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IAS Study Circle

Lead by IAS, IPS, IAS officers

U.A.P.A.

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GS II –Fundamental Rights

UAPA - Unlawful Activities (Prevention) Act

Discuss the UAPA in the context of current developments. Is it desirable to have such a law in a democracy?

UAPA [Unlawful Activities (Protection) Act, 1967] is an anti-terror law aimed to prevent unlawful activities and maintain the sovereignty and integrity of India. This anti-terror law violates constitutional safeguards of accused.

Recent developments:

- The recent judgment of Delhi High Court granted bail to three activists, who have been in jail for over a year without trial, for alleged role in the 2020 Delhi Riots.
- SC in Union of India vs K.A Najeer 2021 declared that despite restrictions on bail under the UAPA, constitutional courts can still grant bail on the grounds that the fundamental rights of the accused have been violated.

Justification for UAPA

- **Maintaining Sovereignty and Integrity:** 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.
- **Supporting investigation agencies:** 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.
- Constitution was amended to insert Sovereignty and Integrity as an exception to Article 19(1)(a) in Article 19(2) giving constitutional validity to act.
- International scenario where countries frame stringent laws to safeguard national security.eg:the United States, Israel, China, Pakistan, and European Union have dedicated laws to declare 'individuals' as terrorist

Issues with UAPA

- **Difficult for an accuse to get Bail: Section 43 (D) (5) deals with** prevention of bail on the basis that police had filed charge sheet and there are reasonable grounds believing that the charges on the

accused is prima facie true. Bail ensures the right to liberty of a citizen.

In a recent judgment, (Union of India vs K.A Najeed 2021) SC held that UAPA bail restrictions will violate fundamental rights of a person if the trial is not completed within a reasonable time.

- **An accused cannot seek anticipatory bail and the period of investigation can be extended to 180 days from 90 days on the public prosecutor's request — which means the accused has virtually no chance of getting bail by default.**
- **Extra power to the state:** The clauses “likely to threaten” or “likely to strike terror in people” giving so much power to state authority to detain and arrest individuals. This is a clear cut violation of **article 21**. There is a sharp rise in use of this act like against tribes in Chhattisgarh, Journalists in Manipur and some proxy server case in Jammu and Kashmir. **72% rise in arrests under UAPA during 2015-2019 period**(source: Ministry of Home affairs)
- The **Ambiguous definition** given to ‘**terrorist act**’ which differ from definition of UN special rapporteur on protection of human rights and fundamental freedom while countering terrorism.
- Designating an individual as terrorist raises serious constitutional questions and has the potential for misuse. This **wrongful information will damage a person's reputation, career and livelihood**.
Example: According to NCRB cases under the UAPA showed a rise in 2019.
- **Pendency of cases:** the rate of pendency level at India is at an average of 96%. The current justice delivery system in India is weak.
- **Lower conviction rate:** as per NCRB 2019 Report out of 4231 FIRs filed under UAPA conviction is as low at 112 (ie 2.2% during 2016 - 2019) which points to misuse of this act.
- **Restricting voice of dissent** as criticism can be interpreted as an act likely to threaten sovereignty of India under UAPA.
- **Violation of fundamental rights:** Those arrested under UAPA can be confined up to 180 days with a charge sheet being filed. This is a clear violation of Article 21. The act restricts freedoms on the basis of ‘the sovereignty and integrity of India’.
- **Undermines Federal Spirit:** Some experts feel that it is against the federal structure since it neglects the authority of the state police in

terrorism cases, given that 'Police' is a state subject under the 7th schedule of the Indian Constitution.

- The UAPA also modifies the **Criminal Procedure Code (CrPC)** to give it more teeth. For example, a remand order can be for 30 days instead of the usual 15, and Maximum period of judicial custody before the filing of a charge sheet is extendable from the usual 90 days to 180 days.

Way Forward

- A balanced approach is needed to curb act of terror using stringent laws on one hand and preserving individual rights on the other.
- The defects and demerits of the law should be addressed in an effective and efficient manner like appointing a review committee.
- Terrorism cannot be justified ever, but no law should be allowed to arbitrarily take away the constitutional rights.
- **Sensitisation of law enforcement personals** to prevent misuse.
- **Active judicial intervention** as seen in recent judgment of Delhi High Court granted accuse bail and criticised the Delhi Police for "casually" invoking provisions of the anti-terror law against the three accused, who had protested against the enactment of the Citizenship Amendment Act (CAA).
- **Compensation:** Higher standards of proof must be applied for conviction and there must be provisions like compensation to victims or punishment/enquiry against those who bring malicious complaints.

UNLAWFUL ACTIVITIES(PREVENTION)ACT,1967

Background:

- In the mid-1960s, in order to curb the various secession movements, the Government of India considered enacting a stringent law.
- In March 1967, a peasant uprising in Naxalbari imparted a sense of urgency
- Unlawful Activities (Prevention) Act was passed in 1967.

About:

- The Act provided for declaring an association or a body of individuals “unlawful” if they indulged in any activity that envisages secession or questions or disclaims the country’s sovereignty and territorial integrity.
- Prior to the UAPA’s enactment, associations were being declared unlawful under the Criminal Law (Amendment) Act, 1952.
 - However, the Supreme Court held that the provision on bans was unlawful because there was no judicial mechanism to scrutinise the validity of any ban.
- Therefore, the UAPA included **provisions for a Tribunal** which has to confirm within six months the notification declaring an outfit unlawful.
- After the Prevention Of Terrorism Act(POTA),2002 was repealed, the UAPA was expanded to include what would have been terrorist acts in earlier laws.
- UAPA has been **amended in 2004 and 2013**, to expand its scope to include 1)Punishment for terrorist acts and activities threatening the country’s security including its economic security,2)Provisions to prevent the use of funds for terrorist purposes,3)The ban on organisations was initially for two years, but from 2013, the period of proscription has been extended to five years4)to give effect to various anti-terrorism resolutions of the **United Nations Security Council** and requirements of the Financial Action Task Force(FATF).

- **UAPA (amendment)Act,2019**

It allows to,

- Designate individuals as terrorists if the individual commits or participates in acts of terrorism, prepares for terrorism, promotes terrorism or is otherwise involved in terrorism.
- The Act empowers the Director General of **National Investigation Agency (NIA)** to grant approval of seizure or attachment of property when the case is investigated by the said agency.
- The Act also empowers the officers of the NIA, of the rank of Inspector or above, to investigate cases of terrorism in addition to those conducted by the DSP or ACP or above rank officer in the state.

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