

**IN THE SUPREME COURT OF INDIA**

**(EXTRA ORDINARY CIVIL WRIT JURISDICTION**

**(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

WRIT PETITION (CIVIL) NO.            OF 2018

**IN THE MATTER OF:**

**MEMO OF PARTIES**

1. Biyumma

2. Solidarity Youth Movement

Through its Secretary

Umar M.

...PETITIONERS

**VERSUS**

1. UNION OF INDIA,

Through Ministry of Law and Justice,

Government of India,

4th Floor, A-Wing,

Shastri Bhawan, New Delhi – 110 011

...RESPONDENT

TO  
THE HON'BLE THE CHIEF JUSTICE OF  
INDIA AND HIS OTHER COMPANION  
JUSTICES OF THE HON'BLE  
THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONERS  
ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioners are filing the instant public interest litigation under Article 32 of the Constitution of India seeking, *inter alia*, a writ of mandamus declaring the Unlawful Activities (Prevention) Act, 1967 and the Unlawful Activities (Prevention) Amendment Act, 2019 as unconstitutional and violative of fundamental rights enshrined under Article 14 and 21 of the Constitution of India.
2. The present Petition has been filed under Article 32 of the Constitution of India is being filed by the Petitioners herein to enforce fundamental rights of the general public, particularly those enshrined under Articles 14, 19, and 21 of the Constitution of India.
3. That the Petitioners herein have no vested interest or ulterior motive in filing the present Petition, and the same has only been filed to secure larger public interest. The Petitioners are not guided by self-gain or for gain of any other person/institution/body. Further, the Petitioners are approaching this Hon'ble court with clean hands and sole intention of addressing the public concern of violation of fundamental rights of the citizens of India.
4. That the Petitioners are not involved in any criminal, civil, revenue, or any other litigation that has any legal nexus with the issues involved in the present public interest litigation.

5. That the Petitioners herein have the requisite *locus standi* to file the present public interest litigation. It is submitted that the Petitioners have already exhausted all other possible alternatives to redress the violations of fundamental rights cause by the Unlawful Activities (Prevention) Act, 1967 and the Unlawful Activities (Prevention) Amendment Act, 2019.

**PARTIES**

Petitioner No.1 herein has dedicated her life to actively fighting the draconian provisions of the Unlawful Activities (Prevention) Act, 1967 and its consequent misuse. She has also been part of an action committee group the sole object of which is to fight the misuse of the aforementioned legislation. The Unlawful Activities (Prevention) Act, 1967 furthered by Unlawful Activities (Prevention) Amendment Act, 2019 has aggrieved Petitioner No.1 herein and therefore, Petitioner No.1 has approached this Hon'ble Court through the present public interest litigation under Article 32 of the Constitution of India.

Petitioner No.2 is the Secretary of an organization named 'Solidarity Youth Movement' - founded in 2003, functioning with its base in Kozhikode, Kerala. It is a movement focused on attainment of an equitable and sustainable society by channeling revolutionary spirit of the youth. Among the diversified activities of the organization, is its unwavering and relentless fight to secure human rights of all individuals. The organization has played an indispensable role in construction of houses for the endosulphan victims in Kasargod, securing right to access clean drinking water through its 100 projects in Kerala, and for securing justice for the Moolampally evictees. Their pro-active role was recognized in the Plachimada Anti-Coco cola agitation, Anti-Mining agitation in Velichalaka, and Anti-Koodankulam nuclear plant agitation in Tamil Nadu, among several others. A True copy of the brochure of the organization Solidarity Youth Movement is annexed herewith as **ANNEXURE P- (Pages to )**

A True Copy of the bulletin issued by the organization Solidarity Youth Movement is annexed herewith as **ANNEXURE P-** (Pages to )

Full name of the Petitioner : Umar M  
Postal Address :  
age : 37 years  
Mobile No. :  
PAN No.  
Occupation : Self Employed  
Annual Income : 3 Lacs

The Respondent

The Respondent is the Union of India, through Ministry of Law and Justice (the **Ministry**). The Ministry discharges multifarious responsibilities, the important among them being – management of legal affairs, legislative activities and administration of justice through its departments, i.e., legislative department, department of legal affairs, and department of justice.

**BRIEF FACTS OF THE CASE:**

- A. That the Unlawful Activities (Prevention) Act, 1967 was enacted by the Parliament with the sole objective of more effective prevention of certain unlawful activities of individuals as well as association and for matter incidental thereto. A true copy of Unlawful Activities (Prevention) Act, 1967 is herewith marked and annexed as **ANNEXURE P-** (Pages to )
- B. That in order to further the objective of the said Act, the Union Home Minister introduced Unlawful Activities (Prevention) Amendment Bill, 2019

in Lok Sabha. The same was subsequently passed by the Lok Sabha on 24.07.2019 and was later passed by the Rajya Sabha on 02.08.2019.

C. That the Unlawful Activities (Prevention) Amendment Act, 2019 was published in the Official Gazette of India for general information of the public. The copy of Official Gazette of India publishing the Unlawful Activities (Prevention) Amendment Act, 2019 dated 08.08.2019 for the general information of the public is herewith marked and annexed as **ANNEXURE**

**P- (Pages to )**

D. That the Unlawful Activities (Prevention) Amendment Act, 2019 was brought into force on 14.08.2019. A copy of the official gazette notifying the date of commencement of the Act is is herewith marked and annexed as

**ANNEXURE P- (Pages to )**

E. Being aggrieved by the aforementioned sequence of events, the Petitioners herein have approached this Hon'ble Court under Article 32 of the Constitution of India for safeguarding the interests of the general public at large which are secured under Articles 14, 19, and 21 of the Constitution of India.

## **2. QUESTIONS OF LAW:**

**1.** Whether the Unlawful Activities Prevention Act, 1967 is violative of fundamental rights enshrined under Part III of the Constitution of India?

**2.** Whether the Unlawful Activities (Prevention) Amendment Act, 2019 is violative of fundamental rights enshrined under Part III of the Constitution of India?

## **3. GROUNDS**

A. BECAUSE, it is humbly submitted that Section 35 of the UAPA is violative of the basic tenets of Part III of the Constitution of India. It is to be noted that even prior to the passage of the impugned amendment, Section 35 of the UAPA authorized only categorization of organization as "terrorist

organizations". However, subsequent to the passage of this amendment, this power has been extended to include within its scope the categorization of individuals as terrorists as well. The difference between the two would lie in the prolonged consequences of such a tag, and its consequent repercussion on an individual's freedom of speech and expression secured under Article 19 (1) (a) as well as an individual's right to life and personal liberty secured under Article 21 of the Constitution of India. Allowing the Respondent herein to designate individuals as terrorists will make matters worse as no commensurate safeguards for this arbitrary power have been introduced.

B. BECAUSE, Section 35 of the UAPA does not specify the stage at which an individual may be designated as a "terrorist", whether the Central Government would be empowered to do so at the stage of registration of a FIR, or whether power can be exercised only upon an individual's conviction in a case related to terrorism. Notwithstanding this, unilateral executive power in the nature of designation of an individual as a "terrorist" is wholly incompatible with the constitutional fabric of the country. It would also be pertinent to note that such categorization pending adjudication by a judicial body could adversely affect impending trial. It also stands contrary to the cherished principle of 'innocent until proven guilty' in criminal jurisprudence. Therefore, it is also in stark violation of International Convention on Civil and Political Rights, 1967 which recognizes the presumption of innocence as a universal human right.

C. BECAUSE, it would be pertinent to note that the notification for designation of an individual as a "terrorist" in the official gazette would not require the Government to assign any reasons for the same. In this context, it would be important to understand the relevance of Section 36 of the Act which provides for denotification of a terrorist organization which may be made to

the Central Government. Section 36 of the Act suffers from two fundamental vices:

- a. A challenge to the notification would lie before the same executive body that exercised its powers under Section 35 of the Act for the said categorization.
- b. An individual desirous of challenging the categorization is not informed of the grounds, or the materials on the basis of which the categorization has taken place. In the absence of this, a provision for challenge is rendered nugatory.

D. BEAUSE, Section 36(4) of the Act further states that in the eventuality of rejection of an application, the applicant may apply for a review before a Review Committee. The foremost fallacy with this lies in the fact that the burden of proof is reversed and placed on the individual to satisfy the government that he/she is not a terrorist. This would have to be done before a Committee constituted by the Central Government, which was closely involved in the issuance of the said notification in the gazette; furthermore, no express provision has been stipulated in the Section to ensure that an opportunity of oral hearing has been secured, thus violation two cardinal principles of natural justice, *nemo iudex in causa sua* and *audi alteram partem*. Additionally, the law also fails to prescribe a time limit for the Government to constitute a review committee and the duration within which the said committee would be required to decide on the merits of the application. This would enable continued disregard for an individual's fundamental rights, particularly those under Articles 19 and 21.

E. BECAUSE, the UAPA under Sections 38, 39, and 40 provide for punishment for an individuals associated with an organization which is included in the First Schedule, i.e., as a "terrorist organization", whether the said association is in terms of membership, support of funding. Therefore, the

Act, prior to the amendment had exhaustively provided for mechanisms to deal with individuals associated with terrorist organizations. This ought to be co-related with the fact that the amendment does not provide any legal consequence in case an individual is designated a terrorist. The inclusion of one's name in the Fourth Schedule as a terrorist *per se* will not lead to any conviction, imprisonment, fine, disqualifications or any sort of civil penalties. Therefore, the law enabling its usage as a tool of repression rather than a law that combats terrorism.

- F. BECAUSE, the Act confers upon the Central Government unfettered powers to declare an individual as a terrorist *only if it believes that it is involved in terrorism*. Therefore, no remote attempt has been made by the legislation to lay down an objective criterion for such categorization. Further, the law remains silent as to who would be the decision-making authority in such a case. The choice to keep the labelling process faceless and shapeless in the statute erodes the accountability of those wielding power, and underscores the imbalance of power between state and subject.
- G. BECAUSE, it would be pertinent to note the stark distinction that exists in the process involving the designation of an organization as "terrorist" vis-à-vis an individual. In cases of the former, Chapter II of the Act requires the notification to specify the grounds on which the notification was issued. Section 3(3) of UAPA provides that for the notification to be effective, the same has to be confirmed by the Tribunal. Thereafter, under Section 4, the Tribunal is required to conclusively adjudicate upon the matter only after notice to the association to show cause. The manner in which the inquiry and judicial determination process by the tribunal is provided under Section 5. These safeguards ensure that the process is not carried out in accordance with the whims and fancies of the Central Government. However, in cases of designation of an individual as a terrorist, no such corollary safeguard has



been put in place. Ordinarily, a greater threshold for scrutiny and compliance ought to have been laid down by the Act with regard to the categorization of individuals as the mere existence of such powers threatens to jeopardize fundamental rights of individuals.

H. BECAUSE, Rule 3 (2) of the UAPA Rules provides that in cases where the Government claims that certain books of accounts or other documents produced before the Tribunal are confidential in nature, the Tribunal shall not make them part of the proceedings, or allow inspection to any party "other than a party" to the proceedings before it. The rule, therefore, is clear that inspection can be denied to all except parties to proceedings. It further empowers the Tribunal to consider records which are "confidential" in nature without the same being part of the proceedings. This brings forth two fundamental questions to the fore:

- a. Can evidence that is invoked as a justification to ban an association be withheld from the association itself?
- b. Given that the authority of Rule 3(2) flows from Section 4 (3) of the Act, what is the meaning of "public interest", and to what extent must the Tribunal scrutinize the government's invocation of "public interest"?

I. BECAUSE, Section 2(o) of the Act defines "unlawful activity". A careful perusal of the definition reveals that it has the potential to criminalize even those peaceful ideas, thought processes and actions that have no propensity to violence, or create public disorder or disturbance of law and order. Furthermore, sub-section (iii) of Section 2(o) which includes "any action which causes or is intended to cause disaffection against India", reiterates the offence of Section 124A of the Indian Penal Code relating to sedition, without taking into account the two explanations of the same which clarify that causing disapprobation of the actions of the Government without

exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence. This is the crucial difference between Section 124A and Section 2(o), since the latter makes no distinction between peaceful, lawful activities on the one hand, and violent activities on the other, that have the intent or the tendency to create public disorder.

- J. BECAUSE, the First Schedule appended to the Act provides a list of banned terrorist organizations. While naming these organization, the Act continues to employ ambiguous phraseology such as "all its formations and front organizations", in the absence of a definitive definition of what constitutes formations and front organizations. This would be relevant in the context of the proviso to Section 38 which allows an accused to disassociate himself/herself from a terrorist organization if he/she is able to prove that the association pertained to a period when the organization was not declared terrorist, and since the time of its declaration as a terrorist organization, the accused has not participated in any of its activities. The mischief of the phrase lies in the ability to rope in as many organizations as "front organizations", on a post facto basis thereby depriving an accused of a defence that was otherwise available to him under Section 38 of the Act.
- K. BECAUSE, Section 43D which provides for modified application of certain provisions of the Code of Criminal Procedure is manifestly arbitrary. It would be pertinent to note that under the section, a single remand can now be extended to a period of 30 days as opposed to 15 days, and the charge-sheet can be filed within 90 days which may be extended up to 180 days. This classification fails to distinguish between offences that carry a minimum sentence of two years and those which carry a sentence of death or life imprisonment. It is also in stark violation of Article 21 of the Constitution of India as the extension of the period of judicial custody from 60 days to 90

days to 180 days for all offences irrespective of the prescribed punishment for the offences is unduly onerous.

- L. BECAUSE, Section 43-D (5) of the Act states that if the public prosecutor opposed bail then the Court ***shall*** deny bail if after perusing the case diary or charge-sheet, it is of the opinion that there are reasonable grounds for believing that the accusations against such person is *prima facie* true. One of the foremost questions before this Hon'ble Court in *Zahoor Ahmad Watali v. National Investigating Agency* was with regard to the interpretation of the above phrase of "*prima facie* true" which is at the heart of Section 43-D (5). This Hon'ble Court stated that no elaborate examination or dissection of the material was required, while also broadening the scope of inquiry for a Court beyond the case diary and charge-sheet to consider "all other relevant material/evidence produced by the investigative agency". Therefore, the Courts would not proceed to provide a merely cursory look not only to the charge-sheet and case-diary but also proceed to evaluate more material with the same benign *prima facie* gaze.

**PRAYER**

In the facts and circumstances stated above, it is most humbly prayed that this Hon'ble Court may be pleased to issue appropriate writs, orders and directions as set out below:

- a. Issue a writ, order, or direction in the nature of mandamus declaring the Unlawful Activities Prevention Act, 1967 as unconstitutional;
- b. Declare the Unlawful Activities (Prevention) Amendment Act, 2019 as violative of fundamental rights enshrined under Article 14, and 21 of the Constitution of India.
- c. Pass any other order or relief in favour of the Petitioners in the interest of justice, equity, and good conscience.

DRAWN BY:

**FILED BY:**

**ADVOCATE FOR PETITIONERS**

DRAWN ON: .2020

FILED ON: .2020

NEW DELHI