

INDIA

Criminalizing Terrorist Acts

The Prevention of Terrorism Act, Chapter 2, details “Punishment for, and Measures for Dealing with Terrorist Activities.” If a terrorist act results in the death of anyone, the perpetrator is punishable by death or life imprisonment. In all other cases, the minimum punishment is set at five years imprisonment, and may be extended up to life imprisonment (Prevention of Terrorism Act, Section 3). This includes those who conspire, attempt to commit, or advocate, abet, advise or incite other to commit terrorist acts and those who harbor or conceal terrorists. Membership in a terrorist gang or organization is an offense under the POTA punishable by imprisonment for a term up to life. Under Section 4, “possession of certain... arms or other explosive substances or other lethal weapons capable of mass destruction and/or use in biological or chemical warfare” without authorization in areas prohibited by the government is also an offense, carrying a penalty of up to life imprisonment.

Under Section 6 of the Prevention of Terrorism Act, “no person shall hold or be in possession of any proceeds of terrorism,” and such proceeds are liable to be forfeited to the Government. Section 22 of the Prevention of Terrorism Act makes fund raising for a terrorist organization an offense, punishable by up to 14 years imprisonment and/or a fine. Section 22 also makes those providing any money or other property to terrorist organizations liable. Section 3 of the Prevention of Terrorism Act makes liable anyone who harbors or conceals a known or suspected terrorist. Section 14 requires any person or entity with information about a terrorist act to provide that information to the police. “Failure to furnish the information called for or deliberately furnishing false information to an investigating officer shall be punishable with imprisonment for a term which may extend to three years or a fine or both. The investigating officer can call for such information only with prior approval in writing of an officer not below the rank of Superintendent of Police.”

The Indian Penal Code covers extra-territorial terrorist offenses committed by Indian citizens. Section 3 of the Code provides jurisdiction over a foreigner when criminal acts have been committed abroad by the foreigner who is now in India. Under Section 41 of the Code of Criminal Procedure, 1973, “a Police Officer may arrest a person without a warrant provided there is information that the person is likely to commit a cognizable offence.” Section 29 and 30 of the Prevention of Terrorism Act, 2002 provide for a Special Court to hear cases involving offenses covered by the Act. “A Special Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.”

Regulations of Pathogens and Equipment

The Department of Biotechnology (DBT) was established in 1986 under the Ministry of Science and Technology. One of the DBT’s functions is to promulgate bio-safety guidelines. India has defined a group of pathogens subject to regulation. Government approval must be obtained before regulated pathogens can be imported, exported, transported, manufactured, processed, used or sold. Research involving regulated organisms may only be conducted in government-approved laboratories.

Preventing Terrorists From Obtaining Weapons

“The Arms Act 1959 deals with acquisition, possession, manufacture, import and export of arms in India.” Licenses must be obtained before an individual can purchase small arms/weapons. Certain categories of weapons are classified as “prohibited arms” (automatic/semi-automatic weapons, artillery, anti-aircraft and anti-tank fire arms, weapons designed to discharge chemical agents, etc.) and are not authorized for possession, manufacture or sale.

Preventing, Suppressing and Criminalizing the Financing of Terrorism

Legislation regulates the operation of the banking industry, prohibits informal banking networks, provides for the seizure of property obtained from criminal activities, and prohibits the donation of money to known terrorist organizations. Also, the Government of India has recently decided it will ratify the International Convention for Suppression of the Financing of Terrorism.

The Directorate of Enforcement oversees enforcement of the Foreign Exchange Management Act, 1999 (FEMA). FEMA prohibits informal banking networks, such as *hawala* (transactions outside the banking industry where money (in Indian or foreign currencies) is received or paid in compensation for certain acts/goods). The Directorate of Revenue Intelligence works as a liaison, relaying information from its investigations to other Indian governmental agencies and international organizations (like INTERPOL). The Intelligence Bureau also works to prevent and suppress terrorism financing by reviewing financial transactions that impinge upon national security and shares this information with other governmental agencies.

Several statutes authorize the government to seize property associated with terrorism. The Code of Criminal Procedure allows the police to seize any property when found under circumstances that create a suspicion that an offense was committed. The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act provides for the forfeiture of illegally acquired property.

International Cooperation

Bilateral mechanisms used by India to address terrorism include joint working groups, bilateral agreements to combat terrorism and organized crime, extradition treaties, and bilateral treaties on mutual assistance in criminal matters. The bilateral agreements aimed at combating terrorism and organized crime facilitate the exchange of operational information between nations and help development of joint programs. "Extradition treaties are more focused in operational scope and are designed to facilitate the transfer of fugitive offenders, suspected terrorists, etc. so that they can stand trial in the State in which the offence was committed." Recent extradition treaties have denied the political exception plea as a defense against extradition. India is also a party to several bilateral agreements on mutual assistance in criminal matters. "These treaties are designed to provide mutual legal assistance in criminal matters that are necessary for the prosecution of offences, searching persons and property in question, location of fugitives and property involved, transfer of witnesses and exhibits, freezing and confiscation of proceeds."

Multilateral mechanisms used by India to address terrorism include international and region conventions on terrorism. India has signed all twelve international conventions on terrorism. India is a party to the South Asian Association for Regional Cooperation Convention on Suppression of Terrorism. The Convention has provisions mandating the exchange of information and other cooperative measures to prevent and prosecute crimes involving hazardous substances. This convention facilitates extradition and denies the application of the political offense exception to crimes involving dangerous substances.

BIBLIOGRAPHY OF INDIAN LEGISLATION

Criminalizing Terrorist Acts

1. Prevention of Terrorism Act (POTA), 2002.
2. Prevention of Terrorism Ordinance (POTO), October 2001.
3. Indian Penal Code, 1860
4. Code of Criminal Procedure, 1973 (preventive action against terrorist/criminals).
5. Arms Act, 1959 (acquisition, possession, manufacture, import, & export of arms in India).
6. Indian Telegraph Act, 1885.
7. Armed Forces (Special) Powers Act, 1958.
8. Anti-Hijacking Act, 1982
9. Merchant Shipping Act, 1948
10. United Nations Security Council Act, 1947 (gives Government power to implement UN Security Council resolutions).
11. Inflammable Substances Act, 1952
12. Unlawful Activities (Prevention) Act, 1967
13. Violation of Arms Act, 1956
14. Explosives Act, 1884

Laws Related to Biology and Science

1. Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms, Genetically Engineered Organisms or Cells (1989)
2. Microorganisms, Genetically Engineered Organisms or Cells, 1987
3. Terrorist and Disruptive Activities (Prevention Act), No. 28, 1987

Preventing Terrorists From Obtaining Weapons

1. Arms Act, 1959 (acquisition, possession, manufacture, import, & export of arms in India).
2. The Explosives Act 1884 (regulations on storage, sale, and importation of explosives).

Preventing, Suppressing and Criminalizing the Financing of Terrorism

1. International Convention for Suppressing the Financing of Terrorism, 2001.
2. Prevention of Terrorism Act (POTA), 2002, Section 6.
3. Foreign Exchange Management Act, 1999 (FEMA).
4. The Unlawful Activities (Prevention) Act, 1967 (Act 37, 1967).
5. Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act 1976.
6. Foreign Contribution (Regulation) Act, 1976.

International Cooperation

- SAARC Regional Convention on Suppression of Terrorism, 1987.