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Unlawful Activities (Prevention) Act (UAPA), 1967

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Why in News: In recent times, two cases have drawn our attention to India's omnibus anti-terror law, the Unlawful Activities (Prevention) Act (UAPA), 1967.

Origin of the UAPA

The Union government was considering a stringent law against calls for secession in the mid-1960s. In March 1967, a peasant uprising in Naxalbari imparted a sense of urgency.

On June 17, 1966, the President had promulgated the Unlawful Activities (Prevention) Ordinance "to provide for the more effective prevention of unlawful activities of individuals and associations".

Its stringency created a furore in Parliament when it was tabled, leading to the government dropping it.

Instead, the Unlawful Activities (Prevention) Act, 1967, which was not identical to the ordinance, was passed.

Scope and expansion of the law

The Act provided for declaring an association or a body of individuals "unlawful" if they indulged in any activity that included acts and words, spoken or written, or any sign or representation, that supported any claim to bring about "the cession of a part of the territory of India", or its "secession", or which 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

In its present form, the Act, after the amendments in 2004 and 2013, covers the declaration of associations as unlawful, punishment for terrorist acts and activities, acts threatening the country's security, including its economic security (a term that covers fiscal and monetary security, food, livelihood, energy ecological and environmental security), and provisions to prevent the use of funds for terrorist purposes, including money laundering.

The ban on organisations was initially for two years, but from 2013, the period of proscription has been extended to five years.

After the Prevention of Terrorism Act (POTA), 2002, was repealed, the UAPA was expanded to include what would have been terrorist acts in earlier laws.

The 2004 amendments were also aimed at giving effect to various anti-terrorism resolutions of the United Nations Security Council.

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In 2012, there was a set of amendments, which was notified from early 2013, seeking to bring the UAPA in line with various requirements of the Financial Action Task Force, an inter-governmental body, to combat money laundering and terrorism financing.

In 2019, the Act was amended to empower the government to designate individuals as terrorists.

UAPA provisions differ from regular criminal law

Just like other special laws dealing with narcotic drugs and the now-defunct laws on terrorism, the UAPA also modifies the Code of Criminal Procedure (CrPC) to give it more teeth.

A remand order can be for 30 days instead of the usual 15, and the maximum period of judicial custody before the filing of a charge sheet is extendable from the usual 90 days to 180 days.

This extension, however, depends on the Public Prosecutor filing a report on the progress in the investigation and giving reasons for seeking another 90 days to complete it. The law also makes it more difficult to obtain bail.

Concerns over bail provisions under UAPA Act

Under Section 43D(5) of the Act, 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.

A Supreme Court judgment on this has clarified that this meant that the court considering bail should not examine the evidence too deeply, but must go by the prosecution version based on broad probabilities.

This means that the onus is on the accused to show that the case is false but without inviting the court to evaluate the available evidence.

This is why human rights defenders feel that the provision is draconian, virtually rendering it impossible for anyone to obtain bail until the completion of the trial.

The Way Ahead

A few petitions are pending before the SC, challenging the validity of the 2019 amendment by which the government can now designate individuals as terrorists. The Court must seize the opportunities presented by these challenges to spell out precisely the objectives of the law.