
FROM TERRORIST ACTS TO TERRORIST THOUGHT: CRIMINALISING INTENT UNDER THE UAPA REGIME

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ABSTRACT

The development of counter-terrorism legislation in India shows a notable change from penalizing actual terrorist actions to criminalising preparatory activities and, more prominently, the domain of intent and ideology. The Unlawful Activities (Prevention) Act, 1967 (UAPA), especially following its amendments in 2004, illustrates this change by broadening the range of criminal responsibility to encompass actions that do not involve direct violence. This study rigorously analyses the transition of the UAPA framework from action-oriented accountability to intent-focused criminalisation, highlighting intricate legal and constitutional issues.

This research examines how the law deals with conspiracy, membership, support, and preparatory actions by analysing statutory provisions like Sections 13, 15, 18, and 38–39 of the UAPA, as well as significant judicial interpretations. The study contends that although preventive strategies are crucial in addressing contemporary terrorism, the growing dependence on subjective factors like intent, connections, and ideological affinity threatens to obscure the distinction between valid prevention and excessive criminalisation. This transition places considerable pressure on essential rights, especially the rights to free speech, association, and personal freedom assured by the Constitution of India.

The study employs a doctrinal and analytical approach, utilising case law, parliamentary discussions, and comparative viewpoints to evaluate if the UAPA upholds a constitutionally appropriate equilibrium between national security and civil rights. It emphasises worries about evidentiary standards, extended pre-trial incarceration, and the possible abuse of vague legal terminology.

The article concludes that penalizing "terrorist ideology" without explicit and objective protections erodes the fundamental principles of criminal law, which typically demand clear actions and intent. A recalibration of the UAPA framework is essential to guarantee that the quest for security does not undermine the rule of law it aims to safeguard.

Keywords: UAPA, terrorist intent, preventive criminalisation, national security, civil liberties, counter-terrorism law.

INTRODUCTION

Terrorism poses a serious threat to national security, public order, and the sovereignty of the State. To address such threats, India enacted the Unlawful Activities (Prevention) Act, 1967 (UAPA), with the primary objective of preventing activities that threaten the unity and integrity of the nation.¹ Initially, the law focused on punishing concrete acts of violence and organised terrorist activity. Over time, however, the scope of the UAPA has expanded significantly, especially through amendments introduced after 2004 and 2019.² This expansion marks a clear shift from criminalising terrorist acts to penalising intent, belief, and association.

One of the most controversial aspects of the UAPA regime is its ability to criminalise conduct that falls short of actual violence. Broad and vague definitions of terms such as “terrorist act,” “unlawful activity,” and “membership” have enabled prosecution based on ideological sympathy, possession of literature, or alleged links with banned organisations.³ The 2019 amendment further intensified these concerns by allowing the Central Government to designate individuals as terrorists without a prior judicial determination.⁴ This shift raises fundamental questions about whether the law now targets conduct or merely perceived thought and intent.

The criminalisation of intent under UAPA has serious constitutional implications. Article 19 of the Constitution of India guarantees freedom of speech, expression, and association, while Article 21 protects personal liberty and due process.⁵ When individuals are prosecuted or detained for their beliefs or associations rather than their actions, these constitutional safeguards risk being rendered ineffective. Courts have repeatedly emphasised that dissent, even if unpopular or radical, cannot be equated with terrorism.⁶ Yet, prolonged pre-trial detention and strict bail conditions under Section 43D(5) of the UAPA often result in punishment without conviction.⁷

This approach also raises concerns under the rule of law, which requires clarity, fairness, and proportionality in criminal legislation. Vague laws that allow excessive executive discretion

¹ The Unlawful Activities (Prevention) Act, No. 37 of 1967,

² The Unlawful Activities (Prevention) Amendment Act, No. 29 of 2004, The Unlawful Activities (Prevention) Amendment Act, No. 35 of 2008, The Unlawful Activities (Prevention) Amendment Act, No. 28 of 2019,

³ The Unlawful Activities (Prevention) Act, 1967, §§ 2(o), 15, 18, 20, India Code,

⁴ The Unlawful Activities (Prevention) Act, 1967, §§ 35–36 (as amended in 2019), India Code,

⁵ INDIA CONST. arts. 19, 21,

⁶ *Shreya Singhal v. Union of India*, (2015) 5 S.C.C. 1 (India),

⁷ The Unlawful Activities (Prevention) Act, 1967, § 43D(5), India Code,

undermine legal certainty and increase the risk of arbitrary enforcement.⁸ In several cases, including those arising from the Bhima Koregaon investigation, courts have observed that mere ideological alignment or passive association does not amount to terrorist activity under the law.⁹ Despite such judicial observations, the continued use of UAPA in intent-based prosecutions reflects a growing tension between state security and individual liberty.

Further, India is a signatory to international human rights instruments such as the International Covenant on Civil and Political Rights (ICCPR), which protects freedom of expression, association, and the presumption of innocence.¹⁰ Criminalising intent or belief without proof of imminent violence conflicts with these international obligations. Human rights bodies have repeatedly warned against counter-terrorism laws that punish thought rather than conduct.¹¹

Against this background, this paper critically examines the transformation of the UAPA from an act-based counter-terrorism law into a regime that increasingly criminalises intent and ideology. Through doctrinal analysis of statutory provisions, judicial decisions, and international human rights standards, the study seeks to assess whether the current UAPA framework strikes a constitutionally valid balance between national security and civil liberties.

RESEARCH OBJECTIVES

The following is the research objective this paper examines:

To analyse how intent-based charges under the UAPA turn the criminal process into a form of punishment, even when conviction rates are low.

RESEARCH PROBLEM

The Unlawful Activities (Prevention) Act may be a legitimate law to prevent terrorism before it takes place, but its emphasis on intent and ideological connections has resulted in fewer discussions about the issue within the criminal justice system. It is not only about the restriction of free speech, but also whether the investigation, arrests, and lengthy pre-trial detention have

⁸ Nat'l Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 S.C.C. 1 (India),

⁹ Sudha Bharadwaj v. State of Maharashtra, Bail Order, Bom. H.C. (Dec. 1, 2021),

Rona Wilson v. Nat'l Investigation Agency, Bail Order, Bom. H.C. (Jan. 10, 2023),

¹⁰ International Covenant on Civil and Political Rights, arts. 9, 14, 19, Dec. 16, 1966, 999 U.N.T.S. 171,

¹¹ U.N. Human Rights Comm., General Comment No. 34: Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34 (2011),

become a form of punishment. People accused under the UAPA often spend years behind bars as the trials proceed at a slow pace, regardless of whether their purported intent results in violence. Why? Lawful criticism or social movements should not be pursued by lawyers, scholars and activists who are afraid of being accused in a "terrorist way".

RESEARCH QUESTIONS AND HYPOTHESIS

RESEARCH QUESTION:

In UAPA cases, is the extended duration of the investigation and trial process a form of punishment, even before guilt has been established?

RESEARCH HYPOTHESIS:

The UAPA's intent-based provisions are increasingly making the criminal process a punitive tool, rather than facilitating fact finding, leading to prolonged detention and self-censorship that does not necessarily promote actual terrorist acts but instead discourages lawful civic and intellectual engagement.

RESEARCH METHODOLOGY

This research paper uses a doctrinal and qualitative approach to the method, as it is based on analysis of current laws, court rulings, and legal literature rather than fieldwork or statistical data. The study aims to investigate how the Unlawful Activities (Prevention) Act has progressed from penalising terrorist acts to criminalising intent and ideology, and how this transformation is executed in reality.

Specifically, the study draws on key sources of law such as its text, amendments to the UAPA, constitutional provisions, and applicable decisions made by the Supreme Court and High courts. In UAPA cases, the application of law during investigation and pre-trial stages is reflected in bail orders and trial-stage decisions, which are given particular attention. Whether the criminal process results in prolonged detention and limitations on liberty is assessed by analysing these cases, even before guilt is established.

The impact of intent-based prosecutions is examined through the use of secondary sources, such as academic articles, law commission reports, commentaries, and human rights

organizations' reports. The UAPA's less publicized effects, such as the limiting influence on legal activism, academic debate, and civil society participation, can be identified using these materials.

This research adapts a constitutional and human rights perspective by scrutinising the UAPA framework, which is established by Articles 19 and 21 of the Constitution of India and India's obligations under international human right instruments like the International Covenant on Civil and Political Rights. International standards are referenced in comparison only to determine compliance, not for comparative study.

By adapting this methodology, the paper can evaluate whether the current implementation of the UAPA maintains a reasonable balance between national security and individual freedom, or engages in pre-trial punishment and self-censorship that exceed the intended purpose of counter-terrorism law.

LITERATURE REVIEW

The UAPA's comprehensive coverage allows for severe limitations and misuse by the State: The government is granted an excessive amount of discretion to declare individuals as terrorists in ways that could violate fundamental rights and facilitate preventive detention under the guise of national security, according to **Sumedha Jamwal**, who has described the UAPA's provisions as "*extraordinary*". Rather than concrete action, intent becomes a basis for action. **Sumedha Jamwal's** article in the 2023 issue of the Journal of Legal Studies & Research discusses the constitutional validity of "*The Special Act of UAPA*".

The Act's vague definitions and reversal of procedural safeguards are detrimental to civil liberties: According to **Anukriti Mishra**, the UAPA's extensive and ambiguous language, including provisions that restrict bail and overturn the burden of proof, infringes on freedom from speech or due process. Her criticism echoes the idea that democratic rights can be compromised through intent-based criminalisation. "*UAPA and Civil Liberties Violation*" by **Anukriti Mishra**, Indian Journal of Law and Legal Research (2024).

The new amendments have a detrimental effect on fundamental rights and the judicial balance: The protections provided under Articles 14, 19, and 21 can be challenged by **Ishaan Singhee's** observation that after 2019, individuals can now be classified as terrorists, not just groups. The

concerns surrounding the expansion of state power and how it could impact dissent is directly linked. **Ishaan Singhee**, *"The Impact of UAPA on Fundamental Rights" in Indian Journal of Law and Legal Research (2023)*".

The UAPA has the potential to contradict rule-of-law principles and normative criminal jurisprudence. For example: According to **Sarfaraz Ahmed Khan**, the UAPA and its related provisions are reminiscent of colonial law concepts that can be politicized by authorities. You're referring to your concern about the law being used for oppression rather than as a legitimate safeguard. **Sarfaraz Ahmed Khan's analysis** of the UAPA, *"From extraordinary to ordinary"* is published in Statute Law Review (2025).

Constitutional freedoms are frequently violated by anti-terror laws like UAPA: Indian anti-terror laws increasingly clash with Part III of the Constitution and detain individuals without providing clear justifications, as **Aujaswi Maken** writes, highlighting the growing tension between national security priorities and civil liberties. The study of pre-trial detention and rights infringement is reinforced by this. **Aujaswi Maken's** research, *"Humanising Anti-Terror Law: India and the World"* in the Indian Journal of Law and Legal Research, 2025.

Inconsistencies and rights concerns are evident in the way judicial decisions, particularly those related to bail and arrest. According to **Himanshu Mishra**, Supreme Court jurisprudence on UAPA arrest and bail often prioritizes national security over procedural safeguards, indicating an institutional trend where legal process may act as a form of extended punishment. This information explains the procedural aspects of your research objectives. **Himanshu Mishra**, *"Examining the Jurisprudence of the Supreme Court on Arrests and Bail under UAPA, 1967"* in Indian Journal of Law and Legal Research (2025).

DISCUSSION

The Unlawful Activities (Prevention) Act is a highly debated law in India, as it is being utilised more frequently without any direct reference to violent crimes.¹² Questions about intent, belief, and association are now being addressed in discussions surrounding the Act, not just terrorism.¹³ According to many scholars and legal commentators, the current law empowers

¹² Anuradha Bhasin v. Union of India, (2020) 3 S.C.C. 637 (India),

¹³ Gautam Bhatia, The UAPA and the Problem of "Association", Indian Constitutional Law & Philosophy (Oct. 6, 2020),

authorities to rely on assumptions about future harm rather than actual criminal behavior.¹⁴ This has prompted a more extensive debate on whether the definition of terrorism in Indian law has been overemphasised.¹⁵

UAPA is frequently viewed from two perspectives in the public.¹⁶ There is a strong consensus that strict anti-terror laws are necessary to prevent serious threats from occurring before they occur, with intent being the driving force.¹⁷ Defenders contend that if violence is not prevented, the consequences may be irreversible.¹⁸ Conversely, fear and uncertainty have been triggered by the use of preventive powers, which are being questioned by civil society groups, journalists, students, and legal professionals.¹⁹ Multiple open discourses illustrate how people are uncertain about what types of speech or associations may be subject to legal scrutiny.²⁰

Scholars writing on UAPA often discuss how it is applied in contexts outside of the courtroom.²¹ According to media reports and academic writings, the Act's potential to incriminate individuals discourages them from participating in protests or expressing their opinions openly.²² It is commonly known as a "chilling effect" due to the tendency of people not to speak up and avoid potential legal action.²³ Such conversations indicate a wider influence of the law on democratic engagement and public discourse.²⁴

In my view, the debate surrounding UAPA highlights a more significant conflict between trust and security.²⁵ The law's aim to preserve society, however, has caused concern among the common people with a growing preoccupation with intent.²⁶ In discussions about the Act, there are increasing concerns about uncertainty regarding the evaluation of intent, association interpretations and the length of legal proceedings.²⁷ Public behavior is shaped by uncertainty, which impacts interactions between individuals and the State.²⁸ In general, the debate on

¹⁴ A.G. Noorani, UAPA: The Drift from Terror to Dissent, *Econ. & Pol. Wkly.* (2019),

¹⁵ Sarfaraz Ahmed Khan, From Extraordinary to Ordinary: India's Anti-Terror Laws, *Statute L. Rev.* (2024),

¹⁶ K.G. Kannabiran, National Security Laws and Civil Liberties, *Econ. & Pol. Wkly.* (2008),

¹⁷ Ministry of Home Affairs, Unlawful Activities (Prevention) Act: Background Note (Gov't of India),

¹⁸ Nat'l Investigation Agency v. Zahoor Ahmad Shah Watali, (2019) 5 S.C.C. 1 (India),

¹⁹ Amnesty Int'l, India: UAPA Used to Silence Dissent (2020),

²⁰ India's Anti-Terror Law Is Creating Fear, *The Guardian* (June 15, 2024),

²¹ Ishaan Singhee, UAPA and Its Impact on Fundamental Rights, *Indian J.L. & Legal Rsch.* (2022),

²² UAPA and the Chilling Effect on Protest, *The Hindu* (Aug. 23, 2021),

²³ U.N. Human Rights Comm., General Comment No. 34, ¶ 38, U.N. Doc. CCPR/C/GC/34 (2011),

²⁴ A.G. Noorani, Democracy and Criminal Law, *Econ. & Pol. Wkly.* (2019),

²⁵ Upendra Baxi, *The Crisis of the Indian Legal System* 32–35 (Oxford Univ. Press 1982),

²⁶ *Thwaha Fasal v. Union of India*, (2021) 4 S.C.C. 1 (India),

²⁷ *K.A. Najeeb v. Union of India*, (2021) 3 S.C.C. 713 (India),

²⁸ *Sudha Bharadwaj v. State of Maharashtra*, Bail Order, Bombay High Court (Dec. 1, 2021),

criminalising intent under UAPA highlights that the law is no longer solely a tool for counter-terrorism, but also reflects an ongoing social and democratic concern.²⁹ But the wide-ranging views on it show how difficult it is to balance security needs with public confidence, freedom and involvement within a democracy.³⁰

CASE LAWS:

Judicial judgments under the Unlawful Activities (Prevention) Act have significantly influenced public discourse on whether the law is shifting its focus from punishing violent offenses to examining ideology and intent. The case of *National Investigation Agency v. Zahoor Ahmad Shah Watali (2019)*,³¹ is frequently mentioned in this context. Due to the Supreme Court's strict bail procedure as per UAPA, this case is frequently brought up in public debates. The Court ruled that courts should not scrutinize evidence extensively during the bail phase and should accept the prosecution's version if it is established as true. The decision is widely regarded by legal experts as an improvement in the enforcement of UAPA's preventive detention policy and a source of anxiety for defendants, as intent and supposed connection were considered grounds for declining bail.

*K.A. Najeeb v. Union of India (2021)*³² is another case that frequently gets mentioned in discussions. This case provided civil liberties advocates with some reassurance, unlike Watali. After a lengthy period of detention without trial, the Supreme Court granted bail to an accused person, stating that extended periods of imprisonment infringes upon Article 21. The judiciary's attempt to balance constitutional rights and national security is often portrayed as an effort in public debate, particularly when the law is applied preventively.

*Thwaha Fasal v. the Union of India (2021)*³³. Due to the Court's observation that a person's possession of literature or expression of certain views does not automatically make their actions terrorism, this case is frequently mentioned in academic and media writings. This case facilitated debates on the issue of criminalising thought by highlighting that UAPA should not encompass ideological sympathy or violent action.

²⁹ International Covenant on Civil and Political Rights arts. 9, 19, Dec. 16, 1966, 999 U.N.T.S. 171,

³⁰ UN Special Rapporteur on Counter-Terrorism, Impact of Counter-Terror Laws on Civil Space (2023),

³¹ *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 SCC 1,

³² *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713,

³³ *Thwaha Fasal v. Union of India*, (2021),

Similarly, Instances like *The state of Maharashtra v. Sudha Bharadwaj*³⁴, *Union of India v. K.A. Najeer*³⁵ and subsequent bail rulings are discussed. Maharashtra State highlighted the extended duration of trials conducted under UAPA. Journalists and scholars frequently reference these cases to demonstrate how uncertainty about intent and association, along with delayed trials, affects public confidence in the justice system.

Generally speaking, these case laws are discussed in court proceedings and also in public forums as well as in universities and civil society debates.

ANALYSIS

The Unlawful Activities (Prevention) Act has been broadened to encompass intent, marking a significant change in the functioning of Indian criminal law.³⁶ Historically, criminal responsibility has been established on the basis of clearly proven acts and intent.³⁷ Despite the lack of evidence for direct involvement in violent activity, UAPA is increasingly being applied to factors other than actual intent, beliefs or associations.³⁸ This modification brings up significant questions about the origins of criminal liability and the measures meant to safeguard individual freedom.³⁹

From a constitutional standpoint, this approach challenges the principles established under Articles 14, 19, and 21 of the Indian Constitution.⁴⁰ When speech, possession of literature, or association are interpreted as evidence of intent, the distinction between lawful speech and unlawful activity becomes blurred.⁴¹ The ambiguity in the definition of legal, or "prescribed" law, is an important consideration.⁴² It is possible that the rule of law will be undermined as a result of individuals' lack of awareness about potential criminal liability.⁴³

³⁴ *Sudha Bharadwaj v. The State of Maharashtra*, AIR ONLINE 2019 BOM 1114; 2019 (3) ABR(CRI) 899; (2020) 1 BOMCR(CRI) 101 (Bombay High Court Oct. 15, 2019),

³⁵ *ibid*

³⁶ Ishaan Singhee, A Case Law Review of the UAPA and Its Impact on Fundamental Rights, INDIAN J.L. & LEGAL RSCH. (2023),

³⁷ Kunal M. Varma, *Criminal Law in India*, INDIAN CONST. L. & PHIL. BLOG (2023) (explaining foundational criminal law principles).

³⁸ International Journal for Multidisciplinary Research, Analysis of UAPA Bail and Evidentiary Issues (2025),

³⁹ Abhinav Sekhri, How the UAPA Is Perverting the Idea of Justice, ARTICLE 14 (2020),

⁴⁰ Ishaan Singhee, *UAPA's Impact on Fundamental Rights*, INDIAN J.L. & LEGAL RSCH. (2023)

⁴¹ Drishti IAS, *UAPA and Its Effects on Freedoms*, DRISHTI IAS (2023)

⁴² *ibid*

⁴³ Abhinav Sekhri, *UAPA Perverting Justice*

Interpretations of UAPA by the judiciary exacerbate this problem.⁴⁴ Decisions that limit judicial scrutiny at the bail stage effectively place the blame on the accused, leading to long-term imprisonment before guilt is determined.⁴⁵ The prevention of terrorism is an essential objective, but refusing to allow early judicial review raises the possibility of abuse, particularly in cases where evidence is based on circumstantial factors like ideology or non-verbal stimuli.⁴⁶ The prolonged duration of trials in UAPA compounds the issue, resulting in preventive detention becoming a punishment with no chance of conviction.⁴⁷

Intent is also a social responsibility that has wider implications.⁴⁸ Those who engage in democratic activities without fear of being perceived as illegal association may be discouraged by the possibility that their speech or protest actions are unlawful.⁴⁹ Without formal censorship, fundamental freedoms are still subject to an overtly chilling effect.⁵⁰ This is a setback to democratic participation, which relies on the freedom of citizens to voice their opinions without facing legal action.⁵¹

International human rights norms require that limitations on liberty be necessary, proportionate, and based on clear evidence of harm before they can be justified as part of criminalising thought and belief.⁵² Preventive measures that are heavily reliant on assumptions about future behavior cannot meet these criteria.⁵³ The state's interest in national security must be weighed against its commitment to safeguarding civil liberties.⁵⁴ According to the analysis, the current implementation of UAPA indicates a more significant conflict between security and constitutional government.⁵⁵ While intent may increase preventive control, it undermines legal certainty, personal liberty, and public confidence in the justice system.⁵⁶ Counter-terrorism efforts must address this imbalance to ensure the preservation of democratic values.⁵⁷

⁴⁴ Drishti IAS, *Violation of Article 21 and Bail Issues*, DRISHTI IAS

⁴⁵ Supreme Court Online, Landmark Ruling on UAPA Bail S.43D (5) (2026),

⁴⁶ LiveLaw, *Between Method and Outcome: Bail in Umar Khalid Case*,

⁴⁷ OHRH, *Constitutional Liberty Under UAPA*,

⁴⁸ Drishti IAS, *UAPA Free Speech Debate*

⁴⁹ International Journal for Multidisciplinary Research

⁵⁰ Drishti IAS, *Chilling Effect Criticism*, DRISHTI IAS

⁵¹ Abhinav Sekhri, *UAPA Perverting Justice*

⁵² OHRH, *UAPA and Human Rights Obligations*

⁵³ Ibid

⁵⁴ Drishti IAS, *UAPA and National Security Debate*.

⁵⁵ OHRH, *Constitutional Liberty Under UAPA*

⁵⁶ LiveLaw & Supreme Court Online

⁵⁷ Ishaan Singhee, *Case Law Review: UAPA & Rights*, INDIAN J.L. & LEGAL RSCH. (2023)

CONCLUSION

The Unlawful Activities (Prevention) Act argument demonstrates how the law has progressed beyond just addressing terrorist activities and has now shifted towards investigating intent, belief or association. The current use of UAPA raises questions about the principles of fairness, clarity, and constitutional balance. The law is now a source of concern for many in society due to the prevalence of presumptions about potential harm, rather than actual criminal acts.

Additionally, the paper states: "The criminalisation of intent [under UAPA] is a form of uncertainty for individuals because it gives rise to the question whether legitimate speech, association or expression can be interpreted as suspicious". Not only the accused, but also other individuals and society are affected by this uncertainty due to the fear of legal action that discourages open participation in democratic activities. The protracted trial process and strict bail terms add to the complexity of the matter, frequently resulting in prolonged detention without a definitive verdict.

In terms of the expanded use of UAPA, this raises constitutional questions about basic human rights such as personal liberty and free speech, or equality before the law. Despite courts' efforts to restore equilibrium in certain cases, the overall framework still prioritizes preventive control. This method may undermine public confidence in the justice system and create a false sense of distinction between lawful protests and criminal activity.

The paper concludes by stating that UAPA, in its current state or at least under the present administration, represents a larger conflict between security and democratic values. We need to adopt a more balanced strategy that emphasizes the importance of distinguishing between violent acts and ideological beliefs, ensuring prompt legal supervision from emerging cases as well as safeguarding individual rights. To maintain the effectiveness of counter-terrorism laws, it is crucial to strengthen these safeguards while also preserving the fundamental values of justice and freedom that make up a democratic society.