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India: Continued detention two years after the repeal of POTA

Amnesty International expresses concern that, two years after India's decision to repeal the controversial Prevention of Terrorism Act (POTA) in response to widespread abuse, hundreds of persons detained under POTA continue to languish in jails without trial and several are undergoing trials for breaching a flawed and now defunct law.

POTA was in force for almost three years, from 2001 to 2004. Under this law, people could be arrested on mere suspicion and detained without charge or trial for six months. The law also allowed for special investigation, as well as special courts and trial procedures.

Amnesty International recalls that, on 21 September 2004, the new government of Prime Minister Manmohan Singh fulfilled one of its key election pledges to repeal POTA and to amend existing laws in recognition that POTA had been used to target political opponents, minorities and marginalised sections of the Indian society.

At that time, the Indian government gave a commitment to complete, within a year, its review of cases pending under POTA. Nevertheless, a large number of POTA detainees continue to languish across Indian jails. A majority of cases have been reviewed by committees set up for the purpose, but the review process itself has come under question, with a number of state governments including of the western state of Gujarat, contending that state prosecutors had the powers to reject the committees' recommendations to drop POTA charges in key cases.

Also, except for a few high profile cases including the one relating to the December 2001 attack on the Indian parliament, convictions under POTA have been rare; in a number of cases, charges under POTA remain to be filed and, for several persons under detention, trial proceedings are yet to see the light of the day.

There are conflicting figures about the number of persons still detained under POTA. According to the government, 135 such persons are still in jail, but human right activists insist that at least 400 persons remain under detention. Amnesty International can verify that a minimum of 265 persons remain under detention, either without a trial or at pre-trial stage (The number of persons convicted under the act is small, but these convictions pertain to serious and high-profile cases).

For instance, official figures given by the government leave out the 21 suspected Maoist sympathisers, who have now been detained for 46 months in the southern state of Tamil Nadu where POTA was known to target political opponents. In Gujarat, where POTA is known to have been widely used to target the Muslim minority, there have been reports that the number of those detained could be as high as 200 as against the official figure of 87.

Also, the Gujarat government has chosen to contest, in the Supreme Court, the review committee's decision to drop POTA cases against certain defendants, including the case relating to the Godhra train fire tragedy in 2002 (The Godhra train fire tragedy set the communal riots during which more than 2,000

persons, a majority of them Muslims, were killed in the state).

The POTA repeal has justified Amnesty International's concerns, expressed at the time of its framing, that this legislation did not conform to the principle of certainty in criminal law, lacked pre-trial safeguards and safeguards of the rights of defendants during trials, and posed a threat to the freedom of association and expression (The Prevention of Terrorism Bill 2000: Past abuses revisited?, June 2000, AI Index: ASA 20/22/2000; India: Briefing on the Prevention of Terrorism Ordinance, November 2001, AI Index: ASA 20/49/2001).

Amnesty International notes that the Indian authorities continue to remain wary of arming themselves again with a POTA-like legislation despite repeated demands to do so after the recent blasts at Mumbai and Malegaon in the western state of Maharashtra. Amnesty International deplors any attack deliberately targeting civilians and any other indiscriminate attack, but maintains that ordinary criminal laws sufficiently enable the authorities to deal with these crimes.

Amnesty International therefore urges the government to drop all cases under POTA and immediately release all individuals held without charge under POTA, unless in those cases where it decides, expeditiously, to transfer them to ordinary courts to face ordinary criminal charges. Even in such cases, continued detention should be the exception rather than the rule, and trials must meet international standards of fairness.

Time spent in detention should be counted towards time served. The trial, conviction and sentences imposed in cases already completed must be reviewed in light of the provisions and requirements of ordinary criminal laws and of international standards of fairness.

The same principles should apply to those still detained or imprisoned under the earlier Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), a decade after it lapsed.

Background

POTA's provisions originally came into force in the form of a Presidential decree, known as the Prevention of Terrorism Ordinance (POTO) in October 2001, soon after the September 11 attacks on the United States and the adoption of United Nations Security Council resolution 1373 instructing states to take steps against terrorism. In March 2002, the Indian parliament passed POTA; the act was in force till September 2004, a month before it was to have lapsed.

In the three years of its existence, a total of 217 cases were reportedly investigated under POTA; trials in 116 of these cases were either completed or are ongoing. Around 3,500 persons in 18 Indian states (including a few children in Jharkhand and Tamil Nadu) were held under POTA for varying periods of time. Gujarat is the state with the highest number of detentions and all but one of the 287 people initially held under the act were Muslims.

POTA's predecessor was the TADA, or the Terrorist and Disruptive Activities (Prevention) Act, 1987. This act was allowed to lapse in 1995, following widespread criticism that it was used widely against peaceful political opponents, human rights defenders minorities and marginalised sections of Indian society. Around 77,000 persons had been arbitrarily arrested under TADA and thousands were tortured with a view to extracting confessions from them. Of those arrested, around 72,000 were later released without having been charged or tried. A decade after the TADA lapsed, 147 persons are under detention for offences under that Act, including some held in connection with high profile cases for which trials are still ongoing.

Successive Indian governments have enacted a variety of security legislation at state and federal levels. In the last few decades, legislation including the National Security Act, the Disturbed Areas Act, the Armed Forces Special Powers Act, the Armed Forces (Jammu and Kashmir) Special Powers Act and the Jammu & Kashmir Public Safety Act have spawned abuses.