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# **People's Tribunal on the Prevention of Terrorist Act (POTA) and Other Security Legislations**

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13-14 March, 2004, New Delhi

Venue:

Indian Social Institute (ISI)  
10, Institutional Area, Lodhi Estate,  
New Delhi - 110 003

## Background Document

*“Mr Chairman, India has been witness to an important ongoing debate in our efforts to deal with the terrorism menace. The Prevention of Terrorism Bill is currently under consideration by our Parliament. As is normal in a democracy, a number of views have been expressed on it by political parties, the media, social activists and NGOs. All these are being taken into account. Necessary safeguards have been built into the provisions of the legislation to ensure that while helping us in our fight against terrorism, it does not lend itself to misuse.”*

- Statement by the Indian delegation at the 58th CHR on 20 March 2002

This statement made six days before, following a vertical split in the Indian Parliament, the controversial anti-terror law, the Prevention of Terrorism Act (POTA) was passed on 26 March 2002 (*Human Rights Features*). The bill had been rejected by the upper house of the Indian Parliament. A Joint Session of Parliament was called when the NDA government used its majority to steamroll the bill through. This was only the third time in the history of the Indian Parliament that the extraordinary measure of calling a Joint Session was taken.

POTA became law with 425 votes for the Act and 296 against, after a 10-hour debate. The opposition raised the issue of the BJP's recent failures in preventing the escalation of violence in Gujarat, and feared that POTA would be used to target minorities and to carry out political vendettas. Commentators have criticised the government for using POTO to cuff charges on Muslims accused of initiating the Gujarat massacre, but not against Hindu extremists responsible for violent retaliation against their Muslim neighbours.

Intense debate took place on certain provisions, seen to be draconian, within POTA. With regard to the provision enabling the use of intercepted communication as evidence, Congress(I) member of the Rajya Sabha and senior advocate R.K. Anand expressed doubts. Citing a 1996 Supreme Court judgment, he said the court had allowed wire-tapping on sufficient grounds and it had made clear that the authority empowered to do so should not be the investigating officer. “The information which will be given to the investigating officers will be limited to the part of the investigation,” the court had ruled, he said. However, Clause 42 of POTA, however, allows interception, in whole or in part, by a public servant acting under the supervision of the investigating officer. Wire-tapping was a serious matter that infringes upon the fundamental right to privacy guaranteed by Article 21, Anand had cautioned.

Advani quoted from the Supreme Court judgment in *Kartar Singh vs State of Punjab* (1994), which upheld the constitutionality of TADA. The court had held that while dispensing justice in cases under TADA, the court should keep in mind not only the need to ensure the liberty of the

### **States where POTA is currently in force and our contacts there**

Andhra Pradesh  
Delhi  
Gujarat  
Himachal Pradesh  
Jammu and Kashmir  
Jharkand  
Maharashtra  
Sikkim  
Tamil Nadu  
Uttar Pradesh

accused but also the interest of the victims and their near and dear ones and, above all, the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and resort to private retribution.

But Advani left unstated what the court's majority judgment said in the succeeding paragraph: "The invocation of the provisions of TADA in cases, the facts of which did not warrant, was nothing but sheer misuse and abuse of the Act by the police."

Two years after the existence of POTA and it being notified in ten states, legitimate fears of its misuse against political opponents and demonised and marginalised communities have been borne out. In Jharkand—the highest POTA cases and detainees—the protesting tribal community have been targeted with even minors being arrested. In Gujarat all except one of the POTA detainees are from the Muslim minority and in Tamil Nadu and UP too the so-called anti-terror law has been abused to book, without transparency and accountability political opponents and poor communities respectively.

### **Rationale for POTO**

It was the events of September 11, 2001 that gave the Government of India the dubious pretext it needed to introduce POTO. The Indian Ministry of Home Affairs justified the initial Ordinance by claiming "an upsurge of terrorist activities, intensification of cross border terrorism, and insurgent groups in different parts of the country". But the MHA's own assessment however contradict this statement - its Annual Report for the year 2000 actually reported a decrease in terrorist incidents in Jammu and Kashmir, a state which remains the main focus of the Indian government's counter-terrorism measures.

The promulgation of POTO was accompanied by the selective ban on SIMI [Student's Islamic Movement of India].<sup>2</sup> At a all state DGP's conference addressed by the Indian deputy prime minister and home minister, LK Advani, the DGP's of three states, Maharashtra, Madhya Pradesh and Rajasthan had made a strong plea for the concurrent ban on Bajrang Dal and SIMI as 'internal terrorist organisations.' However the ban under the Unlawful Activities (Prevention) Act, 1967 was selectively applied to this Muslim outfit raising questions on the motive of the Indian government. Similarly the list of terrorist organisations listed under the act are selectively singled out. (*Communalism Combat, September and October 2001*)

All the provisions contained in POTA - excepting those which contradict the Criminal Procedure Code, the Indian Penal Code, the Evidence Act or the Constitution of India - are covered by existing laws such as the National Security Act, 1980; the Armed Forces Special Powers Act, 1958; the Disturbed Areas Act, the Unlawful Activities (Prevention) Act, 1967; the Prevention of Seditious Meetings Act, 1911; the Anti-Hijacking Act, 1982 No. 65 of 1982, and others.

POTA as POTO—the ordinance that preceded its becoming a law— was promulgated despite the existence of an array of such laws. The Act allows detention of the accused for a prolonged period of detention - up to 180 days - without the filing of a charge sheet. It also effectively subverts the cardinal rule of the criminal justice system by putting the burden of proof on the accused. It does this by withholding the identity of witnesses, by making confessions made to the police officer admissible as evidence, and making bail extremely difficult by giving the public prosecutor the power to deny bail.

The Act is in violation of non-treaty international human rights standards, which provide the framework for the international protection and promotion of human rights. It is also incompatible with international human rights standards and treaties, particularly the International Covenant on Civil and Political Rights (ICCPR), to which India is a Party. India has signed but has not yet ratified the

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); therefore it is obligated under international law not to do anything that would defeat the object and purpose of the treaty. The significance of international human rights standards has been highlighted by the Supreme Court of India in a number of cases, particularly in Vishaka & Others vs. State of Rajasthan & Others (1997(6) SCC24), where it was stated that "...now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law occupying the field."

## **What is POTA?**

POTA suspends certain safeguards involving human rights, for those individuals detained under it, and is thus incompatible with fundamental rights, as they no longer remain fundamental if they can be altered.

A decade long experience with a previous national anti-terror law, the infamous Terrorist and Disruptive Activities Prevention (TADA) that was in force between 1985-1995 —gives legitimacy to the fear that the misuse of such laws evoke among human rights activists, political dissenters and minorities. On August 24, 1994, former Minister of State for Home, Mr Rajesh Pilot had stated that of the approximately 67,000 individuals detained since TADA came into force, 8,000 were tried and only 725 persons were convicted. Some 59,509 people had been detained with no case being brought against them. The TADA Review Committees found that other than in 5,000 cases, the application of TADA was wrong, and asked for the withdrawal of the cases. TADA was wrongly applied in more than 50,000 cases all over India.

Despite the admissibility of confessions made to police as evidence - which were invariably taken under torture - the conviction rate was less than 1%. Yet, thousands of people underwent prolonged detention without ever being convicted. The maximum numbers of arrests under TADA were not made in Punjab, Jammu and Kashmir or North East India where 'terrorism' is a reality, but in Gujarat (19,263 persons as of 1993), which had no record of terrorism! The majority of the victims belonged anti-Dam protestors, trade unionists and religious minorities.

## **POTA Review Committee**

The POTA Review Committee has not received enthusiastic responses since it was set up in May 2003 under Justice Arun Saharya, former Chief Justice of Punjab High Court, to check misuse of POTA. At the time, the Home Ministry, responding to a question from Raddi Sabha MP Shahid Siddiqui, admitted they had been "intimated" by the Jharkhand government that "two cases involving persons aged 17 years and 18 years have been registered under the POTA, 2002."

The following is the latest information provided by the Asian Centre for Human Rights on the POTA Review Committees

Top POTA detainee states (as of 21 October 2003): Jharkhand (185 in jail), Jammu and Kashmir (89), Gujarat (69), Andhra Pradesh (36), Delhi (38) Number of complaints received by the POTA Review Committee: Maharashtra (36 cases), Tamil Nadu (35), Jammu and Kashmir (16), Delhi (6),

Uttar Pradesh (3), Jharkhand (2).

## **POTA is more draconian than TADA in many respects. Why?**

### **VAGUE DEFINITIONS**

➤ Under an expansive definition of terrorism - drawn from the text of TADA - POTA may also be applied to cases of murder, robbery, theft and other crimes that would ordinarily be covered under the Indian Penal Code, in addition to new crimes under the heading of 'terrorist act'. Such crimes include membership of an unlawful association - already covered under the Unlawful Activities (Prevention) Act, 1967 - or any voluntary act "aiding or promoting in any manner the objects of such association". Thus POTA provides for criminal liability for mere association or communication with suspected terrorists without the possession of criminal intent.

➤ Section 3(5) of the POTA, while criminalising membership of a "terrorist gang" or a "terrorist organisation," does not clearly define what these terms mean. The section does not require for example proof that the accused person has been involved in a criminal act such as a murder, the crime is considered complete upon proof of membership, which is not defined. So therefore people may be committing a criminal act without being aware that they are doing something unlawful. Thus POTA provides for criminal liability for mere association or communication with suspected terrorists or expressing political opinions without the possession of criminal intent. Therefore, the section may violate the right to freedom of association enshrined in Article 22 of the ICCPR.

➤ Section 3(8), punishes those in possession of information of material assistance in preventing a "terrorist acts". Failure to provide such information is punishable by up to three years imprisonment.

➤ Section 4 of POTA is similar to Section 5 of TADA in laying out a legal presumption that if a person is found in unauthorized possession of arms in a "notified area," he/she is automatically linked with terrorist activity. This along with other provisions undermines the basic international right to be presumed innocent until proven guilty. The Act criminalises the possession of an unauthorised weapon in notified areas and of bombs, dynamite and specified dangerous substances in any area. This section lends itself readily to abuse, especially by police officers, and may also be applied arbitrarily since many of the offences fall under the Indian Penal Code as well. Furthermore, the provision does not require criminal intent, and could extend to a person in possession of a weapon with a recently expired firearms licence.

➤ It criminalises attempts to harbour or conceal a terrorist, but gives no indication of who is empowered to designate someone a terrorist for the purposes of this section.

➤ POTA criminalises membership of a 'terrorist gang' or 'terrorist organisation', the latter being defined tautologically as "an organisation which is concerned with or involved in terrorism" and thus (potentially and arbitrarily) extending to many patently non-terrorist organisations.

➤ It does not require the government to furnish evidence and specify grounds when issuing a notification declaring an organisation a 'terrorist organisation'. The onus is thus on the accused organisation to disprove the validity of its having been declared a terrorist organisation by the Central Government. The Central Government thus becomes judge, the jury and prosecutor.

➤ Membership of a 'terrorist organisation' constitutes an offence under the Act; the government is not obliged to provide information pertaining to an accused organisation. Failure to disprove allegations of membership of such an organisation could result in imprisonment for ten years. This violates internationally accepted standards on the presumption of innocence.

➤ POTA outlaws the legally undefined offence of giving 'support' to a terrorist organisation, committed by inviting 'support' (not merely through the provision of money or other property), assisting in arranging and managing a 'meeting' in 'support' of a terrorist organisation or to be

addressed by a person belonging to a terrorist organisation or addressing a meeting in support of a terrorist organisation (even in absence of criminal conspiracy or criminal intent). It outlaws encouragement or reception of money or other donations intended “for the purposes of terrorism”, implicating, for instance, those who are compelled to pay ‘taxes’ to armed opposition groups in North East Indian states which quite a few Government officials do.

§ It designates the act of “threatening a witness” as a terrorist act, and provides for the non-disclosure of witness identities - provisions that increase the threat of false accusations by the police.

## ARREST

➤ Section 48(2) provides for the option of pre-trial police detention for up to 180 days. It would appear that this provision contradicts Articles 9(2) and 9(3) of the ICCPR which require that all arrested people be promptly informed of the charges against them and that they be entitled to trial within a “reasonable time” or release.

➤ This section raises fears that long periods of detention without charge or trial will lead to misuse of the section by the police, as occurred under a similar provision in TADA which led to a extremely low percentage below 2% of cases actually reaching the trial stage. Police officers reportedly arrested persons knowing that there was insufficient evidence for the actual arrest under TADA, and detained individuals up to the maximum period allowed as a means of intimidation.

➤ POTA provides for mandatory minimum sentences, with little discretion left to judges regarding the severity of sentencing. It may also lead to extensive invocation of the death penalty, with none of the standards of scrutiny that must be ensured before such a penalty is awarded.

## COURTS

➤ ‘Special courts’ for trials are established under POTA. The creation of such courts jeopardise the independence of the judiciary. Special courts are given the discretion to hold trials in non-public places (like prisons) and to withhold trial records from public scrutiny, thus preventing the independent monitoring of special court sessions. Furthermore, special courts can try the accused for any charge under the Code of Criminal Procedure if it is connected to a POTA charge against the accused. They may also, at their discretion, “draw an adverse inference” from the refusal of the accused to give samples of handwriting, fingerprints, footprints, photographs, blood, saliva, semen, hair and voice - yet another digression from the principle of presumption of innocence.

➤ POTA allows the possibility of a summary trial for offences punishable with less than three years’ imprisonment. The absence of a provision to challenge the sufficiency of prosecution evidence prior to trial implies the possibility of custodial detention for an indefinite period in absence of evidence and of an appeal mechanism for the accused.

➤ The special courts also have the option of proceeding with trials in the absence of the accused or his/her lawyer. This strengthens special courts’ subjective control over the trial process. The special courts can hold trials in camera and keep witnesses’ identities secret, thus undermining the right to fair trial through prejudicing of the defence case. Such a provision also imparts protection to the witnesses for the defence, but not to the prosecution’s witnesses. Finally, it denies the accused the right to oppose the withholding of witnesses’ identities.

➤ It makes admissible as evidence intercepted communication against the accused.

➤ It provides for the option of pre-trial police detention for up to 180 days, thus violating the right of the accused to a speedy trial.

➤ Allegations made by the police can result in adverse inferences - a provision that reverses the rules of evidence and violates the right to presumption of innocence.

➤ Action taken under POTA by central or state governments “in good faith” may be protected by punishment, and blanket immunity is given to “any serving member or retired member of the Armed Forces or other para-military forces.”

➤ POTA provides for punishment and compensation for malicious action on behalf of police officers “knowing that there are no reasonable grounds for proceeding” under POTA. This clause actually reduces the likelihood of prosecution of police abuse of POTA rather than increasing it, since there is no concomitant provision for the protection of witnesses for the defence.

➤ The Central and State review committees lack the necessary guidelines; moreover, there is no provision for a detainee’s representation before the review committees. The review committees are not required to submit their reports to Parliament or State Assemblies, implying the subordination of Parliament and judiciary to the government executive.

➤ Finally, the Act suffers from a lack of provisions for trial procedure (in the absence the applicability of the Code of Criminal Procedure). There is no requirement to make a First Information Report (FIR) or a remand report available to the accused at arrest or at the first court hearing, with the result that the accused may remain ignorant of the reason for arrest for up to 180 days.

## **TORTURE**

There are also fears that the detentions under POTA are dangerously long, as torture in police custody is a fact recognized to be widespread by the authorities.

Section 32 provides that confessions made to police officers are to be admissible in trial. This is contrary to the Indian Evidence Act, therefore indicating that torture to extract confessions is acceptable in certain types of cases. It is well documented that torture is used in police custody as a means of extracting confessions.

Stating its observations on an identical section (section 27) in the Prevention of Terrorism Bill 2000, the NHRC had stated : “This would increase the possibility of coercion and torture in securing confessions and thus be inconsistent with Article 14(3) (f) of the ICCPR which requires that everyone shall be entitled to the guarantee of not being compelled to testify against himself or to confess guilt. This provision [of the ICCPR] is consistent with article 20(3) of the Constitution of India. Making confessions before a police officer admissible would also imperil respect for Article 7 of the ICCPR that categorically asserts, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Section 56 of the Act provides immunity from prosecution for “any authority on whom powers have been conferred under this Ordinance, for anything which is in good faith done.” Therefore the section provides for protection from punishment and blanket immunity is provided to police officers who use torture or cruel, inhuman or degrading treatment during interrogations. The term ‘in good faith’ is not clearly defined or who carries the burden of proving it. Article 2(2) of the CAT distinctly states that “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification of torture.” So therefore POTA appears contradictory with India’s repeated statements that it is dedicated to eradicating torture.

There is to be no review of POTA provisions for three years from the date of enactment. This has been reviewed in a recent SC judgement.

In short, POTA fails to offer the most basic safeguards for a fair trial and due process of law. The grim tradition of national security legislation in India has revealed that such laws result in maximum human rights violations, for minimum convictions. POTA is no substitute for political will, sound

## THE SCHEDULE

(See section 18)

### TERRORIST ORGANISATIONS

1. BABBAR KHALSA INTERNATIONAL.
2. KHALISTAN COMMANDO FORCE.
3. KHALISTAN ZINDABAD FORCE.
4. INTERNATIONAL SIKH YOUTH FEDERATION.
5. LASHKAR-E-TAIBA/PASBAN-E-AHLE HADIS.
6. JAISH-E-MOHAMMED/TAHRIK-E-FURQAN.
7. HARKAT-UL-MUJAHIDEEN/HARKAT-UL-ANSAR/KARKAT-UL-JEHAD-E-ISLAMI.
8. HIZB-UL-MUJAHIDEEN/HIZB-ULMUJAHIDEEN PIR PANJAL REGIMENT.
9. AL-UMAR-MUJAHIDEEN.
10. JAMMU AND KASHMIR ISLAMIC FRONT.
11. UNITED LEBERATION FRONT OF ASSAM (ULFA).
12. NATIONAL DEMOCRATIC FRONT OF BODOLAND (NDFB).
13. PEOPLE'S LIBERATION ARMY (PLA).
14. UNITED NATIONAL LIBERATION FRONT (UNLF).
15. PEOPLE'S REVOLUTIONARY PARTY OF KANGLEIPAK (PREPAK).
16. KANGLEIPAK COMMUNIST PARTY (KCP).
17. KANGLEI YAOL KANBA LUP (KYKL).
18. MANIPUR PEOPLE'S LIBERATION FRONT (MPLF).
19. ALL TRIPURA TIGER FORCE.
20. NATIONAL LIBERATION FRONT OF TRIPURA.
21. LIBERATION TIGERS OF TAMIL EELAM (LTTE).
22. STUDENTS ISLAMIC MOVEMENT OF INDIA.
23. DEENDAR ANJUMAN.
24. COMMUNIST PARTY OF INDIA (MARXIST-LENINIST)—PEOPLE'S WAR, ALL ITS FORMATIONS AND FRONT ORGANISATIONS.
25. MAOIST COMMUNIST CENTRE (MCC), ALL ITS FORMATIONS AND FRONT ORGANISATIONS.
26. Al Badr
27. Jamiat-Ul-Mujahidden
28. Al-Qaida.
29. Dukhtaran-e-Millat (DEM)
30. Tamil Nadu Liberation Army (TNLA)
31. Tamil National Retrieval Troops (TNRT)
32. Akhil Bharat Nepali Ekta Samaj (ABNES)

*Explanation.*—For the purposes of this Schedule, serial numbers 24 and 25 shall be deemed to have been included with effect from the date of publication of S.O. No. 1194(E), dated the 5th December, 2001.



## POTA fact-sheet

- “Terrorism” includes acts committed with any lethal weapon.
- Offences include inviting support for a terrorist organisation, addressing a gathering of terrorism sympathisers and assisting in arranging a meeting where support is expressed for a terrorist organisation or its activities.
  - Properties of terrorist organisations and their sympathisers shall be seized.
  - Suspects can be detained for three months without charges being brought against them; and three more months if allowed by a special judge.
  - A police officer can seek through the court samples of handwriting, fingerprints, footprints, blood, saliva, semen and hair of a suspect. Refusal to give samples will be considered against the accused in trial.
  - Confessions made to a police officer under certain conditions are admissible as against the current law, which allows confessions to be admitted as evidence only if they are repeated voluntarily in court.

### ‘Safety’ net

- Investigation of an accused can be done only by a deputy superintendent of police or officer of higher rank.
  - Confessions must be recorded within 48 hours before a magistrate, who will send the accused for a medical examination if there is a complaint of torture.
  - A legal representative of the accused can be present for part of the interrogation.
  - Police officers can be prosecuted for abusing their authority. Also, victims can be paid compensation.

### Tribunal on Pota

- The significance of the Tribunal on POTA and the timing is to make a direct attack on this legislation. The Tribunal in effect is **An Enquiry into the Relevance and Implementation of the Prevention of Terrorism Act, 2002.**
  - **The** Tribunal will have depositions from all 10 states where POTA is being used. In places like Gujarat, a large number of persons are charged under a single crime or incident.
  - There is a lot of scattered and general information about POTA, the process should be aimed at getting final figures as of 31, January 2004.

# Examples of Abuse of POTA

## ANDHRA PRADESH

1. 36 persons in Andhra Pradesh in Jail under the draconian law (Central Chronicle, January 17, 2004 & Times of India, October 10, 2003)
2. POTA has been invoked against a revolutionary Telugu poet for the first time in Andhra Pradesh. Mr Arvind Babu, convenor of Prakasam district unit of Revolutionary Writers' Association or Virasam. Activists insist that Mr Aravind was subjected to severe mental torture during interrogation and was pressurised into signing a confession statement in which he admitted to having links with the banned People's War. (Deccan Herald, March 8, 2003)
3. Virasam pointed out that the draconian law had been invoked against Muslim youth in the Old City of Hyderabad and in districts too where at least 30 persons have been held. The arrested include poor tailors, agricultural workers, employees in rural areas and Muslims. (Deccan Herald, March 8, 2003)
4. In fact, even doctors have been charged under POTA for treating such militants
5. An embarrassed Andhra Pradesh Government has decided to step back on the issue of invoking POTA against a woman legislator given the outrage it has evoked all round. Mrs Konda Surekha, Congress MLA from Warangal district, her husband K Murali, their two close associates and half a dozen naxalites had been chargesheeted under POTA for allegedly attempting to murder TDP MLA E Dayakar Rao. (Deccan Herald, April 6, 2003)

## DELHI

1. In Delhi, nine cases have been filed under POTA at the Special Court in Patiala House. Only one has been decided — the ruling on the attack on Parliament House, easily the most publicized case, came last December 18, a year after the attack. (The Indian Express April 05 2003)
3. The baffling case of the baby terrorist (The Indian Express February 27 2003). A posse of policemen led by the renowned ACP Mukhbir Singh of the Special Cell with countless notches on his belt, was seen outside the Labour Ward of the GTB Hospital ready to arrest the baby on arrival into the world under the Prevention of Terrorist Act, 2002, affectionately referred to as POTA.

The home minister justified the impending arrest and declared, "As Abhimanyu in Mahabharata learnt how to pierce and enter the Chakravayuh in his mother's womb, similarly this baby had knowledge of the plans to attack Parliament as well as plant RDX bombs and conduct hawala operations as the conspiracy was hatched in the house while he was in the womb." Heaping scorn on the home minister for being a pseudo-secularist, Bishwa Hum-tum Parishad (BHP) president, harking back to the nation's rich cultural traditions, said that Kansa was on the right track. He pointed out that Mother India cannot wait for baby terrorists to grow up into full-fledged terrorists armed with AK-47s who attacked sacred places like Ansal Plaza and they must be exterminated on arrival. The secretary, Home, on being apprised of the provisions of the Juvenile Justice Act with regard to arrest of children, authoritatively stated that there was no room for any controversy even by the media, as

POTA is an extraordinary law to deal with an extraordinary situation and takes precedence over all other laws as well as the Constitution. As per the secretary's communique, Pota itself contains no limitations and any creature — big or small, biped or quadruped, baby or adult — can be arrested under the legislation.

4. The Delhi Police arrested Kashmir Press Service editor Ghulam Mohiudin Bhat following seizure of some documents and computer floppies indicating his alleged links with Pakistan Intelligence agency ISI. [Hindustan Times, May 13, 2003]

5. Delhi police on February 6 arrested two Hurriyat leaders, including its Delhi-based spokesman Shabir Ahmed Dar, for allegedly receiving funds from Pakistan High Commission for passing them on to militant outfits in the state. (February 6, 2003)

6. Two SIMI activists were arrested by the Delhi Police on May 27, 2002 and booked under section 20 of POTA ad 124 (a) of the IPC. The duo- Mohammad Yasin Patel and Ashraf Jaffrey were sentenced to 7 years imprisonment ad a fine of Rs. 50, 000 has been imposed on each of them. (New Indian Express, July 21, 2002)

7. In Delhi, there are a total of 66 people implicated under POTA for various offences. These people are booked under 16 cases and 38 of these people are in jail. [The Hindu, October 2, 2003]

8. The Government on NCT of Delhi had submitted its report to the POTA Review Committee by August 2003. [Sourced from: <http://pib.nic.in/archieve/lreng/lyr2003/raug2003/13082003/r1308200338.html>]

9. A designated court in Delhi sentences a LeT terrorist and his two associates under the Prevention of Terrorism Act. While the LeT terrorist, Feroz Ahmed Sheikh was sentenced to 10 years of imprisonment; his associates Sheikh Sajjad and Mehrajuddin Peer were sentenced to five years of imprisonment on August 7, 2003. [Source: <http://www.satp.org/>]

10. The Delhi Police also arrested 5 Jaish-e-Mohammad militants of whom three were arrested in Delhi while the other two were arrested in Sikandrabad in Uttar Pradesh. The arrests came following a seizure of arms and money and the death of two other militants. [The Tribune, August 31, 2003]

## **GUJARAT**

1. Those charged under POTA in Gujarat, belong to the minority communities. Of the 240 persons charged, 239 are Muslims while there is a lone Sikh. (Hindustan Times September 15, 2003). POTA has been selectively applied in Gujarat.

2. According to an article published in the Hindu, in Gujarat there are 2 cases of POTA for which 158 persons are involved. Of these 69 are currently in jail while another 63 are absconding according to this report. (Hindu October 2, 2003). However, a more recent article puts the number of arrested persons at 83. (Central Chronicle, January 17, 2004)

3. On February 19, 2003 the Gujarat government re-invoked POTA on the 131 accused in the Godhra carnage, including three minors and eight persons who have already been let off due to lack of evidence against them. (Source The Times of India, February 20, 2003)

4. The four accused in the Godhra case, who got bail challenged the state government's decision to book them under POTA since the law was not in force when the crime was committed. According to them, the Sabarmati express was burnt on February 27, 2002 while POTO was adopted in the state on February 28. The bailed challenged the application of the law with retrospective effect. (Source: <http://www.indiaexpress.com/> August 11, 2003)

5. Human rights reports on Gujarat blames the Modi government of grotesque misuse of POTA against Muslims, while further bringing out the hardships that are being suffered by the minority community. According to the report, the families of those languishing in the Ahmedabad and Vadodra jails are facing severe economic crisis, as they have to travel long distances to see the jailed. (Source: The Hindu on April 29, 2003)

6. Maulana Hasan Umarji — who had organised relief work after communal riots was also arrested under the draconian act after its re-invocation in the state. (Source: The Hindu April 29, 2003)

7. The five men accused of storming the Akshardham temple have been booked under POTA. The police do not have any other circumstantial evidence besides their reported links with the Lashkar-e-Taiba and the Jaish-e-Mohammad to tie these men to the case. Unless POTA is used against them, their confessional statements will not be admissible in court as evidence. (Source: NDTV.com August 30, 2003)

8. The state government initially charged those arrested in relation to the attack on the Godhra train under the controversial and draconian Prevention of Terrorism Ordinance (POTO, now the Prevention of Terrorism Act), but filed ordinary criminal charges against those accused of attacks on Muslims. Bowing to criticism from political leaders and civil society across the country, the chief minister dropped the POTO charges but stated that the terms of POTO may be applied at a later date. (Source: Human Rights Watch, "We have No Orders to Save You"- State Participation and Complicity in Communal Violence in Gujarat)

9. In the ISI-conspiracy case, the crime branch of Ahmedabad police had arrested by January 6, 2004 a total of 40 persons all of whom are Muslims. On this date, the police arrested three persons including two brother of an underworld operator called Rasul Khan Pathan alias Rasul Parti. Parti himself is absconding in cases such as Hiren Pandya's murder, ISI-conspiracy case and tiffin-box bomb blast case. The three arrested on January 6 were brought before a POTA court. (Source: Times of India, January 6, 2004)

10. The POTA court adjourned the framing of charges to December 16, 2003 against 39 accused in the ISI conspiracy case as defence advocate Ilyas Pathan asked for more time to file an application challenging the applicability of POTA to the case. It was alleged that the accused had links with terrorist organisations like Lashkar-E-Toiba and Jaish-E-Mohammed and state government had slapped POTA for their involvement in "major conspiracy to foment large-scale terrorist activities in Gujarat, including assassination of top political Hindu leaders, to avenge post-Godhra communal riots. (Sourced from: [http://www.outlookindia.com/pti\\_news.asp?id=186809](http://www.outlookindia.com/pti_news.asp?id=186809))

11. The CBI had filed charge sheets against 19 accused in the Haren Pandya murder case of whom 4 were absconding. Investigations disclosed that though both the murder of Haren Pandya and the attempt to murder of the Vishwa Hindu Parishad (VHP) leader, Jagdish Tiwari, were two separate instances for which two FIRs were registered, they were part of the same transaction of a well-designed conspiracy to strike terror. Therefore, the CBI said, a common charge-sheet was filed

against Asghar Ali and 18 others for committing offences under various sections of the POTA, the Arms Act and the Indian Penal Code. The 15 accused are at present lodged in the Sabarmati jail in Ahmedabad. Keeping in view the sensitive nature of the case, the CBI has filed an application under Section 30 of POTA praying for in-camera proceedings of the trial and for keeping the identity of certain witnesses secret. (Source: The Hindu, September 9, 2003)

12. Special POTA court framed charges against 17 people, including five alleged “ISI” agents involved in the incident on February 4, 2004. Designated judge Sonia Gokani framed charges against these POTA accused and the proceedings were held in camera at the Sabarmati Central Jail premises. All the accused pleaded not guilty to charges, additional public prosecutor Sudhir Brahmhatt told PTI. They were charged under various sections of POTA, CrPC, and Arms Act. (Source: [http://www.outlookindia.com/pti\\_news.asp?id=199235](http://www.outlookindia.com/pti_news.asp?id=199235))

13. AT least seven boys, all said to be under the age of 16, were booked under the Prevention of Terrorism Ordinance by the Government Railway Police for the February 27 attack on a train in Godhra. Following a newspaper report on the biased manner in which POTO was used, the Government withdrew the ordinance against 62 persons, all Muslims. But the accused, including the seven boys, still face charges of murder, attempt to murder, criminal conspiracy, arson, rioting and damaging public property. In violation of earlier Supreme Court orders - that the families of those arrested should be informed within 24 hours - the boys’ parents were not informed, their lawyers said. Godhra town police station inspector K Trivedi claimed it was not possible to check their age at the time of arrest. “They were seen near the site of the incident, so we arrested them.” The rest, he said, “will be taken care of by the judiciary.”

*(The Indian Express, 26 February 2002)*

14. EVEN as the BJP Government at the Centre is trying hard to convince POTO critics that the legislation won’t be misused, the party-ruled Gujarat has just made its job more difficult. Recently, the equally strict Prevention of Anti-Social Activities (PASA) — under which bail is not allowed — was invoked in the state against five first-time Muslim offenders, only to be revoked in 10 days. Such indiscriminate use of POTO, as the rights groups keep repeating, is their biggest fear regarding the Act. On November 24, 2002 Ahmedabad police arrested four brothers — Anwar Hussain Malek, Gulam Mohammed Malek, Firoz Ansar Malek, and Iqbal Malek — and their cousin Faqrudin Baba Syed, on charges of rioting and attempt to murder and booked them under PASA. Members of a family of vegetable vendors, they were sent to jails in different districts. Ten days later, the Home Department revoked the PASA order, convinced that police had erred in applying the law which disallows bail. But the injustice still rankles the Maleks, who say they were the wronged party in the fight in Rajnagar vegetable market.

On September 14, the Maleks were allegedly attacked by Harish and Mahendra Marwari, who have shops in the same row in the market as the Maleks. Gulam Mohammed was admitted to V.S. Hospital with stab wounds, and a complaint was lodged against the Marwaris at Karanj Police Station. The Maleks alleged the fight was over the Rs 50,000 which the Marwaris owed them and were refusing to return.

Again, on September 28, Gulam and one of his brothers were allegedly attacked by the Marwaris. The Maleks lodged a police complaint and followed it up with a representation to the Home Department. This time, too, the Marwaris were charged with rioting.

Then on November 16, Harish Marwari lodged a police complaint that the Malek brothers and their cousin Syed had tried to rob his shop. The Maleks were charged with attempt to murder.

And to their surprise, on November 24, they were told PASA had been invoked against them. Since bail cannot be sought against a PASA detention and PASA review committees sit only once in six months, they would have had no other go but to stay in jail till the committee met.

But Ashrafunnisa, made of stern stuff, was convinced that her boys had been wronged. With help from Gujarat Pradesh Congress Committee secretary Chirag Shaikh, she took her case to the Home Department. She made representations to Minister of State for Home Gordhan Zadaphia, as also to Additional Chief Secretary (Home) Dr V.V. Rama Subbarao, who alone has the authority to revoke PASA detentions without the committee sitting.

Convinced about the irregularity, Zadaphia and Subbarao had the order revoked. The Malek brothers and Syed, however, remain in judicial custody, as they face the charge of attempt to murder. They have now sought bail.

PASA orders are signed by SPs in districts and police commissioners in commissionerate areas. But the orders are sometimes signed blindly. The cell's in-charge in Ahmedabad, Inspector Virendra Raval, says he was on leave when the papers were sent to the commissioner for signing. About the Maleks' case he said, "I admit we could not find any criminal antecedents about them." Asked for his comments, Minister of State for Home Gordhan Zadaphia said: "Yes, more alertness on part of police was required."

But there have been occasions before when PASA orders have been blindly signed. NSUI leader Satish Patel was arrested on August 16 on charge of stealing Rs 900, but was detained under PASA. *(The Indian Express, December 2002)*

## **HIMACHAL PRADESH**

1. In the state, as of October 2003, there was one case booked under POTA in which two persons were in jail while the other was absconding. [The Hindu, October 2, 2003]

2. Two accused in a POTA case have been granted bail by the District and Sessions Court as the state government allegedly failed to provide requisite sanction to the police for prosecuting the ultras nabbed under POTA. The Nurpur police had registered a case under Section 3 and 4 of POTA, Sections 302, 307 of the IPC and Sections 25-24-59 of the Arms Act in January, 2002. The accused were in the Hoshiarpur jail at the time when this article was printed. [The Tribune, June 8, 2002]

3. The Himachal Pradesh government has furnished the requisite information to the POTA Review Committee by August 2003. [Sourced from: <http://pib.nic.in/archieve/lreleng/lyr2003/raug2003/13082003/r1308200338.html>]

## **JAMMU AND KASHMIR**

1. On May 25, 2002, Imtiaz Bazaz, a local magazine editor was booked under POTA for releasing hawala funds to militants. However, he was released on bail on medical grounds on July 17, 2002. (Hindu, July 18, 2002)

2. J&K admits having arrested only 66 persons under POTA, contrary to the figure of 89 given by the Union Home Ministry to the Saharya Review Committee. (Times of India, January 1, 2004)

3. According to an article published in the Hindu, in Jammu and Kashmir there are some 97 cases involving a total of 181 persons of whom 89 are in jail while 92 are on bail. (Source: Hindu on October 2, 2003)

4. The first action in the state under the Act, involved the sealing of the house of a weaver, Ghulam Muhammad Dar, who was convicted under various sections of POTO for allegedly providing a safe hideout for militants. Later, the property was returned to the owners. [Source: The Indian Express, December 1, 2001]

5. The Jammu and Kashmir police, acting on its own behest took into custody nine girls even before the Ordinance had come into effect in the Valley. [Source: The Asian Age, December 3, 2001]

6. Hurriyat leader and Jammu and Kashmir Liberation Front chief Yasin Malik was arrested under POTA in connection with the recovery of one hundred thousand U.S. dollars from his alleged aides. [Source: The Times of India, June 7, 2003]

7. The former All-Party Hurriyat Conference chairman, Syed Ali Geelani and his son-in-law were booked under POTA following raids by the police and Income tax officials at various places in connection with funding of terrorist acts. [Source: The Hindu, June 10, 2002]

8. The Centre has banned a women's terrorist organisation called Dukhtaran-e-Millat in Kashmir under POTA. [the Hindu, June 27]

9. Several of the security laws in force in Jammu and Kashmir indeed directly curtail or violate the human rights of people in the state or facilitate their abuse. The Armed Forces (Special Powers) Act, 1958, empowers security forces to arrest individuals and enter property without warrant and to use force - including lethal force - to affect an arrest in areas declared as "disturbed" and to shoot to kill. The Act is widely believed to have facilitated grave human rights violations in areas where it is in force - in particular extra-judicial executions.

10. The Act allows for impunity for the perpetrators of such abuses; it requires that the state gives its consent before an agent of the state can be prosecuted for abuses but in practice this permission has been withheld as a matter of course. Domestic and international human rights bodies have recommended that this provision be abolished but so far this advice has been ignored.

11. The Jammu and Kashmir Public Safety Act, 1978 [PSA] has often been used to harass or punish political activists by holding them for long periods of time in administrative detention. Sometimes detainees are held outside the state making it difficult for families and lawyers to contact the detainees(2).

12. The Prevention of Terrorism Act [POTA] falls short of a range of fundamental rights set out in the Constitution of India, specific domestic laws and international human rights standards. About three quarters of the total number of cases filed under the provisions of POTA in India have been brought in Jammu and Kashmir. The introduction of POTA was opposed by civil liberties groups in

India as well as by the National Human Rights Commission of India. (CM Mufti Mohammed Sayeed's promise to his people in the Common Minimum Program Point 17— The Government considers that there are enough laws in existence to deal with militancy. Therefore, it will not implement POTA(1) in the state

13. The Terrorism and Disruptive Activities (Prevention) Act, 1987 was widely used in Jammu and Kashmir to arrest and detain people suspected of carrying out 'terrorist' offences. Such activities were defined extremely broadly and encompassed peaceful expression of political or other conscientiously held views. Less than five per cent of those accused under TADA were convicted whereas the rest were released, sometimes after long periods of detention, as no case could be made against them. The Act lapsed in 1995 but people in Jammu and Kashmir continue to be arrested and detained with reference to cases filed under TADA before its lapse.

14. A review of legislation and the way it has been applied with a view to amending law and practice to ensure their compatibility with fundamental rights guaranteed in the Constitution of India and internationally accepted human rights standards is an important stepping stone to the full promotion and protection of human rights. Amnesty International urges that such review be guided by India's international obligations with regard to the rights to life, liberty and fair trial. In particular the organization urges that anyone found to be unlawfully arrested, detained and tried under these laws be released and suitably compensated. Those responsible for abusing the laws should be brought to justice.

15. One of the strangest POTA cases is that of PDP Udhampur district president Surinder Singh aka Fauji. He invited police ire after spearheading an agitation directed at some police officials over the abduction of a college girl a year ago. The agitation compelled the then NC government to not only shift the then SP Katra but also order a CBI probe. The Fauji story began in March 2002, when a truck driver informed the Jammu police he had discovered hand grenades and mortar shells in heaps of scrap which he had carted from Kashmir for unloading at a factory in Paloura. The police registered an FIR under the Explosive Substances Act. Nearly a month later, a police team picked Fauji from his Udhampur residence. The Explosive Substances Act case was converted into POTA and Fauji was booked again under its provisions. Police informed the media that Fauji was a member of the Khalistan Zindabad Force and had sent explosives to Jammu for subversive activities. But Fauji, while he was being paraded before the media, shot back that he was being fixed by a police official against whom he had led the agitation in Udhampur. Prominent citizens of Udhampur town, who had participated in the agitation, wrote to the Governor, expressing the apprehension of POTA being misused. Although police denied Fauji's charges, they failed to challan Fauji in the POTA court. When the POTA court granted him bail, the police re-arrested him under the Explosive Substances Act. This time, Fauji was released on bail by the court of Ist Additional Sessions Judge, Jammu, October 29, 2003.

## **JHARKHAND**

1. So regularly has Jharkhand invoked POTA that it has beaten Jammu and Kashmir hollow in terms of using the law to combat terror — Jharkhand already has 702 POTA accused while Jammu and Kashmir, grappling with cross-border terrorism, has managed only 168 arrests. The Home Ministry under Advani maintains it does not have a list of persons arrested under the Act throughout the country because "implementation of POTA, 2002 is the responsibility of the state governments/UT administrations."

2. Nearly 200 people arrested under POTA in Jharkhand in February 2002. Arrested include 12 year old boys and 81 year old men. Number of children arrested is 10. (PUCL, February 2003)



3. 90 in Jharkhand are behind bars (Central Chronicle, January 17, 2004)

4. Though the government maintains that 207 have been booked, independent observers claim that 3,200 have been framed under the notorious legislation. According to an independent fact-finding mission there are FIRs for 654 persons. (Tribune India, March 7, 2003 and also PUCL Report)

5. Piparwar case number 11/02 of Chatra, Hussianabad-CN-1/02 and Lesliganj-CN-77/01(both in Palamau district) While 13 persons were implicated in Piparwar case, two and three persons were implicated in Hussianabad and Lesliganj cases respectively. (Deccan Herald, July 12 year???)

6. A number of women including Adivasi Women have been also charged under POTA sections (PUCL report, February 2003). By October some 15 women have been charged under POTA.

*(Source: Hindustan Times October 13, 2003)*

7. Ropni Kharia seventeen years of age of Tira Masori Toli village in Gumla district under Palkot police station limits was arrested by the police and slapped POTA. Her only fault was that she is the only educated woman in the village who passed matriculation and is enlightened on social and other patriarchal oppression in the village. She used to educate the women of the village on patriarchal oppression on them and how to resist it.

*(PUCL Report February 2002)*

8. Twenty-two yaer old Poonam Devi was arrested under the Act on March , and had neither been tried nor bailed till October. Other cases of women's arrests include that of fourteen year old Mayanti Raj Kumari and Sheela Devi, and also Urmila Kumari and Savita Kumari. The last two continue to remain in jail despite bail being granted to them by the Jharkhand high court in May since their parents could not furnish the bail bonds. Source: The Indian Express on October,

9. Advocate arrested under POTA: Sushil Prakash Bhasin, an Advocate at Daltonganj was arrested from his house on 28th June 2002. Two revolvers were supposedly recovered by Mr. Anil Palta, he Palamu SP from his Almari. Shushil's father, a freedom fighter and wife, a teacher tell us that Mr. Anil Palta himself by forcefully sending them out from the room searched the only Almirah in the house purposefully and with a conspiracy. The Advocate is now languishing in the Ranchi jail.(PUCL report, February 2002)

10. Journalist faces arrest under POTA: Nagendra Sharma, a reporter of Hindustan, a Hindi daily was arrested under POTA case No. 11/02 SPL from Sadbahini village in Palamu district. His only fault is that he has been regularly covering on the activities of the banned organisations. (PUCL Report, Feb 2002)

11. Minor arrested in Hazaribagh district on suspicion that his father might be working for the MCCI. Janki Bhuiya, minor boy of 14, along with two guests/relatives from Badkigaon in Hazaribagh district, was arrested in the last December. The only mistake of his was that his father might be working with MCCI. This was not confirmed by Janki Bhuiya's mother or any other member in his family do not know if his father is really working in MCCI. But his father has not been coming home for the last 3 years. His mother was arrested before and jailed for 3 months. Later on, on one terrible dark night the police raided the house in dozens and picked up Janki Bhuiya (14) and two more relatives belonging to his mother's side, who came for a courtesy visit and were booked under POTA. (PUCL Report, February 2002)

12. On the morning of 29 January 2002, the Jharkhand Police, the Jharkhand Armed Police and the Central Reserve Police Force were conducting cordon-and-search operations at the nearby Khapia, Batuka and Salga villages. Houses were being demolished. Women, children and elderly people were dragged out and brutally beaten. Many youths were tortured. The security forces finally picked up 13 people including 15-year-old Shankar Karmali who was setting out for school. All 13 were arrested under POTA and jailed in Ranchi. (Source: <http://www.aitpn.org/> AITPN Briefing papers 2003. See footnote 47. Sourced from PUCL report February 2002)

13. Jata Bhuia of Tirkuldiha village in Garhwa district was arrested under POTA after his cousins filed a complaint against him in a land dispute. (Sourced from the Submission to the Review Committee on POTA by Commonwealth Human Rights Initiative)

14. Deo Sharan Mahto of Madheya village in Palamu district was arrested last July 18. When his pregnant wife questioned the police action, she was beaten up and their house ransacked. She suffered a miscarriage soon after. (source same as above)

15. 83 people who were detained under POTA were subsequently released due to lack of evidence against them following the submission of the review committee on those arrested by the police. (Source: NDTV.com, April 1, 2003)

16. The Jharkhand government, now infamous for its dubious PTA record, has finally responded to the requests of the POTA Review Committee by sending them district wise reports. Though the government hasn't as yet given total figures, according to Home Ministry figures 130 persons have been arrested under POTA in the state. (Times of India, January 17, 2004)

17. Taking note of The Indian Express report on Jharkhand juveniles booked under POTA, Chief Minister Arjun Munda today promised to free within a week all "innocents" held under the new law by the state. Jharkhand has a record 702 accused under POTA, including women and children. "POTA will now be invoked against a person only after a thorough inquiry and gathering of evidence for prosecution. Strict action will be taken against police officers who slapped POTA on innocent persons" Munda said.

18. The National Human Rights Commission has slapped a notice on the Jharkhand government and Union home ministry demanding an explanation on reports of misuse of Prevention of Terrorism Act in the state. The government has been asked to reply within a fortnight (Asian Age, February 2003). The notice follows media reports alleging the misuse of Pota wherein a 12-year-old Gaya Singh and 81-year-old Rajnath Mahto have been arrested for supporting Naxals. As many as 10 minors have been reportedly booked under Pota in the state.

## **MAHARASHTRA**

1. Maharashtra has a high number of people booked under POTA behind bars. The total number is estimated to be around 93. (Central Chronicle, January 17, 2003)

2. Four persons, alleged to have masterminded the December 2 Ghatkopar bus bomb blast, were charged under the Prevention of Terrorism Act (POTA) by police on January 2, 2003. The four accused are Mohammed Abdul Mateen Abdul Baseed (28), Sayeed Khwaja Yunus Sayeed Khwaja Ayub (28), Shaikh Mohammed Muzamil Zamil Ahmed (27) and Zaheer Ahmed Bashir Ahmed Shaikh (27). (The Hindu, January 4, 2003)

3. In the Mulund last case, a SIMI activist was arrested for his alleged involvement in the blast. Ghulam Adul Khotal was arrested in Ratnagiri district of the state and POTA provisions were slapped on him. (Sourced from: <http://inhome.rediff.com/news/2003/apr/22mum.htm>)

4. In another development, Taufiq who had been arrested for the Ghatkopar blast under the same Act had been sent to police custody till April 30, 2003. Source same as above. In the same case, one of the accused- Sayeed Khwaja Yunus Yunus has escaped from police custody during transit to Aurangabad. (Source: Mumbai Newline, January 8, 2003)

5. POTA was used indiscriminately against the minorities in the communal riots that broke out in Solapur in 2002. (Sourced from: [http://pd.cpim.org/2003/1012/10122003\\_ashok%20dhawale.htm](http://pd.cpim.org/2003/1012/10122003_ashok%20dhawale.htm))

6. Mohammad Afroz Abdul Razzak was arrested in Mumbai under POTA sometime reportedly in early October in two thousand one. However, there are doubts that he may have been arrested actually sometime in August for routine questioning. However, Afroz had to be granted bail in April two thousand two as even after 6 months of arrest and investigation, the Mumbai police have nothing against him except his own confession where he apparently revealed plans to blow up the House of Commons in the United Kingdom.

*(Source: The Indian Express, April 7, 2002)*

7. The Gadchiroli police have arrested some four tendu leaf contractors and a courier of theirs for supporting the Naxalites under POTA. These arrests have come before the police crack down on the Naxals themselves.

*(Source: The Indian Express on July 21, 2002)*

8. The Gadchiroli police in the Sironcha tehsil under POTA arrested six naxals.

*(Source: The Indian Express July 29, 2002)*

9. The government of Maharashtra had decided to invoke POTA provisions act as deterrent against the commission of crimes against the Dalits by instilling fear in the minds of those who perpetuate such crimes. This decision comes due to the reliance by the government on a provision against sectarian terrorism. However, we also have the Atrocities Act, which has stringent provisions for attacks against SC/STs. Isn't the invocation of a security legislation for such a crime also liable to give too much powers to the police and lead possibly to the misuse of the Act by the state machinery itself?

*(Source: The Indian Express, July 17, 2003)*

10. An Urdu professor of the National Defense Academy, Anwar Ali, has been arrested under POTA for the Mulund blast case. According to the police, Ali had sheltered three LeT militants along with providing his house for a conspiracy meeting regarding the Mulund blast and also of blasting other sensitive places. The police also allege that Ali has links with the banned SIMI LeT.

*(Source: NDTV.com on May 12, 2003)*

11. A state level Review Committee has been established under the chairmanship of Justice K. K. Baam to scrutinize the individual cases booked under POTA and see whether the accused deserved to be charged under the anti-terrorism law. In Maharashtra, as many as 36 complaints have been made against the police for misuse of Pota. These 36 complaints have been referred to the central committee headed by Justice Saharya. (Source: times of India on October 26, 2003)

12. Maharashtra's Congress-led government veered from the party line and merrily slapped POTA charges against tendu contractors and alleged Naxal sympathisers in Gadchiroli though the state has its own MCOCA, on which POTA was modelled, in place to tackle organised crime. With 14 POTA accused — number 15 was Mohammed Afroz, accused of being an Al Qaeda link, but the charge was later dropped — Maharashtra entered the new Act league. (The Indian Express March 29 2003).

13. Weeks after POTA became law, Maharashtra sprung a surprise when police invoked the Act to arrest five tendu leaf contractors, claiming they were financing, even participating in Naxalite activities in the tribal district of Gadchiroli. If the contractors from Andhra Pradesh were aghast that the law which should have protected them from the Naxalites was being used instead to target them, what struck everyone was POTA's use by a Congress-led government after the party had bitterly opposed its enactment inside and outside Parliament. To bolster their case against the contractors, the police also used POTA to hold three 'Naxalites', including two women. Charges were also slapped against some other 'Naxalites', their sympathisers and aides. Of these, Dalam (squad) commander Bakanna and local NCP leader Suresh Poreddiwar's brother Vijay were said to absconding.

14. With 16 POTA offenders, Maharashtra under Congress became one of the big POTA-users. For months, the state government had dithered over its use. Finally, when it granted permission for the chargesheets which the police had filed in anticipation against the accused, four of the five tendu contractors were out on bail. Ordering the release on bail of tendu contractor Mohammad Gausuddin, the Nagpur bench of the Bombay High Court made the observation that it was necessary for police to get prior government permission before chargesheeting the accused. The HC also said that the government shouldn't waste time in giving requisite permission. Although it issued some guidelines to prevent POTA misuse, the court never said Gausuddin's was a case of POTA misuse. In fact, during an earlier bail hearing in the case of three other contractors, another High Court bench upheld the validity of the application of POTA on the basis of confessions of the co-accused. The trio — A Naim, Khwaja Moiuddin and Alimuddin — were later granted bail on technical grounds. The only bail plea that now remains to be discharged is that of contractor Kamlakar Hollala. Curiously, the state government, while giving the long-awaited nod earlier this month, kept Gausuddin, Naim and Poreddiwar out of it. The police have been told to verify if they really have enough evidence against these three. The police maintain that they want to snap the Naxalite finance link. Their contention is that tendu contractors give hefty sums to Naxalites in exchange for safe passage in the jungles. The police had booked the contractors under POTA sections relating to the booking of those rendering financial assistance to terrorists and terrorist organisations and also those participating in or associated with terrorist activities. "In Gausuddin's case, the Gadchiroli police have claimed that he had participated in a meeting where Dalam leader Bakanna was present," government pleader Bharati Dongre said. Police claim Gadchiroli Naxalites earn nearly Rs 15 crore per season from tendu contractors. Large sums are also received from bamboo-cutters. The police have also warned large paper mills to stay away from the Naxalites. The police say if they can cripple the finance sources, it will be tough going for the Naxalites.

15. But there's another side to the story. The Gadchiroli police had been stripped off special preventive powers after killing a youth Chinna Mattami in February 2001 and for carrying out "coercive" search for Naxal sympathisers among tribals. POTA's enactment was godsend for the police. (The Indian Express, April 1, 2003)

16. Maharashtra has in force the Maharashtra Control of Organised Crimes act (MCOCA) enacted in 1999 and Karnataka, a similar law.

## **SIKKIM**

1. According to figures available in October, the state had only one case booked under POTA. There were four persons in jail in the case while two others had been granted bail. Source: the Hindu, October 2, 2003.

2. The first case in which POTA was invoked involved the arrests of four militants including the Vice President of the National Democratic Front of Bodoland from a hide out. Source: the Hindu, January 2, 2003.

## **TAMIL NADU**

1. There are a total of 50 persons involved under POTA in the state. Of these 42 are currently in jail while 6 are absconding. These people have been booked under 9 cases. (Hindu, October 2, 2003)

2. Tamil Nadu had two juveniles among the 46 arrested under POTA. The Madras High Court intervened in the case of one and the 17-year-old was released in 2002. Slamming the teenager's detention under POTA, the judge ruled that only the Juvenile Justice (Care and Protection) Act 2000 should have been applied in the case. Juveniles arrested under POTA: Two minors – Prabhakaran and Bhagat Singh were arrested along with 27 others in the Naxal affected Dharampuri district of Tamil Nadu. According to Prabhakaran's counsel, the arrested include 5 women also. On March 18, 2003 however, Justice K Sampath, concluded in his order that set aside the POTA charges against Prabhakaran and said that he should have instead been tried under the Juvenile Justice Act.  
*(New Indian Express, March 31, 2003)*

3. In the same case, the other minor, B. Bhagat Singh, moved the Madras High court challenging the POTA court order that an age-determining radiological test be done on him. The article doesn't mention what was the final result of this. It ends by saying that the court adjourned the admission by a week and is expected for further hearing on Monday. (Source: The Hindu, March 30, 2003)

Most famous case of misuse of POTA for political vindications is the arrest of MDMK leader Vaiko by the Jayalalitha government. He along with 8 other members of his party were arrested. (The Hindu, August 2, 2002) in fact, in the state, 6 cases booked under POTA include arrests of political opponents, bringing the government under much criticism.

*(New India Express, March 31, 2003)*

4. Tamil Nationalist Movement (TNM) leaders P Nedumaran, Subha Veerapandian, Dr Thayappan and Pavannan were booked under POTA on August 1 last year. They were charged for addressing a meeting in Chennai in support of the LTTE. (Same as above)

5. This apart, the state police have filed a POTA case against TNM leader Pavannan for a speech he reportedly made in support of the LTTE at a meeting in Erode district. A charge-sheet against him was filed by the 'Q' Branch of the state police on January 13 this year. (Same as above)

6. Another TNM leader, Parandhaman, was slapped with POTA on September 19 last year after he expressed support for LTTE during the course of an interview. The banned (Tamil Nadu Liberation Force) TNLF's leader Maran was also booked under POTA by the state police on September 11 last year after he threw a letter at reporters in the Thoothukudi court complex, calling for lifting the ban on the LTTE and the release of Tamil leaders arrested under POTA. (Same as above) Also arrested under POTA is the editor of Nakkeeran, Mr. R. R. Gopal.

7. . Tamil Nadu submitted the details of the POTA cases booked in the state to the POTA Review Committee under Justice Saharya in June 2003. (The Hindu, June 27, 2003)

8. The Jayalalitha government had also decided to book Union minister, M. Kannappan under POTA for his alleged support to the banned LTTE. The Chief Minister of the state wrote to the Centre asking for the Minister to be sacked. Later, newspapers also reported that in case the minister was not sacked, the CM stated that there was no rule in the land that could prevent the arrest.

*(The Times of India, September 29, 2003)*

9. The Jayalalitha government also challenged the jurisdiction of the POTA review committee contending that a state level committee had already been constituted. In response, the committee asserted its position and sent the Central government order vesting the committee with powers to review the cases under POTA.

*(The Hindu, September 9, 2003)*

10. The POTA court has rejected bail plea filed by 8 MDMK men in the Vaiko case.

*(The Hindu, September 11, 2003)*

## **UTTAR PRADESH**

1.

2. Between April and July last year, the Mayawati government had arrested some twenty-five Dalits and Adivasis in the Sonebhadra district. [Source: NDTV.com]

3. In Uttar Pradesh, there are a total of 14 cases booked under POTA, which involve 44 people of whom while 28 are in jail the rest of the 16 are absconding. [The Hindu, October 2, 2003]

4. a. Mallu Baiga and thirteen others have been booked under POTA for allegedly burning the house of the richest landlord in the area. The police declared them sympathisers of the ultra-left, Maoist Communist centre.

b. According to the Adivasis of the area, some of whom subsist on a daily wage of twenty rupees claim that POTA is invoked against them whenever they try to bring up the nexus between the government and the landed class.

c. Those like Vijay Singh Gond, MLA Dudhi, believe that POTA is invoked time and again so that villages can be proved to be Naxal affected and hence siphon off additional funds allocated as a result of. For example, he point out that Katauli is not in the list of the administration's Naxal villages in the district, but people from there were charged with POTA.

5. The Special Task Force in Uttar Pradesh picked up a student, Ejaz Hussain of Rashtriya Kisan Snatokatar Mahavidyalaya, Shamli because they believe that he is a Jaish-e-Mohammad sympathiser. Hussain was picked on March 8 has been booked under POTA. (The Indian Express on March 15, 2003). Another Kashmiri suden, Mehraj Hassan of Kupwara was also arrested besides him. One more Kashmiri oh was arrested from Ghaziabad. [Source: <http://www.kasmirsentinel.com/>]

6. Uttar Pradesh is yet another state where the state government has arrested people under POTA as part of political vengeance. The infamous case of Raja Bhaiya who was booked under POTA along with two of his associates, is a stark example of how POTA could be misused.

## **Government Figures on POTA Detenues**

**702 people held under POTA so far, says Pathak**

New Delhi, July 22: As many as 702 persons have been arrested so far under the Prevention of Terrorism Act across the country, the government told the Lok Sabha on Tuesday while admitting that it has received complaints about its misuse. Although Jharkhand had reported the highest number of cases with the arrest of 234 persons under the POTA, the figure of arrested persons in the state later fell to 130 when 104 persons were discharged on the review of the cases by the state government. With the discharging of these 104 persons, the total number of arrests till date is now 598.

Out of the total 702 persons held earlier, 181 were arrested in J&K, 83 in Gujarat, 44 in Delhi and 42 in Maharashtra, minister of state for home affairs Harin Pathak said. Among the other states, there are 41 POTA detainees in Tamil Nadu, 40 in Andhra, 28 in UP, six in Sikkim and three in Himachal Pradesh, he said. (Asian Age July 23 2003)

## **National Human Rights Commission on POTA**

**Justice AS Anand, Chairperson National Human Rights Commission**

“ We are zealously monitoring the implementation of the POTA.....The government had tried to project POTA as a more acceptable version of the notorious Terrorism and Disruptive Activities (Prevention) Act (TADA) that had been withdrawn in 1995. TADA had been used by the central and state governments to put some 77,000 persons in prison; of whom only around 8,000 were ever brought to trial. The conviction rate had been an abysmal 2 per cent.

Those opposed to POTA had argued that existing laws were sufficient to deal with terrorism. The National Security Act, 1980, for instance, permits the central and state governments to hold in preventive detention persons seen as a threat to the security of the state. Further, in areas where insurgency and terrorism were rife, as in many parts of the north-east, for instance, other draconian laws such as the Armed Forces Special Powers Act were already in place. Within a year POTA has already built up a dubious record and in some states is already becoming as dreaded as its predecessor. State governments, including opposition-ruled ones, have not hesitated to use POTA to fix political opponents. Section 18 of the law defines a terrorist organisation and section 21 prescribes imprisonment up to 10 years for anybody guilty of arranging a meeting addressed by a person alleged to belong or professes to belong to a terrorist organisation, a meeting being defined as one with “three or more persons whether or not the public are admitted”.

*(March 9, 2003, The Deccan Herald,)*

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