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SPECIAL ISSUE ON

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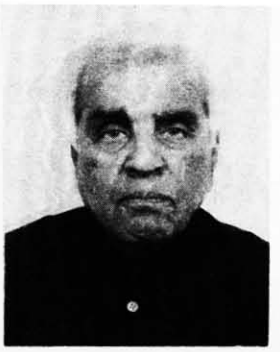
Editorial



Dear Readers

Like you, I have been receiving Via Media since a few months. It is a fine collection of published writings on social issues. It is my pleasure to be the first Guest Editor of Via Media Special Issue on TADA. The selection of articles is my own.

It is a matter of satisfaction that public anxiety at the continuance of TADA is increasing. Government of India has had to concede the gross abuse of TADA. Even the agencies appointed by the Central Government, like the National Commission on Human Rights and the Minorities Commission have themselves asked for a repeal of TADA.

Faced with this situation the only honest course for the Central Govt. is to repeal TADA. but all that the Central Govt. has done is to cynically put all the blame on State Governments. How mischievous. The role of Central Govt. in States like Kashmir, North East Frontier and Punjab which were centrally administered is even more stinking than that of many States.

Government of India may yet redeem itself partly if it was to repeal TADA — question of amendments or more discriminate use of TADA is unintelligible and unworkable.

PUCL has constantly maintained that TADA legislation is unworthy of democratic State. It has always demanded its repeal. It is an obnoxious legislation; it is a blot on Indian democracy. TADA must go.

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Politics and the men in khaki

KULDIP NAYAR on how the police force has given the go-by to its conventional role and become embroiled in politics

ONE has become accustomed to telephone-tapping, interception of mail and being shadowed. One may not like it but one learns to live with such tactics because these are the methods a feeble government employs to keep its critics or opponents under surveillance. However, what alarms me is the blatant manner in which the police have begun to interfere with an individual's life.

My wife and I were invited to dinner the other day at a senior British diplomat's home in New Delhi. Three days later, two policemen knocked at our door. Since I was away, my wife bore the brunt of the interrogation. The policemen had no papers, nor were they apologetic. 'We are from the security,' they said as they left 20 minutes later, and made no secret of the fact that they knew who I was.

The last time when there was a knock at my door, it was during the Emergency (1975-77) which Indira Gandhi had imposed to smother dissent. At that time the policemen had at least a warrant for my arrest. This time the only word flung at my wife was 'security.' Nothing else was considered necessary as the police expect people to do what they are told. I do not think that Prime Minister Narasimha Rao or his high-flying minister Rajesh Pilot are aware of these happenings. That is what makes such developments even more disturbing.

This Orwellian scenario means that the fundamental rights of the individual, like liberty and privacy, are not sacrosanct any more. The authorities treat them as mere concepts which the police can flout at will. It shows that the police have taken upon themselves the responsibility of categorising people as loyal or disloyal, pro- or anti-government and as 'us' and 'them.' Worse, it conveys the feeling that the police have taken it upon themselves to put down political or, for that matter, any other kind of dissent.

This conclusion stands validated if one studies the functioning of the three top police organisations — the Intelligence Bureau, the Central Bureau of Investigation, and the Research and Analysis Wing — over the past few years. In the name of intelligence gathering, the IB has prepared dossiers on everyone who is not in the rulers' good books. Fiction and fact have been intertwined maliciously and tendentiously in reports on several opponents of the government of the day. Since the IB has become embroiled in political espionage, it has very little time for its normal vigilance work. That explains why the IB has had no inkling about the bomb blasts either in Bombay, Calcutta or Madras. The IB bosses have admitted many times at meetings of state directors general of police that their organisation has done precious little by way of counter-espionage.

The CBI, the other top agency, is an extension of the prime minister's secretariat. Witness the manner in which it flouted the instructions of the Joint Parliamentary Committee to pursue the dubious deals of Goldstar Steels and Alloys, a firm of which the prime minister's son is a co-promoter. Even Harshad Mehta would have spilled the beans long ago had the CBI questioned him when the inquiry into the bank scam was entrusted to it. The Bofors pay-off scandal has been exposed despite the CBI's efforts at a cover-up. Now it is working behind the scenes to ensure that the Rajiv Gandhi connection with the deal remains under wraps.

As for RAW, its activities are focused on internal affairs even though it is supposed to be our CIA, with a clear brief to find out what happens in the world and how it affects India. If the force is politicised, as indeed it is, it cannot serve the purpose for which it was established. The PM's secretariat, under which it functions, uses it to know more about such developments as the meetings and activities of Arjun Singh, Sharad Pawar and others who are viewed, however remotely, as posing a threat to Rao. Ironically, the RAW is also used to ascertain how deep the loyalties of the so-called loyalists run.

The three agencies were used by the prime minister and V C Shukla, who was given charge of managing the MPs, during the no-confidence motion in the last session of parliament. In turn the agencies used all the resources at their command to pressurise, purchase and even detain some Lok Sabha members to defeat the motion. Ajit Singh, whose seven members crossed the floor to vote with the Congress, has repeatedly attacked the three organisations for undertaking a hatchet job on him.

Such accusations do not trouble Rao. He has the satisfaction of knowing that he is not the first prime minister to use the police for such purposes. It was Indira Gandhi who began the process. She used the police to threaten and cajole the CWC members during the party's split in '69. She did it again during the Emergency when blank warrants of arrests were issued to the police to pick up anyone who dared to speak against her. In the process, more than 1,00,000 people were detained without trial.

Rajiv Gandhi widened the scope of police work by involving cops in the selection process of Congress candidates for the elections and for checking the credentials of the sitting Congress MPs. Rao, of course, has the distinction of using the police to keep his flock together and for enticing a few from the other side of the fence to wangle a thin majority.

One would have expected the Indian Police Service Association to take stock of the situation as it did after the Emergency was lifted. I am not touching upon the excesses or the brutalities committed by the police because that itself is a topic for an article. I am referring to the failure of the IB, CBI and RAW to conform to professional standards. Perhaps, when senior officials begin to hanker after good postings, out-of-turn promotions or extension of service, standards become difficult to maintain. The force cannot be insulated from politics when even the best in the service have succumbed to politicking.

The proposed Human Rights Commission, the government's attempt at window dressing for the benefit of foreign countries, will be ridiculed when the present police machinery becomes its investigating and prosecuting agency. A force which has stopped seeing itself in the mirror cannot hold it up to others. How can the police —an official set-up — which is increasingly guilty of committing excesses, pursue wrong-doings by government agencies or terrorists? When the force realises that the rulers do not respect human rights themselves, it may become more contemptuous of personal rights and fair methods.

The argument that the antediluvian Police Act of 1861, still the basic law, is the reason for the ills afflicting the police is valid only up to a point. Two decades earlier, the same act provided the ethos for professionalism, responsibility and integrity. Why has so much deterioration taken place in such a short time?The real reason is that the police behave as if they are not

accountable to anyone. The decision to harass or release certain persons is taken entirely on political considerations. When it comes to an ordinary person , it is worse. He or she cannot just escape the wrath of police or the other demands they decide to make.

For their own good, the IB, CBI and RAW must subject themselves to some public scrutiny. Even otherwise, because of the special nature of their functions and operations, it is absolutely necessary to ensure that their activities do not ever go wrong so as to affect the life, liberty and reputation of the individual citizen. They must be held accountable.

It is necessary to emphasise, even at the risk of sounding pedantic, that the moral component must take its legitimate and rightful place in very decision-making process of the police force. To quote Walter Lippman, 'they are the custodians of a nation's ideals, of the beliefs it cherishes, of its permanent hopes, of the faith which makes a nation out of a mere aggregation individuals. They are unfaithful to their trust when by word and example they promote a spirit that is complacent, evasive and acquisitive.'

The Independent,Bombay
September 3, 1993

Who will keep the police in check?

By M.L. CHANDANI

Despite jazzy ad campaigns, the Indian police system is unable to build a creative relationship with ordinary citizens. Instead, it continues to sustain its perverse colonial inheritance as a 'skull cracking force' prone to routine brutality. This image must change

THE POLICE and the public appear to be poles apart from each other. It is true that the police is an important and unavoidable organisation of a modern State. It is regarded as upholder of the law and protectors of the public. And they constitute the first line of defence against criminality.

The police can discharge its functions effectively only when it gets whole-hearted support from the public. This support is however, scarcely available.

The limitations of the police

The gulf between the police and the public may partly be attributed to the limitations under which the police have to function. The government uses the police as a tool to suppress dissent. It asks the police to crush terrorism at one end of the spectrum but to ignore it at the other. Moreover, the police is not properly insulated against political interference. The nature of police power is such that the vicious circle of mutual suspicion and hostility develop very easily between the public and the police.

Again, there is a glaring lack of cooperation among various agencies of the criminal justice administration. The police is seldom taken into confidence by the parliament or state legislatures while making laws though the burden of enforcement of such laws falls on its shoulders. Many of the rules of evidence are not adapted to modern conditions e.g. confessions before the police are not admissible in evidence (section 25, Indian Evidence Act). Explaining the rationale of this rule, the Law Commission of India in its 14th Report (Vol. II, Page 748) pointed out:

"The large mass of offences in our country are investigated only by the subordinate police officials. The high sense of firmness and justice which might actuate the superior personnel does not permeate the lower ranks. To make a confession made to a subordinate police official admissible in evidence would therefore be fraught with dangerous consequences."

Hence, there appears to be no harm if the confessions made before senior police officers are made admissible. At present, a confession, even if made before the Director General of Police, is not admissible in evidence. This legal distrust and bias against the police is bound to lower their morale.

Role of media

From the point of view of the police, the media plays a negative role. Newspapers constantly sensationalise and glorify crime. They pass their value-judgments on the basis of one-sided evidence and create a strong public opinion against the police. They give advance information regarding the plans of the police and thus help the criminals. Movies and television generally present a comical picture of the police.

Prakash Singh, a former director general of UP police expressed his grave concern over the emergence of a "Press mafia" who was on the pay roll of anti-social elements and criminals and printing baseless stories at the instance of their masters. He asserted that freedom of Press should not be taken as a licence for mudslinging, character assassination and black-mailing. *(The Pioneer, June 8, 1993, page 3).*

It is no doubt true that the media is an important means of information and education . It is the duty of the media to expose police excesses and misdeeds. But the media should dalos project the other side of the coin also. The difficulties faced by honest police officials, their poor service conditions and arduous nature of their duties, the great risk to their own life and to that of their relatives and family members, are seldom highlighted by the media. Traffic policeman helping children, the old and infirm in crossing a road, or uniformed men rescuing the victims of flood or fire, or riots; these aspects are conveniently forgotten by the media.

Role of the police in creating the police-public gulf

The main charges against the police are like truths which are repeated so much that truth itself becomes the victim.

Corruption: The Knapp Commission which investigated police corruption in New York divided the corrupt police officials into two categories — 'the meat eaters' and 'the grass eaters'. The meat eaters are those who take large sums of money as

bribes and when their misdeeds are exposed they hit the headlines. The grass eaters are those who take small but regular pay offs from petty shop keepers, hawkers, gamblers, prostituters, motorists etc. Their corruption generally goes unnoticed.

But it is the grass eaters who are largely responsible for tarnishing the police image in the eyes of the public. People feel that a crooked policeman is a rule rather than an exception. In India too bribery is considered a necessary evil. But it should be not be forgotten that a corrupt police depends upon a corrupt community. Police corruption is reflective of the general political and social situation.

Brutality: Police brutality is the biggest stumbling block in bridging the gulf between the police and the public. it is a common knowledge that the police indulges in violence for extorting confession to discover conspiracies, by way of revenge or in a situation of tension. In the Bihar blinding case (Khatri vs. State of Bihar (1981) I.S.C.C. 623) Justice PN Bhagwati's remarks are indeed eye-openers.

"Petitioners complain that they have been deprived of their eyesight by the police while they were in police custody after their arrest in connection with certain criminal cases... they (police) have behaved in a most lawless manner and defied not only the constitutional safeguards but also perpetrated what may aptly be described as a crime against the very essence of humanity."

Condemning police brutality Justice K Jaya Chandra Reddy of the Supreme Court in Bhagwan Singh Vs. State of Punjab (1992) 3 S.C.C. 249 (a case of death due to torture in police custody) observed as follows:

"Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law... If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure... It is more heinous than a game-keeper becoming a poacher."

In Saheli, a women's resources centre, vs. Commissioner of Police, Delhi, A.I.R. 1990 S.C. 513, the Supreme Court held that the state is liable for the tortuous acts of its employees and awarded Rs. 75,000 as compensation to be paid to the mother of the victim, a nine-year old child who had died because of police torture.

In Nilabati Bahera vs. State of Orissa (1993) 2 S.C.C. 746, the Supreme Court observed: "A custodial death is one of the worst crimes in a civilised society governed by the rule of law."

Article 9(5) of the International Covenant on Civil and Political Rights (of which India is also a party) provides: "Anyone who has been the victim of unlawful arrest of detention shall have an enforceable right to compensation."

Police perjury: It is well known that in order to secure the conviction of the accused, the police sometimes indulge in manufacturing and fabricated false evidence and producing 'tottered' witnesses before the courts. Expressing his grave concern over the above mentioned malpractice, Justice Krishna Iyer in Prem Chand (Paniwala) Vs. Union of India (1981) I.S.C.C. 639 observed:

"Who will police the police? The petitioner made a living as a 'paniwala' or vendor of soft drinks near Delite Cinema, Connaught Place, New Delhi. He used to park his soft drinks cart on the roadside due to the indulgence of the police. The petitioner thrived but he became a prey and pawn in the hands of the police. He was persuaded to be their perpetual stooge and 'stock witness' because he had to keep the police in good humour and obliged them with tailored testimony in around 3,000 cases because the alternative was police wrath.... we were flabbergasted at this bizarre confession...."

"For sure, the consternation of the community at this flood of perjury will shake its faith in the veracity of police investigation and the validity of judicial verdict... We condemn, in the strongest terms, the systematic pollution of the judicial process and the consequent threat to human rights of innocent persons."

Police partiality: People also suspect that the police are partial and they go slow against white collar criminals, politicians and rich and powerful members of the society. They feel that the police, instead of being respectors of the law are applying one law for the rich and powerful and another for the poor and the weak. More, the police, sometimes, take sides while controlling disorders, for instance, in communal disturbances.

Complaints against the police have to be filed with the police

People feel aggrieved that there is no system of independent inquiries by outside authorities. The police, on the other hand, feel that they are the most competent to the drop rotten apples in their ranks. At present, complaints against the police have to be filed with the police. It goes without saying that it is very difficult to beard a lion in his den and unless one has the nerve and resources to file such complaints, police excesses go unnoticed and unchecked. Further, it is not easy to collect evidence against the erring policemen particularly when crimes are committed in police custody.

In State of U.P. Vs. Ram Sagar Yadav A.I.R. 1985 S.C. 416, the victim made a complaint against a policeman for demanding bribe. The victim was arrested and beaten to death at the police station. Justice Chandrachud, the then Chief Justice of the Supreme Court observed:

"Police officers alone and none else can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood they often prefer to remain silent in such situations, and when they choose to speak they put their own gloss upon facts and pervert the truth. The result is that a person on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station is left without any evidence to prove who the offenders are."

The need for reforms

A high police morale accrues from good relations with the public. The following suggestions might help.

There is an urgent need for in-service training program for attitudinal changes in the police. They should be trained to avoid the colonial attitude of being 'skull-cracking force' and instead adopt the 'social-service attitude' warranted under the present day conditions of free India.

People's participation in 'preventive policing' should be encouraged. Citizens' coordination committees at the state, district and police station levels should be formed. This will boost up the morale of the police and facilitate the prevention and detection of the crime.

More laws should provide for people's participation in the process of mutual protection and reclamation, reformation and punishment of the wrong doers. The Immoral Traffic (Prevention) Act 1956 is a good experiment in this direction. It provides for a non-official advisory body consisting of not more than five leading social workers of that area to advice the Special Police Officer on questions of general importance regarding the working or this Act. Similarly the Juvenile Justice Act 1986 provides for assistance by social workers.

A provision can be made for independent civilian investigation of complaints in matters where misunderstanding between the police and the public is rife. There should be proper insulation of the police against. undue political interference.

The media should play a positive role and give adequate coverage to the difficulties of the police force and also to the cases where honest and upright police officials are sought to be victimised by vindictive politicians. The press should try to mobilise public support in favour of such officials. The police should also give relevant information to the media, so that reports are not based on rumours.

The police deals directly with crucial fundamental rights and liberties of ordinary citizens. It must take care not to violate these essential right. But what should also be remembered, that fundamentally, the police is part of a society. And if a society sinks, can the police remain far behind?

The Pioneer, Delhi
September 21, 1993

The misuse of TADA in Bombay

By *AMNESTY INTERNATIONAL*

In the 1980s, against the background of a series of bombings in Delhi, the Indian government rushed through parliament a special law "to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities...". The Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA) allows for dangerously long police remands in custody, detention without charge or trial for six months and makes bail hard to obtain (only if a detainee satisfies a magistrate that he is innocent of the offence alleged). Trial *in camera* by a special court is mandatory, the identity of witnesses can be kept secret and the normal rules of evidence have been changed in favour of the prosecution; there is a change in the burden of proof in some cases and statements made to the police, not normally admissible in Indian courts, can be used as evidence in trials held under TADA provisions.

The Bombay press has reported that after the Bombay bombings in March 1993, and which to date have led to the arrest of over 150 people under TADA, the Act has been misused to detain people for whom it was never intended: suspected ordinary criminals. The Times of India, 9 August 1993, for example, reported that prior to 15 July 1993, 121 people described as "gangsters" had been booked under TADA. The report gave the example of four young men accused of gang raping a housewife in Chembur being detained in July. The same article quoted the then Bombay Police Commissioner as saying that he had personally scrutinised every application made by the city police to detain people under TADA.

Amnesty International's delegates spoke to the former Police Commissioner and he confirmed that he had indeed authorised the detention under TADA of suspects in the gang rape case. He explained that he considered it to be a test case. In his view it was the only way to secure the custody in prison of people against whom there was substantive evidence that they had committed serious criminal offenses. He said that police experience was that even in cases of such a serious nature as gang rape, the courts would normally grant bail, that as a result no witnesses would dare to come forward, and that the police would therefore be unable to secure a conviction. He therefore authorised TADA to be applied. He agreed, however, that it would be far better to ensure that the bail system was not abused by lawyers and accused persons with political connection as was said to be the case with some criminal serious crimes had been committed. The Hindustan Times, 15 January 1994, carried a report by a former senior police official, similarly observing: "The police say that they are compelled to use wrong methods and repressive laws like TADA because there is no such thing as judicial appraisal or punishment in the land".

However understandable the pressures that lead the police to act in this illegal way, the answers to law enforcement problems must lie in overhauling the criminal justice system to make it more effective. There can be no justification for misuse of the law, especially a law like TADA which — as the Human Rights Committee examining India's obligations under the International Covenant on Civil and Political Rights found[21] — falls far short of international standards. Its provisions for prolonged police detention without charge or trial encourage police abuse and torture to extract confessions, and provisions for trials in camera under changed rules of evidence which shift the burden of proof onto the defendant can never be accepted as open, fair and as meeting international standards.

Amnesty International was told that 189 people were awaiting trial under TADA for their alleged involvement in the Bombay bombings, but that 44 of them, including the alleged ringleaders and planners, were not in custody[22]. The case against the 145 men is being heard by a Special Court established under TADA, which is to sit in a courtroom set up in Bombay's Central Prison in Arthur Road. Some defence lawyers have maintained before the Bombay High Court that this is too small to fit in all the accused, their lawyers, public prosecutors, policemen and journalists.

The bombings resulted in appalling loss of life. However, Amnesty International is concerned that the accused should all receive a fair trial, in accordance with international standards. Whether they will do so is far from certain. Lawyers appear to have been denied access to their clients for prolonged periods after their arrest when statements to be used in evidence were recorded. They are said, for example, to have confessed to having gone to Islamabad or a camp in Maharashtra for training, to importing explosives and to transporting the bombs or placing them. Many defendants are said subsequently to have retracted confessions allegedly extracted under torture. Such statements made to the police cannot normally be used in evidence (Section 26, Evidence Act). However, Section 15 of TADA makes them admissible. Consequently, the court will admit unreliable evidence which, in many cases, allegedly consists of confessions extracted under torture or ill-treatment as described above.

Further, Amnesty International spoke to several relatives who said that some of the defendants had been unable to pay for a lawyer and none had been provided by the state. Relatives also alleged that a number of the accused had been subjected to grave threats by the police not to contact lawyers. One was said to have been told: "If you contact a lawyer or complain about your treatment, we will take your relatives in custody, or we will arrange a confrontation with one of your relatives and they will be killed". On 7 May 1993, Justice J.N. Patel, of the Designated Court sitting under TADA, ordered the medical examination of Shaikh Aziz Ahmed, son of Mohamed, after he had told the judge "that he was hit by a belt in the night and has been warned not to disclose it to the Court otherwise he will be shot and that he should also say that he does not want to engage any Advocate"[23].

International standards require that all evidence which is established to have been made as a result of torture shall not be invoked as evidence in any proceeding.

They also require that accused persons have prompt, adequate, and regular access to legal counsel of their choice, and that, if they have no lawyer, they are entitled to have legal counsel assigned to them "in all cases where the interests of justice so require" [24]. These provisions should certainly apply to the men now on trial for their alleged involvement in the March 1993 bombings.

Notes

[21] See: India: Examination of the second periodic report by the Human Rights Committee, Amnesty International. March 1993 (AI Index ASA 20/05/93) Pages 10-12.

[22] According to The Indian Express, 12 March 1994, there were 189 accused, 45 of them absconding 121 were custody and 23 were out on bail.

[23] Letter No. 17222 of 1993 from the Registrar, City Sessions Court, Gr. Bombay, to the Sr. Inspector of Police, Worli Police Station, Bombay, informing the latter of the order passed on 7 May 1993 by the Judge, Designated Court, Gr. Bombay.

[24] See: Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Articles 17 and 18 of the UN Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment.

Amnesty International

INDIA
Memorandum to the Government of India
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UNITED KINGDOM

An issue of humanism

IN his article on human rights and Clinton's hyprocrisy. P N Benjamin (Forum, DH, Jan) has focused on the violation of human rights by the Americans both inside and outside the country. While arguing against the American right for critising human rights abuses in India specially in Kashmir, he attacks India's upper class, the cream of the nation, the privileged, the elite who are involved in India bashing on the question of human rights.

Ever since the Indian offensive began in Kashimir in the middle of 1990, the Institute of Kashmir Studies in Srinagar, an automomous, non-political institute has estimated that over 20,000 people of various age groups have fallen to the bullets of the Indian military and para-military forces. While getting rid of them, the official version of the government has been to describe these as militants, suspected militants, terrorists or subversives. The practice of labeling every victim of the bullets as militant or terrorist continues with stereotyped regularity both in Kashmir and Punjab. The other method of shifting the blame from the armed forces is to describe them as retaliatory killings as having occurred in crossfiring. Even the execution of the militants in lockups and custody is termed as crossfiring or encounter deaths.

The role of the elite should be neither to appease or oppose the state but to be a voice of the voiceless specially of those victimised and oppressed by state terrorism. It is no American parameter but a concern of every intellectual based on humanism, says AMBROSE PINTO SJ

Besides the 20,000 who have fallen to the bullets there are at least another 20,000 persons according to the report of the Institute of Kashmir Studies, persons mostly in their early 20s languishing in various torture centres and prisons within and outside the state. When Jagmohan was the Governor, he had amended the Jammu Kashmir Public Safety Act to facilitate the transfer of detenus to places outside the state. In consequence of this amendment, hundreds of Kashmiri detenus are rotting in various prisons in the country. The Governor even wound up the 'designated court' set up in Srinagar under the TADA and directed that there would be one single court with headquarters at Jammu. This in reality has meant denial of justice. The friends and relatives of the detenus have to travel a long way incurring huge expenses on travel, board and lodging to see their captive relations. For many of the kith and kin of the detenus such travel has not been possible given their poverty and hardships.

Is there a doubt in Benjamin's mind that the army and para-military forces have played havoc with the lives of the Kashmiri people? The powers under the 'Disturbed Areas Act' have been used to kill or arrest anybody, anywhere and at anytime. The Government of India may give us a view of the restlessness in Kashmir as a problem of law and order, one created by a handful of disgruntled youngmen at the behest of Pakistan. Even if there is an external hand, can we condone state terrorism on many innocent lives? How could one remain silent when day after day our country men become victims of bullets?

America no doubt has no business to tell us about our violation of human rights. But don't we have responsibility to correct our own faults? India's elite described by Benjamin who make a criticism of human right records do not suffer from inferiority complex as he makes out to be. Their criticism is not meant either to react or respond to American criticism of our human right records. the purpose behind the elites' criticism of the state is to help the state to introspect with a view to make it more human. A democratic state under no condition has a right to get rid of human life through bullets. It can only have a recourse to ballots. Democracy can thrive only through union of minds and hearts of the citizens and not through force and terrorism.

The human right activists surely are not ashamed of India. While being proud of the country, they do not want the state to be brutal. It is not a question of splitting the country into Kashmir, Punjab, Assam,Gorkaland, Jharakhand or Tamil Nadu. Who are the elites to advocate such a division? The right of self-determination must always rest with the people. Not with the state or the elites of the country. That is the essence of democracy. Any form of

government that is imposed from above is far from being a democracy.

Our parameters for human rights violations need not be set by American thought or thinking. We need to set our own parameters. The armed forces in Kashmir are not the only violators of human rights in India. Indian police is well known for their atrocities.

The lock-up deaths in police custody are so common that we have had recent incidents of them even in Bangalore. Why speak only of the armed forces and the police? A state sponsored bundh did play havoc with innocent lives during the 1992 Cauvery riots in Karnataka. Thousands of poor workers who had made Bangalore their home for decades had to flee the city for no fault of theirs.

The communal violence after Ayodhya inflicted heavy casualties on a minority community. The state atrocities continue in Punjab, Assam and North East. Does he expect the intellectual community not to raise its voice to such violent human rights abuse? To be silent in the midst of such state terror is to support the might of the state on innocent groups and individuals.

That raises the question of the role of the elite in human rights. There are elites that support the state whatever be the shortcomings of the state. Being on the side of establishment they gain or profit from such position. There are others among them who oppose the state on ideological grounds. The role of the elite should be neither to appease or oppose the state but to be a voice of the voiceless specially of those victimised and oppressed by state terrorism. It is no American parameter but a concern of every intellectual based on humanism.

Cowardice asks the questions "Is it safe?"

Expediency asks the question "Is it politic?"

Vanity asks the question "Is it popular?"

But the conscience asks the question "Is it right?"

And there are situations of gross human right abuses in the country on which committed intellectuals, however they may be termed must take stand that is neither safe, nor politic nor popular but they must take it because it is right. It is no belittling the country but an attempt to humanise the state and to make our country more of a democracy. Criticism, dialogue and continuous interaction between various sections of the polity within the country is the only method of improving human right records in India and keeping India united.

Deccan Herald, Bangalore

February 7, 1994

TADA
The Crucial Sections

Section 3: Punishment for terrorist acts

(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 firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of property or disruption of any supplies of services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the government or any other person to do or a abstain from doing any act, 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 or imprisonment for life and shall also be liable to fine;

(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 imprisonment for the life and shall also be liable to fine.

(3) Whoever conspires or attempts to commit, or advocates, abets, advices 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 be not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any terrorist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Section 4: Punishment for disruptive activities

(1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, 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 five years but which may extend to imprisonment for 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 other 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 supports 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 purpose of this sub-section, —

(a) "cession" includes the admission of 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 person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

(4) Whoever harbours or conceals, or attempts to harbour or conceal, any disruptionist shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine.

Section 5: Possession of certain unauthorised arms, etc. in specified areas.

Where any person is in possession of any arms and ammunition specified in columns 2 and 3 of Category I or Category III (a) of Sch 1 to the Arms Rules, 1962, or bombs, dynamite or other explosive substances unauthorisedly in a notified area, he shall, not withstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which shall not be less than five years, but which may extend to imprisonment for life and shall also be liable to fine.

PUDR

ENDING THE LATHI RAJ

Corrective action to remove flaws in Police Act

By S. SUBRAMANIAN

INCIDENTS like three UP policemen belabouring a detenu in full public view at the apex court, tattooing the foreheads of hapless women by Punjab police and custodial death in Kerala, have outraged the nation. Citizens are wondering how the police force can be humanised. These incidents not only sully the fair name of Indian democracy but also provide grist to the anti-India propaganda mills abroad. Policing is not a matter of law but of conscience. In a civilised society the way the police organisation functions truly reflects the values and norms of that society. The present dehumanised condition of the police service is the cumulative result of various factors for which society should also share the blame. Mere punishment meted out to a few erring policemen and public relations gimmicks of the police top brass cannot solve this problem. We need serious introspection. Long term solutions may thus be possible.

The police are not a bunch of sadists or psychopaths with a propensity to inflicting violence on people. Thousands of policemen have given their lives to safeguard the unity and integrity of this country and have rendered valuable and yeoman service during natural calamities and in controlling organised crime. The basic causes which make the policeman act in an inhuman way are: negative role assigned to the police under the Police Act of 1861; police-politician nexus and establishment protection role of police which negatives public accountability; total collapse of criminal justice system which enables the people to clamour for ready and rough justice to the criminals and indirectly accords sanction to police violence; prevalence of organisational sub-culture which fosters and nurtures the credo that the ends justify the means; and absence of a self-regulating mechanism within the police organisation.

The Police Act of 1861, under which the police function, assigns a negative and restrictive role to the police. It enjoins the police to be a servant of the Government and not the servant of law. The police have been extensively used in India by politicians to maintain the hegemony of the ruling party and to smother opposition. This establishment protection role has created a nexus between the police and the politician and has created a quid-pro-quo system in which the politician has forfeited his right of supervision over the police in return for favours done.

Secondly, law and order do not go hand in hand and often work at cross purposes. While performing order maintenance functions, the police often give a go-by to legal requirements. Since disorder threatens the ruling political elite, the police are given wide latitude to restore order and illegalities like illegal detentions, fake encounters and eliminations are overlooked, connived at and also encouraged in the process.

Thirdly, police violence often takes place while they are performing the role of crime fighters. The public expects the police to prevent, detect and punish crimes. The criminal justice system in the country has collapsed. There is a huge backlog of criminal cases pending in courts. Actively aided and encouraged by the bar, courts grant adjournments on flimsy grounds and cases drag on for years. Adopting the slogan "Bail is a Right and Jail is an Exception". Well-known hardened criminals are enlarged on bail by the courts to resume their criminal career without let or hindrance. In this atmosphere, the police are encouraged to adopt third-degree methods to ensure quick detection of cases. The people are only interested in restoration of their property and status quo ante regarding their rights and possessions and they do not care for violation of human rights in the process. The general public has lost faith in the criminal justice system and in case of distress it seeks the help of local mafia or musclemen to solve its problems. Often, policemen substitute for these, when cases are of a complicated nature.

The performance appraisal system in the police organisation is based on quantity and not quality of service rendered. this makes the policeman a prey to the tyrant-statistics. The policeman is under almost inhuman personal and hierarchical pressure to achieve the results target-wise. Since personal advancement and survival depends on quantitative results, none bothers about the means adopted. This has given rise to organisational sub-culture which propagates and nurtures the credo that the ends justify the means.

The police, as a profession, does not have a self-regulating mechanism to provide peer pressure to enable it to follow legal and ethical means. This cannot be provided by the administrative hierarchy but only by fellow policemen acting as a group. There is need for a public service, non-governmental organisation of retired policemen preferably to be known, as for instance, "Police Initiative" to act as a watchdog and provide counselling and guidance to police rank and file.

Remedies are not far to seek. The public should take an active interest in the role, functioning and organisation of the police and public opinion should be mobilised to ensure that the society has humane and "civil" police. The police should be made real public servants and cease to be government servants. The suggestion of the National Police Commission to have a State Security Commission to oversee the working of the police should be implemented. A standing permanent Joint Parliamentary Committee and House Committees in State legislatures should continuously monitor the activities of the police. The Apex and High Courts should take active interest in the functioning of courts and take appropriate steps to restore their credibility and ensure quick disposal of criminal cases. The performance evaluation system of police organisations should be made quality-oriented and not statistics-oriented. Finally, a massive personal contact program and propaganda compaign to instill the value of ethics, legality and human rights in the minds of police rank and file should be undertaken by retired policemen.

Let us not waste time stressing the obvious and denigrating the police but start positive action to usher in a humane and civil police service in India and end the Lathi Raj.

(The Writer is a former Director-General of CRPF and NSG.)

Indian Express, Bombay

February 8, 1994

Where has habeas corpus gone?

BY PREM SHANKAR JHA

A SOMEWHAT confused report in a highly reputed daily has drawn attention to a quiet extension of the arbitrary powers of the executive that will take India a good deal closer to becoming an oriental despotism.

The report said the Union Home Ministry intended to introduce legislation in the next budget session of Parliament to enable the State Governments to confiscate the property of those detained under the Terrorist and Disruptive Activities Act. Inquiries reveal that clauses already exist in the oft amended Act that permit the State to confiscate the property of those convicted of terrorist and disruptive activities and to seize (but not confiscate) the property of those who have been detained under it. But so far the State Governments have not been doing this. The Centre now intends to ask the States to enforce these clauses.

In contrast to the Maintenance of Internal Security Act, which was passed just before the Emergency, the TADA Act is narrowly focussed to permit the arrest and trial of those indulging in terrorist activities, and those who are by any means inciting or supporting demands that would bring into question India's sovereignty and territorial integrity.

Designated courts

It makes the grant of bail to those, who have been accused of offences under the Act, extremely difficult and completely prohibits anticipatory bail. However, in an attempt to speed up the disposal of such cases, it requires the State Governments to set up designated courts to try such of fences, and to give these trials precedence over all other work before the judiciary. it also funnels appeals directly to the Supreme Court, in order to minimise the time taken by them.

Had the Home Ministry only insisted on the confiscation of the property of those who have been convicted under TADA Act. This would have had very little additional deterrent effect. This is because not even one in 500 of the nearly 30,000 persons arrested under the TADA Act in the last three years has been convicted so far. Figures are hard to come by, but in Delhi, out of the 838 persons arrested under the TADA Act in 1989, 1990, 1991 only one has been convicted! (Three were acquitted, two discharged, one died and two were transferred to Punjab. The rest continue to languish in jail).

The real purpose of the Government, therefore, is to start seizing the property of those whom it has detained under the TADA Act but who remain in theory at least innocent until they are proved guilty. This is the latest of a long line enactments that expend the arbitrary powers of the executive over the very lives, property and fundamental freedoms of the people, that stretches back to the Preventive Detention Act passed by the British. Although the Congress was vociferous in condemning the PD Act when it was fighting for Independence, it not only retained the Act, but passed more such draconian laws, notably the MISA (Maintenance of Internal Security Act) and the COFEPOSA (Conservation of Foreign Exchange Act) in 1974.

Specific grounds

Under various deliberately ill-defined pretexts all these Acts restrict the fundamental right of habeas corpus — the right to go free until such time as one is convicted of an offence that merits incarceration. Each extension has been justified initially on specific grounds. The MISA was justified on specific ground that it was necessary to curb the activities of smugglers who were wrecking the economy. The TADA Act was aimed specifically at terrorists and their helpers in Punjab. But in practice each has given a carte blanche to the police and the administration to ride roughshod over our fundamental freedoms. About 114,000 people were detained under the MISA during the Emergency simply because they belonged to an Opposition party, or resisted the extinction of democracy. Of the 30,000 who have already been detained under the TADA Act, only a fraction are alleged to be militants. The highest number of detenus, 9,569 in all, is not in Punjab, or Kashmir, or even Assam, but in that relatively law-abiding State, Gujarat. This is because the police have detained even prostitutes under the TADA Act! Nor is Gujarat alone in having misused the TADA Act. Of the 838 detenus in Delhi, only 144 have been picked up on grounds of aiding or being militants.

The TADA Act is being misused even in States affected by insurgency. Some indirect evidence of this can be had from the fact that in Punjab, where only a small fraction of the population is affected by militancy, there were 6,206 detenus at the end of 1991, while in Assam, where an even smaller fraction is disaffected, there were 7,130.

By contrast, in Kashmir, where the bulk of the Muslim population could plausibly be described as disruptionist, there were only 688 TADA Act detenus. It is hardly surprising that Kashmir is also the one State where the Government is making a determined attempt to investigate every allegation of excess committed by the security forces, and has prosecuted or is in the process of trying, a large number of alleged offenders against whom a prima facie case has been established.

Indiscriminate use

Over the years, the indiscriminate use of Preventive Detention, MISA and the TADA Act, has wrought havoc on the administration of justice. They have, at one stroke, lifted the obligation on the police to do the necessary detection work to frame the precise charges, and prove these in a court of law before putting some one in jail. Over the past two decades, this competence has atrophied to the point where, as the Delhi High Court's judgment and the Supreme Court's revision of it, in the case against Win Chadda of Bofors fame show, even elite bodies like the CBI are no longer able to frame a coherent FIR that will stand in a court of law.

The frustration that this is causing in the police and the administration is making them look for newer ways of inflicting deterrent punishment on some people to discourage the others. One that has come more and more frequently into use is trial by the public through the press: in short a lynching. Whether it is a Sanjay Singh, a V.N. Kirloskar, a Rajinder Sethia, a Kirti Ambani to V. Krishnamurthy, the police destroy them by releasing juicy allegations to the press while they are under interrogation, long before they frame a charge., and therefore when, technically the case is not sub judice. After this is done it no longer matters whether a sufficiently plausible case is made that can even be admitted for trial. Those whom the police or their political masters deem guilty have been punished.

The most frightening feature of the erosion of fundamental rights is that it is happening with the tacit approval of the public. When the MISA was promulgated many intellectuals welcomed it because they were fed up with the Government's failure to curb the activities of the smugglers. The TADA Act received endorsement because it seemed that the militants could kill, rape or rob anyone at any time with impunity, and something draconian was needed to halt the slide into chaos.

And lynching via the press is similarly approved of because it seems the only way that a hard pressed salaried and working class can hit back at those fat cats who had bent all the rules to suit their pockets. An Ambani, a Krishnamurthi or a Kirloskar are therefore automatically guilty and deserve everything they get.

At the bottom of this hells-brew is a lack of accountability. No one will deny, seriously, that the same conduct cannot be expected of a Government facing an insurgency as of a Government in a peaceful state. But in both cases the officials concerned can be expected not do more than what they are expectedtoregardlessoftheirpersonalpredilections.

The Indian administration has never been particularly accountable to the public India has no administrative law as the French have and the right of a citizen to prosecute an agent of the Government under the penal code is circumscribed by the need to get the Government's permission first — another fertile area of high - handedness. But two decades of allowing in effect the executive to be the prosecutor, the jury and the judge has completely eroded whatever accountability there was, so much so that arbitrary and high handed behaving with the ordinary people.

Instances

Thus, when Bhanwari Bai was gang-raped by the Gujjars at Bhateri village of Jaipur district, the police dragged their feet and refused to send her for a medical examination for 48 hours, in an attempt to invalidate the medical evidence.

When Sawinder Singh, a Delhi Businessman, fell to his death from a fifth floor window, the officials concerned of the Enforcement Directorate claimed that he had leapt to his death. It took a suo motu intervention by the Supreme Court to prove otherwise.

When the daughter of Satyarani Chadha was burnt to death allegedly by her husband and family, the police initially refused to register a first information report against her husband.

When the Provincial Armed Constabulary was called out in the communal riots in Meerut, in Moradabad, in Aligarh, and elsewhere, it ended by turning its guns on the minority community. The Qatra Malliana massacre was one result, and the attempt by the police to cover it up another. These are a few of the literally hundreds of such cases that are occurring all over the country. And no one knows where the slide into tyranny will stop.

The Telegraph, Calcutta
October 29, 1992

TADA: Deviations and Violations

Issue	TADA	Cr.P.C.	COI	UDHR	ICCPR
Role and Power of High Courts	9(2)(3), 19, 20(6)	374, 482, 483	214, 226, 227, 235, 236, Part V	-	
Abrogation of powers of state governments	7	-	List II; Schedule VII	-	-
Role of executive Magistrates	20(3)(4)	164, 167	50	9, 10	9(4)
Reversing the burden of proof	21	-	21	11	14(2)
Identity of witness	16(2)	-	21	-	14(3)(e)
Bail and remand provisions	20(4)(7)(8)	436, 437, 438	21, 22, 50	9	-
In camera trial	16(1)	327	14, 19, 21	10	14(1)
Freedom of Expression	4(1)(3)	-	19	19	1(1), 19
Admissibility of confessions made before police	15, 20(3)	164 and 26 of IEA	20(3), 50	9, 11	14(3)(g)

Note : In case of TADA, Cr. P.C. and IEA the numbers refer to sections of the acts. In case of others they refer to articles.

TADA	:	Terrorist and Disruptive Activities (Prevention) Act, 1987
Cr.P.C.	:	Criminal Procedure Code
COI	:	Constitution of India
UDHR	:	Universal Declaration of Human Rights
ICCPR	:	International Covenant on Civil and Political Rights
IEA	:	Indian Evidence Act

PUDR

COURTS CRACK THE WHIP

Of late, the police has been subjected to particularly harsh tongue-lashing by the Supreme Court. RITU SARIN on its implications.

Over the past few months, the much-maligned Indian police has come in for a further thrashing at the hands of the honourable Justices of the apex court. And it is none other than the mild-mannered Chief Justice MN Vekatachaliah who has brought in a fresh wave of social activism to the court, and who has been leading the tirade against the police.

As more and more litigants have been approaching the Supreme Court with complaints of police abuse, torture or plain inefficiency, an exasperated Chief Justice has not minced words in reprimanding the police. In one case, where the Etah police failed to take action against a man for selling off and prostituting his wife, the officers were told that their inquiry was, "like a piece of paper which we will throw into the dustbin."

In yet another case, where a young couple from Punjab was harassed by the police after an intercaste marriage, the Delhi Police commissioner was berated for not having traced them in time. The court obviously thought even the higher echelons of the force could be painted with the same brush. "If this is the way of Police commissioner has been working, we will prevent him from working..." the Supreme Court judges had thundered.

Things came to a head when on January 25, three Uttar Pradesh constables unhesitatingly thrashed a detenu within the Supreme Court premises, close to the august chamber of the Chief Justice himself. In an unprecedented contempt action, the Chief Justice sentenced the policemen to a month-long jail term and imposed a stiff fine. Livid that such brazen action could have been committed so close to his own chamber, the Chief Justice had wondered: "If this could happen in the sanctity of the apex court, and that too in the public gaze, then who else safe elsewhere?"

With an increasing global awareness on human rights issues and the fact that unrestrained actions of our police, army and para-military forces have firmly identified India as an area of "major violation", the courts realise they have much to worry about.

Moreover, there is a feeling in the judiciary that with tardiness and corruption rampant in the wings of the executive and the administration, the courts naturally have to play a role. In this sense, the Supreme Court's scathing attack on the police should be seen as an extension of the "administrative activism" which it has been displaying while delivering landmark judgments in areas like education, environment and pollution control.

Says Kapil Sibal, senior advocate and former Additional Solicitor General: "The Supreme Court was not envisaged to deal with such matters of police repression. But the Court has now adopted a moral posture in the hope that there will be a filtering down process and that their observations would lead to some introspection in the executive." He adds that while incidents of police atrocities have always been taking place, now the courts seem to have become more responsive to these aberrations. Previously the Supreme Court had considered admitting cases like the above since they were out of its jurisdiction. But now, it was showing a greater tendency to hear complaint seven though they may not fall under its original jurisdiction.

- **The only misfortune of the citizens of this country is that they have to live under police protection.. unless the courts discipline the police force, the poor man will be shivering before the forces of law and order.**
- **The Government is also not adequately aware of the police going berserk. and it is a manifestation of the habit that they think they can get away with everything ... this zulum and tamasha must end.**
- **If the states do not take action, we then propose to take drastic measures. This includes removal, suspension and transfer of officials who fail to discharge their duty... many heads will roll.**
- **The police is holding the public to ransom. The whole world is looking at you; The human rights organisations are looking at you. Why don't you traverse the allegations?**

— recent observations made by the Supreme Court judges on cases of police excesses.

Other legal experts point out that most of the cases in which the police incurred the Supreme Court's wrath have either been *habeas corpus* petitions or cases of contempt. Or, like the shocking episode where four women, suspected to be pickpockets, had the words *jebkatri* tattooed on their foreheads by the Punjab police. These were the instances where the Supreme Court could not remain a mute witness to such medieval brutality.

Besides, while the Supreme Court and even lower courts have been hauling the police over coals for their inefficiency or connivance in crime even earlier, the past few months have especially seen a rush of cases of police atrocities coming up before the Supreme Court. And a majority of them have been cases involving poor, often illiterate people who were denied justice in lower courts.

Take the case of Vir Singh, father of a 13 year old girl who had been abducted from the Terai region in UP. When the case was heard in the Supreme Court, the Chief Justice realised the complicity of the police in the abduction and discovered that the police had gone to the extent of "interrogating" the seven-year-old sister of the missing girl in the *Thana*. After questioning, the girl had to walk 35 kms alone to reach home. After hearing the bizarre story, the Chief Justice had remarked, " I do not think we can trust anyone. I find the whole system collapsing."

Senior Supreme Court lawyer Rajiv Dhavan says that when the actions committed by the police were so heinous, the apex court was perfectly justified in passing strictures against the police. He in fact feels the honourable Justices had been letting the police off rather lightly. Explains Dhavan: "What we are seeing is the tip of the ice berg. The Supreme Court is only emphasis-

ing that illegal, intimidatory, extortionist investigations are an independent violation of fundamental rights which require the immediate intervention of the courts."

Rajinder Sachar, former Chief Justice of the Delhi High court and President of the People's Union of Civil Liberties (PUCL), opines that pulling up the police for their ineptitude or complicity, the Supreme Court was reacting to the failures of the executive itself. The courts in India were groaning under the over burden of litigation and, therefore, were aware of the fact that they had very limited time to remedy such aberrations.

"Today the state is the coercive power and its instrument of coercion is the police. So if the Supreme Court does not step in, the people will lose faith in the system and be forced to take the law into their own hands," he warns.

Some legal experts hold the view that in the long run, continuous berating and humiliation of the policemen would have adverse effects. They feel that through his recent utterances and threats of taking punitive action against errant policemen, the Chief Justice was giving vent to his anger and this could only lead to a greater confrontation between the judiciary and the police.

As one former Supreme Court Chief Justice observes, "there is no point of a judge huffing and puffing in this manner. The courts can take harsh action against policemen but use sweet words. It is not fair to publically admonish a policeman from that high chair, because you know he cannot hit back at you."

Countering the argument that by passing severe strictures, the animus between the two sides would increase, others point out that on most occasions, the bark of the Supreme Court had been more publicised than its bite. While the remarks made by the Justices might seem to be acerbic, the final judgments were written with reserve.

Says Dhavan, "The police is not being humiliated by the adjectives used by the judges but by the truth exposed by them. It is the truth which is humiliating. The Chief Justice has been expressing astonishment, disbelief and a legitimate judicious anger which stays within the limits of propriety."

Justice Sachar agrees with this view. He recalls that while in the Delhi High Court, he himself had imprisoned policemen for harassing common citizens. In his opinion "these exchanges are a response to the circumstances of the case. Judges are trained not to be carried away with their expressions but give a final decision which will have a sobering effect on society."

He adds that the fact that the Supreme Court was displaying its iron fist to the police has given a lot of confidence to the

WHAT THE FORMER CHIEF JUSTICES SAY

K N Singh
Chairman, Law Commission

The trend of the Supreme Court taking up such matters started about ten years ago, with the Bhagalpur blinding and the Asiad Workers case. Now the Supreme Court even has a separate Public Interest Litigation (PIL) cell, where action can be taken on the basis of a letter or post-card.

Previously too, judges have been reprimanding the police. A judgment delivered by Justice AN Mullah of the Allahabad High Court compared the police to a gang of dacoits. As judge of the apex court, I had myself sent some senior police officials to jail.

I do not find the language used by the Supreme Court objectionable. The deliberations depend on the merit of each case and the judges do not use strong language unless the situation demands it.

Policemen are so used to dealing with criminals and other anti-social elements that they treat each case and every person with suspicion. Besides, they are not familiar with the modern techniques of communication. The ordinary constabulary is ill-educated and ill-equipped and this leads to aberrations.

I consider the beating up of a suspect outside the chamber of the Chief Justice a most heinous, grotesque act. Such a thing should not have happened even outside a magistrate's court. I fully endorse the action taken by the Chief Justice.

By taking such an action, the Supreme Court is coming to the rescue of poor, ignorant people and is also implementing the Directive Principles of state policy as contained in article 39 of the Constitution."

Ranganath Misra
Chairman
National Human Rights Commission

The police in India seem to be totally out of gear. They are continuing with the same culture which they had imbibed before Independence. People are living under the constant fear of police repression and there is a surge of references to the courts against the police.

The Supreme Court is justified to act in this manner because it is not an outside agency. Besides, the judges are not showing any bias or lack of discretion while making their observations.

Power is in the hands of the police in a very raw state. The controls on them have been reduced. There is a visible lack of discipline and professionalism. Unless you develop a new culture, it will be very difficult to check the police. Some day the situation will go out of hand. As a country, we have to be all the more careful about police excesses, because we have already become the focus of international attention and disregard.

In India, the situation is all the more complicated because politicians put the police to all sort of illegitimate use. When the Supreme Court makes these critical observations, they think the court is acting as a superior. But that is not so. The Supreme Court is an in-built social audit system. A judge of the Supreme Court does not think he is a demi-God."

R S Pathak

In India, the police works on a rough-and-ready system of a colonial age. But what is important is that such excesses are not committed only here but all over the world. Even in England, there have been cases of a suspect languishing in prison for seven years before the Supreme Court could review the case.

Our courts are becoming increasingly aware of the human rights philosophy as are courts elsewhere in the world. And the language used by the international community of judges against police excesses is as strong as that of our Supreme Court. Judges react with indignation or anger not because it is a fashion but because the situation demands it.

Basically, judges are restrained and correct in their language. The present Chief Justice is also a very restrained man who will keep the scales off justice absolutely even.

I do not think there will be any sort of confrontation between the police and the courts. The police and the courts are both departments of the state and the courts are the ultimate arbiters of justice."

Y V Chandrachud

It is not as if any court, least of all the Supreme Court, is coming down on the police, or going out of its way to punish policemen. The actions committed by the police call for stringent action.

Policemen are the custodians of law and order in letter and spirit. If the same complaint was made against an ordinary citizen, the courts will not deal with the matter with such severity. A policemen misbehaving is like a judge misbehaving and, therefore, such behaviour cannot be tolerated.

Just as judges must not resist but relish close scrutiny, similarly the police forces should not resist scrutiny of their functioning by the courts.

The objective of the police is to protect the rights of the people. But if they themselves invade them, torture people and as in one recent case, rape someone who had come to them with a complaint, then the courts have to take a very stern view.

It is not that in giving these strictures or punishment to erring policemen, the courts are evolving a new trend in jurisprudence. The courts were always giving such punishment. It is just that the incidents of police atrocities are increasing and so are the strictures.

masses. Just like the lawyer couple from Punjab, more and more people were reacting to the response of the judiciary and knocking at the Supreme Court's doors. "The people" he feels, "are beginning to realise that the police is accountable not only to the politician but ordinary litigants too. They feel they can get justice without the use of money or power."

The general expectation is that like the trend of social activism ushered in by former Chief Justice PN Bhagwati has stayed on, and just as the public interest litigation has remained a powerful instrument of judicial reform; efforts of the Supreme Court to curb police excesses would be sustained beyond the tenure of the present of the present Chief Justice ending in October. There seems to be no going back on the tough stand adopted by the apex court.

The Pioneer, Delhi
February 20, 1994

TADA in Lok Sabha

Discussion

Year	Duration	Participation (No. of MPs)
1985	6 Hours	34
1987	4 hours	18
1989	1 hour 30 mts.	9
1991	3 hours 30 mts.	17
1993	1 hour 10 mts.	8

Note: 1. In 1985, 1987 and 1989 the discussion spread over two days.
2. On all occasions it was passed by voice vote. Except in 1991, when the division was pressed. Only 250 out of the 542 members were present. Of them 134 voted in favour and 116 against the Bill.
3. The number of MPs mentioned here excludes the ministers presenting or defending the Bill. **Source:** Lok Sabha Debates; Relevant Volumes.

PUDR

The ugly face of the Police

The image of the police gets sullied not by the insulting or rowdy behaviour of a young man against a police officer but by the action of the police officers in wanting to pay the offender in the same coin, writes VED MARWAH

THE recent Moti Bagh incident in Delhi in which the Union Food Secretary and his two sons were abused and roughed up, allegedly by the Station House Officers and some other police officers of the Delhi Police, is yet one more incident that has been highlighted by the media projecting an ugly face of the police. The incident has rightly caused concern among the general public as well as the higher echelons of the police and administration. The question which is being asked is, if this can happen to such a senior officer of the Government of India, what chances does an ordinary citizen have to escape police high-handedness?

V. N. Singh, the acting Commissioner of the Delhi Police, and his officers did well in acting promptly. One hopes that the investigation of the case at a sufficiently senior level will be completed in a reasonable time frame, say a month, and the public taken into confidence about result of the investigation, so that there is no scope for any unseemly controversy.

Without anticipating the result of the investigation, a couple of important points regarding the shameful incident must be mentioned: Whatever may have been the provocation, the police officers were not expected to get rattled so easily and lose all self-control. Let us not forget that the police is the only instrument of the state,which is legally empowered to use force in enforcing law to protect the life and property of the people and to maintain order. This power is subject to some restraint.

Firstly, there is the legal restraint;the police officer at no time is permitted to act illegally. He is not above the law. The law of the land applies to him as much as to any one else.

And secondly, the use of force has to be minimum depending upon the circumstances of each case. But in no case this use of force either be vindictive or punitive.

There is absolutely no justification for the use of force to settle personal scores. They are, of course, perfectly within their right to exercise the right of private defence like any other citizen, but they cannot resort to use of force to teach somebody a lesson. It would be a sad day for the country if the police officers were to take the law into their own hands and start punishing the people. That would be making a mockery of the concept of the rule of law.

One hears a lot about the image of the police. These so-called well-wishers of the police ask how dare anyone insult or rough up a police officer?How will the police be able to function, if people are allowed to insult or rough up a police officer and get away with it. People who ask these questions, however, conveniently forget that the law provides a remedy for taking action in such cases. The best course would have been to take action under the relevant section of the law, and not settle scores at the spot, and worse by roughing up the offender at the police post.

"All government departments have their quota of black sheep. The important point, however, is the action taken by the department itself in such cases."

THE image of the police gets sullied not by the insulting or rowdy behaviour of a young man against a police officer, but by the action of the police officers in wanting to pay the offender in the same coin. If the police officer are held guilty in the inquiry, then exemplary punishment should be given to them, not only to restore confidence of the people in the Delhi Police, but also to give a clear warning to the force in general that such behaviour will not be tolerated, so that these incidents do not recur.

The view that such action would ad versely affect the morale of the police i totally misconceived. On the contrary, i any effort is made to whitewash the misde meanour then surely it will adversely affec the morale . Police morale is not affecte when the guilty are punished.

The sad fact is that such pseudo-expert on police morale are not in very small num ber. During the course of my long years i the police I had to face this dilemma man a time. There was this robbery case i Delhi, not long ago, in which during inves tigation an officer of the Delhi Police wa found to have robbed a couple of thei valuables, while he was on night patro duty. When the matter came to my notice I had no hesitation in ordering a charg sheet against the police officer, placing hin under arrest, and suspending him.

A well meaning colleague, after he hear about my order came to see me. He strongl pleaded with me that instead of filing chargesheet in the court the matter shoul be handled internally in a low key, as court case will generate a lot of bad public ity, which would be harmful to the polic image. He also talked about its effect on th police morale. After listening patiently t his reasoning, I did something which wa to become a very important case in the Hig court. I had to make the point that no leni ency would be shown, if the accused was police officer. On the contrary, a law-en forcing officer cannot be allowed to be come a law-breaker.

To make the point I ordered the detentio of the accused police officer under Nationa Security Act for one year, as a crimina police officer is far worse than an ordinary criminal. My colleague could not believe his ears and left in a shocked state. My order was challenged in the high court which later upheld it.

THE criminality in the police or for that matter in any other government department is not a new thing. All government departments have their quota of black sheep. The important point, however, is the actio taken by the department itself in such cases.

In this respect the record of the police department is much better than all other departments of the government, where hardly any action is being taken against the corrupt and criminal officers.

The instruments of the government are in a state of decline and not enough is being done to reverse this process. The developing nexus between some politicians, civil servants, police officers and criminals is playing havoc with the quality of governance in our country. The daring with which they threaten and even blackmail a citizen, including serving government servants, for extortion is frightening. They are not afraid any more of the consequences of their criminal acts. With the judicial processes getting more complicated and dilatory, an ordinary citizen has little hope of getting his fair share of the public services. Many have already given up the fight!

The concept of public accountability of the government departments is becoming a piece of fiction. The internal control mechanisms to enforce accountability are fast disappearing among other factors, by the blatant interference in posting transfers and promotions of officers at various levels by the politicians and others. The stories which one hears, some of them could be exaggerated, are too shocking even to mention. The senior officers are increasingly becoming puppets in the hands of external wheeler dealers. Their authority has been subverted. How can these officers be expected to enforce even the principle of accountability in the departmental hierarchy,what to talk of public accountability. The supervisory officers spend most of the time in fighting the battle to preserve their own chairs. Sitting in their air-conditioned offices they are blissfully oblivious of what is happening outside.

It is time that instead of using incidents like the one at Moti bagh to settle personal or inter-departmental rivalries, a serious attempt is made to strengthen both the internal and external control mechanisms to enforce the principle of public accountability. Media and public attention is focused on this incident, because a senior officer and his family are involved, but if we are to prevent the recurrence of such incidents then a more comprehensive view will have to be taken of the present state of affairs.

Hindustan Times, Delhi
April 24, 1994

REACH AND RANGE OF TADA

Andhra Pradesh
A. P. Civil Liberties Committee (APCLC)
Comunist Party of India (Marxist-Leninist): CPI(M-L) various groups
Congress(I)
Indian Federation of Trade Unions (IFTU)
Radical Students Union (RSU)
Radical Youth League (RYL)
Revolutionary Writers Association (RWA)
Telegu Desam Party (TDP)

Arunachal Pradesh
United Liberation Movement of Arunachal

Assam
All Assam Students Union (AASU)
All Bodo Students Union (ABSU)
All Cachar-Karimganj Students Union
All Guwahati Students Union
Autonomous State Demand Council (ASDC)
Bodo Security Force
Bodoland Legislature Party (BLP)
Manabiya Adhikar Sangram Samiti (MASS)
United Liberation Front of Assam (ULFA)

Bihar
Indian People's Front (IPF)
Mazdoor Kisan Sangram Samiti (MKSS)
C.P.I.(M-L); different groups

Delhi
Akali Dal; different groups
Delhi Gurdwara Prabandhak Committee (DGPC)
Khalistani groups
Kashmir groups

Gujarat
Bharatiya Janata Party (BJP)
Vimal Mills Union
Vishwa Hindu Parishad (VHP)

Haryana
Bharatiya Kisan Union (BKU)
Congress(I)
Janata Dal (JD)
Samajwadi Janata Party (SJP)

Jammu and Kashmir
Allah Tigers
Hizbul Mujahideen
J.K. National Liberation Front (JKNLF)
Ladakh Action Committee
Ladakh Buddhist Association
National Conference (NC)
People's Conference

Karnataka
C.P.I.(M-L)
Karnataka Civil Liberties Committee (KCLC)
Progressive Youth Centre (PYC)
Liberation Tigers of Tamil Eelam (LTTE)

Madhya Pradesh
Adivasi Kisan Mazdoor Sangh (AKMS)
C.P.I.(M-L)

Maharashtra
A.K.M.S.
C.P.I.(M-L)
Congress(I)
Khalistani Commando Force
Shiv Sena

Manipur
National Socialist Council of Nagaland (NSCN)
People's Liberation Army (PLA)

Punjab
Akali Dal; different groups
All India Sikh Students Federation (AISSF)
Babbar Khalsa
B.K.U.
Khalistani Armed Force
Khalistani Commando Force
Khalistani Liberation Force
Khalistani Liberation Organisation
Punjab Human Rights Organisation (PHRO)
Punjab Panchayat Secretariat Union.
Shiromani Gurudwara Prabandhak Committee

Tamil Nadu
L.T.T.E.
Dravidar Kazhagam (DK)
Dravida Munetra Kazhagam (DMK)
Tamil National Retrival Force
Pattali Thozit Sangam
Radical Youth League (RYL)
People's Art and Liberty Association (PALA)
Muslim Youth Organisation

Tripura
All Tripura Tribal Force
CPI(M)

Uttar Pradesh
Congress(I)
Khalistani groups
Samajwadi Janata Party (SJP)

West Bengal
Gorkha National Liberation Front (GNLF)

Note: Members of the above mentioned parties, groups and organisations were arrested, at one time or the other under TADA. Distinction however should be made between those which faced the Act as a group and others where individual members were charged. Some of the cases were either withdrawn or dismissed by the courts. The list is not exhaustive.

PUDR

THE MIDNIGHT KNOCK

In the Indian context, the Rowlatt Act of 1919 marks the beginning of legislation emasculating the rights of citizens by sanctioning preventive detention. Since then, several such acts have been incorporated in the statute books; ostensibly, to prevent terrorism and maintain national security. While examining the circumstances in which the notorious Rowlatt Act bill passed bill passed into law, A G NOORANI argues that the Act was not as repressive as subsequent legislation enacted since independence

Like individuals, nations have memories. The Boston Tea Party, the Stamp Act, and the protests against arbitrary searches are taught to every American school child. Safeguards against repression are woven into the U S Constitution.

It is a singular misfortune of the Indian citizen that alone, among the democracies, the framers of the Constitution thought it fit to legitimise imprisonment without trail in the Constitution itself. Of what avail the text books that recall the agitation against the Rowlatt Act to Indian school children when the Indian polity is blighted by legislation far more repressive than the Rowlatt Act. all the more reason why memories of the agitation against the law deserve to be strengthened today. The Jallianwala Bagh tragedy was enacted in the wake of that agitation. And Gandhi and Jinnah spoke in the same voice.

"If these measures are passed, you will create in this country from one and to another a discontent and agitation the like of which you have not witnessed," Jinnah warned the Imperial Legislative Council on February 6, 1919. The home member of the government of India had just introduced two bills in the Council of which one was later dropped but the other became law — the Anarchical and Revolutionary Crimes Act, 1919. It become popularly known as the Rowlatt Act because it was based on the recommendations of the Sedition Committee headed by Sydney Rowlatt, a judge of the High Court of England. At the core of the Act lay the provisions for imprisonment without trial or, in the lingo of free India, preventive detention.

As a report prepared by the government of India's Intelligence Bureau wryly noted, Jinnah's prophecy was speedily to be fulfilled'. It was fulfilled, however, in a manner which he could never have imagined. For, the agitation against the Rowlatt Act marked the ascendancy of Gandhi. Indian politics were never to be the same again. Judith Brown correctly recalls in her classic *Gandhi's Rise to* Power, that the occasion for 'his transition' from peripheral to committed participation in politics, from local to continental leadership, was satyagraha against the Rowlatt bills', the first major use of the weapon in India.

Never before the had the moderates spoken with such unanimity as they did now. Yet, the British ignored their protests. The moderates knew not what to do. In this atmosphere of frustration, Gandhi propounded satyagraha as "the only way, it seems to me, to stop terrorism". The people craved for action. Gandhi set their minds aflame. A staunch critic of Gandhi, Khaparde, wrote in his diary, 'I went to the Secretariat in a hired tonga and was very much surprised (sic) to see that the driver who was an illiterate Mohammedan spoke of the Rowlatt bills and objected to them very strongly.' Can one imagine similar resentment against preventive detention now, nearly a quarter century later, in free India?

Gandhi convened a meeting of members of the Home rule League at the Sabarmati Ashram in Ahmedabad. They set up a Sat agraha Sabha and issued a manifesto February 24, 1919. It contained a pled which reads thus: "Being conscientious of the opinion that the bills known as t Indian Criminal Law (Amendment) Bill I 1 of 1919 and the Criminal Law (Em gency Powers) Bill No 2 of 1919 are unju subversive of the principle of liberty a justice and destructive of the elementa rights of individuals on which the safety the community as a whole and the St itself is based, we solemnly affirm that the event of these bills becoming law a until they are withdrawn, we shall refu civilly to obey those laws and such otl laws as committee to be hereafter a pointed may think fit and we further affi that in this struggle we will faithfully f low the truth and refrain from violence life, person or property."

The agitation mounted, fed as it was the debates in the Imperial Legislati Council and by the speeches and writin of Gandhi and other leaders. For the fi and last time ever, he attended the procee of the Council. The bill was passed by votes for and 22 against. All the Indian save Sir Sankaran Nair, a member of t government, voted against it. On March 2 1919, the Viceroy granted his assent to t Rowlatt Act and it became the law of t land. The other bill which sought to amen the criminal law was dropped.

That very day protest meetings we held in various parts of the countr The Mulji Jetha Cloth Market Bombay observed a hartal and so did son others. A week later, Jinnah sent a stingi letter to the Viceroy, resigning from t Council. "A government that passes sanctions such a law in times of peac forfeits its claim to be called civilised go ernment," he wrote. Madan Moha Malaviya and Mazharlal Haq also sent i their resignations.

Gandhi hit upon another idea — "It wa as if in a dream... we should call upon th country to observe a general hartal." It wa observed on April 6, 1919. And it wa during this movement that a week later o the fateful day, April 13, some 20,000 In dians assembled at the Jallainwala Bagh i amritsar, despite the repression that ha been let loose in the city. they were there t protest against the Black Act. The thousan and more who were killed by Genera Dyer's callous firing died as matters to principle. Free India mourns the martyr once in a while. It never heeds the princip for which they died — no man shall be pu in prison except on conviction for an of fense after a fair trial.

The Congress perfected yet another instrument against repression — the citizens' inquiry. It set up a committee initially to arrange for an inquiry into the happenings in Punjab, take legal proceedings and collect funds. But when Motilal Nehru and Malaviya went to the Punjab to collect evidence, they were denounced by the regime as biased. The government of India set up an official committee of inquiry but the Congress went ahead with its own people. The author of the Congress report was none other than Gandhi who "made the first draft of the report in a quiet little room." He had, however, no hesitation in giving evidence before the Hunter Committee.

Why was there such a strong feeling or outrage against preventive detention? it was simply because it was not the norm of the legal system then. True, there was the infamous Regulation III of 1818 but it was rarely invoked.

In the first decade of the century, terrorism reared its head, especially in Bengal. The emergency legislation enacted during the First World War, the Defence of India Act, 1915, came in handy to curb 'revolutionary crime'. But what when the war ended? Significantly, the law of 1818 was not regarded as the answer. Preventive detention was regarded as a perversion of the law.

Instead, on December 10, 1917, the governor-general set up a committee headed by Rowlatt and comprising among its members two high court judges in India to investigate 'the nature and extent of the criminal conspiracies connected with the revolutionary movement in India' and suggest legislation 'to deal effectively with them'.

The Rowlatt Report is now a rare book, a collector's prize. It contains a fascinating account of 'revolutionary conspiracies' in various provinces, 'the German Plots', the Turkish Connection, the Gadr Party and much else. The State had to give evidence about the 'foreign hand'. The committee came up with predictable legal difficulties—paucity of police, want of evidence, intimidation of witnesses, length of trial, etc. In short, 'the forces of law and order working through the ordinary channels were beaten'. Worse, 'we do not expect very much from punitive measures'. Conviction would be hard to secure. It, therefore, suggested 'emergency measures (punitive)' including special courts and shorter procedures.

It suggested also 'emergency measures (preventive)'. These included recourse to preventive detention, but subject to an important condition which would astonish people today — 'If in the supreme interests of the community, the liberty of individuals is taken away, an asylum must be provided of a different order from a jail.' (page 206, para 189). In other words, the detenu was not to be put in prison at all — as he is now. If the State must detain persons without trial, 'an asylum must be provided of a different order from a jail'. The report stressed this aspect at two other places besides. 'Confine in non-penal custody,' it emphasized. Under the Penal Code, imprisonment is a form of punishment.

The report was submitted on April 15, 1918. The secretary of state for India, the liberal Edwin Montagu thoroughly disapproved of it. He wrote to the Viceroy that he found it 'most repugnant'. Referring to the governors of Madras and Punjab by name, respectively, he wrote, 'I hate to give the Pentlands of this world or the O' Duryers, the chance of locking up a man without trial.'

Under the National Security Act, 1980, this very power can be exercised even by a district magistrate or a commissioner of police on the basis of his pure subjective opinion. Calcutta, the then capital of India, ignored Rowlatt's recommendation of 'non-penal custody' and went on to enact the Rowlatt Act with tragic consequences.

But, as compared to the National Security Act, the Terrorist Affected Areas (Special Courts) Act, 1984 and the Terrorist and Disruptive Activities (Prevention) Act, 1985, the Rowlatt Act of 1919 was liberal measure. Let us tabulate the contrast.

The Rowlatt Act was mainly in three parts. They concerned, first, trial by special courts for specified offences; secondly, power to direct execution of bond for good behaviour, internment within a city, reporting at police station, and abstention from specified acts; and, lastly, powers of arrest without warrants, preventive detention and search of places. Here are the contrasts:

(1) The provincial government which desired to set up special courts to try an accused had first 'to prefer a written communication to the Chief Justice (of the high court) against such person'. It had to set out 'all particulars within the knowledge of the prosecution of what is intended to be proved against the accused'. The Chief Justice could ask for 'further particulars' and direct a copy of the information to be served on the accused. *This initial judicial check (section 4) is altogether absent in both the Act of 1984 and 1985.*

(2) The Rowlatt Act enjoined the Chief Justice to nominate three high court judges for the trial. The Acts of 1984 and 1985 are content with a sessions judge appointed by the government with the concurrence of the Chief Justice of the high court. (sections 5 and 7 respectively).

(3) All the three Acts of 1919, 1984 and 1985, did away with the comittal proceedings before a magistrate as a preliminary to the trial. But the Rowlatt Act of 1919 required the prosecutor to open the case setting out the evidence which he expected to adduce. The procedure had to be as in a warrant case (section 8). The Acts of 1984 and 1985 permit trial by summary procedure (section 10 and 12, respectively) where an offence is punishable for a term not exceeding three years or with fine or both.

(4) The Acts of 1984 and 1985 enjoin secret trials except if the public prosecutor deigns to opt otherwise. The court has no discretion (sections 12 and 13). The Act of 1919 left the normal discretion of the court untouched and empowered it only to prohibit or restrict publication of reports of the proceedings (section 11).

(5) Under the Rowlatt Act, a sentence of death could be imposed only if all the three high court judges so ordered (section 16). The Acts of 1984 and 1985 enable a sessions judge to impose a death sentence.

(6) These recent Acts permit an appeal directly to the Supreme Court on the facts and the law (Sections 14 and 16), bypassing the High Court. The Act of 1919 barred appeals, but from the verdict of the three high court judges. Hence, the popular slogan, "No vakil, no dalil (argument), no appeal."

(7) The Act of 1919 empowered (section 20) the Chief Justice to make rules regarding bail etc. The Acts of 1984 and 1985 forbid bail as a rule (sections 15 and 17 (5)) unless 'the court is satisfied that there are reasonable grounds for believing that he (the accused) is not guilty' and is not 'likely to commit any offence while on bail'.

(8) To come to the second part of the Rowlatt Act, it empowered the local Government to order a person to execute a bond for good behaviour; notify his residence; confine him to a particular area; report himself to a police station at intervals; and to 'abstain himself from any act so specified (in the order) which, in the opinion of the local government, is calculated to disturb the public peace' etc. But these orders

could be made only after 'a judicial officer who is qualified for appointment to a high court' had given his opinion. No such safeguards exist in the Act of 1985 (section 5).

(9) It is extremely important to note that even in regard to preventive detention, the Rowlatt Act provided an *initial judicial curb* which was never provided in any of the detention laws of free India. The Act directed the government *first* to 'place all the materials in its possession relating to his (the detenu's) case before a *judicial* officer who is qualified for appointment to a high court and to take his opinion thereon' (section 34).

(10) After detention, it provided the same remedies as those available to persons against whom the directives had been issued; namely, a concise statement of the grounds together with 'all material facts and circumstances' be given to the person, plus a right to appear before a three-member body and offer his defence. Two of them had to be former district or sessions judges, and the third, a private individual.

The preventive detention laws made since 1947 added little to these bare safeguards.

Jinnah's speech in the Council was a masterly exposure of the inadequacy of the very safeguards which detenues enjoy in India today. None of them, needless to add, is available to the detenu in Pakistan. He said, "How can you expect this investigating authority (read, advisory court), sitting in *camera*, behind the back of the person accused, to come to any really useful conclusion," especially since no legal representation is allowed to him when he is heard?

Time there was in India when in 1870, in the Great Wahabi case in the Calcutta High Court, TC Anstey declaimed that if the law permitted imprisonment without trial, "There will be no other remedy left to any man of spirit, whatever be his race, creed or colour, except immediate departure, or open rebellion." A small, forgotten road in Bombay still bears Anstey's name in standing recognition of his services to India's freedom. But his brave and noble words are forgotten.

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Recent Changes

In May 1993 when TADA was extended for two more years, government introduced some amendments. Major new draconian provision relates to property. Previously forfeiture of property of the accused or convicted alone was permissible. Now it has been made so wide and loose that it can possibly be a source of extra income for the police [S. 2(1)(gg); S. 3(6); and S. 7 A]. Now whoever holds property 'derived or obtained from commission of any terrorist act or has been acquired through the terrorist funds' is also made liable and such property can also be seized. Some members in Lok Sabha strongly protested pointing out the enormous scope it gives to police to lay their hands on anybody's property. The Home Minister justified it on the grounds that the new provision is require to tackle havala transactions. Another amendment relates to persons who may not themselves be involved in any terrorist acts but are members of 'a terrorist gang or a terrorist organisation'. They shall be punishable for a term which 'shall not be less than five years and may extend to imprisonment for life' [S. 3(5)]. Another amendment permits confessions made to police even by co-accused or co-conspirators admissible as evidence [S. 15(1)].

Along with these amendments some changes in the right direction have also been initiated. The burden of proof is on the accused in some cases even if the accusation is made in the confessions of a co-accused before a police officer or before any other person. These sections relating to confessions by co-accused are now deleted [the deleted sections are [S. 21(1)(c) and (d)]. Previously, in camera trials were mandatory unless otherwise desired by the public prosecutor. Now they can be held only if the 'Designated Court so desires' [S. 16(1)]. Previously the maximum remand period during the course of investigation was one year. Now it is reduced to 180 days [S. 20(4)(b)]. Thereafter remand can be extended only when prosecution gives specific reasons for the delay in investigation. Our report give a number of instances where police never did any worthwhile investigation for the whole year and simply dropped the case once their grace period was over. Reducing the period to six months will be of some relief to thousands detained in false cases. They can at least hope to get bail now, after six months. The powers of local policemen to book TADA cases is also taken away. Now it is mandatory to have the prior approval of the District Superintendent of Police [S, 20 A (1)]. And the prosecution in all such cases can be launched only after the 'previous sanction of the Inspector General of Police, or ... the Commissioner of police' [S. 20 A (2)]. These changes, marginal in nature, have all been introduced on earlier occasions in the Parliament by opposition members, but were rejected by the government. Only now it was obliged to introduce these amendments.

PUDR

Women and TADA

Parliament figures about TADA detenues are gender neutral. They do not reveal the number of women arrested under the Act. The National Crimes Records Bureau puts the number merely at 18 out of a total of 2508 charged in 1990. This however would be a gross underestimate if we take the figures for all the eight years. From our surveys it appears to us that there are a substantial number of women TADA detenues in Punjab and Andhra Pradesh. In Punjab, during the peak of militant activities police arrested under TADA wives, sisters and mothers of wanted militants to blackmail them into surrender. In Andhra Pradesh, along with the adjoining forest areas, the Naxalite groups have substantial number of women as whole timers. Women, reportedly, form a high proportion even in guerrilla squads. Hence here also there are considerable number of women TADA detenues. The oldest women TADA detenue however is from Gujarat. Sixty nine year old Zoharabibi was arrested in Baroda. She complained to higher authorities about the way police killed her husband in communal disturbances. The local police, in an act of vengeance, charged her under TADA. She spent 11 months in jail before she was released on bail.

PUDR

The Misleading Numbers

	State/Union Territory	Number of Detentions under TADA as on			
		10-9-89	31-3-90	31-3-91	15-2-93
1.	Andhra Pradesh	2143	2389	2931	5614
2.	Arunachal Pradesh	24	29	38	88
3.	Assam	1270	4593	7098	10779
4.	Bihar	NF	15	32	190
5.	Chandigarh	400	NG	NG	NG
6.	Delhi	160	NG	NG	NG
7.	Goa	NF	NF	NF	NG
8.	Gujarat	4491	6449	1256	14094
9.	Haryana	275	366	525	916
10.	Himachal Pradesh	19	21	41	55
11.	Jammu & Kashmir	669	983	1213	1826
12.	Karnataka	10	NG	NG	26
13.	Madhya Pradesh	110	NG	NG	103
14.	Maharashtra	379	426	593	1125
15.	Manipur	654	766	857	1003
16.	Meghalaya	NG	NG	NG	NG
17.	Mizoram	NG	NG	NG	NG
18.	Nagaland	NG	NG	NG	NG
19.	Punjab	7969	9552	12180	14457
20.	Rajasthan	59	90	300	422
21.	Tamil Nadu	NF	NF	NF	147
22.	Tripura	NF	NF	NF	47
23.	Uttar Pradesh	130	157	230	851
24.	West Bengal	524	525	525	525
	GRAND TOTAL	**19286**	**26261**	**39089**	**52268**

Note :
NF — The Act was not in force at that point of time
NG — The Act is in force but the figures were not given

In the last column the Home Minister stated that the data relates to 15 February 1993. However in a small note added to the table it was stated that the figures relate to September or December 1992 in most cases.

Source:
Parliament Replies; relevant volumes.

Note on The Unreliability of This Table

The Table given here is based on the data provided by the Union Home Ministry. At best they indicate the *minimum number* of detentions under the Act. The following factors have to be kept in mind while making use of the data.

1. It appears that in the case of some states the figures are cumulative while in case of others they are not. (Compare for instance the data on Assam and Gujarat given by their respective governments quoted in Chapter 5 and the date given here). If the horizontal columns are not comparable, then vertical totals make no sense.

2. Data sent by the state governments to the Centre is not always complete. Nor does it refer to the same time period always. Some governments simply did not send the data.

3. Data does not make it clear whether the figures include people who were released on bail, or against whom cases are withdrawn, or against whom cases are not being pursued. It is also not clear whether those acquitted subsequently are being counted as those arrested under the Act initially. More complicated is the case of those who are convicted on other counts but are acquitted of TADA charges. In other words we do not know whether these figures are gross or net.

4. FIR often refer to a category 'and others'. Leave alone names, even their number is not specified. Usually police later make fresh arrests in the same case and include them as part of the unspecified 'others'. It is not clear whether these subsequent additions are being included or not while computing the total.

5. There is only one other source, more reliable, to gather the data; National Crime Records Bureau. The Bureau however began monitoring TADA only since 1990. Its last published volume is also of the same year.

To have a clear and complete picture of the implementation of the Act one should have the total number of arrests actually made at one time or other, whatever be the aftermath of arrest. These figures would certainly be more than what this table gives here. The lack of reliable information is perhaps part of the schema of misinformation compaign on TADA.

PUDR

Police Raj

Invoking a draconian law

By UDAY MAHURKAR

GUJRAT has more terrorists than any state other than Punjab. True or false? If the number of those arrested under the Terrorist and Disruptive Activities (Prevention) Act (TADA) is an indication, the answer to that is 'true'. As many as 2,230 people — including about 50 children and women — have been arrested under this act as the state Government has ruthlessly used it over the last six months to crush dissent.

Union Home Minister Buta Singh's assurance that TADA won't be misused has amounted to little in Gujarat. The Amarsinh Chaudhary Government has used it to crush farmers' stirs, labour movements and protests over price hike.

Unchecked, the police have resorted to it in the most mindless fashion. Recently, a scuffle following an inter-caste marriage led to arrests under TADA in Junagadh district, and again, it was invoked after a family dispute in Sanand, Ahmedabad district. It is an exhibition of police arrogance that TADA was also used to arrest a blind man, a mentally retarded man, and two others above 75 years old, during a farmers' agitation.

Chaudhary's reputation has suffered owing to the constant attack on this score by opposition parties and civil groups. Jan Morcha leader V.P. Singh voiced his concern over the act's misuse during his visit to the state last fortnight.

It is the BJP, however, that is deriving the maximum mileage. Its cadres are establishing contact with victims of police repression and have arranged village meetings. Fumed party leader Atal Behari Vajpayee at a recently-held convention in Ahmedabad to focus attention on TADA's misuse: "The Centre's assurances about the judicious use of TADA have been honoured only in the breach." The convention included leaders of diverse groups like the Vishwa Hindu Parishad and the Jamait-e-Islami.

M.M.Singh, a no-nonsense IPS officer reputed for his integrity, has been held responsible by many for the act's misuse. Following his appointment as Gujarat's director-general of police (DGP) in May, Singh has been directing his officers to use it. "But," says an officer, "even instances of communal violence, other laws, if implemented seriously, are adequate to deal with the situation."

The anti-terrorist act was first used widely against BJP workers in Baroda after last summer's communal violence. Then, it was the turn of agitating Bharatiya Kisan Sangh activists, 240 of whom were booked under TADA during their rasta roko agitation. Of them, 204 were from Junagadh district alone. The reason — a superintendent of police was injured in stone-throwing.

The Gujarat Government is under strong attack for freely using the anti-terrorist act to crush all manner of public protest

The act was also used to crush the trade union movement in Reliance Industries in Ahmedabad, and in the local unit of the Food Corporation of India. In Vadodara, students agitating against the milk price increase were booked. While violence accompanied these agitations, a senior lawyer asked: "Does that amount to terrorist activity or an act causing communal disharmony?"

Fortunately, the judiciary has acted as a major check on the police. Of the 2,230 persons charged under the act till the third week of October, the courts released 1,800 on bail—an indication of the extent of the act's misuse. What makes the act particularly draconian is that if bail is denied to a TADA accused, he has to apply directly to the Supreme Court. And hiring a Supreme Court lawyer, coupled with other formalities, can cost anything over Rs 6,000, a sum few can afford.

B.K. Shah, special judge, Rajkot, while releasing people charged under TADA for protesting against the transfer of the local municipal commissioner, S.Jagdishan (INDIA TODAY, October 31) noted: "If such indiscriminate use of TADA continues, the impression created among the masses that the state is heading towards a police raj cannot be said to be totally baseless." He said that if this carried on, "democracy will be in great danger." "He directed that a procedure be adopted by which the police obtain the opinion of the chief public prosecutor before resorting to TADA."

The protests seem to be finally paying off. It forced Union Minister of State for Home P.Chidambaram late last month to direct the state Government to use the act sparingly. In a meeting with Chaudhary, DGP Singh and Home Secretary N. Vittal in Gandhinagar, he apparently expressed the Centre's displeasure. As a sequel to this, the police are now reviewing these cases on an individual basis. A good number of them, particularly those involving non-communal incidents, are likely to be withdrawn.

While Chaudhary — who also holds the home portfolio-has reportedly been opposed to TADA's indiscriminate use, he has been unable to rein in Singh. It is widely believed that theirs is at best an uneasy relationship. If Chaudhary fails to assert himself, he will do so only at the risk of major political damage.

India Today, New Delhi

December 15, 1987

After eight years and four extensions

The Three Ifs

"When there is terrorist activity, if you are really serious about it, if it is properly implemented and if the police officers adopt a hundred percent correct attitude, I am sure this kind of legislation will give results."

— S.B. Chavan, Minister of Home Affairs, on the need for extending TADA; Rajya Sabha; 28 April 1993

— PUDR

Terror of the Law

Large scale misuse of TADA by the police

By UDAY MAHURKAR

"Who steals my purse, steals trash... But he that filches from me my good name, robs me of that which enriches not him and makes me poor indeed."

MANY a young man in Gujarat would ruefully agree with Shakespeare's words, for thousands of them have been unjustly accused of terrorist activities and their good names destroyed by the taint of being listed on police records. In the last year over 5,000 people were booked under Terrorist and Disruptive Activities (Prevention) Act (TADA). Amazingly, the figure is much higher than that for states blighted by insurgency and strife. In Punjab, TADA arrests for last year stood at 1,600 and in Jammu & Kashmir it was 2,000.

Social worker Juan Momin calls the figures a case of "the police making a mockery of the anti-terrorist laws." The reason for such a high number of alleged terrorists is fairly straightforward. Ever since the Chimanbhai Patel ministry decided to invoke TADA as a way of dealing with the state's depressingly frequent communal riots, the rights of many people have been trampled upon as the letter of the law has been followed assiduously and the spirit ignored.

B.S.Siayed, Isudas and Abdul Pathan, all in their 20s, have little in common beyond being residents of Ahmedabad. Siayad works as a college lecturer, Isudas ekes out a living by collecting paper and Pathan is employed as a lathe machine operator. Now all three of them have their names listed on police files for alleged terrorist activities.

None of them had any previous criminal record. Siayad , who lives in the Khanpur area of the city, was arrested by the police when he went out to bring his brother home following a stone-throwing incident between Hindus and Muslims. The Police charged him under TADA.

He wasn't the only one in Khanpur to feel the heavy hand of the police. Seventy other, men-vast majority of them Muslims - have been charged under this draconian law. Nooruddin Shaikh, for example, was detained on his way home from buying milk. Laments he: " I happened to be completely innocent. In some cases, youths might have indulged in throwing stones but does that make them terrorists? Isn't the law sufficient to deal with such cases, without TADA?."

The ordeal of the men picked up in Khanpur has been particularly traumatic. They were brutally beaten up by the police after being incarcerated. Even age was no protection. Fifteen-year-old Anwarkhan Pathan says the scars will remain forever: "We will never forget the time in jail. It still gives us nightmares." And they were some of the luckier ones for they were released on bail after 10 days by the courts.

Out of the 47 people charged under TADA in Ansarnagar- a predominantly Muslim locality- 24 are still languishing in prison. The charges against them include the use of "bombs and the spreading of terror". But investigations by INDIA TODAY reveal that what the police describe as bombs are, in fact, simple crackers- the kind sold during Diwali. They are fixed inside a small tin box and explode with a terribly loud noise. Muslims residents in Ansarnagar say they resorted to using these "bombs" to scare away their attackers during communal riots.

> **"We will never be able to forget the way we were brutally beaten up in jail by the police. It still gives us nightmares."**
> ANWARKHAN PATHAN
> a resident of Khanpur

Harpal Singh Jhala, a criminal lawyer who specialises in these cases, cannot hide his indignation. Says he: " What the police are doing in Gujarat is unconstitutional. Even worse, is that TADA is being invoked mostly against Muslims who are already the victims of communal violence." A Hindu himself, he says he comes across very few TADA cases which involve Hindus.

What about the police claim that the number of Muslims and Hindus booked under TADA in Ahmedabad is almost equal? Replies Jhala: "It's a classic case of the police juggling with the figures." Even if the police figures are accurate, the percentage of Muslims would still be disproportionately high because they constitute only 15 percent of Ahmedabad's population.

For social workers and lawyers helping the victims of TADA, the police strategy for containing communal violence is rather like using a sledgehammer to crack a nut. Significantly, when TADA was first approved by the state Assembly, one man at least was aware of its potential for abuse. Said the then Union minister of state for home, P. Chidambaram: "This law is very unusual and must be invoked rarely and only in very special circumstances to avoid abuse."

Ironically, it was the state Janata Dal led by Chimanbhai Patel which pledged to end the indiscriminate use of TADA during last year's election campaign. The promise was a response to the extensive use of the law under his predecessor, Amarsingh Chaudhury. But the moment Patel took office in March last year, his ministry had to confront the hydra headed monster of communal violence. The unimaginative reaction of his top bureaucrats was to claim that TADA was the only weapon that might tame the monster.

In their defence, the state police argue that law and order situation in the state fully warranted the use of TADA. They deny that it is being used indiscriminately and clinch their argument by pointing out that TADA cases are reviewed by a panel of high-ranking officials which usually drops charges against many of the accused.

But INDIA TODAY has learnt that out of the , 5,292 cases recorded last year, only 1,000 had been dropped by mid —February. State Director-General of Police, B.S.Nirula, is adamant: "TADA is the prime factor behind the peace currently prevailing in the state after some horrific riots."

The innocent victims of TADA beg to differ. Such as Banubibi Shermohammed Sirahi, who sells cattle grain on the streets of Ahmedabad. When police opened fire to disperse a mob in Ahmedabad's Jamalpur area during a communal flare-up, she was hit by a police bullet as she came out of her house to see what was happening. While recovering in hospital, the police announced that she had been charged under TADA. Some social workers believe that

when police accidentally fire on innocent bystanders, they tend to charge them under TADA. It's a pre-emptive move designed to justify the shooting retroactively and stop the person from launching a prosecution.

In Banubibi's case, there was such an outcry in the city about her arrest — she is 65 — that the administration plans to drop the charges. Banubibi, though remains traumatised. She and other victims of the police's arbitrary use of TADA refused to talk to INDIA TODAY for fear of police reprisals. It may be little consolation to her but a surge of anger against the use of TADA is building up. The leader of the Congress(I) in Gujarat, Raoof Valiullah, has lodged a strong protest with the chief minister.

From evidence available, there are two possibilities to explain the abundant use of TADA. Either the police are pursuing their own communal passions by cloaking them in the robes of riot-control. Or they genuinely believe that TADA is the best way to contain communal violence but fail to appreciate that the means must bear some relation to the end.

How will communal harmony be achieved if large swatches of the Muslim community are alienated? If the police and the state Government persist in the abuse of TADA whenever a riot breaks out, they will have only themselves to blame if the streets and havelis of the state turn into a breeding ground for new recruits to communalism.

India Today, New Delhi
March 15, 1991

Terrorist and Disruptive Activities Act

Time to look again

By TAVLEEN SINGH

EVERY time clouds appear on Rajiv Gandhi's political horizons someone or other asks the question: Will he declare an emergency? Both political analysts and Opposition leaders have tended to be so obsessed with the possibility of an emergency that they have ignored the fact that the real debate should be about emergency laws which operate even without a declaration of emergency.

On September 3, 1987 an amended and strengthened Terrorist and Disruptive Activities (Prevention) Act came into force unobtrusively and almost unnoticed. No voices were raised by Opposition MPs in Parliament; nor was there any discussion in the press. Yet the new law has important implications since it now applies to the whole country.

Under the law a policeman is fully within his rights to walk into your home and take you off to a cell in Tihar jail without giving you any reasons for your arrest other than that it was being made under what is now called the TD Act. There is no provision for anticipatory bail so the incarceration can be for an indefinite period and if there are serious suspicions that you have links with terrorists then you are literally guilty till proved innocent. Proving your innocence is a remote possibility since the Act provides for in camera trials in special courts in which even the identity of witnesses is kept secret.

Prepared to die

It can be argued that the law is extraordinarily stringent because in Punjab we have an extraordinary situation. Judges have been threatened and shot and even known terrorists can rarely be brought to trial because there are not many witnesses around who are prepared to die for giving evidence.

Nevertheless, the question that we must ask is whether the law has been effective at all and if it has not then on what grounds has it reappeared in reinforced form? Second, the mere enactment of such a law for one part of the country legitimizes its extension to other parts, if by nothing else then at the very least by getting the people accustomed to the conferment of such arbitrary powers on the executive.

The 44th amendment made it virtually impossible for a government to use disturbances - even armed rebellion - in one part of the country for imposing an emergency over the country as a whole. But there is no comparable restraint on the insidious extension of the Terrorist and Disruptive Activities Act by its successive adoption by one state after another, by states and union territories that are not facing problems even remotely comparable to those that are facing Punjab.

For the Act has implications that go well beyond Punjab. In Delhi, we have already seen a disturbing example of how it can be misused in the case of Shahid Siddiqui who edits an Urdu magazine. Siddiqui was arrested for publishing an interview with Jagjit Singh Chauhan, the self-styled president of "Khalistan". It is an offence that at least 50 other Indian Journalists have at some time or other been guilty of. Nevertheless, the Government chose to use Siddiqui as a test case.

Dangerous ideas

After his arrest he was taken to the local police station where he was interrogated by the Station House Officer. SHOs are not generally inclined to have a deep understanding of world affairs and so a question that Siddiqui asked, during the interview, about how "Khalistan" could come about without the help of a super power was interpreted by him as putting dangerous ideas into Chauhan's head.

Later, as the SHO had finished with him he was taken off to the Red Fort for further interrogation by the Intelligence Bureau which, since he is a Muslim, wanted to know things, like whether he had relatives in Pakistan and had he seen them. Interrogation over, he was flung into Tihar jail where he stayed for ten days before a bail application could be successfully moved.

According to Rakesh Luthra, one of Siddiqui's lawyers, "What is dangerous about the Act is that it seeks to break down the basic tenets of criminal procedure and the rules of evidence that exist to protect the accused. Also the definition of terrorism and disruptive activities is so vague as to be able to include almost anyone."

While journalists are perhaps especially vulnerable, anybody else could just as easily be brought into the net. The Act says, "Disruptive activity means any action taken whether by act or by speech or through any other media or in any action taken whether by act or by speech or through any other media or in any other 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 supports any claim, whether directly or indirectly, for the secession of any part of India or the secession of any part of India from the Union."

The disruption can be caused "by act or by speech or through any other media or in any other manner whatsoever". So within this all-embracing description could possibly even come reading a book about Kashmir in which Pakistan's claim is asserted or reading a book about the Sikh problem in which Khalistan is mentioned. Certainly Parkash Singh Badal, Ram Jethmalani and Amarinder Singh can go straight to jail indefinitely for sitting on a platform from which one speaker asserted that Khalistan was the only solution to the Punjab problem. Even ordinary political protest could be considered disruptive activity.

When governments all over the world face rebellions, insurgencies and other threats to their stability they invariably resort to emergency powers and nobody can argue that emergency laws can be done away with altogether. What has gone wrong with their practice in India is the fact that there has not been any system to review their implementation and effectiveness.

In the North-East, for instance, the Assam Disturbed Areas Act and the Armed Forces Special Powers Act have given special powers to the army and the para-military ever since the fifties. Yet never has a commission been set up to review the functioning of these emergency measures.

Vital Difference

Similarly emergency measures like COFFEPOSA and ESMA have been widely used for economic offenses and industrial disputes without anybody going into why the normal laws of the country cannot be used to tackle such problems.

Our current anti-terrorist law is almost an exact copy of similar laws used to control violence in Northern Ireland in the seventies but the vital difference is that the British government has appointed any number of commissions and committees to study the implementation of the laws and their effects.

In his "Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Act 1976" Lord Jellicoe wrote: "..This type of legislation represents a victory for the terrorist. Terrorist 'theoreticians' see it as a major aim to force governments to pass increasingly severe laws... This 'victory' will be enhanced if the legislation is operated in such a way as to alienate that part of the community which the terrorists claim to represent. if that happens, they will not only be likely to gain increased support from within the community; they will also be assisted to project themselves as its legitimate protectors."

Our own TD Act has now been around for two years and it is time that a commission looked into whether the law itself has not turned into a victory for the terrorists. Since commissions of inquiry in India have rarely come up with results that might displease the Government, a better way of reviewing the functioning of our emergency laws could perhaps be through a parliamentary committee.

Scoring points

Sadly the legislature has not fulfilled its role in exercising a measure of control over the powers that the executive arrogates to itself under emergency legislation. Whenever Parliament has debated these matters the debate has tended to become partisan and therefore irrelevant. The general tendency is for everyone to get up and condemn terrorism and then for various political parties to get up and express their view of events in Punjab for instance. In the end a great deal of time is wasted on scoring points off each other when instead MPs and parliamentary select committees could be usefully employed examining the working of emergency laws and suggesting changes and improvements.

There could not be a better time to review the effectiveness of the anti-terrorism law than now after six months of Presidents' rule in Punjab. Only a review of this kind can result in having effective safeguards within the law to prevent it being misused against people like Shahid Siddiqui. Only recently the TD Act was used to arrest two members of the Shiromani Gurdwara Prabandhak Committee in Delhi. They belonged to the Parkash Singh Badal faction of the Alkali Dal and were arrested on the eve of the election of the SGPC President. After the midnight arrests the police tried to persuade them to talk to Mr. Barnala and when they refused they were locked up in Tihar jail for three months. They are both gentlemen over the age of sixty and neither has ever been associated in any way with the terrorist groups and yet the police announcement of their arrest stated that they were hard-core members of Jinda's group.

If this can happen in Delhi under the nose of the country's most vocal civil rights groups then it does not require much imagination to work out what can be done with the Act in States like Punjab and Nagaland. If the Government feels that it cannot function without the help of draconian laws then it must allow Parliament, the judiciary and the Opposition parties to play their part in providing an effective check on their-power.

Indian Express, Bombay

January 7, 1988

TADA: Cases and Convictions

	Area	Arrested	Convicted (%)	Period
1.	India	35538	318 (0.89)	1985 — March 1991
2.	India	52998	434 (0.81)	1985 — March 1993
3.	Punjab	14007	52 (0.37)	1985 — March 1992
4.	Gujarat	11957	99 (0.82)	1985 — December 1990
5.	India	5685	43 (0.75)	1990

Source :
1. Lok Sabha; 12 August, 1991
2. Lok Sabha; 14 May, 1993
3. Lok Sabha; 14 May, 1993
4. Home Department, Gujarat
5. *Crime in India*, 1990, National Crimes Records Bureau Ministry of Home, Government of India

— PUDR

'Cong(I) misuse of TADA estranging minorities'

By NEERAJ MAHAJAN

NEW DELHI, July 9: Repression against the minorities in Gujarat through the misuse of the Terrorist and Disruptive Activities Prevention Act (Tada) and Prevention of Anti-Social Activities Act (PASA) have led to their "total alienation" from the Congress party, MPs allege.

According to them more than 1,800 people have been detained in the state under TADA in the last two years under the present leadership.

Most of the Congress MPs from Gujarat these days are trying to impress upon the central leadership that the party's prospects in the state are very bleak if the present repressive measures continue or if the state leadership is not changed.

According to Raoof Valiullah, MP, and chairman, Gujarat state minorities board, the state government is using the TADA and PASA and other such acts in "flagrant violation of the existing constitutional safeguards given to the minorities" under the pretext of maintaining law and order.

"During the last two years draconian laws have been used for small and petty quarrels. This coupled with the tardy implementation of Rajiv Gandhi's 15 point programme for the minorities has alienated them from the Congress party," Valiullah told *The Sunday Observer.*

According to another MP, only 10 days before the Ghodhara by-election, 23 Muslims were arrested under TADA, for their alleged involvement in the Veerpur-Balasinur riots which broke out a year ago. The local police sub-inspector had instruction from the government to oppose their bail applications in the court. In the Bharuch constituency of the PCC(I) president, Ahmed Patel, 19 people belonging to the minority community were arrested under TADA on the eve of the elections. It is reliably learnt that the sessions judge, Surat, while throwing out the TADA application moved against them by the police severely indicted the government as, "no evidence of subversive or disruptive activities can be tried."

In yet another example of alleged TADA misapplication, the convener of the pradesh youth Congress minorities cell, Idris Dawawala has been detained by the police under TADA for allegedly influencing communal riots.

According to Gujarat MP Haroonbhai Mehta, between January 1, 1986 and November 25, 1987, 1843 people were arrested under TADA in the state. Out of these, 1200 had to be released immediately. Some of the arrested people happened to be workers engaged in trade union activity against their management.

The Sunday Observer, Bombay

July 10, 1988

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Torrent of protest against TADA

By A SPECIAL CORRESPONDENT

IT's over a month since the Terrorist and Disruptive Activities (prevention) Act,1987 (TADA) has been imposed in Maharashtra. The initial trickle of protest against the Act is slowly turning into a torrent. This was apparent by the response to a public meeting held against TADA here on Friday.

Civil liberties groups, trade unions and intellectuals denounced the recent imposition of TADA in the state, calling its provisions against the universal declaration of human rights.

TADA, a law that has crept into 21 states and two Union territories gives unprecedented powers to the state and police to arrest and detain individuals without a warrant or any reason. It also takes away from them the right to a fair public trial.

TADA, which was initially meant to curb terrorist activity in some districts of Punjab, has been brought into Maharashtra "to curb gang feuds and terrorism".

According to a statement made by the Chief Minister Sharad Pawar in the Legislative Assembly, increased criminal activity in Bombay and Thane, free availability of illegal weapons and prompt legal respite available to criminals are the reasons for its imposition.

The police backs the argument stating that till now they were fighting criminals with their hands tied behind their backs, but the new legislation will arm them (literally as well) to deal directly with the criminals.

However, civil liberties groups, trade unions and intellectuals do not buy this argument. They point out that potential of the act is grossly misused by the state to curb democratic struggles of the people whenever they want.

Says Dr. Datta Samant, trade union leader and ex-member of Parliament "I was there when the Act was passed. It was aimed at the Punjab situation as the government was finding it difficult to prosecute terrorists — no one would give evidence against them. The Congress government assured that it would never be used elsewhere as TADA is not needed in other states (except, may be, Kashmir)."

"Though the administration says it is to curb criminal activity, some time ago the Act was used in Ahmedabad against the workers of Reliance Industries when they went on strike demanding the implementation of the Industrial Tribunal Award."

"In the case of criminal gangs they have vested links with politicians, both of the ruling party as well as the opposition and the nexus between the two is responsible for the increased, criminal activity."

Thangappan, Bombay trade unionist and working president of the Kamani Employees Union, reiterates Dr. Samant's stand stating that the Act is being used against workers. He cites the example of Paithan, where in April 'this year 45 workers of Universal Luggage Company were detained under TADA.

One of them, Vishwas Bhagwan Lotange was beaten for 15 days and on admission to a private hospital he was declared dead. According to the doctor's report his body was full of welts and marks of cigarette burns.

"Bombay's mafia has been operating for years — their activities have increased in the last 10 years. Till now the government was not worried — the police in fact was encouraging one group or the other. Not much will be done against them and it will be struggling workers who will come under fire, says Thangappan."

He points out that a parallel economy exists today and is totally handled by anti-social elements only because it has the tacit support of the administration. "How else can, by the government's own admission, 70,000 crores of black money exist.", he asks.

Professor K.K. Theckedath, national secretary of the All India Federation of University and College Teachers Organisation and general secretary of the Maharashtra Federation of college teachers, recalls that black marketers have reason for the imposition of the emergency. He says "Though it was meant to combat, them, it was used against trade union workers and leaders. Teachers and intellectuals are shocked by the blatant misuse of the Act."

Bhusan Oza and Gayatri Singh both advocates and members of the Committee for the Protection of Democratic Rights, explain why organisations such as theirs are opposed to TADA. "Several preventive detention laws are already available, if the administration wants to use them against criminals. Even without such laws people are beaten up in police custody as was the recent case of Raju Mohitye. So with TADA the situation will be worse, they said."

Yogesh Kamdiar, member of the national executive of the People's Union for Civil Liberties maintains that "the more severe the law, the more likely it is to be misused. If you give unaccountable powers to the police, they will take the shortest route possible to show effectiveness — this will hinder actual crime investigation."

He adds: "Let me tell you Arun Gawli was just arrested under normal laws and subsequently put under TADA contrary to what the state claims."

A report on "political parties and the use of TADA prepared by the People's Union of Democratic Rights reveals that the legislation has been used by all the political parties at one time or the other and explains how it" negates all principles of law and justice, legalises torture in police custody and creates a new structure of courts.

While the police justifies the law by blaming the courts for bailing our people under other preventive detention laws, like the National Security Act, trade unions and civil liberties organisations condemnation of it is unconditional. For them 'through TADA the democratic republic is indeed threatened.

The Daily, Bombay

August 19, 1990

Indiscriminate Use Of TADA Act

By A SPECIAL CORRESPONDENT

The arrest of five Sikhs, including two senior college teachers in Bombay for their suspected links with terrorists in Punjab, has sent shock waves among the Sikhs in the city. Civil rights activists, who are extremely agitated over the arrest of two professors, have issued a statement that the government, if at all it has a case against Prof. Dalip Singh, Prof. Jagmohan Singh and Mr. Paramjit Singh, should seek to substantiate its case by taking recourse to the ordinary laws of the land. The use of the Terrorists and Disruptive Activities Act to arrest the professors, they say, exemplifies the ease with which human rights are being trampled upon.

In Bihar where what was initially made out to be a major success story when the Bihar police claimed to have arrested Amarjit Singh Sodhi as a terrorist with Canadian links is slowly turning into a major embarrassment for the police.

In both the cases the persons arrested are human rights activists. Amarjit Singh Sodhi is a member of the Party Unity Group of the CPI (M-L). "The Group claimed in a statement that Amarjit Singh had been a "front-ranking fighter, both in Canada and Punjab against Khalistan ideology and religious fundamentalism."

Meanwhile, the Bihar unit of PUCL has described the police claim of arresting Amarjit Singh a terrorist as "irresponsible showmanship." The deliberate attempt of the DGP to brand Mr. Sodhi as a Khalistani was meant to mislead the people. The PUCL, in a statement, said Mr. Gursharan Singh, leader of the Inquilabi kendra, an organisation known for its anti-Khalistan stand and activities, has stated that Mr. Sodhi was a member of his organisation too.

The PUCL has said such irresponsible acts by police against innocent Sikhs may make the Sikh community feel that they cannot live in this country with security and honour.

In Bombay the arrests of five persons have already caused fear because every Sikh there feels that he could be arrested and taken to Punjab if someone in Punjab named him as an ally of terrorists. It is so because the arrests were not based on dossiers of the Bombay police. The Punjab Police wanted them and it is reported that the basis was beans-spilled by a top-grade Khalistani terrorist, Atinderpal Singh, a Bhopal journalist, who, it is alleged, had joined the Punjab terrorists.

Interestingly, the Bombay police had not discovered anything "objectionable" against the two teachers, inspite of their long and uninterrupted stay there.

Added to all this the recently reported public statement by K.P.S. Gill, the Director General of Punjab Police, that only one person could be convicted till date (though in the last three years about 10,000 persons were arrested as terrorists in Punjab under the various special laws specifically enacted for combating terrorism) exposes the extent of the harassment meted out to innocent persons and attempts to intimidate the people.

The Forum Gazette, Delhi

December 5, 1986

Resistance

Though not so visible, TADA has generated opposition from diverse quarters. Popular opposition is strong most notably in Gujarat and Assam. In Ahmedabad thousands of workers went on strike against the Act. State level conventions were held against it in Gujarat. In Assam intellectuals from wide ranging professional and political backgrounds held meetings against it. In April 1990 during the height of army operation, a PUDR team was witness to a massive demonstration at Guwahati demanding the repeal of the legislation. In Bastar forests, after the arrest of a journalist a successful bandh was held against the misuse of the Act. In Kashmir, government employees went on strike demanding the shifting of the Designated Court. In Tamil Nadu the local unit of PUCL conducted a campaign for the release of Peruchitranar. Civil rights organisations all over the country are actively involved in court battles. Lok Adhikar Sangh, Ahmedabad played a pioneering role in forcing the government to give details that reveal the true nature of the Act. In Andhra Pradesh, lawyers associated with APCLC are engaged in providing defence to the victims even in remote Designated Courts in tribal areas. In Vidarbha the activists are painstakingly providing defence to the people as well. In Punjab lawyers observed a state wide strike and, in Chandigarh High Court Bar Association boycotted the court protesting against the change in the law of confessions. Lawyers in Bombay High Court and Tamil Nadu and Guwahati Designated Courts are innovatively using the existing safeguards against the arbitrary provisions of the Act. At times the governments have come down heavily against those defending the TADA victims. Prof. J.S. Bandukwala, the chairman of the Forum Against TADA in Baroda was himself arrested under National Security Act. So was the case with Niloy Dutta of the Guwahati High Court. In Warangal police killed advocate Narra Prabhakara Reddy who perhaps holds a record for providing defence to TADA detenues: a total of 1,542 persons. In Kashmir the Bar Association president himself was detained under TADA. The popular opposition occasionally reflected in media, also seems to have had an impact on the opposition within Parliament. Initially even the more liberal members were somewhat hesitant in voicing total opposition to the Act. But in subsequent years members, whatever be their party stand, have made forceful please against the Act. A closer look at the constituencies of these members (including those from Congress(I), BJP, National Front, Left Front and others) would reveal the pressure from below where the Act was used extensively.

The opposition to the Act is, as yet, very scattered and confined to isolated pockets. But one cannot miss the irony of it. TADA has become the only common element among all those diverse range of people and organisations. It indeed is the unity that runs through their diversity. As a Marxist-Leninist Telugu poet detained under TADA wrote in a poem addressed to Punjab, "... law alone recognises that both of us belong to the same country. And unites us" ('A Basic Caveat on my Silence about You'; Varavara Rao; Mukta Kantham; Prison Poems; 1986-1989). A unified democratic opposition at the national level against the Act however is a long way ahead.

PUDR

Cases galore of TADA misuse

By ALLWYN FERNANDES

IS the Maharashtra police misusing the Terrorist and Disruptive Activities (TADA) Act 1987 to put behind bars those against whom it has failed to build up a case under the ordinary laws of the land?

A study of recent Bombay High Court judgments that have gone against the police indicates that this is so and that detentions are being made on the basis of misleading or false statements.

Inquiries show that the police have lost four cases in the high court, after the three major cases lost in the Supreme Court in July. Worse, they have lost them on grounds which call for a high level review of how TADA Act detentions are ordered and the manner in which the cases are investigated and presented before the courts.

In at least three cases, court records disclose that the additional public prosecutor appearing for the state, Mr. R.F. Lambay, conceded that the application of the TADA Act was not warranted at all.

In one case, this admission came after a businessman who exports garments worth Rs 12 crores a year, pays excise duty of Rs 12 lakhs a year and has no criminal record, had spent five months in jail as a TADA detenu. As in the other cases, the TADA Act to detain Dilip Govindram Bulchandani, 31, without bail for upto a year was applied after a magistrate granted him bail for allegedly trying to extort Rs 30 lakhs from a restaurateur with the help of criminals.

To make matters worse for the police, the man from whom the suspect was allegedly trying to extort the money, sought anticipatory bail from the sessions court, alleging that the police were threatening to involve him in a criminal case if he failed to give them a statement implicating Bulchandani. He also told the court that there were no financial dealings between him and Bulchandani. A magistrate has also taken adverse note of failure by the police to produce the case diary before them.

Says the noted criminal lawyer, Mr. P.R. Vakil, "The high court asked the public prosecutor whose word it relied on to apply a draconian measure like TADA Act — the word of a shady character or that of a businessman paying taxes. Two criminals were found in his chamber by officers from a special squad set up by the additional police commissioner (north) who went there posing as businessmen. The criminals could have gone there to extort money from Bulchandani. Would he have allowed the policemen posing as businessmen to enter his chamber if he was discussing a deal with known criminals?"

Criminal lawyers who have been arguing that the TADA Act is being misapplied to gangsters, when the ordinary laws would be sufficient to contain gang warfare, and that the act is being misused to detain people after bail has been granted, point to several aspects of the Bulchandani case in support of their arguments.

They say it raises questions about whether the TADA Act is being abused for *mala fide* purposes and about the functioning of the designated court for TADA cases. This court is specially designated to speedily decide matters, since those charged under the TADA Act are being deprived of their liberty for longer periods.

In Bulchandani's case, the designated court failed to decide his bail application for five months, although Mr. Vakil had completed his arguments within two months of his detention. Fortunately for Bulchandani, a petition filed simultaneously before the high court in March came up for hearing before Mr. Justice M.L. Dudhat and Mr. R.G. Sindhkar last month and was disposed of in his favour. Inquiries with other defence lawyer indicate that thee are several such cases because the public prosecutors at the designated court are overburdened with other work.

Mr. Vakil further asks, "A trial judge does not have to wait for a bail application to consider whether a man should be released or not. Is it not the duty of the judge, when the accused is put up before him for remand, to find out if there is any evidence to decide the matter? Can the court not act *suo motu* if it feels the ends of justice have not been met? Can the police commissioner also not withdraw a prosecution when, on closer scrutiny, he finds injustice has been done, instead of waiting for the additional public prosecutor to admit this before the court and then let the court set aside the detention order?"

Of the other cases, two are even more interesting because the Virar police changed the order after judgment was partly delivered by Mrs Justice Sujata Manohar and Mr. Justice B.N. Srikrishna. When it had become clear that sections 5 (possession of arms) of the TADA Act was not applicable to the cases, the police issued an order to apply section 3 (committing a terrorist act) and filed an affidavit to justify it — even though Mr. Lambay conceded that the facts did not justify applying section 3.

The judges, therefore, decided not to even look into the merits of whether the petitioners had indulged in such acts and recorded their disturbance at the conduct of the police. "The right to life and liberty which is constitutionally guaranteed is substantially eclipsed by the application of the TADA Act to an individual. It is necessary that the act is not misused and the authorities concerned apply their minds to the facts and circumstances of the case with great care, before they extend the provisions of the act to anyone," the judges observed.

In the fourth case, Mr. Justice M.L. Pendse and Mr. A.D. Mane found that a man detained under the act as a "known" criminal involved in seven cases (according to the Lonavala Police Inspector who arrested him), had only one case pending against him.

The judges found that the detenu, Uttam Ramaji Hulavale, had been acquitted in four cases. He had been convicted in one case in which he had gone in appeal and which was still pending, while the sixth case was awaiting trial. The seventh case was the one for which he had come before the judges. The judges concluded that there was "no merit" in the police claim that he was a "known criminal".

The judges also accepted the petitioner's contention that the offence with which he was charged —threatening and chasing a driver with a knife — was not of so serious a nature as to merit the application of the TADA Act. They agreed that the police had applied the act because they felt aggrieved when he was granted bail.

The Times of India, Bombay

September 29, 1991

Is TADA relevant ?

MOHAN RAM raises some questions

The Terrorism and Disruptive Activities (Prevention) Act, better known by its acronym TADA, has been extended four times since its enactment in 1985 and will continue for two more years. The last extension, a few weeks ago, was after a mere 70-minute discussion on the closing day of the Lok Sabha's monsoon session and with just eight members speaking on it. The legislation, designed initially for two years, was passed and extended by voice vote except in 1991,. when it was 134-116 division in a 542-members house. But has the TADA achieved its purpose? Has it been effective in preventing terrorist and disruptive activity?

The series of "transistor bomb" explosions in the Capital and the perceived expansion of Khalistan terrorist activities from Chandigarh and Punjab to Delhi, Haryana Uttar Pradesh and Rajasthan, was justification for TADA. But it now stands extended gradually to 22 of the 25 States besides two (Chandigarh and Delhi) Union territories out of seven. It covers 93 per cent of the country's population. It is a Central legislation but implemented by the States. It comes into force when a State or the Centre notifies an area as affected by the terrorist and disruptive activity. Once an area is notified, designated courts are constituted to try offences under TADA.

The definition of terrorist acts and disruptive activities is sweeping because it covers a wide range of activity — private or public, violent or non-violent. it includes any action taken, whether by act or speech or through any other media or in any manner whatsoever. mere expression of opinion even if not accompanied by any violence is "disruptive activity." Penal offences under other laws can be brought under TADA if they are committed in aid of terrorist and disruptive activities.

The Peoples Union of Democratic Rights (PUDR) has documented the use or misuse of TADA during 1985-1993. It was blatantly invoked where it was not applicable. And where applicable it was invoked retrospectively. Those held include not just Khalistanis or Kashmiri militants or members of other terrorist groups for whom the TADA was primarily meant. It has been invoked against political activists, leaders of farmers' movements, students, lawyers, journalists and creative writers and even a former judge involved in human rights issues. It has been invoked where normal laws sufficed.

Some of the obnoxious features of the draconian law are:

__Confessions made before police officers are not admitted as evidence in ordinary courts. But is permissible evidence in a TADA trial.

__It restricts the right of the accused to bail. The normal safeguard is that the accused has to be produced even before an judicial magistrate within 24 hours. But in TADA cases, the accused can be produced even before an executive magistrate.

__The remand period is usually not more than 90 days. But in TADA cases it can be extended upto a year. Bail is permitted as a rule. In TADA cases, the court has to satisfy itself that the accused is unlikely to commit any offense while on bail. It means the subjective satisfaction of the court because the prosecution does not have to present any material, and not even a chargesheet, for upto a year.

__Trial under TADA is in camera which means potential for manipulation of evidence by the prosecution.

The data on the number of detentions under TADA and the outcome of the cases throws up an interesting pattern. Though the TADA was meant for "terrorist-affected" States, Gujarat tops the list when it comes to detentions, overtaking Punjab which had 7,969 in September 1989, out of 19286 in the country, 9,552 out of 26,261 in March 1990, and 12,180 out of 39,089 in March 1991, and 14,458 out of 52,268 in February 1993. Last year, Gujarat was almost level with Punjab but by May 1993, it had over 17,000 detenues, what with even civil disputes attracting TADA. In contrast, Jammu and Kashmir had 1,826 TADA detenues in February 1993. Andhra Pradesh, which had detained 2,143 in 1993, had 5,614.

The abysmally low rate of convictions in the TADA cases underlines both its misuse and its ineffectiveness. Of the 52,998 detained (in the whole country) during 1985-1993, only 434 (a mere 0.81 percent) had been convicted. The record for Punjabis even poorer. Of the 14,007 detained until March 1992, only 52 (0.27 percent) had been convicted.

The National Crimes Record Bureau's findings are equally revealing. in 1990, the police dropped cases against 31 percent of those detained. Only 12 percent were chargesheeted. The trial was completed in a mere four percent of the cases. The trial did not proceed in the rest because police could not complete the investigation. And where completed, the investigation was weak, cavalier and perfunctory.

An "extraordinary measure" designed to meet an "extraordinary situation" found greater application in States not prone to terrorist activity. Anything between 30 and 60 percent charged under TADA belonged to "non-problem" States and had hardly anything to do with terrorism or disruptive activity. As for the argument that TADA was needed because "terrorists" were getting away with ease in ordinary courts under ordinary law, the record of TADA is the most effective answer.

The PUDR thinks that the problem lies not with inadequacy of the ordinary law but the degeneration of the criminal justice system which the TADA aggravates further. Overwhelming majority of the TADA victims do not fit even the Government's definition of terrorism and disruptive activity.

The grim conclusion of the report is that TADA is state terrorism marked by bad conscience and evil intent because the Indian state had "acquired enormous powers to pick and choose the individual, the group, or the class or the community, hit them with violence,"

The Pioneer, Delhi

September 22, 1993

Wide use of TADA in Gujarat

By MANAS DASGUPTA

THE Gujarat police seem to be merrily using the Terrorist and Disruptive Activities Act (TADA) to earn the dubious distinction of being its second highest user despite claiming to be one of the most peaceful states in the country.

On record, the state does not have any known subversive or terrorist group active on its soil, nor has it faced serious law and order problems, except the periodical outbursts of communal riots, to justify the arrests of more than 13,000 alleged anti-social elements under the Act.

The large number of arrests under TADA, next only to the terrorist-infested Punjab, runs contrary to the claim often made by the chief minister, Mr. Chimanbhai Patel, as well as his predecessors, on the floor of the state assembly and outside, that Gujarat was one of the most peaceful states in the country.

The rapid industrial progress achieved by the state, however, justifies the claim. One of the major attractions for the entrepreneurs to set up their industrial units in Gujarat, despite paying the highest electricity bills, is the peaceful situation ensuring uninterrupted production.

But for the comparatively better law and order situation, Gujarat would not have jumped up the ladder among the most industrialised states from the ninth spot to the second within about a decade.

Mr. Ashok Tandon, the director-general of the Gujarat police, attributes the high usage of TADA to the communal riots. It was pointed out that more than 1,600 people were booked under TADA in the two months during which communal disturbances rocked the city following the demolition of the Babri masjid on December 6.

According to him, the state has not only become probably the most communally sensitive area in the country, terrorism was also on the rise and provided a safe passage for the Pakistan-trained terrorists to infiltrate the country. Gujarat had also become a safe haven for the hotly chased terrorists to hide and rest for some time before embarking on their next operation.

According to statistics available with, the DGP's office here, since the introduction of TADA in 1985, as many as 2,990 cases were registered under the Act and 13,152 people booked. (The number of those booked is 14,094 as per the records of the Union home ministry). Out of there, 12,816 either had been released on bail or have been acquitted by the special courts or let off by the home department after a review of the respective cases.

Presently, 410 prisoners booked under TADA are languishing in various jails in the state awaiting trial. Most of them are those arrested during the last bout of communal riots or afterwards.

As explained by Mr. Tandon, TADA had more to deal with the situations arising out of "class conflicts," particularly clash\s between members of two communities, than terrorism. The state police apparently are making the maximum use of the wide range of discriminatory powers given under the Act.

TADA defines as a terrorist "whoever intends to overawe the government" or to "strike terror in the people or any section of the people or to alienate any section of the people."

It can also be used against anyone trying to "adversely affect the harmony among different sections of the people by using bombs, dynamite or any other explosive material, firearms or other lethal weapons or poisonous gases to cause or likely to cause death, injuries to any person or persons or damage or destruction of property or disruption of any services and supplies essential to the life of the community."

Anyone involved in the conspiracy for such an act or abetting the crime by harbouring a terrorist is also punishable under the Act.

The state police had been liberally using the provisions of class conflicts and the attempt to "overawe" the government, booking a large number of people at a time for alleged involvement in group clashes. But in most such cases, the persons were picked up indiscriminately from among the fleeing crowds, irrespective of being attackers or attacked and in the majority of cases, the special courts ordered their release for lack of evidence.

At least in eight cases booked in connection with the December-January riots in Ahmedabad, the accused were released by the courts for the same reason. The court found in many cases that people were picked up from among the crowd who were not actually involved in the riots and were caught in the jam. The real culprits had disappeared from the scene much before the arrival of the police.

Mr. Tandon, however, claimed that particularly after the recent amendment of the Act limiting the power to apply TADA only to the district superintendent of police and the police commissioners, subject to confirmation by the director-general of the police or the inspector -general of police, the chances of misuse of TADA had been minimised.

He also claimed that application of TADA was on the decline in the states. He maintained that there was no political pressure on the police authorities to use TADA on political grounds.

The opposition parties disagree with the government's stand and had repeatedly accused the state authorities of misusing the "draconian law" against political rivals. The provisions of TADA were used against a large number of unarmed farmers who, during a rally in Gandhinagar a few years ago, had turned violent and roughed up some Congress leaders.

There also were cases of it being applied against leaders of the recognised trade unions. In Baroda, TADA was allegedly applied against a 12-year-old boy who was actually trapped in a mosque during the communal riots.

Barring a few cases of bank robbery, there are no records of terrorist gangs being actively involved in any organised crime in the state. Except in a couple of cases where the terrorists were killed in police encounters, no terrorists had been arrested in the state.

The encounters were also the result of the detections by the Bombay or Punjab police who had landed in Gujarat on the hot trail of the known terrorist gangs.

Some senior police officials believe that the terrorists prefer to use Gujarat as a "resting and hiding place" and, unless compelled, would not commit crimes within its territory.

The Times of India, Bombay

October 18, 1993

Text and Context

'Lawless Roads', PUDR Report on TADA: 1985-1993: In the fond memory of C V Subba Rao

IN May 1985 a series of bombs, some of them transistor bombs, exploded in Delhi and other places. A large number of innocent people in buses and public places were killed, generating widespread revulsion. Shortly afterwards, the government cited the bomb blasts as the reason for the introduction of TADA. The explanation of terrorist activities from Chandigarh and Punjab to Delhi, Haryana, Uttar Pradesh and Rajasthan was also cited as a reason. In the subsequent extensions of the Act, the reasons cited changed. But the pattern remained the same. Specific events or problems (transistor bombs, Naxalites, LTTE, recent bomb blasts in Bombay and Calcutta) and specific states, Punjab, later Kashmir and Assam, are stated as reasons for the continuation of the Act.

The Act received more or less unanimous approval of the Parliament in 1985. In 1987 it was reintroduced along with a bill relating to President's Rule in Punjab. In 1989 it was introduced along with Chandigarh Disturbed Areas (Amendment) Bill. Most recently in 1993, in was introduced along with the Bill amending the Indian Penal Code (IPC) to enhance the punishment for kidnapping. In Lok Sabha this year, the Bill extending TADA was brought in the closing hours of the last day of a long session. The members were still going through the after effects of a late night session just 2 days earlier in the impeachment case against Justice Ramaswamy. The Bill was introduced along with the IPC amendment bill at 6:40 in the evening. In about 70 minutes everything was over. TADA shall continue for 2 more years.

On all 4 occasion the Bill for extending TADA was introduced along with some other bill that helped deflect the debate. But the the context chosen by the government and the timing seem to have had some effect on the quality of the discussion generated by the legislation. Some members did make valiant efforts to scrutinise the implications and working of the Act. But by and large either attendance was low or the House was hard pressed for time. Save in 1991, nobody even pressed for a division. It was passed by a voice vote.

On all occasions the Act was introduced along with a statement of objects and reasons. And it was accompanied by a detailed defence of the Act by the Ministers (A K Sen 1985, Buta Singh and P Chidambaram 1987 and 1989, S B Chavan 1991 and 1993). The immediate context chosen by the government played a crucial role in this process. Few cared to note the aftermath.

In the transistor bomb case, 5 suspects were held: Daljit Singh, Jagdish Singh Narela, K S Narang, Maninder Pal Singh and Mohinder Singh Khalsa. None of them was tried under TADA. For all of them died in police custody before they reached any court of law. In other states, not all persons arrested under the Act were necessarily connected with "terrorism". In Kashmir, for instance, as on 1 January 1991, of the 2,044 persons arrested under TADA, only 124 were classified as 'terrorist's (Lok Sabha, 12 August 1992). In other words, as per the government's own account, there is no reason to assume that all those charged under TADA are connected with what the government calls 'terrorist and disruptive activities'.

Significantly, states which do not figure in the government specified list of 'problem states' have extensively used the Act. The most notable example is Gujarat which now tops the number of TADA prisoners. Moreover, the number of states that have used the Act has increased over time. In 1985, the government cited 2 Union Territories and 2 States. Two years later 2 more were added. In 1991 the total became 17. This year 3 more added. A close scrutiny of the figures reveals that 30-60% of the people charged belong to those States that did not figure in the government's list of 'problem states' at the specified time.

If a problem exists in some specified states then logically the Act should have been confined only to those States. At the time of the 2nd extension, BJP member, Janga Reddy, gave a suggestion to that effect (Lok Sabha, 10 May 1989). Later, more concretely, an amendment to that effect was introduced by CPI(M) member Sukomal Sen (Rajya Sabha, 6 August 1991). It was categorically rejected by the government. Currently TADA is in force in 22 out of the 25 States and 2 out of the 7 Union Territories. The exceptions are Kerala, Orissa, Sikkim, Andaman & Nicobar, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep and Pondicherry. An Act like this is required, in government's view, to protect "the unity and integrity of the country". If so, then it is a rather sad commentary in the islands in the oceans that surround the country.

TADA makes drastic changes in bail provisions and trial procedures. Some of these changes are unheard of in the the annals of Indian jurisprudence. The government argument, often echoed by the police, is that 'terrorist' are getting off with ease in ordinary courts under ordinary law. Hence the need for extraordinary measures. As a matter of fact the problem lies not with ordinary laws but with the degeneration of the criminal justice system. TADA has aggravated if further. In a large number of cases, the police simply did not file charge sheets. Nor did they conduct required investigations. The number of TADA cases dropped, cancelled or declared untraced by the police is astonishingly large. The official premises of the Act are thus logically unsound and factually incorrect. On all counts. the government argument collapses by its own weight.

The Act

The Terrorist and Disruptive Activities (Prevention) Act is in 4 parts and 30 sections. The Rules issued under the Act cover connected offences. The Act comes into force when a State or Central Govt. notifies an area an affected [S 2(1)(1)]. No criterion for the notification is laid down in the Act. Once the area is notified the next step is the constitution of Designated Courts.

The definition of terrorist acts [S 3] and disruptive activities [S 4] is wide enough to cover a wide range of activities, private or

public, violent or non-violent. Disruptive activities include 'any action taken, whether by act or by speech, or though any other media or in any manner whatsoever' [S 4(2)]. Penal offences under the provisions of other Acts can be included if they are committed in aid of terrorist and disruptive activities. The most wide ranging powers in this respect are given in relation to the Arms Act [S 5]. The trial procedure in all such cases is different and the punishments are enhanced [S 6]. in other words an accused arrested under ordinary law would get a different treatment if TADA is also added.

The Central Govt has overriding powers to bring the Act without taking the consent of the State Governments [S 7]. Property of the accused can be confiscated by State or Central Govt, "free from all encumbrances" [S 8].

Centre or State governments can constitute a Designated Court which is exclusively meant for TADA. The decision of the Central government on the jurisdiction of the Designated Courts is final. The judges must be serving Sessions judges. But they can continue to preside even after retirement [S 9]. The Designated Court can choose its place of sitting [S 10]. The government can transfer a case from one such court to another within the State or even outside the State [S 11]. These courts also can try other offences [S 12]. In come circumstances the Designated Courts can conduct summary trials [S 14]. They can even "proceed with the trial in the absence of the accused or his pleader" in some situations [S 14(5)].

Confessions made before police officers are admissible as evidence [S 15]. This also applies to statements and confessions made before an executive magistrate [S 20(3)]. All procedures before the Designated Court "shall be conducted in camera" [S 16(1)]. The identity of the witnesses can be kept secret [S 16(2)]. The trial by the Designated Court will have precedence over any other trial of the accused [S 17]. In some situations the accused has to provide proof of his innocence and the prosecution need not prove his guilt. Thus the onus of proof is shifted on the accused [S 21].

The next court of appeal after the Designated Court is not the High Court but directly the Supreme Court [S 19]. and the appeal has normally to be made within 30 days [S 19(3)]. This elimination of the role of High Court applies even to cases involving death sentence [S 20(6)].

The normal safeguard of being produced before a judicial magistrate within 24 hours is modified in TADA cases. The accused can be produced even before an executive magistrate [S 20(4)(a)]. The remand period which is usually never more than 90 days can be extended upto one year [S 20(4)(b)]. Bail as a rule is not permissible under TADA. To grant bail the court must satisfy itself that there are reasonable grounds to believe that the accused is not guilty and that he is not likely to commit any offence while on bail [S 20(8)].

The Act confers powers on the Central Govt to enact rules under the Act. The Terrorist and Disruptive Activities (Prevention) Rules, 1987 came into effect on 7 October 1987. The Rules, among other things, enable the government to notify any area as a prohibited place, the definition is an all-encompassing one, under which practically any place can be covered. And "entering, passing over, loitering in the vicinity of any such place" is an offence [S 5,6,7 TADA Rules]. Once again the onus of proof is on the accused [S 13].

Finally a unique feature of TADA is that prosecution under the Act can continue even after the notification is withdrawn [S 1(4)]. In other words TADA shall continue even after TADA is declared dead.

Validity

Thus almost ever safeguard guaranteed by the Constitution, every single mechanism of checks and balances erected by it, every principle of liberal jurisprudence, every principle of natural justice and every single democratic right won after years of hard battles by our people is thrown to the winds by TADA. It would be difficult to exhaustively enumerate each and every violation. Abrogation of powers of State governments, and of High Court and denial of rights of the accused are, perhaps, some of the important areas to be noted. Mere expression of an opinion not accompanied by any violation or incitement to violence is termed 'disruptive' by the Act [S 4(3)]. Right of self determination is so completely abrogated that anyone who merely holds a different opinion about India's federal structure "shall be punishable with ... imprisonment." [S 4(1)].

The normal hierarchy of courts in the country is designed to prevent miscarriage of justice. TADA eliminates the role of High Courts. The entire Chapter V of the Indian Constitution thus has been virtually nullified. The power of High Courts over subordinate judiciary is also modified by the Act violating the constitutional arrangement [A 227, 235 and 236]. Similarly some provisions of the Act seriously impinge upon the power of the state governments [1 and 65 of List II of Schedule VII]. Principles of equality before law [A 14], freedom of expression [A 19], right to life and personal liberty [A 22], principle of separation of judiciary from the executive [A 50] are all modified or violated by the Act. On these another grounds the constitutional validity of the Act has been challenged in Supreme Court. The case is awaiting judgment.

TADA also violates all international standards of human rights, set out by the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR), India is a signatory to both these declarations. We have given a somewhat incomplete list of how specific sections of TADA deviate or violate from specific sections of CrPC, Constitution of India, UDHR and ICCPR. Behind each of these violations lies a human tale. The true effect of such a legislation can only be seen in the implementation and functioning.

University Today, Delhi
February 1, 1994

"...despotic governments do not recognise the precious human component of the state, seeing its citizens as a faceless __ mass to be manipulated at will ... Patriotism is debased into a smoke screen of hysteria to hide injustice of authoritarian rulers who define the interest of the state in terms of their own limited interest."
— Aung San Suu Kyi

Who Are the Terrorists?

Advocates
D. Veerasekaran, High Court, Madras
Mian Abdul Qayoom, Srinagar
Ms. Shabnam Lone, Supreme Court
Sukhdev Singh Gill, Advocate, Shimla
T.V. Marudhanayagam, High Court, Madras
Cabinet Ministers (former)
Subbulakshmi Jagadesan, DMK,Tamil Nadu
Prakash Singh Badal, Akali Dal, Punjab
Prem Singh Chandumajra, Akali Dal, Punjab
Civil Libertarians
Dr. A. Ramanadham, APCLC (since killed)
Justice Ajit Singh Bains, PHRO
Dr. K. Balagopal, APCLC
Dr. N. Babayya, KCLC
Civil Servants (Serving or retired)
Faid Mustakin Khan, constable, Gumadevi P.S., Maharashtra
Gurumesh Bishnoi, former Chairman, Public Service Commission, Haryana
Hemant Kondiba Jadhav, constable, Gudadevi P.S., Maharashtra
R. Nagarajan, former Home Secretary, Tamil Nadu
S.N. Thapa, Additional Collector, Customs, Maharashtra
Film World
Hanif Kadawala, Producer, Bombay
Jones Moholia, Film maker, Guwahati
Samir Hingora, Producer, Bombay
Sanjay Dutt, Actor, Bombay
Legislators (current or former)
B. Satyanarayana Reddy, Telugu Desam, A.P.
Hari Singh, SJP, Haryana
Hitendra Thakur, Congress(I), Maharashtra
Joyanta Rongpi, M.P., ASDC, Assam
Om Prakash Jindal, HVP, Haryana
Parameshwar Brahma, BLP, Assam
Pramila Rani Brahma, BLP, Assam
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Krishnakant Barua, Budhbar, Guwahati
N. Ramanaiah, Eenadu, Adilbad, A.P.
Nripendra Sarma, Budhbar, Guwahati
Parag Das, Budhwar, Guwahati
Prem Raj, Kondagaon, Bastar, M.P.
S. Ramalinga Reddy, Udayam, Medak, A.P.
Ms. Sansam Ongbi Belu, Lanmei Thanbei, Manipur
Shahid Siddiqui, Nai Dunia, Delhi
Sukhdev Singh, Dignity, Chandigarh
Vithal Dampo, Freelance, Bombay
V.T. Rajashekhar, Dalit Voice, Bangalore
Students
Shailendra Gogoi, Students Union, Naharkatiya, Assam
Shahabuddin Gory, Jawaharlal Nehru University, Delhi
Wisdom Kamodang, Delhi University, Delhi
Writers and Artistes
Anjali Doimari, radio artiste and actress, Guwahati
Gaddar, poet and singer, A.P.
Harisingh Gohain, Theatre artiste, Tinsukia
Peruchitranar, writer, Madras
Varavara Rao, poet and critic, Hyderabad
Others
Dr. Abdul Ahad Guru, (since killed), Cardiologist, Srinagar
Aruchamy, DK, Tamil Nadu
Balbir Singh, BKU, Haryana
Bhai Manjit Singh, AISSF, Punjab
Bhoopalan, Radical Youth League, Tamil Nadu
B.N. Singh, IPF, Palamu, Bihar
Deen Dayal Bhullar, Congress(I), Terai, U.P.
Gurcharan Singh Tohra, SGPC, Punjab
Harchand Singh Brar, Terai, U.P.
Captain Harcharan Singh Rode, Akali Dal, Punjab
Prof. Harminder Singh, Akali Dal, Delhi
Jagdish Sharma, IPF, Palamu, Bihar
Joginder Singh, Akali Dal, Punjab
Kartar Singh, Akali Dal, Punjab
Mallu Kapu Bogami, Congress(I), Chandrapur, Maharashtra
Manphool Singh, Congress(I), Haryana
Sardar Mohan Singh, Congress(I), Terai, U.P.
Ramkrishnan, D.K., Tamil Nadu
Rama Subban, trade unionist, Madras
Ranji Lal, Congress(I), Hissar
Shisupalan, DK, Dharmapuri, Tamil Nadu
Siddhartha Phukhan, ULFA, Assam
T. Marimuthu, DMK, Coimbatore, Tamil Nadu
Tulsi Gogai, AGP, Assam
V. Ravichandran, DMK, Tamil Nadu
Vir Bahadur Singh, Akali Dal, Delhi

Note: This list relates to the last eight years. It is not necessary that all cases are still pending. Some are withdrawn, and others possibly are acquitted. This list is not exhaustive.

PUDR