



## TERROR OF UNLAWFUL ACTIVITIES PREVENTION ACT, 1967 (UAPA)

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### Abstract

In the last few years, the use of the Unlawful Activities Prevention Act, 1967 (UAPA) has increased and needs critical analysis. The most surprising fact about this Act is it was enacted in the year 1967 but its constitutionality has never been challenged neither in the High Courts nor in the Supreme Courts. The Unlawful Activities Prevention Act, 1967 (UAPA) was recently amended in 2019 which brought changes to Section 35 of the Unlawful Activities Prevention Act, 1967 (UAPA). The change brought was that it gave allowance to the Government to categorise individuals who are part of terrorism as terrorists. Previously the Government could only categorise an organisation as terrorist. According to the recorded statistics, the National Crime Records Bureau (NCRB) states that surprisingly before 2014 there was no registration of any crimes under the Unlawful Activities Prevention Act, 1967 (UAPA). But after 2014 the registration of crime rate under the Unlawful Activities Prevention Act, 1967 (UAPA) has increased tremendously. In 2014 total registrations of crime under the Unlawful Activities Prevention Act, 1967 (UAPA) was 976 and by 2015 it was recorded as 897 then in 2016 it was recorded as 922 then in 2017 it was recorded as 901 then in 2018 it was recorded as 1182. The maximum number of cases are

reported in Manipur, Jammu & Kashmir, and Assam.

The paper's main objective is to examine the Act relating to the prevention of unlawful activities.

### Keywords

UNLAWFUL ACTIVITIES, TERRORISM, UPPER HAND, GOVERNMENT, DETENTION PROVISION, DRAWBACKS, 4TH SCHEDULE

### Research Methodology

The data used for the study are collected from secondary sources mainly from published papers, news, articles, and various search engines.

### Timeline of Security Acts enacted in India

**1950- 1969** → Preventive Detention Act  
**1958- Now** → Armed Forces Special Powers Act  
**1967- Now** → Unlawful Activities Prevention Act  
**1971- 1977** → Maintenance of the Internal Security Act  
**1980- Now** → National Security Act  
**1985-1995** → Terrorist and Disruptive Activities (Prevention Act)  
**2001- 2004** → Prevention of Terrorism Act

### Background

Dravida Munnetra Kazhagam (DMK), the founder of this political party is C.N. Annadurai. He also renamed Madras as Tamil Nadu and is also a former Chief Minister of Tamil Nadu. In the year 1962 C.N. Annadurai proposed for a separate Tamil country in his Rajya Sabha speech. But, due to the happening of the Indo-China war in the same year, he let go of his proposal.



The Central Government of India faced tremendous pressure both internally and externally as external aggression was ongoing with China and internally there was a proposal by C.N. Annadurai for a separate Tamil country. The entire country was in a panic state.

The Central Government believed that to deal with the external aggression of the Indo-China war, they have a provision of Emergency that is Article 352 of the Constitution of India, 1949. But to deal with the domestic crisis, the freedom of the citizens has to be restricted. And thus, the Unlawful Activities Prevention Act, 1967 (UAPA) was enacted and enforced before the provision of Emergency came to an end. The timeline is-

- 1962 → Indo China War
- 1971 → Indo Pak War
- 1975 → Emergency

Introduction to Unlawful Activities Prevention Act, 1967 (UAPA)

In the legal sense, the term 'Unlawful' means prohibited or not permitted by law, either it is civil or criminal in nature, and the term 'Activity' includes any kind of action or movement made for any particular purpose. So, unlawful activities refer to activities that are not recognised as permissible by the rules or law of the land. These activities can also be termed as or recognised as defiance of law and there are prescribed punishments of all the various kinds of unlawful activities. Performing of such activities makes an individual punishable by the law when proven guilty.

The Unlawful Activities Prevention Act (UAPA) was passed in 1967 when the National Integration Council set up a committee for national integration and regionalisation. On the recommendation of the National Integration Council, the 16th Amendment Act was enacted. To control and handle the domestic crisis in the country, reasonable restrictions have to be imposed on the fundamental rights of the citizens of the country. For achieving this purpose the 16th Amendment was introduced via which reasonable restrictions were imposed on three fundamental rights of the citizens of the country. The fundamental rights on which reasonable restrictions were imposed are firstly, Freedom of Speech and Expression, secondly, the Right to Assemble peacefully, and lastly, the Right to form Association and Unions.

Unlawful Activities Prevention Act, 1967 (UAPA) is an anti-terror legislation and the enforcement body of this legislation is the National Investigation Agency (NIA). The National Investigation Agency (NIA) is India's central counter-terrorism agency.

Unlawful Activities Prevention Act, 1967 (UAPA) mainly deals with unlawful activities. The unlawful activity includes any action undertaken by any individual or organisation with an intention to bring cession or separation or disrupt or question the sovereignty or territorial integrity of India.

According to Section 2(1)(o) of the Unlawful Activities Prevention Act, 1967 unlawful activities is defined as-

“It is in relation to any individual or an association which means that any action undertaken by any such individual or association (whether it is by committing an



act or by oral words, either spoken or written or by using signs or by any visible representation or otherwise),-

(i) which is intended, or it supports any kind of claim, to bring about, on any ground whatsoever, the secession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or any group of individuals to bring about such secession or secession; or

(ii) which tries to disclaim, questions, disrupts, or intends to disrupt the jurisdiction, sovereignty, jurisdiction, and territorial honour of our nation (India); or

(iii) which causes or is intended to cause some or other kind of disaffection against our nation (India);”<sup>1</sup>

Famous arrests under the Unlawful Activities Prevention Act, 1967 (UAPA)

1. Binayak Sen, who was a doctor by profession and a human rights activist socially. He was detained because he allegedly supported the Naxalites in May 2007.
2. Sudhir Dhawale who was an almoner or a welfare worker and worked as a Dalit rights worker and was arrested in 2018.
3. Mahesh Raut was an almoner or a welfare worker and worked as a tribal rights worker and was arrested in 2018.
4. Varavara Rao was a poet by profession and was arrested in 2018.
5. Surendra Gadling was an almoner or a welfare worker and worked as a Dalit and a tribal rights lawyer and was arrested in 2018.
6. Shoma Sen was a professor by profession and was arrested in 2018.
7. Sudha Bhardwaj was an almoner or a welfare worker and worked as a tribal rights worker and was arrested in 2018.

8. Rona Wilson was a research scholar by profession and was arrested in 2018.
9. Gautam Navlakhawas was a journalist by profession and a member of PUDR socially and was arrested in 2018.

Punishments under the Unlawful Activities Prevention Act, 1967 (UAPA)

#### 1. Punishment for terrorism

- If any act of terrorism results in the death of any individual then such an offence is awarded with a punishment of death penalty or imprisonment for life along with fine.
- If any act of terrorism has any other outcome apart from an individual's death then such an offence is awarded with a punishment of meticulous imprisonment of at least 5 years which may be extended to life imprisonment along with fine.

#### 2. Punishment for conspiracy

- If any act of conspiracy is committed then such an offence is awarded with a punishment of meticulous imprisonment of at least 5 years which may be extended to life imprisonment along with fine.

#### 3. Punishment for organising of terrorist camps

- If any act of organising terrorist camps is committed then such an offence is awarded with a punishment of meticulous imprisonment of at least 5 years which may be extended to life imprisonment along with fine.

#### 4. Punishment for recruiting of any individual or group of individuals for terrorist activities

- If any act of recruiting any person or group of such persons for performing terrorist activities is committed then such an offence is awarded with a punishment of meticulous imprisonment of at least 5 years which may

<sup>1</sup> <https://indiankanoon.org/doc/90473866/>



be extended to life imprisonment along with fine.

**5. Punishment for harbouring**

- If any act of harbouring is committed then such an offence is awarded with a punishment of meticulous imprisonment of at least 3 years which may be extended to life imprisonment along with fine.

**6. Punishment for being a member of a terrorist gang**

- If any individual is caught being a member of a terrorist gang then such an offence is awarded with a punishment of life imprisonment along with fine.

**7. Punishment for holding proceeds of terrorism**

- If any individual is caught for holding proceeds of terrorism the such an offence is awarded with a punishment of life imprisonment along with fine.

**8. Punishment for threatening a witness**

- If any individual commits an act of threatening a witness then such individual is awarded with a punishment of meticulous imprisonment of at least 3 years which may be extended to life imprisonment along with fine.

Amendment of Unlawful Activities Prevention Act, 1967 (UAPA) Amendment (2004)

In the year 2004, the Unlawful Activities Prevention Act, 1967 (UAPA) was amended. To punish terrorist activities parliament introduced dedicated chapters via amendment of 2004. This amendment was introduced in 2004 and not prior to that because the Prevention of Terrorism Act (POTA) was repealed in 2004. And after the repealing of the Prevention of Terrorism Act (POTA), there was a vacuum in the security

system and thus, via amendment, these features were added in the Unlawful Activities Prevention Act, 1967 (UAPA). This is the reason because of which the Unlawful Activities Prevention Act, 1967 (UAPA) is also known as POTA 2.0. Amendment (2019)

In the year 2019 when the amendment was on the verge of passing, then the opposition and the civil liberties raised a strong objection that there are high chances of misusing this Act because this Act directly authorises the government with the power to control, monitor, and curb any type of descent.

The major change made in the amendment of 2004 was-

**1. Who can do terrorism?**

It stated that any individual or any organisation can do terrorism. This change was introduced in the Unlawful Activities Prevention Act, 1967 (UAPA), Chapter 6, Section 35, and Section 36. This Act states that after the recent amendment the Central Government of India has been given the power to declare any individual or organisation as terrorist if it commits or takes a part in the act of terrorism, prepares or promotes terrorism, or is otherwise involved in terrorism. This change was introduced because as soon as a terrorist organisation is banned, the members of those terrorist groups formulate other terrorist organisations or function individually.<sup>2</sup>

**2. Detention Provisions**

If any individual is booked under the Unlawful Activities Prevention Act, 1967 (UAPA) then that individual can be detained for a period of 180 days (6months) without the filing of any charge sheet. This period can

<sup>2</sup> <https://blog.finology.in/protests-and-riots/unlawful-activities-prevention-act-UAPA>



be extended for a greater period but at least for 180 days that person who is branded as a terrorist does not have the Right to Bail.

Under the Code of Criminal Procedure, 1973 (Crpc), Section 167 is applicable which allows a maximum time period of 90 days (3months) for such a situation and states that after 3months Right to Bail will arise for any individual and he cannot be detained longer than that period.

But, Section 43D of the Unlawful Activities Prevention Act, 1967 (UAPA) states that if the investigation is incomplete then any person who is branded as terrorist can be detained for 180 days and longer without filing a charge sheet and the Right to Bail will not arise.<sup>3</sup>

### 3. 4th Schedule

Amendment of 2019 added the 4th Schedule in the Unlawful Activities Prevention Act, 1967 (UAPA). This Act authorises the government with the power to brand or declare any person as a terrorist and add the name of that individual in the 4th Schedule.

The process of adding an individual's name in the 4th Schedule contains no due process. Only a single remedy is available to appeal to the government within 45 days to identify that individual's name from the 4th Schedule for which a review committee will be set up with a retired or sitting judge as its head along with 3 other members.

Drawbacks of 2019 Amendment of Unlawful Activities Prevention Act, 1967 (UAPA)

1. The booked individual will be mandatorily detained in jail for 180 days (6months) as he has no Right to Bail. Moreover, this period of 180 days can be extended further.
2. If the individual appeals for the remedy within 45 days then it is mandatory for him to

appeal only to that authority who has declared him as a terrorist.

### Landmark Judgements

#### R.M. Malkani vs. State of Maharashtra<sup>4</sup>

In this case, a telephonic conversation was taped without any authorisation and without following the provisions stated under the Telegraph Act, 1885. This telephonic conversation was produced as evidence in the Trial Court and the High Court. Both the Courts relied on this evidence. Then it was challenged in the Supreme Court.

The Supreme Court held if any contemporaneous evidence is obtained by any illegal means then also there is no bar in its admission as evidence. It further tried to remove the procedure stated in the People's Union of Civil Liberties Vs. Union of India, AIR 1997 SC 568 and gave directions to the Government to follow a specified mode of operating prior to proceeding.

The Supreme Court stressed upon the fact that "it is entirely for the Central Government to make rules on the subject but till the time it is done the right to privacy of an individual has to be safeguarded."

#### State of Maharashtra vs. Bharat Shanti Lal Shah and others, (2008)<sup>5</sup>

In this case, certain provisions were laid down by The Maharashtra Control of Organized Crime Act, 1999 for the prevention and safeguarding of interests of the privacy of citizens. These provisions and the stated safeguards were similar to the directives which were laid down by the Supreme Court in the P.U.C.L's case. The

<sup>3</sup> <https://cjp.org.in/ready-reckoner-to-the-unlawful-activities-prevention-act-1967/>

<sup>4</sup> AIR 1973 SC 157

<sup>5</sup> 2008 13 SCC 5



Court further observed that though the prevention of communication is an invasion of an individual's right to privacy, the right to privacy is not absolute, thus the court is required to see that the procedure itself is fair, just, and reasonable. According to the procedural safeguards formulated by the Supreme Court of India in the P.U.C.L case, the Central Government brought out an amendment to the Indian Telegraph Rules, 1951 but it failed to remove the unguided prevention. To fill the procedural gap the powers of prevention which were laid out in the Information Technology Act were amended in the year 2008, and again in the year 2009. The two amendments supplemented the procedural gap of the Unlawful Activities (Prevention) Act, 1967, 2004, 2008, and 2012 as far as the procedure for prevention is in consideration.

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#### Conclusion

Hence, To enable the implementation of these restrictions, the Unlawful Activities Prevention Act, 1967 (UAPA) was introduced and enacted in the year 1967. One of the key amendments in the act was made in the year 2004. In this Act, Rights are taken away for providing security, this right is largely misused by most of the government officials and thus given the government an upper hand. Unlawful Activities (Prevention) Act, 1967(UAPA) is the foundation or the keystone of India's legislative policy against terrorism. Unlawful Activities (Prevention) Act, 1967(UAPA) was enacted with a sole objective to control the various kinds of unlawful activities in our country(India). It embodies the essence of the Preventive Detention Act which expired in 1969. Over the passing years the Act has gone through several changes and amendments to widen the ambit of its application.