



## Bail Provision Under UAPA

**For Prelims:** Unlawful Activities (Prevention) Act, Citizenship (Amendment) Act, Code of Criminal Procedure, Supreme Court, First Information Report, National Crime Records Bureau.

**For Mains:** Judgements & Cases, Judiciary, Government Policies & Interventions, Unlawful Activities (Prevention) Act and Related Issues.

### Why in News?

Recently, a Delhi court granted bail to a former Congress (Political Party) councillor in an [Unlawful Activities \(Prevention\) Act 1967 \(UAPA\)](#) case filed in connection with the 2020 anti-[Citizenship \(Amendment\) Act, 2019](#), (CAA) protests.

### What is the Citizenship (Amendment) Act, 2019?

- The CAA provides citizenship to six undocumented non-Muslim communities (**Hindus, Sikhs, Buddhists, Jains, Parsis and Christians**) from Pakistan, Afghanistan and Bangladesh who **entered India on or before 31st December, 2014**.
- It exempts the members of the six communities from any criminal case under the **Foreigners Act, 1946 and the Passport Act, 1920**.
  - The two Acts specify punishment for entering the country illegally and staying here on expired visas and permits.

### What was the Current Ruling?

- The **court granted bail** to the accused despite the prosecution arguing that there were limitations contained in **Section 43D(5) of the UAPA**, a provision which makes grant of bail virtually impossible, as it leaves little room for judicial reasoning.
  - The Defence argued that Section 43D UAPA only **puts restrictions but is not an absolute bar to the grant of bail**.

### What are the Bail Related Provisions and Issues in UAPA?

- 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.
- This provision leaves very **little room for judicial reasoning, and makes the grant of bail virtually impossible under UAPA**.

- In the case of **Zahoor Ahmed Shah Watali**, the **Supreme Court** in 2019 confirmed that **courts must accept the state's case without examining its merits**.
- However, **courts have since read this provision differently, emphasizing the right to a speedy trial** and raising the bar for the state to book an individual under UAPA.

## What is Unlawful Activities (Prevention) Act 1967?

- The UAPA was enacted in 1967, and later **strengthened to be modelled as an anti-terror law by the government in 2008 and 2012**.
- In August 2019, Parliament cleared the **Unlawful Activities (Prevention) Amendment Bill, 2019** to designate individuals as terrorists on certain grounds provided in the Act.
- In order to **deal with the 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 **First Information Report (FIR)** 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) 2002** and **TADA (Terrorist and Disruptive Activities (Prevention) Act) 1987**.

## What are other Associated Issues of the 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.
  - According to Special Rapporteur to call an offence a **“terrorist act”**, three elements must be cumulatively present:
    - The means used must be deadly.
    - The intent behind the act must be to cause fear amongst the population or to compel a government or international organisation to do or refrain from doing something.
    - The aim must be to further an ideological goal.
  - **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.
- **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%**.
  - This means that trials are completed every year in less than 5% 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.
  - 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.

## Way Forward

- There is a greater role for the judiciary here to carefully examine the cases of alleged misuse. Arbitrariness and subjectivity under the law should be checked through **Judicial review**.
- Under the **right to appeal for the individual** against him being designated as terrorists, judiciary should follow the fundamental principle of fair procedure and should remain alert of any intention of executive to frame the individual by manufacturing fake evidence.
- **Officers who are found guilty of any misuse and abuse** of the powers under the law must be strictly punished.

- 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 activitie.**

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