

Bill No. 138 of 2011

**THE UNLAWFUL ACTIVITIES (PREVENTION)
AMENDMENT BILL, 2011**

A

BILL

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

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

1. (1) This Act may be called the Unlawful Activities (Prevention) Amendment Act, 2011.

Short title
and com-
mencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

37 of 1967. **2.** In section 2 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the principal Act),—

Amendment
of section 2.

(i) after clause (ea), the following clause shall be inserted, namely:—

10 (eb) “person” includes,—

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm,

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and 5

(vii) any agency, office or branch owned or controlled by any person falling within any of the preceding sub-clauses;’;

(ii) for clause (g), the following clause shall be substituted, namely:—

‘(g) “proceeds of terrorism” means,— 10

(i) 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; or

(ii) any property which is being used, or is intended to be used, for a terrorist act or for the purpose of an individual terrorist or a terrorist gang or a terrorist organisation. 15

Explanation.—For the purposes of this Act, it is hereby decalred that the expression “proceeds of terrorism” includes any property intended to be used for terrorism;’; 20

(iii) in clause (h), for the words “instruments in any form including”, the words “instruments in any form including but not limited to” shall be substituted.

Amendment of section 6.

3. In section 6 of the principal Act, in sub-section (I), for the words “two years”, the words “five years” shall be substituted. 25

Amendment of section 15.

4. Section 15 of the principal Act shall be renumbered as sub-section (I) thereof and in sub-section (I) as so renumbered,—

(i) in the opening portion, after the word “security”, the words “,economic security,” shall be inserted;

(ii) in clause (a), after sub-clause (iii), the following sub-clause shall be inserted, namely:— 30

“(iii) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or

(iii) in clause (c), for the words “any other person to do or abstain from doing any act;”, the words “an international or inter-governmental organisation or any other person to do or abstain from doing any act; or” shall be substituted;’; 35

(iv) after clause (c), the following clause shall be inserted, namely:—

“(d) demands any bomb, dynamite or other explosive substances 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 terrorism.”; 40

(v) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

‘*Explanation.*—For the purpose of this section,—

(a) “public functionary” means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary; 45

(b) “high quality counterfeit currency” means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.’;

5 (v) after sub-section (I), the following sub-section shall be inserted, namely:—

“(2) The terrorist act under sub-section (I) includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.”.

5. Section 16A of the principal Act shall be omitted.

Omission of section 16A.

10 6. For section 17 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 17.

15 “17. Whoever, in India or in a foreign country, directly or indirectly, raises or collects funds, whether from a legitimate or illegitimate source, from any person or persons or attempts to provide to, or raises or collects funds for any person or persons, knowing that such funds are likely to be used, in full or in part by such person or persons or by a terrorist organisation or by a terrorist gang or by an individual terrorist 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.

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Punishment for raising funds for terrorist act.

Explanation.—For the purpose of this section,—

(a) participating, organising or directing in any of the acts stated therein shall constitute an offence;

25 (b) raising funds shall include raising or collecting or providing funds through production or smuggling or circulation of counterfeit Indian currency; and

30 (c) raising or collecting or providing funds, in any manner for the benefit of, or, to an individual terrorist, terrorist gang or terrorist organisation for the purpose not specifically covered under section 15 shall also be construed as an offence.”.

7. After section 22 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 22A, 22B and 22C.

35 ‘22A. (I) Where an offence under this Act has been committed by a company, every person (including promoters of the company) who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences by companies.

40 Provided that nothing contained in this sub-section shall render any such person (including promoters) liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

45 (2) Notwithstanding anything contained in sub-section (I), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any promoter, director, manager, secretary or other officer of the company, such promoter, director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.

Offences by societies or trusts.

22B. (1) Where an offence under this Act has been committed by a society or trust, every person (including the promoter of society or settlor of the trust) who at the time the offence was committed was in charge of, and was responsible to, the society or trust for the conduct of the business of the society or the trust, as well as the society or trust, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: 5 10

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a society or trust and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any promoter, director, manager, secretary, trustee or other officer of the society or trust, such promoter, director, manager, secretary, trustee or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. 15 20

Explanation.— For the purpose of this section,—

(a) “society” means any body corporate registered under the Societies Registration Act, 1860 or any other State Act governing the registration of societies; 21 of 1860. 25

(b) “trust” means any body registered under the Indian Trusts Act, 1882 or any other State Act governing the registration of trusts; 2 of 1882.

(c) “director”, in relation to a society or trust, means a member of its governing board other than an *ex officio* member representing the interests of the Central or State Government or the appropriate statutory authority. 30

Punishment for offences by companies, societies or trusts.

22C. Where any offence under the Act has been committed by a company or a society or a trust, as the case may be, every person (including promoter of company or trust or settlor of the trust) who at the time of the offence was either in charge or responsible for the conduct of the business shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable with fine which shall not be less than five crore rupees and which may extend to ten crore rupees.”. 35

Amendment of section 23.

8. In section 23 of the principal Act, in sub-section (1), for the words “chemical substance of warfare, he shall”, the words “chemical substance of warfare or high quality counterfeit Indian currency, he shall” shall be substituted. 40

Amendment of heading of Chapter V.

9. In CHAPTER V of the principal Act, in the heading thereof, after the word “TERRORISM”, the words “OR ANY PROPERTY INTENDED TO BE USED FOR TERRORISM” shall be inserted.

Substitution of new sections for section 24.

10. For section 24 of the principal Act, the following sections shall be substituted, namely:— 45

Reference to proceeds of terrorism to include any property intended to be used for terrorism.

‘24. In this Chapter, unless the context otherwise requires, all references to “proceeds of terrorism” shall include any property intended to be used for terrorism.

24A. (1) No person shall hold or be in possession of any proceeds of terrorism.

Forfeiture of
proceeds of
terrorism.

(2) Proceeds of terrorism, whether held by a terrorist organisation or terrorist gang 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.

(3) Where proceedings have been commenced under this section, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to, or, the value of the proceeds of terrorism involved in the offence.’.

10 **11.** In section 33 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:—

Amendment
of section 33.

15 “(3) Where any person is accused of an offence concerning counterfeit Indian currency, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to the value of the counterfeit Indian currency involved in the offence including the face value of such currency which are not defined to be of high quality, but are part of the common seizure along with the high quality counterfeit Indian currency.

20 (4) Where a person is accused of an offence punishable under Chapter IV or Chapter VI, the court may pass an order directing attachment or forfeiture, as the case may be, of property equivalent to or the value of the proceeds of terrorism involved in the offence.

25 (5) Where any person is accused of an offence under Chapter IV or Chapter VI, it shall be open to the court to pass an order that all or any of the property, movable or immovable or both, belonging to him shall, where the trial under the Act cannot be concluded on account of the death of the accused or being declared a proclaimed offender or for any other reason, be confiscated on the basis of material evidence produced before the court.”.

12. In section 35 of the principal Act,—

Amendment
of section 35.

(a) in sub-section (1),—

30 (i) for the word “order”, the word “notification” shall be substituted;

(ii) for the word “Schedule”, wherever it occurs, the words “First Schedule” shall be substituted;

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

35 “(4) The Central Government may, by notification in the Official Gazette, add to or remove or amend the Second Schedule or Third Schedule and thereupon the Second Schedule or the Third Schedule, as the case may be, shall be deemed to have been amended accordingly.

(5) Every notification issued under sub-section (1) or sub-section (4) shall, as soon as may be after it is issued, be laid before Parliament.”.

40 **13.** In section 40 of the principal Act, in sub-section (1), for *Explanation*, the following *Explanation* shall be substituted, namely:—

Amendment
of section 40.

“*Explanation.*—For the purposes of this sub-section, a reference to provide money or other property includes—

45 (a) of its being given, lent or otherwise made available, whether or not for consideration; or

(b) raising, collecting or providing funds through production or smuggling or circulation of counterfeit Indian currency.”.

Amendment
of Schedule.

14. In the principal Act, the existing Schedule shall be renumbered as the First Schedule thereof, and after the First Schedule as so renumbered, the following Schedules shall be inserted, namely:—

“THE SECOND SCHEDULE

[See section 15(2)]

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(i) Convention for the Suppression of Unlawful Seizure of Aircraft (1970);

(ii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);

(iii) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973);

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(iv) International Convention against the Taking of Hostages (1979);

(v) Convention on the Physical Protection of Nuclear Material (1980);

(vi) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988);

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(vii) Convention for the Suppression of Unlawful Acts against the safety of Maritime Navigation (1988);

(viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988); and

(ix) International Convention for the Suppression of Terrorist Bombings (1997).

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THE THIRD SCHEDULE

[See section 15(1) (d)]

Security features to define high quality counterfeit currency notes

(a) water mark;

(b) latent image; and

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(c) see through registration in the currency notes.”.

STATEMENT OF OBJECTS AND REASONS

The Unlawful Activities (Prevention) Act, 1967 has been enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith. The scope of the Act was widened in 2004 and the terrorist activities were brought within the scope of the said Act.

2. An Inter-Ministerial Group was constituted to evaluate the existing provisions of the Unlawful Activities (Prevention) Act, 1967 and to recommend necessary amendments to the said Act. In addition to the above, the Financial Action Task Force, an Inter-Governmental organisation set-up to devise policies to combat money laundering and terror financing admitted India as its 34th member. On the basis of commitment made by India at the time of admission to the said Financial Action Task Force, various legislative and other legally binding measures were required to be taken on a medium term basis, *i.e.*, by 31st March, 2012. These recommendations, were examined and it is proposed to amend the Unlawful Activities (Prevention) Act, 1967 to make it more effective in prevention of unlawful activities and dealing with terrorist activities.

3. The Unlawful Activities (Prevention) Amendment Bill, 2011, *inter alia*, provides to—

(a) increase the period of declaration of an association as unlawful from two years to five years as specified under section 6;

(b) amend section 15 of the aforesaid Act (which defines Terrorist act) and include therein—

(i) economic security and damage to the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material as the existing provisions of the aforesaid Act do not include within their scope an act done with an intent to threaten or threaten likely to economic security of India and counterfeiting Indian paper currency or coin;

(ii) any international or inter-governmental organisation against which any person indulges in acts described in clause (c) of section 15, since the existing provision does not explicitly mention such international or inter-governmental organisation.

(iii) act of demanding any bomb, dynamite or other explosive substances 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 terrorism;

(c) enlarge the scope of section 17 of the aforesaid Act relating to punishment for raising funds for terrorist act and include within its scope, raising of funds, both from legitimate or illegitimate sources, by a terrorist organization or by terrorist gang or by an individual terrorist;

(d) insert new sections 22A, 22B and 22C in the aforesaid Act to include within its scope, offences by companies societies or trusts and provide punishment therefor;

(e) insert a new section 24 in the aforesaid Act so as to enlarge the scope of proceeds of terrorism to include therein any property intended to be used for terrorism;

(f) insert sub-sections (3) to (5) in section 33 of the aforesaid Act to confer power upon the court by order to provide—

(i) for attachment or forfeiture of property equivalent to the counterfeit Indian currency involved in the offence, including the face value of such currency which are not defined to be of high quality but are part of the common seizure along with the high quality counterfeit Indian currency;

(ii) for attachment or forfeiture of property equivalent to or the value of the proceeds of terrorism involved in the offence;

(iii) for confiscation of movable or immovable property on the basis of the material evidence where the trial cannot be concluded on account of the death of the accused or the accused being declared as a proclaimed offender or any other reason.

4. The proposed amendments to the Unlawful Activities (Prevention) Act, 1967, aim to bring more clarity to the existing legal regime, and remove the deficiencies identified in the implementation of the provisions of the said Act by the Central and State intelligence and investigating agencies.

The Bill seeks to achieve the above objects.

NEW DELHI;
Dated the 15th December, 2011.

P. CHIDAMBARAM.

ANNEXURE

EXTRACTS FROM THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

(37 OF 1967)

* * * * *
2. (I) In this Act, unless the context otherwise requires,— Definitions.

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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 or terrorist gang;

(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, bond, drafts, letter of credit, cash and bank account including fund, however acquired;

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6. (I) Subject to the provisions of sub-section (2), a notification issued under section 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made under section 4, remain in force for a period of two years from the date on which the notification becomes effective. Period of operation and cancellation of notification.

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CHAPTER IV

PUNISHMENT FOR TERRORIST ACTIVITIES

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 bomb, 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 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.

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.

Punishment for making demands of radioactive substances, nuclear devices, etc.

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 raising funds for terrorist act.

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 to 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.

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Enhanced punishment.

23. (1) If any person with intent to aid any terrorist contravenes any provision of, or any rule made under the Explosive 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 weapons or substance 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.

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

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CHAPTER V

FORFEITURE OF PROCEEDS OF TERRORISM

Forfeiture of proceeds of terrorism.

24. (1) No person shall hold or be in possession of any 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.

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CHAPTER VI

TERRORIST ORGANISATION

Amendment of Schedule, etc.

35. (1) The Central Government may, by order, in the Official Gazette,—

(a) add an organisation to the Schedule;

(b) add also an organisation to the Schedule, which is identified as a terrorist organisation in a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations, to combat international terrorism;

(c) remove an organisation from the Schedule;

(d) amend the Schedule in some other way.

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40. (1) A person commits the offence of raising fund for a terrorist organisation, who, with intention to further the activity of a terrorist organisation,—

Offence of raising fund for a terrorist organisation.

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Explanation.—For the purposes of this sub-section, a reference to provide money or other property includes of its being given, lent or otherwise made available, whether or not for consideration.

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

(Shri P. Chidambaram, Minister of Home Affairs)