

Unlawful Activities (Prevention) Amendment Act, 2008

February 19, 2013

Preamble

UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2008¹

[ACT NO. 35 OF 2008]

[31st December, 2008]

An Act 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:-

Prefatory Note-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which provisions of the Prevention of Terrorism Act, 2002 had been applied including instances of misuse, the Act was repealed in 2004.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.

1. Received the assent of the President on December 31, 2008 and published in the Gazette of India, Extra., Part II, Section 1, dated 31st December, 2008, pp. 1-7, No. 44

Section 1. Short title

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

Section 2. Insertion of Preamble

In the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as the principal Act), after long title and before the enacting formula, the following preamble shall be inserted, namely:-



"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 (43 of 1947) has made the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007;

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."

Section 3. Amendment of Section 2

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;'

Section 4. Substitution of new section for Section 15

For Section 15 of the principal Act, the following section shall be substituted, namely:-

"15. Terrorist act.-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,-



(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 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 a public functionary."



Section 5. Insertion of new Section 16-A

After Section 16 of the principal Act, the following section shall be inserted, namely:-

"16-A. Punishment for making demands of radioactive substances, nuclear devices, etc.-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."

Section 6. Substitution of new section for Section 17

For Section 17 of the principal Act, the following section shall be substituted, namely:-

"17. Punishment for raising funds for terrorist act.-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."

Section 7. Amendment of Section 18

In Section 18 of the principal Act, for the words "incites or knowingly facilitates", the words "incites, directs or knowingly facilitates" shall be substituted.

Section 8. Insertion of new Sections 18-A and 18-B

After Section 18 of the principal Act, the following sections shall be inserted, namely:-

"18-A. Punishment for organising of terrorist camps.-Whoever organises or causes to be organised 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.

18-B. Punishment for recruiting of any person or persons for terrorist act.- 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."

Section 9. Amendment of Section 23

In Section 23 of the principal Act,-

(a) in sub-section (1), 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 organisation 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 organisation or a terrorist gang" shall be substituted.

Section 10. Amendment of Section 24

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

Section 11. Amendment of Section 25

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;".

Section 12. Insertion of new Sections 43-A to 43-F

After Section 43 of the principal Act, the following sections shall be inserted, namely:-

'43-A. Power to arrest, search, etc.-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.

43-B. Procedure of arrest, seizure, etc.

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

(2) Every person arrested and article seized under Section 43-A 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.

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

43-D. Modified application of certain provisions of the Code.-

(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".

(4) 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.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of 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 such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), 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.

43-E. Presumption as to offence under Section 15.-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 fingerprints 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.

43-F. Obligation to furnish information.-

(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 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 its 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.

Section 13. Amendment of Section 45

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 within such time as may be prescribed 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, within such time as may be prescribed, to the Central Government or, as the case may be, the State Government.”.

Section 14. Insertion of new Section 51-A

After Section 51 of the principal Act, the following section shall be inserted, namely:-

“51-A. Certain powers of the Central Government.-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.”

Section 15. Amendment of Section 52

In Section 52 of the principal Act, in sub-section (2), after clause (e), the following clause shall be inserted, namely:-

“(ee) the time within which sanction for prosecution and recommendation to the Central Government shall be given under sub-section (2) of Section 45, and”.

Section 16. Amendment of Section 53

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, namely:-

“(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.”

Section 17. Amendment of Schedule

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 (43 of 1947) and amended from time to time.”

