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EDITORIAL ANALYSIS

The UAPA at the Crossroads: Anti-Terror Law and Civil Liberties Under Strain

THE HINDU

17 April 2026

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INTERVIEW ANGLE



"Recent High Court observations on UAPA bail jurisprudence have reignited the debate on India's primary anti-terror law — particularly its use against activists, journalists, and dissenters where the standard of bail under Section 43D(5) has effectively become prolonged pre-trial detention. How should India reconcile counter-terrorism imperatives with the constitutional commitment to liberty under Article 21?"

 Source: [Original editorial](#)


EDITORIAL SUMMARY

The Hindu examines how UAPA's Section 43D(5) bail bar, 180-day investigation timelines, 2-3% conviction rates, and 2019 individual-designation amendment have created a structurally problematic regime where pre-trial detention has become the punishment. The editorial calls for bail provision review, mandatory time-bound trials, periodic designation review, and rehabilitation for acquittees.

UAPA ARCHITECTURE — KEY PROVISIONS

SECTION	PROVISION
Section 2(1)(o)	Defines “unlawful activity”
Section 15	Defines “terrorist act”
Section 17	Punishment for raising funds for terrorist act
Section 18	Punishment for conspiracy etc.
Section 35	Centre may designate organisations as terrorist
Section 35 (post-2019)	Centre may designate INDIVIDUALS as terrorist
Section 43A-D	NIA powers; investigation extension to 180 days
Section 43D(5)	Reversed bail presumption — bail shall not be granted if accusation prima facie true

UAPA VS ORDINARY CRIMINAL LAW — THE PROCEDURAL GAP

ELEMENT	ORDINARY BNSS	UAPA
Bail presumption	Bail is rule, detention exception	Reversed — bail shall NOT be granted if accusation prima facie true
Investigation period	60-90 days for chargesheet	Up to 180 days, extendable
Pre-trial detention norm	Limited; bail conditions standard	3-7 years routine; 10+ years in some cases
Conviction rate	Variable	~2-3% (very low)

UPSC RELEVANCE

PAPER	ANGLE
GS2 — Polity	UAPA, civil liberties, Article 21, judicial review of pre-trial detention
GS2 — Governance	NIA, anti-terror enforcement, prosecutorial accountability
GS3 — Internal Security	Terrorism, LWE, radicalisation, counter-terror legal architecture
GS4 — Ethics	Liberty vs security trade-off; due process; institutional duty of fairness
Mains Keywords	UAPA, Section 43D(5), 2019 amendment, individual designation, NIA, Bhima Koregaon, conviction rate, Article 21, BNSS, pre-trial detention, sunset clause

● KEY ARGUMENTS AT A GLANCE

The Unlawful Activities (Prevention) Act (UAPA) — particularly after the 2019 amendments empowering the Centre to designate individuals (not just organisations) as terrorists — has become a structurally problematic statute: its bail provisions under Section 43D(5) effectively presume guilt; investigation timelines extend to 180 days; and conviction rates remain very low (~3%) — suggesting the law functions more as a coercive pre-trial detention mechanism than as a focused counter-terror tool.

✓ SUPPORTING

- Section 43D(5) UAPA reverses the bail presumption — courts shall NOT grant bail if, on perusal of case diary, there are “reasonable grounds for believing that the accusation is prima facie true.” This is a significantly higher bar than the ordinary bail test under CrPC/BNSS, and effectively means bail is rarely granted at trial-court level.
- Investigation timeline extension — UAPA permits investigation up to 180 days (vs 60-90 days under BNSS), with extensions possible. Pre-trial detention in UAPA cases routinely extends to 3-7 years; some cases have crossed a decade without trial completion.
- Conviction rate concerns — NCRB data and parliamentary responses indicate UAPA conviction rates have hovered at approximately 2-3% — meaning out of every 100

arrested under UAPA, fewer than 3 are eventually convicted. This raises questions about the law's actual counter-terror efficacy versus its incidental use against dissent.

- The 2019 amendment empowered the Centre to designate INDIVIDUALS (not just organisations) as terrorists — a procedural extension that bypasses traditional criminal trial safeguards. Constitutional challenges to this amendment are pending in the Supreme Court.

COUNTER

UAPA serves a genuine counter-terrorism purpose — India faces real threats from cross-border terrorism, left-wing extremism, and radicalised networks. Diluting UAPA without an alternative framework would create a security vacuum.

Some bail denials are factually justified given the gravity of charges and risk of evidence tampering. The 2019 amendment enabling individual designations followed UN Security Council practice (UN 1267 sanctions regime designates individual terrorists).

Conviction rates in terror cases are inherently lower because of evidentiary complexity, witness intimidation, and the necessity of source protection.

WAY FORWARD

Five-pillar reform: (1) **Section 43D(5) review** — reform the reversed bail presumption to align with ordinary criminal procedure or include time-bound bail review at fixed intervals; (2) **Mandatory time-bound trials** — UAPA cases to be completed within 3 years from chargesheet, with judicial review of pre-trial detention every 6 months; (3) **Periodic review of designations** — automatic 5-year sunset on individual designations requiring fresh review; (4) **Independent prosecutorial oversight** — central or NHRC review of UAPA charging decisions to filter out cases where ordinary criminal law would suffice; (5) **Rehabilitation framework** — for those eventually acquitted, statutory compensation and reintegration support recognising the long pre-trial detention impact.

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MAINS ANSWER FRAMEWORK

QUESTION

The Unlawful Activities (Prevention) Act has emerged as central to India's counter-terrorism architecture but has also been criticised for its impact on civil liberties. Critically examine the UAPA framework and suggest reforms balancing national security with constitutional rights. (250 words)

INTRODUCTION

The Unlawful Activities (Prevention) Act (UAPA), 1967 — substantially amended in 2004, 2008, 2013, and 2019 — is India's primary anti-terror statute. Designed to address organisations and individuals engaged in unlawful activities (broadly defined to include terrorist acts, support to terrorism, and designated organisations), UAPA has expanded in scope while its procedural safeguards have weakened.

Recent High Court observations on UAPA bail jurisprudence have reignited the debate on whether the statute as applied has tilted dangerously away from constitutional civil liberties.

BODY

The bail problem — Section 43D(5): Unlike ordinary criminal law where bail is the rule and detention the exception, UAPA reverses this presumption. Section 43D(5) provides that bail SHALL NOT be granted if the court, on perusal of case diary, finds "reasonable grounds for believing that the accusation is prima facie true." This bar is exceptionally high; trial courts rarely grant bail; defendants languish in pre-trial detention for years. **Investigation extension:** UAPA allows investigation up to 180 days (vs 60-90 days under BNSS), extendable further.

Combined with the bail bar, this creates pre-trial detention regimes of 3-7 years routine and 10+ years in some cases. **The conviction-rate paradox:** UAPA conviction rates have hovered at ~2-3% based on NCRB data and parliamentary responses. From a counter-terror efficiency standpoint, this raises serious questions: either the law is being misused to charge individuals where evidence is weak, or the prosecutorial machinery is failing to convert charges to convictions.

Either interpretation suggests structural problems. **The 2019 amendment — individual designations:** The amendment empowered the Centre to designate individuals (not just organisations) as terrorists — a procedural mechanism that bypasses the traditional requirement of trial-based proof. The constitutional challenge is pending in the Supreme Court; the amendment has been used to designate prominent figures including alleged Khalistani separatists and ISIS sympathisers. **The civil liberties critique:** Activists, journalists, lawyers, and student leaders have been charged under UAPA in cases like the Bhima Koregaon investigation, the Delhi 2020 riots cases, and various LWE-area prosecutions. Critics argue this represents a chilling effect on democratic dissent disguised as counter-terrorism enforcement.

CONCLUSION

Reforming UAPA does not mean dismantling India's counter-terror framework — it means aligning it more closely with constitutional commitments. Reform should focus on: Section 43D(5) bail provision

review (or judicial periodic review of pre-trial detention); mandatory time-bound trial completion (3-year limit from chargesheet); periodic sunset review of individual designations; independent prosecutorial oversight to filter out cases where ordinary law would suffice; and a statutory rehabilitation framework for eventual acquittees.

India's counter-terror credibility depends not just on prosecutorial deterrence but on the fairness of the system itself — a credibility that the current UAPA architecture progressively undermines.

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