



## UAPA & Constitutional Freedom

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This article is based on **“A limited victory”** which was published in The Indian Express on 22/06/2021. It talks about the recent judgement of the Delhi High Court pertaining to UAPA and associated issues.

Recently, the **judgment of the Delhi High Court** granted the bail to three activists, who have been in jail for over a year without trial, for their alleged role in the 2020 Delhi riots.

The judgment assumes significance because the charges were under the **Unlawful Activities Prevention Act (UAPA), 1967**. UAPA is criticized by the civil society as antithetical to constitutional freedom to dissent, rule of law and fair trial.

The Delhi high court judgement is a step in the right direction, but there are many issues associated with the UAPA.

### UAPA Law

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- Originally enacted in 1967, the UAPA was amended to be modelled as an anti-terror law in 2004 and 2008.
- In August 2019, Parliament cleared the Unlawful Activities (Prevention) Amendment Bill, 2019 to designate individuals as terrorists on certain grounds provided in the Act.
- In order to deal with the terrorism related crimes, it deviates from ordinary legal procedures and creates an exceptional regime where constitutional safeguards of the accused are curtailed.
- Between 2016 and 2019, the period for which UAPA figures have been published by the National Crime Records Bureau (NCRB), a total of 4,231 FIRs were filed under various sections of the UAPA, of which 112 cases have resulted in convictions.

This frequent application of UAPA indicates that it is often misused and abused like other anti-terror laws in the past in India such as POTA (Prevention of Terrorism Act) and TADA (Terrorist and Disruptive Activities (Prevention) Act).

### Associated Issues

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- **Vague Definition of Terrorist Act:** The definition of a “terrorist act” under the UAPA substantially differs from the definition promoted by the United Nations (UN) Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.
  - According to Special Rapporteur to call an offence a “terrorist act”, three elements must be cumulatively present:
    - The means used must be deadly;
    - The intent behind the act must be to cause fear amongst the population or to compel a government or international organisation to do or refrain from doing something; and
    - The aim must be to further an ideological goal.
  - UAPA, on the other hand, offers an overbroad and ambiguous definition of a “terrorist act” which includes the death of, or injuries to, any person, damage to any property, etc.
- **Denial of Bail:** The major problem with the UAPA lies in its Section 43(D)(5), which prevents the release of any accused person on bail if, police have filed the chargesheet that there are reasonable grounds for believing that the accusation against such person is prima facie true.
 

The effect of Section 43(D)(5) is that once the police elect to charge an individual under the UAPA, it becomes extremely difficult for bail to be granted. Bail is a safeguard and guarantee of the constitutional right to liberty.
- **Pendency of Trials:** Given the state of justice delivery system in India, the rate of pendency at the level of trial is at an average of 95.5 per cent.
 

This means that trials are completed every year in less than 5 per cent cases, signifying the reasons for long years of undertrial imprisonment.
- **State Overreach:** It also includes any act that is “likely to threaten” or “likely to strike terror in people”, giving unbridled power to the government to brand any ordinary citizen or activist a terrorist without the actual commission of these acts.
  - It gives the state authority vague powers to detain and arrest individuals who it believes to be indulged in terrorist activities.
  - Thus, the state gives itself more powers vis-a-vis individual liberty guaranteed under Article 21 of the constitution.
- **Undermining Federalism:** Some experts feel that it is against the federal structure since it neglects the authority of state police in terrorism cases, given that ‘Police’ is a state subject under 7<sup>th</sup> schedule of Indian Constitution.

## Significance of Judgement

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- **Limiting Scope:** The court’s judgment notes that as the UAPA is meant to deal with terrorist offences, its application must be limited to acts that can reasonably fall within a plausible understanding of “terrorism”.

- **Confirming Constitutional Freedom:** Earlier this year, the Supreme Court in *Union of India v K A Najeeb* 2021, held that despite restrictions on bail under the UAPA, constitutional courts can still grant bail on the grounds that the fundamental rights of the accused have been violated.
  - The Court held that the rigours of UAPA bail restrictions “will melt down where there is no likelihood of trial being completed within a reasonable time.
  - The Delhi High Court took this reasoning a step further, holding that it would not be desirable for courts to wait till the accused’s rights to a speedy trial are entirely vitiated before they are set at liberty.

## **Conclusion**

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Drawing the line between individual freedom and state obligation to provide security is a case of classical dilemma. It is up to the state, judiciary, civil society, to strike a balance between constitutional freedom and the imperative of anti-terror activities.

### ***Drishti Mains Question***

UAPA is criticized by the civil society as antithetical to constitutional freedom to dissent, rule of law and fair trial. Comment.

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