

Infopack

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Popular Information Centre

State Terrorism Unleashed !

They feel proud in calling themselves the most democratic of all the nations, some even flaunting their status of being the largest democracies of the World, though at the same time nurturing the desire to act more arrogantly and brutally to show that they are capable of good governance. To activate their latent desire, they are always in search of an opportunity.

September 11 attack on World Trade Centre (WTC) provided them this opportunity and they grabbed it with both hands. In the name of "War Against Terrorism" and "National Pride", the democratic fabric of these states was torn apart and the democratic rights and freedom of the people were trampled upon. This was done through the enactment of Anti-Terrorism laws. The plea taken was that there existed no law to deal with the "Terrorism". What followed was the enactment of *PATRIOT* in US, *POTO* in India, *Anti Terrorism Crime and Security Bill* in UK and *Anti-Terrorism Act* in Canada. Though enacted in different soils, a common thread runs through all these Anti-Terrorism Acts, giving enough proof of the similar mindset of these nations.

All the four Anti-Terrorism Acts define terrorism quite broadly encompassing all sections of people (citizens as well as foreigners) and their each and every activity. They are also in unison in providing extraordinary powers to the law and order machinery, giving it ample scope to harass and torture the innocents. These Acts also bear similarity in attacking the ideals of criminal justice and violating the fundamental freedom of speech, association, expression and human rights. The worst provision in these legislations is one regarding the 'disclosure of sources' putting the freedom of expression of media persons and professional freedom of legal fraternity at stake.

The worrisome point is that all these enactments advocate punishment merely on the element of suspicion and punishment is based simply on the bureaucratic assumption that a crime has been committed. Moreover, the provisions regarding Intelligence Surveillance amount to a virtual spying on their own people.

Of all the four Anti-Terrorism legislations, POTO appears to be the most draconian. While USA PATRIOT is heavily loaded against the immigrants and is soft on US citizens, POTO is heavily loaded against the Indian citizens and merely has a passing reference to the non-resident Indians or foreigners committing crime in India.

POTO is yet another dangerous example of thoughtless law making in a country where even simpler laws are misused by the law enforcers to arrest and harass the people. It can be well imagined that, giving the immense powers to the law enforcing machinery, POTO in all probability will be misused to detain and torture the innocents in the Police custody. For instance, section 4(a) and (b) holding possession of certain unauthorised arms etc. as guilty of terrorist act will prove a convenient tool of oppression of innocent citizens through false implication by the Police. The previous experience under TADA is a pointer to this. It is a known fact now that TADA was blatantly misused against the citizens. The subsequent release of majority of TADA detainees proved that the law was more directed against the innocents than the terrorists. Similar is the history of Anti-terrorism laws in United Kingdom. There also these laws have led to some of the worst human rights abuses over the last 30 years.

While fully opposing the enactment of Anti-terrorism laws in these countries, we are, nevertheless, giving in this issue of **Infopack** the brief summary of Anti-Terrorism Acts enacted in India, US, UK and Canada so as to make the readers familiar with the various provisions contained in these Acts.

India : Prevention of Terrorism Ordinance, 2001 (POTO)

*(This 50 - page document
contains 6 chapters, 61
sections and around 500
sub-sections)*

Bird's Eyeview

Definition of Terrorism

The definition is wide-ranging covering all the citizens of India residing in India or outside India, persons in the service of the Government wherever placed and persons on ships and aircrafts, registered in India, wherever they may be. The Ordinance also encompasses almost all the activities of Indian citizens leaving less scope for the exercise of fundamental rights. For instance, under the Ordinance, terrorism comprises of the terrorist, banned terrorist organisations, members of banned terrorist organisations, those aiding or promoting in any manner the objects of such association, supporter of terrorist organisation, manager or arranger of a meeting in support of a terrorist organisation, those addressing meetings of terrorist organisations, those raising funds for terrorist organisation, those disrupting essential services, those giving shelter to terrorists or concealing them and those holding any property derived or obtained from commissions of any terrorist act or has been acquired through the terrorist funds.

In chapter II, clause 3(1)(a) states that 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 does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire arms 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 or by any other means whatsoever, 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 or causes damage or destructions 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 or any other person to do or abstain from doing any act, commits a terrorist act.

In its all-encompassing definition of terrorism, the Ordinance spares only:-

- ❖ The wife or husband of the persons accused of harbouring or concealing the terrorist.
- ❖ The revised version of the Ordinance has now dropped sub-clause 8 of clause 5 which holds a person liable for punishment if he does not disclose to the police the informations he possesses which he knows or believes to be of material assistance in preventing the commission by any other person of a terrorist act.

Punishment

Punishment, under the Ordinance, varies according to the nature of the involvement (crime). In some cases the provision is for death-penalty or life imprisonment while in others the imprisonment varies from 10 years

to 3 years.

Death sentence or imprisonment for life can be awarded to those committing a terrorist act that has resulted in the death of any person. What is intriguing and dangerous is the fact that all other kinds of acts falling under the definition of terrorism though have specified term of imprisonment (three, five or ten years), they all carry a rider in the form of "may extend to imprisonment for life and shall also be liable to fine".

What makes POTO a convenient tool of oppression of innocent citizens through false implication by the law-enforcing agencies, is clause 4(a) and (b) which hold possession of certain unauthorized arms etc. as guilty of terrorist act.

Chapter III of the Ordinance contains the definition of a terrorist organisation and the factors that go in making any organisation a terrorist outfit in governmental parlance.

This chapter also contains section 18(2) whereby the Central Government may by order, in the Official Gazette, (a) add an organisation to the schedule; (b) remove an organisation from that schedule and (c) amend that schedule in some other way.

For the withdrawal of any organisation from the schedule, under section 19(1), an application may be made to the Central Government for the exercise of its power under clause (b) of sub-section (2) of section 18.

But the applicant will have to prove that the organisation was not declared as a terrorist organisation at the time of his joining and that he has not taken part in the activities of the organisation at any time during its inclusion in the schedule.

Review Committee

In case the withdrawal application is rejected by the Central Government, the applicant may apply for a review to the Review Committee constituted by the Central Government under sub-section (1) of section 59 within one month from the date of receipt of order by the applicant.

Section 59(1) states that the Central Government and each State Government shall, whenever necessary, constitute one or more Review Committees. Every such committee shall consist of a Chairperson and such other members not exceeding three and possessing such qualifications as may be prescribed.

Trial

Special Courts : POTO allows for the setting up of special courts which can be constituted by the State or Central Government (Section 23). These special courts shall be presided over by a judge to be appointed by the Central Government or the State Government with the concurrence of the Chief Justice of the High Court. A person shall be qualified for appointment as a judge or additional judge only when he is, immediately before such appointment, a sessions judge or an additional sessions judge in any state. A person appointed as a judge or additional judge shall continue to be so irrespective of his attainment of

the age of superannuation under the rules applicable to him in the service to which he belongs.

The location of these courts is left to the discretion of the central government. However, the sitting of a special court constituted by a state government can not be held at any place outside that state.

The lacuna here is that these special courts can either be located within the premises of the jail as in the Rajeev Gandhi case and countless other TADA cases or can be at a great distance from where the accused is lodged, causing hardship to the family members, bail-aspirants and even advocates representing the accused.

Adverse Inferences : Under POTO 'adverse inferences' can be drawn by the court against the accused i.e. it will be taken as a sign of guilt, if he/she refuses to give a blood sample, handwriting or fingerprint (section 27). The court is also directed to draw an 'adverse inference' about the guilt of the accused if arms or explosives believed to have been used to commit offences under this law, are found in the possession of a person or if the person's fingerprints are found anywhere at the site of such an offence (Section 52).

A series of such 'adverse inferences' inexorably leads to the establishment of the guilt of the accused. In effect, by this clause, the **burden of proof** that a person is innocent until proved guilty is reversed.

Police Empowerment: A number of sections and clauses of POTO are dangerously tilted towards making Police more powerful, thus, conceding it more ground for harassment and victimisation of the innocents.

Section 32(1) of POTO makes confessions made before Police Officers admissible as evidence, as opposed to ordinary procedure in which only 'confessions in court', or before a judicial magistrate are acceptable. **This provision is an invitation to custodial abuse and confessions resulting from torture.**

Section 37 of the Ordinance provides for interception of wire, electronic or oral communication by the police with approval from a Joint Secretary level officer, and its use as evidence in court against the accused. There is no method of verification of the authenticity of intercepted communication produced by the police as evidence of guilt. Hence, this section of POTO arms the police to easily violate the right to privacy of individuals upheld by the courts.

Section 48(2) allows for people to be detained for 90 days in police custody without charge or trial. This period can be extended to 180 days on application by the Public Prosecutor to the Special Court, in order to allow the investigations to be completed. **This provision is liable to be misused by the police for aims of preventive detention.** This is what happened in the case of similar provision under TADA in the past.

Moreover, the provision under section 3(5) regarding the membership of a 'terrorist organisation' may also be misused by the police to falsely implicate the innocents.

Unlike normal laws where the Cr.P.C. governs the conduct of the law enforcing agency, POTO gives power to the executive to frame a new set of rules to enter and search premises, to arrest and extern persons, and to determine and give punishments for contravention of these rules (section 61). It even has the powers of a civil court (section 13). In a departure from TADA, these rules and orders do not even have to be placed before the legislature. So there is no accountability in framing such rules and orders.

Safeguards: Apart from the provision regarding setting up of review committees for the limited purposes of reviewing orders with regard to banning of an organisation and for interception of communication, other safeguards included are that courts will take cognizance of offences only with the sanction of the state or central government (section 49), (whereas under TADA approval of DSP and sanction of IGP was needed for cognizance of cases). In addition, there is an unproven presumption that by allowing only high level police officials to investigate such offences (section 50), some measure of protection against abuse is provided for.

Moreover, certain rights of the accused such as right to legal assistance, right that relatives are to be immediately informed of arrest, and the duty of the police to draw up a custody memo are spelled out under section 51.

Unlike TADA, the right to move the High Courts for appeal has been provided in POTO. But all such appeals are to be made within 30 days and not the normal 90 days.

However, the most dreaded provision of POTO is section 14 which allows the investigating officer to require any person to furnish information considered by the officer to be relevant to the purposes of this Ordinance.

This section neither spares journalists nor lawyers explicitly from the obligation to disclose their source of information given in an article, report or interview and information obtained from their clients respectively. This enormously dangerous section has even been retained in the amended re-promulgated Ordinance of December 31, 2001. Though the amended version drops section 3(8) wherein exemption was given to legal practitioner, it does retain harsher section 14 which gives no such concession to the legal fraternity.

What is deplorable is that besides journalists, film makers, researchers, human rights investigators, this provision might force even NGOs engaged in providing essential and needed services such as health, law improvement, education and disaster relief to become police informers in order to save themselves from police harassment.

Bail : Section 48(6) and (7) of the Ordinance effectively give the power of determination of bail to the public prosecutor rather than the court. Section 48(9) denies granting of bail to non-Indians and illegal immigrants. It states that 'no bail shall be granted to a person (----) if he is not an Indian citizen and has entered the country unauthorisely or illegally.

Though the Ordinance deprives the non-Indian citizens and illegal immigrants of bail, it does not specifically mention these categories under chapter one section 1(5) covering the categories of people to be covered.

Periodicity : The Ordinance, earlier slated to be in force for five years, has now been amended to be in force for a period of three years from the date of its commencement i.e. 31st December, 2001.

Amendments: The Ordinance was re-promulgated on 31st December, 2001 after incorporating the following modifications :

- (i) Sub-section 8 of section 3 has been omitted.
- (ii) Section 7 has been modified to delete reference to the Special Courts, thus doing away with concurrent jurisdiction of the Designated Authority and the Special Courts and to provide for an appeal against the order made by the Designated Authority to the Special Court.
- (iii) Section 8 has been modified to vest power of forfeiture of the proceeds of terrorism in the Special Court, instead of the Designated Authority.
- (iv) "Property" defined under section 2(1)(d) shall now include Bank Accounts.
- (v) It has been provided that the legislation shall remain in force for a period of three years instead of five years.
- (vi) A transitional provision has been made to enable court of session to try the offences punishable under the Ordinance till the Special Courts are constituted under the provisions of the Ordinance.
- (vii) Subsequent to the earlier promulgation of the Ordinance on 24th October, 2001, two more organisations have been declared as terrorist organisations. Accordingly, the schedule of the Ordinance now contains 25 organisations as against 23 in the earlier Ordinance.

Schedule : The last page of the document contains the schedule, under section 18, wherein names of Terrorist Organisations are listed.

USA PATRIOT Act, 2001

The US Anti-Terrorist Act known as USA PATRIOT is actually called Uniting and strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act. The Act was passed by US Congress on October 25, 2001 and was signed into law by President Bush on October 26, 2001.

(This 95 - page document contains 10 chapters, 1016 sections and thousands of subsections.)

Bird's Eyeview

Definition of Terrorism

The definition widely encompasses American citizens; representatives of a foreign terrorist organisation as designated by the Secretary of State under section 219; representatives of political, social or other similar groups whose public endorsement of acts of terrorist activity, in the opinion of the Secretary of State, undermines US efforts to reduce or eliminate terrorist activities; one who has used the alien's position of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organisation; the spouse or child of an alien who is inadmissible under sec. 411, if the activity causing the alien to be found inadmissible occurred within the last 5 years. Exception is provided to a spouse or child who did not know the activity causing the alien to be found inadmissible or whom the Attorney General has reasonable grounds to believe has renounced the activity causing the alien to be found inadmissible under this section.

Under the Act, Terrorist Activity has been defined to mean, on individual level or as member of an organisation, to commit or to incite to commit, under circumstances indicating an intention to cause death or serious body injury; to prepare or plan a terrorist activity; to gather information on potential targets for terrorist activity; to solicit funds or other things of value for a terrorist activity or a terrorist organisation; to solicit any individual to engage in conduct otherwise disabled in the related clause; for a membership in a terrorist organisation; to commit an act that the actor knows or reasonably should know, affords material support including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological or radiological weapons), explosives; or providing training for the commission of a terrorist activity to an individual, or terrorist organisations. But this clause will not apply to any material support that an alien afforded to an organisation or an individual that has committed a terrorist activity if either of the Secretary of State or Attorney General in consultation with each other concludes so in his sole unreviewable discretion.

Thus the provisions are quite menacing. Among the most troubling provisions of the Act are the measures that -

1. Allow for indefinite detention of non-citizens who are not terrorists on minor visa violations if they can not be deported because they are stateless, their country of origin refuses to accept them or because they would face torture in their country of origin.
2. Minimise judicial supervision of federal telephone and internet surveillance by law enforcement authorities.
3. Expand the ability of the government to conduct secret searches.
4. Give the Attorney General and the Secretary of State the power to designate domestic groups as terrorist organisations and deport any non-citizen who belongs to them.

5. Grant the FBI broad access to sensitive business records about individuals without having to show evidence of a crime.
6. Lead to large-scale investigations of American citizens for "intelligence" purposes.

The USA PATRIOT Act is heavily loaded against non-citizens, aliens and immigrants. Section 412 permits indefinite detention of immigrants and other non-citizens. There is no requirement that those who are detained indefinitely be removable because they are terrorists. Section 412 requires that immigrants, 'certified' by the Attorney General, be charged within seven days with a criminal offence for an immigration violation (which need not be on the grounds of terrorism).

However, those immigrants found not to be deportable for terrorist activities, but have an immigration status violation like overstaying a visa, could face indefinite detention if their country refuses to accept them. Detention would be allowed on the Attorney General's finding of "reasonable grounds to believe" involvement in terrorism or activity that poses a danger to national security, and detention could be indefinite upon a determination that such an individual threatens national security, and, or the safety of the country or any person.

Review

Immigrants who are ordered removed but can not be deported in the reasonably foreseeable future are entitled to reviews, at least each six months, of whether they continue to pose a danger.

Trial

But there is no requirement that indefinite detainees ever be given a trial or a hearing in which the government would have to prove that they are, in fact, terrorists. Nor would other important procedural protections apply, such as the requirement of proof beyond a reasonable doubt (in criminal proceedings) or proof by "clear, convincing and unequivocal evidence" (in deportation proceedings). Instead, indefinite detention would apply mainly on the basis of vague and unspecified allegations of threat to national security.

Non-Citizens and Citizens

The USA PATRIOT Act permits detention and deportation of non-citizens who provide assistance for lawful activities of a group the government claims is a terrorist organisation, even if the group has never been designated as a terrorist organisation.

It would be the responsibility of the non-citizen to prove that his or her assistance was not intended to further terrorism.

Section 411 of the USA PATRIOT Act adds a new provision to INA section 212(a)3(b) that permits designations of foreign and domestic groups, without giving procedural safeguards as given in INA sec. 219. Under this new power, Secretary of State could designate any group, that has ever engaged in violent activity, a terrorist organisation (whether it be Operation Rescue, Greenpeace, or People for the Ethical Treatment of Animals). This would mean that the designation would render the

group's non-citizen members inadmissible to the United States, and would make payment of membership dues a deportable offence.

Undemocratic

The Act amends the definition of terrorist activity in such a way that it now covers use of a "weapon or other dangerous device ... to cause substantial damage to property," even if such damage created no danger of injury (sec.411). **Under this definition, groups such as WTO protesters who engage in minor vandalism, those engaged in civil disobedience or protesters who damage a fence, would all be deemed terrorists or terrorist organisations. Likewise purely humanitarian assistance, to those US considers itself at war with, could be assistance to a terrorist organisation.**

Section 411 of the Act even attacks right to speech even of lawful permanent residents, till now protected by the First Amendment . **Under this section, a lawful permanent resident who makes a controversial speech could potentially be barred from returning to his family after taking a trip abroad.**

Empowerment of Government Machinery

The USA PATRIOT Act gives law enforcement agencies nationwide extraordinary new powers unchecked by meaningful judicial review. The Act confers new and unprecedented detention authority on the Attorney General based on vague and unspecified predictions of threats to the national security. The provision of Attorney General's certification gives absolute power which is likely to be misused in most of the cases.

Intelligence Surveillance

The Act allows use of FISA surveillance authority even if the primary purpose was a criminal investigation. This provision authorises unconstitutional physical searches and wiretaps. This is to be noted that earlier FISA surveillance could be used only when foreign intelligence gathering was the primary purpose.

In allowing for "nationwide service" of pen register and trap and trace orders, the PATRIOT Act further marginalises the role of the judiciary. **It authorises what would be an equivalent of a blank warrant for search.**

The Act also grants the FBI broad access in "intelligence" investigations to the records about a person maintained by a business. The FBI need only certify to a court that it is conducting an intelligence investigation and that the records it seeks may be relevant. **With this new power, the FBI can force a business to hand over a person's educational, medical, financial, mental health and travel records. What is disquieting is the fact that as such the FBI already had broad authority to monitor telephone and internet communication, the changes brought about by the new Act now amounts not just to surveillance of terrorists but to all kinds of surveillance in the United States.**

Criminal Justice

The Act dramatically expands the use of secret searches. It extends the

authority of the government to request "secret searches" to every criminal case.

The Act also allows for broad sharing of sensitive information in criminal cases with intelligence agencies, including the CIA, the NSA, the INS and the Secret Service. **It permits sharing of sensitive grand jury and wiretap information without judicial review or any safeguards regarding the future use or dissemination of such information. This, in effect, will increase the spying on Americans.**

Financial Privacy

The USA PATRIOT Act goes beyond its stated goal of combating international terrorism, and instead reaches into innocent customers' personal financial transactions. Under this Act, financial institutions are required to monitor daily financial transactions even more closely and to share information with other federal agencies, including foreign intelligence services such as the CIA. The Act also allows law enforcement and intelligence agencies to get easy access to individual credit reports in secret. It does not provide for judicial review and also does not mandate that law enforcement agencies give the person whose records are being reviewed, any notice.

Student Privacy

The USA PATRIOT Act allows law enforcement officials to cast an even broader net for student information without any particular suspicion of wrong doing. It allows them to receive the student data collected for the purpose of statistical research under the National Education Statistics Act. This accessibility to informations about a private student is based merely on a certification that the records are relevant to an investigation. This certification, which a judge can not challenge, is insufficient to protect the privacy of sensitive informations contained in student records.

Punishment

The Act provides for six months to indefinite detention and also deportation.

United Kingdom: Anti - Terrorism, Crime and Security Bill, 2001

(This Bill is an expansion of the Terrorism Act, 2000. This document consists of 14 parts, eight schedules and 122 pages. This Bill was passed in the Parliament without much opposition on 13th of December, 2001 and received Royal Assent on same day)

Bird's Eyeview

Definition of Terrorism

The definition of terrorism is quite wide and includes violence against any person or property situated anywhere inside and outside of the United Kingdom.

In clause 21(1)(b), the Secretary of State only has to suspect a person rather than believe a person is a terrorist. In clause 21(2), the definition is very wide-ranging allowing a person to be detained if he merely has links with another person. Thus a person might have "links" with another because of professional and innocent dealings (as a lawyer or doctor).

This degree of "flexibility" is in addition to the problematic and vague definition of terrorism in the UK Terrorism Act, 2000 which defines Terrorism in clause 1 as :-

- 1 (1) the use of threat for the purpose of advancing a political, religious or ideological cause, of action which -
 - a) involves serious violence against person or property;
 - b) endangers the life of any person or
 - c) creates a serious risk to the health or safety of the public or a section of the public.
2. In sub-section (1) -
 - a) action includes action outside the UK;
 - b) a reference to any person or to property is a reference to any person or to property, wherever situated and
 - c) a reference to the public includes a reference to the public of a country other than the United Kingdom.
3. In this Act, a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

This definition is dangerous in the sense that it is capable of encompassing activities which, whilst unlawful, can not properly be regarded as terrorism. For example, animal rights activism or civil disobedience movement or even some forms of industrial action can not be called terrorism.

Section 2 provides that "acts of terrorism" means acts of persons acting on behalf of, or in connection with any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence of Her Majesty's government in the United Kingdom or any other government "de jure or de facto".

The definition of terrorism contained in the Bill has an effect of introducing two-tier criminal justice system and contravening the European Convention on Human Rights by reversing the onus of proving innocence on the innocents rather than prosecutors for proving the guilt.

Aim

The act includes measures to cut off terrorists' access to funds; ensure better information sharing between agencies; prevent terrorists from

abusing immigration and asylum laws; tighten up security in relation to aviation, civil nuclear sites and at laboratories holding stocks of potentially dangerous substances and enable swift action to implement EU-agreed measures to tackle terrorism and other crimes.

Essential Tools Provided by the Act : The Act -

- ❖ Ensures that law enforcement agencies have the powers and information needed to effectively combat global terrorism.
- ❖ Provides law enforcement agencies with vital information to target and track terrorists by requiring carriers to supply information about passengers and freight. (part 13, clause 118)
- ❖ Enables communication service providers to retain data - net content- that will be accessed under existing legislation, such as for terrorist and criminal investigations. This will be governed by a voluntary Code of Practice developed in close consultation with the Information Commissioner and industry.
- ❖ Enables swift implementation of EU agreed measures until the end of June 2002 to fight terrorism and related crime through secondary legislation.
- ❖ Removes the scope for people to unreasonably refuse to assist the police in identifying them by allowing the police to require the removal of hand and face coverings (such as masks).
- ❖ Removes barriers that prevent customs and revenue officers sharing information with other law enforcement agencies to aid in the fight against terrorism and other crimes. (part 3, clause 19)
- ❖ Introduces penalties for those who willingly choose to withhold information from the authorities that could help to prevent future terrorist attacks.
- ❖ Introduces penalties for crimes of corruption committed by UK citizens and companies abroad and foreign nationals in UK, which help to undermine good governance and contribute to the conditions that engender organised crime and terrorism.

Prevents terrorists from abusing immigration and asylum procedures:

- ❖ Allows extended detention for suspected international terrorists who threaten national security and for whom there is no immediate prospect of removal (requiring a limited derogation from ECHR Article 5) providing protection for the public and sending a strong signal to others. These provisions will lapse after five years unless renewed by primary legislation.
- ❖ In suspected terrorist cases, where someone is excluded from the protection of the 1951 Convention, allows not to consider the substance of their asylum claim.
- ❖ Removes access to Judicial Review for Special Immigration Appeals Commission (SIAC) decisions in relation to the above two measures. Appeals may be made to SIAC, a superior court of record, chaired by a High Court judge.
- ❖ Enables retention of certain fingerprints taken in immigration and asylum cases for 10 years helping to prevent people from re-applying for asylum to create multiple identities that could be used for criminal

ends.

- ❖ Tough penalties for people seeking to exploit the events of September 11
- ❖ Extends existing racially aggravated offences to cover offences motivated by religious hatred and increases the penalties.
- ❖ Extends the present law which covers bomb hoaxes to include other types of hoaxes (e.g. alleged anthrax) which cause distress and severe disruption.

Cuts off Terrorists from their funds:

- ❖ Ensures controls, equivalent to and building on those in the new Proceeds of Crime Bill, apply in all situations where funds may be used to finance terrorism.
- ❖ Includes an obligation on the financial sector to report where there are "reasonable grounds" to suspect terrorist financing.
- ❖ Allows immediate, targeted action to freeze the assets of overseas individuals or groups that carry out or support terrorist acts where neither the UN nor EU has yet agreed a course of action, or in cases where it is appropriate for the UK to impose sanctions unilaterally.
- ❖ Gives the power to freeze assets at the start of an investigation, reducing the risk that funds will be used or moved.
- ❖ Strengthens current legislation relating to chemical, nuclear and biological weapons and ensure, the protection and security of aviation and civil nuclear sites.
- ❖ Improves the enforcement of aviation security, including new powers enabling the removal and arrest of people in restricted areas; the detention of aircraft for security reasons and making it an offence to falsely claim to be an approved air cargo agent.
- ❖ Allows officers to stop, detain, question, and search people either travelling or believed to be travelling by aircraft within Great Britain and within Northern Ireland. This would have a powerful preventive and disruptive effects on terrorists or suspected terrorists travelling within the United Kingdom.
- ❖ Makes it an offence to aid or abet the overseas use or development of chemical, nuclear, biological or radiological weapons. The Act also introduces offences for biological and nuclear weapons equivalent to those in the Chemical Weapons Act 1996.
- ❖ Enables police officers from the British Transport Police, Ministry of Defence Police and UK Atomic Energy Authority Constabulary to protect the public from acts of crime and terrorism in areas outside their current jurisdictions.
- ❖ Ensures that laboratories holding stocks of potentially dangerous diseases adhere to the highest standards of security in view of the potential threat from terrorism.

In addition, the Act creates a review committee of Privy Councillors who report to Parliament within 2 years on its operation. If the Committee highlights an issue of concern, it will be fully debated in Parliament.

Police Empowerment

The Act gives immense powers to the Police through clauses 89 to

101. Since under the Criminal Justice and Police Act, 2000 the fingerprints of those acquitted or not prosecuted for offences are no longer destroyed but instead can be retained indefinitely, the provisions in the Bill substantially extend the circumstances under which fingerprints can be taken and this will lead to substantial number of people who have been mistakenly arrested to have their fingerprints kept.

The provision in clause 91 to take photographs by force, if necessary, is a new power given to police which is not related to the terrorist threat. The power to take pictures for identification purposes is already available in the Terrorism Act 200 (schedule 8, paragraph 2).

Clause 93 provides power to the police to demand the removal of items of clothing which the officer believes are designed to conceal identity. Failure to do so constitutes a criminal offence and can result in imprisonment for upto one month. This provision has all likelihood to be misused against all those living in the designated locality.

Critique

The Anti-Terrorism, Crime and Security Act has been widely condemned as it is violative of human rights in the UK. **The Act permits non-nationals to be detained without charge or trial for an indefinite period of time. People will be detained simply because the Home Secretary states that he reasonably believes and suspects a person to be national security risk and a suspected "international terrorist"**. The Secretary's belief and suspicion may be based on secret evidence and confirmed by a judicial body that can hold hearings in secret from the detainee and their lawyer may be excluded, and base its decision on secret evidence.

It is being feared that these provisions will create a shadow criminal justice system without the safeguards of the formal system. It has also been pointed out that in order to permit the government to introduce legislation for indefinite detention without charge or trial, the UK has derogated from Article 5 of the European Convention on Human Rights.

The provision regarding destruction of property being constituted a terrorist offence has also been opposed on the grounds that such attacks are considered to be criminal damage and should be dealt with under the already existing police powers. It is being pointed out that this provision is aimed at groups who take direct action in course of their protest.

It is being held that the clause 18 making it an offence not to report any knowledge or belief of terrorist activities to the police is liable to be misused to harass the common citizens and to cause considerable difficulties for investigative journalists.

Similarly, through the clauses 38 and 39, the Government has retained the arrest powers of the PTA which entitle the police to arrest without warrant anyone who they have reasonable grounds for suspecting. It is being said that powers under these clauses are too wide and unnecessary.

Canada, Anti - Terrorism Act, 2001

(In Canada, the new act enacted to counter the terrorism is cited as the Anti-Terrorism Act, 2001. This 175 - page document contains 7 parts, 145 sections and 2 schedules)

Bird's Eyeview

Definition of Terrorism

The Act amends the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and a number of other Acts, and enacts the Charities Registration (Security Information) Act, in order to combat terrorism.

The criminal code is amended to implement the UN Conventions like - The Suppression of Terrorist Financing Convention, The Suppression of Terrorist Bombings Convention and The Safety of United Nations and Associated Personnel Convention and to establish provisions aimed at disabling and dismantling the activities of terrorist groups and those who support them.

The amended criminal code (sec. 83.01) defines "terrorist activity" as an action that takes place either within or outside of Canada that :

- ❖ is an offence under one of 10 UN anti-terrorism conventions and protocols; or
- ❖ is taken or threatened for political, religious or ideological purposes and threatened the public or national security by killing, seriously harming or endangering a person, causing substantial property damage that is likely to seriously harm people or by interfering with or disrupting an essential service, facility or system.

The definition also permits the designation of groups whose activities meet the definition of terrorist activity as "terrorist groups".

Exemption

It does not include an act or omission that is committed during an armed conflict and that, at the time and in the place of its commission, is in accordance with customary international law or conventional international law applicable to the conflict; or the activities undertaken by the military forces of a state in the exercise of their official duties, to the extent that those activities are governed by other rules of International Law.

Addition of new offences in the *Criminal Code* under the Act make it a crime to -

- ❖ *Knowingly collect or provide funds either directly or indirectly, in order to carry out terrorist crimes. But the Crown will have to prove that the accused collected, provided or made available funds that he or she knew would be used to help a terrorist group.* Canadian courts would be given the jurisdiction to try this offence even if it has been committed outside Canada, when the accused is found in Canada. The maximum sentence under this offence would be 10 years.
- ❖ *Knowingly participate in, contribute to or facilitate the activities of a terrorist group.* The participation or contribution itself does not have to be a criminal offence and would include knowingly recruiting into the group new individuals for the purpose of enhancing the ability of the terrorist group to aid, abet or commit indictable offences.

The maximum sentence for the offence of participating or contributing would be 10 years imprisonment. The maximum sentence for facilitation is 14 years imprisonment.

- ❖ *Instruct anyone to carry out a terrorist act or an activity* on behalf of a terrorist group. This offence carries a maximum punishment of life sentence.
- ❖ Knowingly *harbour or conceal* a terrorist. The maximum sentence under this offence would be 10 years.

In addition, any indictable offence under any Act of Parliament that is done for the benefit of, at the direction of, or in association with a terrorist group carries a maximum sentence of life imprisonment. An offender convicted of any indictable offence that is also a terrorist activity would be liable to life imprisonment.

Punishment

Punishment for terrorist activities varies from 10 and 12 years imprisonment to life imprisonment.

The sentences imposed for each of the offences mentioned above are to be served consecutively to any other sentence imposed relating to the same activity or event. The offender would also be ineligible for parole for half of the sentence imposed unless the accused can demonstrate that it is not in the public interest.

- ❖ The new definition and designation schemes make it easier to remove or deny charitable status to those who support terrorist groups under the Income Tax Act.

List of Terrorists

The Act provides for the listing of terrorist organisations. The listing is to be done by the Governor in Council on the recommendation of the Solicitor General provided they are satisfied that there are reasonable grounds to believe that the entity has carried out, attempted to carry out, participated or facilitated a terrorist activity.

Judicial Review : Within 60 days after the receipt of the notice of the decision regarding the listing of Terrorist groups, the applicant may apply to a Judge for judicial review of the decision.

Stronger Investigative Tools : Anti-terrorism measures under the new Act provide new investigative tools to allow security, intelligence and law enforcement agencies to more effectively gather knowledge about terrorist groups. These include :

Electronic Surveillance

The investigatory powers in the earlier criminal code and in Bill C-24 that make it easier to use electronic surveillance against criminal organisation would be applied to terrorist groups as well. The new provision extends the period of validity of a wiretap authorisation from sixty days to upto one year when police are investigating a terrorist group offence. A superior court Judge would still have to approve the use of electronic surveillance to ensure that these powers are used appropriately. Further, the requirement to notify a target, after

surveillance has taken place, could be delayed for upto three years.

Other Highlights

- ❖ The Official Secrets Act is amended to address national security concerns, including threats of espionage by foreign powers and terrorist groups.
- ❖ The Act also adds a new title 'The Security of Information Act' under which new offences have been created to counter intelligence-gathering activities by foreign powers and terrorist groups. Other new offences include the unauthorised communication of special operational information by persons permanently bound to secrecy, harbouring, threats or violence for the purpose of increasing the capacity of a foreign power or a terrorist group to harm Canadian interests. The Act also creates a "preparatory acts" offence, which makes it a crime to prepare to commit any of the above acts.
- ❖ The National Defence Act is amended to clarify the mandate of the Communication Security Establishment (CSE), under strict control to:
 - i) intercept the communications of foreign targets abroad; and
 - ii) undertake security checks of government computer networks to protect them from terrorist activities.

But the permission of the Minister of National Defence is required to authorise any interception of private communications in order to ensure that the privacy of individual Canadian is protected.

- ❖ Individuals with information relevant to an ongoing investigation of a terrorist crime are required to appear before a judge to provide that information. But the consent of the Attorney General is must.
- ❖ The Criminal Code is amended to create a "preventive arrest" power to arrest and impose condition of release, where appropriate, on suspected terrorists. This will allow a peace officer to arrest and bring a person before a judge to impose reasonable supervisory condition if there are reasonable grounds to suspect that the person is about to commit a terrorist activity. For this, a warrant would be required except where exigent circumstance exist, and the person would have to be brought before a judge within 24 hours of an arrest.
- ❖ The Proceeds of Crime (money laundering) Act is amended to authorise the Financial Transactions Reports and Analysis Centre (FINTRAC) to detect financial transactions that may constitute threats to the security of Canada and to disclose this information to the Canadian Security Intelligence Service.
- ❖ The criminal code is amended to allow the courts to order the deletion of publicly available hate propoganda from computer systems such as internet sites.

Periodicity

The Act would be valid for 3 years only. After every 3-year period, it would be reviewed by the Parliament.

Safeguards : Safeguards include -

- ❖ a Parliamentary review of the anti-terrorism legislation in three years;
- ❖ legitimate political activism and protests are protected through the precise definition of terrorist activities;
- ❖ placing the burden of proof on the state to establish the accuser's intentions;
- ❖ ensures that the process of adding a group to the list of terrorist organisations incorporates protections like provision for removal, judicial review and safeguards to address cases of mistaken identity. Also, the list must be reviewed every two years by Solicitor General;
- ❖ requirement of the Attorney General's consent to prosecute the financiers of terrorist activities; and
- ❖ Requiring the Minister of Defence's authorisation for the interception of foreign communication that may have a Canadian connection.

We would like to receive the copy of the document(s) that are ticked at our address below :

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E-mail : _____

- India : Prevention of Terrorism Ordinance, 2001**
(This 50-page document contains 6 chapters, 61 sections and around 500 sub-sections)
- USA Patriot Act, 2001**
(This 95-page document contains 10 chapters, 1016 sections and thousands of subsections.)
- United Kingdom : Anti - Terrorism, Crime and Security Bill, 2001**
(This Bill is an expansion of the Terrorism Act, 2000. This document consists of 14 parts, eight schedules and 122 pages. This Bill was passed in the Parliament without much opposition on 13th of December, 2001 and recieved Royal Assent on same day)
- Canada, Anti-Terrorism Act, 2001**
(In Canada, the new act enacted to counter the terrorism is cited as the Anti-Terrorism Act, 2001. This 175-page document contains 7 parts, 145 sections and 2 schedules)

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