

XLVIII. INDIA¹³¹

SUMMARY OF LEGISLATION OF INDIA RELATED TO TERRORISM

(a) Prevention of Terrorism Act, 2002

The salient provisions of the Prevention of Terrorism Act, 2002 are as follows:

(i) It shall extend to the whole of India. It shall remain in force for a period of 3 years. It's salient provisions are as follows:

(ii) Section 3 of the Act defines "Terrorist Act" as any act or thing done by using bomb, dynamite or other explosive substances or fire arms or lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of hazardous nature or by other means in such a manner as to cause or likely to cause death or injuries to any person or persons or loss or damage to or destruction of property or disruption of any supplies or services essential to the life of the community or causes damage or destruction to any property or equipment used or intended to be used in the defence of India in order to compel the Government or any other person to do or abstain from doing any act.

Membership of a terrorist gang or a terrorist organisation involved in terrorist acts shall also constitute a terrorist act. It is provided to proscribe terrorist outfits under the procedure prescribed for making additions or deletions in the list of such terrorist organisations. A person commits an offence if he invites support for a terrorist organisation. A person also commits an offence if he arranges, manages or assists in arranging or managing a meeting which he knows is:

- (a) to support a terrorist organisation,
- (b) to further the activities of a terrorist organisation, or

¹³¹ Transmitted to the Secretariat by that Government on 12 July 2002 (S/2002/883, enclosure). Information was also provided in respect of: the Indian Penal Code, 1860; The Code of Criminal Procedure, 1973; The Arms Act, 1959; The Explosives Act, 1884; The Explosive Substances Act, 1908; The Indian Telegraph Act, 1885; The Armed Forces (Special) Powers Act, 1958; The Unlawful Activities (Prevention) Act, 1967; The Anti-Hijacking Act, 1982; The Merchant Shipping Act, 1948; and the United Nations Security Council Act, 1947.

(c) to be addressed by a person who belongs or professes to belong to a terrorist organisation.

A person commits an offence if he addresses a meeting and the purpose of his address is to encourage support for a terrorist organisation or to further its activities.

A person also commits an offence under the Act if he wears an item of clothing, or wears, carries or displays an article in a public place in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or supporter of a terrorist organisation.

Further, whoever is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, commits a terrorist act.

Possession of certain unauthorised arms or other explosive substances or other lethal weapons capable of mass destruction and/or use in biological or chemical warfare without authorization in a notified area constitutes an offence under this Act. However possession of hazardous explosives or such lethal weapons in any area whether notified or not shall also constitute an offence under this Act.

Terrorist acts also include acts of fund raising by persons/organizations if such funds are intended for the purposes of terrorism. There are also provisions of seizing properties, assets etc. of terrorist organisations.

(iii) Provision under Section 3(6) seeks to punish those persons who may knowingly come in possession of property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds.

(iv) In Section 3(7) a new provision has been made for punishment of whoever threatens any person who is a witness or any other person in whom such witness may be interested. This is a salutary provision for protection of witnesses.

(v) Section 14 provides a new provision which makes it obligatory to furnish information in respect of a terrorist offence. Failure to furnish the information called for or deliberately furnishing false information to investigating officer shall be punishable with imprisonment for a term which may extend to three years or fine or both. The investigating

officer can call for such information only with prior approval in writing of an officer not below the rank of Superintendent of Police.

(vi) Section 27 provides a new provision wherein a Police Officer investigating a case under the Act can request the Court in writing for obtaining samples of handwriting, finger-prints, foot-prints, photographs, blood, saliva, semen, hair of any accused person who is reasonably suspected to be involved in the commission of an offence under this Act. If any accused person refuses to give such samples, the Court shall draw adverse inference against the accused. This is a salutary provision keeping in view the technological advances in Forensic Sciences and the desirability of promoting scientific investigation of cases.

(vii) Section 29(2) provides that a Special Court may try an offence which is punishable with imprisonment for a term not exceeding three years or fine or both in a summary way. In such cases the punishment prescribed on conviction would be one year imprisonment with fine up to Rs 5 lakhs.

(viii) Section 30 makes special provisions for the protection of witnesses which include holding of the Court proceedings in camera.

(ix) Section 32 provides for admissibility of confessions made to a Police Officer.

(x) Bail Provision:

Section 49(6) of the Act provides that no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond unless the Court gives the public prosecutor an opportunity of being heard. Section 49(7) of the Act requires the magistrate to satisfy himself only regarding the innocence of the accused before granting bail to him.

Section 49(9) also provides that bail shall not be granted to a person accused of an offence punishable under this Act if he is not an Indian citizen and has entered the country (India) unauthorizedly / illegally except in exceptional circumstances and for reasons to be recorded therefore.

(xi) Protection for action taken in good faith and punishment for corrupt and malicious prosecution of any person under this Act:

Section 57 of the Act provides for protection to public servants for their actions under the Act in good faith while at the same time providing for punishment which extends to two years or fine or both against any Police Officer who knowingly or maliciously proceeds

against any person for an offence under this Act when there are no reasonable grounds for proceedings against him. Further, Section 58 also provides for compensation to a person who has been corruptly and maliciously proceeded against under the Act. These are salutary provisions which will go a long way in curbing misuse of the Act.

(xii) Trial by Special Courts:

The Act retains the provisions regarding trial by Special Courts as in the TADA (P) Act, 1987 and Criminal Law (Amendment) Bill, 1995 and also provides that trial by Special Courts will have precedence over the trial by any other courts and shall be concluded in preference to trial in any other case. Section 28 and 29 provide for appointment of a Public Prosecutor and procedures and powers of Special Courts respectively.

(xiii) Provisions have been made under Part V to provide for special powers of interception of wire, electronic or oral communication and the admissibility of such evidence with a view to make the provisions more effective while dealing with organised crime/terrorist activity. These are on the lines of provisions existing in Maharashtra Control of Organised Crime Act, 1999.

(xiv) Provisions have been made under Section 60 of the Act for constitution of Review Committees by the Central Government as well as by the State Governments. The Chairperson of the Committee shall be a person who is, or who has been, a judge of a High Court.

Specific safeguards have been provided for in the Act with a view to prevent the possibility of the misuse of the special powers given to the investigating authorities and address the concern of violation of human rights raised in different quarters while also seeking to ensure that the provisions of the Act are not so diluted as to render them ineffective in combating terrorism.

(b) Indian Penal Code, 1860

Indian Penal Code, 1860 is the comprehensive criminal law of the country which deals with all the general offences. It deals with offences against human body, offences relating to religion, offences against property, offences relating to criminal breach of contracts of service, offences relating to marriage, offences against public tranquillity, State, elections, public justice, etc.

However, the Indian Penal Code does not provide for preventive action against terrorists. It only prescribes punishment for criminal acts after the commission of such acts. However, after the commission of the crime/terrorist act, the offenders are charged under relevant sections of the Penal Code along with relevant sections of specific laws relating to that offence (if any).

(c) The Code of Criminal Procedure 1973

This is the uniform law of criminal procedure for the whole of India. The various sections of the Code provide for conduct of criminal proceedings in the courts of law.

The provisions for preventive action against terrorists/criminals are very mild in Cr.P.C. As per section 41, a Police Officer may arrest a person without warrant provided there is information that the person is likely to commit a cognizable offence (Section 109, 110 Cr.PC). However, the offender has to be produced before Executive Magistrate within 24 hours of detention.

Section 151 Cr.P.C. provides for arrests to prevent the commission of cognizable offence. A Police Officer knowing of a design to commit any cognizable offence may arrest without orders from the Magistrate and without a warrant the person so designing if it appears to such officer that the commission of the offence cannot be otherwise be prevented. However, no person arrested under this section shall be detained in custody for more than 24 hours.

(d) The Unlawful Activities (Prevention) Act, 1967

The object of this Act is to make powers available for dealing with activities directed against the integrity and sovereignty of India. “Unlawful activity” has been defined in relation to an individual or association as an action taken by such individual or association:

- which is intended, or supports any claim to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession;
- which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India;

“Unlawful association” has been defined as any association which has for its object any unlawful activity or encourages any unlawful activity or any activity punishable under section 153(A) or 153(B) of Indian Penal Code.

Section 7 of the said Act empowers the Central Government to prohibit the use of funds of an unlawful association. It effectively freezes the financial operations of an unlawful association.

Section 8 of the said Act empowers the Central Government to notify places used for the purpose of an unlawful association. It effectively restrains the use of moveable and immovable property by unlawful associations.

The punishment provided for unlawful activity is imprisonment up to seven years and fine. Any person assisting any unlawful activity is punishable for imprisonment up to five years or with fine or with both.

This was the first Act under which the assets of any terrorist organization could be frozen. The punishment provided for unlawful activity is also not commensurate with terrorist acts.

It provides for banning of organizations but it covers only those organizations who support cession or secession of a part of a territory of India from the Union or Acts which are intended to disrupt the sovereignty and territorial integrity of India.

XLIX. INDONESIA¹³²

SUMMARY OF LEGISLATION OF INDONESIA RELATED TO TERRORISM

The Indonesian Penal Code includes the following:

Book II on crimes, Chapter V on crimes against the public order

Article 160 which, inter alia, states:

“Any person who orally or in writing incites in public to commit a punishable act, a violent action against the public authority or any other disobedience, either to a statutory provision or to an official order issued under a statutory provision, shall be punished by a maximum imprisonment of six years ...”

Article 163 bis which, inter-alia, states:

“(1) Any person who by one of the means mentioned in Article 55 under 2 attempts to induce others to commit a crime, shall, if it does not result in the crime or a punishable attempt thereto, be punished by a maximum imprisonment of six years ...”

The above articles could be used as legal basis to prevent the recruitment of individuals for terrorist activities.

¹³² Transmitted to the Secretariat by that Government on 21 December 2001 (S/2001/1245, enclosure).