

Uttar Pradesh Dacoity Affected Areas Act, 1983

UTTAR PRADESH

India

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Act 31 of 1983

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Uttar Pradesh Dacoity Affected Areas Act, 1983[Act No. XXXI of 1983]PreambleAn Act to make provision for specifying certain offences in the dacoity affected areas of the Uttar Pradesh in order to curb effectively the commission of scheduled offences and to make provision for punishment and speedy trial thereof and for the attachment of properties acquired through the commission of such offences and for matters connected therewith or incidental thereto. Whereas, for curbing the menace of organised and unorganised gangs of dacoits effectively, it is essential to break the chain of vested interests assisting, or associated with, such gangs and to curb and control them effectively ;And, whereas, it is essential to provide for more stringent punishment for certain scheduled offences in the areas affected by dacoity ;And, whereas, huge properties are being held through the commission of scheduled offences in the names of relatives, associates and confidants of the dacoits and it is necessary to provide for attachment and confiscation of such properties ;It is hereby enacted in the Thirty-fourth Year of the Republic of India as follows :

1. Short title, extent and commencement

(1)This Act may be called the Uttar Pradesh Dacoity Affected Areas Act, 1983.(2)It extends to the whole of Uttar Pradesh.(3)It shall be deemed to have come into force on October 22, 1981.

2. Definitions

In this Act,--(a)"dacoity affected area" means an area declared as such under Section 3;(b)"scheduled offence" in relation to a dacoity affected area means an offence, specified in the schedule to this Act, being an offence committed by a scheduled offender;(c)"scheduled offender" means a person who commits or has committed or is accused of committing or attempt to commit dacoity or robbery as such or being so connected with scheduled offence as to form part of the same transaction, whether such offence has occurred at the same time and place or at different times and places;(d)"Sessions Judge", in relation to a dacoity affected area, means--(i)where such area consists

of a district or part thereof, the Sessions Judge exercising jurisdiction in such district or part, as the case may be;(ii)where such area consists of two or more districts or parts thereof, such Sessions Judge, as may be specified by the High Court, in this behalf for exercising jurisdiction in that area;(e)"Special Court" means a court constituted under Section 5;(f)"Special Judge" means a Judge appointed under sub-section (2) of Section 5 to preside over a Special Court;(g)words and expressions, used, but not defined in this Act and defined in the Code of Criminal Procedure, 1973, shall have the meanings assigned to them in that Code.

3. Declaration of dacoity affected area

If on receiving the report of a police officer or other information in respect of the incidence of the scheduled offences in a district or districts or a part or parts thereof, the State Government considers that a situation has arisen in which the area covered by such district or districts or a part or parts thereof should be declared to be a dacoity affected area for the purpose of this Act, the State Government may, by notification, declare such area to be a dacoity affected area.

4. Person assisting the police to be public servant

(1)A person who assists the police in giving information, or is engaged to assist the police for giving information relating to the commission of a scheduled offence or in the investigation of the commission of such offence shall, for the purposes of this Act, be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code.(2)A certificate by the Superintendent of Police to the effect that the person mentioned therein is a person who assists or is engaged to assist the police for the purposes specified in sub-section (1) shall be conclusive proof of the facts stated therein.

5. Constitution of Special Courts

(1)For the purposes of speedy trial of scheduled offences committed in a dacoity affected area, the State Government may, in consultation with the High Court, constitute, by notification, as many special courts as may be necessary in or in relation to such dacoity affected area or areas as may be specified in such notification.(2)A Special Court shall consist of a single Judge, who shall be appointed by the High Court from amongst the serving Sessions' Judges or Additional Sessions Judges.Explanation.--In this sub-section, the word "appoint" shall have the meaning assigned to it in the Explanation to Section 9 of the Code of Criminal Procedure, 1973.

6. Jurisdiction of Special Courts

(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, a scheduled offence shall be triable only by a Special Court.(2)In trying any scheduled offences a Special Court may also try any offence other than such offence with which a scheduled offender may be charged at the same trial under any law for the time being in force.

7. Procedure and powers of Special Courts

(1)A Special Court may take cognizance of any scheduled offence,--(a)upon receiving a complaint of facts which constitute such offence;(b)upon a police report of such facts;(c)upon information received from any person other than a police officer, or upon its own knowledge that such offence has been committed :Provided that all cases triable by a Special Court under this Act, pending before any Court immediately before the date of the commencement of this Act in a dacoity affected area, shall stand transferred to the Special Court having jurisdiction over such cases and shall be dealt with and disposed of in accordance with the provisions of this Act.(2)A Special Court shall, while trying a scheduled offence, so far as may be, follow the procedure provided by the Code of Criminal Procedure, 1973 for trial of sessions cases :Provided that the Special Courts may, wherever necessary, perform the functions of a Magistrate under Section 207 of the said Code and proceed to try the case as if the case had been committed to Court of Sessions for trial under the provisions of such Code.(3)Save as otherwise expressly provided in this Act, the provisions of the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purposes of the provisions of the said Code, the Special Court shall be deemed to be a Court of Sessions and the person conducting the prosecution before a Special Court shall be deemed to be a public prosecutor.(4)A Special Court may, with a view to obtain the evidence of any person supposed to have been directly or indirectly concerned in or privy to any scheduled offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating 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 said Code, be deemed to have been tendered under Section 307 thereof.(5)A Special Court may pass upon any accused person convicted by it any sentence authorised by law for the punishment of offence of which such person is convicted.

8. Jurisdiction of Special Courts

Notwithstanding anything contained in the Code of Criminal Procedure, 1973,--(a)all offences under this Act, shall be triable only by the Special Courts constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may subject to any general or special order of the High Court be specified in this behalf by the Sessions Judge;(b)where the office of the Special Judge is vacant or a Special Judge is absent or unable to act, the Sessions Judge may subject to any general or special order of the High Court dispose of or make arrangements for the disposal by an Additional or Assistant Sessions Judge or if there be no Additional or Assistant Sessions Judge, by the Chief Judicial Magistrate, of any urgent application, which" is or may be made or pending before such Special Judge every such Judge or Magistrate shall have jurisdiction to deal with any such application.

9. Transfer of cases

The provisions of Sections 406, 407 and 408 of the Code of Criminal Procedure, 1973 shall mutatis mutandis apply for the transfer of cases from one Special Court to another Special Court.

10. Special provisions regarding bail

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused or convicted of a scheduled offence shall, if in custody, be released on bail or on his own bond, unless--(a)the prosecution has been given an opportunity to oppose the application for bail, and(b)where the prosecution opposes the application for bail, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence :Provided that a person accused of a scheduled offence, who has been in custody for a total period of one hundred and eighty days, may be released on bail, subject to such condition as the Court may think fit to impose :Provided further that no such person, as is referred to in the preceding proviso, shall be so released--(i)if he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more; or(ii)if he had been previously convicted on two or more occasions of a non-bailable and cognizable offence; or(iii)if he has committed a breach of any of the conditions of the bail subject to which he was released.

11. Special provisions regarding custody after arrest

(1)The provisions of clause (a) of the proviso to sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 shall, in respect of a scheduled offence, apply with the modification as if a reference to one hundred and eighty days were substituted for the reference to ninety days.(2)The provisions of clause (b) of the proviso to sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 shall not apply to a person who is arrested for the commission of a scheduled offence if such person had been after such arrest produced before a Magistrate and the initial order for detention of such person in custody had been made by the Magistrate before whom he was so produced and the Investigating Officer for reasons to be recorded in writing considers that it is not expedient in the interest of public order to produce such person before the Magistrate.

12. Punishment for offence against public servant

Whoever commits a scheduled offence against the person of a public servant or against the person of a member of his family shall--(a)if such offence is punishable with death or imprisonment for life under the Indian Penal Code be punished with the punishment provided for the offence in the said Code, and(b)in other cases be punished with imprisonment which may extend to ten years and with fine.Explanation.--For the purposes of this section and Section 13, a member of family of a public servant shall mean his parents, spouses, sons and daughters, grandsons and grand-daughters and great grandsons and great grand-daughters and their spouses and shall include a person dependent on and residing with such public servant.

13. Reasons to be recorded for not awarding punishment of death

Notwithstanding anything contained in sub-section (3) of Section 354 of the Code of Criminal Procedure, 1973, when the conviction under this Act is for the murder of more than one person or murder of a public servant or a member of his family and where the sentence of death is not

awarded, the judgment shall state the special reasons for not awarding the death sentence.

14. Punishment for scheduled offence generally

A person who commits a scheduled offence shall, if no special punishment is provided for that offence in the Indian Penal Code and that offence is also not punishable under Section 12 be punished with imprisonment which may extend to ten years and with fine.

15. Punishment for possessing property not satisfactorily accounted for

Where a person living in a dacoity affected area is found to be in possession of property in that area or elsewhere in Uttar Pradesh for which he cannot satisfactorily account for and which has been acquired by or as a result of the commission of a scheduled offence shall be punished with imprisonment which may extend to seven years and with fine.

16. Minimum period of imprisonment

Notwithstanding anything contained in Sections 14 and 15 or any other law for the time being in force the minimum punishment for a scheduled offence shall be imprisonment for three years.

17. Attachment of property

(1) If the District Magistrate has reason to believe that a person living in a dacoity affected area has committed an offence punishable under Section 15 he may make a declaration to that effect and order attachment of the property in respect of which such offence is believed to have been committed. (2) The provisions of the Code of Criminal Procedure, 1973 shall, mutatis mutandis, apply to every attachment made under sub-section (1). (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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. (5) The expenses incurred on the administration of the property, including the expenses relating to police help under sub-section (4) shall be a charge on the property concerned.

18. Release of property

(1) When the property is attached under Section 17, the owner thereof may, within three months from the date of knowledge of attachment, make a representation to the District Magistrate, showing the circumstances in and the means by which the property was acquired by him. (2) If the District Magistrate is satisfied with the representation made under sub-section (1), he may forthwith release the property from attachment and thereupon the property alongwith the profits, if any, after deducting all the expenses charged on the property shall vest in the owner thereof.

19. Enquiry into the character of acquisition of property by Special Court

(1) If the District Magistrate is not satisfied with the representation made under Section 18, he shall refer the matter with his report to the Special Court, having jurisdiction for deciding whether the property or any part thereof was or was not acquired by or as a result of the commission of scheduled offence. (2) On receipt of the reference under sub-section (1), the Special Court shall fix a date for enquiry and give notices thereof to the person making the representation and the State. On the date so fixed, or on any subsequent date to which the enquiry may be adjourned, the Special Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary and decide the reference. (3) For the purposes of enquiry under sub-section (2), the Special Court shall have the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, 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 commissions 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 an order passed by it ex parte; (h) any other matter which may be prescribed. (4) In any proceeding under this section the burden of proving that the property or any part thereof mentioned in the representation under Section 18 was not acquired by or as a result of the commission of a scheduled offence shall be on the person claiming the property notwithstanding anything contained in the Indian Evidence Act, 1872.

20. Confiscation of property

If the Special Court finds that the property was acquired by or as a result of the commission of a scheduled offence, it shall order confiscation of the said property and shall transmit the records to the District Magistrate for execution of its order and in any other case, the property shall be ordered to be released forthwith.

21. No appeal to lie unless otherwise provided

No order passed and no decision made under this Act shall be appealable except as hereinafter provided.

22. Appeal from conviction

Any person convicted on a trial held by a Special Court under this Act may appeal to the High Court.

23. Appeal from acquittal

The State Government may in any case direct the Public Prosecutor to present an appeal to the High Court from an order of acquittal passed by Special Court under this Act.

24. Appeal against order under Section 20

(1)An appeal shall lie to the High Court against every decision of the Special Court made under Section 20.(2)In the appeal preferred in the High Court under sub-section (1) the High Court may confirm, reverse, vary or modify the decision or direct that the matter be re-heard by the Special Court.

25. Provision of Code of Criminal Procedure to appeals

The provisions of Chapter XXIX of the Code of Criminal Procedure, 1973, shall mutatis mutandis, apply to every appeal preferred under Section 22 or Section 23.

26. Bar of jurisdiction of Civil Courts

No Civil Court shall have jurisdiction in respect of any matter which the Special Court is empowered by or under this Act to determine, and no injunction or interlocutory order interfering with the attachment or confiscation of the property shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

27. Presumption in respect of kidnapping and abduction

In any trial of a scheduled offence under this Act where it is proved that--(i)the accused has kidnapped or abducted any person from dacoity affected area, it shall be presumed, unless the contrary is proved, that the accused has kidnapped or abducted such person for ransom;(ii)the accused has wrongfully concealed or confined any person kidnapped or abducted from dacoity affected area, it shall be presumed, unless the contrary is proved, that the accused has concealed or confined such person knowing that such person has been so kidnapped or abducted.

28. Protection of action taken in good faith

(1)No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of the State Government for anything done or intended to be done in good faith in pursuance of this Act or the rules made thereunder.(2)No prosecution against an Administrator appointed under subsection (3) of Section 17 shall be instituted unless previous sanction of the District Magistrate has been obtained therefor.

29. Act to have overriding effect

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any law for the time being in force.

30. Power to make rules

The State Government may, by notification, make rules to carry out the provisions of this Act.

31. Repeal and savings

(1)The Uttar Pradesh Dacoity Affected Areas (Second) Ordinance, 1983 (U. P. Ordinance No. 25 of 1983) 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 this Act as if the provisions of this Act were in force of all material times.

THE SCHEDULE[See Section 2 (b)](i)Offences punishable under Sections 216-A, 302, 303, 304, 307, 308, 325, 326, 327, 329, 331, 333, 363, 364, 365, 368, 369, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402 and 511 of the Indian Penal Code ;(ii)kidnapping or abducting any person for ransom;(iii)assembling or making preparation or attempt for kidnapping or abducting a person for ransom;(iv)making or mending or performing any part of the process of making or mending, buying, selling, possessing, disposing of, supplying or carrying arms or ammunition or explosives for the commission of dacoity;(v)voluntarily supplying food materials, clothing, means of communication, transport and other articles to the persons making preparation for dacoity or assembled for the purpose of committing dacoity or to the dacoits assembled after the commission of dacoity;(vi)mediating in the settlement or standing surety for, the payment of ransom to an abductor or kidnapper;(vii)spying for the persons making preparation for dacoity or assembled for the purpose of committing dacoity or for the dacoits assembled after the commission of dacoity;(viii)receiving benefits from the persons committing all or any of the above mentioned offences.