The Stillborn Statute: Nulla Poena Sine Lege and the Uttar Pradesh Gangsters Act after Shiv Pratap Singh alias Chinu v. State of Uttar Pradesh

AI Disclosure Statement

The author used an AI-assisted writing tool for language editing, grammar refinement and formatting assistance. All legal research, analysis, case law interpretation, arguments, and conclusions presented in this manuscript are the author's own work.

Abstract

In Shiv Pratap Singh alias Chinu v. State of Uttar Pradesh, a two-judge Bench of the Supreme Court of India held that the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 is "stillborn" because it prescribes punishment without creating a distinct substantive offence. The Court found that Section 2 of the Act defines a "gang" and a "gangster" only by reference to conduct already penalised under the Indian Penal Code and other statutes, while Section 3 attaches punishment to that definitional status rather than to any independently created act or omission. Relying on the principle of nulla poena sine lege, the definition of "offence" under the General Clauses Act, 1897, and the guarantee against ex post facto punishment in Article 20(1) of the Constitution, the Court quashed proceedings initiated against two practising advocates on the strength of a police-prepared Gang Chart. This comment traces the factual background of the two appeals, sets out the statutory scheme under scrutiny, examines the Court's reasoning, situates the judgment against the Allahabad High Court's earlier Full Bench decision upholding the Act in Ashok Kumar Dixit, and contrasts the U.P. Act with organised crime statutes such as the Maharashtra Control of Organised Crime Act, 1999, which independently criminalise organised activity. It argues that the judgment, while carefully confined to non-constitutional grounds, exposes a structural defect that the legislature must now address, and considers what the ruling leaves open for future litigation on the Act's constitutional validity.

Keywords

Uttar Pradesh Gangsters Act; nulla poena sine lege; Article 20(1); Gang Chart; organised crime legislation; status offences

I. Introduction

On 20 August 2026, a two-judge Bench of the Supreme Court comprising Justices J.B. Pardiwala and K. Vinod Chandran delivered a judgment that unsettles nearly four decades of prosecutorial practice in Uttar Pradesh.[1] Disposing of two connected appeals, the Court held that the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (the U.P. Act) is, in the Court's own word, "stillborn."[2] The reason given is structural rather than procedural: the statute defines who a "gangster" is but never says what a gangster does that the law itself makes an offence. Punishment under Section 3 attaches to a status fixed by the police through an administrative Gang Chart, not to any act or omission the Act itself makes criminal.

The judgment is significant for three reasons. First, it revisits a challenge that the Allahabad High Court had rejected nearly four decades earlier in *Ashok Kumar Dixit v. State of U.P.*[3], without disturbing that decision on the question of constitutionality and choosing instead a narrower, and on its own terms more decisive, ground. Second, it draws a sharp doctrinal line between the U.P. Act and comparable organised crime statutes such as the Maharashtra Control of Organised Crime Act, 1999 (MCOCA), which independently criminalise organised crime rather than merely defining status. Third, given how often the U.P. Act has been invoked in disputes with a political or personal dimension,[4] the ruling affects a large number of pending prosecutions. This comment traces the facts, sets out the statutory scheme, examines the Court's reasoning, situates the judgment within the case law on Article 20(1), and considers what it leaves open for status-based penal legislation.

II. Factual Background

The lead appeal arose out of a dispute over elections to the Bar Association, Fatehgarh, Farrukhabad.[5] The appellant, a practising advocate, was one of several advocates debarred by the Bar Council of Uttar Pradesh over alleged irregularities in the conduct of the election; the Bar Council's earlier communication on how the election should be conducted was itself set

[1] *Shiv Pratap Singh alias Chinu v. State of Uttar Pradesh*, Criminal Appeal No. 3979 of 2026, 2026 INSC 894 (SC, Aug. 20, 2026) (India) [hereinafter *Shiv Pratap Singh*]; see also 2026 LiveLaw (SC) 836.

[2] *Shiv Pratap Singh*, supra note 1, ¶¶ 43, 58.

[3] *Ashok Kumar Dixit v. State of U.P.*, AIR 1987 All 235 (India).

[4] Agatha Shukla, *UP Gangsters Act Is 'Stillborn' As It Fails to Create an Offence: Supreme Court Quashes Proceedings Against Two Advocates*, Verdictum (Aug. 23, 2026, 10:00 AM), https://www.verdictum.in/supreme-court/shiv-pratap-singh-alias-chinu-v-state-of-up-2026-insc-894-up-gangsters-act-is-stillborn-1620415 (last visited Sept. 16, 2026) (copy on file with author).

[5] *Shiv Pratap Singh*, supra note 1, ¶¶ 4–5.

aside by the Allahabad High Court for want of jurisdiction.[6] When the Bar Council's Disciplinary Committee debarred the appellant a second time in 2023 and directed that a complaint be lodged with the police, an FIR was registered under various provisions of the Penal Code.[7] That complaint in turn led to a second FIR, this time under Sections 2 and 3 of the U.P. Act, accompanied by a Gang Chart naming the appellant and two others as members of a criminal gang allegedly disturbing public order and embezzling government funds.[8] A chargesheet followed, and the appellant's application under Section 482 of the Code of Criminal Procedure, 1973 to quash the proceedings was rejected by the High Court, prompting the appeal to the Supreme Court.

The connected appeal followed a similar pattern. The appellant, also a practising advocate, and members of his family were proceeded against under Sections 2 and 3 of the U.P. Act on the strength of pending criminal cases against them, again without production of the underlying Gang Chart.[9] In both matters, the Court declined to examine the predicate criminal cases or the parallel Bar Council disputes, confining itself to one question: whether a prosecution under Sections 2 and 3 of the U.P. Act can survive when the Act creates no offence of its own.[10]

III. The Statutory Scheme: Defining Without Criminalising

Section 2(b) of the U.P. Act defines a “gang” as a group of persons who, acting singly or collectively through violence, threat, intimidation, or coercion, indulge in twenty-five categories of anti-social activity in order to disturb public order or gain an undue advantage.[11] Each category is already punishable under some other law, from Chapters XVI, XVII, and XXII of the Penal Code to excise, arms, and wildlife legislation.[12] Section 2(c) defines a “gangster” as a member, leader, organiser, abettor, or harbourer of such a gang. Section 3 then prescribes a term of imprisonment of not less than two years, extendable to ten, for a gangster,[13] without any accompanying provision that makes membership of a gang, or the underlying conduct, an offence in its own right.

[6] Id. ¶ 5.
[7] Id. ¶ 7.
[8] Id. ¶¶ 8–9.
[9] *Shiv Pratap Singh*, supra note 1, ¶¶ 13–16.
[10] Id. ¶ 17.
[11] Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, § 2(b) (India).
[12] *Shiv Pratap Singh*, supra note 1, ¶¶ 18, 37.
[13] Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, § 3(1) (India).

The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021 fill this gap through subordinate legislation. Rule 3 sets out when Section 2(b) activities attract liability, and Chapter III prescribes how a Gang Chart is prepared: at the Station House Officer's level, recommended up the police hierarchy, and approved jointly by the district administration and senior police officers.[14] It is this administratively prepared chart, and not any judicially tested finding on a specific act, that supplies the factual basis on which a person is treated as a "gangster" for the purposes of Section 3.

IV. The Court's Reasoning

The Court's analysis rests on three linked propositions. The first is definitional. Section 3(38) of the General Clauses Act, 1897 defines an "offence" as an act or omission made punishable by any law in force, and the principle of nulla poena sine lege, no punishment without a pre-existing legal offence, follows from that definition.[15] Measured against this yardstick, the Court found that the U.P. Act supplies definitions of status, "gang" and "gangster", but no independent offence-creating provision; the conduct that actually attracts liability is, and always was, an offence under some other statute.[16]

The second proposition draws on Article 20(1) of the Constitution, which bars conviction except for violation of a law in force at the time of the act and prohibits a penalty greater than what that law prescribed.[17] The Court read this guarantee, with the General Clauses Act definition, to require that prosecution be referable to the law creating the offence,[18] relying on the Constitution Bench decisions in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*[19] and *S.A. Venkataraman v. Union of India*[20], and the more recent reaffirmation in *CBI v. R.R. Kishore*[21]. Since the U.P. Act creates no offence, any conviction under Section 3 would necessarily punish conduct by reference to a law that does not itself define what was done wrong, an outcome Article 20(1) exists to prevent.

---

[14] Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021, r. 3, ch. III (India); *Shiv Pratap Singh*, supra note 1, ¶¶ 23–24.

[15] General Clauses Act, 1897, § 3(38) (India); *Shiv Pratap Singh*, supra note 1, ¶¶ 29, 37.

[16] *Shiv Pratap Singh*, supra note 1, ¶ 37.

[17] India Const. art. 20, cl. 1.

[18] *Shiv Pratap Singh*, supra note 1, ¶ 36 (quoting *S.A. Venkataraman v. Union of India*, (1954) 1 SCC 586, ¶ 17 (India)).

[19] *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, (1953) 2 SCC 111 (India).

[20] *S.A. Venkataraman v. Union of India*, (1954) 1 SCC 586 (India).

[21] *CBI v. R.R. Kishore*, (2023) 15 SCC 339, ¶¶ 38, 40 (India).

The third proposition is comparative. The Court expressly declined to revisit the constitutional validity of the U.P. Act as upheld by the Full Bench of the Allahabad High Court in *Ashok Kumar Dixit*[22], a decision whose reasoning it nonetheless questioned in some detail, particularly its treatment of pre-trial detention safeguards and its reliance on the difficulty of gathering evidence against habitual offenders of a desperate character to justify extended remand.[23] Instead, the Bench drew a contrast with MCOCA and the Gujarat Control of Terrorism and Organised Crime Act, 2015, both of which independently define and punish "organised crime" as a distinct offence; under *Mahipal Singh v. Central Bureau of Investigation*[24], liability turns on proof of a continuing unlawful activity established through more than one chargesheet within a preceding ten-year window. The U.P. Act, the Court held, has no equivalent provision; it borrows offences already defined elsewhere and reattaches punishment to the status of belonging to a group alleged to have committed them.

V. What the Judgment Leaves Open

The Bench was careful to frame its holding narrowly. It did not strike down the U.P. Act as unconstitutional, a question that has twice moved toward a Constitution Bench without resolution, first alongside the challenge to the Terrorist Affected Areas (Special Courts) Act, 1984 in *Kartar Singh v. State of Punjab*[25], and again left unresolved in *Subhash Yadav v. State of U.P.*[26] once the individual case before the Court became academic. Nor did it revisit the narrower holdings in *Dharmendra Kirthal v. State of Uttar Pradesh*[27], confined to the procedural precedence given to trials under the Act, or in *Shraddha Gupta v. State of Uttar Pradesh*[28], which held that even a single predicate offence suffices to invoke the Act. What the Court did do is treat the absence of an offence-creating provision as a threshold defect that makes the question of constitutionality unnecessary to reach in these appeals, since a statute that creates no offence cannot, on ordinary principles of criminal law, support a conviction regardless of whether it would otherwise survive scrutiny under Articles 14, 19, or 21.

[22] *Ashok Kumar Dixit*, supra note 3; *Shiv Pratap Singh*, supra note 1, ¶¶ 27, 29.
[23] *Shiv Pratap Singh*, supra note 1, ¶¶ 28, 32.
[24] *Mahipal Singh v. Central Bureau of Investigation*, (2014) 11 SCC 282 (India); *Shiv Pratap Singh*, supra note 1, ¶¶ 42–43.
[25] *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 (India); *Shiv Pratap Singh*, supra note 1, ¶ 40.
[26] *Subhash Yadav v. State of U.P.*, (2000) 10 SCC 145 (India); *Shiv Pratap Singh*, supra note 1, ¶ 40.
[27] *Dharmendra Kirthal v. State of Uttar Pradesh*, (2013) 8 SCC 368 (India).
[28] *Shraddha Gupta v. State of Uttar Pradesh*, (2022) 19 SCC 57 (India).

VI. Implications

The immediate consequence is that Sections 2 and 3 of the U.P. Act can no longer sustain a standalone prosecution or the extended period for default bail, or the reversed burden on bail applications.[29] Given how often the Act has been invoked in disputes with a political or personal dimension, including the two appeals at hand — the lead appeal arising from an internal Bar Association dispute, the connected appeal from family-linked criminal proceedings, neither amounting to organised crime in any conventional sense — the judgment is likely to prompt a wave of quashing petitions in pending matters across the state.

The ruling also leaves the Uttar Pradesh legislature with an evident choice. It may amend the Act to insert a genuine offence-creating provision along the lines of Section 3 of MCOCA, tying liability to a continuing unlawful activity proved through multiple chargesheets rather than a single administratively prepared chart, or it may accept that the special procedural architecture built around the Act, in-camera trials, extended remand, and a reversed bail standard, no longer has a valid offence to attach itself to. Other states that modelled similar legislation on the U.P. Act, rather than on MCOCA, now have a template for testing whether their own statutes create an offence at all.

VII. Conclusion

Shiv Pratap Singh alias Chinu does not decide whether the Uttar Pradesh Gangsters Act can survive a direct constitutional challenge; that question remains, as the Court itself acknowledged, open. What it does is expose a more basic problem that constitutional analysis had, for nearly forty years, passed over: a penal statute that never defines the offence for which it punishes. By anchoring that finding in the General Clauses Act's definition of “offence” and in Article 20(1)'s guarantee against conviction without a pre-existing law, the Court has supplied a ground of challenge available in every pending prosecution under the Act, without needing to unsettle the Full Bench ruling in *Ashok Kumar Dixit* on the questions it did decide. Whether the legislature rebuilds the Act around a genuine offence, as MCOCA and the Gujarat Act already do, or leaves the special court architecture standing on an empty statute, this judgment has reset the terms of the next challenge, constitutional or otherwise.

[29]Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, § 19(2), (4) (India).