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The Unwritten Sunset Clause of Personal Liberty in UAPA: Analysing Romila Thapar vs. Union of India

Spandan Roy Basunia

LLM Student at The West Bengal National University of Juridical Sciences, Kolkata - 700010, West Bengal, India; spandanrb2021@gmail.com

Abstract

India's principal anti-terrorism statute, the "Unlawful Activities (Prevention) Act", has faced mounting criticism for its impact on procedural safeguards and personal freedoms. Enacted in 1967 and repeatedly amended to broaden state authority, the law notably lacks a sunset clause—a key feature of its predecessors like TADA—resulting in unchecked state discretion. This paper contends that UAPA's stringent provisions, including extended detention before trial of up to 180 days, a reversed burden of proof, and restrictive bail norms, function as an implicit "sunset clause" by systematically undermining personal liberty. The study critically examines "Romila Thapar v. Union of India (2018)," a pivotal case concerning the arrest of activists regarding the Bhima Koregaon incident. It highlights how the statute's ambiguous terminology, such as "terrorist act," coupled with procedural asymmetries, facilitates its misuse against dissenting voices. The Supreme Court's 2:1 verdict, which denied an independent probe, illustrates judicial deference to executive power, whereas Justice Chandrachud's dissent underscores concerns over trial by media, dilution of the presumption of innocence, and broader threats to democratic values. Statistical analysis between 2015 and 2020 reveals a stark pattern of misuse, with 98.78% of individuals arrested under UAPA classified as undertrials, yet only 2.8% securing convictions. Despite these concerns, recent judicial decisions (KA Najeeb, Sheikh Javed Iqbal) signal a shift towards prioritising constitutional principles over statutory rigidity. The paper ultimately asserts that while national security remains paramount, UAPA's framework disproportionately compromises civil liberties. It calls for urgent legislative and judicial recalibration to ensure alignment with India's constitutional vision, encapsulated in Chimanlal Shah's assertion: "The right to life and personal liberty is the most fundamental of the fundamental rights."

Keywords: *National Security, Personal Liberty, Presumption of Innocence, Preventive Detention, Procedural Fairness, Romila Thapar Case, Sunset Clause, UAPA*

> *"THE RIGHT TO LIFE AND PERSONAL LIBERTY IS THE MOST FUNDAMENTAL OF THE FUNDAMENTAL RIGHTS, WITHOUT WHICH ALL OTHER RIGHTS ARE MEANINGLESS"*
>
> \- Chimanlal Shah, during Constituent Assembly Debates (Varma, 2024)

1.0 Introduction

The "Unlawful Activities (Prevention) Act" (hereinafter referred to as "UAPA") was originally enacted in 1967. The original aim of the Act was to prevent unlawful activities. It was only in 2004 that the terrorism activities came under the ambit of the Act after the repeal of "Prevention of Terrorism Act, 2002" (hereinafter referred to as "POTA") in 2004 (Brunner and Nair, 2020). To provide a brief background of the legislation, the Act was enacted in the context of the Indo-China War of 1962 and the Indo-Pak War of 1965 (John, 2018). Alongside these external conflicts, a 1962 Rajya Sabha Speech by DMK Leader CN Annadurai, who later went on to become the Chief Minister of Tamil Nadu, demanding secession of Tamil Nadu from India, fuelled tension (Ghai, 2025). In response, the National Integration Council

established a Committee on National Integration and Regionalisation, which recommended key constitutional amendments (Ministry of Home Affairs, n.d.). Based on these recommendations, Parliament enacted the Constitution (Sixteenth Amendment) Act, 1963, which imposed restrictions on freedom of speech to safeguard India's sovereignty and integrity. This amendment laid the foundation for UAPA. Over the years, it has gone through multiple amendments in 2008, 2012 and 2019, all of which have weaponised this legislation by broadening the state's power. Although the stated objective of the Act is national security, the law has been criticised for being vague, overbroad and susceptible to misuse. In recent years, UAPA has been invoked against journalists, activists and academics, raising concerns about its role in suppressing dissent rather than strictly addressing terrorism (The Hindu, 2024). In October 2020, the UN High Commissioner Michelle Bachelet expressed her concerns over the deteriorating state of free speech in India by highlighting the frequent invocation of UAPA against social and civil rights activists (The Leaflet, 2021). Unlike its predecessors, like the "Terrorist and Disruptive Activities (Prevention) Act" (hereinafter referred to as "TADA"), which had a sunset clause of 2 years in its Section 1(4), UAPA does not have any such validity period (Chitkara, 2022). Even its immediate predecessor, POTA, lacked a fixed expiration period but was subject to a review committee set up by the Supreme Court. In glaring contrast, UAPA lacks any periodic review mechanism or any sunset clause, but the law's stringent provisions – such as prolonged detention without bail coupled with the reversal of the burden of proof create something which can be termed as an "unwritten sunset clause of personal liberty". Unlike a formal sunset clause, which places a time-bound limitation on a law's validity, this phrase reflects how UAPA indefinitely curtails personal liberty without clear safeguards. This paper highlights the issues about UAPA through the 2018 ruling of the Indian Supreme Court in the Bhima Koregaon case, known as *Romila Thapar v. Union of India* (2018).

UAPA grants extensive authority to law enforcement agencies concerning arrests, searches and investigations. Moreover, it excludes the option of anticipatory bail, imposes strict conditions on granting bail and allows for the admissibility of intercepted conversations as evidence (Singh *et al.,* 2022). The legislation also deviates from the fundamental principle of the presumption of innocence by shifting the burden of proof onto the accused. Furthermore, it extends the permissible period of detention to 180 days and classifies all offences under its scope as cognizable, thereby expanding the State's power to initiate legal action without prior judicial approval (Singh *et al.,* 2022). Before looking at the case at hand, various contentious provisions of UAPA are looked at to understand how it eclipses personal liberty.

1.1 Challenges to Procedural Fairness under UAPA

The right to a fair trial guarantees that people have a reasonable chance to defend themselves before an impartial court because of the natural power disparity that exists between the accused and the State, which is the prosecuting authority. This right lacks a clear definition, despite its widespread use in criminal law and essential constitutional significance. Courts in India, the United States, and common law jurisdictions have refrained from assigning it a rigid or technical meaning. Instead, it is viewed as a flexible right with a broad scope, serving the twofold function of shielding people against arbitrary state activity and ensuring that legal proceedings follow rational and evidence-based methods of establishing the truth (Chitkara, 2022). The right to a fair trial finds recognition in Part III of the Indian Constitution, particularly through Article 20, which safeguards against wrongful conviction, Article 21, which upholds the right to life and personal liberty, and Article 22, which protects against unlawful arrest and detention.

Anti-terror laws weaken the right to a fair trial by deviating from fundamental legal principles such as the presumption of innocence, protection against self-incrimination, and the independence and impartiality of judicial bodies. The provisions under UAPA which challenge procedural fairness are listed below,

I. One of the primary flaws enabling the misuse of stringent anti-terror laws is the vague and arbitrary definition of a "terrorist act" under Section 15 of the Act. The provision employs broad and ambiguous phrases such as "likely to threaten" or "likely to strike terror in people," making its scope excessively wide. This lack of clarity allows for its potential misuse, where legitimate demonstrations by activities, students and civilians could be wrongfully classified as "terrorist acts" on the mere assumption that

they might escalate into violence, causing harm or casualties.

II. Under regular legal provisions, the investigation of a case must be completed within 90 days, failing which the accused can no longer be detained and is entitled to default bail. However, to provide investigative agencies more time to finish their investigations without experiencing any procedural breaches, Section 43D (2) of the UAPA extends this period, allowing imprisonment for a maximum of 180 days. The provision has often been misused, leading to prolonged incarceration of accused individuals by delaying the filing of charge sheets, effectively denying them the opportunity to get bail.

III. The UAPA's Section 43D (5) places two strict requirements on bail. The public prosecutor must first be given a chance to challenge the bail plea. Second, the Court must examine the case diary or report submitted in accordance with Section 173 of the CrPC and decide if there are sound reasons to think that the accusations are not prima facie true. These strict conditions make securing bail under UAPA exceedingly difficult, often resulting in prolonged pre-trial detention for the accused. What is more troubling is the fact that the provision uses the term "shall", making it mandatory for the judge to deny bail if the suspected culpability of the accused is met at a prima facie level (Chitkara, 2022). Therefore, the room for judicial discretion is curtailed.

IV. The presumption of innocence is a fundamental fair trial right safeguarded by Article 21 of the Constitution and is considered a cornerstone of criminal jurisprudence. It is also recognised as a human right under Article 14 of the ICCPR and Article 6 of the ECHR. Often referred to as the "golden thread" of criminal law as laid down in *Woolmington v. DPP* (1935), this principle ensures that an accused is treated as innocent until proven guilty. However, under Section 43E of the UAPA, when a person is charged with a terrorist act, the court is required to presume their guilt unless proven otherwise. This reversal of the presumption standard makes it significantly harder for the accused to secure regular bail.

Abuse of procedural fairness in UAPA can be illustrated through the case of 84-year-old tribal rights advocate and Jesuit priest Father Stan Swamy, who spent nearly three decades advocating for Adivasi and Moolvasi rights in Jharkhand (Barsaiyan and Kartikeya, 2021). Following the Bhima Koregaon violence on December 31, 2017, an FIR was filed against several activists, including Swamy. Initially protected by a Bombay High Court stay, his case was later taken over by the NIA, which arrested him on October 7, 2020, in Ranchi. Despite suffering from advanced Parkinson's disease, he was charged under UAPA for alleged links to the banned CPI (Maoist) organisation. His repeated bail pleas on medical grounds were denied, citing accusations of conspiracy (Barsaiyan and Kartikeya, 2021). The Bombay High Court eventually allowed his transfer to a private hospital, but by then, his condition had worsened. He was placed on a ventilator and passed away ultimately.

2.0 Supreme Court Decision in Romila Thapar vs. Union of India

2.1 Facts and Pleadings

Before looking into the facts of this case, a brief historical backdrop is necessary. On January 1, 1818, East India Company soldiers, mostly consisting of Dalits, Tribals, Muslims, Christians and members of other backward communities, collided with the Peshwa army led by Bajirao II at Koregaon, near the Bhima River in Pune, where the former triumphed over the latter (Pol, 2018). This battle is of significant symbolic value, particularly for Dalits, as it represents their victory over an oppressive regime. To honour the martyrs, the British erected the "Vijay Stambh", which has since then become a focal point for an annual commemoration of the battle. On the 200th anniversary of this historical event, a gathering was organised on December 31, 2017. However, on January 1, 2018, a violent altercation occurred when a group of Dalits was attacked while paying their tribute at the victory pillar (Outlook, 2023). The incident led to widespread agitation across Maharashtra.

In connection to this incident, five individuals named "Gautam Navalakha, Sudha Bharadwaj, Varavara Rao, Arun Ferreira and Vernon Gonsalves," were taken into custody on August 28th, 2018. In response, petitioners in this case approached the Supreme Court. They pointed out that none of the accused were present at the event in Pune and their names were not mentioned in the original FIR. Despite this, Pune Police swiftly acted against

them, invoking provisions of the IPC and UAPA. The arrested persons were prominent human rights activists, journalists and lawyers; the petitioners suggested that the arrests were arbitrary to suppress dissenting voices. The writ petition under Article 32 was filed by five renowned academicians, including Romila Thapar. They sought an independent and impartial investigation into the investigation. They emphasised that the plea was not intended to hinder the investigation but to ensure that it was conducted fairly and transparently under the Court's supervision.

Contrarily, Maharashtra Police, in their counter-affidavit, maintained that the arrests were not based on ideological differences or dissenting opinions. Instead, arrests were made based on an investigation that had revealed the arrested persons were active participants of the "banned outfit of Communist Party of India (Maoist)." The police alleged that the accused were engaged in orchestrating large-scale violence and destruction, intending to destabilise society.

2.2 Decision and Dissent

The Supreme Court, in its 2:1 ruling, did not give the relief sought by the petitioners. The majority opinion given by the then Chief Justice of India, Dipak Misra and Justice AM Khanwilkar held that the arrests were not solely based on the accused persons expressing dissenting views or holding different political ideologies. Rather, the matter pertained to their alleged links with members of the proscribed organisation and their involvement in its activities. Although the Court held that at this preliminary stage, the credibility of the evidence should not be assessed. The Court emphasised that requests for transferring an investigation to another agency must be considered with great caution and cannot be granted in the absence of sufficient grounds. It found no justification for allowing the writ petition seeking a probe by a different investigative agency. The Court clarified that such a request could not be entertained under the guise of public interest litigation. Regarding the release of the arrested activists, the Court stated that the appropriate legal remedies should be sought before the competent court.

Justice DY Chandrachud, in his sole dissenting opinion, emphasised that while adherence to criminal procedural law is essential, it should not come at the expense of fundamental liberties. He asserted that democratic constitutional values necessitate that technicalities must not obstruct substantive justice. Although the Court must exercise caution to prevent misuse of Article 32, it made it clear that this case did not involve any ulterior motive. The dissenting judgment noted selective disclosure of investigative details by senior Maharashtra Police officials to the media and television channels raised serious doubts about the impartiality of the investigation. The use of electronic media to shape the public perception while an inquiry is ongoing undermines the fairness of the process, leading to a "trial by media", the judgment noted. Justice DY Chandrachud stressed that dissent is a hallmark of a thriving democracy, and individuals should not be persecuted merely for advocating unpopular causes. However, if dissent escalates into incitement of violence or attempts to unlawfully overthrow a democratically elected government, it goes beyond the mere expression of dissent. The dissenting judgment underscored that a fair investigation is a fundamental requirement under Articles 14 and 21, and given the serious concerns over impartiality in this case, appointing a Special Investigating Team, as demanded by the petitioners, was not only justified but also a constitutional imperative to prevent any miscarriage of justice.

3.0 Lessons from Romila Thapar vs. Union of India

The decision of the Supreme Court in *Romila Thapar* is an ideal illustration of two things. Firstly, the wide-reaching powers of the State under this legislation of UAPA allow the preventive detention of an individual. Preventive detention is one of the biggest challenges to the principle of presumption of innocence, more so when it is done for an indefinite period. In preventive detention, the incarceration is not to protect the judicial process or investigation, but it is done on the assumption that the detainee is expected to commit an offence if he is left free (Chitkara, 2022). In this case, five persons who were neither present at the scene of violence nor named in the initial FIR were arrested in connection with material evidence collected by the Police from the accused persons. It is at this very stage that UAPA comes into play. Due to the stringent nature of granting bail in the legislation, individuals are incarcerated for a prolonged and indefinite period. In the case of *National Investigation Agency v. Zahoor Ahmad Shah Watali* (2019), the Court

held that the prosecution just needs to satisfy the prima facie standard to secure the detention of the accused; this standard can be met by providing an FIR, chargesheet or any other prosecutor material. Moreover, both the *Watali* and *Romila Thapar* judgments held that the credibility of prosecution evidence cannot be assessed at the stage of hearing bail plea. Such a position of law makes it virtually impossible for any individual to get bail. Thus, a case like *Romila Thapar* shows how easily they can cast aspersion on any individual, even if they are not linked directly with the case at hand and also secure their detention for an indefinite period. Secondly, if the wide-reaching ambit of the law and restricted views taken by the Law Courts are not enough, the media is used as a weapon to shape the public perception in the People's Court. Thus, the individual faces an unfair trial both in and outside of the Court.

Although the dissenting view taken by Justice DY Chandrachud is a ray of hope, it can and has indeed inspired future judgments. The dissenting opinion rightly pointed out that the "media trial" impedes procedural fairness. Selective disclosure by high-ranked individuals of the Maharashtra Police raises serious doubts over the impartiality of the investigative agency. In the case of *Allenet de Ribemont v. France* (1995), before the ECtHR, a Minister did a press conference imputing guilt towards a person facing a homicide trial, the Court held such an act to be in gross violation of the presumption of innocence. It is one of the cornerstones of the criminal justice system. According to Ashworth, the primary function of this presumption is to prevent wrongful convictions (Chitkara, 2022). Another function, although not explicitly stated, but read into by the dissenting opinion, is the right to reputation. In *Subramanian Swamy vs. Union of India* (2016), the apex court held that the right to reputation is an integral part of Article 21. Presumption of innocence till the stage of pronouncement of judgment acts as a safeguard to one's reputation, and any act done in contrast to this presumption is definitely violative of procedural fairness. The selective disclosure of prosecution evidence, the veracity of which is yet to be tested, ensured that the presumption of guilt, which is already eclipsed by the bail provisions of the UAPA, extends to the public perception as well. Thus, the accused faces hardship both in the Court of Law and Eyes of the Public. As Justice Chandrachud held that "Dissent is the voice of the vibrant democracy", the same is under challenge in the way personal liberty is eclipsed.

4.0 Misuse of UAPA through Empirical Data

The PUCL report on UAPA highlights a pattern of its frequent application under the current administration. The data reveal that between 2009 and 2014, when the UPA government, led by Manmohan Singh, was in power, the National Investigation Agency (NIA) registered only 69 cases under UAPA (PUCL, 2022). In stark contrast, by September 2022, the number of UAPA cases filed by NIA since 2014 under the Narendra Modi-led BJP government had risen to 288 (PUCL, 2022). This statistical comparison indicates a significant rise in the use of UAPA during the Modi administration, with an average of 34 cases per year, as opposed to the 13 cases per year recorded during Manmohan Singh's tenure (PUCL, 2022).

According to the NCRB data, between 2015 and 2020, 5924 cases of UAPA were registered, and 8371 persons were arrested (NCRB, 2021). Minister of State of Home Affairs, Nityanad Rai, replied to a question raised at the Lok Sabha, which revealed that during the 2018-2020 period, only 23% of the persons arrested under UAPA were on bail (Ministry of Home Affairs, 2021). It clearly indicates how difficult it is to get a bail in a special provision like UAPA. Prison data provides valuable insight into this issue. According to the 2022 PSI report, a total of 6,482 individuals were undertrial prisoners facing charges under UAPA (PSI, 2024). Among them, only 80 had been convicted, meaning that 98.78% of those accused under UAPA remained in detention without a trial (PSI, 2024). This reflects a troubling trend where nearly all individuals booked under the law endure prolonged incarceration without being proven guilty. The high percentage of undertrial prisoners can be correlated to the lowest charge-sheeting rate of UAPA, which is not only lower than IPC but also amongst other special legislations. The charge-sheeting rate represents the proportion of registered cases in which a charge sheet is filed. Between 2014 and 2019, the charge-sheeting rate under UAPA fluctuated significantly, ranging from 26.4% in 2018 to 38.5% in 2014 and peaking at 56% in 2016 (Chitkara, 2022). In contrast, most other special laws recorded a charge-sheeting rate exceeding 90%, as per data from the National Crime Records Bureau (NCRB).

Table 1. Conviction Rate (calculated based on the number of cases).

Year	UAPA			IPC (Cognizable Crimes)		
	Cases convicted (A)	Cases where Trial is completed (B)	Conviction Rate [(A/B)*100]	Cases convicted (C)	Cases where Trial is completed (D)	Conviction Rate [(C/D)*100]
2015	11	76	14.5	621320	1325989	46.9
2016	11	33	33.3	596078	1274348	46.8
2017	34	69	49.3	649852	1331222	48.8
2018	34	125	27.2	638955	1277011	50
2019	33	113	29.2	620809	1232507	50.4
2020	27	128	21.1	453890	766962	59.2
Total	112	340	32.9	3580904	7208039	48.9
Conviction Rate from 2015-2020	27.57			49.67		

[Source: NCRB – Crime in India: 2015 to 2020, Chapter 18A]

Table 2. Conviction Rate (calculated based on persons arrested)

Year	UAPA			IPC (Cognizable Crimes)		
	Persons Convicted (A)	Persons Arrested (B)	Conviction Rate [(A/B)*100]	Persons Convicted (C)	Persons Arrested (D)	Conviction Rate [(C/D)*100]
2015	23	1128	2.03	869013	3636596	23.89
2016	24	999	2.40	794616	3737870	21.25
2017	39	1554	2.50	873983	3727909	23.44
2018	35	1421	2.46	864686	3315033	26.08
2019	34	1948	1.74	837075	3112639	26.89
2020	80	1321	6.05	634229	4424852	14.33
Total	235	8371	2.80	4873602	21954899	22.19
Conviction Rate from 2015-2020	2.80			22.19		

[Source: NCRB – Crime in India: 2015 to 2020, Chapter 19A]

In UAPA, the conviction rate is glaringly low. NCRB data suggests that conviction rates, calculated on the basis of the number of cases, for which a trial has been completed, stand at 27.57% for the 2015-2020 period, whereas the same for cognizable offences under IPC stands at 49.67% (NCRB, 2021). Thus, a clear gap exists between a general legislation like UAPA and the special legislation of UAPA.

Conviction rate, when calculated on the basis of the number of persons arrested, shows a gloomier picture. In the 2015-2020 period, only 2.8% of the people arrested were actually convicted (NCRB, 2021). Such a low conviction rate is because trials have not been completed in a large number of cases, and it also casts doubt on the merit of the cases and raises the question of whether any prosecution was required at all in the first place.

5.0 Concluding Remarks

This paper attempts to shed light on how the stringent provisions of UAPA result in an unwritten sunset clause of personal liberty. The *Romila Thapar* judgment and the dissenting opinion voiced by Justice DY Chandrachud are illustrations of how several hardships are created for the accused individuals both in and outside of the Court, raising serious challenges to procedural fairness. The empirical data go on to show the increasing use of provisions of UAPA in the current regime; the low charge-sheeting rate, coupled with difficult bail conditions, results in prolonged incarceration of the undertrials languishing at Indian prisons and finally, the dismal conviction rate is the indicator of filing cases which are devoid of merit. But the low conviction rate has barely any value in UAPA, where the process itself is punishment. Both at the stage of hearing bail pleas and the stage of trial, a positive finding of guilt leads to one and the same destination of *detention* in the same facilities under the same conditions (Chitkara, 2022). The only difference is that in the undertrial phase, the detention is indefinite, and at the conclusion of the trial, the detention period is definite. But it would be wrong to say that we continue to live without hope. Supreme Court in *Union of India v. KA Najeeb* (2021) introduced, right to speedy trial as a ground of bail in UAPA cases. The Court held that constitutional courts can uphold constitutional rights even if statutory limitations on bail persist. The apex court recently, in *Jalaluddin Khan v. Union of India* (2024) case, held that the principle "bail is the rule, jail is the exception", stands true even in the case of special statutes like UAPA. In another recent case of *Sheikh Javed Iqbal vs. State of Uttar Pradesh* (2024), the Supreme Court commented that it would be incorrect to state that a specific legislation prohibits

the granting of bail. Furthermore, it said that "statutory restrictions cannot stop the constitutional court from granting bail if the right of the accused under Article 21 is violated". These successive judgments of the Supreme Court reaffirmed its commitment to constitutional principles, echoing the statement of Shri Chinamanal Shah during the constituent assembly debates that said that the "right to life and personal liberty is the most fundamental of the fundamental rights, without which all other rights are meaningless".

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