

Repeal of India's draconian anti-terrorism law

Largely a cosmetic change

Kranti Kumara**27 November 2004**

India's domestic media, the Communist Party of India (Marxist), and Western human rights organisations have all lauded the United Progressive Alliance government's repeal of the Prevention of Terrorism Act (POTA)—which because of the timing of its adoption and repressive sweep can be termed the Indian version of the US Patriot Act.

Human Rights Watch called POTA's repeal a "major step forward for civil liberties in India," adding that it set an example for the rest of the world that "counter-terrorism efforts need not undermine fundamental rights".

The truth is very different. POTA contained a sunset clause and was set to expire in October 2004, just one month after its much-praised repeal. Even more significantly, the Congress-led, Left Front-supported government combined the repeal of POTA with amendments to the 1967 Unlawful Activities Prevention Act (UAPA). These amendments make the repeal of POTA largely cosmetic, since they retain many of the repressive and arbitrary powers POTA granted the state and security forces in the name of fighting terrorism.

The amendments to the 1967 act include several sections taken verbatim from POTA. As a result, the government retains the power it gained under POTA to designate organisations as "unlawful" with only a limited pro-forma judicial review. The list of 32 organisations banned under POTA has been included in the amended 1967 law.

The amended 1967 act also includes, with only slight modification, Section 21 of POTA, which created a new crime of supporting a terrorist organisation. Under POTA, this clause was interpreted by security forces to mean that speaking in support of the Liberation Tigers of Tamil Eelam (LTTE) constituted supporting terrorism.

Legal experts have warned that the amended UAPA does not even include POTA's minimal safeguards concerning the interception of telephone calls and electronic communication.

Furthermore, the government has refused to drop cases registered under POTA against more than 1,600 individuals, many of whom, having been denied bail, have languished in jail for more than two years.

The most important substantive changes between POTA and

the amended 1967 UAFA are that those arrested must be brought before a magistrate within 24 hours (not 30 days); confessions given to police officers are inadmissible as evidence; and the presumption of innocence is restored.

POTA was promulgated, by government ordinance, soon after the September 2001 attack on New York's World Trade Center. The Bharatiya Janata Party-dominated coalition government subsequently seized on the December 2001 attack on the Indian Parliament, to whip up anti-terrorist and anti-Pakistan sentiment, which proved pivotal in steamrolling POTA through parliament.

The Congress made a noisy show of opposition to POTA during the 2001-02 debate over its enactment, then said little about POTA during last spring's election campaign. Its repeal was included, however, in the Common Minimum Program (CMP) that the Congress negotiated with its United Progressive Alliance (UPA) partners and the Stalinist-led Left Front, when cobbling together a coalition government last May.

Like the US Patriot Act, POTA discarded the fundamental right of accused to due process and presumption of innocence. Persons arrested under POTA could be held for 30 days before authorities had to produce them in a special court of law.

Human rights organisations have shown that on numerous occasions the authorities used this 30-day period to extract "confessions" through threats and torture. POTA detainees were burned with cigarette butts, raped, forced to drink urine, and subjected to electric shocks.

That POTA's authors gave a green light to such techniques is underscored by the legislation's setting aside of the Indian judicial system's normal rules of evidence. Under POTA, a person's confession to a crime that he had not formally been charged with could be used by the prosecution as evidence in the court of law.

Under Section 49 (7) of POTA, bail was almost impossible to obtain, since the courts were allowed to grant bail to POTA detainees only if they concluded they were unlikely to be found guilty of the charges against them.

POTA was used by the government, writes Human Rights Watch, "against political opponents, religious minorities, Dalits

[or ex-untouchables], tribals and even children". Even India's official Human Rights Commission condemned POTA, declaring that "existing laws are sufficient to deal with any eventuality, including terrorism, and there is no need for a draconian POTA".

A few examples suffice to show how POTA was used broadly and largely indiscriminately to target government opponents and minorities:

* In the state of Jharkhand, over 3,000 poor adivasis (tribals) were accused of aiding Maoist guerrillas and named therefore as accomplices in "terrorism". Among those still incarcerated are a 14-year-old girl, Mayanti Raj Kumari, who was arrested on her way home from school.

* In Gujarat, site of a massive communal bloodletting in 2002 incited by the Hindu supremacist BJP, the government has used POTA to harass and terrorise Muslims.

* In Uttar Pradesh, POTA has been repeatedly used to repress people protesting the dispossession of their land. In one case a 10-year-old boy, labelled as a dreaded Naxalite (or Maoist), was arrested on an accusation of murder.

* According to a report in the *Hindu* in March 2004, a 17-year-old was detained under POTA for urging women to challenge patriarchal customs.

* The Tamilnadu state government used POTA to imprison opposition politician Vaiko, the head of the MDMK (Marumalarchi Dravida Munnetra Kazhagam), for two years after he gave a speech supporting the LTTE.

Contrary to the widespread propaganda that India is the world's largest "democracy", the Indian ruling elite has always relied upon repressive powers and legislation to maintain its rule. After independence in 1947, the new Congress government not only retained a whole host of British colonial laws that had been invoked against the anti-imperialist movement and worker- and peasant-struggles, but made them even more oppressive.

In 1947 and 1948, under the guise of fighting communalism, the Indian government passed several laws such as the Punjab Disturbed Areas Act, Bihar Maintenance of Public Order Act, Bombay Public Safety Act, and Madras Suppression of Disturbance Act, which gave wide-ranging powers to the security forces to detain and arrest anyone in the name of upholding public order. In 1950, Jawaharlal Nehru's Congress government passed the Preventive Detention Act and utilised it to arrest trade union activists.

In 1958 the Indian parliament, again under the stewardship of Prime Minister Nehru, passed the Armed Forces Special Powers Act, AFSPA, to repress unrest in the north-east. Despite an ongoing mass agitation in the state of Manipur, this legislation, which gives the army the right to use deadly force in maintaining order, remains in force.

In 1974, Prime Minister Indira Gandhi used the armed forces to crush the historic strike of Indian railway workers and subsequently declared a state of emergency. Gandhi utilised the

Maintenance of Internal Security Act (1971) or MISA to throw some 20,000 members of opposition parties in jail for more than 18 months.

Under Indira Gandhi's son Rajiv Gandhi, the Terrorist and Disruptive Activities (Prevention) Act (TADA) was passed in 1985 after his mother's assassination. This law, originally passed as a "temporary" measure to battle Sikh separatists in the Punjab, was repeatedly extended until 1995. TADA was also utilised to break strikes by workers agitating for better working conditions and wages.

A mere listing of some of the acts passed in the 1980s gives some sense of the extent to which the Indian ruling elite depends on repressive legislation to maintain its rule. They included: Jammu and Kashmir Public Safety Act (1978); Assam Preventive Detention Act (1980); National Security Act (1980, amended 1984 and 1987); Essential Services Maintenance Act (1981); Armed Forces (Punjab and Chandigarh) Special Powers Act (1983); Punjab Disturbed Areas Act (1983); Chandigarh Disturbed Areas Act (1983); Terrorist Affected Areas (Special Courts) Act (1984); National Security (Second Amendment) Ordinance (1984); National Security Guard Act (1986); and Armed Forces (Jammu and Kashmir) Special Powers Act (1990).

Many of these laws have arisen from the attempts of the Indian ruling class to "resolve" secessionist agitations, born of its inability to resolve the most basic socio-economic problems after almost six decades of bourgeois rule, through state violence. The people of Kashmir, Manipur, Assam, Mizoram, Arunachel Pradesh and Punjab have especially suffered at the hands of army and other security forces empowered to kill and run roughshod over basic civil liberties.

Nor is the use of repressive legislation confined to the central government or even to the state governments formed by the Congress, BJP and other big business parties.

The CPI (M)-led coalition government in West Bengal routinely arrests opponents from the Maoist Communist Party of India (Marxist-Leninist) without warrant and subjects them to abuse and torture. While the Stalinist CPI (M) joined the condemnations of POTA, the current West Bengal chief minister, Buddhadeb Bhattacharya, consulted with the BJP's Lal Kishan Advani, when he was Home Minister, to discuss using POTA to pre-empt what he termed Islamic terrorists from finding cover in madrassas (Islamic schools.)



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