

Unlawful Activities (Prevention) Amendment Act [UPSC Notes for GS II]

This article will describe in detail the Unlawful Activities (Prevention) Amendment Act (UAPA).

These UPSC Notes on the Unlawful Activities (Prevention) Act are aligned with the [UPSC Syllabus](#) and aspirants should prepare this topic for General Studies Paper II.

The Unlawful Activities (Prevention) Act, commonly called the UAPA, was recently amended by the Parliament. It has raised many questions and is often seen in the news; hence its relevance for the IAS Mains.

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Unlawful Activities (Prevention) Amendment Act

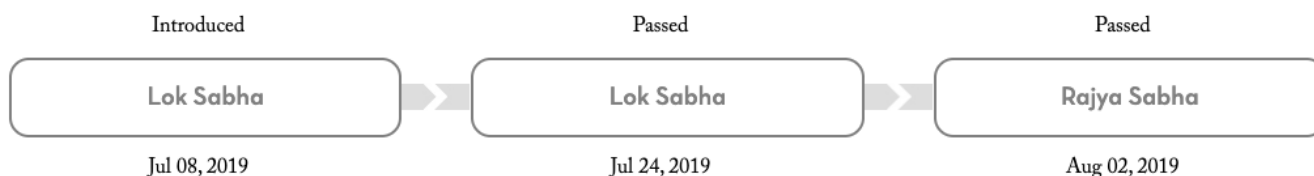
Topic: Functions and responsibilities of the Union and the States

Context: Looking to give more power to the National Investigation Agency (NIA), the government plans to amend two laws the NIA Act and the Unlawful Activities (Prevention) Act to allow it to probe terrorist acts against Indians and to give more power to the NIA to meet fresh challenges, the sources pointed out.

Background:

The UAPA – an enhancement on the TADA (Terrorist and Disruptive Activities (Prevention) Act), which was allowed to lapse in 1995 and the Prevention of Terrorism Act (POTA) was repealed in 2004 — was originally passed in 1967 under the then Congress government led by former Prime Minister Indira Gandhi. Eventually amendments were brought in under the successive United Progressive Alliance (UPA) governments in 2004, 2008 and 2013.

At present, NIA is functioning as the Central Counter Terrorism Law Enforcement Agency in India established under NIA Act 2008.



Unlawful Activities (Prevention) Amendment Act was passed by both Houses of the Parliament:

- The Act gives special procedures to handle terrorist activities, among other things.
- **Who may commit terrorism:** According to the Act, the union government may proclaim or designate an organisation as a terrorist organisation if it: (i) commits or participates in acts of terrorism, (ii) prepares for terrorism, (iii) promotes terrorism, or (iv) is otherwise involved in terrorism. The Bill also empowers the government to designate individuals as terrorists on the same grounds.
- **Approval for property seizure by National Investigation Agency (NIA):** As per the Act, an investigating officer is required to obtain the prior approval of the Director General of Police to seize

properties that may be connected with terrorism. The Bill adds that if the investigation is conducted by an officer of the National Investigation Agency (NIA), the approval of the Director General of NIA would be required for seizure of such property.

- **Investigation by the National Investigation Agency (NIA):** Under the provisions of the Act, investigation of cases can be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above. The Bill additionally empowers the officers of the NIA, of the rank of Inspector or above, to investigate cases.
- **Insertion to schedule of treaties:** The Act defines terrorist acts to include acts committed within the scope of any of the treaties listed in a schedule to the Act. The Schedule lists nine treaties, comprising of the Convention for the Suppression of Terrorist Bombings (1997), and the Convention against Taking of Hostages (1979). The Bill adds another treaty to this list namely, the International Convention for Suppression of Acts of Nuclear Terrorism (2005).

Arguments in Favour of Amendments:

- The object of the proposed amendments is to facilitate speedy investigation and prosecution of terrorist offences and designating an individual as terrorist in line with international practices.
- The amendments will also allow the NIA probe cybercrimes and cases of human trafficking, sources aware of the proposal said Sunday.
- Amendment to Schedule 4 of the Act, the NIA will be allowed to designate an individual suspected to have terror links as a terrorist. In the current scenario before the amendment was made, only organisations were designated as 'terrorist organisations'.
- A strict law is utmost necessary to strengthen the investigation agencies and to uproot terrorism from this country in this regard.
- Hon'ble Home Minister stated in Lok Sabha that law can not be misused against any individual, yet, those individuals who engage in terrorist activities against the security and sovereignty of India, including the urban maoists, would not be spared by the investigating agencies either.
- There are no changes to the bail or arrest provisions. Hence, it is evident that there will be no fundamental rights violation of anyone. Also, the burden of proof is on the investigating agency and not on the accused.
- The amendment about attaching properties amassed through proceeds of terrorism is being proposed in order to accelerate investigation in terror cases and is not against the federal principles.
- At present, Section 25 of the UAPA states that forfeiture of property acquired from terrorism can be done only with the prior approval given in writing by the DGPs of the state wherein lies such property. But the problem is that many times, the terror accused owns properties in multiple states. In this kind of a scenario, it becomes tough to get the approvals of several DGPs and can cause a delay in the whole process of forfeiting property, which can help the accused transfer such property to someone else.

Concerns/Criticism:

- The Act assigns absolute power to the central government, by way of which if the Centre deems an activity as unlawful then it may, by way of an Official Gazette, declare it so.
- The opposition voiced concerns about the amendments, saying the provisions were against the federal structure of the country enshrined in the Constitution.
- There was no pre-legislative consultation.
- Designating an individual as a terrorist raises serious constitutional questions and has the potential for misuse.
- An individual cannot be called a 'terrorist' prior to conviction in a court of law, It subverts the principle of "innocent until proven guilty. A wrongful designation will cause irreparable damage to a person's reputation, career and livelihood.

While none will question the need for stringent laws that show 'zero tolerance' towards terrorism, the government should be mindful of its obligations to preserve fundamental rights while enacting legislation on the subject.

