
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT: A DOUBLE-EDGED SWORD IN CRIMINAL JURISPRUDENCE

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ABSTRACT

The Unlawful Activities (Prevention) Act, commonly known as UAPA, is enacted to combat unlawful and terrorist activities. This act, first introduced in 1967 and subsequently amended, provides the government with extensive powers to deal with individuals and organizations deemed a threat to the sovereignty and integrity of India. Under the UAPA, the government can ban organizations, detain individuals without formal charges, and seize properties. The UAPA has been a subject of debate and criticism for its potential misuse and violation of civil liberties. Critics argue that it can be used to stifle dissent and target marginalized communities. On the other hand, proponents emphasize the necessity of such legislation in safeguarding national security. In recent years, the UAPA has been in the spotlight due to its use against activists, journalists, and political dissenters, raising concerns about its impact on freedom of expression and human rights in India. Balancing national security concerns with individual rights remains a complex challenge, making the UAPA a subject of ongoing legal and ethical discussions.

INTRODUCTION

The Unlawful Activities (Prevention) Act, 1967 (UAPA) is a legislation that provides for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities². The act has been amended several times, with the most recent amendment being in 2019. The extraterritorial jurisdiction of the act extends to citizens of India outside India, persons in the service of the Government, wherever they may be, and associations and bodies of individuals registered or incorporated outside India. The act provides for punishment for terrorist activities, including raising funds for terrorist acts and making demands for radioactive substances or nuclear devices³. The 2019 amendment to the UAPA allows the government to designate an individual as a terrorist without trial. The act also provides for preventive detention of individuals suspected of involvement in unlawful activities. The act provides for establishing special courts for the prosecution of offenses under the act. The act allows for the seizure and attachment of property involved in unlawful activities.

CONTROVERSIES SURROUNDING THE ACT

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²INDIA CODE, <https://www.indiacode.nic.in/handle/123456789/1470> (last visited September 17 2023)

³MHA, https://www.mha.gov.in/sites/default/files/UAPA-1967_0.pdf (last visited September 17 2023)

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The Unlawful Activities (Prevention) Act 1967 (UAPA) has been controversial due to its alleged misuse and abuse by authorities⁴. Some of the controversies surrounding the UAPA are:

- Misuse as a political weapon: Critics say the UAPA is being used as a political weapon to silence activists and opposition and oppress minorities.
- Low conviction rate: The UAPA has a low conviction rate of around 2%⁵. This has led to questions about the effectiveness of the law in preventing unlawful activities.
- Designation of individuals as terrorists: The 2019 amendment of the UAPA allows the government to designate an individual as a terrorist without trial. This has been criticized for violating the principles of natural justice and due process.
- Denial of bail: The UAPA contains provisions that make it difficult for individuals to obtain bail, even if they are not guilty of any offense. This has been criticized for violating the right to liberty and freedom of expression.
- Colonial mindset: The UAPA has been criticized for representing the same colonial mindset and authoritarianism it was meant to replace⁶.
- Lack of clarity: The UAPA has been criticized for its lack of transparency and precision in defining what constitutes an "unlawful activity" or "terrorist act."
- Violation of human rights: The UAPA has been criticized for violating several human rights, including the right to liberty, freedom of expression, and due process⁷.
- Overwhelming powers to the executive: The UAPA provides overwhelming capabilities to the executive, which can be misused to crush dissenting voices and opposition to the government's systems and ideologies⁸.
- Reversal of burden of proof: The UAPA reverses the burden of proof, which means that the accused has to prove their innocence rather than the prosecution proving their guilt⁹.
- Criminalizing mere membership or support: The UAPA criminalizes mere membership or support to banned organizations, which can impact convictions under the law and the right to a fair trial¹⁰.

United Nations special rapporteurs have also criticized the UAPA for contravening several Universal Declaration of Human Rights articles and the International Covenant on Civil and Political Rights¹¹. The UAPA has been the subject of intense scrutiny and debate in recent years. There are many cases where the UAPA has been misused to bypass the general principles of Criminal Law. In 2021, Asif Iqbal Tanha, a 24-year-old student, was arrested and charged under

⁴ALJAZEERA, <https://www.aljazeera.com/news/2021/8/16/india-uapa-terror-law-scrutiny> (last visited September 17 2023)

⁵ALJAZEERA, <https://www.aljazeera.com/news/2021/7/2/india-terror-law-uapa-muslims-activists> (last visited September 17 2023)

⁶Anushka Singh, *Criminalising Dissent: Consequences of UAPA*, <https://www.jstor.org/stable/41720156> (last visited September 17 2023)

⁷HINDUSTAN TIMES, <https://hindustantimes.com/analysis/uapa-when-laws-turn-oppressive/story-d9d7OEO50LQjLZs3Ba5pzi.html> (last visited September 17 2023)

⁸EPW, *Dissent in a Democracy: Political Imprisonment under the UAPA in India*, <https://www.epw.in/engage/article/dissent-democracy-political-imprisonment-under> (last visited September 17 2023)

⁹OHRH, <https://ohrh.law.ox.ac.uk/the-supreme-court-of-india-reads-article-21-protection-into-the-stringent-uapa-bail-jurisprudence/> (last visited September 17 2023)

¹⁰LAW ESSENTIAL, <https://lawessential.com/m%26a-deals-%26-cases-archive/f/how-uapa-curtails-personal-liberty-undermines-fair-trial> (last visited September 17 2023)

¹¹THE LEAFLET, *UN Special Rapporteurs express concerns over UAPA*, <https://theleaflet.in/un-special-rapporteurs-express-concerns-over-uapa/> (last visited September 17 2023)

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the UAPA for his alleged involvement in the Delhi riots 2020. He was detained without producing any incriminating evidence¹². An 84-year-old Jesuit priest and tribal rights activist, Father Stan Swamy, died in judicial custody in 2021 while awaiting bail on medical grounds. He had been jailed since 2020 under the UAPA¹³. In 2020, two students, Devangana Kalita and Natasha Narwal, were arrested and charged under the UAPA for their alleged involvement in the Delhi riots 2020. They were accused of promoting enmity between different groups based on religion, race, place of birth, etc¹⁴. Even during the COVID-19 crisis, when the virus has spread within Indian jails, and bail is preferred for most inmates to ensure safety, many activists including middle-aged persons and the elderly, remained in custody. The UAPA has been criticized for being misused by authorities to target human rights defenders, activists, and dissenters¹⁵. These cases have raised concerns about the effectiveness of the UAPA in preventing unlawful activities and protecting the rights of citizens.

IMPLICATIONS OF THE ACT

The Unlawful Activities (Prevention) Amendment Act 2019 (UAPA 2019) also has significant implications for civil liberties in India. Some of these implications are:

- Impact on the right to a fair trial: The UAPA 2019 allows the government to designate an individual as a terrorist without difficulty, which raises concerns about the right to a fair trial. The law also permits authorities to hold a detainee in judicial custody without charge for up to 180 days, which makes it difficult for individuals to obtain bail¹⁶.
- Impact on freedom of expression: The UAPA 2019 has been criticized for its impact on freedom of expression, as it allows for the detention of individuals for up to 180 days without charge in cases related to insurgency or terrorism. This can have a chilling effect on the freedom of expression and can be used to suppress dissent and criticism of the government.
- Impact on human rights: The UAPA 2019 has been criticized by United Nations special rapporteurs for contravening several Universal Declaration of Human Rights articles and the International Covenant on Civil and Political Rights. The law has been used to target human rights defenders, activists, and critics of the government.
- Impact on online speech: The UAPA 2019 has been criticized for imposing an unreasonable restraint on online speech, which can have a chilling effect on the freedom of expression.

¹²*supra note 3*

¹³INDIA TODAY, *Spotlight on terror law UAPA after Stan Swamy's death*, <https://www.indiatoday.in/india/story/decoded-terror-law-uapa-stan-swamy-death-1824443-2021-07-06>(last visited September 17 2023)

¹⁴DECCAN HERALD, *Tripura riots and the misuse of UAPA*, <https://www.deccanherald.com/opinion/tripura-riots-and-the-misuse-of-uapa-1048718.html>(last visited September 17 2023)

¹⁵CIVILSDAILY, <https://www.civildaily.com/news/uapa-and-its-misuse/>(last visited September 17 2023)

¹⁶BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, *2019 Country Reports on Human Rights Practices: India*, <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/india/>(last visited September 17 2023)

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- Impact on national security: The UAPA 2019 has been defended by the government of India as necessary for national security¹⁷. However, critics argue that the law undermines civil liberties and human rights, which can negatively affect national security.

Overall, the UAPA 2019 has significant implications for civil liberties in India, including the right to a fair trial, freedom of expression, and human rights.

WAY FORWARD

Experts and activists have suggested several changes to the Unlawful Activities (Prevention) Act, 1967 (UAPA), to address concerns about its impact on human rights and civil liberties. Some of the proposed changes are:

- Repeal or amendment of the UAPA: Some have called for the repeal or modification of the UAPA to address concerns about its impact on human rights and civil liberties. This could involve revising the provisions of the UAPA that violate the right to a fair trial and other human rights or replacing the law with a more effective and rights-respecting law.
- Increased scrutiny and oversight: The UAPA has been criticized for its lack of transparency and accountability. Increased scrutiny and management of the law's implementation could help ensure that it is not being misused or abused by authorities.
- Strengthening of human rights protections: The UAPA has been criticized for its impact on human rights, including the right to a fair trial and freedom of expression. Strengthening human rights protections in India could help address these concerns and ensure that the UAPA is not used to suppress dissent or target human rights defenders and activists.
- Engagement with civil society: Engagement with civil society groups and human rights defenders could help to ensure that the UAPA is being implemented in a way that respects human rights and civil liberties. This could involve consultations with civil society groups on the implementation of the law or the establishment of mechanisms for civil society groups to monitor the performance of the law.
- Narrowing the definition of "unlawful activities": The UAPA has been criticized for its lack of clarity and precision in defining what constitutes an "unlawful activity" or "terrorist act." Narrowing the definition of "unlawful activities" could help to ensure that the UAPA is not being misused or abused by authorities.
- Limiting the power to designate individuals as terrorists: The UAPA 2019 allows the government to establish an individual as a terrorist without trial, which raises concerns about the right to a fair trial. Limiting the power to designate individuals as terrorists could help ensure that the UAPA is not used to suppress dissent or target human rights defenders and activists.

¹⁷Amritansu Pushkar, *Examining the Constitutional Validity of The Unlawful Activities (Prevention) Amendment Act, 2019* https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3974648_code4888291.pdf?abstractid=3974648&mirid=1 (last visited September 17 2023)

CONCLUSION

Anti-terror laws are seen in many countries, including the USA, China, Pakistan etc. Many of these legislations are criticized for lacking humanitarian values and considerations. Likewise, UAPA is also heavily criticized for its ignorance of general principles of Criminal law. Terrorism and unlawful activities should be restricted. But, if the cost of peace is the lives of innocents, the whole purpose of the act is vitiated. Hence, the misuse and arbitrary application of the act's provisions should be curtailed. Overall, the UAPA has significant implications for India's human rights and civil liberties. Addressing concerns about the law's impact on these rights will require a concerted effort by the government, civil society groups, and other stakeholders.