

BILL No. 76 OF 2008

**THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT
BILL, 2008**

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BILL

further to amend the Unlawful Activities (Prevention) Act, 1967.

BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:—

1. This Act may be called the Unlawful Activities (Prevention) Amendment Act, 2008. Short title.

37 of 1967.

2. In the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the principal Act), after long title, and before the enacting formula, the following preamble shall be inserted, namely:—

Insertion of
Preamble.

“WHEREAS the Security Council of the United Nations in its 4385th meeting adopted Resolution 1373 (2001) on 28th September, 2001, under Chapter VII of the Charter of the United Nations requiring all the States to take measures to combat international terrorism;

AND WHEREAS Resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1735 (2006) and 1822 (2008) of the Security Council of the United Nations require the States to take action against certain terrorists and terrorist organisations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory, and prevent the direct or indirect supply, sale or transfer of arms and ammunitions to the individuals or entities listed in the Schedule;

AND WHEREAS the Central Government, in exercise of the powers conferred by section 2 of the United Nations (Security Council) Act, 1947 has made the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007; 43 of 1947.

AND WHEREAS it is considered necessary to give effect to the said Resolutions and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto.”.

Amendment
of section 2.

3. In section 2 of the principal Act,—

(i) in clause (d), the words “and includes a Special Court constituted under section 11 or under section 21 of the National Investigation Agency Act, 2008;” shall be inserted at the end;

(ii) after clause (e), the following clause shall be inserted, namely:-

‘(ea) “Order” means the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007, as may be amended from time to time;’;

(iii) in clause (g), after the words “for the purpose of a terrorist organisation”, the words “or terrorist gang” shall be inserted at the end;

(iv) for clause (h), the following clauses shall be substituted, namely:—

‘(h) "property" means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents deeds and instruments in any form including electronic or digital, evidencing title to, or interest in, such property or assets by means of bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit, cash and bank account including fund, however acquired;

‘(ha) “Schedule” means the Schedule to this Act;’.

Substitution of
new section
for section 15.

4. For section 15 of the principal Act, the following section shall be substituted, namely:—

“15. Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,- Terrorist act.

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons 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 in connection with any other purposes of the Government of India, any State Government or any of their agencies; 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; or

(c) 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 any other person to do or abstain from doing any act,

commits a terrorist act.

Explanation.— For the purpose of this section, public functionary means the constitutional authorities and any other functionary notified in the Official Gazette by the Central Government as public functionary.”.

- 5.** After section 16 of the principal Act, the following section shall be inserted, namely:—
- Insertion of new section 16A.
- “16A. Whoever intentionally, by use of force or threat of use of force or by any other means, demands any bomb, dynamite or other explosive substance or inflammable substances or fire arms or other lethal weapons or poisonous or noxious or other chemicals or any biological, radiological, nuclear material or device, with the intention of aiding, abetting or committing a terrorist act, shall be punishable with imprisonment for a term which may extend to ten years, and shall also be liable to fine.”.
- Punishment for making demands of radioactive substances, nuclear devices, etc.
- 6.** For section 17 of the principal Act, the following section shall be substituted, namely:—
- Substitution of new section for section 17.
- “17. Whoever, in India or in a foreign country, directly or indirectly, raises or collects funds or provides funds to any person or persons or attempts to provide funds to any person or persons, knowing that such funds are likely to be used by such person or persons to commit a terrorist act, notwithstanding whether such funds were actually used or not for commission of such act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”.
- Punishment for raising fund for terrorist act.
- 7.** In section 18 of the principal Act, for the words “incites or knowingly facilitates”, the words “incites, directs or knowingly facilitates” shall be substituted.
- Amendment of section 18.
- 8.** After section 18 of the principal Act, the following sections shall be inserted, namely:—
- Insertion of new sections 18A and 18B.
- “18A. Whoever organizes or causes to be organized any camp or camps for imparting training in terrorism shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.
- Punishment for organizing of terrorist camps.
- 18B. Whoever recruits or causes to be recruited any person or persons for commission of a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.”.
- Punishment for recruiting of any person or persons for terrorist act.
- 9.** In section 23 of the principal Act, —
- Amendment of section 23.
- (a) in sub-section (I), for the words “If any person with intent to aid any terrorist contravenes”, the words “If any person with intent to aid any terrorist or a terrorist organization or a terrorist gang contravenes” shall be substituted.

(b) in sub-section (2), for the words “Any person who, with the intent to aid any terrorist”, the words “Any person who with the intent to aid any terrorist, or a terrorist organization or a terrorist gang” shall be substituted.

Amendment of section 24.

10. In section 24 of the principal Act, in sub-section (2), after the words “proceeds of terrorism whether held by a terrorist”, the words “terrorist organization or terrorist gang” shall be inserted.

Amendment of section 25.

11. In section 25 of the principal Act, in sub-section (5), in the *Explanation*, after clause (c), the following clause shall be inserted, namely:—

“(ca) credit or debit cards or cards that serve a similar purpose;”;

Insertion of new sections 43A to 43F
Power to arrest, search, etc.

12. After section 43 of the principal Act, the following sections shall be inserted, namely:—

“43A. Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

Procedure of arrest, seizure, etc.

43B. (1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer in charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

Application of provisions of Code.

43C. The provisions of the Code of Criminal Procedure, 1973 shall apply, insofar as they are not inconsistent with the provisions of this Act, to all arrests, searches and seizures made under this Act.

Modified application of certain provisions of the Code.

43D.(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "ninety days" and "ninety days" respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days:

Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody."

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to "the State Government" shall be construed as a reference to "the Central Government or the State Government",

(ii) to "order of the State Government" shall be construed as a reference to "order of the Central Government or the State Government, as the case may be"; and

(b) the reference in sub-section (2) thereof, to "the State Government" shall be construed as a reference to "the Central Government or the State Government, as the case may be".

(5) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(6) Notwithstanding anything contained in the Code, 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 Public Prosecutor has been given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against the person is *prima facie* true.

(7) The restrictions on granting of bail specified in sub-section (6) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(8) Notwithstanding anything contained in sub-sections (6) and (7), no bail shall 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 unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.

43E. In a prosecution for an offence under section 15, if it is proved —

(a) that the arms or explosives or any other substances specified in the said section were recovered from the possession of the accused and there is reason to believe that such arms or explosives or other substances of a similar nature were used in the commission of such offence; or

(b) that by the evidence of the expert the finger-prints of the accused or any other definitive evidence suggesting the involvement of the accused in the offence were found at the site of the offence or on anything including arms and vehicles used in connection with the commission of such offence,

the Court shall presume, unless the contrary is shown, that the accused has committed such offence.

43F. (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, with the prior approval in writing of an officer not below the rank of a Superintendent of Police, may require any officer or

Presumption as to offences under section 15.

Obligation to furnish information.

authority of the Central Government or a State Government or a local authority or a bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in his or their possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act.

(2) The failure to furnish the information called for under sub-section (1), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, an offence under sub-section (2) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code [except sub-section (2) of section 262] shall be applicable thereto.”

Amendment of section 45

13. Section 45 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) Sanction for prosecution under sub-section (1) shall be given only after considering the report of such authority appointed by the Central Government or, as the case may be, the State Government which shall make an independent review of the evidence gathered in the course of investigation and make a recommendation to the Central Government or, as the case may be, the State Government.”

Insertion of new section 51A.

14. After section 51 of the principal Act, the following section shall be inserted, namely:—

“51A. For the prevention of, and for coping with terrorist activities, the Central Government shall have power to—

(a) freeze, seize or attach funds and other financial assets or economic resources held by, on behalf of or at the direction of the individuals or entities listed in the Schedule to the Order, or any other person engaged in or suspected to be engaged in terrorism;

(b) prohibit any individual or entity from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism;

(c) prevent the entry into or the transit through India of individuals listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorism.”

Certain powers of the Central Government.

Amendment of section 53.

15. Section 53 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section as so renumbered the following sub-section shall be inserted :—

“(2) The Order referred to in entry 33 of the Schedule and every amendment made to that Order shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions.”

Amendment of Schedule.

16. In the Schedule to the principal Act after entry 32, the following entry shall be inserted, namely:—

“33. Organisations listed in the Schedule to the U.N. Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007 made under section 2 of the United Nations (Security Council) Act, 1947 and amended from time to time.” 43 of 1947.

STATEMENT OF OBJECTS AND REASONS

In view of the concerns and complaints expressed about the manner in which provisions of the Prevention of Terrorism Act, 2002 had been applied including instances of misuse, the Act was repealed in 2004. At the same time, keeping in view that India has been a front-runner in the global fight against terrorism, its commitments in terms of the United Nations Security Council Resolution 1373 dated 28th September, 2001 and the resolve not to allow any compromise in the fight against terrorism, the Unlawful Activities (Prevention) Act, 1967 was amended to make provisions to deal with terrorism and terrorist activities.

There have been significant developments since then at the national and the international level. Terrorist incidents and activities sponsored from across the borders, in various parts of India and elsewhere, continue to cause concern. Hence, the legal framework for dealing with such activities, including measures related to financing of terrorism, has been further reviewed. The Administrative Reforms Commission in its Report 'Combatting Terrorism - *Protecting by Righteousness*', has also made various recommendations in this regard. Suggestions in this respect have also been received from various other sources.

After due consideration and examination of these recommendations and suggestions, the Government is of the view that further provisions are required to be made in the law to cover various facets of terrorism and terrorist activities, including financing of terrorism, which are not fully covered in the present law, and to make further provisions with the aim of strengthening the arrangements for speedy investigation, prosecution and trial of cases related to terrorism related offences, while at the same time ensuring against any possible misuse of such provisions.

These provisions are proposed to be incorporated in the Unlawful Activities (Prevention) Amendment Bill, 2008.

The Bill seeks to achieve the above objectives.

NEW DELHI;
The 15th December, 2008.

P. CHIDAMBARAM.

ANNEXURE

EXTRACTS FROM THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

(37 OF 1967)

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Definitions.

2. (1) In this Act, unless the context otherwise requires,—

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(d) "court" means a criminal court having jurisdiction, under the Code, to try offences under this Act;

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(g) "proceeds of terrorism" means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found, and includes any property which is being used, or is intended to be used, for the purpose of a terrorist organisation;

(h) "property" means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets, and includes cash and bank account;

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CHAPTER IV

PUNISHMENT FOR TERRORIST ACTIVITIES

Terrorist act.

15. Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act.

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Punishment for raising fund for terrorist act.

17. Whoever raises fund for the purpose of committing a terrorist act shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

Punishment for conspiracy, etc.

18. Whoever conspire or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to the commission of a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

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Enhanced penalties.

23. (1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under the Explosives Act, 1884 or the Explosive Substances Act, 1908 or the Inflammable Substances Act, 1952 or the Arms Act, 1959, or is in unauthorised possession of any bomb, dynamite or hazardous explosive substance or other lethal weapon or substance

4 of 1884.
6 of 1908.
20 of 1952.
54 of 1959.

capable of mass destruction or biological or chemical substance of warfare, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Any person who, with intent to aid any terrorist, attempts to contravene or abets, or does any act preparatory to contravention of any provision of any law or rule specified in sub-section (1), shall be deemed to have contravened that provision under sub-section (1) and the provisions of that sub-section in relation to such person, have effect subject to the modification that the reference to "imprisonment for life" therein shall be construed as a reference to "imprisonment for ten years".

CHAPTER V

FORFEITURE OF PROCEEDS OF TERRORISM

24. (1) * * * * * Forfeiture of proceeds of terrorism.

(2) Proceeds of terrorism, whether held by a terrorist or by any other person and whether or not such terrorist or other person is prosecuted or convicted for any offence under Chapter IV or Chapter VI, shall be liable to be forfeited to the Central Government or the State Government, as the case may be, in the manner provided under this Chapter.

25. (1) * * * * * Powers of investigating officer and Designated Authority and appeal against order of Designated Authority.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable ground for suspecting that—

- (a) it is intended to be used for the purposes of terrorism; or
- (b) it forms the whole or part of the resources of a terrorist organisation:

Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, "cash" means—

- (a) coins or notes in any currency;
- (b) postal orders;
- (c) traveller's cheques;
- (d) banker's drafts; and
- (e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

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LOK SABHA

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further to amend the Unlawful Activities (Prevention) Act, 1967.

(Shri P. Chindambaram, Minister of Home Affairs)