

# Unlawful Activities Prevention Act (UAPA)

October 8, 2022

## Manifest Pedagogy:

The Unlawful Activities Prevention Act (UAPA) lays down the definitions and rules for designating an organisation as an “unlawful association” if it is engaged in certain types of activities. UAPA gives unfettered powers to the government and leaves a person vulnerable in front of the government. This Act compromises with constitutional values such as freedom of speech, personal liberty and the right to a fair trial. However given the evolving nature of crime and terrorist activities, it is not possible to completely abandon the law. Hence focus must be placed on balancing the security interests with fundamental freedoms granted by the constitution.

**In News:** Recently the central government issued a notification to declare the Popular Front of India (PFI) as an “Unlawful Association under UAPA act.

**Placing it in the Syllabus:** Polity and Security

## Static Dimensions

- About UAPA law
- What is a UAPA tribunal?

## Current Dimensions

- Background
- What does the ban mean?
- The process of banning an organisation
- Need for UAPA law
- Issues with UAPA

## Content

## Background

- The MHA notification published on September 27, said that the PFI and its affiliated organisations are being notified as “Unlawful Associations” with immediate effect.
- The notification accused the PFI of “pursuing a secret agenda to radicalise a particular section of society working towards undermining the concept of democracy and showing sheer disrespect towards the constitutional authority and constitutional set up of the country.”
- It has been alleged that the “PFI is involved in several criminal and terror cases and shows sheer disrespect towards the constitutional authority of the country and, with funds and ideological support from outside, it has become a major threat to the internal security of the country.”
- Further, the PFI is accused of “engaging in violent and subversive acts.

## About UAPA Law

- It was enacted to provide for more effective prevention of certain unlawful activities of individuals and associations, and for dealing with terrorist activities.
- The Unlawful Activities Prevention Act (UAPA) lays down the definitions and rules for designating an organisation as an “unlawful association” if it is engaged in certain types of activities.
  - The government can then issue a notification designating such an organisation as a terrorist organisation, if it believes that the organisation is part of “terrorist activities.”
- Both Indian and foreign nationals can be charged. It is applicable even if the offence is committed outside india.
- A charge sheet can be filed in **maximum 180 days** after

the arrests. The investigation **has to be completed within 90 days** and if not, the accused is eligible for default bail.

- A Special Court under the UAPA conducts trials.
- Under **section 2(o)** of the UAPA, an unlawful activity in relation to an individual or association means –
  - Any action taken by such an individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),
    - Which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession 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 group of individuals to bring about such cession or secession.
    - Which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India.
    - Which causes or is intended to cause disaffection against India;
- The UAPA also defines an “Unlawful Association” under **section 2(p)** as meaning any association –
  - Which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity.
  - Which has for its object any activity which is punishable under section **153A (45 of 1860)** or **section 153B of the Indian Penal**

**Code**, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity.

▪ **2019 Amendment under UAPA Act, 1967:**

- Union government may designate an individual or an organisation as a terrorist organisation if it:
  - commits or participates in acts of terrorism, prepares for terrorism, promotes terrorism, or is otherwise involved in terrorism.
- Approval of Director- General for seizure of property if the investigation is conducted by an officer of the National Investigation Agency (NIA).
- Officers of the rank of Inspector or above in NIA can investigate cases.
- International Convention for Suppression of Acts of Nuclear Terrorism (2005) is added under the schedule under which terrorist act is committed.
- Under the Act, therefore, 'unlawful activity' is not limited to terror activities relating to causing direct violence or attacks, it also includes any activities that disrupt the sovereignty and territorial integrity of the country, disrupts the economic stability of the country or causes disharmony or feelings of enmity.
- Related and ancillary acts, including financing, support or promotion of any such activities are also "unlawful activity".

**What does the ban mean**

- The notification means that the membership of, support or financing to the PFI and the allied banned organisations. Any person who is a member of these organisations can face arrest, and joining membership of these organisations is a criminal offence.
- The government can also seize the properties, bank

accounts and offices connected to these organisations.

### **The process of banning an organisation**

- Before issuing a notification under **Section 3** of the UAPA, the government conducts an analysis of threat perception to peace in the country, secession activities, territorial safety, terrorism etc.
- The recommendations and complaints by a state government can also be considered based on FIRs filed or incidents in the state.
- **Section 3** also allows the government to implement an “immediate ban” on an organisation, “if the central government is of the opinion that circumstances exist which render it necessary”.
- However, the Gazette notification of the government is required to give reasons and allegations against the organisation and its members.

### **What is a UAPA tribunal?**

- The UAPA provides for a tribunal **under a High Court judge** to be constituted by the government for its bans to have long-term legal sanctity.
- Orders to declare an organisation as “unlawful” are issued by the Centre under **Section 3** of the UAPA. The provision says that “no such notification shall have effect until the tribunal has, by an order made under Section 4, confirmed the declaration made therein and the order is published in the Official Gazette.
- Thus, a government order would not come into effect until the tribunal has confirmed it. However, in exceptional circumstances, the notification can come into effect immediately once the reasons for it are recorded in writing. The tribunal can endorse or reject it.
- **The procedure**

- According to **Section 4** of the UAPA, after the Centre declares an organisation “unlawful”, its notification must reach the tribunal **within 30 days** to adjudicate “whether or not there is sufficient cause” for the move.
- After this, the tribunal calls upon the association, by notice in writing, to show cause within 30 days why it should not be declared unlawful. Once this is done, the tribunal holds an inquiry and decides the matter within six months.

- **Constitution of the tribunal**

- The tribunal consists of only one person, who has to be a High Court judge. If a vacancy (other than a temporary absence) occurs in the Tribunal, the Centre appoints another judge and the proceedings continue from the stage at which the vacancy is filled.
- The Centre is to provide to the tribunal such staff as necessary for the discharge of its functions
- . All expenses incurred for a tribunal are borne out of the Consolidated Fund of India.

- **Its powers**

- The tribunal has power to regulate its own procedure, including the place at which it holds its sittings. Thus, it can hold hearings in different states for allegations pertaining to those states.
- To make inquiries, the tribunal has the same powers as vested in a civil court under the Code of Civil Procedure, 1908.

- All proceedings before the Tribunal are deemed to be judicial proceedings.
- **Issues with the tribunal**
  - Proceedings of the tribunal have been criticised for being somewhat opaque. The UAPA permits public non-disclosure of information on bans given the sensitivity involved.
  - It has been said that often, the government gives evidence in sealed cover, leaving no opportunity for an organisation to defend itself.

### **Need for UAPA Law**

- It was initially promulgated to enable the government to curb secessionist activities.
  - For instance, states of Nagaland and Tamil Nadu were demanding a separate nation for them during the 1960s.
- The law provides greater powers of search, seizure, and detention that are beneficial for aiding the investigation and preventing the occurrence of a bigger crime.
- In 1963, Article 19(2) of the Constitution was amended for the last and final time. The words 'the sovereignty and integrity of India' were inserted in it as one more exception to the right to free speech. This enabled the parliament to enact the UAPA based on this exception.
- Countries across the world have formulated stringent laws for effectively protecting the security framework in their jurisdiction.
  - For instance, the United States, Israel, China, Pakistan, and European Union have dedicated laws to declare 'individuals' as terrorists.

### ***Issues with UAPA***

- **Misuse:** It has been seen in the past that the Acts like

POTA and TADA, which were specifically enacted to counter terrorism, were being misused.

- **Federalism:** Police is a state subject under VIIth Schedule. Giving NIA authority to investigate and attach property is viewed as encroachment over the state's jurisdiction.
- **Denial of Bail:** Under **Section 43D(5)**, bail cannot be granted to a suspect if the court is of the opinion that there are reasonable grounds to believe that the charges are prima facie true.
- **Burden of Proof:** Accused has to show that the case is false which is opposite of other criminal offences where the burden is on the State.
- The sharp surge in the state's use of this provision in a sweeping range of alleged offences – against tribals in Chhattisgarh, those using social media through proxy servers in Jammu and Kashmir; and journalists in Manipur among others.
- **Restricts freedom**-UAPA empowers the parliament to restrict the rights and freedoms of citizens to protect 'the sovereignty and integrity of India.
- **Bypass fundamental rights**-It can simply be used to bypass fundamental rights and procedures. For instance, those arrested under UAPA can be incarcerated up to 180 days without a charge sheet being filed. It thus directly violates **Article 21** of the constitution.
- **Frivolous Filing:** The wide and ambiguous provisions of the act enables the state to impose frivolous charges on innocent individuals. This is testified by a mere 2.2% conviction rate between 2019-2019.

### Wayforward

- To prevent frivolous arrests, compensation should be provided out of government funds.
- Arrests should not be made for political vendetta. Proper information and investigation should be done



before booking under the provisions of UAPA.

- The Act needs to be amended, in order to ensure a constitutional functionary who is independent from the Executive, be in charge of sanctions for prosecutions and investigations under this Act. Maybe a High Court Judge could be designated for this purpose.
- The existing UAPA does have effective provisions to combat terrorism (cognizable offence) but there are also some defects and demerits which needs to be addressed properly to make the law effective and efficient to prevent and combat terrorism.
- Duty upon the judiciary to ensure that the arrest itself is based on cogent and irrefutable evidence.
- The government needs to educate the Law enforcement authorities to prevent the problem of misuse.
  - The enforcement authorities should be trained regarding the application and non-application cases of UAPA. Further, they should be made sensitive towards Right of Dissent in a democratic setup.

### **Mould your thoughts**

Q.UAPA gives unfettered powers to the government and leaves a person vulnerable in front of the government.Critically Discuss (50 words)

### **Approach to the answer.**

- Introduction about the law.
- Need for such a law
- Issues with the lay
- Suggestions to make it more effective
- Wayforward and conclusion.