

# Indian parliament rushes through draconian “anti-terror” laws

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Barely three weeks after the Mumbai terrorist attack, India's Congress Party-led United Progressive Alliance (UPA) government pushed draconian new "anti-terror" laws through parliament.

Amidst an unrelenting din of hysteria over reputed "Pakistani-sourced terrorism," all sections of India's political establishment—including the Hindu supremacist Bharatiya Janata Party and Shiv Sena and the Communist Party of India (Marxist)-led Left Front—unanimously joined with the Congress and its UPA allies on Dec. 17 to adopt the *Unlawful Activities (Prevention) Amendments Act 2008* and the *National Investigating Agency Act*.

The *Unlawful Activities (Prevention) Amendments Act 2008* introduces harsh amendments to the already draconian provisions of a similarly titled 1967 act, including doubling the time "terror" suspects can be held without charge and forcing accused in certain cases to "prove" their innocence. The second bill authorizes the creation of a National Investigating Agency (NIA) akin to the US Federal Bureau of Investigation (FBI). According to the Indian constitution "law and order" comes under the purview of the state governments. However the new agency will have the authority to probe "terrorist acts" directly without the authorization of local state governments. The *National Investigating Agency Act* also establishes special courts to try terrorism cases.

Pressing for unanimous passage of the two bills in the Lok-Sabha (the lower house of India's parliament), Home Minister P. Chidambaram claimed the legislators had "captured the mood of the nation" by agreeing to set aside normal parliamentary procedures to rush through emergency, "consensus" legislation. Chidambaram claimed that the bills were needed to confront the threat of "Jihadi-terrorism," yet hypocritically urged the legislators not to look at the legislation through a "communal prism."

While the UPA government and corporate media have claimed the bills are a response to the three-day commando-style attack on Mumbai in late November, the Hindu right and large sections of India's security establishment have long been pushing for new powers for the state in the name of combating terrorism. UPA Prime Minister Manmohan Singh has himself repeatedly referred to terrorism—by which he means not just the bombings and commando raids mounted by Islamacist groups, but a whole series of national-separatist and Naxalite (Maoist) insurgencies—as the greatest threat to the Indian state.

The hypocritical and reactionary character of the ruling class debate over terrorism is underscored by the fact that entirely excluded from discussion are the atrocities that the Hindu right, with the complicity of much of state apparatus, has perpetrated over the past two decades—most infamously in the wake of the 1992 razing of the Babri Masjid mosque in

Ayodhya and the 2002 Gujarat pogrom. In so far as there has been a rise of Islamicist terrorism in India, it has come largely in reaction to the Indian bourgeoisie's connivance with, and sponsorship of, the Hindu right.

That the target of the legislation is far more than the perpetrators of the Mumbai attack and like atrocities is above all demonstrated by the sweeping definition of terrorism set out in the *Unlawful Activities Act (2008)*. The multi-part definition declares guilty of a "terrorist act," "Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country" using any "hazardous substance" likely to cause injury or property damage or disrupt essential services; or by using "criminal force" or threatening criminal force to "overawe" any public official; or who seeks to compel the Indian government, any state or foreign government to do anything by detaining or kidnapping anyone.

The bill goes on to make it a crime liable to a minimum of five years and a maximum of life imprisonment to raise, collect, or provide funds, "directly or indirectly," "likely" to be used to "commit a terrorist act."

It also provides, according to an analysis carried out by Amnesty International, "no clear and strict definition of what constitutes 'membership' of a 'terrorist gang or organization.'" This opens the door to the witchhunting of large numbers of people who support the objectives of an organization deemed by the Indian state to be terrorist, but who are in no way involved in violence.

The bill's definitions of terrorism and support for terrorism provide the legal framework for the Indian state to greatly intensify its attempts to crush through state violence the ethno-separatist insurgencies in Kashmir and the north-east and the insurgencies being mounted by several Naxalite groups. (According to the Indian government, Naxalite insurgents are active in about 180 administrative districts or more than one-fifth of the entire country.)

The Naxalites are a retrograde, nationalist political tendency. But they have been able to gain support in some of the poorest and most remote areas of India because of the tremendous agrarian crisis and because the mainline Stalinist parties, the Communist Party of India (Marxist) and the Communist Party of India, have politically paralyzed the working class.

The Naxalite movement enjoys the support of a layer of students and has a network of support and cultural organizations, some of them patronized by well-known intellectuals and artists. Such activities have now been criminalized and there is every reason to expect that the ruling elite will utilize these new laws to launch a dragnet against Naxalite-aligned groups and their supporters.

The legislation could also be invoked in the future directly against the working class, as almost any form of resistance to the state could be labeled a threat to the "unity, integrity, security or sovereignty of India." Sections of the corporate media have long denounced *hartals* (political strikes) and *gheraos* (in which protesters surround and detain a government official or corporate boss) as violent acts, based on "terrorizing" opponents.

## Overturning of key juridical principles

Of no less importance is the fact that the legislation overturns longstanding juridical principles, laying the basis for further attacks on democratic rights.

Police are now empowered to arrest "terrorist suspects" and detain them for 180 days without filing any formal charges. Under the 1967 Act the maximum period of imprisonment without formal charges was 90 days.

Foreign "terror suspects" or indeed almost any foreign national accused of entering the country illegally will have no right to bail. Even for Indian nationals, bail will be difficult if not impossible to obtain, as it is subject to the consent of a judge of the special "terrorist" court. The state is empowered to freeze, seize or attach funds and other financial assets or economic resources reputedly held by "suspected" individuals on behalf of terrorist organizations.

If a suspect is caught with "weapons," the law will presume the accused is guilty; in other words the burden of proof will be shifted from the state to the accused, thereby violating one of the most essential principles of civil liberty—"innocent until proven guilty."

The special courts established under the *National Investigating Agency Act* will try terror suspects *in camera*, denying the public knowledge of the proceedings and thereby greatly facilitating convictions on the basis of flimsy or concocted evidence.

The UPA government's adoption of the *Unlawful Activities (Prevention) Amendments Act 2008* and the *National Investigating Agency Act* constitutes a further major shift to the right on the part of the Congress Party, the Indian bourgeoisie's traditional party of government. In July, the Congress-led UPA broke with the Stalinist Communist Party of India (Marxist) and its Left Front (which had been providing the minority government with the parliamentary votes needed to remain in office), so as to press forward with the Indo-US civilian nuclear treaty and, more broadly, a "global, strategic" partnership with US imperialism.

In passing the twin "anti-terror" bills, the Congress is adapting and giving succor to the Hindu right. In a communally-laced propaganda offensive, the official opposition Bharatiya Janata Party (BJP) has long accused the Congress of being "soft on terrorism" because it wants to attract Muslim votes. This Hindu communalist party, which was swept from the power by the Congress-led UPA in 2004, has particularly lashed out against the UPA government for its repealing of the Prevention of Terrorism Act (POTA), legislation the previous BJP-led government adopted in 2002 following a terrorist attack on India's parliament and in the midst of a massive military mobilization and threats of war against

Pakistan.

The Congress Party made much of its repeal of POTA after it came to power in 2004, conceding that it was anti-democratic, had resulted in police dragnets in which large numbers of innocent people, especially Muslims, had been victimized, and had been used by various state governments to witchhunt political opponents.

The Congress Party has now come full-circle. The new laws adopt the key elements of POTA, including long detentions without charges, a broad definition of terrorism, placing the burden of proof on the accused, and closed trials in special courts. Only a few provisions are different. Unlike POTA, the new law does not allow prosecutors to use "confessions" made to police officers. (India's police and security forces have an appalling human rights record, including routine use of summary executions and torture.)

The *Times of India* in its article entitled "POTA Back as New UAPA?" concluded that the new legislation is indeed "old wine in new bottle."

## The BJP welcomes the Congress' "U-Turn"

The Congress Party's lurch to the right was acknowledged by BJP leader L.K. Advani, but he made sure to once again admonish the Congress for having repealed POTA and to demand even more repressive measures, such as making police-elicted "confessions" admissible in court.

Said Advani, "I cannot express happiness but I express satisfaction today. You have today admitted that the government was wrong for 10 years and will rectify mistakes. You have woken up from Kumbhakarna's sleep. (Kumbhakarna is a character in a Hindu epic who is always in deep sleep.) I want that you admit that you were wrong. . . . You attacked us as if we had committed a crime when we ushered in the Prevention of Terrorism Act (POTA)."

Having lectured the Congress for having termed POTA as "anti-minority," Advani concluded by proclaiming, "Today I am happy with your U-turn."

The Congress-Party led UPA government has used last month's Mumbai attack to ratchet up tensions with Pakistan, India's historic rival, and thereby force it to cut off support for the anti-Indian insurgency in Kashmir, to divert popular attention from the fallout within India of the world economic crisis, and now to mount a sweeping attack on democratic rights.

In the process, the self-avowed "secular" Congress has joined hands with the BJP, while competing with the Hindu supremacists as to which party is the most resolute against terrorism and Pakistan.

The Congress has now leveled its own "soft on terrorism" charge against the BJP, repeatedly referring to a 1999 incident in which the BJP-led government of the time authorized the release of some Kashmiri separatists from prison in India to secure the release of hostages on a hijacked plane.

The attitude taken by Stalinist parties towards the new "anti-terror" laws

has exposed their pathetic prostration before the Indian bourgeoisie and its state.

After proposing a series of amendments that were rejected by the united front of the Congress and BJP, the Stalinists joined with the government and the Hindu supremacists to adopt the two bills, thereby enabling the Indian state to claim that the legislation enjoys parliament's unanimous support.

CPM MP Basudeb Acharia justified the CPM's support for the formation of NIA by saying, "Initially, we were not in favor of a central investigating agency. But from the kind of terror attacks the country is facing today it is clear that it cannot be handled by state governments. So we support such an agency."

The Stalinists' initial reservations on the NIA were not based upon a principled defence of democratic rights, but instead arose from their longstanding attempts to woo various regional-based bourgeois cliques in the name of "state rights." Several state governments and regional parties had opposed the establishment of a federal "terrorist" agency, complaining that it violated the constitution's division of powers. However, such opposition rapidly dissipated in the face of a strong push from the dominant sections of India's elite to use the Mumbai atrocity to streamline and strengthen the state apparatus.

The Indian corporate media has supported the new anti-terror laws, but their harsh provisions have caused some commentators to express concerns. An editorial in the *Hindu* said the laws raise "serious concerns from a jurisprudential and civil rights standpoint," especially the provision "that mandates special courts to presume that the accused is guilty under certain circumstances." However, registering its basic agreement with the new laws, the editorial concluded: "Terrorism needs to be fought, and firmly, through a number of measures, including beefing up the intelligence and investigative apparatus and the police force."

International human rights groups have been more forthright. Madhu Malhotra, Asia Pacific Program Deputy Director at Amnesty International, said: "While we utterly condemn the [Mumbai] attacks and recognize that the Indian authorities have a right and duty to take effective measures to ensure the security of the population, security concerns should never be used to jeopardize people's human rights." Amnesty urged the Indian president not to proclaim the two bills law, saying that they violate international human rights treaties to which India is a signatory.



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