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The Normalization Of Terror: Section 113 Bns And The Perilous Embedding Of Terrorism In India's Ordinary Criminal Law

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ABSTRACT

Section 113 of India's new Bharatiya Nyaya Sanhita (BNS) embeds the definition of "terrorist act" directly into the ordinary criminal code, shifting it from special laws like the UAPA. This integration normalizes terrorism charges, making them appear routine alongside common crimes. Critics argue this perilous embedding carries severe risks: the overbroad definition (including acts threatening security, unity, or causing disruption "by any means") and harsh penalties enable potential misuse against dissent, protests, minorities, and journalists. It blurs crucial distinctions between ordinary crime and national security threats, erodes due process, creates a chilling effect on fundamental freedoms, and risks mainstreaming controversial anti-terror frameworks. This article mainly critically analyses the newly inserted provision. The Paper briefly analyses the historical development of counter terrorism laws in India from TADA to POTA to the current primary counter terrorism statute, the Unlawful Activities (Prevention) Act (UAPA).Further the possible perils of normalization of terrorism law under section 113 BNS is also analyzed. Furthermore a comparative analysis of the Indian law with the international legal standard is also discussed briefly. And lastly the actions in order to mitigate the profound perils posed by section 113 are also discussed as suggestions.

Keywords: Terrorism, Counter Terrorism laws, Section 113 BNS.

INTRODUCTION: A Foundational Shift in Legal Architecture

India's ambitious legal reform, culminating in the Bharatiya Nyaya Sanhita (BNS) 2023, signifies a decisive break from its colonial penal legacy, the Indian Penal Code (IPC), 1860. Promising modernization, decolonization, and efficiency, the new code aims to reflect contemporary societal values. However, nestled within its provisions lies Section 113, a clause that has ignited intense debate and profound apprehension among legal scholars, human rights defenders, and civil society organizations. This section defines and prescribes punishment for "terrorist acts," marking a pivotal and potentially perilous departure: the explicit incorporation of a terrorism definition directly into the country's ordinary criminal law framework. This integration, ostensibly justified by national security imperatives, risks normalizing extraordinary counter-terror powers, diluting crucial legal safeguards designed for everyday crimes, and fundamentally altering the relationship between the state and its citizens under the guise of routine criminal justice. This article argues that Section 113 BNS represents a dangerous normalization of terror-related exceptionalism, embedding its broad and ambiguous reach into the bedrock of India's criminal justice system, with far-reaching and detrimental consequences for civil liberties, federal balance, and the foundational principle of the rule of law. The very act of placing "terrorism" alongside theft, assault, and murder signifies a conceptual shift with potentially devastating implications.

Historical Context: The Pendulum of Exceptionalism

To fully grasp the significance of Section 113, one must navigate India's turbulent history with extraordinary anti-terrorism legislation. Laws like the Terrorist and Disruptive Activities (Prevention) Act (TADA, 1985-1995) and the Prevention of Terrorism Act (POTA, 2002-2004) became synonymous with systemic abuse. Documented cases revealed widespread misuse, arbitrary detentions, custodial torture, fabricated encounters, and the disproportionate targeting of religious minorities, Dalits, Adivasis, and political dissenters.[2] Both statutes were eventually repealed following massive public outcry, civil society campaigns, and significant judicial criticism highlighting their incompatibility with fundamental constitutional rights enshrined in

2 Singh, Ujjwal Kumar. The State, Democracy and Anti-Terror Laws in India. Sage Publications, 2007. (Comprehensive analysis of TADA/POTA era abuses, including targeting patterns).

Articles 14 (Equality), 19 (Freedoms), and 21 (Life and Liberty).[3] The Supreme Court, in People's Union for Democratic Rights vs Union of India (2004), acknowledged the grave dangers inherent in such extraordinary powers, even while sometimes upholding specific provisions.[4]

The current primary counter-terrorism statute, the Unlawful Activities (Prevention) Act (UAPA), 1967, though enacted earlier and made permanent, retains many characteristics of an extraordinary law. Its stringent bail provisions, encapsulated in Section 43D(5), effectively reverse the presumption of innocence, requiring courts to deny bail if the accusations appear "prima facie true" – a notoriously low threshold interpreted restrictively against the accused (National Investigation Agency vs Zahoor Ahmad Shah Watali, 2019).[5] It permits extended pre-charge detention (up to 180 days), features broad and often vague definitions of "terrorist act" and "unlawful activity," establishes special courts with specific procedures, and significantly enhances the powers of central agencies like the National Investigation Agency (NIA). Crucially, throughout this history, these laws existed outside the IPC. This separation, however problematic in practice, acknowledged a societal and legal consensus that dealing with the unique challenges of terrorism – its networked nature, ideological motivations, potential for mass disruption, and threat to the state's integrity – might necessitate a distinct legal regime with heightened state powers, accompanied by an awareness of the concomitant risks to liberty. The persistent track record of abuse, however, underscored the inherent dangers of granting the state such exceptional authority, even within a dedicated statute.[6] The perceived need for these laws stemmed from the belief that ordinary criminal procedures (governed by the CrPC, now replaced by the Bharatiya Nagarik Suraksha Sanhita, BNSS) were inadequate to combat terrorism effectively. This history sets the stage for understanding why embedding a terror definition within the ordinary code is such a radical departure.

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3 People's Union for Democratic Rights vs Union of India (2004) 2 SCC 476. (Supreme Court judgment discussing the repeal of POTA and highlighting abuses under TADA/POTA).

4 National Human Rights Commission (NHRC) Reports on TADA/POTA Misuse. (Numerous reports documenting specific cases of abuse during the operation of these Acts).

5 National Investigation Agency vs Zahoor Ahmad Shah Watali (2019) 5 SCC 1. (Landmark Supreme Court judgment interpreting the stringent bail provisions under UAPA Section 43D(5), setting a high bar for release).

6 Commission of India Reports. (Various reports, including 173rd and 180th, have discussed the challenges and potential for misuse in anti-terror laws).

Section 113 BNS: The Mechanics of Embedding "Terror"

Section 113 of the BNS marks a decisive break from the historical separation of extraordinary terror laws and ordinary criminal justice. It defines a "terrorist act" comprehensively:

(1) Whoever does any act with the intent to threaten or likely to threaten the unity, integrity, sovereignty, security, or economic security of India or to strike terror in the people or any section of the people in India or in any foreign country,

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or

(ii) loss of, or damage to, or destruction of, property; or

(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or

(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or for the purposes connected with defence; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary,

(2) or detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act, commits a terrorist act.

Punishment is severe: death or imprisonment for life without parole if the act results in death; imprisonment for life in other cases; and a minimum of five years imprisonment.[7]

The critical, transformative shift is not merely the definition itself (which bears similarities to UAPA), but its location. This definition of "terrorist act" now resides within the BNS, the foundational code governing everyday crimes like theft (Section 303), assault (Section 352), culpable homicide (Section 104), and murder (Section 101). This embedding signifies a profound conceptual normalization. Terrorism is no longer treated legislatively as an exceptional threat demanding a distinct legal architecture with heightened powers and specific (if often inadequate) safeguards. Instead, it is presented as just another category of crime, albeit a

grave one, within the standard criminal justice system governed primarily by the BNSS. This relocation fundamentally alters the legal and psychological framework within which terrorism is perceived and prosecuted.

The Multifaceted Perils of Normalization: Erosion of Safeguards and Expansion of State Power

The integration of a terrorism definition into ordinary criminal law creates a web of interconnected dangers that threaten the core principles of a liberal democracy:

1. **Dilution of Stringent Judicial Scrutiny**: Extraordinary laws like the UAPA, despite their well-documented flaws, operate under a degree of heightened judicial awareness precisely because they are recognized as exceptional. Courts, while often exhibiting excessive deference to the executive in matters of "national security," are theoretically more alert to potential abuses inherent in such special regimes. The Supreme Court in Arup Bhuyan vs State of Assam (2011) emphasized the necessity of strictly construing terror laws to prevent their misuse against innocent individuals.[8] Embedding a terror definition within the ordinary law risks normalizing its application. Prosecutors and lower courts may apply Section 113 BNS with the same procedural mindset and

[7] The Bharatiya Nyaya Sanhita, 2023. Section 113. [Official Text from Gazette of India].

[8] Arup Bhuyan vs State of Assam (2011) 3 SCC 377. (Supreme Court emphasized the necessity of strictly construing terror laws like UAPA to prevent misuse and protect innocent individuals, requiring concrete evidence of intent and active membership).

presumptions used for ordinary offenses like robbery or rioting. They may overlook the uniquely severe consequences (death penalty, life imprisonment without parole) and the inherent risks of overbreadth and misuse historically associated with terror charges. The exceptional nature of the power becomes obscured, potentially leading to complacency in rigorously safeguarding fundamental rights during investigation, trial, and bail considerations. The gravity of the label may unconsciously lower the threshold of proof required or diminish the vigilance against procedural irregularities.

2. **Over breadth and Vagueness creeping into the Ordinary:** Section 113's definition is alarmingly expansive and susceptible to subjective interpretation. Terms like "intent to threaten... economic security," "strike terror in... any section of the people," "disruption of any supplies or services essential to the life of the community," and compelling governments or "any other person" are inherently broad and lack precise legal contours. While such breadth is problematic even under UAPA, its presence in the ordinary code exponentially increases the risk. These vague concepts can now be invoked by regular police forces across the country against a vastly wider range of situations that bear little resemblance to what is commonly understood as terrorism. Examples are not merely hypothetical:

- Large-scale protests against economic policies (like farm laws or industrial projects) causing significant disruption to transport or supply chains could be interpreted as intending to threaten "economic security" or cause "disruption of essential services."
- Aggressive trade union strikes halting production in critical industries (power, transport) could fall under the same broad definitions.
- Vocal political opposition or dissent challenging government policies, particularly if it involves strong rhetoric or civil disobedience causing public inconvenience, could be construed as intending to "strike terror" in a section of the people or threaten national integrity.

This risks criminalizing legitimate dissent, industrial action, or political opposition under the terrifying and stigmatizing label of "terrorism," but crucially, using the standard, less rigorous procedures of the ordinary criminal justice system (BNSS). The chilling effect on fundamental freedoms guaranteed under Article 19 (freedom of speech, assembly, association) is immense.[9]

3. **Erosion of Procedural Safeguards:** Extraordinary laws often have specific, albeit problematic, procedural rules attached. By placing the terror offense solely within the BNS, its investigation and prosecution default to the general procedures of the BNSS. While proponents might argue this subjects terror cases to "normal" safeguards, it ignores the complex realities of terror investigations (often involving inter-state/international links, covert operations, intelligence inputs, and witness protection needs) that general procedures may not adequately address or effectively constrain. Conversely, the fear and political pressure surrounding any "terror" charge may incentivize investigative agencies to stretch ordinary BNSS procedures (related to arrest, remand, search and seizure, witness examination) beyond their intended limits. Agencies

might exploit the gravity of the "terror" label to justify prolonged detention during investigation or expansive seizures without necessarily adhering to the specific checks (however flawed) built into UAPA. Furthermore, while UAPA's stringent bail provision (Section 43D(5)) does not automatically apply to Section 113 BNS, the sheer severity of the prescribed punishment (death or life imprisonment) will inevitably make courts extremely reluctant to grant bail under the ordinary provisions of the BNSS (Sections 480). This creates a de facto high barrier to bail, mirroring the UAPA standard but without its explicit statutory basis, leading to inconsistent and potentially arbitrary application across different courts and judges.[10]

4. **Exponential Increase in Misuse and Discriminatory Targeting:** India's history provides ample evidence that broad anti-terror laws are disproportionately deployed against marginalized communities, religious minorities, human rights activists, student leaders, journalists, and political dissenters.[11] Embedding an equally broad, if not broader, terror definition into the ordinary law

9 International Commission of Jurists (ICJ). "India: Anti-terrorism legislation and human rights." 2012. (Analysis highlighting how broad definitions in laws like UAPA risk criminalizing legitimate dissent and protest). https://www.icj.org/wp-content/uploads/2012/07/India-anti-terrorism-legislation-and-human-rights-Advocacy- Analysis-brief-2012-ENG.pdf

10 State of Rajasthan vs Balchand (1977) 4 SCC 308. (Established the principle that "bail is the rule, jail is the exception," a principle severely undermined in practice by UAPA and potentially by the severity of Section 113 BNS).

11 Amnesty International Reports on India. (Multiple reports documenting patterns of misuse of security laws against minorities, activists, and dissenters, e.g., reports on Jammu & Kashmir, Bhima Koregaon case, anti-CAA protests).

significantly lowers the threshold and vastly expands the opportunities for such misuse. Police forces across India's states, operating with varying levels of training, resources, accountability, and political pressures, now possess the direct power to invoke "terrorism" charges under Section 113 BNS for incidents that might previously have been booked under ordinary offenses like unlawful assembly (BNS Section 192), rioting (BNS Section 193), criminal conspiracy (BNS Section 61), or even mischief (BNS Section 322). The discretion afforded to the police station level is immense. A protest turning violent, a speech deemed inflammatory, a social media post criticizing policy – all could potentially be framed, even if tenuously, within the ambit of Section 113's vague terms. The chilling effect on free speech, peaceful assembly, and legitimate dissent is not just theoretical; it is a predictable outcome, creating an environment of fear where citizens hesitate to engage in lawful protest or criticism for fear of being branded a "terrorist" under the main criminal code.

5. **Federalism Under Strain:** The Indian Constitution delineates powers between the Union and States. Policing and public order are primarily State subjects (List II, Schedule VII). While "terrorism" is on the Union List (List I), enabling Parliament to legislate and central agencies like the NIA to investigate UAPA cases nationwide, the application of Section 113 BNS falls primarily within the domain of state police forces. This creates significant potential for inconsistent application across different states. What one state government might treat as a serious but ordinary law and order issue (e.g., a violent caste protest), another might choose to invoke Section 113 BNS as "terrorism." This inconsistency undermines national legal coherence. Furthermore, it raises complex questions about the Centre's ability to intervene in cases booked under Section 113 by state police. Can the NIA take over such investigations? On what grounds? Would this require state consent or override state jurisdiction? This ambiguity invites jurisdictional conflicts and politicization of terror allegations, where rival political parties governing at the Centre and in a State might weaponize Section 113 BNS against each other's supporters. The landmark case State of West Bengal vs Union of India (1963) affirmed the federal balance; Section 113 BNS risks disrupting this delicate equilibrium in the sensitive domain of security.[12]

12 State of West Bengal vs Union of India AIR 1963 SC 1241. (Landmark Supreme Court case outlining the principles of federalism and the distribution of powers between Centre and States under the Indian Constitution).

6. **Cultural Normalization of the "Terror" Label:** Perhaps the most insidious long-term effect is the cultural and psychological normalization of labeling acts or individuals as "terrorists" through the ordinary criminal justice process. When "terrorism" becomes just another section number (113) in the main criminal code, listed alongside burglary and cheating, the extraordinary stigma, societal panic, and presumption of guilt historically associated with the term risk becoming applied more casually and pervasively. This normalization within the legal fabric can seep into public discourse and media reporting, further polarizing society. It undermines the fundamental presumption of innocence for a vast range of actions potentially caught by the broad definition, as the mere invocation of Section 113 BNS by police can instantly tar an individual or group with the terrorist brush in the public eye, causing irreparable reputational damage even before trial.

Coexistence with UAPA: Compounding the Risk and Creating Arbitrariness

A critical and dangerous aspect of Section 113 BNS is that it does not replace the UAPA. Both statutes now coexist, creating a complex, opaque, and potentially abusive legal landscape:

1. **Prosecutorial Choice and Forum Shopping**: Investigating agencies (state police or central agencies like NIA) now have significant discretion to choose whether to charge an individual under Section 113 BNS (invoking ordinary BNSS procedures but severe punishment) or under the relevant sections of UAPA (invoking special procedures, stringent bail under S. 43D(5), and potential designation as a terrorist organization). This choice can be arbitrary, influenced by political considerations, resource availability, or a strategic desire to maximize punitive outcomes or minimize judicial scrutiny. An agency might choose UAPA for its bail hurdles in one case, while opting for Section 113 BNS in another similar case to avoid the specific reporting requirements or oversight mechanisms tied to UAPA. This "forum shopping" undermines legal certainty and equality before the law.[13]

2. **Overlapping Charges and Double Jeopardy Concerns**: The broad definitions in both statutes create significant potential for overlapping investigations and charges. An individual could

13 Chhibber, Maneesh. "New criminal laws: How prosecution can pick and choose between BNS and UAPA." ThePrint, December 26, 2023. (Analysis of the risks of prosecutorial discretion and forum shopping under the new framework).

plausibly face charges under both Section 113 BNS and relevant sections of UAPA (e.g., S. 15, 16, 18) for the same act or series of acts. This exponentially increases the legal burden on the accused, exposes them to multiple severe penalties, complicates defense strategies, and raises serious concerns about double jeopardy, prohibited under Article 20(2) of the Constitution. While courts like in Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao (2011) have reiterated the principles against double jeopardy,[14] the mere initiation of parallel or sequential proceedings under both statutes creates significant harassment and undermines fair trial rights.

3. **Undermining UAPA's Specificity and Diluting its Focus:** While UAPA has its own well-documented problems of breadth, it also contains specific chapters dealing with the declaration and consequences of terrorist organizations (Chapter IV), terrorist gangs (Chapter V), and terrorist financing (Chapter VI) – aspects not covered by Section 113 BNS. The existence of the BNS provision could lead to its misuse for acts that UAPA was specifically designed to handle. For instance, instead of invoking the process for banning an organization under UAPA, authorities might simply charge its members under Section 113 BNS for their activities, bypassing the specific (though flawed) procedural structures and potential judicial review associated with UAPA's organizational bans. This could lead to an ad hoc and less transparent approach to tackling organized terror networks.

Comparative Perspectives and International Legal Standards

Internationally, most established democracies maintain a clear distinction between their ordinary criminal law and dedicated legislation dealing specifically with terrorism. The United Kingdom operates under the Terrorism Act 2000 (and subsequent amendments), a distinct statute outlining specific offenses, police powers, and procedures related to terrorism, separate from its general criminal law. Similarly, the United States relies on a complex framework including the Patriot Act and specific sections within Title 18 of the US Code dedicated to terrorism, distinct from ordinary

[14] Kolla Veera Raghav Rao vs Gorantla Venkateswara Rao (2011) 2 SCC 703. (Reaffirmed the constitutional protection against double jeopardy under Article 20(2), relevant given the potential for overlapping charges under BNS 113 and UAPA).

federal crimes.[15] This separation acknowledges the need for specialized tools to combat a unique threat while recognizing the necessity of containing exceptional powers within a defined legislative framework subject to specific parliamentary oversight and judicial review mechanisms.

The fundamental principle of legality (nullum crimen sine lege), enshrined in Article 15 of the International Covenant on Civil and Political Rights (ICCPR) which India has ratified, demands that criminal laws be precisely defined. Citizens must be able to reasonably foresee what conduct is prohibited. Section 113 BNS, with its embedded broad and vague definitions like "threatening economic security" or "striking terror in any section," contravenes this principle. It leaves citizens uncertain about the boundaries of permissible conduct and grants excessive, unchanneled discretion to law enforcement agencies.[16]

Furthermore, UN human rights bodies, particularly the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, have consistently warned against the misuse of counter-terrorism legislation to suppress dissent, target minorities, and curtail legitimate expression and assembly.[17] Embedding a broad terror definition into ordinary law significantly heightens these risks, as the label becomes easier to apply through routine police work and prosecution, far removed from the specialized (though imperfect) scrutiny sometimes applied to dedicated counter-terror laws.

[15] Roach, Kent. The 9/11 Effect: Comparative Counter-Terrorism. Cambridge University Press, 2011. (Detailed comparative analysis of counter-terrorism legal frameworks in democracies like the UK, US, Canada, showing the prevalence of distinct statutes).

[16] International Covenant on Civil and Political Rights (ICCPR), 1966. Article 15 (Principle of Legality). (Ratified by India; broad definitions violate the requirement for precision in criminal law).

[17] Reports of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. (Annual and thematic reports consistently expressing concerns about the misuse of counter-terrorism laws globally to suppress fundamental freedoms). https://www.ohchr.org/en/special- procedures/sr-terrorism

CONCLUSION: Confronting the Embedded Peril

The incorporation of Section 113 into the Bharatiya Nyaya Sanhita is not a mere technical relocation or minor legislative adjustment. It represents a profound conceptual shift with potentially dire consequences for India's democratic fabric and commitment to the rule of law. By embedding a broad, vague, and highly punitive definition of "terrorist act" directly into the nation's foundational ordinary criminal code, the law risks irrevocably normalizing the exceptional powers and pervasive fear historically associated with counter-terrorism. This normalization blurs crucial legal and procedural lines, dilutes safeguards designed to protect citizens from state overreach in everyday criminal matters, exponentially increases the potential for misuse – particularly against vulnerable communities, dissenters, and political opponents – fuels tensions within India's federal structure, and subjects a vast range of ordinary activities, including legitimate protest and dissent, to the devastating stigma of terrorism through the routine machinery of the criminal justice system.

The coexistence of Section 113 BNS with the UAPA creates not a streamlined system, but a dual- track regime ripe for arbitrariness, prosecutorial discretion, forum shopping, and compounded legal harassment. While the duty of the state to combat terrorism and protect its citizens is undeniable and paramount, sacrificing core constitutional principles of legality, proportionality, due process, and federalism on the altar of security is ultimately self-defeating. It erodes the very rule of law, institutional integrity, and democratic freedoms that terrorism itself seeks to undermine. Robust security and robust rights are not mutually exclusive; in fact, sustainable security requires upholding the rule of law.

Mitigating the profound perils posed by Section 113 BNS demands urgent, sustained, and multi-faceted action:

The Judiciary must exercise heightened vigilance and rigorous scrutiny when cases under Section 113 BNS come before it. Courts must actively apply the principles established in cases like Arup Bhuyan (2011), insisting on strict construction of the provision, striking down vague and overbroad interpretations, demanding concrete proof of the specific intent to threaten national integrity or strike terror (beyond mere disruption or protest), and safeguarding procedural rights at every stage, especially regarding bail. The Supreme Court must provide clear guidelines to prevent misuse.

Legal Practitioners and **Civil Society** must meticulously document instances of misuse of Section 113 BNS, challenge unconstitutional applications in courts, and engage in sustained advocacy. Efforts should focus on pressuring the legislature to amend Section 113, narrowing its definition, introducing clearer intent requirements, and explicitly defining ambiguous terms. Clarifying the relationship and preventing overlap with UAPA is also crucial.

The Legislature must acknowledge the serious concerns raised and undertake a comprehensive review. Amendments should aim to excise the most problematic vague terms ("economic security," "any section of the people," "any other person"), require a higher threshold of intent and imminent threat, and incorporate specific procedural safeguards within the BNS/BNSS framework for offenses carrying punishments as severe as death or life imprisonment without parole. Parliament must reconsider the wisdom of embedding this definition within the ordinary code versus maintaining a dedicated, but significantly reformed, counter-terrorism statute with stronger oversight.

Failure to confront the dangers inherent in Section 113 BNS risks entrenching a "permanent emergency" within the ordinary law, fundamentally damaging India's constitutional democracy. The normalization of terror through this legislative embedding is a perilous step backward. It demands not just critical engagement, but decisive corrective action to uphold the delicate balance between security and liberty that defines a free society. The integrity of India's criminal justice system and the protection of its citizens' fundamental rights depend on it.