

INTERNAL SECURITY ACT, 1960¹

We have seen in Chapter V the reasons for having the Internal Security Act, 1960, herein-after referred to as the Act. This chapter will be devoted to the study of the important provisions of the Act. The most significant feature of this Act is the power of preventive detention. The legislature saw the need to have preventive detention in time of peace due to the fact that the risks of subversion and turmoil still exist after the twelve year Emergency ended in 1960.

The powers of preventive detention found in the Act was actually the preventive detention under regulation 17 of the Emergency Regulation, 1948, which came to be embodied in the Act, with the repeal of the Regulations. The Act was passed pursuant to Article 149 of the Federal Constitution to provide for the internal security of the Federation, preventive detention, the prevention of subversion, the prevention of organised violence against persons and property and for matters incidental thereto.

This Act can be considered as the most potent weapon in controlling and preventing subversion. It empowers the executive with very wide powers of detention. Since the Minister is exercising quasi-judicial functions under the Act the principles of natural justice apply. Thus, by article 151 of the Federal Constitution

¹ Act 82 (Revised - 1972).

detailed and precise restrictions, are laid down on preventive detention. Any person detained under this Act shall, as soon as may be, informed of the ground for his detention and, the allegations of fact on which the detention order is based, and shall be given the opportunity of making representations against the order as soon as may be, by the detaining authority.² However, the Minister has the discretionary power whether to state the allegation of fact. The allegations of fact need not be disclosed by the authority if the disclosure would in his opinion be against the national interest.³ The detaining authority must, however, furnish the detainee with a statement in writing stating the nature and grounds of the detention within a reasonable time.

Article 151 (1)(b)⁴ imposes further restriction on preventive detention by providing that no citizen shall be detained under the Act for a period exceeding three months unless an advisory board has considered any representations made by him and made recommendation there on to the Yang Di Pertuan Agong. This safeguard is not available to a non-citizen. The effect of this clause is that the

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Article 151 (1)(a) of Federal Constitution.

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Article 151 (3) of Federal Constitution.

⁴

Federal Constitution.

advisory board need merely consider the representations made by the detainee for an appeal to reconsider the decision.

These safeguards found in the Federal Constitution are embodied in the Act itself.⁵ By virtue of section 13 (1) of the Act the Advisory Board has the power to review every order or direction made or given to the detainee, so long as it remains in force, not less often than once in every six months.

Chapter II of Part II of the Act confers the Powers of preventive detention on the Minister. Section 8 (1) sets out the preventive detention power. It provides as follows:

"If the Minister is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services thereⁱⁿ or to the economic life thereof, he may make an order directing that that person be detained for any period not exceeding two years."

The operation of this section was dealt in the most celebrated case of Karam Singh v. Menteri Hal Ehwal Dalam Negeri.⁶ The Federal

⁵ See Section 11.

⁶ 1969 2 MLJ 129.

Court decided that the authority may detain a person under the section on subjective satisfaction. The court has no power to decide whether the grounds for detention are sufficient or not.⁷ The court is unable to enquire whether grounds existed which would have created the subjective satisfaction of the detaining authority on which alone the order could have been made. In the mind of a reasonable person, the courts are only entitled to look at the face of the order.⁸

The power of the Minister to issue an order of detention is very wide under section 8 of the Act. It cannot be challenged that the allegations of fact supplied by the authority to the detainee in pursuance to article 151 (1)(a) and section 11 of the Act are vague, insufficient or irrelevant. As Suffian⁹ FJ as he then was, observed¹⁰ at page 263,

" Whether or not the facts on which the order of detention is to be based are sufficient or relevant, is a matter to be decided solely by the executive. In making their decision, they

⁷ per Kania C.J. in Bhim Sen v. State of Punjab /1952/ SCR 19.

⁸ Ram Manohar v. State of Bihar A.I.R. 1966 S.C. 740.

⁹ Now he is the Lord President of Malaysia.

¹⁰ Karam Singh v. Menteri Hal Ehwal, Malaysia. 1969 2 MLJ 129.

have complete discretion and it is not for a court of law to question the sufficiency or relevance of those allegations of fact."

Finally, the detention may be held illegal if the detainee could prove mala fides,¹¹ lack of good faith or non-application of the mind of the detaining authority in issuing the order of detention. The onus of proving the legality of the detention is on the Minister in the first instance. If the detainee alleges mala fides, then the onus shifts to him and it is for him to prove mala fides.

The Act further provides for the power to impose restriction to persons in relation to his movements. The Minister may make a restriction order imposing upon a person restrictions and conditions, if he is satisfied that for any of the purposes mentioned in Section 8 (1) of the Act that it is necessary that control and supervision should be exercised over that person in respect of his activities, freedom of movement or places of residence or employment.¹² If it is unnecessary to detain him, the Minister may prohibit him from being out of doors for certain hours except with written permission; require him to notify his movements; prohibit him from addressing

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Mala fides means not personal animosities towards the detainee, but a casual and cavalier attitude, and inadequate consideration on the part of the authorities as to the necessity for the detainee's detention.

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Section 8 (5) of the Act.

public meetings or from holding office in, or taking part in the activities of or acting as adviser to, any organisation or association, or from taking part in any political activities; and prohibiting him from travelling beyond the limits of Malaysia or any part thereof. These restrictions and conditions amount to serious deprivation of the freedom of movements of a person under article 9 of the Constitution. Nevertheless, the constitution allows the encroachment.¹³

Special powers relating to subversive publications are contained in chapter III. By section 22 the Minister has the power to prohibit absolutely or conditionally any document or publication if they purport to do any of these:

- a) contains any incitement to violence;
- b) counsels disobedience to the law or to any lawful order;
- c) is calculated or likely to lead to a breach of the peace, or to promote feelings of hostility between different races or classes of the population; or
- d) is prejudicial to the national interest, public order, or security of Malaysia.

The Minister charged with responsibility for printing presses and

publications has under the section, the discretionary power and subjective satisfaction of making the prohibition order.

However, the person affected by the order may, within one month of the date of publication of the order in the gazette, make an objection against the order to the Yang Di Pertuan Agong, whose decision shall be final and shall not be called into question in any court.¹⁴ A person who contravenes section 22 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding three years or to both. There is a proviso that a person shall not be convicted if he proves to the satisfaction of the court that the document or publication was printed, published, sold, issued, circulated or reproduced, without his consent and knowledge, and without want of due care or caution on his part, and that he did not know and had no reason to suspect the nature of the document or publication.¹⁵

Further offences are created by sections 25 to 29 which deal with possession and importation of documents;¹⁶ posting and

¹⁴
Section 23.

¹⁵
Section 24.

¹⁶
Sections 25 and 26.

distribution of placards, circulars or other documents containing an incitement to violence, counselling disobedience to the law or to a lawful order or likely to lead to any breach of the peace;¹⁷ spreading false reports or making false statements likely to cause public alarm or despondency by word of mouth or writing in a newspaper, periodical, book, circular or other printed publication or by any other means;¹⁸ and without lawful excuse carrying or having in one's possession or under one's control any subversive document.¹⁹ Section 30 gives powers of search of premises, stopping and searching vehicles and seizure of offending documents or materials to a police officer not below the rank of Inspector.

Chapter IV of the Act provides for the control of entertainments and exhibitions. The purpose of having these provisions is to have close scrutiny in the field of entertainments and exhibitions which is likely to be in any way detrimental to the national interest. By virtue of section 35 (1) the Minister has the power to prohibit certain entertainments or exhibitions. Section 32 gives the Minister power to require information and section 33 gives power to impose conditions relating to the

¹⁷
Section 27.

¹⁸
Section 28.

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The word 'subversive document' is defined in S. 29 (3).

holding of the entertainment or exhibition.

Under chapter V various powers are given to the Minister for prevention of subversion. In pursuant to section 41A (2) the Minister may prohibit the appointment or recruit of any person by person, body or authority, whose appointment is in the opinion of the Minister prejudicial to the interests of Malaysia. Further, by section 41B the Minister has the power to close schools or educational institution being used for a purpose detrimental to the interests of Malaysia or of the public; for the purpose of instruction detrimental to the interests of the public or of the pupils; or as a meeting place of an unlawful society. The effect of this section is to prevent schools or educational institution from being infiltrated with subversive teachings or subversive propaganda.

Part II of the Act deals with special situations in special areas such as the existence of Communist terrorists astride the Malaysia - Thailand border. Chapter I provides for the proclamation of security areas.²⁰ Section 48 empowers the Minister, if he considers it necessary or expedient in the public security to do so, to declare any area within a security area to be a danger area. No person other than the security forces in the performance of their duty are allowed to enter or remain in a danger area. A member of the security forces within a danger area is allowed to take such measures, including means dangerous or fatal to human life,

²⁰ Section 47.

as he considers necessary to ensure that no person prohibited from entering or remaining in a danger area shall enter or remain in such area.

By section 49, the Minister may declare an area within a security area to be controlled area. No person is allowed to reside in a controlled area elsewhere than in a residential part of it, and restrictions can be placed by the order on entering or remaining in a residential part of the controlled area. Section 50 contains special provisions for the declaration of protected places in security areas. Additional powers to exclude people from security areas, to impose a curfew, to take possession of any land or of any buildings, to order the destruction of unoccupied buildings, to control roads or waterways and to seize rice and other foods, are contained in section 51 to 56.²¹

Chapter III creates offences relating to security areas. Most important provision in section 57 which create an offence punishable by death where any person without lawful excuse, in any security area carries or has in his possession or under his control any fire-arm, ammunition or explosives without lawful authority. The same penalty applies to person consorting with a person carrying or having in his possession arms or explosives

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These powers are quite similar to those in Part III of the Public Order (Preservation) Ordinance 1958.

contrary to section 57.²²

Chapter IV lays down the powers of police. By section 64, any police officer may, without warrant, arrest any person suspected of the commission of an offence created by the part of the Act relating to security areas. Powers of search and seizure, without warrant, of any article or material being evidence of the commission of an offence against the Part of the Act are contained in section 65. Finally by section 66 a magistrate or coroner may dispense with the holding of a death inquiry or inquest on the dead body of any police officer or any member of the security forces in a security area or on the dead body of any person where the magistrate or coroner is satisfied that such person has been killed in a security area as a result of operations by the police or by the security forces for the purpose of suppressing organised violence.

The rest of the provisions of the Act deal with other minor aspects of security measures. In conclusion, we can say that the Internal Security Act 1960 gives very wide powers to the government to suppress subversion with great emphasis on the suppression of organised violence. It is felt that the Act is sufficient to cater for most kinds of subversion, thus, deeming

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²²Section 58.

other similar laws unnecessary.

The statistics below show the number of Communist terrorist supporters and food suppliers arrested under the Internal Security Act from 1971 to mid - 1976. After investigations they are placed either under a detention order or restricted order.

TABLE D*

Year	No
1971	211
1972	177
1973	98
1974	118
1975	86
mid - 1976	92

Tabulated below are the number of Communist terrorists captured from the period 1970 to mid - 1976.

TABLE E*

Year	No
1970	97
1971	38
1972	39
1973	68
1974	26
1975	5
mid - 1976	5
Total	278

*Both statistics obtained from the Ministry of Home Affairs on September 1, 1976

CONCLUSION

Democracy would be shattered if the Communists gain the upperhand. Democracy means a lot to us, and we must defend and preserve it from being destroyed, since it gives us the rights and opportunities to lead our lives as real human beings. Democracy confers on us the right and freedom of organisation, the right and freedom to decide on who should represent us in the government and the right and freedom to profess any religion and the right and freedom of speech and expression.

Democracy is also firmly based on the concept of the Rule of Law so jealously cherished and guarded by every civilised society and on the impartial implementation of law, free from any political influence and political power. And if justice is denied, the citizens have the right to voice their protests, in fact choosing a new government through the process of democracy to prevent miscarriage of justice. Even democracy itself would be dead when these individual liberties and freedoms of the people are impinged upon arbitrarily by the authorities. On the contrary, if these rights and freedoms are misused or used without restrictions, democracy would also be dead.

Hence, to uphold the system and the democratic way of life and justice based on law, is a heavy and delicate task because there are numerous human weaknesses which give way to the temptations

for lust, position, wealth and power. Human beings are often easily swayed by emotions and the surrounding circumstances and are also prone to irrational thinking, whereas democracy and justice not only need sanity and rationalism but also calmness, sincerity, discretion and intelligence. These qualities are most important to those who are vested with the political powers entrusted by the people for the just implementation of the law - stemming from the lowest authority, that is from the police, right up to the Lord President of the Federal Court. The duty entrusted on these people to uphold the rule of law and justice is an invidious task, frequently resulting in abuse of power or arbitrary use of power.

The legislation considered in this paper were intended to strike at enemies of freedom. In many instances, however, they hit others instead - lecturers, students, political minorities, and even religious groups. Surely they create a general uneasiness about dissent, about advocacy, and about ideas unrelated to acts or threatened acts.

There are ways of fighting subversive ideas. One is the policy of repression. Though the Constitution gives the government the inherent right to use all means necessary to put down resistance to its authority, and restore peace, order, and obedience to law, it must bear with the fact that oppressive laws

do not win the confidence and loyalty of the people. This policy is contrary to the letter and the spirit of the Constitution of the country. It cannot be justly enforced, because it is impossible to tell precisely what people are thinking - they have to be judged by their acts. It has been generally thought that the widest possible attitude would be given to freedom of speech and healthy opposition, on the ground that the expression of differing points of view, some of which are bound to be unpopular, is the way to progress in the country.

What the country needs now is not an ever growing body of laws to deal with supposedly subversive persons or beliefs. For the State's legitimate protection they need merely to enforce the already large body of laws that concentrate on actions instead of opinions and associations. There are numerous laws already in the statutes which provide for the punishment of subversive acts.

Possibly the present period demands not more and more legislation, but a slight enlargement of calm and common sense. An element of panic would play into the hands of the enemies. So the task of the legislature is not merely to protect the people by passing laws that prevent the minority from overthrowing the government. It is to eliminate those social evils and those political injustices which are the sources of discontent and disaffection.

Finally we ought to be on guard against the sinister forces that do not rest in their attempts to undermine the democratic system of our country by secret and subversive means. The democratic system that we hold dear is in grave danger of being subverted. Once lost, freedom is hard to recapture.