

Section 43D(5) of the Unlawful Activities Prevention Act (UAPA)

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In news- Just two days before his death, Human rights activist, Stan Swamy, accused in the **Elgar Parishad case** had moved the Bombay High Court challenging Section 43D(5) of the Unlawful Activities Prevention Act (UAPA).

Key updates-

- The test for denying bail under the UAPA is that the court must be satisfied that a “prima facie” case exists against the accused.
- In 2019, the SC defined prima facie narrowly to mean that the courts must not analyse evidence or circumstances but look at the “totality of the case” presented by the state.
- Section 43D(5) reads that **“No person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release”**.
- It has many times been used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

Unlawful Activities (Prevention) Act, 1967–

- It 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- It is considered to be the **predecessor of** laws such as the (now repealed) Terrorist and Disruptive Activities (Prevention) Act (**TADA**) and Prevention of Terrorism Act (**POTA**).
- The Act assigns absolute power to the central government that 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.
- The act was **amended in 2004** and added **“terrorist act”** to the list of offences, to ban organisations for terrorist activities.
- The **2019 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.