

A CITIZEN'S GUIDE TO RAJIV GANDHI'S INDIA



People's Union for Democratic Rights
New Delhi

People's Union for Democratic Rights, till 1980 known as People's Union for Civil Liberties and Democratic Rights, came into existence during the Emergency. It is one of the few civil rights organisations in the country that has pursued its task despite fluctuations in the political environment and changes of Government.

Though a Delhi-based organisation PUDR has, in a variety of ways, helped strengthen the civil rights movement in the country. In the past it has taken up issues relating to agricultural labourers and peasants of Telengana, Patna and Jehanabad, industrial workers of Faridabad and Modinagar, mine workers of Chattisgarh and Meghataburu, Harijans of Bilaspur, slum dwellers of Delhi, artists of Kerala, political activists of Tamilnadu, Adivasis of Adilabad and Singhbhum, Nagas of Manipur and others. It has fought a number of cases in the Supreme Court in relation to the rights of bonded labour, construction workers, tribals and concerning Police and Army atrocities. Thus, PUDR's work covers many states under different governments.

Given the consistency with which the rights of a large number of people are being violated in the country, PUDR's work can only be described as insignificant. Yet it intends to continue its work and appeals to all concerned people to help with donations and popularisation of its literature.

A CITIZEN'S GUIDE TO RAJIV GANDHI'S INDIA

SOUNDING THE ALARM

The citizens' rights guaranteed in our Constitutions were won at a great cost. Any attempt to curtail, suspend or withdraw them therefore amounts to turning back the wheels of history. It calls for vigilance on the part of every citizen who wants to preserve his/her liberties.

When Rajiv Gandhi became the Prime Minister following the Congress(I)'s massive victory in the 1984 general elections in India, in his radio broadcast on January 5, 1985 he said that his first duty was *'to safeguard the life, property and legitimate rights of citizens belonging to every faith.'*

His promise of a clean administration and to settle the disputes that were a legacy from his mother's regime, initially inspired the Indian press to build up his image as that of a young and dynamic Prime Minister determined to turn over a new leaf. Ironically today, the same press is at the receiving end of its erstwhile hero's stick. Journalists are among the first to bear the brunt of the series of extraordinary laws that had been enacted during the last three years of the Rajiv regime.

What followed his assumption of office was not only a continuation of the dismal legacy of the past, but a further reinforcement and extension of the authoritarian tendencies which during his mother's regime culminated in the shape of the Emergency in 1975-77. These tendencies are reflected in the new repressive laws and in the amendments made recently to similar laws enacted in the past, giving the police extreme discretionary powers without proper supervision or accountability. *All these laws threaten the 'life, property and legitimate rights of citizens belonging to every faith'* — the objects which Rajiv Gandhi pledged to defend when he became the Prime Minister.

We already have quite a number of anti-democratic laws from the past which make inroads on our freedoms guaranteed by the Constitution. Some of them are derived from the British colonial regime and some of them were enacted during Mrs. Gandhi's regime. Some are restricted to certain parts of the country and some are applicable to the entire Indian territory.

Thus, for instance, under the Andhra Pradesh Suppression of Disturbances Act of 1948, a large number of areas in Andhra Pradesh remain declared 'disturbed' where the inhabitants for the past several years have had no access to their fundamental rights. Section 5 of the Act empowers the police to "fire upon, order to fire to be opened or otherwise use force, even to the *causing of death* against any person who is acting in contravention of any law" *No prosecution suit or other legal proceeding can be instituted against the police for such firing (Section 6.)*

The Armed Forces Special Powers (Assam and Manipur) Act, 1958 (amended in 1972), which is in operation in the north-eastern states of India, empowers the army personnel with similar rights and immunity through Sections 4 and 6 of the Act respectively.

This Act was recently imposed in Tripura by the Centre in the face of opposition from the democratically elected Left Front government of Tripura. Such opposition by the Rajiv Gandhi led-Centre to elected non-Congress (I) state governments is quite common, as evident in May 1987, when it ousted the Akali (L) government in Punjab and imposed President's rule there, which was extended by another six months, in May this year.

Thus, a large part of our population are legally segregated as 'second class citizens', being denied the right to equality with other Indian citizens. While Article 21 which guarantees us protection of life remains suspended for them, at the same time they are denied the right to legal redress which is open to citizens in other parts of the country.

There are some other laws which touch every Indian in any part of the country. The National Security Act of 1980 provides for preventive detention of citizens. Any citizen can be detained — *not for committing any offence*, but just because the government may feel "satisfied with a view to *preventing* him from acting in any manner prejudicial to the security of the State or to the maintenance of public order"[S.3(2)]. The period of detention can be prolonged at the will of the government.

The Terrorist Affected Areas (Special Courts) Act - which was first promulgated as an Ordinance in July 1984 - can implicate any innocent citizen on charges of 'terrorism'. While defining the term 'terrorist', in addition to including any person "who indulges in wanton killing of persons or violence", the Act covers persons who may indulge in "*the disruption of services or means of communication essential to the community or affecting adversely the harmony between different religious, racial, language or regional groups or caste or communities*" Thus, a transport worker on strike for his legitimate trade union demands, or a 'dalit' labourer protesting against social discrimination by an upper caste landlord, may be hauled up as a 'terrorist'. Given the habit of the police to display arbitrary attitude or excess of zeal in performing their duties, one can well imagine how these laws can be bent by them to harass and endanger individual citizens.

THE RAJIV REGIME:

Soon after Rajiv Gandhi came to power, he introduced the TADA, [*Terrorist and Disruptive Activities (Prevention) Act 1984*] - one of the most draconian legislations that the country has seen in recent times. In *September 1985*, he extended the *ESMA (Essential Services Maintenance Act)* - which bans strikes in essential services - by another five years.

The next year, 1986, saw the introduction of an amendment to the *Indian Post Offices Act*, to further tighten the provisions of this piece of colonial legislation (passed by the British rulers in 1898) which empower the government to snoop into the private mail of citizens.

Not satisfied with these measures, the Rajiv government sought to impose further curbs on the rights of citizens in 1987 by amending the *National Security Act* to provide for prolonged preventive detention without obtaining the opinion of the advisory board. The same year, when the TADA was about to expire (it was initially meant for two years), the government introduced an amendment to extend it for two more years and make confessions normally attracted through nature before senior police officers admissible in courts - the first time in the country's legal history.

The ascending order of repression reached its apogee in 1988 with the *59th amendment to the Constitution* which permits the imposition of Emergency in Punjab on the plea of any 'internal disturbances' there, and provides for the *blacking out of news of Punjab from the rest of the nation*.

In his determination to see to it that the repressive arm of the state - the police, the para-military forces, the intelligence services - carries out the task of persecution without any protest, Rajiv Gandhi during his regime introduced three legislations with the specific purpose of curtailing the fundamental rights of members of these forces. The *National Security Guard Bill of August 1986* purports to suspend some of the fundamental rights with regard to the NSG. The *Intelligence Organisations Bill of August 1985* disallows members of the intelligence wings to exercise their democratic rights like attending meetings, or communicating their grievances to the press. The *Special Protection Group (SPG) Bill* was introduced on May 5, 1988, constituting an armed force to provide proximate security to the Prime Minister and his family. It prohibits members of the SPG from joining any organization and from communicating with the press or publish anything.

This then has been the record of Rajiv Gandhi's first three years in office. *His voyage towards the 21st century is pulling the nation steadily away from the shores of Constitutional safeguards.*

"Ours is a vibrant, living democracy. The people's voice rules through the legislature. The rule of law prevails. Our courts of justice are vigilant protectors of the rights of the individual. Our press is free, Ours is a great secular democracy in which every individual of every community is an equal Indian, equal in the enjoyment of civic and political rights ..."

— Rajiv Gandhi's speech at the commemorative session of Parliament to mark the 40th anniversary of Independence, August 13, 1987.

THE WRITING ON THE WALL.....

should be clear to all.

The following pages are an attempt to warn the citizens of India of the unduly wide scope of powers being given to the police, the paramilitary forces and the army under these Acts, which violate the right of the ordinary citizen to go about his/her legitimate business in daily life without unnecessary interference. The violation can take numerous forms ranging from detention of innocent citizens for an indefinite period to the outright shooting of citizens without any obligation on the part of the police or army to face the courts. The laws affect all sections of the population, ranging from employees in government institutions (including even those employed in the police intelligence agencies) to journalists, from trade union activists to an ordinary pedestrian. We have given examples of the situations which are most likely to occur - *and have occurred* - in the daily lives of citizens.

We are constantly aware of the need of balancing two interests - *the need to ensure that terrorism is stopped*, that criminals are prosecuted on the one hand, and on the other hand, *the right of citizens to perform their normal functions without harassment*, and above all their right to protection of life and personal liberty. But we feel that the government is increasingly adopting measures that are supposed to contain terrorism at the expense of individual liberty.

The government has as yet failed to give us a convincing explanation as to why instead of taking recourse to *extraordinary laws*, it is not effectively using the *existing laws* like the Criminal Procedure Code, the Indian Penal Code and similar legislations which are specifically meant to deal with criminals and have provisions that are thoroughgoing enough to arm the authorities with powers to tackle offences of a violent nature - the sort of offences that the terrorists are committing? Why are new laws being enacted which *in one brush-stroke paint both the terrorist and an innocent citizen with the uniform colour of black*, which with a broad sweep drive both a criminal and a law-abiding citizen to the same fate - imprisonment or death?

If the government can violate the fundamental rights of Indian citizens on the basis of its subjective assessment of 'intentions,' it is about time that Indian citizens question the *INTENTIONS OF THE GOVERNMENT* - a questioning not based purely on subjective

speculations, but on the actual evidence of how these Acts are being used against political opponents, trade unionists, civil liberties activists - any ordinary citizen.

WATCH THE DAMOCLES' SWORD hanging over your lives. You may be yet unaffected by the repression - which is let loose in the less-publicized areas of Nagaland, Manipur or Mizoram, or the more-exposed (but likely to be blacked out once the Emergency is declared there) areas in Punjab. But soon, one day or the other, you can become its victim.

THE DRAGNET IS CLOSING IN. Yesterday it was Nagaland. Today it is Punjab. Tomorrow it may be you!

IF YOU WANT TO WALK, YOU NEED THE GOVERNMENT'S PERMISSION

If you are walking down a certain road, or taking a stroll along a railway track, or loitering near a certain building, you may be committing a crime. You can be hauled up by the police and sent to jail for a period that can last from six months to three years.

Under the Terrorist and Disruptive Activities (Prevention) Rules, 1986, made by the Central Government in exercise of the powers conferred by the Terrorist and Disruptive Activities (Prevention) Act, or TADA of 1985: "No person shall, without the permission of the Central Government or the State Government enter or be on or in or pass over or loiter in the vicinity of any *prohibited place*." (Rule 6).

What is a prohibited place? According to the Rules, it means a place as defined in Cl.8 of Sec.2 of the Official Secrets Act, 1923. The relevant clause of that Act describes, among other places: "... any railway, roadway, or channel or other means of communication by land or water.... which is for the time being declared by the Central Government by notification in the official Gazette to be a prohibited place for the purpose of this Act."

If you are unlucky enough to miss the official gazette notification, or fail to memorize the ever-growing list of such prohibited places, and inadvertently walk into their *vicinity*, leave alone entering them, you will be stung by the TADA live wire!

IF YOU ARE A BYSTANDER....

and happen to be present when a violent incident takes place, you can be accused of being responsible for it.

If you think it is absurd, read *Section 111A of the Terrorist Affected Areas (Special Courts) Act*: which says that if a person "had been at a place in such areas 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.*"

DO NOT TOUCH ANY PAPER....

If you receive a letter, or anyone thrusts a handbill into your hands, or you pick up a newspaper from a stall, be careful. For, they can carry "information likely to assist terrorists or disruptionists." And once

you touch them, you can be jailed for a term varying from six months to seven years.

Under TADA, "*acquisition, possession or publication, without lawful authority or excuse, of information likely to assist terrorists or disruptionists*" is a crime (S.5-2-a-ii).

The mere receipt of such information by you is good enough for the government to arrest you. Plug your ears, put blinkers over your eyes and do not touch anything!

BEWARE OF SPEAKING AND WRITING....

The government can intercept and interrupt your conversation if you are talking to a friend (TADA - 5-2-i) on phone, since it might be suspected of facilitating "*the commission of terrorist acts.*"

We pass and receive '*information*' by speaking and writing. What is the "*information likely to assist the terrorists and disruptionists?*"

The TADA Rules, 1986 are quite explicit about the nature of such information. It includes "*any information which is intended or is likely - (i) to bring into hatred or contempt, or to excite, disaffection towards the Government established by law in India;*

(ii) to bring into hatred or contempt, or excite disaffection towards the Armed Forces of the Union or the *police force* by whatever name called, of a State or any public servant or class of public servants;

(iii) to promote feelings of enmity or hatred or otherwise affect the harmony between *different classes of persons* in India." (19.1.c.i.ii,iii)

So be careful! If you are a journalist exposing corruption in the government, you can be accused of '*bringing into hatred or contempt towards the government.*' If as an ordinary citizen, you write a letter to a newspaper complaining about police inefficiency, you can be charged with '*exciting disaffection towards the police force.*' If you are a trade union leader and speak of the conflict between the working class and the industrialist class, or if you are a social activist and write about the persecution of the landless class by the landlord class, you can be hauled up for '*promoting feelings of enmity or hatred affecting the harmony between different classes of people....*'

If you think this is an idle speculation or a baseless apprehension, let us take you back to *Ahmedabad, August 1987*. Workers of Reliance Industries Limited went on strike demanding the implementation of the Industrial Tribunal award and increase in wages. *Six leaders of their struggle committee were arrested under TADA*, who were refused bail by the specially designated court set up under the Act.

IF YOU ARE A JOURNALIST....

forget '*Freedom of the Press.*' The traditional privilege of interviewing anyone anywhere and the right to publish his/her view in newspapers is no longer there.

Under the TADA Rules: "*No person shall, without lawful authority, make, print, publish, or distribute any document containing or spread by any other means whatsoever, any matter derived from terrorists or*

disruptionists, their sympathisers or associates, or sources sponsored or utilised by or otherwise connected with terrorists, disruptionists, or their associates or sympathisers." (20.1)

Publication of "any matter derived from terrorists or" through interviews or otherwise, does not necessarily indicate that the reporter or publisher of the newspaper sympathises with the view expressed by the interviewee. But our government thinks otherwise, and bundles together both the interviewer and the interviewee as criminals. If you publish "any matter derived from terrorists or disruptionists" or even "their sympathisers or associates", you can be punished with "imprisonment for a term which may extend to five years and shall also be liable to fine." (20.3)

Forget even interviews. If you happen to come across a leaflet and use its contents for writing a report - a common practice in world-wide journalism - you may attract the TADA which says that if "any leaflet distributed by the terrorists and disruptionists, by any means whatsoever, is at any subsequent time reproduced, whether in the same or a different form and whether with or without comments in any document," the designated court can take action (20.2.ii).

At least four journalists have been arrested under TADA - V.T. Rajshekhar, editor of DALIT VOICE; Sukhdev Singh, editor of DIGNITY; Shahid Siddiqui, editor of NAI DUNIYA; Khalid Ansari, editor of MIDDAY; and Al Haj Naz Ansari, editor of MASHIRIQUI AWAZ. While the first was accused of expressing criticism regarding the Indian government's handling of the Khalistani secessionist movement, the other three have been charged merely for reproducing interviews with the Khalistani spokesmen.

If TADA spares you, there are other Acts to ensnare you. The National Security Act (NSA) of 1980 - further tightened up by Rajiv Gandhi's government through an amendment in 1987 which can keep you in jail for years - can haul you up if the government, both the Central and the State, is satisfied that you need to be prevented "from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order."

INTERVIEW: your occupational obligations involve your meeting with different sorts of people for carrying out your professional responsibility of objective reporting. Such meeting with anyone whom the government may consider a foreign spy or a terrorist, can be interpreted as "prejudicial to the security of the State," or "prejudicial to the maintenance of public order."

This is not wild imagination on our part. Let us remind you. One of your colleagues — *Kuldip Singh Arora* — a UNI staff correspondent in Amritsar, was *arrested by the police on April 12, 1988, under NSA*. The charge-sheet issued by the authorities against him accuses him of meeting certain persons - which he did in the discharge of his professional duty like any other journalist.

To escape going to jail if you decide to avoid touching domestic affairs and write about events abroad, you may still get into trouble. Reports do appear criticising the the Indian government's role in Sri

Lanka, the behaviour of the Indian Peace Keeping Force there. But there is a constant threat hanging over the reporters and the publishers of those reports. The government may detain them under NSA, if it is satisfied that their publication is "prejudicial to the defence of India, the relations of India with foreign powers."

There are still other ways of preventing you from carrying out your professional duties. You may visit a trouble spot-affected by a communal riot, or a police firing, or insurgency-and send your report to your newspaper. But the report may never land up there. There is the *Indian Post Offices Act of 1898* to take care of it. It enables the government to *prevent transmission, or intercept or detain any message from any person relating to any subject*, if the government thinks it is necessary in the interests of public safety, or on the occurrence of any public emergency. (S-26). Your report may attract this catch-all provision of the Act. Even after that, if you want to send your report through a private courier, you will be stopped from doing so by the latest amendment to the Act introduced by the Rajiv government. This amendment empowers the postal officers to enter the premises of anybody, especially of private couriers and conduct search.

IF YOU MENTION 'PUNJAB'...

you may soon get into trouble

The 59th amendment passed on March 23, 1988, does not only provide for the declaration of Emergency in Punjab, but also empowers the government to ban meetings to discuss anything on Punjab even outside the state. It can impose pre-censorship not just within Punjab, but also in the rest of India to cover any report that discusses the Punjab situation.

If you are arrested in this connection anywhere outside Punjab, you cannot obtain judicial redress by way of habeas corpus in any court because Article 359 has not been amended to restrict its operation only to Punjab.

One of the grounds for declaring emergency in Punjab, under the new amendment of the Constitution, is "*internal disturbances*." A stir by farmers of Punjab for better prices for their agricultural produce, marked by meetings and demonstrations, can be described as an "internal disturbance" and used as a plea for imposing Emergency. It is not only terrorist activities, peaceful protests like a non-cooperation movement also can fall under this category.

Any political protest, any democratic movement in any part of the country can be described as an "internal disturbance" by the Centre, to be used as an excuse for declaring Emergency. *Punjab can well be the test-case-the prelude to the declaration of Emergency all over the country.*

Once Emergency is declared in Punjab, the state's inhabitants will lose their rights to freedom of speech and expression; to assemble peaceably; to form associations; to move freely-the rights guaranteed under Article 19 of the Constitution. Article 21, which guarantees

protection of life and personal liberty will also remain suspended during the Emergency period.

This can be a prolonged agony for the people of Punjab, for the 59th amendment provides for continuation of Emergency for three years, without bringing the matter up in Parliament for reconsideration.

During this period, the state will be cut off from the rest of the country, since the government is empowered to regulate the entry of people into Punjab. The suspension of fundamental rights will encourage the police to put thousands behind bars without any accountability, and to shoot down citizens without any impunity whatsoever.

IF YOU ARE LIVING IN PUNJAB...

You must have already been hemmed in by 25 odd legislations—specially meant to combat terrorism in your state. There are the Code of CRPC (Punjab Amendment) Act of 1983; Armed Forces (Punjab and Chandigarh) Special Powers Act of 1983; Punjab Disturbed Areas Act of 1983; Chandigarh Disturbed Areas Act of 1983 and a host of other such measures which *allow the police and para-military forces to arrest you, confiscate your property and even to kill you, but which deny the citizens right of recourse to due process of law—since actions taken by the police under these laws are immune from court proceedings.*

Since the imposition of President's rule in Punjab in May 1987—at least 2,678 people have been arrested as 'terrorists' there. *One wonders how many of them are terrorists?* The majority of those who were held as 'terrorists' during the Operation Bluestar in Amritsar in 1984—and 300 odd among them are still detained in Jodhpur jail—were innocent pilgrims, old men and women who were stranded in the Golden Temple.

Ironically, *while common citizens are being harassed, arrested and killed* (in false encounters—till October 1987 there were about 430 such killings of innocent people) on mere suspicion of their having terrorist connections, *the actual terrorists go undetected and have in fact increased their scores in terms of victims.* According to the former Punjab Chief Minister Surjeet Singh Barnala, over 1,500 persons had been killed by terrorists in Punjab since the imposition of President's rule there.

Now with the 59th amendment, the bloody may-hem will be carried out in total darkness—since *people outside Punjab will have little chance to know what is happening there with the imposition of precensorship.*

From now on then, you are a second class citizen in Punjab—denied the rights which your fellow citizens enjoy in the rest of India. You are also a 'fair game' — for both the trigger-happy police and the fanatic terrorists.

IF YOU ARE A DOCTOR, A LAWYER, OR A TEACHER....

beware of your patients, your clients or your students. They may be "terrorists", "disruptionists", "secessionists"

Forget the Hippocratic oath and swear by TADA. If a patient comes to you and you treat him, and he turns out to be a "terrorist," you have committed a crime. According to TADA, "rendering of any assistance, whether financial or otherwise, to terrorists or disruptionists" is an offence (5-2-a-iii). You can be punished with imprisonment for a term which may not be less than six months but which may extend to seven years.

Do not dare to act on behalf of your client, if you are a lawyer. He may be a "terrorist". Acting on behalf of such a person "in drawing, accepting, paying, presenting for acceptance, or payment, negotiating, or otherwise dealing with any negotiable instrument" is an offence under the TADA rules (23-1-d).

Shun your students. For, they may be "instigating or abetting terrorist acts or disruptive activities or assisting in any manner terrorists or disruptionists. "Communicating with such persons is an offence. (TADA-5-2-a-i).

YOU MAY BE INNOCENT, BUT YOUR HOUSE...

can be found guilty. TADA provides for "the demolition, destruction or rendering useless, in case of necessity, of any building or other premises or any other property." (5-2-f) to prevent the use of the premises by terrorists, or even to "minimise danger to persons and property in or in the vicinity of such premises during any operations against terrorists and disruptionists. "(TADA Rules-21-1)

IF YOU ARE A WORKER...

employed in essential services like the railways, posts and telegraph, transport, etc. you are denied the right to strike. The Essential Services Maintenance Act (ESMA) which bans your right to strike was introduced first in 1981. It was extended by another five years on August 22, 1985. If you join the strike, or instigate or incite others to join it, you are liable to disciplinary action (including dismissal) and can be punished with imprisonment for a term which may extend to six months or with fine which may extend to Rs 1,000 or with both.

EVEN YOUR WIFE OR HUSBAND OR FRIEND....

is not spared by ESMA. Any person who expends or supplies any money in support of strike shall be punishable with imprisonment or fine or both, thus preventing the relatives and friends of the striking employees from contributing to strike-funds, or even from helping them out with food and money.

IF YOU WORK IN A HOSPITAL A SCHOOL OR A COLLEGE...

you cannot go on strike, which is banned by the Hospitals and other Institutions Bill, passed by Rajya Sabha in April, 1988.

IF YOU ARE A POLICEMAN...

do not think that you can escape the tentacles of the legal octopus. Three new bills have been introduced by the Rajiv Government, to keep your mouths shut.

The first-the Intelligence Organizations (Restriction of Rights) Bill- was passed on August 26, 1985. If you are a member of IB (Intelligence Bureau), RAW (Research and Analysis wing), and other agencies, you are *"barred from communicating with the Press, or publishing or causing to be published any book, letter, pamphlet, poster or other document, except with the prior permission of the head of the Intelligence body."*

You cannot participate in or address any meeting, or take part in any demonstration organized by any body of persons for any political purpose or for such other purposes as any be proscribed.

If you violate these rules, you can be punished with imprisonment for a term which may extend to two years, or with fine which may extend to Rs 2000, or both.

You can be jailed even for talking to your friends or relatives about functioning, structure, personal or organisational affairs of the intelligence organizations. The law bars you from contacting or *communicating* on these matters with any person except for purposes of official duty.

The other bill is the National Security Guard Bill, which was passed on August 20, 1986. It provides for the establishment of a new paramilitary force called the National Security Guard to deal with terrorist activities in various states.

The other is the National Security Guard Bill, which was passed on August 20, 1986. It provides for the establishment of a new paramilitary force called the National Security Guard to deal with terrorist activities in various states.

If you are a member of the force, your fundamental right to Constitutional remedies like the right to move the Supreme Court, stands restricted abrogated.

The latest bill-*Special Protection Group (SPG) Bill*- introduced in May 1988, prevents you, if you are a member of the SPG, from joining any organization, or speaking to the press about your grievances.



"We have taken up the cause of suppressed sections of the world. We have demonstrated that our voice is that of balance, tolerance, compassion, truth and non-violence."

-Rajiv Gandhi's speech from the ramparts of Red Fort on the occasion of Independence Day, August 15, 1987.

IF YOU ARE A JAWAN....

you have been trained and you are expected to protect the nation's borders from its enemies. But you can be called up any moment to shoot upon your fellow citizens-in Nagaland, Andhra Pradesh, Tripura - and wherever the Rajiv Gandhi government wants to suppress the mounting discontent of the people.

You can be summoned to go to some other country and shoot down

innocent citizens there, as right now 50,000 of your colleagues -in the guise of the Indian Peace Keeping Force (IPKF)- are doing in Sri Lanka. Over 400 of your men have already lost their lives there while fighting the Liberation Tigers of Tamil Eelam (LTTE), and about 1,300 are lying injured. (Defence Minister K.C. Pant's statement in the Rajya Sabha on April 28, 1988).

Whose war are you fighting in Sri Lanka? Do the Tamils who are facing your bullets there, regard you as a 'peace keeping force', or as an 'occupation army'?

IF YOU ARE ARRESTED...

under NSA, you can be detained for an indefinite period.

You should be informed of the grounds of your detention within ten days of your arrest at the most; but the *authorities are not bound to disclose the facts if they consider it to be against public interest to disclose.* (8-2). Thus, you may be in complete darkness as to the reasons for your detention.

You are *not allowed to have a lawyer to represent your case.* (11-4)

You can appeal to an Advisory Board set up by the government. The Board shall consist of three persons who are, or have been or are qualified to be appointed as Judges of a High Court (9-2). One of the members who is, or has been a judge of a High Court shall be its chairman. (9-3). When there is a difference of opinion among the members of the Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board (11-3).

It is on the recommendation of the Advisory Board that the government can either revoke your detention order, or confirm it. Thus, the composition of the three-member Board is an important factor which decides your case. Let us try to understand the implications of the composition of the Board as provided by NSA. The three members only need to be qualified to be appointed as High Court judges for membership of the Board. According to the Constitutional Article 217(b) one of the qualifications for appointment as a High Court Judge is at least 10 years' experience as a High Court advocate. Thus, any two High Court advocates with 10 years experience each, can be appointed members of the Advisory Board. Nothing prevents the government from appointing its own public prosecutors as the members of the Board. If the government wants to keep you in detention, two hand-picked members of the Board can overrule the chairman, a sitting or retired Judge, if the latter favours your release. You can be detained for a maximum period of 12 months (13). But even after the expiry of that period, or even if your detention order is revoked on the recommendation of the Board, you may be put back in jail under fresh detention orders (14-2).

In 1987, by an amendment, the Rajiv Gandhi government took away from you even the little hope that you could expect from the Advisory Board's recommendation. The amendment now *enables the government to detain you "without obtaining the opinion of the advisory board for a period longer than three months but not*

exceeding six months from the date of detention."

If you are arrested under TADA,

you will be triable only by a Designated Court, and not the ordinary judiciary (9).

Your trial will be held in camera (13-1) and the identity and address of the witnesses will be kept secret (13-2).

Do you understand the implications? You will be completely cut off from the rest of the world during your trial, with no friends or relatives to give you moral support. You cannot hope for a fair trial, not able to challenge the witness brought to give evidence against you. (He could be a police officer in mufti, pretending to be a member of the public, since his identity cannot be asked for).

You may be arrested in Punjab, but can be taken away for trial to Kanyakumari. For, the government can transfer your case from one Designated Court in a State to another Designated Court in a different state (9-2), thus depriving you of easy access to your family and friends living in the state to which you belong.

Two new amendments made to TADA in August 1987, have pushed you further to the walls. First, *your confession to a police officer (and not to the judicial magistrate, as in the past) should be good enough for admissibility in the courts.* Its ominous meaning must be clear to you. The police, notorious for their third-degree methods in custody—where almost every day there are cases of arrested suspects being beaten to death—will use all types of torture upon you to make you sign a confession to crimes which you have not committed. Thus, ironically enough, you can be convicted on the basis of a confession extorted from you at bayonet point.

The other amendment *shifts the onus of proof from the prosecution to the accused*, in four circumstances: recovery of arms and explosives from the possession of the accused; finding of fingerprints at the scene of the crime; confession to a co-accused; and extra-judicial confession made to any person other than a policeman.

If the over-zealous policeman wants to get you prosecuted, he can plant arms or explosives on you at the time of your arrest. You will then have to prove that they do not belong to you. In practice it is extremely difficult for the accused to discharge this burden of proving his/her innocence.

This legal provision violates the International Covenant on Civil and Political Rights (to which India is a signatory), which lays down "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law,"—a right which is recognized by the Human Rights Committee in its statement: "...the presumption of innocence... is fundamental to the protection of human rights... By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt."

But if you are arrested under TADA, all the odds are rallied against you — you will be barred from the outside world; witnesses will be brought against you whom you cannot challenge; you will be at the

mercy of the police who will torture you with impunity to extort confessions from you.

That had been the fate of about 9,300 people *detained under TADA till the end of 1987*. Of them 4,028 were in Punjab alone, 2234 in Gujarat and 1,410 in Haryana.

WHAT DO YOU EXPECT FROM THE COURTS ?

The citizen's last resort for protection from the tyranny of an authoritarian government is the judiciary.

But can you hope for a fair hearing in our courts? If you are poor — many among the victims of the repressive laws come from the lowest rungs of the socio-economic order — the odds are heavily stacked against you. A beggarly appearance itself is often a reason for suspicion in the minds of those who are better fed and better dressed. It is the latter again who man the judiciary. A classic case of their typical bias against the poor was provided by the acquittal by the Madras High Court of some landlords who were accused of burning to death 42 Scheduled Caste landless labourers, including 20 children on December 25, 1968 in Kilvenmani, Tamilnadu. Acquitting them, the High Court observed: "Most of them are rich men owning vast extents of land...it is difficult to believe that they themselves walked bodily to the scene and set fire to the houses..."

'Compliant' judgments are delivered from various motivations ranging from political bias to personal ambitions. The tendency towards such judgments increases during an Emergency — as we remember in 1975-77. When MISA detenus were being tortured and fired upon in jails, one Supreme Court judge in a famous judgment in the Habeas Corpus Case in April 1976, said: "...the care and concern bestowed by the state authorities upon the welfare of the detenus, who are well-housed, well-fed and well-treated, is almost maternal." The majority judgments in that same case which upheld the government's decision to suspend fundamental rights during an Emergency situation, indicated that a judiciary of the type we have in India can rarely persevere at odds for too long with the ruling political party.

The new extraordinary laws which have culminated in the passing of the 59th amendment are likely to lead to the judiciary's progressive capitulation to the executive's view of its legal powers. These laws seek to legitimize the oppressive authority of the police by deliberately obfuscating the boundaries of what constitutes lawful and legitimate views and actions in a parliamentary democracy through attempts to brand all dissidents as 'extremists' and 'terrorists.' In such a situation, the judiciary can again act as a suppliant tool of the executive as it did during the 1975-77 Emergency period.

But not quite reassured of the judiciary's support, the government is trying its best to severely restrict the courts' scope for judicial review. NSA and TADA detenus have been put beyond the pale of the ordinary courts — the former to be heard by government appointed Advisory Boards, and the latter by specially designated courts.

Besides, the judiciary is being barred from interfering in disputes between the citizens and the police, armed forces. The latter are being granted protection from any legal proceedings in connection with actions carried out by them in accordance with the objectives of these laws.

As a result, while you can be harassed, your movement curtailed, your voice muffled, your house demolished, your body rots in jail and remains at the mercy of police bayonets.

YOUR PERSECUTORS GO SCOT-FREE.

Even if you are proved innocent — if you are lucky enough, or after you move heaven and earth to get released — you have no redress for the harassment and hardship caused to you, for the valuable time of yours stolen by the jail and the police, for the loss of income caused by days and months of incarceration.

You cannot go to the court demanding compensation for the losses you have suffered, or punishment for those responsible for causing them. *Both NSA (Section 16) and TADA (Section 20) prevents you or others from instituting any suit, prosecution or other legal proceeding against the Central Government or the State Government or any other officer or authority, who might have been responsible for restricting your movements, expunging your reports, stifling your voice, putting you behind bars — or even doing away with your life. The government grants them this immunity because whatever they do in accordance with the objectives of these Acts, is assumed to have been done "in good faith".*

If you unwittingly stray anywhere near the Prime Minister or any one of his family members, you can be shot dead by the Special Protection Group (SPG), and your friends or relatives cannot seek any redress since under the SPG Bill "no suit, prosecution or legal proceedings shall lie against any member of the group who does anything which is in *good faith* done...."

Your "*good faith*" has no place in the thinking of a government which provides no remedy in the courts by way of damages for a person who is subsequently shown to have been sent to prison for a crime which he did not commit.

YOU CAN BE MADE TO DISAPPEAR...

and your dead body may reappear somewhere.

Although the Government has not yet enacted any law to make you disappear, the police can pick you up one fine morning and that may be the last one will hear of you.

If you think it is a figment of our imagination, remember Hashimpura in Meerut. On May 22, 1987, several people were taken away in trucks by the Provincial Armed Constabulary. Later, their bullet-ridden bodies were recovered from canals, where according to eye witness accounts the PAC threw them after killing them.

In Andhra Pradesh, for the last several years now, political dissidents and civil liberties activists had been captured by the police,

never brought before any court, shot dead and their bodies later shown as "killed in encounters".

On July 11, 1987, the Assam Rifles launched 'Operation Bluebird' in Oinam village in Manipur — in retaliation against an attack on their camp by guerillas of the National Socialist Council of Nagaland. Unable to apprehend the guerillas, the Assam Rifles personnel took it out on the innocent Naga villagers of Oinam. At least 15 villagers were taken away and tortured to death. Two teen-aged girls were kidnapped by the Assam Rifles personnel. They have not yet returned.

A POSTSCRIPT FOR CITIZENS WHO HAVE NOT YET HEARD THE MIDNIGHT KNOCK...

You may accuse us of being prophets of doom, of over-stating dangers, of spreading panic.

You may ask: "Why? Here we are — still moving around in a free society, enjoying free press that everyday brings out for us entertaining skeletons from the government's cupboard. Where is the nightmare that you are conjuring up from laws that in any case are not relevant for us — innocent, law-abiding citizens?"

You may say: "Punjab or Nagaland are distant-exceptional regressions from our democratic standards. They therefore deserve such exceptional laws. We are sure the government will use these laws in a spirit of understanding and generosity, sparing us — innocent, lawabiding citizens."

There were optimists like you in Germany in the 1930s. Listen to their plight, as summed up by a civil liberties activist:

"...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 me, and by that time there was *no one left to speak for anyone.*"

If you choose, you can go through the same process of elimination. Somewhere along the line, you may find a niche for your personal survival. But at what cost? What sort of life are you opting for?

You can opt for the following—

- stop meeting people, even your friends, since they might be suspected of being terrorists, and thereby put you into trouble;
- stop receiving letters, newspapers and magazines, since they may contain terrorist propaganda;
- stop writing or speaking in public since it might be construed as aiding and abetting terrorists and disruptionists.

Do these options sound absurd? Unrealistic? Unnecessary? Since, the majority of our citizens can still avoid such extreme decisions?

But you can soon be pushed into making these decisions, since the laws — both old and new that are on the statute books — have all the provisions to compel you to restrict your lives to the grooves dictated by the state.

And even then, are you sure one midnight the security men will not come and knock at your door ?

As we have tried to prove to you till now, the scope of operation of these laws is menacingly stupendous and all-embracing. They leave nothing to chance, and nothing escapes them. If today, in Delhi, Calcutta, Bombay, or Madras, you feel sure that they do not touch you, tomorrow any policeman can pick you up — if your name resembles that of a 'dreaded terrorist', or your face arouses suspicion, or even if your normal functioning in the course of your professional duties is considered as "abetting, advocating, advising, inciting... disruptive activity" (Section 4-1 of TADA). There is hardly anything you do which can escape the staggering provisions of these laws.

If you are still not feeling their pinch, chances that they will be used against you are vastly increasing. Remember how the TADA, ostensibly meant for the Punjab terrorists, was used against Gujarat workers. Remember how the NSA, ostensibly meant for the defence of India against foreign enemies was used against an Indian journalist. Remember how villages of Hashimpura disappeared — their bodies found later floating in canals.

A LAST TIP FOR CITIZENS who want survive in Rajiv Gandhi's India...

Begin to protest against the 'Black Laws.' Talk to friends, neighbours, relatives, colleagues, fellow-workers. Take part in actions. Join civil liberties groups. Go to meetings.

Speak up, **BEFORE THERE IS NO ONE LEFT TO SPEAK FOR ANYONE.**



Published by:

Gobinda Mukhoty

President, PUDR

213, Jorbagh

New Delhi-110003

For Copies

Delhi

PUDR

C/O Navdita Haksar

56 Munrika Enclave

New Delhi-110067

Suggested Contribution : Rs. 3

May 1988

**Printed at : Graphic World, Kucha Dakhni Rai
Daryaganj, Delhi 110002**