Concept of UA (P) Act

- Art. 19 (1) of the Constitution gives right to form associations.

- The UAPA was originally enacted in 1967 to impose reasonable restrictions on associations operating in India and to prevent unlawful activities.
- Later, the law of terrorism also included.

UAP (A) can be divided into four parts

1. Declaration of unlawful associations and offences connected therewith.
2. Terrorist act and offences relating to it
3. Procedural Provisions
4. Rules of Evidence

Major Amendments

- In 2004, Chapter IV included in the UAPA so as to include the law of terrorism a part of it.
- In 2008, through another significant amendment, major provisions of the POTA were incorporated into the UAPA.

- By Act 3 of 2013, the production, smuggling, and circulation of high-quality counterfeit Indian currency notes and coins, and of other materials were included within the definition of terrorist acts under the UAPA.

- Act 3 of 2013 also inserted the 2nd Schedule into the UAPA, to provide that acts of terrorism covered under certain international treaties and conventions specified therein to be treated as 'terrorist acts' under the Act.

- By the 2019 amendment, the Fourth Schedule was inserted into the UAPA and certain procedural provisions were also introduced.

- Unlawful Associations and Related Offences

Declaration an unlawful
(Section 3)

- Only the Central Government has the power.
- Declare it unlawful by notification
- The grounds for declaring it unlawful shall be specified in the notification.
- Certain facts may be withheld from disclosure in the public interest
- The notification shall not take effect unless it is confirmed by the Tribunal under S. 4

When an association becomes unlawful?

As per S. 2(p), if it: -

- has, for its object, unlawful activity as defined in S. 2(o); or
- has, for its object, any activity punishable u/s 153A/153B of IPC; or
- encourages or aids persons to undertake unlawful activities, or activities punishable u/s 153A/153B IPC, or whose members engage in such activities

Impact of the declaration

- Its funds shall be prohibited. (S. 7)
- The premises used by the unlawful association may be notified. (S 8)
- Membership in such an association shall attract punishment. (S 10)
- Penalty for dealing with the funds of an unlawful association. (S 11)
- Penalty for dealing with a notified place. (Section 12)

Offence u/s 13

- Unlawful activity is punishable u/s 13. This has two distinct parts, namely sub-sections (1) and (2). S. 13(1) operates independently of any declaration of an association as unlawful.
- S. 13(2) is linked to the declaration of an association as unlawful. The offence u/s 13(2) arises only after such a declaration has been made.

Mere membership is offence.

The Supreme Court, in *Arup Bhuyan v. State of Assam (AIR 2011 SC 340)*, held that mere membership of a banned organisation does not, by itself, render a person criminally liable unless such person resorts to violence.

This position was overruled by a larger Bench, in *Arup Bhuyan (AIR 2023 SC 1685)*, and held that continued membership of an association declared unlawful constitutes an offence in itself u/s 10(a)(i), even in the absence of proof of violence.

Terrorist Act and Related Offences

The law of Terrorism ?

- **Terrorism is a menace that affects countries across the world. However, it is often said that it is difficult to arrive at a universally accepted definition of terrorism. An act that is regarded as terrorism in one particular context or situation may not be viewed in the same manner in another.**

Definition u/s 15

The definition covers (1) the intention:

To threaten the unity, integrity, security, sovereignty, or economic security of the nation or to strike terror among the people, or any section of the people, in India or in any foreign country.

Actual threat or likeliness of threat is enough

The definition covers (2) the use of weapons:

by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature.

The definition covers (4) the impact:

death of, or injuries to, any person or persons; or

loss of, or damage to, or destruction of, property; or

disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or

damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act

The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

(The 2nd schedule consists of 10 Conventions)

S. 16 Punishment for Terrorist Act

a) **if such act has resulted in the death of any person, be punishable *with death or imprisonment for life, and shall also be liable to fine;***

b) **in any other case, be punishable *with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.***

Punishment for raising funds for terrorist act. (S. 17)

- Collects any fund knowingly that such funds are likely to be used, in full or in part to commit a terrorist act by any person or organization
- Irrespective of the fact whether such funds were actually used or not for commission.

Punishment for conspiracy, etc. (S. 18)

Unlike the offence of criminal conspiracy u/s 120A IPC (S. 61(1) of the BNS), S. 18 UAPA penalises a wider range of conduct. It criminalises conspiracy and attempts to commit a terrorist act, advocating, abetting, advising, inciting, directing or knowingly facilitating, or undertaking any act preparatory to the commission of a terrorist act.

As regards the expression “conspiracy” occurring in S. 18 UAPA, its meaning may be gathered from the IPC relating to criminal conspiracy.

All the other expressions employed in Section 18 are to be understood in their ordinary and natural sense.

- S. 18 A. Punishment for organizing terrorist camps.
- S. 18 B. Punishment for recruiting of any person or persons for terrorist act.
- S. 19. Punishment for harbouring, etc. (knowing that such person is a terrorist)

Punishment for being member of terr. gang or orgsn (S. 20)

Any person who is a member of a terrorist gang or a terrorist organisation, which is involved in terrorist act, shall be punishable with imprisonment for a term which may extend to imprisonment for life, and shall also be liable to fine.

(2. (l)"terrorist gang" means any association, other than terrorist organisation, whether systematic or otherwise, which is concerned with, or involved in, terrorist act.)

- S. 21. Punishment for holding proceeds of terrorism
- S. 22. Punishment for threatening witness.
- S. 22A. Offences by companies.
- S. 22B. Offences by societies or trusts.
- S. 22C. Punishment for offences by companies, societies or trusts.
- S. 23. Enhanced penalties

Chapter VI -Terrorist Organisations

S. 35 provides for amending the Schedules of the UAPA.

1st Schedule has a list of terrorist organisations.

2nd schedule contains list of Conventions.

3rd Schelde is about the high quality counterfeit currency and the

4th Schedule contains the list of individual terrorist.

(Equivalent to S. 18 POTA)

Inclusion of Terrorist Organisation

Unlike the declaration of an organisation as unlawful u/s 3 and its confirmation by the Tribunal, no procedure is prescribed to list an organisation in the 1st Schedule. An amendment to the Schedule will do it.

The belief of the Govt. [u/s 35(2)] that an organisation or individual is involved in terrorism, is the criteria.

The list of Unlawful Associations is not part of the Act, whereas the list of Terrorist Organisations forms part of the Act itself.

Procedure is prescribed for de-notification of the Terrorist Organisation (S. 36)

Review Committees u/s 37 are formed for de-notification

There were Review Committees formed u/s 60 of the POTA for reviewing whether *prima facie* case existed

Review Committees u/s 37 UAPA is only for the purpose of S. 36, de-notification

S. 38 . Offence relating to membership of a terrorist organisation

S. 20 deals with membership of a Terrorist Organisation (TO), whereas S. 38 concerns a person's association with a T O. Membership, by itself, is not an ingredient of the offence under S. 38.

A person commits an offence under S. 38 only if he performs any of the acts specified therein with the intention of furthering the activities of a T O.

S. 39. Offence relating to support given to a terrorist organisation

An offence under Section 39 is also attracted when a person does any of the acts specified therein with the intention of furthering the activities of a Terrorist Organisation.

S. 40. Offence of raising fund for a terrorist organisation.

An offence under Section 40 is also attracted when a person does any of the acts specified therein with the intention of *furthering the activities* of a Terrorist Organisation.

Procedural Part

S. 43. Investigating Officers
S. 43 A. Power of arrest , search
S. 43 B. Procedure of arrest
S. 43 C. Application of the Provisions of the Code

S. 43D. Modification of provisions of the Code.

(in relation to S. 167)

The provisions relating to detention, custody, and default bail in ordinary offences are governed by S. 167 of the Code (now S. 187 BNSS). In cases under the UAPA, these provisions apply subject to certain modifications. Accordingly, the references to “fifteen days”, “sixty days”, and “ninety days” in the Code are to be construed as “thirty days”, “ninety days”, and “ninety days” respectively.

S. 43D. Modification of provisions of the Code.

(in relation to S. 268)

The Central Government also gets power to make orders for exclusion of operation of S. 267 order.

Extension of Detention

The detention of an accused beyond the initial period of 90 days can be authorised only on the basis of a report submitted by the Public Prosecutor indicating the progress of the investigation and the specific reasons necessitating further detention. [Section 43D(2)(b)]

Notice of extension application

The accused must be given notice of an application seeking extension of the period of detention. However, a written notice is not mandatory. The High Court of Delhi has held that notice given to the counsel representing the accused is sufficient compliance with this requirement.

When an order extending detention is passed without notice to the accused, or without producing him before the court, the accused becomes entitled to be released on default bail.

Md. Ariz Hasnain vs. State of Jharkhand (2026 INSC 456)

The provisions relating to anticipatory bail under S. 438 CrPC (now S. 482 BNSS) are expressly excluded in cases involving offences punishable under the UAPA.

Bail.

The Public Prosecutor has no discretion in the matter of bail under the UAPA, (if the offence comes under Chapter IV or VI) though he must be given an opportunity of being heard. Once the Court is satisfied that there are reasonable grounds for believing that the accusation against the accused is prima facie true, the accused shall not be released on bail.

No Bail, if the accusation is prima facie true

In *NIA vs. Zahoor Ahmad Shah Watali* (AIR 2019 S C 1734) , the Supreme Court held that the admissibility and credibility of the material and evidence presented by the IO would be a matter for trial. The elaborate examination or dissection of the evidence is not required to be done at this stage. The Court is merely expected to record a finding on the basis of broad probabilities regarding the involvement of the Accused in the commission of the stated offence.

Bail (UAPA): Rule or Exception?

Having regard to the stringent restrictions imposed by Section 43D(5) of the UAPA, the Supreme Court in *Gurwinder Singh v. State of Punjab (AIR 2024 SC 952*) held that, in UAPA cases, *bail is an exception and jail is the rule.*

Bail: Rule, not Exception

In *Syed Iftikhar Andrabi v. NIA (2026 INSC 503)*, the Supreme Court said that Najeeb case was a warning against treating the statutory embargo as the sole factor justifying continued detention by ignoring constitutional principles.

In *Syed Iftikhar*, the Supreme Court reiterated that the Court have no manner of doubt in stating that even under the UAP Act, 'bail is the rule and jail is the exception'.

Watali, no precedent

In *Sheikh Javed Iqbal vs. State of UP (AIR 2024 SC 3579)*, the Supreme Court held that the decision in *Watali* has to be read and understood in the context in which it was rendered and not as a precedent to deny bail to an Accused-undertrial suffering long incarceration.

Default bail, a Fundamental Right

"The right to default bail, as has been correctly held by the judgments of this Court, are not mere statutory rights under the first proviso to S. 167(2) of the Code, but is part of the procedure established by law Under Article 21 of the Constitution of India, which is, therefore, a fundamental right granted to an Accused person to be released on bail once the conditions of the first proviso to Section 167(2) are fulfilled."

Bikramjit Singh vs. The State of Punjab: (2020)10 SCC 616

Default Bail under UAPA

When the investigating agency fails to complete the investigation within the period for which the accused can be lawfully detained, the accused acquires an indefeasible right to be released on default bail. This principle was, in a TADA case, was settled by the Supreme Court in *Sanjay Dutt v. State through CBI ([(1994) 5 SCC 410*]. Followed in UAPA cases.

Bail: UAPA vs Constitution

In *Union of India v. K.A. Najeeb (AIR 2021 SC 712)* the Supreme Court harmonised the bail restrictions under the UAPA with the guarantee of personal liberty of the Constitution. The Court held that Constitutional Courts to grant bail in appropriate cases. This occurs where the trial is unlikely to conclude within a reasonable time and the accused has undergone prolonged incarceration.

Rules of Evidence

1. S. 43E. Presumption.
2. S. 46. Admissibility of evidence collected through the interception of communications

S. 43E. Where a person is prosecuted for an offence under Section 15, the Court shall presume that the accused committed the offence unless the contrary is proved.

Conditions:

1. Arms, explosives, or other similar materials are recovered from the accused; articles of a similar nature were used in the commission of the offence.
2. Fingerprints or other conclusive evidence indicating the involvement of the accused are found.

46. Admissibility of evidence collected through the interception of communications

Evidence collected under the provisions of the Indian Telegraph Act, 1885 or the Information Technology Act, *or any other law for the time being in force*, shall be admissible as evidence against the accused in the court during the trial of a case.

Intercepted Matters as Evidence

1. S. 46 is the replica of S. 45 of POTA. It makes legally intercepted communications, such as voice recordings, images, electronic messages, and other similar materials, admissible in evidence.
2. Under POTA, interception of communications was specifically authorised by Ss 38 to 44. The UAPA does not contain any corresponding provisions authorising interception. As provided u/s 46, interception must be carried out under other applicable laws. like the Indian Telegraph Act, 1885 (now replaced by the Telecommunication Act, 2023), and the rules framed thereunder.

Relevant Case Laws on interception

1. **People's Union of Civil Liberties (PUCL) v. UoI (AIR 1997 SC 568).**
2. **NCT of Delhi v. Navjot Sandhu (AIR 2005 SC 3820)**
3. **State of Maharashtra v. Bharat Shanti Lal ([2008] 13 SCC 5)**
4. **Hukkum Chand Shyam Lal v. UoI (AIR 1976 SC 789)**
5. **R. M. Malkani v. State of Maharashtra (1973 Crl LJ 228)**
6. **Ritesh Sinha v. State of UP (AIR 2019 SC 3592)**

43F. Obligation to furnish information

Any person, association, company etc. are obliged to furnish information to the Investigating Officer, investigating an offence.

Conditions:

1. Information, which useful for, or relevant to, the purposes of this Act.
2. Which is in possession of that person etc.
3. With prior approval of the Superintendent of Police in writing.

44. Protection of witnesses.

1. Trial may be held *in camera*
2. Identity of the witness can be kept secret, either by the application f witness, the prosecutor or by the court suo motu
3. May hold the proceedings at a place to be decided by the court
4. May avoid the mentioning of the name and address of the witness in its orders or judgments or in any records of the case accessible to public
5. May issue any directions for securing that the identity and address of the witness are not disclosed
6. Deicide, in the public interest to order that all or any of the proceedings pending before the court shall not be published in any manner

S. 45. Cognizance

Previous Sanction, of the:

1. Central Govt. or of any officer authorised by that Govt.(if the offence is under Chapter III);
2. Central Govt., where the offence is committed against the Govt. of a foreign country;
3. Central Govt. or the State Govt., as the case may be, if the offence comes under Chapter IV or VI.,

is necessary to take cognizance of offence.

Rules as to sanction

1. Section 45 has to be read in conjunction with the UAPA (Recommendation and Sanction for Prosecution) Rules, 2008.

1. As per the Rules, the Authority is required to make its recommendation to the Government within *seven* working days from the date of receipt of the evidence gathered by the investigating officers.

1. In *Roopesh v. State of Kerala (MANU/KE/0889/2022)*, the High Court of Kerala held that the time limit prescribed under the Rules is mandatory in nature. The SLP (State of Ker v Roopesh-SLP [Crl] No. 6981-6983/2022)preferred against the said judgment was subsequently withdrawn, saying that the view that the decision of the High Court was correct.

2. **In *Judgebir Singh v. NIA ([2023]6 SCR 1)*, the Supreme Court said that the Court was making emphasis on the time frame prescribed. (though the question of time limit did not directly arise for consideration in that case).**

- So, time limit fixed as per Rules is mandatory

S. 48. Overriding Effect

UAPA has an overriding effect over all other laws. In *Essa v. State of Maharashtra (2013 (3) SCALE 1)*, the question was whether the then prevailing Juvenile Justice (Care and Protection of Children) Act, 2000 had an overriding effect over POTA. The Supreme Court held that POTA would prevail over the Juvenile Justice Act, 2000.

Vagueness of Certain Provisions and Definitions

- S. 20 makes membership of a terrorist organisation a punishable offence.
- S. 38. Offence relating to membership of a terrorist organisation.

Though there are differences between these provisions, membership of a terrorist organisation emerges as a common element among them.

…… Cond

- Mere membership in an U/A is an offence u/s 10. Membership in a T/O or T/G, which is *involved in terrorist act* is an offence u/s 20. Associating, professing to be associated in a T/O, with an *intention to further its activities* is another offence u/s 38.
- Nowhere it is stated that mere membership in a T/O or T/G is an offence.

The First Schedule includes various organisations and their frontal organisations and formations. The expression "*frontal organisations*" is neither defined in the Act nor are listed.

... Cond

S. 15 defines a "terrorist act" to include acts falling within the definitions contained in the conventions and treaties specified in the 2nd Schedule. But, the texts of those conventions and treaties have not been published in the Official Gazette.

….. Cond

Inappropriate placing of sub-clause (iiia) of S. 15

The placement of sub-clause (iiia) within clause (a) gives rise to an anomaly, as it makes the former subject to the latter. Consequently, acts affecting the monetary stability or economic security of the country would also have to satisfy the requirement of the use of any of the weapons mentioned therein.

S. 16 of the NIA Act empowers the Special Court to take cognizance of an offence without the committal of the case by a Magistrate.

In fact, the expression "committal of the accused" is no longer employed in the Code. The Code contemplates the "committal of the case". So, S. 16(1) of the NIA Act is inaptly articulated.

….. Cond

S. 15 vis a vis S. 113 BNS

Section 113 of the BNS also defines a terrorist act and prescribes punishment therefor. The definition is substantially identical to that contained in S. 15 UAPA.

S. 113 contains an additional stipulation that, an officer not below the rank of Supdnt of Police shall decide whether the case is to be registered under S. 113 BNS or under the provisions of the UAPA. This requirement appears to be unnecessary.

- S. 17. Punishment for raising funds for terrorist act.
- S. 40. Offence of raising fund for a terrorist organisation.

Both are of more or less same kind of offence.

S. 43D permits the extension of the period of detention of an accused up to 180 days. The provision applies uniformly to all offences under the Act, including relatively minor offences such as those punishable under S. 12, which carries a maximum sentence of only one year.

Whether the legislature genuinely intended such an extraordinary procedure remains to be judiciously explained.

S. 23. Enhanced Punishment

S. 23 provides for enhanced punishment for certain offences. Ordinarily, a provision prescribing enhanced punishment presupposes the existence of a lesser punishment for the same offence under the general law. However, some of the offences covered by S. 23 already attract severe penalties under other provisions of law. Hence, the expression "enhanced punishment" appears to be a misnomer.

Interplay with the NIA Act, 2008

Unlike TADA and POTA, which contained both substantive and procedural provisions, the UAPA initially incorporated only terrorism-related offences in 2004. Procedural provisions, as ‘modified application of the Code , were added in 2008. Matters concerning Special Courts, Prosecutors, and allied procedural aspects are governed by the NIA Act. Consequently, the legal framework relating to terrorism is split between the UAPA and the NIA Act.

Scheduled offence investigated by NIA shall by tried by Special Court .

Section 11 of the NIA Act empowers the Central Government to designate Special Courts, while Section 22 confers a similar power on the State Government.

Cognizance without committal

S. 16 of the NIA Act empowers a Special Court to take cognizance of an offence without committal of the accused.

If, no Special court is formed

As per S. 22 (3) the jurisdiction conferred by this Act on a Special Court shall, until a Special Court is constituted by the State Government u/s 22 (1) in the case of any offence punishable *under this Act*, notwithstanding anything contained in the Code, be exercised by the Court of Session of the division in which such offence has been committed.

Consequently, where no Special Court is constituted u/s 22, the proceedings must commence before the Court of Session itself. However, in the absence of a corresponding amendment to the Cr PC/BNSS, this requirement may be overlooked by investigating agencies other than the NIA.

Provisions of Chapter IV of the NIA Act (which includes S. 22) are applicable to all the offences included in the Schedule to the NIA Act.