

ORGANISED CRIME & OFFENCES AGAINST NATIONAL SECURITY: LEGISLATIVE LANDSCAPE

- Joymalya Bagchi, Judge, Calcutta High Court

EVOLUTION OF NATIONAL SECURITY/ORGANIZED CRIME LEGISLATIONS

1860: IPC Chapter VI

1967: UAPA

1985: TADA Act

1995: Lapse of TADA Act

2000: Section 66-F IT Act

2002: POTA

2004: POTA Repealed & UAPA amended incorporating terrorist acct as a punishable offence & forfeiture of proceeds of terrorism

2008: NIA Act specialized agency for investigation and trial of UAPA and other scheduled offences

2024:

- IPC repealed. BNS promulgated.
- New offences – Section 113– Terrorist Act.
- Sections 111/112 – Organized Crime/petty organized crime.
- Chapter VI IPC replaced by Chapter VII BNS
- Section 124A IPC repealed;
- Section 152 BNS introduced-
 - a) In terms of Kedarnath Singh ratio (1962 SCC OnLine SC 6)
 - b) Electronic communication/financing of seditious materials made punishable

State Legislations on Organised Crime (*Illustrative List*)

- Maharashtra Control of Organised Crime Act, 1999
- Karnataka Control of Organised Crime Act, 2000
- Andhra Pradesh Control of Organised Crime Act, 2001
- Arunachal Pradesh Control of Organised Crime Act, 2002
- Gujarat Control of Terrorism and Organised Crime Act, 2015
- Uttar Pradesh Control of Organised Crime Act, 2017
- Haryana Control of Organised Crime Act, 2023

A blurred background image showing a war-torn landscape. In the foreground, a dark, indistinct shape, possibly a vehicle, is visible on a road. In the mid-ground, there are large, bright orange and yellow explosions or fires rising into the air. The background shows a hazy, greyish-blue sky and distant hills or mountains.

WHAT CONSTITUTES ‘WAGING OF WAR’?

- *“We conceive the term ‘wages war against the Government’ naturally to import a person arraying himself in defiance of the Government in like manner and by like means as a foreign enemy would do, and it seems to us, we presume it did to the authors of the Code that any definition of the term so unambiguous would be superfluous.”*

- Indian Law Commissioner's Report, 2nd report, 1847

- *Waging of war is not conventional war between 2 nations*

- *State(NCT of Delhi) vs Navjot Sandhu, (2005)11 SCC 600*

WAGING OF WAR- ANIMUS/ INTENT

- Every organised violent activity causing internal disturbance may not necessarily amount to ‘waging of war’. Animus of the act is relevant.

- *Extra-Judicial Execution Victim Families Assn. v. Union of India*, (2016) 14 SCC 536

- *“The expression “waging war” means and can only mean waging war in the manner usual in war. In other words, in order to support a conviction on such a charge it is not enough to show that the persons charged have contrived to obtain possession of an armoury and have, when called upon to surrender it, used the rifles and ammunition so obtained against the government troops. It must also be shown that the seizure of the armoury was part and parcel of a planned operation and that their intention in resisting the troops of the Government was to overwhelm and defeat these troops and then to go on and crush any further opposition with which they might meet until either the leaders of the movement succeeded in obtaining the possession of the machinery of government or until those in possession of it yielded to the demands of their leaders.”*

-*Nazir Khan vs State of Delhi*, (2003)8 SCC 461

‘WAGING OF WAR’- DETERMINING TESTS

- 1) Most important factor should be the intention and purpose behind the waging of war against the State should be ascertained.**
- 2) The modus operandi adopted which involved mobilisation of men and materials such as arms and ammunition indulging in serious conspiracy over a period of time is another relevant factor.**
- 3) It will not depend upon the number of persons—even limited persons can indulge in more harmful crime than large crowd of persons could do.**
- 4) There need not be pomp and pageantry like a battlefield.**
- 5) Not all violent behaviour would fall within the prescription of waging war as stipulated under Sections 121, 121-A, 122 read with Section 120-B.**
- 6) The object sought to be achieved should be directed against the sovereignty of the State and not merely commission of crime even if it is of higher velocity.**
- 7) The concept of “waging war” should not be stretched too far.**

- 8) A balanced and realistic approach should be maintained while construing the offence committed and find out whether it would amount to waging of war against the State.
- 9) Mere organised movement with violence without any intention of acting against the interest of the nation has to be examined.
- 10) Neither the number engaged nor the power employed nor the arms used can be the criteria.
- 11) It should be seen as to what is the purpose behind the choosing of a target of attack.
- 12) When a planned operation is executed, what was the extent of disaster which resulted, is to be seen.
- 13) It is to be seen whether it is a mere desperate act of a small group of persons who indulged in the crime.
- 14) It must be seen whether the undoubted objective and determination of the offender was to impinge on the sovereignty of the nation.

- Mohd. Jamiludin Nasir v. State of W.B., (2014) 7 SCC 443



CONCEPTUALISING TERRORISM

- The term ‘terrorism’ though a widely used term, lacks precise definition. It is identifiable from its intent and outcome rather than the modus.
- Efforts have been made to define terrorism. For example:-
- *“Peacetime equivalents of war crimes”*

- UN Crime Branch report, A. Schimd, 1992

- *“Unlawful use of force or violence against persons or property to intimidate or coerce a government, civilian population or any segment thereof, in furtherance of political objectives.”*

- FBI definition

- *“Criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or abstain from doing any act which constitute offences in international conventions and protocols relating to terrorism, and are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or similar nature.”*

- United Nation Security Council, 2004

TERRORISM VS WAGING OF WAR

- *“Though every terrorist act does not amount to waging war, certain terrorist acts can also constitute the offence of waging war and there is no dichotomy between the two. Terrorist acts can manifest themselves into acts of war....*
- *“.....However, the degree of animus or intent and the magnitude of the acts done or attempted to be done would assume some relevance in order to consider whether the terrorist acts give rise to a state of war. Yet, the demarcating line is by no means clear, much less transparent. It is often a difference in degree. The distinction gets thinner if a comparison is made of terrorist acts with the acts aimed at overawing the Government by means of criminal force”*

-State(NCT of Delhi) vs Navjot Sandhu, (2005)11 SCC 600

BNS VS UAPA

Offence	BNS	UAPA
Terrorist Act	S. 113 (1) & (2)	S. 15 & 16
Conspiracy etc. to Commit Terrorist Act	S. 113 (3)	S. 18
Organizing Terrorist Camps & Recruitment	S. 113 (4)	S. 18A & 18B
Membership of Organization involved in Terrorist Act	S. 113 (5)	S. 20
Harbouring Terrorist	S. 113 (6)	S. 19
Holding Proceeds of Terrorism	S. 113 (7)	S. 21
Raising Funds for Terrorist Act	-	S. 17

Police officer not below SP shall decide whether case shall be registered under UAPA or BNS.

SEDITION-REVOLVING DOORS

- Section 124A IPC repealed but section 152 BNS introduced
- Essential Changes:-
 - a) Actus reus* enlarged-Electronic communication or funding of seditious material made punishable.
 - b) Mens Rea* streamlined (as per ratio in Kedar Nath Singh, (*supra*))

NATIONAL INVESTIGATING AGENCY

NIA Act

- a) Constitutes specialized agency for investigation and prosecution of scheduled offences
- b) Priority of NIA to investigate scheduled offences (Section 6)
- c) Empower to investigate non scheduled offences (section 7)- ***Ankush Vipran Kapoor vs NIA***, 2024 SCC OnLine SC 3750
- d) Special Courts to try offences (Sections 11 & 22) in default Court of Sessions
- e) Special procedure for sanction (Section 18), trial (Section 16) and protection of witnesses (Section 17) and appeals (section 21)
- f) Restrictions on bail (Section 43-D (5) UAPA)

LIMITATION FOR APPEAL UNDER NIA

- Section 21(5) –Limitation- 30 days.
- But no appeal to be entertained after 90 days – Whether Mandatory?
- Views are divergent.

MANDATORY	NON-MANDATORY
<ul style="list-style-type: none">• Madras High Court ,2024 SCC OnLine Mad 6189• Meghalaya High Court ,2024 SCC OnLine Megh 72• Calcutta High Court ,2023 SCC OnLine Cal 493• Kerala High Court, 2015 SCC OnLine Ker 39625	<ul style="list-style-type: none">• Bombay High Court ,2023 SCC OnLine Bom 1936• Delhi High Court ,2019 SCC OnLine Del 9158• Jammu & Kashmir High Court, CrIa(D) No. 46/2022 (CrIM No. 1474/2022) decided on 13.12.2022• Chhattisgarh High Court Acquittal Appeal No. 350/2022 decided on 12.04.2023

TOP 10 MOST COMMONLY INVOKED UAPA OFFENCES



Source: PUCL Report, 2022

EXTRA TERRITORIALITY

- Cyber offences- Section 1(5)(c) BNS 2023 and section 75 IT Act
- Abetment of crime outside India is punishable - Section 48 BNS
- Any person committing an offence beyond India which is punishable under UAPA may be tried as if it has been committed in India – section 1(4) UAPA
- NIA can investigate and prosecute any person who commits a scheduled offence beyond India affecting Indian citizens or affecting Indian interest- Section 1(d) NIA Act
- Earlier place of trial was where accused was found (section 188 CrPC), after the introduction of BNSS, place of trial can also be where offence is registered in India (Section 208 BNSS)

REPEAL AND SAVINGS

- Section 531 BNSS
- Section 358 BNS
- Section 6 NIA Act