The UPA has been concerned at the manner in which POTA has been grossly misused in the past two years. There will be no compromise in the fight against terrorism. But given the abuse of POTA that has taken place, the UPA Government will repeal it, while existing laws are enforced strictly (Common Minimum Programme, UPA government, released on 27 May 2004)

Preface

On the night of 21 September 2004, the President promulgated two Ordinances. One of these repealed the Prevention of Terrorism Act (POTA) a month before it was to come up for legislative review, and the other amended the provisions of the Unlawful Activities (Prevention) Act 1967, (UAPA). In its winter session both Houses of Parliament gave the Ordinances their approval. This means that POTA is no longer on the statute books and UAPA 1967 has been replaced by UAPA 2004. The promulgation of both Ordinances and their subsequent enactment, have to be viewed against the immediate backdrop of the United Progressive Alliance (UPA) government's National Common Minimum Programme (CMP), and election promises by most of its constituent members, primarily the Congress, to repeal POTA. A careful reading of the promise to repeal POTA in the CMP is telling, however. While pledging to remove POTA, the UPA government also cautions that it will not compromise in its fight against terrorism. It is no wonder then that the repeal of POTA has come alongside the amendment of an existing law (UAPA 1967) to include specific POTA provisions pertaining to definition of terrorist activities and banning of terrorist organisations. By bringing in these changes through Ordinances, the government has been able to avoid acrimonious debate within Parliament and send across the message of having kept a poll promise (repeal of POTA). At the same time it ensures a doublespeak: the promise of repeal and the promise to strengthen an existing law in order to combat terrorist. The implications of these two Acts hold ominous portends for the democratic rights of citizens, and the institutions and processes that protect their rights and provide avenues for their expression.

While the repeal of POTA does away with provisions relating to bail and confessions that eroded personal liberties and subverted due process, the fact that its provisions pertaining to definition of terrorist acts, banning of terrorist organisations and interception of electronic communication have been retained through importation into the UAPA does not augur well for Indian democracy. The retention of these provisions has been justified by the UPA government in the debates in Parliament on the ground that investigating agencies need legal guidelines to identify terrorist activities. The government needs to be reminded that the so-called 'misuse' of POTA - which has been repeatedly cited as the basis for the repeal of POTA and the institution of a time-bound review of POTA cases - was largely because the definition of terrorist activities in POTA was infinitely vague, arbitrary, and devoid of any objective criteria. This made it easy for various state governments including Tamil Nadu, Gujarat and Uttar Pradesh, to apply the provisions to a whole range of activities and people, labeling them 'anti-national' and 'terrorist' with impunity. It must also be pointed out that Section 21 of POTA which was (mis)used against the MDMK leader Vaiko in Tamil Nadu continues as Section 39 of the amended

UAPA. Thus the restoration of certain personal liberties has also brought with it a continued erosion of political rights that are fundamental to democracy and have been recognised as such in the Constitution of India.

What needs to be kept in mind that it is for the first time that an extraordinary law is being repealed. POTA's notorious predecessor TADA lapsed in 1995, while cases booked under it continue to be tried in courts to this day. A reading of the CMP shows that the basis of the repeal of POTA is not because the Congress led UPA government thinks that the law is inherently undemocratic, but because the law has been 'misused'. This has led to a situation where while POTA has been repealed and most of its provisions done away with, the cases under the Act shall be sustained, and put through a time bound review process. An especially empowered Review Committee shall sift through existing POTA cases to identify and separate 'appropriate' POTA, i.e., cases in which according to the Review Committee POTA has not been 'misused', for continued trial. The others, it is assumed, will be dropped.

Moreover, the amended UAPA by including the provision relating to banning 'terrorist' organisations, sustains a politics of proscription, which erodes the democratic space for ideological dissent. The repeal of POTA has therefore led to a scenario where specific cases that have been identified as 'appropriate' POTA cases shall continue to be tried under the Act 'as if the Act has not been repealed', and a more belligerent UAPA, will be the new draconian law in the governments armoury to stifle dissent and crush those groups that raise a voice against exploitation.

The Unlawful Activities Amendment Act by including POTA provisions has confirmed a dangerous trend - that of making temporary and extraordinary measures part of the ordinary legal system. This trend was also evident in the recommendations made by the Malimath Committee on the Reform of the Criminal Justice System in India. It must be remembered, moreover, that POTA came with a provision that required that the Act be reviewed by the Parliament every three years. For TADA this period was two years. By inserting specific provisions of POTA into the amended UAPA, the government has managed to give permanence to these provisions. While POTA and TADA came up for periodic review before the legislature, opening them to political debate and public scrutiny, the inclusion of POTA's provisions in UAPA has removed them from such scrutiny altogether. The inclusion of extraordinary provisions in the ordinary law of the land not only gives permanence to measures that are otherwise brought as temporary measures to deal with specific situations, it also ends the periodic legislative review that extraordinary laws go through for their extension. The latter is important not only as a safeguard against an overbearing political executive but for democracy in general, because legislative reviews are expected to bring contested issues in the domain of public discussion and debate. PUDR feels strongly that the manner in which the repeal of POTA has been conceived, as well as the normalisation of 'extraordinary' situations and measures through incorporation in ordinary law, are dangerous for democracy. They pose a permanent threat to the personal liberties of ordinary citizens and clear the way for an invasive, intrusive and hegemonic state.

POTA Repeal: Anomalies, Imbalances and Erosions

The spectre of a legal vacuum in dealing with terrorism had been raised persistently after TADA lapsed in 1995. Discussions and debates over an anti-terror law continued and suggestions by the Law Commission over a draft Bill came in. The 'international consensus' on countering terrorism after the September 11 events in the United States, was seized as an opportunity to promulgate the Prevention of Terrorism Ordinance on 24 October 2001. A second Prevention of Terrorism Ordinance was promulgated on 30 December 2001 in the background of the attack on the Parliament building on 13 December 2001. Eventually, despite opposition protest, a fractured political opinion, and the turning down of the Bill by the Rajya Sabha, POTA was pushed through in an extraordinary joint session of Parliament on 26 March 2002.

The experience with TADA cases that are still lingering in Courts, and the manner in which POTA cases have unfolded over the past three years, have confirmed that such laws affirm arbitrariness, by doing away with the personal rights available to an accused under normal law. Once a person is detained, he/she is denied bail for a minimum of one year; moreover bail would not be given if the prosecution opposed it, and unless the court was satisfied of the detainee's innocence. The withdrawal of existing safeguards and dilution of evidence, decrease the threshold of proving guilt, encouraging shoddy investigation and tilting the trial disproportionately in favour of the prosecution.

The lives of previous such laws threw up numerous instances of injustice, sufferings and abuse and the trajectory of POTA was no different. Indeed, the experience of investigation and trial under POTA as in the much-publicized Parliament attack case showed, even the limited safeguards were not adhered to. In short, extraordinary powers given to the executive under POTA, police arrogance that they can get away with shoddy investigations and a political climate which wanted immediate retribution, regardless of whether those accused are in fact the ones who are responsible led to a situation where innocent people could be easily hanged. The politically motivated and partisan use of the Act made itself manifest in different ways throughout the last three years. While the accused in the various riot cases which resulted in the deaths of thousands of Muslims in Gujarat in 2002 were being steadily let off for 'lack of evidence', until the Supreme Court intervened, the accused in the Sabarmati Express coach burning case in Godhra, all of whom are Muslims, felt the noose of POTA tighten surely and tenaciously around their necks. The majority of the accused in the train-burning case have been under prolonged detention as fresh charges continue to be brought against them. The application of POTA to the case has made their release on bail or otherwise, impossible.

The repeal of POTA means scrapping the system of parallel justice that POTA had set up, and the reinstatement of the due process laid down in the *Criminal Procedure Code*, 1973 in matters of arrests, bail, confessions, and burden of proof. It also means that those arrested are to be brought before a magistrate within 24 hours, confessions before police officers are no longer admissible as primary evidence of guilt, and bail need not be denied for the first three months. In other words, personal safeguards that are prescribed by the Constitution against unfair trial and self-

Box One: POTA Repeal Act

Section 2(2) of the Repeal Act lays down that the repeal of the Act shall not effect –

(a) the previous operation of, or anything duly done or suffered under, the said Act, or

(b) any right, privilege or obligation or liability acquired, accrued or incurred under the said Act, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under the said Act, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the said Act had not been repealed:

Provided that notwithstanding anything contained in this sub-section or in any other law for the time being in force no court shall take cognizance of an offence under the repealed Act after the expiry of the period of one year from the commencement of this Ordinance.

Section 3 Notwithstanding the repeal of section 60 of the said Act, the Review Committee constituted by the Central Government under sub-section (l) of that section, whether or not an application under sub-section (4) of that section has been made, shall review all cases registered under that Act as to whether there is a prima facie case for proceeding against the accused thereunder and such review shall be completed within a period of one year from the commencement of this Ordinance and where the review Committee is of the opinion that there is no prima facie case for proceeding against the accused, then,-

(a) in cases in which cognizance has been taken by the court, the cases shall be deemed to have been withdrawn; and

(b) in cases in which investigations are pending, the investigations shall be closed forthwith, with effect from the date of issuance of the direction by such review Committee in this regard.

Section 4 The Review Committee constituted by the Central Government under sub-section (l) of section 60 of the said Act shall, while reviewing cases, have powers of a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

(a) discovery and production of any document;

(b) requisitioning any public record or copy thereof from any court or office.

Section 5.TheCentral Government may constitute more review Committees, as it may consider necessary, for completing the review within the period specified in sub-section 3.

incrimination have been restored. However, the fact that the Act has not been rolled back, i.e., not repealed with retrospective effect, has led to a situation where the Act also lays down a review process to distinguish appropriate POTA cases from those in which the Act has been misapplied. This would mean that a new and complicated procedure will supplant the existing review process. Moreover, as Box One displaying the contents of Repeal Act shows, the legal-judicial process set in motion in several cases under POTA shall be put on hold until the Review Committee gives its approval. There will certainly also be cases where the Review Committee will, as it has done in the past in Vaiko's case, recommend withdrawal of a case. In such cases, the Review Committee now empowered as a civil court, shall sit in judgement over the procedures of the Special POTA court. Trials in Special POTA Courts have undoubtedly been detrimental for the rights of the accused and procedural justice. Yet, the entire process of setting up parallel courts and

subsequently supplanting one set of judicial proceedings by another, giving in other words judges and courts different roles to play, according to the whims of the political executive, will in the long run erode the credibility of the judiciary.

The short text of the Prevention of Terrorism (Repeal) Act, 2004, consists of two sections one specifying its title and commencement, and the other announcing the repeal of the POTA 2002, along with four saving clauses. The saving clauses attempt to provide a way of dealing with the numerous POTA cases that have accumulated over its short span of life. A careful perusal of the saving clauses shows that the Ordinance lays down two tracks for dealing with POTA cases that are still pending after the repeal:

(i) ***Continuity***:(a) of the penalty, punishment, liability, rights and privileges, as well as the investigations and legal proceedings instituted under the Act *as if the Act has not been repealed.*

(ii) ***Change***: (a) Cases in which trial has not begun: no court can take cognizance of an offence under the repealed POTA one year after the commencement of the Repeal Act. (b) The powers of the Review Committee: The Review Committee's powers under the Repeal Act have been enhanced (See Boxes One and Two). Unlike the situation before repeal, the Review Committee is now entrusted with the task of *reviewing all cases registered under the Act*, to see whether or not a *prima facie* case for proceeding against the accused can be made, *whether or not an appeal for review has been made* to the Review Committee under section 60(4) of the POTA. The task of review has to be completed within a year. If the Review Committee feels that there is no *prima facie* case against the accused, then even if the court has taken cognizance, such cases shall be deemed to have been withdrawn. Similarly cases that are still in the process of investigation shall be closed. While reviewing cases, the Review Committee shall have the powers of a Civil Court, and could order the production of specific documents or requisition public records from any court or office.

We are aware that cases under TADA which lapsed in 1995 have continued, and so will the quandary of pending POTA cases, at different stages of investigation

Box Two: Review Procedure under POTA

60(1) The Central Government and each State Government shall, whenever necessary constitute one or more Review Committees for the purpose of this Act….As per POTA as amendment on 2 January 2003, (4) Any Review Committee constituted under sub-section (1) shall, on an application by any aggrieved person, review whether there is a prima facie case for proceeding against the accused under this Act and issue directions accordingly. (5) Any direction issued under sub-section (4)-(I) by the Review Committee constituted by the Central Government shall be binding on the Central Government, the State Government and the police officer investigating the offence; and (ii) by the review Committee constituted by the State Government. (6) Where the review under sub-section (4) relating to the same office under this Act have been made by a Review Committee constituted by the Central Government and a Review Committee constituted by the State Government, under sub-section (1), any direction issued by the Review Committee constituted by the Central Government shall prevail. (7) Where any Review Committee constituted under sub-section (1) is of opinion that there is no prima facie case for proceeding against the accused and issues directions under sub-section (4), then, the proceedings pending against the accused shall be deemed to have been withdrawn from the date of such direction.

Box Three: The Curious Case of Raghuraj Pratap Singh alias Raja Bhaiyya

On 25 January 2003 POTA was invoked by Mayawati, the then Uttar Pradesh Chief Minister, on Raghuraj Pratap Singh alias Raja Bhaiyya, independent MLA and Minister in the BJP-BSP coalition government in the state and on his 80 year old father. The imposition of POTA on Raja Bhaiyya was largely construed in political circles, especially in BJP and SP, as an act of political vindictiveness, aimed at snuffing dissident voices targeting Mayawati's leadership. The powerful Rajput segment within the BJP, which had patronised Raja Bhaiyya and Samajwadi Party, criticised their legislators and the national party leadership for not taking an aggressive stand on the issue. With August 2003, the configuration of forces in the state changed, and the Samajwadi Party came to power in UP with Mulayam Singh as the Chief Minister. The SP, spearheaded by Amar Singh had opposed POTO and the associated anti-terror poll plank of BJP in the Assembly elections. Among the first decisions that the new government took, even before it proved its majority on the floor of the legislature, was to roll back the imposition of POTA on Raja Bhaiyya, his father and associates. The state unit of BJP predictably welcomed the declaration of withdrawal. The POTA court in Lucknow immediately took note of the declaration, and instructed that any withdrawal will have to follow the procedure laid down in law, and the government will have to submit an application to the effect under section 321 of CrPC (Withdrawal from prosecution). In the meantime a Supreme Court order in response to a petition challenging the Uttar Pradesh government's decision to withdraw POTA laid down that the trial court could not drop POTA charges, since the state government was not empowered to take a decision on a Central Law. In other words, the assent of the Centre became necessary for any initiation of withdrawal proceedings.

and trial. The high profile cases of Vaiko and Raghuraj Pratap Singh alias Raja Bhaiyya have shown that trial and review procedures laid down in POTA have conflicted (See Boxes Three and Four). Further, the state governments, the Central government, the Special Courts, the High Courts and the Supreme Court have figured in this conflict as contending parties. By giving overriding powers to the Review Committee under the Repeal Act, the government has sought to preempt situations of contest that had arisen in the review procedure under POTA. In the process, however, it has deepened the erosion of institutions, more precisely the credibility of the judiciary, by subjecting it to the whims of the political executive.

(1) *The anomalies*: The inclusion of repeal of POTA in the political agenda of the UPA as well as its constituent parties was based on the assumption that the Act was amenable to misuse. Considering that provisions pertaining to confession to police officers and bail have been dropped through repeal it may be assumed that in the eyes of the government, these provisions were especially amenable to misuse. The retention and continuation of investigations and trial in some cases under POTA after a process of sifting by the Review Committee is completely illogical. An anomalous situation is then likely to emerge where certain provisions that are found inappropriate on the test of democracy and justice in some cases, would be considered suitable for application in others.

(2) *Blurring of institutional boundaries and emergence of contest :* Following from the above, despite a more precise delineation of the powers of the Review Committee, chances of contest among institutions, of the kind that were seen in the Vaiko and Raja Bhaiyya cases, remain. While the Repeal Act specifies that a case under trial if so directed by the Review Committee shall be deemed

Box Four: The case of Vaiko

The arrest of MDMK leader Vaiko by the Jayalalitha government in Tamil Nadu on charges of supporting terrorism under section 21 of POTA, led to a situation where the allies of the NDA government became disgruntled with the BJP. An amendment Ordinance was brought before the winter session in 2003 (replaced by the POT (Amendment) Act 2003 on 2 January 2004) arming the POTA Review Committee, to see whether there existed 'a prima facie case to proceed against an accused under the Act' and to issue directions 'that shall be binding on the Central Government, the State Government and the police officer investigating the offence'.

Armed with new powers, the Review Committee issued notices to the Tamil Nadu Government in November 2003, to show cause whether the incarceration of MDMK leader Vaiko and journalist R.R.Gopal under POTA was 'fit and proper'. In response, the Tamil Nadu government's petitioned the Madras High Court, challenging the order of the Review Committee to submit relevant papers regarding POTA cases against Vaiko, Gopal and others. In its writ petition, the state government contended that as the proceedings pertaining to POTA against these persons were already pending before regular courts, the Review Committee did not have the jurisdiction to test the legality of invocation of POTA against them. On 4 February 2004 the Madras High Court dismissed the writ petition, and the Tamil Nadu government moved the Supreme Court. On 8 March 2004, the Supreme Court dismissed the appeals challenging the Central Review Committee's powers to probe the detention of MDMK leader Vaiko, Nakkeeran editor, R.Gopal and eight others. The counsel for the Tamil Nadu government argued that in the case of Vaiko and eight others, charges were framed after the Special POTA court decided that there was a prima facie case to proceed against them under POTA. The trial was already under way and twenty-six witnesses had already been examined in the ongoing trial. Moreover, the discharge application filed by eight others earlier that there was no prima facie case against them, had been dismissed by the Special POTA court, and the dismissal was confirmed by the Madras High Court. The state government argued (a) that if the Review Committee would now say that there was no prima facie case, it would amount to interference in the course of justice and (b) the Review Committee's work would amount to parallel proceedings. A significant part of the appeal focussed on the constitutional validity of sub-sections 4, 5, 6 an 7 of Section 60 of POTA added after amendment to the Act, giving powers to the committee to review and reverse the court's proceedings. Appearing for Vaiko and eight others, senior counsel Fali Nariman pointed out that the scope of proceedings before the Special Court or any court of law was different from the scope of review under the POTA Review Committee, and that it was the duty of the Review Committee, set up pursuant to the amendments to POTA, to look behind the reasons for invoking the law against an individual. Subsequently, in September 2004 the special court at Poonamallee dismissed a prosecution application seeking to withdraw the case against Vaiko and eight other accused.

The order of the special court was based on (a) rejection of Central Review Committees findings, (b) dissatisfaction with the reasoning of Special Public Prosecutor and (c) a pro-active stand stating that the 'trial was in progress' and 'the evidence [is] not yet concluded'. The special judge did 'not accept the findings of the POTA Review Committee' as the review committee had 'prematurely' concluded the issue 'without having any opportunity to analyse the complete materials relied upon by the prosecution as available before the court'. The Court also refused to accept a request made by the Special Public Prosecutor to seek consent for the withdrawal of case as this was based on the review committee findings. According to the judge the public prosecutor had assigned 'no independent, convincing reasons' in seeking consent to withdraw the prosecution against the accused.

withdrawn, it is not clear whether within the given period of a year the Courts can take cognizance of an offence under POTA, before the Review Committee has screened it. In either case, it opens up possibilities of contest between the executive and the judiciary, a lack of faith in the legal and judicial process, and a derogation of the institution of the judiciary.

(3) *Transparency and public scrutiny:* There also seems to be an assumption that the functioning of the Review Committee under the Repeal Act shall be totally fair and impartial. There appears to be no provision for public scrutiny of the review procedure. While POTA cases in courts become public through press reporting, the functioning of POTA Review Committee has so far remained behind a veil of ambiguity and secrecy. A periodic reporting of the findings and rulings by the Review Committee to the Legislature is required in order to allow for transparency in its own proceedings and also for the dissemination of information in the public domain. It may be pointed out that a system of annual reporting to the Parliament of the applications and authorisation of interceptions by the Review Committee existed in repealed POTA (Section 48).

Undoing Democracy: The Unlawful Activities Prevention Act, 2004

The *Unlawful Activities Prevention (Amendment) Ordinance*, 2004, substituted new chapters IV, V, VI, and VII, for Chapter IV of the original Act. Through this substitution, it has broadened the scope of the Unlawful Activities Prevention Act 1967, to include 'terrorist activities' alongside 'unlawful activities', specifying different procedures for dealing with each. Moreover, the amendments purport to bring into the Act specific provisions of POTA pertaining to definition, punishment and enhanced penalties for 'terrorist activities', and specific procedures including the banning of 'terrorist organizations' and interception of telephone and electronic communications. The provision of telephone tapping has been retained, however, with the addition of specific features that make it even more violative of personal liberties.

The manner in which the inclusion has taken place, viz., by promulgating an Ordinance defies the norms of parliamentary democracy. While the UAPA may blunt apprehensions of a legislative vacuum in dealing with terrorism, in its attempt to round off political opposition and facilitate the repeal of POTA, the UPA government has brought a permanent legislation, legalizing extraordinary measures. At the same time, it has smothered out periodic legislative review, which was a substantive safeguard in the temporary laws dealing with terrorism. More reprehensible and dangerous is the fact that UAPA has set in motion the process of making permanent, provisions that had hitherto been associated with laws that brought in extraordinary measures to deal with extraordinary/temporary situations. Considering that these provisions have been used in the past both under TADA and POTA against political opponents, the radical left, religious minorities, workers, peasants, not sparing old men and minor children, there is no reason to believe that these provisions will not be used again in a similar way.

A. Definition of 'terrorist acts': Replication and extension:

Anti-terror laws in India as elsewhere in the world have been associated with specific contingencies or circumstances. These circumstances are taken as the justification for the extraordinary procedures and enhanced penalties that the Acts sanction for crimes that are also punishable under the ordinary law of the land. The use of explosives, disruption of community life and destruction of property are, for example, already punishable offences under the law. Similarly sedition and waging war are also offences under Sections 124-A and 121 of the *Indian Penal Code*.To list offences already listed in law not only gives rise to replication, but the wide scope of the definition pf terrorist activities keeps alive the danger of converting a range of such activities into terrorist crimes. The Parliament Attack case (See Boxes Six and Seven) has shown that despite the absence of any evidence, not only were all the accused labeled 'terrorists', the fact that the charges under ordinary law when augmented by charges under POTA brought them the maximum possible punishment under the Act (See Box Seven). The fact that those sections of POTA that define 'terrorist' acts and organizations have not only been retained but also included as permanent features in law has grave implications. Most provisions that define terrorist activities and organizations seek to abridge crucial and fundamental freedoms guaranteed by the Constitution of India, primarily those that pertain to freedoms of association and expression. The curtailment of these freedoms truncates public and political spaces. The restriction of political freedoms and limitations on dialogue, communication and free and public dissemination of information have in the history of our own country and elsewhere in the world paved the way for the flourishing of authoritarian regimes.

What is to be especially noted is that unlike POTA there does not exist a Review Committee under UAPA 2004 to see if prima facie a case under provisions pertaining to terrorist activities can be made out against an individual. Considering that another POTA provision, viz., admissibility of interception of electronic communication as evidence in court, without the procedural safeguards that POTA carried with the provision, give the amendments further potential for abuse.

The extension of the law, moreover, to terrorism in foreign territories, creates extra-territoriality, which was not present in either POTA or TADA. The scope of terrorist activities is no longer confined to acts that strike terror or disrupt supplies of essential services, in the Indian people or in the territory of India, or done with the intention of 'compelling' the Government of India. In each case 'terrorist activity' is widened to include people and life of the community in India ***and*** in any foreign country, and the Government of India ***or*** the Government of a foreign country. This insertion of extraterritoriality may appear to suggest partnership in and a commitment to the United Nations resolution calling for international cooperation against 'global terrorism'. In actual practice, however, as the discussion below would show, this will impact on the law of extradition and refugee protection. The Government of India has managed to give itself space to maneuver out of specific responsibilities and accountability under international human rights norms, particularly those that protect people against political persecution. On the other hand, the

Box Five: Defining Terrorism: A Comparison of POTA, UAPA,67 and UAPA,04		
POTA	**UAPA 1967**	**UAPA 2004**
Under 3(1) Whoever, - (a) with the intention to threaten the unity, integrity or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause death, injury, or destruction of property or equipment, used or intended to be used for the defence of India ..(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act 1967, or voluntarily does an act aiding or promoting in any manner the objects of such association…commits a terrorist act	None	Whoever with the intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community in India or in any foreign country or causes damage or destruction of any property of equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or to abstain from doing any act, commits a terrorist act.
Conspiracy and 'supporting terrorism'		
3 (3) Whoever conspires or attempts to commit, or advocates, abets, advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act…(4) Whoever voluntarily harbours or conceals, or attempts to conceal any person knowing that such person is a terrorist…(5) Any person who is a member of a terrorist organisation, which is involved in terrorist acts…(6) Whoever knowingly holds any property derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds… (7) whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence, or wrongfully restrains or confines the witness...	None	Same as POTA Section 17 (Punishment for raising funds for terrorist act) Section 18 (Punishment for conspiracy) Section 19 (Punishment for harbouring) Section 20 (Punishment for being member of terrorist gang or organisation) Section 21 (Punishment for holding proceeds of terrorism) Section 22 (Punishment for threatening witness)

Box Six: The Parliament Attack Case

On 13 December 2001 five armed men drove into the precincts of the Parliament House, killing nine members of the Parliament watch and ward staff and injuring sixteen others, before they fell to the bullets of the security men. This attack was widely portrayed as an attack on Indian democracy, the circular building of the Parliament, having become since India became a republic, the most visible and powerful symbol of democracy, regardless of what takes place inside.

The investigation into the attack was handed over to the Special Cell of the Delhi Police on the day of the attack and within days of the attack the Delhi police implicated four persons: (1) Mohammad Afzal, a former JKLF militant who had surrendered in 1994, (2) his cousin Shaukat Hussain Guru, (3) Shaukat's wife Afshan Guru (Navjot Sandhu before marriage), (4) SAR Geelani, a lecturer of Arabic at Delhi University. In addition to the four accused there were three others charged in the case including Jaish-e-Mohammed chief Maulana Masood Azhar, who had been released by the NDA government in response to the hijacking of IC 814, and Azhar's aids, Ghazi Baba and Tariq Ahmed. These men were declared proclaimed offenders and were not part of the trial.

Curiously in this case the provisions of POTO were added to the original charges only on 19 December 2001. The FIR lodged by the police on 13 December records an armed attack by the terrorists but only mentions sections of the IPC. The accused were tried under Sections 121 (Waging War), 121 A (conspiracy), 122 (collecting arms etc. to wage war), 123 (concealing with intent to facilitate design to wage war), 302 (murder), 307 (attempt to murder) read with 120 B (Death sentence for waging war). The charges under POTO added later pertained to sections 3 (punishment for terrorist acts), 4 (possession of certain unauthorized arms), 5 (enhanced penalties for contravening provisions or rules made under the Explosives Act 1884, Explosive Substances Act 1908, Inflammable Substances Act 1952, or the Arms Act 1959), 6 (confiscation of proceeds of terrorism) 20 (offences dealing with membership of a terrorist organisation). The case was brought before a Special Court under Justice S.N.Dhingra on 22 December 2001. The trial started on 8 July 2002 and continued on a daily basis. Arguments concluded on 18 November 2002, the conviction took place on 16 December 2002 and on 18 December three of the accused were sentenced to death, and the fourth (Afshan Guru) given five years rigorous imprisonment. In the meantime, as the trial progressed, POTO which was introduced as an Ordinance on 24 October 2001, and repromulgated as a Second Ordinance on 30 December 2001, came up for legislative approval. Amidst heated arguments and debates, it was passed in a joint session of Parliament on 26 March 2002. The extraordinary joint session was called when the Rajya Sabha rejected the Bill when it came to it after its passage through the Lok Sabha.

PUDR's experience of the trial showed that (a) the accused suffered all the disabilities prescribed under POTA (b) the safeguards were violated (c) the lowered threshold for proving guilt under POTA encourages shoddy investigation and (d) the court failed to take into account both the violation of the safeguards and the shoddy investigation in the judgment.

Box Seven: Charges and Punishment in the Parliament attack case			
Charge	**Description**	**Accused**	**Punishment**
121 IPC	Waging or attempting to wage war or abetting waging war against Government of India	Afzal, Shaukat, Gilani	Life imprisonment + Rs.25,000 or addl. 1 yr. RI
121-A IPC	Conspiracy for Section 121 IPC	Afzal, Shaukat, Gilani	10 yrs. RI + Rs.10,000 or addl. 6 months RI
122 IPC	Collecting arms etc. with the intention of waging war against Government of India	Afzal, Shaukat, Gilani	Life imprisonment + Rs.25,000 each or addl. 1 yr. RI
123 IPC	Concealing with intent to facilitate design to wage war	Afsan Guru	5 yrs. RI + Rs.10,000 or addl. 6 months RI
302 read with 120-B IPC	Conspiracy to murder	Afzal, Shaukat, Gilani	Death sentence + Rs.5 lakhs
307 read with 120-B IPC	Conspiracy to attempt murder	Afzal, Shaukat, Gilani	10 yrs. RI + Rs.1.75 lakhs or addl. 1 yr. imprisonment
3(2) POTA read with 120-B IPC	Terrorist act	Afzal, Shaukat, Gilani	Death sentence + Rs. 5 lakhs
3(3) POTA	Conspiracy, attempt, abet etc. to terrorist act	Afzal, Shaukat, Gilani	Life imprisonment + Rs. 25,000 or addl. 1 yr. RI
3(4) POTA	Harbouring or concealing terrorist	Afzal, Shaukat	Life imprisonment + Rs.25,000 or addl. 1 yr. RI
3(5) POTA	Membership of terrorist gang	Afzal, Shaukat, Gilani	Life imprisonment + Rs.25,000 or addl. 1 yr. RI
4(B) POTA	Unauthorised possession of explosives etc.	Afzal, Shaukat, Gilani	Life imprisonment + Rs.25,000 or addl. 1 yr. RI
3 Explosive Substances Act	Causing explosion, threatening life or property	Afzal, Shaukat, Gilani	Life imprisonment + Rs. 25,000 or 1 yr. RI
4 Explosive Substances Act	Attempt to cause explosion	Afzal, Shaukat, Gilani	20 years RI + Rs.25,000 or addl. 1 yr. RI

Source: *Trial of Errors: A Critique of the POTA Court Judgement on the 13 December Case*, People's Union for Democratic Rights, Delhi, February 2003.

assertion of authority over people beyond nation-state boundaries, also hints at hegemonic intents, where the sovereignty of nation-states may be seen as redundant. Conversely in a context of cross-border alliances of popular movements for democracy and representative governments, e.g., the Maoists in Nepal, such a provision opens up possibility and gives legal backing to state repression – with one government acting in concert with the other.

In the past (2002) the Government of India, in a manifestation of state sovereignty deported several Nepali students and journalists to Nepal, despite the fact that they were likely to be (and were) politically persecuted in their home country. The Delhi High Court upheld the deportation on the ground that the Indian government was simply exercising its legitimate sovereign authority. What it overlooked was the fact that under the extradition treaty with the Nepalese government, the Indian government was obliged to hand over to the Nepalese government all 'wanted' Nepalese, but it retained with it the right not to deport a person who was wanted for a political offence. The right not to be deported, of persons likely to face torture and political persecution in their home country, translates into a responsibility of the state to offer protection to such persons. This responsibility is augmented if read alongwith the convention of non-refoulement under the international human rights norms. The principle of non-refoulement has been laid down in Article 33(1) of the 1951 Convention on the Status of Refugees which states that 'no refugee should be returned to any country where he or she is likely to face persecution or torture'. While the Nepali students were not refugees in India, the fact that they would face persecution on their return to Nepal brought them under the purview of non-refoulement. With the inclusion of extraterritoriality, it would be easy to label an act as 'terrorist', filter it out of the category of political, and the protection it was thereby entitled to (See PUDR, *Quit India:Ban, Deportation and Rights of Nepali People*, 2002).

Like POTA, the amended UAPA, 2004, continues to target the financing of terrorism. The procedure evolved is purely administrative. The attachment order of the Investigating Officer is to be confirmed by a Designated Authority (Joint Secretary at the Centre or Secretary level officers in the States) over a period of 60 days. This decision is subject to appeal within 30 days. Forfeiture can take place by way of an order of the court after a pre-decisional hearing process. The preventive purpose of denying funds to terrorists can be achieved by attachment without forfeiture, which must be subjected to prior judicial scrutiny.

B. Banning of organisations

Apart from the fact that POTA provided a procedure for the declaration of an organisation as terrorist, while defining 'terrorist acts' Section 3(b) of POTA also brought members of associations banned under UAPA, 1967 under its purview. The UAPA, 1967 provided a separate procedure for banning and denotifying 'unlawful associations' (See Box Nine). The UAPA, 2004 imports the provisions prescribed in POTA for banning organisations, adding a separate chapter on 'terrorist organisations' and specifying the procedure for their banning. Thus the UAPA as amended now has two different kinds of banning – one for 'terrorist organisations' imported from POTA – and the other for 'unlawful organisations' persisting from UAPA, 1967 (Boxes Nine, Ten and Eleven). A comparison of the two shows that the procedure for banning an organisation on

Box Eight: Review Procedure and the case of ABNES

On 1 July 2002, ABNES was banned under section 18(2)(a) of POTA and added in the Schedule at serial number 32. On 21 August 2002 ABNES moved an application before the Central Government under section 19(1) and (2) and clause 3 and 4 of the Making of Application for Removal of Organisation from the Schedule Rules 2001 for its removal from the Schedule. On 7 October 2002, the Central Government denied the prayer without giving reasons. On 12 December 2002, ABNES filed an application for review before the Review Committee against the Order, which was the next permissible step under the provisions of the Act. Since there was no Review Committee in existence, the petition was sent to the Secretary, Ministry of Home Affairs, so that a Review Committee could be constituted and the application placed before it.

Till date, the organization has not heard of any acknowledgement of its petition. In short, the stress of applying within 30 days and the period of waiting is enhanced by the lack of time frame of Sec.60 which provided for the setting up of a Review Committee in POTA. In any case, the review provided for u/s 19(2) is not a judicial review and therefore violates the constitutional right to judicial redressal.

Box Nine: Defining terrorist and unlawful organizations

POTA **Terrorist organisation**	**UAPA 1967** **Unlawful Organisation**	**UAPA 2004**	
		Terrorist organisation	**Unlawful organization**
18(4) For the purposes of sub-section (3) an organisation shall be deemed to be invloved in terrorism if it: (a) commits or participates in acts of terrorism, (b) prepares for terrorism, (c) promotes or encourages terrorism or (d) is otherwise involved in terrorism. In addition Section 20 deals with offences relating to membership of a terrorist organisation, Section 21 deals with offences relating to support given to a terrorist organisation and Section 22 deals with fund raising for a terrorist organisation.	'Unlawful organisation means any association - (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or (ii) which has for its object any activity which is punishable under section 153A or section 153B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity: Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir	Same as POTA	Same as UAPA, 1967

Box Ten: Banning a terrorist organisation under POTA

Section 18 (1) For the purpose of this Ordinance an organisation is a terrorist organisation if, (a) it is listed in the Schedule, or (b) it operates under the name as an organisation listed in that schedule, (2) The Central Government may by order in the Official Gazette, (a) add an organisation to the Schedule; (b) remove an organisation from that Schedule (c) amend that Schedule in some other way.

There is no need to specify the grounds on which an organisation is declared terrorist. Under Section 18(3), an organisation can be declared as a terrorist organisation 'if it (the Central Government) believes that it is a terrorist organisation'.

Box Eleven: Banning an unlawful organisation under UAPA, 1967

Section 3 (1) Central government is of opinion that any association is, or has become, an unlawful association, it may by notification in the Official Gazette, declare such an association to be unlawful.

(2) Every such notification shall specify the grounds on which it is issued and such other particulars as the Central Government may consider necessary: Provided that nothing in this sub-section shall require the Central Government to disclose any fact which it considers to be against the public interest to disclose.

(3) No such notification shall have effect until the Tribunal has, by an order made under section 4, confirmed the declaration made therein and the order is published in the Official Gazette: Provided that if the Central Government is of opinion that circumstances exist which render it necessary for that government to declare an association to be unlawful with immediate effect, it may, for reasons to be stated in writing, direct that the notification shall, subject to any order that may be made under section 4, have effect from the date of its publication in the Official Gazette.

(4) Every such notification shall, in addition to its publication in the Official Gazette, be published in not less that one daily newspaper having circulation in the State in which the principal office, if any, of the association affected is situated, and shall also be served on such association is such manner as the Central Government may think fit and all or any of the following modes may be followed in effecting such service, namely: (a) by affixing a copy of the notification to some conspicuous part of the office, if any, of the association; or (b) by serving a copy of the notification, where possible, on the principal office bearers, if any, of the association; or (c) by proclaiming by beat of drum or by means of loudspeakers, the contents of the notification in the area in which the activities of the association are ordinarily carried on; or (d) in such other manner as may be prescribed.

the charge of terrorism is much easier than banning an organisation on a milder charge of unlawful activities. The banning of an organisation as 'unlawful' under UAPA requires that the notification of banning be accompanied by the specific grounds or reasons. The notification for banning unlawful organisations would become effective only when the Judicial Tribunal set up under the Act headed by a sitting High Court Judge ratified the declaration within six months after which it is published in the Official Gazette. Moreover, the procedure allows the affected association to participate in the judicial proceedings. UAPA, 2004 introduces a different process for banning of terrorist organisations which following the procedure under POTA does not require that grounds for banning be given.There is,

Box Twelve: Denotification of terrorist and unlawful organisation		
POTA (terrorist organisation)	**UAPA, 1967 (unlawful association)**	**UAPA,-2004**
19 (1) An application may be made to the Central Government for the exercise of its power under clause (b) of sub-section (2) of Section 18 to remove an organisation from the Schedule. (2) An application may be made by - a. the organisation, or b. any person affected by inclusion of the organisation in the Schedule as a terrorist organisation; (3) The Central Government may make rules to prescribe the procedure for admission and disposal of an application made under this section. (4) Where an application under Sub-section (1) has been refused, the applicant may apply for a review Committee constituted by the Central Government under sub-section (1) of section 59 within one month from the date of receipt of the order by the applicant. (5) The Review Committee may allow an application for review against refusal to remove an organisation from the Schedule, if it considers that the decision to refuse was flawed when considered in the light of the principles applicable on an application for judicial review. (6) Where the Review Committee allows review under sub-section (5) by or in respect of an organisation, it may make an order under this sub-section. (7) where an order is made under sub-section (6) the Central Government shall, as soon as the certified copy of the order is received by it, make an order removing the organisation from the list in the schedule.	4. Where any association has been declared unlawful by a notification issued under sub-section (1) of section 3, the Central Government shall, within thirty days from the date of the publication of the notification under the said sub-section, refer the notification of the Tribunal for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful. (i) On receipt of a reference under sub-section (1), the Tribunal shall call upon the association affected by notice in writing to show cause, within thirty days from the sate of the service of such notice, why the association should not be declared unlawful. (ii) After considering the cause, if any, shown by the association or the office bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in Section 9 and after calling for such further information as it may consider necessary from the Central Government or from any office bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring the association to be unlawful and make, as expeditiously as possible and in any case within a period of six months from the date of the issue of the notification under sub-section (1) of section 3, such order as it may deem fit either confirming the declaration made in the notification or canceling the same. (iii) The order of the Tribunal made under sub-section (3) shall be published in the Official Gazette.	Imports POTA provisions for terrorist organizat-ions (Sections 36-37) Retains UAPA, 1967 provisions for unlawful organisat-ions
Period of operation and cancellation of notification		
There is no period whatsoever except that under Section 18(2) the Central Government may 'remove an organisation from that Schedule or 'amend that Schedule in some other way'.	6. (1) Subject to the provision of sub-section (2), a notification issued under section 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made under section 4, remain in force for a period of two years from the date on which the notification becomes effective. (2) Notwithstanding anything contained in sub-section (1), the Central Government may, either on its own motion or on the application of any person aggrieved, at any time, cancel the notification issued under section 3, whether or not the declaration made therein has been confirmed by the Tribunal.	Same as POTA for terrorist organizat-ions same as UAPA, 1967 for unlawful associatio-ns

moreover, no such requirement of ratification and judicial review.

UAPA 2004 introduces another innovation – the terrorist gang as distinct from terrorist organization. While laying down the punishment for terrorist activities in Chapter Four, it mentions punishment for being member of a 'terrorist gang' which is defined as 'any association, other than terrorist organization, whether systematic or otherwise, which is concerned with, or involved in, terrorist act. A 'terrorist organisation' on the other hand means an organization 'listed in the Schedule'. The definition of a terrorist gang gives scope to the government to include organisations that may not be explicitly listed in the Schedule. In other words, any association taking up democratic rights issues, or any civil society organisation for that matter, may find itself branded a terrorist gang.

If the procedure for banning terrorist organisations under UAPA, 2004 makes it possible for successive governments to snuff out political organisations from the public domain, the procedure for denotification remains difficult and ambiguous. The provisions of Section 19 pertaining to the de-notification of terrorist organizations as laid down in POTA and retained in UAPA, 2004 (Sections 36-37) are inadequate and insufficient (See Box Twelve). It must be noted that the provision of a Review Committee in UAPA 2004 under Section 37 is only for the purpose of denotification of a terrorist organization and not for the review of other cases of 'terrorist activities'. The experience with the process of denotification under POTA in the case of ABNES showed that the process is full of ambiguities and hurdles that make the process incomprehensible and inaccessible (See Box Eight). An application for denotification is to be made to the Central Government. But the applicant is not provided the initial reason for the ban. Refusal by the Central Government merely states "the government is not inclined to use its powers to denotify". On such refusal the applicant may approach the Review Committee within one month. But the applicant has no argument to present since the refusal does not reflect any application of mind. The absence of a specific time-frame within which the Review Committee is to examine the application, further augments the problem.

C. Telephone tapping

POTA 2002 put in place a phone tapping code that was dangerous. Phone tapping serves the illicit purpose of simply providing the information to the government, which it uses as surreptitiously as it acquires it. While other procedures that were especially pernicious with POTA viz., confessions to a police officer, the period of police and judicial remand before bail could be given, have been dropped, the provision that gave evidentiary value to telephone tapping remains. It needs to be reminded that such measures invade personal liberties and privacy of citizens. Considering that the intercepts are not reliable as evidence since they are not tamper proof and their interpretations are subjective and motivated, to have a potentially dangerous and intrusive measure on statute books is extremely perilous for democracy. *Moreover, UAPA is more draconian than POTA when it comes to the admissibility in evidence of telephone and e-mail intercepts. The police can now produce intercepts in the court without abiding by any of the elaborate safeguards provided by the repealed POTA*. Thus, if the police cannot anymore extract a confession in custody, they have been given more scope than before to plant evidence in the form of interceptions.

Box Thirteen: Telephone tapping		
POTA	**UAPA 1967**	**UAPA 2004**
Section 38 (1) A police officer not below the rank of Superintendent of Police supervising the investigation of any terrorist act under POTA could submit an application in writing to the Competent Authority for an order authorising or approving interception. The application shall include the identity of the investigating officer and a statement of the facts and circumstances relied upon by the applicant, the type of communication to be intercepted, and the identity of the person whose communications are to be intercepted. The order by the Competent Authority must specify the identity of the person whose communication is to be intercepted, the nature and location of communication facilities, the agency authorised to intercept and the period or time during which interception is authorised. The Competent Authority shall immediately after passing the order under sub-section (1) of Section 39, shall submit a copy of the same to the Review Committee with all the relevant papers. Section 45 - Notwithstanding anything in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this Chapter shall be admissible as evidence against the accused in the Court during the trial of a case: Provided that the contents of any wire, electronic or oral communication intercepted pursuant to this Chapter or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceedings in any court unless each accused has been furnished a copy of the order ten days before trial. Section 46 - The Review Committee shall review every order passed by the Competent Authority. Section 47 Interception and disclosure of wire, electronic or oral communications prohibited except as otherwise specifically provided in section 39. Section 48 Annual reports of interceptions are to be prepared giving full accounts of interceptions, under the instructions of the Central or state governments.	No provision	Section 46 - Notwithstanding anything contained in the Indian Evidence Act 1872 or any other law for the time being in force, the evidence collected through interception of wire, electronic or oral communication under the provisions of the Indian Telegraph Act, 1885 or the Information Technology Act 2000 or any other law for the time being in force, shall be admissible as evidence against the accused in the court during the trail of a case: Provided that the contents of any wire, electronic or oral communication intercepted or evidence derived therefrom shall not be received in evidence or disclosed in a trial unless the accused has been furnished with a copy of the order. Unlike POTA, however, there is no provision of recourse to the Review Committee or legislative review.

Outcome and Demands

While the repeal of POTA has indeed meant the restoration of constitutional rights of a person to fair trial, the expansion of the scope of Unlawful Activities Prevention Act has significant ramifications. By inserting specific provisions pertaining to terrorist activities into the Unlawful Activities Prevention Act 1967, the UAPA is intended as a surrogate for POTA. The Unlawful Activities Prevention Act, 2004, confirms a dangerous trend, whereby extraordinary law becomes

a model for remapping ordinary criminal jurisprudence.

Moreover, notwithstanding the illogic of continuing the inherently undemocratic and unjust legal/judicial procedures of a dead Act (POTA), it is uncertain how the review panels that have been appointed to sift through POTA cases, will function vis-à-vis the various state governments and the courts. The experience with the functioning of the Central POTA Review Committee in the past has thrown up instances of contest and unbridgeable stalemate and may continue to appear. It is essential therefore, to look at the discrepant situations that the repeal without retrospective effect is likely to throw up and their implications for the rights of people and sanctity of democratic institution.

It is important to guard against the continuation of extraordinary measures which are detrimental to democracy and freedom. In this case, UAPA has preserved parts of POTA that defined terrorism and provided for banning terrorist organisations and intrusive investigation like telephone tapping. The UAPA, 2004, comes amidst popular movements in Manipur opposing the Armed Forces Special Powers Act that has taken the shape of a permanent law having been in operation for the last nearly forty years, giving the army extraordinary powers without commensurate accountability in the region. Considering that all such laws are political, serving the purpose of subduing and snuffing out political and ideological opposition, the changes in the UAPA should be a cause for grave concern. The repeal of POTA should also be seen in the light of threats posed by other laws that have been used against political dissent like the *Armed Forces (Special Powers) Act*, and the *Disturbed Areas Acts* in the states of the North-East and Jammu and Kashmir, as well as laws like the *Maharashtra Control of Organised Crime Act* (MCOCA), which have been and have the potential to be used against political opposition. Coincident with the announcement of the CMP, the Gujarat Assembly passed on 2 June 2004, the *Gujarat Control of Organised Crime Bill* (GUJCOC), on the lines of MCOCA, which is in operation in Maharashtra and Delhi since February 1999 and January 2002, respectively. The proposed GUJCOC, it may be noted, has provisions allied with POTA that would allow the holding of detenus without trial subject to a review committee's decision on the application of the Act. Thus, even if POTA was repealed, the Gujarat government could continue the detention of around 250 people who are presently held under POTA in the state in various cases including the Godhra (Sabarmati Express coach burning) case, the Akshardham temple attack case, and the murder of the former Home Minister in the state government, Haren Pandya, under the new Act.

To guard against continuation of political persecution through undemocratic laws, the violation of civil rights of people, and the erosion of democratic safeguards, it is important that such measures be done away with entirely. PUDR strongly condemns the eyewash that the government is perpetrating in the name of repealing POTA. The experience with TADA cases that continue to linger, the political use of such laws to snuff out ideological and political opposition, particularly those that seek to restructure the exploitative structures of the state, its use against minorities, workers and dalits, and against nationality struggles, have been reiterated and emphasized several times. That the primary concern of such laws is to strike at the foundations of a

plural society is more than evident. The provisions pertaining to banning of organizations is amply indicative of this. The manner in which successive governments have looked at 'terrorism' and defined 'terrorist activities' is, moreover, devoid of any comprehension of the social, economic and political contexts. For the state one popular movement merely melts into the other as an indistinctive and seamless tale of terror.

PUDR therefore demands that

(1) POTA be repealed immediately with retrospective effect.
(2) All cases registered under POTA be withdrawn**.**
(3) The amendment to UAPA be withdrawn.
(4) The politics of proscription be given up since it corrodes civil society and democracy.

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About Peoples Union for Democratic Rights (PUDR)

Over the last 20-30 years, the civil rights movement in India has emerged as a growing and independent moment in defense of civil liberties and democratic rights of the Indian people. The Peoples Union for Democratic Rights (PUDR), Delhi, is part of this movement.

In the last two and a half decades of its existence the organisation has taken up hundreds of instances of violations of democratic rights, covering most parts of the country and involving the rights of many sections of society. The right to life, liberty and equality, the freedom of expression, the right to struggle against oppression and the right to association are essential for the functioning of a just democratic state and society.

Some of the issues taken up by PUDR over the years include rights of organised and unorganised working class, rights of peasants and landless labourers, forest policy, displacement, communal riots, caste massacres and repression on dalits, encounter killings, deaths and rapes in custody, anti-democratic laws, death penalty etc. PUDR conducts fact findings, publishes reports, issues statements, distributes leaflets, organizes public meetings, demonstrations and dharnas, and fights legal cases to highlight the violation of peoples' rights, and to help towards their redressal.

PUDR is a small non-funded democratic rights organization. It is not affiliated to any political party. Activists give their time on a voluntary basis and the organization meets its expenditures entirely through the sale of its literature and small donations. Any one can come for the weekly activist meetings, where ideas, issues and suggestions are discussed and debated in an informal and non-hierarchical atmosphere. Members include people from all walks of life: academics, journalists, lawyers, students, workers, people between jobs or unemployed, private sector employees, bank officials etc. If you wish to know more about us, or help us in any way, please contact us at the addresses given below or visit our website at www.pudr.org.

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