



Mains Marathon

Day 52: Unlawful Activities (Prevention) Act (UAPA) is the India's main anti-terrorism legislation but UAPA is being grossly misused, often with impunity. Discuss

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Approach / Explanation / Answer

- Briefly explain UAPA.
- Explain the significance of UAPA.
- Discuss the issues associated with UAPA.
- Conclude suitably

Answer:

UAPA Law was originally enacted in 1967, the UAPA was amended to be modelled as an anti-terror law in 2004 and 2008. The 2019 amendment gave the Home Ministry the power to designate individuals as terrorists.

In order to deal with 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

- **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 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 Trails:** 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 of 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 7th schedule of Indian Constitution.

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.

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