



# **LEGISLATIVE LANDSCAPE**

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# BNS *VIS-À-VIS* IPC & UAPA

Offence	Bharatiya Nyaya Sanhita, 2023	Indian Penal Code, 1860	Unlawful Activities Prevention Act, 1967
Terrorist Act	Section 113	-	Sections 15 - 21 (except 17)
Waging War	Sections 147– 151, 153	Sections 121– 124, 125	-
Endangering Sovereignty, Unity & Integrity of India	Section 152	Sedition – Section 124A	-
Offences Relating to Terrorist Organisations & Individuals	-	-	Sections 38 - 40
Funding of Terrorist Acts & Terrorist Organisations	-	-	Sections 17 & 40

## CHAPTER VII BNS – OFFENCES AGAINST THE STATE (Offences of Waging War & Sedition 2.0)

- Schedule Offence (*vide* Notification By Ministry of Law & Justice (Legislative Department) Notification S.O. 2790(E) Dated July 16, 2024)
- Investigatory Mechanism – As per NIA Act, 2008
- Sanction For Prosecution – As per Section 217 BNSS
- Jurisdiction – NIA Court
- Bail & Remand – As per BNSS



## **CHAPTER IV & VI UAPA (Terrorist Act & Offences Relating To Terrorist Organisations & Individuals)**

- Schedule Offence
- Investigatory Mechanism – As per NIA Act, 2008
- Sanction For Prosecution - Section 45 UAPA
- Jurisdiction – As per NIA Act, 2008
- Bail & Remand – Section 43-D(5) UAPA

## **SECTION 113 BNS (Terrorist Act – Offence against Human Body)**

- Not a Schedule Offence
- Investigatory Mechanism – As per BNSS
- Sanction for Prosecution – Not Required
- Jurisdiction – Sessions Court
- Bail & Remand – As per BNSS
- Explanation to S. 113 BNS –

**“For the removal of doubts, it is hereby declared that an officer not below the rank of Superintendent of Police shall decide whether to register the case under this Section or under the Unlawful Activities (Prevention) Act, 1967.”**

## POINTS TO CONSIDER

- Terror Funding not included in BNS
- Chapterisation of Section 113 as an Offence against Human Body -
  - 2 separate procedures and courts for similar nature offences
- Invoking UAPA in offences registered under Section 113 BNS
  - Possibility & Challenges
  - Rationale for Invoking UAPA

# **OFFENCES OF MEMBERSHIP**



# OFFENCES OF MEMBERSHIP

## S. 38 UAPA

- Membership of Terrorist Organisation

## S. 20 UAPA

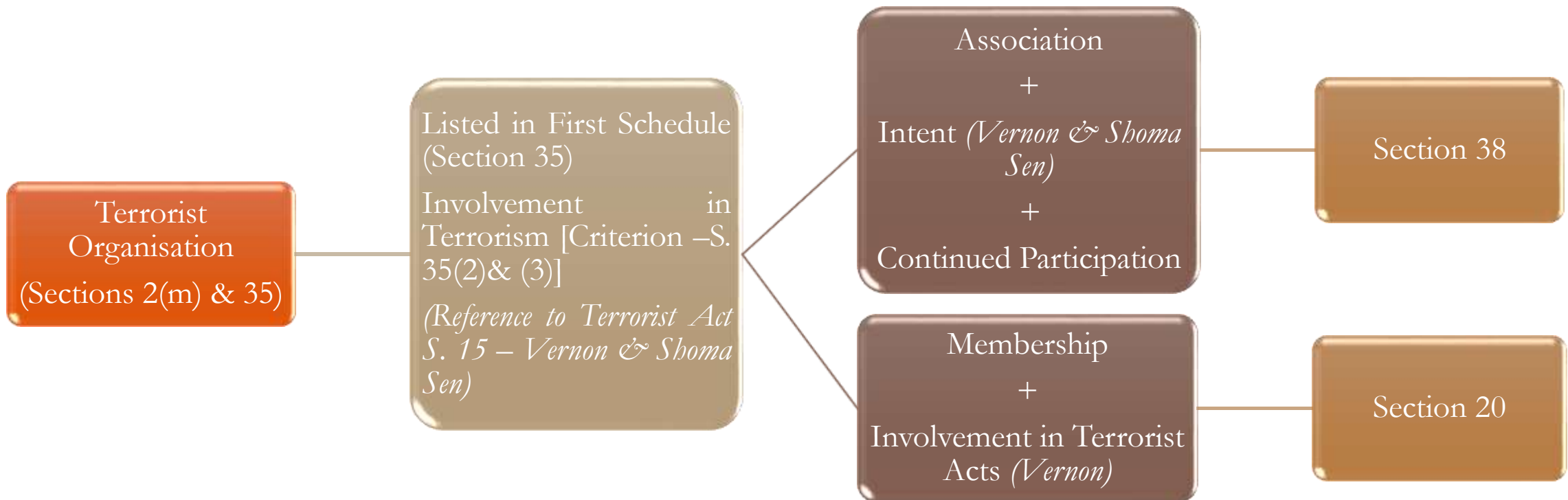
- Membership of Terrorist Gang or Organisation

## S. 113 (BNS)

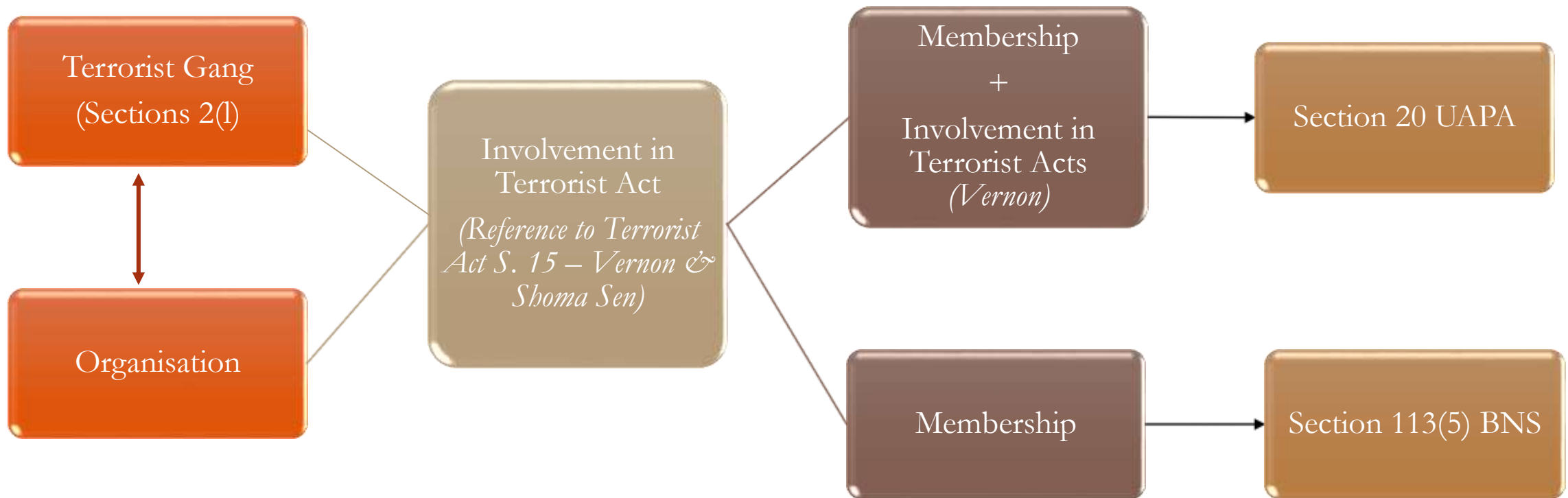
- Membership of Organisation involved in Terrorist Act



# MEMBERSHIP OF TERRORIST ORGANISATION



# MEMBERSHIP OF ORGANISATION (OTHER THAN TERRORIST ORGANISATION)



- **Guilt by Association** – Section 10 UAPA
  - Continuity of Membership after declaration as unlawful association = culpability (*Arup Bhuyan 2022*)
- **Active Participation Criteria** – Section 20 UAPA & Section 113 BNS
  - Stringent punishment – attracted when terrorist organization involves in terrorist acts – (*Thwaha Fasal 2022*) - factum of commission of terrorist act makes members involved to be liable
  - Mere membership not enough. Necessity of evidence to show person has been involved in or indulged in terrorist act (*Vernon (2023)*)
- **Mens Rea Criteria** - Section 38
  - Mere Association is Not Sufficient. Intent to further activity is required – (*Thwaha Fasal 2022*)
  - Intention to further activity of terrorist organization i.e. terrorist act. Necessity of evidence to show intention to be involved in a terrorist act (*Vernon 2023 & Shoma Sen 2024*)



## POINTS TO CONSIDER

- Reading active participation criteria for offence under Section 113(5) BNS
- “Associate/profess to associate” *vis-à-vis* “is a member”

## Intention – Furtherance of Activities of Terrorist Organisation

- Associate or Profess to be Associated

Membership (S. 38)

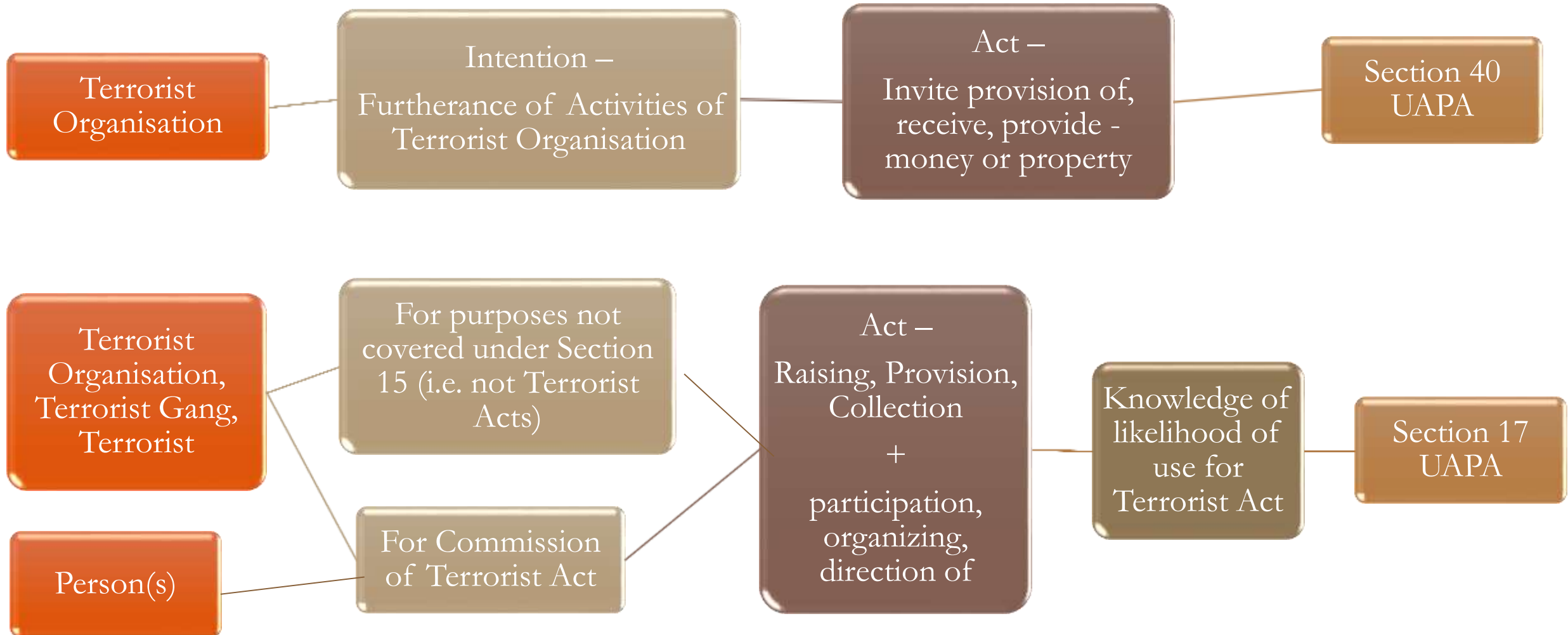
- Invite support (funding or otherwise)
- Meeting (arrange, manage or assist in)
  - To support
  - To further activity
  - To be addressed by person associate with terrorist organisation
- Address meeting to encourage support/ further activity of terrorist organisation

Support (S. 39)

(Invite person to provide/  
Receives/ Provides) –  
Money or Property  
+  
Intention/knowledge of  
use for terrorism

Funding (S. 40)

# TERROR FUNDING



# **ORGANISED CRIME**



# ORGANISED CRIME

- **Material Benefit** – What is ?
  - UNODC study (2017) on “Concept of Financial & Other Material Benefit”–
    - Financial Benefit & Benefits Motivated by Profit
    - Benefits excluding Humanitarian & Family Reunification Motivation
  - MCOCA 1999
    - Pecuniary benefits, Undue Economic or Other Advantage
    - “Other Advantage” not restricted to pecuniary advantage or benefit – advantage of stronghold or supremacy leading to unwarranted advantages (*Abhishek v. State of Maharashtra, (2022) 8 SCC 282*)
    - “other advantage” cannot be read *ejusdem generis* – wider meaning (*State of Maharashtra v. Jagan Gagansingh Nepali, 2011 SCC OnLine Bom 1049*)
- **Continuity Factor and Categorisation** – Organised Crime & Petty Organised Crime



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**THANK YOU!**