
THE UNLAWFUL ACTIVITIES (PREVENTION) ACT AND COUNTER-TERRORISM FRAMEWORK IN INDIA: BALANCING NATIONAL SECURITY AND FUNDAMENTAL RIGHTS

Ishita Gupta, Bharati Vidyapeeth Institute of Management and Research (BVIMR), New Delhi

ABSTRACT

Unlawful Activities (Prevention) Act (UAPA) is the principal anti-terror legislation in India and plays a central role in the country's counter-terrorism framework. Enacted initially in 1967 to address unlawful associations and activities threatening national integrity, the Act has undergone several amendments, especially after major security incidents, expanding its scope to deal specifically with terrorism, terrorist organizations, and individuals designated as terrorists.

This paper examines the legal framework of UAPA and its role in combating terrorism in India. It analyses the key provisions of the Act, including investigation powers, detention, bail restrictions, and the process of declaring organizations or individuals as terrorists. The study also explores the constitutional concerns arising from the implementation of the Act, particularly in relation to fundamental rights guaranteed under Articles 14, 19, and 21 of the Constitution of India.

The research adopts a doctrinal methodology based on statutes, judicial decisions, legal articles, and secondary sources. It reviews important judgments of the Supreme Court and High Courts to understand judicial interpretation and the practical application of the Act. The paper further highlights criticism regarding misuse, prolonged detention, and concerns related to civil liberties and due process.

The study concludes that while UAPA is an important legislative tool for national security, its broad provisions and strict procedural safeguards raise serious questions about balancing state security with individual freedoms. It emphasizes the need for reforms to ensure effective counter-terrorism measures while safeguarding constitutional rights and democratic values.¹

¹ Unlawful Activities (Prevention) Amendment Act 2004.
Unlawful Activities (Prevention) Amendment Act 2008.

Introduction:

Unlawful Activities (Prevention) Act is one of the most significant legislations governing counter-terrorism measures in India. It was enacted in 1967 with the primary objective of preventing unlawful activities that threatened the sovereignty and integrity of the nation. Over time, particularly after the repeal of Terrorist and Disruptive Activities (Prevention) Act and Prevention of Terrorism Act, UAPA evolved into India's principal anti-terror law. Several amendments have expanded its scope, empowering the State to address modern threats of terrorism, unlawful associations, and activities considered prejudicial to national security.

Terrorism has emerged as one of the most serious challenges to national and international peace. Incidents of organized violence, insurgency, and cross-border terrorism have prompted governments worldwide to strengthen domestic security laws. In India, concerns relating to internal security, separatist movements, and terror attacks have shaped the legal and policy framework for anti-terror measures. UAPA became central to this framework by providing legal mechanisms for investigation, detention, prosecution, and designation of terrorist organizations and individuals.

Statement of Problem:

Unlawful Activities (Prevention) Act was enacted to protect the sovereignty and integrity of India and to provide legal mechanisms for dealing with unlawful and terrorist activities. With the changing nature of terrorism and national security threats, the Act has been repeatedly amended to expand governmental powers of investigation, arrest, detention, and prosecution. While these measures aim to strengthen internal security, they have also raised significant concerns regarding the protection of constitutional rights and civil liberties.

Objectives of Study:

The objective of this study is to examine Unlawful Activities (Prevention) Act as the principal anti-terror legislation within the counter-terrorism framework of India. It aims to analyze the historical development and key provisions of the Act, including powers of investigation, arrest, detention, and bail, and to assess its role in addressing threats to national security. The study further seeks to evaluate the constitutional implications of UAPA, particularly in relation to Article 14 of the Constitution of India, Article 19 of the Constitution of India, and Article 21

of the Constitution of India, while examining judicial interpretation and practical implementation. It also aims to identify concerns regarding misuse, prolonged detention, and impact on civil liberties, and to suggest reforms that ensure an appropriate balance between national security and constitutional rights.

Research Questions:

This study seeks to address the following questions in relation to Unlawful Activities (Prevention) Act and the counter-terrorism framework in India:

1. How has UAPA evolved as the primary anti-terror legislation in India?
2. What are the major provisions of UAPA for prevention and control of terrorist activities?
3. Whether the powers granted under UAPA are consistent with constitutional safeguards and fundamental rights?
4. To what extent has the judiciary interpreted and reviewed the application of UAPA in significant cases?
5. Whether UAPA effectively balances national security concerns with the protection of civil liberties?
6. What reforms are necessary to ensure accountability and prevent misuse of the Act?

Research Methodology:

The present study adopts a *doctrinal research methodology* for analyzing Unlawful Activities (Prevention) Act and its role in the counter-terrorism framework of India. The research is primarily based on secondary sources, including statutes, constitutional provisions, judicial decisions, books, journal articles, reports, and scholarly writings related to anti-terror laws. The study examines the legislative framework of UAPA along with its amendments and analyzes relevant case law to understand judicial interpretation and practical application. It also evaluates constitutional issues arising from the implementation of the Act through analytical and critical examination of legal principles, judicial precedents, and academic commentary.

Literature Review:

The legal and academic discourse surrounding Unlawful Activities (Prevention) Act has expanded significantly as the law became central to counter-terror policy in India. Scholars have examined the evolution of anti-terror legislation from earlier statutes such as Terrorist and Disruptive Activities (Prevention) Act and Prevention of Terrorism Act to UAPA, highlighting the gradual expansion of state powers in response to internal security threats. Academic writings generally recognize the necessity of anti-terror legislation but emphasize that such laws must operate within constitutional limitations.

Several legal scholars and commentators have critically analyzed the broad powers granted under UAPA, especially provisions relating to arrest, detention, investigation, and restrictions on bail.

Judicial decisions and case commentaries form an important part of the literature. Analyses of cases such as NIA v. Zahoor Ahmad Shah Watali have highlighted how judicial interpretation has influenced the practical enforcement of the Act, particularly concerning bail standards. Overall, the literature reflects a continuing debate between the need for strong counter-terror measures and the obligation to preserve constitutional rights, making UAPA a significant subject of legal and policy research.

Evolution Of Anti-Terror Laws in India:**1. The Act to Prevent Terrorist and Disruptive Activities (TADA)**

TADA was passed in 1985 to combat the rise in terrorism and militancy, especially in areas where separatist and insurgent violence was occurring. It was passed as a temporary statute to provide the government the authority to deal with risks to national security and organized crime. Preventive detention, the creation of special tribunals, and the acceptance of confessions made in front of police officials as evidence are only a few of the many powers granted to authorities by the Act.

2. The Act to Prevent Terrorism (POTA)

POTA was passed in 2002 as a result of the government's assessment that more robust anti-terror measures were required following the terrorist attack on the Indian Parliament in 2001.

3. The Unlawful Activities (Prevention) Act (UAPA)

In order to stop illegal activity endangering India's integrity and sovereignty, UAPA was first passed in 1967. Its original focus was on illegal affiliations rather than terrorism, in contrast to TADA and POTA. Following the abolition of POTA, UAPA was amended to cover offenses related to terrorism, particularly in 2004. The Act was enhanced by additional amendments in 2008, 2012, and 2019 that added rules about terrorist groups, financing of terrorism, prolonged detention, bail limits, and the labeling of individuals as terrorists. UAPA is currently India's main anti-terror law.

4. Present Counter-Terror Framework

At present, UAPA forms the core legal framework for combating terrorism in India. It works alongside agencies such as the National Investigation Agency, which was established to investigate terrorism-related offences. The current framework reflects a shift from temporary anti-terror laws like TADA and POTA to a permanent statutory mechanism under UAPA.²

Balance between Security and Liberty

The constitutional challenge of UAPA lies in balancing collective security with individual freedoms. The State has a duty to protect citizens from terrorism and maintain national security. At the same time, constitutional democracy requires that such powers be exercised within limits of fairness and accountability. Anti-terror legislation, by nature, grants extraordinary powers, but unchecked exercise of those powers may undermine the very rights the Constitution seeks to protect.

Judicial Review

The judiciary plays a crucial role in maintaining this balance. Courts review whether the application of UAPA complies with constitutional principles and whether restrictions imposed are proportionate to security concerns. Through judicial interpretation, constitutional safeguards act as a check against misuse. However, due to the stringent bail provisions and special procedures under UAPA, courts often face challenges in reconciling national security

² Unlawful Activities (Prevention) Act 1967

interests with personal liberty.

Thus, the constitutional perspective of UAPA reveals an ongoing tension between the need for strong anti-terror laws and the requirement to preserve fundamental rights.

Important Judicial Decisions:

Judicial interpretation has shaped how Unlawful Activities (Prevention) Act is applied in India. Some key decisions are:

1. NIA v. Zahoor Ahmad Shah Watali

This case represents a significant ruling regarding the Unlawful Activities (Prevention) Act (UAPA). It involved the consideration of bail for an individual accused under this legislation. The Supreme Court was tasked with determining the appropriate approach for courts when evaluating bail requests in light of the stringent requirements outlined in Section 43D(5) of the Act.

The Court concluded that, during the bail consideration phase, the court's role is limited to assessing whether the allegations seem *prima facie true* based on the evidence presented by the investigating authority. It emphasized that a thorough examination of the evidence or a credibility assessment is not warranted at this juncture. If the evidence provided by the prosecution establishes a prima facie case, the court may refuse bail.

2. Union of India v. K.A. Najeeb

This ruling established a significant safeguard. The defendant was charged under the UAPA and had been in custody for an extended duration while the trial faced delays. The central question for the Court was whether constitutional courts had the authority to grant bail despite the limitations imposed by Section 43D(5).

This case reaffirmed that statutory limitations cannot indefinitely supersede constitutional protections of personal liberty. It introduced a crucial balancing principle against prolonged detention.

3. Arup Bhuyan v. State of Assam

While this case emerged within the broader context of anti-terror legislation, it is pertinent for comprehending membership under the UAPA. The key issue was whether mere membership in a proscribed organization suffices for a conviction.

The Supreme Court determined that mere passive membership in an unlawful organization is insufficient; there must be demonstrable evidence of active participation or incitement to violence. The Court underscored that guilt cannot be inferred solely based on an individual's association with an organization.

Significance:

These judgments show that the judiciary plays a crucial role in interpreting UAPA. Decisions like *Watali* strengthened state powers and made bail more restrictive, while cases like *K.A. Najeeb* emphasized that constitutional rights cannot be suspended through prolonged detention. Together, they reflect the ongoing judicial effort to balance national security with the rule of law and individual liberty.

Challenges And Criticism:

Unlawful Activities (Prevention) Act has been an important legal instrument for counter-terrorism in India, but its implementation has faced substantial criticism from legal scholars, civil rights groups, and judicial commentators. While the objective of national security is considered legitimate, several practical and constitutional challenges have been raised regarding the law's operation.³

Broad and Vague Definitions

One of the most significant criticisms of UAPA is the broad wording of terms such as “unlawful activity” and “terrorist act.” These definitions cover a wide range of conduct and may be interpreted expansively. Critics argue that vague language increases the possibility of arbitrary application and may affect legitimate expression, association, or political dissent. The broad scope makes the law susceptible to differing interpretations by authorities.

³ *Kartar Singh v State of Punjab* (1994) 3 SCC 569.

Stringent Bail Provisions

The strict bail provisions under UAPA are frequently criticized. Under Section 43D(5), bail may be denied if the court finds a *prima facie* case against the accused. This creates a high threshold and often results in prolonged custody before trial. Since trials in complex terror cases may take years, accused persons may spend substantial periods in prison without conviction. This has raised concerns regarding personal liberty and the principle that an accused is presumed innocent until proven guilty.

Prolonged Detention and Delayed Trials

The Act permits extended detention during investigation, including extension of time for filing chargesheets up to 180 days. In practice, this often leads to lengthy incarceration before trial begins. Delays in investigation and judicial proceedings worsen this issue.

Impact on Fundamental Rights

UAPA raises constitutional concerns because its provisions directly affect rights under Article 14 of the Constitution of India, Article 19 of the Constitution of India, and Article 21 of the Constitution of India. Critics argue that the combination of broad offences, long detention, and strict bail can restrict freedom of speech, association, and personal liberty. The challenge lies in ensuring that anti-terror laws do not disproportionately interfere with constitutional guarantees.

Investigative and Enforcement Concerns

Implementation of UAPA also faces operational challenges. Terror investigations often involve large volumes of digital evidence, cross-border financing, and intelligence inputs, making proceedings complex.

Balance between Security and Liberty

The central criticism of UAPA lies in the tension between security and liberty. Supporters argue that strong laws are necessary to address modern terrorism and protect the nation. Critics maintain that extraordinary powers should be accompanied by stronger safeguards, transparency, and judicial oversight. The continuing debate reflects the challenge of protecting

national security while preserving democratic freedoms and constitutional accountability.

Comparative Analysis:

Counter-terrorism laws across countries aim to protect national security, but they differ in scope, procedure, and safeguards. Comparing UAPA with anti-terror frameworks in other jurisdictions helps understand its strengths and concerns, especially regarding detention, bail, and civil liberties.

UAPA and the United Kingdom Framework

In the United Kingdom, the principal law is the Terrorism Act 2000. Like UAPA, it defines terrorism broadly and allows the proscription of terrorist organizations. It also gives police powers to arrest suspects and investigate terrorism-related offences.

However, the UK framework generally provides stronger judicial oversight. Detention without charge is subject to stricter limits and regular judicial review. Human rights protections under the Human Rights Act 1998 require state action to remain proportionate. Compared to UAPA, the UK system places greater emphasis on balancing security measures with individual rights.

UAPA and the United States Framework

The United States relies on several laws, including the USA PATRIOT Act, enacted after the September 11 attacks. The law expanded powers of surveillance, intelligence gathering, and financial monitoring to prevent terrorism.

Unlike UAPA, the U.S. legal framework strongly emphasizes constitutional review under the Bill of Rights. Courts frequently examine whether anti-terror measures violate due process, free speech, or privacy. While surveillance powers are broad, detention and prosecution generally involve stronger procedural safeguards compared with UAPA's extended detention provisions.

UAPA and the Canada Framework

Canada regulates terrorism mainly through the Anti-terrorism Act, 2001. The law criminalizes terrorist financing, participation, and support for terrorist groups. It also allows preventive arrests in limited circumstances.

A significant feature of the Canadian framework is strong parliamentary and judicial oversight. Measures affecting liberty are subject to review under the Canadian Charter of Rights and Freedoms. This ensures anti-terror actions are assessed for consistency with constitutional rights. Compared with UAPA, Canada provides more explicit rights-based safeguards.

Suggestions And Reforms:

While Unlawful Activities (Prevention) Act remains a crucial instrument in the counter-terror framework of India, reforms can strengthen both effectiveness and constitutional fairness.

Clearer statutory definitions

Terms such as “unlawful activity” and “terrorist act” should be defined with greater precision. Narrower drafting can reduce ambiguity and help prevent overly broad interpretation, while still preserving the law’s purpose against genuine terror threats.

Stronger judicial oversight

Executive powers to ban organizations or designate individuals as terrorists should be subject to faster and more robust judicial review. Independent review at an earlier stage would improve accountability and reduce the possibility of arbitrary action.

Review of bail provisions

The strict bail standard under UAPA has led to long pre-trial detention in many cases. Reform could allow courts greater discretion where investigation is delayed, evidence is weak, or trial is unlikely to begin promptly. This would better align with constitutional protections of liberty.

Safeguards against misuse

Clear operational guidelines should govern arrests, investigations, and application of UAPA charges. Mandatory periodic review by senior judicial authorities can help ensure the law is used only in cases genuinely involving terrorism, not as a substitute for ordinary criminal statutes.

Protection of constitutional rights

Implementation should consistently respect Article 14 of the Constitution of India, Article 19

of the Constitution of India, and Article 21 of the Constitution of India. Counter-terror legislation is strongest when it protects security without weakening democratic safeguards.⁴

Capacity building

Specialized agencies such as the National Investigation Agency should continue strengthening technical expertise in cyber investigations, digital forensics, and financial tracking. Better investigations can improve conviction quality and reduce unnecessary detention.

Conclusion:

Unlawful Activities (Prevention) Act has evolved into the central anti-terror legislation within the legal framework of India. Through successive amendments, it expanded from a law dealing with unlawful associations into a comprehensive statute addressing terrorism, terrorist organizations, financing, and threats to national security. The Act grants extensive powers to the State for prevention, investigation, and prosecution of terrorism-related offences, making it a key instrument for maintaining internal security.

At the same time, the implementation of UAPA has generated serious legal and constitutional debate. Provisions relating to broad definitions, prolonged detention, strict bail conditions, and designation of individuals as terrorists have raised concerns regarding due process and fundamental rights. Judicial decisions have reflected this tension by recognizing both the necessity of strong anti-terror measures and the need to protect constitutional guarantees.

The study shows that while UAPA plays an essential role in addressing terrorism, effective security measures must operate within the framework of constitutional democracy. National security cannot be separated from the rule of law, fairness, and judicial accountability. The challenge lies in ensuring that extraordinary powers granted under anti-terror legislation are exercised proportionately and subject to adequate safeguards.

Therefore, the future effectiveness of UAPA depends not only on its strength as a security law but also on its ability to maintain a fair balance between collective security and individual liberty. A democratic legal system must protect the nation from terrorism while preserving the constitutional rights and freedoms that form the foundation of justice.

⁴ Constitution of India 1950.

Bibliography:

Table of Cases

A K Gopalan v State of Madras AIR 1950 SC 27.

Kartar Singh v State of Punjab (1994) 3 SCC 569.

Kedar Nath Singh v State of Bihar AIR 1962 SC 955.

Maneka Gandhi v Union of India (1978) 1 SCC 248.

National Investigation Agency v Zahoor Ahmad Shah Watali (2019) 5 SCC 1.

People's Union for Civil Liberties v Union of India (2004) 9 SCC 580.

Romila Thapar v Union of India (2018) 10 SCC 753.

Union of India v K A Najeeb (2021) 3 SCC 713.

Table of Legislation

Constitution of India 1950.

National Investigation Agency Act 2008.

Unlawful Activities (Prevention) Act 1967.

Unlawful Activities (Prevention) Amendment Act 2004.

Unlawful Activities (Prevention) Amendment Act 2008.

Unlawful Activities (Prevention) Amendment Act 2012.

Unlawful Activities (Prevention) Amendment Act 2019.

Books

Austin G, Working a Democratic Constitution: The Indian Experience (Oxford University

Press 1999).

Basu DD, Introduction to the Constitution of India (24th edn, LexisNexis 2022).

Jain MP, Indian Constitutional Law (9th edn, LexisNexis 2023).

Seervai HM, Constitutional Law of India (4th edn, Universal Law Publishing 2015).

Singh MP and Deva S, Constitution of India (2nd edn, Eastern Book Company 2018).

Journal Articles

Bhatia G, 'The Unlawful Activities (Prevention) Act and Constitutional Liberty' (2020) 55 Economic and Political Weekly.

Noorani AG, 'Civil Liberties and Anti-Terror Laws in India' (2009) 44 Economic and Political Weekly.

Reports

Law Commission of India, Report No 267: Hate Speech (Government of India 2017).

National Human Rights Commission, Annual Report 2022–2023 (NHRC 2023).

Websites

India Code, 'Unlawful Activities (Prevention) Act, 1967' [<https://www.indiacode.nic.in>] (<https://www.indiacode.nic.in>) accessed 26 June 2026.

Ministry of Home Affairs, Government of India [<https://www.mha.gov.in>] (<https://www.mha.gov.in>) accessed 26 June 2026.

Supreme Court of India [<https://www.sci.gov.in>] (<https://www.sci.gov.in>) accessed 26 June 2026.