



## Bail Under UAPA

**For Prelims:** [Supreme Court](#), [Unlawful Activities Prevention Act](#), [National Investigation Agency](#), [Cyber-terrorism](#), [Judicial review](#)

**For Mains:** Major Judicial Pronouncements Related to Bail Provisions under UAPA, Concerns Related to UAPA.

**Source:** [IE](#)

### Why in News?

Recently, the [Supreme Court](#) denied bail to an accused involved in an alleged Khalistan module, stating that the principle of '[bail is rule, jail is the exception](#)' is not applicable under the [Unlawful Activities Prevention Act \(UAPA\)](#).

### How the Provision of Bail Evolved under UAPA?

- **2008:** The **UAPA Amendment Act, 2008** introduced **Section 43D (5)**, which required a Court to deny bail if there were **reasonable grounds to believe that the case against the accused was prima facie true**.
  - It requires the accused to convince the court that it is unreasonable to consider the accusations as prima facie true.
  - By shifting this burden onto the accused, the fundamental principle of criminal law, which presumes innocence until proven guilty, is **altered within the framework of the UAPA**.
- **2016:** In the **Angela Harish Sontakke v State of Maharashtra**, the judiciary granted bail despite Section 43D (5)'s stringent provisions, considering the **extended period of custody and the likelihood of a swift trial**, emphasising the need for balance between the alleged offence and the accused's time in jail.
- **2019:** The **National Investigation Agency v Zahoor Amhad Shah Watali judgment** provided a narrow interpretation of Section 43D (5), stating the court must accept the NIA's version of events without delving into the merits of the case, thus making bail harder to secure after charges are framed by the NIA.
- **2021:** In **Union of India v K.A. Najeeb**, the Supreme Court highlighted the possibility of granting bail based on the violation of [Article 21](#) rights due to prolonged incarceration (being imprisoned or detained).
  - The **State of NCT of Delhi v Devangana Kalita case** saw the Delhi High Court separating evidence from NIA inferences, leading to bail granted on the basis of the NIA's failure to establish a prima facie case.
- **2023:** The Supreme Court, in the **Vernon Gonsalves v State of Maharashtra case**, diverged from the previous Watali ruling on the "**prima facie true**" test for granting bail, emphasising the need for **evidence analysis**.
  - However, in the recent case, a two-judge bench denied the bail exclusively following the **Watali precedent**, overlooking the Gonsalves ruling.
  - The conflicting interpretations by different benches raise questions about the consistency

and application of bail provisions under UAPA.

## What is UAPA?

- **Background:** On **17<sup>th</sup> June 1966**, the President had promulgated the Unlawful Activities (Prevention) Ordinance “to provide for the more effective prevention of unlawful activities of individuals and associations”.
  - The introduction of the stringent measure sparked uproar in Parliament, resulting in the government retracting it.
  - Subsequently, the **Unlawful Activities (Prevention) Act of 1967**, which differed from the ordinance, was enacted instead.
- **About:** UAPA is a law that aims to prevent unlawful activities and deal with terrorism. It is also known as the "**Anti-Terror law**".
  - Unlawful activities are defined as **actions supporting or inciting the cession or secession of any part of India**, or actions questioning or disrespecting its sovereignty and territorial integrity.
  - The **National Investigation Agency (NIA)** is empowered by the UAPA to investigate and prosecute cases nationwide.
- **Amendments:**
  - It underwent multiple amendments, in **2004, 2008, 2012 and most recently in 2019**, expanding provisions related to **terrorist financing, cyber-terrorism, individual designation, and property seizure**.
- **Related Concern:**
  - **Low Conviction Rate:** Under the UAPA, 4,690 persons were arrested between 2018 and 2020, but only **3% were convicted**.
  - **Subjective Interpretation:** The broad definition of unlawful activities allows for subjective interpretations, **making it vulnerable to potential misuse against specific groups** or individuals based on their identity or ideology.
  - **Limited Judicial Review:** The 2019 amendment empowers the government to **designate individuals as terrorists** without any **judicial review**, raising concerns about due process of law and the potential for arbitrary designations.

## Way Forward

- **Enhanced Oversight:** Implementing **robust oversight mechanisms to prevent misuse of the UAPA**, including regular reviews of its implementation and **strengthening judicial scrutiny** to ensure adherence to constitutional principles and human rights standards.
- **Clearer Definitions:** There is a need to refine and narrow down the definition of unlawful activities to minimise subjectivity and potential for misuse.
- **Time-bound Investigations and Trials:** Establish clear timelines for investigations and trials to **prevent prolonged detentions** and ensure efficient judicial processes.

## UPSC Civil Services Examination, Previous Year Question (PYQ)

### Mains

**Q.** The 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 the prevailing security environment while discussing scope and reasons for opposing the UAPA by human rights organizations. **(2019)**

