

A CRITICAL ANALYSIS ON

REPEAL OF PREVENTION OF TERRORISM ACT

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ABSTRACT

A piece of legislation goes through an acute scrutiny from its early stage of draft to the moment before it is officially passed in the Parliament. The alarming terror attacks which is a threat to the national security and danger to lives of Indian citizens triggered the Central government to legislate the Prevention of Terrorism Act, 2002. This well-crafted document aimed to protect the State from external aggression by malicious groups in the pretext of terminating terrorist assaults, it operated in a manner it jeopardized fundamental rights of the citizens and progressed to function arbitrarily. The central government sided that no such violations of the fundamental rights would arise assured that the procedures stipulated in the legislation would be handled by senior most experts only. The Act also gave a precise interpretation of 'terrorism' which gave punitive powers to the state governmental officers for the crimes said in the Act were depriving the citizens their rights moreover the Act lacked procedural safeguards which was a major drawback and also the sole reason for the Act frivolous in nature and also unconstitutional in many ways. Within few days of the enactment of the POTA, India witnessed a large number of arrests under the POTA. Instead of removing anti terrorist elements, the authorities began to arrest people who were minorities and 'innocents'. They were harassed and tortured to admit to the crime and confess to the police authorities which

under the POTA can be held against the detainees.. This paper critically analyses the POTA on a different light and the consequences of errors in the legislation.

Introduction

POTA was legislated to eliminate potential threats of violence through any acts concerning act of terrorism. more specifically, because of the menacing threat of Malaysians connection with the Islamic State of Iraq and Syria (ISIS)

The term "terrorism" comes from the French word 'terrorism', that is predicated on the Latin verb 'terror' (to cause to tremble). It dates back to 1795 once it had been accustomed describe the actions of the Jacobin Club in their reign of post-Revolutionary France, the alleged "Reign of Terror". Jacobins are reported to have coined the term "terrorists" to refer to themselves. act of terrorism refers to a technique of making use of violence, social threats, or coordinated attacks, so as to come up with fear, cause disruption, and ultimately, brings about compliance with specific political, religious, or ideologic demands. The European Unions definition of "terrorism" is the aim of "destabilizing or destroying the basic political, constitutional, economic or social structures of a country." act of terrorism is outlined within the U.S. by the Code of Federal Bureau of Investigation as: ". the unlawful use of force and violence against persons or property to intimidate or pressure a government, the civilian population, or any section therefrom, in furtherance of political or social objectives." The Federal Bureau of Investigation furthermore describes act of terrorism as either domestic or international, reckoning on the origin, base, and objectives of the terrorists.

A well popular feature of the POTA is that Any persons who fall into suspicion of terrorist activities will be detained, without warrant, up to a most time of sixty days by the police. Under the approval of yang di-Pertuan Agong, then appointed five-to-eight-member Prevention of terrorism board this may be extended for up to 2 years at a time. anyone who is incarcerated shall be brought before to the magistrate within twenty-four hours unless discharged earlier. India is facing multifaceted challenges within the management of its internal security.

There is an up rise of terrorist activities, increase of cross border terrorist activities and insurgent groups in numerous parts of the country. act of terrorism has currently gained international dimensions and has become the challenge for the entire world. The reach and strategies adopted

by terrorist teams and organization make the most of recent means that of communication and technology using high tech facilities accessible within the type of communication system, transport, refined arms and numerous alternative means. This has enabled them to strike and make terror among folks at will. The criminal justice system of India was not constructed to handle such type of heinous and barbaric crimes. In the perception this situation it was felt a need to enact laws for the prevention of and for coping with growing terrorist activities.

Objectives

- To know about the anti-terrorism legislations in India
- To Study about the Prevention of Terrorism Act in India
- To understand the reason and causes behind the repeal of the POTA

Hypothesis

The repeal of POTA is justified since the the Prevention of Terrorism Act serves the purpose of the Act

Methodology

This is a doctrinal Research and various articles, blogs, case laws have been used as a source to finish the study.

History and Legislation of POTA

it is usually mentioned that act of terrorism could be a low intensity war. however the loss, that our country has suffered within the last twenty years because of the increase of terrorist activities, has been on a really massive scale. This country has fought four high intensity wars and in those wars we've lost more then 6000 individuals. we've already lost more then 70000 civilians. additionally, we've lost more then 9000 security personnel. nearly six lakh individuals in this country became homeless as a results of terrorist act. Outside the expenditure on our defense force, just for maintaining the whole established to fight insurgency, to fight cross-border act of terrorism, the economic value itself has been Rs 45000 crore. The monetary fund increase itself within the last fifteen years, as a result of act of terrorism or anti-insurgency activities, has been twenty six times. we've no record of the explosives that are employed in varied parts of the country. we've got a record of crime. But the explosives that are appropriated

by our security agencies weigh 48000 kilos. If our security forces had not been watchful enough to confiscate these explosives, they'd most likely are enough to take care of each inch of Indian soil. After the 9/11 attacks on the world trade center the world's perception towards the terrorist and terrorist organization has modified the laws became far more rigorous to curb such activities. The indian outlook conjointly modified specially when the 13 Dec attack on the Indian parliament¹ that is seen as an emblem of our democracy then it became necessary to enforce a law which might be more rigorous so the terrorist can't go scot free as a result of after the lapse of TADA in 1995 following the wide spread criticism that it absolutely was being abused there was no law that can be used as a powerful weapon against the rising terrorist activities in India.

In 2002 March session of the parliament the POTA bill was introduced² and it had been widely opposition not even within the indian parliament however throughout India particularly with the human rights organization as a result of they thought that the act impungned most of the elemental rights provided within the Indian constitution. The protagonists of the Act have, however, hailed the legislation on the bottom that it's been effective in guaranteeing the speedy trial of these suspect of indulging in or abetting act of terrorism.³ POTA is beneficial in stemming "state-sponsored cross-border terrorism", as envisioned by the then Home Minister L.K. Advani. The POTA⁴, was a debatable piece of legislation ever since it had been said to be used as a weapon against terrorist act. act of terrorism has vastly affected india.⁵ the explanations for terrorist act in india might vary immensely from religious to geographical to caste to history.

The Indian Supreme Court upheld and observed in *Kartar Singh v. State of Punjab*⁶, where it was clearly said that the country has been within the firm grip of terrorist violence and is struck between deadly pangs of tumultuous activities. except for several skirmishes in numerous parts of the country, there have been multitudinous serious and dreadful events engulfing several cities

¹ H.E. Lal Krishna Advani, Indian Home Minister, Statement on the Terrorist Attack on Parliament House, 1, 2 (Dec. 18, 2001), at <http://www.indianembassy.org/>

² South Asia Human Rights Documentation Centre, Prevention of Terrorism Ordinance 2001: Government Decides to Play Judge and Jury 13 (2001) (quoting Union Home Ministry).

³ Rajeev Dhavan, Opinion, Sugarcoating POTA, *Hindu* (India), Oct. 31, 2003, 10, 11, available at <http://www.hindu.com/2003/10/31/stories/2003103100841000.htm>; Reform Without Rationale

⁴ Assembly 3(Oct.3,2001), at <http://meaindia.nic.in/disarmament/dm03oct01.htm> [hereinafter Measures to Eliminate Terrorism]. See generally H.E. Atal Behari Vajpayee, Prime Minister of India, Address to the Nation on Terrorist Attacks on the United States (Sept. 14, 2001), at <http://www.indianembassy.org/special/>

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⁶ [1994] 3 SCC 569

with reverie of blood-bath, firing, looting, mad killing even without stinting women and children and reducing those areas into a burial ground, that brutal atrocities have rocked and appalled the entire nation woefully, determined youths lured by hard-core criminals and underground extremists and attracted by the ideology of act of terrorism and indulgence in committing serious crimes against the humanity without mercy.

Anti-terrorism laws in India have continuously been an issue of a lot of argument. one amongst the arguments is that these laws change the approach of basic rights of citizens secured by part III of the Constitution.⁷ The anti-terrorist laws are enacted before by the law-makers and overlooked by the judiciary although not without reluctance. The intention was to legislate these statutes and convey them clearly until matters improves. The intention wasn't to form these rigorous measures but a permanent feature of law of the land. however due to continued terrorist activities, the statutes are reintroduced with requisite modifications.

Some of the predecessors of POTA are as follows

1. The Unlawful Activities (Prevention) Act 1967

The UAPA was legislated to take care of associations and activities which questioned the territorial integrity of India. once the Bill, for its assent was debated in Parliament and the leaders insisted that its extent be therefore restricted that the right to association remained unaffected which the executive didn't expose political parties to the intrusion. So, the scope of the Act was strictly restricted to meeting the challenge to the territorial integrity of India. The Act was a self-contained code of provisions for declaring exponent associations as unlawful, assessment by a judicature, management of funds and places of labor of unlawful associations, penalties for his or her members etc. The Act has right along been worked holistically in and of itself and is totally within the ambit of the central list within the seventh Schedule of the Constitution.

2. Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA)

The second major act came into effect on three September 1987 was The Terrorist Activities (Prevention) Act 1987 this act had rather more rigorous provisions then the UAPA and it absolutely was specifically framed to manage terrorist activities in india. once TADA was

⁷ South Asia Human Rights Documentation Centre, Prevention of Terrorism Ordinance 2001: Government Decides to Play Judge and Jury 13 (2001) (quoting Union Home Ministry).

enacted, it was challenged before the Apex Court of the country as being unconstitutional. The Supreme Court of India held its constitutional validity on the belief that those entrusted with such draconic statutory powers would act in good faith and for the general public in the case of *Kartar Singh vs State of Punjab*⁸.

However, there have been several instances of misuse of power for collateral functions. The rigorous provisions contained within the statute came to be abused within the hands of enforcement officers. TADA lapsed in 1995. different major Anti-terrorist law in India is that the Maharashtra control of organised Crime Act, 1999 that was enforced on twenty fourth April 1999. This law was specifically created to cope with rising social group in Maharashtra and specially in city because of the underworld. for example, the definition of a act of terrorism is much more elastic in MCOCA than below POTA. For, POTA failed to note of organized crime per se whereas MCOCA not solely mentions that however, that moreover, includes 'promotion of insurgency' as a act of terrorism. Again, the burden to prove someone guilty below POTA lies on the prosecution whereas underneath the Maharashtra law an individual is likely guilty unless he's able to prove his innocence. MCOCA doesn't stipulate prosecution of law enforcement officials found guilty of its misuse. however, POTA did.

REPEAL OF POTA

On 26 March 2002, the very arguable anti-terror law, the prevention of act of terrorism Act (POTA) was passed with a gross 425 votes for the Act and 296 against the Act, soon after a 10-hour discussion within the parliament⁹. The intensity of the consequences of the bill can be seen clearly by the rejection of the bill in the upper house of the Indian Parliament resulting in a Joint Session of Parliament.¹⁰ A step that had taken place solely the third time in the past. The Indian Ministry of Home Affairs even after the initial Ordinance after the September 11,2001 terror attacks by claiming an upsurge of terrorist activities, increase of cross border act of terrorism, and insurgent teams in numerous parts of the country, despite the very fact that the state of

⁸ (1994) 3 SCC 569

⁹ Jyotsna Singh, India Launches Anti-Terror Law, BBC News, 2 (Oct. 25, 2001), at http://news.bbc.co.uk/1/hi/world/south_asia/1619870.stm (reporting criticism of POTO); TADA in New Garb

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Jammu and Kashmir witnessed a decrease within the terrorist incidents¹¹ happening in that state. POTA, although currently has been repealed, lives as an example showing the daring step taken by India in its fight against act of terrorism.¹² The POTA had throughout its days and even after its downfall, has created India a silent spectator to serious debates between the media, political parties, social activists and NGOs on some provisions seen to be Draconian, within POTA.¹³

Two years from the enactment of the POTA, a numerous number of problems on the probabilities of misuse of the provisions of the anti terror law as well as the targeting of minorities and the abuse of it against political opponents had arisen¹⁴. In Gujarat, all except one amongst the POTA detainees are from the Muslim minority and in Tamil Nadu and UP too the anti-terror law has been abused by police authorities, without lucidity and answerability, political opponents and poor communities respectively. They Act frivolously violated the fundamental right to life personal liberty and other vital fundamental rights. Many reports started to boom against the abuse of power by government officials in India by the means of POTA by many journalists exposed the inconsistencies of the legislation which later after a critical review led to the repealing of the legislation. A decade long expertise with a previous national anti-terror law, the infamous Terrorist and disruptive Activities Act (TADA) that was effective between 1985-1995 offers legitimacy to the concern that the misuse of such laws evoke among many human rights activists, political dissenters and minorities. under the TADA, the conviction rate was lower than I Chronicles, despite the very fact that the confessions created to the police, although being given under torture, were admissible as proof.¹⁵

The developments after the enactment of the POTA, as well as the responses received by the POTA review committee show that the POTA is worse than that of the TADA. POTA provides

¹¹ J&K Panel Reviews Cases of Public Safety Act Detainees, *Hindu* (India), Jan. 30, 2004, 1, available at <http://www.hindu.com/2004/01/30/stories/2004013003731200.htm>.

¹² Venkatesan, President's Nod for Ordinance to Repeal POTA, Sept. 21, 2004, *Hindu* (India), 1, available at <http://www.hindu.com/2004/09/22/stories/2004092207420100>

¹³ repealing POTA, the Indian government passed an ordinance to amend an existing law to replace POTA. See V. Venkatesan, POTA Reinvented, *Frontline* (India), Oct. 23–Nov. 5, 2004, 5, available at <http://www.frontlineonnet.com/fl2122/stories/>

¹⁴ Selective Use of POTA, *Hindu* (India), Apr. 1, 2003, 1, 2, available at <http://www.hinduonnet.com/thehindu/2003/04/01/stories/2003040100391000.htm> (discussing political detentions in the states of Tamil Nadu and Uttar Pradesh).

¹⁵ Prevention of Terrorism Act, 24 (2)–(3), 34, 40, 60 reprinted in *Thakur*, supra note 6, at 25–26, 31–32, 36, 48–49 (establishing review procedures); *Abuse of the Law in Gujarat*, supra note 16, at 1–2 (discussing prolonged detention, torture, and disregard of POTA safeguards)

for criminal liability on a person for mere association or communication with a suspected terrorists without the possession of any criminal intent (Section 3(5) of the POTA). Section four of POTA is very comparable to the Section five of TADA in giving out legal assumption that if found in unauthorized possession of the arms in a very notified space, he/she is automatically connected with terrorist activity. Section 48(2) provides for the choice of pre-trial police detention for up to a hundred and eighty days. As below the TADA, wherever ninety eight percent of the cases never reached the trial stage, this Section 48(2) may even be ill-used by the police by keeping associate defendant for long periods of detention for complimentary or trial.

The Special courts for the trials are established below POTA that are given the wide discretion to carry trials in private places, like prisons, and to withhold all the trial records from public scrutiny, so preventing the independent observation of special court sessions. Section thirty-two provides that confessions created to law enforcement officials are to be admissible in trial, that has raised the chance of coercion and torture in securing confessions.

The provisions contained under the POTA were largely contained in existing laws, except those, that were contained within the Criminal Procedure Code, the Indian penal code, the evidence Act or the Constitution of India. The Act effectively undermines the fundamental dogma of the criminal justice system by putting the burden of proof on the defendant. however, the Act conjointly had some provisions, that weren't attacked for being against human rights. These provisions declared that Confessions should be recorded among forty-eight hours before a justice, who can send the defendant for a medical exam if there's a grievance of torture. more a legal representative of the defendant will be present for a part of the interrogation. Moreover, law enforcement officials are often prosecuted for abusing their authority. The POTA additionally as long as victims can be paid compensation. however these provisions couldn't act as an efficient shield to guard the Act from the criticism it received for its alternative provisions abusing human rights. Those against POTA had argued that existing laws were adequate to handle act of terrorism. within a year POTA had already engineered up a dubious record and in some states it absolutely was already terrible as its forerunner. State governments, together with opposition-ruled ones, had not hesitated to use POTA to mend political opponents.

At the Tribunal on POTA and some Other Security Legislation at the Press Club in New Delhi on July 16, 2004 a 629-page report based on depositions made before the Tribunal by victims and their families from ten states in India, as well as expert depositions by lawyers and activists, showed that such security legislations grant sweeping powers to authorities, which has led to misuse of these powers and severe restriction of basic rights. At the same time, such legislations do not address the political, social and economic roots of the problem.

The tribunal concluded that the review of victim and expert testimony showed that the misuse of the Act is inseparable from its normal use. The tribunal stated that the statute meant to terrorise not so much the terrorists as ordinary civilians and particularly the poor and disadvantaged such as dalits, religious minorities, adivasis, and working people.¹⁶ Thus the tribunal recommended that POTA be repealed and that too in such a manner that the POTA charges are deleted from all existing investigations and trials. But, if the state so desires, these may continue under other laws and charges.

CONCLUSION

POTA first reflects the fact that overbroad definitions of terrorism are dangerous. Definitions of terrorism that may include acts of speech and association, but do not include an explicit requirement of intent could encompass innocent activity and curtail the political process. Any reasonable government would support an extremist who “incites,” “advocates,” or “invites support for” terrorists.¹⁷ Including these terms in the POTA, the anti-terrorism legislation, however, gives zealots within the government a loaded weapon against those with whom they simply disagree the Government, Due in part to the decentralization of the anti-terror laws’ enforcement in India, law enforcement officers have applied such laws differently from state to state. When governments did not apply anti-terror laws consistently, they invite a harsh criticism and violent reprisals. For example, in Gujarat, only Muslims were subject to the POTA, a

¹⁶ Manoj Prasad, A 14-Year-Old Tells You What POTA Means to the Poor, *Indian Express*, Mar. 29, 2003, 1, 6, 7, 8, 11, available at http://www.indianex-press.com/full_story.php?content_id=21041.

¹⁷ *South Asia Human Rights Documentation Centre*, 8, 5 (observing that the terms “advocates” and “incites” criminalize mere association or communication with terrorists); Supreme Court Upholds POTA, Vaiko May Get Some Relief, *Hindu* (India), Dec. 17, 2003, available at <http://www.hindu.com/2003/12/17/stories/2003121704620100.htm> (Supreme Court’s statement that POTA should not be interpreted as criminalizing mere speech).

practices that helped violence to endure beyond the 2002 pogroms¹⁸. In other Indian states, such as Tamil Nadu¹⁹, Jarkhand²⁰, Kashmir etc repression under the anti-terror laws has led to similar cycles of escalating violence. POTA's application provides insight into the hazards that anti-terror laws pose when implemented. Our India's experience suggests that taking of some legislative shortcuts around safeguards framed to prevent arbitrary arrest and detention as result in precisely the arbitrary practices. Although this outcome may initially seem like a reasonable, if not inevitable, compromise, when police arrest, detain, and abuse hundreds of minorities on unsubstantiated grounds, respect for the rule of law suffers. POTA exhibits the primal need for minimal transparency in the system and a review for the protection of the detained under the anti-terror laws. Although POTA did not deprive Gujarat of detainees of all their procedural rights, some in the law enforcement and the judicial officers ignored some few rights that prisoners retained. Such deprivations of rights led to India's realization that an active and empowered central review process is necessary to remedy such injustices.

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¹⁸ Human Rights Watch, 14 "We Have No Orders to Save You" State Participation and Complicity in Communal Violence in Gujarat 14,15 (Apr. 2002), available at <http://www.hrw.org/reports/2002/india/gujarat.pdf>

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²⁰ Rakesh Sinha & Kavita Chowdhury, POTA Fact: Jharkhand Has a Lot More Terror Than J-K, *Indian Express*, Mar. 28, 2003, 8 graphic, available at http://www.indianexpress.com/full_story.php?content_id=20985.

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