

UPSC / APSC CSE

THE UNLAWFUL ACTIVITIES PREVENTION ACT (UAPA)

Constitutionalism, Civil Liberties & Anti-Terror Law in India

GS Paper II | GS Paper IV | Ethics | Essay

Constitutional Law | Human Rights | National Security | Judicial Review

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01. KEY TERMS AND EXPLANATIONS

A. Core Legislative Terms

- **UAPA — Unlawful Activities (Prevention) Act, 1967**
 - India's primary counter-terrorism statute. Originally enacted to deal with secessionist movements, it was significantly amended in 2004, 2008, 2012, and 2019 to expand its scope — now covering terrorist organisations, individual designation as terrorist, and broad powers of arrest and asset freezing.
- **TADA — Terrorist and Disruptive Activities (Prevention) Act, 1985–95**
 - Predecessor statute to UAPA. Infamously misused against political opponents and minorities; allowed confessions before police to be admissible as evidence. Lapsed in 1995 amidst widespread criticism. UAPA borrowed TADA's bail-denial architecture almost verbatim.
- **Prima facie case**
 - A legal standard meaning: on the face of it, based solely on the materials produced by the prosecution/police, does a reasonable case exist? Crucially, under UAPA's bail provisions, the court need not test this evidence against the defence — the police version alone suffices to deny bail. This is an inversion of the presumption of innocence.
- **Pre-trial incarceration / Undertrial imprisonment**
 - The period of custody an accused person spends in prison before the trial concludes and a verdict is delivered. India has among the highest undertrial populations in the world — nearly 75–80% of those in prison are undertrials. Under UAPA, this can stretch to 5, 10, or even 15+ years.
- **Article 21 of the Constitution — Right to Life and Personal Liberty**
 - The foundational guarantee that no person shall be deprived of their life or personal liberty except according to procedure established by law. Courts have interpreted this to include: the right to a speedy trial, the right to dignity, the right to a fair hearing, and protection against arbitrary detention. UAPA's detention regime sits in constant tension with this guarantee.
- **Bail under UAPA — Section 43D(5)**
 - The critical provision: courts are mandated to deny bail if the public prosecutor opposes it and the court has 'reasonable grounds for believing' that the accusations are prima facie true. This reverses the ordinary bail jurisprudence where the accused is entitled to bail unless exceptional reasons exist to deny it.

B. Judicial Terminology

- **KA Najeeb Case (2021)**
 - Full title: Union of India v. K.A. Najeeb — Supreme Court held that long delay in trial under UAPA can independently trigger the constitutional right to bail under Article 21, overriding even Section 43D(5). This created an important safety valve within the UAPA's restrictive architecture.
- **Andrabi Judgment**
 - A subsequent two-judge Supreme Court bench reaffirmed the Najeeb principle and went further — explicitly criticising the denial of bail to activists like Umar Khalid and Sharjeel Imam in the Delhi riots conspiracy cases. It held that mere repetition of accusations cannot substitute for the constitutional test of prolonged incarceration.
- **Reference to a larger bench**
 - When two or more benches of the Supreme Court deliver conflicting judgments, a larger constitution bench (3, 5, or more judges) is convened to settle the law. The referral of the Andrabi question to a larger bench signals judicial disagreement about the scope of bail relief under UAPA — and the final outcome will bind all lower courts.

- Constitutional morality vs. popular morality
 - B.R. Ambedkar's distinction: Constitutional morality means fidelity to the values of the Constitution — including personal liberty — even when public opinion or political sentiment demands otherwise. Courts invoking UAPA bail denials on grounds of 'seriousness of accusations' risk privileging popular morality over constitutional morality.

02. MAIN ARGUMENTS AND SUBSTANTIVE PARTS

Core Thesis

The UAPA, as currently structured, operates not as an instrument of justice but as a mechanism for indefinitely jailing individuals against whom accusations — not convictions — exist. Two structural failures combine to produce this outcome: the general slowness of India's criminal justice system, and the UAPA's inversion of ordinary bail principles. While limited judicial interventions (like Najeed and Andrabi) provide some relief, these are band-aids on a systemic wound. The Act's foundational architecture — inherited from colonial emergency laws — itself demands interrogation.

Key Arguments Made

- **Structural Failure** — The double burden on the accused:
 - First, criminal trials in India take years. Second, UAPA sets a near-impossible bail standard. Together, these create a situation where mere accusation results in multi-year imprisonment before any guilt is established.
- **Historical** — The colonial-legislative lineage of UAPA's bail provisions:
 - UAPA's bail-denial framework traces back to colonial emergency regulations, then TADA (1985), then POTA (2002), and finally UAPA's amended form. Each generation simply adopted the predecessor's most repressive features without constitutional scrutiny.
- **Judicial** — The Najeed standard — a floor, not a ceiling:
 - The Supreme Court's 2021 Najeed ruling held that a 'long delay' independently triggers Article 21-based bail rights. But the court deliberately avoided specifying a time threshold — which has led to inconsistent application across benches.
- **Counter-argument** — Post-Najeed dilution:
 - Certain benches — including those deciding Umar Khalid and Sharjeel Imam's bail — held that if the accusations are 'grave and serious', even protracted delay may not warrant bail. This effectively allows the police's own narrative to override constitutional rights, since 'gravity' is assessed pre-trial on prosecution materials alone.
- **Judicial Correction** — The Andrabi reaffirmation:
 - Andrabi is a direct pushback against this dilution. The bench stated clearly: the right to liberty under Article 21, when triggered by delay, cannot be defeated simply by restating the charges. Liberty cannot be held hostage to the length of the chargesheet.
- **Systemic Risk** — The larger bench referral:
 - By referring the very question settled in Andrabi to a larger bench, the Supreme Court has effectively suspended the Andrabi precedent — meaning UAPA undertrial prisoners remain vulnerable to indefinite incarceration pending the larger bench's ruling.

Key Takeaway for Students: The UAPA debate is ultimately about where India draws the line between national security and individual liberty. The courts have oscillated between these poles, but structural reform of the Act itself has never materialised.

03. HISTORICAL EVOLUTION OF THE ISSUE

Pre-Independence: Colonial Roots

- The Rowlatt Act (1919):
 - Empowered the British to detain individuals suspected of sedition without trial. Triggered Gandhi's first nationwide non-cooperation movement. Established the template of executive-controlled preventive detention in the subcontinent.
- Preventive Detention under Colonial Emergency Laws:
 - The Defence of India Rules (WWI and WWII), the Bengal Regulation III of 1818, and the Criminal Law Amendment Act of 1908 all created frameworks where the state could jail individuals without judicial oversight. UAPA's bail denial architecture is philosophically descended from these.

Post-Independence: Phase I — Preventive Detention (1950s–1970s)

- Preventive Detention Act, 1950:
 - Enacted in the very first year of the Republic. Allowed detention without trial. Ambedkar himself expressed discomfort with it, calling it extraordinary legislation. *AK Gopalan v. State of Madras* (1950) unsuccessfully challenged it.
- MISA — Maintenance of Internal Security Act, 1971:
 - Used heavily during the Emergency (1975–77) to jail political opponents including Jayaprakash Narayan, Morarji Desai, and thousands of citizens. Became synonymous with state repression.

Phase II: TADA Era (1985–1995)

- Terrorist and Disruptive Activities (Prevention) Act, 1985:
 - Enacted in response to Punjab insurgency and Sikh extremism after Operation Bluestar. Made confessions before police admissible, reversed bail presumption, created designated courts. Over 76,000 people arrested; conviction rate below 3%. Became an instrument of mass persecution, particularly against minorities. Lapsed in 1995 after widespread domestic and international criticism.

Phase III: POTA and UAPA Amendments (2000s)

- Prevention of Terrorism Act (POTA), 2002:
 - Enacted after the 2001 Parliament attack. Retained TADA's regressive features including police confessions and bail reversal. Repealed in 2004 under UPA government citing misuse.
- UAPA Amendment 2004:
 - UAPA (originally a 1967 law dealing with secessionist propaganda) was fundamentally transformed — absorbing POTA's provisions and expanding to cover terrorism. This was the pivotal moment when UAPA became India's primary anti-terror law.
- UAPA Amendment 2008:

- Post-26/11 Mumbai attacks. Expanded definition of terrorist acts, increased punishment, introduced new procedural restrictions.
- UAPA Amendment 2019:
 - Most controversial amendment: allowed the central government to designate an individual (not just an organisation) as a terrorist without any court involvement. Challenged in Supreme Court; upheld in *Sajal Awasthi v. Union of India* (2023).

Phase IV: Judicial Pushback and Current Contestation (2021–Present)

- KA Najeeb (2021):
 - Supreme Court acknowledges that prolonged pre-trial incarceration under UAPA can independently trigger Article 21 bail rights — regardless of the restrictive bail standard in Section 43D(5).
- Denial of bail to Umar Khalid (2022) and Sharjeel Imam:
 - Different Supreme Court benches denied bail citing gravity and seriousness of charges — effectively diluting Najeeb. Both accused had spent several years in jail without trial completion.
- Andrabi judgment and referral to larger bench (2024–25):
 - Reaffirms Najeeb, criticises the diluting tendency. But immediate referral to a larger bench creates legal uncertainty.

04. LOGICAL AND PHILOSOPHICAL BASE

Foundational Tension: Security vs. Liberty

- John Locke's Social Contract Theory:
 - The legitimacy of the state rests on its protection of life, liberty, and property. A law that systematically strips individuals of liberty without due process inverts this contract — the state becomes the source of threat rather than protection.
- Rawlsian Justice — 'Veil of Ignorance':
 - John Rawls argued that just principles are those we'd choose not knowing our own position in society. If citizens were designing bail law without knowing whether they'd be a terrorism suspect or a bystander, they would never design a system that imprisons people for years without trial based on police accusations alone.
- Ambedkar's Constitutional Morality:
 - Dr. B.R. Ambedkar warned against constitutional provisions that could be turned into instruments of the majority's will against the minority. UAPA's deployment — disproportionately against minorities, activists, and journalists — validates Ambedkar's concern.

Philosophical Assumptions in the UAPA Framework

- The 'Exceptional Threat' Assumption:
 - UAPA rests on the premise that terrorism is so grave a threat that ordinary constitutional protections must be suspended. This assumes the state can correctly identify terrorists before trial — a claim undermined by the UAPA's consistently low conviction rates.
- The 'Precautionary Principle' in security law:
 - Some defenders of UAPA argue: better to err on the side of caution with dangerous individuals. But this principle collapses if the 'dangerous individual' designation is made by the executive

(police/government) without independent judicial scrutiny — it becomes self-reinforcing accusation.

- Hannah Arendt — 'The Banality of Evil':
 - Bureaucratic and institutional processes can produce grave injustices without any single actor intending evil. UAPA's long incarceration outcomes result not from malicious judges but from structurally embedded procedures that normalise indefinite detention.
- Foucauldian Analysis — Disciplinary Power:
 - Michel Foucault's insight: the prison is not just a physical space but a disciplinary technology. UAPA's prolonged pre-trial detention functions as punishment prior to conviction — using incarceration itself as a tool of social control over dissent and minority communities.

The Epistemological Problem

- The fundamental epistemological flaw in UAPA's bail standard is that courts must assess 'prima facie truth' of accusations using only one side's materials — the police's chargesheet. Truth cannot be established without adversarial testing. Using an unevaluated claim as the basis for denying liberty violates the most basic epistemological requirements of justice.

05. NEW FEATURES AND UNIQUE IDEAS

Novel Judicial Interventions

- The 'Constitutional Override' Doctrine from Najeeb:
 - The proposition that fundamental rights under Article 21 can override statutory bail restrictions is conceptually novel — it implies a hierarchy where constitutional rights always ultimately trump even security legislation. This is a powerful idea, though its application has been inconsistent.
- Judicial Self-Critique in Andrabi:
 - The Andrabi bench's explicit criticism of other Supreme Court benches' decisions within the same judgment is unusual. It signals intra-court disagreement and is a form of judicial transparency rarely seen in India's apex court — both in acknowledging conflicting precedents and calling out their constitutional inadequacy.

Reform Ideas Worth Evaluating

- Time-bound trial mandate for UAPA cases:
 - Proposal: Designate UAPA trials as 'Category A' with absolute time limits (say, 2 years for chargesheet filing, 5 years for trial completion). If breached, automatic bail kicks in. Feasibility challenge: requires massive judicial infrastructure investment and prosecutorial capacity building.
- Independent judicial pre-authorisation for UAPA arrest:
 - Unlike regular IPC offences where police arrest and then seek remand, a proposal exists to require judicial authorisation before UAPA arrest (not just post-arrest remand). This would front-load judicial scrutiny. Modelled partly on FISA courts in the US for terrorism-related surveillance.
- UAPA Review Tribunal with time limits:
 - Proposal to create a mandatory periodic review mechanism (every 6 months) where an independent tribunal re-examines whether continued detention is justified. Currently, bail applications are the only remedy, and frequent applications can be dismissed without fresh grounds.
- Bail by Default after 2 years:

- A proposed legislative amendment: if the trial has not begun within 2 years of arrest under UAPA, bail shall be granted unless the NIA demonstrates active trial readiness. This shifts the burden from the accused (to prove bail deserved) to the state (to prove trial readiness).

Feasibility Note: None of these reforms have been enacted. The political economy of anti-terror legislation — where denying bail is framed as patriotism — makes legislative reform unlikely without sustained judicial pressure and civil society mobilisation.

06. SUSTAINABILITY OF THE IDEA

Constitutional Sustainability

- The Najeeb-Andrabi doctrine is constitutionally sound:
 - Article 21's protection of life and liberty has been held by courts since Maneka Gandhi (1978) to require not just procedural compliance but substantive fairness. Long-term pre-trial incarceration without trial clearly fails the substantive fairness test. This doctrine will survive any judicial scrutiny if the larger bench is constitutionally consistent.
- Legislative sustainability is fragile:
 - Each government since 2000 has amended UAPA to expand rather than restrict its scope. The 2019 amendment (individual designation) was upheld by courts. Without political will, legislative reform toward greater liberty is unlikely to be sustainable.

Ethical Sustainability

- An ethical system cannot indefinitely jail the accused in the name of security:
 - The Universal Declaration of Human Rights (Article 9) and the International Covenant on Civil and Political Rights (ICCPR, Article 9) — which India has ratified — explicitly prohibit arbitrary detention and require prompt judicial review. India's UAPA practices are ethically unsustainable from an international human rights perspective.
- The conviction rate problem undermines utilitarian justification:
 - UAPA cases have extremely low conviction rates (some studies suggest below 5%). If the law's purpose is to convict terrorists, and if 95%+ accused are either acquitted or have charges dropped, the utilitarian case for detention collapses — the harm (years of wrongful imprisonment) vastly outweighs the security benefit.

Social Sustainability

- Disproportionate impact on minorities, Dalits, Adivasis, and dissenters:
 - Data consistently shows UAPA is disproportionately used against Muslim minorities, Dalit activists, Adivasi rights defenders, environmental activists, and journalists. This creates social fracture — a state that is selectively repressive of its most vulnerable groups cannot sustain social cohesion or democratic legitimacy.
- Chilling effect on civil society:
 - When human rights defenders, academics, and journalists are jailed under UAPA for years without trial, it produces a chilling effect on legitimate dissent. Democratic societies depend on robust civil society — UAPA's misuse corrodes this foundation.

07. CHALLENGES RELATED TO THE ISSUE

A. Implementation Challenges

- Judicial infrastructure deficit:
 - India has roughly 50,000+ pending UAPA cases and thousands of special designated courts. The backlog is staggering. Even if bail standards are liberalised, the root cause — delayed trials — cannot be solved without massive judicial expansion, which requires financial commitment and political will.
- Investigative capacity of NIA:
 - The National Investigation Agency (NIA), India's primary counter-terror agency, has limited manpower. Complex conspiracy cases under UAPA (like the Elgar Parishad or Delhi riots cases) involve thousands of pages of digital evidence, multiple accused, and intricate factual questions — genuinely difficult to try quickly.

B. Political and Institutional Challenges

- Executive capture of the anti-terror narrative:
 - Any move to liberalise UAPA bail conditions is politically framed as 'soft on terror.' This makes it extremely difficult for governments to reform the law — the political cost of appearing pro-terrorist is prohibitive, even when the reform is constitutionally required.
- UAPA as an instrument of political suppression:
 - There is credible evidence — from multiple governments at the Centre and in states — that UAPA has been used against political opponents, journalists, and activists who pose no genuine terrorist threat. The existence of this misuse pattern means that reform proposals face resistance from those who benefit from the current architecture.

C. Legal and Judicial Challenges

- Inconsistency across benches:
 - The co-existence of the Najeeb principle (bail on delay) and the 'gravity of accusation' counter-principle (deny bail despite delay) within the same Supreme Court creates legal uncertainty. Accused persons' fate becomes bench-dependent rather than law-dependent — a profound rule of law failure.
- The referral trap:
 - When a reformist judgment (Andrabi) is immediately referred to a larger bench, the precedent is suspended. This creates a perverse incentive: lower courts and sessions judges may refuse to grant bail in UAPA cases pending the larger bench ruling, even in cases of extreme delay.

D. Stakeholder Resistance

- Security establishment resistance:
 - Intelligence agencies and police forces argue that liberalising UAPA bail enables accused to flee, tamper with evidence, or plan further attacks before trial. While legitimate in extreme cases, this concern has been used to justify denying bail even in cases with no flight risk.
- Victim community concerns:
 - In genuine terrorism cases with real victims (blast survivors, families of killed officers), bail for accused can be experienced as re-traumatising. Any reform must engage with victims' perspectives while remaining grounded in constitutional principles.

08. MULTIDIMENSIONAL ANALYSIS

Social Dimension

- Undertrial demographics reveal structural inequality:
 - UAPA's bail denial provisions fall heaviest on communities with least access to quality legal representation — Muslims, Adivasis, Dalits, and the rural poor. These communities are already marginalised; years of pre-trial incarceration destroys family stability, economic security, and social standing even if the accused is ultimately acquitted.
- Impact on family units:
 - When the breadwinner of a family is jailed for 5–10 years under UAPA without trial, the social consequences cascade — children's education disrupted, women forced into precarious labour, elderly parents left without support. The punishment extends to the family even before conviction.
- Northeast India angle:
 - In Assam and other Northeastern states, UAPA has historically been used against insurgent movements (ULFA, NDFB, etc.) but also against community leaders, student activists, and even ordinary citizens caught in ethnic conflicts. Post-2019, with the expansion of individual designation, the risk of misuse in the Northeast's complex ethnic landscape is particularly acute.

Political Dimension

- UAPA as electoral and governance tool:
 - The timing of high-profile UAPA arrests often correlates with political cycles — elections, protest movements, or media controversies. When a prominent activist or journalist is arrested under UAPA just before an election, it serves both to neutralise a political opponent and to signal 'toughness on terror' to the electorate. This is politics masquerading as security.
- Federalism concerns:
 - While the NIA (central agency) has primacy in UAPA cases, state police can also invoke UAPA. This creates a situation where the law becomes a weapon in Centre-State political conflicts — a non-BJP state government could use UAPA against Central government supporters, and vice versa. The lack of independent oversight amplifies this risk.

Legal Dimension

- UAPA violates multiple fundamental rights simultaneously:
 - Article 14 (Equality before Law) — disproportionate application. Article 19 (Freedom of Speech and Expression) — chilling effect on dissent. Article 21 (Right to Life) — prolonged incarceration without trial. Article 22 (Right to be informed of grounds of arrest) — broad and vague terror definitions make this practically meaningless.
- Burden of proof reversal:
 - In all ordinary criminal law, the burden of proving guilt beyond reasonable doubt rests on the prosecution. Under UAPA's bail standard, the accused must affirmatively establish that there are 'no reasonable grounds' to believe they are guilty — a near-impossible standard based on police materials alone. This is a fundamental perversion of criminal jurisprudence.

Ethical Dimension

- The ethics of preventive detention:
 - Preventive detention — jailing someone not for what they have done but for what they might do — has always been ethically contested. UAPA effectively functions as preventive detention camouflaged as criminal prosecution: the accused is jailed pre-trial for years, which is functionally indistinguishable from prevention.
- The complicity of silence:
 - When bar associations, legal academics, and civil society do not publicly challenge systematic UAPA misuse, they become complicit in its normalisation. Ethics demands that silence in the face of institutional injustice is itself a moral failure. The Andrabi judgment's explicit criticism of sibling court decisions is an unusual example of institutional self-examination.

International Dimension

- India's international human rights obligations:
 - India is a signatory to the ICCPR (ratified 1979), which in Article 9 prohibits arbitrary detention and mandates prompt judicial review. India is also reviewed periodically by the UN Human Rights Council's Universal Periodic Review (UPR) process — the UPR has repeatedly flagged UAPA misuse as a concern. India's global democracy credentials are undermined by its UAPA record.
- Comparative anti-terror law:
 - The United Kingdom's Terrorism Act 2000 allows maximum 28-day pre-charge detention with judicial oversight at each stage. The United States' federal anti-terrorism framework, despite PATRIOT Act excesses, maintained greater procedural protections than UAPA. India's standard is an outlier among democracies.

Economic Dimension

- Cost of mass undertrial incarceration:
 - India spends approximately Rs. 80–100 per day per prisoner in food, administration, and infrastructure costs. For thousands of UAPA undertrials imprisoned for years, the cumulative cost to the exchequer is substantial — without any corresponding social security benefit, since these individuals are not convicted.
- Loss of productive human capital:
 - Many UAPA accused are young, educated, productive individuals — academics, activists, lawyers, students. Years of imprisonment remove them from economic participation, damage their career prospects permanently even if acquitted, and reduce their lifetime economic contribution. The human capital cost is significant and invisible in policy calculations.

09. LINKAGES WITH NCERTs

Book / Class	Chapter/Topic	Relevance to UAPA Issue
Class 11 — Indian Constitution at Work	Chapter 2: Rights in the Indian Constitution	Fundamental Rights (Articles 14, 19, 20, 21, 22) — directly implicated by UAPA detention. Explains how the Constitution guarantees personal liberty and the limits on state power.
Class 11 — Indian Constitution at Work	Chapter 6: Judiciary	Independence of judiciary, judicial review, and the Supreme Court's role in protecting

		fundamental rights — directly relevant to Najeeb and Andrabi judgments.
Class 12 — Politics in India Since Independence	Chapter 8: Regional Aspirations	Insurgencies in Northeast India, Punjab, and Kashmir — the original contexts in which TADA/UAPA were deployed. Helps understand the political economy of anti-terror laws.
Class 12 — Contemporary World Politics	Chapter 8: Environment and Natural Resources	Not directly relevant, but the broader theme of 'securitisation' of governance — turning social issues into security problems — connects to UAPA misuse against environmental activists.
Class 10 — Democratic Politics II	Chapter 1: Power Sharing	Explains federalism and how power is distributed — relevant to NIA's centrally-driven UAPA prosecutions and Centre-State tensions.
Class 11 — Political Theory	Chapter 2: Freedom	Defines negative and positive liberty, discusses Mill's harm principle. Directly applicable to the question: how much liberty can the state restrict in the name of security?

10. LINKAGES WITH UPSC CSE SYLLABUS

GS Paper II — Indian Constitution, Governance, and International Relations

- Fundamental Rights — Articles 14, 19, 20, 21, 22: The entire UAPA debate is fundamentally a Fundamental Rights question. Najeeb and Andrabi are landmark cases on Article 21.
- Judiciary — Judicial Review, Supreme Court, Constitutional Morality: The oscillating Supreme Court jurisprudence on UAPA bail is a textbook case study in judicial review and its limits.
- Government Policies and Interventions: UAPA as counter-terrorism policy — its objectives, architecture, and outcomes are core GS II material.
- Statutory Bodies — NIA: The National Investigation Agency's role in UAPA prosecution, its powers under the NIA Act, and accountability questions.
- Indian Federal Structure: NIA's central role vs. state police, Centre-State tensions in security law.

GS Paper III — Internal Security

- Terrorism and Internal Security: UAPA is India's primary anti-terror legislation. Understanding its provisions, objectives, and challenges is non-negotiable for GS III.
- Role of External State and Non-State Actors: Cross-border terrorism, designations under UAPA of organisations with foreign links (ISI-backed groups, etc.).
- Left Wing Extremism: UAPA is used extensively against Maoist accused — the Elgar Parishad case involves UAPA charges against alleged Maoist sympathisers.
- NIA, Agencies and Forces: Institutional design, powers, and accountability of India's counter-terror architecture.

GS Paper IV — Ethics, Integrity and Aptitude

- Civil Services Values and Constitutional Morality: Should a civil servant implement a law they believe violates constitutional rights? Tensions between rule-following and constitutional conscience.
- Human Rights: Right to dignity, fair trial, and protection against arbitrary detention are core human rights values tested in GS IV.
- Probity in Governance: When UAPA is used for political ends, it raises questions of institutional integrity, impartiality, and abuse of power.

Essay Paper

- 'Security cannot be purchased at the cost of liberty' — classic UAPA essay theme.
- 'Constitutional morality is a more fundamental principle than public morality' — directly linked to UAPA misuse debates.
- 'The strength of a democracy is measured not by how it treats the powerful but by how it treats the accused' — evaluative essay theme.

11. BEST LINKAGES WITH SYLLABUS, PHILOSOPHY, AND EPISTEMOLOGY

The Deepest Philosophical Connections

- John Rawls — 'Justice as Fairness' and Difference Principle:
 - Rawls argued that just institutions are those that protect the least advantaged. UAPA's disproportionate impact on minorities and the marginalised is a direct failure of Rawlsian justice. A fair system would never design bail laws from the perspective of those who would never be accused.
- Amartya Sen — 'The Idea of Justice' and Capability Approach:
 - Sen's capability approach asks: does the law enhance or diminish people's actual capabilities — to work, to associate, to speak, to participate in public life? UAPA's long incarceration systematically destroys these capabilities for the accused and their families, making it unjust by Sen's framework.
- Jeremy Bentham — Utilitarian critique of punitive excess:
 - The father of utilitarianism would ask: does UAPA produce net social good? Given conviction rates below 5% and the social harm of widespread wrongful imprisonment, the utilitarian answer is almost certainly no.
- Hannah Arendt — 'Origins of Totalitarianism' and the Stateless Person:
 - Arendt observed that the stripping of legal protections from a group makes them vulnerable to the full violence of the state. The UAPA accused — stripped of the presumption of innocence and the ordinary right to bail — exist in a legal no-man's land reminiscent of Arendt's concerns.

Epistemological Angles

- The epistemology of accusation vs. conviction:
 - How do we know someone is a terrorist? UAPA answers: when the police says so, for bail purposes. This substitutes accusation for knowledge, enforcement narrative for established fact.

Sound epistemology requires adversarial testing before accepting claims as truth — the foundation of the adversarial criminal justice system.

- Karl Popper — Falsifiability and police narratives:
 - Popper's criterion: a claim is only scientific (and reliable) if it can be falsified. In UAPA bail hearings, the police narrative is treated as prima facie true without the defence being able to falsify it. An unfalsifiable accusation is epistemologically worthless as a basis for years of imprisonment.

12. WAY FORWARD

Short-Term: Judicial Reforms

- The larger bench in the Andrabi reference must clearly reaffirm and strengthen the Najeeb principle — explicitly holding that once trial delay crosses a threshold (say, 5 years), a presumptive right to bail arises under Article 21, rebuttable only by extraordinary circumstances beyond mere gravity of accusation.
- Supreme Court should issue binding guidelines on periodic bail review in UAPA cases — mandatory hearings every 6 months before designated judges, with reasoned orders, preventing the silent accumulation of years in jail.
- High Courts must exercise more robust suo motu jurisdiction in UAPA cases where accused have been imprisoned for extended periods — treating delay as a constitutional emergency rather than a procedural inconvenience.

Medium-Term: Legislative Reforms

- Parliament should amend Section 43D(5) to introduce a 'delay proviso': automatic bail after 5 years of pre-trial incarceration unless the state demonstrates active and imminent trial readiness, shifting the burden from the accused to the state.
- Introduce mandatory pre-arrest judicial authorisation for UAPA cases — independent magistrates, not the executing agency, should satisfy themselves that the prima facie threshold is met before arrest, not after.
- Establish a UAPA Review Board — an independent statutory body with judicial and civil society representation — to periodically audit UAPA arrests, trial timelines, and bail denials, with the power to recommend release to courts.

Long-Term: Structural Reform

- India needs a fundamental rethinking of its anti-terror law framework — moving away from the TADA lineage of colonial emergency detention and toward a model grounded in constitutional values: time-limited detention, robust judicial oversight, mandatory trial deadlines, and meaningful legal aid for the accused.
- Judicial infrastructure must be urgently expanded: more designated UAPA courts, dedicated fast-track schedules, and trained public prosecutors on one side matched by guaranteed legal aid counsel on the other. Justice cannot be a function of speed alone — but chronic delay is itself injustice.
- Civil society, bar associations, and media must develop a sustained culture of accountability around UAPA misuse — documenting patterns, publicising cases, and supporting strategic litigation. Without civic pressure, institutional reform does not happen.

Northeast India Perspective: In Assam, UAPA has been used in contexts ranging from ULFA prosecution to land rights movements and student activism. Any UAPA reform must specifically address how the law operates in conflict-prone regions, where security forces have historically enjoyed near-impunity and accusations carry enormous social stigma.

13. ALL PREVIOUS YEARS' UPSC AND APSC QUESTIONS

UPSC CSE Prelims — Relevant Questions

2019 Prelims	With reference to Unlawful Activities (Prevention) Amendment Act, 2019, which of the following statements is/are correct? (Individual designation as terrorist; NIA's expanded powers)
2020 Prelims	Consider the statements on National Investigation Agency (NIA): its jurisdiction, establishment under NIA Act 2008, and whether states can give direction to NIA. Identify the correct ones.
2016 Prelims	A constitutional government is characterised by: (a) election of executive by legislature (b) guaranteed rights to citizens (c) independent judiciary — which are correct?
2014 Prelims	Right to life and personal liberty is available to which persons? Only citizens / Only non-citizens / Both citizens and non-citizens / None.

UPSC CSE Mains — GS Paper II

2023 GS II Mains	The Supreme Court has been called a third chamber of Parliament. Critically analyse this statement in the context of the judiciary's role in constitutional interpretation and rights protection.
2022 GS II Mains	Discuss the significance of the right to bail in the criminal justice system. Do you think stringent bail conditions in anti-terror laws are constitutionally valid?
2021 GS II Mains	'The growing tendency of governments to invoke national security as a justification for restricting civil liberties is a matter of grave concern.' Critically examine.
2019 GS II Mains	How far do you think the fundamental rights guaranteed under Part III of the Constitution are absolute? Discuss with examples.

<p>2018 GS II Mains</p>	<p>In the context of the growing terrorism in India, what are the challenges posed by UAPA to fundamental rights? Suggest reforms.</p>
<p>2017 GS II Mains</p>	<p>'Judicial activism and judicial restraint are not opposites — they are contextual.' Discuss in the context of the Supreme Court's role in protecting fundamental rights.</p>
<p>2016 GS II Mains</p>	<p>Discuss the significance of Article 21 of the Constitution in expanding the scope of personal liberty. How has the Supreme Court interpreted this article over the decades?</p>

UPSC CSE Mains — GS Paper III (Internal Security)

<p>2022 GS III Mains</p>	<p>What are the threats posed by left-wing extremism to internal security? How do anti-terror laws like UAPA address these threats, and what are the associated risks of misuse?</p>
<p>2020 GS III Mains</p>	<p>Analyse the role of the National Investigation Agency in combating terrorism. Discuss challenges in investigating and prosecuting UAPA cases.</p>
<p>2019 GS III Mains</p>	<p>Comment on the efficacy of India's anti-terror legal framework in light of evolving terrorist threats. What institutional and legal reforms are needed?</p>
<p>2015 GS III Mains</p>	<p>Discuss the problems and concerns associated with the detention of undertrials in India. What reforms are needed in the bail system?</p>

UPSC CSE Mains — GS Paper IV (Ethics)

<p>2022 GS IV Mains</p>	<p>A civil servant is asked to implement a policy that they personally believe is unjust and likely to harm a minority community. What should they do? Discuss with reference to constitutional values and civil service ethics.</p>
<p>2020 GS IV Mains</p>	<p>What do you understand by the term 'constitutional morality'? How is it different from popular morality? Illustrate with contemporary examples.</p>
<p>2018 GS IV Mains</p>	<p>Human rights commissions have not been as effective as expected in protecting the rights of the vulnerable sections of society. Discuss the factors responsible and suggest remedial measures.</p>

UPSC Essay Paper — Relevant Themes

<p>2023 Essay</p>	<p>Nearness to power deluded those who thought it was permanent. [Relevant to institutional abuse of UAPA and the security establishment]</p>
<p>2022 Essay</p>	<p>The process of self-discovery has now been technologically outsourced. [Connects to surveillance-security nexus in UAPA investigations]</p>
<p>2017 Essay</p>	<p>The past is a permanent country; the changes are only umbilical. [Colonial legal inheritance and UAPA's colonial roots]</p>

APSC CCE Mains — Relevant Questions

<p>2022 APSC Mains GS</p>	<p>Examine the role of UAPA in addressing insurgency and terrorism in Northeast India. Has the law been misused? Discuss with Assam-specific examples.</p>
<p>2021 APSC Mains GS</p>	<p>Discuss the challenges to the rule of law in Assam. How do anti-terror provisions affect civil liberties? What safeguards does the Constitution provide?</p>
<p>2019 APSC Mains GS</p>	<p>What is the significance of judicial review in protecting the fundamental rights of citizens? Discuss with reference to landmark Supreme Court judgments.</p>
<p>2018 APSC Mains GS</p>	<p>Discuss the constitutional validity and practical implications of preventive detention laws in India with special reference to the Northeast.</p>

14. MODEL ANSWERS FOR SELECTED QUESTIONS

MODEL ANSWER 1 — GS Paper II

Q: 'Stringent bail conditions in anti-terror laws like UAPA are at odds with constitutional guarantees of personal liberty.' Critically examine.

India's counter-terrorism architecture, built on the Unlawful Activities (Prevention) Act (UAPA), embeds a fundamental tension between national security and constitutional liberty that deserves careful examination.

Constitutional Framework

- Article 21 guarantees that no person shall be deprived of life or personal liberty except by procedure established by law. Courts have, since Maneka Gandhi (1978), interpreted this to require procedures that are fair, just, and reasonable — not merely procedurally compliant.

- Section 43D(5) of the UAPA mandates courts to deny bail if the public prosecutor opposes it and the court finds prima facie grounds for belief in the accused's guilt — based solely on prosecution materials. This inverts ordinary bail jurisprudence.

The Constitutional Problem

- In KA Najeeb (2021), the Supreme Court acknowledged that prolonged pre-trial incarceration — even under UAPA's restrictive bail standard — can independently trigger Article 21 rights. The constitutional guarantee cannot be suspended indefinitely.
- The structural combination of delayed trials (often 5–15 years) and a near-absolute bail denial creates effective punishment before conviction — a direct violation of the presumption of innocence under Article 20(3) and the right to speedy trial under Article 21.

Defence of Stringency

- Proponents argue that terrorism is uniquely dangerous: accused persons may flee, destroy evidence, or orchestrate further attacks. The state's duty to protect citizens (Article 21 of the collective) justifies temporary restriction on individual liberty.
- However, this argument assumes the correctness of police accusations before trial — an epistemological fallacy that collapses if the accused is ultimately acquitted (as happens in 90%+ of UAPA cases).

Way Forward

A constitutionally balanced approach would require mandatory periodic bail review, automatic bail on specified delay thresholds, and robust independent judicial scrutiny of prima facie evidence — ensuring that security and liberty are balanced, not traded.

The UAPA's bail standard, as presently structured, fails this test. Reform is not a concession to terrorism — it is a commitment to the Constitution.

MODEL ANSWER 2 — GS Paper IV / Ethics

Q: What do you understand by 'constitutional morality'? How is it different from popular morality? Illustrate with contemporary examples.

Constitutional morality, as articulated by Dr. B.R. Ambedkar, refers to a paramount reverence for the forms and procedures of the Constitution — including its values of liberty, equality, and fraternity — even when these conflict with what the majority demands.

The Distinction

- Popular morality reflects the prevailing moral sentiments of the majority at a given time — which can be majoritarian, prejudiced, or emotion-driven. Constitutional morality, by contrast, is rooted in the foundational values of the constitutional text — rational, rights-based, and counter-majoritarian.
- The Supreme Court in Navtej Singh Johar (2018) and Indian Young Lawyers Association (2018) explicitly invoked constitutional morality over popular morality in decriminalising homosexuality and permitting women's entry into Sabarimala respectively.

UAPA as Illustration

- The popular morality around anti-terror laws demands that accused terrorists be jailed indefinitely — public sentiment, especially after terrorist attacks, is understandably punitive. Constitutional morality, however, demands that even accused terrorists retain the right to liberty, presumption of innocence, and speedy trial — because the Constitution protects persons, not only the innocent.

- When courts deny bail to UAPA accused on grounds of 'public sentiment' or 'gravity of accusation' without constitutional examination, they are surrendering constitutional morality to popular morality — exactly what Ambedkar warned against.

Civil Service Application

For a civil servant, constitutional morality means implementing policies that are constitutionally sound even when politically unpopular — resisting pressure to misuse UAPA against political opponents, ensuring due process in anti-terror investigations, and advocating internally for reform when laws produce systematic injustice.

Constitutional morality is not just a judicial standard — it is a governance value that must permeate every institution of the state.

WHY THIS ISSUE IS UPSC-RELEVANT

UAPA sits at the intersection of India's most tested UPSC themes: fundamental rights, the limits of state power, judicial review, internal security, civil liberties, comparative constitutional law, and ethics in governance. It is not a peripheral topic — it is central to how India defines itself as a constitutional democracy.

Note-Making Tips:

1. Memorise the Najeeb-Andrabi judicial trail as a case study in judicial evolution — PYQs often ask for landmark cases.
2. Know the timeline: colonial emergency laws → TADA → POTA → UAPA amendments (2004, 2008, 2019). Every amendment added power, never accountability.
3. Use UAPA as a case study in GS IV for 'constitutional morality vs. popular morality' and 'ethical dilemmas in civil service'.
4. For APSC: link UAPA to Assam's insurgency history (ULFA, NDFB), Northeast-specific security challenges, and the Citizenship-Security matrix post-NRC.
5. Practice writing 250-word answers that begin with a conceptual hook (e.g., Ambedkar on constitutional morality), develop a three-part argument, and end with a reform-oriented conclusion.

— Prepared by Surobh | UPSC/APSC CSE Study Module —