

Human Rights and Anti-Terror Laws: India Sets An Example

Swati Mehta

Police Reforms Programme, CHRI

That anti-terror laws are being used to curb people's civil liberties is no longer a disputed fact. From the developed West where Muslims are alleging unwarranted harassment through stop, seizures and arrests, to developing countries where these laws are used against political opponents, human rights violations abound in Commonwealth countries. India, which has had a long-standing problem of terrorist activities, has also had the dubious distinction of having extremely repressive anti-terror laws.

Under the Terrorist and Disruptive Activities (Prevention) Act, 1987, the total number of detainees was around 76,000. Of these, 25% were dropped by the police without charges; trials were completed in only 35% of the cases and 95% of these trials ended in acquittals. The conviction rate was less than 1.5% and there were reports of human rights violations committed by the police abusing their excessive powers under the Act. This law was allowed to lapse in 1995 after pressure from national and international civil society groups, as well as the UN Human Rights Committee which monitors countries' compliance with the International Covenant on Civil and Political Rights.

The Government of India used the events of September 11, 2001, to justify legislating on terrorism once again – and the new Prevention of Terrorism Act 2002 (POTA) is similar to its predecessor in its provisions and in its implementation. There is no dearth of reports of it being abused for politically motivated arrests and torture: cases such as Mr. Vaiko, who, when a member of Parliament and a leader of the main opposition party in the state of Tamil Nadu, was incarcerated for over a year under this law without any charges being filed in court. Many tribal women and children in the state of Jharkhand, were arrested and placed in custody for long periods under this law. Similarly, many Muslims were held under the law in the state of Gujarat after anti-Muslim riots. Despite the fact that this Act was not

applied in 15 states and six Union Territories, in the remaining 14 states, a total of 301 cases have been registered involving over 1,600 persons over the two and a half years since it was enacted.

It is in this scenario of excessive abuse of the law that the new Government, elected in May 2004, promised to repeal the POTA. Impressively, it is already taking action: on August 10 the Cabinet gave its nod of approval to the repeal of the controversial Act.

The repeal will not have retrospective effect but the Government promises that it will ensure that the interests of the innocent are protected. The Government has promised to introduce two Bills – one to repeal POTA and another to amend the Unlawful Activities (Prevention) Act, 1967 – in the second half of the current Budget session of Parliament. The proposed amendments to the Unlawful Activities (Prevention) Act would ensure the implementation of the UN Security Council Resolution 1373 concerns relating to internal security, including funding of terrorist organisations. While it is too early to comment on the suggested amendments to the Unlawful Activities (Prevention) Act, it is hoped that the Government will keep in mind the reasons for repealing POTA and will ensure that the proposed amended Act will not become another piece of legislation that is easily misused.

This decision to repeal the abusive law – especially when countries across the globe are passing repressive anti-terror laws – is a very welcome step. It is hoped that it will be emulated by other countries where such laws are being used to curb civil liberties and political dissent and harass members of the minority community. No one can argue that security concerns are not justified but they cannot be used to take away hard won civil rights. After all, doesn't arguing for security without liberty (or extremely curtailed liberty) significantly blur the difference between a democracy and a dictatorship?