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PRELIMINARY COMMENTS ON THE CHHATTISGARH SPECIAL PUBLIC SECURITY ACT 2005

The Commonwealth Human Rights Initiative (CHRI), expresses its deep reservations to the Chhattisgarh Special Public Security Act 2005. After close analysis, we believe that it may become a potential instrument to throttle the right to free speech, legitimate dissent, and trample the fundamental rights enshrined in Articles 14, 19 and 21 of the Constitution. Features of the Act also imperil the existence of civil society organisations, which are an integral part of Chhattisgarh's democratic life and whose existence is vital to development and peace-building in the state.

We are aware that the State and the society are facing grave problems of violence and the government has a duty to maintain public safety and security. However, the response to insurgency must be conditioned by the imperative to uphold constitutional rights. In *Maneka Gandhi's case* (1978 SCC 248) the Supreme Court emphasised that the procedure affecting the rights of any person must be "reasonable, fair and just." Indeed a fine balance must be struck between the need for security and the protection of liberty. However, in seeking to maintain public order, the Act intrudes into the realm of personal liberty and democratic freedoms. *We illustrate below, ways in which the Act breaches the spirit of the Constitution of India:*

Draconian punishment for activities declared "unlawful"

Draconian punishment for up to seven years is provided for committing an "unlawful" activity, the definition of which is imprecise and loose to encompass everyday pursuits such as committing an act, uttering words, writing or making visual representations that may "create risk or danger" for public order, peace and public tranquillity or create an impediment in the administration of law or institutions. The present definition of "unlawful activities" imperils free exercise of fundamental freedoms set out under Article 19 of the Constitution and illustratively it appears to restrict the right to hold public meetings; organise public protests; and oppose government policies through the media.

Wide and unbridled governmental powers to declare organisations unlawful

Any organisation can be declared "unlawful" by the state government on the grounds that it is involved in committing any "unlawful activity" or if its objective is to encourage, assist or induce the same through any means. This may be done by issuing a notification that specifies the reasons for doing so. However, the stipulation to disclose reasons may be dispensed with in "public interest". This clearly violates the principle that reasons must be given by the government before taking any action that affects citizens' rights. Once an organisation is declared unlawful, its funds and premises can be seized. The existence of such wide and unbridled powers represents a serious threat to civil society from expressing legitimate dissent against government policies.

Punishment for mere membership or participation

The Act prescribes punishment with imprisonment for up to three years merely for being a member of an organisation that has been declared “unlawful.” A person is liable to punishment even if s/he were a member, participated in its meetings or received contributions on its behalf before the organisation was declared unlawful. This breaches the well established principle of non-retroactivity of laws, which holds that a person cannot be punished for an act that was not illegal at the time it was committed, overlooking Article 21 of the Constitution that guarantees that no one shall be deprived of life or liberty except according to the procedure established by law.

Punishment for involuntary contributors, protectors

The Act prescribes punishment with up to two years imprisonment for making a contribution to an unlawful organisation or for protecting a member of an unlawful organisation. This is a real danger that blanket application of this provision may result in undue harassment of persons coerced by insurgent groups to provide sustenance and shelter to them.

We urge the Chhattisgarh Vidhan Sabha to repeal this anti-people Act at the earliest.

P.S Please also find attached relevant portions of the Prime Minister’s Speech to the Conference of Chief Ministers in April 2005

Relevant Excerpts from Prime Minister, Dr Manmohan Singh's Speech to the Conference of Chief Ministers, April 2005

At Chief Ministers' Conference in April 2005, the Prime Minister, Dr Manmohan Singh stressed that "a democratic government has to make a distinction between the genuine and legitimate expression of dissent and disaffection and the manifestations of anti-national, anti-social and anti-people threats to our democratic way of life." He rightly pointed out that while "our citizens are free to choose the particular brand of politics they wish to follow, they have the freedom to take recourse to collective action to achieve the social, political or economic changes that they desire, but *no one is either permitted or expected to resort to violence to achieve these ends.*" At the same time, the PM also recognised that "*Extremism is not merely a Law and Order issue....* Development, or rather the lack of it, often has a critical bearing, as do exploitation and iniquitous socio-political circumstances.... There may be other more complex issues like language, ethnicity, caste or religion or cultural rights... all these facets have to be taken into account in evolving a concerted and effective strategy to counter these challenges." The Prime Minister asserted that "*We need to be firm, but not transgress the limits of human rights or dignity. We must prevent our society from being brutalised.* However, legitimate needs and aspirations, even if set out in procedurally or presentationally inappropriate terms, should be examined with care and with sympathy because we are dealing after all, with our own people, even though they may have strayed from the path of rectitude."