCLUSION

It is evident that

- a. The laws have been misused in the past, and continue to be misused in the present.
- b. The central government has infinite powers under UAPA to **curtail freedom of speech**, and the **right to dignity as guaranteed by Article 21** of the Constitution.
- c. Private individuals under Sedition laws hold the power to persecute anyone who speaks against their own agenda.

“We are particularly alarmed over the increasingly violent repression of dissent in India and the arbitrary detention and harassment of activists and human rights defenders by the state in relation to their participation in peaceful protests against the Citizenship Amendment Act 2019 (CAA), the National Population Register and the National Register of Citizens.”

- OMCT and ICJ welcome the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association

In 2019 alone 1226 cases of UAPA and 93 cases of Sedition were filed in India.

The 2020 report is yet to be published by the National crimes Bureau and the number is most likely to be more this year, taking into account that CAA was passed in December 2019 and most of the people arrested under the UAPA and sedition laws are protestors.

The supporters of the UAPA are of the view that an iron-clad law on terrorism is necessary to curb terror. However, there is **established a precedent for abuse** of these laws in India,

and in the past similar laws around the world. If not scrapping of these laws, a mechanism to check and balance these laws is the need of the hour.
