

THE INTELLIGENCE SERVICES (POWERS AND REGULATION) BILL, 2011

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Bill No. 23 of 2011

THE INTELLIGENCE SERVICES (POWERS AND REGULATION)
BILL, 2011

By

SHRI MANISH TEWARI, M.P.

A

BILL

to regulate the manner of the functioning and exercise of powers of Indian Intelligence Agencies within and beyond the territory of India and to provide for the coordination, control and oversight of such agencies.

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

PART I

PRELIMINARY

5 2011. **1.** (1) This Act may be called the Intelligence Services (Powers and Regulation) Bill,

Short title,
extent,
application and
commence-
ment.

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

(3) This Act extends to the whole of India and applies to:—

- (a) all citizens of India, inside and outside India;
- (b) persons in the service of the Government wherever they may be; and 5
- (c) persons on ships and aircrafts registered in India wherever they may be.

Definitions.

2. In this Act, unless the context otherwise requires,—

(i) "Committee" means the National Intelligence and Security Oversight Committee established under section 12;

(ii) "Intelligence Bureau" means the Intelligence Bureau constituted under section 4; 10

(iii) "Indian territory" shall have the same meaning as is ascribed to the territory of India under article 1 of the Constitution;

(iv) "law enforcement agency" means and includes—

- (a) any Government department; and 15
- (b) any other person charged with the duty of investigating offences or charging offenders;

(v) "Member of the Tribunal" means the members appointed under section 24;

(vi) "National Technical Research Organisation" means the National Technical Research Organisation constituted under section 6; 20

(vii) "national security" includes the sovereignty, territorial integrity, economic stability and upholding of the Constitution;

(viii) "prescribed" means prescribed by rules made under this Act;

(ix) "Research and Analysis Wing" means the Research and Analysis Wing constituted under section 3; 25

(x) "threats to national security" includes:—

- (a) terrorist acts, including international terrorism;
- (b) espionage directed against the country or otherwise detrimental to the security of the country;
- (c) sabotage directed against the vital national infrastructure of the country or otherwise directed against the country; 30
- (d) organized crime directed against the country or otherwise detrimental to the security of the country;
- (e) drug, arms and human trafficking directed against the country or otherwise detrimental to the security of the country; 35
- (f) illegal international proliferation of weapons of mass destruction or the components thereof as well as materials and tools required for their production;
- (g) illegal trafficking of internationally controlled products and technologies; and
- (h) organized acts of violence or intimidation against ethnic or religious groups within the country; 40

(xi) "terrorist act" shall have the same meaning as ascribed to it in the Unlawful Activities (Prevention) Act, 1967; and 37 of 1967.

(xii) "Tribunal" means the National Investigation Tribunal established under section 23.

PART II

THE RESEARCH AND ANALYSIS WING

5 **3. (1) There shall be constituted a Research and Analysis Wing (hereinafter referred to as the R&AW) which shall function under the control of the Prime Minister.** Research and Analysis Wing.

(2) The functions of the R&AW shall be exercisable:—

(a) in the interests of National security, with particular reference to the defence, security strategic, economic and foreign policies of the Union of India; or

10 (b) in aid of the neutralization of threats from external sources.

(3) The day-to-day operation of the R&AW shall be vested in an officer not below the rank of a Secretary to the Government of India who shall be appointed by the Prime Minister and who shall hold office for a period of two years or till he attains the age of sixty-two years, whichever is later.

15 (4) It shall be the duty of the head of the R&AW to ensure that—

(a) no information is collected and used by the R&AW except what is necessary for discharge of its functions and that no information under their custody is disclosed by it except so far as necessary for the proper and efficacious conduct of functions assigned to it;

20 (b) the R&AW does not take any action that furthers the interests of any political party or coalition of political parties or other such interest groups; and

(c) there are appropriate arrangements for coordination with the IB, the NTRO, Central Para-Military Organisations and other law enforcement agencies for proper implementation of the mandate of this Act.

25 (5) The head of the R&AW shall submit a bi-annual report on the working of the R&AW, including of its accounts, to the Prime Minister and may, at any time, report to the Prime Minister on any matter relating to its work.

(6) The head of the R&AW shall not be eligible for reappointment to any post under the State except as an Advisor to the Government of India.

30 PART III

THE INTELLIGENCE BUREAU

4. (1) There shall be constituted an Intelligence Bureau (hereinafter referred to as the IB) which shall function under the control of the Prime Minister. Intelligence Bureau.

35 (2) It shall be the duty of the IB to work for national security in the context of internal conflict and, in particular, provide protection against threats from espionage, terrorist acts organized by other countries within the territory of India with the help of Indian nationals or residents and from actions intended to subvert the Constitution of India by violent means.

(3) It shall perform the following functions:—

(i) collection and management of intelligence within the country;

40 (ii) safeguarding the economic well-being of the Union of India against threats posed by the actions or intentions of any person whether Indian national or otherwise within the country; and

(iii) acting in aid to the Central and State police agencies including Para-Military Organisations and other law enforcement agencies.

Director of the
IB.

5. (1) The day-to-day control of the IB shall be vested in a Director who shall be appointed by the Prime Minister and shall hold office for a period of two years or till he attains the age of sixty-two years, whichever is earlier.

(2) It shall be the duty of the Director to ensure that—

(a) no information is collected and used by the IB except what is necessary for discharge of its functions and that no information under their custody is disclosed by it except so far as necessary for the proper and efficacious conduct of functions assigned to it; 5

(b) the IB does not take any action that furthers the interests of any political party or coalition of political parties or other such interest groups; and 10

(c) there are appropriate arrangements for coordination with the R&AW, the NTRO, Central Para-Military Organisations and other law enforcement agencies for proper implementation of the mandate of this Act.

(3) The Director shall submit a bi-annual report on the working of the IB, including of its accounts, to the Prime Minister and may, at any time, report to the Prime Minister on any matter relating to its work. 15

(4) The Director shall not be eligible for reappointment to any post under the State except as an Advisor to the Government of India.

PARTIV

THE NATIONAL TECHNICAL RESEARCH ORGANISATION

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National
Technical
Research
Organisation.

6. (1) There shall be constituted a National Technical Research Organisation (hereinafter referred to as the NTRO) which shall function under the control of the Prime Minister.

(2) It shall perform the following functions—

(a) to monitor and interfere with all forms of communications using such technical equipments as it may think fit within and beyond the territorial boundaries of India and also monitoring the uses of such equipments; 25

(b) to collate and provide information so collected in such form and to such agencies as may be prescribed; and

(c) to provide advice and assistance about—

(i) languages including technical terminology used for technical matters, 30
and

(ii) cryptography and other matters relating to the protection of classified information and other such material,

to the armed forces of the Union of India, to the Central Government or to any other organisation which is determined for the purposes to this section in such manner as may be specified by the Prime Minister. 35

(3) The function referred to in sub-section (2)(a) above shall be exercisable only—

(a) in the interests of national security, with particular reference to the fields of defence, internal security and furtherance of foreign policy of the country; or

(b) in the interests of economic well-being of the country in relation to the actions or intentions of any person whether Indian national or otherwise, inside or outside the Indian territory; or 40

(c) in support of prevention, detection, interdiction or investigation of such crimes as may be assigned to it by the Prime Minister.

(4) In this Act, the expression "NTRO" refers to the National Technical Research Organisation and to any unit or part of a unit of the armed forces of the Union of India, which is for the time being, required by the Prime Minister to assist the NTRO in carrying out its functions. 45

7. (1) The day-to-day operation of the NTRO shall be vested in a Chairman who shall be appointed by the Prime Minister and who shall hold office for a period of two years or attaining the age of sixty-two years, whichever is earlier. Chairman of the NTRO.

(2) It shall be the duty of the Chairman to ensure that—

5 (a) no information is obtained by NTRO except when it is necessary for the discharge of its functions under the Act and that no information is disclosed to any person or agency except when it is necessary for discharge of its functions or for the purpose of any matter connected with ensuring the security, stability and sovereignty of the country;

10 (b) it does not take any action that furthers only the interests of any political party or similar interest group.

(3) The Chairman shall submit a bi-annual report on the working of the NTRO, including of its accounts, to the Prime Minister and may, at any time, report to the Prime Minister on any matter relating to its work.

15 (4) The Chairman shall not be eligible for reappointment to any post under the State except as an Advisor to the Government of India.

PART V

AUTHORISATION AND PROCEDURES

20 **8. (1) No entry on any property or interference with any form of communication including wireless telegraphy under the Act shall be lawful unless it is authorised by a warrant issued by the authority designated for the purpose by the Central Government:** Authorisation of certain actions for the R&AW, the IB and the NTRO.

Provided that the authority so designated shall not be an officer below the rank of a Secretary to the Government of India (hereinafter referred to as the Designated Authority).

25 (2) The Designated Authority may, on an application made by the IB or the R&AW or the NTRO, as the case may be, issue a warrant under this section authorising the taking of such action as is specified in the warrant in respect of any property or in respect of all forms of communication including wireless telegraphy, if the Designated Authority—

(a) deems it necessary for the action to be taken on the ground that it is likely to be of substantial value in assisting, as the case may be,—

30 (i) the R&AW in carrying out any of its functions under section 3; or

(ii) the IB in carrying out any of its functions under section 4; or

(iii) the NTRO in carrying out any function which falls within section 6;

(b) is satisfied that the objective cannot reasonably be achieved by any other means; and

35 (c) is satisfied that adequate arrangements are in force with respect to the disclosure of information obtained under this section and that any information obtained under the warrant shall be subject to those arrangements.

(3) A warrant authorising action for prevention or detection or interdiction of any terrorist act may also include action outside the country in such manner as may be prescribed.

40 (4) The IB may make an application under sub-section (2) for a warrant to be issued authorising the IB (or a person acting on its behalf) to take such action as is specified in the warrant on behalf of the R&AW or the NTRO and, where such a warrant is issued, the functions of IB shall include the carrying out of the action so specified, whether or not it would otherwise be within its functions :

Provided that no application shall be made for a warrant by virtue of sub-section (4) above except where the action proposed to be authorised by the warrant—

(a) is an action in respect of which the R&AW or the NTRO, as the case may be, could make such an application; or

(b) is to be taken otherwise than in support of preservation of national security. 5

Warrants,
procedure,
duration for
the R&AW,
the IB and
the NTRO.

9. (1) A warrant shall not be issued except—

(a) under the hand of the Designated Authority; or

(b) in an urgent case where the Prime Minister has expressly authorised its issue and a statement of that fact is endorsed on it, under the hand of the Director of IB or the Secretary of the R&AW or the Chairman of the NTRO, as the case may be. 10

(2) A warrant shall, unless renewed under sub-section (3), cease to have effect,—

(a) if the warrant had been issued under the hand of the Designated Authority, at the expiry of the period of three months from the date on which it was issued; and

(b) in any other case, at the expiry of the period ending with the second working day following the day on which it was issued. 15

(3) If, at any time before the day on which a warrant would cease to have effect, the Designated Authority considers it necessary for the warrant to continue to have effect for the purpose for which it was issued, he may, by an instrument, under his hand, renew it for a further period of three months beginning with the day it would otherwise have ceased to be effective. 20

(4) The Designated Authority may cancel a warrant if he is satisfied that the action authorised by it is no longer necessary.

Authorisation
of the acts
outside the
Indian
territory for
the R&AW
and the
NTRO.

10. (1) If, except in so far as provided for in this Part, a person is liable to the Union of India for any act done outside the Indian territory, he shall not be so liable if the act is one which is authorised to be done by virtue of an authorisation given by the Designated Authority under this section. 25

(2) the Designated Authority shall not give an authorisation under this section unless he is satisfied—

(a) that any act which may be done in reliance on the authorisation or, as the case may be, the operation in the course of which the acts may be done will be necessary for the proper discharge of a function of the R&AW and the NTRO, as the case may be; and 30

(b) that satisfactory arrangements are in force to ensure—

(i) that nothing is done in reliance on the authorisation beyond what is necessary for the proper discharge of a function of the R&AW or the NTRO, as the case may be; 35

(ii) that, in so far as any act may be done in reliance on the authorisation, their nature and likely consequences will be reasonable, having regard to the purposes for which they are carried out; and

(c) that satisfactory arrangements are in force with respect to the disclosure of information obtained by virtue of this section and that any information obtained by virtue of anything done in reliance on the authorisation will be subject to those arrangements. 40

(3) Without prejudice to the generality of the power of the Designated Authority to give an authorisation under this section, such an authorisation— 45

(a) may relate to a particular act or acts, of a description specified in the authorisation or to acts undertaken in the course of an operation so specified;

(b) may be limited to a particular person or persons of a description so specified; and

(c) may be subject to such conditions as may be specified.

(4) An authorization shall not be given under this section except—

5 (a) under the hand of the designated authority; or

(b) in an urgent case where the Prime Minister has expressly authorized its issue and a statement of that fact is endorsed on it, under the hand of the Director of IB or the head of the R&AW or the Chairman of the NTRO, as the case may be.

10 (5) An authorization shall, unless renewed under sub-section (6) below, cease to have effect—

(a) if the authorization was given under the hand of the Designated Authority, at the expiry of the period of three months from the date of its issue;

(b) in any other case, at the expiry of the period ending with the second working day following the day on which it was given.

15 (6) If, at any time before the day on which a warrant would cease to have effect, the Designated Authority considers it necessary for the authorization to continue to have effect for the purpose for which it was issued, he may, by an instrument, under his hand, renew it for a further period of three months beginning with the day it would otherwise have ceased to be effective.

20 (7) The Designated Authority shall cancel an authorization if he is satisfied that any act authorized by it is no longer necessary.

11. (1) Any information obtained by the R&AW, the IB and the NTRO without a specific warrant or authorization under section 9 or 10, shall not be used to take action against individuals to whom this information relates to. Unauthorised information.

25 (2) Such information obtained without specific warrant may only be used for the limited purpose of authorizing fresh warrants.

(3) The R&AW, the IB and the NTRO, as the case may be, shall apply for fresh warrants in accordance with section 9 and 10 herein within forty-eight hours of obtaining any such information in the event of any such information being relevant to the discharge of functions and duties of the R&AW, the IB and the NTRO, as applicable.

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PART VI

THE NATIONAL INTELLIGENCE AND SECURITY OVERSIGHT COMMITTEE

35 **12. (1) There shall be constituted a Committee, to be known as the National Intelligence and Security Oversight Committee (hereinafter referred to as the Committee) to examine the administration and compliance of policy laid down under this Act.** Establishment of National Intelligence and Security Oversight Committee.

(2) The Committee shall, unless it is necessary to perform the functions assigned to it under the Act, not go into the operational aspects and sources of intelligence of the functioning of the R&AW, the IB and the NTRO, as the case may be.

(3) The Committee shall consist of the following:—

40 (a) the Chairman of the Council of States, *Chairperson*;

(b) the Speaker of the House of the People, *Member*;

(c) the Prime Minister, *Member*;

(d) the Minister of Home Affairs, *Member*;

(e) the Leader of Opposition in the House of the People, *Member*;

45 (f) the Leader of Opposition in the Council of States, *Member*; and

(g) one member each from the House of the People and the Council of States to be nominated by the presiding officers of the respective Houses, as members.

(4) The Cabinet Secretary shall be the Secretary to the Committee, *ex-officio*.

(5) The Committee shall submit an annual report on their functioning to the Prime Minister and may at any time report to him on any matter relating to discharge of those functions. 5

(6) If it appears to the Prime Minister, after consultation with the Committee, that the publication of any matter in a report would be prejudicial to the discharge of the functions of the R&AW, the IB or the NTRO, the Prime Minister may exclude that matter from the annual report. 10

(7) The Prime Minister shall lay on the table of each House of Parliament a copy of each annual report submitted by the Committee under sub-section (5) together with a statement as to whether any matter has been excluded.

Tenure of Office.

13. (1) Subject to the provisions of this section, a member of the Committee shall hold office for the duration of his membership of the House to which he has been elected. 15

(2) A member of the Committee shall vacate office—

(a) if he ceases to be the Speaker of the House of the People or a member of the House of the People;

(b) if he ceases to be the Chairperson of the Council of States or a member of the Council of States; 20

(c) if he ceases to be the Leader of Opposition in the Council of States or the House of the People;

(d) by resigning at any time through a notice to the Chairperson of the Committee.

Procedure.

14. (1) Subject to the provisions of this section, the Committee may determine their own procedure. 25

(2) If on any matter there is an equality of voting among the members of the Committee, the Chairperson shall have and exercise the casting vote.

(3) The Chairperson may appoint one of the members of the Committee to act, in his absence, as the Chairman at any meeting of the Committee, but the person acting as such shall not have a casting vote. 30

(4) The quorum for a sitting of the Committee shall be three.

Access to information.

15. (1) If the Director of the IB or the head of the R&AW or the Chairman of the NTRO is asked by the Committee to disclose any information under their custody, then as to the whole or part of the information which is sought, he shall either—

(a) arrange for it to be made available to the Committee subject to and in accordance with arrangements approved by the Cabinet Secretary; or 35

(b) inform the Committee that it cannot be disclosed because—

(i) it is sensitive information which, in his opinion, may not be made available; or

(ii) the Prime Minister has certified that it should not be disclosed. 40

(2) The fact that any particular information is sensitive shall not prevent its disclosure, if the Director, IB or the head of the R&AW or the Chairman, NTRO, as the case may be, consider it safe to disclose.

(3) Any information which has not been disclosed to the Committee on the ground that it is a sensitive information, shall be disclosed to them if the Cabinet Secretary certifies in the prescribed manner that it is fit to be disclosed in public interest. 45

(4) The disclosure of information to the Committee in accordance with the provisions of this section shall be regarded for the purposes of this Act as necessary for the proper discharge of the functions of the R&AW, the IB and the NTRO.

Explanation. In this section the expression 'sensitive information' shall include—

- 5 (a) an information which might lead to the identification of, or provide details of the sources of information or operational methods used by the R&AW, the IB and the NTRO;
- (b) information about specific operations which have been, are being or are proposed to be undertaken in pursuance of any of the functions of those bodies; and
- 10 (c) information provided by the Government or an agency of any other country which does not consent to the disclosure of the information.

PART VII

INTELLIGENCE OMBUDSMAN

15 **16. (1) The Central Government shall, in consultation with the National Intelligence and Security Oversight Committee, appoint an Intelligence Ombudsman (hereinafter referred to as the "Ombudsman") from amongst persons having special knowledge in the field of intelligence to address the grievance of the members of staff and officers of the R&AW, the IB and the NTRO:**

Intelligence
Ombudsman.

20 **Provided that no person shall be appointed as an Ombudsman who has served as the head of the R&AW; the Director, IB or the Chairman, NTRO.**

(2) The administrative control of the Ombudsman shall be vested in the Cabinet Secretary.

(3) The Ombudsman shall be appointed for a tenure of three years from the date of his appointment or till he attains the age of sixty-eight years, whichever is earlier.

25 (4) The Ombudsman shall perform the following functions:—

(i) resolve grievances of members of staff or officers of the R&AW, the IB and the NTRO, as the case may be;

30 (ii) suggest changes in the administrative practices of the R&AW, the IB and the NTRO, as the case may be, to mitigate the problems of the members of staff or officers of the R&AW, the IB and the NTRO, as the case may be.

(5) Not later than thirty-first day of March of each calendar year, the Ombudsman shall prepare and submit a report of its functioning to the Prime Minister.

(6) Without prejudice to the generality of the foregoing provision, the report shall contain—

35 (a) the recommendations of the Ombudsman for improving functioning of the R&AW, the IB and the NTRO;

(b) a summary of the problems of the members of staff or officers with the R&AW, the IB and the NTRO, as the case may be, including a description of the nature of such problems;

40 (c) a summary of,—

(i) action taken in matters enumerated in clauses (a) and (b);

(ii) the result of such action;

(iii) the matters where no action was taken and the period for which the matter has been pending;

(iv) the reasons why no action was taken alongwith the persons responsible for such non-action;

(v) the recommendations with a view to solve the problems of the members of the R&AW, the IB and the NTRO; and

(d) such other information as the Ombudsman may deem necessary. 5

(7) The Ombudsman may consult the heads of the R&AW, the IB and the NTRO, as the case may be, in carrying out the Ombudsman's responsibilities under this section.

Procedure.

17. (1) The orders of the Ombudsman in relation to any complaint by a member of staff or officer of the R&AW, the IB and the NTRO, as the case may be, shall be implemented by the Government in such manner as it may specify. 10

(2) It shall be the duty of every member of the R&AW, the IB or the NTRO to disclose or to give to the Ombudsman such documents or information as may be required for the purpose of enabling him to carry out his functions under this Act.

(3) The Ombudsman shall carry out his functions in such a way as to ensure that no document or information disclosed or given to him by any person is disclosed without the consent of such person to any complainant or to any person holding office under the Union of India or to any other person; and accordingly the Ombudsman shall not, except in its reports under sub-section (1) of section 22, give any reasons for a determination notified by them to a complainant. 15

(4) Subject to sub-section (3), the Ombudsman may determine his own procedure. 20

Complaints to the Ombudsman.

18. Any complaint by a member or ex-member of the IB, the R&AW or the NTRO, as the case may be, in relation to his service and, unless the Ombudsman consider that the complaint is frivolous, vexatious or without any valid basis, shall be dealt with accordance with this Part.

References and investigations by the Ombudsman.

19. (1) After the submission of the complaint, if the Ombudsman is *prima facie* satisfied, a copy of such complaint shall be forwarded to the persons heading the IB, the R&AW and the NTRO, as the case may be, for their reply and comments on the allegations or grievances reported in the application by the complainant. 25

(2) The R&AW, the IB and the NTRO shall submit their replies or comments, as the case may be, within three weeks of receipt of the complaint from the Ombudsman. 30

(3) The Ombudsman shall give its decision within forty-five days of the receipt of the complaint.

Disposal of the complaints.

20. Where the Ombudsman determines that the R&AW, the IB and the NTRO, as the case may be, did not have reasonable grounds for their actions or inactions, they shall—

(a) give notice to the complainant that they have made a determination in his favour; and 35

(b) send a recommendation of their findings to the persons heading the R&AW, the IB and the NTRO, as the case may be.

Remedies.

21. Where the Ombudsman passes a finding or an order, the Ombudsman may do all or any of the following, namely,— 40

(a) **direct that any action by which the complainant is so aggrieved be reversed or if the act cannot be reversed, give such relief including compensation to the complainant as it may determine;**

(b) direct the persons heading the R&AW, the IB or the NTRO, as the case may be, to pay to the complainant such sums by way of compensation as may be specified by the Ombudsman.

5 **22.** The Director of IB or the head of the R&AW or the Chairman of the NTRO, as the case may be, shall establish procedures, requiring a formal response to all complaints received from the Ombudsman and comply with the findings, orders or recommendations of the Ombudsman within three weeks of the receipt of the order of the Ombudsman.

R&AW, the IB and NTRO to comply with the orders of the Ombudsman.

PART VIII

NATIONAL INTELLIGENCE TRIBUNAL

10 **23.** The Central Government shall, by notification in the Official Gazette, establish a tribunal to be known as the National Intelligence Tribunal (hereinafter referred to as the Tribunal), for the purpose of investigating complaints against the R&AW, the IB or the NTRO.

National Intelligence Tribunal.

24. The Tribunal shall consist of:—

15 **(i) a Chairperson who shall be a sitting or a retired judge of the Supreme Court, to be appointed by the Central Government in consultation with the Chief Justice of the Supreme Court;**

Constitution of the Tribunal.

(ii) one member who is or has been a judge of the High Court to be appointed by the Central Government in consultation with the Chief Justice of the High Court concerned; and

20

(iii) one member who shall be appointed from amongst persons who have been the head of the IB or the R&AW, to be appointed from the two services alternately.

25. The Chairperson or members of the Tribunal shall hold office for a term of five years from the date on which they enter upon office and shall not be eligible for reappointment.

25 Term of Office.

26. (1) The Chairperson or a member of the Tribunal may, by notice in writing under his hand, addressed to the President, resign his office:

Resignation and removal.

30 Provided that the Chairperson or a member shall, unless permitted by the President to relinquish office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his terms of office, whichever is earlier.

35 **(2)** The Chairperson or a member other than a sitting Judge of the Supreme Court or a High Court, as the case may be, of the Tribunal shall not be removed from office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a sitting Judge of the Supreme Court in which such Chairperson or other member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

40 **(3)** The Central Government may, by rules to be prescribed, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson or other members referred to in sub-section (2).

27. (1) The Chairperson shall have the power to review the exercise by the State of its powers of issuing authorizations or warrants under sections 8, 9, 10 and 11 of this Act.

Functions of the Chairperson.

(2) The Tribunal shall submit a bi-annual report on their functioning to the Prime Minister.

(3) The Prime Minister shall cause to lay before each House of Parliament a copy of each bi-annual report submitted by the Committee under sub-section (2) together with a statement as to whether any matter has been excluded from that report in pursuance of sub-section (4).

(4) If it appears to the Prime Minister, after consultation with the Chairman of the Tribunal, that the publication of any matter in a report would be prejudicial to the discharge of the functions of the R&AW, the IB or the NTRO, as the case may be, he may exclude that matter from the bi-annual report laid before each House of Parliament.

(5) The Prime Minister may, in consultation with the Chairperson provide the Tribunal with such staff and infrastructure facilities as the Chairperson thinks necessary for the discharge of his functions.

Salaries and expenses.

28. The Chairperson and members shall hold office in accordance with the terms of their appointment and they shall be paid such salary and allowances equivalent to their last drawn salary and allowances.

Financial and Administrative Powers of the Chairperson.

29. The Chairperson shall exercise such financial and administrative powers over the Tribunal as may be prescribed:

Provided that the Chairperson shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other member or any officer of the Tribunal, subject to the conditions that such member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

Staff of the Tribunal.

30. (1) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Tribunal in the discharge of its functions and provide the tribunal with such officer and other employees as it may think fit.

(2) The salaries and allowances payable to, and the other terms and conditions of service of the officers and other employees of the Tribunal shall be such as may be prescribed.

(3) The officers and other employees of the Tribunal shall discharge their functions under the general superintendence of the Chairperson.

Jurisdiction, powers and authority of the Tribunal.

31. (1) It shall be the duty of the Government or any of its agencies to implement the orders of the tribunal.

(2) It shall be the duty of the R&AW, the IB or the NTRO to disclose or give to the Tribunal such documents or information as it may require for the purpose of carrying out its functions under this Act.

(3) The Tribunal shall carry out its functions under this Act in such a way as to ensure that no document, or information disclosed or given to the Tribunal by any person is disclosed without the consent of such person to the complainant or to any person holding office under the Union of India or to any other person; and accordingly the Tribunal may not give any reason for their decision notified to a complainant.

(4) Subject to sub-section (3) the Tribunal may determine its own procedure.

(5) For the purpose of investigating and adjudicating a complaint under this Act, the Tribunal shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;

- (e) issuing commissions for the examination of witnesses or documents; and
- (f) reviewing its decisions.

(6) The Tribunal shall have the power to decide both questions of interpretation of provisions of this Act and facts that may be raised before it.

5 **32.** (1) Any person may complain to the Tribunal if he is aggrieved by anything which he believes the R&AW or the IB or the NTRO, as the case may be, has wrongfully done in relation to him or to his property. Investigation of complaints.

(2) On receipt of a complaint by any person aggrieved by the actions of the R&AW or the IB or the NTRO, as the case may be, if the Tribunal, after such inquiry, as it may deem necessary, is satisfied that it is fit for adjudication by it, admit such complaint; but where the Tribunal is not satisfied, it may dismiss the application after recording its reasons in writing.

(3) In so far as the complaint alleges that anything has been done wrongfully in relation to any property of the complainant, the Tribunal shall investigate—

15 (a) whether the R&AW or the IB or the NTRO, as the case may be, had obtained or provided information or performed any other tasks in relation to the submissions of the complainant; and

(b) if so, whether the R&AW or the IB or the NTRO, as the case may be, had reasonable grounds for taking that action.

(4) If, in the course of the investigation of a complaint by the Tribunal, if the Tribunal consider it necessary to establish whether a warrant and/or an authorization was issued/ given to the R&AW or the IB or the NTRO, as the case may be, under sections 9 and/or 11 of this Act for the commission of any act, it shall refer so much of the complaint as relates to the doing of that act to the Designated Authority for validation of the actions.

25 (5) If the Tribunals hold that a valid warrant was issued or a valid authorization was given, it shall determine whether the Designated Authority was acting properly in issuing or renewing the warrant or, as the case may be, in giving or renewing the authorization.

(6) The Tribunal shall make a determination within forty-five days of the receipt of the complaint.

45 of 1860. 30 (7) All proceedings before the Tribunal shall be deemed to be judicial proceedings for the purposes of sections 193, 219, 228 and 196 of the Indian Penal Code, 1860 and the Tribunal shall be deemed to be a court for the purposes of section 195 and Chapter XXVI of 2 of 1974. the Code of Criminal Procedure, 1973.

(8) The decision of the Tribunal shall be taken by majority and it shall be binding on all parties.

35 **33.** (1) A person making a complaint to the Tribunal may either appear in person or take the assistance of a legal practitioner before the tribunal. Assistance of legal practitioner.

(2) The Central Government or the competent authority, as may be prescribed, may authorize one or more legal practitioners or any of its law officers to act as counsel and every person so authorized by it may present its case with respect to any complaint before the Tribunal.

34. Where the Tribunal determines under section 32 that the R&AW or the IB or the NTRO, as the case may be, did not have reasonable grounds for its actions or inactions, the Tribunal may, by an order, direct— Relief, compensation and restitution.

45 (a) that the obtaining and providing of information in relation to the complainant or, as the case may be, the conduct of other activities in relation to him or to any property of his shall cease and that any records relating to such information so obtained or provided shall be destroyed in such manner as to render them unusable henceforth and such activities shall be stopped forthwith;

(b) **payment of compensation to the person who has been aggrieved by the actions of the R&AW or the IB or the NTRO, as the case may be;**

(c) restitution of property damaged by such actions;

(d) quashing of any warrant or authorization which the Tribunal has found to have been improperly issued, renewed or given; 5

(e) institution of proceedings under the relevant statutes and applicable laws against the persons responsible for that.

Appeal. **35.** Any person, aggrieved by an order made by the National Intelligence Tribunal, may prefer an appeal to the Supreme Court within a period of ninety days from the date of such order. 10

Power to make rules. **36. (1)** The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. 15 20

STATEMENT OF OBJECTS AND REASONS

Intelligence agencies are responsible for maintaining internal security and combating external threats to the sovereignty and integrity of the nation. These responsibilities range from counter-terrorism measures tackling separatist movements to critical infrastructure protection. These agencies are operating without an appropriate statutory basis delineating their functioning and operations. This tends to, among other things, compromise operational efficiency and weakens the professional fabric of these agencies. It also results in intelligence officers not having due protection when performing their duties.

Assessments and gathering of information by intelligence agencies are catalysts for law enforcement units to act, necessitating that these be reliable, accurate and in accordance with law. This kind of efficiency has been hindered by obscured responsibilities that have plagued the functioning of the agencies.

Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to the procedure established by law. The Supreme Court of India has carved a right to privacy from the right to life and personal liberty. Such rights to privacy are compromised when agencies undertake surveillance operations. In *Re: Peoples Union of Civil Liberties vs. Union of India*, the Supreme Court issued detailed guidelines regarding telephone tapping. A proper legal framework is required to regulate surveillance of other forms, using different technologies, as well. There is an urgent need to balance the demands of security and privacy of individuals, by ensuring safeguards against the misuse of surveillance powers of intelligence agencies. Therefore, legislation is imperative to regulate the possible infringement of privacy of citizens, while giving credence to security concerns.

In view of the reasons stated, the Bill seeks to enact a legislation pursuant to Entry 8 of List I of the Seventh Schedule of the Constitution of India to provide:—

- (a) A legislative and regulatory framework for the Intelligence Bureau, the Research and Analysis Wing and the National Technical Research Organisation;
- (b) Designated Authority regarding authorization procedure and system of warrants for operations by these agencies;
- (c) A National Intelligence Tribunal for the investigation of complaints against these agencies;
- (d) A National Intelligence and Security Oversight Committee for an effective oversight mechanism of these agencies; and
- (e) An Intelligence Ombudsman for efficient functioning of the agencies and for matters connected therewith.

The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;
March 4, 2011

MANISH TEWARI

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the constitution of a Research and Analysis Wing under the control of the Prime Minister. Clause 4 provides for the establishment of an Intelligence Bureau under the control of the Prime Minister. Clause 5 provides for appointment of a Director for day-to-day operation of the IB. Clause 6 provides for the establishment of a National Technical Research Organisation under the control of the Prime Minister. Clause 7 provides for appointment of a Chairman in whom shall be vested the day-to-day operations of the NTRO. Clause 12 provides for the constitution of a National Intelligence and Security Oversight Committee to examine and administer and ensure compliance of the policies laid down under the Act. Clause 16 provides that an Intelligence Ombudsman shall be appointed by the Central Government. Clause 21 provides for remedies including compensation to the persons aggrieved by the actions of the intelligence agencies. Clause 23 provides that a National Intelligence Tribunal shall be established by the Central Government. Clause 24 provides for the appointment of the Chairperson and members of the Tribunal. Clause 28 provides for salaries and other expenses of the chairperson and members of the Tribunal. Clause 30 provides for the staff for the effective functioning of the Tribunal. Clause 34 provides for the payment of compensation to the persons who have suffered loss by any action of the R&AW or the IB or the NTRO.

The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is estimated that a sum of rupees ten thousand crore will be involved as recurring expenditure per annum.

A non-recurring expenditure to the tune of rupees five hundred crore is also likely to be incurred from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 36 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

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BILL

to regulate the manner of the functioning and exercise of powers of Indian Intelligence Agencies within and beyond the territory of India and to provide for the coordination, control and oversight of such agencies.

(Shri Manish Tewari, M.P.)