

IMPACT OF AMENDMENTS ON ORGANISED CRIME AND TERRORISM

ORGANIZED CRIME:

According to United Nations Convention Against Transnational Organized Crime (UNTOC), 'Organized Crime' shall mean a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes as defined in this convention in order to obtain directly or indirectly a financial or other material benefit.

TERRORISM:

It is the use of violence against non-combatants to achieve political or ideological goals. It can be defined as a method of coercion that uses violence to spread fear and pressure governments to change their policies.

HISTORY OF TERRORISM AND ORGANIZED CRIME IN INDIA:

India's tryst with terrorism and violent extremism can be traced back partly to the religion based partition in 1947, which ripped the sub-continent into two nations: India and Pakistan. The sub-continent remained witness to the most horrifying ethnic riots in modern history which were marked by extreme violence and acts of terrorism. India also remains highly vulnerable to terrorism due to porous borders with all its neighbors and a long coast line.

In Pre-independence era, India witnessed sporadic instances of violence and uprisings against British rule, some of which could be considered as early forms of terrorism. In post-partition era, the partition of India in 1947 led to wide spread communal violence and displacement creating a fertile ground for extremist ideologies. In between 1980 - 1990's several separatist movements emerged, fueled by the ethnic religions, like khalistan movement seeking a separate Sikh state led to have a wave of violence in Punjab. Even in Kashmir insurgency often supported by Pakistan resulted in numerous terrorist attacks. In north-east India various insurgent groups operated in the place demanding greater autonomy or secession.

In the 1990 - 2000's there is religious extremism like Islamic terrorism and groups included are Lashkar-e-taiba and Jaish-e-mohammad based in Pakistan carried out major attacks including the 2008 Mumbai attacks. There are other forms of terrorism like left-wing terrorism, cross-border terrorism, cyber-terrorism, home grown terrorism. Left-wing terrorism known as Naxalites or Maoists has been involved in violent insurgency in several parts of India particularly in rural areas.

Cross-border terrorism has been happening in India primarily from Pakistan based groups. The home-grown terrorism fueled by radicalization and online propaganda is a growing concern in India. The cyber-terrorism is increasing all over the world. Terrorist groups are increasingly using cyber space for recruitment, propaganda, and attacks on critical infrastructure. India has experienced almost all forms of terrorist attacks:

- Hijacking and blowing up of aircrafts;
- Sabotaging railway tracks;
- Kidnapping hostages for meeting political demands;
- Suicide attacks;
- The assassination of two of its Prime ministers;
- Attacks on places of worship, transportation systems, security forces and financial hubs;
- Communal riots followed by extreme violence;
- Attacks both by religious and non-religious terrorist groups.

Organized crime in India has a long and complex history evolving from localized activities to sophisticated transnational networks. In pre-independence era, the foundations can be traced back to colonial times when the British Empire oppressive rule led to the emergence of various forms of criminal activities, including dacoity. The most infamous criminal gang of this time was the "Thugs" a group involved in robbing and murdering travelers. They were believed to be part of a larger network that spreads across different parts of India.

In post-independence era, organized crime began to evolve with the growth of illicit activities such as boot legging, smuggling, and black market operations, especially during periods of economic hardship and shortages. There saw the emergence of several criminal syndicates,

often linked to the political environment of the time. In the 1970's and 1980's Indian cities like Mumbai became breeding grounds for gangsters involved in illegal activities like smuggling, extortion, and drug trafficking. In 1990's there is a rise of some of most notorious criminal syndicates in Indian history many of which centered in Mumbai. These criminal empires were involved in a wide range of illegal activities from extortion and smuggling to money laundering and even contract killings.

From 2000's the rise of narcotics trade, arms smuggling, and terror financing brought Indian organized crime into global stage. In the 2000's organized crime syndicates from India were not controlling domestic markets but also had international reach particularly in the Middle East, South East Asia, and even Europe and the United States. Terrorism is a global trouble and India has been target of terrorist groups for numerous times. In response, counter terrorism laws have been legislated in India.

They are:

- Unlawful Activities (Prevention) Act, 1967
- National Investigation Agency Act, 2008
- Prevention of Money Laundering Act, 2002
- The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 (Amendments in 2008, 2012, AND 2019) ¹:

The UAPA was originally enacted to prevent unlawful activities against the sovereignty and integrity of India. The Act is aimed at fighting terrorism and other forms of unlawful activities similar as organized crime, plutocrat laundering and trafficking. Amendments play a crucial role in shaping the legal and operational landscape for combating organized crime and terrorism. The 2008 amendment broadened the definition of the term terrorist act under section 43A they could arrest anyone unless there was proper evidence to prove otherwise, it extended the pre-charge detention to 180 days, then it further gave the courts the right to reject bail if the court sees any evidence as "Prima facie" true.

¹Unlawful Activities (Prevention) Act, 1967, Act no. 37 of 1967, enacted on December 30, 1967.

The 2012 amendment includes economic offences that support terrorism (money laundering, extortion, and drug trafficking). It also widened the scope of conspiracy and preparatory acts allowing preemptive action against organized crime. After 2012, the most recent amendment made to the UAPA gives powers to DG, NIA to attach properties acquired from proceeds of terrorism. The bill increases the ambit of who qualifies as a terrorist and empowers the government to designate individuals as terrorists. Prior to the amendment only organizations could be designated this way and individuals were not covered. The 2019 amendment further strengthened the power of the centre and blurred the category of who is a terrorist or what maybe a terrorist act. This amendment also strengthened laws against organized crime syndicates funding terror activities and increased global cooperation for tackling cross-border terrorism and organized crime. Even gave National investigation agency more power to investigate cases without state government approval.

IMPACT:

- Enhanced surveillance and swift action against suspected terrorists.
- Strengthened anti-terror financing mechanisms.
- Increased scrutiny of International and domestic funding for extremist groups.
- However concerns over misuse of the law against activists and dissenters have been raised.

CASELAW:

National Investigation Agency vs. Zahoor Ahmad Shah Watali (2019)²:

Zahoor Ahmad Shah Watali a businessman from Kashmir was arrested by NIA for allegedly funding terrorist activities in Jammu and Kashmir. He was allegedly funding terrorist activities in Jammu and Kashmir. He was accused of acting as a conduit for Pakistan based terror organizations such as lashkar-e-taliba (LET) and Hizabul mujahdeen. The prosecution claimed that he achieved funds from Pakistan's Inter Services Intelligence, separatist leaders and other anti-India entities to finance terrorism. Watali applied for bail before the Delhi High Court which granted it, questioning the strength of the evidence.

²NIA vs Zahoor Ahmed Shah Watali (2019) 5 SCC 1.

But the Supreme Court overturned the Delhi's High court's bail order and denied bail to Watali. It held that section 43 D (5) of UAPA, courts should not conduct a detailed examination of evidence at bail stage. The Prosecution only needs to show a prima facie case, and if the allegations appear credible, bail should not be granted. The court emphasized that national security concerns outweigh individual liberty in terror financing cases. This case set a precedent for denying bail in UAPA cases based on Prima facie's evidence, reinforcing India's tough stance on terrorism and terror financing.

THE NATIONAL INVESTIGATION AGENCY ACT, 2008 (Amendment in 2019)³:

The NIA Act established the national investigation agency to handle terrorism related cases. The 2019 amendment expanded its jurisdiction to include human trafficking, cyber terrorism, and organized crime beyond national borders.

IMPACT:

- Strengthened India's ability to investigate terror related cases across states and internationally.
- Increased collaboration with Interpol and foreign agencies to curb international terror financing.
- Enhanced law enforcement capabilities against transnational organized crime.
- NIA now investigates organized human trafficking networks, often linked to ISIS recruitment and cross border crime.

CASE LAW:

A. K. ROY VS. UNION OF INDIA (1982)⁴:

The National Security Act, 1980 was challenged in this case. A.K Roy was a communist leader along with other petitioners argued that National Security Act violated Fundamental Rights, especially Article 14 (Equality), Article 21 (Right to life and liberty), and Article 22 (Protection against Preventive Detention). NSA allows the government to detain individuals without trial for up to 12 months if they are considered a threat to national security. The petitioners claimed that NSA was vague, arbitrary and unconstitutional.

³National Investigation Agency Act, 2008, Act no. 34 of 2008, enacted on December 31, 2008.

⁴A. K Roy vs Union of India AIR 1982 SC 710.

The Supreme Court upheld the constitutional validity of NSA stating that Preventive Detention is necessary for national security and public order. But the court set legal boundaries for preventive detention under NSA. The Supreme Court upheld the constitutionality of the national security ordinance and the National Security Act, 1980.

THE PREVENTION OF MONEY LAUNDERING ACT (PMLA), 2002 (Amendments in 2009, 2012, 2019, 2022) ⁵:

The Prevention of Money Laundering Act, 2002 was enacted to combat money laundering which funds organized crime and terrorism. Over the years, several amendments have strengthened the law, expanding the Enforcement Directorate's powers and improving financial crime tracking. The 2009 amendment expanded the definition of money laundering to include the possession, acquisition and use of proceeds of crime. It also strengthened confiscation provisions for illegally acquired property. It even allowed international cooperation improving global tracking of terror funding.

The 2012 amendment added tax evasion and cheating under scheduled offences, targeting financial crimes linked to organized crime syndicates. It enabled ED to attach properties even before conviction, preventing funds from being used for terror activities. The 2015 amendment included "concealment of proceeds of crime" as a punishable offence. It strengthened provisions for extradition, making it easier to track international crime syndicates. The 2019 amendment tightened bail provisions and allowed ED to summon, investigate, and arrest suspects without prior approval. The 2022 amendment expanded definition of "proceeds of crime" to include indirect gains from criminal activities. It allowed ED to act against individuals, not just organizations, making it easier to crack down terror financing and shell companies. It improved global cooperation by aligning PMLA with FATF (Financial Action Task Force) guidelines.

IMPACT:

- Curbed financial networks of crime syndicates and terrorist groups.
- Increased scrutiny of shell companies and illegal financial transactions.
- Reduced the flow of black money into organized criminal activities. However allegations of selective enforcement and political misuse persist.

⁵Prevention of Money Laundering Act, 2002, Act no. 15 of 2003, enacted on January 17, 2003.

UNDER PEER REVIEW IN IJAR

CASELAW:

VIJAYMADNANLALCHOUDHARYVS.UNIONOFINDIA(2022)⁶:

The case challenged several provisions of Prevention of Money Laundering Act, 2022 particularly those granting extensive powers to Enforcement Directorate. The petitioners argued that those provisions violated fundamental rights especially concerning arrest, property attachment, and lack of procedural safeguards. The Supreme Court upheld ED'S powers of arrest, search, and seizure as constitutional and essential to curb money laundering. Even the property attachment justified that ED can attach property before conviction if it is linked proceeds of crime.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (NDPS) ACT, 1985

(Amendments in 2014, 2018 and 2021)⁷:

The NDPS Act aims to control Drug trafficking, a key source of revenue for organized crime. The amendments in this act significantly impact organized crime and terrorism in India due to the deep nexus between drug trafficking, organized criminal networks, and terror financing. The 2014 amendment introduced stricter punishment for repeat offenders. The 2018 amendment increased surveillance and cyber tracking of drug transactions, especially on the Dark Web and the 2021 amendment removed loopholes related to drug possession.

IMPACT:

- Weakens organized crime syndicates that thrive on the drug trade.
- Reduces terror funding making it harder for extremist groups to operate.
- Strengthens legal mechanisms for confiscating assets linked to drug crimes.
- Disrupts drug cartels funding terrorist activities.
- Encourages international collaboration in tackling drug-related crimes.
- Reduces illicit drug trade and cross-border smuggling.

CASELAW:

GURDEV SINGH VS. STATE OF PUNJAB (2021)⁸:

⁶Vijay Madanlal vs Union of India (2022) 10 SCC 545.

⁷NDPS Act, Act no. 61 of 1985, enacted on September 16, 1985.

⁸Gurdev Singh vs State of Punjab AIR 2021 SCC 180.

UNDER PEER REVIEW IN IJAR

This case examined strict liability and enhanced punishments under the NDPS Act following amendments particularly their role in tackling organized drug syndicates. The Supreme Court upheld stringent punishments reinforcing the government's stance on drug-related crimes. The ruling supported the 2014 amendment which allowed authorities to confiscate drug related assets, hitting organized crime financially.

CONCLUSION:

Amendments to India's legal framework have played a crucial role in countering organized crime and terrorism. Strengthening laws such as the Unlawful Activities (Prevention) Act (UAPA), the Prevention of Money Laundering Act (PMLA), and the National Investigation Act (NIA) has enhanced law enforcement's ability to investigate, prosecute, and dismantle criminal networks. These amendments have improved surveillance, expedited trials, and imposed stricter penalties acting as strong deterrents. However, challenges such as misuse of laws, delays in judicial processes, and the evolving nature of crime demand continuous reforms and a balance between security and civil liberties. Effective implementation, coordination among agencies, and adherence to constitutional principles remain essential in combating organized crime and terrorism while upholding democratic values.