

Bill No. 75 of 2022

THE UNLAWFUL ACTIVITIES (PREVENTION) REPEAL BILL, 2022

By

DR. SHASHI THAROOR, M.P.

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BILL

to repeal the Unlawful Activities (Prevention) Act, 1967.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. This Act may be called the Unlawful Activities (Prevention) Repeal Act, 2022. Short title.

5 2. The Unlawful Activities (Prevention) Act, 1967 is hereby repealed. Repeal of Act No. 37 of 1967.

3. This Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, Savings.
10 or any indemnity already granted, or the proof of any past act or thing.

STATEMENT OF OBJECTS AND REASONS

The Unlawful Activities (Prevention) Act, 1967 (UAPA) has opened the door to a gross abuse of power that is in contravention of the standards set by article 21 of the Constitution of India and international counter-terrorism legislation. As per the 2019 amendment to the UAPA, the state now commands the power to designate individuals as “terrorists”, which was previously restricted to naming groups as “terrorist organisations”. Interfering with the privacy and liberty of individuals, the UAPA contravenes constitutionally mandated provisions which protect against arbitrary or unlawful interference with a person’s privacy. The Act also allows for searches, seizures, and arrests based on the “*personal knowledge*” of the police without written validation from a superior judicial authority.

Further, it turns the presumption of innocence on its head, giving the Government unfettered power to declare any individual a terrorist. The UAPA also violates several fundamental rights along with their various extensions, namely, the right to dissent, the right to reputation, and the right to access the internet. In the leading case of *Nikesh Tarachand Shah v. Union of India*, the Hon’ble Supreme Court has cautioned that laws which “*make drastic inroads into the fundamental right of personal liberty guaranteed by Article 21*” should only be applied when there is “*compelling state interest for tackling serious crimes*”. However, there exists an evident lack of such discrimination in UAPA.

The United Nations has also emphasised the importance of preserving and protecting human rights and the rule of law while countering terrorism. In 2020, eight UN special rapporteurs had raised concerns following the 2019 amendment of the UAPA. They found the Act to be incompatible with global standards of human rights legislation, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. As per international law, to call an offence a “*terrorist act*”, three elements must be cumulatively present: the means used must be deadly; the intent behind the act must be to cause fear among the population or to compel a government or an international organisation to do or refrain from doing something; and the aim must be to further an ideological goal. They noted that the UAPA provided no precise and unambiguous definition of what constitutes a “*terrorist threat*” which allowed the Government to apply the Act widely and indiscriminately, often to the detriment of human rights. The UAPA allows the Government to take action against individuals for acts that are “*likely to threaten*” or “*likely to strike terror in people*”, and it is this notion of ‘potential terrorism’ that violates the principle of proportionality in punishment and encourages misuse.

The death of Father Stanislaus Lourduwamy, a prominent tribal rights activist known for his decades-long service, in judicial custody after being repeatedly denied bail, and the prolonged indefinite detention of journalist Siddique Kappan, highlights the worrying implications of this regime.

The UAPA has also been criticised for making the process itself a punishment. For example, according to the National Crime Records Bureau, between 2014 and 2016, over 75% of cases under the UAPA ended either in acquittal or discharge. Data also suggests that each year between 2014 and 2020, an average of 985 cases under UAPA were registered, of which the number of pending cases rose by 14.38% annually. Over

the last 7 years, though around 10,552 Indians have been arrested under UAPA, only 253 have been convicted, making the conviction rate a meagre 2.4%. During the same period, merely 40.58% of the cases taken up for investigation were sent to trial, of which trial was completed in a scarce 4.5% of the cases. These statistics are representative of the grave miscarriages of justice that the UAPA enables and too often entails.

Several noted Supreme Court judges, such as Justice DY Chandrachud, Justice Madan B. Lokur, Justice Deepak Gupta, Justice Aftab Aslam, Justice Gopala Gowda, and Justice RF Nariman, have expressed concern over the UAPA and its potential for misuse and wrongful incarceration. Similarly, senior advocates and civil society leaders alike have criticised the Act, noting its liability for abuse, and suggested that its powers be curtailed or struck down entirely. Over the years, UAPA has become a tool of repression—a weapon to keep people entangled in the legal system and place people in jails for as long as the state wants. The state owes a duty of care to its citizens and the fear of dissent and criticism is no excuse to violate fundamental rights and impinge on natural freedoms. Behind the facts, figures, and analysis lie the human cost at the heart of a draconian and unjust act, such as the UAPA.

Such a law, which is a weapon of misuse and abuse, has no place in a democracy. It is, therefore, important to repeal this legislation.

Hence this Bill.

NEW DELHI;
17 February, 2022

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(Dr. Shashi Tharoor, M.P.)