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**BALANCING NATIONAL SECURITY AND FUNDAMENTAL RIGHTS: A
CRITICAL ANALYSIS OF UAPA ARREST PROCEDURES**- Prashant Pandey¹**Abstract**

The Unlawful Activities (Prevention) Act, 1967 (UAPA) is one of India's principal laws for dealing with terrorism and unlawful activities that threaten national security. Because the offences covered by the Act can involve serious violence, organised networks and threats to the sovereignty and integrity of India, the law gives investigating agencies strong powers. At the same time, arrest under a security law directly affects personal liberty, dignity and the presumption of innocence. This article critically examines whether the UAPA arrest framework maintains a fair balance between national security and fundamental rights. It focuses on Sections 43A, 43B, 43C and 43D, the longer investigation period, restrictions on anticipatory bail and the stringent standard for regular bail. It also studies the constitutional safeguards under Articles 14, 21 and 22 of the Constitution and the development of Supreme Court jurisprudence, especially D.K. Basu, Joginder Kumar, Zahoor Ahmad Shah Watali, Union of India v. K.A. Najeeb, Thwaha Fasal, Vernon Gonsalves and later decisions. The article argues that strong anti-terror law is constitutionally legitimate, but strong powers must be accompanied by equally strong judicial supervision. Arrest should not become punishment before trial. The courts must therefore examine the legality of arrest, the quality of the prosecution material, delay in investigation and trial, and the continuing necessity of detention. The article concludes with practical reforms aimed at making UAPA procedure more transparent, accountable and rights-compatible without weakening legitimate national-security investigations.

Keywords: UAPA, arrest, national security, fundamental rights, Article 21, Article 22, bail, Section 43D(5), personal liberty, terrorism.

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1. Introduction

National security is a basic responsibility of every constitutional government. A State must be able to prevent terrorism, protect its institutions, stop violent networks and respond to threats to the sovereignty and integrity of the country. At the same time, the Constitution does not treat national security as a complete answer to every restriction on liberty. The State must exercise its security powers within law. The difficult question is therefore not whether national security should be protected, but how it should be protected without making constitutional rights meaningless.

The Unlawful Activities (Prevention) Act, 1967, commonly called the UAPA, occupies an important place in this debate. The Act was originally enacted to deal with unlawful activities and has been substantially strengthened over time to address terrorist acts, terrorist organisations, financing and related conduct. Its present framework contains special rules concerning investigation, arrest, custody and bail.² These rules reflect Parliament's judgment that terrorism cases may require more time and specialised investigative methods than ordinary criminal cases.

The same provisions, however, can have a very serious effect on an accused person. A person arrested under UAPA may remain in custody for a long period before the evidence is fully tested at trial. Section 43D permits an extended period for investigation in appropriate cases, while Section 43D(5) makes bail considerably harder in cases involving Chapters IV and VI.³ The practical result is that the pre-trial stage can become lengthy and burdensome.

The constitutional problem begins when the exceptional nature of the offence is allowed to replace an individualised assessment of the accused. The fact that terrorism is serious cannot by itself establish that every accused person presents the same risk. The Constitution requires courts to distinguish between a genuine security threat and a person against whom the prosecution material is weak, delayed or incapable of supporting the ingredients of the alleged offence.

²The Unlawful Activities (Prevention) Act, 1967, India Code, especially Chapters IV–VII. Source: <https://www.indiacode.nic.in/handle/123456789/1470>

³The UAPA, s. 43D(2) and s. 43D(5), as reproduced in the official India Code text. Source: <https://www.indiacode.nic.in/bitstream/123456789/1470/1/a1967-37.pdf>

This article studies that balance. It does not argue that UAPA should be abolished or that national security concerns are unimportant. Rather, it asks whether the arrest procedure and the connected bail regime provide sufficient safeguards against arbitrary or unnecessary deprivation of liberty. It also examines how the Supreme Court has tried to reconcile statutory restrictions with Articles 14, 21 and 22 of the Constitution.

2. Objectives and Research Method

The principal objective of this article is to critically analyse the UAPA arrest procedure from a constitutional perspective. The study has five specific objectives: first, to explain the statutory framework governing arrest and investigation; second, to identify the fundamental rights affected by UAPA arrest; third, to examine leading judicial decisions; fourth, to identify weaknesses in the present framework; and fifth, to suggest reforms that preserve national-security effectiveness while protecting individual liberty.

The article follows a doctrinal legal research method. It relies primarily on the text of the UAPA, the Constitution of India and decisions of the Supreme Court of India. Secondary materials are used only to explain the broader legal context. The analysis is qualitative rather than statistical. The phrase “arrest procedure” is used broadly to include the power to arrest, communication of grounds, production before a Magistrate, investigation custody, the statutory extension of the investigation period, default bail and regular bail.

The article uses simple language because constitutional criminal procedure should be understandable not only to lawyers but also to students, researchers and ordinary citizens. The aim is not to reduce legal accuracy, but to make the reasoning accessible.

3. UAPA and the Special Nature of Arrest Powers

Section 43A of the UAPA deals with the power of arrest, search and seizure in specified cases. Section 43B requires an officer arresting a person under Section 43A to inform the arrested person of the grounds for arrest as soon as may be. The person arrested and articles seized are to be forwarded without unnecessary delay to the officer in charge of the nearest

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police station, and the subsequent procedure is linked to the ordinary criminal procedure to the extent that it is not inconsistent with UAPA.⁴

These provisions show an important principle: UAPA does not create a completely separate constitutional universe. The special statute modifies ordinary criminal procedure in certain respects, but constitutional guarantees continue to operate. The ordinary rules concerning judicial production, legal representation and protection against arbitrary detention remain relevant unless a valid statutory provision lawfully changes a particular procedural rule.

The special character of UAPA becomes more visible in Section 43D. UAPA offences are treated as cognizable offences. The normal statutory period for investigation is modified, and the period can be extended up to 180 days when the court is satisfied about the Public Prosecutor's report, the progress of investigation and the specific reasons for continued detention.⁵ This is a major departure from the ordinary framework and is justified by the complexity of terrorism investigations.

Section 43D(4) excludes the ordinary statutory route for anticipatory bail in UAPA cases. Section 43D(5) further provides that an accused in custody for offences under Chapters IV and VI should not be released on bail if the court finds reasonable grounds for believing that the accusation is prima facie true, after giving the Public Prosecutor an opportunity to be heard.⁶

The words “prima facie true” have therefore become central to UAPA bail jurisprudence. The standard is not the same as proving guilt beyond reasonable doubt. Yet it is also not meant to permit a court to simply accept the prosecution's allegations without scrutiny. The Supreme Court has repeatedly explained the limited but real nature of judicial examination at this stage.

The result is a two-sided system. On one side, the State receives additional time and stronger investigative powers because terrorism cases can involve encrypted communications, financial trails, international links, multiple accused persons and sensitive intelligence. On the

⁴The UAPA, ss. 43A–43C. Source: <https://www.indiacode.nic.in/bitstream/123456789/1470/1/a1967-37.pdf>

⁵The UAPA, s. 43D(2), including the provision for extension up to 180 days subject to the statutory conditions. Source: <https://www.indiacode.nic.in/bitstream/123456789/1470/1/a1967-37.pdf>

⁶The UAPA, s. 43D(4)–(5). Source: <https://www.indiacode.nic.in/bitstream/123456789/1470/1/a1967-37.pdf>

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other side, the accused faces a more difficult route to liberty. The constitutional legitimacy of the system therefore depends heavily on judicial supervision.

4. Constitutional Framework: Articles 14, 21 and 22

Article 14 guarantees equality before law and equal protection of the laws. A special criminal statute may classify offences and create a different procedure when the classification has a rational connection with a legitimate objective. Terrorism and organised unlawful activity can justify special legislation. But classification cannot become a licence for arbitrary treatment. Similar persons must not be treated differently without a legally relevant basis.

Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law. After *Maneka Gandhi v. Union of India*, “procedure established by law” is not understood as any procedure merely because Parliament has written it into a statute. The procedure must satisfy constitutional standards of fairness, reasonableness and non-arbitrariness.⁷ Thus, even a valid national-security statute must be administered fairly.

Article 22 provides specific safeguards on arrest and detention. An arrested person must ordinarily be informed of the grounds of arrest and must be produced before the nearest Magistrate within the constitutionally prescribed period. The right to consult and be defended by a legal practitioner is also recognised, subject to the constitutional limitations applicable to preventive detention.⁸

The Supreme Court’s decisions in *Joginder Kumar v. State of U.P.* and *D.K. Basu v. State of West Bengal* are especially important for understanding the meaning of lawful arrest. *Joginder Kumar* stressed that the existence of a legal power to arrest does not mean that arrest should be made automatically. Arrest must be justified by necessity and the facts of the case.⁹ *D.K. Basu* laid down safeguards against custodial abuse and emphasised documentation, communication and accountability in the arrest process.¹⁰

⁷*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. Source: <https://www.sci.gov.in/>

⁸Constitution of India, art. 22. Source: <https://www.indiacode.nic.in/>

⁹*Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260. Source: <https://www.sci.gov.in/>

¹⁰*D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416. Source: <https://www.sci.gov.in/>

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These principles matter under UAPA because the label attached to an offence should not erase the individual nature of criminal responsibility. The police may have a lawful power to arrest, but the decision to exercise that power should still be based on material connecting the particular person to the alleged offence.

The constitutional concept of personal liberty also explains why pre-trial detention deserves special attention. An accused is not yet convicted. Detention may be necessary to prevent flight, interference with evidence, threats to witnesses or continuing serious offences, but it should not silently become an alternative form of punishment. This concern becomes stronger when the trial is likely to take many years.

5. Arrest and Communication of Grounds

A lawful arrest begins with a lawful reason. In UAPA cases, Section 43B expressly requires the grounds of arrest to be communicated. The importance of this requirement is not merely formal. A person cannot meaningfully challenge detention without knowing why the State has taken away his liberty.

The Supreme Court has treated communication of grounds as a substantive safeguard. In *Pankaj Bansal v. Union of India*, although the case arose under another special statute, the Court emphasised that a person arrested under a stringent law must be informed of the grounds in a meaningful manner so that the right to challenge arrest is real rather than theoretical.¹¹ The constitutional logic is relevant to UAPA because Article 22 and Section 43B both recognise the importance of informing the arrested person.

A useful distinction must be made between the “grounds of arrest” and the entire investigation file. The police need not necessarily disclose every sensitive investigative detail at the moment of arrest. National-security investigations may contain information whose immediate disclosure could compromise sources or operations. But the grounds must be sufficiently clear to tell the person the basic factual and legal basis for the arrest.

¹¹*Pankaj Bansal v. Union of India*, (2024) 7 SCC 576 (principle concerning meaningful communication of grounds of arrest under a special statute). Source: <https://www.sci.gov.in/>

This balance is delicate. If the grounds are too vague, the right becomes meaningless. If every investigative detail is required immediately, legitimate investigations may be harmed. The proper approach is therefore to require clear and intelligible grounds while permitting lawful protection of genuinely sensitive material.

Arrest should also be distinguished from interrogation. The fact that the police want to question a person does not automatically establish that prolonged custody is necessary. The court should examine whether custody is genuinely required for investigation and whether less restrictive measures could protect the investigation.

This is particularly important where the prosecution relies heavily on documents, electronic records or materials already in official possession. If the evidence is largely documentary and the accused has limited practical ability to interfere with it, the justification for continued detention may weaken. Courts should not mechanically treat the seriousness of the UAPA charge as sufficient reason for indefinite custody.

6. Extended Investigation and Pre-Trial Detention

The most significant procedural concern under UAPA is the extended investigation period. Section 43D(2) modifies the ordinary remand framework and permits extension of the period for completing investigation up to 180 days, subject to judicial satisfaction based on the Public Prosecutor's report, progress of investigation and specific reasons for continued detention.¹²

The provision reflects a genuine problem. Terrorism investigations can be complicated. Investigators may need to trace financial transactions, analyse digital devices, examine communications, identify networks and obtain material from different jurisdictions. A rigid investigation period designed for ordinary offences may sometimes be inadequate.

But additional investigation time creates an additional liberty cost. The longer the accused remains in custody without trial, the greater the risk that detention itself becomes the practical punishment. This is why the statutory requirement of judicial satisfaction is important. Extension should not be treated as an administrative formality.

¹²The UAPA, s. 43D(2). Source: <https://www.indiacode.nic.in/bitstream/123456789/1470/1/a1967-37.pdf>

The court should insist on a specific explanation of what investigation remains, why it cannot reasonably be completed within the existing period, and why continued custody is necessary. A vague reference to the “seriousness of the offence” should not be enough. The Public Prosecutor’s report should provide concrete information about investigative progress rather than merely repeat the allegations.

The right to default bail is another important safeguard. If the investigation is not completed within the legally permitted period and the statutory conditions for default bail are met, the accused acquires a valuable procedural right. The Supreme Court’s jurisprudence on default bail treats it as a safeguard flowing from the legislature’s decision to limit the permissible period of investigation custody.¹³ In a special statute, the extended period is already an exception; it should therefore be interpreted and applied carefully.

A constitutional system should not permit an investigation to become effectively endless simply because the case is labelled a national-security matter. Security investigations may be complex, but complexity must be demonstrated rather than assumed.

7. The Strict Bail Standard under Section 43D(5)

Section 43D(5) is perhaps the most controversial part of the UAPA bail framework. It prevents release on bail where the court finds reasonable grounds for believing that the accusation is prima facie true, subject to the statutory hearing requirement. The provision creates a higher barrier than the ordinary bail framework.

In *National Investigation Agency v. Zahoor Ahmad Shah Watali*, the Supreme Court explained how courts should approach this standard. The Court held that at the bail stage the material supplied by the prosecution is to be examined to see whether the accusation is prima facie true, while the court should not conduct a detailed assessment of the evidence as though it were conducting a trial.¹⁴ The decision therefore restricts the scope of the bail hearing, especially in relation to weighing competing versions of evidence.

¹³ See, e.g., *Bikramjit Singh v. State of Punjab*, (2020) 10 SCC 616, on default bail and statutory time limits. Source: <https://www.sci.gov.in/>

¹⁴ *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1. Source: <https://www.sci.gov.in/>

Watali has had a major influence on UAPA bail litigation. Its benefit is that courts do not conduct premature mini-trials in complicated terrorism cases. Its difficulty is that a restrictive interpretation can make it very hard for an accused to obtain bail even where the prosecution case may later fail at trial.

The answer lies in careful application. The “prima facie” test should not mean that every allegation in a charge-sheet is accepted as true. The court must still examine whether the alleged facts, taken at the appropriate level of scrutiny, satisfy the ingredients of the offence. A recent Supreme Court formulation has described the inquiry as one of limited but real statutory scrutiny: the court should test whether the material, taken at face value and without a detailed trial, discloses the essential ingredients of the alleged offences.¹⁵

This approach is important because UAPA contains broad offences. Mere association, support, expression or possession of material cannot automatically be treated as terrorism without examining the statutory ingredients and the specific role attributed to the accused. The prosecution must connect the person to the legal elements of the offence.

The Supreme Court has also recognised that constitutional courts retain power to protect fundamental rights despite Section 43D(5). The leading authority is *Union of India v. K.A. Najeeb*. The Court held that statutory restrictions on bail do not completely exclude constitutional courts’ power to grant bail where continued incarceration violates fundamental rights, particularly the right to a speedy trial under Article 21.¹⁶

Najeeb is therefore a constitutional safety valve. It does not remove Section 43D(5), but it prevents the provision from becoming an absolute rule of detention. Where trial is unlikely to finish within a reasonable time and the accused has already spent a substantial period in custody, constitutional considerations can justify release.

¹⁵Supreme Court of India, judgment dated 5 January 2026, explaining that the “prima facie true” inquiry has limited but real content and is not a mini-trial. Source:

https://api.sci.gov.in/supremecourt/2025/50992/50992_2025_16_1502_67204_Judgement_05-Jan-2026.pdf

¹⁶*Union of India v. K.A. Najeeb*, (2021) 3 SCC 713. Source: <https://www.sci.gov.in/>

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8. Landmark Judgements and Their Findings

The judicial history of arrest and bail under UAPA can be understood through several important decisions.

First, *D.K. Basu v. State of West Bengal* established that arrest and custody must be accompanied by procedural safeguards designed to prevent abuse. Its principles concerning arrest records, communication and accountability remain part of the constitutional background against which UAPA arrests should be assessed.¹⁷

Second, *Joginder Kumar v. State of U.P.* clarified that the power to arrest is not the same as the necessity to arrest. Police must have justification for taking a person into custody.¹⁸ This principle is particularly valuable under a stringent law because the seriousness of the statutory offence can otherwise encourage routine arrest.

Third, *Arup Bhuyan v. State of Assam* and *Indra Das v. State of Assam* addressed the relationship between membership and criminal liability in the context of unlawful associations. The Supreme Court's reasoning emphasised that mere passive association cannot automatically be equated with criminal conduct where the statutory and constitutional requirements of incitement or violence are not met.¹⁹ These cases are relevant to UAPA because they support an individualised approach to criminal liability rather than guilt by association.

Fourth, *National Investigation Agency v. Zahoor Ahmad Shah Watali* remains the leading authority on Section 43D(5). It established a restrictive bail-stage review and warned courts against conducting a detailed evaluation of evidence at the bail stage.²⁰

Fifth, *Union of India v. K.A. Najeer* is equally important from the opposite direction. The Court held that the existence of Section 43D(5) does not remove the constitutional jurisdiction of

¹⁷*D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416. Source: <https://www.sci.gov.in/>

¹⁸*Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260. Source: <https://www.sci.gov.in/>

¹⁹*Arup Bhuyan v. State of Assam*, (2011) 3 SCC 377; *Indra Das v. State of Assam*, (2011) 3 SCC 380. Source: <https://www.sci.gov.in/>

²⁰*National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1. Source: <https://www.sci.gov.in/>

higher courts. If an accused has suffered prolonged incarceration and there is no reasonable prospect of a timely trial, constitutional courts may grant bail to protect Article 21.²¹

Sixth, *Thwaha Fasal v. Union of India* demonstrated that the “prima facie true” test requires examination of the statutory ingredients and the material connecting the accused with the alleged offence. The Court cautioned against automatically treating possession of certain materials or broad allegations as sufficient without analysing the specific role and legal requirements.²²

Seventh, *Vernon Gonsalves v. State of Maharashtra* continued the development of a more careful approach to UAPA bail. The Court examined whether the material against each accused, taken at the required level of scrutiny, actually supported the statutory offences alleged.²³

Eighth, *Shoma Kanti Sen v. State of Maharashtra*, *Athar Parwez v. Union of India* and *Jalaluddin Khan v. Union of India* illustrate that Section 43D(5) is not a substitute for judicial reasoning. The court must assess the prosecution material within the limits of the statutory test and consider the constitutional context of detention.²⁴

More recent Supreme Court reasoning has continued to stress that “prima facie true” is neither a mini-trial nor a mechanical acceptance of the prosecution story. In a January 2026 decision, the Court explained that the inquiry has “limited but real” content: the judge must examine whether the material, taken at face value, discloses the essential ingredients of the alleged offences.²⁵ This formulation is useful because it avoids both extremes: excessive scrutiny at the bail stage and no scrutiny at all.

The combined lesson of these cases is that UAPA creates a strict legal framework, but the Constitution remains the controlling background. Security concerns may justify special procedure; they do not justify arbitrary procedure.

²¹*Union of India v. K.A. Najeeb*, (2021) 3 SCC 713. Source: <https://www.sci.gov.in/>

²²*Thwaha Fasal v. Union of India*, (2021) 16 SCC 703. Source: <https://www.sci.gov.in/>

²³*Vernon Gonsalves v. State of Maharashtra*, (2023) 8 SCC 1. Source: <https://www.sci.gov.in/>

²⁴*Shoma Kanti Sen v. State of Maharashtra*, (2021) 16 SCC 720; *Athar Parwez v. Union of India*, 2024 SCC OnLine SC 124; *Jalaluddin Khan v. Union of India*, 2024 SCC OnLine SC 742. Source: <https://www.sci.gov.in/>

²⁵Supreme Court of India, judgment dated 5 January 2026, paras 70–72, discussing the “prima facie true” standard. Source: https://api.sci.gov.in/supremecourt/2025/50992/50992_2025_16_1502_67204_Judgement_05-Jan-2026.pdf

9. National Security versus Personal Liberty: Finding the Balance

The central policy argument for UAPA is compelling. Terrorist organisations can exploit ordinary legal delays, use covert networks and destroy evidence. The State needs adequate time and powers to investigate. If the legal system makes it impossible to identify and prosecute genuine threats, the consequences can be severe.

However, the opposite risk is also serious. If arrest becomes easy and release becomes extremely difficult, the process itself can become punishment. A person may lose employment, education, family life, reputation and financial stability long before a court determines guilt. This is particularly problematic where the trial involves hundreds of witnesses or large electronic and documentary records.

The proper balance should therefore be based on necessity, proportionality and individualised assessment. National security should influence the level of caution, but it should not eliminate judicial scrutiny.

Four principles can guide this balance.

First, necessity: the State should explain why arrest and continued custody are required in the particular case. A serious allegation is relevant but should not be the only reason.

Second, proportionality: the restriction on liberty should be proportionate to the investigative or security objective. Where evidence is already secured and there is little realistic risk of interference, continued detention should be reconsidered.

Third, individualisation: each accused should be assessed separately. A person should not remain in custody merely because he or she is charged in a large case involving many accused persons.

Fourth, time sensitivity: the longer a person remains in custody without trial, the stronger the constitutional need for judicial review. Najeer makes this especially clear. The bail framework cannot be applied in a way that effectively converts pre-trial detention into an unending sentence.

This does not mean courts should disregard the risks of terrorism. It means that the risks must be established with reference to the individual accused. A constitutional democracy is

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strongest when it can investigate serious crimes firmly while still proving guilt through a fair trial.

10. Major Concerns in the Present Arrest Framework

Several concerns deserve attention.

First is the risk of arrest based on broad allegations. UAPA contains offences covering unlawful activities, terrorist acts, funding, conspiracy and support. The breadth of the statute can make the initial factual assessment especially important. Arrest should be connected to specific material rather than general suspicion.

Second is the risk created by long investigation periods. Although the 180-day framework has a statutory basis, repeated delays can place substantial pressure on the accused. Judicial extension should therefore remain evidence-based.

Third is the difficulty of obtaining bail. The Section 43D(5) standard is deliberately strict. But strictness can become problematic when trials are delayed for years. Najeeb provides an important constitutional answer, but reliance on exceptional constitutional bail should not replace efficient trial management.

Fourth is the danger of treating electronic and documentary evidence as automatically reliable. Digital material may be important, but questions of authenticity, chain of custody, context and interpretation remain. At the bail stage the court need not conduct a full trial, but it should not ignore obvious gaps connecting the accused to the offence.

Fifth is the problem of stigma. An arrest under an anti-terror law can have consequences beyond ordinary criminal cases. Public perception may treat an allegation as proof of guilt. Investigating agencies and media communication should therefore distinguish clearly between accusation and conviction.

Sixth is the need for accountability in arrest decisions. Strong powers require strong records. The reasons for arrest, the grounds communicated to the accused, the timing of production before court, the custody sought and the progress of investigation should be properly documented.

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Finally, there is a structural concern. Constitutional safeguards are most effective when they operate at the earliest stage. A remedy available only after years of detention is less effective than a system that prevents unnecessary detention in the first place.

11. Suggested Reforms

The UAPA can be strengthened without weakening national security. The following reforms would improve the balance.

1. Clearer arrest records: Every UAPA arrest should contain a written, case-specific explanation of the material and legal provisions relied upon. The record should distinguish between evidence directly connecting the accused and background intelligence.

2. Meaningful communication of grounds: Grounds of arrest should be intelligible and sufficiently specific. Where sensitive information cannot be disclosed immediately, the agency should disclose the substance necessary for the accused to challenge the arrest while protecting legitimately classified details.

3. Stronger scrutiny for custody extension: Applications for extension of investigation custody should identify completed investigative steps, pending steps, reasons for delay and the expected timeline. Courts should avoid routine extensions.

4. Periodic detention review: In lengthy UAPA cases, trial courts should periodically examine whether continued detention remains necessary, even when a formal bail application is not pending. This would make Article 21 more practical.

5. Speedy trials: Special courts dealing with UAPA matters should adopt realistic case-management schedules. Unnecessary adjournments, repeated witness delays and avoidable procedural disputes should be reduced.

6. Individualised bail assessment: Courts should identify the exact role of each accused. Mere presence in a large charge-sheet should not be treated as proof that the Section 43D(5) threshold is satisfied.

7. Better judicial training: Judges handling UAPA matters should receive continuing training on digital evidence, financial investigation, national-security material and constitutional rights. This would help courts understand both security risks and evidentiary limitations.

8. Protection for sensitive intelligence: Reform should not require unrestricted disclosure of intelligence sources. Courts can use controlled procedures, redacted material and other lawful methods where necessary, while still ensuring a meaningful challenge to detention.

9. Accountability for unlawful arrest: Where courts find serious procedural violations, appropriate remedies should be available. Constitutional remedies should remain effective rather than purely symbolic.

10. Periodic legislative review: Parliament should periodically examine whether the special procedural provisions continue to be necessary, proportionate and effective. Anti-terror laws should not become permanently exceptional without evidence that each exceptional power remains justified.

12. Critical Analysis

The strongest justification for UAPA is that ordinary criminal procedure may not always be sufficient for terrorism investigations. That justification has force. Terrorist offences can be secretive, organised and transnational. The State must have time and tools to investigate.

The strongest criticism is that the same features that make UAPA effective can make it difficult for an innocent person to obtain early relief. The prosecution controls the investigation at the beginning, while the accused has limited access to the evidence. Section 43D(5) then raises the threshold for bail. If the trial is delayed, the accused may remain in custody for a period that approaches or even exceeds a substantial part of the possible sentence.

The judicial response has been an attempt at balance. *Watali* protects the special statutory scheme by limiting the depth of bail review. *Najeeb* protects the Constitution by recognising that statutory restrictions cannot justify an indefinite breach of Article 21. *Thwaha Fasal* and later decisions show that the court must still identify the statutory ingredients and examine the material at the required threshold.

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The most convincing interpretation is therefore neither “national security always wins” nor “liberty always requires immediate release.” Instead, the law should operate through calibrated scrutiny. At the beginning of a case, where credible material indicates a serious security threat, courts should respect the legislative policy behind UAPA. As the case continues, however, the court should increase its attention to delay, the strength of the material, the actual role of the accused and the possibility of a timely trial.

This approach is consistent with constitutionalism. A constitutional democracy does not prove its strength by having no security laws. It proves its strength by ensuring that security laws remain controlled by law, evidence and judicial review.

13. Conclusion

The UAPA represents one of the most difficult areas of Indian criminal law because it operates at the intersection of national security and personal liberty. The State has a legitimate and compelling duty to prevent terrorism and protect the country. Parliament is therefore entitled to create special investigative and procedural mechanisms for serious security offences.

But the Constitution places limits on how those powers are used. Articles 14, 21 and 22 require fairness, non-arbitrariness, lawful procedure and protection against unjustified deprivation of liberty. Section 43B’s requirement to communicate grounds of arrest, the judicial role in extending investigation custody, the rules on default bail and the constitutional power of higher courts together form an important system of safeguards.

The Supreme Court’s jurisprudence provides the central balance. Watali recognises the strict nature of Section 43D(5), while Najeeb confirms that the provision cannot be used as a complete answer to prolonged unconstitutional detention. Thwaha Fasal, Vernon Gonsalves and later decisions reinforce the need for a real, though limited, examination of the prosecution case at the bail stage. D.K. Basu and Joginder Kumar provide the broader constitutional principles governing arrest.

The future of UAPA should therefore not be framed as a choice between national security and fundamental rights. Effective national security and constitutional liberty can coexist. Indeed, they strengthen each other. A system that arrests on specific material, communicates clear

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grounds, obtains meaningful judicial authorisation, completes investigation diligently and conducts timely trials is more legitimate and more effective.

The key principle should be simple: **national security may justify stronger legal powers, but it cannot justify weaker constitutional accountability.** Arrest must remain a tool for investigation and protection, not an alternative form of punishment. When courts maintain that distinction, UAPA can serve its legitimate security purpose while remaining consistent with the constitutional promise of personal liberty.



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References

Constitution of India, especially Articles 14, 21 and 22.

Unlawful Activities (Prevention) Act, 1967, as amended; India Code, Government of India.

Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

Joginder Kumar v. State of U.P., (1994) 4 SCC 260.

D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

Arup Bhuyan v. State of Assam, (2011) 3 SCC 377.

Indra Das v. State of Assam, (2011) 3 SCC 380.

Bikramjit Singh v. State of Punjab, (2020) 10 SCC 616.

National Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 SCC 1.

Union of India v. K.A. Najeeb, (2021) 3 SCC 713.

Thwaha Fasal v. Union of India, (2021) 16 SCC 703.

Shoma Kanti Sen v. State of Maharashtra, (2021) 16 SCC 720.

Vernon Gonsalves v. State of Maharashtra, (2023) 8 SCC 1.

Athar Parwez v. Union of India, 2024 SCC OnLine SC 124.

Jalaluddin Khan v. Union of India, 2024 SCC OnLine SC 742.

Pankaj Bansal v. Union of India, (2024) 7 SCC 576.

Supreme Court of India, judgment dated 5 January 2026, discussing the scope of the Section 43D(5) “prima facie true” standard.

Online Legal Sources

<https://www.indiacode.nic.in/handle/123456789/1470>

<https://www.indiacode.nic.in/bitstream/123456789/1470/1/a1967-37.pdf>

<https://www.sci.gov.in/>

https://api.sci.gov.in/supremecourt/2025/50992/50992_2025_16_1502_67204_Judgement_05-Jan-2026.pdf

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