



Controversies Surrounding UAPA

For Prelims: [Unlawful Activities \(Prevention\) Act, 1967](#), [Code of Criminal Procedure \(CrPC\)](#), [Indian Penal Code \(IPC\)](#)

For Mains: UAPA: Related Judgments, Concerns, Way Forward

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Why in News?

Recently, the Delhi Lieutenant Governor (LG) approved the prosecution of novelist Arundhati Roy for **supposedly making provocative statements at a 2010 event that advocated Kashmiri separatism**. This approval was granted under **Section 13 of the [Unlawful Activities \(Prevention\) Act, of 1967](#)**.

- In 2023, the author was **charged under several sections of the [Indian Penal Code \(IPC\)](#)**.

Note: Section 13 of the UAPA deals with advocating, abetting or inciting any unlawful activity and is punishable with imprisonment for up to seven years.

What is the Unlawful Activities (Prevention) Act (UAPA)?

- **Background:**
 - On 17th June 1966, the President promulgated the Unlawful Activities (Prevention) Ordinance **“to provide for the more effective prevention of unlawful activities of individuals and associations”**.
 - Subsequently, the Unlawful Activities (Prevention) Act of 1967 **was enacted**.
- **About:**
 - The Unlawful Activities (Prevention) Act, 1967 was **enacted to provide for more effective prevention of certain unlawful activities of individuals and associations**, for dealing with terrorist activities, and for matters connected therewith.
 - 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.
 - The Act also empowers the **Director-General, the National Investigation Agency (NIA) to grant approval of the seizure or attachment of property** when the case is being investigated by the agency.
- **Amendments:**
 - It underwent multiple amendments **(2004, 2008, 2012 and 2019)** expanding provisions

related to terrorist financing, [cyber-terrorism](#), individual designation as terrorist, and property seizure.

▪ Major Provisions:

- Till the year 2004, "unlawful" activities referred to actions related to secession and cession of territory. Following the 2004 amendment, "**terrorist act**" was added to the list of offences.
 - 2019 amendment, empowers the government to **designate individuals as terrorists**.
- The Act gives the **central government complete authority to declare any activity as unlawful**. If the government considers an activity unlawful, it can **officially declare it so by publishing a notice in the Official Gazette**.
- Under the UAPA, **the investigating agency can file a charge sheet in maximum 180 days after the arrests** and the duration can be extended further after intimating the court.
- **Both Indian and foreign nationals can be charged**. It will be applicable to the offenders in the same manner, even if crime is committed on a foreign land, outside India.
- It has the death **penalty and life imprisonment as highest punishments**.

▪ Related Judgments:

- 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.
 - However, in 2023 the Supreme Court ruled that **membership alone in such organisations can be considered an offense** even without the presence of overt violence.
- In the *People's Union for Civil Liberties v. Union of India, 2004*, the Court decreed that if human rights are violated in combating terrorism, it will be self-defeating.
 - The court held that a former police officer is not a good choice to be appointed as a member of the [National Human Rights Commission \(NHRC\)](#) as their experience is more related to **investigating crimes rather than protecting and promoting human rights**.
- In the *Mazdoor Kisan Shakti Sangathan v. Union of India, 2018*, the Court said that protests against governmental and parliamentary actions are legitimate, although **such protests and assemblies are supposed to be peaceful and non-violent**.
- In the *case of Hussain and Anr. v/s Union of India, 2017*, the focus was on expediting the processing of bail applications, with an emphasis on the idea that bail should be the standard and imprisonment the rare exception.
- In *NIA v. Zahoor Ahmad Shah Watali, 2019*, the Supreme Court emphasised that courts should not delve deeply into the evidence but rather trust the state's case as presented when making decisions on bail applications related to the UAPA.

What are the Concerns Related to UAPA?

- **Low Conviction Rate:** According to NCRB data, a significant number of UAPA cases remain pending, with a low conviction rate.
 - Only 18% of UAPA cases result in convictions, and the pendency rate in trials is 89%.
- **Subjective Interpretation:** The vague 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.
- **Detention Rules:** The UAPA has a provision that allows for individuals to be detained for up to 6 months without being charged. This is in stark contrast to regular criminal law, which only **allows for a 3 month pre-charge detention period** before bail can be sought.
- **Violation of Fundamental Rights:** The law infringes upon the essential rights of free speech, assembly, and association protected by the Constitution.
 - It makes it illegal to express disagreement and protest and **can be employed to single out advocates, reporters, students, and marginalised communities who speak**

out against the authorities.

Way Forward

- **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.
- **Need for Amendment:** There is a need to refine the definition of "unlawful activity" and "terrorist act" to specifically exclude constitutionally protected activities like peaceful protests, differing viewpoints, and ideological expressions.
 - The existing definitions **are overly ambiguous, wide-ranging, and open to interpretation, allowing the government to potentially criminalize any action it finds objectionable or menacing.**
 - Dissent is a crucial aspect of the freedom of speech as outlined in Article 19(1)(a) as established **in the case of Maqbool Fida Hussain v. Rajkumar Pandey, 2008.**
- **Non-Biased Review Mechanism:** Create a system for reviewing government decisions to ban or label certain groups or individuals as unlawful or terrorist. This system should be independent and impartial, allowing for monitoring and challenging of the government's actions.
 - The current system is not sufficient, as the **government is not required to justify its decisions or provide evidence, and the review tribunal is often influenced by the government.**
- **Presumption of Innocence: Section 43D(5)** of the act could be amended to explicitly emphasize the **presumption of innocence until proven guilty.**
 - This would ensure that the prosecution bears the burden of proof throughout the bail procedure and the **accused is not required to establish their innocence.**
- **Clearer Grounds for Denial of Bail:** The provision could be changed to establish specific and well-defined grounds for denying bail.
 - This would **prevent bail from being denied arbitrarily and provide clarity to the courts** and the accused regarding the situations in which bail can be denied.

Conclusion

In the mentioned issue, it is doubtful whether a mere speech, without a specific call to violence, would be considered "unlawful activity" under the UAPA. The implication is that the mere expression of views or opinions about the status of Kashmir, even if they are controversial or critical, may not necessarily constitute a violation of the UAPA, which is typically intended to address more direct incitements to unlawful action.

Drishti Mains Question

Q. What are the key provisions of the Unlawful Activities (Prevention) Act (UAPA), and how have these provisions impacted the balance between national security and civil liberties?

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)**

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