

GREENWOOD HIGH
JUNIOR MODEL UNITED NATIONS

BACKGROUND GUIDE



AIPPM

AGENDA

EVALUATING THE CONSTITUTIONAL
VALIDITY OF THE UAPA IN
RELATION TO ARTICLE 19 AND 21

Letter from the Executive Board

Greetings Delegates,

The Executive Board welcomes you to the All India Political Parties Meet (AIPPM) at Greenwood High International School's Junior Model United Nations, 2026.

The AIPPM stands distinct from other MUN committees due to its unceasing chaos, fiery speeches in both English and various Indian languages and its distinguished rules of procedure. We look forward to engaging, substantive and solution-oriented debate over the course of this committee.

In order to help delegates with their research on the agenda, this background guide has been compiled by us with all the basic information any delegate needs before coming to this conference. In this background guide, you will find a summary about the agenda and the questions you must solve along with your fellow delegates. This background guide cannot be held as a valid source during the debate between delegates, it is a medium to provide a certain amount of information about the agenda. Delegates are expected to research to a further extent on this agenda and must not restrict themselves to this background guide.

For any clarifications regarding this guide, the committee, or the agenda, please feel free to contact the EB. We are looking forward to an action packed committee.

With Regards,

Miraya Singh - Head Chairperson of AIPPM

Sarvesh Anshul Jairath - Vice Chairperson of AIPPM

Ian Jobby - Moderator of AIPPM

Rules of Procedure

Roll Call: At the beginning of each session, the chairperson(s) shall record the presence of each participant, and determine quorum, as well as simple and special majority.

Opening Statement: Members of the Committee, will be given 90 seconds (per member) to present an opening statement outlining their portfolio's views on the agenda.

This is a non-exhaustive list, and the committee will return to opening statements in the absence of passage of any other motion.

Question Hour: It is an opportunity for delegates to question other Members on any topic not related to the agenda. Members to whom questions are addressed will be informed of said questions prior to the commencement of Question Hour, and will be given adequate time to prepare responses. It is a moderated Question and Answer session, and delegates will be expected to submit questions to the Speaker's desk [Executive Board] for approval.

The Executive Board will designate questions as Starred or Un starred:

1. Starred Questions are those questions where oral answer is mandatory, and supplementary questions allowed by default.
1. Unstarred Questions are those questions where answers may be oral or written in chit form. Supplementary questions are disallowed unless indicated otherwise by the Executive Board.

Note: Each delegate will be limited to a maximum of 3 (three) submissions for Question Hour.

Zero Hour: Zero Hour will take place immediately after Question Hour. Delegates will be able to ask questions without any prior notice and those asked will be required to provide an answer orally. The Zero Hour will be unmoderated, and hence no submissions via chit will be accepted by the Executive Board

Discussion Sessions (Moderated Caucuses): Members of the Committee will decide and pass a motion to enter a discussion session, with both a fixed topic and time per speaker.

Forms of Engagement Post Speech:

1. Points of Information (POI): Members can question speakers on the topic of the discussion session or the content of their speeches. Delegates shall not use POIs to request a speaker to repeat any part of their speech.

2. Points of Order: This point can be raised in rebuttal to another delegate's speech to point out a mistake or flaw. Delegates must quote verbatim the part of the speech containing the error.

- *Factual Inaccuracy*

Something that is factually inaccurate, For example: India is the richest country in the world.

- *Logical Fallacy*

Something that is logically fallacious, For example: If one student cheated in the exam, then all students are dishonest.

Private Sessions (Unmoderated Caucuses): Informal debates allowing delegates to speak freely among each other for a set period of time, without a fixed topic.

Motions: Above sessions shall be proposed by individual delegates, and voice-voting will be conducted to determine the passage of said motion.

Those in favour of the motion, when prompted, must say "*Aye*"

Those against the motion, when prompted, must say "*Nay*"

Documentation:

Press Releases: A Press Release, as the name suggests, is a method of informing the committee, via a news agency, of any new developments in committee. Press Releases may be sent at any point of time when in formal session, except during Question Hour, ZeroHour and Tabling of Bills.

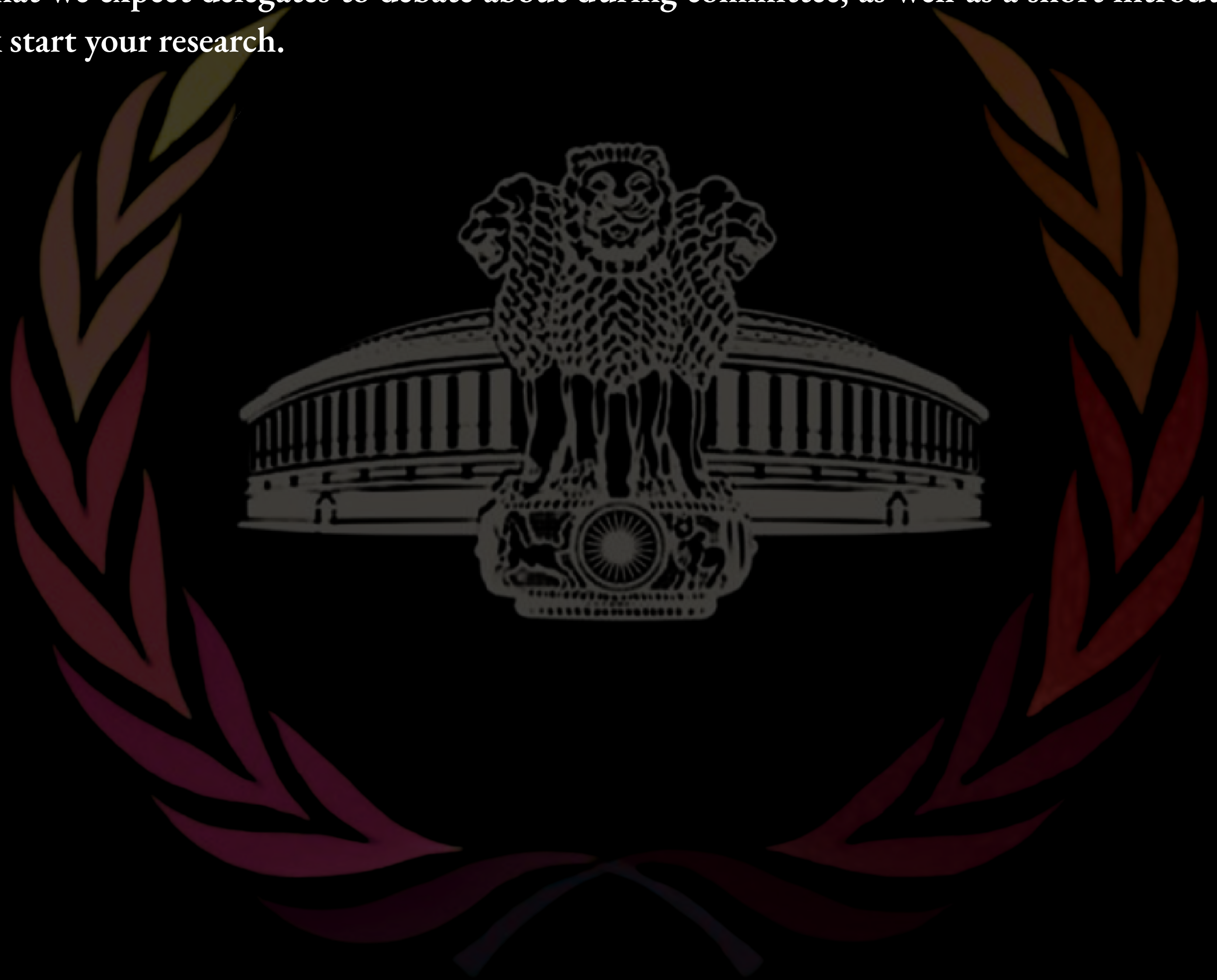
Draft Resolutions/Draft Bills: The function of the legislature of a nation is to draft laws, and hence we expect a bill to be tabled as the final resolution of this committee. To be submitted to the dais, the final document requires 1/3rd of the committee's strength as signatories, and can generally have 2 sponsors.

A sponsor: will be expected to present the bill to the committee, as well as respond to any queries from the committee or the Executive Board regarding the contents of the bill.

A signatory: wants to see the bill discussed in committee, and need not agree with the content of the bill. A delegate may be a signatory to multiple bills, but a sponsor cannot be a signatory to any bill, including his own.

Further clarification on which format documentation is expected to be presented can be sought during committee meetings. This section of the background guide is a short outline which gives you a synopsis of our agenda, and what we expect delegates to debate about during committee, as well as a short introduction to kick start your research.

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History of UAPA

The Unlawful Activities Prevention Act (UAPA) was implemented in India, in 1967. It has made pivotal changes to the law and federalism, due to its controversial attributes, which raise concerns under international human rights standards, while its ambiguity and presence as a law is debated upon till date.

After India got its Independence in 1947, the country faced multiple internal challenges that threatened national security, including *secessionist movements*, communalism, insurgencies, and divisions along communal and regional lines, while also impacting India's political stability. Post 1962, after the *Sino-Indian War*, the public started losing faith in the central government, as concerns regarding internal security intensified. This led to some political groups showing ideological solidarity towards China or advocating for secession. Hence, India recognized the need for stronger legislative tools that would provide the framework to handle these efforts that meant to undermine Indian sovereignty.

The *National Integration Council (NIC)* was then tasked with recommending legal reforms to protect the nation's integrity. The council suggested that reasonable restrictions should be placed on freedoms, like speech, assembly, and association, considering that those fundamental rights were used to undermine the nation's sovereignty. As a result, the Constitution (Sixteenth Amendment) Act of 1963 was passed. The purpose of this amendment was to explicitly empower the Parliament to impose reasonable restrictions on freedoms as mentioned before, in the interests of sovereignty and the integrity of India. This constitutional backing is crucial as prior to the amendment, the Supreme Court had invalidated certain restrictions for being disproportionate and calling them as unconstitutional, as they lacked judicial and procedural safeguards and their inability to limit fundamental rights appropriately.

However, even after the constitutional amendment, the need for a specific law that could legally define and penalise activities that were against Indian Unity, still remained. Hence, on December 30th, 1967, the Parliament passed the Unlawful Activities (Prevention) Act (UAPA), which serves its principal goal as to provide the Government with powers to prevent unlawful acts that threaten India's territorial integrity or sovereignty. The original act aimed to define and criminalise "unlawful activity", allow the government to ban organisations that engaged in such activities, set up tribunals to adjudicate whether an organisation can constitute as unlawful, and provide the base framework for future amendments, while safeguarding India's unity. The UAPA welded the holes in the structures of political instability and national security that previous laws like the Criminal Law (Amendment) Act (CLAA) were incapable of doing, or at least that was the idea of implementing the UAPA.

Further expanding on the UAPA's stated objective, the act gave the Central Government the ability to declare an organisation unlawful, considering that the government is satisfied that it engaged in activities that compromised national security. Before the UAPA, such bans were often challenged due to lack of procedural mechanisms. The UAPA introduced a tribunal review process to check arbitrary designation, while aiming to balance fundamental rights with security. But the UAPA's journey didn't end just there. Internal security threats are ubiquitous, even after the UAPA was implemented. Cross border terrorism and insurgencies, posed new predicaments for the growing nation. For those reasons, the UAPA was amended multiple times over the course of the next few decades.



UAPA and Federalism

While the historical context of the UAPA plays a major role in understanding its relevance in the interests of sovereignty and territorial integrity, it's important to understand the federalism angle of UAPA.

Under the Indian Constitution, powers are divided between the Union and the States through the Seventh Schedule. It is crucial to note that public order and police fall under the State list, while defence, sovereignty, and integrity of India fall under the Union list. This division created a structural challenge in the early decades after independence; they included threats to national security, like ideological extremism, and previously mentioned ones as well. Before 1967, the Union government had limited options when faced with secessionist activity within a state. They were forced to rely on state police and criminal law, which was often slow or politically constrained, or impose *President's Rule* (under article 356, a drastic and politically sensitive step), or invoke temporary preventive detention laws, which lacked permanence and safeguards. After all, this furthered disputes between political groups and increased tension between respecting state autonomy, and protecting national unity and sovereignty.

The UAPA provided a constitutionally grounded middle path to address the federal challenge. As previously discussed, it allowed the Union government to declare an organisation as unlawful when they threatened India's sovereignty or integrity (again, these declarations were not absolute). States continued to investigate and enforce the law through their police. The benefit of this structure is that the Union could act decisively on national security concerns and states were able to retain their operational role in law enforcement. Furthermore, the UAPA operates through *cooperative federalism*, rather than centralising police power. This means that policy direction and designation powers lie within the Centre. Investigation, arrests, and prosecution are largely carried out by state agencies, however later on it was also carried out by the *National Investigation Agency (NIA)*. This helped prevent excessive central intrusion into state law and order powers, and avoid the overuse of emergency constitutional provisions.

Amendments to the UAPA

After the repeal of previous anti terror laws like *Prevention of Terrorism Act (POTA)* – which was repealed in 2004 – many of POTA’s terrorism related provisions were incorporated into the UAPA. Especially after the 2008 *26/11 terror Attacks*, the law was strengthened further to combat terrorism financing, recruitment, and acts threatening national security. In 2012, UAPA was further amended to expand on the definition of “person”, enhanced penal provisions to prevent money laundering, and other amendments that aimed to strengthen UAPA. Additionally, prior to 2019, only organisations could be declared as terrorists, but the new amendment empowered the government to designate individuals as terrorists. This amendment has been a topic of high controversy, as the UAPA converted from a law, addressing secessionist and unlawful associations, to an anti terror statute.



Opprobriums regarding the UAPA:

Although the UAPA was enacted to protect India's sovereignty and territorial integrity, over time it has raised serious legal, political, and human rights concerns. They mainly emerge from the law's expansion, vague definitions, procedural impact, and real world applications. One foundational critique is that the act's terminology (such as "unlawful activity", "terrorist act", "likely to strike terror", or actions "prejudicial to national security") is very broad and ambiguous. The use of vague language gives wide discretion to the state to determine who or what qualifies as unlawful or terrorist. Some argue that this blurs the line between violent extremism and peaceful dissent, which risks the criminalisation of legitimate protest or political opposition. Human rights organisations contend that broad definitions open space for arbitrary interpretation by police and prosecutors.

After the 2019 amendment, individuals can be declared as terrorists, before conviction, raising due process questions. Additionally, the amendment does not require prior judicial approval before designation, instead the executive has primary power. Critics fear that this executive discretion could be used selectively against political activists or minorities. Apart from its amendment, UAPA has been constantly criticised for its procedural framework, as it weakens due process protections compared with ordinary criminal law. Specifically, authorities can detain suspects for up to 180 days without filing a charge sheet, which is much longer than normal criminal procedures. Likewise, under section 43D(5), bail is exceptionally hard to obtain until the court believes that the case is not *prima facie* true, which effectively shifts burdens against the accused. Many accused under the UAPA spend years in jail even before trial begins, prolonging *pre-trial incarceration*, which civil rights group argue amounts to punishment in itself, inherently indicating that the process is punitive, even though it isn't officially designated as a formal punishment. Human rights advocates have called these features draconian and are contrary to the principle of "innocent until proven guilty".

Moreover, parliamentary data and government records show that most UAPA cases do not end in conviction. Government sources reported that between 2016 and 2020, only about 2-3% of those arrested under UAPA were convicted, with the vast majority awaiting trial or are acquitted. The pattern suggests that a large number of arrests may be based on personal whim and preliminary suspicion, rather than actual evidence. A consistent concern from civil society and legal scholars is that UAPA has been invoked in cases far removed from classic terrorism or insurgency, indicating the potential for misuse and how it can be used as a tool to stifle political opposition or unpopular voices. While UAPA has its own tribunal and allows judicial challenges, the process offers limited real time judicial oversight of executive decisions such as terrorist designations, meaning that the primary power is still the executive. In many cases, courts are constrained to examining only *prima facie* material rather than full evidence at early stages, making bail extremely difficult.

Correspondingly, the United Nations Special Rapporteurs, have raised concerns that key features of UAPA may conflict with international human rights norms, which includes the right to fair trial, freedom of expression and association, and protection from arbitrary detention.

The amendment to the UAPA in 2019 was proposed by Home Minister Amit Shah who, in a Rajya Sabha response stated that the amendments were made to meet “international obligations”. While this is indicated through the Second Schedule of the UAPA, many international organizations such as the UN and Amnesty International have critiqued the UAPA’s restrictions on civil liberties- especially in regards to Jammu and Kashmir. The UN has stated that the UAPA is not compliant to the principles of Global Counter-Terrorism Strategy relating to human rights, prolonged detention periods and fair trials. The UN Special Rapporteurs have also repeatedly brought up concerns regarding the UAPA and its misuse or targeted abuse in Jammu and Kashmir.



Specifics I (UAPA):

The UAPA bill was first introduced in the Parliament during the *Fifth Lok Sabha*, backed by the *Ministry of Home Affairs*. As expected, the debates focused on national security, internal threats, and the need to have central powers against activities undermining India's unity. The bill was passed by both Houses of Parliament, first the Lok Sabha and then the Rajya Sabha. After the passage, it was sent to the president for assent. It received presidential assent on December 30th, 1967.

According to the UAPA, when the Central Government issues a notification under Section 3 declaring an association as unlawful, that declaration must be confirmed by the *UAPA tribunal* to have lasting legal effect. Without this confirmation, the government's notification has no effect. However, this is subject to limited exceptions where immediate effect is allowed. The tribunal is constituted by the Central Government and must be presided over by a High Court Judge. It is only after the tribunal confirms the government's declaration does the ban formally take effect and can be enforced. Within 30 days of the publication of the notification in the *Official Gazette*, the government must refer the notification to the UAPA tribunal for confirmation. The tribunal serves a written notice to the organisation, giving it 30 days to show why it should not be considered unlawful. The tribunal then conducts a *quasi-judicial inquiry*, after which the tribunal must make a decision, either confirming or rejecting the government's declaration within 6 months. If confirmed, the declaration becomes legally effective, and if rejected, the declaration lapses and the organisation is no longer considered as unlawful.

The tribunal's role is not like a regular civil court hearing dispute between parties, but rather, it is a *statutory body* with a specific mandate to assess whether the government has sufficient cause for its ban. It is important to note that the organisation can also challenge the tribunal's confirmation in the High Court under Article 226 (writ jurisdiction). This tribunal review system helps balance executive power by providing a judicial check on executive declarations, ensures that organisations being declared unlawful get a chance to defend themselves, and effectively encompasses legal validity. The UAPA, while being a controversial law, has aided India in maintaining its territorial integrity and sovereignty. Furthermore, under UAPA, liability can also arise from membership of a banned organisation, support for such organisations (financial, recruitment, logistical), advocacy or encouragement of unlawful activities, and/or possession of literature/digital material linked to banned groups, again, any government notification declaring an organisation unlawful under these reasons, is still subject to the tribunal review process, except in some cases as mentioned before. However, post 2019, after the amendment (individuals can be declared as terrorists), no prior conviction is required. A review committee exists but it is executive dominated.

Specifics II (Security Laws):

Historically, the UAPA fits into a broader trajectory of Indian security laws (not just POTA), that prioritised preventive action over *post-facto punishment*, which indicates the recurring state response to internal threats, and India's long tradition of preventive security laws. For example, the Preventive Detention Act (1950), a law that allowed the detention of a person without trial and conviction by a court, serving its purpose not to punish a person, but rather prevent them from committing an offence in the near future. The detention of a person could not exceed 3 months.

The law remains a significant part of India's security laws due to its dent to democracy, extra judicial authority (which raised concerns about arbitrary designation), manipulation of government officials, and of course, the misuse of other acts due to their use of prevention detention, which includes the UAPA. A case in 1997, *Ankul Chandra Pradhan Case*, emphasized that the purpose of preventive detention is to prevent harm to the security of the state, rather than to impose punishment, which are major concerns regarding the UAPA as of now. Coincidentally, a recent case in 2023, the *Ameena Begum Case*, where the Supreme Court held that preventive detention is an exceptional measure meant for emergencies, and should not be used routinely.

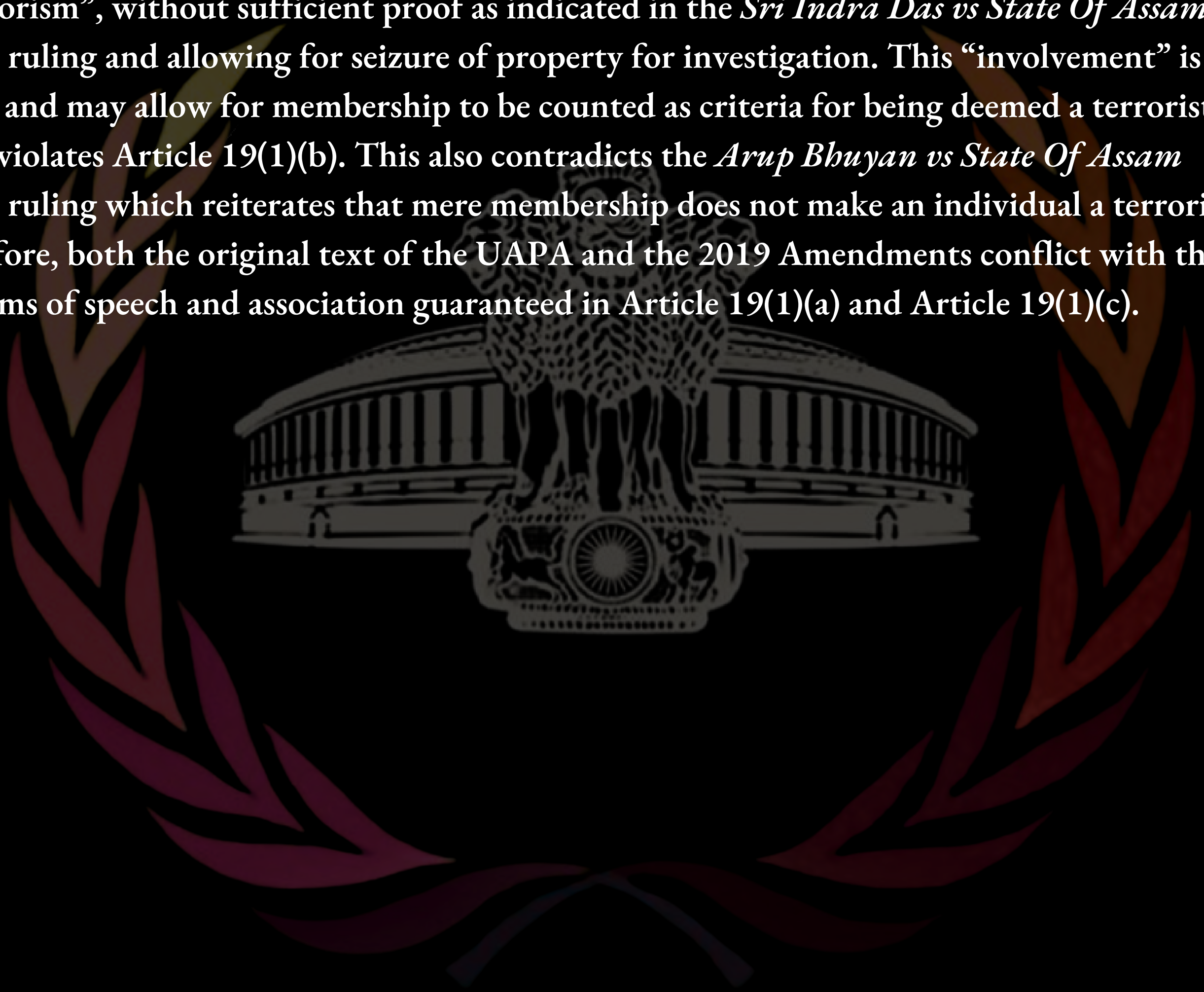
There are other laws which have similar backgrounds and align with the UAPA, including the Maintenance of Internal Security Act (MISA), 1971, and Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985-1995, both of which play significant roles when it comes to India's preventive detention measures and possible concerns regarding how they can be misused, just like the UAPA, however some argue that even though these previous laws were repealed, the UAPA remains till date, even though the same concerns have been raised multiple times. UAPA isn't an isolated law, but rather a part of a continuum of internal security legislation that share the same concerns.

Relation to Article 19

Article 19 of the Indian Constitution is titled the Right to Freedom and guarantees the Right to Freedom of Speech, Peaceful Assembly without Arms, Formation of Assemblies and Unions, Freedom of Movement within India, Freedom of Profession in Clause (1), Sub-clauses (a)-(g). However, Clauses (2) to (5) state that these freedoms can be circumvented by the State, “in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.” for Sub-clauses 1(a)-(f), and included “public order or morality” for Clauses (2) and (4) which addressed Clauses 1(a) and 1(c) respectively. Clause (2) additionally mentions that, “the security of the State, friendly relations with foreign States”, and, “contempt of court, defamation or incitement to an offence”, were also reasons that can be used by the State to curb Freedom of Speech.

The UAPA is meant to operate under the reasonable restrictions listed from Article 19(2) to Article 19(4). The balance between the Fundamental Freedoms guaranteed in Article 19(1) and the UAPA and security, sovereignty, public order and other national concerns of the state. An example of freedoms being curbed in the interest of the State is the decreased bail provisions due to the direct accusation of individuals and the assumptions of accusations being prima facie true. While this decrease in bail has been considered constitutional in certain cases such as *NIA v Zaroor Ahmed Shah Watali (2019)* who was not granted bail due to terror financing accusations being under investigation and the evidence for the following being considered prima facie true. While not being found guilty yet, he was still not allowed bail under the UAPA Section 43(D)(5). This was a unanimous decision by both judges, which while curbing the freedoms of Watali, were made in the interest of national security due to sufficient evidence of terrorist financing being presented and being considered prima facie true. However, in many cases, bail has to be granted on humanitarian bases and the freedoms guaranteed under Article 19(1) of the Constitution as non-provision of bail limits Freedom of Movement, Freedom of Peaceful Assembly and Freedom of Speech if the accusations are unfounded. Examples of these are *Asif Iqbal Tanha vs State Of Nct Of Delhi (2021)* where the accused was permitted bail due to the case not falling under the UAPA’s Section 43(D) regarding bail restrictions. The court also acknowledged the blurry line distinguishing terrorist activity from the freedom of expression and right to protest granted to its citizens, stating that detaining the accused before their trial would be a psychological punishment without bail and would constrain fundamental freedoms.

The 2019 Amendment to the UAPA allowed the Central Government to deem individuals “terrorists” which conflicts with previous analysis of the UAPA’s constitutionality in regards to Article (19). Prior to the amendment, in *Sri Indra Das vs State Of Assam (2011)*, the court ruled that membership of a terrorist organization does not make an individual a terrorist until they engage in violence (proven in a court of law beyond reasonable doubt) and that punishing membership in a terrorist organization (Done by Section (10) of the UAPA) violated Freedom of Association guaranteed in Article (19)(1)(a) of the Constitution if interpreted plainly Furthermore, the inclusion of individuals to Section 35 and 36 of the UAPA through the 2019 Amendment further goes against the ruling in *Sri Indra Das vs State Of Assam (2011)* as it allows the Central Government to deem individuals terrorist if they believe they are “involved in terrorism”, without sufficient proof as indicated in the *Sri Indra Das vs State Of Assam (2011)* ruling and allowing for seizure of property for investigation. This “involvement” is also vague, and may allow for membership to be counted as criteria for being deemed a terrorist and hence violates Article 19(1)(b). This also contradicts the *Arup Bhuyan vs State Of Assam (2011)* ruling which reiterates that mere membership does not make an individual a terrorist. Therefore, both the original text of the UAPA and the 2019 Amendments conflict with the freedoms of speech and association guaranteed in Article 19(1)(a) and Article 19(1)(c).

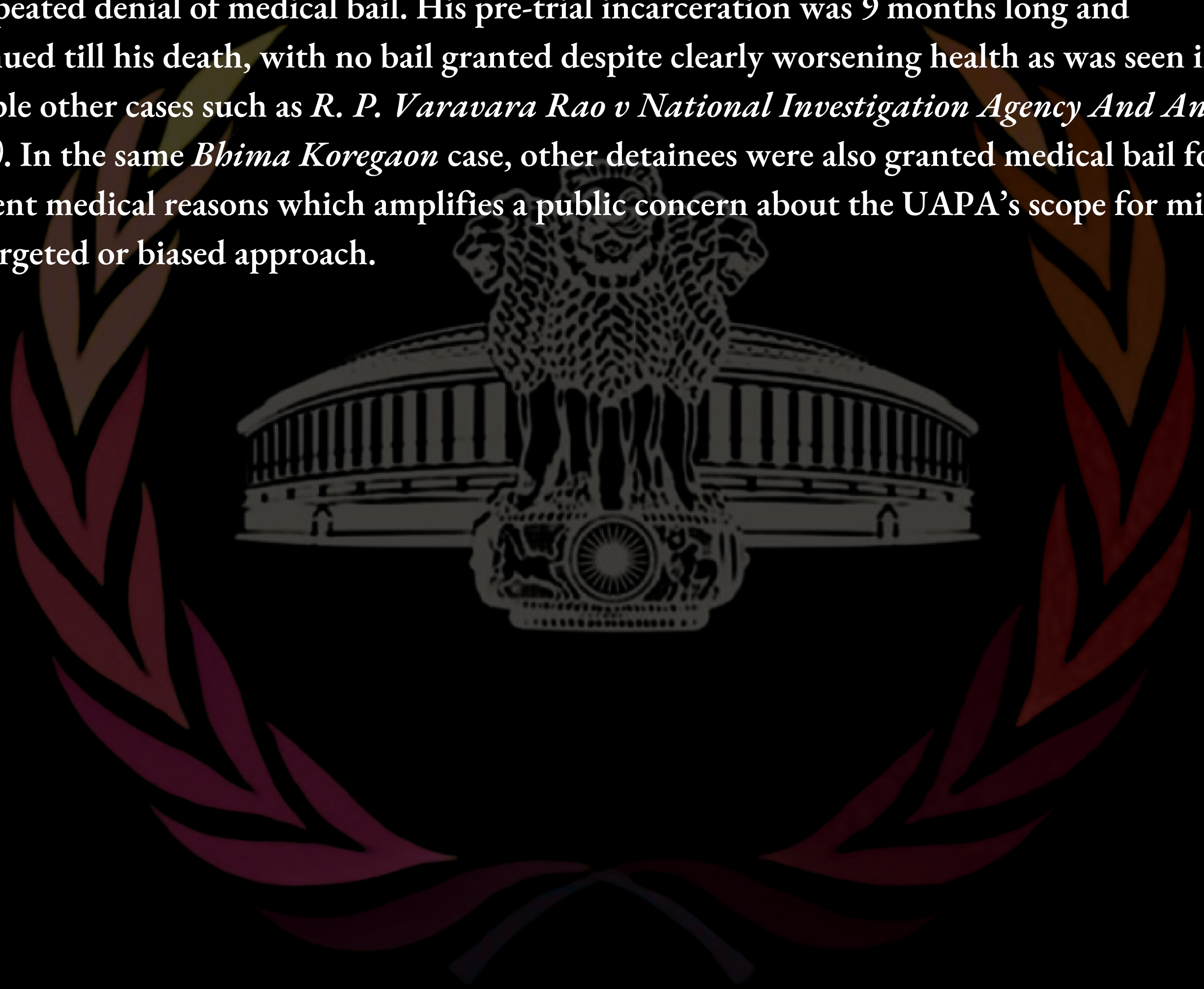


Relation to Article 21

Article 21 of the Indian Constitution, “Protection of life and personal liberty”, states, “No person shall be deprived of his life or personal liberty except according to procedure established by law”, and it falls under the Fundamental Right to Freedom. As per the Preamble of the Indian Constitution, liberty comprises thought, expression, belief, faith and worship. The UAPA has been viewed as a constraint on the latter two aspects- thought and expression as, the comparative precedence of the UAPA and Article 21 has never been constant and fluctuates from case to case- which embodies a major public concern regarding the fairness of the UAPA and the scope for misuse.

The jurisprudence of bails for cases under the UAPA has continuously come into conflict with Article 21. Under Section 167 of the CrPc, the maximum time for detaining a suspect for a maximum of 90 days during an investigation of a crime which has a punishment period of ten years or greater. However, under Section 43 (D)(2) of the UAPA, the maximum period of detention is doubled as it is 180 days. The rights guaranteed under Article 21 have been given more precedence than the UAPA such as the ruling in *Union of India v. K.A. Najeeb AIR (2021)* where the right to a speedy trial overweighed the UAPA’s limitations. This sentiment was repeated in the *Thwaha Fasal v Union of India (2021)* and *Javed Gulam Nabi Shaikh v. State of Maharashtra (2024)*, with the latter also being influenced by the Freedom of Association and Freedom and Liberty of Speech present in Article 19(1)(c), Article 19(1)(a) and Article 21 of the Constitution. However, the same right to a fair and speedy trial under Article 21 has not been guaranteed to the human rights activists prosecuted under the UAPA in the Bhima Koregaon case. Continuous delays in the trial proceedings of the *Bhima Koregaon case* led to long pre-trial incarcerations and a repeated rejection of bail for Sudha Bhardwaj who spent 3 years in prison before being let out on bail and Hany Babu, who spent 5 years in prison before being let out on bail. These human rights activists were kept in pre-trial detention for prolonged periods of time and the violation of Article 21 is what led to the final granting of bail to both individuals. However, the long pre-trial incarceration period and the continuous bail denials shows the misuse of the UAPA’s restrictions and its possible unconstitutionality.

The “Protection of life” as guaranteed under Article 21 also includes a Right to Health and Medical Care, which impacts the granting of medical bail to those incarcerated or detained pre-trial under the UAPA. In many instances such as the *landmark judgement in R. P. Varavara Rao v. National Investigation Agency And Anr. (2022)* where the appellant Dr. P. Varavara Rao was granted a temporary six-month bail followed by an indefinite period of bail due to multiple ailments and failing health conditions. This pattern was repeated throughout multiple cases for varying ailments or conditions such as diabetes, high blood pressure, arthritis and pregnancy. However, this medical bail was not always applied uniformly, leading to conflicts with Article 21. In the *Bhima Koregaon* case, 84 year old detained tribal activist Father Stan Swamy died due to multiple ailments which worsened in the health conditions in jail as well as the repeated denial of medical bail. His pre-trial incarceration was 9 months long and continued till his death, with no bail granted despite clearly worsening health as was seen in multiple other cases such as *R. P. Varavara Rao v National Investigation Agency And Anr. (2022)*. In the same *Bhima Koregaon* case, other detainees were also granted medical bail for different medical reasons which amplifies a public concern about the UAPA’s scope for misuse and targeted or biased approach.



Case Study 1 : Dr. Khafeel Khan

Dr. Kafeel Khan is a medical doctor with roots in the state of Uttar Pradesh in India. He was arrested in connection with events that transpired as a result of protests against the Citizenship Amendment Act (CAA) in late 2019. It is pertinent to note that the reported matter is in the context of increased mobilizations in the country.

In December 2019, a speech by Dr. Khan at Aligarh Muslim University (AMU) took place in a protest organized and led by students against the Citizenship (Amendment) Act (CAA). The speech targeted a gathering of students and covered issues associated with constitutional values and governance. After the speech, it was alleged that the speech had a provocatively divisive and potentially disturbing effect on communal harmony.

Then, in January 2020, Dr. Kafeel Khan was arrested by the Uttar Pradesh police. According to the presentations made before the judiciary, the police alleged that Khan tried to arouse the feelings of the Muslim gathering present during the session and that his utterances were intended to encourage enmity and hate towards the Hindu community. It is on this premise that the government believed his acts threatened public order.

Dr. Khan was detained for over 200 days, and the authorities continued justifying his detention based on security reasons. This situation attracted country-wide media attention and sparked a discussion about the proportionality of the state's reaction and the interpretation of public speeches during sensitive political settings. Some sections of civil society and observers cited concerns about the implications of the detention on the freedom of expression.

In September 2020, an order was passed by the Allahabad High Court to release Dr. Khan. The Court stated that:

A reading of the speech disjoints any forceful call to violence or direct attack on any community. This because criticism of the Government's policies and expression of dissent may be forceful but would necessarily constitute no danger to the maintenance of public order. The Court clarified that restrictions on individual liberty require judicial evidence rather than postulations based on the fear of harassment.

Case Study 2: A Private Member's Bill Submitted By Shashi Tharoor in 2022

In April 2022, Member of Parliament Dr. Shashi Tharoor moved a Private Member's Bill in the Lok Sabha for the repeal of the Unlawful Activities (Prevention) Act or UAPA. This move came when there was growing debate in India about the use of this act in matters of political dissent, prolonged arrest, and individual freedom.

While introducing the bill, Dr. Tharoor said that the UAPA had grown outside of its intended scope and became liable to abuse owing to its loosely drafted definitions and harsh procedural standards tilted largely and visibly in favor of the state. The bill pointed out that the conviction rate under the UAPA was low but the number of people arrested under the bill was considerably high, and the accused could remain in jail for a prolonged period of time without trial and without bail.

One of the vital aspects of the proposed revocation concerned the amendment introduced by the UAPA in 2019, giving the government the right to tag persons, and not just organizations, as terrorists. Dr. Tharoor argued that giving such powers without sufficient screening by the judiciary during the first stage could have negative repercussions on the person's reputation and rights. He termed the Act "a blot on democracy" and declared: "Our security laws must not come at the cost of our rights guaranteed under the Constitution."

The proposed Bill saw a strong reaction from both sides of the political divide. Members of the ruling government were opposed to the proposed Bill and claimed that the UAPA is a critical tool for combatting terrorism, insurgency, and threats to the unity of the nation and that any weakening or negation of the act will hamper the efforts of a Terrorism Response in India.

Being a Private Member's Bill, it did not enjoy the support of the government, which meant that there were very limited possibilities for it being turned into legislation. However, it was still quite meaningful in making a statement through parliamentary forums about reforming UAPA in relation to concerns about security, as well as freedom.

Although the Bill could not move ahead, it is certainly an important point of reference in the debates on the legal accountability of terror laws and the powers of Parliament in India. It is an important reminder of the use of the opposition in using the legislature to challenge existing laws through the legislative mechanism.

Case Study 3: Anup Bhuyan Vs State Of Assam

Background of the Case

The case of *Anup Bhuyan v. The state of Assam* arose from allegations that Anup Bhuyan was associated with the *United Liberation Front of Assam (ULFA)*, an organisation that had been declared illegal due to findings of its involvement in illegal and violent activities. The state of Assam sought to establish criminal liability on Anup Bhuyan primarily on the basis of his *alleged membership* with banned organisation, without giving any sort of evidence for his participation in such violent acts or terrorist operations.

The main issue which was at the Supreme Court of India was whether mere membership or association with a banned organization could directly, by itself, prove criminal guiltiness

Supreme Court's Ruling (2011)

The Honourable Supreme Court Of India deemed the answer to this issue as a denial in 2011 .The courts stated that holding passive or direct membership with a banned organisation is not enough to deem a criminal as liable/guilty. The Court ruled that the prosecution must establish:

- *Active participation with that particular organisation*, or
- *Incitement to violence*, or
- *Overt acts* that contribute to illegal or terrorist activities

The Court emphasised that the law cannot punish any individual's belief, ideology, or association alone with any kind of organisation , as doing so would violate constitutional protections.

Link to the Unlawful Activities Prevention Act (UAPA)

Although Anup Bhuyan's case was not decided under the UAPA, the principles which were laid down in this judgement were a foundation of the interpretation of multiple sections under that UAPA, especially the ones regarding membership and support.

1. Section 10, UAPA — Membership of an Unlawful Association

Section 10 of the UAPA deems a person guilty merely based on membership of an unlawful/banned organisation. After the verdict of Anup Bhuyan, courts have interpreted this section to require proof of active involvement. Which basically means that having a mere membership of such an organisation cannot deem a person guilty unless there is an involvement in the unlawful actions done by such organisations. The Judgement of this particular case of Anup Bhuyan Vs the state of Assam prevents section 10 of the UAPA to declare any individual guilty on the bases of mere membership.

Note: There are other sections of the UAPA also related to this. The delegate needs to research about it on their own if they feel it is necessary to know.

Constitutional Basis of the Case Judgement:

1. Article 19 1 (a) - Freedom of speech
2. Article 19 1 (c) - Freedom of Association
3. Article 21 - Right to life and personal liberty

Questions A Resolution Must Answer (QARMA)

- 1) Has the 2019 amendment of UAPA eroded its constitutional validity?
- 2) Does the UAPA comply with India's International Human Rights obligations?
- 3) To what extent does the UAPA restrict the fundamental rights and freedoms under Article 19 and Article 21?
- 4) How reasonable are the bail provisions under the UAPA and how effective is the tribunal review process?
- 5) Is UAPA moderately distinctive from previous security laws like POTA to justify its ratification in the present day?
- 6) How can the procedural framework of UAPA be amended to prevent potential misuse of executive power and increase conviction rates?

