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Bail Jurisprudence under UAPA: A Departure from the Presumption of Innocence

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Bail Jurisprudence under UAPA: A Departure from the Presumption of Innocence

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Abstract

This paper examines the legal and jurisprudential dimensions of bail under the Unlawful Activities (Prevention) Act (UAPA) and preventive detention laws in India. It begins with an introduction that outlines the tension between national security imperatives and individual constitutional rights, especially the right to personal liberty under Article 21. The historical context of these laws is traced throughout the study, emphasizing their inception and development in reaction to challenges to national security and public order. The strict bail requirements under Section 43D(5) of the UAPA and the constitutional foundation for preventive detention under Article 22 of the Indian Constitution are described in depth in the legislative framework section, which also discusses how these laws are unique in comparison to normal criminal law norms. The judicial response segment analyses landmark judgments that have shaped the interpretation and application of bail and preventive detention, including the Supreme Court's efforts to balance state security concerns with fair trial rights. It reviews cases such as National Investigation Agency v. Zahoor Ahmad Shah Watali and Union of India v. K.A. Najeeb, which demonstrate the evolving judicial stance towards ensuring speedy trials and protecting personal freedoms within the confines of these special laws. In order to reduce the possibility of arbitrary detention and protect fundamental rights, the paper also compares bail and preventive detention laws with those in other democracies, such as the United States and the United Kingdom, which have stronger procedural safeguards, judicial oversight, and explicit time limits. This comparative viewpoint identifies areas for improvement and draws attention to the unique difficulties facing India's legal system. The conclusion summarizes the main conclusions and emphasizes the critical necessity for judicial and legislative changes to stop abuse and safeguard constitutional rights without sacrificing security goals. Lastly, the study makes thoughtful recommendations for improving judicial discretion, speeding up trials, and fortifying supervisory procedures. This comprehensive legal and jurisprudential analysis provides a nuanced understanding of the complexities surrounding bail under the UAPA and preventive detention laws in India, situating them within broader comparative and constitutional frameworks.

Keywords: *Bail Jurisprudence, Unlawful Activities (Prevention) Act (UAPA), Anti-Terror Legislation, Personal Liberty, Article 21, Presumption of Innocence, Preventive Detention.*

Overview of the Study

The law around bail has the philosophy of personal liberty at its core. In a system of democracy and constitutional principles, being imprisoned before being found guilty is the exception, with only compelling reasons to hold people prior to a criminal conviction. In India, Article 21 of the Constitution guarantees that everyone has the right to life and personal liberty unless there has been a process defined by law. Judicial decision-making has widened the interpretation of this guarantee to require that any such procedure is fair, just and reasonable. As bail is a procedural tool to avoid having to keep someone for punishment before they have been proven guilty through due process, this is how the presumption of innocence serves as the normative base for criminal law and is the conceptual basis for liberal bail standards. According to this concept, all the moral and legal principles support the notion that the State must prove that a person committed an offence beyond a reasonable doubt (the standard is designed to safeguard against the possibility of wrongful conviction) and that a person should not suffer a punishment for merely being charged with a crime. Bail put the presumption and moral conviction into action by allowing a person accused of committing a crime to remain free before trial unless they represent a specific danger to society or are unlikely to appear for trial.

Bail is given at the discretion of judges according to the Code of Criminal Procedure, taking into consideration certain factors : the seriousness of the offence; the likelihood of the person fleeing; whether the individual will destroy evidence; and whether they may influence witnesses. These variables aim to ensure that the right to liberty is balanced against the need to protect the community. The presumption is that people should not be placed in custody before trial unless necessary, rather than simply being placed there as a matter of course; therefore, the case law on bail is based on a rights-based view of the law that is consistent with constitutional values. There is a stark departure from traditional bail laws and other laws relating to anti-terrorism; in the last few decades, the Indian Government has enacted numerous new laws to protect against threats to national security or public order caused by insurgency, cross-border terrorism and organised violent extremism. Among these new laws were TADA (Terrorist and Disruptive Activities (Prevention) Act) and POTA (Prevention of Terrorism Act), both of which included far-reaching procedural restrictions on bail. Although these statutes were ultimately repealed following widespread abuse usage and abuse of civil liberties, the legislative philosophy behind both of them continues to influence the development of the law in relation to terrorism.

Section 43D(5) of the Unlawful Activities (Prevention) Act, 1967 (UAPA) has expanded the anti-terrorism scope of the law through amendments and has a statutory framework for the bail system. According to this law, an individual cannot "be released on bail" unless the court finds that "prima facie" the person has committed a crime which prevents the individual from being released on bail during pretrial detention. Although this is a significant departure from pretrial standards under guidelines for granting bail to the accused, it is often difficult to determine whether the prosecution evidence satisfies the prima facie burden. Courts tend to use a strict burden of proof standard, which limits what courts can consider when determining whether to grant or deny bail. As terrorism trials often require the consideration of a large volume of complex information, it is likely difficult to satisfy the burden of proof for bail early in the pretrial process. In practical terms, Section 43D(5) serves to lengthen pretrial detention, which creates serious due process issues for individuals accused of a terrorist attack.

When a person is kept in detention for an extended period of time without being found guilty by a court, there are many potential legal ramifications. One question that arises is if a bail system created under UAPA violates the presumption of innocence by placing an acceptable burden on an accused person before their guilt or innocence has been established. This creates tension between freedom and security - the State has a compelling interest in securing our nation and preventing terrorist acts - but constitutional democracies recognize that sometimes national security is threatened, and thus require different legal responses. At the same time, irrespective of security concerns, constitutional principles require that restrictions imposed on liberty are reasonable and proportional to the reasons for them, and comply with the fundamental rights guaranteed in the Constitution. The challenge then becomes how to accomplish security without harming foundational principles of criminal justice.

This dissertation addresses whether the bail system established under UAPA represents a doctrinal and structural break with respect to the presumption of innocence that permeates all Indian criminal law jurisprudence. It examines whether Section 43D(5) of UAPA has, by its design and interpretation, created a significant imbalance in favor of the State. It also analyzes whether lengthy pre-trial detention under stringent bail standards constitutes punishment without conviction, contrary to Article 21's assurance of fairness and reasonableness.

This study's central research question focuses on whether a restrictive bail scheme outlined in the UAPA can be aligned with the constitutional rule regarding personal liberty. It also provides sub-questions related to; what does general bail jurisprudence do to protect the presumption of innocence? How does Section 43D(5) modify this law concerning section 437 of the CrI P C? How do courts view the "prima facie true" standard of proof? In addition, does the constitutional doctrine of proportionality afford any protection from excessive pre-trial

detention? The hypothesis of this research is that, although UAPA has legitimate security objectives, the bail rules marked a fundamental divergence from traditional criminal law rules and present a substantial risk of undermining the presumption of innocence as a matter of routine practice. The dissertation employs a doctrinal research methodology based on statutory and constitutional interpretation. It will take into account the legislative history, judicial precedent and academic opinion to determine whether the UAPA bail jurisprudence is constitutionally defensible. By ascribing legal meaning to UAPA bail jurisprudence through the theoretical discourse regarding liberty and security as they relate to the broader legal framework, this study intends to offer a principled and critical evaluation rather than purely descriptive data.¹

Section 43D(5) and the Restrictive Bail Framework

The most significant deviation from usual criminal law principles in the Unlawful Activities (Prevention) Act, 1967 (UAPA), is found in Section 43D(5), in which there are substantial new limits on granting bail. This is the provision which creates the procedural core of UAPA's exceptionalism. Although the Act contains expansive definitions of terrorism and enhanced investigatory powers, the procedure contained in Section 43D(5) is what's most directly affecting the liberty of the accused at the pre-trial stage. As a result of the expanded permissibility standard for granting bail established by the legislature, the balance between individual liberty and state security has been shifted significantly toward the latter.

Thus, Section 43D(5) of the UAPA states that an accused person shall not be released on bail if, on the basis of his or her case diary or the Section 173 report (provided to trial courts prior to making any bail decision), the judge has reasonable grounds for believing that the accusation against the accused person is, in fact, *prima facie* true. The specific language found in Section 43D(5) is dramatically different than that which is used in the general framework of bail under the Code of Criminal Procedure (CrPC). Bail decisions under ordinary criminal law are subject to multiple discretionary factors, including: the seriousness of the crime, the risk of the accused fleeing from prosecution, the likelihood of the accused tampering with evidence, and the interests of justice.

Unlike a traditional bail application which is intended to determine whether there is a need for the accused person to remain in jail, Section 43D(5) requires the judge to perform a preliminary assessment of the prosecution's claims based on the case diary and charge sheet. However, judges have very little ability to examine the credibility or reliability of the prosecution's evidence when deciding bail under this section. Therefore, judges will have limited ability to scrutinize the prosecution's claims before granting or denying bail.

¹ Moti Ram v. State of M.P., (1978)4 SCC 47.

This is a very different standard than judges normally apply in a criminal matter. Normally, when determining whether or not someone should be held in custody prior to trial, even if the offence is non-bailable, the judge has discretion and will consider whether holding the accused in custody is necessary to ensure that the accused will appear for trial or whether there is a likelihood that the accused will interfere with justice. Although most judges would consider whether the accused has committed the alleged offence to be one of the factors to consider when determining bail, there are a number of other factors for the judge to consider and the prosecution does not have to establish their case beyond a reasonable doubt in order for the judge to consider holding the accused in custody.

With the enactment of Section 43D(5), a judge's assessment of the prosecution's case is determinative. If the judge concludes that there is a prima facie case against the accused, they will deny bail to the accused. Therefore, judges' discretion is limited, and the focus is no longer on determining whether holding the accused in custody is necessary, but on the strength of the allegations against the accused.

The judicial interpretation of Section 43D(5) has had a further restrictive effect. Courts have generally ruled that at the bail stage under UAPA, the defence cannot request an extensive investigation of evidence or discredit the prosecution's case. The investigation limits to determining if the evidence provided by the prosecution, on its own merit, establishes a prima facie case. This judicial practice has been justified because anti-terrorism crimes are complex in terms of investigation and intelligence. However, it can also result in the accused remaining in custody based on untested allegations and without an opportunity for a complete defence prior to trial. Section 43D(5) imposes important structural limitations to the operation of bail. First, it changes the normal operating presumption at the bail hearing. Normally, the presumption of innocence means that there is a presumption of bail unless there is a justifiable exception. In UAPA cases, if the prosecution shows a prima facie case, the presumption now shifts to the accused against bail. The accused has the burden of proving that there is no prima facie case against him or her which the accused often has no real ability to do because the opportunity to contest evidence at the pre-trial stage of the proceedings is limited. This reversal of presumptions raises fundamental issues of fairness and due process under the Constitution of India.

Next, there are several other aspects of UAPA's procedural provisions which impact on the ability to extend both time limits for investigations and time limits for filing of charge sheets in UAPA cases, when compared to other criminal cases. There are longer time limits to file a charge sheet under the UAPA, and with it being common to see bail provisions that restrict when a person can get bail from UAPA, this leads to a situation where people detained under the UAPA can spend

a substantial amount of time in pre-trial detention before the case goes to trial. It is common for an accused person detained under the UAPA to have spent multiple years in pre-trial detention while the prosecution prepares its case, as the complexity of terrorism cases is, typically, extremely high due to their nature (numerous witnesses and voluminous documentary materials). These same reasons are why the accumulation of extended investigation times and strict bail standards creates a very likely scenario for people being held in pre-trial detention for lengthy periods of time, turning more and more into punitive (punishing them) forms of detention. Additionally, it becomes increasingly difficult to distinguish between preventive detention and punitive detention when pre-trial detainees continue to be held long-term simply because it takes so long for the prosecution to prepare. Finally, when the reasons justifying pre-trial detention are supported by theory (preventing absconding; preventing witness tampering; etc.), and pre-trial detention exceeds multiple years, it becomes increasingly difficult to determine whether the pre-trial detention is an example of punishment without conviction. Article 21 of Indian Constitution requires that the impairment of the right to liberty must be fair and proportionate. This would mean that a bail regime that allows for a lengthy period of time to be spent in pre-trial detention when based solely on a preliminary hearing and not based on proof of guilt, would likely not satisfy the requirement of being fair and proportionate.

Additionally, it can be seen that reliance on the prosecution's case diary and charge sheet during the bail stage leads to question about how reliable and/ or believable the evidence will be. There may be some statements and/or items in the case diaries that have not yet been tested by a witness through cross-examination and therefore, the defendant has limited ability to test them before trial. As a result of this lack of testing, the prima facie determination may be based on incomplete or one-sided evidence. While the intention of Section 43D(5) is to prevent someone accused of committing a serious crime from being released prematurely, the method used to achieve this goal may actually undermine the procedural safeguards that would otherwise exist.

The restrictiveness of Section 43D(5) must be construed in accordance with the overall principle of proportionality. Recent developments in constitutional law support that limitations placed on fundamental rights must be proportional to the legitimate purpose being served by such limitation(s). The legitimate purpose for imposing a bail restriction is to protect national security and to maintain the integrity of the trial process. However, in order to achieve this purpose, any restriction on an individual's liberty must be necessary and have the least impairment possible. A blanket restriction on the grant of bail based upon a prima facie case will not consider each defendant's individual circumstance, such as age, health, delay in trial and the nature of the accused's participation in the alleged crime.

According to many critics, Section 43D(5) creates a situation where the entire experience of being arrested and charged is treated as a mini-trial of sorts with prosecutors' witnesses testifying against your character and/or reputation while the accused does not have the same amount of procedural protections. As such, the presumption of innocence could be significantly impacted because of how much weight is given to the prosecutor's evidence (and/or narrative). In contrast, supporters assert that individuals who are arrested for committing acts of terrorism represent unique risks and therefore, require special circumstances to justify them being released prior to trial because if they are released early, they could jeopardize public safety and/or national security. Therefore, there seems to be a difference of opinion surrounding whether or not the statutory framework achieves the appropriate balancing of competing constitutional rights. Furthermore, there have been many instances whereby the experiences of people arrested/litigating charges under UAPA demonstrate that the conviction rate has often been very low in relation to the number of people arrested; and while conviction rates are not determinative of constitutionality, they nonetheless demonstrate that individuals who were held for long periods of time may not receive a fair trial even after being acquitted of said charge, making the protective elements of bail very important given that those who are held for long periods of time will have a significantly more difficult time receiving relief or vindication than someone who was detained for a shorter period of time prior to being acquitted of the same offence. Consequently, the restrictive nature of s.43D(5)'s thresholds have implications that extend beyond legal doctrine into the real lives of accused persons.

Bail under the Code of Criminal Procedure: The Rule of Liberty

Bail in General Criminal Law The Code of Criminal Procedure, 1973 (CrPC) constitutes the legal framework regulating arrest, detention, and bail in India. Being a procedural law, the CrPC implements the provisions of the Constitution relating to the right to personal liberty into practice. Whereas Article 21 of the Constitution sets forth the principle of liberty, the CrPC enshrines its implementation procedures. The law of bail enshrined in the CrPC manifests a well-balanced position between an individual's right to liberty and the state's need to administer justice. As per the CrPC, the guiding principle of bail is "bail is the rule, and jail is the exception". The CrPC starts from classifying offenses as bailable and non-bailable offenses. The classification itself indicates legislative will and shows the nature of such proceedings. As for bailable offenses, the accused has a statutory right to bail. According to Section 436 of the CrPC, any person charged with a bailable offense must be released on bail as of right. Neither a police officer nor a court can refuse granting bail to an accused person if he/she is willing to furnish the bail bond. This demonstrates legislative understanding that in less serious offenses, detention is unnecessary and disproportionate. As for the process of releasing accused persons of non-bailable

offenses, it is regulated by Sections 437 and 439. While releasing accused persons from custody in non-bailable offenses is neither mandatory nor automatic, judicial discretion can grant bail. The Magistrate, while being guided by Section 437, and the Sessions Court and High Court, while being free from the limitations of Section 437, can grant bail. Notably, non-bailable does not equal non-grantable; it merely means that there is no right to bail.²

In accordance with Section 437, if reasonable grounds arise regarding the culpability of an accused person with an offense liable to death or life imprisonment, the court may refuse granting bail. Nevertheless, there are certain exceptions in the provision allowing women, minors, the ill and the infirm. What is also noteworthy, is the possibility of bail even in serious cases, provided that there is little evidence or other reasonable grounds for detention. In turn, according to Section 439, the Sessions Court and High Court are given wide discretionary powers concerning granting bail. In addition to not having to abide by the limitations set forth in Section 437, these courts can grant bail even if the offense is non-bailable.

Thus, it becomes clear how the hierarchy of courts allows addressing any unjust refusal to grant bail. Also, appellate and revisionary procedures are in place. The existence of a prima facie case of commission of a crime is not sufficient to detain a person accused of it. However, while assessing whether there is any reasonable ground for detention, courts evaluate the possibility of the suspect absconding, tampering with evidence, intimidating witnesses or committing other crimes.

In addition, it should be noted that, as stated by the Supreme Court, personal liberty must never be restricted without absolute necessity. The court has reiterated time and again that the grounds for refusing bail must be cogent; mere gravity of the accusation cannot be an adequate reason to detain a person without bail. While the seriousness of the offense is certainly an important element of the bail procedure, it cannot outweigh constitutional rights of individuals. Thus, the gravity of the offense needs to be evaluated along with personal circumstances of the accused and the potential risk of misuse of liberty.

Another important element in determining whether a person qualifies for bail in general criminal law is socio-economic circumstances. Indeed, imposing excessively high bail amounts can actually deprive an accused person of his/her liberty. Such a violation would clearly contradict equality before the law principle. As a result, the court insists that bail conditions should not be disproportionately high. The purpose of bail is ensuring the attendance at the trial, not inflicting additional financial hardships on the person accused.

² Law Commission of India, 268th Report on Bail Reforms (2017).

Judicial Development of Bail Principles: Balancing Liberty and Justice

The idea of bail represents the conflict between society interests and individual liberty (enshrined in Article 21), necessitating a careful and moral approach when providing it. It is crucial to keep in mind that bail is a right, not a luxury. According to Justice William Blackstone, it is "a delivery or bailment of a person to his sureties on their giving, together with himself, sufficient security for his appearance, he being supposed to continue in their friendly custody instead of going to jail." He described it as entrusting an individual to their sureties, who provide sufficient security for the individual's court attendance. Instead of being imprisoned, this arrangement suggests that the person stays in the informal custody of their sureties.³

Criminal cases include crimes against the state, whereas civil lawsuits involve disagreements between people or organizations. Bail is typically a right for the defendant in civil lawsuits. The decision to issue bail in criminal matters rests with the court or a police officer. The term "bail" is not precisely defined under the Criminal Procedural Code (henceforth referred to as CrPC). Section 2(a) defines only "bailable offence" and "non-bailable offence."

The Supreme Court made it clear in the *Moti Ram v. State of Madhya Pradesh* case that bail includes both release on personal recognizance and with the aid of sureties. It is important to emphasize, nevertheless, that even with this more expansive interpretation, bail is still dependent on the provision of financial security, either through one's own commitment or with the help of third-party sureties.

Historical Development and Transformation of UAPA

The Unlawful Activities (Prevention) Act, 1967 (UAPA) serves as the fundamental law that protects India against terrorist threats. The law developed through a series of major legal changes into its current form which functions as an all-encompassing anti-terrorism legislation. The UAPA started as a minor law enforcement tool but transformed into a major counter-terrorism legal framework through its development across multiple decades. The Indian legal system experienced evolution through legislative changes and constitutional right advancements which resulted in the shift of criminal laws into security regulations.

The enactment of UAPA must be understood against the backdrop of post-independence constitutional developments. The 1960s period saw India contend with internal political conflicts which included secessionist movements and demands that endangered its territorial integrity. The Sixteenth Constitutional

³ Prevention of Terrorism Act, 2002 (repealed).

Amendment (1963) amended Articles 19(2), 19(3), and 19(4) to permit reasonable restrictions on freedom of speech, assembly, and association in the interest of the sovereignty and integrity of India. The constitutional amendment established a legal basis that allowed lawmakers to create laws which would restrict secessionist activities. The UAPA law was established by Parliament during the year 1967 to serve this purpose. The statute was not originally conceived as an anti-terror law. The main function of the law enabled the government to label groups as unlawful when those groups conducted activities which endangered national security. The organization maintained its focus on preventing activities through regulatory methods instead of applying penalties against violators. The Act created procedures for organization bans and restriction enforcement but it lacked the broad definitions of terrorism and the strict procedural rules that exist now. The original version of UAPA operated through the standard criminal judicial system.⁴

The Era of Special Anti-Terror Legislation: TADA and POTA

The development of UAPA requires assessment of special anti-terror laws which began with their first implementation during the 1980s and continued until the early 2000s. The Parliament established the Terrorist and Disruptive Activities (Prevention) Act (TADA) in 1985 because of the increasing internal security threats which included insurgency activities in Punjab and militancy operations in Jammu and Kashmir. TADA introduced extraordinary procedural measures. The legislation granted police officers greater authority which enabled them to hold suspects for extended periods without submitting formal charges while their police statements became usable as evidence. The TADA bail provision established an exceptionally high threshold which required courts to prove the defendant's innocence before they could grant bail. The legal system experienced a major shift through this process because it violated established rules of criminal law. The authorities used TADA as a short-term solution for dealing with exceptional dangers but the program faced widespread disapproval. The public opposition grew because of the accusations of misuse combined with the low conviction rates and the reported human rights abuses. TADA expired when it reached its scheduled end date in 1995. The legislative framework established by the law created special procedures for dealing with terrorism which did not exist in standard Indian criminal regulations. The Indian government passed the Prevention of Terrorism Act (POTA) after the 2002 Parliament attack. POTA adopted several TADA elements such as its strict bail requirements and its rules about holding suspects for long periods. The system continued to use special criminal procedures even though it made some attempts to introduce protective measures. POTA faced the same accusations of civil rights violations and misuse

⁴ A.G. Noorani, "Preventive Detention and National Security", (2002) 37 Economic and Political Weekly 1153.

which TADA experienced. The program ended through its repeal in 2004. The repeal of POTA did not signify abandonment of the exceptionalist approach.⁵

I. Bail Jurisprudence under the Unlawful Activities (Prevention) Act

The Supreme Court of India established the principle that "the basic rule is bail, not jail" in the seminal ruling of *State of Rajasthan v. Balchand alias Baliya*.²⁴ UAPA, however, has made "jail, not bail" the norm.

Although Section 43D(2) of the UAPA, 1967 raises the maximum length of incarceration for a person accused under this law to 180 days, as opposed to the 90-day statutory period permitted under Section 167 of the Criminal Procedure Code (CrPC), bail is regarded as an important aspect of criminal jurisprudence. Additionally, the proviso to sub-section (5) imposes a statutory duty on the court or judge to refrain from granting bail to an accused person who has been charged with terrorist activities or terrorist organizations if the court or judge determines, after reviewing the case diary or the police report submitted under section 173 of the Criminal Procedure Code. The mere allegation of involvement in terrorism is sufficient to invoke Section 43D(5) and result in the rejection of bail for an individual whose name is not listed in the Fourth Schedule. Furthermore, there is no justification for denying someone their right to bail based only on an accusation because UAPA is not a preventive detention law.

Conclusion

India's experience with cross-border terrorism, organised extremism, the threat to its sovereignty and the resulting legislative amendments to the Unlawful Activities Prevention Act are truly indicative of how laws develop as states experience those issues. UAPA has also been subject to amendments in 2004, 2008, 2012 and 2019 since the enactment of the Act does not occur without context and typically arise to respond to significant events that require an institutional response from the state. Therefore, UAPA is representative of the state's obligation under the Constitution to protect life, territorial integrity and public order. The Constitution allows for the state to enact stringent laws as a response to extraordinary circumstances. Article 21 protects both an accused person's rights to liberty and the citizenry's general right to life and security from terrorism or serious violence. Finally, constitutional democracy requires that even in the case of a legitimate threat to public safety that the state will act reasonably, proportionately and fairly. The strength of a constitutional system cannot solely be measured by its power to neutralise a given threat, but rather by its ability to neutralise the threat while maintaining fundamental principles contained in the Constitution. It is in this context of balancing safety concerns against constitutional limitations that the determination of Section 43D (5) occurs.

⁵ National Crime Records Bureau, *Crime in India* (latest edition).

regulating loss of property represents a legitimate objective of protecting national security. A rational nexus exists between restricting bail and the act of preventing an individual from posing a threat to national security. Nevertheless, there are some complications to the necessity and balancing stages of proportionality. The lack of mandatory periodic review, lack of differentiation regarding level of participation, and lack of sufficient discretionary judicial decision-making create a risk of disproportionate outcomes.

Judicial rulings from around the world also address this issue. Democracies facing terrorism have instituted severe security measures, all of which include a necessity-based bail structure and a mechanism for periodic reviews of such decisions. While the UAPA in India has some characteristics typically associated with severe bail restrictions (e.g., granting or denying bail based on a person's initial accusation rather than an ongoing risk assessment), the overarching nature of these structures creates a much more rigid system. There is presently no indication or assumption that this structure is unconstitutional; however it does suggest that continued vigilance is warranted. The overarching philosophical question this study seeks to answer is one of the meaning of constitutional resilience. The commitment to freedom by a democracy is put to the test most severely when that democracy is threatened by a perceived immediate danger.

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