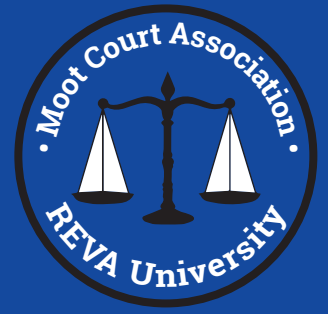




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School of Legal Studies Organises



3rd REVA National Moot Court Competition, 2023 Moot Proposition

'Union of Inbia' (hereinafter referred to as 'Inbia') is a democratic country in South Asia with 'Heldi' as its capital. Inbia has a quasi-federal structure, and the Constitution and all laws of Inbia are in pari materia with the laws of Union of India. In the years 2000, 2002, and 2003, Inbia witnessed a series of massive terrorist attacks, after which the Central Government decided to revive earlier legislation by the name Terrorist Activities Prevention Act of 1967 (in short, 'TAPA'). The legislative intent and provisions of 'TAPA' are same as that of the Unlawful Activities (Prevention) Act of 1967 (in short, UAPA) and the amendments made to UAPA till 2019 are equally applicable to TAPA.

Though there have been several criticisms against the revival and subsequent implementation of TAPA in Inbia, the Government of Inbia went ahead with its implementation on the ground of 'national security'. An amendment was brought to TAPA in November 2021 by which the powers and functions of Review Committees constituted under section 37 of TAPA were increased. A new provision was added to TAPA, which read thus:

"Section 37A - The Review Committee constituted by the Central Government under section 37(1) of Terrorist Activities Prevention Act of 1967 shall review all cases registered under Terrorist Activities Prevention Act of 1967 as to whether there is a prima facie case for proceeding against the accused thereunder and such review shall be completed within a period of two years from the commencement of this Amendment Act and where the Review Committee is of the opinion that there is no prima facie case for proceeding against the accused, then,-

(a) in cases in which cognizance has been taken by the Court, the cases shall be deemed to have been withdrawn; and

(b) in cases in which investigations are pending, the investigations shall be closed forthwith, with effect from the date of issuance of the direction by such Review Committee in this regard."

In December 2021, terrorist attacks in several parts of South Inbia resulted in the loss of life of almost 200 innocent civilians and damage to public properties worth Rs. 5 crores. In addition to the same, more than 350 people got severely injured. Investigations revealed that a terrorist named 'Holeman Deadely', a foreign national, was the mastermind behind the terrorist attacks, and he had frequently visited Inbia before the terrorist attacks so as to plan and execute the attacks. This was revealed during

the interrogation of two other foreign nationals who had allegedly participated in the terrorist attack along with 'Holeman Deadely'. This made the Government of Inbia realize that more provisions are required to be incorporated into TAPA and hence the TAPA was amended in March 2022 so as to incorporate section 43G, which read thus:

"Section 43G - Certain confessions made to police officers to be taken into consideration: (1) Notwithstanding anything in the Code of Criminal Procedure, 1973 or in the Indian Evidence Act, 1872, but subject to the provisions of this section, a confession made by a person before a police officer not lower in rank than a Superintendent of Police and recorded by such police officer either in writing or on any mechanical device like cassettes, tapes or soundtracks from out of which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator for an offence under this Act or rules made thereunder:

Provided that co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he has reason to believe that it is being made voluntarily."

Post the terrorist attacks in December 2021, the NEA(National Enquiry Agency) became more vigilant and has suspected a few organizations which are indulging in unlawful activities which are prejudicial to the integrity, sovereignty, and security of the country and that they have the potential to disturb public peace and communal harmony in the country. NEA(National Enquiry Agency) started secret investigations across Inbia and carried out simultaneous raids across different parts of Inbia which resulted in the arrest of several people who are alleged to be members of such organizations in August 2022. Among them, few citizens have no history of violence. The arrested people have filed a bail petition, and the petitions have been rejected by the lower courts and high courts. Later all the accused filed an appeal on this to the Supreme Court to grant bail, which also been rejected based on the charge sheet filed by NEA(National Enquiry Agency). Since it is alleged that the provisions of TAPA are a blatant violation of the fundamental rights of citizens, the accused have decided to file a writ petition to the Supreme Court of Inbia, challenging the constitutional validity of TAPA.

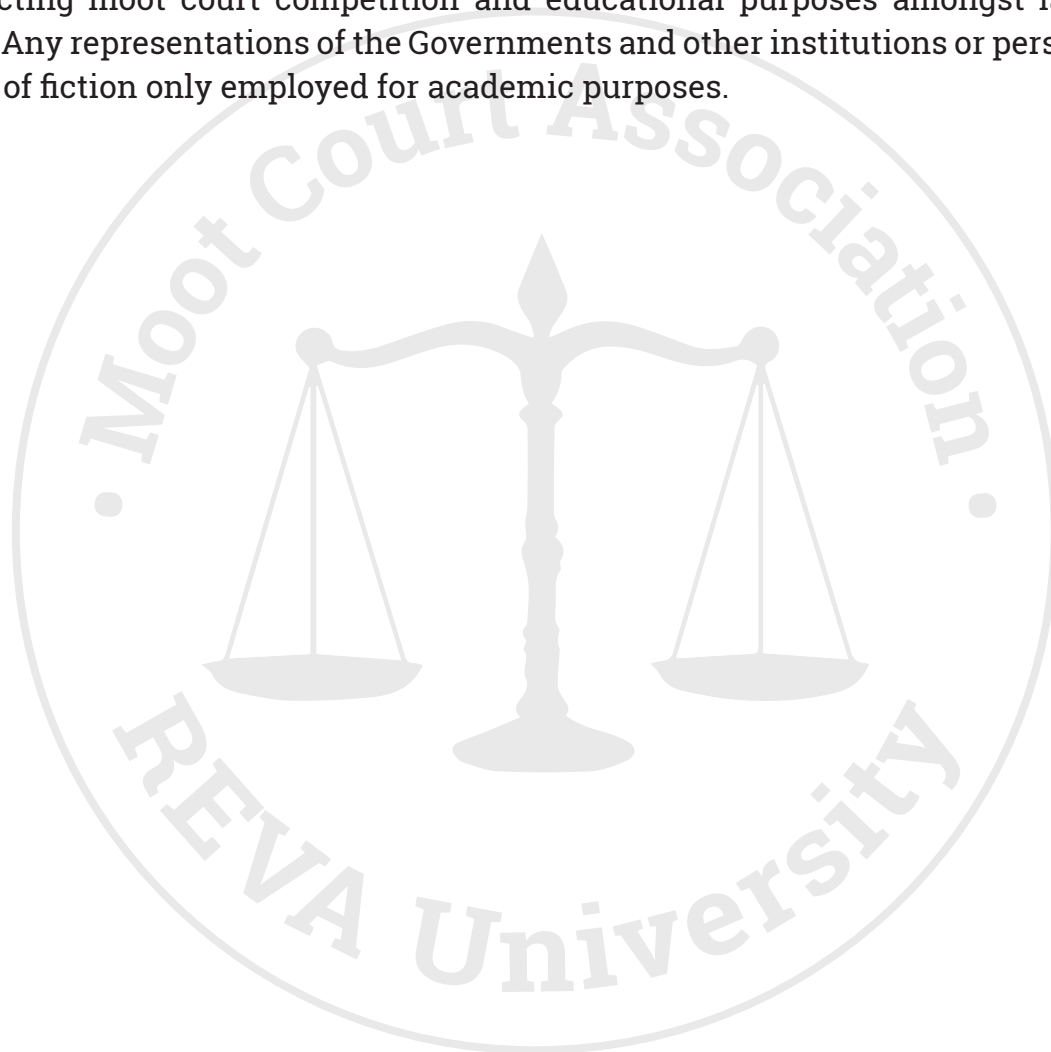
The 2022 amendment was also opposed by many human rights activists and citizens, stating that the provisions violate the fundamental rights of citizens. A social

welfare organization by the name of “Freedom 4ever” challenged the constitutional validity of TAPA, including its latest amendment in 2022 in the Supreme Court of India. The contentions raised by ‘Freedom 4ever’ are the following:

1. Section 45 of TAPA, though talks of ‘independent review of the evidence gathered in the course of an investigation’ for the purpose of according sanction, is vague for want of clarity regarding requirement of reasons for recommendation.
2. Section 43D (5) of TAPA is unconstitutional as it is against general principles of criminal justice administration regarding bail. The wordings of the section is also completely deviated from similar provisions of NDPS Act, MCOCA, erstwhile TADA and POTA which shows that the burden is more on the accused than the prosecution.
3. There is an overlap between sections 20 and 38 of TAPA and it is unclear under what circumstances sections 20 or 38 are to be invoked and hence both should be declared as unconstitutional. Variations in punishments under both the sections are without any rationale.
4. Section 43E of TAPA creates a strong presumption against the accused especially where the phrase ‘possession’ is not qualified by any other terms such as ‘knowingly’. This would deter any accused from proving that the unauthorized possession of weapons was absolutely unrelated to any terrorist activity. Hence the same should be declared as unconstitutional.
5. The definition of ‘unlawful activity’ under section 2(o) of TAPA has close resemblance with section 124A of the IPC and it fails to distinguish between peaceful and violent acts. Section 2(o) has the potential to criminalize even actions not intended towards violence or public disorder and hence the same should be declared as constitutionally invalid.
6. Section 43G of TAPA, incorporated in the year 2022, strikes at the root of general principles of criminal law and hence the same should be deleted from the statute book as soon as possible. Retaining the same would only ensure that more and more innocents would be targeted by investigating officials solely based on confession by others.
7. Section 46 of TAPA has created a situation in India where mostly electronic evidences are only used as evidences against the accused, which may be false, planted and fabricated. The absence of adequate laws regarding data protection and data disclosure also makes matters worse. Hence, such a provision should be declared as unconstitutional for want of adequate safeguards.
8. Section 37A was enacted only because the Government of India realized the increase in unwarranted trials pending before various courts. Low conviction rates under TAPA compared to excessive pending litigations was also cited as a ground for challenging the constitutional validity of TAPA.

The Supreme Court of India has decided to club both petitions and to hear the constitutional validity of Terrorist Activities Prevention Act on the 10th of February, 2023. The parties are free to identify issues and frame contentions accordingly, but not issues and contentions on maintainability and admissibility, as they can consider the petition admitted by the Supreme Court of India. However, the parties shall preferably limit themselves to the maximum of five issues.

This Moot Proposition is purely a work of fiction, and resemblance to any such incident shall be purely coincidental. The above set of facts is only for the purpose of conducting moot court competition and educational purposes amongst law students. Any representations of the Governments and other institutions or persons are works of fiction only employed for academic purposes.





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