



Assessing the Unlawful Activities Prevention Act

This editorial is based on [“The case of delayed bail and trial”](#) which was published in The Hindustan Times on 05/12/2023. The article talks about the Unlawful Activities Prevention Act (UAPA) and challenges associated with it.

For Prelims: [Unlawful Activities Prevention Act \(UAPA\)](#), [National Crime Records Bureau’s ‘Crime in India’](#), [FIR](#), [National Investigation Agency \(NIA\)](#), [United Nations Convention for the Suppression of the Financing of Terrorism](#).

For Mains: Unlawful Activities Prevention Act (UAPA), Arguments in favor and Arguments against UAPA, Committees Recommendations on UAPA, Measures that can be taken to Reform the UAPA

The [Unlawful Activities Prevention Act \(UAPA\)](#) is India’s toughest **terror law** with some alleged draconian provisions. A lot of leeway is given to its form and operation because this country has been bruised by acts of terrorism multiple times. Yet, a comparison of the data from the [National Crime Records Bureau’s ‘Crime in India’ \(for 2022\)](#) on the time taken to file charge sheets under different laws makes for a disturbing reading. **Charge sheets in close to 50% of UAPA cases have been filed at least a year after the FIR was registered — 15% of these charge sheets took more than two years.**

What is Unlawful Activities Prevention Act (UAPA)?

- It was **first enacted in 1967 to deal with secessionist movements** and anti-national activities.
- It was amended several times, most recently in 2019, to include provisions related to terrorist financing, cyber-terrorism, individual designation, and seizure of property.
- It empowers the [National Investigation Agency \(NIA\)](#) to investigate and prosecute cases under UAPA across the country.
- It **provides for the death penalty and life imprisonment as the highest punishments** for terrorist acts.
- It allows for the **detention of suspects without charge or trial for up to 180 days**, and for the denial of bail to the accused unless the court is satisfied that they are not guilty.
- It **defines unlawful activity as any action that supports or incites the cession or secession** of any part of India, or that questions or disrespects its sovereignty and territorial integrity.
- It **defines terrorism as any act that causes or intends to cause death or injury to any person, or damage or destruction to any property**, or that threatens the unity, security or economic stability of India or any other country.

What are the Arguments in favor and Arguments against UAPA?

Arguments in Favor:

- **National Security:** Advocates argue that the UAPA is **crucial for safeguarding national security**. The law empowers the government to take preventive measures against individuals and organizations that are involved in or support terrorism and other activities that threaten the security of the nation.
 - For example, Stan Swamy, a Jesuit priest, and activist, who was booked under the UAPA for inciting violence during a Dalit meeting in January 2018. The government alleged that he was linked to a banned Maoist group and was part of a conspiracy to overthrow the state.
- **Counterterrorism Measures:** UAPA is seen as **a comprehensive legislation that provides law enforcement agencies with the necessary tools to combat terrorism effectively**. It allows for the designation of individuals and organizations as terrorists, making it easier to investigate, prosecute, and prevent terror-related activities.
 - For example, the government designated several individuals and organizations as terrorists under the UAPA, such as Masood Azhar, Hafiz Saeed, Zaki-ur-Rehman Lakhvi, Dawood Ibrahim, Lashkar-e-Taiba, Jaish-e-Mohammad, and others. This enabled the government to freeze their assets, ban their travel, and impose sanctions on them.
- **Preventive Detention:** The UAPA allows for **preventive detention of individuals suspected of being involved in unlawful activities**. Proponents argue that this provision is essential for preventing potential threats before they materialize, especially in cases where there may not be enough evidence for a formal trial.
 - For example, Safoora Zargar, a student activist who was arrested and detained under the UAPA for allegedly being part of a conspiracy to incite communal riots in Delhi in 2020. The government alleged that she was associated with a banned extremist group and was involved in organizing anti-[CAA](#) protests.
- **Global Commitments:** Supporters contend that the UAPA is **in line with India's international commitments to combat terrorism**. The legislation aligns with global efforts to address transnational terrorism and provides a legal framework for cooperation with other nations in the fight against terrorism.
 - For example, the government ratified the [United Nations Convention for the Suppression of the Financing of Terrorism](#) in 2019 and amended the UAPA to incorporate its provisions. The amendment enabled the government to criminalize the financing of terrorism and impose obligations on financial institutions to report suspicious transactions.
- **Effective Prosecution:** UAPA is perceived as a **robust legal tool that facilitates the prosecution of individuals involved in unlawful activities**. The law allows for the use of intercepted communications, electronic evidence, and other modern investigative techniques, making it easier to build a case against those engaged in terrorist activities.
 - For example, the government used the UAPA to prosecute and convict Ajmal Kasab, the lone surviving terrorist of the 26/11 Mumbai terror attacks. The government relied on the CCTV footage, phone records, confessions, and forensic evidence to prove his involvement in the attacks. He was sentenced to death and executed in 2012.
- **Deterrence:** The UAPA is seen as a **deterrent against individuals and organizations that might be inclined to engage in activities detrimental to the security of the nation**. The severe penalties and legal consequences prescribed by the law are intended to discourage individuals from participating in or supporting unlawful activities.
 - For example, in the case of the [2001 Parliament attack](#), which killed 14 people and injured 22. The government used the UAPA to impose severe penalties on those who were found guilty of conspiring and executing the attack. Among them, Afzal Guru was hanged in 2013.

Arguments Against:

- **Violative to Fundamental Rights:** The law **violates the fundamental rights of freedom of expression, assembly, and association** guaranteed by the Constitution. It criminalizes dissent and protest, and can be used to target activists, journalists, students, and minorities who raise their voice against the government.
- **Lacks Safeguard Mechanism:** The law lacks adequate safeguards and accountability mechanisms to prevent misuse and abuse of power by the authorities. It **gives the central**

government the sole discretion to designate individuals as terrorists, without any judicial review or opportunity for appeal. It also shifts the burden of proof to the accused, making it difficult to obtain bail or fair trial.

- Furthermore, the Supreme Court in [NIA v. Zahoor Ahmad Shah Watali \(2020\)](#) ruled that it is not permissible for courts to even engage in a detailed analysis of prosecution case while considering bail under UAPA and to weigh whether evidence adduced (cited as evidence) by prosecution is even sufficient or not.
 - Later in the case of Thwaha Fasal vs Union of India (2021) the court made it easier to get bail for accused charged under sections of UAPA.

- **Against the Federal Structure:** The law is against the federal structure of the country, as it **encroaches upon the powers of the state governments to maintain law and order and investigate crimes.** It also undermines the autonomy and independence of the NIA, which is supposed to be a central agency for counter-terrorism.
- **Low Conviction Rate:** The law has a low conviction rate, indicating that it is ineffective and arbitrary in achieving its objectives. According to the Union Home Ministry, **only 2.2% of the cases registered under the UAPA between 2016 and 2019 ended in conviction by courts.** This shows that the law is used to harass and intimidate innocent people, rather than to curb terrorism.

What is the Judiciary's View?

- In **Arup Bhuyan vs State Of Assam (2011)** the Supreme Court ruled that **mere membership of a banned organisation will not incriminate a person.** It can be done if a person resorts to violence or incites people to violence or does an act intended to create disorder.
- In **The People's Union for Civil Liberties v. Union of India (2004)**, the Court had decreed that if human rights are violated in combating terrorism, it will be self-defeating.
- In **Union of India v. K A Najeed (2021)**, the Supreme Court said that notwithstanding restrictions on bail under the UAPA, constitutional courts can still allow bail if they perceive that the accused's fundamental rights have been violated.
- In the **Mazdoor Kisan Shakti Sangathan v. Union of India (2018)**, the Court said that **uprisings against governmental and parliamentary actions are legitimate.** Though such protests and assemblies are supposed to be peaceful and non-violent.

What Measures should be taken to Reform the UAPA?

- **Amend the Law:** Narrow down the definition of "unlawful activity" and "terrorist act" to **exclude constitutionally protected activities such as peaceful protests, dissenting opinions, and ideological expressions.** The current definitions are vague, broad, and subjective, and can be used to criminalize any act that the government deems undesirable or threatening.
 - **Dissent is an indispensable feature of the right to free speech** under Article 19(1)(a) as rendered in *Maqbool Fida Hussain v. Rajkumar Pandey (2008)*.
- **Shift the Burden of Proof:** Ensure that the **burden of proof lies on the prosecution and not on the accused.** The UAPA law reverses the normal principle of criminal law by requiring the accused to prove their innocence rather than the prosecution to prove their guilt. This makes it extremely difficult for the accused to get bail or a fair trial.
- **Establish a Review Mechanism:** Establish an **independent and impartial review mechanism to monitor and challenge the government's decisions to ban or designate certain associations or individuals as unlawful or terrorist.** The current mechanism is inadequate and ineffective, as the government does not have to provide any reasons or evidence for its actions, and the review tribunal is often biased or influenced by the government.
- **Use the Law as the Last Resort:** Ensure that the UAPA law is **used only as a last resort and not as a first response** to deal with security threats or social unrest.
 - The UAPA law **should not be used to suppress legitimate dissent,** criticism, or opposition, or to harass, intimidate, or silence civil society actors, journalists, academics, or human rights defenders.
 - The government **should respect and protect the fundamental rights and freedoms of all citizens, and use dialogue, negotiation,** and reconciliation as the preferred means to resolve conflicts and grievances.

Conclusion

The UAPA is a potent tool in India's anti-terrorism efforts, but concerns persist about its impact on individual liberties. Supporters highlight national security and counterterrorism, while critics point to potential rights violations and a low conviction rate. **Striking a balance between security and civil liberties requires thoughtful amendments**, a commitment to due process, and judicious use of the UAPA for a more effective counterterrorism strategy in India.

Drishti Mains Question:

Discuss the significance of the Unlawful Activities Prevention Act (UAPA) in India's counterterrorism strategy. Suggest measures for achieving a more balanced and transparent legal framework.

UPSC Civil Services Examination, Previous Year Question (PYQ)

Mains

Q. Indian government has recently strengthened the anti-terrorism laws by amending the Unlawful Activities(Prevention) Act, (UAPA), 1967 and the NIA Act. Analyze the changes in the context of prevailing security environment while discussing scope and reasons for opposing the UAPA by human rights organizations. **(2019)**

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