BLACK LAWS 1984

The Terrorist Affected Areas
(Special Courts) Ordinance

Ordinances Amending The
National Security Act

PEOPLE'S UNION FOR CIVIL LIBERTIES
DELHI

Contents

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A Warning For Our Times

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

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

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

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

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

MARTIN NIEMOLLER
(1892-1984)

The Black Laws 1984

The National Security (Second Amendment) Ordinance 1984 and the Terrorist Affected Areas (Special Courts) Ordinance 1984,* have given wide powers to the police and to the State. There is widespread apprehension in the country that given the past record of the Government in the manner in which it has enacted laws† directly affecting the civil rights of citizens, particularly the poor and has misused them, these "black laws" of 1984 may also be used against dissenters and for narrow political ends by the ruling party.

History tells us that when a Government loses the goodwill of the people it brings about draconian laws to keep itself in power and to safeguard the vested interest it represents. The result: civil liberties and democratic rights of the citizens are curbed.

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

*Both the Ordinances have been passed by Parliament on August 22, 1984. They now await Presidential assent.

†For example: The Hospital and Other Institutions (Settlement of Disputes) Bill 1982; Amendment to Indian Trade Unions Act 1926; Amendment to Industrial Disputes Act 1947; Amendments to the Delhi Development Act 1957, Delhi Municipal Corporation Act 1957, The Public Premises (Eviction of Unauthorised Occumpants) Act 1971, Punjab Municipal (New Delhi) Act 1911 and The Indian Forest Bill 1982.

rights of the people by retaining the harsh and repressive provisions of the Defence of India Act permanently on the statute books.

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

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

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

398 persons were detained under the amended National Security Act in Punjab alone from April 5 to July 31, 1984. Of these, 335 persons were still under detention.

Hindustan Times (August 18, 1984)

Article 22 of the Constitution laid down the scheme under which a preventive detention law could be enacted. The Preventive Detention Act was enacted in 1950 and it continued to be on the statute book until the Maintenance of Internal Security Act (MISA) came into existence in 1971. From 1950 to 1970,

the Preventive Detention Act was reenacted seven times, each time the duration of the Act being three years. There was a gap of about a year when there was no Central law on the subject, though several States had PD laws. [Preventive Detention is different from detention under normal laws, i.e. the Indian Penal Code (I.P.C.) and the Criminal Procedure Code (Cr. P.C.). Under the I.P.C. and the Cr. P.C. persons are arrested for having committed acts violative of the law. Under Preventive Detention however, persons are arrested to prevent them from doing what the government does not wish them to do.]

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

And now, 37 years after Independence, the people of India have been subjected to laws which violate all principles of natural justice. In some ways, they are worse than laws under the colonial regime. Not only do they subvert the right to fair trial but they could also be used against individuals and groups working for social and political justice.

Four more Special Courts are to be set up in Punjab (in addition to the already existing three) to cope with the large number of cases registered since January 28, 1984 when the Terrorist Affected Areas (Special Courts) Ordinance came into force retrospectively.

There are at present about 5,000 cases under "Specified Charges" registered since January 28.

Presently, these courts are functioning from temporary accomodation provided to them. *Ultimately, trial of the accused is proposed to be held in jails.*

Indian Express (August 26, 1984)

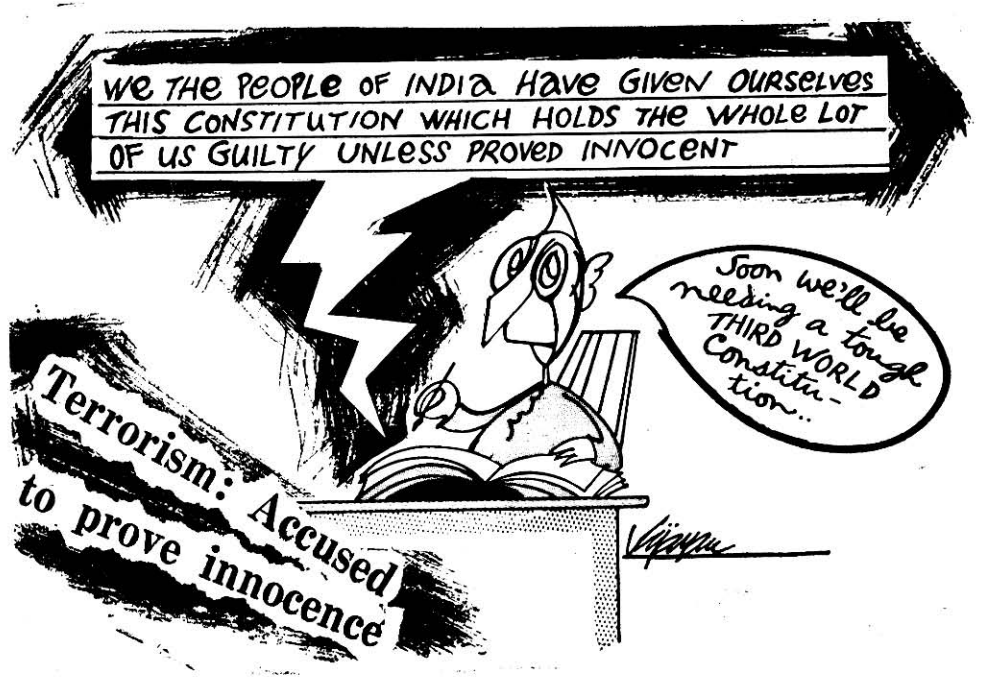
This booklet contains the full text of the National Security (Second Amendment) Ordinance 1984 and the Terrorist Affected Areas (Special Courts) Ordinance 1984, and a commentary on them by eminent Jurist, V.M. Tarkunde. We have also append-

ed excerpts from a letter written by Gandhiji on March 1, 1919 on the Rowlatt Bills.

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

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

PEOPLE'S UNION FOR CIVIL LIBERTIES
(DELHI)



A Legal Commentary

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

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

The National Security Amendment Ordinance No. 5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

police custody whenever the police so desire.

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

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

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

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

V.M. TARKUNDE

What The Press Says

More and More Extraordinary Powers

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

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

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

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

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

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

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

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

S. SAHAY in *Statesman*

Too much power for police in Ordinance

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

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

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

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

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

Indian Express

Curbing Civil Liberties

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

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

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

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

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

Hindustan Times

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

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

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

Gandhiji's Letter on Rowlatt Bills

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

Sir,

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

* * *

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

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

The Satyagraha Vow

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

Rowlatt Act : Relevant Extracts

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

3. **Condition of Application of Part—1**

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

4. **Initiation of Proceedings**

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

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

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

5. **Constitution of Court**

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

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

(a) Persons who have served as permanent Judges of the High Court; or

(a) with the consent of the Chief Justice of another High Court, persons who are Judges of that High Court.

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

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

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

26. **Reference to Investigating Authority**

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

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

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

(*Refer Clause* 12)

PART III

34. **Powers Exercisable when Part III is in Force**

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

(a) the arrest of any such person without warrant;

(a) the confinement of any such person in such place and such conditions and restrictions as it may specify.
Provided that no such person shall be confined in that part of a prison or other place which is used for the confinement of convicted criminal prisoners as defined in the Prisons Act, 1894, and

(b) the search of any place specified in the order which, in the opinion of the Local Government, has been, is being, or is about to be used by any such person for any purpose connected with any anarchical or revolutionary movement.

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

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

35. **Arrest**

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

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

36. **Search**

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

38. **Penalty for Disobedience to Orders Under this Part**

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

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

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

(*Refer Clause* 14).

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

Full Texts Of The Ordinances

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

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

THE NATIONAL SECURITY (SECOND AMENDMENT) ORDINANCE, 1984

No. 6 of 1984

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

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

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

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

Short title and commencement.

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

(2) It shall come into force at once.

Insertion of new section 5A.

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

Grounds of detention severable.

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

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

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

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever,

and it is not, therefore, possible to hold that the Government or Officer making such order would have been satisfied as provided in section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have made the order of detention under the said section after being satisfied as provided in that section with reference to the remaining ground or grounds."

Amendment of section 14.

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

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

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

Amendment of section 14A.

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

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

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

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

ZAIL SINGH
President

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

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

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

THE TERRORIST AFFECTED AREAS (SPECIAL COURTS) ORDINANCE, 1984

No. 9 of 1984

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

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

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

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

Short title, extent and commencement.

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

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

(3) It shall come into force at once.

Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

(iv) endangering the sovereignty and integrity of India;

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

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

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

Declaration of terrorist affected area.

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

(a) declare such area to be a terrorist affected area; and

(b) constitute such area into a single judicial zone, or into as many judicial zones as it may deem fit.

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

Provided that—

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

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

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

Establishment of Special Courts.

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

(a) within such judicial zone; or

(b) if the Central Government having regard to the exigencies

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

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

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

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

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

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

Composition and appointment of Judges of Special Courts.

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

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

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

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

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

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

Place of sitting

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

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

Jurisdiction of Special Court

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

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

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

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

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

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

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

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

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

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

Power of Special Courts with respect to other offences.

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

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

Public Prosecutors.

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

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

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

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

Procedure and powers of Special Courts.

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

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

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

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

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

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

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

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

Power of Supreme Court to transfer case.

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

Protection of witnesses.

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

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

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

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

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

(b) the avoiding of the mention of the names and addresses

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

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

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

Power to transfer cases to regular courts.

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

Appeal.

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

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

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

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

Modified application of certain provisions of the Code.

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

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

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

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

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

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

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

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

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

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

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

Overriding effect of Ordinance.

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

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

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

Delegation.

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

Power to make rules.

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

Saving.

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

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

Amendment of Act 1 of 1872.

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

Presumption as to certain offences.

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

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

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

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

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

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

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

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

THE SCHEDULE

[*See* section 2 (f)]

PART I—INDIAN PENAL CODE

45 of 1860.

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

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

(b) sections 128, 129 and 130;

(c) sections 131, 132, 133, 134, 135, 136, 138 and 140;
sections 153A and 153B;
sections 189 and 190;
sections 212, 216, 216A, 224, 225 and 225B;
sections 295 and 295A;
sections 302, 304 and 307;

(d) sections 308 and 326;

(e) sections 332, 333, 342, 343, 344, 346, 347, 353, 363, 364, 365, and 367;
sections 392, 393, 394, 395, 396, 397, 398, 399 and 436;
sections 505, 506 and 507.

PART II—THE EXPLOSIVE ACT, 1884

4 of 1884.

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

section 9B.

PART III—THE INDIAN TELEGRAPH ACT, 1885

13 of 1885.

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

sections 20 and 25.

PART IV—THE INDIAN RAILWAYS ACT, 1890

9 of 1890.

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

sections 126, 126A, 127 and 128.

PART V—THE EXPLOSIVE SUBSTANCES ACT, 1908

6 of 1908.

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

sections 3, 4, 5 and 6.

PART VI—THE ARMS ACT, 1959

54 of 1959.

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

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

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

37 of 1967.

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

sections 10, 11, 12 and 13.

PART VIII—THE ANTI-HIJACKING ACT, 1982

65 of 1982.

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

sections 4 and 5.

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

66 of 1982.

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

sections 3 and 4.

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

3 of 1984.

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

sections 3 and 4.

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

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

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

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

ZAIL SINGH
President

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

Cartoon by O. V. Vijayan. Courtesy : The Statesman

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