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India: The POTB is not the answer to the attack on parliament

On the eve of the discussion on the Prevention of Terrorism Bill 2001 (POTB) in the Rajya Sabha (the Upper House), Amnesty International is urging all parliamentarians to keep in mind that a vote in favour of the POTB is not a vote against "terrorism".

"A vote in favour of the POTB is a vote which does away with legal safeguards designed to prevent innocent persons from being prosecuted and punished," the organization said.

The organization condemns the armed attack on the Indian Parliament on 13 December 2001, which was targeted at civilians. "However, the enactment of the POTB is not the answer to such heinous acts. The need of the hour, when the country is faced with violent opposition, is to uphold the rule of law and make human rights violators on all sides accountable."

The POTB does not fully uphold the fundamental principles set out in the Indian Constitution or legal safeguards for suspects contained in international human rights standards, nor does it ensure that human rights abusers on all sides will be brought to justice.

"Lessons need to be drawn from the past", the organization said. The implementation of Terrorist and Disruptive Activities Act (TADA) - of which the POTB retains many provisions - neither secured high rates of convictions nor did it act as a deterrent for armed opposition. It led instead to widespread human rights violations which will again occur if POTB is enacted.

In the first case of implementation of the Prevention of Terrorism Ordinance (POTO, later amended and renamed "POTB"), an entire family was evicted from their house in Kashmir as it was wrongly suspected to have been built from the "proceeds of terrorism". The Minister of Law himself affirmed: "in this case, the provisions of POTO were misconceived." This demonstrates the danger of misuse of POTO and does not bode well for the future implementation of the Bill.

"The protection of civil liberties and the strengthening of the criminal justice system are the only lasting and effective answers to violent opposition in the country," the organization said. "POTB does not address any of these issues."

"Effective criminal investigation and prosecution, an increased number of courts and the implementation of existing laws are the guarantees to ensure that those responsible for criminal offences will be brought to justice. These root issues need to be addressed. Adopting draconian laws will only lead to their grave misuse."

Background

Amnesty International believes that the enactment of POTB would seriously violate basic principles of criminal jurisprudence. The principle of certainty in criminal law is defied in the Bill by the vague definition of certain offences. Several provisions risk facilitating torture and obstacles have been introduced to the right to a confidential communication between an accused and his or her legal adviser.

Amnesty International is also concerned that the enactment of the POTB as it currently stands would lead in practice to a virtual impossibility to obtain bail and to insufficient independence of the Special Courts set up under it from the executive power. The organization has urged for the introduction of sufficient safeguards for the principle of

presumption of innocence, regarding the interception of communications and for the right to a review of sentences.

The Bill is also considered to be a threat to freedom of expression and association and it targets specific organizations by naming them in a list without instituting sufficient guarantees for the members of these organizations who may not be involved in criminal acts. Further concern is expressed about the inclusion of the death penalty for certain crimes.

Amnesty International expressed its concerns on the POTB in a “Briefing on the Prevention of Terrorism Ordinance”, published on 15 November 2001. The report is available at <http://www.web.amnesty.org/ai.nsf/index/asa200492001>

The organization has recently also expressed its concerns on “anti-terrorism” legislation in many other countries, including the United Kingdom, Canada, the USA, the European Union and Nepal.

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