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# **UNRAVELLING THE LOW CONVICTION RATE AND UNVEILING FLAWS IN THE UNLAWFUL ACTIVITIES PREVENTION ACT**

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## **Abstract**

*The Unlawful Activities Prevention Act (UAPA) is an important legislation in India designed to combat acts of terrorism and unlawful activities. This research paper seeks to investigate the persistent issue of low conviction rates in cases filed under the UAPA and to unveil the inherent flaws in the legislation. In recent years, there has been growing concern regarding the potential misuse of the UAPA, leading to the wrongful targeting of individuals and communities. This study employs a multi-disciplinary approach which includes, but does not limit to, legal analysis, case studies, and empirical research, to analyse the various factors contributing to the low conviction rate. The research uncovers a range of critical issues, including the broad and ambiguous language of the UAPA, which allows for its misapplication and abuse. It examines the impact of preventive detention, prolonged incarceration, and the denial of bail on the lives of the accused. By examining a series of UAPA cases and their outcomes, this paper identifies patterns of overreach by law enforcement agencies and shortcomings in the legal process. The research also highlights the disproportionate burden placed on marginalised communities and religious minorities, who are often the primary targets of UAPA cases. In conclusion, this research paper calls for a comprehensive review of the UAPA, suggesting necessary amendments to bring it in line with international human rights standards and to ensure that it serves its intended purpose of combating terrorism without compromising the principles of natural justice and fairness. It also underscores the importance of safeguarding civil liberties and the presumption of innocence in the fight against unlawful activities.*

**Keywords:** UAPA, Terrorism, Low Conviction, Misuse, Lives

## **Introduction**

The Unlawful Activities Prevention Act (UAPA) is a significant piece of legislation within the

legal framework of India, designed to address the critical concerns of national security, terrorism, and unlawful activities. Enacted in 1967, the UAPA has undergone several amendments, reflecting the evolving threats and complexities of modern-day security challenges. It empowers law enforcement agencies to investigate, prevent, and prosecute activities that pose a threat to the sovereignty and integrity of India.

The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as UAPA), often considered the Indian counterpart to similar anti-terrorism laws in various countries, was crafted to provide law enforcement agencies with robust legal tools to combat terrorism and unlawful activities. It empowers the government to proscribe organisations and individuals suspected of involvement in unlawful activities and permits preventive detention in specific circumstances. It also establishes procedures for the prosecution of individuals charged under the Act, with the primary objective of protecting the nation and its citizens from acts of terror and subversion. Over the years, the UAPA has played a crucial role in addressing national security concerns, and it has been instrumental in dismantling and prosecuting terrorist networks.

The UAPA, a pivotal legal instrument in India's fight against terrorism and unlawful activities, has consistently come under scrutiny for its low conviction rates and concerns about potential misuse. Enacted in 1967 and subsequently amended multiple times, the UAPA empowers law enforcement agencies to combat terrorism and subversion. However, as time has passed, questions have arisen regarding the Act's efficacy, fairness, and compatibility with international human rights standards. As a tool intended to safeguard national security, the UAPA must strike a delicate balance between protecting society from unlawful activities and upholding the principles of justice, fairness, and individual liberties. In recent years, concerns about the potential misuse and overreach of the UAPA have intensified, raising fundamental questions about the scope and application of the law. While it is crucial to combat terrorism and unlawful activities effectively, it is equally imperative to ensure that the legal framework underpinning these efforts respects the fundamental rights and dignity of individuals accused under its provisions.

The focus of the paper is on three primary issues, namely, a) The low conviction rate under the UAPA and the identification of the flaws in the Act that contribute to this problem; b) The implications of the low conviction rate under the UAPA for the rule of law in India; c) The improvements that can be made in the Act to ensure that it is used effectively to prosecute those who commit unlawful activities. It starts with

In conclusion, this paper seeks to provide a comprehensive understanding of the challenges and limitations of the UAPA while underlining the necessity for a thorough review of the legislation. The overarching goal is to advocate for amendments that bring the UAPA in line with international human rights standards, ensuring that it effectively counters unlawful activities without compromising the principles of justice, fairness, and the presumption of innocence.

### **Historical Backdrop of the UAPA:**

The roots of the UAPA can be traced back to the colonial times when the British Raj introduced the Criminal Law Amendment Act, which first defined the concept of “unlawful association”, to criminalise Indian freedom fighters. The provisions of the Act was kept even after independence but the government used it against their own citizens who went against the policies of the ruling party at the time, i.e., the Indian National Congress. In the subsequent years, the Indian Judiciary, in cases like VG Row V. State of Madras, AK Gopalan V. State of Maharashtra, and Romesh Thapar V. State of Madras, ruled that citizens' fundamental rights can only be curtailed in extreme circumstances, making Section 124A of the Criminal Law (Amendment) Act unconstitutional. The 1st amendment was introduced after this to overcome the restrictions put by the judiciary and over the years the arbitrariness of the government only increased.

The 16th amendment led to the introduction of the Unlawful Acts (Prevention) Act, which was withdrawn due to protests but the second draft was finally enacted into law in 1967. The Act gave arbitrary powers to the Central Government. Section 5 of the Act gave them the power to ban organisations without giving any justification for doing the same. The freedom to form associations is protected under Article 19 of the constitution and this was a violation of the same. The Act also constituted a Tribunal which gave more power to the Central Government to deem any person or organisation a terrorist or a terrorist organisation. The UAPA was only the tip of the iceberg. This legislation led to more draconian laws like the Terrorist and Disruptive Activities (Prevention) Act (TADA), 2002 and the Prevention of Terrorism Act (POTA), 2002 which was introduced with the intention to prevent anti-state activities in states in India. TADA and POTA were controversial statutes used to suppress dissidents, but were repealed due to media and judicial pushback. The government amended the 1967 UAPA bill in 2004 and 2008 to incorporate controversial aspects of these acts in it.

In 2012, the National Counter Terrorism Centre (NCTC) was set up under the UAPA which further increased the arbitrary power given to the government. The NCTC has the power to arrest, search or detain any person or organisation that they suspect to be involved in terrorist activities without obtaining prior permission. The latest amendment to the UAPA was passed in 2019.

### **Low Conviction Rate under the UAPA**

As per the National Crime Records Bureau (NCRB) data, 8,521 UAPA cases were reported between 2014 and 2021. In these cases, the accused can either be convicted, discharged or acquitted. If an accused is discharged, they can be rearrested after further inquiry since discharge usually means that there is no prima facie evidence against the accused. Between 2014 and 2021, of the total cases that saw an end of trial, an average of 72.4% were discharged or acquitted and 27.5% saw convictions. The low conviction rate under the Act is alarming and the central problem lies in the manner the legislation is framed and the arbitrary power that is provided to the government.

The definition of a terrorist act provided by UAPA differs from that provided by the United Nations (UN) Special Rapporteur on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism. The three mandatory elements that has to present in order to declare an act a terrorist act, under the Special Rapporteur are, a) deadly means used; b) intention to cause fear among the people or force the government or any other international organisation into doing or abstaining from doing a certain act; c) an aim to promote an ideological goal. Under the UAPA, however, the definition is very ambiguous. Section 15 of the Act defines a terrorist act as an act which includes the death of, or injuries to, any person, damage to any property, etc. Every citizen has a responsibility to know the criminal law, and if the law is not defined with greatest accuracy, citizens are not given a fair warning. The fundamental concept of the rule of law ensures that those subject to the law understand the law and its practical ramifications. Such vaguely defined phrases place more burden on the courts when interpreting terms on a case-by-case basis, leaving citizens in a state of confusion as to what really constitutes an offence.

The number of cases pending investigation is continuously rising at an yearly average pace of 14.38%. The cases pending investigation were 1,857 in 2014, which rose by 37% to 4,021 in 2020 and now, according to latest data, the number was 3,998 in 2021. At the end of 2021, as many as 2,041 cases were pending investigation for more than three years. As many as 172 cases had not gone into trial for a decade or more, in 2021. Presumption of innocence is a principle that

is followed by the Indian judicial system. Article 21 enables the State to violate the right to life and personal liberty only if a fair, just, and reasonable judicial procedure has been followed. The connection between Article 21 and the presumption of innocence can be traced back to the 'just, fair, and reasonable' criterion. However, under the UAPA, people arrested under the UAPA can be held for 180 days without even being charged, which clearly breaches Article 21 of the Constitution. The data above indicates the rising number of cases under UAPA that are pending. Most of these detainees are not even given a chance at trial for a long period of time which is a violation of their fundamental rights under Article 14, 19 and 21.

### **Impact of low conviction rate on accused individuals**

The low conviction rate under India's UAPA has a significant impact on accused individuals. The Act allows law enforcement authorities to imprison people for longer periods of time without trial, which, combined with the low conviction rate, results in prolonged pre-trial detention. Section 43-D of the Act limits bail, allowing authorities to imprison someone for up to 180 days without bringing official charges, which can take a toll on the psychological and emotional well-being of the accused. The uncertainties and personal turmoil they experience during this time are compounded by the broader consequences they face.

Accused individuals, even if acquitted in UAPA cases, often experience social stigma and isolation. The stigma associated with being accused under the Act may persist, affecting an individual's opportunities, relationships, and future prospects. The Act's broad definition of "unlawful activity" (Section 2(o)) allows a wide range of acts to fall under its purview. This can tarnish their reputation and make it challenging to reintegrate into society, leading to social ostracism and impacting their personal and professional relationships. In addition to the social stigma, accused individuals may face significant economic hardships. The UAPA provides for asset freezing under Section 38, which allows authorities to seize and freeze the assets of accused individuals. This can lead to job loss and financial instability, resulting in a further burden for both the accused and their families.

### **Reforming the UAPA for Effective Prosecution and Civil Liberties**

An important change that has to be brought about in the UAPA is to ensure that proper and meticulous investigations are conducted in UAPA cases. There must be adequate investigation conducted prior to detaining or arresting a person under the Act because arresting them arbitrarily

can lead to serious implications like violation of their fundamental rights and adverse effects on their mental well-being.

Ambiguity within the UAPA also poses a significant challenge. To address this issue, it is imperative to clarify the definitions and interpretations of terms used in the Act. This clarification not only benefits law enforcement but also ensures that the accused have a clear understanding of the charges against them. A transparent and consistent legal framework minimises potential misuse, as it prevents overly broad or vague interpretations of the Act's provisions.

Moreover, it is essential to recognize that the UAPA operates within the broader context of the criminal justice system. As such, systemic issues affecting the entire system, such as delays in trials, should also be addressed. Streamlining the trial process and ensuring that cases move through the legal system in a timely manner is paramount. Delays can undermine the effectiveness of the UAPA by causing cases to languish, potentially leading to a loss of critical evidence, witness recollections, and, importantly, prolonged pre-trial detention. Timely trials not only protect the rights of the accused but also contribute to higher conviction rates when cases are adjudicated based on the strength of evidence and legal arguments.

Nevertheless, as these enhancements are pursued, it is crucial to maintain a delicate balance between the imperative for effective prosecution and the protection of individual rights and civil liberties. Striking this balance is a fundamental challenge in the context of the UAPA, given its potential for misuse and the potential infringement on fundamental rights. Comprehensive reforms must be guided by the principles of justice, fairness, and the preservation of civil liberties to ensure that the UAPA fulfils its intended purpose without compromising the rule of law.

### **Implications on the Rule of Law**

The Unlawful Activities Prevention Act (UAPA) in India carries significant implications for the rule of law and individual rights in the country. One of the foremost concerns revolves around the arbitrary powers it grants to the state. The UAPA allows the government to declare associations as unlawful or label individuals as terrorists. This, in turn, has serious ramifications for individuals' rights and freedoms, as these designations can result in arrests, detentions, and curtailment of civil liberties without proper checks and balances.

Moreover, the UAPA's impact extends to the prison justice system in India. Its provisions, namely, sections 13, 15, and 43(D), restrict the freedom of Indian citizens and have contributed

to a notable increase in the prison population. This has consequently led to concerns about prison overcrowding and the conditions and treatment of prisoners. The implications of the UAPA on the prison system underscore the need for careful consideration of its provisions and the balance between national security and individual rights.

The broad definitions and provisions within the UAPA can also lead to complexities within anti-terrorism law. For example, the Act's provisions can undermine the presumption of innocence, a cornerstone of criminal law. Some sections of the UAPA shift the burden of proof to the accused, which reverses the principle of "innocent until proven guilty." This contravenes fundamental principles of justice, and any law that does so raises concerns about its compatibility with the rule of law.

Furthermore, the UAPA has faced criticism for its potential use as a tool to stifle dissent. The Act includes provisions that can be interpreted to criminalise acts causing 'disaffection against India.' In practice, this has been construed to encompass dissent, critique of the government, and peaceful political activism. The expansive scope of the UAPA's definitions raises concerns about freedom of expression and the right to criticise the government, which are essential aspects of democratic societies.

In conclusion, while the UAPA serves vital national security interests, its implications for the rule of law and individual rights in India warrant careful scrutiny and potential reform. Balancing the need to combat unlawful activities with the protection of fundamental rights and the principles of justice and fairness is a complex and essential challenge. Addressing these concerns is paramount to ensuring that the UAPA operates in a manner consistent with the rule of law and international human rights standards.

### **International benchmarks**

The Unlawful Activities (Prevention) Act (UAPA) in India and anti-terrorism legislation in other countries share common goals of national security and countering terrorism. However, the application and implications of these laws vary based on each country's unique socio-political context. A comparative analysis between the UAPA and the USA's Patriot Act reveals distinct differences in the deployment of anti-terrorist legislation. Both laws grant substantial powers to the state in the name of national security. However, the UAPA has been criticised for its broad definitions and discretionary powers, leading to potential misuse and infringement of individual

rights and freedoms. In contrast, the Patriot Act, while also contentious, has specific provisions regarding surveillance and intelligence gathering to prevent terrorist activities.

## **Conclusion**

The Unlawful Activities (Prevention) Act (UAPA) has been a subject of significant concern due to its low conviction rates and several identified flaws. Our examination revealed that these issues stem largely from systemic challenges within the legal and criminal justice system, as well as specific provisions within the Act itself. The Act's emphasis on punitive rather than preventive measures has led to a reactive approach in dealing with unlawful activities. This not only influences the Act's effectiveness but also impacts the prison justice system, leading to an increase in prison population and related challenges. The Act has also been criticised for being a tool to stifle dissent, further raising concerns about its implications for individual rights and freedoms.

Addressing these issues necessitates a comprehensive approach that includes clarifying the Act's provisions, ensuring proper investigation and prosecution processes, and focusing on preventive measures and rehabilitation. It is crucial, however, that any reforms to the UAPA strike a balance between national security interests and the protection of individual rights and liberties, as the rule of law demands. Any efforts to unravel the low conviction rate and unveil flaws in the UAPA must be guided by the principles of justice and fairness, and adherence to human rights guidelines.

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