The Chhattisgarh Special Public Safety Bill, 2005

A Memorandum to the President of India

Peoples Union for Democratic Rights (PUDR)

In its session in December 2005, the Chhattisgarh Legislative Assembly passed the Chhattisgarh Special Public Safety Bill, 2005. The *Chhattisgarh Vishesh Jan Suraksha Vidheyak,* 2005 was introduced by the ruling party (the Bharatiya Janata Party) and some of the members of the main opposition party, the Indian National Congress, claim that the Bill was intentionally passed by the House during a walkout by Congress legislators.[1] The Bill is believed to have been sent to the office of the President of India for assent by the Governor of Chhattisgarh, despite it not being made available for public discussion and debate. Notably there was no detained deliberation on the contents of the Bill in the Chhattisgarh assembly, neither was there any public suggestion or expert committee opinion sought with respect to the implications of this legislation. The little public outrage seen so far has been in the context of the statement that journalists would not be excluded by this legislation.[2]

The first public reference made to such legislation was made on 5 September 2005 by the state Home minister Ramvichar Netam in a public meeting in response to an attack by Naxals that killed 24 jawans. The Minister stated that the Government would shortly clear the 'Chhattisgarh Special Public Safety Ordinance' to combat the growing naxal violence in the state.[3] The need for such legislation is unclear. The Chhattisgarh government already has recourse to the legal provisions available in the Indian Penal Code and the Criminal Procedure Code to combat the violent naxal movement. In fact all the naxal groups are already declared unlawful and banned organisations under the new 2004 amendment to the Unlawful Activities (Prevention) Act, 1967 (hereinafter UAPA).[4]

The present legislation clearly appears to be aimed against the sympathisers of these organisations and also against the political dissent of all kind. Furthermore while the particular attack on the jawans in September may have triggered the public call for such legislation, the Ordinance and subsequent Bill themselves are inspired from and draw heavily on the Madhya Pradesh Special Areas Security Act, 2001.[5]

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[1] See 'Cong to appeal to President', *The Times of India*, 16 February 2006

[2] . See 'Chhattisgarh government adopts law that could put journalists in prison', Reporters Without Borders, 8 September 2005, at http://www.rsf.org/article.php3?id_article=14900

[3] See 'Chhattisgarh moves to ban naxalite outfits', *Hindustan Times*, 5 September 2005, at http://www.hindustantimes.com/2005/Sep/06/5922_1483456,0015002100000000.htm

[4] The UAPA 1967 was drastically strengthened by a central government amendment in 2004 to provide a draconian pan-Indian legislation to combat organisations declared as unlawful and terrorist. This amendment was carried out on the same day that POTA was repealed.

[5] This critique must therefore be read to apply to both the M.P Act and the Chhattisgarh Bill to the extent that the provisions of the two legislations are similar.

Peoples Union for Democratic Right (PUDR) has previously raised objections and concerns with respect to the draconian UAPA.[6] The Chattisgarh Bill however goes well beyond the UAPA in terms of provisions that violate human rights standards as also for its lack of safeguards. This note, while not a comprehensive critique of the Bill, is intended to highlight some of the key areas and provisions of the Bill that PUDR is concerned about:

(A) The Chhattisgarh Special Public Safety Bill, 2005 dramatically broadens the ambit of what is deemed 'unlawful'. In section 2(e) of the Chhattisgarh Bill, "unlawful activities" includes any act (or communication verbally or in writing or by representation) by a person or organisation:

I. Which poses a danger or fear thereof in relation to public order, peace or tranquillity; or
II. Which poses an obstacle to the maintenance of public order, or which *has a tendency* to pose such obstacle; or
III. Which poses, or *has a tendency* to pose an obstacle to the administration of law or to institutions established by law or the administration of their personnel or;
IV. Which intimidates any public servant of the state or central government by use of criminal force or display of criminal force or otherwise; or
V. Which involves the participation in, or advocacy of, acts of violence, terrorism or vandalism, or in other acts that have a tendency to instil fear or apprehension among the public or which involves the use, or the spread or encouragement, of fire-arms, explosives or other devices which destroy the means of communication through the railways or roads; or
VI. Which *encourages* the disobedience of the established law or the institutions set up by law, or which involves such disobedience; or

Furthermore Section 2(e)(VII) provides that the accumulation of large sums of money or large quantities of material goods with a view to furthering any of the above acts would also be an "unlawful act". Similarly Section 2(f) provides, rather loosely, that any organisation engaged in any of the above (whether directly or indirectly) or whose aims are to further, or aid, or assist, or *encourage*, through any medium, device, or other way any unlawful activity would be an "unlawful organisation".

By this definition, the Chhattisgarh Special Public Safety Bill, 2005 adopts broadly the definition of unlawful activity in the M.P Act – going well beyond the definitions of "unlawful activity" and "terrorist act" in Sections 2(o) and 15 respectively of the UAPA.[7] In fact only Section 2(e)(V) compares to the understanding of terror as contained in the UAPA. By broadening the scope of 'unlawful', this Bill ignores the principle of certainty of offences in criminal law. The categorisation of activities as unlawful banks entirely on subjective interpretation. In fact

[6] For a critique of the Act, *see Obsessive Pursuit: The Unlawful Activities Prevention Act, 2004: Reinforcing a draconian law*, PUDR, January 2005: Delhi.
[7] With the exception of sub-clause IV, the remaining section is similar to the definition in the M.P Act.

through the MP Act and this Bill, an entire new layer of imprecise and vague 'unlawful activity' is sought to be introduced – applicable only in the central-Indian states of Madhya Pradesh and Chhattisgarh. This vagueness extends the reach of this Bill to just about any person or organisation, allowing (inherent) potential for misuse and abuse of the legal process – patterns that have been only too obvious with TADA and POTA previously.

The reference to 'tendency' to do certain acts in Section 2(e) II and III also ignores the very basics of criminal law jurisprudence by which *intent* to commit an act cannot be punished and *only* the acts and attempts to commit certain acts can be punished. Furthermore by seeking to bring criminal liability upon persons who the State perceives to have a *tendency* to commit offences, this Bill gives the state arbitrary powers to effectively decide who is "unlawful" irrespective of the person's or organisations acts or intentions.

The reference to 'unlawful activities' being committed by communication – verbal or written or even by representation in Section 2(e) raises concern that this particular provision may be used against journalists and media-persons or any individuals who publish or telecast news or images relating to naxal activities or reporting on state repression. Such vague and broad language only gives unbridled power to State agencies and invariably lead to misuse.

At present propounding and encouraging disobedience of any law is a valuable freedom and an essential ingredient of a democracy. Section 2(e) clause VI makes 'encouragement to disobedience of established law and its institutions' an unlawful activity.

The target of such provisions are often writers, poets or other individuals who may share a political ideology but are not part of the organisations declared as unlawful. Such provisions may also be used against academic and civil society seminars and meetings highlighting state repression and questioning state policies. Such restrictions on the constitutional freedom of speech and expressions cannot be considered reasonable restrictions and are a severe curtailment of democratic rights.

Under Section 8(4) seven years imprisonment is provided for a person who commits any unlawful activity or makes abetment to that or tries to comment or plans to commit shall be imprisonment up to seven years. Given the broad and vague definition of 'unlawful activities' in Section 2(e), this amounts to harsh and severe punishment which fails to distinguish between committing violent acts on the one hand and 'having a tendency' to create danger to public order or encourage disobedience to law and institutions and the other.

(B) The state government can arbitrarily declare any organisation 'unlawful' for a period of one year [Section 3(1) and 3(4)] of and it need not necessarily give grounds of the declaration [Section 3(2)]. Furthermore

organisations that may seek to contest being declared unlawful are given only 15 days in which to make representations before the Advisory Board (Section 4).

Questions also need to be raised with respect to the composition of the Advisory Board. Section 5(1)(b) allows the three-member board to consist of retired High Court judges or even those who are qualified to be a High Court judge. This is a dilution of safeguards as it ensures that the credibility of the advisory board is reduced in as much that senior lawyers sympathetic to the ruling party can be made members of such a board. In contrast even UAPA requires that the Tribunal established must be staffed by sitting High Court judges.

(C) Section 8(1) of the Chhattisgarh Bill provides for up to three years imprisonment for merely being a member of an organisation declared unlawful. In criminal law a person is required to commit a specific act in order to be punishable. Mere membership without participating in other concrete acts is against the basic canons of criminal law.

Furthermore section 8(2) of the Bill also provides for upto two years imprisonment for persons who *not* being members of any unlawful organisations may in any manner even make contributions. Peculiarly the Bill does not define contribution nor does it make a distinction between knowingly and unknowingly contributing. In fact the absence of knowledge and intention, as a pre-requisite to pinning criminal liability is a recurring and dangerous feature found in various provisions of this Bill.

(D) The Bill also provides sweeping powers to the District Magistrate with respect to notifying a place being used for the purpose of unlawful activities and taking occupation thereof and seizure of properties (Sections 9 & 10).

The provision for notification of any place as being used by an 'unlawful organisation' under Section 9(1) does not provide an objective criteria on the basis of which this decision may be made. There is no requirement for any material or evidence to be placed on record prior to the decision to declare the place as 'notified' and there is no opportunity for hearing provided before the formation of the opinion thus violating all tenets of natural justice.

Furthermore there is even no remedy of appeal or review provided against such arbitrary powers and decisions that may be made by the District Magistrate. In fact Section 14 goes even further by providing an 'ouster of jurisdiction' clause and providing that action taken under this Bill by any officer authorised by the government for this purpose or by the District Magistrate shall not be questioned before any court.

Of particular concern is Section 9(2) that allows the District Magistrate to evict persons living in any place notified as being used for activities of 'unlawful organisations'. Similarly Section 10(1) allows the District

Magistrate to seize all movable properties found in notified places. Such seizures may also include agricultural and other trade implements and even livestock thus severely affecting the livelihood of affected persons.

Representations relating to the properties seized are to be made to the District Magistrate himself and even the appeal provided for is to the State govt. Similarly the powers of forfeiture are to be exercised by the State Government (Section 11), but they may be delegated to the District Magistrate [sec. 11(11)].

It is important to note that powers of seizure and forfeiture are ordinarily exercised by the judiciary and transfer of such vast powers to the executive can lead to gross abuse, especially to harass family members of persons accused of being involved in 'unlawful activities'.

PUDR is concerned that the transfer of judicial powers to members of the executive along with ouster of jurisdiction of the courts is dangerous as it provides for vast and unchecked powers. More so given that a large number of people are unable to access constitutional remedies available in the High Court and Supreme Court. PUDR believes that the absence of judicial review and transparency can only lead to increased misuse of this legislation.

Conclusion

In the name of combating violent movements the Chhattisgarh government is bringing in a legislation which would target all peoples movements, civil liberties and democratic rights organisations, other groups challenging the State's human rights record and questioning the State's understanding of development as also its anti-people development policies. This is also reflected in the *Statement of Object and Reasons* of the legislation which states that the Bill is required to be enacted to keep a control on organisations and individuals who engage in disruptive activities and create an atmosphere of terror and fear thereby having an adverse impact on the security and development of the State.

After the passing of the Madhya Pradesh Special Areas Security Act by the state legislature, a large number of peoples' movements and organisations, trade unions etc had issued a press release expressing concern that the enactment was targeting dissenters and even those who opposed the state in a non-violent manner.[8] The results of the M.P Act were soon evident as the law was even enacted in the three districts of Mandla, Dindori and Balaghat though none of these districts had any significant presence of naxal or other armed groups. Instead the use of the MP Act in these districts which were host to a large tribal population and emerging local movements for control of local natural resources was predominantly to harass the local groups and dissuade them from protesting against state policies.[9]

[8] 'Targeting people's organisation in the name of Naxalism', *PUCL Bulletin*, Feb 2001.
[9] *Special 'Security' Legislation and Human Rights,* Amnesty International India, December 2002: Delhi.

By including a clause penalising those not even members of unlawful groups, the Chhattisgarh Bill has even exceeded the M.P Act. The use of the Bill against peaceful protest groups, peoples movements and democratic rights groups is inevitable given the growing discord between state policy and peoples interest. What this Bill will do is give the local administration at the district level huge powers to forfeit monies and seize movable and immovable property without any system of appeal, thereby only increasing corruption and harassment.

The Chhattisgarh Special Public Safety Bill, 2005 is a perfect example of legislation enacted in the garb of security and protection, leading to increased repression and suppression of peoples rights. PUDR calls upon the President of India to reject the Chhattisgarh Special Public Bill, 2005 and refuse to give his assent to the Bill.

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