

INDIA

@Open letter to members of parliament The Criminal Law Amendment Bill 1995

Amnesty International has written to members of parliament to draw attention to its concerns about certain provisions of the Criminal Law Amendment Bill 1995 which it is understood will be discussed in Parliament at a future date. The text of the letter is reproduced below:

Amnesty International, in a report published in November 1994, called on the Government of India to review the Terrorist and Disruptive Activities (Prevention) Act (TADA) and to bring the law in conformity with international standards, including the International Covenant on Civil and Political Rights (ICCPR), to which India is a party. It is now concerned that many provisions which violate international human rights standards and which were formerly contained in TADA – a law also criticised by many other organizations concerned with human rights within India, including the National Human Rights Commission, as well as by members of the Human Rights Committee and other United Nations human rights mechanisms – have been retained in the Criminal Law Amendment Bill.

Amnesty International welcomes the omission from the bill of certain provisions which as part of TADA were open to abuse. These include provisions making confessions made to the police admissible as evidence and the presumption of a "terrorist" motive for people found in possession of unauthorised arms in specified areas, making such people liable to a minimum sentence of five years' imprisonment.

Amnesty International also welcomes the provision in the bill which states that any police officer who "corruptly or maliciously proceeds or threatens to proceed against any person for an offence" under the proposed bill would be prosecuted (Section 24(2)). Amnesty International believes that, if fully implemented, this provision could be an important step in bringing an end to the sense of impunity currently prevailing among police officers.

However, we remain concerned that many of the issues raised in Amnesty International's report *TADA: The lack of 'scrupulous care'* (AI Index: ASA 20/39/94) which is attached, remain valid for the proposed new legislation.

Amnesty International wishes to draw your attention to its main concerns about the text of the Criminal Law Amendment Bill presented to Parliament by the Minister of Home Affairs on 18 May:

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- ◆ Section 3 of the bill, which defines a "terrorist act", contains provisions (in particular sub-sections (4), (5) and (6)) which could lead to the arrest and detention of individuals who have not knowingly abetted "terrorist" activities as defined in sub-section (1). These sub-sections provide for a minimum sentence of five years' imprisonment and the possibility of life imprisonment for those who harbour or conceal a "terrorist", for those being a member of a "terrorist gang" or a "terrorist organization" and for those holding property derived from or obtained from commission of a "terrorist act".

 - ◆ Section 3(2)(i) includes the possibility of punishment with death for "terrorist" acts which result in death. Amnesty International opposes the death penalty unconditionally on the grounds that it is the ultimate form of cruel, inhuman and degrading punishment and a violation of the right to life.

 - ◆ Section 4(2) of the bill contains dangerously vague definitions of "disruptive" activities which, as under TADA, could lead to the prosecution of people for the exercise of their right to freedom of expression of political or other conscientiously held views – a freedom guaranteed in both Article 19 of the ICCPR and in Article 19(1)(a) of the Constitution of India. The section defines "disruptive" offenders as those who, "by act or by speech or through any other media", "question" the sovereign and territorial integrity of India or support directly or indirectly a claim for cession or secession of any part of India. Individuals can be found guilty under this section if they "conspire, attempt to commit, abet, advocate, advise or knowingly facilitate" the commission of a "disruptive activity". The United Nations Working Group on Arbitrary Detention has repeatedly expressed concerns that such broadly worded definitions invite arbitrary arrest or detention which are prohibited by Article 9(1) of the ICCPR.

Amnesty International believes that the bill contravenes essential safeguards for a fair trial as guaranteed by the ICCPR, including the presumption of innocence, as well as the accused's right to cross-examine witnesses under the same conditions as the prosecution.

- ◆ The proposed bill includes provisions for the presumption of guilt for those accused of certain offences including those who are alleged to have rendered financial assistance to an accused, even if there is only "reasonable suspicion" that the accused carried out terrorist offences (Section 21). Amnesty International believes that this section violates the right of a person charged with a criminal offence to be presumed innocent until tried according to law as guaranteed by Article 14(2) of the ICCPR.

- ◆ The proposed bill also provides for the identity and address of any witnesses to be kept secret (Section 14(2)). Such a provision denies the accused the rights adequately to prepare his or her defence and to examine witnesses on the same terms as the prosecution as guaranteed by Articles 14(3)(b) and 14(3)(e) of the ICCPR. This

provision, which was included in TADA, was criticised by the Supreme Court in the *Kartar Singh* case: "Whatever may be the reasons for the non-disclosure of witnesses, the fact remains that the accused persons to be put up for trial under this Act which provides severe punishments, will be put to disadvantage to effective cross-examining and exposing the previous conduct and character of the witnesses."

- ◆ Amnesty International is concerned that Section 14(1) of the bill, permitting trial *in camera*, based solely on the unfettered discretion of the court trying the case, violates the right to a fair and public hearing guaranteed in Article 14(1) of the ICCPR. Article 14(1) of the ICCPR limits the discretion of the court to exclude the public. Moreover, such unfettered discretion to conduct *in camera* proceedings could lead to misuse. This provision should be reviewed in the light of international human rights standards.

- ◆ Section 18(2)(a) of the bill effectively provides for 90 days' detention in police custody without charge or trial by order of a judicial magistrate. This period can be extended to 180 days on application by the Public Prosecutor (Section 18(2)(b)). Amnesty International believes that this provision of the bill would contravene Article 9(2) and 9(3) of the ICCPR which require that all arrested persons be promptly informed of the charges against them and that they be entitled either to trial within a reasonable time or release. Amnesty International welcomes that the bill provides for authorization of detention within 24 hours to be carried out by a judicial magistrate, in accordance with section 167 of the Code of Criminal Procedure (CrPC) as opposed to an executive magistrate as was the case under TADA. However, it is concerned that the provision for remand includes the possibility for police to request the transfer of an accused from judicial to police custody for a period of time for the purposes of further investigation (Section 18(2)(b)). Amnesty International is gravely concerned that this provision could facilitate the use of torture. Amnesty International has documented the widespread use of torture and ill-treatment in police custody in India.

- ◆ Section 18(5) makes release on bail difficult to obtain, denying all anticipatory bail and denying bail altogether unless the Public Prosecutor has been given the opportunity to oppose the bail application. Under TADA, which contained similar provisions, prisoners held under the act were rarely tried, leading to prisoners spending long periods awaiting trial without being granted bail. Amnesty International believes that practices under TADA contravened, and the proposed section risks running foul with, the guarantees of the presumption of innocence and the presumption to release pending trial contained within Articles 14(2) and 9(3) (respectively) of the ICCPR. The UN Human Rights Committee has explained: "By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved

beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is therefore the duty of all public authorities to refrain from prejudicing the outcome of the trial."

Amnesty International understands that several amendments to the bill have been introduced by the Minister of Home Affairs. These have included an amendment to restrict appeal only to the Supreme Court (Section 17). Amnesty International believes that in practice this limitation would not provide an effective right of appeal as international human rights standards for a fair trial require and that the Code of Criminal Procedure as it stands lays down adequate guidelines for appeal. The Supreme Court, in the *Kartar Singh* case, recognized that "the indisputable reality is that the Supreme Court is beyond the reach of an average person considering the fact of distance, expense etc."

When it was enacted, TADA was presented by the government as a temporary law, which would only be enacted in states where there was a problem of organized political violence. Amnesty International is concerned that the proposed Criminal Law Amendment Act, if passed, would extend special measures to all states, regardless of the law and order situation in each state. The organization believes that special provisions should apply only to the extent strictly required by the exigencies of the situation and that in all cases, any special provisions should comply with international human rights standards.

Furthermore, Amnesty International urges that the work of review committees, set up by order of the Supreme Court in 1994 to review all TADA cases, continues and is completed promptly. Amnesty International believes that the findings of these review committees should be fed into the debate surrounding the framing of the Criminal Law Amendment Bill in order to prevent the continuation of provisions which are found to have led to the widespread abuse of TADA, including arbitrary arrest and detention and other violations of human rights.

Amnesty International hopes that there will be a full and open discussion before such an important piece of legislation, which will have a bearing on the human rights of all Indian citizens, is made law. We urge you to ensure that international human rights standards are taken into account in the framing and passing of this new legislation.

Finally, Amnesty International remains concerned about people who are currently detained under TADA. The organization calls for the immediate release of those who are being held solely on the basis of the peaceful exercise of their right to freedom of expression of political or other conscientiously held views. Amnesty International also calls for other persons held under TADA without charge to be promptly charged with a recognizable criminal offence or released. Those who have been charged should receive a prompt and fair trial or be released.

The organization believes that those tried under TADA will not receive a fair trial as guaranteed by Articles 9 and 14 of the ICCPR and other international standards and therefore urges that they should be tried promptly under ordinary criminal procedures or released.

Yours sincerely,

Derek Evans
Acting Secretary General