

The Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986

UTTAR PRADESH

India

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The Uttar Pradesh Gangsters And Anti-Social Activities (Prevention) Act, 1986[Act No. VII of 1986][19th March, 1986]An Act to make special provisions for the prevention of, and for coping with, gangsters and anti-social activities and for matters connected therewith or incidental theretoIt is hereby enacted in the Thirty-seventh Year of the Republic of India as follows:

1. Short title, extent and commencement

(1)This Act may be called the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986.(2)It extends to whole of Uttar Pradesh.(3)It shall be deemed to have come into force on January 15,1986.

2. Definitions

In this Act,--(a)"Code" means the Code of Criminal Procedure, 1973 (Act No. 2 of 1974);(b)"Gang" means a group of persons, who acting either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion, or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in antisocial activities, namely:(i)offences punishable under Chapter XVI, or Chapter XVII, or Chapter XXII of the Indian Penal Code (Act No. 45 of 1860), or(ii)distilling or manufacturing or storing or transporting or importing or exporting or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U. P. Excise Act, 1910 (U. P. Act No. 4 of 1910), or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), or any other law for the time being in force, or(iii)occupying or taking possession of immovable property otherwise than in

accordance with law, or setting-up false claims for title or possession of immovable property whether in himself or any other person, or(iv)preventing or attempting to prevent any public servant or any witness from discharging his lawful duties, or(v)offences punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. 104 of 1956), or(vi)offences punishable under Section 3 of the Public Gambling Act, 1867 (Act No. 3 of 1867), or(vii)preventing any person from offering bids in auction lawfully conducted, or tender, lawfully invited, by or on behalf of any Government department, local body or public or private undertaking, for any lease or rights or supply of goods or work to be done, or (viii) preventing or disturbing the smooth running by any person of his lawful business, profession, trade or employment or any other lawful activity connected therewith, or (ix) offences punishable under Section 171-E of the Indian Penal Code (Act No. 45 of 1860), or in preventing or obstructing any public election being lawfully held, by physically preventing the voter from exercising his electoral rights, or (x) inciting others to resort to violence to disturb communal harmony, or (xi) creating panic, alarm or terror in public, or(xii)terrorising or assaulting employees or owners or occupiers of public or private undertakings or factories and causing mischief in respect of their properties, or(xiii)inducing or attempting to induce any person to go to foreign countries on false representation that any employment, trade or profession shall be provided to him in such foreign country, or(xiv)kidnapping or abducting any person with intent to extort ransom, or(xv)diverting or otherwise preventing any aircraft or public transport vehicle from following its scheduled course;(xvi)offences punishable under the Regulation of Money Lending Act, 1976;(xvii)illegally transporting and/or smuggling of cattle and indulging in acts in contravention of the provisions in the Prevention of Cow Slaughter Act, 1955 and the Prevention of Cruelty to Animals Act, 1960;(xviii)human trafficking for purposes of commercial exploitation, bonded labour, child labour, sexual exploitation, organ removing and trafficking, beggary and the like activities.(xix)offences punishable under the Unlawful Activities (Prevention) Act, 1966:(xx)printing, transporting and circulating of fake Indian currency notes;(xxi)involving in production, sale and distribution of spurious drugs;(xxii)involving in manufacture, sale and transportation of arms and ammunition in contravention of Sections 5, 7 and 12 of the Arms Act, 1959;(xxiii)felling or killing for economic gains, smuggling of products in contravention of the Indian Forest Act, 1927 and Wildlife Protection Act, 1972;(xxiv)offences punishable under the Entertainment and Betting Tax Act, 1979;(xxv)indulging in crimes that impact security of State, public order and even tempo of life.(c)"gangster" means a member or leader or organiser of a gang and includes any person who abets or assists in the activities of a gang enumerated in clause (b), whether before or after the commission of such activities or harbours any person who has indulged in such activities;(d)"public servant" means a public servant as defined in Section 21 of the Indian Penal Code (Act No. 45 of 1860), or any other law for the time being in force, and includes any person who lawfully assist the police or other authorities of the State, in investigation or prosecution or punishment of an offence punishable under this Act, whether by giving information or evidence relating to such offence or offender or in any other manner;(e)"member of the family of a public servant" means his parents or spouse and brother, sister, son, daughter, grandson, grand-daughter or the spouses of any of them, and includes a person dependent on or residing with the public servant and a person in whose welfare the public servant is interested;(f)words and phrases used but not defined in this Act and defined in the Code of Criminal Procedure, 1973, or the Indian Penal Code shall have the meanings respectively assigned to them in such Codes.

3. Penalty

(1)A gangster shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to ten years and also with fine which shall not be less than five thousand rupees:Provided that a gangster who commits an offence against the person of a public servant or the person of a member of the family of a public servant shall be punished with imprisonment of either description for a term which shall not be less than three years and also with fine which shall not be less than five thousand rupees.(2)Whoever being a public servant renders any illegal help or support in any manner to a gangster, whether before or after the commission of any offence by the gangster (whether by himself or through others) or abstains from taking lawful measures or intentionally avoids to carry out the directions of any court or of his superior officers, in this respect, shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than three years and also with fine.

4. Special Rules of Evidence

Notwithstanding anything to the contrary contained in the Code or the Indian Evidence Act, 1872, for the purposes of trial and punishment for offences under this Act or connected offences--(a)the court may take into consideration the fact that the accused was--(i)on any previous occasion bound down under Section 107 or Section 108 or Section 109 or Section 110 of the Code, or(ii)detained under any law relating to preventive detention, or(iii)externed under the Uttar Pradesh Control of Goondas Act, 1970 (Act No. 8 of 1971) or any other such law;(b)where it is proved that a gangster or any person on his behalf is or has at any time been, in possession of movable or immovable property which he cannot satisfactorily account for, or where his pecuniary resources are disproportionate to his known sources of income, the Court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his activities as a gangster;(c)where it is proved that the accused has kidnapped or abducted any person, the Court shall, presume that it was for ransom;(d)where it is proved that a gangster has wrongfully concealed or confined a kidnapped or abducted person, the Court shall presume that the gangster knew that such person was kidnapped or abducted, as the case may be;(e)the Court may, if for reasons to be recorded it thinks fit so to do proceed with the trial in the absence of the accused and record the evidence of any witness, provided that the witness may be recalled for cross-examination if the accused so desires but recording his examination-in-chief afresh in presence of the accused shall not be necessary.

5. Special Courts

(1)The State Government may if it considers necessary so to do in the interest of speedy trial of offences under this Act, for the whole or any part of the State, constitute one or more Special Courts.(2)A Special Court; shall be presided over by a Judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court.(3)The State Government may also appoint, with the concurrence of the Chief Justice of the High Court, Additional Judges to exercise Jurisdiction in Special Court.(4)A person shall not be qualified for appointment as a Judge or an additional Judge of a Special Court unless he is, immediately before such appointment, a Sessions Judge or an Additional Sessions Judge in any State.(5)Where the office of the Judge of the

Special Court is vacant, or such Judge is absent from the ordinary place of sitting of Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of: (a) by the Additional Judge, if any, exercising jurisdiction in that Special Court, (b) where there is no such Additional Judge available, in accordance with the directions of the Sessions Judge having jurisdiction over the ordinary place of sitting of the Special Court as notified. (6) Where one Additional Judge is, or more Additional Judges are appointed in a Special Court, the Judge of the Special Court may, from time to time, by general or Special Order, in writing, provide for the distribution of business of the Special Court among himself and the Additional Judge or Additional Judges and also for the disposal of urgent business in the event of the absence of any Additional Judge.

6. Place of sitting

A Special Court may, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than the ordinary place of its sitting: Provided that if the Public Prosecutor certifies to the Special Court that it is, in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interest of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Special Court may, after hearing the accused make an order to that effect unless, for reasons, to be recorded in writing, the Special Court thinks fit to make any other order.

7. Jurisdiction of Special Court

(1) Notwithstanding anything contained in the Code, where a Special Court has been constituted for any local area, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Special Court within whose local jurisdiction it was committed whether before or after the constitution of such Special Court. (2) All cases triable by a Special Court, which immediately before the constitution of such Special Court were pending before any court, shall on creation of such Special Court having jurisdiction over such cases, stand transferred to it. (3) Where it appears to any court in the course of any inquiry or trial in respect of any offence that the case is one which should be tried by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court and thereupon such case shall be tried and disposed of by the Special Court in accordance with the provisions of this Act: Provided that it shall be lawful for the Special Court to act on the evidence, if any, recorded by the Court in the case in the presence of the accused before the transfer of the case under this section: Provided further that if the Special Court is of opinion that further examination of any of the witnesses whose evidence is already recorded in the case is necessary in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination and re-examination, if any, as it may permit, the witness shall be discharged. (4) The State Government may, if satisfied that it is necessary or expedient in the public interest so to do, transfer any case pending before a Special Court to another Special Court.

8. Power of Special Courts with respect to other offences

(1) When trying any offence punishable under this Act a Special Court may also try any other offence with which the accused may, under any other law for the time being in force, be charged at the same trial. (2) If in the course of any trial under this Act of any offence, it is found that the accused has committed any other offence under this Act or any rule thereunder or under any other law, the Special Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

9. Public Prosecutor

(1) For every Special Court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors: Provided that the State Government may also appoint for any case or class of cases a Special Public Prosecutor. (2) A person shall be eligible to be appointed as Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or State, requiring special knowledge of law. (3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of Section 2 of the Code, and the provisions of the Code shall have effect accordingly.

10. Procedure and powers of Special Courts

(1) A Special Court may take cognizance of any offence triable by it, without the accused being committed to it for trial upon receiving a complaint of facts which constitute such offence or upon a police report of such facts. (2) Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of Section 260 or Section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of Sections 263 to 265 of the Code, shall, so far as may be, apply to such trial: Provided that when in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to rehear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate: Provided further that in the case of any conviction in a summary trial under this sub-section, it shall be lawful for a Special Court to pass sentence of imprisonment for a term not exceeding two years. (3) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to an offence, tender a pardon to such person, on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission, thereof, and any pardon so tendered shall, for the purposes of Section 308 of the Code, be deemed to have been tendered under Section 307 thereof. (4) Subject to the other

provisions of this Act a Special Court for the purpose of trial of any offence, have all the powers of a Court of Session and shall follow the procedure prescribed in the Code for the trial of warrant cases by the Magistrate.(5)Subject to the other provisions of this Act every case transferred to a Special Court under sub-section (3) of Section 7 shall be dealt with as if such case had been transferred under Section 406 of the Code to such Special Court.

11. Protection of witnesses

(1)Notwithstanding anything contained in the Code all proceedings before a Court trying an offence under this Act shall be conducted in camera:Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.(2)Such Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witnesses or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.(3)In particular and without prejudice to the generality of the provisions of sub-section (2), the measures which such Court may take under that subsection may include--(a)the avoiding of the mention of the names and addresses of the witnesses in its orders or judgment or in any records of the case accessible to public;(b)the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed.(4)Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

12. Trial by Special Court to have precedence

The trial under this Act of any offence by Special Court shall have precedence over the trial of any other case against the accused in any other court (not being a Special Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

13. Power to transfer cases to regular courts

Where after taking cognizance of any offence, a Special Court is of opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it has taken cognizance of the offence.

14. Attachment of property

(1)If the District Magistrate has reason to believe that any property, whether moveable or immovable, in possession of any person has been acquired by a gangster as a result of the commission of an offence triable under this Act, he may order attachment of such property whether or not cognizance of such offence has been taken by any Court.(2)The provisions of the Code shall mutatis mutandis apply to every such attachment.(3)Notwithstanding the provisions of the Code the

District Magistrate may appoint an Administrator of any property attached under sub-section (1) and the Administrator shall have all the powers to administer such property in the best interest thereof.(4)The District Magistrate may provide police help to the Administrator for proper and effective administration of such property.

15. Release of property

(1)Where any property is attached under Section 14, the claimant thereof may, within three months from the date of knowledge of such attachment, make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.(2)If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1) he shall forthwith release the property from attachment and thereupon such property shall be made over to the claimant.

16. Inquiry into the character of acquisition of property by court

(1)Where no representation is made within the period specified in sub-section (1) of Section 15 or the District Magistrate does not release the property under sub-section (2) of Section 15 he shall refer the matter with his report to the Court having jurisdiction to try an offence under this Act.(2)Where the District Magistrate has refused to attach any property under sub-section (1) of Section 14 or has ordered for release of any property under sub-section (2) of Section 15, the State Government or any person aggrieved by such refusal or release may make an application to the Court referred to in sub-section (1) for inquiry as to whether the property was acquired by or as a result of the commission of an offence triable under this Act. Such court may, if it considers necessary or expedient in the interest of justice so to do, order attachment of such property.(3)(a)On receipt of the reference under sub-section (1) or an application under sub-section (2), the Court shall fix a date for inquiry and give notices thereof to the person making the application under sub-section (2) or, as the case may be, to the person making the representation under Section 15 and to the State Government, and also to any other person whose interest appears to be involved in the case.(b)On the date so fixed or on any subsequent date to which the inquiry may be adjourned, the Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary, decide whether the property was acquired by a gangster as a result of the commission of an offence triable under this Act and shall pass such order under Section 17 as may be just and necessary in the circumstances of the case.(4)For the purpose of inquiry under sub-section (3), the Court shall have the power of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Act No. V of 1908), in respect of the following matters, namely:(a)summoning and enforcing the attendance of any person and examining him on oath;(b)requiring the discovery and production of documents;(c)receiving evidence on affidavits;(d)requisitioning any public record or copy thereof from any court or office;(e)issuing commission for examination of witnesses or documents;(f)dismissing a reference for default or deciding it ex parte;(g)setting aside an order of dismissal for default or ex parte decision.(5)In any proceedings under this section, the burden of proving that the property in question or any part thereof was not acquired by a gangster as a result of the commission of any offence triable under this Act, shall be on the person claiming the property, anything to the contrary contained in the Indian

Evidence Act, 1872 (Act No. 1 of 1872), notwithstanding.

17. Order after inquiry

If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise.

18. Appeal

The provisions of Chapter XXIX of the Code shall, mutatis mutandis, apply to an appeal against any judgment or order of a Court passed under the provisions of this Act.

19. Modified application of certain provisions of the Code

(1)Notwithstanding anything contained in the Code every offence punishable under this Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of clause (c) of Section 2 of the Code and cognizable case as defined in that clause shall be construed accordingly.(2)Section 167 of the Code shall apply in relation to case involving an offence punishable under this Act or any rule made thereunder subject to the modifications that--(a)the reference in sub-section (1) thereof to "Judicial Magistrate" shall be construed as a reference to "Judicial Magistrate or Executive Magistrate";(b)the reference in sub-section (2) thereof to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "sixty days", "one year" and "one year", respectively;(c)sub-section (2-A) thereof shall be deemed to have been omitted.(3)Sections 366, 367, 368 and 371 of the Code shall apply in relation to a case involving an offence triable by a Special Court, subject to the modification that the reference to "Court of Session" wherever occurring therein, shall be construed as reference to "Special Court".(4)Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless--(a)the Public Prosecutor has been given an opportunity to oppose the application for such release, and(b)where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.(5)The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code.

20. Overriding effect

The provisions of this Act or any rule made thereunder shall effect notwithstanding anything inconsistent therewith contained in any other enactment.

21. Presumption as to order

Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, as Court shall, within the meaning of the Indian Evidence Act, 1872 (Act No. 1 of 1872), presume that such order was so made by that authority.

22. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against the State Government or any Officer or authority of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

23. Power to make rules

(1)The State Government may, by notification, make rules for carrying out the purposes of this Act.(2)The rules made under sub-section (1) may provide that any contravention of any of the provisions of the rules shall be punishable with imprisonment for a term not exceeding six months with or without fine not exceeding rupees one thousand.

24. Repeal and saving

(1)The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Ordinance, 1986 (U. P. Ordinance No. IV of 1986), is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the Ordinance referred to in sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act as if the provisions of this Act were in force at all material times.