



LAW AS AN INSTRUMENT OF OPPRESSION

Unlawful Activities Prevention Act
(UAPA)

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**KASHMIR**
ACTION

Law as an Instrument of Oppression: Unlawful Activities Prevention Act

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Introduction

The Unlawful Activities Prevention Act is an act that the government of India has instituted to “prevent terror-related activities, unlawful associations, and activities that may endanger the sovereignty and integrity of India.” A person can be labeled a terrorist if he conducts or participates in terrorist activities, prepares for terrorism, supports terrorism, or is otherwise involved in terrorism.¹ It allows the government to jail an individual for six months, without a trial or bail, precluding any judicial intervention.

According to Amnesty International and the United Nations, the UAPA does not fulfill international human rights standards.² The UN has stated that the UAPA utilizes “imprecise criteria, contains a vague and overly broad definition of ‘terrorist act’, allows people to be held in lengthy pre-trial detention and makes securing bail very difficult”.³

The UN further has stated that the UAPA has resulted in a “worrisome rise” in the number of arrests in India, and especially in Indian-administered Jammu and Kashmir (J&K). “We regret that the Government continues to use the UAPA as a means of coercion to restrict civil society’s, the media’s and human rights defenders’ fundamental freedoms in Indian-administered Jammu and Kashmir as well as in the rest of the country. We therefore once again urge the Government to bring this legislation in line with India’s international legal obligations under human rights law,” the UN experts have stated.⁴

Between 2016 and 2019, among the 5,922 persons charged under this law across India, people from Jammu and Kashmir constitute 15 percent (876) though the conviction rate remains little over 2 percent. Jammu and Kashmir registered the highest number of cases filed under the UAPA, according to 2020 data, the latest available, put out by the National Crime Records Bureau (NCRB) in 2021.⁵ Police have booked more than 2,364 people under UAPA since 2019 and nearly half of them are still languishing in jail inside and outside the Kashmir valley.⁶ The rate of detentions is only growing exponentially.⁷

One of the fundamental criticisms of this counter-terror legislation is that it

1 <https://ohrh.law.ox.ac.uk/constitutionality-of-indias-unlawful-activities-prevention-amendment-bill-2019-indias-mccarthy-ism-moment/>

2 <https://www.amnesty.org/en/latest/news/2021/11/india-kashmiri-activist-held-under-abusive-law/>

3 <https://news.un.org/en/story/2021/12/1108592>

4 <https://www.ohchr.org/en/press-releases/2021/12/un-experts-urge-indian-authorities-stop-targeting-kashmiri-human-rights>

5 <https://article-14.com/post/in-kashmir-the-random-and-rampant-use-of-india-s-anti-terrorism-law--61bc0c1086e87>

6 <https://thewire.in/rights/how-uapa-abuse-is-affecting-womens-aspirations-in-kashmir>

7 <https://www.aljazeera.com/news/2021/11/23/india-kashmir-khurrum-parvez-arrest-human-rights-uapa-terror-law>

criminalizes dissent, a particular set of beliefs or opinions that the government might deem unlawful or “anti-national”.⁸ Categorization as a ‘terrorist’, under the UAPA, by the Indian government, carries with it serious implications, such as seizure of one’s properties, including one’s home, or loss of employment. Many Kashmiris have been expelled from their employment for supporting Kashmir’s right to self-determination, and many have had their properties confiscated for the same reason.⁹ In September, 2021, the Indian government instituted new rules under which employees can be dismissed from service if they or their family members are found to be “sympathetic” to people accused under the Unlawful Activities (Prevention) Act (UAPA). Sympathy, a feeling, or a thought, which is not even discernable or tangible, is punished under this counter-terror legislation. One of the clauses of UAPA penalizes any act or speech that “creates disaffection against India”.¹⁰ After experiencing endless human-rights violations at the hands of the varied Indian governments across decades, it’s understandable that many Kashmiris feel a strong sense of disaffection against the state, and many call for Kashmir’s UN-mandated right to self-determination. However, any expression of this disaffection results in the possible years-long imprisonment of the person and being categorized as a “terrorist”.¹¹ The language of “national security”, “territorial integrity/sovereignty”, or “national interest” is deployed to criminalize any and all forms of Kashmiri dissent against Indian rule in Kashmir.

It’s important to note here that the UAPA is not being merely *misused*, but rather it is structured and designed in a manner that facilitates and enables its use in the manner that is repressive of dissent and human rights. Hence, the issue is not one of its correct application, but of the constitution of the law itself.¹² In the words of UN appointed experts, UAPA allows for its use as “a means of coercion to restrict civil society’s, the media’s and human rights defenders’ fundamental freedoms in Indian-administered Jammu and Kashmir.”¹³

8 <https://thediplomat.com/2020/09/empty-fields-the-use-and-abuse-of-uapa-in-kashmir/>

9 <https://thewire.in/government/jk-admin-brings-rule-to-dismiss-govt-employees-if-found-linked-to-uapa-psa-accused>

10 <https://www.mha.gov.in/sites/default/files/A1967-37.pdf>

11 <https://www.aljazeera.com/news/2021/12/10/india-kashmir-human-rights-crackdown-activists>

12 <https://article-14.com/post/the-uapa-is-one-of-many-modern-day-avatars-of-the-draconian-colonial-rowlatt-act-6102c435172cf>

13 <https://www.ohchr.org/en/press-releases/2021/12/comment-un-human-rights-office-spokesperson-rupert-colville-arrest-human>

Seven case-studies where the counter-terror UAPA was used to stifle dissent and attack the freedoms of Kashmiri individuals and civil society

The use against journalists and press-freedoms

- On April 20, 2020, the J&K Police announced that it had filed an FIR against Kashmiri photojournalist Masrat Zahra under the UAPA. The police claimed that Zahra was booked under UAPA for “anti-national” social-media posts. She was booked under the act because she had captured a photograph of civilian Kashmiri protestors who were holding a photograph of a pro self-determination Kashmiri armed fighter. The photograph in question is the property of a Western visual media company, Getty Images, and is still available on its website. Zahra was called to the police-station and subjected to intimidation and interrogation.¹⁴
- Another example is Asif Sultan, who is a Kashmiri journalist who was incarcerated more than 2000 days, since his arrest in August 2018 under the UAPA. Sultan, 36, is accused of “harboring known pro-freedom fighters” while working as an assistant editor for a Srinagar-based English magazine Kashmir Narrator, an allegation which he rejects and that the government has failed to prove. The family of Asif Sultan and the editor of the magazine he worked for, reject the state’s narrative, asserting that he was jailed for his journalistic work, especially for a story titled *The Rise of Burhan*, which he wrote for his magazine in July 2018. The story mapped the life story of a popular pro-freedom commander, who was killed by the Indian state in 2016.¹⁵
- Fahad Shah, is another Kashmiri journalist who had been in jail under the UAPA since February 2022, released only after spending more than 600 days in prison. He had been imprisoned for the reporting, in his newspaper *The Kashmir Walla*, of the events of a gunfight that took place between Indian armed forces and pro-freedom Kashmiri rebels. In a press statement, the police identified Shah among “Facebook users” who “are uploading such posts which tantamount to glorifying the terrorist activities and causing dent to the image of law enforcing agencies besides causing ill-will [and] disaffection against the country.” Speaking with the media

14 <https://www.firstpost.com/india/masrat-zahra-booked-under-uapa-kashmiri-photojournalists-work-focussed-mostly-on-women-conflict-reporting-in-valley-8278721.html>

15 <https://www.kashmiraction.org/the-case-of-journalist-asif-sultan/>

Kashmir police chief, Vijay Kumar said: “Accused Fahad Shah has been arrested on the basis of one of the three FIRs lodged against him for frequently glorifying terrorism, spreading fake news, & instigating people, for the past 3–4 years.”¹⁶ Shah is only one among many Kashmiri journalists who have been jailed for not toeing the state’s line in their press reports. Rights experts maintain that the “purpose” of the UAPA against journalists is to make them indulge in self-censorship. At the center of this law is a goal to control the media’s work and criminalize any reporting that does not follow the state’s standpoint.

The use against social media users

- The anti-terror legislation has been used against social media users who may post anything that the state deems as violating the “national interest”. In Kashmir, this takes the form of any criticism that is aimed at the state, or any advocacy, including the non-violent forms, for Kashmir’s self-determination, or a call for a democratic plebiscite. Kashmiri young boys have been called to the infamous interrogation center called *Cargo*, their phones snatched and surveilled, and intimidation carried out.¹⁷ The Cyber Cell of the Jammu and Kashmir police actively monitors the use of social media in Kashmir, and any user who engages in dissent is summoned and/or detained under the UAPA. Those who are released from detention are made to give a written pledge that they will not post anything “anti-India”.¹⁸
- Police in Kashmir even invoked the stringent UAPA to register a case against people using social media through proxy servers by getting past internet firewalls.
- In advertisements published in at least three local dailies in Kashmir on December 12, 2021, the Jammu and Kashmir Police warned Kashmiri social media users of cases under the UAPA. Carried on the front page of the newspapers, the police warned social media users that “supporting and promoting terror is as grave as the actual act of terror”. It is pertinent to note here, as we mentioned before, that there’s a deliberate vagueness and arbitrariness that characterizes the state’s definition of what constitutes an act of terror under the UAPA, as it has included even “feelings of sympathy” towards the self-determination struggle. The UN-backed Kashmiri self-determination struggle, both in its non-violent and violent manifestations, has for long been labeled by the state as “terrorism” and “anti-India”. In a recent ruling by the High Court of Jammu and Kashmir and Ladakh, the court held that statements such as “Kashmir is occupied by the military or that people of the region have been reduced to slaves”, would not be protected by the right to freedom of speech

16 <https://thekashmirwalla.com/statement-fahad-2shah-editor-of-kashmir-walla-sent-to-10-days-custody/>

17 <https://theintercept.com/2020/12/06/kashmir-social-media-police/>

18 <https://standwithkashmir.medium.com/young-kashmiris-on-what-it-means-to-be-silenced-on-social-media-a4e5e0f2e88f>

and expression under Article 19(1)(a) of the Constitution.¹⁹

The use against civilians who raised slogans, including minors

- In August, 2020, the Jammu and Kashmir Police detained two men and booked others under the UAPA for allegedly shouting “anti-India” slogans during a Muharram procession in the outskirts of Srinagar. The slogans were calling for Kashmir’s self-determination.²⁰
- On June 21, 2021, the police booked several persons under the UAPA for raising pro-freedom slogans at the funeral of sportsman Mohamad Amin Dar. As Dar was popular in the area, a large number of people participated in the funeral. The police booked four persons under the counter-terror law UAPA, the detainees included a minor child. Another minor from Khanyar area of Srinagar was booked and arrested under the UAPA, for participating in a civilian protest against India’s denial of freedom to Kashmiris.²¹
- In May of 2021, at pro-freedom Kashmiri leader Muhammad Ashraf Sehrai’s funeral, his two sons were booked and detained under the UAPA for raising anti-India slogans during the funeral process. It is important to note here that Sehrai was denied medical healthcare whilst in detention for months, and this prolonged denial of critical medicine and healthcare led to his death. The family members were booked under the UAPA for highlighting the state’s complicity in the death of their old loved one.²²
- In a similar way, the family of Syed Ali Geelani, a Kashmiri pro-freedom leader who passed away, was booked also for raising pro-freedom slogans. The slogans had been raised after the police had snatched his body away from the family and would not let them be present for the burial.²³

The use against young boys for playing cricket or supporting Pakistani team in a game of sports

- In September, 2020, sports playing boys in the Shopian area of Kashmir were arrested under the UAPA. They were detained for playing a match in memory of a slain pro-freedom rebel, Syed Ruban, on the banks of the Jhelum river on August 4, 2020. After the sports match, Ruban’s brother, Syed Tajamul, had distributed cricket uniforms among players, inscribed with his brother Ruban’s name, a way to keep his memory alive. Tajmul and eight players had also visited the grave of Ruban to recite prayers for the deceased, a basic religious right. Later on September 1, the police summoned all of the above-mentioned individuals, who had visited Ruban’s grave with Tajamul, for questioning and booked them under UAPA

19 <https://www.barandbench.com/news/no-free-speech-protection-for-statement-that-people-of-kashmir-are-slaves-under-military-occupation-jk-high-court>

20 <https://scroll.in/latest/971500/jammu-and-kashmir-two-arrested-under-uapa-for-pro-freedom-slogans-at-muharram-procession>

21 <https://www.outlookindia.com/website/story/india-news-uapa-and-psa-go-side-by-side-in-kashmir/387821>

22 <https://thewire.in/rights/kashmir-ashraf-sehrai-sons-uapa-arrest>

23 <https://www.aljazeera.com/news/2021/9/6/india-kashmir-separatist-geelani-family-terror-law-uapa>

for “glorifying militancy”.²⁴ They were kept in detention for 6 months.

- In a similar manner, on October 24th, 2021, Pakistan won against India in a cricket match, and many Kashmiris celebrated the historic win. This was seen as an act of “terrorism” by the Indian government and those who were seen as celebrating the win were booked under the UAPA. It’s troubling how India can label celebrations after a sporting event as “terrorism”, revealing the workings of the UAPA and its deliberate ambiguity in defining what constitutes terrorism.²⁵ Many of those detained spent months in prison.
- On November 27th, 2023, seven Kashmiri Muslim students were arrested by India for allegedly not supporting India’s cricket team in a World Cup final against Australia. A copy of the first information report (FIR), accessed by us, shows the students have been booked under Section 13 of the Unlawful Activities Prevention Act and Sections 505 and 506 of the Indian Penal Code related to public mischief. The case against Kashmiri students was lodged a day after the world cup final on the basis of a complaint by an Indian student from outside Jammu and Kashmir. The seven students were arrested on November 20. The Indian student had accused the Kashmiri students of cheering for Australia and celebrating India’s loss in the cricket match final. The Kashmiri students have also been accused of raising anti-India slogans during the match. One university official who spoke to Justice for All on the condition of anonymity stated that the Kashmiri students engaged in no violent activity and were punished solely for being jubilant over Australia’s victory in the cricket match. They were later granted bail after prolonged detention.²⁶

The use against human rights defenders and those who document Indian army’s human rights violations

- One prominent example of the use of the counter-terrorism laws against human rights defenders is that of Khurram Parvez. Khurram Parvez is the chairman of the Asian Federation Against Involuntary Disappearances (AFAD) and coordinator of the Jammu Kashmir Coalition of Civil Society (JKCCS). He has been actively involved in raising awareness about human rights violations, including arbitrary detention, torture, and enforced disappearances. Parvez was arrested in November, 2021, under UAPA for “criminal conspiracy and waging war against the government”. He was shifted to Tihar Jail, New Delhi, on 24th November, where he has been ever since. He has been placed in Tihar Jail’s maximum security prison. His office was raided and ransacked, and on 27th March 2022, while Khurram was in jail, his home was raided once again to intimidate his family members. On the day of Khurram’s arrest, Mary Lawlor, U.N Special Rapporteur on Human Rights Defenders, stated in a tweet that “I’m hearing disturbing reports that Khurram Parvez was arrested today in Kashmir and is at risk of being charged by the authorities in India with terrorism-related crimes. He’s not a terrorist, he’s a human rights defender.”²⁷ UN experts

24 <https://scroll.in/article/991077/for-anything-and-everything-uapa-cases-are-rising-in-kashmir>

25 <https://www.bbc.com/news/av/world-asia-india-59702427>

26 <https://www.reuters.com/world/india/kashmiri-students-arrested-celebrating-indias-cricket-world-cup-de-feat-get-bail-2023-12-03/>

27 <https://twitter.com/marylawlorhrds/status/1462821562566987781>

have repeatedly called for his immediate release.²⁸

- Exposing the human rights violations and illegal activities of the army in Kashmir is also categorized by the state as an act of “terrorism”. And thus on March 25, 2021, an Assistant Professor of geography, Abdul Bari Naik, was arrested and slapped with UAPA for his activism work. He has been detained because he “had exposed corruption in the government as well as encroachment of village land by the Indian army”. In March of 2019, Naik was sent notices from the police superintendent of Kulgam which stated that “he was working against India’s national integrity and was putting out social media content which has resulted in law and order issues”.²⁹

The use against the family members who demand the return of the dead bodies of their loved ones

- On February 5, 2021, Mushtaq Ahmad Wani, whose 16-year-old was falsely implicated and murdered in a fake encounter by the Indian armed forces, along with seven other Kashmiris, was booked under the UAPA for demanding the dead body of his son to be returned to his family. The dead body was withheld from the family members and they were denied the right to bury him. The body of Mushtaq’s son was buried by the army 120 kms away from his home. The question then arises is how exactly does the demand for the return of the dead body of one’s family members who was extrajudicially murdered fall under the purview of terrorism, which the UAPA defines vaguely as any action, whether by an individual or an association, which “disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India” or “causes or is intended to cause disaffection against India”.³⁰

The use against political parties through bans while their leaders are incarcerated

- On October 6th 2023, India declared Jammu and Kashmir Democratic Freedom Party (JKDFP), a pro-freedom organization headed by Hurriyat leader Shabir Ahmad Shah, as an “unlawful association”, thereby banning it, under UAPA.³¹ The ban is set for five years. In the recent past, India has similarly banned socio-political organizations like Jamaat-e-Islami (JeI), women’s group Dukhtaran-e-Millat (DeM), Jammu and Kashmir Liberation Front (JKLF), for their activism in favor of Kashmiri right to self-determination.
- Jammu and Kashmir Democratic Freedom Party was formed in 1998 by Shabir Ahmad Shah, who has been under illegal detention for the past 6 years. He is one of Kashmir’s longest serving political prisoners, having spent more than 30 years of his life in prisons across India for his peaceful pro-freedom activism. In the notification banning the party that we

28 <https://www.ohchr.org/en/press-releases/2022/11/one-year-detention-un-experts-demand-immediate-release-kashmiri-activist>

29 <https://scroll.in/article/990441/this-college-professor-did-covid-19-duty-in-kashmir-but-police-say-he-was-absconding-under-uapa>

30 <https://scroll.in/article/991077/for-everything-and-everything-uapa-cases-are-rising-in-kashmir>

31 <https://thewire.in/security/expained-what-is-the-now-banned-jkdfp-and-who-is-its-leader-shabir-shah>

accessed, the government of India justifies the ban by stating that Shabir Shah had called Kashmir a 'dispute' and ruled out any settlement within the framework of the Constitution of India. It's pertinent to note that the United Nations has consistently maintained a similar position, seeing Kashmir as a dispute to be resolved by the much-awaited plebiscite.

- More than 6 pro-freedom peaceful political parties have been banned by India in a similar fashion.³²
- On 1st January, 2024, India banned a pro-freedom amalgam of organizations, *Tehreek-e-Hurriyat* (TeH), for their advocacy and struggle for Kashmiri right to self-determination. The amalgam was banned under the Unlawful Activities Prevention Act. The leaders of the amalgam are already facing prolonged illegal detentions.³³ On 29th February, 2024, the Home Ministry of India declared both factions of Muslim Conference, a nonviolent pro-freedom political organization in the Kashmir valley, headed by activists Prof. Abdul Gani Bhat and Ghulam Nabi Sumji respectively, as unlawful associations under the UAPA. On 13th March, the BJP-led Indian government banned a non-violent pro-freedom political party, Jammu Kashmir National Front (JKNF), led by incarcerated pro-freedom leader Nayeem Ahmad Khan.

Conclusion: India's counter-terrorism UAPA and its failure to align itself with international law

The UAPA stands in clear violation of the mandate of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 15(1) of the United Nations International Covenant on Civil and Political Rights (ICCPR) and Article 11 of the Universal Declaration of Human Rights (UDHR) enshrine the principle of "legal certainty," which declares that the criminal law must clearly lay out what constitutes an offense so as to avoid any arbitrary application or abuse of the law.

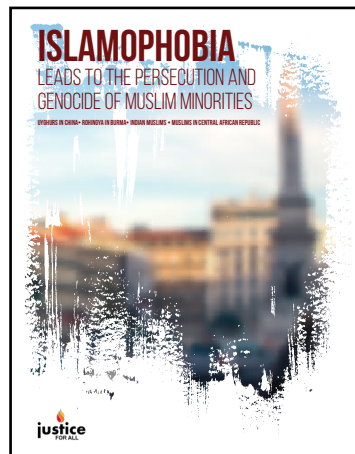
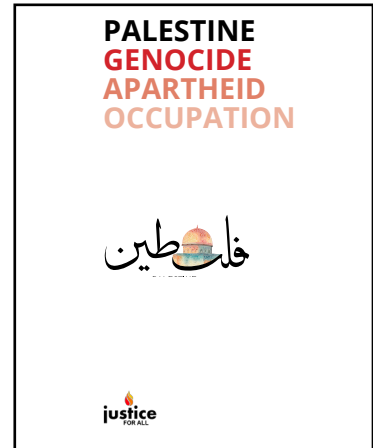
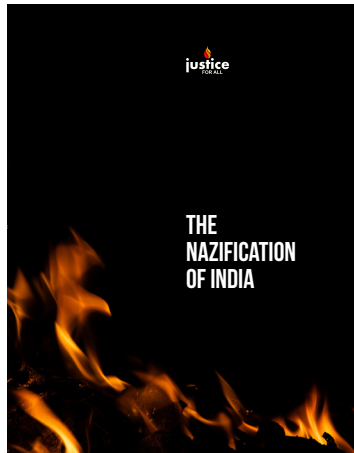
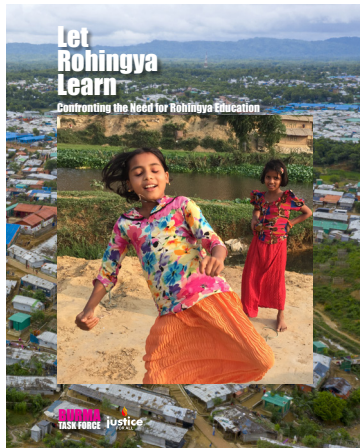
In contrast, UAPA offers a very loose and vague definition of what constitutes a "terrorist act", making abuse of law easier, as we witnessed in all the aforementioned cases. It is worth noting that the definition also encompasses any act that is "likely to threaten" or "likely to strike terror in people," giving unbridled power to the government to brand any ordinary citizen or activist a terrorist without these acts actually being committed. This undermines a range of fundamental human rights. The ICCPR allows for pre-trial detention to be used only as a last resort when it is necessary, reasonable, and proportionate to the objective sought by the prosecution, all the standards that UAPA fails to meet in the cases we elucidated.

UAPA also violates article 17 ICCPR and article 12 UDHR which protect against arbitrary and unlawful interference with a person's privacy and home, rights that were violated in the cases of Khurram Parvez and many others. In the words of the Human Rights Council, the UAPA has become an *instrument of oppression*.

32 <https://indianexpress.com/article/india/jammu-kashmir-national-front-banned-by-govt-under-uapa-9210623/>

33 <https://standwithkashmir.org/release-kashmiri-prisoners/>

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