

Excerpt from CHRI's Submission to the POTA Review Committee

The Prevention of Terrorism Act (POTA), enacted on March 28, 2002, replaced the Prevention of Terrorism Ordinance (POTO) 2001. The Act came into force after the President of India gave his assent. POTA however was misused by the state to intimidate Indian citizens completely divorced from terrorist activities. After sustained pressure by the media and human rights groups in particular, the Government of India created a Review Committee to look into the enforcement and implementation of the Act. The following is an excerpt from CHRI's submission to the Review Committee.

I. Loose Definitions with Extremely Wide Ambit

a. Terrorism and Terrorist Activity

The definition of terrorist activity is extremely wide in its ambit and has the potential to cover activities conveying political and ideological dissent. CHRI recommends that apart from other changes that the Government may deem relevant to tighten the ambit of the definition of terrorist activity, a proviso should be added to the definition that states that a "terrorist act" does not include an act, if such act is lawful advocacy, protest, dissent or industrial action.

b. Membership of a Terrorist Organisation

The law makes membership of a terrorist organisation a punishable offence without defining what constitutes membership. CHRI strongly recommends that the law must clearly specify the criteria for determining whether a person is a member of an organisation or not. These may include, *inter alia*, attending the meetings of a terrorist organisation, collecting funds for the same, arranging meetings for the same, mobilizing public support or facilitating its terrorist activities,

c. Support to a Terrorist Organisation

The law mandates that providing support to a terrorist organisation is a punishable offence. POTA clearly makes it an offence to address, arrange or manage a meeting to support or further the activities of a terrorist organisation or inviting funding for terrorist activities and also punishes a person who harbours, advocates, abets, advises, incites or facilitates the commission of a terrorist act. In that case, the meaning of the term "support" that covers a separate category of acts is not clear and CHRI

recommends that the Act should either clearly indicate the same or delete this provision.

d. Possession of Unauthorised Arms etc.

POTA provides extremely harsh punishment for possession of unauthorized arms etc. in a notified area unconnected with any terrorist activity. This implies that a person whose license to own a firearm expires is exposed to prosecution under POTA. CHRI recommends that keeping in mind the directions of the Supreme Court, POTA should be amended to make the possession punishable only where it is connected with the use thereof.

II. Wide and unguided power of the executive

Government

Declaration of a terrorist organisation

POTA empowers the Central Government to declare an organization as a terrorist organisation "if it believes that it is involved in terrorism". Clearly no guidelines are laid down for the Executive to ensure fairness of procedure. CHRI recommends that the procedure prescribed under the Unlawful Activities Prevention Act, 1967 be followed under POTA also. An organisation that is to be declared a terrorist organisation should be given a notice and the court of law should decide whether to declare it so. However, if the Government is unable to do so because of the existence of an extraordinary situation, the Act itself should provide clear guidelines on the basis of which an organisation may be declared a terrorist organisation. It was further recommended that the power of judicial review of the executive action should not be taken away from the courts keeping in view the observations of the Supreme Court¹. ■

¹ *State Of Madras V. Union Of India & State Of Travancore Cochin* AIR 1952 SC 196