



Imprisonment During Trial: Punishment Before Conviction Under UAPA Cases in India

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Abstract

The provision of the Unlawful Activities (Prevention) Act (UAPA) allows the Indian government to designate an individual as a terrorist without trial. Moreover, Section 43D (5) of UAPA prevents the court from granting bail to an accused if the Judges see a prima facie case has been made against the accused. Unlike other ordinary laws, custody can be sought for up to 180 days during the investigation and trial in the UAPA. This paper critically examines the Unlawful Activities (Prevention) Act (UAPA) in India, focusing on how its stringent bail provisions facilitate prolonged pre-trial detention, effectively punishing individuals before conviction. Drawing on case studies mainly from Kerala and beyond, the article explores how the UAPA disproportionately impacts marginalised communities, particularly Muslims, Dalits, and political dissenters. A further purpose is to explore the concept of 'process being the punishment'. This part will address the state's power to enact certain laws that can trap the accused in a situation where the period and the process of getting out of the case become the punishment.

Keywords: *Prison, UAPA, Law, Bail, Conviction.*



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1. INTRODUCTION

The system of punishment has evolved throughout the centuries. It has evolved from more physical, public, savage, and retributive forms to rationalised ones. In the medieval period, punishment was often arbitrary and unequal based on one's caste, class, or social status. The period of Enlightenment and the rise of the modern nation-state witnessed a rational, humane

and utilitarian approach to punishment. With the rise of industrialisation and bureaucratic states in the 18th and 19th centuries, punishment reformed in the form of prison institutions where offenders are put under incarceration as a method to reform, observe and normalise their behaviour.

Today, incarceration is the dominant form of punishment in the world. Proponents of imprisonment often argue for incarceration by

highlighting its deterrent effect, as well as the ability to change, reform, and rehabilitate those it contains positively, and the idea that a prison sentence is a proportionate response to crime (Scott, 2007). Foucault was suspicious of this evolution in the system of punishment. For Foucault, the global transition of punishment from violent torture to imprisonment concerned not the welfare of criminals but social control (Foucault, 1975).

How do states exploit imprisonment the most? Bringing this question to the forefront, this paper will investigate the terms of the Unlawful Activities (Prevention) Act (UAPA) in India, which enables the government to keep innocent individuals in prison for a long time without proper trial and conviction. An official and detailed report on the arrests under UAPA is not available in India. The available information is documented through parliament questions, NCRB data, court observations and investigative journalism. This article is built on several such sources, including that only 2.2% of cases registered under the UAPA from 2016 to 2019 ended in a court conviction (Hindu, 2021). As reported by Scroll, in seven years (2014-2020), 10,552 Indians have been arrested under UAPA – but only 253 were convicted (Doshin, 2021). Since 2014, acquittals have consistently outnumbered convictions, except for one year (Sharma, 2024). Several reports are available which prove that individuals arrested under UAPA are languishing in jails (Tamilarasu, 2020, The Hindu, 2024)

This article adopted a qualitative methodology. Some cases under UAPA are analyzed to briefly overview the situation. The article argues that the stringent conditions of UAPA have allowed the government to detain anyone without bail for the long term. These innocents will be ‘punished’ when they are acquitted after the long-term trial and conviction. The purpose is to explore the concept of ‘process being the punishment’. This part will address the state’s power to enact certain laws that can trap the accused in a situation where the period and the process to be freed from the case becomes the punishment. The paper argues that though the form of punishment has evolved from overt violence to bureaucratic control, today it has become less visible but more pervasive, often hidden in legal processes and extended pre-trial detention.

2. UNLAWFUL ACTIVITIES (PREVENTION) ACT (UAPA)

India claims to be the largest democracy in the world. It has developed several laws to deal with terrorism in the state. Laws like UAPA (1967), Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987, and Prevention of Terrorism Act (POTA), 2002, etc., have been formed in different political situations and locations of Indian history.

The roots of post-independence legislation like the 1950 Preventive Detention Act and 1967 UAPA can be traced back to the Rowlatt Act introduced by the British in 1919. Enacted by the British colonial government, the Rowlatt Act allowed indefinite detention without trial. It was designed to suppress dissent after World War I, especially following the Home Rule movement. This act laid the ideological and procedural groundwork for preventive detention laws in postcolonial India. After Independence, India continued the principle of preventive detention. The Preventive Detention Act (PDA), 1950, allowed the state to detain individuals without formal charges, citing national security.

In the 1960s, political tensions intensified due to Dravidian separatist movements in Tamil Nadu, Naga and Mizo insurgencies, and the Naxalbari movement. To counter such “unlawful” associations, the government sought a constitutional amendment. The 16th Amendment limited the freedom of speech and association on the grounds of sovereignty and integrity of India. This amendment paved the way for UAPA, enabling Parliament to restrict associations deemed threatening to national unity. Meanwhile, the Terrorist and Disruptive Activities (Prevention) Act (TADA), which was passed in 1985, was repealed in 1995. After the 2001 Parliament attack, India passed the Prevention of Terrorism Act (POTA) in 2002, which was eventually repealed in 2004.

To fill the vacuum left by TADA and POTA, the government amended UAPA multiple times, giving it more teeth. Initially, UAPA provided for declaring only an association or a body of individuals’ act ‘unlawful’. UAPA was amended in 2004 to make it more stringent. Section 2(6) of UAPA defines unlawful activities as any action ‘which causes or is intended to cause disaffection against India’. Significantly, this section doesn’t define the act that causes disaffection against

India. Consequently, the Indian government can define any act of Indian citizens as causing or intended to cause disaffection against the nation. After the 26/11 Mumbai attacks, the law was further strengthened by expanding police powers and detention timelines (e.g., up to 180 days without charges). The 2012 Amendment expanded the definition of "terrorist organizations" and criminalized fundraising or membership. The 2019 Amendment empowered the central government to designate individuals (not just organizations) as terrorists, without court oversight.

Along with this, the strengthening notion of a 'security state' has legitimized the claim that laws like UAPA are essential to counter-terrorism. Italian philosopher Giorgio Agamben, in his 2005 influential work *State of Exception*, argues that modern liberal democracies increasingly govern through exception rather than law. The state declares a "state of emergency" that becomes permanent, thereby suspending rights while preserving the appearance of legality. In India, laws like UAPA serve this function: they suspend bail rights, reverse the burden of proof, and empower the executive, all while maintaining a formal legal framework.

In addition, the ambiguous nature of UAPA gives unreasonable power to authorities. This has led the government to arrest and detain innocents from communities like Scheduled Tribes, Scheduled Castes, and the Muslims in India. Most of those arrested are not provided with a proper trial and conviction. They languish in jails for years and, in due course, are acquitted on 'humanitarian consideration' or because of 'lack of evidence'. Some of such cases can be identified here:

2.1. GN Saibaba Case (Patnaik, 2024).

- **Background:** Former Delhi University professor and disability rights activist GN Saibaba was arrested in 2014 under UAPA for alleged Maoist links. Despite being wheelchair-bound and suffering from severe health issues, he was imprisoned for nearly a decade.
- **Outcome:** Acquitted twice (2022 and 2023) by the Bombay High Court due to a lack of evidence and procedural lapses. Tragically, he died seven months after his final acquittal in 2024.

2.2. Umar Khalid, Khalid Saifi, Meeran Haider, Gulfisha Fathima, Sharjeel Imam and Others - Delhi Riots Conspiracy Case (Sharma, 2024).

Background: Umar Khalid has been in jail since 2020 without trial, with bail pleas repeatedly rejected despite no charges being framed. Others who protested the Citizenship Amendment Act—Meeran Haider, Gulfisha Fatima, and Sharjeel Imam—have been imprisoned even longer than Khalid, facing prolonged delays and adjournments from Delhi High Court.

Sharjeel Imam's trial has been pending since 2020, and charges have not been framed so far. In the case of Gulfisha Fatima, she has been jailed for five years, and her bail plea has been pending in the Delhi High Court for nearly three years, despite Supreme Court reminders.

2.3. Thwaha Faisal and Allan Shuhaib (The Hindu 2021)

Background: Two students were arrested in 2019 for alleged Maoist links and granted bail in 2021. Both were in jail for approximately two years before being granted bail, citing a lack of concrete evidence and vague allegations.

2.4. Bhima Koregaon Accused - Mahesh Raut, Hany Babu, and Others (Kalia 2024)

Background: Activists and academics were arrested in 2018 for alleged Maoist links. After six years in jail without trial, some secured bail in 2023–24 due to delays and lack of evidence. Others remain detained despite the Supreme Court guidelines on prolonged incarceration. Along with these, Multiple accused — including Surendra Gadling, Sagar Gorkhe, Sudhir Dhawale, Rona Wilson, and others — have reported being denied court transport and trial dates.

2.5. Ibrahim vs State of Kerala (Philip 2021)

Kerala High Court granted bail to UAPA accused Ibrahim, who was arrested in 2015 after 7 years of imprisonment, citing 'nothing to show his involvement' in the case.

2.6. Abdul Nazar Madani (Jisha 2024)

Abdul Nazar Madani was detained for nine and a half years between 1998 and 2007 and again detained between 2009 and 2014. After spending nearly 14 years in prison across two separate stints (1998–2007 and 2009–2014), Abdul Nazar Madani has seen all pending charges

in a notable 1996–1998 assassination conspiracy officially dropped by the Kerala crime branch, with the case formally closed in 2020.

2.7. Panayikulam Simi Camp Case ([The New Indian Express 2019](#))

In 2019, the state High Court acquitted all five Muslim men in Kerala after 3 years and 4 months of imprisonment. In a significant judicial reversal, India's Supreme Court in September 2023 dismissed the National Investigation Agency's appeal, thereby upholding the Kerala High Court's 2019 acquittal. The court ruled that there was no evidence against them.

2.8. Hubly Terror Conspiracy ([Kumar, 2017](#))

Yahya Kammukutty was arrested in 2008 and detained till 2015, eventually released because of a lack of evidence. He spent about 7 years in jail.

The cases of GN Saibaba, Umar Khalid, Thwaha Faisal, Mahesh Raut, Abdul Madani, and others together disclose an extremely troubling pattern in India's counter-terror governance under the Unlawful Activities (Prevention) Act (UAPA). They demonstrate how the law's indistinct provisions, reversal of the presumption of innocence, and rigorous bail clauses serve to punish individuals through prolonged pretrial incarceration, even in the absence of credible evidence. In most cases, the prosecution had no reasonable evidence against the Individuals accused under UAPA. The vague definition of 'unlawful activities' in UAPA has favoured the state to arrest and detain innocent individuals. Moreover, the stringent bail conditions stretch the trial period and, consequently, the detention of the 'criminals' is prolonged for the long term. They are kept behind bars for years till judgment.

3. THE UAPA AND THE REVERSAL OF JUSTICE

The relationship between law and crime is clear at this moment. The power of law, in the case of UAPA, is not limited to defining what can constitute a crime but is extended to 'construct' a criminal. Under Section 43D (5) of UAPA, bail cannot be granted to a suspect if the court believes there are reasonable grounds to believe that the charges are prima facie true.

The Unlawful Activities (Prevention) Act (UAPA) raises significant concerns regarding its

compatibility with foundational constitutional guarantees, particularly the presumption of innocence, equality before law (Article 14), personal liberty (Article 21), and procedural fairness (Article 22). A central critique focuses on the Act's restructuring of standard criminal justice principles. While the right to bail is conventionally understood as an inherent component of the right to liberty under Article 21, Section 43D(5) of the UAPA establishes an exceptionally stringent threshold, effectively rendering pre-trial release improbable.

This statutory framework was substantially reinforced by the Supreme Court's ruling in *National Investigation Agency v. Zahoor Ahmad Shah Watali* (2019). The Court mandated that, at the bail stage, courts must prima facie accept the prosecution's evidence as credible, even before the formal testing of charges during trial. This approach arguably institutionalizes a significant departure from established norms of pre-trial adjudication. It stands in tension with the broader constitutional principle articulated in *Maneka Gandhi v. Union of India* (1978), which requires that any procedure depriving an individual of liberty must be "just, fair, and reasonable."

Further compounding these concerns are amendments empowering the executive to designate individuals as terrorists, introduced in 2019. This mechanism operates with minimal judicial oversight, effectively granting the executive broad and largely unreviewable discretion. Such a delegation marks a notable departure from conventional understandings of the rule of law and separation of powers.

Consequently, legal scholars such as Vasudev Devadasan and Gautam Bhatia contend that the UAPA effectively establishes a dual-track justice system ([Devadasan & Bhatia 2025](#)). Individuals prosecuted under this special regime operate within a distinct procedural framework that, in practice, places them outside the full ambit of constitutional protections ordinarily guaranteed to accused persons. The cumulative effect of the UAPA's stringent bail provisions, the Watali doctrine, and the executive designation power is not merely prolonged pre-trial detention. It represents a profound dilution of the constitutional safeguards integral to a liberal democratic legal order.

4. PRE-TRIAL DETENTION IS THE PUNISHMENT

The lack of a concrete definition of the term terrorism in UAPA is a deliberate attempt to have a broad meaning to favor the state in their subjective reading of the Act. This has given the investigating agencies wide discretion in deciding what can be a terrorist offence. Though the right to bail is perceived as the accused's fundamental right, securing bail under UAPA is difficult.

The uncertainty regarding the status of the accused is a major concern. Are they just detained in the ongoing trial, or are they imprisoned, given their criminal status? I.e., is the individual arrested under UAPA an accused or a criminal? How can we explain the long-term imprisonment of these people if they are merely accused? Or does the state treat these 'accused' as 'criminals' even before conviction? These questions take us to the politics behind the formulation of draconian laws like UAPA. The justification for the establishment of security laws is often backed by the idea of the "dilemma of democracy", i.e. extraordinary situations may surface due to the openness of the democracy and extraordinary laws are necessary to restore the condition to preserve the very functioning of democracy (Batra, 2007). This must be understood with the universalised 'war on terror' policy and the communal/caste politics in the Indian state. Scholars identify that a common element is visible in both the UAPA, and the Patriot Act introduced by America after 9/11. Both are similar in stringent provisions, favouring the states to detain suspects longer before filing charges (R S, 2016).

The post-9/11 arrests of foreign nationals in America produced such an exceptional situation. "Without statutory authority - and in apparent violation of the extended seven-day period for precharge detention that the PATRIOT ACT allows in terrorism cases - the Immigration and Naturalization Service held some of these suspects for months without affording hearings and without charging any violation of criminal or administrative law" (Schulhofer, 2004, 101).

Hence, apart from the pre-trial detention being a punishment, the process is a punishment for an Individual accused under UAPA. The imposition of UAPA itself is a punishment for them. The process to prove innocence becomes the punishment. The moment a person is arrested under UAPA, they are being penalised for being a specific identity disliked by the state or for

dissenting against the state. So, pre-trial detention, in an actual sense, is a 'prison punishment' for the 'accused'. These are under-trial prisoners who suffer prolonged detention due to a dysfunctional criminal justice system.

This pre-trial punishment is accompanied by mental pressure and torture inside the jail. The accused's family life, employment, and social surroundings have collapsed. In India, there exists no proper legal aid, and under trial, prisoners are treated inhumanely (Verghese, 2017). For Foucault, the modern punishment system has its principal object, which is loss of wealth or rights. However, "mere loss of liberty has never functioned without a certain additional element of punishment that certainly concerns the body: rationing of food, sexual deprivation, corporal punishment, solitary confinement...It always involved a certain degree of physical pain" (Foucault, 1975, 16). Pre-trial detention under UAPA, which is not a punishment in the language of the law, is not merely a violation of an individual's freedom. It is more than violating a bunch of rights protected by our constitution.

5. CONCLUSION

A major portion of the individuals imposed with UAPA are 'innocent prisoners' or, in the language of the law, suspicious pre-trial custodians. A law that allows the state to decide the pre-trial detention duration and the rigidity in the law that leaves the accused - suspicious persons - in a situation that doesn't allow them to come out of trouble easily can become a political weapon. Such a law is inefficient if it cannot achieve the desired objective, and such rules must be repealed, considering the injustice it imparts upon the possibly innocent.

In India, the act is used as a political tool to silence the people questioning the government. More specifically, the UAPA is meant to subjugate the minorities, Dalits, and other dissenting voices in the state. Manisha Sethi, in her 'Kafkaland', observes UAPA as a continuation of the Terrorist and Disruptive Activities (Prevention) Act TADA, whose aim is only to arrest minorities with a Political motive (Sethi, 2014). The 2006 Sachar committee report highlighted the poor representation of Muslims in Indian public life. However, as noted by Irfan Ahmed, the report lacks the details of the overrepresentation of Muslims in Indian prisons. Inquiring into the

government's figures from 1998 to 2014, the percentage of Muslims in prison is greater than the percentage of Muslims in the total population (Ahmed 2022). In such a socio-political context, the existence of draconian laws like UAPA makes it harder for the marginalised to break out from oppressive state power.

Collective pressure from the public is required to make the state follow the safeguards for pre-trial custodians. Scholars note that the detained person must be granted specific rights, such as – the real cause for the arrest being informed, the accused being permitted to meet the relatives and lawyers, the accused being provided with sufficient health security under custody, the accused being produced before the court of law within a short period, and the accused is provided with sufficient compensation in cases of false accusation (R S, 2016).

However, even after years of imprisonment and trial, if the accused proves his innocence in court and is released, he or she will still be isolated from society, so social life is impossible. Indian democracy has provided this resistance power to the dominant groups to remain free despite the visible violence they have done. At the same time, the marginalised are imprisoned and their social life is dismantled for nothing.

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