Black Law and White Lies

a report on TADA: 1985-1995

People's Union for Democratic Rights
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Shortly before the introduction of TADA, a legislation called the Terrorist Affected Areas (Special Courts) Act was promulgated through an ordinance on 14 July 1984. It contained some of the provisions later to be found in the Terrorist and Disruptive Activities (Prevention) Act [TADA] such as imprecise and vague definition of 'terrorist', restrictions on bail, summary trials, and limited scope of appeal. At that time PUDR published a brief report: *Are You a Terrorist?* which highlighted the possibilities of misuse of such provisions.

TADA came into force on 23 May 1985. Since then PUDR has been chronicling the process of the implementation of the Act in different parts of the country. The lies given for the justification of the Act and the manner in which each government used it to silence political opposition was the subject of the report published by us in 1989: *United We Terrorise: Political parties and the uses of the Anti Terrorist Act.*

Lawless Roads: A Report on TADA: 1985-1993 was a comprehensive report published in 1993 which conclusively established the draconian nature of the provisions of TADA and that misuse is structurally inbuilt into the Act, The report also dealt with the its communal application, and the detrimental impact on society and polity.

In 1994 after the Supreme Court upheld the constitutional validity of TADA, we published a critique of the judgement highlighting the manner in which the court had abdicated its responsibility in upholding the Constitution.

Today, after nearly a decade of implementation of the Act, there is a marked change in the way in which people, political parties, legislatures, media, as well as the Minorities and the Human Rights Commissions view the Act. All agree that TADA has been grossly misused. However, that a new law or changes in normal law, are required before TADA can be repealed is also as easily accepted. Or even that some amendments in TADA to "prevent its misuse" would suffice.

The present report is an attempt to once again counter the lies being churned out in support of TADA. It argues that misuse is inbuilt into the Act, that TADA attempts to replace normal law and procedure, and eats into the foundations of democracy. It took nearly ten years for the political parties and governments to accept that the Act was being 'misused' This report is brought out in the hope that it does not take yet another decade to realise and accept the inherently undemocratic nature of this law.

Ten years ago TADA was introduced as a temporary measure to combat an extraordinary situation. Over a decade, 23 of the 25 states and two of the seven union territories were notified under the Act. More than 95 percent of our citizens came under the purview of the Act.

Today it is widely accepted that TADA has been thoroughly misused. Large numbers of innocents have been arrested. Protests against the Act have also grown. In this situation every political party has suggested some change in the Act to curb such large-scale arrests. However, it is not so widely accepted that the provisions of TADA are themselves responsible for such a state of affairs. A brief look at the data of implementation would put to rest all hopes of a 'TADA with a human face'.

76,166 persons had been arrested under the Act till 30 June 1994. Of these 18,708, i.e., 24.5 per cent, were discharged without any charges being framed against them. Trials were completed in the cases of 20,386 persons. Of these 843 were convicted and 19,543 acquitted: i.e., barely 4 per cent of the people who were tried under TADA, were found guilty (see Table: *Of Arrest and Justice*). That nearly one fourth of the people arrested under TADA were not even charged for any offence and that 96 per cent of those tried were found innocent only goes to show that TADA is not only inefficient but also ineffective for the purpose it was meant to serve. Inefficiency, however, is not just a technical matter. In the case of TADA it involves the life and liberty of tens of thousands of our citizens. As of today, there are 37,033 people still accused under the Act and their cases are either in the investigation stage or under trial. Even if we assume that charges have been framed against all these people, then going by the previous record, over 35,500 people will be found innocent by the court and acquitted.

This is not merely a farcical exercise of locking up and releasing people. As of 30 September 1994, a total of 876 people had already spent over one year in jail and their cases were still in the investigation stage. Of these, 143 people had spent between two to three years, 49 more had spent three to four years and 4 accused had spent over seven years, without the police having filed charge sheets (see Table: *Punishment without a charge*). Apart from these, there are 2,582 accused still in custody whose cases have reached the trial stage. For instance, Rakesh Kumar was arrested with a button activated knife from Beri Wallah Bagh in West Delhi in September 1986. Charged under Section 5, TADA, he was in jail for four years before charges were filed. Fter another four years of trial, he was finally acquitted in 1994. These undertrials have spent anywhere between one to nine years in jail. The question therefore, is not only the number of people falsely accused but also the length of time for which they are kept in detention.

Of Arrest and Justice

(arrest staistics as on 30 June 1994)

State/U.T.	Total Arrest	Discharged	Acquitted	Convicted	Conviction Rate
A.P.	7,434	581 (8)	3.254 (99)	44	0.59
Arunachal	97	8 (8)	11 (100)	0	0.00
Assam	12,715	0 (0)	15 (100)	0	0.00
Bihar	845	437 (52)	0 (-)	0	0.00
Chandigarh	249	59 (24)	144 (92)	12	4.82
Delhi	1,529	4 (0)	474 (91)	47	3.07
Goa	4	0 (0)	0 (-)	0	0.00
Gujarat	18,584	11,925 (64)	5,190 (97)	174	0.94
Haryana	1,770	0 (0)	871 (82)	192	10.85
H.P.	22	0 (0)	14 (100)	0	0.00
J & K	10,987	2,042 (19)	1,628 (100)	0	0.00
Karnataka	225	0 (0)	2 (100)	0	0.00
Kerala	14	0 (0)	0 (-)	0	0.00
M.P.	358	2 (0.)	134 (94)	9	2.51
Maharashtra	2,419	316 (13)	330 (90)	36	1.49
Manipur	1,601	266 (17)	14 (93)	1	0.06
Meghalaya	16	0 (0)	0 (-)	0	0.00
Punjab	15,282	2,768 (18)	7,261 (96)	292	1.91
Rajasthan	473	135 (29)	32 (53)	28	5.92
Tamil Nadu	253	46 (18)	1 (100)	0	0.00
U.P.	1,283	119 (9)	168 (95)	8	0.62
West Bengal	6	0 (0)	0 (-)	0	0.00
Total	76,166	18,708 (25)	19,543 (96)	843	1.11

Note: The states of Nagaland and Tripura are notified, however there are no cases under TADA registered there.
All figures in brackets are percentages.
% discharged is calculated in relation to total arrests
% acquitted is calculated in relation to total decided cases
Conviction rate is a percentage of convictions to total arrests

Source: Home Ministry

When charged under TADA, by definition the accused crosses the line beyond which his freedom is a threat to the 'Security of State', and 'Public Order'. It seems extraordinary that mere words scribbled on an FIR can change material reality, and can convert a free citizen into a threat to the Security of State and a prisoner without trial. And even though discharged or acquitted, the stigma remains. And it remains there for life. Which in the ultimate analysis, gives rise to a contempt for the

rule of law, and engenders precisely the kind of violence that the Act purports to suppress.

It is the provisions of TADA which are responsible for this failure of the Act, and the consequent wanton punishment and human misery. The replacement of a judicial magistrate by an executive magistrate, the extended remand period, admissiblity of confessions made to police, the shifting of onus of proof on to the accused, and denial of bail, means that any citizen can be picked up and put in jail with hardly any avenues of redress. More than 76,000 people have been branded "anti-national" by the state in this fashion, and have been made to go through this tortuous process.

In these ten years, arguments in favour of TADA have revolved largely around the inadequacy of existing law. In fact, a separate judiciary and enhanced powers for the police have been justified on precisely these grounds. It was then argued that TADA would provide speedy trials and effective procedures for combating "terrorist and disruptive

Punishment Without A Charge

years of detention of detenues in jail whose charegsheets have not been filed for over a year

(as on 30 September 1994)

State/U.T.	1	2	3	4	5	6	7	Total	Avg
A.P.	33	4	8	1	0	0	0	46	18
Assam	574	61	11	4	0	0	0	650	14
Chandigarh	0	1	1	0	0	0	0	2	30
H.P.	2	0	0	0	0	0	0	2	12
M.P.	3	0	0	0	0	0	0	3	12
Maharashtra	7	34	9	0	0	1	0	51	25
Meghalaya	0	10	0	0	0	0	0	10	24
Punjab	24	2	1	0	0	0	0	27	14
U.P.	18	31	19	9	4	0	4	85	31
Total	**661**	**143**	**49**	**14**	**4**	**1**	**4**	**876**	**16**

Note: Similar data is not available for Arunachal, Bihar, Gujarat, Jammu and Kashmir, Manipur and Mizoram.
No instances of detention without chargesheet filed for over a year in Delhi, Goa, Haryana, Karnataka, Kerala, Rajasthan, Tamil Nadu and West Bengal
The column Avg indicates the average period of detention for the column 'Total', in months.

Source: Home Ministry

activities." This position argues that normal procedures of law are ineffective in dealing with "terrorist" crimes. As though normal law was not made for those who commit crimes. And normal procedures were constructed so as to allow the guilty a chance to evade punishment. This argument is most popular with the police and they have been trying to propagate it with an eager and willing executive and legislature in tow. And indignation against increasing violence has also resulted in the consolidation of public opinion in favour of extraordinary laws like TADA.

It is in this situation we are faced with today, that the obvious needs to be restated. That the provisions of law are meant for those who violate law, not for those who follow it. The normal procedures prohibiting police confessions, assumption of innocence of the accused, are not made to provide elbowroom to the accused to evade punishment. These are necessary to ensure a fair trial and to differentiate between the innocent and the guilty. The procedures for bail under normal law are similarly intended to protect the innocent against long periods of detention, when the process of investigation and trial is wilfully delayed by the police.

TADA, by crippling these provisions, cannot distinguish between the innocent and the guilty. It results in innocents being kept for long periods without any charges. It results in a higher possibility of corrupt practices in the police force. Thus misuse, human suffering and denial of justice are congenital to the Act. But this is not all. TADA not only deprives people of their democratic rights. It also erodes all the institutions that are necessary to ensure these very rights.

The Regime of TADA

Devolution of powers between legislature, executive and judiciary is essential to provide checks in any law. TADA drastically alters this balance of power. Notification of any area under the Act is done by the executive. The police, as part of the executive, gets untrammelled powers to arrest. The accused are produced before an executive magistrate. The judiciary has precious little to say or do in this entire process. The courts cannot even prevent the incarceration of an innocent for up to six months at least. Very recently, on the suggestion of the judiciary, executive review committees were formed, comprising senior bureaucrats and state officials, to examine the operation of the Act. TADA has ensured that the necessary restraints on the power of the executive have disappeared; and has also made other institutions of the state irrelevant, as they themselves willingly renounce their own powers in favour of the executive.

Take the case of the police. The function of the police is to maintain law and order, to investigate crimes, and collect evidence. It is an

The Police and TADA

(position of cases as on 30 June 1994)

State/U.T.	Total	*of total*		*of challaned*		
		Dropped by police	Challan filed	Dropped by court	Acquitted	Convicted
A.P.	3,655	660	2,101	0	629	28
Arunachal	28	0	22	4	6	0
Assam	4,792	1,490	975	5	9	0
Bihar	57	14	0	0	0	0
Chandigarh	189	60	127	60	99	9
Delhi	1,735	228	1,490	0	479	47
Goa	5	4	0	0	0	0
Gujarat	3,154	1,212	1,916	1,162	574	19
Haryana	1,443	108	1,331	0	780	157
H.P.	33	20	7	0	7	0
J & K	14,475	10,264	461	0	16	0
Karnataka	41	4	23	0	1	0
Kerala	5	0	0	0	0	0
M.P.	122	12	108	0	23	7
Maharashtra	733	194	343	104	75	8
Manipur	946	483	88	62	6	1
Meghalaya	3	0	0	0	0	0
Punjab	17,518	7,378	9,843	1,368	5,263	235
Rajasthan	150	37	112	18	10	11
Tamil Nadu	43	13	16	0	1	0
U.P.	731	312	383	112	15	3
West Bengal	1	0	1	0	0	0
Total	**49,859**	**22,493**	**19,347**	**2,895**	**7,988**	**522**

Note: The states of Nagaland and Tripura are notified, however there are no cases under TADA registered there.

Source: Home Ministry

experienced reality that ordinary police procedures frequently involve torture and extortion. The flow of funds, to a large extent, determines the registration of an FIR or even a proper investigation. The entry of TADA into such a context has only worsened the situation by giving unchecked powers to the police to arrest, detain and punish. The data on the implementation of TADA shows this starkly (see Table: *The Police and TADA*). Till 30 June 1994 the police had filed 49,858 cases all over the country. Leaving aside the 8019 cases in which investigation is

still on, there are 41,840 cases. Of these 22,493 cases, i.e. 54 per cent of the total, never reached a Designated Court. Each of the accused was remanded to custody up to one year. In this period the police was to complete investigations and file charge sheets. The police did not file a charge sheet, and the accused were let off after a year in jail. Of the 19,347 cases which reached a Designated Court, 2,859 cases, i.e. 15 per cent of those charge sheeted, were found to be baseless or lacking in evidence and were hence dropped by the Court. Trial was completed in 8,510 cases, of which 94 per cent of the cases resulted in acquittal.

An Act that gave powers to the police to book any person as a 'terrorist', that created provisions to remand an accused person up to one year, to extract confessions and to shift the onus of proof onto the accused, has made the police less serious in filing charge sheets and in collecting evidence. In sum the Act encourages the police to neglect or violate procedure. It provides space and justification for shoddy work and poor investigation. And when this attitude sets in, the police attempts to denigrate all safeguards of normal law. For the police TADA is a convenient replacement for the Indian Penal Code. Ordinary and petty crimes can easily be registered under the Act. Hence both the abysmal conviction rate, as well as the large number of cases of "misuse" being cited today. The Supreme Court in *Kartar Singh* ruled that misuse can be tackled by giving powers only to higher police officers. Thus, in Delhi the Police Commissioner was required to give assent to every case booked under TADA. The former police commissioner, M.B. Kaushal, however could not recall the number of cases in which he had given assent. When asked by a judge in Karkardooma Designated Court whether petty criminals can be booked under TADA, he replied in the affirmative adding that the accused should have been convicted in some previous case. Using the Oxford dictionary he defined 'terrorist' to mean any person who creates scare and concluded that all persons whose acts can lead to others feeling scared can be booked under TADA.

It was police officers such as these along with a set of bureaucrats who were entrusted by the Supreme Court to review TADA cases to prevent possible misuse. Three months after the Supreme Court recommendation, the Minister of State for Internal Security assured the Rajya Sabha, on 16 June 1994, that the government will review the working of TADA. A month later Chief Ministers were asked to "consider reviewing *some* TADA cases, *selected personally* on a *random basis*" (emphasis ours). The Supreme Court had however suggested that the review committee be headed by the Chief Secretary, and include the Home Secretary, Secretaries of other departments concerned, and police officers. No criteria was evolved to examine the distinction between proper use and misuse. Nor was any compensation suggested for those

found to have been wrongly charged and arrested.

State governments worked in an equally random manner. The Uttar Pradesh government announced on 16 July 1994 that zonal Inspector-Generals of police had reviewed the cases and had decided to withdraw charges against 180 accused. In Maharashtra a retired High Court judge reviewed 282 cases and found 93 cases of wrong application. In Gujarat the Chief Minister Chimanbhai Patel initially denied any misuse of TADA. Later under pressure a review committee comprising the State Congress Party chief, a former MP and other politicians was formed. The new Chief Minister, Chhabildas Mehta, after assuming office declared that the recommendations of this committee were not binding on the government. In Punjab, the Police Chief K.P.S. Gill declared in January 1995 that Punjab Police had undertaken an exercise to review TADA cases against 300 militants to identify those to be granted amnesty. He added that TADA had been brought in as a preventive measure and not to punish the accused. In Delhi a review committee identified 379 cases in which TADA provisions were to be removed. When this was presented by the prosecution, the judge of a Designated Court refused to allow charges to be removed from 134 of the cases. The process of review thus came to a standstill. 2 undertrials however petitioned the Supreme Court to implement the withdrawal of charges as stated in the government order.

The review committees, though welcome, have further confused the circumstances facing those arrested under TADA. The arbitrary manner in which committees were formed, the lack of any guideline, and refusal by the government to declare any criteria on which the cases were to be judged, inherently creates a procedure that is not fair. In many cases the police which till now was the prosecution, investigation and supplier of evidence, has also become the dispenser of justice. TADA lacks a rational classification to decide the circumstances in which the Act is to be used; to it has been added a review that lacks a rational basis. And notice the way this has been implemented. TADA has bred a contempt in the executive for all norms of fair procedure.

Once an accused is given over to the court, the judiciary is responsible for preventing miscarriage of justice. But under TADA, the judiciary has little control over the case till six months of detention are completed. For the case is not brought before a Designated Court till the charge sheet is filed. The Executive Magistrate before whom the accused is produced, can only choose between remanding the accused to police custody or judicial custody. After the filing of charge sheet, the framing of charges by the court begins. The non-availability of the police investigating officer for long periods ensures that this takes nowhere less than two years. All this time, the court is prevented from

giving bail, since the Act rules that delay does not constitute a reason for giving bail. The High Courts too are constrained from hearing appeals against any order under TADA. Thus the judiciary is made redundant to a large extent, in preventing the miscarriage of justice.

The judiciary however has one power under the Constitution: to strike down any legislation that contravenes the letter and spirit of the Constitution. It is here that the judiciary abdicated its responsibility. In early 1994 when the figure of the total arrested people had crossed 67,000, the Supreme Court took up for hearing a batch of over 400 writ petitions, special leave petitions and appeals, on the *vires* (legislative competence) and the constitutional validity of the Act. On 11 March 1994, the court finally delivered the judgement upholding the Act and disposed of the petitions without costs [*Kartar Singh vs State of Punjab*]. The oft repeated refrain in the judgement was the intention of Parliament. The argument put forward by the Court was simple. That Parliament is competent to promulgate this Act, was justified by locating the

How Speedy is Your Trial?

No. of undertrials in jail whose trial has taken over a year, according to number of years of detention

(as on 30 September 1994)

State/U.T.	1	2	3	4	5	6	7	8	9	Total
A.P.	43	23	29	3	0	0	0	0	0	98
Chandigarh	0	1	0	1	0	0	0	0	0	2
Delhi	10	102	194	116	68	25	6	2	5	528
Haryana	14	28	41	11	14	3	8	0	0	119
Karnataka	13	99	15	0	1	0	0	0	0	128
M.P.	3	26	13	4	2	1	0	1	0	50
Maharashtra	121	425	246	73	31	1	0	0	0	897
Meghalaya	8	1	0	0	0	0	0	0	0	9
Punjab	64	65	94	43	14	10	9	3	0	302
Rajasthan	10	32	31	56	40	10	0	0	1	180
Tamil Nadu	32	25	5	42	0	0	0	0	0	104
U.P.	2	57	36	34	16	7	6	1	0	159
West Bengal	0	6	0	0	0	0	0	0	0	6
Total	**320**	**890**	**704**	**383**	**186**	**57**	**29**	**7**	**6**	**2,582**

Note: Similar data is not available for Arunachal, Bihar, Gujarat, Jammu and Kashmir, Manipur and Mizoram.
No instances of such detention in Assam, Goa, H.P., and Kerala.

Source: Home Ministry

purpose of the Act under 'defence of India', a central subject and not 'law and order' which is a state subject.

Once the competence question was settled, virtually every provision of TADA was justified, and striking down of any provision of the Act, introduction of any changes or even providing a more liberal interpretation was categorically opposed as these would frustrate the intention of Parliament. Such an argument is a bit strange when the constitutionality of a legislation is in question. The intention of the legislature is the proper concern when a court interprets a statute. But when constitutional validity is what is being tested, the intention of the framers of the Constitution seems to be the proper concern. The court willingly accepted the government contention that TADA was required for a speedy trial. This argument could easily have been tested against the facts but the court chose not to do so. On 30 September 1994, the number of undertrials lodged in jail for over one year stood at 2,582. Of them 285 were in jail for a period ranging from 5 to 9 years, and 1087 were in jail for 3 to 5 years and the rest between one to three years (see Table: *How speedy is your trial?*). Add to this the people in jails due to delay in investigation and we get a total figure of 3,458 persons in jail due to delay by the prosecution or the courts.

The general attitude of the apex court towards TADA provisions has been one of resisting any substantive change in the provisions, whether through striking down the provisions or through interpretation. Wherever the Supreme Court has attempted to narrow down the scope of use of some of the sections such as those related to S. 5 or bail, later judgements have partly overruled these. In Delhi, for instance, of the 316 people in judicial custody at the end of 1994, 140 had been charged solely under Section 5. The Constitution Bench judgement on TADA brought this provision into limelight. Since only a minority judgement had commented on it, and ruled that to attract the provisions of TADA, association of the arms with terrorist activity needs to be shown, it gave hopes that the ambit of S.5 may be reduced. On 17 May 1994 in the matter of *Paras Ram vs State*, the Supreme Court further laid down that a person cannot be prosecuted under S.5 unless live ammunition is recovered along with the firearm. However, both these were overruled by another five member Bench [*Sunjay Dutt vs State*, 9 September 1994]. The court held that only 'conscious', 'unauthorised' 'possession of arms' in a 'notified area' is required to be proved by the prosecution. The onus of proving that possession of arms has no connection with terrorist or disruptive activity again falls on the accused. On the question of ammunition it was held that the "arms and ammunition" mentioned in S.5 be read as "arms or ammunition." The Bench agreed that S.5 would be vulnerable to misuse and the state government's power would be

unfettered if the power to notify an area under the Act does not have a relation with curbing terrorist and disruptive activities. Yet, while in the full knowledge of the fact that TADA presently covers over 95 percent of our citizens, and many of the areas to which it extends cannot even be remotely connected with terrorism as explained in the statement of objects and reasons, the Court desisted from making any change and merely records: "the existence of the factual basis for declaring a specified area as notified area has to be *presumed* for the purposes of S.5, for otherwise it would be put to proof in every case." Legal presumption is all very fine; but not when one is dealing with a legislature that found 16 hours in nine years, to assess the outcome of this legislation. The court by making this presumption inverted all logic and held that terrorist acts occur in every area notified under TADA. Yet, how true it turned out to be. In each state and Union Territory that was notified, police promptly identified terrorists.

Despite the absence of any substantive modification in the Act by the apex court, the blatant misuse is bemoaned by the Court on various occasions. *Kartar Singh vs State* for instance was the first official acknowledgement that TADA was being misused. It recorded that entire states had been notified in one go, and no area once notified has been denotified. In *Hitendra Thakur* the court categorically states: "Of late, we have come across some cases where the designated courts have charge sheeted and/or convicted an accused person under TADA even though there is not even an iota of evidence from which it could be inferred, even prima facie let alone conclusively, that the crime was committed with the intention as contemplated by the provisions of TADA." While TADA makes the courts redundant to an extent in checking misuse, the ease with which the judiciary has abandoned its responsibility and yielded to the pressures from the police and the government is disturbing. And to give over the charge of reviewing the misuse back to the executive is shameful. Compare this with Sri Lanka, where in a situation qualitatively worse for the government, the Supreme Court alert to the hazardous outcome, struck down the provisions relating to admissibility of confessions to police, introduced by the Parliament.

The legislature which created this piece of legislation that is to haunt us for many years to come even if TADA is not extended, discussed its promulgation for six hours in which only 34 members participated. In the ten years following the promulgation, TADA came up for discussion on four occasions, and the total time spent in discussion was ten hours and ten minutes, in which in all 42 MPs participated. For the central legislature abdicated all responsibility to assess what was happening to the citizens through a law it had created. The discussion that took place was merely because TADA had to be extended every two

years through an amendment in Parliament. The state legislatures were no better. Without any debate on whether such a legislation was required, state after state was notified through an executive order published in the State Gazette. The opposition to TADA today by various political parties is solely governed by the considerations of electoral politics. For instance, Chief Ministers of Uttar Pradesh, Andhra Pradesh, Kerala and Bihar have opposed further extension of TADA. Andhra Pradesh has a record of being the fifth largest state in the number of people arrested to date. Uttar Pradesh has the dubious distinction of keeping people in jail for seven years without even filing charges. And Kerala was only recently notified with the arrest of 3 RSS and 4 CPI(M) activists. On the other hand, Chief Ministers of Orissa, Sikkim and Nagaland support TADA, even though their states have not been notified under the Act.

Political parties too failed in their duty to protect people's rights. The opposition is expected to play a serious role when the ruling party blatantly misuses a provision. This, of course, did happen. But every major political party in the country is, or has been, a ruling party in one state or another in the last decade. And it has derived benefit from the provisions of TADA to decimate all political opposition. By using it against each other depending on which party is in power, these parties have effectively obscured the difference between use and misuse. Today, when TADA is being perceived as a communal legislation, the Act has become an issue in the Parliament with the elections close by in the future. But none of these parties has made a categorical statement against promulgation of any similar law or changes in the established law. Each of these parties have enjoyed the absolute and unquestioned power that TADA gives to the ruling party. And none is willing to give it up in the interests of democracy and people's rights.

Thus, institution after institution is being eroded of all democratic content. Such then is the regime of TADA that we confront today. A law is drafted by anonymous bureaucrats in the Law Ministry, passed without debate by indifferent parliamentarians, implemented with a vengeance by the police, and then left to be decided in the listless hearings of disinterested magistrates and judges. And so separate criminal procedure, separate judicial hierarchy, a separate political structure is created in our midst. Implicated in this structure, a structure of systematic violence directed against over 855 million people of our country, are a range of actors: from the inspectors in remote thanas, magistrates in far-flung Designated Courts, right up to the top officials in police and bureaucracy, Chief Justices, elected Parliamentarians and Ministers. Haunted by the reality and images of mindless violence, we accept this structure even as it tears apart the basic democratic fabric of social life,

imperceptibly changes not only our life and living, but even our perceptions about them. It destroys and subverts democratic institutions and polity from within, with the tacit consent of those who would bear the full brunt of this collapse of rule of law.

The fact that TADA is misused is so well known, that it hardly needs reiteration. The fact that it has failed miserably in controlling the menace of "terrorism" too is starkly clear. But we still accept the white lies that brought this black Act into existence. We still refuse to see that TADA is condemned by its very logic and structure to both misuse and failure. This is inevitable.

The legislators, political leaders, the Courts, the police all invoke the escalation of violence in everyday life, uprooting it from its social context, in its roots in the policies and development process set in motion by them. Whatever democratic space is provided in the Constitution for political protest and dissent is gradually circumscribed. Until all protest is pushed outside the realm of the Constitution. The "perceived" threat to the State is automatically heightened. And so the hysteria about grave threats to "unity, integrity and sovereignty" grows, as the state abdicates its responsibilities to the people, negates its own basic foundation - that of a democratic, secular socialist republic. and having stared long enough into the abyss, the abyss stares back. So the state inevitably becomes the mirror image of the grotesque monster that it created, and now seeks to suppress. The tragic outcome of this distortion is faced by the thousands condemned to the regime created by this law.

Extraordinary situations demand not extraordinary laws but an extraordinary will to strengthen and preserve the basic democratic values and foundations of a society facing challenges. The more severe the challenge, the more overpoweringly urgent it is to strengthen the institutions that maintain democracy. Failure to do so does not only mean a failure to confront the extraordinary challenge. More dangerously, it propels us down the precipice that leads to anarchy.

To preserve what democracy is still left and to reverse this process of erosion of people's rights, PUDR demands the repeal of TADA.

'गर देश की सुरक्षा का यही मतलब हैं
कि बेज़मीरी ज़िन्दगी के लिए शर्त बन जाये,
आँख की पुतली में 'हाँ' के सिवा कोई भी शब्द अश्लील हो,
और मन बदकार पलों के सामने दंडवत् झुका रहे।
तो हमें देश की सुरक्षा से खतरा है।

- पाश

WITHOUT COMMENT

In the context of the coming elections in Jammu and Kashmir, repeal of TADA would send wrong signals.

S.B. Chavan
Home Minister

TADA in Jammu and Kashmir

Total cases registered	14,475
Cases dropped by police	10,264
Cases resulting in acquittal	16
Cases resulting in conviction	0

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