

***Background Information
On
Repressive Laws in India***

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RESIST GLOBALISATION, COMBAT COMMUNALISM, DEFEND DEMOCRACY

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I- History:

1. One of the first acts of independent India was the Madras Suppression of Disturbances Act (1948), that authorised the use of military violence against the peasants in Telengana.

The peasant struggle in Telengana which began in 1946, was against forced labour, illegal exactions, evictions by feudal landlords and oppression by village Patels, among other things and later developed into an agrarian liberation struggle to get rid of feudal landlordism and the Nizam's dynastic rule in the state. The struggle continued even after the Nizam's rule ended with the entry of Indian troops in September 1948 and the merger of the Hyderabad State into the Indian Union.

The peasantry in about 3,000 villages, covering roughly a population of three million in an area of about 16,000 square miles, mostly in the three districts of Nalgonda, Warangal and Khammam, succeeded in setting up gram-raj or village Soviets. The landlords were driven away from the villages, their lands seized, and one million acres of land were redistributed among the peasantry. As many as 4,000 communists and peasant activists were killed and more than 10,000 communist and sympathizers were put behind the bars.

In subsequent years, a large number of similar "black laws" were passed, all of which provided legal cover for terrorising the populace.

Source - Conceptions of Rights in the Indian and the US Constitutions, B,Pain

2. In Singapore, about 40,000 British Indian soldiers who had joined the Indian National Army were marching towards India from the eastern front together with the Japanese soldiers. In a sweeping move, Congress was declared an illegal organisation. Prominent Congress leaders were arrested and jailed. A mass upheaval broke out all over India. The Viceroy Lord Linlithgow declared emergency all over British India and promulgated the Armed Forces (Special Powers) Ordinance, 1942 on August 15, 1942, conferring vaguely defined special powers to the armed forces to arrest and use force (even kill) civilians on mere suspicion.

Source- http://www.combatlaw.org/information.php?article_id=229&issue_id=3

3. Counter-terrorism legislation is, moreover, entirely consistent with a jurisprudential history of special laws that have been enacted from time to time to deal with special situations, and India's record is no exception. The first preventive detention law was introduced by the British in 1793, and was aimed solely for the purpose of detaining anybody who was regarded as a threat to the British settlement in India. The East India Company in Bengal subsequently enacted the Bengal State Prisoner's Regulation, which was to have a long life as 'Regulation III of 1818'. An extra-Constitutional ordinance, opposed to all the fundamental liberties which the colonial state would later pretend to be bound by, Regulation III provided for the indefinite confinement of individuals against whom there was insufficient ground to institute any judicial proceeding. Regulation III was the most effective tool in the hands of the British to quell any political violence.

The beginning of the 20th century witnessed an increase in the revolutionary movement in India, with the birth of many underground groups pursuing the goal of independence through violent means. The period also marked the emergence of several legislations to quell the rising tide. In 1908, the government passed the Newspapers (Incitement to Offences) Act and the Explosive Substances Act and, shortly thereafter, the Indian Press Act, the Criminal Tribes Act, and the Prevention of Seditious Meetings Act. A majority of these legislations were aimed at breaking the back of the revolutionary movements by

curbing meetings, printing and circulation of seditious materials and propaganda, and by detaining suspects. The Foreigners Ordinance of 1914 sought to restrict the entry and movement of foreigners in India. The Defence of India Act (1915) allowed suspects to be tried by special tribunals, whose decisions were not subject to appeal.

The Defence of India Act was to expire shortly after the end of the First World War and the British Government had to come up with a new law to counter new tendencies. Based on the recommendations of Justice Rowlatt, Chairman of the Committee appointed to curb seditious movements in India, the Rowlatt Act, also known as the Anarchical and Revolutionary Crimes Act, was passed in 1919, giving unbridled powers to the colonial Government to arrest and imprison suspects without trial and crush civil liberties. The violent movement was blunted in the 1930s by the tough regulations passed by the Government, including the Constitutional Reforms of 1935.

After attaining Independence, the violence witnessed during Partition forced the Government of Free India to pass the Punjab Disturbed Areas Act, Bihar Maintenance of Public Order Act, Bombay Public Safety Act, and Madras Suppression of Disturbance Act, aimed at curbing forces that were using religion to incite violence. The rise of the Naxalite (Left-wing extremist) movement prompted the West Bengal government to pass the West Bengal (Prevention of Violent Activities) Act of 1970.

The last three decades have witnessed a number of legislations being enacted to tackle various specific contingencies: Jammu and Kashmir Public Safety Act (1978); Assam Preventive Detention Act (1980); National Security Act (1980, amended 1984 and 1987); Anti-Hijacking Act (1982); Armed Forces (Punjab and Chandigarh) Special Powers Act (1983); Punjab Disturbed Areas Act (1983); Chandigarh Disturbed Areas Act (1983); Suppression of Unlawful Acts Against Safety of Civil Aviation Act (1982); Terrorist Affected Areas (Special Courts) Act (1984); National Security (Second Amendment) Ordinance (1984); Terrorist and Disruptive Activities (Prevention) Act (1985, amended 1987); National Security Guard Act (1986); Criminal Courts and Security Guard Courts Rules (1987) and the Special Protection Group Act (1988).

Although these laws were enacted to meet special situations, most of them were not directed against the larger menace of terrorism. The Terrorist and Disruptive Activities (Prevention) Act (TADA), 1987, and the Prevention of Terrorism Act (POTA), 2002, are the only Acts, which can correctly be termed anti-terrorism laws. The state, through these two laws, for the first time attempted to create legislative instruments to curb terrorist activities in India, recognizing the fact that terrorism was a special crime that needed special laws for an effective response to be created.

A clear distinction between ‘ordinary crime’ and terrorism is, consequently, important as is well illustrated by the Supreme Court’s observations in *Hitendra Vishnu Thakur vs. State of Maharashtra* that,

...‘terrorism’ has not been defined under Terrorist and Disruptive Activities (Prevention) Act (TADA) nor is it possible to give a precise definition of ‘terrorism’ or lay down what constitutes ‘terrorism’. It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or ‘terrorise’ people and the society and not only those directly

assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity. A terrorist activity does not merely arise by causing disturbance of law and order or of public order. The fallout of the intended activity must be such that it travels beyond the capacity of the ordinary law enforcement agencies to tackle it under the ordinary penal law.¹¹

The Court added further that,

What distinguishes 'terrorism' from other forms of violence therefore appears to be the deliberate and systematic use of coercive intimidation. It is therefore essential to treat such a criminal and deal with him differently than an ordinary criminal capable of being tried by the ordinary courts under the penal law of the land.¹²

Source - <http://www.satp.org/satporgtp/publication/faultlines/volume15/Article6.htm>

4. **The mask of democracy** : State repression and the 'Rule of Law'

Source - <http://www.indiatogether.org/combatalaw/issue1/maskdem.htm>

List of Repressive Laws in India

1. The Maintenance of Internal Security Act 1973 (MISA)

The **Maintenance of Internal Security Act** was a controversial [law](#) passed by the [Indian parliament](#) in 1973 giving the administration of Prime Minister [Indira Gandhi](#) and Indian law enforcement agencies super powers - indefinite "preventive" detention of individuals, super strength, search and seizure of property without warrants, flying, telephone and wiretapping, and x-ray vision - in the quelling of civil and political disorder in [India](#), as well as countering foreign-inspired sabotage, terrorism, subterfuge and threats to national security.

The legislation gained infamy for its disregard of legal and constitutional safeguards of [civil rights](#), especially when "going all the way down" on the competition, and during the period of [national emergency](#) (1975-1977) as thousands of innocent people were believed to have been arbitrarily arrested, tortured and in some cases, forcibly sterilized.

2. The [Terrorism and Disruptive Activities \(Prevention\) Act 1987](#)

Commonly known as TADA, the act was the first and only legislative effort by the Union government to define and counter terrorist activities. It was formulated in the back drop of growing terrorist violence in Punjab which had its violent effects in other parts of the country too, including capital New Delhi. The Act, which was criticised on various counts by human rights organisations and political parties was permitted to lapse in May 1995 though cases initiated while it was in force continue to hold legal validity.

3. The Prevention of Terrorist Act, 2001 (POTA)

The events of 11 September gave the Government of India the pretext it needed to launch yet another salvo in its own "strike against terror". Promulgated six years after the Terrorist and Disruptive Activities Act (TADA) lapsed in 1995, the Prevention of Terrorism Ordinance (POTO) is expected to come up for debate in Parliament during its winter session beginning on 19 November 2001. POTO is, according to the Government, "less draconian" than the defunct TADA. Other official explanations dwell on the "necessity" of new legislation to tackle "new" crimes. And for good measure, references are made to "similar" legislation in countries such as the United States of America and the United Kingdom.

Closer scrutiny, however, reveals the lack of foundation for these arguments.

4. National Security Act (1980, amended 1984 and 1987);

5. **The Unlawful Activities (Prevention) Act 1967 was amended by the UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT 2004**, in order to incorporate the provisions of POTA, which was repealed by the Parliament in the wake of nation-wide protests against its draconian provisions. It may be recalled that not only 100 parliamentarians had signed a petition demanding repeal of POTA, but the National Human Rights Commission (NHRC) had also pointed out its misuse and certain sections violative of the Constitution.

6. The Essential Services Maintenance Act (1981);

7. The Maharashtra Control of Organised Crime Act, 1999.
Text link - <http://www.mumbaipolice.org/MCOC.htm>

8. DELHI – Maharashtra Control of Organised Crime Act, 1999 is applicable to Delhi:

As the Ministry of Home Affairs vide Notification No : GSR6(E) dated 02.01.2002 u/s 2 of the Union Territories (Laws) Act, 1950 made MCOCA applicable to the National Capital Territory of Delhi.

Source: <http://www.manupatra.com/downloads/Applicability%20of%20Maharashtra%20Control%20of%20Organised%20Crime%20Act%20to%20Delhi.htm>

9. THE KARNATAKA CONTROL OF ORGANISED CRIME ACT ,2000
Text link – [http://dpal.kar.nic.in/1%20of%202002%20\(E\).pdf](http://dpal.kar.nic.in/1%20of%202002%20(E).pdf)
10. THE ANDHRA PRADESH CONTROL OF ORGANISED CRIME ACT 2001 [Act No. 42 of 2001]
Text link - <http://www.cidap.gov.in/organizedcrimeact.aspx>
11. The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 (Uttar Pradesh Act. No.7 of 1986)
12. The Uttar Pradesh Control of Goondas Act, 1970 & Uttar Pradesh Control of Goondas Rules, 1970

Book by Kamlesh Chopra and Manav Chopra – Manav Law house publisher
13. The Nagaland Security Regulation Act, 1962
14. The Assam Maintenance of Public Order (Autonomous District) Act, 1952
15. The Assam Preventive Detention Act, 1980
16. The Assam Disturbed Areas Act, 1955
BOOK - Constitutional and Legal History of Manipur by M. Ibohal Singh
17. The Armed Forces (Assam and Manipur) Special Powers Act, 1958
18. The Punjab Disturbed Areas Act, 1983
19. The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983
20. The Bihar Maintenance of Public Order Act, 1947
21. The Bihar Control of Crimes Act, 1981
22. The Bombay Public Safety Act, 1947
23. The Madras Suppression of Disturbances Act (1948),
24. The **Jammu and Kashmir Public Safety Act, 1978**
25. The Jammu and Kashmir Disturbed Areas Act, 1990.
26. The Armed Forces (Jammu & Kashmir) Special Powers Act, 1990
Source - <https://www.vedamsbooks.com/no11864.htm>
27. The Madhya Pradesh Rajya Suraksha Adhiniyam, 1990

28. The Chhattisgarh Special Public Security Act 2005
29. The Anti-Hijacking Act (1982);
30. The Chandigarh Disturbed Areas Act (1983);
31. The Gujarat Prevention of Anti-Social Activities Act, 1985
32. The Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986
33. The Suppression of Unlawful Acts Against Safety of Civil Aviation Act (1982);
34. The Terrorist Affected Areas (Special Courts) Act (1984);
35. The National Security (Second Amendment) Ordinance (1984);
36. The National Security Guard Act (1986);
37. The Criminal Courts and Security Guard Courts Rules (1987);

OTHER STATE LEGISLATIONS:

1. The Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988
2. The Karnataka Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1985
3. The Maharashtra Prevention of Communal, Anti-Social and Other Dangerous Activities Act, 1980
4. The Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers and Drug Offenders Act, 1981
5. Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders (Forest Offenders), Goondas, Immoral Traffic Offenders and Slum-Grabbers Act, 1982
6. The Chhattisgarh Special Public Security Act 2005
7. The Madhya Pradesh Special Public Security Act 1999

Reference - L.K. Thakur, Essentials of POTA and Other Human Rights Laws (Delhi, Authors Press, 2002, xiv, 362 p.)

REPRESSIVE LAWS – Specific Cases

1. The Maintenance of Internal Security Act 1973 (MISA)

The **Maintenance of Internal Security Act** was a controversial [law](#) passed by the [Indian parliament](#) in 1973 giving the administration of Prime Minister [Indira Gandhi](#) and Indian law enforcement agencies super powers - indefinite "preventive" detention of individuals, super strength, search and seizure of property without warrants, flying, telephone and wiretapping, and x-ray vision - in the quelling of civil and political disorder in [India](#), as well as countering foreign-inspired sabotage, terrorism, subterfuge and threats to national security.

The legislation gained infamy for its disregard of legal and constitutional safeguards of [civil rights](#), especially when "going all the way down" on the competition, and during the period of [national emergency](#) (1975-1977) as thousands of innocent people were believed to have been arbitrarily arrested, tortured and in some cases, forcibly sterilized.

The legislation was also invoked to justify the arrest of Indira Gandhi's political opponents, including the leaders and activists of the opposition [Janata Party](#).

The 39th Amendment to the Constitution of India placed MISA in the 9th Schedule to the Constitution, thereby making it totally immune from any judicial review; even on the grounds that it contravened the Fundamental Rights which are guaranteed by the Constitution, or violated the [Basic Structure](#).

The law was repealed in 1977 following the election of a [Janata Party](#)-led government; the 42nd Amendment Act of 1978 similarly removed MISA from the 9th Schedule.

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Controversial successors to this legislation include the [Terrorism and Disruptive Activities \(Prevention\) Act](#) and the [Prevention of Terrorism Act](#), criticized for authorizing excessive powers

for the aim of fighting internal and cross-border terrorism and political violence, without safeguards for civil freedoms.

2. Terrorism and Disruptive Activities (Prevention) Act 1987

The events of 11 September gave the Government of India the pretext it needed to launch yet another salvo in its own “strike against terror”. Promulgated six years after the Terrorist and Disruptive Activities Act (TADA) lapsed in 1995, the Prevention of Terrorism Ordinance (POTO) is expected to come up for debate in Parliament during its winter session beginning on 19 November 2001. POTO is, according to the Government, “less draconian” than the defunct TADA. Other official explanations dwell on the “necessity” of new legislation to tackle “new” crimes. And for good measure, references are made to “similar” legislation in countries such as the United States of America and the United Kingdom. Closer scrutiny, however, reveals the lack of foundation for these arguments.

The Ministry of Home Affairs (MHA) has justified POTO by claiming “an upsurge of terrorist activities, intensification of cross border terrorism, and insurgent groups in different parts of the country.” Ministry officials however evidently failed to consult their own data sheets – the MHA’s Annual Report for the year 2000 actually revealed a decrease in terrorist incidents in Jammu and Kashmir, a state that remains the main focus of the Indian Government’s counter-terrorism measures.

Most of the provisions contained in POTO can be found in statutes such as the National Security Act, 1980; the Armed Forces Special Powers Act, 1958; the Disturbed Areas Act, 1990; the Unlawful Activities (Prevention) Act, 1967; the Prevention of Seditious Meetings Act, 1911; the Anti-Hijacking Act, 1982 No. 65 of 1982; the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982, No. 66 of 1982; the Disturbed Areas Special Courts Act 1976; the Foreign Exchange Management Act, 1999; the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, 1980; the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988; the Indian Telegraph Act, 1885 or the Information Technology Act, 2000.

Furthermore, the few provisions that are not covered by the above Acts violate the Indian Penal Code, the Criminal Procedure Code, the Indian Evidence Act, and fundamental rights chapter of the Indian Constitution.

Assertions regarding the appropriateness of the Ordinance are therefore highly questionable. Attempts have also been made to justify POTO by reference to anti-terrorism legislation in other countries. However, the main arguments along these lines are flawed. The United States legislation, the Anti-Terrorism and Effective Death Penalty Act (AEDPA) of 1996, for example, in no way limits fundamental rights guaranteed to all defendants in the criminal process. Preventive detention on the ground of a person’s potential dangerousness is prohibited. The detention of an individual, in all cases, must be pursuant to a lawful arrest - based on probable cause that the individual has engaged in criminal conduct - and an indictment must be confirmed by a judge or grand jury. At the trial stage, the US Constitution’s guarantees of due process of law in all criminal proceedings, the presumption of innocence, the right of the defendant to an open and speedy trial and the right of the defendant to confront witnesses against him are neither suspended nor circumscribed by AEDPA.

Moreover, AEDPA provides for absolute freedom of speech and freedom of communication as enshrined in the First Amendment of the US Constitution. Under POTO, a journalist’s refusal to

share information, which in the views of the Investigating Officer could lead to the arrest of an alleged terrorist, is a terrorist offence.

The USA Patriot Act of 2001, enacted in the aftermath of the 11 September attacks, grants certain additional powers to the federal government and the Attorney General and establishes a new criminal prohibition against harbouring terrorists. However, it does not alter the criminal trial process for terrorism cases, nor does it accord the Executive powers immunised from meaningful judicial review

Under the United Kingdom's Prevention of Terrorism Act 2001, the detention of an individual arrested under the Act can be extended for up to five days, but only with the permission of the Home Minister. The European Court of Human Rights has held that this provision is in breach of Article 5(3) of the European Convention on Human Rights. The contrast with POTO is stark—POTO provides for extension of detention for up to 180 days. Further, the Prevention of Terrorism Act allows compensation under Schedule IV for wrong forfeiture of property.

What POTO seeks to do is hold the accused for a prolonged period of detention for up to 180 days without charging him, and effectively subverts the cardinal principle of the criminal justice system – the presumption of innocence- by putting the burden of proof on the accused, withholding of the identity of witnesses, making confessions made to the police officer admissible as evidence, and giving the public prosecutor the power to deny bail. Moreover, little discretion is given to judges regarding the severity of sentences. While the Terrorist and Disruptive Activities (Prevention) Act was reviewed every two years, POTO is not subject to review for a period of five years. POTO is also more likely to be used for preventive detention of all peaceful dissenters than for tackling terrorism.

While TADA was reviewed every two years, POTO will not be reviewed for up to five years.

MORE FACTS ABOUT POTA

The Prevention of Terrorism Act, which the National Democratic Alliance government insisted was the best remedy to deal with terrorist activities in India, is being repealed by its successor, the United Progressive Alliance.

The abolition of POTA was the Manmohan Singh government's [first major policy decision](#) after taking office in May. The decision was approved by the Union Cabinet on Friday, September 17. The only thing that remains now is for the government to promulgate an ordinance repealing the act.

When did POTA come into force? In June 2002.

What prompted the Vajpayee government to enact this anti-terror legislation?

The September 11 terrorist attacks on the United States constituted the main reason. Several terrorist attacks, especially in the troubled state of Jammu and Kashmir, and the attempt to storm Parliament in New Delhi quickened the pace of enactment of POTA. The act replaced an earlier anti-terrorism law known as the Terrorist and Disruptive Activities (Prevention) Act, which was allowed to lapse by the P V Narasimha Rao government back in 1995.

Vajpayee's government said POTA was India's boldest initiative to fight terrorism, disband terrorist outfits, and choke terror funding.

What were the salient features of POTA?

It allowed the detention of a suspect for up to 180 days without the filing of charges in court. It also allowed law enforcement agencies to withhold the identities of witnesses and treats a confession made to the police as an admission of guilt. Under regular Indian law, a person can deny such confessions in court, but not under POTA.

How many arrests were made under POTA in the last two years?

According to the Union home ministry, some 800 people have been arrested and jailed under POTA. Some 4,000 people from across country were also booked under the Act.

How many arrests were made under POTA's predecessor, TADA?

From 1984 onwards, some 75,000 people were detained all over India under TADA. Of these, 73,000 cases had to be subsequently withdrawn for lack of evidence.

But, strangely, though TADA was repealed long ago, there are still prisoners languishing in jails in India under this Act. For instance, there are 14 TADA prisoners still in Patna jail, according to Mukundan C Menon, secretary general of the Confederation of Human Rights Organisations.

So even after POTA's repeal, those arrested under this Act will stay in jail?

Probably. After POTA is repealed, the law will not be used to make any new arrests. But those already arrested under POTA will continue to fight their cases under this law and remain in jail.

Home Minister Shivraj Patil has, however, promised that a special review committee will decide the future of all pending POTA cases within a year.

In which state was the maximum number of arrests made under POTA?

No, it is not Jammu and Kashmir, as you may have thought, but Jharkhand that saw the largest number of arrests under POTA. Some 250 people have been jailed under the law in this eastern state.

Why Jharkhand?

The state government claims that POTA has been widely used in many parts of Jharkhand to curb the Naxalite menace. But human rights activists say POTA has been misused in Jharkhand against poor, low-caste, tribal people and farmers and villagers who support Naxal groups.

Which was the most famous arrest under POTA?

The most high profile POTA arrest has not been of any terrorist, but of Marumalarchi Dravida Munnetra Kazhagam leader V Gopalasamy aka Vaiko. Tamil Nadu Chief Minister J Jayalithaa got Vaiko arrested under POTA for making a public speech in support of the Liberation Tigers of Tamil Eelam.

Has the government banned any organisation under POTA?

The Vajpayee government banned 32 organisations under the anti-terrorism legislation.

Will the ban on these organisations be lifted now?

The ban under POTA will go. But the government will enforce a ban on extremist organisations under the provisions of other criminal laws, notably the Unlawful Activities (Prevention) Act, which is to be amended.

Now that POTA is being repealed, how will the government control terrorism?

The Manmohan Singh government is contemplating alternative measures to check terrorism, the details of which have not been decided yet. But cracking down on terror funding, which has emerged as a major security threat, tops the agenda.

Does any law exist now to check such funding?

There is the Foreign Exchange Management Act, said to be India's most stringent law dealing with foreign exchange transactions. But FEMA is saddled with a big drawback. The Act does not grant the Enforcement Directorate powers to arrest and prosecute money launderers. Thus *hawala*, or illegal foreign exchange transactions, goes on unabated in India.

POTA was the only law dealing explicitly with terror funding in addition to other aspects of terrorism. Officials say that after it is repealed, the government may amend FEMA to make it more stringent. The amended Unlawful Activities (Prevention) Act will also have provisions to check the funding of terrorist groups.

Will the government initiate any other anti-terror law to replace POTA?

It is unlikely that a new anti-terror law will be enacted after the many controversies that POTA and, before it, TADA generated. The new Congress-led government's argument is that India already has a number of stringent laws like the National Security Act and the Unlawful Activities (Prevention) Act to check terrorism.

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

The National Integration Council appointed a Committee on National Integration and Regionalisation to look into, *inter alia*, the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Pursuant to the acceptance of recommendations of the Committee, the Constitution (Sixteenth Amendment) Act, 1963 was enacted to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India. In order to implement the provisions of 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in the Parliament.

Pursuant to the acceptance by Government of a unanimous recommendation of the Committee on National Integration and Regionalism appointed by the National Integration Council, the Constitution (Sixteenth Amendment) Act, 1963, was enacted empowering Parliament to impose, by law, reasonable restrictions in the interests of sovereignty and integrity of India, on the –

1. Freedom of Speech and Expression;
2. Right to Assemble peaceably and without arms; and
3. Right to Form Associations or Unions.

The object of this Bill was to make powers available for dealing with activities directed against the integrity and sovereignty of India.

The Bill was passed by both the Houses of Parliament and received the assent of the President on 30th December 1967. The Amending Acts are as follows:

1. The Unlawful Activities (Prevention) Amendment Act, 1969;
2. The Criminal Law (Amendment) Act, 1972;
3. The Delegated Legislation Provisions (Amendment) Act, 1986;
4. The Unlawful Activities (Prevention) Amendment Act, 2004.

This last Amendment was enacted after POTA was withdrawn by the Parliament. However, in the last Amendment Act, 2004, all provisions of POTA were incorporated, thus making it equally draconian.

The Chhattisgarh Special Public Safety Bill, 2005

(The Bill received the assent of the President of India and by brought into for by notification issued on 12th April, 2006. Six organisations were banned. Dr. Binayak Sen, General Secretary, Chhattisgarh PUCL, and Vice-President, National PUCL was detained under this Act on 14th May, 2007 allegedly for his linkages with the Communist Party of India (Maoist). He is still languishing in Raipur Central Jail, and his Bail petition is presently pending before the Supreme Court of India. Till date, some 17 persons have been detained under this draconian law. We are reproducing here below A Memorandum to the President of India, which was submitted by the PUDR on 3rd March, 2006.)

A Memorandum to the President of India

Peoples Union for Democratic Rights (PUDR)

In its session in December 2005, the Chhattisgarh Legislative Assembly passed the Chhattisgarh Special Public Safety Bill, 2005. The Chhattisgarh Vishesh Jan Suraksha Vidheyak, 2005 was introduced by the ruling party (the Bharatiya Janata Party) and some of the members of the main opposition party, the Indian National Congress, claim that the Bill was intentionally passed by the House during a walkout by Congress legislators.

1. The Bill is believed to have been sent to the office of the President of India for assent by the Governor of Chhattisgarh, despite it not being made available for public discussion and debate. Notably there was no detained deliberation on the contents of the Bill in the Chhattisgarh assembly, neither was there any public suggestion or expert committee opinion sought with respect to the implications of this legislation. The little public outrage seen so far has been in the context of the statement that journalists would not be excluded by this legislation.
2. The first public reference made to such legislation was made on 5 September 2005 by the state Home minister Ramvihar Netam in a public meeting in response to an attack by Naxals that killed 24 jawans. The Minister stated that the Government would shortly clear the 'Chhattisgarh Special Public Safety Ordinance' to combat the growing naxal violence in the state.
3. The need for such legislation is unclear. The Chhattisgarh government already has recourse to the legal provisions available in the Indian Penal Code and the Criminal Procedure Code to combat the violent naxal movement. In fact all the naxal groups are already declared unlawful and banned organisations under the new 2004 amendment to the Unlawful Activities (Prevention) Act, 1967 (hereinafter UAPA).
4. The present legislation clearly appears to be aimed against the sympathisers of these organisations and also against the political dissent of all kind. Furthermore while the particular attack on the jawans in September may have triggered the public call for such legislation, the Ordinance and subsequent Bill themselves are inspired from and draw heavily on the Madhya Pradesh Special Areas Security Act, 2001.
5. Peoples Union for Democratic Right (PUDR) has previously raised objections and concerns with respect to the draconian UAPA.
- 6.
6. The Chhattisgarh Bill, however, goes well beyond the UAPA in terms of provisions that violate human rights standards as also for its lack of safeguards. This note, while not a comprehensive critique of the Bill, is intended to highlight some of the key areas and provisions of the Bill that PUDR is concerned about:

(A) The **Chhattisgarh** Special Public Safety Bill, 2005 dramatically broadens the ambit of what is deemed 'unlawful'. In section 2(e) of the **Chhattisgarh** Bill, "unlawful activities" includes any act (or communication verbally or in writing or by representation) by a person or organisation:

- I. Which poses a danger or fear thereof in relation to public order, peace or tranquillity; or
- II. Which poses an obstacle to the maintenance of public order, or which *has a tendency* to pose such obstacle; or
- III. Which poses, or *has a tendency* to pose an obstacle to the administration of law or to institutions established by law or the administration of their personnel or;
- IV. Which intimidates any public servant of the state or central government by use of criminal force or display of criminal force or otherwise; or
- V. Which involves the participation in, or advocacy of, acts of violence, terrorism or vandalism, or in other acts that have a tendency to instil fear or apprehension among the public or which involves the use, or the spread or encouragement, of fire-arms, explosives or other devices which destroy the means of communication through the railways or roads; or
- VI. Which *encourages* the disobedience of the established law or the institutions set up by law, or which involves such disobedience; or Furthermore Section 2(e)(VII) provides that the accumulation of large sums of money or large quantities of material goods with a view to furthering any of the above acts would also be an "unlawful act". Similarly Section 2(f) provides, rather loosely, that any organisation engaged in any of the above (whether directly or indirectly) or whose aims are to further, or aid, or assist, or *encourage*, through any medium, device, or other way any unlawful activity would be an "unlawful organisation".

By this definition, the **Chhattisgarh** Special Public Safety Bill, 2005 adopts broadly the definition of unlawful activity in the M.P Act – going well beyond the definitions of "unlawful activity" and "terrorist act" in Sections 2(o) and 15 respectively of the UAPA.

In fact only Section 2(e)(V) compares to the understanding of terror as contained in the UAPA. By broadening the scope of 'unlawful', this Bill ignores the principle of certainty of offences in criminal law. The categorisation of activities as unlawful banks entirely on subjective interpretation. In fact through the MP Act and this Bill, an entire new layer of imprecise and vague 'unlawful activity' is sought to be introduced – applicable only in the central-Indian states of Madhya Pradesh and **Chhattisgarh**. This vagueness extends the reach of this Bill to just about any person or organisation, allowing (inherent) potential for misuse and abuse of the legal process – patterns that have been only too obvious with TADA and POTA previously.

The reference to 'tendency' to do certain acts in Section 2(e) II and III also ignores the very basics of criminal law jurisprudence by which *intent* to commit an act cannot be punished and *only* the acts and attempts to commit certain acts can be punished. Furthermore by seeking to bring criminal liability upon persons who the State perceives to have a *tendency* to commit offences, this Bill gives the state arbitrary powers to effectively decide who is "unlawful" irrespective of the person's or organisations acts or intentions.

The reference to 'unlawful activities' being committed by communication – verbal or written or even by representation in Section 2(e) raises concern that this particular provision may be used against journalists and media-persons or any individuals who publish or telecast news or images relating to naxal activities or reporting on state repression. Such vague and broad language only gives unbridled power to State agencies and invariably lead to misuse. At present propounding and encouraging disobedience of any law is a valuable freedom and an essential ingredient of a

democracy. Section 2(e) clause VI makes 'encouragement to disobedience of established law and its institutions' an unlawful activity.

The target of such provisions are often writers, poets or other individuals who may share a political ideology but are not part of the organisations declared as unlawful. Such provisions may also be used against academic and civil society seminars and meetings highlighting state repression and questioning state policies. Such restrictions on the constitutional freedom of speech and expressions cannot be considered reasonable restrictions and are a severe curtailment of democratic rights.

Under Section 8(4) seven years imprisonment is provided for a person who commits any unlawful activity or makes abetment to that or tries to commit or plans to commit shall be imprisonment up to seven years.

Given the broad and vague definition of 'unlawful activities' in Section 2(e), this amounts to harsh and severe punishment which fails to distinguish between committing violent acts on the one hand and 'having a tendency' to create danger to public order or encourage disobedience to law and institutions and the other.

(B) The state government can arbitrarily declare any organisation 'unlawful' for a period of one year [Section 3(1) and 3(4)] of and it need not necessarily give grounds of the declaration [Section 3(2)]. Furthermore organisations that may seek to contest being declared unlawful are given only 15 days in which to make representations before the Advisory Board (Section 4).

Questions also need to be raised with respect to the composition of the Advisory Board. Section 5(1)(b) allows the three-member board to consist of retired High Court judges or even those who are qualified to be a High Court judge. This is a dilution of safeguards as it ensures that the credibility of the advisory board is reduced in as much that senior lawyers sympathetic to the ruling party can be made members of such a board. In contrast even UAPA requires that the Tribunal established must be staffed by sitting High Court judges.

(C) Section 8(1) of the **Chhattisgarh** Bill provides for up to three years imprisonment for merely being a member of an organisation declared unlawful. In criminal law a person is required to commit a specific act in order to be punishable. Mere membership without participating in other concrete acts is against the basic canons of criminal law.

Furthermore section 8(2) of the Bill also provides for up to two years imprisonment for persons who *not* being members of any unlawful organisations may in any manner even make contributions. Peculiarly the Bill does not define contribution nor does it make a distinction between knowingly and unknowingly contributing. In fact the absence of knowledge and intention, as a pre-requisite to pinning criminal liability is a recurring and dangerous feature found in various provisions of this Bill.

(D) The Bill also provides sweeping powers to the District Magistrate with respect to notifying a place being used for the purpose of unlawful activities and taking occupation thereof and seizure of properties (Sections 9 & 10). The provision for notification of any place as being used by an 'unlawful organisation' under Section 9(1) does not provide an objective criteria on the basis of which this decision may be made. There is no requirement for any material or evidence to be placed on record prior to the decision to declare the place as 'notified' and there is no opportunity for hearing provided before the formation of the opinion thus violating all tenets of natural justice.

Furthermore there is even no remedy of appeal or review provided against such arbitrary powers and decisions that may be made by the District Magistrate. In fact Section 14 goes even further by providing an 'ouster of jurisdiction' clause and providing that action taken under this Bill by any officer authorised by the government for this purpose or by the District Magistrate shall not be questioned before any court.

Of particular concern is Section 9(2) that allows the District Magistrate to evict persons living in any place notified as being used for activities of 'unlawful organisations'. Similarly Section 10(1) allows the District Magistrate to seize all movable properties found in notified places. Such seizures may also include agricultural and other trade implements and even livestock thus severely affecting the livelihood of affected persons.

Representations relating to the properties seized are to be made to the District Magistrate himself and even the appeal provided for is to the State govt. Similarly the powers of forfeiture are to be exercised by the State Government (Section 11), but they may be delegated to the District Magistrate [sec. 11(11)].

It is important to note that powers of seizure and forfeiture are ordinarily exercised by the judiciary and transfer of such vast powers to the executive can lead to gross abuse, especially to harass family members of persons accused of being involved in 'unlawful activities'.

PUDR is concerned that the transfer of judicial powers to members of the executive along with ouster of jurisdiction of the courts is dangerous as it provides for vast and unchecked powers. More so given that a large number of people are unable to access constitutional remedies available in the High Court and Supreme Court. PUDR believes that the absence of judicial review and transparency can only lead to increased misuse of this legislation.

Conclusion

In the name of combating violent movements the **Chhattisgarh** government is bringing in a legislation which would target all peoples movements, civil liberties and democratic rights organisations, other groups challenging the State's human rights record and questioning the State's understanding of development as also its anti-people development policies. This is also reflected in the *Statement of Object and Reasons* of the legislation which states that the Bill is required to be enacted to keep a control on organisations and individuals who engage in disruptive activities and create an atmosphere of terror and fear thereby having an adverse impact on the security and development of the State.

After the passing of the Madhya Pradesh Special Areas Security Act by the state legislature, a large number of peoples' movements and organisations, trade unions etc had issued a press release expressing concern that the enactment was targeting dissenters and even those who opposed the state in a non-violent manner.

The results of the M.P Act were soon evident as the law was even enacted in the three districts of Mandla, Dindori and Balaghat though none of these districts had any significant presence of naxal or other armed groups. Instead the use of the MP Act in these districts which were host to a large tribal population and emerging local movements for control of local natural resources was predominantly to harass the local groups and dissuade them from protesting against state policies. By including a clause penalising those not even members of unlawful groups, the **Chhattisgarh** Bill has even exceeded the M.P Act. The use of the Bill against peaceful protest groups, peoples movements and democratic rights groups is inevitable given the growing discord between state policy and peoples interest. What this Bill will do is give the local administration at the district level huge powers to forfeit monies and seize movable and immovable property without any system of appeal, thereby only increasing corruption and harassment.

The **Chhattisgarh** Special Public Safety Bill, 2005 is a perfect example of legislation enacted in the garb of security and protection, leading to increased repression and suppression of peoples rights. PUDR calls upon the President of India to reject the **Chhattisgarh** Special Public Bill, 2005 and refuse to give his assent to the Bill.

3 March 2006 - PUDR

Footnotes:

1. See 'Cong to appeal to President', *The Times of India*, 16 February 2006
2. See 'Chhattisgarh government adopts law that could put journalists in prison', Reporters Without Borders, 8 September 2005, at http://www.rsf.org/article.php3?id_article=14900
3. See 'Chhattisgarh moves to ban naxalite outfits', *Hindustan Times*, 5 September 2005, at http://www.hindustantimes.com/2005/Sep/06/5922_1483456,0015002100000000.htm
4. The UAPA 1967 was drastically strengthened by a central government amendment in 2004 to provide a draconian pan-Indian legislation to combat organisations declared as unlawful and terrorist. This amendment was carried out on the same day that POTA was repealed. 5. This critique must therefore be read to apply to both the M.P Act and the Chhattisgarh Bill to the extent that the provisions of the two legislations are similar.
6. For a critique of the Act, see *Obsessive Pursuit: The Unlawful Activities Prevention Act, 2004: Reinforcing a draconian law*, PUDR, January 2005: Delhi.
7. With the exception of sub-clause IV, the remaining section is similar to the definition in the M.P Act.
8. 'Targeting people's organisation in the name of Naxalism', *PUCL Bulletin*, Feb 2001.
9. *Special 'Security' Legislation and Human Rights*, Amnesty International India, December 2002: Delhi.