# The Dangers of Strong Laws

## What is the issue?

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- Recently, 5 people were arrested under “Unlawful Activities (Prevention) Act (UAPA)” for allegedly having instigated violence in the Bhima-Koregaon riots.
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- This has again refreshed the need to reconsider legislations that have armed governments with a strong mandate to crush even democratic dissent.
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## What are the risks in empowering governments with strong laws?

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- Even in the constituent assembly, concerns were raised on the wide ranging restrictions on fundamental rights, which may be misused.
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- They drew attention to the misuse of various “Public Safety Acts” and “Defence of India Acts” by the colonial regime, to curtail democratic opposition.
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- Many articulated that despite the best of intentions, the restricting provisions could easily be interpreted to authorise repression.
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- The accused booked recently, under UAPA for the Bhima-Koregaon riots case, are seemingly victims of a possible misuse of strong curtailment laws.
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## What are the provisions under UAPA?

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- UAPA gives vast discretionary powers to state agencies, rendering personal liberty at risk, and curtailing judicial oversight.
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- As long as the government version (charge sheet) makes a case for an offence under UAPA, the court can’t grant bail.
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- Many constitution makers saw such detentions as a big risk, but the clause was retained with the condition that its use would be rare.
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- Considering the inordinately slow pace of criminal trials in India, UAPA is effectively a warrant for perpetual imprisonment without trial.
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- **Fallouts -** There have already been multiple cases were people have spent multiple years in jail, only to get acquitted at the end.
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- Such detentions are hence a blatant assault on personal liberty, for which no amount of compensation can possibly be made.
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## Why is UAPA prone to misuse?

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- The UAPA authorises the government to ban “unlawful organisations” (subject to judicial review) and penalises membership of such organisations.
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- But “unlawful activities” is widely and vaguely defined, and encompasses terms like causing “disaffection” against India.
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- **Membership -** Even “membership of an unlawful organisation” (which is a criminal offence that could entail even life imprisonment), is defined broadly.
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- Notably, charge-sheets under UAPA often cite ‘seizure of books of banned organisations’ and ‘having met active members’ as proof for membership.
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- Considering the extensiveness and comprehensiveness of the act, it sort of

comes close to criminalising even thoughts of people.
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- **Reform -** In 2011, the Supreme Court did make an attempted to narrow the scope of these provisions, in order to minimise misuse.
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- It held that “membership” was limited to cases where an individual is found to have engaged in active incitement of violence.
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- But the implementation of these provisions has nonetheless been patchy and arbitrary and governments continue to have unbridled power to arrest.
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## What is the way ahead?

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- People occupying high government offices are also human, and hence, despite the best intentions of legislations, misuse is inevitable.
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- The best possible solution is one that minimises misuse, which can be done by reducing the discretionary powers of authorities.
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- In this context, pro-UAPA arguments that demand states to be given a strong unrestricted hand to control alleged disruptive activities are undesirable.
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- Hence, courts should hence strike down strong detention laws or frame sufficient safeguards to prevent misuse or improper use of such laws.
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- Another important aspect to improve the justice system in India is to speed up cases to avoid years of litigation, particularly when bail is not an option.
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### Source: The Hindu

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