

BLACK LAWS 1984-85



PEOPLES UNION FOR CIVIL LIBERTIES
DELHI

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Introduction

The history of post-Independent India is replete with Ordinances and Acts which have seriously eroded the civil and democratic rights of the Indian people. While most of these legislations were enacted with a view to deal with specific issues, their actual implementation has directly affected the rights of trade unionists, voluntary activists and dissidents as well as the poor and the landless, the dalits and the tribals struggling for their basic rights.

Recent enactments have dramatically aggravated this situation. The deteriorating situation in Punjab, itself a creation primarily of the State and the ruling party, has prompted the government to bring in an additional set of repressive measures. What is worse, a carefully manipulated climate of opinion that is full of panic and fear have allowed these legislations to be passed almost without a whimper of protest. What is of grave concern is the almost complete lack of active opposition to these laws among democratic section of the public.

And now upon all this, comes the Terrorist and Disruptive Activities (Prevention) Bill, 1985 which was rushed through Parliament in a record time with almost the entire Opposition giving their assent—directly or through their silence. The Bill, popularly known as the “Anti-Terrorist Act”, is the crowning act of a State which has symbolised growing oppression and terror against the people. It is thus not only undermining its own legitimacy but also undermining the whole Constitutional basis of a civil society. The earlier measures which have been put on the statute book over the years have so over-equipped the State and its ordinary functionaries with extraordinary powers that they are bound to be used against innocent people. And have been. This new Act will be too. Apart from the fact that it was wholly unnecessary.

Above all, the Act seeks to “terrorize” in a rather basic way—by terrorizing the mind, by making any dissent from mainstream thinking an *unpatriotic* act. Anyone can be called a “terrorist” (as with Naxalites in the past) and be damned. This particular *culture* that the Act seeks to promote is more pernicious than the Act itself. It is likely to muzzle the press, the judiciary, the middle class intelligentsia by simply alarming them beyond all reason. This has already happened. The conditioning of the press and the judiciary in recent years, following the Army action in Punjab, is only a forerunner of what is

in fact enjoy. And the moot point is that the Act will hardly put a stop to "terrorism". It will only dramatically curb the basic liberties of the people.

The People's Union for Civil Liberties has consequently decided to re-issue the *Black Laws* booklet (now out of print) to include the latest legislation.

A Brief History

The Defence of India Act of 1858 was amended at the time of the First World War to enable the State to detain a citizen preventively. This was followed by the Rowalatt Act, more popularly known as "The Black Act". The then Government of India appointed a Committee on December 10, 1917 with Justice Rowlatt as President to report on what were termed as "criminal conspiracies connected with revolutionary movements in India". The Committee prepared a detailed account of the activities of organisations and young revolutionaries throughout India. It recommended special legislation to curtail the liberty and legal rights of the people by retaining the harsh and repressive provisions of the Defence of India Act permanently on the statute books.

The Rowlatt Act empowered the State to detain a citizen without giving the detenu any right to move a law court. A detenu was not even allowed the assistance of lawyers. The Act also made provisions for speedy trial of offences by a special court. Moreover, the provincial governments were empowered to search a place and arrest a suspect without a warrant, and to confine anywhere in the country. "No vakil, no appeal, no daleel"—that is the way the Act was popularly referred to at the time. The Jallianwalla Bagh tragedy was a direct result of the protest against the Rowlatt Act.

The Government of India Act, 1935, empowered the State to detain a person preventively for reasons of defence, external affairs or in the discharge of functions of the Crown in its relations with the Indian States. The provincial legislatures could formulate laws for the Maintenance of Public Order.

When the Constitution of India was enacted, Article 21 guaranteed to every person the right of life and liberty which could not be denied to her/him without honouring the due procedure established by law. In A.K. Gopalan's case, the Supreme Court distinguished "the procedure established by law" from the "due process of law" by stating that any procedure duly enacted would be a "procedure established by law". This view, however, now stands reversed in Maneka Gandhi's case (A.I.R. 1978 S.C. 597) in which the Supreme Court held that the "procedure established by law" must also be just, fair and reasonable.

Article 22 of the Constitution laid down the scheme under which a

preventive detention law could be enacted. The Preventive Detention Act was enacted in 1950 and it continued to be on the statute book until the Maintenance of Internal Security Act (MISA) came into existence in 1971. From 1950 to 1970, the Preventive Detention Act was reenacted seven times, each time the duration of the Act being three years. There was a gap of about a year when there was no Central law on the subject, though several States had PD laws. [Preventive Detention is different from detention under normal laws, i.e. the Indian Penal Code (I.P.C.) and the Criminal Procedure Code (Cr. P.C.). Under the I.P.C. and the Cr. P.C. persons are arrested for having committed acts violative of the law. Under Preventive Detention however, persons are arrested to prevent them from doing what the government does not wish them to do.]

In 1977, the MISA was repealed. And the only period in the Indian Republic without any preventive detention law was the three year period, beginning with the repeal of MISA in 1977 to the promulgation of the National Security Act in December 1980, though an attempt was made even during this period to bring in a "mini MISA".

And now, 38 years after Independence, the people of India have been subject to laws which violate all principles of natural justice. In some ways, they are worse than laws under the colonial regime. Not only do they subvert the right to fair trial but they can also be used against individuals and groups working for social and political justice.

This booklet contains the full texts of the Terrorist and Disruptive Activities (Prevention) Act, 1985, the National Security (Second Amendment) Ordinance 1984 and the Terrorist Affected Areas (Special Courts) Ordinance 1984, and a commentary on them by eminent Jurist, V.M. Tarkunde. We have also appended excerpts from a letter written by Gandhiji on March 1, 1919 on the Rowlatt Bills. An edited version of the use of the latter two (prepared by People's Union for Democratic Rights) is also included.

We believe that the present political system is bent upon subverting the principle of freedom and justice, and destruction of the fundamental rights of the individuals. There is an urgent need to build public opinion and to bring popular pressure against the black laws of 1984-85.

For, as Srinivasa Sastri has said: "A bad law once passed is not always used against the bad.... In times of panic caused, it may be, by very slight incidents, I have known governments lose their heads. I have known a reign of terror being brought about.... when Government undertakes a repressive policy, the innocent are not safe".

PEOPLE'S UNION FOR CIVIL LIBERTIES
(DELHI)

*THE TERRORIST AND DISRUPTIVE ACTIVITIES
(PREVENTION) ACT (1985)*

A Draconian Legislation

V.M. Tarkunde

Taking advantage of the natural public revulsion against the loss of innocent lives through the bomb blasts which were witnessed recently in Delhi and elsewhere, the Government of India has rushed through Parliament a truly draconian legislation called "The Terrorist and Disruptive Activities (Prevention) Bill, 1985", which is calculated to confer on the police and administrative authorities vast and arbitrary powers to interfere with the legitimate activities of citizens.

Section 5 of the bill enables the Central Government to make such rules "as appear to it necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities". Rules can be made under Section 5 to prevent the spread of any reports or the prosecution of any purpose "likely to prejudice maintenance of peaceful conditions", to regulate "the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas", to require any person "to comply with any scheme for the prevention, or for coping with, terrorist acts and preventive activities", and so forth.

Assumption of such vast coercive powers by the Executive is quite unnecessary for coping with terrorist acts and socially harmful activities. The ordinary law of the land, embodied in the Indian Penal Code and the Criminal Procedure Code, can easily deal firmly and adequately with terrorist acts and activities which are really disruptive.

The oppressive nature of the legislation is further brought out by the way it deals with persons who are merely suspected of

before the executive (not judicial) magistrates. They cannot be released on bail except after notice to the Public Prosecutor and only if they satisfy the magistrate that they are innocent of the alleged offences. *If they are not released on bail, they will remain in jail for a whole year even if no charge sheets have been filed against them in any magistrate's court.*

Another harmful feature of the Bill is that the definition of "disruptive activity" is so wide as to include a mere expression of opinion, not accompanied by any violence or incitement to violence. Any Sikh who says that he agrees with the Anandpur Saheb Resolution, any Muslim who says that there should be a plebiscite in Jammu & Kashmir, any Naga or Mizo or Manipuri who says that the people of his or her state should have the right to selfdetermination, is guilty of "disruptive activity" and can be punished by a sentence which may extend to imprisonment for life and shall not be less than imprisonment for a term of three years.

Those who drafted this legislation have failed to realise that the unity and integrity of India can be maintained only by the spontaneous sense of loyalty and cooperation of the people of different regions of the country and not by recourse to oppression and coercion. Such draconian laws are counter-productive, because they drive secessionist movements underground, where they thrive on the dissatisfaction of the local populations. □

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he had all the guarantees necessary for his defence."

*— Article 11 of the Universal
Declaration of Human rights*

Grabbing More and More Powers

S. Sahay

Editor, The Statesman, Delhi

What money is to unscrupulous traders, power is to politicians and bureaucrats. Any excuse is good enough to have more and more and in any case in excess of requirements of the situation. And what has once been grabbed has to be retained on one pretext or another.

Recall how preventive detention initially had annual life and how after being fitted into different grabs (MISA, National Security Act and what have you), it has become a permanent feature of our life. Recall how many extraordinary pieces of legislation have been enacted in recent years which deny citizens the right to be tried under the ordinary laws of the land. There are special laws to deal with smugglers, with economic offenders, with other anti-social elements. Not that these have curbed smuggling or economic offences, the political morality being what it is, but the remedy touted is to have still more power.

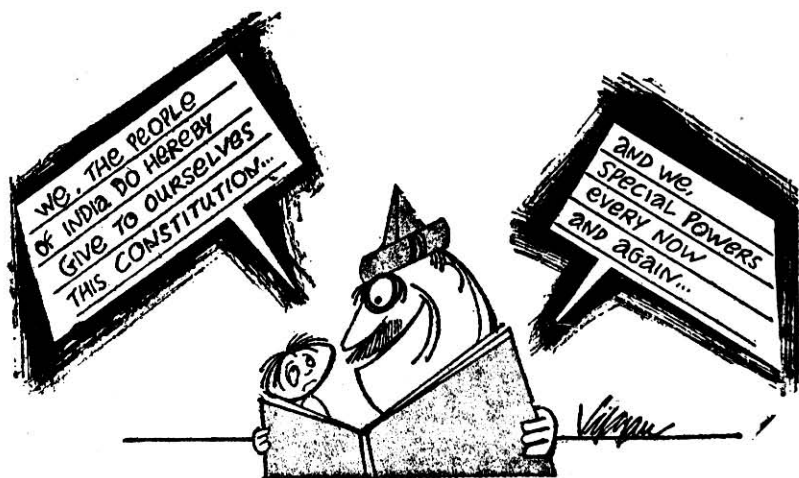
The recent planting of "transistor bombs" in Delhi and elsewhere gave the Government an opportunity to push through Parliament the Terrorist and Disruptive Activities (Prevention) Act. It is true that the Union Law Minister, Mr. Asoke Sen, was at pains to point out during the debate on the Bill that the measure was not intended to be against the Sikhs, that it included terrorism elsewhere in the North-East, for example. However, few will miss the proximity between the planting of the transistor bombs and the adoption of the Bill. The North-East has been a problem with us for over two decades. Why was not such a measure adopted earlier?

Mr. Sen was also at pains to assure Parliament that the Government did not intend to rule through extraordinary powers, that the measure would not last beyond two years. One can only say that one has heard all this before, especially in relation to the preventive laws.

Whether or not the Act will strike terror in the hearts of the terrorist remains to be seen, but it is sure to strike terror in the hearts of journalists and others. Even a District Magistrate can be authorized to

make steps to prevent the acquisition, possession or publication of any information likely to assist terrorists or disruptionists. He can also prohibit or regulate the use of postal, telegraph or telephonic services.

Since the borderline between terrorism and insurgency in Punjab is getting thinner and thinner, it is highly unlikely that the Terrorist Act will help the Government much. Will it then seek still more powers?



THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1985

STATEMENT OF OBJECTS AND REASONS

Terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh. Since the 10th May, 1985, the terrorists have expanded their activities to other parts of the country, i.e., Delhi, Haryana, Uttar Pradesh and Rajasthan as a result of which several innocent lives have been lost and many suffered serious injuries. In planting of explosive devices in trains, buses and public places, the object to terrorise, to create fear and panic in the minds of citizens and to disrupt communal peace and harmony is clearly discernible. This is a new and overt phase of terrorism which requires to be taken serious note of and dealt with effectively and expeditiously. The alarming increase in disruptive activities is also a matter of serious concern.

2. *The Bill seeks to make provision for combating the menace of terrorists and disruptionists. It seeks, **inter alia**, to—*

(a) provide for deterrent punishments for terrorist acts and disruptive activities;

(b) confer on the Central Government adequate powers to make such rules as may be necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities; and

(c) provide for the constitution of Designated Courts for speedy and expeditious trial of offences under the proposed legislation.

3. *The Bill seeks to achieve the above objects.*

A.K. SEN.

NEW DELHI;
The 17th May, 1985.

Part I

PRELIMINARY

1 (1) This Act may be called the Terrorist and Disruptive Activities (Prevention) Act, 1985.

(2) It extends to the whole of India, and it applies also—

(a) to citizens of India outside India;

(b) to persons in the service of the Government, wherever they may be; and

(c) to persons on ships and aircraft registered in India, wherever they may be:

Provided that so much of this Act as relates to terrorist acts shall not apply to the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and shall remain in force for a period of two years from the date of its commencement, but its expiry under the operation of this subsection shall not affect—

(a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under his Act or of any order made under any such rule, 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 this Act had not expired.

2. (1) In this Act, unless the context otherwise requires,—

(a) “Code” means the Code of Criminal Procedure, 1973;

(b) “Designated Court” means a Designated Court constituted under section 7;

(c) “disruptive activity” has the meaning assigned to it in section 4, and the expression “disruptionist” shall be construed accordingly;

(d) “High Court”, in relation to a Designated Court, means the High Court within the territorial limits of whose jurisdiction such Designated Court is proposed to be, or is, constituted;

(e) “Public Prosecutor” means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 11, and includes any person acting under the directions of the Public Prosecutor;

(f) “terrorist act” has the meaning assigned to it in sub-section (1) of section 3 and the expression “terrorist” shall be construed accordingly;

(g) words and expressions used but not defined in this Act and defined in the Code shall have the meaning respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

Part II

PUNISHMENTS FOR, AND MEASURES FOR COPING WITH, TERRORIST AND DISRUPTIVE ACTIVITIES

3 (1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, commits a terrorist act.

(2) Whoever commits a terrorist act shall—

(i) if such act has resulted in the death of any person, be punishable with death;

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to empower the Central Government to make such rules as appear to it necessary or expedient for the prevention of and for coping with terrorist and disruptive activities. The particular matters in respect of which such rules may be made have been specified in sub-clause (2) of the clause. The rule making power under the clause is of sufficient amplitude to enable the Central Government to provide for stringent punishment within the limits specified in sub-clause (3) of clause 5 for contraventions of the rules and for other matters connected with such contraventions. The situations which arise as a result of terrorist and disruptive activities are of a very grave nature. Further, it is not possible to visualise the various types of situations which terrorists and disruptionists may create.

2. Sub-clause (2) of clause 18 of the Bill provides for the delegation by the Central Government of its powers and duties under the legislation to officers and the authorities subordinate to the Central Government and to State Governments and officers or authorities subordinate to State Governments as also to other authorities. Sub-Clause (3) of clause 18 seeks to confer power on a State Government to delegate the powers conferred on it by the legislation to its officers and authorities. The sub-clause also provides for sub-delegation by a State Government to its officers and authorities of the powers delegated to it by the Central Government. Provisions for delegation and sub-delegation on the lines provided in sub-clause (2) of clause 18 are necessary for securing effective administration of the legislation.

3. Clause 19 of the Bill seeks to empower the Supreme Court to frame such rules, if any, as it may deem necessary for carrying out the purposes of the bill relating to Designated Courts. The matters in respect of which the Supreme Court can make rules would relate to matters of detail or procedure. The power is sought to be conferred on the Supreme Court to enable it to provide for contingencies which it is not practicable to visualise and thereby secure the effective functioning of the Designated Court.

4. In the context of the circumstances as explained above, the delegation of legislative power involved is of a normal character.

(ii) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to term of life and shall also be liable to fine.

(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, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

4 (1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, incites or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

(2) For the purposes of sub-section (1), "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any manner whatsoever—

(i) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereignty and territorial integrity of India; or

(ii) which is intended to bring about or support any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation—For the purposes of this sub-section—

(a) "cession" includes the admission or any claim of any foreign country to any part of India, and

(b) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

(3) Without prejudice to the generality of the provisions of sub-section (2), it is hereby declared that any action taken, whether by act or by speech or through any other media or in any other manner whatsoever which—

(a) advocates, advises, suggests or incites; or

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt, the killing or the destruction of any persons bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servants shall be deemed to be a disruptive activity within the meaning of this section.

5 (1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, and may empower any authority (being the Central Government or a State Government or the Administrator of a Union territory under article 239 of the Constitution or an officer of the Central Government not lower in rank than that of a Joint Secretary to that Government or an officer of a State Government not lower in rank than that of a District Magistrate or an officer competent to exercise under any law the powers of a District Magistrate) to make orders providing for, all or any of the following matters with respect to the purposes mentioned in that sub-section, namely:—

(a) preventing or prohibiting anything likely to facilitate the commission of terrorist acts or disruptive activities or prejudice the successful conduct of operations against terrorists or disruptionists including—

(i) communications with persons (whether within or outside India) instigating or abetting terrorist acts or disruptive activities or assisting in any manner terrorists or disruptionists;

(ii) acquisition, possession or publication, without lawful authority or excuse of information likely to assist terrorists or disruptionists;

(iii) rendering of any assistance, whether financial or otherwise, to terrorists or disruptionists;

(b) preventing, with a view to coping with terrorist acts or disruptive activities, the spread without lawful authority or excuse, or reports or the prosecution of any purpose likely to cause disaffection or alarm or to prejudice maintenance of peaceful conditions in any area or part of India or to promote feelings of ill-will, enmity or hatred between different sections of the people of India;

(c) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(d) requiring any person or class of persons to comply with any scheme for the prevention of, or for coping with, terrorist acts or disruptive activities;

(e) ensuring the safety of persons and property;

(f) the demolition, destruction or rendering useless, in case of

necessity, of any building or other premises or any other property;

(g) prohibiting or regulating in any area traffic and the use of any vehicles or vessels or signals or any apparatus whatsoever;

(h) the control of movements within India of persons arriving in India from outside India;

(i) prohibiting or regulating the use of postal, telegraphic or telephonic services, including taking possession of such services, and the delaying, seizing, intercepting or interrupting of postal articles or telegraphic or telephonic messages;

(j) regulating the delivery, otherwise than by postal or telegraphic service, of postal articles and telegrams;

(k) regulating supplies and services essential to the life of the community;

(l) the requisitioning of services of persons for maintaining supplies and services essential to the life of the community;

(m) the provision, construction, maintenance or alteration of buildings, premises or other structures or excavations required for the conduct of operations against terrorists or disruptionists;

(n) prohibiting or regulating the possession, use or disposal of—

(i) explosives, inflammable substances, corrosive and dangerous articles, arms and ammunitions;

(ii) vehicles and vessels;

(iii) wireless telegraphic apparatus;

(iv) photographic and signalling apparatus, or any means of recording or communicating information;

(o) preventing the disclosure of official secrets;

(p) prohibiting or regulating meetings, assemblies, fairs and processions;

(q) preventing or controlling any use of uniforms, whether official or otherwise, flags, official decorations like medals, badges and other insignia and anything similar thereto, where such use is calculated to deceive;

(r) ensuring the accuracy of any report or declaration legally required of any person;

(s) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purported to be or resembling an official person, official document or official property;

(t) the entry into, and search of, any place whatsoever reasonably suspected of being used for harbouring terrorists or disruptionists or for manufacturing or storing anything for use for

purpose of terrorist acts or disruptive activities.

(3) The rules made under sub-section (1) may further—

(a) provide for the arrest and trial of persons contravening any of the rules or any order issued thereunder;

(b) provide that any contravention of, or any attempt to contravene, or any abetment of, or any attempt to abet the contravention of any of the provisions of the rules or any order issued under any such provision, shall be punishable with imprisonment for a term which may extend to seven years or for a term which may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine;

(c) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in clause (b) has been committed and for the adjudication of such seizure and forfeiture, whether by any court or by any other authority;

(d) confer powers and impose duties as respects any matter upon the Central Government or officers and authorities of the Central Government or upon any State Government or officers and authorities of the State Government;

(e) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules or any order made thereunder;

(f) provide for preventing contravention, obstruction and deception of, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules or any order made thereunder;

(g) prohibit attempts by any person to screen from punishment any one, other than the husband or wife of such person, contravening any of the rules or any order made thereunder;

(h) empower or direct any authority to take such action as may be specified in the rules or as may seem to such authority necessary for the purpose of ensuring the safety of persons and of property.

6 (1) If any person contravenes, in any area notified in this behalf by a State Government, any such provision of, or any such rule made under, the Arms Act, 1959, the Explosive Act, 1884, the Explosive Substances Act, 1908, or the Inflammable Substances Act, 1952, as may be notified in this behalf by the Central Government or by a State Government, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made

thereunder, be punishable with imprisonment for a term which may extend to ten years or, if his intention is to aid any terrorist or disruptionist, with death or imprisonment for a term which shall not be less than three years but which may extend to term of life, and shall also be liable to fine.

(2) For the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order shall be deemed to have contravened that provision.

Part III

DESIGNATED COURTS

7 (1) The State Government may for the whole or any part of the State constitute one or more Designated Courts.

(2) A Designated Court shall be presided over by a judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court.

(3) The State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction in a Designated Court.

(4) A person shall not be qualified for appointment as a judge or an additional judge of a Designated Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

(5) For the removal of doubts, it is hereby provided that the attainment by a person appointed as a judge or an additional judge of Designated Court of the age of superannuation under the rules applicable to him in the Service to which he belongs, shall not affect his continuance as such judge or additional judge.

(6) Where any additional judge or additional judges is or are appointed in a Designated Court, the judge of the Designated Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Designated Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

8 A Designated Court may, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than the ordinary place of its sitting, in the State in which it is constituted:

Provided that if the Public Prosecutor certifies to the Designated

How much cost for the Exchequer?

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for the constitution of Designated Courts by the State Governments and also for the appointments of the Judges and Additional Judges of those Courts. Clause 11 of the Bill provides for the appointments of the Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors by the State Governments.

2. The expenditures towards setting up of the Designated Courts and towards salaries and allowances of the Judges, Public Prosecutors and staff will be defrayed out of the Consolidated Funds of the States. The expenditure towards setting up of the Designated Courts in the Union territories will be defrayed out of the Consolidated Fund of India. The likely expenditure for each Designated Court and on the salaries and allowances of the Judges, Public Prosecutors, Additional Public Prosecutors staff, etc., over a period of six months is expected to be about rupees 3.57 lakhs, out of which rupees 1.72 lakhs will be of a recurring nature and rupees 1.85 lakhs of a non-recurring nature. As it is not possible at this stage to visualise the number of such Courts that may have to be established, it is not possible to give an estimate of the actual expenditure that may have to be incurred in this behalf.

Court that it is in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interests of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Designated Court may, after hearing the accused make an order to that effect unless, for reasons to be recorded in writing, the Designated Court thinks fit to make any other order.

9 (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed.

(2) The Central Government may, if satisfied on the recommendation of the State Government or otherwise that it is necessary or expedient in the public interest so to do, transfer with the concurrence of the Chief Justice of India (such concurrence to be obtained on a motion moved in that behalf by the Attorney-General of India) any case pending before a Designated Court in that State to a Designated Court in any other State.

(3) Where the whole or any part of the area within the local limits of the jurisdiction of a Designated Court has been declared to be, or forms part of, any area which has been declared to be a disturbed area under any enactment for the time being in force making provision for the suppression of disorder and restoration and maintenance of public order, and the Central Government is of opinion, whether on receipt of a report received from the Government of the State in which such court is located or otherwise, that the situation prevailing in the State is not conducive to fair, impartial or speedy trial within the State, of offences under this Act or the rules made thereunder which such court is competent to try, the Central Government may, with the concurrence of the Chief Justice of India, specify, by notification in the Official Gazette, in relation to such court (hereafter in this sub-section referred to as the local court) a Designated Court outside the State (hereinafter in this section referred to as the specified court), and thereupon—

(a) it shall not be competent, at any time during the period of operation of such notification, for such local court to exercise any jurisdiction in respect of, or try, any offence under this Act or the rules thereunder;

(b) the jurisdiction which would have been, but for the issue of such notification, exercisable by such local court in respect of such offences committed during the period of operation of such notification shall be exercisable by the specified court;

(c) all cases relating to such offences pending immediately before the date of issue of such notification before such local court shall stand transferred on that date to the specified court;

(d) all cases taken cognizance of by, or transferred to, the specified court under clause (b) or clause (c) shall be dealt with and tried in accordance with this Act (whether during the period of operation of such notification or thereafter) as if such offences had been committed within the local limits of the jurisdiction of the specified court or, as the case may be, transferred for trial to it under sub-section (2).

Explanation—A notification issued under this sub-section in relation to any local court shall cease to operate on the date on which the whole or, as the case may be, the aforementioned part of the area within the local limits of its jurisdiction, ceases to be a disturbed area.

10. (1) When trying any offence a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial of the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule thereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

11 (1) For every Designated Court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the State Government may also appoint of any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

12 (1) A Designated Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Designated Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Designated Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way, in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when in the course of a summary trial under this sub-section, it appears to the Designated Court that the nature of the case is such that it is undesirable to try it in a summary way, the Designated Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Designated Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Designated Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) A Designated Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(5) Subject to the other provisions of this Act, every case transferred to a Designated Court under sub-section (2) of section 9 shall be dealt with as if such case had been transferred under section 406 of the Code to such Designated Court.

13 (1) Notwithstanding anything contained in the Code, all proceedings before a Designated Court shall be conducted *in camera*:

Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.

(2) A Designated Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.

(3) In particular and without prejudice to the generality of the provisions of sub-section (2), the measures which a Designated Court may take under that sub-section may include—

(a) the holding of the proceedings at a protected place;

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed.

(4) Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

14 The trial under this Act of any offence by a Designated Court shall have precedence over the trial of any other case against the accused in any other court (not being a Designated Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

15 Where after taking cognizance of any offence, a Designated Court is of opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

16 (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Designated Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from;

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the

appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Part IV

MISCELLANEOUS

17 (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder subject to the modifications that—

(a) the reference in sub-section (1) thereof to “Judicial Magistrate” shall be construed as a reference to “Judicial Magistrate or Executive Magistrate”;

(b) the references in sub-section (2) thereof to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “sixty days”, “one year” and “one year”, respectively; and

(c) sub-section (2A) thereof shall be deemed to have been omitted.

(3) Sections 366 to 371 and section 392 of the Code shall apply in relation to case involving an offence triable by a Designated Court subject to the modifications that the references to “Court of Session” and “High Court”, wherever occurring therein, shall be construed as references to “Designated Court” and “Supreme Court”, respectively.

(4) Nothing in section 438 of the code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act or any rule made thereunder.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing

that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(6) The limitations on granting of bail specified in sub-section (5) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

18 (1) Any power exercisable by a State Government under this Act may, after consultation with the State Government, be exercised by the Central Government with the same effect as if such power had been conferred directly on the Central Government and had been delegated by that Government to such State Government.

(2) The Central Government may, by notification in the Official Gazette, direct that any power (except the power under section 5 to make rules) or duty which by this Act or by any rule made under this Act is conferred or imposed on the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also—

(a) by any officer of the Central Government not lower in rank than a Deputy Secretary to that Government, or

(b) by any State Government or by any officer of a State Government not lower in rank than a Sub-divisional Magistrate or Magistrate of the First Class.

(3) The State Government may, by notification in the Official Gazette, direct that any power which by this Act or by any rule made under this Act is conferred or imposed on the State Government or which being by this Act or any such rule conferred or imposed on the Central Government has been directed under sub-section (2) to be exercised or discharged by the State Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority subordinate to the State Government.

19. The Supreme Court may, by notification in the Official Gazette, make such rules, if any, as it may deem necessary for carrying out the positions of this Act relating to Designated Courts.

20 (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Designated Court shall be deemed to be a court of ordinary criminal justice.

21. Every rule made by the Central Government under this Act shall

be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

22. The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

23 Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

24 No suit, prosecution or other legal proceeding shall lie against the Central Government or State Government or any officer or authority of the Central Government or State Government or any other authority to whom powers have been delegated under this Act for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder or any order issued under any such rule.

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment as punishment”.

—Article 5 of the Universal Declaration of Human Rights

1984

“Received your letter of the 8th July 1936. I am glad that you have hit upon a right plan to fight the black laws of the country. The country cannot even grow under the weight of the present lawless laws. I am with you in this noble task and I gladly allow you to include my name amongst the foundation members of the civil liberties union.”

—Master Tara Singh to Pandit Jawaharlal Nehru on 14th July 1946

A Legal Commentary on Black Laws, 1984

This note deals with the two Ordinances issued for amending the National Security Act in April and June 1984 (being Ordinance 5 of 1984 dated April 5, 1984 and Ordinance 6 of 1984 dated June 21, 1984) and the Terrorist Affected Areas (Special Courts) Ordinance, being Ordinance 9 of 1984 dated July 14, 1984.

My note does not deal with earlier laws restrictive of civil liberties which are still operative in Punjab and Chandigarh such as the press gag imposed by a notification issued under the Punjab Special Powers (Press) Act 1956, the Chandigarh Disturbed Areas Act 1983, or the Armed Forces (Punjab and Chandigarh) Special Powers Act 1983.

The National Security Amendment Ordinance No. 5

There are two features of this Ordinance which are particularly objectionable.

A detenu arrested under a law of preventive detention finds it virtually impossible to challenge his detention by filing a Habeas Corpus petition till the grounds of detention are communicated to him. Section 8 of the National Security Act (before its amendment) provided that the grounds of detention should be communicated to the detenu "as soon as may be, but ordinarily not later than 5 days and in exceptional circumstances and for reasons to be recorded in writing, not later than 10 days from the date of detention".

The Supreme Court has observed in a reported decision that the grounds of detention should be available when the detention order is issued and should normally be served along with the detention order. The Ordinance amends section 8 so as to substitute "fifteen days" for "ten days". After the amendment, a detenu may remain in jail for fifteen days without knowing why he is detained and without having any effective remedy against the detention. The extended period is available "in exceptional circumstances" but it will not be difficult for the detaining authority to discover some exceptional circumstance to explain the delay.

Secondly, the Ordinance makes some draconian provisions in regard to persons arrested under detention orders before April 3, 1985. Under sections 10 and 11 of the unamended Act, the case of a detenu must be referred to the Advisory Board within 3 weeks of his detention and the Advisory Board must submit its report within 7 weeks of the detention. The Ordinance

amends sections 10 and 11 so as to provide that the case of a person detained before April 3, 1985 may be submitted to the Advisory Board within 4 months and 2 weeks of his detention and the Advisory Board may submit its report within 5 months and 3 weeks of the detention. Thus a detenu covered by the amendment will undergo imprisonment for a period of nearly 6 months even if his detention is eventually found by the Advisory Board to be entirely unjustified.

In the case of persons detained before April 3, 1985, another amendment made by the Ordinance is to provide that they can be detained for a period of 2 years, instead of one year as laid down in section 13 of the Act. Thus a person is liable to be in jail for 2 years simply because the Executive believes that he is likely to behave in a prejudicial manner in the future.

A curious feature about the composition of Advisory Boards under the National Security Act deserves to be highlighted. By the Constitution (Forty-Forth Amendment) Act 1978, Article 22(4) was amended so as to provide that an Advisory Board shall be constituted "in accordance of the recommendations of the Chief Justice of the appropriate High Court" and two others who may be either serving or retired High Court Judges. The amendments made by the 44th Amendment Act were to be brought into force on such date or dates as the Central Government may notify. Although the 44th Amendment Act was passed on June 10, 1979, the above amendment to Article 22(4) still remains unnotified.

According to Section 9 of the National Security Act, which was passed on December 27, 1980, more than a year and a half after the passing of the 44th Amendment Act, the Advisory Board is to be formed by the appropriate Government without seeking any recommendation of the Chief Justice of the appropriate High Court and the Advisory Board is to consist of three persons "who are qualified to be appointed as Judges of a High Court". Thus a Constitutional amendment duly passed by the requisite majority of Parliament has been virtually flouted by the Central Government for over five years, in order that Advisory Boards in laws of preventive detention should consist of Government nominees.

The National Security (Second Amendment) Ordinance, No. 6

The main purpose of this Ordinance is to introduce in the National Security Act two amendments which have already been effected in the COFEPOSA. The amendments in COFEPOSA

have been challenged before the Supreme Court, but for one reason or another the Supreme Court has not yet pronounced its judgment on their validity. *Prima facie*, they are contrary to Article 21 of the Constitution which, as interpreted by the Supreme Court, provides that no person shall be deprived of his life or personal liberty except in accordance with a procedure which is just and reasonable.

One of these amendments introduces Section 5A in the National Security Act. This section provides that even if a detention order is based on several grounds, it shall be assumed to have been made separately on each ground, so that the order of detention will be valid even if only one of the several grounds on which it is based is free from any invalidity arising from vagueness, non-existence, irrelevance, staleness or any other reason. The section thus attributes to the detaining authority an intention which he may not have entertained, and makes it virtually impossible for the detenu to challenge his detention by pointing out that many of the grounds on which he is detained are invalid for one reason or another.

The second important amendment brought about by this Ordinance is in section 14(2) of the National Security Act. Section 14(2) as it stood before the amendment laid down that on the revocation or expiry of a detention order, a fresh detention order could be made only when fresh facts had arisen after the date of revocation or expiry. The amended Section 14(2) now lays down that after the expiry or revocation of a detention order, another detention order can be issued even if no fresh facts have arisen, provided that the total period of detention does not exceed 12 months.

The amendment has a very serious implication. In effect, it provides that if a detention order is held invalid by a court of law, the detaining authority can revoke the said order and can make another detention order on the same grounds provided the detenu is not thereby detained for a total period of more than 12 months.

As indicated above, both these amendments are *prima facie* invalid and are liable to be challenged as unconstitutional. In any case, they involve a serious encroachment on personal freedom.

The Terrorist Affected Areas (Special Courts) Ordinance No. 9

The provisions of this Ordinance can apply to any area in the country which is declared by the Central Government to be

a terrorist affected area. At present the whole of Punjab has been declared such an area. The Ordinance, however, can be made applicable to any other area which the Central Government may consider to be terrorist affected.

In Section 2(h) of the Ordinance, the definition of "terrorist" is obviously too wide. The term "terrorist" can be applied to any person who causes "disruption of services or means of communications essential to the community", if he does so for "coercing or overawing the Government established by law." Thus, a body of workers who go on a strike in the railways or in the postal department with a view to pressurise the Government to accept their demands would come under the definition of "terrorists" and the area affected by the strike can be declared as a terrorist affected area.

The main purpose of the Ordinance is to set up special courts for the speedy trial of certain offences in terrorist affected areas so that the Courts may sit at places other than the usual Courtrooms, the trials may be held *in camera* and the names of witnesses may not be disclosed.

Section 167 of the Criminal Procedure Code provides *inter alia* that where a person is arrested for an alleged offence and where investigation into the offence cannot be completed within 24 hours, he should be produced before a judicial magistrate. The magistrate may release him on bail or may order his continued detention, in which case the prisoner would be remanded either to judicial custody or to police custody. A judicial magistrate does not normally direct the prisoner to be in police custody unless the nature of the investigation requires that he should remain in the custody of the police. Section 167, moreover, lays down that the total period of custody shall not exceed 15 days unless the magistrate is satisfied on adequate grounds that custody for a longer period is necessary. Even in such cases the total period of custody is not to exceed 90 days in very grave offences and 60 days in offences of lesser gravity.

Several drastic amendments have been made by the Ordinance in Section 167 as well as to the provisions of the Criminal Procedure Code relating to the grant of bail. The Ordinance provides that, under Section 167, the arrested person may be produced before an executive magistrate and not necessarily before a judicial magistrate. As is well known, executive magistrates are appointed by the Government and are amenable to executive influence. They are likely to relegate the prisoner to

police custody whenever the police so desire.

The Ordinance also extends the ordinary period of investigation from 15 days to 30 days, and where adequate grounds are shown, to one year instead of 90 or 60 days. Thus, under the Ordinance, a person arrested for an alleged offence may remain in custody for a whole year without a charge-sheet being filed against him in a court of law! This amounts virtually to detention without trial for a period of one year.

On bail, the Ordinance deletes the salutary provision of anticipatory bail made in Section 438 of the Criminal Procedure Code. What is more, the Ordinance also alters the ordinary rule laid down by the Supreme Court that an undertrial prisoner, since he is assumed to be innocent till his guilt is proved, should normally be released on bail when it is found that he is not likely to abscond or to tamper with prosecution evidence. The Ordinance provides on the contrary that no person, accused of an offence scheduled under the Ordinance, shall be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of the alleged offence and further that he is not likely to commit "any offence" while on bail. In effect the Ordinance provides that the normal rule will be jail and not bail.

Another very objectionable provision of the Ordinance is the one which amends the Evidence Act by introducing section 111A therein. This Section will apply to any area which is declared a "disturbed area" under any enactment for the time being in force (there are several Disturbed Areas Acts in force in different States in the country) and also to "any area in which there has been, over a period more than one month, extensive disturbance of the public peace".

In such a disturbed area, if a person is alleged to have committed an offence under Section 121, 121A or 122 of the Indian Penal Code (sedition and connected offences), and if the prosecution shows that the accused person was at a place where fire-arms or explosives were used in an attack on the police or the armed forces, the accused shall be presumed to have committed the alleged offence unless he proves his innocence. It is well known that even minor acts of defiance are magnified by the police into offences of sedition under sections 121 and 121A of the Indian Penal Code. The above provision which throws the burden on the accused to establish his innocence is liable to be abused on a large scale.

V.M. TARKUNDE

What The Press Says

More and More Extraordinary Powers

The gay abandon with which the Central Government has been accumulating extraordinary powers makes one wonder whether in the not too distant future anything will be left of the normal law of the land. Quick on the heels of the amendment of the National Security Act further diluting the procedural safeguards available to a detainee has now come the Terrorist Affected Areas (Special Courts) Ordinance.

The indiscriminate resort to the Ordinance-making power itself shows scant regard for democratic norms and a tendency to go by the letter rather than the spirit of the Constitution. To come out with Ordinances when a parliamentary session is not far off, or even adjourning the legislature, as some States do, in order to issue Ordinances, is a curious commentary on our parliamentary practice.

...the sweep of the Ordinance is really breath-taking. The crimes included in the Schedule are wide enough to include offences against the State, such as waging war or sedition, and those relating to the Army, Navy and Air Force, such as desertion, physical attacks on officers and the harbouring of deserters. Also included are threats to public servants and constitutional dignitaries (the President and Governors). Threats to national integration and communal harmony also figure in the Schedule. . . Included in it (Schedule) are certain offences under the Indian Telegraph Act, the Indian Railways Act, the Explosive Substances Act, the Arms Act, the Unlawful Activities (Prevention) Act, the Anti-Hijacking Act, the Suppression of the Unlawful Acts against Safety of Civil Aviation Act and the Prevention of Damage to Public Property Act.

... where is the guarantee that the Ordinance would not be politically misused ? If it was Punjab alone that was causing

problem, why could not the jurisdiction of the Ordinance be confined to Punjab?

The implications of the new Ordinance are best explained through an illustration. The whole of Punjab has now been declared a terrorist-affected area. Let us assume a procession shouting anti-India and anti-Indira Gandhi slogans has been taken out in Jalandhar and the processionists try to intimidate the officers obstructing their march. The police arrest the processionists and along with them is arrested an innocent passer-by. He can be charged with sedition and obstructing a public servant in his public duty. He can be charged with being a member of an unlawful assembly and be deemed to have committed all those offences which the processionists have, for the Ordinance makes it clear that the offence by one in a group would amount to offence by all. . .

Since the offences in which our passer-by has unwittingly got involved are punishable with jail terms not exceeding three years, he may be tried summarily. The Criminal Procedure Code allows summary trials of offences punishable up to two years, but there can be no conviction for a period longer than three months. The Ordinance not only increases the summary trial ambit of the Special Courts but allows them to jail the accused up to two years.

Even before the actual trial starts, our passer-by may be produced before a judicial or executive magistrate and may be detained, to begin with for 30 days and possibly up to one year. The Criminal Procedure Code has been modified by the Ordinance to make this possible. Our passer-by can be released on his own bond only if the Public Prosecutor has been heard and overruled by the court. The Ordinance rules out the grant of anticipatory bail.

S. SAHAY in *Statesman*

Too much power for police in Ordinance

The new provision, Section 112A of the Evidence Act, puts the burden of proof on the accused, if he or she is charged with criminal conspiracy or attempt to wage war against the State. If the police can show that the accused had been in a "disturbed"

area at a time "when firearms of explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order" it shall be presumed that the accused is guilty unless and until proved innocent in a court of law. This is a heavy burden because he or she will have to bring witnesses and withstand the cost and time of prolonged litigation that could last up to a decade. Endless harassment can ensue.

The record of the police does not inspire confidence that they will always use these sweeping provisions with due caution. (It is) a threat to social workers, trade unionists, civil libertarians, political opponents and others.

The declaration by a magistrate of any area as "disturbed" under the Criminal Procedure Code would attract the provisions of the new enactment. Areas covered by proclamations of Section 144 are, by definition, disturbed. It is not even necessary to declare an area "disturbed", the new section says that even an area where there have been extensive disturbance over a period of a month may be considered "disturbed".

If an innocent person had been "at a place in such area at a time when firearms or explosives were used to attack forces charged with maintenance of public order", he shall be presumed guilty. It is quite possible that he was first caught in the melee; but he is liable to prosecution. It is not necessary that he should be found with weapons; his mere presence will condemn him.

Indian Express

Curbing Civil Liberties

... the hallmark of a mature liberal polity is its capacity to deal with temporary law and order situations without undermining its democratic ethos. We in this country have not faced the challenge of Punjab imaginatively, if the evidence of two bills—the National Security (Second Amendment) Bill and the Terrorist-Affected Areas Special Courts) Bill—is to be believed.

... alarmingly the legislation would have nationwide application. The security forces would now be armed with unprecedented power to detain an individual. For example, under

the Terrorist-Affected Areas Bill, the onus of proof has shifted from the accuser on to the accused; moreover a 'terrorist' is defined so vaguely that an individual need not have necessarily indulged in violence to attract the penalising eye of the legislation. What it simply adds up to is that if the Government, in its unquestionable discretion, declares any part of the country as terrorist-affected any individual in the area can be arrested on mere suspicion and it would be for that unfortunate detenu to establish his innocence. Moreover, under the National Security (Amendment) Bill an individual can be arrested again and again on the same ground. Furthermore, police officials are absolved of the time-honoured obligation of being specific in their charges while detaining an individual.

The expanse of the new powers of detention is disturbing . . . Armed with such enormous power, a government—any government—is tempted to use such laws against its political opponents. This aspect of the issue cannot be ignored.

Apart from the question whether such additional powers will help in healing the wounds in Punjab, what is really questionable is the Union Home Minister's justification of these bills as "logical". It is precisely here that the trouble lies. According to Narasimha Rao, the two bills should not be objected to because these are mere extensions of existing laws. But if the argument is accepted, then a still more anti-democratic law can be proposed as a further extension of these two laws. Let us not forget that police officials' quest for more and more powers is intrinsically insatiable. Narasimha Rao's defence is unacceptable because it is based on the logic of repression.

Hindustan Times

No one shall be subjected to arbitrary arrest, detention or exile.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charges against him.

Art. 9, 10 from the Universal Declaration of Human Rights (U.N. General Assembly, 1948)

Gandhiji's Letter on Rowlatt Bills

Mahatma Gandhi wrote a letter to the Press on March 1, 1919 on the Rowlatt Bills, enclosing with the letter, The Satyagraha Vow. We publish both these documents below.

Sir,

I enclose herewith the Satyagraha Pledge regarding the Rowlatt Bills. The step taken is probably the most momentous in the history of India. I give my assurance that it has not been hastily taken. Personally I have passed many a sleepless night over it. I have endeavoured duly to appreciate the Government's position, but I have been unable to find any justification for the extraordinary Bills. I have read the Rowlatt Committee's report. I have gone through its narrative with admiration. Its reading has driven me to a conclusion just opposite of the Committee's. I should conclude from the reports that secret violence is confined to isolated and very small parts of India and to a microscopic body of the people. The existence of such men is truly a danger to the society. But, the passing of the Bills, designed to affect the whole of India and its people and arming the Government with power out of all proportion to the situation sought to be dealt with, is a greater danger. The Committee utterly ignores the historical fact that the millions of Indians are by nature the gentlest on the earth.

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It will be now easy to see why I consider the Bills to be the unmistakable symptom of the deep-seated disease in the governing body. It needs, therefore, to be drastically treated. Subterranean violence will be the remedy by the impetuous, hot headed youths, who will have grown impatient of the spirit underlying the bills and circumstances attending their introduction. The bills must intensify hatred and ill-will against the State, of which deeds of violence are undoubtedly an evidence. The Indian Covenanters,

by their determination to undergo every form of suffering, make an irresistible appeal to the Government, towards which they bear no ill-will, and provide to the believers in efficiency of violence as means of securing redress of grievance with the infallible remedy and withal a remedy that blesses those that use it and also goes against whom it is used. If the Covenanters know the use of this remedy, I fear no ill from it. I have no business to doubt their ability. They must ascertain whether the disease is sufficiently great to justify a strong remedy and whether all milder ones have been tried. They have convinced themselves that the disease is serious enough and that the milder measures have utterly failed. The rest lies in the lap of Gods.

The Satyagraha Vow

Being conscientiously of the opinion that the Bills known as the Indian Criminal Law (Amendment) Bill No. 1 of 1919 and the Criminal Law (Emergency Powers) Bill No. 2 of 1919 are unjust, subversive of the principle of liberty and justice and destructive of the elementary rights of individuals on which the safety of the community as a whole and the State itself is based, we solemnly affirm that in the event of these Bills becoming law and until they are withdrawn, we shall refuse civilly to obey those laws and such other laws as a Committee to be hereafter appointed may think fit and we further affirm that in this struggle we will faithfully follow the truth and refrain from violence to life, person or property.

Rowlatt Act : Relevant Extracts

Below, we reproduce some clauses from the Rowlatt Act (Act No. XI of 1919) passed by the Indian Legislative Council. The Act received the assent of the then Governor-General on March 21, 1919. At the end of each clause, is a reference (in italics) of a similar clause in the Terrorist Affected Areas (Special Courts) Ordinance, 1984. It is evident from the references that while some clauses are nearly identical, the others are far more restrictive in the current ordinance under review. Overall, the Rowlatt Act, had far more safeguards in it than the new ordinance.

3. Condition of Application of Part—1

If the Governor-General in Council is satisfied that, in the whole or any part of British India, anarchical or revolutionary movements are being promoted, and that scheduled offences in connection with such movements are prevalent to such an extent that it is expedient in the interests of the public safety to provide for the speedy trial of such offences, he may, by notification in the Gazette of India, make a declaration to that effect, and thereupon the provisions of this Part shall come into force in the area specified in the notification.

4. Initiation of Proceedings

1. Where the Local Government is of opinion that the trial of any person accused of a scheduled offence should be held in accordance with the provisions of this Part, it may order any officer of Government to prefer a written information to the Chief Justice against such person.

2. The information shall state the offence charged and so far as known the name, place of residence, and occupation of the accused, and the time and place when and where the offence is alleged to have

been committed and all particulars within the knowledge of the prosecution of what is intended to be proved against the accused.

5. Constitution of Court

Upon such service being effected, and on application duly made to him, the Chief Justice shall nominate three of the High Court Judges (hereinafter referred to as the court) for the trial of the information, and shall fix a date for the commencement of the trial:

Provided that when the total number of Judges of the High Court does not exceed three, the Chief Justice shall nominate not more than two such Judges, and shall complete the Court by the nomination of one or, if necessary, two persons of either of the following classes, namely:—

- (a) Persons who have served as permanent Judges of the High Court; or
- (a) with the consent of the Chief Justice of another High Court, persons who are Judges of that High Court.

(Refer Clause 4, 5, 6, 7, 8, 9, 10, 11, 12, 13)

11. Prohibition of Restriction of Publication of Reports of Trial :

The Court, if it is of opinion that such a course is necessary in the public interest or for the protection of a witness, may prohibit or restrict in such way as it may direct the publication or disclosure of its proceedings or any part of its proceedings.

26. Reference to Investigating Authority

(1) When the Local Government makes an order under section 22, such Government shall, as soon as may be, forward to the investigating authority to be constituted under this Act a concise statement in writing setting forth plainly the grounds on which the Government considered it necessary that the order should be made, and shall lay before the investigating authority all material facts and circumstances in its possession relevant to the inquiry.

(2) The investigating authority shall then hold an inquiry *in camera* for the purpose of ascertaining what, in its opinion, having regard to the fact and circumstances adduced by the Government, appears against the person in respect of whom the order has been made. Such authority shall in every case allow the proceeding and shall, if he so appears, explain to him the charge made against him shall hear any

explanation he may have to offer, and shall make such further investigation (if any) as appears to such authority to be relevant and reasonable.

(Refer Clause 12)

PART III

34. Powers Exercisable when Part III is in Force

1. Where, in the opinion of the Local Government, there are reasonable grounds for believing that any person has been or is concerned in such area in any scheduled offence, the Local Government may place all the materials in its possession relating to his case before a judicial officer who is qualified for appointment to a High Court and take his opinion thereon. If after considering such opinion the Local Government is satisfied that such action is necessary, it may make in respect of such person any order authorised by section 22, and may further by order in writing direct:—

- (a) the arrest of any such person without warrant;
- (a) the confinement of any such person in such place and such conditions and restrictions as it may specify.
Provided that no such person shall be confined in that part of a prison or other place which is used for the confinement of convicted criminal prisoners as defined in the Prisons Act, 1894, and
- (b) the search of any place specified in the order which, in the opinion of the Local Government, has been, is being, or is about to be used by any such person for any purpose connected with any anarchical or revolutionary movement.

2. The arrest of any person in pursuance of an order under clause (a) of subsection (1) may be effected at any place where he may be found by any police officer or by any other officer of Government to whom the order may be directed.

3. An order for confinement under clause (b) or for search under clause (c) of sub-section (1) may be carried out by any officer of Government to whom the order may be directed, and such officer may use all means reasonably necessary to enforce the same.

35. Arrest

Any person making an arrest in pursuance of an order under clause (b) of sub-section (1) of section 34 shall forthwith report the fact to the Local Government and, pending receipts of the orders of the Local Government, may by order in writing commit any person so arrested to such custody as the Local Government may by general or special order specify in this behalf:

Provided that no person shall be detained in such custody for a period exceeding seven days unless the Local Government so directs, and in no case shall such detention exceed fifteen days.

36. Search

An order for the search of any place issued under the provisions of clause (c) of sub-section (1) of section 34 shall be deemed to be a search warrant issued by the District Magistrate having jurisdiction in the place specified therein, and shall be sufficient authority for the seizure of anything found in such place which the person executing the order has reason to believe is being used, or is likely to be used, for any purpose prejudicial to the public safety, and the provisions of the Code so far as they can be made applicable, shall apply to searches made under the authority of any such order and to the disposal of any property seized in any such search.

38. Penalty for Disobedience to Orders Under this Part

If any person fails to comply with, or attempts to evade, any order made under section 34 or section 37 other than an order to furnish security, he shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

42. Orders Under this Act not to be Called in Question by the Courts

No order under this Act shall be called in question in any Court, and no suit or prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this act.

(Refer Clause 14).

(A full text of the Rowlatt Act is available from PUCL)

Full Texts Of The Ordinances

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 21st June, 1984/Jyaistha 31, 1906 (Saka)

THE NATIONAL SECURITY (SECOND AMENDMENT)
ORDINANCE, 1984

No. 6 of 1984

Promulgated by the President in the Thirty-fifth Year of the Republic of India.

An Ordinance further to amend the National Security Act, 1980.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

Short title and commencement.

1. (1) This Ordinance may be called the National Security (Second Amendment) Ordinance, 1984.

(2) It shall come into force at once.

Insertion of new section 5A.

2. In the National Security Act, 1980 (hereinafter referred to as the principal Act), after section 5, the following section shall be inserted, namely:—

Grounds of detention severable.

“5A. Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Ordinance,

1984] under section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately one each of such grounds and accordingly—

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

- (i) vague,
 - (ii) non-existent,
 - (iii) not relevant,
 - (iv) not connected or not proximately connected with such person, or
 - (v) invalid for any other reason whatsoever,
- and it is not, therefore, possible to hold that the Government or Officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;
- (b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds.”

Amendment of section 14.

3. In section 14 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2). The expiry or revocation of a detention order (hereafter in this sub-section referred to as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the National Security (Second Amendment) Ordinance, 1984] bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under section 3 against the same person:

Provided that in a case where no fresh facts have arisen after the expiry or revocation of the earlier detention order made against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case, extend beyond the expiry of a period of twelve months from the date of detention under the earlier detention order.”

Amendment of section 14A.

4. In the principal Act as applicable to the State of Punjab and the Union territory of Chandigarh, in section 14A, in sub-section (2),—

(i) in the opening portion, for the words and figures "sections 10 to 13", the words and figures "sections 10 to 14" shall be substituted;

(ii) after clause (d), the following clause shall be inserted, namely:—

'(e) in section 14, in the proviso to sub-section (2), for the words "twelve months", the words "two years" shall be substituted.'

ZAIL SINGH
President

R.V.S. PERI SASTRI
Secy. to the Govt. of India

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 14th July, 1984/Asadha 23, 1906 (Saka)

THE TERRORIST AFFECTED AREAS (SPECIAL COURTS)

ORDINANCE, 1984

No. 9 of 1984

Promulgated by the President in the Thirty-fifth Year of the Republic of India.

An Ordinance to provide for the speedy trial of certain offences in terrorist affected areas and for matters connected therewith.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution and of all other powers enabling him in that behalf, the President is pleased to promulgate the following Ordinance:—

Short title, extent and commencement.

1. (1) This Ordinance may be called the Terrorist Affected Areas (Special Courts) Ordinance, 1984.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force at once.

Definitions.

2. (1) In this Ordinance, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974),

(b) "High Court", in relation to a Special Court, means the High Court within the territorial limits of whose jurisdiction such Special Court is proposed to be, or is, established;

(c) "judicial zone" means a judicial zone constituted under sub-section (1) of section 3:

(d) "notification" means a notification published in the Official Gazette;

(e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 9 and includes any person acting under the directions of the Public Prosecutor;

(f) "scheduled offence" means an offence specified in the Schedule being an offence committed in a terrorist affected area;

(g) "Special Court" means a Special Court or an Additional Special Court established under section 4;

(h) "terrorist" means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to—

(i) putting the public or any section of the public in fear;

or

(ii) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or

(iii) coercing or overawing the Government established by law; or

(iv) endangering the sovereignty and integrity of India;

(i) "terrorist affected area" means an area declared as a terrorist affected area under section 3;

(j) words and expressions used but not defined in this Ordinance and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Ordinance to the Code or any provision thereof shall, in relation to an area in which the Code or such provision is not in force, be construed to as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

Declaration of terrorist affected area.

3. (1) If the Central Government is of the opinion that offences of the nature specified in the Schedule are being committed in any area by terrorists on such a scale and in such a manner that it is expedient for the purpose of coping with the activities of such terrorists to have recourse to the provisions of this Ordinance, it may, by notification,—

- (a) declare such area to be a terrorist affected area; and
- (b) constitute such area into a single judicial zone, or into as many judicial zones as it may deem fit.

(2) A notification issued under sub-section (1) in respect of an area shall specify the period during which the area shall, for the purposes of this Ordinance, be a terrorist affected area, and where the Central Government is of the opinion that terrorists had been committing in that area, from a date earlier than the date of issue of the notification, offences of the nature specified in the Schedule on such a scale and in such a manner that it is expedient to commence the period specified in the notification from such earlier date, the period specified in the notification may commence from that date:

Provided that—

(a) no period commencing from a date earlier than six months from the date of publication of the notification shall be specified therein; and

(b) so much of the period specified in such notification as is subsequent to the date of publication of the notification shall not, in the first instance, exceed six months, but the Central Government may, by notification, extend such period from time to time by any period not exceeding six months at any one time, if the Central Government, having regard to the activities of terrorists in such area, is of the opinion that it is expedient so do to.

Explanation:—For the avoidance of doubts, it is hereby declared that the period specified in a notification issued under this section may commence from a date earlier than the date of commencement of this Ordinance.

Establishment of Special Courts.

4. (1) For the purpose of providing for speedy trial of scheduled offences committed in a judicial zone, the Central Government may establish, by notification, a Special Court in relation to such judicial zone—

- (a) within such judicial zone; or
- (b) if the Central Government having regard to the exigencies

of the situation prevailing in such judicial zone considers it expedient so to do, at any place outside such judicial zone but within the State in which such judicial zone is situated.

(2) Notwithstanding anything contained in sub-section (1), if, having regard to the exigencies of the situation prevailing in a State, the State Government is of the opinion that it is expedient to establish in relation to a judicial zone, or in relation to two or more judicial zones, in the State, an Additional Special Court outside the State, for the trial of such scheduled offences committed in the judicial zone or judicial zones, the trial whereof within the State—

(a) is not likely to be fair or impartial or completed with utmost dispatch; or

(b) is not likely to be feasible without occasioning a breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor and the Judge or any of them; or

(c) is not otherwise in the interests of justice;

the State Government may request the Central Government to establish in relation to such judicial zone or judicial zones an Additional Special Court outside the State and thereupon the Central Government may, after taking into account the information furnished by the State Government and making such inquiry, if any, as it may deem fit, establish, by notification, such Additional Special Court at such place outside the State as may be specified in the notification.

Composition and appointment of Judges of Special Courts.

5. (1) A Special Court shall be presided over by a Judge to be appointed by the Central Government with the concurrence of the Chief Justice of the High Court.

(2) The Central Government may also appoint, with the concurrence of the Chief Justice of the High Court, Additional Judges to exercise jurisdiction in a Special Court.

(3) A person shall not be qualified for appointment as a Judge or an Additional Judge of a Special Court unless he is immediately before such appointment a Sessions Judge or an Additional Sessions Judge in any State.

(4) For the removal of doubts, it is hereby provided that the attainment by a person, appointed as a Judge or an Additional Judge of a Special Court, of age of superannuation under the rules applicable to him in the Service to which he belongs, shall not affect his continuance as such Judge or Additional Judge.

(5) Where any Additional Judge or Additional Judges is, or are,

appointed in a Special Court, the Judge of the Special Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Special Court among himself and the Additional Judge or Additional Judges and also for the disposal of urgent business in the event of his absence or the absence of any Additional Judge.

Place of sitting

6. A Special Court may, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than the ordinary place of its sitting, in the State in which it is established;

Provided that if the Public Prosecutor certifies to the Special Court that it is in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interests of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Special Court may, after hearing the accused, make an order to that effect unless, for reasons to be recorded in writing, the Special Court thinks fit to make any other order.

Jurisdiction of Special Court

7. (1) Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in a judicial zone in a State at any time during the period during which such judicial zone is, or is part of, a terrorist affected area shall be triable, whether during or after the expiry of such period, only by the Special Court established for such judicial zone in the State:

Provided that where the period specified under sub-section (2) of section 3 as the period during which an area declared by notification under sub-section (1) of that section to be a terrorist affected area commences from a date earlier than the date on which such notification is issued, then—

(a) nothing in the foregoing provisions of this sub-section shall apply to a scheduled offence committed in such area in which the whole of the evidence for the prosecution has been taken before the date of issue of such notification; and

(b) all other cases involving scheduled offences committed in such area and pending before any court immediately before the date of issue of such notification shall stand transferred to the Special Court having jurisdiction under this section and the Special Court to which such proceedings stand transferred shall proceed

with such cases from the stage at which they were pending at that time.

(2) Notwithstanding anything contained in sub-section (1), if in respect of a case involving a scheduled offence committed in any judicial zone in a State, the Central Government, having regard to the provisions of sub-section (2) of section 4 and the facts and circumstances of the case and all other relevant factors, is of the opinion that it is expedient that such offence should be tried by the Additional Special Court established in relation to such judicial zone outside the State, the Central Government may make a declaration to that effect:

Provided that no such declaration shall be made unless the State Government has forwarded to the Central Government a report in writing containing a request for making of such declaration.

Explanation:—Where an Additional Special Court is established in relation to two or more judicial zones, such Additional Special Court shall be deemed, for the purposes of this sub-section, to have been established in relation to each of such judicial zones.

(3) A declaration made under sub-section (2) shall not be called in question in any court.

(4) Where any declaration is made in respect of any offence committed in a judicial zone in a State, any prosecution in respect of such offence shall be instituted only in the Additional Special Court established in relation to such judicial zone outside the State, and if any prosecution in respect of such offence is pending immediately before such declaration in any other court, the same shall stand transferred to such Additional Special Court and such Additional Special Court shall proceed with such case from the stage at which it was pending at that time.

Power of Special Courts with respect to other offences.

8. (1) When trying any scheduled offence, a Special Court may also try any offence other than the scheduled offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with the scheduled offence.

(2) If, in the course, of any trial under the Ordinance, it is found that the accused person has committed any offence, the Special Court may, whether such offence is or is not a scheduled offence, convict such person of such offence and pass any sentence authorised by law for the punishment thereof.

Public Prosecutors.

9. (1) For every Special Court, the Central Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the Central Government may also appoint for any case or class of cases a Special Public Prosecutor.

(2) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Procedure and powers of Special Courts.

10. (1) A Special Court may take cognizance of any scheduled offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where a scheduled offence is punishable with imprisonment for a term not exceeding three years or with fine or with both, a Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Special Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary

trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding two years.

(3) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Subject to the other provisions of this Ordinance, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(5) Subject to the other provisions of this Ordinance, every case before an Additional Special Court shall be dealt with as if such case had been transferred under section 406 of the Code to such Additional Special Court.

Power of Supreme Court to transfer case.

11. Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case be transferred from one Special Court to another Special Court.

Protection of witnesses.

12. (1) Notwithstanding anything contained in the Code, all proceedings before a Special Court shall be conducted *in camera*:

Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.

(2) A Special Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.

(3) In particular and without prejudice to the generality of the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

- (a) the holding of the proceedings at a protected place;
- (b) the avoiding of the mention of the names and addresses

of the witnesses in its orders or judgements or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed.

(4) Any person who contravenes any direction issued under subsection (2) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Power to transfer cases to regular courts.

13. Where after taking cognizance of any offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it has taken cognizance of the offence.

Appeal.

14. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgement, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgement, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgement, sentence or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Modified application of certain provisions of the Code.

15. (1) Notwithstanding anything contained in the Code or any other law, every scheduled offence shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving a scheduled offence subject to the modifications that—

(a) the reference in sub-section (1) thereof to "Judicial Magistrate" shall be construed as a reference to "Judicial Magistrate or Executive Magistrate";

(b) the references in sub-section (2) thereof to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "thirty days", "one year" and "one year", respectively; and

(c) sub-section (2A) thereof shall be deemed to have been omitted.

(3) Sections 366 to 371 and section 392 of the Code shall apply in relation to a case involving a scheduled offence subject to the modifications that the references to "Court of Session" and "High Court", wherever occurring therein, shall be construed as references to "Special Court" and "Supreme Court", respectively.

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed a scheduled offence in a terrorist affected area.

(5) Notwithstanding anything contained in the Code, no person accused of a scheduled offence shall, if in custody, be released on bail or on his own bond unless—

(a) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(6) The limitations on granting of bail specified in sub-section (5) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

Overriding effect of Ordinance.

16. (1) The provisions of this Ordinance shall have effect notwithstanding anything contained in the Code or any other law, but save as expressly provided in this Ordinance, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Ordinance, apply to the proceedings before a Special Court; and for the purpose of the said provisions of the Code, the Special Court shall be deemed to be a Court of Session.

(2) In particular and without prejudice to the generality of the provisions contained in sub-section (1), the provisions of sections 326 and 475 of the Code shall, as far as may be, apply to the proceedings before a Special Court, and for this purpose any reference in those

provisions to a Magistrate shall be construed as a reference to the Special Court.

Delegation.

17. The Central Government may, by notification, delegate, subject to such conditions as may be specified, all or any of the powers exercisable by it under this Ordinance [except the power under sub-section (2) of section 4 and the power under sub-section (2) of section 7] to the State Government.

Power to make rules.

18. The Supreme Court may, by notification, make such rules, if any, as it may deem necessary for carrying out the purposes of this Ordinance.

Saving.

19. (1) Nothing in this Ordinance shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or any other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Special Court shall be deemed to be a Court of ordinary criminal justice.

Amendment of Act 1 of 1872.

20. In the Indian Evidence Act, 1872, after section 111, the following section shall be inserted, namely :—

Presumption as to certain offences.

“111A. (1) Where a person is accused of having committed any offence specified in sub-section (2), in—

(a) any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace,

and it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to

attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

(2) The offences referred to in sub-section (1) are the following, namely:—

(a) an offence under section 121, section 121A, section 122 or section 123 of the Indian Penal Code;

(b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 122 or section 123 of the Indian Penal Code.”

THE SCHEDULE

[See section 2 (f)]

PART I—INDIAN PENAL CODE

45 of 1860.

1. Offences under the following provisions of the Indian Penal Code, 1860 :—

(a) sections 121, 121A, 122, 123, 124 and 124A;

(b) sections 128, 129 and 130;

(c) sections 131, 132, 133, 134, 135, 136, 138 and 140;

sections 153A and 153B;

sections 189 and 190;

sections 212, 216, 216A, 224, 225 and 225B;

sections 295 and 295A;

sections 302, 304 and 307;

(d) sections 308 and 326;

(e) sections 332, 333, 342, 343, 344, 346, 347, 353, 363, 364, 365, and 367;

sections 392, 393, 394, 395, 396, 397, 398, 399 and 436;

sections 505, 506 and 507.

PART II—THE EXPLOSIVE ACT, 1884

4 of 1884.

2. Offences under the following provisions of the Explosives Act, 1884 :—

section 9B.

PART III—THE INDIAN TELEGRAPH ACT, 1885

13 of 1885.

3. Offences under the following provisions of the Indian Telegraph Act, 1885 :—

sections 20 and 25.

PART IV—THE INDIAN RAILWAYS ACT, 1890

9 of 1890.

4. Offences under the following provisions of the Indian Railways Act, 1890 :—

sections 126, 126A, 127 and 128.

PART V—THE EXPLOSIVE SUBSTANCES ACT, 1908

6 of 1908.

5. Offences under the following provisions of the Explosive Substances Act, 1908:—

sections 3, 4, 5 and 6.

PART VI—THE ARMS ACT, 1959

54 of 1959.

6. Offences under the following provisions of the Arms Act, 1959 :—

sections 25(1) excluding clause (b), 25(1A), 25(1B) excluding clauses (d), (e), (i), 26, 27, 28 and 29.

PART VII—THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

37 of 1967.

7. Offences under the following provisions of the Unlawful Activities (Prevention) Act, 1967 :—

sections 10, 11, 12 and 13.

PART VIII—THE ANTI-HIJACKING ACT, 1982

65 of 1982.

8. Offences under the following provisions of the Anti-Hijacking Act, 1982 :—

sections 4 and 5.

PART IX—THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY
OF CIVIL AVIATION ACT, 1982

66 of 1982.

9. Offences under the following provisions of the Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982 :—
sections 3 and 4.

PART X—THE PREVENTION OF DAMAGE TO PUBLIC PROPERTY ACT, 1984

3 of 1984.

10. Offences under the following provisions of the Prevention of Damage to Public Property Act, 1984 :—
sections 3 and 4.

Note 1.—An offence specified in item 1(b) of Part I of this Schedule (that is to say, an offence under section 128, 129 or 130 of the Indian Penal Code) shall be deemed to be a scheduled offence only where such offence is committed in relation to a prisoner accused, charged or convicted of a scheduled offence.

Note 2.—An offence specified in item 1(d) of Part I of this Schedule (that is to say, an offence under section 308 or section 326 of the Indian Penal Code) shall be deemed to be a scheduled offence only where such offence is committed with a firearm.

Note 3.—The offence of criminal conspiracy or attempt to commit, or abetment of, an offence specified in this Schedule shall be deemed to be a scheduled offence.

Note 4.—The commission of an offence specified in this Schedule by any member of an unlawful assembly shall be deemed to be the commission of that scheduled offence by every other member of the unlawful assembly.

ZAIL SINGH
President

R.V.S. PERI SASTRI
Secy. to the Govt. of India

An enquiry into the functioning of 1984 Black Law in Punjab

The Government rationale for the new laws after Punjab was put under Presidents rule is that they are necessary to deal with extremist violence. It is not our contention that no danger exists from communally-motivated terrorist violence. But nor can it be the contention of any sane person that the entire Sikh community is guilty of "extremism". And yet, by the imposition of these laws, the entire people of Punjab are being deprived of the rights guaranteed in the Constitution and thousands of ordinary citizens made to bear the brunt of their operation.

This was the finding of a fact-finding team sent to Punjab by PUDR in March 1985. The task of the team was to investigate the impact of these laws on ordinary people and whether the laws were effective in terms of their stated objectives. The investigation revealed that not only are the laws ineffective with regard to their stated purpose, but worse, they are helping to further communal terrorism. This is a consequence of the anti-democratic nature of the laws and the wide scope they provide for their arbitrary and indiscriminate application.

The evidence documented in this report relates in the main to what followed after the Army entry in the Golden Temple in June. Combing operations were undertaken in the rural areas, and those arrested from both the Golden Temple and the villages were placed in army camps. These included women and small children. At Amritsar, there were four such camps. After the army was removed, the police has been continuing its search for terrorists and making indiscriminate arrests. The number of arrests remains disputed and unverifiable (at present, the government figures for those in custody are around 850). While some of those arrested were released, the rest were transferred to different jails and placed under the jurisdiction of various Special Courts, the most important being the Jodhpur Special Court.

The information collected points to widespread use of torture, fabrication of evidence, severe harrassment of families of which male members were missing or absconding. Mindless and arbitrary use of these laws

often lead either to settle personal scores or to teach a lesson to any one who dared to voice any protest against the anti-democratic laws and procedures.

Special Courts

1. The Terrorist-Affected Areas (Special Courts) ordinance was promulgated on July 14, 1984—10 days before Parliament was to sit. The Act was passed to “provide for speedy trials of certain offences of terrorist-affected areas and for matters connected therewith”. The State of Punjab and Union Territory of Chandigarh were declared “terrorist-affected” in August, 1984. Three judicial zones were created, each with a special court. The special courts were established at Patiala, Jullandhar and Ferozepur. Subsequently seven additional special courts were set up: two at Amritsar, one each at Hoshiarpur, Ludhiana, Patiala, Bhatinda and Chandigarh.

We may note that in 1976 the Government passed the Disturbed Area (Special Courts) Act, 1976. The object of this Act was “to provide for the speedy trial of certain offences in certain areas and for matters connected therewith”. Under this act, the State Government could declare an area disturbed and then set up a special court. Furthermore, the scheduled offences included the offences of conspiracy, murder, causing hurt, etc. including offences under the Arms Act and under the Indian Explosive Act.

Who can be tried in special court?

Anyone who has committed almost any crime. The definition of terrorist is itself wide enough to include just about anyone.

Section 3(h) defines terrorist:

“means a person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communications essential to the community or in damaging property with a view to:

- (i) putting the public or any section of the public in fear; or
- (ii) affecting adversely the harmony between different religious, racial, language or regional groups or castes or communities; or
- (iii) covering or overthrowing the government established by law; or
- (iv) endangering the sovereignty and integrity of India.”

Thus any person committing any offence listed in the schedule can be tried in a special court. In fact section 7(1)(b) of the Act states that all other cases involving scheduled offences committed in such area

pending before any court shall be transferred to the special court. The schedule in the Act has been expanded to include offences ranging from offences against the State to criminal intimidation. Even a person wholly unconnected with terrorist activity can be tried under the Special Court. For instance, at Amritsar, in the Additional Special Court of Addl. Special Courts Judge G.L. Chopra, a case is pending involving a murder committed in a village. The incident occurred on the night of January 7/8, 1985 at village Thada, Kathu Nangal P.S., District Amritsar. FIR No. 9/85 records that Smt Mahendra Kaur, her husband Dayal Singh and their elder son had gone to their tubewell to irrigate their fields. The elder son was away; the husband and wife were sleeping in the tubewell room (bambi) with the door open, when one Kewal Singh and another man alleged to have entered and hacked Dayal Singh with a 'datar' (sickle).

Another case, FIR 97/84, also pending before the Addl. Special Court at Amritsar, involves a dispute between brothers of village Jethuwal. One of them, Karnail Singh, is alleged to have given kirpan blows to his brothers, his niece and sister-in-law. This case came up at the Jalandhar special courts and was later transferred to the Addl. Special Court of G.L. Chopra at Amritsar. Again case FIR No.250/84 dt 29.8.84 there was dispute over share of land within the family at village Sidhar, P.S. Beas, Dist Amritsar, leading to murder. The son and daughter-in-law along with two grandsons of the deceased have been arrested. Their case came up before the Jullandhar Special Courts and from there it has been transferred to the Addl. Special Court at Hoshiarpur, 200 km from Amritsar.

Each case first comes up before the special court at the zonal level and then it is transferred to any of the seven additional special courts. Now all criminal cases involving offences in the schedule are tried by these special courts. The police can present the challan in upto one year. This means a person can be held as an undertrial upto one year without having his confession recorded or the possibility of bail. This has opened avenues for the police to make money by accepting a bribe in order to present the challan.

The bulk of the cases in the special courts relate to offences under the Arms Act. The way out for those who are alleged to have committed an offence under this Act is to confess and be released. At Amritsar, of the 27 cases disposed of in the court of Shri H.S. Sahni, 26 were confessions and one was transferred.

Worse, the work that was being done by 18 Sessions and Addl. Sessions Judges plus about 25 Magistrates is now being done by 3 special courts and 7 Additional Special Courts. This itself defeats the purpose of the Act.

As a result of this, the dates of hearing are fixed after a gap of 6-8 months, sometimes longer. This is not taking into account the delay in filing charges after detaining the accused as case number 5 shows. We list below, a few instances.

(1) *State vs Ajit Singh*: the accused was charge-sheeted on 19.10.84 and the next date of hearing is fixed for 28.8.85. This case has been transferred from Jullandhar to Amritsar. After transfer, the date is likely to be extended.

(2) *State vs Buta & others*: a case under Sec. 302 from village Jalalpura. The accused was chargesheeted on 21.1.85. The next date of hearing is 1.11.1985.

(3) *State vs Vishwanath & others*: a case under Sec. 307 IPC. Accused chargesheeted on 15.11.1984. Next date of hearing is 15.11.1985.

(4) *State vs Bakhtamar singh*, R/o Jandiala, Dist. Jalandhar: Charged under Sec. 302 IPC. Arrested July 24.7.1984. Chargesheeted on 1.1.1985, Trial to begin on 1.10.1985.

(5) *State vs Daljit Sing*, R/o Harpura vilalge, Dist. Gurdaspur under Sec. 302 IPC. Arrested January 30, 1984. Procedure for framing charges began on 8.6.1984 and chargesheeted on 12.11.1984. Trial fixed for 22.11.1985.

Both Hindu and Sikh advocates told us that since the police are not obliged to produce challans for a year, it was virtually impossible to get bail in special courts even in ordinary criminal cases. Under the Act, no one can get anticipatory bail and there are severe limitations on the granting of bail.

In Manohar Singh vs State of Punjab (S.L.P.) (609 of 1985) the Supreme Court released the appellants (the accused) on bail after the Jullandhar Special Court had refused. This was a case in which the appellants were accused under Sec. 153A, IPC, of stopping a rickshaw carrying two Sikhs wearing black turbans and exhorting them to "get united and we shall drive out Hindus from the state". This was an incident which was supposed to have taken place on June 28, 1984 but no challan was presented at the Court till February 22, 1985. The first informant (on whose basis the FIR is supposed to have been filed) Shri Kapoor Chand made a statement before the Deputy Commissioner, Gurdaspur denying that he had ever made such a complaint. A copy of the affidavit of Kapoor Chand disavowing all knowledge of the incident was presented before the Judicial Magistrate, Batala. Amar Chand, the rickshaw-puller also filed an affidavit before the special court stating that he was not a witness to any such incident. Despite this the special court at Jullandhar rejected the bail application on

11.11.84. The accused were released on bail by the Supreme Court by the order of Justices A.P. Sen and D.P. Madan.

According to Minister of State for Home Affairs (March 28) there were, as of March 22, 1985, 3,264 cases pending in the Special Courts. While 1,785 trials were completed out of 1,976 trials being conducted, in 744 cases there were confessions. We were told that most of these were charges under the Arms Act (1983) where even a pen-knife (with 5 cm blade) is considered illegal. And the punishment usually is a few days in custody or fine, but in most cases here, the accused have spent months in police custody.

On the day we visited Amritsar, there were 724 cases pending before the two additional special courts, the majority being offences under the Arms Act. The undertrials who have been languishing in jail have moved the High Court and the Inspecting Judges of the High Court that the special courts were giving very long dates. The former directed them to give shorter dat

Jodhpur Special Court

Under Sec. 4 of the Act, the State Government can request the Central Government to set up a special court at any place outside the state. It is under this provision that a special court has been made in Jodhpur inside the jail with elaborate safety measures. The trial of 379 terrorists is to be held there.

The 379 have been chargesheeted under Sec. 121 of the IPC read with Sec. 25 and 27 of the Arms Act. Sec. 121 is the offence of waging war against the State. If a person is accused of an offence under Sec. 121 then under the Act he or she will be presumed to be guilty unless he or she can prove their innocence. Sec. 20 states that if a person "had been at a place in such area at a time when fire-arms or explosives were used at/from that places to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence".

All the 379 have been given the same charge-sheet. All were arrested from the Golden Temple. The advocates preparing the defence of these 379 people are up against a wall. They have not been given a list of witnesses. This makes it virtually impossible to prepare a defence. If a person was at the Golden Temple but had nothing to do with the terrorists, how is he/she going to prove his or her innocence? If the "identity and address of the witness" can be kept "secret" under sec. 13 (2) once again no defence can be conducted to question the authenticity of witness's statement.

Take the case of Inderjeet Kaur, she is a woman of about 35 years

old, a housewife and mother of four children. Inderjeet Kaur and her family live at Atta Mandi, near the Golden Temple. Inderjeet and her friend Parmjeet, visited the Golden Temple every morning. A few days before 'Operation Blue Star', the BSF had set a camp in their building. Both Inderjeet's family and Paramjeet's family gave water, sherbet and food to the BSF and as a result were threatened by 'extremists'. On June 4, 1984 the two women got up early and as usual they started off for the Golden Temple. The BSF had become friendly and allowed them to go. Paramjeet never returned. Her husband has had no official intimation. Inderjeet sustained bullet injuries and was in hospital. Then she was at a military camp. All the time her husband was assured that she would be released. But she was transferred to Nabha jail under N.S.A. The grounds for arrest are cyclostyled and is identical for each person. She said the Advisory Board has not confirmed her detention. Even then, she was transferred to Jodhpur.

Meanwhile, her husband received a letter (No. Teh/RR/1250-1400 dt. December 12, 1984) from the Deputy Commissioner asking him to put in her claim for relief. This particular aspect also highlights the *contradictions of official action*. The fact that the government is providing Inderjeet Kaur compensation for injuries sustained at Golden Temple, for which a verification is supposed to be done by the CID, indicates that she had nothing to do with terrorists. Yet she is being tried at Jodhpur. There are several other similar instances of persons who have received claims for compensation while simultaneously facing trial.

What makes the official proceedings even more dubious are the "confessions" of persons like Inderjeet Kaur. Barring the change in name and other particulars, all the detainees picked up from Golden Temple were detained under NSA and served with cyclostyled grounds of arrest and confessions supposedly made by them. A copy of one such cyclostyled statement is given below:

"Stated that I am a resident of Atta Mandi, Amritsar and I am a member of All-India Sikh Students Federation and Dal Khalsa. Bhai Amrik Singh was President of these organisations. These organisations were associated with Sant Bhindranwale and we all acted according to the dictates of Sant Jarnail Singh Bhindranwale. In order to maintain the independent entity of Sikhs, our aim was to establish a separate state (Khalistan) with a separate constitution. In order to fulfil this mission we gathered lots of arms, ammunitions bombs and explosives from the foreign countries. So that for the achievement of the Sikh state Khalistan we should be able to strike the government. To fulfil this object six thousand persons were

Shubheg Singh. We kept our objective secret from the visitors to Darbar Sahib Amritsar and also the Government. On 5.6.84 the security forces deployed around Darbar Sahib gave us warning to come out of Darbar Sahib. About 120 persons came out of Darbar Sahib on their warning. We were in groups. Due to this firing the security forces continued upto 10.8.84. Following were the active members of our organisation.

I and these persons participated vigorously. At last the security forces us after entering into Darbar Sahib. Many of our workers were killed during the encounter with the Army. The army seized lots of arms of ammunicions from the vicinity of Darbar Sabih. Apart from this many Pakistan army officers conspired with us and fought against the government. The government with the help of army has destroyed Darbar Sahib by firing on it and killing the Sikhs. We will vindicate this by killing four for each Sikh killed. Even if we are released, we will again collect arms and with our supporters fight for making Khalistan a separate State."

II

On October 15, 1983, the Armed Forces (Punjab and Cnadigarh) Special Powers Ordinance was promulgated. Later, in December it became an Act. Like the previous laws passed by the government to curb terrorism, this too has become a permanent part of the statute book. It is under this law that the armed forecs get extraordinary powers and their activities get legal sanction.

This Act is almost a replication of the Armed forces (Assam and Manipur) Special Powers Act, 1958. It is significant that when the earlier Act was being discussed in Parliment, many members, including those belonging to the ruling party, expressed their misgivings. The then Chairman of the Rajya Sabha pointed out that once an area is declared disturbed and authority is transferred to the military to deal with the situation, "the civil authority will have no control over the situation".

Under sections of the Act, *even junior officers have vast powers to search, seize and arrest people at any time of the day or night, without any warrant.* Even a non-commissioned officer has power to shoot someone on mere suspicion that he may disturb public order. There is no check at all on the actions of the army, and the ordinary citizen who becomes a victim of the army's arbitrary powers is left without any

relative is picked up by the army in the dead of the night has no way of knowing where to search for the missing person; a person whose property is looted by the army cannot recover it; a person tortured by the army has no way of getting relief through the law courts. For, as section 7 of the act lays down, "No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the central government, against any person in respect of anything done or purported to be done is exercise of the powers conferred by this Act."

During the army action at the Golden Temple, there were many cases of indiscriminate killing of ordinary people including unarmed women and children. The post-mortem reports state that some of those killed had their hands tied behind their backs. These killings include 16 sewadars of Baba Kharak Singh from Gurudwara Dera Baba Sham Singh, located 50 yards from the Golden Temple. Baba Kharak Singh is an old, revered sant and a pacifist. On June 7, sixteen of his men, including 70 year old Joginder Singh and 18 year old Harde Singh were pulled out from the Dera, their hands tied behind the back, made to walk through the streets of Aita Mandi Bazar, and were shot dead opposite the DCM shop by BSF personnel. Soldiers belonging to the Bihar regiment and the BSF also looted the store of the Dera and decamped with things worth Rs. 70,000 and half a kg. of gold. This was reported to us by the granthi of the Gurudwara. The report of the looting and killing was confirmed by eye-witnesses.

The sweeping powers given to the army and the scope provided therein of their misuse is indicated in the four cases given below. The first is given in some detail as it encapsulates the experience of others who have been similarly victimized.

1. RS is a respectable citizen who following a quarrel with some of his colleagues was denounced by the authorities as a supporter of Bhindranwale. One night his house was surrounded by the army, he and his family woken up, and the house searched for weapons. When none were found, a pistol was ordered by the officers in charge to be placed under some garbage and the police accompanying the army were told to recover it. Then some of the male members of the family and RS were taken away by the army. While the other family members were released the next day, RS was detained, for interrogation.

RS was blindfolded and taken to some place which he could not recognize. He was pressurized to confess that he was follower of Bhindranwale which he refused to do, stating that he had publicly been opposed to him. The commanding officer hit him severe blows in the chest and abdomen. All day he was not given any food to eat. When he

wanted to go to toilet they bound his hands and took him out with a sten gun placed on his neck. He urinated and vomitted blood. Next day he was blindfolded and taken to an unknown place from there to an army camp at Amritsar. For the first few days he was kept in a cell 12e × 15e with 28 others and then shifted to a cell 6e × 8e in a barrack which had 6 people in each cell. He was kept here for 35 days. During the initial period of detention he was physically tortured everyday. The normal torture entailed being hit by fists and rifle butts. Occassionally electric shocks were given on his soles. Every kind of humiliation was heaped on him. One day soldiers asked him to clean a room full of bidi and cigarette butts and when he said that as a Sikh he could not touch them he was hit in the back with a rifle butt. He fell unconscious. He also spoke about a sadistic practice at the Army Camp. Officers would enter the camp at night, drunk, and threatening to cut the prisoners to pieces, they would choose one person from among the detenues for their night-time pleasure. The unlucky prisoner had his skin all raw at the 'game' as he was flayed with a wet cane. "It was like being thrown in hell". The food was rotten and detenues ate it only because it was a question of survival.

There was a chargesheet against R.S. which was withdrawn. Since no viable case could be made out against him they later charged him under section 107 for shouting slogans against Santa Singh. This case was also quashed and he was released. He was left at night on a street in Amritsar, with broken ribs and in such a bad physical condition that he could barely stand.

Notably RS was not given any copy of FIR and his whereabouts were not known to any relative.

2. Parduman Singh a journalist from Hoshiarpur was detained by police and handed over to the Army for 8 days (FIR No. 143, P.S. Sadar, Hoshiarpur) for publishing a report about some persons in military uniform who had looted a bus during the first phase of army operations. A young woman, Kamlesh Kumari, who informed the journalist, and herself lost ear-rings etc., was also detained under the same FIR 143 and handed over to army authorities. The woman and journalist were charged with conspiring "to overthrow the central Government by force (SIC!) and wanted to form Khalistan". All this was said to be on the basis of "reliable information". The advocate defending the journalist, Jaswinder Singh Parmar of Hoshiarpur was then detained, on July 16 and interrogated by the Army for defending that journalist. Another advocate Mr. Kehar Singh Gill too was arrested and interrogated about matters considered confidential between advocates and clients. The army authorities obviously not

only did not like anybody writing what they consider as portraying the army in an unfavourable light, but also disliked any lawyer defending persons they had chargesheeted.

3. Gurbux Singh, S/o Teja Singh from village Khajala (Dist. Amritsar) was picked up by Major S.K. Bali of 15 Jat Regiment from Khajala on June 6, 1984. His licensed .38 revolver along with 3 cartridges of 9 mm bore were taken away. On June 18, 1984 FIR No. 160/84 was registered against him at Chowk Mehta Police Station under the Arms Act 1983. Thereafter he was sent to Amritsar army cantonment. Having been detained for two months he was handed over to police who promptly rearrested him under NSA mentioning that Gurbux Singh was arrested by the armed forces from Golden Temple while fighting against armed forces during first week of June 1984. The NSA advisory board quashed the order and he was released.

4. In another instance, charges of sedition were filed by the army against those criticising army action and the accused declared absconders even when they were present in the city. In *Union Territory of Chandigarh vs Maj. Gen. Narinder Singh*, Brig. Joginder Singh Dhillon and Navrang Singh, were charged with sedition. In the FIR No. 460/84 dated July 15, 1984 registered at PS East Chandigarh, the accused were said to have made provocative speeches. The FIR however shows that while the accused criticised the army action, complained about how army soldiers robbed some persons, there was nothing incendiary in them. Worse still, the Executive Magistrate, Chandigarh issued a proclamation on December 17, 1984 declaring "Joginder Singh Dhillon has absconded or is concealing himself" and demanding presence by January 30, 1985 in his court of the accused. Similar proclamations were issued against the other 2 co-accused. This, despite the fact that all the 3 were present in Chandigarh at their residences.

Torture and harassment by Police

The most notorious case has been the brutal torture of 92 detenues who were taken from Nabha Central Jail to Ladha Kothi (District Sangrur) between 30.8.84 and 11.1.85 and subjected to third degree methods. This sordid affair was exposed when Justice S.S. Sodhi, Vigilance Judge, Sessions Division at Patiala visited the Central Jail at Patiala and Nabha. During his visit, the people picked up from the Golden Temple and detained under NSA complained of the tortures. Justice Sodhi directed an enquiry and the report was submitted to the court. According to the Enquiry Report, "Their statements reveal two common modes of torture, one is use of extra thick pestle, like mini-log

which is placed on the thighs of the detainees with one person or two persons standing on it. The detainee is made to lie on the floor prostrate or supine. The pestle with load thereon is then rotated over the thighs. If the position is prostrate, then the lower leg is bent over the pestle and pressed against it. Surface of the pestle being smooth and wrapped in a cloth does not cause any outward injury on the thigh."

"The second mode of torture which is described to be more painful consists of stretching the legs apart to an unbearable extent. The detainee is made to sit on a plain surface with one person supporting his back with his knees and pulling his long hair backwards. The legs are held at the ankle level by different persons and pulled apart. The legs on reaching a particular angle cause acute pain which on persistence result into swooning."

"The detainees at Ladha Kothi are not accorded the treatment due to them. They are locked up in individual cells and are kept in solitary confinement all the 24 hours except for the period when they are subjected to interrogation and torture. They are served food in the very cells and are also required to make water and ease themselves within the four corners of their cells".

"After going round the premises of Ladha Kothi, I got the impression that it was just an interrogation centre and it possessed least trappings of a Central Jail. There seems no justification for shifting small batches of detainees from Nabha jail to Ladha Kothi. The detainees stated that their shiftings from Nabha jail to Ladha Kothi were only a camouflage for taking them out from Nabha jail and to by-pass the requirement of law to produce them before a Judicial Magistrate for being remanded to Police Custody for their interrogation in some new case."

The more recent cases of victimization in rural areas are by the police as in the second phase the army was withdrawn from the villages. The police has been spreading a reign of terror by nightly visits, illegal detention and illegal attachment of property of families of wanted persons. Below are three sample cases of families being terrorised because some male member is absconding/missing.

1. The police lodged FIR no. 111/84 at P.S. Jandiala on the basis of secret information that one Kuldip Singh is a terrorist. The man is missing but the police have arrested his father, Bachan Singh aged 70, his mother aged 60, his brother, his married sister and her two children aged 2½ and 8 years. All have been in jail since 24.2.1985. The case was to come up at Jallundhar Special court for bail on 15.4.1985.

(2) CS, son of JS in district Amritsar, was accused of being involved in a case of murder on June 4, 1985.

then banned, AISSF. CS went into hiding. Then began a reign of terror for the family. His mother was kept in police custody for five months. She was released but the brother-in-law of the accused and a cousin were picked up and detained for 2½ months. Apart from detention, the house was sealed and the goats, cow etc taken away. Rice which was being harvested was taken away and auctioned ostensibly to pay for the upkeep of the animals. Yet the police demanded Rs. 5,000 from the family for fodder. The 80 year old grandmother of the boy was asked to leave the village and persons even remotely associated were threatened. The land remains uncultivated since last June and the family has left the village to escape being further harrassed.

(3) NS, son of BS, in village T near Amritsar was arrested on 5.10.1984 in connection with an incident of firing nearby. Four days later, the family members who had gone to visit the accused were told that the boy was with DSP Bua Singh. However, the same night, the police raided the house claiming that the accused has escaped. Thirteen members of the family were taken into custody, including the women. Next morning, eight persons were released. But four young women of the family were kept for eight days and one of the brothers for 23 days. He was rearrested and kept for a month and another brother was also taken into detention. Since mid-March they have been free, but as a result of the more than five months' harrassment, they could not sow the winter crop. It is noteworthy that not once were any of the persons detained produced before any magistrate. No warrant was ever shown. The prisoners were even made to pay for their food.

These daily occurrences have upset people the most. The blatant injustice of persecuting family members of missing persons (through illegal detention, torture, humiliation of women, jailing even of minors and old people, and economic hardship) cannot but alienate people. It should be noted that according to the villagers interviewed, many young men absconded because of the occurrence of "encounter" deaths in the districts of Amritsar and Gurdaspur. Rather than surrender and face certain death, they fled. Others have fled, we were told, because of the terror created by the police.

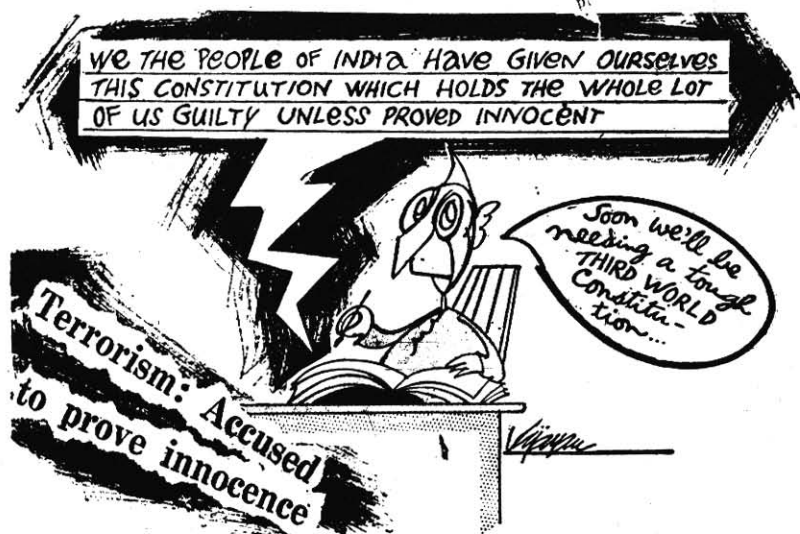
Conclusion

Our enquiry points to serious and widespread violation of the fundamental rights of the people through both the use and the misuse of the black laws enacted in Punjab. The extraordinary powers

the people, breeding resentment, and creating discontent. Also, since the principal target in the implementation of these laws are members of the Sikh community, we feel that it has further vitiated the relationships among different communities.

The laws have not only failed in their stated objective, but have created an atmosphere of terror among ordinary citizens. What is more, by blocking all channels of legitimate protest and dissent, they are throttling those very forces of democratic and secular opinion which can best combat communalism and help restore normalcy. □

—PEOPLE'S UNION FOR DEMOCRATIC RIGHTS



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A Warning For Our Times

“In Germany, the Nazis came first for the Communists, and I didn’t speak up because I was not a Communist.

Then they came for the Jews, and I didn’t speak up because I was not a Jew.

Then they came for trade unionists, and I didn’t speak up because I was not a trade unionist.

Then they came for the Catholics, and I was a Protestant and so I didn’t speak up.

Then they came for me, and by that time there was no-one left to speak for anyone.”

MARTIN NIEMOLLER
(1892-1984)
