

SOS v. UOI

1. In the 2003 March session of the Indian Parliament, the Opposing Terrorism Act was introduced. This Act met with widespread opposition not only within the Indian Parliament but throughout the nation especially with the human rights organizations because they thought that the act violated most of the fundamental rights provided in the Indian Constitution. The protagonists of the Act have, however, hailed the legislation on the ground that it has been effective in ensuring the speedy trial of those accused of indulging in or abetting terrorism and curbing terrorism to a great extent.
2. The Opposing Terrorism Act, 2003, was seen as a controversial piece of legislation ever since it was conceived as a weapon against terrorism. The Act is useful in stemming "state-sponsored cross-border terrorism", as envisaged by the then Home Minister Harkat Ram Chaurasia.
3. This Act retains provisions appreciably expanding government investigative authority, especially with respect to the Internet. Those provisions address issues that are complex and implicate fundamental constitutional protections of individual liberty, including the appropriate procedures for interception of information transmitted over the Internet and other rapidly evolving technologies.
4. The OTA, 2003 increases the ability of law enforcement agencies to intercept the communications of a person and to keep such persons under surveillance. The Act says, "An authorized officer shall have the right to intercept the communication of a person..."
The Internal Affairs Ministers by writing designates a security officer as an authorized officer. The scope of the interception and surveillance specified by the law include interception of letters and postal packages of any person; interception of telephone calls,

faxes, emails and other communications made or issued by or addressed to a person; and monitoring meetings of any group of persons. Other provisions include surveillance of the movements and activities of any person; electronic surveillance of any person; access to bank accounts of any person; and searching of the premises of any person. The law also says a magistrate may, on an application made by an investigating officer, issue a warrant for searching material which the Act categorizes as 'excluded or special procedure material'. While giving security officers leeway to use 'reasonable force' while pursuing terrorism suspects, the Act says no police officer or person assisting such an officer is liable to any proceedings for anything they do while hunting down suspected terrorists.

5. It also allowed for the arrest of individuals without a warrant and on reasonable suspicion that they were guilty of an offence under the Act or otherwise "concerned in the commission, preparation or instigation of acts of terrorism". The period of initial detention was up to 48 hours, this could be extended by a maximum of five additional days by the Magistrate. The detainee was exempted from certain provisions of other Acts relating to the arrest procedure and the legal protection of those arrested. This part also allowed for streamlined search procedures of persons or property and checks under the Act on persons at port or other border controls.
6. After the OTA, 2003 had come into power the enforcement agencies have been able to apprehend Bisimi- Bin- Haaden, the right hand man of the notorious Dabba Singh, who had been responsible for a bomb blast in a busy market place in the Capital in 2006. Pursuant to the powers conferred by the OTA, 2003 the police, on 3rd November, 2007 apprehended, Dr. Mohammed Abdul Syed a 63 year old doctor, in New Delhi. Dr. Md.

Abdul Syed, ran a free-aid clinic for the poor and needy in the Capital. He was suspected to be member of Dabba Singh's gang, who provided medical assistance to the gang. Dr. Syed was taken to a 'safe house' in Harayana for interrogation. After seven days he was released as nothing concrete could be ascertained and also the statutory period of seven days had expired.

7. On 15th November, 2007 another bomb blast took place in a School in the Capital. Dr. Mohammed Abdul Syed was shot in the shoulder as part of an anti-terror raid, as he was suspect, re-igniting the debate on the use of force to counter potential security threats, was returning home that evening from his clinic when he was shot. He succumbed to his injuries a few days later in the hospital where he had been admitted.
8. The case, later it was found, was of mistaken identity. Two days later the enforcement agencies were successful in nabbing the real culprit. A Dr. M. Y. Sinha, who had been aiding Dabba Singh and his gang members, and through him Dabba Singh had been put behind the bars.
9. The Centre pleased with the consistency and the success of the Act, sought to insert it in the Ninth Schedule. However this move was fiercely opposed by the opposition and many of the NGO's.
10. An NGO named, Save Our Soul, which worked to free the innocent who had been wrongfully implicated as terrorists, alarmed at the rate of misuse of the draconian powers, by the enforcement agency, under OTA, filed a PIL, in the Supreme Court drawing the attention of the court to the rising number of encounters and unlawful detentions in the so called safe houses where the accused were brutally tortured during interrogation.

11. The Petitioner prayed that these deaths, for example the encounter of Dr. Syed, were due to mistaken identity and the OTA, 2003 be struck down as unconstitutional. Further it was deemed that the OTA did not pass 'the rights test' as it snatched the basic rights of life, liberty, privacy, etc, without giving a chance of fair hearing. However, the Advocate General contended that the OTA, 2003 was constitutional; as the main objective of the Act was safeguarding the public interest; prevention of the violation of the fundamental and other human rights and freedom of any person from terrorism; prevention or detecting the commission of any offence; and safeguarding the national economy from terrorism, and so it passed the 'essence of rights test'.
13. The PIL has been set for hearing. The Mooters shall prepare a brief for the Petitioner / NGO namely Save Our Soul and also the Respondent/ UOI.