



MOOT PROPOSITION

1. The Republic of Vikas, also referred to as Vikas, has achieved all-round socio-economic progress during the last 72 years of its Independence from the Kingdom of Mahishmathi. Vikas has become self-sufficient in agricultural production, it is also now one of the top industrialized countries in the world and one of the few nations to have gone into outer space to conquer nature for the benefit of the people. As the 7th largest country in the world, Vikas stands apart from the rest of the Asian countries, marked off as it is by the mountains and the sea, which gives the country a distinct geographical entity. It showcases world class airports, hotels, luxurious shopping malls, restaurants, pubs and cafes to overcrowded streets and alleyways. All the cities across Vikas are filled with thousands of little shops offering every possible modern, ethnic products and native street food is a fascinating experience for all individuals.
2. The Constitution of Vikas is the supreme law of Vikas. It imparts constitutional supremacy and not parliamentary supremacy, as it is not created by the Parliament but, by a Constituent Assembly, and adopted by its people, with a declaration in its Preamble.
3. However, Vikas has emerged as one of the world's most consistent targets of radical militants. Although the attacks of November 2008 attracted the most global attention, they were merely the most recent and dramatic in a series of bloodshed terrorist incidents throughout the urban Vikas. During that phase, the terrorists planted seven bombs in the Railway Stations and 5-star Hotels of Chumban, causing the death of more than 200 people. The November 2008 attacks, however, brought into clear focus the inability of the Vikanian security apparatus to anticipate and appropriately respond to major terrorist related intelligence.
4. As one prominent analyst wrote, the government's responses to the Chumban attacks were "*comprehensive failures from the point of view of Vikas' security establishment*". While some Vikanian analysts and politicians prefer to focus on Imaginistan, the neighboring country, which has held a role as a haven for a variety of militant groups and terrorist organization, it is clear that Vikas needs to dramatically enhance its domestic counter-terrorism infrastructure. Improvement will require significant infusions of resources, policy consistency, and political will that are often lacking in Vikas.
5. In 2014, the largest democracy elected Prime Minister Sher Singh to power with a majority that broke all exit poll records, and the anti-terror policies of the government saw a steep reduction in terror



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- activities. However, in 2018, two attacks on the military jawans of Vikas by the militants resulted in the deadly retaliation across the international borders, that wiped out the target militant camp bases, in the form of surgical and air strikes by Armed Forces.
6. The current scheme of law proved to be inefficient since only “organizations” could be designated as terrorists. Similarly, several authorizations from the respective State police were mandated by the Unlawful Activities (Prevention) Act, 1967 so as to attach and seize the properties of such terrorists for investigation purposes which were considered to be the main cause of delay and inefficiency of the law.
 7. As a result of which the Ministry of Home Affairs, Government of Vikas, on **3rd June 2019**, amended the anti-terror law, Unlawful Activities (Prevention) Act, 1967, - **(A)** to empower the **Central Government to designate individuals as terrorists, similar to the procedure in force for terrorist organizations**, if the person commits or participates in acts of terrorism, cyber terrorism, prepares for terrorism, promotes terrorism or is otherwise involved in terrorism, and **(B)** providing the **National Investigation Agency power to investigate and seize property with mere permission from Director General of National Investigation Agency**, vide the Unlawful Activities (Prevention) Amendment Act, 2019.
 8. The Minister for Home Affairs, Government of Vikas, Mr. Manju Kumar, advocating for the Amendment, stated the following on the Floor of the Lower House of Vikas Parliament: *“I will try to allay all apprehensions on the bill and I hope it is passed unanimously in the House. Terrorism has to be uprooted from this country. A strict law is of an utmost necessary in this regard to strengthen the investigation agencies. The urgency of this matter needs to be understood by all. Reiterating the zero toleration against terrorism, this Amendment is to facilitate speedy investigation and prosecution of terror offences and designating an individual as terrorist in line with the international practices. An individual's psychology is the birthplace of Terrorism, rather than an institution. If, in the first place, an individual is stopped from attracting other individuals into terrorism by providing ideological and financial support, this menace can be finished. Hence, designating an individual as terrorist, after following the due process of law, is of prime importance to nip terrorism in the bud.”*
 9. However, this new law was not well received by the State Governments of Vikas. Chief Ministers of 7 of the 30 States refused to attend the National Policy Commission (Hereinafter referred to as the “NPC”), chaired by the Prime Minister to foster Centre-State relations on policy discussions. The



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- meeting of the NPC scheduled on **5th June 2019**, where the key agenda was the discussion on the newly amended Unlawful Activities (Prevention) Amendment Act, 2019, *inter alia*, was called off by the 7 Chief Ministers, branding it to be *fruitless* and *useless as the Centre fixed policies without consulting States*.
- 10.** Simultaneously, media reports emerged stating that there was a server intrusion which had occurred in one of the primary data centers of Reserve Bank of Vikas, which is the Central Bank of Vikas and through intelligence reports it was suggested that there could be the involvement of renowned terrorist organization in conspiracy with an individual in the breach. Thereby the Government of Vikas sensed that cyber terrorism as a tool could be utilized to conduct unlawful attacks and threats of attacks against computers, networks, and information stored therein to intimidate or coerce the government or its people for propagating hidden political or unlawful social and religious agendas. These attacks could result in violence against persons or property or cause public unrest, through explosions, plane crashes and severe losses. It is also a noted fact that Terrorists tend to use Internet to prepare the schemes, recruit potential terrorists, raise funds and spread cyber terrorism.
 - 11.** Thus, to counter cyber terrorism, in addition to the existing law that punishes cyber terrorism, i.e., Section 66F of the Information Technology Act, 2000, the Government of Vikas further issued a notification under Section 69 of the Information Technology Act, 2000, as annexed herewith as **Annexure-1**, on **8th June 2019**, that empowers investigation agencies to intercept, monitor and decrypt any information which is generated, transmitted, received or stored in any computer source. Owing to the heightened attention garnered by issues on the right to privacy and personal liberty, an NGO, named Specter Donna Organization, filed a PIL challenging the impugned notification within 4 days of its publication in the Official Gazette of Government of Vikas, before the Hon'ble Supreme Court of Vikas. The Organization had also attached the RTI reply from the Central Government as provided herewith as **Annexure-2**, dated **15th June 2019**, *in re* the interception activities of the Central Government and authorities under it. The matter is *sub judice* before the Hon'ble Supreme Court.
 - 12.** On **7th July 2019**, the Customs Department of Vikas received information about smuggling of counterfeit currencies worth VNR 10 lakhs by a passenger named Mr. Nesamani from El Dorado, through the Mahindra Jhangir Airport, Dhanjan. Upon receipt of the same, the officials initiated action, by tapping his mobile phone and tracking it under surveillance. The officials arrested the passenger and took him into custody for questioning, as well as checking of his luggage. During investigation, Mr. Nesamani admitted the following when questioned by the officials of Customs Department:



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- A. That, he was in possession of counterfeit currency worth VNR 10 Lakhs and had knowledge of the same;
- B. That, he was working on a contract basis for a person named Mr. Chiddu, a resident of Dhanjan who is also a close aide and member of Mr. Rocky Bhai's organized crime syndicate. Mr. Rocky Bhai is the most wanted criminal by Interpol and funds terror activities from El Dorado and Imaginistan;
- C. That, the currency notes were counterfeited in Imaginistan and transported to El Dorado to facilitate easy access into Vikas by virtue of holding UEA Passport, in order to destabilize the economic conditions and security of Vikas;
- D. That, the smuggled currency was to fund sleeper-cells active in Vikas to perform terror activities as guided by heads/ leaders of radical nature from Imaginistan. Based on the above information from the Customs Department an FIR was registered.
- 13.** The Central Government referred the case to the National Investigation Agency (Hereinafter referred to as the "NIA") for investigation, in light of the gravity of the offence and to bust the racket of counterfeit currency market and allied activities in Vikas vide notification dated **10th July 2019**. The NIA registered a case against him as RC/07/2019/DNG/MR under Sections 489B, 489C of the Vikanian Penal Code, 1860 and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967. The NIA officials produced Mr. Nesamani before the Special Judge to try NIA cases for recording of the confessions made.
- 14.** Further, NIA Cyber Cell team sought permission from the competent authority to proceed in furtherance of the information provided by Mr. Nesamani. Upon approval vide Order by the Secretary to the Ministry of Home Affairs, Union Government, under the Rules prescribed, the NIA Cyber Cell began to intercept, monitor and decrypt relevant information from the target computer source, through its high standard monitoring device, and the following incriminatory material/information were retrieved on **11th July 2019**:
- (a) E-mail conversations with Mr. Rocky Bhai's organized crime syndicate which is pertaining to the counterfeit currency smuggling details to keep track on;
- (b) E-mail conversations with respect to sleeper cells pertaining to accounts of funds and details on usage of those funds to destroy the peace in Vikas;



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- (c) Browser history on developing of bombs and research on cruel methods to kill people in large numbers;
- (d) Files pertaining to accounts on funds and unlawful activities planned to be carried out in Vikas;
- (e) Video files pertaining to training camps at the International border between Vikas and Imaginistan;
- (f) Files containing illegally obtained passports to ferry sleeper cells into Vikas after training;
- (g) Stalkbook and TapApp chats with several terror linked outfits;
- 15.** On obtaining the aforementioned incriminatory evidence, the NIA initiated action against Mr. Chiddu and arrested him at his residence in Dhanjan with the help of Paramilitary Forces on the same day. Upon the arrest, the NIA officials drew up a memorandum of arrest in accordance with the procedure, making a seizure of the computer, 15 SIM Cards including both Vikanian and Imagistanian, 7 Mobile Sets, 10 Pen Drives, 7 Memory Cards, 4 Hard Disk Drives, 1 Internet Dongle, 1 Satellite Phone, 1 Router, 16 CDs/DVDs, besides 300 Air Gun Pellets, 1 Electric Baton, 1 Dagger and along with documents and pamphlets printed in various languages.
- 16.** The NIA officials added Mr. Chiddu to the same registered FIR and tried him under Sections 489B, 489C r/w 120B of the Vikanian Penal Code, 1860 and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967, along with several unknown accused. The Government of Vikas issued a notification adding the names of the accused Mr. Chiddu and Mr. Nesamani into the *Fourth Schedule* of the Unlawful Activities (Prevention) Act, 1967 (as amended in 2019), as ‘terrorists’.
- 17.** Further, the NIA officials filed the chargesheet against Mr. Nesamani and Mr. Chiddu before the Special NIA Court on **25th July 2019**. The Special Court, was hearing the matter everyday on a fast-track basis and the matter is still pending.
- 18.** The accused challenged the constitutionality of the Unlawful Activities (Prevention) Amendment Act, 2019 and the impugned notification designating him as a ‘terrorist’ before the Hon’ble High Court of Dhanjan. The Division Bench heard the learned advocates on behalf of the accused and the Learned Additional Solicitor General of Vikas.



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19. Upon an application made by the Attorney General of Vikas in the PIL filed by Spectre Donna Organization *in re* the same substantial questions of law before the Hon'ble High Court of Dhanjan, the Hon'ble Supreme Court Bench transferred the case from the Hon'ble High Court and clubbed the same with the PIL filed by Specter Donna Organization and laid down the following common substantial questions of law as issues to be decided upon:

- (A) Whether the amendments to the Unlawful Activities (Prevention) Act, 1967, vide the Unlawful Activities (Prevention) Amendment Act, 2019 violates Article 14 and 21 of the Constitution of Vikas?
- (B) Whether the excessive powers granted to National Investigation Agency, vide the Unlawful Activities (Prevention) Amendment Act, 2019, violates the quasi-Federal nature of Vikas enshrined under the basic structure of the Constitution of Vikas?
- (C) Whether the Section 69 of the Information Technology Act 2000, the Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009 and the impugned notification issued by the Central Government under the aforesaid law violates Article 14 and 21 of the Constitution?

20. The Hon'ble Chief Justice of the Supreme Court of Vikas constituted an 11 Judge Bench to adjudicate upon the aforementioned issues laid down, and to reconsider the reasonable restrictions available to right to privacy, and to adjudicate upon the aforementioned issues; and, thereby served notices upon the Central Government, informing accordingly.

21. The Central Government further filed statement of objections to the combined Petition on **1st September 2019**, stating, *inter alia*, that on an average 7500 to 9000 orders for interception of telephones and 300 to 500 orders for interception of emails are issued by the Central Government every month, for the sole purpose of national security and it is well within the powers of the Government to make such rules protecting its subjects.

22. The Registrar of the Supreme Court has listed the matter before the Constitutional Bench of Hon'ble Supreme Court at 11:30 AM on **15th September 2019** for final arguments of all parties to the petition.

NOTE:

- 1. The laws and Constitution of Vikas are *pari materia* to that of Republic of India.**
- 2. Teams are advised to frame additional issues, if any, based on the Factual and Legal aspects.**



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ANNEXURE – 1

**MINISTRY OF HOME AFFAIRS
(CYBER AND INFORMATION SECURITY DIVISION)**

ORDER

Dhanjan, the 8th June, 2019

S.O. 9999(E).— In exercise of the powers conferred by sub-section (1) of section 69 of the Information Technology Act, 2000 (21 of 2000) read with Rule 4 of the Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009, the Competent Authority hereby authorizes the following Security and Intelligence Agencies for the purposes of interception, monitoring and decryption of any information generated, transmitted, received or stored in any computer resource under the said Act, namely:—

- i. Intelligence Bureau;
- ii. Narcotics Control Bureau;
- iii. Enforcement Directorate;
- iv. Central Board of Direct Taxes;
- v. Directorate of Revenue Intelligence;
- vi. Central Bureau of Investigation;
- vii. National Investigation Agency;
- viii. Cabinet Secretariat (RAW);
- ix. Customs Department;
- x. Commissioner of Police, Dhanjan.

[No.07/16/2019-T]

T. Annamalai, Union Home Secy.



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ANNEXURE-2

No. 034/35/2011-IS.II

Government of Vikas

Ministry of Home Affairs

(IS.I Division/IS.II Desk)

Dhanjan; dated the 15th June, 2019

To

Shri Harvey Spectre,

Sub: Application of Shri Harvey Spectre seeking information under Right to Information Act, 2005.

Sir,

1. In connection with your application dated 15.06.2019, it is stated that on an average, around 7500 to 9000 orders for interception of computer sources are issued by the Central Government per month.
2. Also, 40% of the orders for interception of computer sources give details that are incriminatory in nature and require further investigations.
3. In furtherance of para 2, an approximate of 5% of the cases, in which orders for interception of computer sources are received, corroborate the recovery of new evidence that is proof of terrorist activity.

Yours faithfully.

Sd/-.

(Shri. Velayudham) Director (Internal Security-I)