

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. OF 2019

(Petition under Article 32 of the Constitution of India read
with Order XXXVIII of Supreme Court Rules, 2013)

IN THE MATTER OF:

Sajal Awasthi

...Petitioner

Versus

Union of India

...Respondent

P A P E R - B O O K

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FILED BY:

(Advocate for the Petitioner)

Filed on:-

Place: New Delhi

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SYNOPSIS

The Petitioner is a public spirited individual and a Good Samaritan who has endeavoured throughout his life to promote values and principles of justice and equality. The present Public Interest Litigation seeks intervention of this Hon'ble Court for enforcement of fundamental right to life under Article 21 and fundamental right to equality under Article 14 and fundamental right to free speech and expression under Article 19 (1) (a) of the Constitution of India.

It is well-settled and established position of law that dignity and liberty of an individual is inalienable under the regime of our controlled constitution and that the State is under an obligation to preserve the same. Though there have been certain instance wherein the State has adopted a contrary approach to the above stated fact and it is pertinent to note here that the Unlawful Activities (Prevention) Amendment Act, 2019 is an example of such an encroachment upon the Fundamental Rights of individuals as enshrined under Part III of the Constitution of India.

The respondent *vide* Unlawful Activities (Prevention) Amendment Act, 2019 (hereinafter referred to as "UAPA, 2019") seeks to substantially modify Chapter VI of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "UAPA, 1967) and Section 35 and 36 therein. The new Section 35 of the UAPA Act, 1967 empowers the Central Government to categorise any individual as "terrorist" and add name of such a person in Schedule 4 of the Act. It is submitted that conferring

of such a discretionary, unfettered and unbound powers upon the central government is antithesis to the Article 14 of the Constitution of India.

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

The UAPA, 2019 does not afford an opportunity to an individual, being categorised as terrorist, to present his/her case and let such individuals to live on the whim and caprice of the society thereafter. The amended Section 35 of the UAPA, 1967 directly and adversely affects the fundamental right to free speech and expression as enshrined under Article 19 (1) (a) of the Constitution of India. It is relevant to note here that Right of dissent is a part and parcel of fundamental right to free speech and expression and therefore, cannot be abridged in any circumstances except for mentioned in Article 19 (2). The UAPA, 2019 empowers the ruling government, under the garb of curbing terrorism, to impose indirect restriction on right of dissent which is detrimental for our developing democratic society. India is a democracy and every citizen of India has a fundamental right to dissent but presence of draconian law and provisions as contained in Section 35 and 36 of the UAPA, 2019

directly encroach upon the same. The Hon'ble Supreme Court in the case of **Romesh Thappar v. State of Madras, AIR 1950 SC 124** analysed the importance of right to free speech and expression and observed to the following effect:

"...The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which envisages changes in the composition of legislatures and governments and must be preserved."

Therefore, the present Public Interest Litigation is filed to vindicate and enforce the crucial fundamental rights of citizens of India as enshrined under Article 14, 19 and 21 of the Constitution of India and to strike down UAPA, 2019 on the ground of it being violative of basic tenets of Constitution of India.

LIST OF DATES

1967	That the Unlawful Activities (Prevention) Act, 1967 was passed by the Parliament for more effective prevention of certain unlawful activities of individuals and associations and for matter connected therewith. The copy of The Unlawful Activities (Prevention) Act, 1967 is annexed herewith as ANNEXURE P-1 .
08.07.2019	That the Unlawful Activities (Prevention) Amendment Bill of 2019 was introduced in the Lok Sabha by the Hon'ble Home Minister of India.
24.07.2019	That the Unlawful Activities (Prevention) Amendment Bill of 2019 was passed by the Lok Sabha.
02.08.2019	That the Unlawful Activities (Prevention) Amendment Bill of 2019 was passed by the Rajya Sabha.
03.08.2019	That the petitioner addressed a representation to the Hon'ble President of India requesting alterations and modifications in the present Unlawful Activities (Prevention) Amendment Bill of 2019 as the same being violative of fundamental rights of the citizens of India. The copy of representation dated 03.08.2019 sent by the petitioner requesting the Hon'ble President of India to reconsider the Unlawful Activities (Prevention) Amendment Bill of 2019 before giving his assent is annexed herewith as

	ANNEXURE P-2.
03.08.2019	That the petitioner addressed a representation to the Hon'ble Union Home Minister of India requesting alterations and modifications in the present Unlawful Activities (Prevention) Amendment Bill of 2019 as the same being violative of fundamental rights of the citizens of India. The copy of representation dated 03.08.2019 sent by the petitioner requesting the Hon'ble Union Home Minister of India to reconsider the Unlawful Activities (Prevention) Amendment Bill of 2019 is annexed herewith as ANNEXURE P-3.
08.08.2019	That Hon'ble President of India gave his assent to the Unlawful Activities (Prevention) Amendment Bill of 2019.
08.08.2019	That the Unlawful Activities (Prevention) Amendment Act, 2019 was published in the Official Gazette of India for general information of the public. The copy of Official Gazette of India publishing the Unlawful Activities (Prevention) Amendment Act, 2019 dated 08.08.2019 for the General Information of the Public is annexed herewith as ANNEXURE P-4.
13.08.2019	That the petitioner addressed a letter dated 13.08.2019 to the Ministry of Law and Justice (legislative department) for reconsideration of the UAPA, 2019 before bringing the Act into commencement. The copy of letter dated

	<p>13.08.2019 addressed by the petitioner to the Ministry of Law and Justice (legislative department) requesting reconsideration of the UAPA, 2019 before bringing the Act into commencement is annexed herewith as ANNEXURE P-5.</p>
14.08.2019	<p>That the Unlawful Activities (Prevention) Amendment Act, 2019 was brought into force. The copy of Official Gazette notifying the date of commencement of the Unlawful Activities (Prevention) Amendment Act, 2019 is annexed herewith as ANNEXURE P-6.</p>

The Hon'ble Chief Justice of India
And his companion Justices of the
Supreme Court of India

The humble petition of the
Petitioner above named.

MOST RESPECTFULLY SHOWETH:-

1. The petitioner has no personal interest in the litigation. The petition is not guided by self-gain or for gain of any other person/institution/body and that there is no motive other than of public interest in filing the present writ petition. Further, the petitioner is approaching this Hon'ble court with clean hands and sole intention of addressing the public concern of violation of fundamental rights of the citizens of India as enshrined under Article 14, 19 and 21 of the Constitution of India.
2. The present writ petition under Article 32 of the Constitution of India is being filed by the Petitioner to enforce fundamental rights of the general public particularly, the Right to Life enshrined under Article 21 of the Constitution and Right to Equality as enshrined under Article 14 of the Constitution and Right to free speech and expression under Article 19 (1) (a) of the Constitution. The Petitioner is a public spirited individual and a Good Samaritan who has endeavoured throughout his life to promote values and principles of justice and equality.
3. That the petitioner is not a meddlesome interloper or busybody and has requisite *locus standi* to file the present Public Interest Litigation. It is submitted that the petitioner has already exhausted all other possible

alternatives to redress the issue of blanket and unregulated power being conferred by Section 35 and 36 of the UAPA, 2019.

4. That the petitioner addressed representations to the Hon'ble President of India and Hon'ble Union Home Minister of India requesting for immediate reconsideration of the UAPA, 2019 but the respective authorities failed to pay any heed to such an important issue. Therefore, being aggrieved by non-action on the part of the Executive and the Head of the Executive, the petitioner has approached this Hon'ble Court under Article 32 of the Constitution of India for safeguarding the interests of the general public and core democratic values of our Constitution which are embraced in the form of fundamental rights guaranteed under Part III of the Constitution of India.

BRIEF FACTS OF THE CASE:-

5. That the Unlawful Activities (Prevention) Act, 1967 (Hereinafter "UAPA, 1967") was enacted by the Parliament with the sole objective of more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith. The copy of The Unlawful Activities (Prevention) Act, 1967 is annexed herewith as **ANNEXURE P-1**.
6. That in order to further the objective of the said Act, the Union Home Minister introduced Unlawful Activities (Prevention) Amendment Bill, 2019 in Lok Sabha which *vide* its amendment in Section 35 of the Act, empowers the respondent to categorise any person as terrorist without involving any judicial application of mind and even before commencement of trial of such a person, if he/she are allegedly involved in some kind of disruptive activities under the said Act.
7. That the Lok Sabha on 24.07.2019 passed the Unlawful Activities (Prevention) Amendment Bill, 2019 with majority and the same was also passed by the Rajya Sabha on 02.08.2019.
8. That the petitioner in wake of rising threat and high susceptibility of the misuse of the unfettered discretion being granted under Unlawful Activities (Prevention) Amendment Bill, 2019, addressed representation to the Hon'ble President of India requesting reconsideration of the of the same as it was in violation of Article 14, 19 and 21 of the Constitution of India. The copy of representation

dated 03.08.2019 sent by the petitioner requesting the Hon'ble President of India to reconsider the Unlawful Activities (Prevention) Amendment Bill of 2019 before giving his assent is annexed herewith as **ANNEXURE P-2**.

9. That the petitioner addressed a representation to the Hon'ble Union Home Minister of India requesting alterations and modifications in the present Unlawful Activities (Prevention) Amendment Bill, 2019 as the same being violative of fundamental rights of the citizens of India. The copy of representation dated 03.08.2019 sent by the petitioner requesting the Hon'ble Union Home Minister of India to reconsider the Unlawful Activities (Prevention) Amendment Bill of 2019 is annexed herewith as **ANNEXURE P-3**.

10. That the Unlawful Activities (Prevention) Amendment Act, 2019 (Hereinafter "UAPA, 2019) was published in the Official Gazette of India for general information of the public. The copy of Official Gazette of India publishing the Unlawful Activities (Prevention) Amendment Act, 2019 dated 08.08.2019 for the General Information of the Public is annexed herewith as **ANNEXURE P-4**.

11. That the petitioner addressed a letter dated 13.08.2019 to the Ministry of Law and Justice (legislative department) for reconsideration of the UAPA, 2019 before bringing the Act into commencement. The copy of letter dated 13.08.2019 addressed by the petitioner to the Ministry of Law and Justice (legislative department) requesting reconsideration of the UAPA, 2019 before bringing the Act

into commencement is annexed herewith as **ANNEXURE P-5**.

12. That the Unlawful Activities (Prevention) Amendment Act, 2019 was brought into force on 14.08.2019. The copy of Official Gazette notifying the date of commencement of the Unlawful Activities (Prevention) Amendment Act, 2019 is annexed herewith as **ANNEXURE P-6**.

13. Being aggrieved by non-action on the part of the Executive and the Head of the Executive, the petitioner has approached this Hon'ble Court under Article 32 of the Constitution of India for safeguarding the interests of the general public and core democratic values of our Constitution which are embraced in the form of fundamental rights guaranteed under Part III of the Constitution of India.

QUESTIONS OF LAW:-

14. The Public Interest Litigation *inter alia* raises the following questions of law relating to public interest and importance, without prejudice to each other, for the consideration of the Hon'ble Court:

- I. Whether the Unlawful Activities (Prevention) Amendment Act, 2019 is violative of fundamental rights enshrined under Part III of the Constitution of India?
- II. Whether unilateral categorisation of an individual as terrorist by the respondent by virtue of unfettered and absolute power under the Unlawful

Activities (Prevention) Amendment Act, 2019 violative of Article 14 of the Constitution of India?

- III. Whether categorisation of an individual as terrorist and simultaneous addition of his/her name in Schedule 4 of the Act, without any judicial application of mind, is in violation of Right to Reputation under Article 21 of the Constitution of India?
- IV. Whether the Unlawful Activities (Prevention) Amendment Act, 2019 adversely effects the canals of Right of Dissent vis-à-vis Right to free speech and expression under Article 19 of the Constitution of India?
- V. Whether the Unlawful Activities (Prevention) Amendment Act, 2019 suffers from the vice of manifest arbitrariness?
- VI. Whether terming or categorising of an individual as terrorist even prior to conclusion of his/her trial or judicial application of mind, in contravention to the settled canons of the criminal jurisprudence?

GROUNDS:-

- A. That the draconian provisions contained in the Unlawful Activities (Prevention) Amendment Act, 2019 (hereinafter referred to as 'impugned law'), especially Section 35 of the said law is violative of basic tenets of Part III of the Constitution. It is averred that a person's reputation is an inseparable element of an individual's personality and

thus, it cannot be allowed to be tarnished. Though the present impugned law is totally in contravention to above stated settled position of law.

- B. That the subject-matter of the present petition invokes immediate need of protection from the draconian and harsh provisions of the Section 35 of the impugned law which are in nature of unreasonable infringement of fundamental rights guaranteed under Article 14, 19 and 21 of the Constitution of India.
- C. That prior to passing of the impugned law, the Unlawful Activities (Prevention) Act, 1967 *vide* its Section 35 authorised only categorising of organisations as terrorist organisations but after coming into force of the impugned law, the same has been extended to individuals as well. It is submitted that it is necessary to draw a clear line of distinction between unilateral categorisation of an organisation as terrorist organisation and unilateral categorisation of an individual as a terrorist because the latter carries with itself far more prolonged consequences and repercussions for a person's liberty and to live freely with dignity.
- D. That the right to reputation is an integral part of one's fundamental right to life with dignity under Article 21 of the Constitution. It is pertinent to note here that what Article 21 postulates is a dignified life and not merely an animal existence. Therefore, categorising of an individual as terrorist under Section 35 of the impugned law by the respondent without any controlled mechanism or system

of checks and balances, amounts to violation of both Article 14 and 21 of the Constitution of India.

- E. That Right to reputation is an insegregable part of Article 21 of the Constitution. A person's reputation is an inseparable element of an individual's personality and it cannot be allowed to be tarnished. Further, Reputation of a person is neither metaphysical nor a property in terms of mundane assets but an integral part of his sublime frame and a dent in it is a rupture of a person's dignity, negates and infringes fundamental values of citizenry right.
- F. That the term 'Life' under Article 21 of the Constitution of India includes reputation of an individual as well as the right to live with freedom. The expression ' life' also appears in Article 21 of the Constitution and has been provided a wide meaning so as to inter alia include within its ambit the right to live with dignity, right to shelter, right to basic needs and even the right to reputation.
- G. That the Hon'ble Supreme Court in the case of **Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni & Ors., AIR 1983 SC 109** held to the following effect:-

"It is thus amply clear that one is entitled to have and preserve, one's reputation and one also has a right to protect it. In case any authority, in discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him,

must provide a chance to him to have his say in the matter.”

- H. That the impugned law does not provide any sort of reliable safeguards against the high possibility of misuse of such a discretionary power being conferred upon the respondent. The nature of determination under Section 35 with respect to an individual warrants judicial application of mind rather than being exercised by the respondent. Further, the respondent has also failed to comprehend meaning of word ‘alleged’ in any trial and consequently, the far reaching adverse consequences of Section 35 of the impugned law in those cases wherein an alleged accused is categorised as terrorist, even before completion of his/her trial of such a person.
- I. That the the procedure for denotification of an individual as a ‘terrorist’ is flawed and devoid of any impartial procedure, as the same lacks any judicial member or retired judicial member, especially in the instant case where fundamental rights of an individual are at stake.
- J. That the Section 35 of the impugned law is also violative of international conventions ratified and implemented by India. International Covenant on Civil and Political Rights (1965) recognises right of reputation of others and right to hold opinions without interference.
- K. That Section 35 of the impugned law does not specify detailed grounds or reasons based on which an individual can be termed as terrorist and, therefore, conferring of

such an arbitrary and unfettered power without any limits or bounds amount to violation of Article 14 of the Constitution of India.

- L. That our Constitution has been crafted and evolved as a controlled constitution embracing adequate checks and balances on all the branches of the executive and administrative bodies and consequently, in contravention to this, conferment of discretionary power upon the respondent to term any individual as terrorist under Section 35 of the impugned law, which in all possibilities has direct impact upon the fundamental rights of such an individual, is anathema to the Rule of Law as postulated and adopted under Article 14 of the Constitution of India.
- M. That conferring of absolute, unrestricted and unobstructed powers upon the respondent, especially when the same is influencing the essential fundamental rights of a person, is not permissible under the regime of Constitution of India vis-à-vis Article 13 of the Constitution of India.
- N. That the impugned law suffers from the vice of manifest arbitrariness and therefore, the impugned is liable to be struck down only on the ground of presence of manifest arbitrariness as well. It is submitted that thread of reasonableness runs through the entire Part III of the Constitution and not even an iota of the provisions contained in Section 35 of the impugned law be termed as fair and reasonable. The Hon'ble Supreme Court in the case of ***Shayara Bano & Ors. v. Union of India &***

Ors., (2017) 9 SCC 1 dealt with the scope of challenging validity of an enactment on grounds of being manifestly arbitrary and observed to the following effect:

“Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well Under Article 14.”

- O. That in light of the rulings of this Hon’ble Court, it can be safely stated that a constitutional infirmity is found in Article 14 itself whenever legislation is "manifestly arbitrary"; i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased. Therefore, positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest etc. all of which are missing in the impugned law.
- P. The mandate of Article 14 of the Constitution prohibits conferment unguided and unrestricted power on any authority. As was observed by the Hon’ble Supreme Court in the case ***District Registrar and Collector v. Canara Bank, (2005) 1 SCC 496***, wherein, it was observed to the effect that:-

“Where power is open to use disproportionate to purpose be achieved in invalid in the absence of guidelines or principles or norms which are ‘essential’ for exercise of such power.”

Q. That our Constitution envisages a society governed by rule of law. Absolute discretion uncontrolled by guidelines which may permit denial of equality before law is the antithesis to rule of law. Absolute and unfettered discretion is violative of Article 14 of the Constitution. Further, every person has a fundamental right to live freely and without any undue encroachments upon the same but, the unhindered power granted by Section 35 of the impugned law upon the respondent and its usage in absence of any judicial application of mind is in sheer violation of Article 21 of the Constitution read with Article 14 of the Constitution of India.

R. That the impugned law is also liable to be struck down as the same is violative of fundamental right to free speech and expression guaranteed under Article 19 (1) (a) of the Constitution of India. It is submitted that right of dissent is an integral part of Article 19 (1) (a) and is an important right in the realm of our flourishing democracy. The importance of right of dissent was highlighted by the Hon'ble Supreme Court in the case **Maqbool Fida Hussain v. Rajkumar Pandey, (2008) Cri L.J. 4107 (SC)** as follows:

“The right to dissent is the hallmark of a democracy. In real democracy the dissenter must feel at home and ought not to be nervously looking over his shoulder fearing captivity or bodily harm or economic and social sanctions for his unconventional or critical views. There should be freedom for the thought we hate. Freedom of speech has no meaning if there is no freedom after speech. The reality of democracy is to be measured by the extent of freedom and accommodation it extends.”

- S. That the fundamental right of dissent and it being part and parcel of free speech and expression makes it inalienable except in the circumstances mentioned in Article 19 (2). The Hon’ble Supreme Court in the case of **Romesh Thappar v. State of Madras, AIR 1950 SC 124** analysed the importance of right to free speech and expression and observed to the following effect:

“...The freedom of speech and expression of opinion is of paramount importance under a democratic Constitution which envisages changes in the composition of legislatures and governments and must be preserved.”

- T. That the analysis of provisions contained in Section 35 of the impugned law clearly reveals indirect encroachment

upon the liberty of individuals to freely dissent in the Indian democracy. It is submitted that the right of dissent forms one of the pillar in the democracy and ripping off the same from its very roots would tantamount to destruction of very core of the Constitution of India. The importance of right of dissent was emphasised by Professor Meiklejohn in his book titled "Political Freedom" (New York: Harper & Brothers, 1948) pages 27-28-

"If, then, on any occasion in the United States it is allowable to say that the Constitution is a good document, it is equally allowable, in that situation, to say that the Constitution is a bad document. If a public building may be used in which to say, in time of war, that the war is justified, then the same building may be used in which to say that it is not justified. If it be publicly argued that conscription for armed service is moral and necessary, it may likewise be publicly argued that it is immoral and unnecessary. If it may be said that American political institutions are superior to those of England or Russia or Germany, it may, with equal freedom, be said that those of England or Russia or Germany are superior to ours. These conflicting views may be expressed, must be expressed, not because they are valid, but because they are relevant. If they are responsibly entertained by anyone, we, the voters, need to hear them. When a question of policy is 'before the house', free men choose to meet it not with their eyes shut, but with their eyes open. To be afraid of ideas, any ideas, is to be unfit for self-government. Any such suppression of ideas about the common good, the First Amendment condemns with its absolute disapproval. The freedom of ideas shall not be abridged."

PRAYER

In view of the facts and circumstances mentioned, the petitioner humbly prays before this Hon'ble Court to pass the following relief:-

- a. Issue of writ, order or direction in nature of mandamus declaring the Unlawful Activities (Prevention) Amendment Act, 2019 as unconstitutional;
- b. Declare that the Unlawful Activities (Prevention) Amendment Act, 2019 is violative of fundamental rights as enshrined under article 14, 19 and 21 of the Constitution of India;
- c. Pass any other order or relief in favour of the petitioner in the interest of justice, equity and good conscience.

PETITIONER

THROUGH

Drawn By:-

Pawan Reley, Advocate

FILED BY:

Counsel for the petitioner

Place: New Delhi

Date: .08.2019

