

UAPA amendment Bill 2019

August 15, 2019

Manifest pedagogy:

Recently the central government has passed a plethora of laws to strengthen the security of the nation from external state and non-state actors. In this light, knowing a brief history of the anti-terror laws in India is necessary in understanding the current amendments. Apart from this there is always the continuing debate between Human rights protection and state powers. Both these aspects are important for UPSC Prelims and Mains

Source: *The Hindu*

In news:

- Parliament has passed Unlawful Activities (Prevention) Amendment bill, 2019

Placing it in syllabus:

- **Paper 3 – Internal Security**
- Challenges to internal security through communication networks, role of media and social networking sites in internal security challenges, basics of cyber security; money-laundering and its prevention
- Security challenges and their management in border areas; linkages of organized crime with terrorism

Static dimensions:

- POTA
- TADA
- UAPA, 1967
- The Maharashtra Control of Organised Crime Act, 1999 (MCOCA)
- Examples of abuses of the anti terror laws

Current dimensions:

- Provisions of UAPA amendment bill, 2019
- Issues regarding the bill
- Safeguards for Human rights in the new bill

Content:

Parliament has passed Unlawful Activities (Prevention) Amendment Bill, 2019

Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA):

- The Act defined what “terrorist act” and “disruptive activities” mean, and put restrictions on the grant of bail.
- It also gave enhanced power to detain suspects and attach properties.
- The law made “confessions given to a police officer” admissible as evidence.
- Separate courts were set up to hear cases filed under TADA

Prevention of Terrorism Act ,2002(POTA):

- In wake of the 1999 IC-814 hijack and 2001 Parliament attack, there was a clamour for a more stringent anti-terror law.
- This came in the form of “Prevention of Terrorism Act” (POTA), 2002
- According to the Act, a suspect could be detained for up to 180 days by a special court.
- The law made fundraising for the purpose of terrorism a “terrorist act”.\
- Union government was mandated to maintain a list of organisations that would fall under the act’s radar and had full authority to make additions or removals
- However, reports of gross misuse of the Act by some

state governments led to its repeal in 2004

Unlawful Activities Prevention Act (UAPA), 1967:

- The UAPA, an upgrade of the TADA Act (lapsed in 1995) and the POTA Act (repealed in 2004) was originally passed in the year 1967.
- Till the year 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.
- By inserting specific chapters, the amendment criminalised the raising of funds for a terrorist act, and holding of the proceeds of terrorism.
- Membership of a terrorist organisation and support to a terrorist organisation were also made a crime.
- It increased the time available to law-enforcement agencies to file a charge sheet to six months from three months.
- The law was again amended in 2008 after the Mumbai Serial attacks, and again in 2012 to make it more comprehensive.
- The definition of “terrorist act” was expanded to include offences that threaten economic security, and counterfeiting Indian currency.
- Procurement of weapons was also made a crime under the act.
- Additional powers are granted to courts to provide for attachment or forfeiture of property equivalent to the counterfeit Indian currency involved in the offence or to the value of the proceeds of terrorism involved in the offence.
- As of now, under Section 35 of the UAPA, there are 39 groups in the list of banned terrorist organisations, the latest one to have been added being the NSCN (Khaplang)

Maharashtra Control of Organised Crime Act, 1999 (MCOCA):

- It is a law enacted by Maharashtra state in 1999 to combat organised crime and terrorism.
- It has stringent and deterrent provisions including, in certain circumstances power to intercept wire, electronic or oral communication to control the menace of organised crime.
- Unlike normal law the confessions before senior police officers are admissible, not only against the accused giving the confession but also against the other accused in the same case.
- There is no provision for granting anticipatory bail for 6 months to the accused.
- In 2002 in order to curb the increasing crimes of the organised gangs this law was extended to the National Capital Territory of Delhi by the Union Home Ministry

Examples of abuse of anti- terror laws:

The UAPA was first passed in 1967 by Indira Gandhi-led Congress government as a measure against secession. UAPA gave the central and state governments the power to ban an organisation through an announcement alone. While investigating the case of violence at the Bhima Koregaon memorial in Pune in 2018, the police raided the homes of several well-known human-rights activists, scholars and lawyers, and arrested five among them under the UAPA act. This move was heavily criticised

TADA act, passed in 1985 during the insurgency in Punjab gave enormous power to law-enforcement agencies as they no longer had to produce a detainee before a judicial magistrate within 24 hours. In 1990, the Gujarat police booked over five thousand people, most of them were Muslims, under the act. TADA arrests stood at 1,600 in Punjab and at 2,000 in Jammu and Kashmir

While TADA was scrapped in 1995, the 2001 attack on parliament led to POTA Act. Like TADA, POTA also gave extraordinary

powers to investigative authorities, and was also misused thoroughly. State governments used the act to arrest political opponents—the Jayalalithaa government in Tamil Nadu arrested the Marumalarchi Dravida Munnetra Kazhagam's Vaiko.

The Mayawati-led Uttar Pradesh government held Raghuraj Pratap Singh. In 2003, post Godhra riots, the Gujarat government invoked POTA against 123 Muslims accused of starting the Godhra fire, but not against any Hindus for the subsequent violence

In 2004, the newly formed United Progressive Alliance government, led by the Congress, repealed POTA, but the same government amended the UAPA in 2004, 2008 and 2012, making the law more vicious. The 2008 changes to the law clearly enabled human-rights violations. It does not include any review mechanisms, which brought a sense of permanence to the repressive laws. It also granted immunity from prosecution to central and state governments, and their employees

Provisions of UAPA amendment bill, 2019:

The Bill amends the Unlawful Activities (Prevention) Act, 1967. The Act provides special procedures to deal with terrorist activities, among other things

Who may commit terrorism:

Under the Act, the central government may designate an organisation as a terrorist organisation if it: (i) commits or participates in acts of terrorism, (ii) prepares for terrorism, (iii) promotes terrorism, or (iv) is otherwise involved in terrorism. The **Bill also empowers the government to designate individuals as terrorists** on the same grounds

This has been done as it is seen that when a terrorist organization is banned, it's members form a new organization to spread terrorism

Approval for seizure of property by NIA:

Under the Act, an investigating officer is required to obtain the prior approval of the Director General of Police to seize properties that may be connected with terrorism. The Bill adds that **if the investigation is conducted by an officer of the National Investigation Agency (NIA), the approval of the Director General of NIA would be required for seizure of such property**

It has been seen that many times a terror accused own properties in different states. In such cases, seeking approval of DGPs of different states becomes very difficult, and the delay caused by the same may enable the accused to transfer properties

Investigation by NIA:

Under the Act, investigation of cases may be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above. The Bill additionally **empowers the officers of the NIA, of the rank of Inspector or above, to investigate cases**

Insertion to schedule of treaties:

The Act defines terrorist acts to include acts committed within the scope of any of the treaties listed in a schedule to the Act. The Schedule lists nine treaties, including the Convention for the Suppression of Terrorist Bombings (1997), and the Convention against Taking of Hostages (1979). The **Bill adds** another treaty to the list. This is the *International Convention for Suppression of Acts of Nuclear Terrorism (2005)*.

No change is being made in arrest or bail provisions. Also, the provision that the burden of proof is on the investigating agency and not on the accused, has not been changed

Issues regarding the bill:

- The Bill which allows the central government to name an individual as a terrorist if it “believes” he is involved is based on presumption of guilt and can have serious consequences and is against the principle of natural justice.
- The proposed law allows the National Investigation Agency (NIA) to go to any state without taking permission from state police concerned for checking anti-terror activities. This is against the federal structure of the country.
- There is apprehension of the agency being misused for political vendetta.
- Opposition raised apprehensions about the misuse of the proposed law and of innocent and people of a particular religion being harassed.
- In case of misuse of the law, no compensation is provided to the victim

Safeguards in the bill:

Security of individuals is a basic human right and protection of this right is the fundamental obligation of any government. Anti-terror laws play an important role in fulfilling this responsibility

- The amendments in the UAPA bill, 2019 empowering the NIA will expedite the process of investigation and prevent procedural delays.
- This Act can be used by NIA and states as well, thus strengthens the functioning of NIA without diluting the power of states.
- The addition of International Convention for the Suppression of Acts of Nuclear Terrorism (2005) to the list of treaties will help counter the critical threat of nuclear terrorism.
- Robust procedures are required to be followed by the

concerned officials before declaring an individual as a terrorist as well as a **four-stage provision** that includes application to central government and a review committee that protects these rights. If an individual wants to approach the court, he/she can do so.

- Including individual terrorist in the Schedule enables seizure or attachment of properties of those organisations
- Identifying individuals as a terrorist is a step forward in strengthening global efforts to counter terrorism

The possibility of the misuse of any law drafted with good intentions cannot be thoroughly denied. However, diluting necessary anti-terror measures will not be a quick fix. Unconventional problems cannot be solved by conventional methods. Hence, the UAPA amendment is a welcome step

Suggestions:

- There should be a better coordination among different agencies and NIA.
- The coordination should be done through an institutionalised set up and not on case-to-case basis.
- Crimes including bio-terrorism and narco-terrorism should be covered under the purview of this law.
- Judicial system needs to be further strengthened and there is also a need for police reforms.
- There is a need to ensure that minorities do not suffer and police should file a charge sheet within 90 days and not 180 days as mentioned in the bill