



# Stringent Nature of UAPA

## Why in News

Recently, the death of **Father Stan Swamy**, a Jesuit priest and tribal rights activist, while in judicial custody, has brought the stringent provisions of **Unlawful Activities (Prevention) Act** (UAPA) into the focus.

- **UAPA** is the **India's main anti-terrorism legislation**, but the law makes it more difficult to obtain bail.
- This difficulty in obtaining bail is being seen as one of the principal reasons for **Fr. Swamy's death** as a prisoner in a hospital and **compromises constitutional liberties**.

## Key Points

- **Background of UAPA:**
  - In the mid-1960s, in order to **curb the various secession movements**, the Government of India considered enacting a stringent law.
  - In March 1967, a **peasant uprising in Naxalbari** imparted a sense of urgency.
  - On 17<sup>th</sup> June, 1966, the President had promulgated the **Unlawful Activities (Prevention) Ordinance**.
    - The ordinance intended to **“provide for the more effective prevention of unlawful activities of individuals and associations”**.
  - After initial resistance from the Parliament (owing to its stringent nature), the **Unlawful Activities (Prevention) Act was passed in 1967**.
  - The Act provided for declaring an association or a body of individuals “unlawful” if they indulged in any activity that **envisages secession or questions or disclaims the country's sovereignty and territorial integrity**.
  - Prior to the UAPA's enactment, associations were being declared unlawful under the **Criminal Law (Amendment) Act, 1952**.
    - However, the Supreme Court held that the provision on bans was unlawful because there was **no judicial mechanism** to scrutinise the validity of any ban.
  - Therefore, the UAPA included **provisions for a Tribunal** which has to confirm within six months the notification declaring an outfit unlawful.
  - After the **Prevention of Terrorism Act (POTA), 2002**, was repealed, the UAPA was expanded to include what would have been terrorist acts in earlier laws.
- **Current Status of the Act:**
  - In its present form, the UAPA has been **amended in 2004 and 2013**, to expand its scope.
  - **Expanded Scope of Law:**
    - Punishment for terrorist acts and activities,
    - Acts threatening the country's security, including its economic security (a term that covers fiscal and monetary security, food, livelihood, energy ecological and environmental security),
    - Provisions to prevent the use of funds for terrorist purposes, including money.
  - The ban on organisations was initially for two years, but from 2013, the period of proscription has been extended to five years.
  - Further, the amendments aim to give effect to various anti-terrorism resolutions of the **United Nations Security Council** and requirements of the **Financial Action Task Force**.

- In 2019, the Act was amended to empower the **government to designate individuals as terrorists.**
- **Modus Operandi of UAPA:**
  - Just like other special laws dealing with narcotic drugs and the now-defunct laws on terrorism, the UAPA also modifies the [Code of Criminal Procedure](#) (CrPC) to give it more teeth. For example,
    - A remand order can be for 30 days instead of the usual 15,
    - Maximum period of judicial custody before the filing of a chargesheet is extendable from the usual 90 days to 180 days.
- **Controversy Regarding 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.**
    - 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.
  - **Denial of Bail:** The major problem with the UAPA lies in its **Section 43(D)(5)**, which makes it difficult for any accused person to obtain bail.
    - In case, if police have filed the chargesheet that there are reasonable grounds for believing that the accusation against such person is prima facie true, bail cannot be granted.
    - Further, a Supreme Court judgment on this has clarified that the court considering bail should not examine the evidence too deeply, but must go by the prosecution version based on broad probabilities.
    - Thus, UAPA **virtually denies bail**, which 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%.
  - **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.
  - **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 **7<sup>th</sup> schedule of Indian Constitution.**

## Way Forward

- 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.

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