

Terror Assured Lawless Law!

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In India, The Prevention of Terrorism Ordinance (POTO) has generated a lot of debate in recent times. The debate is about whether we need special laws to counter these terrorist attacks. There are weighty arguments on both sides. It is obvious that terrorists should be dealt with utmost severity. However the central issue here is to deal with terrorism appropriately.

The POTO according to the government is less draconian than the defunct TADA and is based on the necessity of new legislations to tackle new crimes. However, we have not learned from our past mistakes. There is a history here that we are forgetting. The Terrorist and Disruptive Activities Act (TADA) enacted in 1987 was a knee jerk reaction to a spate of transistor bombings in Delhi in the 1980's. It remained in force till 1995 during which period thousands of people were arbitrarily arrested, detained and tortured under it.

TADA was merely used to crack down on political opponents. Finally it was allowed to lapse following wide spread allegations of misuse and criticism both at home and abroad. In the interregnum between POTO and TADA several governments have made constant efforts to introduce similar legislations to deal with the terrorism threat. This includes shooting off the shoulders of the Law Commission to validate the Criminal Law Amendment Bill. However, opposition by the National Human Rights Commission (NHRC), media vigilance and public outcry has kept these unseemly restrictions on civil liberties firmly at bay - until September 11th. The atmosphere of the high anxiety created by repeated attacks on the major public buildings in the country including the Parliament on December 13th have muted voices of opposition. These events have given the government the justification they need to pass laws, the implications of which for the ordinary citizens' civil liberties are not properly comprehended by the public at large.

Admittedly terrorism has emerged as one of the greatest threats to modern civilized society. But what we need right now is an effective criminal justice system and not a draconian law like POTO. Most of the provisions contained in POTO are already taken care of under existing laws. The soundest argument for not having preventive detention laws is that they do little to prevent terrorism but are a threat to human rights. These preventive detention laws primarily aimed at dealing with organised crime are more often used as a hardy tool to put away inconvenient people. The laws act as an alternative to working within the well-respected Indian Penal Code and erode the notion of due process, which is fundamental to the rule of law in India. These laws now extant in the country are an encouragement to discretionary justice at the hands of the police and the executive.

The POTO 2001, a mere a reincarnation of the TADA contravenes fundamentals of the Indian Constitution and the International Covenants as laid down by the United Nations. This conviction has been deepened by the wisdom shown by the NHRC in its recent

opinion on the Ordinance, that it will erode Article 21 of the Indian Constitution that *guarantees a life with dignity*. It denies the basic principles that a person is presumed innocent till found guilty. It brings with it new judicial procedure. Remand is extended, confessions are admissible before the police, release on bail is near impossible, punishments are enhanced and the trial procedure is prejudiced against the accused.

The POTO is drafted in a very vague manner and thus susceptible to misuse. For example, the ordinance gives the police powers to detain a person for forty-eight hours before informing a Magistrate on the suspicion that he/she may be involved in acts of terrorism or abetting terrorism. Under the Penal Code twenty-four hours in police custody is the maximum allowed and even this period is fraught with danger. India has signed but not ratified the torture convention. Despite advice from the Attorney General to do so, there is little political will to reform or even chastise the police for excesses. Police are regularly cited for lockup deaths and encounter deaths where a case is founded upon militants and other agitators of various hues being killed in self-defence. Police too, have lost many lives to militancy but these killings and counter killings are an indication of erosion in lawful methods and absolute lack of confidence in the legal process. The victim of course is the rule of law. Under the Ordinance, property held by people is liable for forfeiture even without that person being charged. Government proponents of the Ordinance point to the ability of a person to appeal forfeiture before the High Court as the 'human face' of the act. But the realities of the Indian court procedure ensure that forfeited property remains tied up in litigation for many years. Similarly, the provision that victims of police abuse can get compensation through this expensive and circuitous route is cold comfort to those caught in the web of false accusation.

The Ordinance provides for the declaration of any organisation as being "terrorist" by mere publication of the name in the Schedule 18 of the Ordinance. It however does not lay down any criteria for doing so. Denying all legal redress further worsens this. This provides huge executive discretion. Controversy is rife about the political selectiveness with which the government has already declared organisations, as 'terrorist' there by shutting them down; while leaving equally suspicious other's untouched.

By mere logic the POTO is condemned for misuse and failure, which is the case for any law that attacks the very principles on which a democracy is based. A law that is enacted must keep in mind the country's obligations under international human rights treaties as well as its obligation towards its citizens. Escalating violence is not for the lack of laws but for the lack of proper implementation of existing laws. The sole remedy lies in addressing the root causes of this evergrowing menace. Introduction of new laws such as POTO will only lead to its grave misuse, the consequences of which will be borne by hundreds of Vague definitions of 'terrorist' and 'terrorist organisation' leaving scope for misuse.

Violates the Fundamental Rights of citizens and goes against the principles of natural justice. Denies the right to a fair trial. No possibility of bail to foreigners. Insufficient safeguards on arrest, which allows for people to be detained for ninety days in police custody without charge or trial.

The ninety days detention may be extended to hundred and eighty days. This introduces high risk of torture.

Composition of the Review Board entirely at the discretion of the executive. Violation of the principle of presumption of innocence. Under the ICCPR the accused is innocent until proven guilty. In-Camera trial discretionary leaving no scope for public involvement.

Detenu held incommunicado during period of detention. Threat to the Right to Freedom of Expression. The Ordinance provides for punishment for those in possession of information which may be of assistance in preventing a terrorist act.

Innocent people being killed and thousands remaining in jails awaiting trial for a crime they did not commit.