

UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 AND THE CURIOUS CASE OF AKHIL GOGOI (SPECIAL NIA CASE NO. 2/2020): AN ANALYSIS

ABSTRACT

The Unlawful Activities (Prevention) Act, 1967 (hereinafter, UAPA/ the Act) is one of the most controversial pieces of legislations in the history of independent India. This Act was originally conceptualized by India's first Prime Minister Nehru as a tool to defend the integrity of our country and to deal with various secessionist, regionalist and linguistic chauvinist tendencies. But it was rarely used in the first few decades after our independence due to enactment of other similar legislations such as the Maintenance of Internal Security Act, 1971, Terrorist and Disruptive Activities (Prevention) Act, 1987, The National Security Act, 1980 etc. However, eventually, UAPA became the primary tool in the hands of successive governments to crush political dissent and it has been witnessed that it was used against academicians, human rights activists, students and trade unionists who raised their voices against certain policies of the ruling dispensation. As a result, many people were detained for a longer period of time without being given an opportunity to prove their innocence in the courts of law. This is considered as against the basic tenets of human freedom and dignity enshrined in the Constitution of India. It is in this backdrop that the paper seeks to endeavour an analysis of UAPA with special reference to its recent use and experience.

Keywords: Constitution of India, Unlawful Activities (Prevention) Act, 1967, Preventive Detention, Civil Liberty.

1. INTRODUCTION

The Constitution of India (hereinafter, CoI) represents collective wish and aspirations of the people of India to lead a life of freedom and dignity. In order to achieve the same, Part III of the Constitution guarantees certain sacred and inalienable rights to the people of India which are indispensable for leading a free and dignified life. In order to prevent and remedy encroachment of these rights by the mighty State, a mechanism has

been provided within the Part through which the citizens can approach the Supreme Court of India (hereinafter, SCI) as well the High Courts.

One of the most important rights guaranteed under Part III of CoI is right to life and personal liberty under art. 21.¹ It provides that the life and personal liberty of a person cannot be restricted or deprived by the State without following a procedure established by law. In the initial years after the independence, the meaning of the instant provision was construed in a limited sense. However, this notion was changed by the SCI, in *Maneka Gandhi v. UOI*.² The Court in this case has held that it is not sufficient that the procedure laid down under the law is duly complied with. It is equally important that the law and the procedure laid down in it should be just, fair and reasonable. To sum up the position, the liberty of a person can only be deprived through accurate compliance of a procedure which is and laid down in a just, fair and reasonable legislation. This can be termed as the essence of the limited government in India where the arbitrary exercise of power by the government is limited and circumscribed by the principles present in CoI and evolved by SCI.

However, this is not the reality which we Indians experienced. The fundamental freedoms of the citizens are often violated by those in power in order to serve their own vested political interests. One infamous tool used by them, in this regard, is the ‘preventive detention’ (hereinafter, PD). PD is a concept which allows the State to restrict the liberty of a person even before he is alleged to have committed an offence. This is done when the State believes that the concerned person is in all likelihood going to commit an offence which can be prejudicial to public order, public safety, sovereignty and security of the nation etc. It can be understood by juxtaposing it with the concept of punitive detention where the state restricts the liberty of a person when he is alleged to have committed an offence. Prima facie, the concept of PD appears to be antithetical to the ideas of rule of law and limited government. However, the framers incorporated it in CoI to enable the executive to deal with extraordinary circumstances. Clauses (3) to (7) of art. 22 of CoI lays down the law and procedural safeguards with respect to use of PD.³ Taking the advantage of this provision, which was supposed to be used in rare circumstances, the successive dispensations have enacted, amended and grossly misused certain legislations to curb the liberties of its citizens.

¹ India Const. art. 21.

² *Maneka Gandhi v. UOI*, AIR 1978 SC 597.

³ India Const. art. 22.

One of such legislation is the UAPA. Initially enacted for a different purpose, this piece of legislation was later armed with sharp teeth by successive regimes. However, this law was neither effectively used for its original purposes and nor for the purposes for which it was later amended. Instead, it became a political weapon to threaten fearless democratic voices whose only offence was to utilise their constitutionally guaranteed rights. This paper is an attempt to analyse the provisions of UAPA and to understand the implementation of this legislation at the ground level in order to find out whether the government is using this law for the right purpose or not. In order to successfully complete the analysis, several aspects of UAPA have been outlined starting from tracing the reasons behind its enactment to its present day implementation. The amendments to this legislation and the political and economic backdrop in which these were introduced are also analysed. In order to understand the implementation of UAPA, Akhil Gogoi's case (Special NIA Case No. 2/2020) registered under its provisions has been discussed.

2. HISTORICAL INSIGHT

The origin of UAPA can be traced back to the National Integration Council (hereinafter, NIC) constituted under the aegis of India's first Prime Minister Nehru. The NIC was constituted with eminent people from all walks of life and the purpose of the Council was to reflect upon, discuss and come up with reforms in order to deal with problems such as communalism and regionalism which posed challenge to the national integrity.⁴ The NIC, in its initial meetings felt the need for a legislative instrument to deal with the challenges faced by the country and recommended the government to enact a strong law aimed at protecting the integrity and sovereignty of the country.⁵ Parliament could make such laws imposing restrictions on the exercise of fundamental rights guaranteed under art. 19(1) (a), (b) and (c) of the CoI that provides the right to freedom of speech and expression⁶, freedom to gather⁷ and freedom to form associations⁸. This led to the enactment of UAPA. The original law was supposed to create a fact finding mechanism

⁴ Vinay Kumar, *National Integration Council Reconstituted*, THE HINDU (April 13, 2010, 02:50 AM) <https://www.thehindu.com/news/national/National-Integration-Council-reconstituted/article16365938.ece>.

⁵ Prabhash K Dutta, *Decoded- Spotlight on Terror Law UAPA after Stan Swamy's Death*, INDIA TODAY (July 6, 2021, 11.36 PM) <https://www.indiatoday.in/india/story/decoded-terror-law-uapa-stan-swamy-death-1824443-2021-07-06>.

⁶ INDIA CONST. art. 19, cl. (1)(a).

⁷ *Id.* at art. 19 cl. (1)(b).

⁸ *Id.* at art. 19 cl. (1)(c).

and the accused were to be tried under the procedure laid down in the existing criminal procedure. The statement of objects and reasons of the original Act states that it wants to prevent unlawful activities which may be committed either by individuals or by associations.

The later developments of UAPA as a security legislation is influenced by significant national and international events. On Sept. 11, 2001, the world faced one of the deadliest terrorist attacks in the history of mankind when Al Qaeda, a terrorist organisation hijacked four commercial planes in order to hit several prominent buildings in the USA. As a response to this attack, USA declared war against terrorism and launched worldwide military covert and overt operations. The United Nations requested its member States to take stringent legislative against terrorism. In response to this, India decided to use UAPA as her primary anti-terrorism law. This marks the transformation of UAPA from a law designed to curb activities prejudicial to national integration to an anti-terror law.

2.2 Scheme of UAPA

The Act in its present form is divided into seven chapters. The first chapter deals with the basic provisions such as extent, scope and applicability. The second chapter deals with unlawful associations. It deals with the mechanism to declare an association as an unlawful association by the Central Government⁹ as well as the adjudication of the reasonableness of such a decision by a tribunal.¹⁰ The third chapter deals with offences created by the Act and penalties for the same. The offences include being member¹¹ of an association declared as unlawful by the government under s. 3 of the Act and dealing with funds of such associations¹². The fourth chapter deals with punishment for engaging in terrorist activities and defines 'terrorist act'. It creates offences related to terrorism such as conspiring, advocating, collecting money, organising camps and conducting recruitment drives.¹³ The fifth chapter deals with forfeiture of proceeds of terrorism or any property intended to be used for terrorism. The sixth chapter deals with terrorist organisations and individuals. The last chapter

⁹ Unlawful Activities (Prevention) Act, 1976, s. 3, No. 37, Acts of Parliament, 1967 (India).

¹⁰*Id.* at § 4.

¹¹*Id.* at § 10.

¹²*Id.* at § 11.

¹³*Id.* at § 16-18 A.

deals with miscellaneous provisions including the most draconian provisions such as the bail provisions, presumption and procedure of arrest etc.

2.3 Unlawful Activities Preventions (Amendment) Act, 2004

The intention behind the amendment to UAPA in 2004 (hereinafter, the 2004 amendment) becomes clear from the insertion of the words ‘for prevention of terrorist activities’¹⁴ in the long title of UAPA. It was the first time when the Act was amended in order to use it as India’s primary anti-terror law. Taking into account the tectonic shift in the primary purpose of the law, s. 1 and 2 were substituted in order to insert new definitions. Section 1(3) of UAPA extends the jurisdiction of the law to commissions which are not within the territory but are made punishable by the Act. This is line with the recommendation of the United Nations to take action against cross border terrorism.

The definition part included a range of new definitions related to terrorism such as ‘terrorist act’ in s. 2(k), ‘terrorist organisation’ in s. 2(m), ‘terrorist gang’ in s. 2(l) etc. Section 2(k) directs to s. 15 that defines ‘terrorist act’ in terms of using dangerous substances to cause harm to person or property and done with the intention of threatening the sovereignty, integrity and unity of our country or to strike fear in the minds of people. This was the time when international consciousness regarding terrorism has started to be built. Another significant definition *i.e.* the definition of ‘unlawful activity’ is provided in s. 2(o). It defines an ‘unlawful activity’ in terms of secessions or incitement of secession of a part of our country, acting against national integrity and causing disaffecting against the nation. A close look at this definition helps one to understand that it has similarities with the definition of ‘sedition’ provided in s. 124A of the IPC.¹⁵ At chapter IV, due to the 2004 amendment, along with the definition of ‘terrorist act’ certain new offences and penalties for such as ‘raising fund for terrorists’ (s. 17), ‘conspiracy’ (s. 18), ‘harbouring’ (s. 19), ‘member of terrorist gang or organisation’ (s. 20), holding proceeds of terrorism’ (s. 21) and ‘threatening witness’ (s. 22) got included. The intention behind insertion of the above-mentioned provisions was to ensure that the terrorist organisations do not get any financial or logistical help from its supporters.

2.4 Unlawful Activities Preventions (Amendment) Act, 2008

¹⁴ Unlawful Activities Prevention (Amendment) Act, 2004, § 2., No. 29, Acts of Parliament, 2004 (India).

¹⁵ Indian Penal Code, 1860, § 124A, No. 45, 1860 (India).

The amendment to UAPA in 2008 (hereinafter, the 2008 amendment) inserted a preamble to the Act. The preamble¹⁶ enumerated the Security Council resolutions of the United Nations undertaken in order to require the member States to take strong measure against cross-border terrorism. Though, the aim of the 2004 amendment was identical, it finds explicit mention in the preamble *vide* the 2008 amendment. Along with this, the 2008 amendment had a second aim. It was to prevent the territory and resources of India to be used for facilitating terrorism in foreign countries. This required power to prevent entry into and exit of suspicious persons, stop terrorism financing by freezing assets and to cut supply chains of terrorist organisations.

Towards this, certain substantive changes were also made. Section 15 was substituted to include a few more elements in the definition of terrorist act. This included committing or attempting to commit the death of a public functionary to overawe Government of India; and abducting or kidnapping any person or attempting to do so to force the government to do or abstain from doing any such acts which it would not have otherwise done or abstained from doing. In order to address the prevalent fear of the ever growing nuclear arsenal falling in the hands of terrorist organisations and being used for indiscriminate killing, s. 16A was inserted which made demands of radioactive material, radiological, biological substance or nuclear device in order to commit or help committing a terrorist attack a punishable offence.¹⁷ Two new provisions namely, s. 18A and 18B were inserted which aimed to target the handlers and agents who acted in covert manner and recruited¹⁸, brainwashed young people to join terrorist organisations and provided them training¹⁹ to make them ready for attacks.

The most striking feature of the 2008 amendment is the insertion of new s. 43A to 43F.²⁰ Section 43A provides authority to officers of designated authority to arrest or authorise arrest of persons based on personal knowledge or other information. Section 43C affirms the overriding effect of the Act over the Code of Criminal Procedure, 1973. Section 43D of the Act deals with bail provisions. Section 43D(a) states that all the offences under the Act shall be cognizable. Section 43D(2)(b) extends the time periods

¹⁶ Unlawful Activities Prevention (Amendment) Act, 2008, § 2., No. 35, Acts of Parliament, 2008 (India).

¹⁷ *Id.* at § 5.

¹⁸ *Id.* at § 8.

¹⁹ *Id.*

²⁰ *Id.* at § 12.

provided under s. 167 of the Code of Criminal Procedure, 1973²¹ by two times. Further, there is an additional provision where the court can increase the time of police custody up to one hundred and eighty days upon hearing the public prosecutor. Section 43D(4) removes the provision of anticipatory bail for persons who are accused under the Act. Section 43(5) provides that a person accused under chapters IV and VI of the Act are not to be granted bail if the court, on a reading of the case diary, arrives at the opinion that there exists reasonable basis for a prima facie case against the accused. Section 43D(5) makes special provision for aliens who have entered the borders in an illegal way. They can be granted bail only under exceptional circumstances for reasons to be recorded in writing. Section 51A provides the power to Central Government to prevent the movement of persons or freeze the economic resources of persons on mere suspicion.

It is clear that these provisions violate the basic liberty of a person and defeats the fundamental rights provided by Part III of the CoI. Even if a person is a suspect of terrorism, his right to freely move across the territory of India, guaranteed under art. 19(1)(d) cannot be encroached upon. Moreover, economic resources of a person can also be frozen under s. 51A(a) of the Act. A person, deprived of his economic resources, cannot sustain even for a day in today's world. Hence, stripping a person of his economic resources in today's world is equivalent to violating the right to life and personal liberty guaranteed under art. 21 of CoI.

2.5 Unlawful Activities Preventions (Amendment) Act, 2013

The amendment to UAPA in 2013 (hereinafter, the 2013 amendment) was brought in order to address the issue of threat to the economic security of India posed by massive counterfeiting and smuggling of currency notes. A huge chunk of these counterfeit coins was smuggled out and used for terrorism financing. This problem of economic terrorism became a huge national security concern. The 2013 amendment inserted a definition of 'economic security' under s. 2(ea) in a broad manner to include environmental, food, ecological, energy security within its ambit, apart from the primary concern of monetary and fiscal stability. Consequently, s. 15 was amended to include threatening of economic security as an element of terrorist act. Section 17 was substituted in order to modify the definition of raising funds to include rising fund

²¹ Code of Criminal Procedure, 1973, § 167, No. 02, Acts of Parliament, 1974 (India).

through the production, smuggling and use of counterfeit coins. This was done in order to curb big scale terrorism financing. Moreover, raising fund with the intention of using it for terrorism funding was in itself made an offence irrespective of its final application. Sections 22A and 22B were inserted to make provisions for offences being done by companies or societies. These provisions were inserted in the backdrop of many terrorist organisations using the corporate veil to channel funds from one place to another and convert and collect donations from sympathisers.

2.6 Unlawful Activities Preventions (Amendment) Act, 2019

This is the most recent and most debated amendment to UAPA. Through this amendment in 2019 (hereinafter, the 2019 amendment), the Parliament grants power to the Central Government to designate individuals as a terrorist.²² A new Schedule²³ is added to the Act where the Central Government can add the names of individuals whom it deems as terrorists. Sections 35 and 36 of the Act were amended in order to reflect this change. Under s. 35, the Central Government can add or remove the name of an individual from the Schedule under s. 35(1)(a) and 35(1)(d) respectively. This provision which was earlier available only in case of organisations was extended to individuals. The objective provided under s. 25(2) for the exercise of the above-mentioned power is that the government should believe that the individual is involved in terrorism. The criteria for the exercise of the above-mentioned power are provided under s. 35(3) of UAPA. The criteria include preparation, promotion and otherwise involvement in terrorism.

It can be noticed that the criteria of promotion and preparation are vague and provides widespread executive discretion. However, even if they are tried to be justified on grounds of national security, the provision of residuary power under sub-section (d) which provides almost unrestricted discretion is difficult to justify in a liberal democracy like India. Such provisions providing widespread executive discretion violates the concept of limited government. By using s. 35(a)(d), the Central Government can designate any individual as a terrorist without providing any concrete grounds. This is problematic on many accounts. Firstly, extending the provisions originally meant for organisations to individuals can be argued to be creation of a false

²² Unlawful Activities Prevention (Amendment) Act, 2019, § 5. No. 28, Acts of Parliament, 2019 (India).

²³ *Id.* at § 12.

equivalence. An individual and an organisation cannot be treated equally under the law. An individual has certain sacrosanct and inalienable rights under CoI which may not be extended to an organisation. Secondly, designating a person as a terrorist without any formal prosecution and conviction in a court of law is akin to presuming a person as guilty without giving him chance to prove his innocence. Thirdly, designating an individual as a terrorist has very severe societal consequences not only for that particular individual but also for his family. The person and his family maybe socially stigmatised forever and find it extremely difficult to return to the mainstream society even if the person is de-notified.

3. CURIOUS CASE OF AKHIL GOGOI

Akhil Gogoi is a peasant leader from Assam. He was instrumental in founding Krishak Mukti Sangram Samiti (hereinafter, KMSS), an organisation which works for the welfare of people who take agriculture as their livelihood. He is also one of the voices in Assam against the enactment of the Citizenship Amendment Bill, 2019 (hereinafter, CAA) which incorporated provisions for a fast track process for giving Indian citizenship to members of persecuted religious communities from certain neighbouring countries.²⁴ There was a concern that allowing these people to settle in various Indian States including Assam might lead to the alteration of the linguistic and cultural identities of these States in a permanent manner.²⁵ Akhil Gogoi also represented this concern and was actively involved in organising mass movement against the CAA.

In December 2019, Akhil Gogoi and a number of his associates were arrested in Jorhat as a measure of PD in the backdrop of the ongoing protests against the CAA.²⁶ Later, a case was registered against him by the Assam Police.²⁷ The original FIR in this case states that Mr. Gogoi had hatched a secret plan and was successful in setting up organisational tie-ups between banned organisations and his organisation KMSS and

²⁴ Apurva Vishwanath, *Supreme Court takes up Citizenship (Amendment) Act challenge: Where does the Case Stand*, THE INDIAN EXPRESS (September 12, 2022, 04:15 AM) <https://indianexpress.com/article/explained/supreme-court-to-take-up-caa-challenge-where-does-the-case-stand-8145310/>.

²⁵ *Id.*

²⁶ Ananya Bhardwaj, *NIA Arrests RTI Activist Akhil Gogoi amid Assam Unrest, Charges him under Amended UAPA*, THE PRINT (December 15, 2019, 12:34 PM) <https://theprint.in/india/nia-arrests-rti-activist-akhil-gogoi-amid-assam-unrest-charges-him-under-amended-uapa/335484/>.

²⁷ *Id.*

conspired to incite violence and hatred against the government established by law with the intention, ultimately, to destabilise the same. It has been contended that the protests against the CAA were used as a veil to hide the plan and execute it in a covert manner. Without much preliminary investigation, the case was handed over to the NIA for further investigation and inquiry wherein it filed a charge sheet against Akhil Gogoi and his associates later. The discussion here, however, will be limited to the charges against Akhil Gogoi and the judgement given by the NIA Special Court in this regard.

3.1 Charge Sheet

The charges mentioned against Akhil Gogoi in this case (as reflected in the charge sheet) included s. 18 and 39 of UAPA read with s. 120B, 124A, 153A and 153B of IPC, 1860. As discussed above, s. 18 of UAPA deals with conspiracy or aiming to facilitate the commission of a terrorist act or any act which precedes a terrorist act and is preparatory in nature with respect to the former. Section 39 of UAPA deals with providing support to terrorist organisations with money, human resource and other logistical support. On the other hand, as per IPC, s. 120B deals with punishment for criminal conspiracy, s. 124A deals with sedition and s. 153A and 153B deals with statements facilitating clashes between communities which may affect fraternity among citizens and may hamper national integrity.

The charge sheet specified various findings. First, Akhil Gogoi has secret alliance with the banned organisations and had sent members of his organisation to get trained by their leaders in arms and ideology. Second, he had given speeches and comments at various places which had elements of provoking enmity between various groups of people and also elements of breaking the national integrity. Third, he used the CAA protest as an excuse to execute mass road blockades which led to the disruption of transportation, essential supply chains and strategic lines of supply that had ultimately led to threatening the economic security of the nation.

3.2 Law on Framing of Charges

Since the matter was at the stage of framing charges, the NIA court dealt with seminal case laws and principles on framing of charges before delving into the individual charges and evidence offered by both sides for and against those charges. The Court went through the precedents laid down in the judgements of *Sajjan Kumar*

*v. Central Bureau of Investigation*²⁸, *Asim Sharrif v. NIA*²⁹, *State of Orissa v. Debendra Nath Padhi*³⁰, *State v. Selvi*³¹ and *ME Shiuvalingamurthy v. CBI*³² etc, in order to cull out the essential principles for framing of charges.

After discussing relevant portions of these judgements, the Court arrived at the conclusion as to framing of charges which are to be applied in the present case. The Court observed that at the stage of framing a charge the court exercising its jurisdiction has to weigh the evidence provided by prosecutions as well as defence in order to arrive at a conclusion with respect to the existence or otherwise of a prima facie case against the accused. Further, if the evidence which has been adduced by the prosecution, deemed to be accepted by the court and deemed to be unchallenged by the defence fails to prove the commission of the offence, then the court ought to discharge the accused. Moreover, the court cannot allow the prosecution to commence the trial on the ground of mere suspicion and if the evidence adduced by both side presents two views and one of them provides grounds for mere suspicion, then the court can discharge the accused.

3.3 Evidence Adduced

The materials which were submitted by NIA included recorded statements of 19 prosecution witnesses and transcripts of public speeches of Akhil Gogoi as well as private conversations with several persons. The first two witnesses termed as ‘protected witnesses’ provided certain facts regarding the alleged connection of Akhil Gogoi with various leaders of banned organisations and trainings organised by those leaders for the members of KMSS at the request of Mr. Gogoi. Other prosecution witnesses (witnesses 3 to 19) provided details regarding the involvement of Mr. Gogoi in the anti-CAA protest in Assam and the various directions that he gave to his associates to organise mass protests and blockades in different parts of the State. The Court also evaluated the transcripts of various speeches of Mr. Gogoi and his conversations with persons. In most of them, there have been requests for severe forms of protest including half-naked and naked protests, tyre burns and economic blockades. However, it has been found

²⁸ *Sajjan Kumar v. Central Bureau of Investigation*, (2010) 9 SCC 358.

²⁹ *Asim Sharrif v. NIA*, (2019) 7 SCC 148.

³⁰ *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568.

³¹ *State v. Selvi*, (2018) 12 SCC 455.

³² *ME Shiuvalingamurthy v. CBI*, (2020) 2 SCC 768.

that he has also requested people to protest in a peaceful manner and not engage in violent activities.

3.4 Examination of Facts and Evidence by Court

The Court referred to various case laws on the provisions of UAPA and the IPC, 1860 under which Mr. Gogoi had been booked. On the point of meaning of ‘terrorist act’ and ‘conspiracy to abet a terrorist act’, the Court referred to the case laws of *Union of India v. Yasmeeen Mohammad*³³ and *Mahalakshmi v. NIA*³⁴. The cumulative finding of both the cases are that in order to successfully convict a person under s. 39 of UAPA the act of the person has to strictly fall within any one of the three sub-sections and that the act has to be done with the precise intention of advancing the activities of a terrorist organisation. The Court then discussed the meaning of ‘terrorist act’ under s. 15 of UAPA as it was required to ascertain its true meaning in order to evaluate the charges against Mr. Gogoi pertaining to conspiracy. The Court arrived that s. 15 is an offence based on *mens rea* and in order to fulfil the requirements of the instant provision, it is imperative that the acts described in sub-sections (a), (b) and (c) of it are done with the precise intention of threatening the sovereignty and integrity of the country or spread terror among public.

While analysing the evidences in the light of the various principles developed, in this cases, the Court found that the speeches and telephonic conversations of Mr. Gogoi does not indicate any call for a direct incitement to violence or compromise the integrity of the nation. The vandalism and destruction of physical property that happened during the violence cannot be attributed to direct effect of speeches and exhortations of Mr. Gogoi. Even though Mr. Gogoi advocated for road blockades and bandhs which might lead to disturbances in the flow of economic activity, such acts *ipso facto* cannot be said to threaten the economic security of the country if not done with one of the intentions specifically mentioned in s. 15 of UAPA. The Court stated that an act to come within the ambit of UAPA should be specifically targeted towards the sovereignty, unity and integrity of the nation and ordinary bandhs and blockades with no such intention behind them cannot be brought within the ambit of the law laid down.

³³ *Union of India v. Yasmeeen Mohammad*, (2019) 7 SCC 79.

³⁴ *Mahalakshmi v. NIA*, (2014) 1 Gau LR 409.

On the issue of supporting terrorist organisation punishable under s. 39, the Court after much deliberation has stated that the provisions of a penal statute like UAPA have to be construed in a strict manner and utmost care should be taken to ascertain that accused should not be punished for crimes that the legislature did not intend to punish. The Court did not find any coherent evidence that satisfies the two primary requirements of s. 39, *i.e.* act falling under any one of the three sub-sections and done in order to further the interests of a terrorist organisation. The Court found no coherent evidence to suggest that Mr. Gogoi had links or allegiance with banned organisations and had worked for advancing its activities.

The Court also examined the charges against Mr. Gogoi under s. 120B, 124A, 153A and 153B of the IPC, 1860 in light of the materials advanced. The court after due deliberation has found that there is no such incriminating element involved in the facts and materials submitted before it in this connection. Thus, the Court held that the materials adduced by the prosecution are inadequate to sustain any of the charges mentioned in the charge sheet and hence the Mr. Gogoi along was discharged. Most importantly, the Court while releasing Mr. Gogoi and his associates pointed out its concern as to the nature of UAPA and its manner of application.

4. ANALYSIS

In the previous segments, a detailed discussion was being done regarding the legislative history of the UAPA. The changes introduced by the four significant amendments to it are also mentioned alongside the backgrounds on which such amendments were introduced by the government. The curious case of Akhil Gogoi booked under UAPA was also outlined and the salient points of the judgement delivered by the NIA Court in this regard were analysed. From the above mentioned discussions, several significant points regarding the use of UAPA come to the forefront.

Firstly, the law has been enacted for a specific purpose and is claimed to be used for another purpose, but was ultimately used for a third purpose. UAPA was enacted to curb communal, sectarian and regionalist elements which posed a threat to the integrity of India. But, after the terrorist attack on the USA on 2001, it was amended several times to use it as a major anti-terror legislation of the country. However, it has been

witnessed that it was continuously used for a third purpose, *i.e.* stifling dissenting voices.

Secondly, UAPA faced wider public criticism for its amendments rather than its enactment. As discussed earlier, at the time of its enactment, UAPA created a fact finding mechanism which was used to detect the elements the legislature intended to curb and prevent. After identification, the law took its own course and the accused were tried under the normal trial procedure, as it is enacted and amended from time to time. However, the much criticised provisions of UAPA such as the stringent bail provisions and designating individuals as terrorists were added later through amendments. From this, we can infer that this legislation was not initially intended or used in the manner it has been infamous for.

Thirdly, UAPA provides wide executive discretion without providing for adequate procedural safeguards. As discussed earlier, under s. 3 of it the Central Government has the authority to declare an association as unlawful if it is of the opinion regarding the same. The proviso to the same section enables the Central Government to withhold facts which the Government deem to be in public interest. Although such an order becomes effective once confirmed by a tribunal, the Act also includes a proviso under which the Central Government can make an order with immediate effect. The same principle applies while designating an individual as a terrorist under the Fourth Schedule of the Act. The procedural safeguard for the same are loose and there are no judicial scrutiny. These provisions are being used by the successive regimes in an indiscriminate manner in order to harass individuals outside the scope of judicial scrutiny. These provisions, when taken together form a sphere where the executive has unrestrained discretion and is almost beyond judicial reach.

Moreover, it has been found that the judiciary has played a crucial role in determining the purpose and contours of this legislation. In Akhil Gogoi's case, the Court made some salient observations regarding the purpose of the UAPA and observed that terrorism poses a real threat to the mankind and every country needs a strict anti-terrorism law in order to deal with this threat. Therefore, an obligation lies in the executive to use the same in good faith.

5. CONCLUSION

Values of liberty and freedom are the foundations of our constitution. When India emerged as an independent nation after years of struggle against the British Rule and after sacrifices of thousands of her sons and daughters, the people of India dreamt of a nation where individual would be free to create his or her own destiny, form his or her own views and follow his or her own conscience. The liberty of individuals would ideally be subject only to the limitations imposed or permitted by CoI and cannot be subject to the whims and fancies of those in power. However, as witnessed above, security legislations, which were intended to protect the sovereignty and integrity of the country, were used by the executive wing of the government on flimsy grounds. Using security legislation to trample liberties leads to the violation of the freedom and dignity of individuals at the hands of the State and this erodes the faith of the public in the democratic credentials and commitments of the elected government.

In India, UAPA is being used as its principal anti-terror law. It is nothing unusual for an anti-terror law to have provisions which facilitate the timely completion of the adjudication process so that the guilty can be punished. Although, the law contains stringent provisions pertaining to bail, taking into account public safety and the security of the State there are cogent justifications offered for such provisions. Thus, the obligation is on the executive and judiciary to implement and adjudicate the law with minimum harm to the sacrosanct civil liberties of individuals. The executive should be circumspect while using the law and should adhere to the limitations and procedural safeguards provided in the statute as well as laid down by the judiciary. The courts also should aim to dispose of the cases concerning UAPA within a reasonable time so that an under trial should not have to spend prolonged duration behind bars. Thus, both the wings of the government have to strive to achieve a *carte balance* between individual liberty and security of the nation.