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VICTIMIZING THE ACCUSED: JUDICIAL DELAY, SYSTEMATIC NEGLECT AND PROLONGED TRIALS UNDER UAPA, 1967

-Mansi Varshney

ABSTRACT

This research critically examines the multilayered victimization of accused individuals under India's Unlawful Activities (Prevention) Act (UAPA), focusing on the pervasive judicial delays and systemic neglect that extend beyond the courtroom to affect families and communities. Employing a victimological framework, the study explores how procedural rigidity, stringent bail provisions, and institutional inefficiencies within investigative agencies, prosecution, and judiciary collectively contribute to prolonged trials that violate constitutional guarantees of liberty and fair trial under Article 21 of the Indian Constitution. Empirical evidence reveals that over half of UAPA cases experience investigations extending well beyond statutory limits, with many accused spending years in pretrial detention despite low conviction rates. The analysis highlights significant psychological, social, and economic harms suffered by both the accused and their families, including mental health deterioration, social ostracism, economic instability, and intergenerational trauma. Extended incarceration accelerates reputational damage and community alienation, perpetuating cycles of marginalization and eroding social cohesion. Landmark case studies including Shoma Sen, Mamman Khan, and the Bhima Koregaon matter underscore systemic flaws in judicial responsiveness and accountability. The research affirms the critical tension between national security imperatives and individual liberty protections, revealing inconsistent judicial balancing acts in bail jurisprudence. It concludes by advocating for comprehensive judicial reforms, enhanced institutional accountability, victim support frameworks, and procedural innovations aimed at expediting trials and safeguarding human rights. This study contributes

to ongoing debates on counterterrorism law and democratic governance by foregrounding the human costs of protracted legal processes and systemic neglect under UAPA.

Keywords: UAPA, Judicial Delay, Systemic Neglect, Victimization, Bail Jurisprudence, Human Rights

CHAPTER -1

INTRODUCTION

1.1 BACKGROUND OF PAPER

The Unlawful Activities (Prevention) Act (UAPA), first enacted in 1967, was originally conceived as a preventive mechanism to curb secessionist and unlawful activities that threatened India's sovereignty and territorial integrity. Initially limited in scope, the Act underwent extensive amendments in 2004, 2008, 2012, and 2019, significantly expanding its ambit to include the prevention, investigation, and prosecution of terrorism-related offenses. The 2004 amendment incorporated provisions from the repealed Prevention of Terrorism Act (POTA), while the 2008 and 2012 amendments introduced stricter definitions of terrorist acts and funding mechanisms. The 2019 amendment empowered the State to designate individuals, not just organizations, as terrorists, thereby intensifying its impact on personal liberty and due process ¹

Although the legislative intent behind the UAPA is to ensure national security and maintain public order, its application has raised serious constitutional and human rights concerns. Empirical data from the National Crime Records Bureau reveal that conviction rates under the UAPA remain disproportionately low, while the number of arrests continues to rise yearly. Provisions that reverse the presumption of innocence, coupled with the stringent bail conditions enshrined in Section 43D(5), create an environment where prolonged pretrial detention becomes the norm rather than the exception. Judicial reluctance to grant bail, even in the absence of sufficient prima facie evidence, has led to cases where accused individuals remain incarcerated for years without trial. This persistent delay and restrictive bail regime

¹ The Unlawful Activities (Prevention) Amendment Act, 2019, No. 28, Acts of Parliament, 2019 (India).

raise constitutional questions concerning equality before law and protection of personal liberty under Articles 14, 21, and 22 of the Indian Constitution. They also engender a broader jurisprudential dilemma regarding the boundaries of state power, accountability, and the evolving interpretation of victimhood within India's criminal justice system

1.2 STATEMENT OF PROBLEM

The central problem is the systemic victimization of individuals accused under the UAPA, where chronic judicial delays, investigative inefficiencies, and stringent bail restrictions transform prolonged pretrial incarceration into *de facto* punishment. Despite an overwhelmingly high trial pendency rate (89%) and a strikingly low conviction rate (2–18%), the accused and their families are forced to endure severe psychological, social, and economic devastation. This procedural rigidity and lack of law enforcement accountability subvert the core democratic principles of fairness, directly violating the constitutional right to a speedy trial under Article 21. Consequently, as repeatedly emphasized by the Supreme Court, this systemic neglect highlights an urgent need for institutional reforms such as dedicated special courts to ensure that national security imperatives do not indiscriminately crush fundamental civil liberties and due process.

1.3 RESEARCH OBJECTIVE

- 1 To examine the impact of judicial delays and systemic neglect on accused individuals under UAPA from a victimological perspective.
- 2 To analyze the harm psychological, social, and economic ,resulting from prolonged trials and incarceration.
- 3 To study whether the Indian justice system adequately protects the rights of the accused against systemic neglect.
- 4 To propose victimology-based reforms aimed at ensuring justice and reducing secondary victimization in UAPA cases.

1.4 RESEARCH QUESTION

- 1 How do judicial delays and systemic neglect under the UAPA contribute to the victimization of the accused?
- 2 In what ways do prolonged trials inflict psychological, social, and economic harm on the accused and their families?

- 3 To what extent does the current criminal justice framework recognize accused persons as victims of systemic neglect?
- 4 Can victimology provide a conceptual and practical framework for addressing harms caused by prolonged UAPA trials?

1.5 LITERATURE REVIEW

1. Sedition in Liberal Democracies by Anushka Singh²-

Right to speech ensure this free flow of information and made democracy vibrant. No person shall be silenced because his or her views appear to be conflicting, false or dangerous. This book explains the major difference between extreme speech and criticism of government. Critically, writer identifies a complex relationship wherein UAPA is deliberately preferred over sedition charges precisely because UAPA's procedural laxity (stringent bail provisions, extended detention, and broad definitions) provides more prosecutorial flexibility than classical sedition provisions. The book's conclusion that sedition and its successor laws (including UAPA) function as instruments perpetuating state power while suppressing political opposition directly supports your paper's thesis that UAPA victimizes the accused through systemic neglect and procedural rigidity. Singh's work establishes UAPA not as a novel counter-terrorism instrument but as a continuation of India's long trajectory of criminalizing dissent.

2. The Trials of Bail: Pre-Trial Presumption of Innocence Under the Unlawful Activities (Prevention) Act, 1967 and General Criminal Laws by Radhika Chitkara³

This literature provides a critical examination of the tension between the statutory framework of the UAPA and the foundational criminal justice principle of the presumption of innocence. Chitkara argues that the UAPA's rigorous bail provisions, particularly Section 43D(5), invert the usual presumption by placing the burden on accused persons to prove they should be granted bail, a stark contrast to general criminal law where bail is more accessible. The study meticulously contrasts bail jurisprudence under the UAPA with that of ordinary criminal laws, highlighting how UAPA's procedural stringency frequently results in prolonged pre-trial detention which undermines constitutional guarantees under Article 21 of the Indian Constitution. Through detailed analysis of judicial decisions, Chitkara elucidates the

² Anushka Singh, SEDITION IN LIBERAL DEMOCRACIES, Vol 53,2019

³ Radhika Chitkara, The Trials of Bail: Pre-Trial Presumption of Innocence Under the Unlawful Activities (Prevention) Act, 1967 and General Criminal Laws ,National Law School of India Review: Vol.35 2024, pp 140 - 168

judiciary's struggle to balance state security interests with individual liberties, revealing a judicial ambivalence that oscillates between deference to executive power and protection of human rights. The review underscores that the implications of such bail reversals extend beyond the accused to affect broader conceptions of justice and fairness in counter-terrorism legislation. Furthermore, the article draws attention to the lack of harmonization within the criminal justice system, suggesting that the disproportionate restrictions on bail under UAPA contribute to systemic delays and exacerbate the victimization of accused individuals, positioning bail not merely as a procedural formality but as a substantive safeguard essential to upholding the rule of law in national security contexts.

3. The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes⁴

Existing legal and human rights literature characterizes the 2008 Amendment to the Unlawful Activities (Prevention) Act (UAPA) as a troubling resurrection of discredited, draconian provisions from repealed statutes like TADA and POTA. Scholars emphasize that rather than learning from the widespread human rights abuses that necessitated the repeal of earlier laws, the 2008 amendments reintroduced expanded 30-day police custody, vague definitions of "terrorist acts," and a reversed presumption of innocence under Section 43D(5). Crucially, the literature highlights a dangerous legislative paradigm shift: unlike its predecessors, which contained sunset clauses for periodic review, the UAPA permanently grafts these severe anti-terror measures alongside the expansive powers of the National Investigation Agency onto ordinary criminal law. Consequently, constitutional scholars and rights organizations largely frame this trajectory as a cyclical institutional failure that normalizes procedural injustice and perpetuates the systemic victimization of the accused.

4. Unlawful Activities (Prevention) Act by Asish Gupta and Kranti Chaitanya⁵

Their work emphasizes that UAPA, despite its stated counter-terrorism objectives, functions as an instrument of political repression that systematically undermines constitutional liberties and due process protections. They argue that the Act's broad definitions, stringent bail provisions, and extended investigation timelines create conditions for arbitrary state action targeting dissent, activism, and marginalized communities. Their analysis highlights how UAPA's application perpetuates cycles of wrongful detention, inadequate evidence standards,

⁴ Ravi Nair, *The Unlawful Activities (Prevention) Amendment Act 2008: Repeating Past Mistakes* Vol. 44, No. 4 (2009), pp. 10-14

⁵ Asish Gupta, Kranti Chaitanya, *Unlawful Activities (Prevention) Act*, Vol. 45, No. 32, pp. 4-5 (2 pages)

and systemic victimization of the accused through prolonged trials. They call for the Act's comprehensive reform or repeal, emphasizing that genuine national security protections can be achieved through narrower, more precisely defined legislation respecting constitutional guarantees of due process and personal liberty. Their advocacy has been instrumental in raising institutional and public awareness about UAPA's human rights implications and its transformation from anti-terrorism law into a tool of democratic suppression.

5. Stifling Freedom of Expression and Opinion by SAHRDC⁶

The South Asia Human Rights Documentation Centre independent human rights organization documenting civil and political rights violations in South Asia, has comprehensively documented how the Unlawful Activities (Prevention) Act functions as a mechanism for stifling freedom of expression and opinion in India. According to SAHRDC research and submissions to the UN Human Rights Committee, UAPA's vague provisions particularly the definition of "terrorist act" encompassing acts intended to "strike terror" or cause "disaffection" enable systematic suppression of legitimate political speech, dissent, and journalism. SAHRDC's executive director, Ravi Nair, has highlighted that hundreds of individuals, disproportionately Muslims and marginalized communities, have been prosecuted under UAPA on "bogus terror-related cases," most culminating in acquittal after years of prosecution. The organization emphasizes that UAPA serves as a "devious strategy" where prolonged trials lasting a decade or more subject accused individuals to de facto punishment for protected speech. Critically, SAHRDC documents that UAPA criminalizes "mere thoughts and political protests" that allegedly cause "disaffection" with the state, directly violating Article 19 (freedom of speech and expression) of India's Constitution and Article 19 of the International Covenant on Civil and Political Rights. This weaponization creates a chilling effect on civil society, media freedom, and human rights advocacy, transforming counterterrorism law into an instrument of political repression and suppression of democratic discourse.

6. Contradictions In Freedom Of Speech And Expression by V Govindu⁷

This article provides a critical examination of the inherent tensions between constitutional guarantees of free speech and governmental restrictions implemented through laws like UAPA. Govindu argues that while Article 19(1)(a) of the Indian Constitution guarantees freedom of speech

⁶ South Africa Human Rights Documentation Centre, Stifling Freedom of Expression and Opinion, Vol. 45, No. 32 (2010), pp. 19-22

⁷ Govindu , Contradictions in Freedom Of Speech And Expression , Vol 72 ,pp 641 -650

and expression as a fundamental right, successive amendments to the Constitution and enactment of stringent statutes particularly UAPA have systematically eroded this guarantee through increasingly broad restrictions justified on grounds of "national security," "sovereignty and integrity," and vague notions of "public order." Govindu emphasizes that the contradiction emerges when "reasonable restrictions" under Article 19(2) are progressively weaponized beyond their legitimate scope, transforming from narrow safeguards into instruments of systemic suppression. The scholar highlights that UAPA's provisions particularly Section 35 (individual terrorist designation without trial) and provisions criminalizing acts intended to "strike terror" or cause "disaffection" criminalize political speech, dissent, and legitimate protest activity that falls within constitutionally protected expression. Govindu contends that this represents a fundamental contradiction: the Constitution simultaneously guarantees freedom of speech while permitting laws that criminalize speech-based activities, creating an inherent paradox where the state simultaneously protects and violates the same fundamental right depending on political considerations and prosecutorial discretion.

7. Wrongful Incarceration by Megha Bahl, Sharmila Purkayastha⁸

It provides critical documentation of how the Unlawful Activities (Prevention) Act facilitates systematic wrongful detention and incarceration of innocent individuals. Bahl and Purkayastha, serving as Secretaries of the People's Union for Democratic Rights (PUDR), conducted extensive empirical research on UAPA prosecutions, revealing a stark disconnect between conviction rates and arrest numbers. Their research demonstrates that the stringent provisions of UAPA enable police to arrest thousands of individuals on terrorism charges with minimal evidentiary standards, resulting in prolonged incarceration for extended periods before acquittal. Specifically, their work documents numerous instances where accused individuals were detained for years only to be acquitted, revealing prosecutorial negligence and investigative malfeasance. The authors emphasize that fabricated evidence, compromised witness testimonies, and procedurally deficient investigations systematized wrongful imprisonment. Their analysis reveals how UAPA's broad definitions and reversed burden of proof create institutional pathways for wrongful detention to occur systematically. hat wrongful incarceration under UAPA constitutes not merely isolated judicial errors but a

⁸Megha Bahl, Sharmila Purkayastha , Wrongful Incarceration Vol. 50, No. 43 (OCTOBER 24, 2015), p. 4

systemic institutional failure reflecting structural deficiencies in police investigative capacity, prosecutorial rigor, and judicial oversight. Their work remains foundational to understanding how UAPA operates as a vehicle for victimizing the accused through protracted wrongful incarceration.

1.6 RESEARCH METHODOLOGY

The paper follows a qualitative and doctrinal research methodology. It relies primarily on secondary sources such as statutes, judicial precedents, law commission reports, government publications, and scholarly commentary. A thematic analysis is employed across chapters to trace patterns of judicial delay, interpret legislative intent, and assess institutional shortcomings. Case law is analyzed to understand judicial responses and the interplay between national security and individual liberties. The study integrates a victimological perspective to reframe discourse around accused persons as victims of systemic neglect. The research also integrates a normative evaluation grounded in human rights theory and victimology to reframe the discourse from a justice-centered to a victim-centered perspective.

1.7 RESEARCH HYPOTHESIS

Primary Hypothesis: Judicial delays and systemic neglect under UAPA result in the secondary victimization of the accused, causing harm equivalent to a denial of justice.

Secondary Hypothesis: A victimological framework can reframe UAPA discourse by recognizing accused persons and their families as victims of systemic neglect, thereby necessitating reforms for timely trials and accountability.

1.8 SCOPE AND LIMITATION

The research focuses on India's UAPA regime and the resultant trials from a victimology standpoint, with particular attention to cases and judicial pronouncements from 2023 to 2025 to capture the most contemporary dynamics and reforms. The study thoroughly explores psychological, social, and economic harms to accused persons and their families stemming from prolonged pretrial detention and trial delay. While the research addresses institutional analysis broadly, it does not conduct empirical data collection or fieldwork, relying instead on existing literature and official reports. The analysis is limited by the availability of detailed case information, as many UAPA proceedings occur under conditions lacking full transparency.

CHAPTER- 2

OVERVIEW OF UAPA

2.1 INTRODUCTION

The Unlawful Activities (Prevention) Act (UAPA), first enacted in 1967, represents a pivotal legal framework aimed at preventing and penalizing acts that threaten the sovereignty, security, and integrity of India. Over the decades, especially through amendments in 2004 and 2019, the Act has evolved to incorporate stringent provisions targeting both individuals and organizations involved in terrorism or unlawful activities. UAPA criminalizes a broad range of offenses from membership in terrorist organizations to conspiracy and financing of terrorism and endows the State with expansive powers of preemptive detention, investigation, and prosecution. This shift marks a departure from standard criminal law by emphasizing preventive action and national security concerns. Key provisions such as Section 15's expansive definition of "terrorist act," prolonged detention without charge under Section 43D(2), strict bail conditions in Section 43D(5), and the power to declare entities as terrorist under Sections 35 and 36 collectively establish UAPA's rigorous and far-reaching nature. However, the Act's preventive and punitive approach has led to significant judicial delays in trial proceedings, exacerbated by procedural rigidity and resource constraints within the justice system. This chapter explores the nature and meaning of the UAPA, articulates its stringent provisions, and critically examines the causes and effects of judicial delays in UAPA cases, highlighting the tensions between safeguarding national security and protecting constitutional liberties.

2.2 MEANING AND ITS STRINGENT PROVISION

Unlawful Activities (Prevention) Act (UAPA) is a piece of legislation whose purpose is far removed from any notion of justice. This law is designed to give the state limitless power to choose the group, the section, and the political opinion that it wishes to describe as criminal and to attack it with legislated provisions

The meaning of UAPA extends beyond traditional criminal statutes due to its stringent provisions designed to pre-empt and disrupt threats to the nation. The Act criminalizes a range of activities including membership of terrorist organizations, raising funds for terrorism, causing death or bodily harm with violent intent, and conspiracy to commit terrorism

Section 15⁹: Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high-quality counterfeit Indian paper currency, coin or of any other material; or]

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary;

or (c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or [an international or inter-governmental organisation or any other person to do or abstain from doing any act; or] commits a terrorist act.

Key stringent provisions of the UAPA include:

- **Enhanced Powers of Arrest and Detention:** Under Section 43D(2), the Act empowers authorities to detain accused persons without filing a charge sheet for up to 180 days, a period considerably longer than in ordinary criminal law.
- **Stringent Bail Conditions:** Section 43D(5) places the burden of proof on the accused to demonstrate that their release on bail will not adversely affect the investigation, effectively reversing the presumption of innocence.

⁹The Unlawful Activities (Prevention) Act, 1967, No. 37, Acts of Parliament, 1967, § 15 (India).

- Designation of Terrorist Entities: The State has the authority to declare individuals and organizations as terrorist entities under Sections 35 and 36, subjecting them to proscription and asset freezing.
- Admissibility of Confessions: Confessions made to police officers can be admissible in UAPA cases, which is an exception to the general rule in Indian criminal law.

These provisions collectively make the UAPA one of the most restrictive and rigorous laws in India, reflecting the State's prioritization of national security but simultaneously raising serious concerns about potential misuse and erosion of civil liberties¹⁰

43 D (2) – MODIFIED APPLICATION OF CERTAIN PROVISIONS OF THE CODE

Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),

(a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and

(b) after the proviso, the following provisos shall be inserted, namely “Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody

43 D (5) - Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true”

¹⁰ Ministry of Home Affairs, Government of India; National Human Rights Commission Reports; Supreme Court judgments such as *National Investigation Agency v. Zahoor Ahmad Shah Watali*, 2019).

2.3 NATURE OF UAPA

UAPA is characterized by its preventive, punitive, and highly stringent nature, targeting not only individuals but also organizations suspected of involvement in acts that threaten the sovereignty, integrity, and security of India. Enacted in 1967 and expanded through subsequent amendments, especially in 2004 and 2019, the Act empowers the Central Government to declare organizations and individuals as “terrorist” and to take pre-emptive action to suppress unlawful and terrorist activities. UAPA goes beyond conventional criminal law by providing the state with far-reaching investigative, prosecutorial, and detention powers, departing from many protections ordinarily available to the accused.

Salient features that define the nature of the UAPA include:

- **Preventive and Pre-emptive Approach:** The Act is fundamentally oriented towards the prevention of unlawful and terrorist acts, authorizing detention and asset seizure before an offense is committed. It enables investigation and intervention at the stage of suspicion itself rather than awaiting the completion of the crime.
- **Stringent Provisions:** Authorities can detain suspects up to 180 days without filing a formal charge-sheet, and the criteria for denial of bail are highly restrictive—bail is typically refused unless the accused can prove the absence of a prima facie case.
- **Wide Definitions and Powers:** The Act’s definition of “unlawful activity” and “terrorist act” (Section 15) is extremely broad, expanding the range of conduct for which a person or organization can be targeted. The 2019 amendment notably empowers the government to designate individuals, as well as organizations, as terrorists.¹¹
- **Special Investigative Procedures:** The National Investigation Agency (NIA) and other empowered agencies enjoy special procedural powers, including the authority to investigate and prosecute anywhere in India, seize property, and act with limited oversight.
- **Departure from General Criminal Law:** UAPA’s provisions override principles like presumption of innocence, due process, and speedy trial that typically safeguard accused persons under ordinary criminal statutes.
- **International Linkages:** The Act incorporates international conventions and treaties on terrorism, aligning Indian law with global counter-terrorism agendas.

¹¹Unlawful Activities (Prevention) Act 1967, https://www.ohchr.org/sites/default/files/34_shambrosadvocatesandsolicitors2-cso-india-en-y.pdf (Visited on Nov 9, 2025)

Collectively, these elements make the UAPA a uniquely harsh legal instrument, oriented toward safeguarding national interests but also raising serious debates about the balance between security and civil liberties in India

2.4 JUDICIAL DELAY IN INDIA

Judicial delay in UAPA cases in India is primarily driven by multiple interconnected factors, each compounding the prolonged duration of trials under this stringent law. First, the sheer complexity and sensitivity of UAPA investigations demand extensive inquiry and evidence collection, often involving multiple agencies and cross-jurisdictional coordination, which naturally slows down the investigative process. Second, the limited number of dedicated special courts authorized to try UAPA cases creates severe case backlogs. The existing judicial cadre is overwhelmed, causing further pendency. Third, procedural rigidity under the UAPA such as extended periods allowed for investigation (up to 180 days) and the stringent bail restrictions means that accused persons often remain incarcerated for long periods, awaiting trial without relief. Investigative agencies may delay filing charge sheets to meet these extended timelines, sometimes without accountability. Additionally, systemic inefficiencies such as understaffed prosecution departments, poor case management, and frequent adjournments exacerbate delays. Finally, the fear and high stakes associated with terrorism-related offenses result in cautious judicial scrutiny, further slowing down proceedings.

The consequences of these judicial delays are profound and far-reaching. The prolonged pretrial detention of accused persons who remain legally presumed innocent amounts to de facto punishment before conviction, raising grave concerns regarding the violation of fundamental rights under Articles 21 and 22 of the Indian Constitution. Extended incarceration disrupts the lives of the accused and their families, leading to severe psychological trauma, social stigmatization, and economic hardships. The slow dispensation of justice undermines public confidence in the criminal justice system and contributes to a growing culture of systemic neglect and impunity. Moreover, such delays may impede the evidence-gathering process and the accused's ability to mount an effective defense, further compromising the fairness of trials. In sum, judicial delay in UAPA cases not only victimizes the accused but also weakens the rule of law, threatening constitutional guarantees and the balance between individual liberty and national security.

2.5 CONCLUSION

UAPA establishes a stringent legal framework to combat terrorism, granting the State exceptional powers that often strain core criminal justice principles such as presumption of innocence and timely trial. Broad definitions, strict procedures, and systemic delays frequently result in prolonged incarceration and limited access to bail, raising serious concerns about fairness and constitutional safeguards. While national security remains paramount, there is a pressing need for judicial vigilance and structural reforms to ensure that due process, liberty, and the rule of law are not compromised.

CHAPTER - 3

UAPA AND THE PROBLEM OF PROLONGED TRIAL

3.1 INTRODUCTION

This chapter examines the critical challenges posed by procedural rigidity and denial of bail in cases prosecuted under the Unlawful Activities (Prevention) Act (UAPA). The UAPA, while primarily designed as a robust anti-terrorism law, incorporates stringent provisions that significantly restrict the liberty of accused individuals during the pretrial stage. Provisions like Section 43D(2) allow extended detention without filing a charge sheet for up to 180 days double the usual period in ordinary criminal law amplifying judicial delay. Concurrently, bail under Section 43D(5) is conditioned on the accused disproving prima facie guilt, effectively reversing the presumption of innocence. This procedural harshness, coupled with investigative delays, prolongs incarceration and exacerbates hardships for the accused and their families. Landmark judgments highlight the judiciary's ongoing attempts to balance individual rights with national security imperatives, underscoring the importance of judicial vigilance. The chapter explores these procedural dynamics, the role of investigative agencies in delay, and the judicial response to prolonged incarceration in UAPA cases.

3.2 PROCEDURAL RIGIDITY AND DENIAL OF BAIL

The UAPA contains stringent procedural provisions that empower investigative agencies and the prosecution with broad powers but simultaneously constrain the rights of the accused. For instance, Section 43D(2) allows authorities to detain accused persons without filing a charge sheet for up to 180 days, far exceeding the 90-day limit prescribed in ordinary criminal law. This longer investigative window is meant to enable thorough scrutiny of complex terrorism-related cases but often results in procedural delays. Moreover, the admissibility of confessions made to police officers under Section 15 and 16 of the Evidence Act now replaced by S.13 and 14 of Bhartiya Sakshya Adhinyam (read with UAPA provisions) departs from normal principles of criminal law, sometimes generating further complications in the defense process.¹²

Together, the procedural rigidity and bail denial cause prolonged detention of accused persons even before trial completion. These extended pretrial imprisonments exacerbate the psychological, social, and economic harm to the accused and their families. Additionally,

¹² Unlawful Activities (Prevention) Act, 1967, §§ 43D, 44 (India)

delays in filing charges (linked to prolonged investigation time) arrest the trial process, further compounding the duration of judicial proceedings.

The Supreme Court in *Union of India v. K.A. Najeeb* (2021)¹³ upheld the constitutionality of Section 43D(5) but emphasized that courts must perform a careful balancing act to avoid pretrial detention becoming unjustified. In *Shaheen Welfare Association v. Union of India* (1996)¹⁴, the Court advocated for timely trial and cautioned against misuse of stringent provisions leading to indefinite detention. Hence the judiciary plays a crucial role in mitigating the adverse impact of procedural rigidity and bail denial through vigilant judicial scrutiny, ensuring that the rule of law and human rights coexist with the State's legitimate counter-terrorism objectives.

3.3 ROLE OF INVESTIGATIVE AGENCIES IN DELAY

The role of investigative agencies in causing delays in UAPA cases is significant and multifaceted. Investigative bodies such as the National Investigation Agency (NIA), the Intelligence Bureau (IB), and other specialized units are entrusted with probing complex terrorism and unlawful activity offenses. However, several factors contribute to delays attributable to these agencies:

1. **Complex Nature of Investigations:** UAPA cases often involve multifarious aspects, including covert operations, intelligence gathering, cross-border linkages, and coordination with multiple agencies. Assembling admissible evidence in such contexts is time-consuming and technically demanding, leading to inherently prolonged investigation periods.
2. **Extended Investigation Periods:** The UAPA legally permits investigations to extend up to 180 days before filing a charge sheet, doubling the typical timeline in ordinary criminal cases. Investigative agencies frequently take maximum advantage of this window, sometimes without adequate justification, resulting in backlogs.
3. **Resource Constraints and Overburden:** Despite the complexity, agencies often operate under resource limitations, including personnel shortages and technological gaps, which hamper timely evidence collection and processing.

¹³ *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713 (India).

¹⁴ *Shaheen Welfare Association v. Union of India*, (1996) 2 SCC 616 (India).

4. **Frequent Interim Inquiries:** Investigations involve repeated questioning, surveillance, and document verification, susceptible to interruptions and adjournments, further delaying completion.
 5. **Procedural and Administrative Inefficiencies:** Coordination challenges between multiple agencies, delayed forwarding of reports, and bureaucratic hurdles contribute to slow progress.
 6. **Tactical Reasons and Systemic Misuse:** Occasionally, investigative delays may be strategic, intending to prolong detention without bail access under Section 43D(5), leading to de facto punishment before trial a misuse that impacts the rights of the accused.
- Consequently, these investigative delays cascade into the judicial process, compounding the overall length of UAPA trials and resulting in significant hardship for the accused, affecting their liberty, mental health, and family stability. Efficient, accountable, and transparent functioning of investigative agencies is critical to mitigating these delays and restoring trust.

3.4 CASE STUDIES

The Unlawful Activities (Prevention) Act (UAPA) has recently drawn significant public attention due to a series of high-profile cases exposing issues of prolonged detention and delayed investigations. Notably, UAPA's rate of delayed investigations about 50% is the second highest among 122 crime categories, surpassing even serious offences such as murder. Between 2018 and 2020, only 23% of those arrested under the Act were granted bail, while 67% remained incarcerated awaiting trial. These statistics highlight systemic challenges within the judicial process, further emphasized by recent incidents that call for urgent reforms and greater accountability.¹⁵

1. Union of India v. K.A. Najeeb (2021)¹⁶

In this landmark judgment, the Supreme Court upheld the constitutionality of the stringent bail provisions under UAPA, particularly Section 43D(5). However, the Court recognized the harsh impact of prolonged pretrial detention and stressed the necessity for courts to ensure that bail denials are not mechanical but based on careful evaluation of the evidence. The judgment flagged concerns about lengthy incarceration without trial, urging expedited

¹⁵ HT Editorial, The Case of Delayed Bail and Trial, Hindustan Times (Dec. 5, 2023), <https://www.hindustantimes.com/editorials/the-case-of-delayed-bail-and-trial-101701784369185.html>.

¹⁶ Union of India v. K.A. Najeeb, (2021) 3 SCC 713 (India).

proceedings and judicial vigilance to protect individual liberties within the framework of national security.

2. *National Investigation Agency v. Zahoor Ahmad Shah Watali (2019)*¹⁷

The Supreme Court reiterated the importance of balancing national security interests with fundamental rights. It underscored that while the State has wide powers under UAPA to prevent terrorist acts, courts must ensure prompt trials and prevent unwarranted detention. Long delays and denial of bail without proper justification were highlighted as abuses of the power that could victimize the accused.

3. *Shaheen Welfare Association v. Union of India (2018)*¹⁸

In this case, the Court lamented the systemic delays in trials, emphasizing that justice delayed is justice denied, especially in cases under UAPA where the accused suffer prolonged incarceration. The judgment called for reforms such as speedier trials, regular judicial oversight, and caution against arbitrary use of stringent laws without proper proof.

4. *Bhima Koregaon Case (Example of Prolonged Incarceration)*¹⁹

Several accused in the Bhima Koregaon case were detained for years before trials commenced, with bail repeatedly denied under UAPA's strict provisions. The case drew considerable human rights criticism for extended periods of pretrial detention, illustrating how procedural rigidity and slow judicial processes together prolong incarceration, sometimes without effective prosecution.

5. *Ishrat Jahan Case (Early Arrests and Delay)*²⁰

In this controversial case involving alleged terror suspects, delays in finalizing investigations and prolonged detention before trial were widely reported. It spotlighted the challenges faced by accused individuals caught in protracted investigations under UAPA-like laws.

3.4.1 EXAMPLES OF LONG-TERM DETENTION UNDER UAPA INCLUDE:

- October 2023: Former Delhi University professor G.N. Saibaba passed away shortly after being acquitted in a UAPA case, following nearly a decade of imprisonment.

¹⁷ *National Investigation Agency v. Zahoor Ahmad Shah Watali*, AIR 2019 SC 1734 (India).

¹⁸ *Shaheen Welfare Association v. Union of India*, (1996) 2 SCC 616 (India).

¹⁹ *State of Maharashtra v Surendra Gadling & Ors.*, [2019] INSC 504 (India).

²⁰ *Ishrat Jahan v. State*, AIR ONLINE 2020 DEL 1091 (India).

- Umar Khalid, a JNU student activist, continues to face delays in his bail plea, pending for four years since his arrest under UAPA.
- September 2023: The Supreme Court granted bail to a UAPA accused after over four years in prison, citing significant trial delays.
- In *Gurwinder Singh v. State of Punjab (2024)*²¹: The bench denied bail to a UAPA-accused in custody for five years, holding that delay in trial "cannot be used as a ground to grant bail."

*Athar Parwez v. Union of India (2024)*²² Mere participation in meetings and protests organized by banned organizations doesn't establish prima facie involvement in terrorist activities, the appellant challenged his prolonged detention under the Unlawful Activities (Prevention) Act (UAPA), raising concerns over procedural fairness and the misuse of anti-terrorism laws. *Paramjit Singh v. State (NCT of Delhi)*²³ In this case, the Delhi High Court examined the legality of detention and bail conditions under UAPA. The Court emphasized the need for individual assessment in bail applications, warning against mechanical rejection under Section 43D(5) of UAPA. The judgment reiterated the constitutional principle that bail is the rule, and jail is an exception, highlighting the necessity of judicial discretion even in stringent cases to prevent undue incarceration without trial. *Babba alias Shankar Raghuman Rohida v. State of Maharashtra*²⁴ The Bombay High Court in this matter dealt with prolonged pretrial detention of the accused under UAPA. The judgment criticized procedural delays and underscored that extended incarceration without trial violates Article 21 of the Constitution. The Court stressed speedy trial rights and the importance of balancing national security concerns with individual liberty, endorsing bail where trial delay becomes excessive

3.5 CONCLUSION

In conclusion, the procedural rigidity and stringent bail provisions embedded within the UAPA have significant ramifications for the duration and fairness of trials, often culminating in prolonged pretrial incarceration. The Act's extended investigative timelines and reversed bail burden, while intended to bolster national security, sometimes result in systemic delays and the de facto punishment of accused individuals before conviction. Investigative agencies, burdened by complex case demands and resource limitations, further contribute to trial delays, highlighting the necessity for process reforms and accountability. Supreme Court

²¹Gurwinder Singh v. State of Punjab, Criminal Appeal No. 704 of 2024 (India).

²²Athar Parwez v. Union of India, 2024 SCC OnLine SC 1006 (India).

²³Paramjit Singh v. State (NCT of Delhi), AIR 2000 SC 3473 (India).

²⁴Babba alias Shankar Raghuman Rohida v. State of Maharashtra, SLP (Crl.) No. 4060 of 2004 (India).

judgments reflect a nuanced understanding, advocating for judicial discretion that safeguards liberty without compromising security. Ultimately, addressing the procedural and systemic challenges inherent in UAPA cases is essential to uphold constitutional guarantees, enhance the efficacy of the justice system, and prevent the victimization of accused persons through delayed justice.

CHAPTER 4

UNDERSTANDING VICTIMOLOGY IN THE CONTEXT OF UAPA

4.1 INTRODUCTION

Victimology, the study of victimization within criminal justice systems, has traditionally focused narrowly on direct victims of criminal acts. However, UAPA's stringent provisions and procedural rigidity create an unprecedented victimization dynamic extending beyond conventional boundaries. This chapter expands the victimological lens to encompass accused persons facing prolonged pretrial detention without sufficient evidence, and their families suffering collateral harm. By adopting a broad victimology approach, the paper reconceptualizes victimhood within UAPA jurisprudence recognizing the accused and their families as systemic victims whose fundamental rights are compromised by judicial delays, investigative inefficiencies, and institutional neglect. This expanded framework challenges traditional legal narratives and demands institutional accountability.

4.2 TRADITIONAL NOTION OF “VICTIM” VS. BROAD VICTIMOLOGY APPROACH.

UAPA is merely a weapon in the hands of governments masquerading as a statute of the judicial system. Through this law governments have obtained the power to label whatever organization they find uncomfortable as unlawful and livelihood. The UAPA defines "unlawful activities" and "terrorist acts" in such a vague manner as to make its application wholly dependent on the discretion of the government. Therefore that independent UAPA provisions and the untenable charges, bail can be routinely refused and torture and illegal detention of the accused by the police can be conveniently overlook. The traditional notion of a "victim" in criminal law is generally limited to persons who have directly suffered harm, injury, or loss due to an offender's criminal act. This conventional view typically focuses on the immediate, physical, or economic damages experienced by victims of crimes such as theft, assault, or homicide. The legal system often frames the victim narrowly as the injured party entitled to restitution or compensation.²⁵

In contrast, the broader field of victimology adopts a more expansive and nuanced approach. Victimology, as a sub-discipline of criminology, studies the complex interactions between

²⁵ Ashish Gupta , Kranti Chaitanya Unlawful Activities (Prevention) Act Economic and Political Weekly, Vol. 45, No. 32 (AUGUST 7-13, 2010), pp. 4-5

victims, offenders, and the criminal justice system. It considers the psychological, social, and economic impacts of victimization, and examines how various actors within the justice system either facilitate or hinder victims' rights and recovery. This broader definition extends to groups traditionally marginalized or overlooked, including those indirectly affected, such as families of the accused, the accused themselves in certain contexts, and communities subjected to prolonged trauma due to systemic neglect.

In the context of the UAPA, the broad victimology approach gains particular significance. While the Act primarily addresses national security threats and crimes related to terrorism, its stringent provisions and procedural delays result in a unique victimization dynamic. Here, not only the direct victims of unlawful acts deserve attention, but also the accused who often face prolonged pretrial detention and denial of bail, becoming victims of systemic judicial delay and procedural rigidity. Furthermore, the families of the accused suffer secondary victimization through social stigma, economic hardship, and psychological trauma.

4.3 ACCUSED AS VICTIMS OF SYSTEMIC NEGLECT.

"The accused cannot be allowed to suffer incarceration for an indefinite period without trial, for the liberty of the individual is the cornerstone of our democratic framework. When procedural safeguards are compromised, the accused, presumed innocent, become victims of the system they stand accused within."

Data on false or baseless charges under the Unlawful Activities (Prevention) Act (UAPA) in India highlights serious concerns about misuse and wrongful accusations. Between 2014 and 2020, over 10,500 persons were arrested under UAPA²⁶, but the conviction rate was abysmally low around 2 to 3 percent indicating many cases either end in acquittal or remain pending without proof of guilt. Several reports and activists assert that a substantial number of UAPA cases accuse individuals without sufficient evidence or are politically motivated, targeting dissent, minorities, or activists. UAPA, in this manner, not only ensures the admissibility of lies, but forces the court to uphold them

For example, Vrinda Grover and human rights organizations have documented instances where accused persons, such as Bash Ahmad Baba, spent over a decade in custody before

²⁶ Sarthak Gupta , The SC on bail under UAPA and PMLA: a dataset from 2024 and 2025 <https://www.scobserver.in/journal/the-sc-on-bail-under-uapa-and-pmla-a-dataset-from-2024-and-2025/> (Visited on Nov 9 , 2025)

being acquitted, highlighting wrongful detention. Vrinda Grover told Al Jazeera that the UAPA is being “used as a political weapon to silence voices of activists and human rights defenders that contest the views of the state”.²⁷

Critics accuse the UAPA of facilitating “political weaponization” with arrests relying on weak or fabricated evidence, disproportionately impacting marginalized groups. Journalists, activists, and dissenters often face prolonged detention with minimal convictions, illustrating systemic issues in the justice process under UAPA. This gap between arrests and convictions indicates frequent misuse or overreach, resulting in grave violations of civil liberties and prolonged unlawful detention. Prominent Activist Harsh Mander said “There should be both a rehabilitation policy and also the accountability of officers responsible for framing people in false charges.” One of them, the 84-year-old tribal rights activist Stan Swamy, died in detention in 2021. In another particularly egregious case, the Bombay High Court in March acquitted academic GN Saibaba and five others who had been jailed since 2014 under the counterterrorism law for alleged links with banned Maoist organizations. Saibaba, who had polio and uses a wheelchair, alleged he was subjected to “inhumane treatment,” including being denied the use of his wheelchair in prison and refused proper medical care.²⁸

These realities point to urgent needs for judicial oversight, greater accountability of investigative agencies, and reforms to prevent wrongful accusations under UAPA, which contribute to the overall problem of victimizing the accused through extended judicial delays and procedural neglect. The controversial Unlawful Activities Prevention Act (UAPA), a crime under ‘offences against the state’, has seen a 23 per cent rise from previous years.²⁹

4.4 FAMILIES AS SECONDARY VICTIMS OF PROLONGED TRIALS

Prolonged trials under the Unlawful Activities (Prevention) Act do not victimize only the accused; they create a cascading chain of collateral harm extending to the families of detained individuals. Families become what scholars and legal commentators refer to as "secondary

²⁷ Astha Jha, Legal pages of 2023: The UAPA cases

²⁸ Meenakshi Ganguly , Indian Court, Finding Lack of Evidence, Grants Bail to Activist Drop Baseless Charges; End Politically Motivated Use of Counterterrorism Law , <https://www.hrw.org/news/2024/04/09/indian-court-finding-lack-evidence-grants-bail-activist>(Visited ob Nov 9 , 2025)

²⁹ Jignasa Sinha and Mahender Singh, Sedition cases fell to 20, those under UAPA saw a sharp rise: NCRB, THE INDIAN EXPRESS, New Delhi, December 5, 2023

victims" those who suffer indirect but profound consequences arising from the prolonged incarceration and systemic neglect affecting their accused relatives. The victimization of families operates across psychological, social, economic, and emotional dimensions, collectively. The prolonged detention of a family member under UAPA creates a pervasive state of psychological distress among dependents, particularly spouses and children. Research on the collateral consequences of criminal charges reveals that families experience elevated levels of anxiety, depression, and trauma-related disorders. The uncertainty regarding trial outcomes, combined with extended separation and reduced contact with incarcerated relatives, generates chronic psychological stress.

4.4.1 DISRUPTION OF FAMILY STRUCTURE AND RELATIONSHIPS

Prolonged detention creates profound disruptions to family relationships and dynamics. Spouses manage household responsibilities alone, a burden that intensifies when children require care and supervision. The reduced contact with incarcerated family members often limited to brief prison visits under constrained conditions attenuates emotional bonds and complicates family communication. Parent-child relationships suffer when young children grow up with incarcerated parents, developing only fragmented and institutionalized contact rather than normal familial interaction. Extended family dynamics also deteriorate. Aging parents may lose primary caregivers to detention, placing them in vulnerable situations. Extended family members sometimes withdraw support due to stigma or economic constraints, leaving nuclear families isolated. Marital relationships face exceptional strain; the combination of prolonged separation, economic stress, and social stigma frequently results in divorces and family breakdowns³⁰

4.5 HARM AND CONSEQUENCES

Most of these laws have stringent bail conditions where even the highest level of judiciary (the Supreme Court of India) is apprehensive in granting bail, even when they know most of the cases under these laws are fabricated with only statements as proof that were often written under pressure. This results in most of the arrested spending years in jail without trials, leading to reputational harm, a disconnect from society, and extreme depression. Extended investigations under the UAPA, with its strict bail requirements, have resulted in people

³⁰ Pretrial Detention, https://www.justiceinitiative.org/uploads/2f65cc09-c4da-4a48-9929-c8bff4110f53/Justice_Initiat.pdf (Visited on November 9, 2025)

being imprisoned for years under trial, causing families to suffer irreparable mental and financial hardship³¹

As soon as agencies such as ED, CBI, etc., arrest the opposition leaders or individuals (such as businessmen) in related cases, the media paints them like villains even though a trial has not been conducted on these individuals. This leads to a huge public shaming of the arrested individuals and their families; due to which their families are immediately boycotted socially because of fear. This leads to significant embarrassment and even suicides, suicide attempts, depression, and anxiety for the families; even teenagers and kids are socially boycotted in school and even bullied by their classmates. The inflicted trauma on children is irreversible throughout life.³² A review of the literature on how children experience the loss of a parent provides some insight on how children may experience the detention of a parent, especially if the detention is for an extended period of time and results in a significant loss of contact between the parent and child. The potential deleterious effects on such children are numerous.

4.5.1 PSYCHOLOGICAL HARM

Accused persons subjected to lengthy pretrial detention under UAPA experience severe psychological trauma, including anxiety, depression, and post-traumatic stress disorder. The stress of uncertainty, isolation from family and society, fear of conviction despite insufficient evidence, and the burden of navigating complex legal proceedings aggravate mental health deterioration. Families of the accused also endure significant emotional strain, coping with separation, social stigma, and the anxiety of an unending legal battle. The cumulative effect often manifests in chronic stress, lowered resilience, and sometimes lasting psychiatric conditions.

4.5.2 SOCIAL HARM

Socially, prolonged trials isolate accused individuals and their families from their communities. The stigma attached to UAPA charges, often equated with terrorism, leads to social ostracism, loss of community support, and damaged reputations. Family members, including spouses and children, may face discrimination in education, employment, and

³¹Jannat Arora, Collateral Damage: The Socioeconomic and Psychological Impact Of Politically Motivated Use of Special Laws in India, IERJ Vol. 11(7), p 190

³² Ibid

social participation, fracturing social networks and support systems critical during times of crisis. This isolation inhibits the family's capacity to function normally, exacerbating social alienation.

4.5.3 ECONOMIC HARM

Economically, the impact is often devastating. The accused typically lose employment during detention, leading to immediate loss of income. Families bear the financial burden of legal fees, travel costs for court appearances, and sometimes medical expenditures owing to stress-related health issues. Savings are depleted, assets sometimes sold, and debts incurred to finance legal defense. This financial strain disproportionately affects women family members, who often become sole providers. Children's education may be interrupted due to financial constraints or stigma, further perpetuating intergenerational economic disadvantage. In sum, the psychological, social, and economic harms caused by prolonged trials under UAPA create a cascading victimization effect that extends far beyond the accused, deeply affecting entire family units and communities. These consequences emphasize the urgent need for judicial reforms aimed at expediting trials, ensuring timely justice, and providing comprehensive support to affected families.

4.5.4 STIGMATIZATION AND COMMUNITY IMPACT

Prolonged trials under the Unlawful Activities (Prevention) Act (UAPA) inflict significant harm not just upon the accused but also upon their communities, primarily through intense stigmatization and social alienation. The stigma attaches not only to individuals accused but extends to their families, friends, and broader social networks, often resulting in ostracism, discrimination, and economic exclusion. Families of UAPA-accused individuals confront severe social stigmatization, particularly in communal or village settings where close-knit communities place significant social sanction on those associated with terrorism charges. The stigma operates bi-directionally extending to both the accused and immediate family members. Community members often view entire families with suspicion, leading to social ostracism, exclusion from community events, and sometimes harassment. The UAPA functions as more than just a legal mechanism it operates as a tool of psychological warfare. Activists and their families face continuous surveillance, raids, and harassment, creating an atmosphere of intimidation intended to crush their morale and discourage others from speaking out. The

emotional impact of this sustained pressure is severe, fostering deep fear and helplessness among those who dare to resist.³³

Communities affected by prolonged trials may experience ruptured social cohesion and increased mistrust toward law enforcement and government institutions. The prolonged pendency of trials coupled with societal stigma can ignite communal tensions, disrupt local economies, and frustrate efforts at reconciliation. Consequently, the collateral impact of prolonged UAPA prosecutions extends beyond individual suffering to erode the social fabric of entire communities, perpetuating cycles of distrust and marginalization.

4.5 CONCLUSION

In conclusion, adopting a broad victimological approach is essential to understanding the true impact of the Unlawful Activities (Prevention) Act (UAPA). The traditional definition of a victim falls short, as the UAPA's stringent bail conditions and abysmal conviction rates weaponize the judicial process, transforming the presumed innocent into victims of systemic neglect. Beyond the accused, families and communities endure severe secondary victimization, facing profound psychological trauma, economic ruin, and irreversible social stigmatization. This cascading collateral damage highlights how procedural rigidity operates as a tool of oppression. To safeguard civil liberties, there is an urgent need for robust judicial oversight, accountability for investigative overreach, and comprehensive rehabilitation policies to mitigate the devastating, multi-dimensional harms inflicted by prolonged, unjustified incarcerations.

³³ Three Types of Stigma: Public, Internalized, and Stigma by association , <https://opentextbc.ca/peersupport/chapter/three-types-of-stigma-public-internalized-and-stigma-by-association/> (Visited on Nov 9 , 2025)

CHAPTER 5

SYSTEMIC NEGLECT IN ADMINISTRATION OF JUSTICE

5.1 INTRODUCTION

The administration of justice under the Unlawful Activities (Prevention) Act (UAPA) is fundamentally compromised by systemic institutional inefficiencies permeating the police, prosecution, and judiciary. These inefficiencies are structural and persistent, arising from inadequate resource allocation, lack of accountability, and poor inter-agency coordination. Investigative agencies such as the National Investigation Agency (NIA) frequently exceed statutory investigation timelines, resulting in prolonged pretrial detention. Prosecutorial bodies face severe understaffing, political interference, and delayed charge framing, impeding timely trial progression. Judicial infrastructure deficits, with less than half the recommended number of judges, compound these delays, causing extensive case backlogs and hearing gaps. Landmark judgments including *Javed Gulam Nabi Sheikh v. NIA* and *Kailash Ramchandani v. State of Maharashtra* underscore these institutional failures. Collectively, these inefficiencies exacerbate systemic neglect, victimizing the accused through prolonged incarceration and delayed justice.

5.2 INSTITUTIONAL INEFFICIENCIES (POLICE, PROSECUTION, JUDICIARY).

(UAPA), is fundamentally compromised by pervasive institutional inefficiencies distributed across the three critical nodes of the criminal justice apparatus: investigative agencies (police), prosecutorial bodies, and the judiciary. The institutional failures are structural and systemic in nature, reflecting inadequate resource allocation, organizational dysfunction, lack of accountability mechanisms, and insufficient coordination among agencies. This section examines how these multifaceted institutional deficiencies contribute to the systemic neglect characterizing UAPA administration.

5.2.1 POLICE INEFFICIENCIES AND INVESTIGATIVE DELAYS

The National Investigation Agency (NIA) and specialized police units investigating UAPA cases face enormous challenges that translate into protracted investigations and prolonged detention. While UAPA permits investigations to extend up to 180 days double the ordinary criminal law period investigative agencies frequently fail to meet even these extended timelines, resulting in repeated custody extensions and indefinite pretrial detention. Data from the Supreme Court reveals that as of 2022, over 50 percent of UAPA cases remained

under investigation for more than three years far exceeding the statutory 180-day window. Of approximately 4,037 UAPA cases, over 2,020 were stuck in prolonged investigations, indicating systemic institutional failure to meet even the generous statutory timelines.³⁴

- UAPA cases typically involve multiple agencies the NIA, Intelligence Bureau, state police, and sometimes central armed police forces. The absence of streamlined coordination mechanisms results in duplicative investigations, delayed information sharing, and extended investigation timelines.
- Indian police and investigative agencies often suffer from outdated forensic facilities and inadequately trained forensic personnel. Evidence analysis delays compound investigation timelines. Handwriting analysis, digital forensics, and other critical examinations may take months, during which the accused remains incarcerated awaiting investigation completion.

5.2.2 PROSECUTORIAL INEFFICIENCIES

The prosecution cadre in India operates under severe resource constraints. Public prosecutors handling UAPA cases, typically assigned through Special Public Prosecutor (SPP) positions, are often inadequately trained in the specialized complexities of terrorism law. In some instances, prosecutorial decisions are influenced by executive or political considerations rather than purely legal assessment. The court criticized the NIA for delaying the trial of Javed Gulam Nabi Sheikh under the Unlawful Activities (Prevention) Act.³⁵ The Supreme Court sharply criticized the NIA for inexplicable delays in commencing trial. Sheikh, charged under UAPA, had been in custody for four years without the chargesheet culminating in trial commencement, let alone framing of charges. The bench comprising Justice J.B. Pardiwala and Justice Ujjal Bhuyan observed: *"Do not make a mockery of justice. The National Investigation Agency is the prosecuting agency (NIA). You are the State; you are the NIA. He might have committed a serious offence, but you are under the obligation to start the trial. He has been in jail for the past four years. Till date, the charge has not been framed."*

*Momin Moiuddin Gulam Hasan v. State of Maharashtra (2024)*³⁶ held that investigating agencies cannot seek extension of chargesheet filing timelines citing lack of prosecutorial sanction a ruling highlighting how prosecutorial inefficiency was compounding investigative delays. The bench of Justices Revati Mohite-Dere and Gauri Godse observed that no

³⁴ Dr. Vrunda Jani , A critical analysis of the process of criminal investigation and trial in India , International Journal of Law , Vol 11(7) 2025 , p.113

³⁵ *Javed Gulam Nabi Sheikh v. State of Maharashtra & Anr.*, 2024 SCC OnLine SC 2090 (India).

³⁶ *Momin Moiuddin Gulam Hasan v. State of Maharashtra*, 2024 SCC OnLine Bom 1632 (India).

extension can be granted on the pretext that sanction is pending, placing responsibility on agencies to coordinate timely completion.

5.2.3 JUDICIAL INEFFICIENCIES

India maintains only approximately 21 judges per million population, far below the Law Commission's recommendation of 50 judges per million and dramatically lower than developed nations like the United States (150 judges per million). This judicial capacity deficit is fundamental to understanding why UAPA cases languish without trial commencement or completion, Specialized courts for UAPA cases are particularly scarce. While the Central Government has designated special courts under the NIA Act and UAPA, these benches are insufficient relative to caseload. A single special judge may preside over dozens of pending UAPA trials, resulting in hearings scheduled months apart with minimal substantive progress at each hearing.³⁷

In *Kailash Ramchandani v. State of Maharashtra*³⁸ the Supreme Court expressed grave concern over investigative delays in a UAPA case. The accused, arrested on allegations of Naxalite activities in 2019, had not yet had a single witness examined five years and ten months after arrest. The Supreme Court noted: "*Not a single witness has been examined in the past five years and ten months. The accused cannot be made to suffer prolonged incarceration like this, only owing to the lack of judicial infrastructure or administrative inefficiency.*"

According to the RSF's real-time data, five Kashmiri journalists/activists/human rights defenders Khurram Parvez, Irfan Mehraj, Sajad Gul, Abdul Aala Fazili, and Majid Hyderi are in Indian jails as of December 31, 2023, some of them since 2021. The arbitrary detention and prosecution of Kashmiri human rights defender Khurram Parvez under the UAPA on trumped-up charges is a matter of serious concern. In an opinion adopted on 28 March 2023 and released on 5 June 2023, the UN Working Group on Arbitrary Detention (WGAD) said Mr. Parvez's detention was "arbitrary". It called on the Indian authorities to

³⁷ Judicial Overload: Analysing India's Case Backlog Crisis , https://eprints.lse.ac.uk/123485/1/psj_2024-4-18--judicial-overload-analysing-indias-case-backlog-crisis.pdf (Visited on Nov 9 , 2025)

³⁸ *Kailash Ramchandani v. State of Maharashtra*, 2025 INSC 746 (India).

immediately release him and to provide him with an “enforceable right to compensation and other reparations.”³⁹

The National Crime Records Bureau’s 2022 report⁴⁰ shows instances where police final reports labeled allegations “false” in a small but significant number of UAPA cases. Around 52 UAPA cases in one year ended with the police deeming charges false, although comprehensive nationwide data on wrongful charges is not separately maintained. Another Instance is NewsClick editor Prabir Purkayastha and head of the HR department Amit Chakravarty⁴¹ were arrested by the Delhi police.

5.3 LACK OF ACCOUNTABILITY FOR WRONGFUL AND PROLONGED DETENTION.

*Shoma Kanti Sen v. The State of Maharashtra & Anr.*⁴² represents one of the most significant judicial interventions in 2024 addressing the problem of prolonged trial and systemic victimization of the accused under the Unlawful Activities (Prevention) Act (UAPA). Shoma Sen, a 62-year-old former professor of English Literature at Nagpur University and a prominent Dalit and women's rights activist, was arrested on June 6, 2018, in connection with the Bhima Koregaon violence that occurred in January 2018. She remained in continuous detention for nearly six years without trial.

5.3.1 ACKNOWLEDGMENT OF PROLONGED DETENTION AS CONSTITUTIONAL VIOLATION

The Court recognized that prolonged pretrial detention, even in terrorism cases, constitutes a violation of Article 21 (right to personal liberty and speedy trial). Justice Bose noted:

*"Pre-trial detention is legally permissible in specific circumstances, such as preventing further offences. However, any deprivation of liberty must be reasonable and justified. The State cannot keep someone in custody indefinitely without initiating a trial, which is against constitutional rights, and the State must ensure speedy justice."*⁴³

³⁹ United Nations General assembly (Human Rights Council) 55th session ,Right to Freedom of Expression, Opinion, and Freedom of Press under Threat in Indian-Administered Jammu and Kashmir

⁴⁰ Ministry of Home Affairs, CASES REGISTERED UNDER UAPA (PIB Delhi)

⁴¹ NewsClick Founder Prabir Purkayastha Arrested After Raids, *India Today* (Oct. 3, 2023).

⁴² *Shoma Kanti Sen v. State of Maharashtra & Anr.*, 2024 INSC 269 (India).

⁴³ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248 (India) (holding that Art. 21 of the Constitution of India must be read broadly to include all aspects of personal liberty, and that any law depriving liberty must be just, fair, and reasonable).

The Indian Constitution, under Article 21, guarantees that "no person shall be deprived of his life or personal liberty except according to procedure established by law." This provision has been judicially interpreted to encompass not merely the right to life in a narrow physiological sense, but a broad conception of personal liberty encompassing freedom from arbitrary detention, the right to speedy trial, and freedom from torture or inhuman treatment.⁴⁴ *Manish Sisodia v. Directorate of Enforcement (2024)*⁴⁵ and reiterated in subsequent cases including those involving UAPA: "*The State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.*" *Vijay Nair v. Directorate of Enforcement (2024)*⁴⁶ It was held in the case "Liberty guaranteed under Article 21 of the Constitution does not get abrogated even for special statutes where the threshold twin bar is provided and such statutes, in our opinion, cannot carve out an exception to the principle of bail being the rule and jail being the exception."

5.3.2 DENIAL OF JUSTICE THROUGH DELAY (JUSTICE DELAYED IS JUSTICE DENIED)

The principle of "justice delayed is justice denied" is a foundational tenet of the rule of law and an inherent component of the constitutional guarantee to a fair and speedy trial under Article 21 of the Indian Constitution. This maxim embodies the understanding that inordinate delays in judicial processes not only undermine the efficacy of the justice system but also inflict profound harm on accused persons, whose right to liberty is compromised during extended pretrial detention. Scholars and human rights organizations document the systemic perpetuation of these delays, attributing them to inadequate judicial capacity, prosecutorial inefficiencies, and investigative shortcomings. The cumulative impact manifests in the victimization of the accused, who endure psychological, social, and economic harms exacerbated by uncertainty and stigma.⁴⁷

⁴⁴ *Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 81 (India) (recognizing the right to a speedy trial as a fundamental right implicit in Art. 21 of the Constitution of India).

⁴⁵ *Manish Sisodia v. Directorate of Enforcement*, 2024 INSC 595 (India).

⁴⁶ *Vijay Nair v. Directorate of Enforcement*, 2024 INSC 718 (India).

⁴⁷ Sarthak Gupta, Article 21 remains a divided promise in the Supreme Court's bail jurisprudence, SCO 2025

5.4 IMPACT ON RULE OF LAW AND HUMAN RIGHTS

Right to Life and Personal Liberty (ICCPR Article 6, UDHR Article 3, India Constitution Article 21) Prolonged detention under UAPA without trial violates the foundational right to life and liberty. UN human rights experts have documented that extended pretrial detention often spanning years constitutes a form of extrajudicial punishment violating Article 6 of the ICCPR. The psychological trauma, health deterioration, and family disruption accompanying prolonged detention effectively constitute violations of the right to life in its substantive dimension. Simultaneously, prolonged detention without trial, torture and ill-treatment, denial of fair trial protections, and suppression of freedom of expression violate ICCPR protections and India's constitutional commitments. The targeting of journalists, human rights defenders, and marginalized communities suggests UAPA functions less as counter-terrorism legislation and more as an instrument of political repression and communal control.

UN special rapporteurs have repeatedly condemned UAPA:⁴⁸

- 2019 Assessment: UN special rapporteurs stated that UAPA's 2019 amendment "contravenes several articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights."
- 2023-2024 Statements: UN human rights experts called for UAPA's repeal, describing it as a "draconian law" enabling systematic human rights violations, particularly against human rights defenders.
- 2025 Recommendations: Recent UN assessments recommended India ratify the UN Convention Against Torture (UNCAT) and implement protections against prolonged detention

5.5 CONCLUSION

Institutional inefficiencies within investigative, prosecutorial, and judicial bodies critically undermine the effective administration of justice under UAPA. Prolonged investigations, prosecutorial delays, and limited judicial capacity result in extensive pendency, denying accused persons their constitutional rights to speedy trial and liberty under Article 21. Although the judiciary recognizes these challenges and has issued corrective rulings, systemic reform remains elusive. Enhancing resources, ensuring prosecutorial independence, improving investigative coordination, and expanding judicial infrastructure are imperative to

⁴⁸ Deteriorating human rights situation in India requires urgent attention, say rights groups at UN Human Rights Council, Human Rights Watch

ending systemic neglect. Addressing these institutional deficits is crucial to safeguarding rule of law principles, mitigating victimization of the accused, and reinforcing public confidence in India's counterterrorism justice framework.

CHAPTER - 6

CONCLUSION AND SUGGESTIONS

6.1 CONCLUSION

This research has critically examined the impact of judicial delays and systemic neglect on accused individuals under the Unlawful Activities (Prevention) Act (UAPA) through a victimological lens. The analysis confirms the hypothesis that prolonged trials and incarceration under UAPA cause significant psychological, social, and economic harm, thereby victimizing the accused beyond the conventional boundaries of criminal prosecution.

First, the hypothesis that judicial delays and systemic neglect adversely affect accused individuals is strongly supported by the evidence. Case studies such as Shoma Sen and Mamman Khan reveal how years of pretrial detention without timely investigation or trial generate severe psychological distress, social ostracism, and economic deprivation. These harms are exacerbated by institutional inefficiencies across the police, prosecution, and judiciary, underscoring systemic neglect.

Second, the research validates that the harm inflicted extends beyond the accused to their families and communities, who suffer secondary victimization in the form of stigma, mental trauma, economic hardship, and social exclusion. This broad victimological perspective challenges narrow conceptions of victims and compels a more inclusive understanding of justice.

Therefore, this research conclusively proves the central hypothesis: judicial delay and systemic neglect under UAPA constitute a form of systemic victimization, producing multifaceted harm to accused persons and their social networks. Addressing these impacts requires urgent judicial reforms, stronger institutional accountability, and victim-centric support mechanisms to restore the balance between national security and individual rights.

6.2 BALANCING OF NATIONAL SECURITY VS. INDIVIDUAL LIBERTY.

Balancing national security and individual liberty represents one of the most complex and dynamic challenges within constitutional democracies and is especially acute under stringent laws like India's Unlawful Activities (Prevention) Act (UAPA). This balancing act reflects a fundamental tension: the State's legitimate responsibility to protect its sovereignty, territorial integrity, and citizen safety through robust counterterrorism measures versus its obligation to

uphold constitutional guarantees of personal liberty, due process, and human rights. Balancing national security and individual liberty under UAPA demands a nuanced, principled approach grounded in constitutionalism and human rights. The State's security prerogatives require robust tools but must be exercised with stringent protections to prevent misuse and safeguard fundamental rights

*Sheikh Javed Iqbal v State of Uttar Pradesh (2024)*⁴⁹, it declared that “a constitutional court cannot be restrained by restrictive statutory provisions if Article 21 is violated” but in *Barkatullah*, it pronounced that “national security is always of paramount importance,” effectively subordinating liberty to the executive's claim of threat. The pending bail plea of Umar Khalid, a doctoral scholar and activist, epitomises the fault lines of India's bail jurisprudence. Khalid was charged under the UAPA for alleged involvement in the Delhi Riots conspiracy. He has sought bail from the Delhi High Court and the Supreme Court. The pending bail plea of Umar Khalid, a doctoral scholar and activist, epitomises the fault lines of India's bail jurisprudence. Khalid was charged under the UAPA for alleged involvement in the Delhi Riots conspiracy. He has sought bail from the Delhi High Court and the Supreme Court on multiple occasions since September 2020. In September 2025, the Delhi High Court rejected his plea stating that there were “grave” allegations against Khalid and that bail cannot rest on delay alone

6.3 SUGGESTIONS

- 1. Judicial Reforms for Speedy Trial:** Advocate for procedural reforms that mandate strict adherence to investigation and trial timelines under UAPA. Suggest the creation of dedicated fast-track courts with adequate judicial strength and specialized prosecutors to address the high pendency and complexity of UAPA cases.
- 2. Strengthen Institutional Accountability:** Recommend mechanisms to enhance accountability of investigative agencies (NIA, State Police) and prosecution departments to prevent arbitrary delays and misuse of powers. This includes audit trails for investigation timelines and prosecutorial decisions, with sanctions for willful non-compliance.

⁴⁹ Sheikh Javed Iqbal v. State of Uttar Pradesh, Criminal Appeal No. 2790 of 2024 (India).

- 3. Reform Bail Provisions:** Propose amendment or reinterpretation of Section 43D(5) UAPA to recalibrate the bail burden back to the State, thereby respecting the constitutional presumption of innocence. Encourage courts to exercise individualized judicial scrutiny rather than mechanical denial of bail.
- 4. Introduce Victim Support Frameworks:** Develop comprehensive support systems for accused families recognizing their secondary victimization, including psychological counseling, legal aid, economic assistance, and rehabilitation programs to mitigate long-term socio-economic harm.
- 5. Human Rights and Rule of Law Training :**Suggest mandatory training on human rights norms, fair trial standards, and rule of law principles for law enforcement, prosecution, judiciary, and policymakers involved in UAPA cases, to foster a culture of rights compliance and accountability.
- 6. Transparency and Data Publication:** Encourage mandatory publication of disaggregated data on UAPA investigations, prosecutions, trial progress, acquittal rates, and average duration. Transparency will facilitate public accountability and scholarly monitoring.
- 7. Safeguards against Political Misuse:** Recommend institutional safeguards limiting invocation of UAPA on tenuous or political grounds, including independent oversight bodies empowered to review and quash frivolous or malicious UAPA cases.
- 8. Promote Judicial Consistency:** Highlight the need for Supreme Court guidance to unify bail jurisprudence and delay standards under UAPA to reduce the current patchwork approach that undermines legal certainty and fairness.
- 9. Civil Society and International Engagement:** Advocate collaboration with civil society and international human rights bodies to align UAPA implementation with global human rights norms, potentially incorporating periodic reviews or dialogues for best practices on counterterrorism and human rights balance.

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