

Indian government rams repressive laws through parliament

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Under the pretext of “fighting terrorism,” the Indian government of Prime Minister Atal Behari Vajpayee pushed a battery of anti-democratic laws—the Prevention of Terrorism Ordinance (POTO)—through a special joint session of parliament on March 26.

Just days before, the ruling National Democratic Alliance (NDA) had failed in its first bid to enact the legislation. It passed in the Lok Sabha, the lower house of the Indian parliament, where the NDA commands a majority, on March 18. But the law was defeated on March 21 in the Rajya Sabha or upper house, where the ruling coalition is in a minority.

Vajpayee was so determined to pass the bill that he formally requested the Indian president to convene a joint session of both houses—only the third such sitting since Indian independence in 1947. The bill was passed 425 to 296, with 60 MPs either absent or abstaining.

Most of the NDA parties voted for the POTO law, which was also supported by the Tamil Nadu-based All India Anna Dravida Munnetra Kazhagam (AIADMK) and the Nationalist Congress Party (NCP). All but one of the remaining opposition parties, including Congress (I), voted against. The Bhahujan Samaj Party (BSP) joined the Trinamool Congress (TC) from West Bengal, an NDA partner, in abstaining.

The new legislation provides sweeping powers to police to arrest “terrorist suspects”. Detainees can be held for questioning for 30 days without being produced in court and for 90 days without formal charges. With the approval of a special court, suspects can be held for an additional 90 days without charge. The property of anyone suspected of terrorism can be seized prior to any investigation and trial.

The government can brand any group as a “terrorist organisation”. Anyone suspected of giving money, shelter, transport or other support to a proscribed organisation can be tried on “terrorism” charges. Confessions made to the police, the testimony of unidentified witnesses and intercepted communications can all be admitted as evidence. Police will have wide powers to intercept telephone, radio

and internet messages.

The bill is based on a very broad definition of terrorism. Anyone is a “terrorist” who threatens the unity of India or causes “terror” among the population. The burden of proof is on the accused in clear violation of the established legal principle of “innocent until proven guilty”. Those found guilty of offences face sentences ranging from a minimum of five years jail up to the death penalty. There is no right to compensation for those detained and later found not guilty.

Vajpayee and his Hindu chauvinist Bharathiya Janatha Party (BJP), the leading party in the NDA, exploited the September 11 attacks in the US and the December 11 attack on the Indian parliament building to enact these anti-democratic measures. Significantly, the Bush administration, which has made major inroads into civil liberties in the US, praised the Indian laws. On March 28, US State Department spokesman Richard Boucher declared in relation to the Indian bill: “It is important for governments to take steps against terrorism.”

POTO, which was first proclaimed in October by presidential decree, now becomes POTA (Prevention of Terrorism Act). In a number of respects, it is harsher than the notorious Terrorist and Disruptive Activities (Prevention) Act (TADA) that was allowed to lapse in 1995 after widespread criticism. TADA could only be used against individuals, whereas POTA can also be applied to an organisation and therefore to all its members and activities. The police powers to intercept communications are stronger and action can also be taken against those who may have information on “terrorists”.

TADA was infamous for its gross abuse of democratic rights, particularly in Jammu and Kashmir, where the Indian security forces used its provisions to intimidate and jail opponents of Indian rule. Arbitrary arrest, lengthy detention with trial and extra-judicial killings were common.

A recent editorial in the *Economic Times* on March 23 noted: “Over 99 percent of the people rounded up under TADA were intimidated, harassed and some were killed without any proof of guilt.” Officially 77,571 people were

detained under TADA but the conviction rate was less than one percent. Several hundred people are still in jail under the TADA provisions despite the lapse of the law.

The purpose of the new legislation is already clear: to intimidate political opponents and, in the name of “fighting terrorism,” to ratchet up communal tensions by targeting Muslims. All of this takes place under conditions where the ruling coalition is fraught with divisions, tensions with Pakistan remain high, and the government faces growing opposition to the social impact of its pro-market economic reforms.

On March 25, the day before the joint parliamentary sitting, POTO was used to detain the leader of the Jammu Kashmir Liberation Front (JKLF), Yasin Malik, after two people arrested with \$100,000 a day earlier “confessed” that the money was for him. He was arrested at a press conference at Srinagar headquarters of the All Party Hurriyat Conference (APHC), a legally functioning umbrella organisation of Kashmiri separatist groups. He has denied all charges.

Home Minister L.K. Advani told the joint session that 69 people had been arrested using POTO—51 of them were Muslims from Jammu and Kashmir. In addition, the BJP-led state government in Gujarat has arrested 62 people under the ordinance. All of them were Muslims allegedly involved in an attack on a train in Godhra on February 27 in which 58 people, including a number of Hindu fundamentalist activists, died. None of the Hindu fanatics, who went on a rampage in Gujarat killing hundreds of Muslims, have been held under POTO. Rajinder Sachar, a retired chief justice and civil liberties activist, commented: “Gujarat is an example of how a law like this can be used not against perpetrators of a crime, but its victims.”

The legislation has provoked considerable opposition including a number of protests and strikes in Jammu and Kashmir. The Indian head of Amnesty International, Vijay Nagaraj, declared: “The new law is a violation of human rights sanctioned by law.” Pointing to a clause that provides immunity from prosecution to the security forces, providing they can show they were acting in “good faith,” he added: “By giving such powers to the police, it safeguards the interests of the potential abusers.”

The editorials in the Indian press reflected concerns in the ruling elite that the Vajpayee government may have overstepped the mark and exacerbated political tensions needlessly. An editorial in the *Economic Times* called on the NDA not to “ram POTO down India’s throat by demanding a joint session of parliament” arguing that “India already has ample laws to punish criminal activities”. The *Indian Express* called on the government to “refashion POTO” to obtain consensus of ruling circles.

The sham opposition of some BJP’s partners was exposed when they voted for it. The National Conference (NC) initially voted for the bill in Lok Sabha but then voted against it in the Rajya Sabha, for fear of further eroding its base among the Muslim majority in Jammu and Kashmir. Days later in the joint session, the NC supported the POTO laws without a murmur of criticism. The only concession offered by Vajpayee was to press the Gujarat state government to drop its POTO charges and use existing laws instead.

The stance of the opposition parties—Congress (I) and the Stalinist Communist Party of India-Marxist (CPI-M)—was completely hypocritical. None of them have any fundamental opposition to the anti-democratic measures or the manner in which POTO has already been used. All of them accept the lie that the legislation is to “fight terrorism”.

Congress (I) leader Sonia Gandhi warned rhetorically: “POTO, I suspect, will become an instrument in the hands of this government to suppress political opponents, religious minorities, ethnic groups, weaker sections of our society and the trade unions.” She then went on to justify her party’s decision to enact and use the TADA laws, saying only that it was done “in a climate of consensus and not in a climate of confrontation”. Moreover, Gandhi had nothing to say about the fact that Congress-led state governments in Karnataka and Maharashtra have already passed similar legislation.

During the debate, the CPI-M criticised the Vajpayee government for “misuse” of POTO against the Muslim minority and insisted that existing laws were adequate to “fight terrorism.” So minor were the disagreements over the new laws that CPI-M leader Somnath Chatterjee told the *Indian Express* that Vajpayee “could have sat down with all political parties and thrashed out the differences.” In West Bengal, the CPI (M)-led Left Front state government is preparing its own bill, the “West Bengal Prevention of Terrorism Ordinance,” to curb democratic rights.

The fact that there was no principled stance against the POTO laws is a sharp warning that none of these parties will in the future oppose the use of this anti-democratic legislation to clamp down on opposition to the government’s policies.



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