

Delhi High Court on UAPA

June 29, 2021

By ruling that “terrorist activity” cannot be broadly defined to include ordinary penal offences, the three Delhi High Court orders granting bail to three student-activists Devangana Kalita, Natasha Narwal, and Asif Iqbal Tanha, mark a crucial moment. The three orders by the Delhi High Court are perhaps the first instance of a court calling out alleged misuse of the UAPA against individuals in cases that do not necessarily fall in the category of “terrorism” cases. So, understanding the nitty-gritties of the judgement and the UAPA act are important from UPSC point of view.

In news: Delhi HC calls out misuse of UAPA, raises bar for State to slap terror tag

Placing it in syllabus: Law & Policy

Dimensions

- Delhi HC Ruling
- UAPA Provisions
- Misuse with recent incidents as examples
- Importance of the Ruling in such a scenario
- Amendments needed in the Act

Content:

Delhi HC Ruling:

A bench comprising Justices Sidharth Mridul and Anup Jairam Bhambhani was granting bail to Delhi-riots accused Asif Iqbal Tanha, Natasha Narwal and Devangana Kalita, who faced charges for being part of a “larger conspiracy” during the anti-Citizenship (Amendment) Act, 2019 protests which erupted into violence resulting in deaths across North-East Delhi.

Quoting sections of the Unlawful Activities Prevention Act, 1967, and a string of key Supreme Court rulings on terrorism

and terror laws, the court reasoned that:

- The term “terrorist action” should not be used carelessly to trivialise them.
- The court cautioned investigating agencies on the frivolous use of the UAPA. It said they are not to wantonly apply sections 15, or 17, which relates to raising funds for a terrorist act and section 18, which is about conspiracy, for it would only trivialise such issues.
- Terrorist action is defined as activity that goes beyond the capabilities of law enforcement agents to deal with under ordinary criminal law. The court based its conclusion on the Supreme Court’s judgement in the Hitendra Vishnu Thakur case.
- Terrorist activities should not be confused with the state’s normal law and order problems.
- The Term “Terrorist Action” cannot be used frivolously in cases that fall under conventional offenses under the IPC.
- The border between the constitutionally protected freedom to demonstrate (Article 19) and terrorist conduct appears to be blurring.

UAPA Provisions

- **Unlawful Activities (Prevention) Act, 1967** is primarily an anti-terror law – aimed at more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities.
- It was promulgated in 1967 to target secessionist organisations. It is considered to be the predecessor of laws such as the (now repealed) **Terrorist and Disruptive Activities (Prevention) Act (TADA)** and **Prevention of Terrorism Act (POTA)**.

Key Provisions of the Act:

- The Act assigns **absolute power to the central government**. It can declare an activity as unlawful, by way of an Official Gazette.
- The act has the death penalty and life imprisonment as the highest punishments.
- Under the act, both **Indian and foreign nationals** can be charged. It will be applicable to the offenders in the same manner, even if the crime is committed on a foreign land, outside India.
- The investigating agency can file a charge sheet in maximum 180 days after the arrests. This duration can be extended further after information to the court.

2004 amendment:

- The act was amended in 2004. It added “terrorist act” to the list of offences, to ban organisations for terrorist activities.
- Till 2004, “unlawful” activities referred to actions related to secession and cession of territory. Following the 2004 amendment, “terrorist act” was added to the list of offences.

2019 amendment:

- The amendment empowers the Central Government to designate individuals as terrorists on certain grounds.
- It empowers the Director-General, National Investigation Agency (NIA) to grant approval of seizure or attachment of property when the case is under investigation by the agency.
- It also empowers the officers of the NIA, of the rank of Inspector or above to investigate cases of terrorism in addition to those conducted by the DSP or ACP or above rank officer in the state.

Section 15, 17 and 18 of UAPA:

- Section 15: engrafts the crime of ‘terrorist action.’

- Section 17: specifies the penalty for soliciting funding to perform a terrorist attack.
- Section 18: engrafts the offence of 'punishment for conspiracy to conduct a terrorist action or any action preliminary to committing a terrorist attack.'

Controversial Provisions:

- The definition of terrorism in **Section 15** of the law is broad and encompassing, encompassing practically every type of violent conduct, political or non-political.
- The police have the authority under **sections 43A and 43B** to search, seize, and arrest anybody engaging in illegal activity without a warrant.
- With the court's consent, the police can remove the accused from judicial custody and place him in police custody.
- The accused does not have the option of anticipatory bail under UAPA. It presumes the accused guilty simply based on the evidence gathered.

Misuse with recent incidents as examples

From the data submitted by the Union Home Ministry to the Rajya Sabha about the cases registered under the Unlawful Activities (Prevention) Act and Sedition(Section-124A):

- Between 2016 and 2019, the total number of the persons arrested and convicted in the country under UAPA were 5,922 and 132 respectively.
- This means only 2.2 % of cases registered under the Act ended in convictions by the court.
- The NCRB does not maintain this data on the basis of religion, race, caste or gender.

Critics of provisions of UAPA cite the following as examples of misuse of the Act:

- recent crackdown on Jamia Millia Students
- Cases filed against the social activists Rona Wilson Varavara Rao, Arun Ferreira, Sudha Bharadwaj and Gautam Navlakha in the 2018 Bhima Koregaon violence
- The arrest of Peasants' leader Akhil Gogoi
- The arrest of Sharjeel Imam
- The arrest of Kashmiri Photojournalist Masrat Zahra
- Arrest of Anand Teltumbde and Gautam Navlakha

Importance of the Ruling in such a scenario

- This is the first time a court has condemned suspected abuse of the UAPA against persons in instances that do not necessarily come under the definition of "terrorism."
- According to data presented in Parliament by the Ministry of Home Affairs in March, a total of 1126 cases were filed under UAPA in 2019, a significant increase from 897 in 2015.
- The court has therefore raised the threshold for the State to charge an individual with terrorism under this law.
- Without questioning the basic premise of anti-terror laws, the court has cautioned against using them for partisan political purposes to shut debate and dissent that are ordinarily considered legitimate.
- However, the Supreme Court has said this High Court order will not be a precedent.

Amendments needed in the Act

- Anti-terror laws should not be used as tool to silence the critics of government
- Need to set up a review committee to examine and supervise the process of designating individuals as terrorists and investigation of cases with objectivity and fairness.
- There is a greater role for the judiciary here to

carefully examine the cases of alleged misuse. Arbitrariness under the law should be checked through Judicial review.

- Drawing the line between individual freedom and state obligation to provide security is a case of classical dilemma. It is up to the officers to ensure professional integrity, follow the principle of objectivity and avoid any misuse.
- The term “Unlawful activities” is so vague that several activists against the interest of the ruling party can be tagged as a terrorist (Bhima Koregaon Case). Therefore the definition must be clearly defined in unambiguous terms

Mould your thought: Discuss the importance of the Delhi High Court Judgement in respect to UAPA Act.

Approach to the answer:

- Introduction
- Give brief about the UAPA Act and its misuse
- Discuss the Delhi HC Judgment
- Mention the importance of this judgement
- Conclusion