IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 6458 OF 2021

Mr. Anil Baburao Baile,
Age : 46 years, Occ. : Service,
Add: Room No. 1, Plot No. 25,
Siddharth Colony,
K.N.Gaikwad Marg,
Chembur, Mumbai – 400 071. .....Petitioner

Vs.

1) Union of India,
Legal Department, 3rd Floor,
Pratishtha Bhavan, Churchgate,
Maharshi Karve Road, Dhobi Talao,
Mumbai – 400 020.

2) Union of India,
Through Attorney General of India,
Add: 10, Moti Lal Nehru Marg,
New Delhi – 110 011.

3) Home Department,
Ministry of Home Affairs,
North Block,
Central Secretariat,
New Delhi – 110 001.

4) Secretary,
Department of Law,
Government of India,
North Block, New Delhi.

5) National Investigation Agency,
Ministry of Home Affairs,
Govt. of India,
Branch Office – Mumbai,
Cumballa Hill, Peddar Road,
Mumbai – 400 026.

6) The State of Maharashtra,
Through Chief Secretary,
Home Department, Mantralaya,
Mumbai – 400 021. .....Respondents

Mr. Prakash Ambedkar with Mr. Sandesh More, Mr. Hemant Ghadigaonkar, Mr. Hitendra Gandhi, Mr. Nikhil Kamble and Mr. Siddharth Herode for the Petitioner.
Mr. Devang Vyas and Mr. Anil Singh, Additional Solicitor Generals of India with Mr. Sandesh Patil, Mr. Chintan Shah, Mr. Sheelang Shah, Mr. Prithviraj Gole, Ms. Anusha Amin & Mr. Jalaj Prakash for the Respondent Nos. 1 to 5.
Mr. A. S. Shalgaonkar, APP, for the Respondent No.6-State.

CORAM : A. S. GADKARI AND
DR. NEELA GOKHALE, JJ.
RESERVED ON : 24th JUNE 2025.
PRONOUNCED ON : 17th JULY 2025.

JUDGMENT :-

1) By this Petition under Article 226 of the Constitution of India, the Petitioner has prayed for an appropriate writ and/or directions to declare the Unlawful Activities (Prevention) Act, 1967 (for short, *"UAPA"*) and Section 124-A of the Indian Penal Code (for short, *"IPC"*) as *ultra virus* and unconstitutional. The Petitioner has also prayed for an appropriate writ and/or directions for quashing and setting aside the Notice dated 10th July 2020, issued by the National Investigation Agency (for short, *"the NIA"*) i.e. Respondent No.5 herein.

2) **OVERVIEW :**

2.1) The Petitioner is stated to be a self-employed citizen of India and works as a Financial Advisor and Freelancer, also doing social work in

his area of residence. The Respondents are the Union of India, the National Investigation Agency as well as the State of Maharashtra.

2.2) The Petitioner is stated to belong to the Mahar community, included in the Schedule Caste in the Presidential Order issued in the year 1950 under Article 341 of the Constitution of India. Petitioner narrates the social structure in the country in the pre-constitution era, relating to the caste system prevailing in the country. He further gives a brief history of the monument built in the memory of Indian soldiers by the British Empire at Bhima Koregaon and submits that considering its history, every year in the recent past, many people come to Bhima Koregaon to pay their respects at the monument.

2.3) A brief narration of the conflict that took place at Bhima Koregaon follows relating to the Elgaar Parishad rally arranged by the Parishad on 31st December 2018 and a function organized by Vedic Hindu Organization on 1st January 2019 at the Samadhi of Sambhaji Maharaj, situated at less than 800 meters away from the Elgaar Paridhad rallying point. According to the information gathered by the Petitioner and the details in an Affidavit filed in the Supreme Court by the rural police in a connected matter reveals that, the organizers of the function at Sambhaji Maharaj Samadhi planned and caused an attack on innocent persons paying homage to the soldiers at the Bhima Koregaon site.

2.4) An FIR came to be registered by the police against the perpetrators of the riot, but according to the Petitioner, the Police Commissioner (Pune City) made out a false and fabricated case that, the Elgaar Parishad caused the riot and that, the Parishad had connections with the CPI (M) Group, which is a banned organization. The inquiry in the riot and the connection of Elgaar Parishad with the banned organization was transferred to the NIA, which invoked provisions of the UAPA and Section 124-A of IPC against the accused.

2.5) The thread connecting the Petitioner to the incident and giving rise to this challenge is that, pursuant to his visit to the homage site at Bhima Koregaon on 1st January 2019, the NIA vide its Notice dated 10th July 2020, called upon the Petitioner to appear before the Investigating Officer, in respect of the case bearing No. RC.01/2020/NIA/MUM registered on 24th January 2020 under Sections 153A, 505(1)(B) and 117 read with 34 of IPC and Sections 13, 16, 18B, 20 and 39 of the UAPA, 1967. Petitioner thus, assailed the constitutionality of UAPA, 1967 itself and consequently, challenged the Notice dated 10th July 2020 issued by the NIA to him.

2.6) By an Order dated 23rd November 2022, the Petition was admitted and Rule notice was issued.

3) Heard Mr. Prakash Ambedkar, learned counsel for the Petitioner, Mr.

Devang Vyas, the former Additional Solicitor General of India and thereafter Mr. Anil Singh, the present Additional Solicitor General of India represents the Respondent Nos. 1 to 5. Mr. A. S. Shalgaonkar, learned APP alongwith Mr. Ajay Patil learned APP represents the Respondent No.6-State.

4) At the outset, it be noted here that, the challenge to Section 124-A of the IPC is pending for consideration before the Hon'ble Supreme Court and has been referred to a larger Bench. Thus, the challenge to Section 124-A of the IPC is already *sub judice* before the Apex Court. Even otherwise, in view of the enactment of *"the Bharatiya Nyaya Sanhita, 2023 (for short, "BNS")* which came into effect from 1st July 2024, the Indian Penal Code stands repealed and therefore, the challenge to Section 124-A of the IPC loses its significance.

4.1) Mr. Ambedkar, learned counsel for the Petitioner, therefore, fairly submitted that, the Petitioner does not wish to press the challenge to Section 124-A of the IPC.

5) In so far as the challenge to Notice dated 10th July 2020 is concerned, Mr. Vyas submitted that, the Petitioner has not been made an accused and in fact, is a witness in the said crime and the trial of the said Special Case has already been commenced. In view thereof, the challenge to the impugned Notice dated 10th July 2020 as of today does not survive and according to us, is no more relevant, as the said prayer has become infructuous.

5.1) Hence, the only issue that remains for our consideration is the challenge to the constitution validity of UAPA, 1967, on various grounds raised by the learned counsel for the Petitioner.

6) **Submissions of Mr. Ambedkar, learned counsel for the Petitioner :**

i) At the very outset, it is submitted that, the UAPA does not have any provision declaring the date of coming into force of the Act. He submits that, a provision to bring this Act into effect by the Executive is totally absent in the statute. Referring to the constituent power vested in the Parliament by Article 368 of the Constitution of India to amend a statute in accordance with the procedure set out in the Article itself, Mr. Ambedkar submits that, even after the Parliament exercises this power and amends by way of addition, variation or repeal of any provision in a statute, the Executive cannot implement the provision without the statute specifically providing for a date on which the statute or the provision will come into effect. Thus, the statute being bereft of such a notified date, is without sanction of law and hence, illegal.

ii) Mr. Ambedkar raises an issue pertaining to the title of the UAPA. The complete name of the UAPA is 'The Unlawful Activities (Prevention) Act, 1967.' The bracketed word 'Prevention' according to him, is self-eloquent. Since the name of the Act specifies the term 'Prevention', the Act cannot and must not contain any penal provision. The Act can

provide only for 'prevention' of Unlawful Activities and providing for 'penal clauses' for commission of an activity prohibited in the Act is in itself a most significant contradiction.

iii) It is argued that, in the year 1978, the Forty Fourth Amendment to the Constitution was introduced in the Parliament, deleting the original sub-clauses (4) and (7) of Article 22 and adding new sub-clauses (4) & (7) to the said Article. Mr. Ambedkar submits that, by deletion of the original sub-clauses (4) & (7) of Article 22, all enactments providing for preventive detention including UAPA stand nullified, inapplicable of being administered and repealed from the date of their approval of the deletion by the Parliament. Moreover, as the date of Notification, on which the amended Sub-clause is to be given effect is not yet notified in the Official Gazette, the Parliament itself is not clothed with the power to frame or legislate on the issue of Preventive Detention.

iv) Mr. Ambedkar argues that preventive detention cannot be used against persons simply on account of them holding different ideological views from the Government of the day. He also states that the parliament cannot enact any law curtailing the liberty of an individual in the manner that the UAPA provides.

v) It is argued that the Executive has not comprehended the provisions of Sections 15(1)(a)(i to iv) and (b) (c) and (2) of the UAPA and there is

no clarity amongst the executive in respect of its implementation. Action under these provisions is also available in the IPC and hence, the provisions are overlapping.

vi) It is also argued that there is no definition of 'unlawful activities.' The Act is not only incomplete, but against the principle and spirit of the constitution, as mentioned in Articles 15 and 17 of the Constitution.

vii) Mr. Ambedkar lastly submits that the subject of 'Preventive Detention' being in the Concurrent List of the Seventh Schedule, the Parliament does not have any competency to enact a law on Preventive Detention. The Union List in the Seventh Schedule only limits jurisdiction of Parliament to enact laws of Preventive Detention for reasons connected with Defense, Foreign Affairs or the security of India and the persons subjected to such detention.

viii) Mr. Ambedkar, in support of these submissions placed reliance on the following decisions of the Hon'ble Supreme Court and the High Courts:

a. *I.T.C. Bhadrachalam Paperboards & Anr. v. Mandal Revenue Officer, A.P. & Ors.*[1]
b. *J. & K. National Panthers Party v. Union of India & ors.*[2]
c. *Maneka Gandhi v. Union of India & Ors.*[3]
d. *Dr. D. C. Wadhwa & Ors. v. State of Bihar & Ors.*[4]

1 (1996) SCC 634.
2 AIR 2011 SC 3.
3 AIR 1978 SC 248.
4 (1987) SCC 378.

Dr. Ambedkar thus prays that, the Petition be allowed.

7) **Submissions of Mr. Vyas/Mr. Anil Singh, learned counsel for the Respondents 1-5 :**

i) Mr. Vyas submitted that, the Petitioner has no cause of action to invoke the writ jurisdiction of this Court, as no fundamental right of the Petitioner is violated. There is no cause of action for the Petitioner to challenge the validity of the UAPA and the Writ Court must not be called upon to determine a constitutional question in a vacuum.

ii) Mr. Vyas submitted that, the principle of presumption of constitutionality of a statute is a long-accepted principle, also upheld by the Supreme Court in a series of its decisions and it is presumed that, the legislature understands the need of the people. He submits that the burden on the person attacking the validity of a statute cannot be simply met by apprehensions of unconstitutionality and it can be rebutted, only on the basis of concrete facts.

iii) Mr. Vyas contends that, the legislative competency of the Act is undoubted. Life and liberty under Article 21 of the Constitution is not absolute. The State and the Parliament is competent to legislate for the purpose of regulating the country and society and UAPA is one such law, which regulates an important aspect of national policy.

iv) He submitted that, the procedure adopted in the implementation of UAPA is just, fair and reasonable, as it is the same procedure that is

followed for every other criminal offence under the IPC, which is the Code of Criminal Procedure, 1973 (For short, "CrPC"). It is submitted that, the CrPC envisages a procedure which creates rights on part of the investigating agency and on part of the accused persons, which is harmoniously balanced with constitutional principles deeply embedded at every juncture.

v) The assertion of the Petitioner that, with the efflux of time, democracy has matured to an extent, wherein UAPA has lost its effectiveness as a tool for crime control is erroneous. Mr. Vyas submitted that, the mischief that UAPA seeks to curb, still exists in the country and merely because other countries and their legislatures have found it expedient to do away with similar laws, does not bring to the fore any ground of unconstitutionality.

vi) Mr. Vyas further submitted that, whether a provision of law as enacted subserves the object of the law or should be amended is a matter of legislative policy, which cannot be subject of judicial review. Furthermore, the question of the need to frame or remove a law with regard to criminalization of actions within a country is solely within the domain of the Parliament and the question of policy efficacy falls outside the judicial realm.

vii) In reference to the ground relating to the name of the statute

emphasizing 'Prevention' and not 'Penal', Mr. Vyas submits that, the title of an enactment is not the conclusive fact to ascertain the legislative nature of the enactment.

viii) Mr. Vyas also submitted that, Section 5 of the General Clauses Act provides that, when any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day, on which it receives assent of the President. The UAPA, 2019 is notified by a Government Order, hence the argument that, there is no notified date for the Act to be enforceable is not justified.

ix) Mr. Vyas then took the Court meticulously through each provision of the Act to support his arguments regarding constitutionality of the Act. He also drew our attention to the Statement of Objects and Reasons of the UAPA, which according to him, make it abundantly clear that, the enactment is for providing more effective pre-emption of certain unlawful activities of individuals and associations and for dealing with terrorist activities and for matters connected therewith.

x) While meticulously taking us through each provision of the Act, Mr Vyas submits that, the entire scheme of the Act provides for checks and balances and sufficient safe guards to the accused whereby appeals, revisions, and referrals to Tribunals and the High Courts are provided. Neither the Government nor its agencies enjoy any unfettered powers, as alleged by the Petitioner.

xi) Finally, Mr. Vyas concludes by submitting that, there is no conflict with any provisions of the Act with the Constitution of India. The entire Act is harmonious with the Sections and Provisions of the CrPC, the IPC and the Indian Evidence Act, 1872 with due regard to the rights provided in the Constitution of India.

xii) Mr. Vyas places reliance on the following decisions of the Supreme Court and the High Courts to support his arguments:

a. *Kusum ingots & Alloys Ltd. v. Union of India & Anr.*[5]
b. *The State of Andhra Pradesh & Anr. v. K. Jayaraman & Ors.*[6]
c. *Sanjeev Coke Manufacturing Co. v. M/s. Bharat Coking Coal Ltd. & Anr.*[7]
d. *Indian Aluminium Co. & Ors. v. State of Kerala & Ors.*[8]
e. *State of W.B. & Anr. v. Madan Mohan Ghosh & Ors.*[9]

8) After the arguments were substantially completed, the constitution of this Bench changed. On 8th May 2025, this Division Bench, which had heard the matter substantially was specially reconstituted to hear the Petition. Accordingly, the matter was listed for directions. We put certain queries to the learned counsel for the Respondent Nos.1 to 5. However, he sought time to consult the learned ASG. Time was granted and the matter was listed on 24th June 2025. Mr. Anil Singh, learned ASG appeared in the matter and made submissions on our queries. He also submitted additional

5 (2004) 6 SCC 254.
6 (1974) 2 SCC 738.
7 (1983) SCC 147.
8 (1996) 7 SCC 637.
9 (2002) 9 SCC 177.

Written Submissions dated 4th July 2025 as follows:

i) The UAPA came to force on 30th December 1967. The 44th Amendment Act received assent from the President of India in 1979. According to Mr. Singh, there is no provision in the Constitution of India that says that by only virtue of amendment of Constitution and/or some of its provisions, the law already framed becomes unconstitutional. Once a law is framed, it continues to be in force till it is repealed by the Parliament or declared unconstitutional by a Constitutional Court.

ii) Mr. Singh submitted that, the 44th Amendment Act amended Article 22, but has nowhere amended the Unlawful Activities (Prevention) Act, 1967. Moreover, the UAPA has no nexus with preventive detention. Additionally, the 44th Amendment of the Constitution of India has no bearing on the *vires* of UAPA.

Thus, the learned ASG urges the Court to dismiss the Petition.

9) **ANALYSIS :**

9.1) The controversy in the present matter essentially raises questions of contemporary importance touching upon the *vires* of the UAPA on the ground that *firstly*, the UAPA is a law of preventive detention; *secondly,* the 44th Constitutional Amendment Act,1978, amending Article 22 sub-clauses (4) and (7) of the Constitution of India is not notified and consequentially, since the 44th Amendment, substituting the old sub-clauses (4) and (7) of Article 22, which deal with

provisions of preventive detention, not yet being notified, the UAPA itself cannot exist and *thirdly,* the UAPA enacted on 30th December 1967 not having expressed a date on which it becomes operable and hence a nullity. Based on submissions made by the parties, the following issues arise for consideration:

(a) Whether absence of the expression of coming into effect an Act of the Parliament renders the statute unconstitutional and inoperable?

(b) Whether absence of notification of Section 3 of the 44th Constitutional Amendment Act of 1978, substituting sub-clause (4) and (7) of Article 22 of the Constitution of India relating to Preventive Detention law, by itself render the original sub clause-provision inoperable?

(c) Whether the word 'Prevention' in the nomenclature of the UAPA categorizes the entire enactment to be in the nature of preventive detention?

9.2) **Issue (a) :**

(I) Pursuant to the acceptance by the Government of a unanimous recommendation of the committee on National Integration and Regionalism appointed by the National Integration Council, the Constitution (Sixteenth Amendment) Act, 1963 was enacted empowering Parliament to impose, by law, reasonable restrictions in

the interests of the sovereignty and integrity of India, on the-

(i) freedom of speech and expression;

(ii) right to assemble peaceably and without arms; and

(iii) right to form associations or unions.

(II) In pursuance of these Constitutional provisions, a draft Bill titled as the Unlawful Activities (Prevention) Bill was prepared to deal with individuals and associations engaged in secessionist and other activities directed against the integrity and sovereignty of the Union. Owing to the pressure of legislative business in Parliament during the Budget session, the Bill could not be introduced or passed. Meanwhile, Government took a decision to restrict the application of the Defense of India Act and Rules to certain States and territories and for certain purposes, connected with defense and to have recourse to the maximum extent possible to the normal laws, existing or to be enacted when necessary. With this decision, the necessity to have a law to deal with secessionist and other activities directed against the integrity and sovereignty of the Union became urgent. As, however, Parliament had by then adjourned, the President promulgated the Unlawful Activities (Prevention) Ordinance, 1966 on 17th June 1966. The Bill sought to replace the said Ordinance and the Unlawful Activities (Prevention) Act (Act 37 of 1967) was enacted on 30th December 1967.

(III) The UAPA was enacted by the Parliament with the sole objective to provide more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith. As per its objects and reasons, the Security Council of the United Nations in its 438th meeting adopted a Resolution on 28th September 2001 requiring all the States to take measures to combat international terrorism. The Resolutions of the Security Council of the United Nations required the States to take action against certain terrorists and terrorist organizations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory, and prevent the direct or indirect supply, sale or transfer of arms and ammunition to the individuals or entities listed in the Schedule.

(IV) The Central Government, in exercise of the powers conferred by Section 2 of the United Nations (Security Council) Act, 1947 made the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007 and considered it necessary to give effect to the said Resolution and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto. The UAPA was thus enacted.

(V) The UAPA was amended from time to time by the legislature in the

years 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2008, 2011, 2013 and finally in 2019. In order to further the objective of the said Act, the union Home minister introduced Unlawful Activities (Prevention) Amendment Bill, 2019 in Lok Sabha, which vide its amendment in Section 35 of the Act, empowers Central Government to categorize any person as terrorist. The Lok Sabha on 24th July 2019, passed the Unlawful Activities (Prevention) Amendment Bill, 2019 and the same was also passed by the Rajya Sabha on 2nd August 2019. The Unlawful Activities (Prevention) Amendment Act, 2019 was brought into force on 14th August 2019.

(VI) Insofar as Issue (a) is concerned, with reference to the argument canvassed by Mr. Ambedkar regarding the UAPA not being notified and therefore, being unconstitutional, admittedly, the UAPA is Act No. 37 of 1967 is enacted on 30th December 1967. The General Rules of Construction of the General Clauses Act, 1897 provides for coming into operation of enactments. Section 5 of the said Act clearly provides that, where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the President, in case of an Act of Parliament. Undoubtedly, the UAPA is an Act of Parliament. Even though there is no expression in the Act regarding the specific day on which the Act would come into operation, by operation of Section 5 of the General

Clauses Act, the UAPA came into operation on the day, it received assent of the President, i.e., on 30th December 1967. Hence, a constitutional challenge to the *vires* of the Act on this ground alone, must fail.

9.3) **Issue (b) :**

I) It is the contention of Mr. Ambedkar that, the 44th Constitutional Amendment was introduced in the Parliament in the year 1978 deleting sub-clauses (4) and (7) of Article 22 and adding new sub-clauses. Since Section 3 of the Constitution Amendment Act remains to be notified, the Parliament does not have legislative power to make any law relating to preventive detention, as contemplated under Article 22 of the Constitution. For the purpose of dealing with this tranche of the argument, it is necessary to reproduce certain provisions of law in that regard:

> *"**Part XX***
> ***Amendment of the Constitution***
> ***368.Power of Parliament to amend the Constitution and procedure therefor:-*** *(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.*
> *(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a*

majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in-

(a) Article 54, Article 55, Article 73, Article 162, Article 241, or Article 279A, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in Article 13 shall apply to any amendment made under this article.

(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article whether before or after the commencement of Section 55 of the Constitution (Forty-Second Amendment) Act, 1976 shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the

provisions of this Constitution under this article."

Thus, after passing of any such Bill, once it is presented to the President who has given assent to the same, the Constitution shall stand amended in accordance with the terms of the Bill. Hence, the Constitutional Amendment takes effect as per the terms of the Bill. There is a Notification published for general information, dated 19th June 1979 of the Constitution (Forty-fourth Amendment) Act of 1978. Mr. Ambedkar submitted that, Section 3 of the said Act is not notified and hence the Parliament does not have the power to legislate on any law relating to preventive detention.

II) The Constitution (Forty-Fourth Amendment) Act, 1978, reads thus:

> *"**Section** 1(1) This Act may be called Constitution (Forty-Fourth Amendment) Act, 1978.*
> *1(2). It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act."*

Hence a plain reading of the provision of the Amendment Act clearly indicates that various Sections shall come into effect on the day and date that the Government by separate notification may appoint. According to Mr. Ambedkar, Section 3 of the Amendment Act, dealing with the substitution of sub-clauses (4) and (7) of Article 22 is not yet notified. The corollary, according to Mr. Ambedkar is that, by virtue of the amendment, even if not yet notified, the original provision stands repealed. Thus, in the

absence of Notification of Section 3 of the Amendment Act, the Parliament is bereft of legislative power to legislate on issues of Preventive Detention. The citations and the decisions cited by the Petitioner do not lend any strength or support to the arguments canvassed by the Petitioner.

III) A Five Judge Bench of the Supreme Court in its decision in the case of *A.K.Roy v. Union of India,*[10] while considering a challenge to the validity of the National Security Ordinance, 11 of 1980 and certain other provisions of the National Security Act, 65 of 1980, which replaced the Ordinance, has discussed in detail the effect of the operability of Section 3 of the 44th Constitutional Amendment Act, 1979. Paragraphs 45 and 46 of the said decision reads thus:

> *"45. The argument arising out of the provisions of Article 368(2) may be considered first. It provides that when a Bill whereby the Constitution is amended is passed by the requisite majority, it shall be presented to the President who shall give his assent to the Bill, "and thereupon the Constitution shall stand amended in accordance with the terms of the Bill". This provision shows that a constitutional amendment cannot have any effect unless the President gives his assent to it and secondly, that nothing more than the President's assent to an amendment duly passed by the Parliament is required, in order that the Constitution should stand amended in accordance with the terms of the Bill. It must follow from*

10 (1982)1 SCC 271.

this that the Constitution stood amended in accordance with the terms of the 44th Amendment Act when the President gave his assent to that Act on April 30, 1979. We must then turn to that Act for seeing how and in what manner the Constitution stood thus amended. The 44th Amendment Act itself prescribes by Section 1(2) a pre-condition which must be satisfied before any of its provisions can come into force. That pre-condition is the issuance by the Central Government of a notification in the official Gazette, appointing the date from which the Act or any particular provision thereof will come Into force, with power to appoint different dates for different provisions. Thus, according to the very terms of the 44th Amendment, none of its provisions can come into force unless and until the Central Government issues a notification as contemplated by Section 1(2).

46. There is no internal contradiction between the provisions of Article 368(2) and those of Section 1(2) of the 44th Amendment Act. Article 368(2) lays down a rule of general application as to the date from which the Constitution would stand amended in accordance with the Bill assented to by the President. Section 1(2) of the Amendment Act specifies the manner in which that Act or any of its provisions may be brought into force. The distinction is between the Constitution standing amended in accordance with the terms of the Bill assented to by the President and the date of the coming into force of the Amendment thus introduced into the Constitution. For determining the date with effect from which the

Constitution stands amended in accordance with the terms of the Bill, one has to turn to the date on which the President gave, or was obliged to give, his assent to the Amendment. For determining the date with effect from which the Constitution, as amended, came or will come into force, one has to turn to the notification, if any, issued by the Central Government under Section 1(2) of the Amendment Act."

IV) The Supreme Court thus has held that, the constitutional amendment shall come into effect only when the Central Government brings them into force by issuing a Notification under Section 1 sub-clause (2) of the Amendment Act. On this settled position of law, the corollary argument of Mr. Ambedkar that an existing constitutional provision ceases to remain in operation once it is substituted/amended, even if the amendment is not notified to have come into effect, must be rejected at the threshold. Even if the amended sub-clauses (4) and (7) of Article 22 of the Constitution of India are yet to notified, the original sub-clauses (4) and (7) of Article 22 remain. A constitutional provision cannot be rendered ineffective, merely because the provision substituting it, by way of a constitutional amendment remains to be notified. Hence, taking Mr. Ambedkar's argument at its face value, the original sub-clauses (4) and (7) of Article 22 continue to exist, till they may be substituted by notifying the Amendment. Hence, Parliament continues to be vested with the power to legislate on the law relating to Prevention Detention. The issue (b) also stands answered

accordingly.

9.3 **Issue(c) :**

I) Since, the first two issues have been answered as above and we have already upheld the Parliament's power to legislate on matters pertaining to preventive detention and rejected the challenge to the *vires* of the UAPA on the grounds raised by the Petitioner, the answer to issue (c) is moot at this juncture. However, we deem it appropriate to deal with the same, since much was argued in that regard.

II) In order to ascertain the context and the objects of any enactment, it is necessary to understand the concept of 'preventive detention'. The Supreme Court of India in its decision in the case of *Nenavath Bujji etc. v. The State of Telangana and Ors.*[11] has explained the meaning of the concept 'Preventive Detention'. In paragraph 24 of the said decision, the Apex Court observed that the essential concept of preventive detention is that, the detention of a person is not to punish him for something he has done, but to prevent him from doing it. The basis of detention is the satisfaction of the Executive about the likelihood of the detente acting in a manner, similar to his past acts, which is likely to affect adversely the maintenance of public order and, thereby prevent him, by an Order of detention, from doing the same. A criminal conviction on the other hand, is for an act already done which

11 2024 INSC 239.

can only be possible by a trial and legal evidence. There is no parallel between the prosecution in a Court of law and a detention Order under the Act 1986. One is a punitive action and the other is a preventive act. In one case, a person is punished on proof of his guilt and the standard of proof beyond the reasonable doubt, whereas in the other, a person is detained with a view to prevent him from doing such act(s), as may be specified in the Act authorizing preventive detention.

III) The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offense. It is not a parallel proceeding and does not overlap with prosecution, even if it relies on certain facts, for which prosecution may be launched or may have been launched. An Order of preventive detention may be made before or during prosecution or with or without prosecution and in anticipation or after discharge or even acquittal.

IV) In its recent decision in the matter of *Dhanya M versus State of Kerela and Ors.,*[12] the Apex Court has succinctly summarized the well settled position of law that, the provision of preventive detention is an extra ordinary power in the hands of the State that must be used sparingly. It curtails the liberty of an individual in anticipation of the commission

12 (2025) INSC 809.

of further offense(s), and therefore, must not be used in the ordinary course of nature. The power of preventive detention finds recognition in the Constitution itself, under Article 22(3)(b). Significantly, Article 22 also provides stringent norms to be adhered to while effecting preventive detention. Further, Article 22 speaks of the Parliament making law prescribing the conditions and modalities relating to preventive detention.

V) There are various enactments specifically dealing with and relating to preventive detention, e.g. the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974; the Immoral Traffic (Prevention) Act, 1956; the Maharashtra Preventive Detention Act, 1970; the Maharashtra Prevention of Communal, Anti–Social and other Dangerous Activities Act, 1980; the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981; the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 etc.

VI) Distinct from the enactments mentioned herein above, UAPA is divided into 7 chapters comprising of 53 Sections. Chapter 1 deals with the applicability and the definitions. Chapter 2 deals with declarations of unlawful associations and the procedure for the purpose of

adjudication, as to whether or not there is sufficient cause for declaring any associations as unlawful. It also provides for constitution of the Unlawful Activities (Prevention) Tribunal, the period of operation and cancellation of Notification, the powers of the Central Government to prohibit the use of funds by an unlawful association, the power to notify places used for the purpose of an unlawful association and the procedure to be followed by the Tribunal in holding inquiries under the provisions in this chapter. Chapter III deals with offenses and penalties and Chapter IV provides for punishment for terrorist activities. The provisions in Chapter V relate to forfeiture of proceeds of terrorism, powers of the Investigating Officer and Designated Authority and appellate provisions, and the procedure to be followed. Chapter VI and VII deal with de-notification of a terrorist organization/individual, offenses related to membership of and support to such an organization and raising funds for a terrorist organization etc. and delegation of powers under Sections 7 and 8 of the Act by the Central Government.

VII) Thus, the UAPA essentially and substantially contains penal provisions for committing offenses specified under the Act. The word 'Prevention' appearing in the title of the enactment relates to prevention of unlawful activities and does not substantially vest precautionary power of preventive detention in any authority under the Act. Undoubtedly,

Section 51-A vests in the Central Government certain powers for prevention of and coping with terrorist activities. However, these powers contemplate freezing, seizure or attachment of funds, financial assets or economic resources of persons engaged in or suspected to be engaged in terrorism and not preventive detention of a person. The preventive power of the Government pertains to attachment of financial assets and a clamp down on economic liberty and not liberty of the individual. Even in Section 43A as inserted by Act 35 of 2008, the power to arrest and search etc. is not in the manner of 'preventive detention'. An authorized officer subordinate to any officer of the designated authority is empowered to arrest a person knowing of a design of a person to commit any offence under this Act does not have the flavor of preventive detention. Such arrest is not to prevent him from doing the said act, but is the power to arrest post-commission of the act after registering the offence. In any case, as we have already upheld t he legislative competency of the Parliament to legislate on matters pertaining to Preventive detention, even if the said Section of Act provides for preventive detention, we have no hesitation in holding that, this Act has a legitimate constitutional sanction.

VIII) The argument advanced by Mr. Ambedkar is that since the name of the Act specifies the term 'Prevention', the Act cannot and must not contain any penal provision. He further submits that, the Act can

provide only for 'prevention' of Unlawful Activities and providing for 'penal clauses' for commission of an activity prohibited in the Act is in itself a most significant contradiction. This argument summarizes and presumes that, the UAPA is a preventive detention law merely because it contains the word 'prevention'. Mr. Ambedkar himself admits while canvassing this submission that, the UAPA provides for penal clauses for commission of activities prohibited in the Act. This is thus, quite a paradoxical argument and has the effect of putting the cart before the horse. Substratum of UAPA may be construed to be a 'deterrent' to commission of unlawful activities, but by no stretch of imagination can it be equated with a law completely relating to preventive detention. There are various other enactments having the word 'Prevention' in the title such as, the Prevention of Corruption Act, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Prevention of Money Laundering Act, 2002, the Immoral Traffic Prevention Act, etc. The inclusion of the word 'Prevention' in the title of an enactment does not by itself render the Act to be a preventive detention law. Ironically, the UAPA 1967, originally was also titled as the Unlawful Activities (Prevention) Act, 1967, despite not containing any provision related to preventive detention at that time. Hence, Issue (c) is also accordingly answered.

10) In addition to the main issue raised by Mr. Ambedkar, he also

canvassed certain ancillary issues. The Petitioner emphasized Section 15 of the UAPA contending that, the provision overlaps with offenses specified in the IPC. Section 15 of the UAPA reads thus:

> *"15. Terrorist act.-*
>
> *(1) 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.

Explanation.--For the purpose of this sub-section,

(a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;

(b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.

(2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the

treaties specified in the Second Schedule."

10.1) Section 15 clearly identifies the person doing an act as specified in the provision to be committing a terrorist act. There is no offense provided in the IPC which defines as to what constitutes a 'terrorist act'. Both these enactments operate in distinct spheres in respect of the offenses specified therein. There may be some overlapping in the language of a particular offense, but that by itself would be wholly insufficient to hold that the prosecution under one Act would exclude the operation of the other Act. The IPC defines specific offenses and corresponding punishments for committing such offenses. There is no offense such as 'terrorist act', 'terrorist gang', 'terrorist organization', 'unlawful activity' relating to cession or secession of a part of a Indian territory from the Union; or unlawful association defined in the penal code. The UAPA, on the other hand deals with punishing the act of insurgency *per se*. Since these two enactments operate in respect of different and distinct offenses and a prosecution in respect of offenses under both the enactments would certainly be maintainable.

11) The other peripheral argument advanced by Mr. Ambedkar that the Parliament does not have the legislative competency to enact a law such as, the UAPA, on the additional grounds that (i) UAPA curtails the liberty of citizen and (ii) the power to do so, does not fall within List-I in the Seventh Schedule of the Constitution, are noted only to be rejected. In this regard,

a reference can be made to the decision in the case of *Additional Secretary to the Government of India & Ors. v. Smt. Alka Subhash Gadia & Anr.,*[13] in which the three Judge Bench of the Hon'ble Supreme Court has observed as under:

> *"11. The provisions of Articles 21 and 22 read together, therefore, make itv clear that a person can be deprived of his life or personal liberty according to procedure established by law, and if the law made for the purpose is valid, the person who is deprived of his life or liberty has to challenge his arrest or detention, as the case may be, according to the provisions of the law under which he is arrested or detained. This proposition is valid both for punitive and preventive detention. The difference between them is made by the limitations placed by sub- clauses (1) and (2) on the one hand and sub- clauses (4) to (7) on the other of Article 22, to which we have already referred above. What is necessary to remember for our purpose is that the Constitution permits both punitive and preventive detention provided it is according to procedure established by law made for the purpose and if both the law and the procedure laid down by it, are valid.*
>
> *12. This is not to say that the jurisdiction of the High Court and the Supreme Court under Articles 226 and 32 respectively has no role to play once the detention — punitive or preventive — is shown to have been made under the law so made for the purpose. This is to point out the limitations which the High Court and the Supreme*

13 (1992) Supp. (1) SCC 496.

Court have to observe while exercising their respective jurisdiction in such cases. These limitations are normal and well known, and are self-imposed as a matter of prudence, propriety, policy and practice and are observed while dealing with cases under all laws. Though the Constitution does not place any restriction on these powers, the judicial decisions have evolved them over a period of years taking into consideration the nature of the right infringed or threatened to be infringed, the scope and object of the legislation or of the order or decision complained of, the need to balance the rights and interests of the individual as against those of the society, the circumstances under which and the persons by whom the jurisdiction is invoked, the nature of relief sought etc."

Hence, the contention that UAPA is unconstitutional since it curtail the liberty of an individual must fail. Insofar as the second aspect of the argument of Mr. Ambedkar is concerned, acting in public interest, the Constituent Assembly made provision in Entry-9 of List-I and Entry-3 of List-III authorizing the Parliament and the State Legislature by Article 246 to pass laws of preventive detention. Admittedly, the Parliament and the State Legislature have the power to make a law on preventive detention. This power was conferred by the Constitution in order to ensure that the security and safety of the country and the welfare of its people are not put in peril. So long as a law relating to preventive detention operates within the general scope of the affirmative words used in the respective entries of

the Union and the Concurrent List, which gives that power and so long as it does not violate any condition or restriction placed upon that power by the Constitution, the Court cannot invalidate that law on the specious ground that it is calculated to interfere with the liberties of the people. In any case, as discussed herein above, the UAPA is not a preventive detention law and even if alleged by the Petitioner to be such law, the challenge to its vires on this ground, also fails.

12) Furthermore, there is always a presumption of Constitutional validity of a statute. The presumption of Constitutional validity of a statute means that, the courts assume a law is constitutional unless proven otherwise. It asserts that, laws passed by the legislature are presumed to be constitutional unless proven. The presumption of constitutionality is the legal principle that the judiciary should presume statutes enacted by the legislature to be constitutional, unless the law is clearly unconstitutional or a fundamental right is implicated.

12.1) In *Kesavananda Bharati Sripadagalvaru V. State of Kerala & Anr.,*[14] a thirteen Judges Bench of the Supreme Court reaffirmed the general principle of presumption of Constitutional validity of statute. The Court overruled its previous decision in the Golak Nath Vs. State of Punjab which has held that the Fundamental Rights could not be amended at all. It held that Article 368 of the Constitution gives

14 (1973) 4 SCC 225.

power to amend the Constitution, but not to destroy/change its basic structure. It didn't directly modify the principle of presumption of Constitutional validity of statutes.

12.1.1.) The Court generally proceeds on the presumption of constitutionality of all legislation. The presumption of the Constitutional validity of a statute will also apply to Constitutional amendments. It is not correct to say that what is difficult to decide does not exist at all. In paragraph 661, it is discussed as follows:-

> *"661. It was strenuously urged on behalf of the Union and the States that if we come to the conclusion that there are implied or inherent limitations on the amending power of Parliament under Article 368, it would be well nigh impossible for Parliament to decide before hand as to what amendments it could make and what amendments it is forbidden to make. According to the Counsel for the Union and the States, the conceptions of basic elements and fundamental features are illusive conceptions and their determination may differ from Judge to Judge and therefore we would be making the task of Parliament impossible if we uphold the contention that there are implied or inherent limitations on the amending power under Article 368. We are unable to accept this contention. The broad contours, the basic elements or fundamental features of our Constitutions are clearly delineated in the preamble. Unlike in most of the other Constitutions, it is comparatively easy in the case of our Constitution to discern and determine the basic elements or the fundamental features of our Constitution. For*

doing so, one has only to look to the preamble. It is true that there are bound to be borderline cases where there can be difference of opinion. That is so in all important legal questions. But the courts generally proceed on the presumption of constitutionality of all legislations. The presumption of the constitutional validity of a statute will also apply to constitutional amendments. It is not correct to say that what is difficult to decide does not exist at all. For that matter, there are no clear guidelines before the Parliament to determine what are essential legislative functions which cannot be delegated, what legislations do invade on the judicial power or what restrictions are reasonable restrictions in public interest under Article 19(2) to 19(6) and yet by and large the legislations made by Parliament or the State Legislatures in those respects have been upheld by courts. No doubt, there were occasions when courts were constrained to strike down some legislations as ultra vires the Constitution. The position as regards the ascertainment of the basic elements or fundamental features of the Constitution can by no means be more difficult than the difficulty of the Legislatures to determine before hand the constitutionality of legislations made under various other heads. Arguments based on the difficulties likely to be faced by the Legislatures are of very little importance and they are essentially arguments against judicial review."

12.2) The Supreme Court in its decision in the matter of *R. K. Garg V. Union of India & Ors.*[15] held that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him, who attacks it to

15 (1981) 4 SCC 675.

show that there has been a clear transgression of the constitutional principles. In paragraph 7 of the said decision, it is discussed as follows:-

> *"7. Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well-established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."*

12.3) Once again, in the case of *M. Karunanidhi V. Union of India & Anr.,*[16] a Five Judge Bench of the Supreme Court held that presumption is always in favour of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. In paragraph 24 of the said decision, it is discussed as follows.

> *"24. It is well settled that the presumption is always in favour*

16 (1979) 3 SCC 431.

of the constitutionality of a statute and the onus lies on the person assailing the Act to prove that it is unconstitutional. Prima facie, there does not appear to us to be any inconsistency between the State Act and the Central Acts. Before any repugnancy can arise, the following conditions must be satisfied:-

1) *That there is a clear and direct inconsistency between the Central Act and the State Act.*
2) *That such an inconsistency is absolutely irreconcilable.*
3) *That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."*

13) From the foregoing, it is clear that Section 5 of the General Clauses Act lends constitutional validity to the UAPA, the same being notified on the date on which the President assented to the Bill on 30th December 1967. Secondly, in the absence of the notification effecting the constitutional amendment to a provision, the original provision in the Constitution continues to exist till such time that the amendment is notified. The UAPA, thus in its present form is constitutionally valid and the challenge to its vires on the grounds raised by the Petitioner fails.

14) The Petition is accordingly dismissed.

(DR NEELA GOKHALE, J.) **(A.S. GADKARI, J.)**