

# The Terror of Law

**UAPA and the Myth  
of National Security**

**Coordination of Democratic Rights Organizations  
(CDRO)  
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## Preface

This joint report demanding the repeal of UAPA [Unlawful Activities (Prevention) Act] is the first attempt by CDRO (Co-ordination of Democratic Rights Organizations) to bring out a comprehensive account of terror laws and their operation. The CDRO was formed in August 2007, and is a coalition of over twenty civil and democratic rights organizations from across India. The CDRO arose in the context of the violent state repression of people's movements in India as well as the arrest of democratic rights activists. In its first meeting CDRO affirmed: • The right to organize and struggle is a basic democratic right of the people • To stand united against all forms of state repression on people's democratic struggles • To support with solidarity actions in the event of attacks by the state on any civil rights organizations or its representatives. Accordingly, a broad range of campaigns and issues arose such as, the demand for the repeal of brutal laws; the demand for the release of political prisoners from jails across India; combating the increasing use of extra judicial, state-sponsored armed gangs; demands for the repeal of death penalty; exposing narco analysis as a form of police torture etc.

In this context, the need to bring out a detailed report on UAPA has been a long felt one. However, the present report is not an empirical report based on a fact finding. In fact, the paucity of comprehensive 'facts' regarding UAPA cases such as the number of arrests, period of detention, status of cases etc. was a problem that made a 'fact' oriented report difficult. Also, this report is not a strictly legal report which analyzes only the provisions of the law. It is an attempt at understanding how legislations like UAPA are part of a larger history of banning and criminalizing dissent. The political history of curtailment of rights and freedoms is also the context within which the provisions of the law are analyzed. The selected case studies draw upon the experiences of different organizations and their struggles with UAPA. The annexures offer a larger perspective of judgments and resolutions.

The journey of this report has taken over eight months as collective labour is a time consuming process. The report has benefited from discussions with and the inputs of several lawyers, activists and other individuals.

## **Constituent Organizations of CDRO**

Association for Democratic Rights (AFDR, Punjab), Andhra Pradesh Civil Liberties Committee (APCLC), Asansol Civil Rights Organization (West Bengal), Association for Protection of Democratic Rights (APDR, West Bengal), Bandi Mukti Committee (West Bengal), Committee for Protection of Democratic Rights (CPDR, Mumbai), Coordination for Human Rights (COHR, Manipur), Human Rights Forum (HRF, Andhra Pradesh), Lokshahi Hak Sangathana (LHS, Maharashtra), Manab Adhikar Sangram Samiti (MASS, Assam), Naga Peoples Movement for Human Rights (NPMHR), Organisation for Protection of Democratic Rights (OPDR, Andhra Pradesh), Peoples Committee for Human Rights (PCHR, Jammu and Kashmir), Peoples Democratic Forum (PDF, Karnataka), Peoples Union for Civil Liberties (PUCL) Chhattisgarh, PUCL Jharkhand, PUCL Nagpur, PUCL Rajasthan, PUCL Tamil Nadu, Peoples Union For Democratic Rights (PUDR, Delhi), Peoples Union for Human Rights (PUHR, Haryana), Campaign for Peace and Democracy, Manipur (CPDM).

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## Introduction

People crushed by laws, have no hopes but from power. If the laws are their enemies, they will be enemies to the law; and those who have much to hope and nothing to lose will always be dangerous.

Edmund Burke

Civil liberties and democratic rights organizations have for long argued against extraordinary laws and anti-terror legislation because they have become a tool for curbing political dissent. This report analyzes the entire range of such laws which give the Indian state unrestricted powers to infringe on fundamental freedoms guaranteed by the Constitution.

How have these extraordinary laws influenced Indian polity?

First, terror is defined in such a way that it removes from consideration crimes against humanity committed by those in power, including government forces. Instead, terror is defined only in terms of the actions of those who question the status quo. Second, such laws criminalize the fundamental freedom to associate and assemble in a democracy by allowing the government to simply ban political organizations. However, banning organizations has never resulted in a particular ideology disappearing or losing its appeal. These organizations are only pushed underground and membership is made criminal. Finally, such laws skew the balance of power between the executive and judiciary, allowing the executive immense power to restrict the democratic right of citizens to organize and agitate democratically. And, when the executive overpowers the judiciary in this manner, those the executive wants to control or punish or silence simply do not get any justice in court and are treated unfairly, unequally and undemocratically. Three cases listed below show the circularity of reasoning which UAPA propagates through its definitions, procedures, provisions and proscriptions.

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When Soni Sori, a mother and school teacher, lay shackled to a hospital bed in Jagdalpur, after she had been sexually abused and tortured by Chhattisgarh police personnel, life had turned a full circle for her in less than a month. Sori had left her village in Jabeli district

of Chhattisgarh on 10 September 2011 when the police began accusing her of aiding Maoists. Her nephew, Lingaram Kodopi, had just been arrested on trumped-up charges of collecting hush money from the Essar company, supposedly at the behest of the Maoists.

Sori was arrested almost a month later in Delhi and was produced at a district court in south Delhi on 4 October 2011. At the court, she pleaded that she be held in a jail in Delhi because she feared abuse at the hands of the Chhattisgarh police. Moreover, she said that she was innocent and that the police was out to 'get her' for being a proactive member of her village community.

Unfortunately, a large number of charges had been leveled against her—criminal conspiracy (Section 120 B of the IPC), waging war (Section 121 of the IPC), sedition (Section 124 A of the IPC), and aiding a terrorist organization (Section 39 Unlawful Activities Prevention Act, 2008) and raising funds for its activities (Section 40 of the UAPA). As a result, the judge chose to weigh the merit of Sori's appeal against the charges leveled by the Chhattisgarh police against her and decided to reject her bail petition. When Sori was sent back to Chhattisgarh under the direction of the court and media glare, no one could imagine the impunity with which the Chhattisgarh police would abuse and torture her. The court had specifically allowed the police to interrogate her for two days while taking care of her security and protection. What followed for Sori was an experience of brutal abuse in police custody in Dantewada, which left her so injured that she had to be put in hospital in Jagdalpur. On their part, all the police did to get away with torture and abuse is claim that Sori slipped in the bathroom and hurt her head and her back. Later medical examinations would go on to prove that Sori had indeed been beaten and sexually abused by Chhattisgarh policemen.

Why was Sori denied bail and forced to go back to Chhattisgarh in the custody of the police who, she knew, would torture her? The law is supposed to protect the victims as well as the accused, even more so in a custodial situation. Not only did her cries fall on the deaf ears of the judiciary in Delhi, she was returned to the custody of a team that included one of the torturers from a previous detention, who then, once again, tortured and sexually violated her in custody. Her crime: she was an alleged supporter of a so-called terrorist organization. Her thoughts and actions were deemed criminal simply

based on the accusations of a police force acting under government instructions, and she was pronounced an enemy of the state.

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That the UAPA allows the government/executive to decide which organizations it wishes to ban, and what kinds of people it wishes to silence or eliminate is no where clearer than in the comparison of Hindutva terror and Islamic terror. The unequal application of the tag of ‘unlawful’ and ‘banned’ to communal organizations has led to the appeasement of right wing Hindutva terror groups, even as they have continued a vitriolic and violent campaign, including large-scale killings, against minority communities. As we can see later in this document, while Hindutva terror groups do not face the prospect of banning because their activities are not viewed as ‘organized’ or detrimental to the ‘security’ of the Country, Islamic groups, such as SIMI, that has never been convicted of any violent acts, are deemed unlawful and banned. For the far right government then in power, SIMI’s campaign for following Islamic beliefs such as *jehad* and the eschewing of idolatry, were reason enough for SIMI to be deemed a threat to the ‘security’ of Country.

The Maharashtra theatre blasts case, discussed in Chapter 4, is a prime example of how the judiciary treats a banned organization and a legally-recognized association differently. The phrase ‘strike terror’ as it is applied to the alleged actions of banned organizations such as Indian Mujahideen, Hizbul Mujahideen, CPI (Maoist), etc., was considered inapplicable by the judge to the the Hindutva organization that carried out the Maharashtra theatre blasts.

It is worth considering whether Soni Sori would have met with the same fate had she been linked with Hindutva organizations such as Sanathan Sanstha or Abhinav Bharat (responsible for bomb blasts in Ajmer Sharif and Hyderabad’s Mecca Masjid in 2007, Samjhauta Express in 2007, and in Malegaon in 2008). While Soni Sori is an alleged supporter of a banned organization, Sadhvi Pragya is a conspirator in acts of mass murders. The sinister truth about laws that ban organizations is that they exist on the premise that bans can be enforced at the subjective satisfaction of the functionaries of the state.

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The extent of the executive's power to ban critical political thinking is most obvious in the verdict of a Ranchi Session's court in the case of Amitabh Bagchi, polit bureau member of the CPI (Maoist). Two years after Bagchi was arrested in 2008, the session's judge agreed that since no firearms were recovered from the accused at the time of the arrest, Section 10 (b) of the UAPA (penalty for using firearms) could not be held against them. However, for the judge, the nature of literature recovered from the accused and the fact that he belonged to a banned organization were sufficient reasons to indict him. The judge said:

I have gone through the contents of the documents as well as the books. The contents are sufficient to change the attitude of any person. It is full of criticism of the functioning and structure of State and Central Government. True it is that the citizen have right granted under article 19 (1) (a) of Constitution of India to enjoy freedom of speech and expression but this fundamental right is however subject to limitation embodied under article 19 (2) of the Constitution. It is the fundamental right of every citizen to have his own particular theories and ideas and to propagate to and work for their establishment so long as he does not seek to do so by force and violence or contravenes any provision of law. It is not that the accused undertook to propagate their political thoughts that capitalism and democratic system of governance are dangerous to the advancement of society rather the literature and books goes to show that it has such explosive contents which can change the very thinking of ordinary man and it is highly provocative against Central and State Governments. When in pursuance of one's political beliefs one tries to overthrow the existing government by violence it becomes punishable u/s121 of IPC. The recovery of books like 'operation Jail break' which was related with Jail Break of Jehanabad on 13.11.2005 left little to be said about the intention of the accused. Likewise the book 'Dandakaranyak me nayi Jansatta' also contains the material which can systematically change the very thinking of masses against the government. It is not necessary that for waging war the accused must be found collecting men, arms and ammunition rather waging war against the government is the attempt to accomplish by violence any purpose of public nature. When a

multitude rises and assembles to attain by force and violence any object of a general public nature, it amounts to levying war against the government. The books and the reading material contain the sentences which instigate the masses to take up arms against the government. In unambiguous language an appeal is made to the people to assemble and change the system by using gun and to adopt Guerrilla warfare. After going through the book “Operation Jail Break” and “Dandakarnya me nayi Jansatta” it is crystal clear that the accused are educating the opinion of the masses against the Government to take up arms and change the existing system of Government, on gun point. In my opinion educating the opinion of the masses is more dangerous than killing one or two individuals. It is like cancer in the society. After going through the seized material I find that the accused are at the helm of the affairs and they are instrumental in planning and executing raids against the police, paramilitary force as well as turning the masses against the government.<sup>1</sup>

The important thing to note is that the contents of the two booklets cannot be delinked from the social context in response to which this literature is published. Armed struggles or recourse to arms come about only when all avenues for working peacefully for social transformation or for right of self-determination are suppressed by an unequal and unjust social, political and economic system. The provisions of the UAPA and other extraordinary laws actually intensify the injustices by making political association and dissent unlawful. As a result, literature becomes more incendiary than an actual bomb planted at a public place because ‘educating the opinion of the masses is more dangerous’! This is a clear give away of the attempt to defend the existing state of affairs and maintain the status quo.

Of course it does not follow that each time an accused is held for belonging to a banned organization, he/she will necessarily be convicted, irrespective of mitigating circumstances. Laws are said to be products of enlightened jurisprudence and not reenactments of medieval witch hunts. The counsel for the accused raised an important point that, ‘If the books were indeed so provocative, then the [trial court] judge ought to have been transformed into the Naxalite way of thinking.’ Presumably, this argument persuaded the Division Bench comprising Justice R.K. Merathia and Justice Jaya Roy, which was

considering the bail application of the accused, to observe that merely possessing Naxalite literature did not amount to criminal offence. The court further said that every citizen has the right to profess ideologies at will and this was not a crime under the IPC.<sup>2</sup>

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The law cannot be separated from the manner of its use. UAPA provisions for proscribing organizations and criminalizing political ideologies and organizational membership, sympathy, support make extraordinary laws concerted attempts by the government to restrict the fundamental freedoms of citizens. The purpose of the UAPA is to allow the government to outlaw opponents or those who question the status quo. The extraordinary nature of the UAPA is clearest in the time taken between arrest and bail or acquittal. The fact that the UAPA overturns one of the fundamental principles of jurisprudence—the presumption of innocence to the presumption of guilt—makes the possibility of a fair trial for the accused very rare. Even if the judiciary grants a reprieve, laws like the UAPA allow the authorities to promptly implicate the person in another case and re-arrest him. The entire period of detention itself, therefore, amounts to punishment.

This report seeks to understand how and why this legislation arrived in our midst and how it continues to vitiate our polity by masquerading as a ‘normal law’. It examines the fine print of the law and provides examples from some of the many cases which illustrate how the politics of proscription originated and expanded. The report is informed by the conviction that heinous crimes such as bomb blasts and other acts which kill civilians are reprehensible and, those who are guilty must be punished. But in order to address terror strikes, we should not submit and give our consent to a system which produces unjust laws. Through analysis and examples, the report hopes to convince the public that repressive laws are a form of state-approved violence.

#### **Endnotes**

1. ST case no. 41/2010 Kamal Kishore Versus Amitabh Bagchi and Tohid Mulla, Court of Additional Judicial Commissioner (F.T.C) VIII, Ranchi, Dated: 18.8.2010, pp. 13–14. Bagchi was charged under Sections 121/34 of the IPC read with Sections 10, 13 (1) (a) (b) of the UAPA 1967 and Section 17 of the CLA Act.

2. *The Telegraph*, 24 December 2010 <[http://www.telegraphindia.com/101224/jsp/frontpage/story\\_13341740.jsp](http://www.telegraphindia.com/101224/jsp/frontpage/story_13341740.jsp)>, accessed on 1 March 2012.

## I. Making the Unlawful

The fundamental freedoms guaranteed by the Indian Constitution, that of association, assembly and expression, are essential for the maintenance of a functioning democracy. These freedoms enable people to collectively express, promote, pursue and defend common political interests. They give common people not only the right to express themselves through demonstrations and protests, but also allow for public mobilizations of opinion, irrespective of whether these opinions are critical of the government or the executive. However, these lofty ideals of the Constitution have been systematically pruned to suit the interests of the ruling class, and there is no better example of this than the Unlawful Activities (Prevention) Act, which place severe strictures on citizens' rights to practice fundamental freedoms.

The current Unlawful Activities (Prevention) Act, like its predecessors TADA and POTA, grants the state sweeping powers to restrict citizens' freedom of expression, assembly and association. These acts are the logical consequence of a process begun almost a hundred years ago by the Criminal Law Amendment Act (CLA) of 1908, which first used the term 'unlawful association'. It was on the basis of the definition of 'unlawful association' contained in this act that the British Raj tried to suppress the Indian independence movement by imposing bans on several organizations. Unfortunately, Indian governments after 1947 have used these very same powers to curb dissent caused by widespread abuses of state power and the structural inequalities that plague Indian society. The government of India has continuously curtailed the fundamental freedoms of Indians. It has done this by changing the law to impose restrictions on fundamental rights, so that the executive holds immense power to silence political dissent.

The fact is that India's indigenous rulers had the choice of discarding British laws and establishing a true democracy. However, the process of the abridgement of fundamental rights, especially the freedoms of expression, speech, assembly and association began in 1951 with the First Amendment.

## **The build-up to the First Amendment**

After the transfer of power in 1947, the higher courts had construed the freedom of association and expression liberally to permit only the most minimal restriction of citizens' rights. The first Amendment was adopted specifically to counter these liberal judgments.

1947–51 was a tumultuous period when the country was engulfed in communal frenzy following Partition on the one hand, and peasant movements such as Telengana and Tebhaga on the other. Communal frenzy had begun to subside by 1950, following the assassination of M.K. Gandhi on 30 January 1948 and by 1951, the Communist Party of India-led Telengana Movement had more or less been called off. Even at this stage, the government used military suppression against members, supporters and sympathizers of communist parties. Hindu right wing political parties and social organizations, which advocated the use of force against Muslims, did not face such severe repression. The appeasement of extreme right wing organizations and the persecution of communists—both tactics employed by the British Raj—were carried on after 1947. The class and religious character of the Indian state crystallized most coherently in the law, where issues such as 'public order' and 'security of the state' became shorthand for the executive's power to quell political challenges and minimize citizens' rights to practice democracy.

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Why did the First Amendment bring about changes in Article 19 (1) (a) of the Indian Constitution [Freedom of expression and speech]? To answer this question, we begin with a discussion on some early judgments by the judiciary of the newly-formed Indian republic that struck a deeply democratic note. The primary argument of these judgments was based on Article 13 of the new Constitution. Clause (1) of Article 13 says, 'All laws in force in the territory of India before the commencement of this Constitution, in so far as they are inconsistent by the provisions of this Part, shall, to the extent of such inconsistency, be void.' That is, all laws would only be valid if they respected the Fundamental freedoms laid down in the new Indian Constitution. Three judgments—*Romesh Thapar versus the State of*

Madras, V.G. Row versus the State of Madras and the A.K. Gopalan case—played a very important role in protecting our Constitutional freedoms by arguing for their liberal interpretation.

***Romesh Thapar versus the State of Madras:*** This particular case contested an order issued by the governor of undivided Madras province on 1 March 1950. The order banned ‘the entry into, or the circulation, sale, or distribution in the state of Madras .... [of] newspaper entitled Crossroads, an English weekly published in Bombay’ under the Madras Maintenance of Public Order Act, XXXIII of 1949. This order was challenged in the Madras High Court and the matter came up before the Supreme Court as Romesh Thapar versus the State of Madras on 26 May 1950. The Bench headed by the Chief Justice held that the order was ‘wholly unconstitutional and void’ because restrictions on the freedoms of expression and speech would only be tenable if the security of the State is undermined or its overthrow it is planned, which the said publication had not done. The rest of the judgment is worth quoting in full for the relevance it holds for us even today.

[T]he Constitution, in ... imposing restrictions on the fundamental rights enumerated in article 19(1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment ... while the right of peaceable assembly ... and the right of association ... may be restricted under clauses (3) and (4) of Article 19 in the interests of “public order” ... (Therefore), criticizing the Government, exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or tend to overthrow the State. ... [the] deletion of the word “sedition” from the draft article 13(2) ... shows that criticism of Government, exciting disaffection or bad feelings towards it, is not to be regarded as justifying ground for restricting the freedom of expression and of the press, unless it is such as to

undermine the security of or tend to overthrow the State ... Thus, very narrow and stringent limits have been set to permissible legislative abridgement of the right to freedom of speech and expression and this was doubtless due to the realization that freedom of speech and of press lay at the foundation of all democratic organizations, for without free political discussions no public education, so essential for the proper functioning of the processes of popular government, is possible.<sup>1</sup>

***V.G. Row versus the State of Madras:*** This case led to a judgment which declared provisions of S 17 (E) (3) of the Criminal Law Amendment Act 1908 void because it was '... inconsistent with the fundamental rights guaranteed under Part III, Constitution of India, more particularly, rights specified under Articles 19, 21 and 31 of the Constitution'.<sup>2</sup> Delivered in the Madras High Court on 14 September 1950, Justice Satyanarayan Rao's observations in *V.G. Row versus the State of Madras* show a deep insight into the significance of the fundamental right of free association:

[T]he provisions of the Criminal Law Amendment Act (1908) ... are inconsistent with the Fundamental Rights in Part III of the Constitution ... That provision confers upon the Provincial Government the power to declare an association unlawful if it is of the opinion that the association interferes or has for its object interference with the administration of law or with the maintenance of law and order or that it constitutes a danger for public peace. That declaration is final and conclusive and cannot be questioned in a prosecution under S 17 of the Act. The accused has no right or opportunity to show that the declaration was erroneous and was not justified. It is a naked arbitrary power conferred by ... [the act] upon the Provincial Government to impose a restriction on the right of a free association conferred by Article 19 (C) of the Constitution and is of such an absolute nature which cannot be and indeed was not attempted to be supported as a reasonable restriction on the exercise of the right. In my opinion it offends also Article 14 as it denies equal protection of the laws to persons ...<sup>3</sup>

**A.K. Gopalan Case:** In the A.K. Gopalan case, the Supreme Court said:

It will be noticed that of the seven rights protected by Clause (1) of Article 19, six of them namely (a), (b), (c), (d), (e), and (g) are what are said to be rights attached to the person (*jus personarum*). The remaining ... (f) is the right to property (*jus rerum*) ... [a] perusal of Article 19 makes it abundantly clear that none of the seven rights enumerated in Clause (1) is an absolute right for each of these rights is liable to be curtailed by laws made or to be made by the State to the extent mentioned in the seven clauses (2) to (6) of that Article. Those clauses save the power of the State to make laws imposing certain specified restrictions on the several rights. The net result is that the unlimited legislative power given by Article 246 read with different legislative lists in Schedule VII is cut down by the provisions of Article 19 and all law made by the state with respect to these rights must, in order to be valid, observe these limitations. Whether any law has in fact transgressed these limitations is to be ascertained by the court and if in its view the restrictions imposed by the law are greater than what is permitted by Clause (2) to (6) ... [it] will declare the same to be unconstitutional and therefore, void under Article 13.<sup>4</sup>

What these three judgments asserted were, a) fundamental freedoms could be curbed only in the most extreme of cases, b) state declarations and laws tend to curb fundamental freedoms, even as their imposition without a trial does not guarantee equal protection under the law to all citizens, and c) laws that curb fundamental rights are essentially unconstitutional.

Before assuming that the judiciary was one in its liberal interpretations, it is important to understand that judgments that argued in opposite terms, using the same laws, also occurred. An example of this is the *Brij Bhushan and Others versus The State of Delhi* case. On 26 May 1950, the Supreme Court held in this case that it was the government's decision whether restrictions were to be imposed on fundamental freedoms and that, '[T]his Constitution itself has prescribed certain limits for the exercise of the freedom of speech and expression.'<sup>5</sup> Judicial differences notwithstanding, the First Amendment once and for all changed the Constitution to suit the Executive/government's need to control and silence dissent. We argue

that the Executive enacted the First Amendment in 1951 in a bid to restrict liberal judicial interpretations of fundamental freedoms that allow for the democratic questioning, critiquing and challenging of established state power.

### **The First Amendment of 1951<sup>6</sup>**

The First amendment specifically sought to amend 1) Article 15 to provide reservations for 'Backward Communities'; 2) Article 19 to add the word 'reasonable' before restrictions and to add 'public order' as being one more ground for abridging Fundamental Rights in Article 19 (2); 3) replacing Article 31 with Article 31A (Saving of laws providing for acquisition of Estates, etc).

Nehru justified the need for an amendment saying that it was an 'enabling' measure, necessary for achieving equality and development as laid out by the Directive Principles of State Policy. He argued that 'The real difficulty we have to face is a conflict between the dynamic ideas contained in the Directive Principles of State Policy and the static position of certain things that are called "fundamental" whether they relate to property or whether they relate to something else.' By pushing through such a diverse set of amendments to the Constitution, including the need to enforce Directive Principles and the curtailment of fundamental freedoms, the first Government of India under Nehru, paradoxically, paved the way for abridging freedoms. Six decades later, while the Directive Principles of State Policy remain unenforced, freedoms under Article 19 have become constricted.

While arguments for and critiques of each of these amendments are interesting (available in parliamentary debates), in this report, we are concerned with amendments made to Article 19.

This is how the government argued for an amendment to article 19 in Parliament:

During the last fifteen months of the working of the Constitution, certain difficulties have been brought to light by judicial decisions and pronouncements specially in regard to the chapter on fundamental rights. The citizen's right to freedom of speech and expression guaranteed by article 19 (1) (a) has been held by some courts to be so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence. In other

countries with written constitutions, freedom of speech and of the press is not regarded as debarring the State from punishing or preventing abuse of this freedom. The citizen's right to practice any profession or to carry on any occupation, trade or business conferred by article 19 (1) (g) is subject to reasonable restrictions which the laws of the State may impose "in the interests of general public". While the words cited are comprehensive enough to cover any scheme of nationalisation which the State may undertake, it is desirable to place the matter beyond doubt by a clarificatory addition to article 19(6). (Statement of Object and Reasons signed by Jawaharlal Nehru on 10 May 1951)

The home minister C. Rajagopalachari argued, 'If Parliament gravely sits down to pass a law that people should not sell wheat or gram at above a certain price ... that people should not commit theft ... (or) in any other matter which does not involve violence, is it to be conceived that the freedom of speech granted by the Constitution should go to the extent of encouraging or inciting people to commit those very crimes [?] ... [was] it the intention of any honourable member who was party to the Constitution ... that freedom of speech should allow anybody to act adversely, by speaking or writing, to the security of the State or to friendly relations with foreign States or to public order or decency or morality or that the laws of contempt of court should be abolished or that the law of defamation should be abolished or that incitement to offence should become part of the charter of freedom of speech?'

Debates on the amendment to Article 19 covered several key issues: the diffuse nature of the term 'public order', the attempt by the state to enact extraordinary laws to punish political dissent in times of peace, and the restoration of colonial laws and definitions such as that of sedition.

That the First Amendment showed the tendency of the Indian state to control political dissent of any kind was raised by a member of parliament, K.T. Shah, who pointed out, '[E]very one would be one at one with the prime minister when he says that every liberty we possess may have to be restricted when it comes to the question of the integrity and independence and continued existence of this country as an independent sovereign state ... But we have made separate provision for dealing with emergencies in our Constitution ... [So] it

does not behove us, for fear of possible emergencies, that we should today make a general provision and limit the freedom of speech in the interest either of public order or in the interest of possible danger of incitement of offence.’

One major fall out of the amendment was the restoration of several laws made void by the new Constitution. In addition to changes in Article 19, the First Amendment resuscitated both Section 124 A of the Indian Penal Code (Sedition) and Section 153 A of the IPC (preaching of hatred between different groups). Naziruddin Ahmad argued against the government that members of the Drafting Committee of the Constituent Assembly had wanted to do away with the law of sedition, but no action had been taken to do this, thus leaving it open to the state to impose sedition on activities that it considered detrimental to ‘public good’. Ahmad also said that the words ‘security of the State’ in the original article 19 (2) did in fact leave provision for the state to make laws only when there is a threat of overthrowing the state.

S.L. Saksena observed that following the amendment those laws which had become void under original Article 19 could be considered not to have become void. What this meant was that the First Amendment was an enacting rather than enabling one. Indeed, it restored the validity provisions of the Criminal Law Amendment Act 1908, which defined unlawful association, among other things. In this manner, several repressive laws used by the colonizers against the people who now held the reins of power, were reinstated in the Indian Constitution.

### **The Sixteenth Amendment of 1963<sup>7</sup>**

The next step in the abridgement of freedom of expression, assembly and association occurred in shape of the Sixteenth Amendment in 1963. The main purpose of the amendment was to alter Article 19 to include the words ‘reasonable restrictions in the interest of the sovereignty and integrity of India’. Again, the government argued against liberal judicial interpretations of fundamental rights. The law minister A.K. Sen defended the amendment saying, ‘... some of the decisions of the Supreme Court have made it quite clear that the

words “security of state” is a limited expression and it does not comprehend any power to ban organizations or political activities. ... [The] purpose of this Constitution (Amendment) Bill is mainly that we want to appropriate powers for the Government to impose restrictions against those individuals or organizations who want to make secession from India or disintegration of India as political issues for the purpose of fighting elections.’ The minister justified the amendment in the interest of outlawing secessionism, in the absence of which the situation in India, the minister said, would be the same as in 1940, when the Muslim League first put forward the idea of the Partition of India.

The Sixteenth Amendment occurred in the immediate wake of the Sino-Indian War and the debacle suffered by the Indian Army, as well as the threat posed by Dravida Munetra Kazhgham’s contesting elections in Tamil Nadu with secession from India being part of their manifesto. During the debate, some members of parliament did point out that the immediate objective behind the amendment, which was to stop the DMK from contesting elections for entertaining secessionism, had become redundant because the party had already dropped secessionism from its charter. However, parliamentary debate records show that the mood of the House was intolerant and jingoistic. Even those who had reservations about the amendment were less opposed to it than fearful that the Congress party could use these powers against their political opponents.

In the course of the debate in Parliament, E. Sezhiyan argued that whatever the balance gained between individual rights and the collective interests of society, the government’s attempts to encroach on fundamental rights need to be limited. He also approvingly quoted Justice Jackson’s memorable ruling in *West Virginian Board versus Barnette* to make his point: ‘Freedom to differ is not limited to things that do not matter much. That would be a more shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.’

With increasing curbs on Article 19, what the Indian government had succeeded in doing was making the raising of questions against the existing structures of power unlawful and illegal.

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Of the two Constitutional amendments, the First was passed by a Parliament which had not been elected under universal suffrage as the first general elections took place only in 1952. Both the amendments mustered 2/3rd majority since Congress enjoyed complete domination over the Parliament.

However, what both amendments did was to enable the Parliament and state legislatures to enact laws through simple majority, as opposed to 2/3rd majority needed for the passage of a Bill amending the Constitution. The original restriction which requires a 2/3rd majority vote for changes in fundamental rights was circumvented by passing amendments empowering the Parliament and state assemblies to enact laws which impose restrictions or abridge fundamental rights. If the original Constitution as well as the earlier judgments of the Courts had narrowed down the possibility of restricting Freedoms, with these two amendments to the Constitution, the Government empowered itself to curtail fundamental freedoms. This that should be kept in mind as we turn to a discussion of the Unlawful Activities (Prevention) Act.

### **Unlawful Activities (Prevention) Act of 1967<sup>8</sup>**

The sixteenth amendment paved the way for the enactment of the UAPA. Though the UAP Bill was tabled twice in Parliament, during the third Lok Sabha and then again during the fourth Lok Sabha, in both cases it was withdrawn due to opposition. Finally, it was passed by the fifth Lok Sabha in 1967. The UAP Bill sought to empower the central executive to ban organizations, a right which until then had been the prerogative of the provinces under the Criminal Law Amendment Act of 1908. The centre did enjoy powers under the Constitution to restrict freedom of association, but as MP Dayabhai V. Patel pointed out during a debate in Lok Sabha on 11 August 1967, by declaring as 'unlawful' a range of activities 'which encourage or aid persons in unlawful activities or who undertake unlawful activities habitually' extraordinary powers were being acquired by the executive. He also referred to Article 13 (2) of the Constitution, which debars Parliament from enacting such legislations ('The State shall not make any law which takes or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.').

In the course of the debate some members advanced arguments against the UAPA, which are as relevant today as they were then. It was C.C. Desai, an MP from Gujarat, who questioned the very rationale of the bill:

They talk about secessionism. Why should there be secessionism? Where is the danger to the integrity and sovereignty of this country today? It is not in the south, it is not in Assam, it is not even in Kashmir. .... Look at Assam. The present situation in Assam is the direct creation of bad policies of [the] Government. At one time we had only the Naga problem, but now we have the Naga problem, the Mizo Hills problem, the Lushai and Jayantia Hills problem, the demand from Cachar for being a separate state, the demand for the constitution of Brahmaputra Valley as a separate State ... Similarly take the case of Kashmir ... Kashmir is an internal problem, but it is a problem in the sense that our writ does not run there and they do not have a government of the people, by the people and for the people. So what we want in Kashmir is not a draconian measure, not an unlawful Bill like this, not a Black Bill like this, but free and fair elections, freedom of movement, freedom of association and freedom speech to the people of Kashmir so that they can have a government of their own choice and their own desire. Even the so-called plebiscite front people, the so called secessionists, will come round if we tackle them in the correct way and persuade them to make common cause with us in our objective ... The real danger to the country is from a movement started by my honourable friend himself [pointedly referring to the union home minister Y.B. Chavan], the Shiv Sena, that is directed at the very heart of India in the city of Bombay, in the metropolis of the country—started by the present Home Minister here and carried on by the Home Minister of Bombay. That is the unlawful activity that has got to be curbed not the so called secessionist activity at which the Bill is supposed to be directed.

Another MP, Surendranath Dwivedi likened the UAP Bill to colonial laws: "The clauses of the Bill ... it reminded me of the year 1932 when the civil disobedience movement started in this country ... You will remember in the year 1932 on 4th January before any formal announcement of civil disobedience movement was made the then Viceroy of India, Lord Willingdon proclaimed as many as 12

ordinances declaring unlawful every Congress organization, anybody helping or abetting any political offenders etc. and out of these at least 4 were Emergency Powers Ordinance, Unlawful Instigation Ordinance, Unlawful Association Ordinance, Preventive Molestation and Boycotting Ordinance. If one reads those ordinances and compares them with the present Bill one would fear that probably in the Secretariat of New Delhi those elements or persons ... still exist.'

He went on to critique the bill saying that it did not respect principles of fair jurisprudence: 'They say that that if they feel that in public interest, the reasons for which they are declaring such an association or group of individual as unlawful, are not to be disclosed, they need not disclose. ... In this country we want that you should prove that offence. If a man is really indulging in unlawful activities you can go to the court.'

Another MP, K.M. Koushik argued against the bill on similar grounds: 'In clause 4 the burden of proof has been cast on the persons. A notice is issued to him, he goes to the Tribunal. There he is asked to show cause as to why the Association should not be declared unlawful. This is running counter to the canons of jurisprudence. It is for you, for the Government to show that the organization is an unlawful one.' Another member wondered, 'Where does honest expression of opinion and mobilization of public opinion end and where does incitement begin?'

Another bone of contention was the designation of tribunals to review bans. S.M. Bannerjee pointed out, 'Section 5 says "The Central government may by notification in the Official Gazette constitute as and when necessary a tribunal to be known as the Unlawful Activities (Prevention) Tribunal" constituting of one person to be appointed by the Central Government provided that no person shall be so appointed unless he is a Judge of High Court.' This, he said, gave enormous powers to the executive to decide both the timing and composition of a tribunal, something which has come true in practice. Tenneti Viswanathan warned, 'Suppose a gentleman A is prosecuted and the judgment does not satisfy the requirements of the Government. Next time they may appoint another [tribunal] judge.' He also observed that a tribunal has always been a failure 'because it is not a permanent institution. It can be changed according to the whims and fancies of the Home Minister.' When the issue of state notifications about bans

not disclosing reasons for declaring an organization unlawful was raised, the home minister Y.B. Chavan said that when a tribunal would be in process, facts not disclosed in the notification would not be concealed from the tribunal. What Chavan did not say is that those facts need not be shared with the individual or association declared unlawful!

In spite of such resistance to the UAP Bill, it became an act in 1967.

UAPA 1967 enables the central government to impose 'reasonable restrictions' on the right to association. Though the UAPA gave powers to the central government to impose all-India bans on associations, the powers of the state governments to ban organizations were not affected, because 'maintenance of public order' had been read by the apex court to represent the lower end of 'threat to security of state'. In other words, an organization can be banned by the central and state governments separately, with no recourse to an appeal. Also, much like in the CLA, the UAPA too makes the process of banning associations into a simple matter of the government announcing them as such.

### **Amendments to the UAPA in 2004 and 2008**

The amended UAPA 2004 introduced provisions from TADA and POTA, both being laws that had led to severe rights violations. Among other issues, the amended 2004 UAPA made substantial changes to the definition of 'unlawful activity', included the definition of 'terrorist act' from the POTA, which lapsed, and also introduced the concept of a 'terrorist gang'.

On 17 December 2008, another amendment of the UAPA was moved and adopted following the attack by armed gunmen in Mumbai on 26 November 2008. Barely a few days after the attack, the UPA government pushed through an amended UAPA which accorded even more powers to the central executive (see Chapter 2). In contrast to at least some members casting doubts on the UAP Bill during the debate in Parliament in 1967, few voices were raised in 2004 and 2008 against the abridgement of fundamental rights and the expansion of the executive's powers over citizens. With this, the UAPA became an omnibus and permanent act that provided the government with

grounds to ban associations under two provisions: under S. 2 as an 'unlawful association' (UA) and under S. 35 as a 'terrorist organization' (TO). Indeed, some of the provisions of the existing UAPA are far worse than POTA.

### **Inventing Yet another Behemoth**

On 3 February 2012, the central government issued a notification for setting up the National Counter Terrorism Centre (NCTC). The NCTC is planned as a specialized body that will derive its powers from the UAPA and will perform functions relating to intelligence and investigation.<sup>9</sup> Although the NCTC is not planned as the primary intelligence agency, it has been endowed with powers which place it above all the state level agencies and departments. The rationale for this is that the NCTC will allow the government to deal with the 'borderless' security threat and the danger posed by 'terrorism'.

The NCTC is nothing but another move by the government to ride roughshod over citizens' freedoms of expression, assembly and association. But, it also undermines the federal character of the Indian Constitution by reducing the power of state governments. This factor has been the main bone of contention between the central and state governments and the NCTC's fate hangs in balance because state governments have risen in protest against what they view as the central government's attempt to reduce state governments' power.

According to the notification, the Director of the NCTC can be the 'designated authority' to 'control and coordinate' all counter-terrorism measures. This means that the NCTC will be authorized under Section 43 A of the UAPA to exercise the power to arrest, search, etc., without consulting the state government. Further, all state government functionaries, including police departments, are required to provide information, documents and reports to the NCTC. This duplicates work with more than one agency being empowered to act using the UAPA. It is also a clear infringement of the Constitutional requirement that law and order are to remain state governments. The state governments of Odisha, West Bengal, Bihar, Tamil Nadu and Gujarat have already protested this violation of the constitutionally-mandated federal structure.

The executive order which set up the NCTC places it under the Intelligence Bureau, which itself was created by an executive order of

the British Raj in 1887. Since the IB was not created by any legislation, the unaccountability and opaque character of IB's functioning is duplicated in the NCTC. Moreover, the NCTC will possibly come to exercise control over the National Investigation Agency, which was constituted by law.

Indeed, the setting up of the NIA without much debate on 31 December 2008 after the 26 November 2008 attack on Mumbai was itself a very controversial move. Under Section 3 (2) of the Act, NIA is empowered to take up for investigation 'scheduled offences and arrest of persons concerned in such offences' and enjoys 'all the powers, duties, privileges and liabilities which officers have in connection with investigation of offences committed therein.' Section 3 (3) mandates that any 'officer of the Agency, or above the rank of Sub-Inspector may ... exercise throughout India, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being'. Besides, the central government is allowed under Section 6 (3) to determine 'on the basis of information made available by the state government, or received from other sources ... whether the offence is a scheduled offence or not and also whether ... it is fit case to be investigated by the Agency'. The Schedule to the Act in fact lists eight laws including the UAPA, and sections 12–130 and 489 A–E of the IPC.

The encroachment into the domain ostensibly reserved for state governments is one aspect of concern. The bigger threat posed by the NCTC and NIA is that like the IB, they enjoy immense powers under the UAPA. Given the biases with which the UAPA operates in the Country, such agencies make a mockery of the freedom versus security debate because the freedoms of minorities and political dissidents who challenge the status quo are suppressed in order to secure the privileges and powers of power-hungry and corrupt rulers and Hindu right-wing elements. The next two chapters detail and critique the text of the UAPA and its application.

**Endnotes**

1. Romesh Thapar vs The State of Madras, 26 May 1950 [1950 AIR 124, 1950 SCR 594].
2. V.G. Row vs The State of Madras, 14 September 1950 [AIR 1951 Mad (1951)].
3. V.G. Row vs The State of Madras, 31 March 1952 [1952 AIR 196, 1952 SCR 597].
4. A.K. Gopalan vs The State of Madras, 19 May 1950 [1950 AIR 27, 1950 SCR 88].
5. Brij Bhushan and Others vs The State of Delhi, 26 May 1950 [1950 AIR 129, 1950 SCR 605].
6. All quotations in this section are drawn from Parliamentary Debates, 29, 30, 31 May, 1 and 2 June 1950, pp. 9612–10105.
7. All quotations in this section are drawn from 22 January 1963, Lok Sabha Debates, pp. 5759–5841; and 2 May 1963, Lok Sabha Debates, pp. 13409–13506.
8. All quotations in this section are drawn from Rajya Sabha Debate, Vol. 61, No. 18, 16–18 August 1967, pp. 4313–4369; Lok Sabha Debate, Vol. VIII, No. 60, 10 August 1967, pp. 18595–18719; Lok Sabha Debates, Vol. XI, No. 26, 18 December 1967, pp. 7824–7925; Lok Sabha Debates, Vol. XI, No. 26, 19 December 1967, pp. 8134–8263; Lok Sabha Debates, Vol. XI, No. 26, 20 December 1967, pp. 8449–8560; Synopsis of Lok Sabha Debates, 11 December 2008, pp. 182–201 and 17 December 2008, pp. 1–13.
9. Union Home Minister at Intelligence Bureau Centenary Endowment Lecture; New Delhi December 23, 2009

## II. Restricting Fundamental Freedoms

Based on the categories ‘unlawful activity’ and ‘terrorist act’, the UAPA permits the government’s banning of associations and organizations. The UAPA was the first central law passed by the Indian Parliament after Independence in 1967 which allowed the central government to proscribe organizations. In 1991, the Prevention of Terrorism Ordinance created another provision for banning, which was incorporated in the UAPA through its amendment in 2004. Thus the present UAPA has two different provisions for imposing a ban. What follows is a description of how the government has arrogated powers for itself by disdaining fair judicial procedures. Two acts, the CLA and the UAPA authorize the executive, state and central governments to restrict freedom of association (affecting freedom of expression and speech as well as assembly). Both the acts are informed by international obligations which flow from the UNSC Resolution 1373 under Chapter VII of the UN Charter (see Annexures).

### Creating New Crimes

The two crimes defined under the UAPA are ‘Unlawful Activity’ and ‘Terrorist Act’.

***Unlawful Activity:*** Unlawful activity was first defined in the UAPA in 1967. The 2004 amendment to the act makes substantial changes to this definition. Section 2 (o) defines unlawful activity as:

- ... any action taken by an individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),
- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
  - (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
  - (iii) which causes or is intended to cause disaffection against India

This definition means that ‘unlawful activity’ as a crime does not need to involve a violent act. In fact, the definition can be interpreted

as criminalizing everything from spoken and written words to artistic expressions such as theatre, song, dance and painting. This means that criminal action can be initiated under this act not just against those who have committed violent act, but more disturbingly, against persons whose views and beliefs may be considered threatening by those in power. So, what kinds of views are being criminalized by the UAPA? Any talk of cession or secession becomes criminal. But that does not mean that issues of cession (as in the international border with Bangladesh) or of secession (as in the various political movements in Jammu and Kashmir and the Northeast) cease to exist. If one follows the letter of the UAPA, it declares criminal any discussion on such issues by the citizens of the Country, and only the government has the absolute and total power to speak and do as it pleases on this count. This is explicitly stated in Section 13 (3) wherein the government retains the power to act unilaterally: 'Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefore carried on by any person authorised in this behalf by the Government of India.' In other words, the Government eliminates any possibility of democratic engagement with the subject of secession, thus encouraging and celebrating jingoism and virulently exclusivist 'nationalism', while effectively criminalizing reasoned debates on the right to self determination.

Let us revisit subsection 2(o) (iii) of the definition of unlawful activity. This subsection was added to the UAPA through the 2004 amendment and makes any action that causes 'disaffection against India' a crime. Now disaffection as a term has a wide range of meanings. It can mean anything from harbouring a grudge or resentment to feeling alienation and practicing political dissent to rebellion or mutiny. This vague term makes even 'unintentional' or 'unintended' disaffection a crime! 'Disaffection' against the country under this law makes it potentially criminal to critique the oppressions of caste, class, gender, religion, ethnicity and region; failures and outcomes of governmental policies on hunger and malnutrition; the growing inequality of income and wealth; flouting of workers' rights; the destruction of livelihoods through eviction and displacement ... the list can go on. Importantly, 'disaffection' could also mean critiquing provisions and acts of the Constitution which in reality may be

subverting Constitutional promises of equality and the protection of citizens' rights.

But the fact is that all such persons whose words and actions spread disaffection have not ended up being arrested under this law. Nor have all the persons who have expressed their views on cession or secession gone to jail. Such a situation would be gross dereliction of duty on the part of the state if it related to any penal offence, but it becomes wholly justified under the UAPA since the government wields the unilateral power to decide which action, person or organisation is to be deemed unlawful. In short, 'unlawful activity' as a category exists only for the state to quell opposition, and in that sense is arbitrary, unfair and undemocratic. The provision to punish 'unlawful activity' is a negation of the freedom of expression of Indian citizens and an attempt by the government to give to itself the monopoly to decide on issues of cession, secession and to punish disaffection among citizens.

***Terrorist Act:*** The second 'new' crime included in the amended 2004 UAPA was 'terrorist act'. The POTA definition of 'terrorist act' was included verbatim in S. 15 of the 2004 UAPA. 'Terrorist act' is defined through its intent:

Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country ...

This crime was first defined under TADA in 1985, and the very broad definition of this crime led to over one lakh people being detained or arrested. Faced with reports of widespread abuse by the police and the fact that most of those arrested under the law were dalits, tribals and Muslims, the Parliament was forced to allow it to lapse in 1995. However, in 2002, the promulgation of POTA included a similar definition, with one major omission. The BJP-led NDA government had removed the clause 'adversely affecting the harmony among different sections of the people' as one of the intentions that define terrorist acts. While communal violence ceases to be a terrorist act, under the UAPA, damaging government property constitutes one. This also means that events such as the killings of *dalits* or the Gujarat anti-Muslim pogrom do not threaten the unity of the country

or terrorise any section of the people under the UAPA. By a simple reversal of this argument, it emerges that terror-causing actions under the UAPA can only be done by those who do not represent the majority community or dominant sections of the Country. This definition of the intent of 'terrorist acts' is thus a violation of the principle of equality before law.

Next, up until now, terrorist acts concern what is common sensically considered to be terrorism—mass murders of civilians causing terror at large or the commission of war crimes during peace time. The actions that are considered as terrorist under the UAPA go far beyond commonly held perceptions to include a range of actions that are defined as crimes under various other legislations. Under S. 15, terrorist acts are those that:

- (a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological, radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause:
  - (i) death of, or injuries to, any person or persons; or
  - (ii) loss of, or damage to, or destruction of, property; or
  - (iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
  - (iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or
- (b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or
- (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or any other person to do or abstain from doing any act.

Each of the 'terrorist' actions stated above are also defined as

crimes under other laws—the IPC, Arms Act, Explosives Act, Explosive Substances Act, etc. It therefore remains the arbitrary decision of the government and law enforcers whether or not to file charges under the UAPA. Instances of such unfair means of not applying the UAPA abound (see section ‘Two Deaths’ in Chapter 4). Public killings by caste panchayats of young couples are certainly heinous crimes meant to terrorize others who may contemplate exercising their right to free association. But such crimes have never attracted the provisions of the UAPA. Thus the UAPA permits criminal proceedings for similar crimes to proceed along with different laws, wholly on the basis of the whims and fancies of the government in power.

Subsections (b) and (c) are direct attacks on peoples’ right to protest. In circumstances of rampant police highhandedness or where police repression is the order of the day, people show their strength by gheraoing police stations to obtain the release of those illegally detained by the police. The West Bengal Chief Minister Mamata Banerjee’s show of strength to secure the release of her party colleague from police custody is a most recent example. Similarly, in the context of police firings against the protests by the Bharatiya Kisan Union in Haryana, the protestors were forced to abduct and detain some policemen in order to compel the police not to open fire during their protest rallies. The inclusion of such actions of the people within the ambit of the UAPA criminalizes people’s right to protest against state brutality even as state officials reserve the right to call particular actions terrorist over others.

***Punishments:*** The punishments for these ‘new’ offences pose further questions. S. 13 (1) and 16 deal with the punishments for terrorist acts:

13 (1) – Whoever –

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

16 (1) – Whoever commits a terrorist act shall, –

(a) if such act has resulted in the death of any person, be punishable

with death or imprisonment for life, and shall also be liable to fine;

(b) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Knowing that state and government officials enjoy the right to accuse citizens of unlawful activity simply for expressing discontent, a seven year sentence is grossly unjust. Those enacting a play voicing political differences can be potentially sent to jail for a term equivalent to that for convicted rapists. To provide for the same punishment for those who have not even 'committed' the unlawful activity, such as those who may have provided advice, makes thought itself a crime.

In the case of terrorist acts, even where no person is killed, a minimum punishment of five years, extendable to life imprisonment is stipulated. Our Constitution as a rule does not prescribe minimum punishments. The rationale for this is that the judicial mind is expected to examine the extent of involvement of the accused and the damage that the crime has caused to society before awarding the necessary punishment. The UAPA ignores the Constitution's mandate and interferes with the judiciary's rights to the detriment of justice.

Second, the prescription of life imprisonment with a minimum of five years also extends to those who have not actually committed terrorist crimes. Sections 17 to 19 extend harsh punishments to those who attempt to commit terrorist acts, and those who may have abetted, advised, incited, raised funds for, imparted training to, recruited, or harboured terrorists. Given that the definition of a terrorist act includes a range of actions not usually associated with 'terrorism' in the public mind, these sections extend the ability of the government to use the law to silence political dissent enormously (see the cases of Seema Azad, Gopal Mishra and Kanchan Bala in Chapter 4).

One other way by which the UAPA makes political dissent a dangerous activity punishable with long prison sentences is the novel method of enhancing punishments in case the accused is found guilty of the contravention of specific laws other than the UAPA. Thus, all the police need to do is to heap a series of cases under these specific laws and the UAPA so that a long prison term is guaranteed for the accused (see section 'Two Deaths' in Chapter 4). S. 23, 'Enhanced

Penalties' states:

(1) If any person with intent to aid any terrorist or a terrorist organisation or a terrorist gang contravenes any provision of, or any rule made under the Explosives Act, 1884 (4 of 1884) or the Explosive Substances Act, 1908 (6 of 1908) or the Inflammable Substances Act, 1952 (20 of 1952) or the Arms Act, 1959 (54 of 1959), or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance capable of mass destruction or biological or chemical substance of warfare, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Any person who with the intent to aid any terrorist, or a terrorist organisation or a terrorist gang attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years".

With this provision, once the police or the government decides that the intent of the accused was to aid a terrorist or a terrorist organization or gang, the punishment for possessing an unlicensed arm increases from as low as 6 months to life imprisonment (if the person violated any provision of the Arms Act, for instance). Not surprisingly, simply the intent to violate provisions of laws specified in S. 23 (2) of the UAPA can invite upto 10 years imprisonment. Given the ease with which the police can charge sheet people for breaking multiple laws, the sheer increase in the scale of punishment actually encourages the misuse of the UAPA against citizens (see case of Aeronautical Engineer in Chapter 4).

There are also two linked issues that a prescription of enhanced penalties ignores. One, implements and substances used by the poor to carry on their trade or livelihood are in many cases included in the

list of prohibited arms. People also do trade in kerosene, petrol, etc. for which they do not possess licenses. Second, the issue of punishing those who possess unlicensed arms is a sticky one because in most instances, only those with the monetary resources to own branded arms go through the procedures for obtaining a license. As a result, the moneyed sections hold licensed arms and use these as a continued basis for their dominance, while the poor, *dalits* and other oppressed sections who hold arms to challenge the authority of their oppressors do so by violating the Arms Act.

In this fashion, the UAPA brings offences of varying gravity, which would normally attract different punishments, under a single offence. In doing so, the UAPA increases the quantum of punishment, introduces the concept of minimum punishment into the Indian Constitution and negates the delicate balance between a crime and its punishment.

### **Banning Organizations**

***To reason or not to reason:*** The UAPA includes within itself provisions that allow the state to ban organizations without so much as providing reasons for it. First, S. 3 (1) says that an organization can be declared unlawful 'if the central government is of the opinion that any association is or has become an unlawful association'. Similarly, an organization can be declared terrorist on the ground of the central government 'believing' it to be one (S. 35). While S. 3 states that for unlawful organizations the central government needs to issue a notification in the official gazette specifying the reasons for imposing the ban, S. 35 dealing with terrorist organizations does away with this minimal requirement. Of course, even under S. 3, the government can choose not to disclose any fact that it considers not to be in 'public interest'.

Second, S. 3 requires the prior approval of a Tribunal for imposing a ban. Banning under S. 35, however, does away with any requirement for an independent review and comes into effect from the date that the government chooses to add the name of an organization to a list appended to the Act, called the 'Schedule'. Despite this, all the notified bans even under S. 3 come into effect without the approval of the Tribunal since the government reserves the right under S. 3 itself to impose the ban with immediate effect if it is of the 'opinion' that

circumstances necessitate such an action.

Third, and most disturbingly, while bans under S. 3 remain in force for two years, organizations banned under S. 35 continue into perpetuity. No procedure is laid down in the UAPA for a periodic review or when organizations on the Schedule can be taken off it. Reports now suggest that the UPA government is moving an amendment to UAPA whereby the period of ban for organizations declared unlawful will be raised from two to five years.

The provision requiring the government to specify reasons for imposing and extending a ban on 'unlawful' organizations has been experienced more in its violation than in its practice. Since an organization can be banned only for two years at a time, if the government wants to extend the ban any further, it must do so based on evidence of unlawful activity conducted during the period of the first ban. That is, a ban cannot be extended on the basis of any 'unlawful' activity that a) occurred before the period of the first ban, and b) which had already been the grounds for the ban in the first place.

Such safeguards were considered necessary when this law was being debated in the Parliament. After all, the right to associate is a Fundamental Right guaranteed in the Constitution, and endless bans on organizations without fresh cause to do so would severely compromise the Constitutional right of that association to exist. However, despite this requirement, an overwhelming majority of the cases that the centre brought to the latest tribunal from the various states pertained to periods as far back as 1999, from which time three tribunals have already heard cases for banning!

***The Farce of the Tribunal:*** S. 4, 5 and 6 delineate redressal procedures for an association declared unlawful. Within 30 days of a notification by the government of the establishment of a one-member Tribunal to reconsider grounds for banning an organization, the office bearers or members of the banned 'unlawful' organization can send their show cause notice to the Tribunal arguing to be removed from the list. Following this, within a total period of six months, the Tribunal is expected to adjudicate as a civil court and give its decision. But such a process first exposes the office bearers of the 'unlawful' association to the risk of criminal action. As members of a banned

association, how safe is it to appear before a Tribunal? Second, the redressal process begins with the banned organization having little or no knowledge of the reasons for their organization being banned. This would seriously limit its ability to defend itself. And finally, the judge heading the Tribunal is selected exclusively by the executive, since even the concurrence of the chief justice of the High Court is not required. This makes the Tribunal completely controlled by the government. Nonetheless, there have been exceptional judgments such as the SIMI one (see next chapter, 'The Case of SIMI').

If the procedure was wanting in 'some' crucial respects, the redressal procedure for lifting bans on terrorist organizations are a complete farce. S. 36 and 37 spell it out. The organization declared 'terrorist' needs to apply to the central government to remove its name from the Schedule. There is no listed procedure of how the government is to dispose of this application. Once the application is rejected, the organization may apply to a Review Committee within one month. It is stated that the Review Committee shall consider the application 'in the light of the principles applicable to a judicial review' because the UAPA permits that the Review Committee be composed of members who are non-judicial. It may have up to four members with the chairperson being a High Court judge or a retired judge, while the other members are to be government officers of the rank of secretary with a year's experience in legal affairs or in criminal justice administration [S. 37 and S. 3 Rules, 2004]. This means that the Review Committee is composed of a majority of members of the same government or even the same officials who have imposed a ban. The committee itself can be a non-judicial one, as when a retired judge may be appointed. Finally, this committee is appointed entirely by the government, which raises serious questions about whether a fair hearing will be provided to associations or groups that are banned.

The UAPA sets no limit to how long the Review Committee may take to come to a decision. Tilting the case in the government's favour is the provision that the banned organization is denied access to the arguments that may be presented by the government in favour of the continuation of the ban. The organization is also denied the right to argue its case in person or through a legal representation, and may only make a case on the basis of its application to the Review Committee. Finally, the Review Committee needs to give an order

only if it considers an application valid. Otherwise, no order needs to be issued at all. The reasons for the refusal, if any, need not be revealed. And since the UAPA provides for no more chances of a review of the ban, a ban on an organization listed as ‘terrorist’ continues for ever.

While this redressal mechanism is far from fair, it is not as if the pitfalls of executive-appointed tribunals were not debated in the parliament. During the Parliamentary debates on the UAP Bill in 1967, several members had cautioned that since the ban on an organization curtailed the right to association, a better course for the government was to prosecute the ‘unlawful’ or ‘terrorist’ group. This would allow it to defend itself, proving its charge. Second, it was also argued that because the Tribunal constituted under the UAPA is not a permanent one, if a Tribunal order were to go against the government ban, all that the executive needs to do is to replace the judge the next time around! For example, the centre had almost admitted before the third tribunal in 2006 that it didn’t have any new cases against SIMI. Yet, the third tribunal had inexplicably upheld the ban notification. In the face of such unchecked power, it is expected in a democratic set up that strong and effective remedial procedure should exist, to quickly undo any wrong.

While in the case of organizations labeled ‘unlawful’ at least a procedure based in a Tribunal is listed, under S. 36 of the UAPA, in order to be taken off the ‘terrorist’ organization Schedule, a review board, not a tribunal, with at least one High Court judge expected to consider any cases of organizations contesting their categorization as ‘terrorist’. Neutralizing all available redressal measures, S. 36 (3) leaves the setting up of such a review board to the central government.

The authority that categorizes an organization as being involved in terrorism is the authority that imposes the ban on the organization; it is also the same authority that considers the first appeal and picks and chooses the members who are to consider the appeal. Additionally, the predicament for associations labeled ‘unlawful’ who wish to challenge or contest the ban is that even if the ‘unlawful’ tag is lifted, they do not cease to be banned because almost all the associations are also concurrently banned as ‘terrorist’ organizations. Not strange therefore that only a few of the thirty-five banned organizations listed

in the UAPA's Schedule have appealed against their ban.

### **What a Ban Entails: More Offences and Gagging**

Bans on organizations have huge ramifications for the life and liberty of citizens, for their political rights and for democracy. Targeting not just the active members of a banned organization, a ban makes it an offence to have any kind of association with an organization so categorized by the government. For example, S. 10 prescribes a punishment of two years for any person who is a member, attends meetings or 'in any way assists' the operations of a banned 'unlawful' association. In the case of a person who promotes 'in any manner the objects of such association' and commits a violent act leading to 'significant damage to property', the punishment is one of life imprisonment with a minimum of five years. Both the extent of association and the extent of damage caused by violent acts are left vague and open to interpretation. The looting of government trucks carrying food grains by people suffering near famine conditions would invite a life imprisonment under these provisions (See Gopal Mishra's case in Chapter 4).

In many parts of the country where banned 'unlawful' associations have garnered mass support, people do attend meetings of such associations since they take up a large number of issues that concern the daily lives of people. Further, the objects of any association are diverse and question the non-delivery of many of the concerns that have been part of the government's Constitutional mandate.

In the case of an organization banned as terrorist, the provisions are wider and harsher. In S. 38, a member is defined as 'a person who associates himself, or professes to be associated with a terrorist organization with intention to further its activities'. Under this provision, a doctor treating a sick person belonging to the banned organization, a lawyer appearing for a person arrested as terrorist and a teacher working in a school set up by such an organization can all potentially be accused of being members of a banned organization and be subjected to punishment.

This section does not make the distinction between criminal association and legitimate association. Nor for that matter does it allow people to carry out their legitimate tasks. The CPI (Maoist),

one of the banned organizations listed in the UAPA's Schedule, is known to have created village committees to oversee different aspects of village life from health care to irrigation. A substantial number of the residents of each village are part of or associated with such committees. As per the UAPA, all such persons become members of the outlawed organization and can be punished with a sentence of ten years imprisonment, even if they have never been part of any violent acts.

The fact is that the UAPA defines a wide range of fundamental democratic rights guaranteed to citizens as 'terrorist'. Many more democratic rights of citizens become crimes in S. 39, which defines the offence of support for a banned organization:

39. (1) A person commits the offence relating to support given to a terrorist organisation,
- (a) who, with intention to further the activity of a terrorist organisation,
    - (i) invites support for the terrorist organisation, and
    - (ii) the support is not or is not restricted to providing money or other property within the meaning of section 40; or
  - (b) who, with intention to further the activity of a terrorist organisation, arranges, manages or assists in arranging or managing a meeting which he knows is
    - (i) to support the terrorist organisation, or
    - (ii) to further the activity of the terrorist organisation, or
    - (iii) to be addressed by a person who associates or professes to be associated with the terrorist organisation; or
  - (c) who, with intention to further the activity of a terrorist organisation, addresses a meeting for the purpose of encouraging support for the terrorist organisation or to further its activity.
- (2) A person, who commits the offence relating to support given to a terrorist organisation under sub-section (1), shall be punishable with imprisonment for a term not exceeding ten years, or with fine, or with both.

Here the legitimate act and democratic right of disseminating and receiving information, of generating public debate, of voicing concerns and opposition to governmental policies all become criminal activity if the government decides that it is furthering the activity of a banned organization. That so much concern is shown in the UAPA to curb political meetings gives away the true purpose of the Act—governmental curbs on political dissent.

Through this devious method what is sought to be curbed is not the organization itself but the issues championed by banned organizations. Thus opposition to government policies of creating organizations like the Salwa Judum can conveniently be labelled as one which furthers the activity of a banned organization. The arrest and prolonged incarceration of Dr. Binayak Sen in Chhattisgarh is clearly related to the opposition mounted by the Chhattisgarh PUCL to the Salwa Judum. In fact, once when a petition was filed in the Supreme Court challenging this policy, the government of Chhattisgarh repeatedly threatened the petitioners and made insinuations of their being members of the banned CPI (Maoist) party. Laws like the UAPA make such arrests and threats possible.

The organizations banned under the UAPA are also involved in a variety of activities apart from those that lead to violent acts. It is many of these issues addressed by them which generate support among the people. Any serious attempt to solve peoples' anger and resentment against the government needs to grapple with the consistent failure of elected governments to address development issues. Simply banning organizations that raise issues of poverty or marginalization, however opposed to the existing government they might be, is nothing but short-term policy based in the curbing of Fundamental Rights. Take for instance the practice in some regions of central Bihar where a *dalit* bride was forced to spend her first days after marriage with local upper caste landowners. The Maoist Communist Centre, active in this region, single-handedly put an end to this practice. While such initiatives need to be recorded and appreciated, it is governments that have to take up similar social initiatives and public pressure needs to be built up so that governments act as per the responsibility vested in them. S.39 of the UAPA actually prevents the building up of any progressive political ideas or even opposition to injustices that people endure daily. The bind this section creates is one where citizens

are gagged and the state tries its best to nip public pressure in the bud.

### **The ‘Modified Application’ of Established Norms of Jurisprudence**

When offences and punishments, as in the UAPA, carry the scope for so much subjectivity, procedures and checks that effectively rule out wrongdoing by law enforcers are essential. But, the UAPA does exactly the opposite. It increases police powers of arrest, search and seizure (S. 43A, 43B), makes all offences cognizable [S. 14, 43 D (1)], enhances the period of detention [S. 43 D (2)], overturns the established norms for granting police custody [S. 43 D (2)], undermines the power of the court to demand the attendance of accused in their trials [S. 43 D (3)], disallows anticipatory bail [S. 43 D (4)], enhances the restrictions on bail [S. 43 D (5)], presumes the guilt of the accused (S. 43 E), permits in-camera trials and the withholding of the identity of the witness (S. 44), and finally, allows intercepted communications to be used as evidence (S. 46). Each of these measures gives unrestricted powers to law enforcers.

Arrest without a warrant is permitted for any offence under this Act. Since a large number of offences defined in UAPA have little to do with what a person does, more to do with how the government interprets or wishes to believe what a person’s intentions may be, this blanket power to arrest is an invitation for abuse. Though this power to arrest without warrant is given only to senior officers in the central and state administration, presumable as a restriction on the power, the fact that the ‘designated authority’ may authorize any subordinate officer to make the arrest defuses the restriction. Quite absurdly, this authorization need not even be written or recorded! The requirement in the Cr. P. C. that ‘the police officer arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested’ (S.50), is done away with in the UAPA. Here, all the arresting police officer needs to do is to let the accused know of his crime ‘as soon as may be’.

Once arrested, as per the Cr. P. C., the accused may be detained in jail for a maximum period of fifteen days at a time. Section 167 Cr. P. C. stipulates this condition in order to prevent abuse by the police. The reason for the requirement that the accused is produced in court

is to see whether continued detention is required and also to enable the accused to make any representation before the court since most of the accused prisoners do not have lawyers at this stage. It also enables the accused to complain in case they are denied their rights in jail. The UAPA increases the police remand period to thirty days. Why does such a change appear in this law, for it has no role whatsoever in the aid of justice? Its only possible role is to increase the possibility of the miscarriage of justice by a) reducing the role of the magistrate in assessing whether continued detention is required, b) preventing the accused from bringing any relevant facts to the notice of the magistrate, and c) taking cognizance of harassment, if any, suffered by the prisoner in jail. Since in most instances, the court visit is the only time that the accused is able to meet the lawyer, this change reduces the prisoner's access to legal counsel.

To make matters worse, UAPA stipulates that S. 268 of the Cr. P. C. applies to every offence under the act. This means that the court loses the power to direct the officer in charge of a prison to produce a detained person in court for answering to a charge, or for examination as a witness during the course of an inquiry, trial or any other proceeding. Anyone accused under the UAPA can by law be denied all access to the court!

Not only does the UAPA increase the period of detention to thirty days, it also permits the investigating police officer to apply for continued police custody even after this period. Police custody entails immense mental suffering and physical torture. Given that the UAPA deals with political 'crimes', this period, if anything, needs to be limited so that the accused is able to bring facts before the court without the fear that the facts so stated will lead to increased torture in police custody. By permitting unrestricted police custody, the UAPA gags the accused, prevents them from stating anything that may be inconvenient for the police or the government, and punishes a person with extended prison sentences without a fair trial.

The duration of detention approved by the UAPA is a matter of serious concern because it infringes upon rights guaranteed in the Constitution and the Cr. P. C. A democratic judicial system can declare an accused guilty only after the judge declares them to be so following the completion of a fair trial. The judicial system also fixes

a reasonable period during which an accused may be imprisoned. During this period, the police is expected to complete its investigation and submit its findings in court.

Preventive detention is prohibited by Article 22 of the Constitution and the Cr. P. C. allows a maximum period of ninety days in case an offence carrying a punishment of ten years or above, and sixty days in other cases. Under the UAPA, all offences, including the most minor ones, carry a ninety-day detention. Add to this the provision S. 43 D (2) (b), that detention can be extended by another ninety days, and we have a full-blown law for preventive detention that puts to shame even the draconian National Security Act in having no checks on police power at all!

Added to this is the provision that makes bail more difficult and denies anticipatory bail altogether. Bails can be refusal on a number of criteria, the most significant being reasonable fear that the accused may abscond and commit another offence or that they may threaten witnesses. The UAPA adds a further condition for denying bail to those accused of 'terrorist activities'—that the public prosecutor should have an opportunity to oppose bail and that if on the basis of the case diary the accusations reasonably seem to be prima facie true, bail should be denied. This effectively rules out the possibility of getting bail for most accused. A bail application can be kept hanging for ever if the public prosecutor fails to attend the court, and the case diary whose contents are to be relied upon to assess prima facie truth is a collection of a number of statements, many of which are so blatantly false that they fail to even appear in the charge sheet.

The assumption of innocence is a fundamental plank on which Indian jurisprudence is based, and is most clearly seen in the general rule that granting bail is the norm and its refusal, an exception. But, the provisions of the UAPA arm the government to effectively silence and put behind bars indefinitely any person it finds politically undesirable.

The dice remains loaded against the accused even after a case goes to trial. What would not be permitted as evidence in a crime of murder, or of corrupt dealings of crores of rupees, can be used as conclusive proof for convicting an accused under the UAPA. Two significant provisions—that of presuming the guilt of the accused

and using intercepted communication as evidence—make it very difficult going for the accused in court, while state agencies need to put in minimum investigative work for the accused’s prosecution in court.

The first provision of presuming the guilt of the accused in cases where a terrorist act has occurred, Section 43 E, states that a person accused of a terrorist act will be assumed to be guilty unless he can prove his innocence. In a prosecution for an offence under section 15, if it is proved:

(a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or

(b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence, the Court shall presume, unless the contrary is shown, that the accused has committed such offence.

Presumption of guilt is an extremely dangerous provision, since the accused usually have no way of proving their innocence. To say that the two situations stated above create reasonable suspicion against the person, and to argue that the person is to be assumed guilty are poles apart. For the latter absolves the investigation of any responsibility of presenting a credible prosecution. Once a terrorist act has occurred, this provision helps to close the case as solved if the police so desires, while the persons detained and convicted may be wholly innocent. One can easily imagine a number of situations where a person’s fingerprints may be found at the site of a crime, while the person is unconnected with the crime. Once such presumption of guilt is permitted to enter our jurisprudence, its impact on securing justice will be disastrous.

A second issue is of intercepted phone, email or oral communication being permitted as evidence in a court of law. In private conversations, a number of things are said that are not necessarily meant as per their apparent intent. A steep rise in petrol prices may force someone

to remark that those responsible should be doused in petrol. Such remarks, when nothing of the sort is intended, are normal in the life of a society. The use of such flippant remarks as evidence can lead to a great miscarriage of justice. Interceptions may aid investigation or even the prevention of offences, but their use as evidence is once again an easy way to convict the accused, regardless of their innocence.

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When POTA was introduced, after the large-scale institution of false cases by the police across the country under TADA, it was considered important to send a message to the police that it could be held culpable for such actions. Hence S. 58 of POTA came into being:

58. Punishment and compensation for malicious action.

- (1) Any police officer who exercises powers corruptly or maliciously, knowing that there are no reasonable grounds for proceeding under this Act, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.
- (2) If the Special Court is of the opinion that any person has been corruptly or maliciously proceeded against under this Act, the Court may award such compensation as it deems fit to the person, so proceeded against and it shall be paid by the officer, person, authority or Government, as may be specified in the order.

With UAPA replacing POTA, entire sections were imported verbatim, but it is worth noting that the contents of S. 58 listed above were dropped as a policy decision. In any case, the punishment for malicious action under POTA was lower than that stipulated in the IPC. The complete exclusion of this clause from the UAPA points to the fact that governments wish to provide the police with prior general amnesty for any actions they might take.

### III. The Case of SIMI

When the Students Islamic Movement of India or SIMI was banned on 27 September 2001, barely two weeks after the 11 September 2001 attack in the US, the government, then headed by the right wing Bhartiya Janata Party promptly banned SIMI under UAPA (1967). SIMI came into existence in 1977 and there were no known cases in which they were implicated or which could be characterized as ‘striking terror’ or sowing enmity between groups, religious or otherwise. SIMI was perceived as a political challenge and this translated into their being banned by the government.

As per the provisions of the Unlawful Activities (Prevention) Act 1967, under which SIMI was banned, a tribunal headed by a sitting high court judge has to be constituted within thirty days from the day the ban is notified. The tribunal’s purpose is to judge ‘whether or not there is sufficient cause for declaring the association unlawful’—this is perhaps the only corrective imposed on the immense power accorded to the executive by the UAPA. The law clearly stipulates that such a Tribunal must declare its finding ‘within a period of six months from the date of the issue of the notification’ banning the organization. However, in practice, the Tribunal and its functioning have shown how the UAPA skews all judgements in the government’s favour.

SIMI was banned in 2001, 2003 and 2006, and each time, a new Tribunal was constituted. Each Tribunal returned its finding in favour of the government, upholding the ban on SIMI, and each time, Shahid Falahi appealed before the Supreme Court against the Tribunal’s decision. Now, while the Supreme Court showed great alacrity on 6 August 2008 in responding to the Centre’s plea to stay Judge Mittal’s order in favour of SIMI (see later in this chapter), it did not take up any of Falahi’s three appeals in all these years.<sup>1</sup> If one is to follow the rule of law, there should be no difference in the legal status of Falahi’s appeals and that of the Centre’s before the Supreme Court. After all, both were equal parties before the Tribunals.

SIMI was banned for the first time in 2001 under Section 3 (1) of the UAPA. The ban was put into immediate effect because the provision, Section 3 (3) allows for the government to impose an immediate ban even before the declaration for banning is adjudicated and confirmed or cancelled by the Tribunal.

### **Arguments against the ban**

In 2006, SIMI raised several arguments against its ban. SIMI argued that the UAPA 1967 contemplated offences with regard to 'cession and secession' only, something attested to by the Union Home Minister Y.B. Chavan in 1968 during the debate in the Parliament on the UAP Bill. The Tribunal rejected this argument and insisted that 'The main concern at the time when the said Bill had to be moved, was that the Country was faced with serious threat to its integrity and sovereignty and in a situation where it was felt that there was no law to deal with activity leading to cession or secession ... it was imperative to provide for effective law to counter the unlawful activities of divisive forces ... [however] the fact remains that even in the present day context such threat continues to exist on account of terrorism and other kind of unlawful activities by various organizations/militant outfits ... Thus it would not be right to contend that unlawful activity, as contemplated under the Act, can be held to have been committed only in case an action complained of intends or supports any claim to bring about cession or secession ... Any action which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India is also of equal concern.' This judgment by the Tribunal effectively *expanded* the scope of what constituted unlawful activity well beyond what was contemplated by the original Bill.

This argument aside, a brief review of arguments raised by SIMI is listed below:

- a) The minimum requirement of natural justice cannot be fulfilled where the threat of prosecution dangles on every person who seeks to contest these proceedings. As the UAPA criminalizes association with a banned organization no person can in reality contest an organization's ban without fear of having committed a cognizable offence by doing so.
- b) Though the UAPA, under Section 3 (1) requires the government to state its opinion as to why an organization should be banned and also requires it under Section 3 (2) to state the reasons for its opinion, the Government notification imposed a ban with 'immediate effect' under Section 3 (2), which leaves the choice of revealing information and reasons for the ban on the government. In other words, the checks on the government's power in the UAPA, can be quite easily ignored.
- c) The notice banning SIMI did not fulfill the requirements of Section 4 (2), 'non-disclosure of the basis of the action', as explicated by

the Supreme Court in the case of *Jamat e Islami i Hind versus Union of India* (1195, 1 SCC 42). In this case, the court had ruled that ‘... subject to the requirement of public interest which must undoubtedly outweigh the interest of the association and its members, the ordinary rules of evidence and requirement of natural justice must be followed by the Tribunal making adjudication under the Act’. SIMI argued that this made disclosure of supporting evidence a part of natural justice due to everyone.

- d) The SIMI counsel argued against the reliance on ‘secret’ material by the central government to ban them. Such ‘secret’ material was neither shared with nor inspected by the accused organization. The counsel compared its predicament with that of the VHP, RSS and Bajrang Dal. On 4 June 1993, a UAPA Tribunal considering the banning of VHP, RSS and Bajrang Dal had refused to consider ‘secret’ documents because these were not made available for the scrutiny and analysis of the accused organizations. Why this stance of an earlier Tribunal, which gave the benefit of doubt to organizations responsible for acts such as the demolition of the Babri Masjid and the following anti-Muslim riots, was not applied for SIMI is a moot question.
- e) Although Rule 5 of the UAPA Rules 1968 specifies that every reference made by the government to the Tribunal need to be accompanied by ‘all the facts on which the ground is specified in the said notification based’, no FIR number, name of police station and the provisions under which cases are lodged against the accused were provided by the government in its Background Note on SIMI.
- f) The Act permits a ban for a period of two years. But repeated banning has meant that the Government has uncontrolled power to continue banning organizations as unlawful for indefinite periods.
- g) SIMI insists that they have always respected and abided by the Constitution of India in its letter and spirit. This is attested to by the fact that though the organization has been repeatedly and unjustly declared ‘unlawful’ by the central government, SIMI in each case chose to contest its ban in the manner provided by Indian law.

### **The Tribunal’s Judgment**

The Tribunal headed by Justice B.N. Chaturvedi while upholding the ban in 2006 advanced several arguments justifying the continued ban on SIMI.<sup>2</sup>

Responding to the SIMI counsel's argument that following Supreme Court's judgment on *Jamaat e Islam i Hind*, SIMI too should have access to evidence presented against it, the Tribunal held that the Supreme Court judgment meant that the central government could, if it so wished, withhold material from the accused organization in 'public interest'. In the context of the argument that the background note did not contain essential details, the Tribunal held that the grounds of the ban and the facts which constituted the basis of the ban by the central government drew from Intelligence inputs, which were set out in the background note. The Tribunal said that the mere fact of cases being registered against SIMI members did not mean much. Assuming that cases registered under sections of the IPC are not necessary for conducting judicial procedures as the 2006 Tribunal's judgment seems to imply, it is indeed odd that SIMI members were accused of being involved in the Malegaon bomb blast (2006) and the Hyderabad Mecca Masjid blast (2007), both of which now appear to be the handiwork of Hindutva terror organizations.

The Tribunal further argued that SIMI '... carries a tag of being a terrorist organization having been so declared vide Schedule to the Act. The declaration of respondent-organisation as a terrorist organization implies that it has been following the path of terrorism contrary to its assertion.' This is a circular argument which elevates the subjective understanding of the executive to the level of fact.

If we consider the Gazette Notification and the Tribunal judgment banning SIMI, some startling facts also emerge. On 11 August 2006, the Ministry of Home Affairs notification declaring SIMI to be an unlawful association claimed that,

Central Government is of the opinion that the activists of SIMI are still indulging themselves in the communal and anti-national activities [*sic*]. The activities of SIMI are detrimental to the peace, integrity and maintenance of the secular fabric of Indian society and that it is an unlawful association. ... [SIMI aims to] utilize students/youth in propagation of Islam religion and obtain support for jihad (for Islam). SIMI is charged with the formation of "shariat" based Islamic Rule through 'Islamic Inqalab' ... and that it does not believe in the Nation-State. It also does not believe in the Constitution or the Secular order. Idol worship is regarded as sin by it and seeks to end such idol worship as part of its holy duty. ... as far as believing in Holy Quran and its teachings and propagation of Islam are concerned, no fault can be found therewith. However, the problem arises when in the name of propagation of Islam, the same is sought to be thrust upon non-Muslims by resorting to violent means or use of force in

any form or terrorizing the people. ... There can be no controversy on a correct and true meaning of term 'jihad'. The problem arises when a distorted meaning is assigned to it. ... [by exhorting its cadres, it] is taking recourse to violence and unlawful activities. By seeking to establish Islamic Rule of Caliphate ... [they] are working for destruction of Indian Nationalism ... [and against] the concept of secularism enshrined in the Indian Constitution.

In its submission before the Tribunals, SIMI repeatedly pointed out that its exhortations against idolatry applied only to Muslims. However, this injunction meant for believers was transformed into the Tribunal's sweeping claim that SIMI was against idol worship per se or that SIMI intended to forcibly end it. The direct implication of this is that SIMI's politics is directed against Hindus in general. The 'crimes' that SIMI committed were entirely in the realm of political mobilization and no evidence of violent crime which showed that SIMI was using force against non-Muslims or coercing them into become Muslims was produced to corroborate this. Paragraph 17 of the Tribunal's order indeed says, 'though no violent incident involving SIMI has been reported during 2004-05, there is no indication that the outfit has given up the path of violence.' This statement is an indication of how the Tribunals constituted to review bans operate in favour of the government.

The Tribunal's judgment paints a picture of SIMI which is meant to arouse suspicion about Islamic beliefs and practices as though the practices themselves constitute 'unlawful activity'. They damn SIMI for 'crimes' such as printing leaflets and quarterlies, and bringing out pamphlets showing the role of BJP in the anti-Muslim carnage in Gujarat of 2002. It is worth reiterating that while SIMI was declared unlawful for allegedly not believing in the Constitution, the organization contested these charges against it lawfully. Also, the Supreme Court found no time to hear what SIMI had to say.

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At what point does propagating views contrary to majoritarian or governmental understanding question the Constitution? And indeed, in a secular country such as India, can the government decide what is an acceptable understanding of Islamic beliefs and practices? Then again, if the subjective understanding of the government is valid, then why are different mechanisms adopted for dealing with Hindu right wing organizations which invoke the idea of India as a Hindu country? Indeed, there is corroborative evidence, available in the reports of judicial commissions of inquiry, which implicates

Hindutva groups for committing violence against non-Hindu minorities over several decades.

In a climate of fear where terrorists are identified largely as Muslims and Hindutva terror is soft pedaled, majoritarian and exclusivist ideas have a free run under the UAPA. The essential element that is lost is the democratic rights of citizens and equality before the law. The NDA and the UPA I and II governments have chosen to ignore Hindutva terror and have concentrated their attention on Muslims.

The experience of SIMI shows the problem which confronts a banned organization. The fact that SIMI has failed to overturn each notification banning them shows the limitations of Tribunals. Whether material is not disclosed to the accused organization or whether individuals alleged to be members of SIMI are considered guilty before the conclusion of judicial processes, it is the subjective understanding of the Tribunal judge that counts. Moreover, it is not the actual commission of crimes, but the government's claim that SIMI has not disavowed violence which is held against them. This is even after SIMI swearing before the Tribunal as well as the Supreme Court that its charter disavows violence.

### **Hindutva Terror**

Hindutva organizations have a far longer history of violence against the minorities. Its anti-minority rhetoric has a strong following within the government as well, and UAPA Tribunals, constituted by the government have yielded few surprises in this regard, except in the case of Justice Mittal, who overturned SIMI's ban. The Justice B.N. Chaturvedi-led Tribunal for instance took the position that SIMI's rejection of idolatry was a direct threat to all those who do practice idolatry—the Hindus.

While the deep roots of the Hindutva ideology can be seen in state apparatus, how is Hindutva violence, in legal terms, not considered a threat to national security or unconstitutional or something that strikes terror in a section of people?

**Terrorist Gang:** A fourth category, Terrorist Gang (TG) made its appearance in the UAPA in 2004 and was a direct import from the organized crime acts of several states. These acts refer to mafia-like or organized crime groups or a few people who come together to plan and carry out a crime. Termining an organization a TG is the way in which the government can evade banning an organization or making its associates culpable for a terrorist act. In a TG, there is no guilt by

association (see cases of college students, *dalit* activists and Kanchan Bala in Chapter 4 where the provision of ‘association’ takes on absurd forms; the UAPA authorizes the police to accuse people of being members of banned groups for a range of reasons—from being landlords of the accused to being friends and relatives of those accused). Branding an organization a TG does not disable or ban it from carrying on its work and its mere membership is not considered a criminal act. For instance, Abhinav Bharat was not banned, but its members were accused of forming a TG for carrying out terror acts. The kith and kin of TG members escape harassment as they are not covered by Sections 10 and 38 (membership of banned organizations) or by Section 39 (supporters of banned organizations) of the UAPA. A convicted member of a TG is only covered under Section 20, which mandates imprisonment for terms extendable to life imprisonment whereas Section 38 mandates that a convicted member of a banned organization should be punished for up to ten years and Section 10 declares that a convicted member of a UA should be punished with a term not less than five years and extendable to life. If the actions of a convicted member of UA resulted in death, they are to be punished with death. In other words, TG supporters and sympathizers escape the heavy punishment which confronts supporters and sympathizers of UA and TO.

In a TG, only those who plan and perpetrate action are considered culpable whereas in UA or TO, every member, supporter or sympathizer is potentially a criminal, whether or not he/she participates in planning and carrying out violent action. In fact, Section 39 says that convicted sympathizers of TOs can be imprisoned for up to ten years.

The conspicuous absence of any Hindutva terror outfit from the schedule of the UAPA speaks for itself and brings out how the executive discriminates between citizens and their democratic rights even when the nature of the alleged crime may be similar. It is not just the government, but also the Tribunal which is guilty of inconsistency, subjectivity and arbitrariness. In the case of RSS, VHP and Bajrang Dal, the Tribunal insisted that banned organizations need to have access to evidence—something which another Tribunal denied to SIMI! This means that the subjective discretion of the government and Tribunal in declaring organizations unlawful or terrorist can end up being in contravention of Article 14 which mandates equality before the law.

The application of the category of TG for Hindutva organizations has meant that different courses of action are adopted for similar

crimes in Indian law. Being branded a TG does not cripple an association, incriminate every supporter or sympathizer of a banned organization or carry the disabilities associated with being UA or TO. It is this factor that makes the powers given to the executive by the UAPA open to recurrent abuse.

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A malleable polity has reduced citizen's rights and expanded the executive's powers to such an extent that extraordinary powers have been conferred to the executive for use during peace times. The UAPA is a permanent law which makes offences out of democratic rights. Even as the government asserts its monopoly on practicing violence, it criminalizes certain forms of political dissent, while ignoring others. The democratic right to practice political dissent of whatever content no longer exists. There is no doubt that violent acts must be punished; but surely the comprehensive Indian Penal Code can deal with all manner of violent crime, political or otherwise.

What the government sees as potentially threatening to its hegemony has been equated with threats to 'national security'. As a result, the 'unlawful' now covers several issues. If in 1967 it was restricted to 'reasonable restrictions in the interests of the sovereignty and integrity of India', it now includes activity 'which causes or is intended to cause disaffection against India'.

This report tries to show the arbitrariness which the UAPA encourages in political and judicial decision-making. By comparing the fates of SIMI and Hindutva organizations, it does not support the banning of one over another, rather, it questions the very logic of banning political dissent. The question this report seeks to raise is whether there is a need for an extraordinary law to deal with political dissent during peace time in a democratic country. Who does such a law serve if it has led to the curtailing of Constitutionally guaranteed democratic rights of Indian citizens? The next chapter details the experiences of people who have been accused under various sections of the UAPA to highlight the repeated pattern of biases of state authorities, the abuse of power by the government and the curtailment of citizens' democratic right to political association, assembly and expression.

#### **Endnotes**

1. The Gazette of India, Part II, Sec 3, Subsec ii, New Delhi, 11 Aug 2006.
2. Union of India (Central) vs SIMI, 26 March 2002, Order of Justice S. Agarwal, 99 (2002) DLT 147, 2002 (63) DRJ 563.

## IV. Tales in Terrorism

Just a few hours after the blast at the Delhi High Court on 7 September 2011, Harkat-ul-Jihad Islami (HuJi, with bases in Pakistan and Bangladesh) claimed responsibility via an email sent out to various media offices in the capital. The email stated that the blast was carried out in order to protest the death sentence on Afzal Guru, a key accused in the 2001 Parliament attack case. Within a day, however, another Islamic organization, Indian Mujahideen (IM, a home-grown organization) sent out an email claiming responsibility for the same. In the course of the next few weeks, newspapers reported that the man who planted the bomb that fatal Wednesday morning was probably of Hizbul Mujahideen (HM, primarily a Kashmir based organization). In the third week of October, media reports included the Jaish-e-Mohammad (JeM, primarily a Pakistan based organization) within its speculation.

In the growing confusion over who was responsible for the blast which left fifteen people dead and over seventy injured, the arrest of three youth from Kishtwar by the National Investigation Agency (NIA) has placed an inordinate amount of stress on the reliability of emails as possible clues. It is worth remembering that none of the accused was present in Delhi on the day of the blast. Further, one of the accused who purportedly sent the first email, Amir Abbas Dev, is possibly mentally unwell and his co-accused, Abid Hussain, is a minor. The third, Wasim Malik, supposedly the lynchpin of the plot, is said to have been framed on the allegations of a jailed HM militant.

In these days of terror attacks when investigators follow emails and ATM transactions as leads and admit them in court as valid pieces of evidence, the question to be asked is in what manner do the police use UAPA against the accused? A few cases are offered below of those who have been detained under the law. While the cases presented below have been taken from various FIRs and charge sheets filed by the police, our effort has also been to look beyond the police account, at the politics and circumstances of these accused in order to reflect on why they have been detained. The case studies illustrate how, in these seven years since the UPA led government came to power, a large number of arrests of persons belonging to diverse walks of life have been arrested under the amended UAPA. What is common across these cases is that most are not guilty of any cognizable criminal offence or activity. Their alleged association with an organization critical of the government is itself held as a crime. The case studies

show that the UAPA helps the government specifically target those whose criticisms it seeks to repress.

### **An Aeronautical Engineer**

A resident of Handwara in Kashmir, Imran Kirmani wanted a job far away from militancy-torn Kashmir. The son of a school teacher, he pursued and completed a course in aviation maintenance from Rajiv Gandhi Memorial College of Aeronautics, Jaipur, in 2003. He returned to Kashmir and worked as a teacher in a private school for a year and half, waiting for a job in the aviation sector. In December 2005, he came to Delhi and joined Star Aviation Academy, Gurgaon, as an aircraft technician. After working there for nine months, he was on the verge of getting a job with a premier airline company when on 15 November 2006 he was picked up by members of the Special Cell of Delhi Police.

Kirmani was kept in police custody for ten days, during which he was tortured and then imprisoned on charges of 'waging war', procuring and diverting funds collected through hawala transactions for purposes of terrorism, being a member of a banned organization and, carrying explosives. The FIR lodged by the Special Cell states that Imran as well as his alleged associate, Ghulam Rasool, were members of Lashkar-e-Taiba (LeT, a banned organization). They were accused of setting up a LeT base in Delhi on the instruction of one Khaled, a member of the same organization. Kirmani's charge sheet was filed with a minor modification and the case was committed to trial in March 2007, almost three months after his arrest. It is pertinent to remember that both accused were held under Sections 17, 18 and 20 of the UAPA, read with Sections 121, 121-A, 122, 120B of the IPC and Section 5 of the Explosives Substances Act. The inference is that the duo, as members of an organization banned under UAPA, had conspired to wage war against the state by procuring explosives and transferring hawala money. Naturally, they were not granted bail at their first hearing.

Imran pleaded that he was not guilty and that he had been picked up from his rented apartment in Dwarka along with Rs.4.5 lakh that his father had given him (of which Rs 50,000 had been borrowed from a friend) for purchasing a flat in Delhi. His father had sold a plot of land in his village to raise the money for Imran. Further, Imran stated that his signatures were taken by the Special Cell police on blank sheets of paper. His co-accused, Ghulam Rasool, was picked up from the exit gate of New Delhi airport and both claim that

explosive substances were planted on them.

Over four-and-a-half years later, in May 2011, Kirmani's trial concluded and Session's Judge Surinder Rathi not only acquitted both Imran and Ghulam Rasool but made several adverse comments about the Special Cell and its 'unspecial' ways. Besides casting severe doubt on the shoddy investigation done by the police, the Judge drew attention to the misleading facts provided in court. Examining the failure of the prosecution in providing a satisfactory answer as to why a junior official, Sub-inspector Rajendra Singh Sehrawat, was initially shown as the investigating officer (IO) when senior officials such as Inspector M.C. Sharma and others were part of the raiding team, the Judge opined, 'The clandestine manner in which the senior officials shirked from their role of taking over the investigation and becoming a witness in this case, despite heading the entire operation, smacks that something was seriously amiss in the whole story.' The story of Imran and Ghulam Rasool is not a one-off case. The response to an RTI filed by activist Gopal Prasad shows that the Special Cell has a habit of framing individuals and keeping them behind bars for inordinate periods of time, without much of a case in hand. Between 2005 and 2010, the Special Cell arrested 174 people on various charges, of which 119 (nearly 70 per cent) were acquitted.

Imran Kirmani and Ghulam Rasool's case show what blatant miscarriages of justice the UAPA permits. Both were kept behind bars for nearly five years for crimes of which they did not commit! Today, Imran is back in his village and although he tried to meet the Chief Minister of Jammu and Kashmir, he has not been able to do so till date. No longer interested in joining the aviation sector, this qualified engineer now teaches in a local school.

### **A Civil Rights Activist**

On 6 February 2010, Seema Azad and her spouse Vishvviyay were arrested at Allahabad railway station on charges of being Maoists and sedition. Cases were slapped against both under the UAPA 2008. Following this, bail petitions were presented in court one after the other. Each time the petition was rejected. Apparently, the cause behind the rejection of these petitions would have been the 'threat' posed by Seema to the State.

Seema completed her bachelor's and a master's degree in psychology from Allahabad University. Till 1995, her interests were mainly confined to personal scientific quests in understanding the mysteries of the universe. But she started to connect these inquiries

with societal movements through books such as J.D. Bernal's *Science in History*. In 1995–96, her involvement in student and gender politics began increasing.

Seema remained active on the women's liberation front till 2001. The bonds forged with the revolutionary students' movement continued till 2004. Seema married for love and left home. She got rid of the caste identity reflected in her name and replaced her surname, Srivastava, with 'Azad'. A new Seema was born: Seema Azad. She put together some money and bought a bike. She went amongst people to find news. Her struggle involved making people's lives a part of the news. The newspapers in Allahabad prominently featured her reports. Seema became one of the much talked about people in the city. She became a part of movements associated with human rights, the struggle against exploitation and oppression, sociopolitical people's movements, and of the demonstrations of peasants and workers. A new magazine, *Dastak*, was brought out by her which privileged people's movements and sociopolitical thoughts. Through the magazine, she did a thorough investigation of the Ganga Expressway plan which threatened to displace thousands of farmers. In order that the threats posed by the Expressway plan be known to more and more people, she published the findings of her survey in the form of a booklet and distributed copies. *Dastak* also published a long report on the arbitrary arrests and torture of Muslim youth in Azamgarh. Seema Azad became more and more active in the human rights movement. She joined the PUCL in Uttar Pradesh where she was entrusted with the responsibility of the secretary.

At the time of Seema's arrest, there was a generation of youth in Uttar Pradesh vocal in raising human rights issues. Growing social insecurity was creating anger and discontent amongst people. Such reactions were seen as threats by governments, both the centre and the state. One name expressing this protest was that of Seema Azad's. In early 2010, on their way back from buying books from the Delhi Book Fair, Seema and her husband were arrested for expressing their opinions.

In a context where patriotism and sedition can be read into the same act, this arrest can be seen as nothing more than a dangerous and agonizing farce intended to silence a human rights activist.

### **College Students**

Since the third week of September 2008, three students of Jamia Milia Islamia including one former student have been behind bars on

charges of terrorism. Zia-ur-Rehman, a final year student of the BA Pass Programme was arrested on 20 September 2008 in the afternoon after he visited the police station with his father for the second time to give a copy of the tenant verification form to clarify his family's relation with the youth who were occupants of flat no L-18, Batla House, where an encounter had happened the previous morning. Mohammad Saquib Nissar, a former student of Jamia, who was pursuing a MBA course from Sikkim Manipal University (Distance Education) and working in a private firm was picked up from his residence on 20 September after he had appeared before a national channel to proclaim his innocence. Mohammad Shakeel, a final year student in the MA Economics programme at Jamia Milia Islamia was picked up on from his home at Sangam Vihar in the morning of 21 September. All three were paraded before the media covered in telltale white and red checked Arabi rumaal, a farcial 'proof' of their communal identity. A reporter who was lucky to get an interview with Zia wrote about how the 'jihadi' mind works behind soft-spoken, educated faces and that the accused are actually 'walking bombs who perform their act of mass slaughter in the name of Allah and without the slightest suggestion of remorse'. Such gross and unsubstantiated judgments are common in media representations of Muslims.

Three years down the line, all three remain behind bars as do two others, Mohammad Saif, a graduate from Shibli College, Azamgarh, who was arrested from the controversial encounter site on 19 September itself, and Zeeshan Ahmed, his flat mate and an MBA student who was writing an examination at the time of the encounter. Ahmed was arrested that evening after he 'surrendered' to a police team waiting outside a TV channel office where he had gone to publicly declare his innocence. Over the years, all five have been accused not only in the Delhi blast case of September 2008 but also shown as guilty in the Jaipur and Ahmedabad bomb blasts of May and July 2008 respectively. The police claim that they are members of the banned organization, Indian Mujahideen, which is allegedly involved in various blasts across the country. In February 2011, nine accused (including the five mentioned above) approached the Supreme Court praying that their various cases be clubbed together and tried in one city as they feared that the 'slow pace and huge number of cases filed against them in different states will outlast their lives'. Charges were finally framed in May 2011 against the thirteen accused in the Delhi blasts which included waging war, murder, attempt to murder, mischief causing damage along with

criminal conspiracy and several sections of Explosives Substances Act, Information Technology Act and of course, the UAPA.

If charge sheets are filed after such delays (in this case, a delay of almost three years!), and bail is denied because the cases are deemed 'serious', then the fanfare with which the police arrest IM or SIMI suspects, needs to be investigated. It should be remembered that the nine Muslim youth, allegedly members of SIMI, who were arrested in 2006 in connection with the Malegaon blasts would have continued to languish in jail had not Swami Aseemanand's confession shown that the investigation by the Maharashtra Anti-Terrorist Squad (ATS) was wrong all along. Even now, they have only been granted bail and not pronounced innocent by any court of law. Given this background, it is fair to ask why the road to justice is always so long and tortuous for Muslim youth accused in blast cases. Or is that the police use the UAPA as a communal tool to stereotype Muslim students and youth as likely terrorists and jihadis?

### **Dalit Activists**

Angela Sontakke was arrested on 24 April 2011 by the Maharashtra ATS for allegedly having links with Maoists. Angela was charged with crimes under the UAPA. The daughter of a schoolteacher from Ballarshah town in Chandrapur district, Maharashtra, Angela graduated in micro biology, completed her master's degree in science and also earned a B.Ed. degree. She taught in Chandrapur till 1996. While studying in Nagpur she met Milind Teltumbde, also from Chandrapur, and they got married. Milind's nephew Viprav Teltumbde stated that Angela moved to Mumbai to avoid constant harassment by the police because Milind Teltumbde left home and went underground as a political activist. Anand Teltumbde, Milind's brother and a dalit writer and activist, had not heard from either Angela or Milind in a long time and did not know about where they were or what they were doing, though after her arrest, he has done whatever he could to ensure timely legal and other assistance to her.

The police have foisted twenty cases on Angela, mostly for alleged crimes she committed in Gadchiroli and Gondia, both places she has never visited. The police claim to have recovered Maoist literature and some cash from Thane, the place where she was arrested. For the police, the possession of Maoist literature was proof enough to accuse Angela of being a member of the CPI (Maoist) and thus deserving of punishment. The police version is that Angela is a member

of the 'Golden Corridor Committee' set up to widen the Naxal base in urban areas like Surat, Ahmedabad, Mumbai, Pune and Thane. She endured prolonged police custody because the police extended her custody eighteen times, matching the number of crimes that she was accused of committing. Finally, she was remanded to jail at Byculla women's prison in Mumbai.

In spite of her being tried for so many cases, she was not taken for her court hearings. On 15 and 17 October 2011, prison officials and staff of Nagpur Central jail (where she was lodged at that time) did not take her to court in Mumbai and Gadchiroli, respectively. When Angela protested and sought an explanation from the jail superintendent, he ordered two women staffers to assault her. She was not given medical treatment for the injuries she sustained due to this assault for four days till she returned to Byculla. Adding insult to injury, the Nagpur city police registered a criminal case against her at the Dhantoli police station alleging she had created prison unrest and obstructed jail officials. This became the twentieth case against Angela. Angela's lawyers and other democratic rights and civil liberties activists find that deliberate efforts are being made to ensure that Angela simply does not get a fair trial. This means that her release will be further delayed.

Six others were arrested within days of Angela's arrest. They are all dalits. Sushma Hemant Ramteke, 27 years, was arrested from Pirangut in Pune on 25 April 2011. Though no incriminating evidence was found with her, she was charged with having played a part in setting up a Naxal base in Pune. Since 23 January 2011, she had been working as a computer operator in an engineering equipment company. The only offence she seems to have committed in the police's eyes is that she shared rented accommodation with Angela. Anuradha Sonule and Mayuri Bhagat (Jenny), both 23 years of age, were arrested from Pune on 28 April 2011. They are activists from Chandrapur who were in the final year of their bachelor's degree. They came to Pune looking for employment and further education in 2009 after the police crackdown on student activists in Chandrapur in 2008. They too have been accused of being members of the CPI (Maoist) because they possessed Maoist literature. Anuradha Sonule was probably arrested because she is Manoj Sonule's sister. Manoj was arrested from Chandrapur in 2008 along with eight others, including Arun Ferreira. (This is the case in which all the accused, including Manoj and Arun, were acquitted in September this year.) Jyoti Babasaheb Chorge, 19 years, was arrested for being a friend of Anuradha and

simply for being at the wrong place at the wrong time. She had left home a few days earlier and taken up rented accommodation. She left home as her parents were forcing her to get married even though she wanted to pursue further education. She found a friend and mentor in Anuradha who helped her to find a place to stay. She planned to find a job and pursue her education since she had only completed her higher secondary examination. Sidhartha Bhosale (Jeeva), 24 years, was arrested by the ATS from Chandwad, Nasik, on 28 April 2011. He is a college student studying for his master's in Economics and an active member of a theatre group. Sidhartha is from Ahmednagar and had been staying in a rented house in Kondhwa, Pune. His older brother Chandrakant, who works as a peon in the village school, describes Sidhartha as a sincere student who had also taken the entrance test of the state service commission. Deepak Denge, 27 years, is the last person accused in Angela's case. A Pune Municipal Corporation employee, he was an active member of a cultural organization called Kabir Kala Manch. The ATS launched a witch hunt to track down all members of this organization, which they claim had links with the Maoists. Leading political figures in Pune like socialist leader Bhai Vaidya have launched a campaign for his release. Denge's wife is a cancer patient and he is from a very poor family.

A few weeks after Angela and the others were arrested ten contract workers from West Bengal were arrested in Pune by the ATS. The contractor under whom they were working was accused of having Maoist links and this was sufficient for the Pune ATS to arrest him along with all the contract workers working under him. It is worth noting that this ATS is the same investigating agency which till date has not made any arrests in the German Bakery blast case.

## **A Politician**

When Thounaujam Shyamkumar Singh, a Manipuri businessman turned politician won the assembly elections in 2007 on an MPP (Manipur People's Party) ticket, he had reasons to celebrate. It made up for the two defeats that he suffered in 2001 and 2002 after contesting with NCP and INC tickets, respectively. But his celebration happened somewhat differently: hot paneer pakoras and chutney made in Tihar canteen were freely distributed among his friends and the jail staff. Singh had filed his nomination and contested elections from behind bars as he was facing charges under Sections 18, 19 and 20 of the UAPA and Sections 3 and 9 of the Official Secrets Act read with Section 120B of the IPC.

On 2 October 2006, Singh and two others who were identified as active members of the UNLF (United National Liberation Front, a banned organization) were nabbed by the Special Cell officials headed by Inspector M.C. Sharma at the New Delhi airport. Singh was charged for acting as a conduit and facilitator and for planning a meeting in Kathmandu for which he had already done a *recce* in September 2006.

The two others who were arrested, P.Ghanshyam Singh and M. Jayanta Kumar Singh, were self-styled colonels of UNLF and were travelling on forged documents. Both were already accused in a number of heinous crimes in Manipur and Jayanta Kumar, the deputy secretary of the organization, was the accused in an extortion case too. The Delhi Special Cell claimed to have found a pen drive and CD with Ghanshyam and Jayanta Kumar containing enough incriminating evidence for their being members of a banned organization. The police claimed that Singh, a contractor cum politician, was hoping for electoral support from the UNLF for his forthcoming election in 2007 and that all three had stayed a night together in Delhi before their attempted departure and arrest. An FIR (no. 70/2006) was filed in Delhi alleging that the trio was setting up a terrorist base in the capital. Another one was filed in Imphal. Within three months the charge sheet was filed, in which the charges of waging war and forgery were added.

Till early February 2007, Singh could not impress upon the Delhi courts to give him bail even though his lawyer argued that he was a public man, that his association with the two others was merely coincidental, that he was not remotely connected with any banned organization or involved in any anti-national activities and, that his business as a civil construction contractor had suffered huge losses on account of his incarceration. Things changed when Singh won the assembly elections and was also elected as the Deputy Speaker of the Legislative Assembly. He was allowed to proceed on interim bail which he renewed from time to time for the next two years. His stature as a politician was sufficient reason for him to remain on bail. However, in 2009, the Delhi High Court as well as the Supreme Court rejected his bail application. At this juncture, his political fortunes also changed as he was accused of rigging the Lok Sabha elections in his own constituency (Andro) in April 2009. He was expelled from his party, MPP, for anti-party activities and he resigned from his post as Deputy Speaker.

Interestingly, while the two others arrested with him remain behind bars, Singh's position as a politician helped him in many ways. After all, an ex-Deputy Speaker of a duly elected government house is vastly different from self-styled colonels of underground militant organizations! And Singh had no hesitation in using his public profile to impress upon the courts the importance of his personhood. His bail petitions claimed that he was suffering from several complicated health issues ranging from angina pectoris, hypertension to diabetes and a host of other issues, including depression. He was even admitted to the Regional Institute of Medical Sciences in Imphal and created quite a stir when he attended the Legislative Assembly, leaving every day escorted from the hospital. A short while after his bail was rejected, he was able to apply again and continued like this for four-and-a-half years till March 2011, when the sessions court in Delhi concluded the trial and pronounced its judgment.

The judgment said that there was no case against Singh as the prosecution had failed to prove its charge against the trio beyond the case of the forged documents that P. Ghanshyam and Jayanta Kumar were guilty of travelling on. So, once again, the overzealous Special Cell had no substantive proof of terror plots being hatched by underground militant organizations. Th. Shyamkumar Singh's case offers some interesting insights into the way in which an influential political career can change the course of a UAPA case.

### **A Trade Unionist and a Women's Rights Activist**

Born in Siliguri, Gopal Mishra was raised in an orphanage after the mysterious death of both of his parents while he was still an infant. Gopal's father was a labour union leader in one of the tea gardens of Siliguri. After completing his education from Scottish Church College and Jadavpur University, Kolkata, Gopal went on to develop a strong interest in labour organizations and struggles. He moved to Rajasthan to work with some civil society organizations. Later, he joined All India Peoples Resistance Forum (AIPRF), an anti-imperialist forum in Delhi and in due course, decided to work among the working class of Delhi. The issues he took up were those typically related to non-payment of overtime, minimum wages, retrenchment of workers, etc. What made him different from other trade unionists and which became the main reason for his arrest was the fact that he was deeply sympathetic to Maoist politics.

Kanchan Bala was born in Varanasi in an economically backward home and her father's paan *khokha* was not profitable enough to

manage the needs of a family of five. Kanchan's earnings as a primary school teacher were very important in financing the education of her two younger brothers. Soft spoken and gentle, Kanchan developed a strong sensitivity towards and political interest in questions of gender from an early age. Soon after graduation, she joined an NGO which enabled rural women to market their products and was also active in other programmes and issues related to women. She decided to move to Allahabad and work among students as a cultural activist as she is a very fine singer who often composes protest songs. She took part in many activities in and around Allahabad University and was intellectually involved in seminars and study circle groups at the university. She married Gopal in 2005 in Delhi. Here, she became actively involved in bringing out a magazine related to women's issues.

In April 2010, the Special Cell claimed that it had arrested Gopal Mishra from outside Shyam Lal College in Shahadra on 26 April 2010 at around 11.20 a.m. He was charged only under Sections 10, 13, 18 and 20 of the UAPA. The police also claimed that Kanchan Bala, Gopal's wife, was arrested in the same case on 27 April. The charge sheet in their case was filed a full six months later on 19 October 2010. According to the police, during Gopal's interrogation it was revealed that his wife was also a full time activist of a banned organization, and as the charge sheet goes on to state on page 14, 'On this [*sic*] accused Kanchan Bala @ Anu was also made to join investigation of the case and on having sufficient grounds that she is also CPI (Maoist) party member and activist, accused was also arrested in the case on 27.4.2010.' The police charge sheet also says that the discovery of a large number of magazines, books, a wooden hammer and sickle, audio and video discs, as well as documents published by the banned CPI (Maoist) at his residence are all proof of his being a full-time member of a banned terrorist organization. In Kanchan's case, the charge sheet mentions a letter that she is said to have received from another member of the banned organization.

Gopal and Kanchan were arrested on the suspicion that they are members of a banned organization. The charge sheet mentions that neither Gopal nor Kanchan has any history of criminal cases or convictions. Their arrest is not connected with the commission of any violent activity or criminal offence. What's more, Gopal's arrest and subsequent charges leveled against him and Kanchan show that the police have fabricated a story in order to support its illegal methods. Gopal was actually arrested from near Qutub Minar in South Delhi and kept in illegal detention for over twenty-four hours. He was brought

to his residence at about noon on 27 April 2010. His wife Kanchan reached home around 5 p.m. on the same day after winding up a May Day campaign in Shahadra. The police was waiting in her residence to arrest her. Both of them along with their land lord and friend were intensively interrogated and terrorized by the police there. It is therefore factually incorrect that Gopal had told the police about his wife's involvement in the CPI (Maoist) party.

The police have claimed that an incriminating letter was recovered from Kanchan's possession. The letter is one that she received from her friend, Seema Azad (state committee member of PUCL, UP and editorial board member of a popular registered magazine *Dastak*, see Seema Azad's case listed earlier in this chapter). The letter contains nothing but a list of books published by different publications. The point is that Seema Azad's case is still in court, and it remains unproven whether she actually is a member of a banned organization. The fact that the police can presume the guilt of those under trial is nowhere else clearer than in this case where a letter from Seema Azad, whose Maoist affiliation remains unproven in court, is considered proof enough to accuse Kanchan of having links with the banned organization.

Kanchan's bail was rejected by the lower courts and only in March 2012, after almost two years of imprisonment, was she granted bail by the High Court. The UAPA in this case has allowed for the prolonged incarceration of political activists with no criminal record on the basis flimsy, and at best, circumstantial evidence. Gopal continues to remain in Tihar Jail.

### **A Peasant-Tribal Leader**

Chatradhar Mahato was the spokesperson of the Peoples Committee against Police Atrocities (PCPA), Lalgarh, from the time of its inception in November 2008 till his arrest in September 2009. Originally from Amalaka village in Lalgarh block of Paschim Medinipur district, West Bengal, Chatradhar Mahato came from a politically conscious family and had at times been affiliated to the Trinamool Congress. His younger brother, Sashadhar Mahato, was a highly popular and influential leader of the CPI (Maoist) in the adivasi regions of West Bengal and was killed in an encounter in March 2011.

Chatradhar Mahato catapulted into the public eye in the wake of the Lalgarh people's uprising against police atrocities in November 2008. As the traditional power structures in the Lalgarh area dissolved

due to the mass uprising, new leaders came up from amongst the people to become the face of the movement. Chatradhar Mahato was one such person. He was elected the spokesperson of PCPA in a mass meeting in Dalilpur Chowk in December 2008 together with Lalmohan Tudu as president and Sido Soren as general secretary. Both Lalmohan and Sido Soren have since been killed by the joint forces entrusted with 'cleansing' Lalgarh of left-wing extremists.

Chatradhar, a highly articulate person, gave voice to peoples' aspirations in the Lalgarh movement. He spoke with many outsiders who visited Lalgarh in solidarity with the movement and also addressed the media regularly. He travelled extensively to other areas of Jangalmahal and addressed huge mass meetings in these areas. He also visited Kolkata on two occasions and addressed mass meetings and a convention held in solidarity with the Lalgarh movement, which was attended by intellectuals and human rights activists from all over India. Because he was the most visible face of the movement, he was constantly targeted by the state administration and the ruling CPI (M) who accused him and the PCPA of being an organization of the Maoists.

Chatradhar Mahato led the PCPA delegation in talks with both the administration and the election commission. In the run-up to the Lok Sabha elections in 2009, when the people in Lalgarh declared that they would not allow the entry of the police into the area with the excuse of holding elections, Chatradhar Mahato did multiple rounds of negotiations with the chief election commissioner as a result of which the elections were held with polling booths set up outside Lalgarh. Following the elections, talks began between the PCPA and the state administration regarding the demands of the Lalgarh movement, where Chatradhar Mahato again led the PCPA delegation. While these talks were still underway, and a date had been fixed for a meeting, the state and central government sent in the joint state and central police and paramilitary forces into Jangalmahal on 18 June 2009, with the declared aim of crushing the uprising and clearing the area of Maoists. What happened thereafter, and is still continuing, are unprecedented atrocities on the people of Jangalmahal. Chatradhar Mahato, along with the leadership of the PCPA, went underground to evade arrest by the government's joint forces. Even under these circumstances, he kept on meeting the media to describe to them the condition in Jangalmahal and appealed to the government to resume the talks process. He also met with a group of cultural artistes from Kolkata, who were later threatened to be charged with violating Section

144 which was in force in Jangalmahal. Finally, Chatradhar Mahato was arrested by CID agents masquerading as journalists on 26 September 2009. He was charged under the UAPA and was also charged under various sections of the Cr P.C. Twenty cases, including waging war against the state, keeping arms, riotous assembly, exploding land mines and attempt to murder were registered against him. Most of these cases are timed during the period when he was actually attending talks with the state government! He has since got bail in nearly all of these cases as the police did not have evidence against him. The then DG of police, Bhupinder Singh, blatantly lied in a press conference after Chatradhar Mahato's arrest that the police has found out by interrogating him that he owned a life insurance worth Rs 1 crore and extensive property in Jharkhand. All these claims were later found to be false.

Chatradhar Mahato has been lodged in Medinipur central jail since his arrest in 2009. Although he has been granted bail in most cases against him, he is not being released because of the remaining charges under UAPA against him. He stood in the last state assembly elections in West Bengal as an independent candidate on behalf of a new group called the Forum against Terror, Corruption and Imperialism. Fighting the elections from within the jail, and nearly without an organization on the ground (as the PCPA has been severely repressed by the joint forces), he still won 20,000 votes in the election. Chatradhar Mahato's case is a grim reminder of how the Indian State tries to suffocate every democratic voice of dissent that comes up from among the people.

In January 2010, Chatradhar wrote an open letter to Mamata Bannerji, the Trinamool Chief Minister, who came to power on the popular mood in West Bengal in support of the Lalgarh uprising. Among other things, he told her, 'Listen, the Indian constitution has given every citizen the right to get organized. It has given the right to express their opinions. It is not that they have to organize only as per the wishes of the ruling class, is it?'

Is the Chief Minister of West Bengal listening?

### **An NGO Worker**

After the Babri Masjid demolition in December 1992, Abdul Shakeel Basha took a break from his post graduate studies and plunged into relief and rehabilitation programmes in Mumbai, where he had grown up. Some years later, he moved to Gujarat where he started work among mill workers and after the 2002 Godhra riots, he became

involved in a project called Nyaya Graha, a legal aid initiative for riot victims. Between 2004 and 2008, Shakeel worked with Harsh Mander's organization Aman Biradari, which works for the rehabilitation of homeless street children in Delhi. Soon, he formed his own organization, Haq (World of Faith) and also worked actively with Shahari Adhikar Abhiyan. The metamorphosis of this middle class young man from someone who once aspired to join government service to that of a committed social activist in the non-governmental sector is not an ordinary one. Hence, when personnel from the Special Cell arrested him from outside his house in R.K. Puram on 17 June 2010 on charges of being a dreaded Maoist and announced the same to the media, the twist in the tale was obvious.

Shakeel was shown as accused number 14 in an omnibus FIR which the Surat range police had filed on 26 February 2010 claiming that the Maoists were attempting to build a 'red corridor' in the industrial areas of Maharashtra and Gujarat, using Surat as their base. The FIR mentioned no names but was registered against 'known and unknown leaders and members of the banned organization, CPI (Maoist)'. Since the FIR does not mention any particular incident or event, it charges those who are 'inciting feelings of disaffection among minorities and tribal people against the constitutionally established administration, and are creating civil war by remaining in touch with the Naxalite affected areas of the neighbouring state'.

Not surprisingly, this loose and politically motivated FIR became the basis for arresting a number of respected trade unionists, and social and cultural activists who had been working in Gujarat for many years among workers, dalits, adivasis and other marginalized communities. Over the next few months, sixteen persons were arrested, including Shakeel. The arrests included Avinash Kulkarni, who had been working in the Dangs area for two decades; Bharat Pawar, an adivasi activist who had worked for the implementation of the Forest Rights Act; Niranjana Mahapatra, a freelance journalist who worked among textile workers; K.N Singh, a labour lawyer; Makabhai Choudhary and Jairam Goswami, who worked among quarry workers and workers in the diamond industry; Satyam Rao Ambade, a labour organizer active with textile workers; Vishwanath Iyer, an retired official who was an exemplary customs official; and Srinivas Kurapati, a trade unionist and peace activist.

These arrests were accompanied by much media hype and the accused people's family members were victimized, harassed and some

were even detained. In June 2010, when the PUCL appealed to the NHRC to take cognizance of the arbitrary arrests, the police promptly filed a mammoth charge sheet against the accused. Subsequently, a second charge sheet was filed in October 2010. This chargesheet also charged persons who are already imprisoned such as Vernon Gonsalves and Sridhar Srinivasan who were arrested in Mumbai in 2007, and Kobad Ghandy, who was arrested in Delhi in 2009. Yet others, such as Seema Hirani and Tushar Bhattacharya were arrested even though they had been acquitted of the charges of being Naxalites.

The charge sheet claimed that ten of the accused were members of CPI (ML) Janashakti, an over ground party that contests elections, and one which is most certainly not included as a banned organization. The others are charged with being members of the banned CPI (Maoist), even though their association, in many cases, remains vague and without proof, except of course the police's word for it. Besides being members, the accused allegedly arranged 'secret meetings', drew up agendas for these meetings, possessed banned literature, gave shelter to terrorists, incited adivasis and workers with 'anti-national' thoughts, etc.

None of these activities—arranging meeting, giving shelter, organizing marginalized groups—are criminal in themselves but become so in the context of the UAPA provision of banning. The most serious charge—that of giving armed training—is not backed up by any evidence other than statements attributed to some co-accused. Nevertheless, all the accused have been charged with other sections from the IPC: waging war (121), sedition (124 A), doing acts prejudicial to harmony (153 A), imputations and anti national assertions (153 B), aiding the disappearance or destruction of evidence (201). Under the UAPA, they have been accused of being members of a banned organization (38), supporting a terrorist organization (39), raising funds (40), and for organizing camps (18 A) for recruitment (18 B).

Not surprisingly, this flimsy charge sheet did not stand up to judicial scrutiny and most of the accused are out on bail. In November 2010, the Gujarat High Court upheld the bail petition filed by some of the accused whose bail petitions had been turned down by the Sessions court and observed that the mere possession of literature expressing disaffection, authoring or propagating such literature unaccompanied with any criminal activity does not constitute an offence. Further, the judge, Anant Dave, held that organizing workers by forming a union or leading a movement in order to strengthen and safeguard

rights cannot be considered anti national activities.

It is abundantly clear that such an omnibus politically motivated FIR, filed against unknown persons for as yet unknown crimes, can only violate norms of the Indian Constitution. The UAPA, with its provision of banning, allows the government, through the police, to concoct charges against activists who have actually pioneered many different kinds of movements to help voice the legitimate concerns of people. Second, irrespective of whether these charges are proved or not, the sheer length of police custody and the inordinate period of judicial procedure allows the police and the government to harass those who raise political criticisms.

### **Human Rights Activists**

In the infamous Khwairamband fake encounter of 23 January 2009, two political activists were killed in the heart of Imphal city. In the protests that followed, several people were arrested and detained under various sections of the UAPA.

In one such case of mass arrests, on 5 August 2009, Deban, organizational secretary of the All Manipur United Club Organisation (AMUCO), Dayananda, the assistant secretary of AMUCO and Naobi, a member of AMUCO, were arrested from Haobam Marak Irom Leikai by a police team led by Additional SP A.K. Jhalajit. Just that morning, the owner of the house from where Deban, Dayananda and Naobi were arrested, Leimapokpam Kumar, too had been arrested. Also arrested was his wife Nganbi who was the secretary of Kwakeithel Meira Paibi Apunba Lup. Kumar, Nganbi, Deban, Naobi and Dayananda were all booked under Sections 188, 121, 121-A, 147, 148, 149, 427 and 34 of the IPC, Section 7 of the Criminal Law (Amendment) Act and sections 18 and 39 of the UAPA. The same police team picked up Karam Sunil, another human rights activist from his home in the afternoon, accusing him under Sections 124-A, 435 and 34 of the IPC, Section 7 of the Criminal Law (Amendment) Act and Section 39 of the UAPA.

The next day, the Additional Chief Judicial Magistrate of Imphal extended the police custody of all those arrested the previous day by five days. The five were produced before the CJM of Imphal on 10 August, who remanded them to judicial custody for another thirteen days. They remain in jail on NSA charges, in addition to the judicial remand, according to an order of the Imphal West District Magistrate. These cases show just how easy it is for the government to impose order violently and then punish those who protest this violence.

## Two Deaths

The deaths of Swapan Dasgupta in February 2010 and Ranjit Murmu in September 2011 in Kolkata have shown that despite a change in part in power in West Bengal, there has been scant change as far as the rights of political prisoners are concerned. Swapan Dasgupta, the editor-publisher of the Bengali version of *People's March* was arrested on 6 October 2009 in Kolkata. The charge against him was that his magazine was an organ of the banned CPI (Maoist) party and that he was guilty of waging war and inciting people by publishing seditious material. Besides Sections 121, 121 A and 124 of the IPC, he was also charged under Sections 18, 20 and 39 of the UAPA, provisions that deal with membership and support given to banned organizations. The curious fact is that the magazine was registered under the Government of India Registration of Newspaper Act and was never banned or proscribed.

Swapan Dasgupta was a chronic asthma patient, a fact known to the administration at the time of his arrest. Yet, he was denied bail despite repeated pleas by his lawyer that he was very sick. The judge claimed that the charges against Dasgupta were too serious to grant him bail. Dasgupta's condition deteriorated over the next few months and it became clear that denial of timely and proper medical help only compounded his problem. It was apparent that he was also suffering from other complications. He was finally hospitalized only in January 2010 when his condition had become critical. He died on 2 February 2010 in the custody of the West Bengal police.

Ranjit Murmu was arrested in September 2009 along with Chhatradhar Mahato and five others (Sagun Murmu, Shambhu Soren, Sukhsanti Baskey, Prasun Chatterji and Raja Sarkhel). The FIR charged them with waging war, sedition, attempt to murder and, along with sections of the Explosives Substances Act and Arms Act, also charged them under Sections 16 (I) b, 17, 18, 20, 38, 39 and 40 of the UAPA. The police claimed that they arrested Ranjit Murmu from the spot where the raiding party was attacked by Murmu and his associates. His family claims otherwise; that he was tending to his cattle when the police came. They beat him up and took him away. He was first lodged in Medinipur Jail and then transferred to Alipore Jail in Kolkata where he was kept handcuffed in a lock up meant for the mentally challenged.

Unlike Swapan Dasgupta, Ranjit Murmu did not suffer from any chronic ailment before his arrest. Yet, APDR, which conducted an

inquiry into the circumstances surrounding his death got information from both the hospital and sources at the Entally police station that Murmu was suffering from renal failure compounded with malaria, clearly contracted in jail. Murmu was initially admitted to SSKM hospital in early September 2011 but was discharged within ten days. He was again admitted to Bangur Institute of Neurology on 24 September, which referred him to another hospital which, in turn, referred him to yet another. After being transferred from three hospitals, obviously because he was too sick to be treated, in less than twenty-four hours, Ranjit Murmu died. The police did not inform his family about his death for almost two days.

Both Swapan Dasgupta and Ranjit Murmu's deaths were unnecessary. They were allowed to die by a police state which believes in incarcerating people on trumped-up charges and then forcing upon them a brutal regime of neglect and torture. Given the appalling conditions inside jails, Dasgupta and Murmu are just two of the many cases of people who die due to medical neglect in police custody.

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This section lists two cases where people accused of crimes under the UAPA were acquitted. The cases and the reasons, however, couldn't be more different. And thereby hangs a tale.

### **The case of Jiten Marandi**

In April 2008, when Jiten Marandi was arrested, he was told that he was one of the main accused in the Chilkhari massacre of October 2007, in which nineteen persons were killed along with Anup Marandi, the son of former chief minister of Jharkhand, Babulal Marandi. The massacre was said to be perpetrated by the Maoists. Within two days of the massacre, a local daily published a photograph of Jiten Marandi claiming him to be the leader of the squad that carried out the attack. However, the following day, the same newspaper carried a correction, stating that the Jiten Marandi whose picture they had published was not the same person whose name was mentioned in the FIR registered following the massacre. The newspaper's mistake brought to light the fact that there are two persons with the same name.

So, when Jiten Marandi, the cultural activist and one who addressed a rally demanding the release of political prisoners was arrested on 5 April 2008 by plainclothes policemen from Ranchi, the police knew that they were deliberately arresting the wrong person.

Significantly, from the time of his arrest, several people, including his wife, repeatedly brought to light the fact that Jiten Marandi was being framed by the police and that he was innocent. However, by 30 June, two months after arresting him, the police filed a charge sheet naming the cultural activist as the main accused, which effectively denied any possibility of him getting bail. Marandi's trial was as murky as his arrest and perhaps shoddier because the police used stock witnesses to frame the cultural activist. Marandi's lawyers also pointed out how his identification process was incomplete and controversial as the three witnesses could not name Jiten Marandi's father. The correct name would simply have settled the confusion regarding the correct Jiten Marandi! The learned Session's court judge, however, opined, 'It is not necessary to know the father's name of culprit' [*sic*].

Following this obvious sabotaging of a fair trial, Jiten Marandi was pronounced guilty by the Session's court in June 2011. Along with three others (Chattrapati Mandal, Manoj Rajwar and Anil Ram), he was held guilty under Sections 148, 302/149, 307/149, 342, 379/149 and 120 of the IPC; Section 27 of the Arms Act, and Section 17 of the CLA. While delivering the sentence, the judge stated that the accused were members of the MCC, a banned organization and that they were also accused in several other cases. (Jiten Marandi is accused in six other cases.) Taking a strong position based on slim evidence, the honourable judge pronounced a death sentence on Marandi stating that this case came under the category of 'rarest of rare' and that all three accused were 'sentenced to undergo death penalty for the charge u/s 302/149 IPC and they are directed to be hanged by the neck till their death, subject to the confirmation by the Honorable Jharkhand High Court'. It was the Jharkhand High Court which threw out the death sentence and this case on Jiten Marandi. The reason for dropping the UAPA charges against Marandi, however, were not because the judiciary questioned a shoddy police investigation or because Marandi was acquitted. Marandi escaped an unfair death sentence because in the tradition of shoddy work, the police prosecution had not taken the required sanction or filed a notification that the MCC was to be considered an unlawful association.

### **Maharashtra Theatre Blast Cases of 2008**

Two months after the Jiten Marandi judgment, another judgment was passed in the Maharashtra theatre blast cases of 2008, which were also filed under sections of the UAPA. Two years earlier, in

June 2008, a theatre in Thane screening *Jodha Akbar* was targeted for showing a film in which a Muslim king marries a Hindu princess. The organization which carried out the attack was Sanatan Sanstha, a Hindu right wing organization which works under the banner of Hindu Janajagruti Samiti (HJS). A few days prior to the incident, another bomb had gone off in an auditorium in Vashi, Navi Mumbai. A few months earlier, in February 2008, explosives were found in an entertainment hall in Panvel, apparently planted there in protest against a Marathi play being enacted there. The play, *Amhi Pachpute*, allegedly depicted Hindu gods in a poor light.

Six persons belonging to Sanatan Sanstha were arrested by the Maharashtra ATS and indicted for conspiracy, planting bombs, attempt to murder and under some sections of the UAPA. In September 2011, two of the accused, Ramesh Gadkari and Vikram Bhave were convicted for planting bombs. Convicting the duo to ten years' imprisonment, the Session's court judge dropped the UAPA charges on them saying that their offence was not a 'terrorist act' intended to threaten the country's sovereignty. The judge also said that the target in the Thane and Vashi theatres was only the producer of the Marathi play and that it was a protest against the performance. Discarding the application of Section 15 of the UAPA in this case, the judge maintained that the UAPA sections invoked by the Maharashtra ATS were invalid because, 'It is nowhere in the case of the prosecution that the accused, by their acts, intended to threaten or were likely to threaten the unity, integrity, security or sovereignty of India. The words "strike terror" [in section 15 of UAPA] signify the meaning "hit hard to create extreme fear". The alleged motive of the crime was objection to the performance of the drama *Aamhi Pachpute*, based on an alleged mockery of Hindu gods. It appears to be the only against the producer of the said drama. The producer cannot be termed as 'section of the people'." But the fact is that the bombs were planted in a cinema hall, a public place and that civilians were the targets, neither the film nor the producer. The court also disbelieved the prosecution's claim regarding recovery of gelatins, detonators and revolvers as there were inconsistencies in its own report and in the disclosure statements made by the accused. The delay in finding witnesses in the Panvel case went against the prosecution as the witness was deemed 'untrustworthy'. Hence, the Panvel case remained unsolved.

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The difference between the Jiten Marandi case and the Maharashtra theatre blasts one is stark. Despite repeated interventions by the defence showing that Jiten Marandi has been framed by the police, the judge in Ranchi was stuck to the police version. The only reason why the UAPA could not be upheld was a technical detail: the lack of proper sanction. The session's judge in Maharashtra took an entirely different view—the non application of the UAPA given the *nature* of the target. While one welcomes the fact that the court found that the very use of UAPA inappropriate, one is left wondering whether the same would have been the case if the organization associated with the incident was one banned by the government.

## Conclusion

Over the last six decades, successive governments have failed to uphold the Directive Principles of State Policy, but have shown a remarkable propensity to restrict fundamental rights of citizens under one pretext or another. Both the first amendment of 1951 and the sixteenth amendment of 1963 restricted the rights of citizens guaranteed by the Constitution and have tilted the political field in India in favour of state agencies and right-wing extremist groups, whose terrorization of minorities for over six decades remains unparalleled.

The enactment of terror laws like the UAPA is one way in which this attack on political freedoms is executed. As this report shows, the discourse of the UAPA blurs the difference between political dissent and criminal activity. By delegitimizing the former and turning it into the latter, this law attacks peoples' fundamental rights of freedom of speech and association and converts rightful citizens into wrongdoers. The definition of crime and provisions for punishment in the UAPA actually follow from banning and the curbing of political dissent. The fact that these provisions have not been used for Hindutva terror groups only confirms that it is not a *particular* type of heinous behavior which is being outlawed, but particular ideologies and groups espousing them, while other majoritarian ideologies are exempted from its purview.

A culture of political witch hunts ensues wherein selected organizations that question the legitimacy of the state and the ruling classes are outlawed. By clubbing crime with expression and mobilization, political and ideological differences are made unlawful and the specific context which causes and prolongs conflicts is erased. As noted in Annexure I of this report ('Drawing Comfort from the UN for the Politics of Ban'), this is precisely what is demanded for by the UNSCR number 1373 (2001). The Resolution, a significant addition to history of the UN's concern with terrorism, states that member states should not only ensure stern actions against perpetrators of 'terrorist acts', but also make certain that "such terrorist acts are established as serious criminal offences in *domestic laws and regulations* and that the punishment duly reflects the seriousness of such terrorist acts". Interestingly, while the Resolution is categorical about strict punishment and changes in domestic law, it remains silent on what constitutes a terrorist act or international terrorism. The purpose obviously helps country and states to freely denounce

certain movements as ‘terrorist’, erase the particular histories and contexts, and deal with dissenters as ‘terrorists’. Hence, the history of Manipur’s merger or accession of Jammu and Kashmir to the Union of India gets categorized as separatist conflict in which the protagonists’ perspective/s become/s criminal.

Does this mean that CL-DR groups are oblivious to violent crimes and trivialize the problem that confronts a society such as ours which is witness to frequent incidents of mass murder? Are CL-DR groups unmindful of the need to bring to justice those who commit heinous crimes? Do CL-DR groups believe that the Indian government needs to ban Hindutva groups so that the law ceases to be discriminatory?

On the contrary, our plea is that it is not an extraordinary law that is required, but fair judicial process backed up by professional investigation. Our contention is that the same approach be adopted for everyone as is being done for Hindutva groups. Our appeal is that political dissent must remain within the public domain, as it allows for the possibility of democratic debate with dissenters and the peaceful resolution of political differences. We believe that right-wing Hindu supremacist ideology has not taken over India because their over ground presence enables democratic forces to ideologically confront them. Thus, while right-wing groups are successful in imposing their diktat because the authorities go out of their way to pander to them, the appeal of their ideology shrinks under the weight of logic.

We are concerned about the untrammelled powers that are vested in the police as it means that the victims of UAPA are actually victims of biased and prejudiced policing done in the name of security of the country. The cynicism underlying strong arm policing is evident from the way the trial court discharged Kobad Ghandy of all UAPA charges because the police had failed to obtain the proper, mandatory sanction from a competent authority. That the police failed to comply with even the most minimal checks within the UAPA suggest not just ineptitude and incompetence, but also overweening ambition and arrogance of the part of the police in believing that it can produce false and baseless charges in court. While one applauds the trial judge, the question remains: why shouldn’t the police be punished for falsely detaining Ghandy for nearly two years? Why is the police allowed to seek a review for a fresh sanction? Nothing in the UAPA suggests that the police can be penalized for malicious prosecution. Instead, it empowers the police to use it as a preventive detention measure against political opponents.

We believe that that the justification for the curtailment of rights

is specious as it points to the refusal of the state to engage with real issues. CL-DR groups believe that the pathetic material conditions of the mass of our people have led to social polarization and increasing unrest caused by people's anger against an apathetic state. The emergence of organizations which are consequently banned under the UAPA has also occurred within this context. In light of this tragic reality of the criminal neglect of people's welfare and 'development' in favour of the corporate sector, Indian or foreign, the banning of political groups that question this status quo underlines the apathy of the Indian state towards these pressing issues. As civil rights activist and victim of the UAPA, Binayak Sen has repeatedly pointed out, the structural violence caused by the state through its policies of omission and commission has only deepened malnutrition in tribal belts and, has led to famine-like conditions there. Sen's argument that the terms of 'genocide' (as defined by Article 2 of The Convention on Prevention and Punishment of the Crimes of Genocide) should extend to the creation of 'physically and mentally hazardous conditions' which can put the survival of particular communities at risk, is a forceful one and cannot be denied. As this report goes to press, the Koodankulam anti-nuclear struggle is in progress. In addition to having cut off essential supplies to the protesting villages, state authorities have reportedly accused about 180 people of sedition, as well as other 'crimes' under the UAPA.

We denounce the politics of banning, the use of draconian laws to silence dissent and the restrictions imposed on our freedoms of expression, assembly and association. The rhetoric of protecting the country undermines the fact that freedom of expression is not only an individual right, but also the collective right of groups, unions and political parties. A UAPA-dependent country is a weak country; one that attacks its most vulnerable sections, and serves those powerful. It bans discussion since it fears the solutions. It is incapable of dealing with the outcomes its own policies, so it hides them. It fears that people will see the skeletons overflowing from the cabinet, so it declares it to be a crime to look. And finally, the country becomes a reproduction of its worst paranoid nightmares. And laws like the UAPA make it so by legalizing what should never have been permitted.

We draw strength for our view from the V.G. Row versus the State of Madras judgment of 1952, delivered just one year after the passage of the First Amendment. The judgment expressed concern at the unbridled powers vested with the government to ban organizations and made two essential points: one, it said that provincial governments

should impose bans on organizations only in ‘very exceptional circumstances’, and two, it raised serious concerns about the ‘subjective satisfaction of the Government’ being the basis for banning. Our arguments against the executive’s banning of organizations are based in these two concerns raised by this judgment. This judgment was also attuned to the fact that freedom of expression as defined by the Constitution is not just an individual right, but the collective right of groups, unions and political parties to propagate and disseminate their views in order to mobilize support and give public expression to their views. It also rejected non-judicial reviews of the validity of bans, which, unfortunately, have become the norm with the UAPA. Finally, the judgment refuses to accept the proscription of organizations—except in exceptional circumstances and following a judicial review—as the general pattern of ‘reasonably’ restricting fundamental rights.

While we have a long way to go in achieving a truly democratic and peaceful polity and society, this judgment shows us the way ahead. By heeding its wisdom and by contesting an illegal, unconstitutional and undemocratic act such as the UAPA, we can move one step closer to a just and equal society. A strong country will then see itself as it really is, generate free and fair debate, and derive its strength from the freedoms enjoyed by its people.

## Annexure I

### *Drawing Comfort from the UN for Politics of Ban*

The amendment to the UAPA in 2008 began by citing United Nations Security Council Resolution 1373 of 28 September 2001, Chapter VII of the Charter of the UN 'requiring all the States to take measures to combat international terrorism'. A slight pause is necessary here.

UN was seized of the matter of terrorism since the 1970s and began to come down on irregulars/militants/rebels/partisans, etc., who began to appear as international players or carry out attacks outside their own national boundaries. Thus, the declaration of the Al Qaeda as illegal combatants and the denial of any rights and privileges to combatants meant that as POWs, they had barely any recourse to judicial redressal. Indeed, the illegal combatants also became victims of illegal incarcerations because their rights and privileges as combatants conceded under Geneva Convention were disputed by the United States. This is important to keep in mind because the political act of banning either follows or is linked to attempts to turn political dissidents even within nations into nothing less than criminals. Thus history, circumstances, the socio-economic and political processes which result in engendering armed resistance are all cut off from the association which is banned or whose members declared criminals.

The Resolution 1373 calls upon member Governments to 'Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.'

After listing the actions to be taken, the Resolution says, '... it is considered necessary to give effect to the said Resolutions and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto.' The important point to note is that the UN resolutions speaks of 'international terrorism' and 'terrorist act' but nowhere defines it.

Prior to 2001, the UN did not impose measures against terrorism generally, nor did they define it. However, various resolutions after 1985 designated specific incidents and types of violence by and against various actors as terrorism. But within seventeen days of the attack on US soil on 11 September 2001, the US managed to push through UNSC Resolution 1373. As of May 2004, no less than 500 entities and individuals were listed by the UNSC Sanctions Committee. An individual or an entity which believes that they have been wrongly banned has no right of appeal. In addition, it is left to individual proclivities of the member states to define 'terrorist act'. It is worth remembering that the UNSC has been remarkably inconsistent in applying of uniform rules covering war, armistice and peace. For instance, it has been unable to rein in Israel from carrying out terror acts against Palestinians or annexing Palestinian territories. But even more important is that the US, UK and NATO's heinous acts of aggression and war crimes in Iraq and Afghanistan are excluded from the purview of the Resolutions, although what is defined as terrorism and war crimes are essentially similar actions.

Informed by this meaning, it is worth noticing that organizations holding views regarded as anathema for the US and NATO are on the UNSC Sanctions Committee list, whereas not a single entity connected with the agencies and personnel of US or NATO countries find mention in the list. Clearly, the object behind the UN Resolution is to ban entities which threaten their powerful member states. They do not criminalize violent behavior in general, which would necessitate uniform rule for state as well as non-state actors who commit heinous crime. Cruelty, measurement of terror, collective punishment, and participation in genocide remain war crimes. But what banning by UNSC does is to take away all the rights and privileges of combatants and he/she is treated as criminal who needs to be rendered harmless by summary punishments and repressive measures. The point to note is that the amount and extremity of violence committed by a group, the targeting of civilians, or the threat it poses has very little to do with whether an organization is listed or not.

If the definition of terror acts had been proximate to war crimes, i.e., terrorist acts are war crimes committed in peace time, then the crime itself gets outlawed through punitive measures against all those who carry out such criminal acts. But if certain 'entities' get proscribed as though they are the only ones committing crimes against humanity, then it is not the crime itself but some select 'entities' who are held responsible for such acts and they get persecuted. Exclusion of agencies

of state is inevitable because the UNSC is foremost a political decision-maker, neither a legislative body nor a juridical body applying legal principles. It's a body made up of member nation-states. Thus it follows that its lack of definition or use of discrete understanding of what constitutes 'terrorist acts' allows every member state to specify whom they consider illegitimate or proscribe.

Two things are worth noting that whereas the term 'war crimes' defined illegal conduct during wars or armed conflicts and placed the onus on both adversaries, not to harm civilians, the UN Resolutions only illegalized the 'irregulars' or combatants by bringing 'attacks on the Government' and not just civilians into the domain of criminality. This allows member states to delegitimize everyone who challenges their authority or rebels against them within their own borders. The politics which generate armed conflict within nation-states' borders get muted. For instance, the partition of India and the division of Jammu and Kashmir in 1947 and consequent history cannot be separated from the current movement for 'azaadi' in Jammu and Kashmir, because without that the brutal history of the past twenty-two years, any sense of this movement loses its political poignancy. Governments, instead, can now declare militants fighting for self-determination or people wanting to resist takeover of their land, forest and water as being no different from those who carry out the deliberate killings of civilians in the name of religion, race or nationalism.

## **Annexure II**

***International Convention on Civil and Political Rights adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 (Selected provisions)***

### **Article 19**

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

**Article 20**

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

**Article 21**

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

**Article 22**

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

*[While ICCPR recognizes the centrality of freedom of expression, assembly and association it does not mandate its application or adoption by the member-State since it only acts as a guideline.]*

## Annexure III

### ***V.G. Row versus The State of Madras***

Early in the history of Indian Republic Law banning ‘unlawful’ organizations was challenged and heard by the highest Court. One of the most memorable judgment which also holds true for UAPA and its provisions which ban organizations, was the State of Madras versus V G Row 31 March 1952. On 10 March 1950 the State Government of Madras declared that People’s Education Society has “for its object interference with the administration of the law and the maintenance of law and order and constitutes a danger to the public interest”. The state government through an affidavit claimed that the People’s Education Society was “really to be a propaganda organization of the Madras branch of the Communist Party and was formed by the leading Communist of Madras....” The Society in its petition claimed that object was to “(a) to encourage, promote, diffuse and popularize useful knowledge in all science and more specially social science; (b) to encourage, promote, diffuse & popularize political education among people; (c) to encourage, promote or popularize the study and understanding of all social and political problems & bring about social & political reforms; & (d) to promote, encourage and popularize art, literature & drama”.

The judgment is significant because it states:

“This Court had occasion in Dr Khare’s case [1950; SCR 519] to define the scope of the judicial review under clause(5) of Article 19 where the phrase “reasonable restrictions on the exercise of the right” also occurs, and found out of five Judges participating in the decision expressed the view....that both the substantial and the procedural aspects of the impugned restrictive law should be examined from the point of view of the reasonableness ; that is to say , the Court should consider not only factors such as the duration and the extent of the restrictions, but also the circumstances under which and manner in which their imposition has been authorized. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern, of reasonableness can be laid as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions

at the time, should all enter into the judicial verdict.....Giving due weight to all considerations indicated above, we have come to the conclusion that section 15(2) (b) cannot be upheld as falling within the limits of authorized restrictions on the right conferred by article 19(1) (c) [Right to form association or unions]. The right to form association or unions has such wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious and political and economic fields, that the vesting of authority in the executive government to impose restrictions on such right, without allowing grounds of such imposition, both in their factual and legal aspects to be duly tested in a judicial inquiry, is a strong element which in our opinion must be taken into account in judging the reasonableness of the restrictions imposed....”

Earlier the Madras High Court on 14 September 1950 held that the provisions of the Criminal Law Amendment Act 1908, un-amended and amended, which confers on the authority the power to declare associations “unlawful”, as being “inconsistent with the fundamental rights in part III of the Constitution”. Justice Viswanath Sastri held in para 66 that: “The law as regards preventive detention effectively, though indirectly restrains the exercise of these rights by the citizen who is detained. The wide legislative powers conferred on Parliament under Article 22 of the Constitution & the power conferred by Entry No. 3 in the Concurrent List (NO. III Schedule VII) with reference to preventive detention in the interests of public order & the security of the State operate on natural persons. The Preventive Detention Act (IV [4] of 1950) passed by Parliament has been declared to be validly enacted by the S. C. in *A. K. Gopalan v. The State of Madras*. It is in this context that the provisions of the impugned Act must be considered. *The State Legislature has purported to extend the provisions of the Preventive Detention legislation which applies to individual citizens to associations, & to enlarge the scope of that legislation so as to include forfeiture of property*. Having regard to the limited legislative purpose & the limited extent of the legislative power conferred on the State, I find it difficult to uphold the provisions of the impugned Act relating to forfeiture of property as having a reasonable relation to the end in view, viz., the maintenance of public order.”

And then advances the following argument:

“72. In my opinion, the Act exceeds the authority given to the Legislature by our Constitution. The Act is a permanent part of the statute book & not a piece of emergency legislation. It is not a

legislation passed in the exercise of the defence power of the State. The legislative power that is invoked is “public” order in Entry I of List II of Schedule VII. Constitutional rights & liberties guaranteed by the Constitution & which are of prime importance to the citizens of a free democracy have been considerably eclipsed. The Act creates & establishes a crime & provides drastic penalties by way of imprisonment, fine & forfeiture of property without a fair trial. It does not provide for proper & reasonable notice to persons penalised. It does not give them fair & reasonable opportunity to be heard before they are condemned. At the trial before a Magistrate. for the offence of being a member of an unlawful association, the declaration by the Govt. is conclusive. In effect, it places sentence before trial & judgment. I do not think that the Constitution has made this colossal delegation of power to State Legislatures when they were authorised to legislate with respect of public order. Let me make good these observations.

73. A declaration by the Govt. published in the official gazette that an association or body of persons is unlawful makes it an unlawful association. This initial declaration is made *ex parte* by the Govt. on its own information. The selection of the association is left to the discretion of the Govt. The grounds for declaration together with reasons & such particulars as the Govt. may think it fit to give, are published in the Gazette. So soon as the declaration is published, the association becomes an unlawful association & its members are liable to be prosecuted & sentenced to imprisonment & fine under Section 17. The moveable properties, monies, securities & credits of the association as well as effects, not belonging to it are liable to be forfeited by Govt. under Sections 17B & 17E. On a prosecution under Section 17, it will not be open to the members of the association to go behind the declaration & show that it is unjustified, that the grounds do not exist & the reasons are incorrect. Even strangers who take part in the meetings of such association after the declaration are liable to imprisonment & fine. All this might happen even before the persons affected had any opportunity to have their objections to the declaration by the Govt. considered by the Advisory Board. Punishment might automatically follow the declaration though the Govt. might be trusted to await the report of the Advisory Board before launching a prosecution. There is no provision in the Act for service of the notice of the declaration on the Association through its office-bearers or members at its place of business. Such a provision is common in other enactments. The suggestion that the members of the association might be unknown to the Govt. does not carry weight, for it is

unreasonable to penalise persons whom you do not even know, for an alleged transgression of the law. A time for making representations against the declaration of the Govt. is fixed in the notification but in the absence of a service of the notice on the association or its office-bearers or members, the time might pass by without their being aware of the notification at all. I am aware that in some cases, as for example, in the Income-tax Act, statutory provision is made for the publication of a general notfn. so as to fix all citizens with notice. I am also aware that citizens who were in enemy country during war time & who actively assisted the enemy have been condemned as war criminals without personal service of the proceedings but after publication in official gazettes. But this rule of constructive service by publication is the exception rather than the rule. *Penneyer v. Nett*, (1877) 95 U. S. 714. The persons affected are not entitled to know on what evidence they are being declared to be members of an unlawful association. The Govt. is entitled to withhold communication of the evidence according to its discretion, even though it cannot claim privilege under the Evidence Act. It might be that during a state of war when the very existence of the State is threatened, or under the provisions of the Preventive Detention Act, the Govt. might not be required to disclose confidential information which it considers, it would be against public interest to disclose. But this is an exceptional procedure which does not admit of being made part of the ordinary criminal law & procedure. The representation by the persons affected is presumably required to be in writing for it has to be placed by the Govt. before the Advisory Board. If there is no right to be heard in person on so grave an accusation it has been held to be a denial of due process. *Londoner v. Deener*, (1908) 210 U. S. 373. The imposing facade of an Advisory Board is not an effective protection. There is no limit of time within which reference should be made to the Advisory Board or within which the Board should give its report. The persons affected are not entitled to be heard in person or by counsel before the Board though Article 22(1) accords that right to persons charged with a crime. They have no right to test the evidence relied upon by the Govt. or to lead evidence contra. The Govt. is the sole Judge of what evidence it will produce & what it will withhold from the scrutiny of the Advisory Board. The Board cannot compel the Govt. to produce all the evidence in its possession. The Board functions in secrecy & its report, except its final opinion or the opinion of the majority, is confidential. There is not even a provision that if the reference to the Board is not made or the decision of the Board is not given, say within 3 or 6 months, the declaration by the Govt. should stand cancelled.

There is no provision that no prosecution or forfeiture shall be made till the Board has given its decision. There is no limit of time for the continuance of the declaration. A report by the Board that there is no justification for the notfn. is like a judgment of acquittal on an appeal from a conviction. But the trial itself is fundamentally opposed to principles of justice & fair play. The safeguards are nothing compared with those given to a man charged with murder who must at once be produced before a judicial tribunal which investigates the case in public.

74. There is one other feature of the case that must be adverted to. A person who is accused of the offence of being a member of an unlawful association under Section 15 (2) (a) has a right to be tried before a Magistrate. He can be defended by counsel cross-examine prosecution witnesses, lead evidence in defence, address arguments & establish that the association is not unlawful. By contrast, a person charged as being a member of an unlawful association under Section 15 (2) (b) cannot be heard to dispute the declaration by the Govt. that the association was unlawful. This brings out the unreasonableness of the restriction imposed by the impugned Act on the right of freedom of association declared by Article 19(1)(o) of the Constitution. I do not however consider that this feature of the impugned Act in itself renders it obnoxious to the principle of "equal protection of the laws" in Article 14 of the Constitution. The mere juxtaposition of the two parts of the definition of "unlawful association" in Section 15 (2) (a) & (b) of the Act is by no means decisive. Suppose Section 15 (2) (a) had not been enacted & only Clause (b) had been found in the impugned Act or again suppose that Section 15 (2) (a) & 15 (2) (b) had been the subject of separate enactments. In such a case, it could not be said that there was any discrimination or unequal treatment & it need not make any difference that the two categories are dealt with in one section. Further, it will be observed that the activities of associations dealt with by Section 15 (2) (b) constitute a direct threat to the maintenance of public order or a danger to the public peace whereas the activities of associations falling under Section 15 (2) (a) are injurious to individual citizens or citizens of a particular locality & indirectly to the public peace or public order. It cannot therefore be said that there is no reasonable basis for differentiating between the two types of associations whose activities differ in their technique & their consequences. But there is no justification for a radical difference in the procedure for trial of these categories of offences.

Another judge, Justice S Rao, argued that by conferring on the

“provincial government the power to declare an association unlawful *if it is of the opinion* that the association interferes or has for its object interference with the administration of law or with the maintenance of law and order or that it constitutes a danger to the public peace. That declaration is final and conclusive and cannot be questioned in a prosecution under Section 17 of the Act. That accused has no right or opportunity to show that the declaration was erroneous and was not justified. It is a naked arbitrary power conferred upon the Provincial Government to impose a restriction on the right of free association conferred by Article 19 (d) of the Constitution and is of such an absolute nature which cannot and indeed, was not attempted to be supported as a reasonable restriction on the exercise of the right. In my opinion it offends also Article 14 as it denies equal protection of the laws to persons. “(And) it is unnecessary to give more reasons to hold that it is inconsistent with the provisions of Part III of the Constitution. In view of Article 13 (Laws inconsistent with and in derogation of the fundamental rights) it must be held that Section 16 which is inconsistent with the provisions of the Constitution is void.”

He pointed out that that “An examination of the provisions of the Amended Act undoubtedly leads to the conclusion that the remedy provided for is ineffective to give a right of equal opportunity to the persons affected. It is not based on any reasonable classification and there is no reason or justification for making invidious distinction between one kind of unlawful association and another. All members of an unlawful association are not placed in the same footing; and there is no justification for the Legislature to have selected persons forming an association within the meaning of Sub-Clause (b) of Section 15 for a special kind of treatment, unlike other persons who are accused of offences either under the Penal Code or under special laws. Nor is there any reason for not following the ordinary procedure for trial of offences laid down in the Criminal P.C. The legislation is not directly aimed at preventive detention in which case the Constitution recognized an abridgement of the right. I have therefore no hesitation in holding that the impugned provision of the Amendment Act is WHOLLY INCONSISTENT with Article 14. “

This argument remains relevant in so far as proscription of organization as “unlawful” or as a “terrorist organization” is concerned.

Chief Justice Rajamannar in his turn said in Para 93 that “I can understand in the case of a declaration by Govt. the onus shifting on

to the accused who may be called upon to establish that the declaration of the Govt. is unwarranted & illegal. But to say that an association shall be deemed to be unlawful once & for ever by a declaration by the Govt. subject only to the opinion of an Advisory Board which merely considers the material placed before it by the Govt. & may or may not call for further information from the association or its members & which does not conduct its proceedings in the presence of the aggrieved party or some one representing him appears to me to unreasonably restrict the right conferred by Article 19(1)(c) of the Constitution.

94. I have, therefore, come to the same conclusion as my learned brothers that the Amending Act is void as it is inconsistent with the provisions of Part III of the Constitution, in particular with the provisions of Article 19.”

## **Annexure IV**

In *The Superintendent, Central ... vs Ram Manohar Lohia* on 21 January, 1960 the apex Court held that “It is self evident and common place that freedom of speech is one of the bulwarks of a democratic form of Government. It is equally obvious that freedom of speech can only thrive in an orderly society. Clause (2) of Art. 19, therefore, does not affect the operation of any existing law or prevent the State from making any law in so far as such law imposes reasonable restrictions on the exercise of the right of freedom of speech in the interest of public order, among others. To sustain the existing law or a new law made by the State under cl. (2) of Art. 19, so far as it is relevant to the present enquiry, two conditions should be complied with, viz., (i) the restrictions imposed must be reasonable; and (ii) they should be in the interests of public order. Before we consider the scope of title word, of limitation, “reasonable restrictions” and “in the interests of”, it is necessary to ascertain the true meaning of the expression “public order” in the said clause. The expression “public order” has a very wide connotation. Order is the basic need in any organised society. It implies the orderly state of society or community in which citizens can peacefully pursue their normal activities of life. In the words of an eminent Judge of the Supreme Court of America “the essential rights are subject to the elementary need for order without which the guarantee of those rights would be a mockery “. The expression has not been defined in the Constitution, but it occurs in List II of its Seventh Schedule (that is the state list) and is also inserted by the Constitution (First Amendment) Act, 1951 in cl. (2) of Article”.

But then it goes on to argue in para 19 that: “The sense in which it (public order) is used in Art. 19 can only be appreciated by ascertaining how the Article was construed before it was inserted therein and what was the defect to remedy which the Parliament inserted the same by the said amendment. The impact of clause (2) of Art. 19 on Art. 19(1)(a) before the said amendment was subject to judicial scrutiny by this Court in *Romesh Thapar v. The State of Madras*. There the Government of Madras, in exercise of their powers under s. 9(1-A) of the Madras Maintenance of Public Order Act, 1949, purported to issue an order whereby they imposed a ban upon the entry and circulation of the journal called “Crossroads” in that State. The petitioner therein contended that the said order contravened his fundamental right to freedom of speech and expression. At the time when that order was issued the (expression “public order” was not in Art. 19(2) of the Constitution; but the words “the security of the State” were there...

Presumably in an attempt to get over the effect of these two decisions, the expression “public order” was inserted in Art. 19 (2) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of purely local significance within the scope of permissible restrictions under cl. (2) of Art. 19. After the said amendment, this Court explained the scope of *Romesh Thapar’s Case in The state of Bihar v. Shailabala Devi*. That case was concerned with the constitutional validity of s. 4 (1) (a) of the Indian Press (Emergency Powers) Act, 1931. It dealt with the words or signs or visible representations which incite to or encourage, or tend to incite or encourage the commission of any offence of murder or any cognizable offence involving violence. Mahajan, J., as he then was, observed at p. 660: “(t)he deduction that a person would be free to incite murder or other cognizable offence through the press with impunity drawn from our decision in *Romesh Thapar’s case* could easily have been avoided...”

When the matter reached the Supreme Court, the Court chose to consider the reasonableness of the restriction and said the following after comparing ban with preventive detention and externment :

“externment of individuals, like preventive detention, is largely precautionary and based on suspicion. In fact, section 4 (1) of the East Punjab Public Safety Act, which was the subject of consideration in *Dr. Khare’s case*, authorised both preventive detention and externment for the same purpose and on the same ground namely,

with a view to preventing him from acting in any manner prejudicial to the public safety or the maintenance of public order it is necessary, etc.” Besides, both involve an element of emergency requiring prompt steps to be taken to prevent apprehended danger to public tranquillity, and authority has to be vested in the Government and its officers to take appropriate action on their own responsibility. These features are however, absent in the grounds on which the Government is authorised, under section 15 (2) (b), to declare associations unlawful. These grounds, taken by themselves, are factual and not anticipatory or based on suspicion. An association is allowed to be declared unlawful because it “constitutes” a danger or “has interfered or interferes” with the maintenance of public order or “has such interference for its object” etc. *The factual existence of these grounds is amenable to objective determination by the court*, quite as much as the grounds mentioned in clause (a) of sub-section (2) of section 15, as to which the Attorney-General conceded that it would be incumbent on the Government to establish, as a fact, that the association, which it alleged to be unlawful, “encouraged” or “aided” persons to commit acts of violence, etc. We are unable to discover any reasonableness in the claim of the Government in seeking, by its mere declaration, to shut out judicial enquiry into the underlying facts under clause (b). Secondly, the East Punjab Public Safety Act was a temporary enactment which was to be in force only for a year, and any order made there-under was to expire at the termination of the Act. What may be regarded as a reasonable restriction (1) [1950] S.C.R. 519. imposed under such a statute will not necessarily be considered reasonable under the impugned Act, as the latter is a permanent measure, and any declaration made there-under would continue in operation for an indefinite period until the Government should think fit to cancel it. Thirdly, while, no doubt, the Advisory Board procedure under the impugned Act provides a better safeguard than the one under the East Punjab Public Safety Act, under which the report of such body is not binding on the Government, the impugned Act suffers from a far more serious defect in the absence of any provision for adequate communication of the Government’s notification under section 15 (2) (b) to the association and its members or office-bearers. The Government has to fix a reasonable period in the notification for the aggrieved person to make a representation to the Government. But, as stated already, no personal service on any office-bearer or member of the association concerned or service by affixture at the office, if any, of such association is prescribed. Nor is any other mode of

proclamation of the notification at the place where such association carries on its activities provided for Publication in the official Gazette, whose publicity value is by no means great, may not reach the members of the association declared unlawful, and if the time fixed expired before they knew of such declaration their right of making a representation, which is the only opportunity of presenting their case, would be lost. Yet, the consequences to the members which the notification involves are most serious, for, their very membership there- after is made an offence under section 17. There was some discussion at the bar as to whether want of knowledge of the notification would be a valid defence in a prosecution under that section. But it is not necessary to enter upon that question, as the very risk of prosecution involved in declaring an association unlawful with penal consequences, without providing for adequate communication of such declaration to the association and its members or office bearers, may well be considered sufficient to render the imposition of restrictions by such means unreasonable. In this respect an externment order stands on a different footing, as provision is made for personal or other adequate mode of service on the individual concerned, who is thus assured of an opportunity of putting forward his case.... Indeed, as we have observed earlier, a decision dealing with the validity of restrictions imposed on one of the rights conferred by article 19 (1) cannot have much value as a precedent for adjudging the validity of the restrictions imposed on another right, even when the constitutional criterion is the same, namely, reasonableness, as the conclusion must depend on the cumulative effect of the varying facts and circumstances of each case.

Having given the case our best and most anxious consideration, we have arrived at the conclusion, in agreement with the learned Judges of the High Court, that, having regard to the peculiar features to which reference has been made, section 15 (2)(b) of the Criminal Law Amendment Act, 1908, as amended by the Criminal Law Amendment (Madras) Act, 1950, falls outside the scope of authorised restrictions under clause (4) of article 19 and is, therefore, unconstitutional and void.”

## Annexure V

**Arnu Ferreira's letter demanding details of the basis of his re-arrest in 2011**

BEFORE THE COURT OF THE HONOURABLE JMFC,  
KURKHEDA, GADCHIROLI

IN  
C.R. No. 14/07 P.S. Kurkeda (SP Badgaon)

Arnu Thomas Ferreira  
Aged 58 years  
R/o Bandra, Mumbai - 400 050 \_\_\_\_\_ Applicant/Accused

v/s  
State of Maharashtra  
through P.S.O., Kurkeda P.S.  
Gadchiroli \_\_\_\_\_ Respondent.

Regarding the illegal arrest of the  
Applicant/Accused on 27.9.2011  
and  
Prayer to be immediately provided  
with chargesheet in the said  
crime and be remanded to  
Judicial custody.

MAY IT PLEASE YOUR HONOUR  
I, the Applicant/Accused most humbly beg to submit  
as under:

1. That, I the Applicant/Accused was arrested on 25.2.2007  
in C.R. No. 14/2007 by Dhandoli P.S. Nayjar and thereafter  
serially arrested in 4 cases of Chinchguthi P.S. (Gondia),  
2 cases of Salekhan P.S. (Gondia) and in one case of  
Ramanagar P.S. (Chandrapur) i.e. in C.R. No. 30/2008 which  
came to be tried as ST No. 35/08 at the Court of  
Sessions at Chandrapur. List of such cases and date of  
arrested as a attached herewith as ANNEXURE 1.

2. That, I the Applicant/Accused came to be acquitted in all the above mentioned crimes during the past 4 years & months of ~~just~~ continuous judicial custody at Nagpur Central Prison. In the last case pending against me i.e. ST No. 75/08 at Chandrapur (i.e. CR No 3013/08 Ranagar P.S.), I came to be acquitted on 23-9-2011 and was ordered to be released on furnishing sureties of Rs 15,000 o/s 437A Cr.P.C.

3. That, I the Applicant/Accused furnished the required above-mentioned sureties in ST No. 75/08 at Chandrapur on 26-9-2011 and came to be released from prison after ~~an~~ a continuous incarceration period of 4 years 4 months on 27-9-2011.

4. That, on 23-9-2011 at 1400 hours ~~months~~ after being released free at the ~~ga~~ Nagpur Central Prison, Command of C-60, Gudkholi kidnaped me at the Gate of the Prison in full view of my father, mother, brother and Advocate Surendra Gadling (Nagpur). <sup>Neither</sup> ~~did~~ the kidnappers identify themselves nor did they inform me or my family and Advocate of my arrest. The kidnappers were all in civil clothing. Thus in total violation of the guidelines set by the Hon'ble Supreme Court in the D.K. Baxu case. I was later taken by these kidnappers to Wadgaon-Dealganj and was at 5:30pm told that I was ~~was~~ being arrested in CR No. 14/07. Runada, P.S.

5. That the Hon'ble Supreme Court has held that when accused is enlarged on Bail, the rearrest ~~was~~ thereafter, without apprizing the court which granted bail is illegal. [Uday Chand & ors v/s State]

Mohd. Abdulah, CM, J&K & ors, (1983) 2 SCC 417] Copy of this reported Judgement is attached herewith, hence the present rearrest by the Respondent when I, the Applicant/ Accused am released u/s 437A Cr.P.C. issued on 27.9.2011 in C.R. No. 14/2007 Rurada P.S. is illegal.

6. That, the chargesheet against a certain accused Ms. Sujana w/o Malla Raji Reddy has been filed in this said crime a C.R. No. 14/07 Rurada P.S as chargesheet no. 19/2008 i.e. C.C. No. 342/08 by the Respondent. It is the contention of the respondent that I, the Applicant/ Accused to the absconding accused as shown in the said chargesheet filed in 2008. Throughout this period I, the applicant/accused have been lodged at the Nagpur Central Prison and therefore it is not according to the procedure established by law to show me as absconding u/s 279 Cr.P.C. in the said chargesheet and thereafter rearrest me in the same.

#### PRAYER

In view of the above the applicant/accused most humbly prays that;

- (i) his arrest be declared as illegal i.e. not according to the procedure established by law and hence immediately remand the applicant/accused to judicial custody.
- (ii) to immediately be supplied with a copy of the chargesheet No. 19/2008, which has already been filed against me, the applicant/accused u/s 279 Cr.P.C.

Contd. by 2

(iv) + grant other such orders and reliefs as necessary in the above circumstances so that the applicant/accused's right to speedy trial is safeguarded considering his already long period of undisturbed incarceration of 4 years 6 months.

AND FOR THE ACT OF JUSTICE AND KINDNESS  
THE APPLICANT/ACCUSED SHALL EVER PRAY.

Halsa - Dominguz  
Date - 28.9.2011

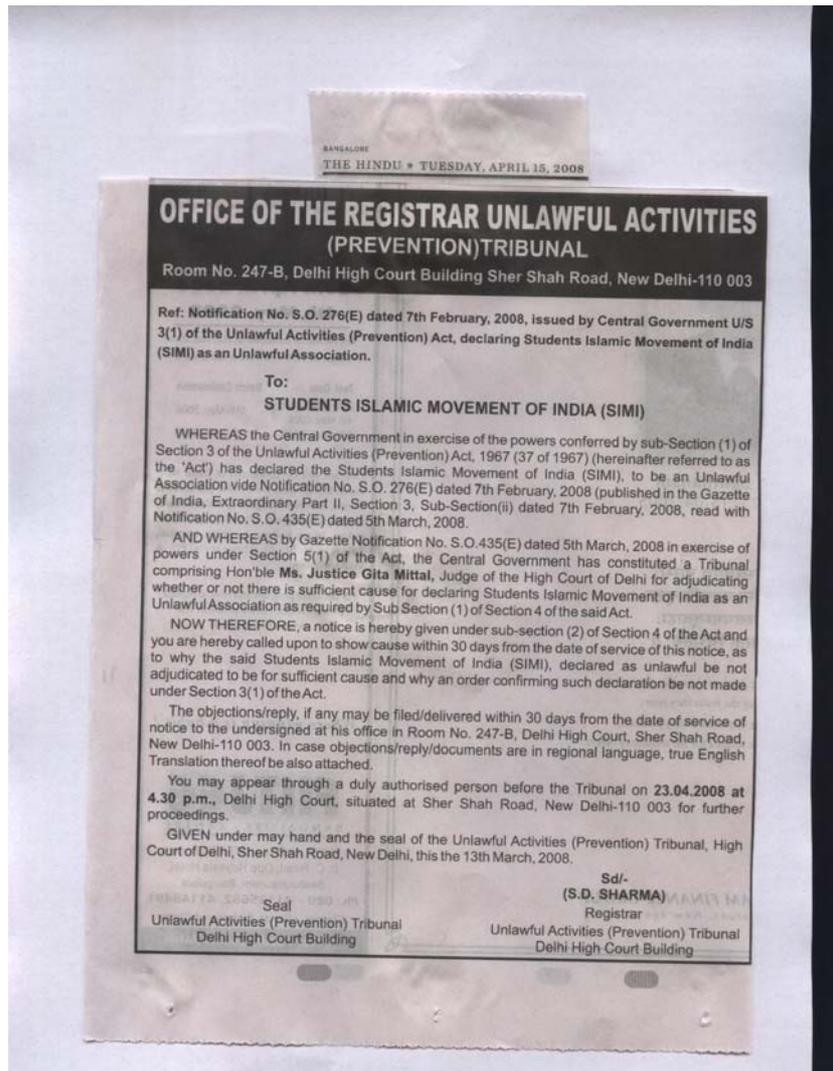
*Arun Thomas*  
Arun Thomas Ferreira  
(Applicant/Accused)  
In-person.

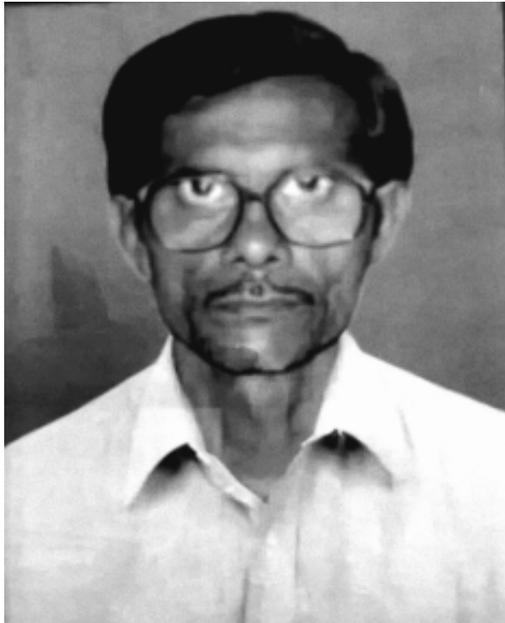
ANNEXURE NO. 1

Sl. No.	CRIME NO. & P.O.	S.T. NO.	CHARGES (1/a)	COURT	STATUS
1	149/07 Nawal (MAGPUR) P.S.	325/01 MAGPUR	+ 10, 12, 20 UAPA* + 3/25 Arms Act + 353 r/w 34 IPC	Adhoc Dist & Ad. Sess Court # C MAGPUR	Acquitted on 19-12-2007
2	24/05 Sakibani (GONDIA) P.S.	34/04 GONDIA	+ 201, 307, 10000, 147, 49, 141, 323, 353, 109, 149, 201, 208, 312 IPC + 3/25 Arms Act + 16, 18, 20 UAPA* etc.	Adhoc Dist & Ad. Sess Court GONDIA	Acquitted on 15-8-2017
3	134/06 Sakibani (GONDIA) P.S.	40/08 GONDIA	+ 201, 242, 254, 49, 49, 149, 153, 191, 112, 399, 120(C) IPC + 120, 101, 102 Railway Act + 16, 17, 19, 20 UAPA* etc.	Adhoc Dist & Ad. Sess Court GONDIA	Acquitted on 15-8-2010
4	04/06 Chandgola (GONDIA) P.S.	106/03 GONDIA	+ 207, 120(B), 47, 49, 149 IPC + 3/25 Arms Act + 20, 23 UAPA*	Ad. Dist & Sess Court # 1 GONDIA	Acquitted on 11-06-2009
5	43/06 Chandgola (GONDIA) P.S.	104/02 GONDIA	+ 207, 120(B), 47, 49, 149 IPC + 3/25 Arms Act + 20, 23 UAPA*	Adhoc Dist & Ad. Sess Court GONDIA	Acquitted on 19-09-2010
6	20/04 Chandgola (GONDIA) P.S.	14/04 GONDIA	+ 207, 241, 225, 234, 147, 149, 153 IPC + 3/25 Arms Act + 20, 23 UAPA*	Adhoc Dist & Ad. Sess Court GONDIA	Acquitted on 03-04-2011
7	03/06 Chandgola (GONDIA) P.S.	34/04 GONDIA	+ 201, 120(B), 47, 49, 149 IPC + 3/25 Arms Act + 16, 18, 20, 23, 24, 30, 12/40 UAPA*	Adhoc Dist & Ad. Sess Court GONDIA	Acquitted on 02-2-2011
8	2013/08 Banspur CHANDIA- APUR P.S.	30/08 BANSUR	+ 10, 12, 19, 24(C) UAPA* + 3/25 Arms Act + 8, 12 Private Act + 120, 101, 102, 124(C), 120(C) 34, IPC.	Ad. Dist & Sess Court Chandpur	Acquitted on 23-9-2010
9	52/08 Nawal (MAGPUR) P.S.	-	+ 324 IPC	Chief Court # 1 MAGPUR	Discharged on 20-06-2008

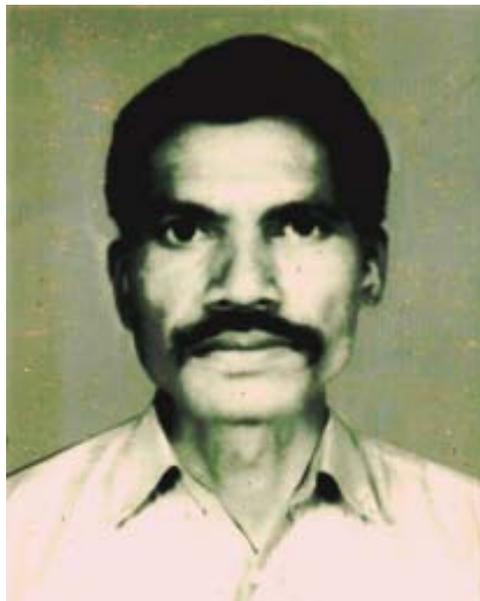
\* INCL. ARMS ACT/1959, (CRACKDOWN) ACT 1955, APPEALED 2009.

## Annexure VI

*SIMI Ban Review Tribunal Notice, 2008*



**Swapan Dasgupta**  
Died in police  
custody on  
2 February 2010



**Ranjit Murmu**  
Died in police  
custody on  
25 September 2011

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**Suggested Contribution:**