



## Stringent Nature of UAPA

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### Why in News

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Recently, the death of **Father Stan Swamy**, a Jesuit priest and tribal rights activist, while in judicial custody, has brought the stringent provisions of **Unlawful Activities (Prevention) Act (UAPA)** into the focus.

- **UAPA** is the **India's main anti-terrorism legislation**, but the law makes it more difficult to obtain bail.
- This difficulty in obtaining bail is being seen as one of the principal reasons for **Fr. Swamy's death** as a prisoner in a hospital and **compromises constitutional liberties**.

### Key Points

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- **Background of UAPA:**

- In the mid-1960s, in order to **curb the various secession movements**, the Government of India considered enacting a stringent law.
- In March 1967, a **peasant uprising in Naxalbari** imparted a sense of urgency.
- On 17<sup>th</sup> June, 1966, the President had promulgated the **Unlawful Activities (Prevention) Ordinance**.

The ordinance intended to “**provide for the more effective prevention of unlawful activities of individuals and associations**”.

- After initial resistance from the Parliament (owing to its stringent nature), the **Unlawful Activities (Prevention) Act was passed in 1967**.
- The Act provided for declaring an association or a body of individuals “unlawful” if they indulged in any activity that **envisages secession or questions or disclaims the country’s sovereignty and territorial integrity**.
- Prior to the UAPA’s enactment, associations were being declared unlawful under the **Criminal Law (Amendment) Act, 1952**.

However, the Supreme Court held that the provision on bans was unlawful because there was **no judicial mechanism** to scrutinise the validity of any ban.

- Therefore, the UAPA included **provisions for a Tribunal** which has to confirm within six months the notification declaring an outfit unlawful.
- After the **Prevention of Terrorism Act (POTA), 2002**, was repealed, the UAPA was expanded to include what would have been terrorist acts in earlier laws.

- **Current Status of the Act:**

- In its present form, the UAPA has been **amended in 2004 and 2013**, to expand its scope.
- **Expanded Scope of Law:**
  - Punishment for terrorist acts and activities,
  - Acts threatening the country’s security, including its economic security (a term that covers fiscal and monetary security, food, livelihood, energy ecological and environmental security),
  - Provisions to prevent the use of funds for terrorist purposes, including money.
- The ban on organisations was initially for two years, but from 2013, the period of proscription has been extended to five years.
- Further, the amendments aim to give effect to various anti-terrorism resolutions of the **United Nations Security Council** and requirements of the **Financial Action Task Force**.
- In 2019, the Act was amended to empower the **government to designate individuals as terrorists**.

- **Modus Operandi of UAPA:**

Just like other special laws dealing with narcotic drugs and the now-defunct laws on terrorism, the UAPA also modifies the **Code of Criminal Procedure** (CrPC) to give it more teeth. For example,

- A remand order can be for 30 days instead of the usual 15,
- Maximum period of judicial custody before the filing of a chargesheet is extendable from the usual 90 days to 180 days.

- **Controversy Regarding UAPA:**

- **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**.

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 makes it difficult for any accused person to obtain bail.
  - In case, if police have filed the chargesheet that there are reasonable grounds for believing that the accusation against such person is prima facie true, bail cannot be granted.
  - Further, a Supreme Court judgment on this has clarified that the court considering bail should not examine the evidence too deeply, but must go by the prosecution version based on broad probabilities.
  - Thus, UAPA **virtually denies bail**, which 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%.
- **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.
- **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**.

## Way Forward

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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.

Source: TH