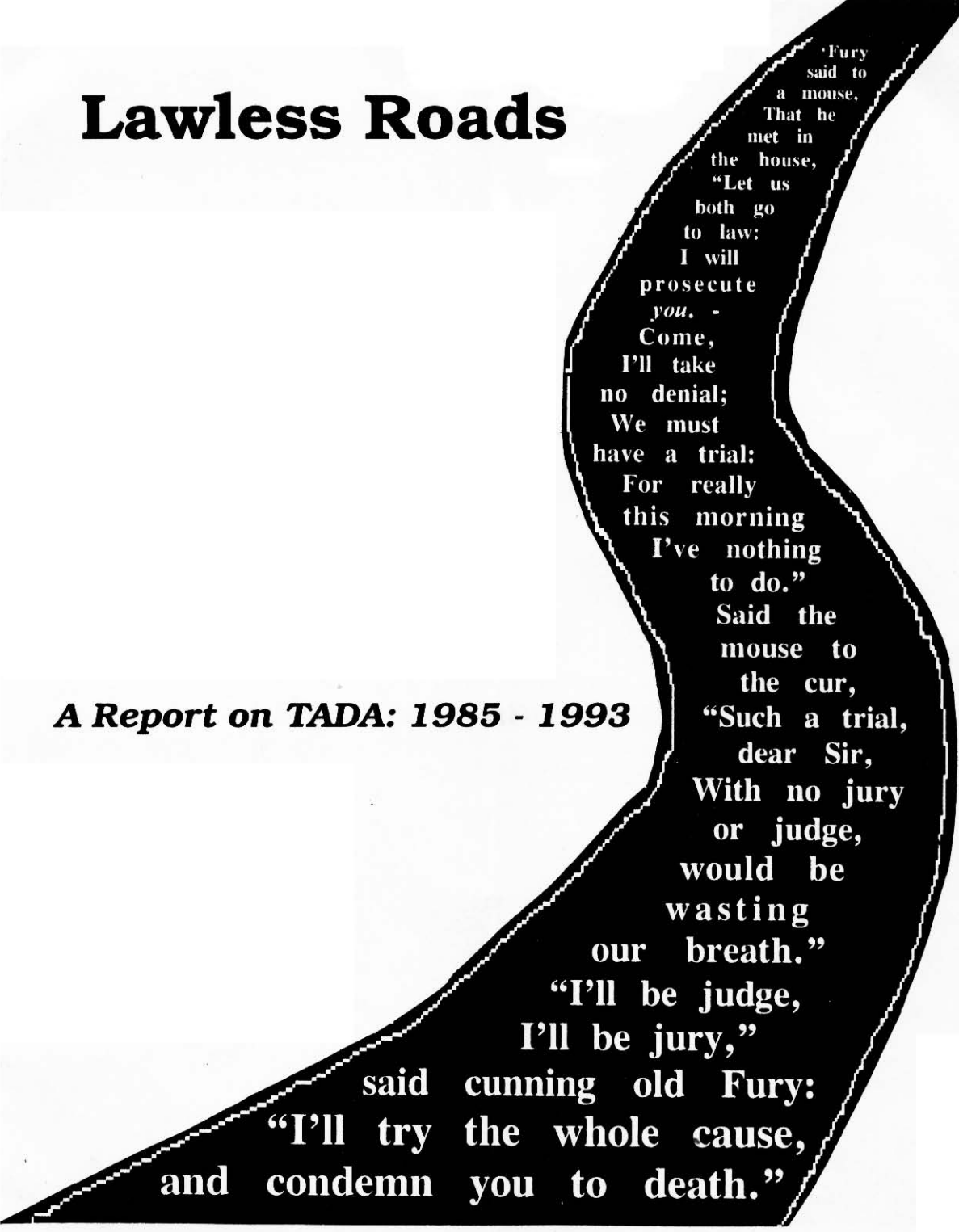


Lawless Roads

A Report on TADA: 1985 - 1993



Fury
said to
a mouse.
That he
met in
the house,
"Let us
both go
to law:
I will
prosecute
you. -
Come,
I'll take
no denial;
We must
have a trial:
For really
this morning
I've nothing
to do."
Said the
mouse to
the cur,
"Such a trial,
dear Sir,
With no jury
or judge,
would be
wasting
our breath."
"I'll be judge,
I'll be jury,"
said cunning old Fury:
"I'll try the whole cause,
and condemn you to death."

**People's Union for Democratic Rights
Delhi**

September 1993

To ask for papers proving guilt in black and white
Is senseless, for there need be no such papers
The criminals have proof of their innocence
The innocent often have no proof.

BERTOLT BRECHT

KHALNAYAK

The arrest of film star Sanjay Dutt under the Terrorist and Disruptive Activities (Prevention) Act - TADA - made the Act famous all over the country. In 1985 when we brought out a leaflet on the implications of the Act, it was not known outside the small civil rights circle. In 1989 when we released a report, the Act was known only in those states and pockets where it was extensively implemented. Now, after Sanjay Dutt's arrest, radio, Doordarshan, newspapers, magazines, and for once even film magazines, have commented on the Act. Some sort of a debate on the functioning of the Act ensued in the mass media. In a sense this is to be expected. For the Act touched a leading personality in the world of popular culture. In its own inverse and perverse ways, popular culture is often a good reflection of how things are perceived by ordinary people. In a recent Hindi commercial film, *Bomb Blast*, the comic villain police officer (played by Shakti Kapoor) keeps threatening everyone '*main tumko tada ke andar band karoonga*' (I will lock you up under TADA). This refrain, repeated ad nauseum, by a cardboard villain to entertain his beleaguered audience is perhaps a good commentary on the tragedy and farce of TADA.

First introduced in May 1985, the Act was meant to be a temporary measure for two years. However it has been regularly extended every two years. The latest was in May 1993. Its area of operation that began with just one state and two Union Territories has now extended to cover most parts of the country. And there is practically no political party or group, and no social tension left untouched by TADA now. The government, on its part, points out that the country is going through an extraordinary situation with increasing terrorist violence. Hence the need for an extraordinary legislation and its repeated extension.

There is no doubt that the complexity and scale of violence in our social and political life is on the increase. In recent decades more and more social tensions are operating outside the constitutionally ordained institutional framework. These problems be they communal tensions and consequent anti social acts like bomb blasts; or border region problems like Punjab, Kashmir and Assam; or regional aspirations like Gorkhaland, Bodo, Karbi and Jharkhand; or movements against social oppression like Naxalite movement - have each their specific characteristics and social origins. They vary in their ideology and politics. In fact even in violence they differ in approach, targets, scale, and technology. To club together all these divergent problems and then attempt to deal with them through a legislation like TADA is bound to make the whole exercise, sooner or later, into a silly joke. As reflected in that commercial film.

The process by which TADA became such a farce however, has entailed human suffering. Much of it untold and unrecorded. The travails of ordinary men and women detained under the Act are not a result of what are described as 'stray cases of misuse'. They are structurally inbuilt into the Act. It confers, with no checks and balances, extraordinary powers on the police and the political party in power.

After eight years of its functioning the Act has led to criticism from various quarters. And popular opposition from below. That is perhaps the reason why the government has accepted in the latest version of the Act, some of the amendments that it had earlier rejected. These changes however are marginal. The complete repeal of India's most draconian legislation involves long years of struggle ahead. Towards that end this report seeks to make a modest contribution.

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TEXT AND CONTEXT

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

The Act received more or less unanimous approval in the Parliament in 1985. In 1987 it was introduced along with a bill relating to President's Rule in Punjab. In 1989 it was introduced along with the Chandigarh Disturbed Areas (Amendment) Bill. Most recently in 1993, it was introduced along with the Bill amending the Indian Penal Code (IPC) to enhance the punishment for kidnapping. In Lok Sabha this year, the Bill extending TADA was also brought in the closing hours of the last day of a long session. The members were still going through the after effects of a late night session just two days earlier in the impeachment case against Justice Ramaswamy. The Bill was introduced along with the IPC amendment bill at 6.40 in the evening. In about 70 minutes everything was over. TADA shall continue for two more years.

On all four occasions the Bill for extending TADA was introduced along with some other bill that helped deflect the debate. Both the context chosen by the government and the timing seem to have had some effect on

the quality of the discussion generated by the legislation. Some members did make valiant efforts to scrutinise the implications and working of the Act. But by and large either attendance was low or the House was hard pressed for time. Save in 1991, nobody even pressed for a division. It was passed by voice vote.

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

In the transistor bomb case, five suspects were held: Daljit Singh, Jagdish Singh Narela, K.S. Narang, Manindar Pal Singh, and Mohinder Singh Khalsa. None of them was tried under TADA. For all of them died in police custody before they reached any court of law. In other states, not all persons arrested under the Act were necessarily connected with 'terrorism'. In Kashmir, for instance, as on 1-1-1991, of the 2044 persons arrested under TADA, only 124 were classified as 'terrorists' (Lok Sabha, 12 August 1991). Similarly in Delhi, only 144 out of 838 persons arrested in 1990-92 were 'militants' (Rajya Sabha, August 1992). In other words, as per the government's own account, there is no reason to assume that all those charged under TADA, are connected with what the government calls 'terrorist and disruptive activities'.

Significantly, states which do not figure in the government specified list of 'problem states' have extensively used the Act. The most notable example is Gujarat which now tops in the number of TADA prisoners. Moreover, the number of states that have used the

Act has increased over time. In 1985, the government cited two Union Territories and four states. Two years later two more were added. In 1991 the total became 17. This year three more were added. A close scrutiny of the figures (see Table: The Misleading Numbers) reveals that 30-60 percent of the people charged belong to those states that did not figure in the government's list of 'problem states' at the specific time.

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

After eight years and four extensions

The Three Ifs

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

S.B. Chavan

Minister for Home Affairs

On the need for extending TADA
Rajya Sabha; 28 April 1993.

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

THE ACT

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

The definition of terrorist acts [S. 3] and disruptive activities [S. 4] is wide enough to cover a wide range of activities, private or public, violent or non-violent. Disruptive activity includes 'any action taken, whether by act or by speech, or through any other media or in any manner whatsoever' [S. 4(2)]. Penal offences under the provision of other Acts can be included if they are committed in aid of terrorist and disruptive activities. The most wide ranging powers in this respect are given in relation to the Arms Act [S. 5]. The trial procedure in all such cases is different and the punishments are enhanced [S. 6]. In other words an accused arrested under ordi-

TADA in Lok Sabha

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

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

Source: Lok Sabha Debates; Relevant Volumes.

nary law would get different treatment if TADA is also added.

The central government has overriding powers to bring the Act without taking the consent of the state government [S. 7]. Property of the accused can be confiscated by state or central government, 'free from all encumbrances' [S. 8].

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

Confessions made before police officers are admissible as evidence [S. 15]. This also

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

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

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

TADA: Deviations and Violations

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

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

TADA : Terrorist and Disruptive Activities (Prevention) Act, 1987

Cr.P.C. : Criminal Procedure Code

COI : Constitution of India

UDHR : Universal Declaration of Human Rights

ICCPR : International Covenant on Civil and Political Rights

IEA : Indian Evidence Act

are reasonable grounds to believe that the accused is not guilty and that he is not likely to commit any offence while on bail [S. 20(8)].

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

Rules]. Once again the onus of proof is on the accused [S. 13].

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

VALIDITY

Thus almost every safeguard guaranteed by the constitution, every single mechanism of checks and balances erected by it, every principle of liberal jurisprudence, every principle of natural justice and every

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

The normal hierarchy of courts in the country is designed to prevent miscarriage of justice. TADA eliminates the role of High Courts. The entire Chapter V of Indian Constitution thus has been virtually nullified. The power of High Courts over subordinate judiciary is also modified by the Act violating the constitutional arrangement [A. 227, 235 and 236]. Similarly some provisions of the Act

seriously impinge upon the power of state governments [1 and 65 of List II of Schedule VII]. Principles of equality before law [A. 14], freedom of expression [A. 19], right to life and personal liberty [A. 22], principle of separation of judiciary from the executive [A. 50] are all modified or violated by the Act. On these and other grounds the constitutional validity of the Act has been challenged in Supreme Court. The case is awaiting judgement.

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

TALES IN TERRORISM

The following are some case studies. They include two Khalistanis, a tribal leader from Andhra Pradesh, a judge from Punjab, an advocate from Jammu and Kashmir, a journalist from Assam, a student from Delhi, a farmers leader from Haryana and trade unionists from Gujarat; all of them charged under TADA. More than political arguments and legal analysis these human accounts reveal the true nature of the legislation.

KHALISTANIS

Sukhdev Singh (Sukha) and Harjinder Singh (Jinda) are among the more well known of the Khalistani militants. Both were hanged in October 1992, in the General Vaidya assassination case.

General A.S. Vaidya was the Chief of the Armed Forces when the army entered the Golden Temple, Amritsar to flush out militants. Thus he incurred the wrath of the Khalistanis. Subsequently General Vaidya retired in January 1986 and settled in Pune, Maharashtra. On 10 August 1986 he and his wife went for shopping in his car. While they were returning to their house in Koregaon Park, two motor cycle borne persons came and fired at them from close range. General Vaidya died on the spot and his wife Bhanumati was injured. A month later Sukhdev Singh, along with one Nirmal Singh was arrested in Pune itself riding the same motor cycle used earlier and carrying the same pistol used in the assassination. Subsequently

two other accomplices were arrested. Finally, Harjinder Singh was arrested near Delhi University in August 1987. Besides the five accused, there were five others who were declared as absconders.

The prosecution charged Sukhdev Singh and Harjinder Singh for the murder of General Vaidya and murder attempt on his wife. Others were accused of being in criminal conspiracy with them. In addition to the relevant sections of the IPC (120-B, 302, 307 and others) they were also charged under TADA (S. 3 and 4). Initially all the five accused denied the charge. Subsequently however Sukhdev Singh made a statement in September 1988 in which he admitted 'to have fired four bullets at General Vaidya and to have killed him ... that he had accidentally injured Bhanumati Vaidya although he did not intend to do so' (This and all quotations here are from State of Maharashtra Vs Sukhdev Singh and Others 1992 3 SCC 701). He proclaimed his faith in Khalistan and averred that he had killed Vaidya to avenge the desecration of the Golden Temple. Harjinder Singh also made a similar statement to the court (S. 313 Cr.P.C). It is pertinent to note here that these statements do not fall into the category of confessions made before the police that are admissible as evidence under TADA. They are voluntary statements made in the court. Both of them also eventually refused to appeal against their conviction.

The learned judge at the Designated Court has painstakingly examined all the evidence gathered by the police. He found many inconsistencies and contradictions. On occasions he found 'prosecution staked its claim on an artificial and unnatural story...'. He found tell tale evidence of tampering of evidence and tutoring of witnesses. The judge acquitted the other three accused. Sukhdev Singh and Harjinder Singh too were acquitted of all other charges including TADA charges, except the murder of General Vaidya and attempt to murder of Bhanumati Vaidya.

They were sentenced to death (State of Maharashtra Vs Sukhdev Singh and others; Terrorist Sessions Case No.2 of 1987; Designated Court, Pune, 21 October 1989).

Although acquitted of TADA offences the trial continued at the Designated Court since the Act explicitly permits trying of other connected offences by the same court. Ordinary law relating to death sentence makes it mandatory for the High Court to confirm it. Since the role of the High Court even in this regard is eliminated by TADA, the case went straight to Supreme Court.

The state appealed against the rest of the judgement and sought confirmation of death sentence. The Supreme Court saw 'no merit in states' appeal against the acquittal of other accused persons...and accused 1 and 5 (Sukha and Jinda) on the other counts with which they are charged. However it confirmed the death sentence. India is among those democratic republics which still has in its statutes the abominable penalty of death sentence. Repeated attempts to get their death sentence commuted proved a failure. Finally both were hanged.

Sukhdev Singh and Harjinder Singh, in many ways satisfy a typical governmental construct of 'terrorists'. Sukha, aged 26 at the time of his arrest was from Ganganagar district of Rajasthan. Jinda, 25 belonged to Gadali, Punjab. One of them was an accused in a number of lumpen crimes in the past. Given the nature of Khalistani violence it is perhaps not surprising that youth from such a background are attracted to militant groups of Punjab. Eventually both were converted to the cause of Khalistan. In their own self image they became inheritors of militant traditions of their religion. During the course of the trial they voluntarily made a statement proclaiming their faith and admitting their actions. Yet the prosecution failed to prove the charge of terrorism against them. The enormous scope for laxity in investigation that TADA permits certainly contributed to

it. The 300 page judgement of the Designated Court is an eloquent testimony to the failure of investigation and prosecution agencies. Supreme Court too has pointed to this failure while upholding the lower court order. India's most famous 'terrorists', in the end were convicted under ordinary law of the land. Why then have an extraordinary legislation?

A TRIBAL LEADER

This account, when it ended in October 1992, became in the words of the Supreme Court, 'merely academic'. But that was not how it began many years earlier.

In the late seventies, tribals in Adilabad, Andhra Pradesh north of the river Godavari, were attracted to the Girijan Ryotu Coolie Sangham (Tribal Peasant Labour Association) that effectively took up the issue of land alienation in the region. It was affiliated to a CPI(M-L) group. Soon it became a popular movement. It came to the notice of the world outside when police opened fire on its conference at Indravelli on 20 April 1981 when over sixty people were killed.

Among the Sangham's initial organisers was Dasari Laxmikantam, presently in his mid fifties. He was arrested in November 1984 and spent nine years in the central prison at Warangal. Number of cases, in quick succession were launched against him. Finally he was acquitted in the last case on 25 February 1987 by the Judicial Magistrate at Asifabad. That day he told the judge that if he was let out as a free man, he would again be picked up by the police. The judge, helplessly perhaps, held that 'the court cannot interfere with police action outside the court'. As soon as Laxmikantam came out police caught him, threw him into a waiting jeep and took him to Sirpur police station. He was in illegal custody for 34 days.

On 29 March, he was produced before the Judicial Magistrate at Sirpur. The charge against him this time was that he was found coercing tribals to fight against tendu

contractors, was carrying an unlicensed gun, and opened fire on the police. The actual trial in this case however began almost two years later. Thereby hangs this academic tale. But of that later.

In their enthusiasm to enforce the law of the land police did not pay much attention to the laws of nature. No tribal in the central forest region would be engaged in tendu leaf plucking in the last week of March. That would only be in peak summer six to eight weeks later.

According to the FIR (No.22/87;28-3-87; Sirpur PS, Circle Kagaz Nagar, Adilabad, Andhra Pradesh) the policemen who went 'on receipt of credible information, that a man was inciting the tribals against beedi leaf contractors, found him in a cart-track near the village Madapally. He fired on them with his unlicensed weapon (Material Object No.1: S.B.M.L. Gun). However, after a stern warning by the police party this armed extremist organiser raised his hands and surrendered. He was charged with various sections of Indian Arms Act [S. 25(1) and 27], IPC [S. 307] and TADA 1987 [S. 3 and 5]. The case was committed to the Designated Court at Adilabad.

Adilabad is more than 100 kms. away from Warangal, south of the river, where Laxmikantam was lodged. For about 20 months the police never brought him to the court. The trial commenced thus in January 1989 and the judgement delivered a month later. The original chargesheet in the case

In-laws, Outlaws and TADA

No. 104/87, Mulugu P.S., Warangal: "On 24-10-87 the accused Karsala Vadialu... came to the village Banderpally and demanded that his mother-in-law should come to the forest, on refusal beat her and took away household articles with him"; S. 147, 148, 452, 379, 506, 324 IPC and S. 3 and 4 TADA

was found defective and was redrafted. The gun that he used was produced as a material object in the case but no corroborative evidence, like pellets, percussion caps, were produced. The gun instead of being sent immediately to the forensic laboratory as is the normal practice, was kept for nine months with the Inspector. The Circle Inspector, was the eye witness, informant and investigating officer all rolled in one. Other witnesses were his sub-ordinates. The only public witness was a villager whom the police summoned to the police station late that evening to sign the panchnama. These incongruities notwithstanding, the Designated Court found him guilty of offences under S.25(1) of Arms Act and S.5 of TADA. The minimum sentence in the latter being five years, Laxmikantam was sentenced to five years.

Laxmikantam wrote from jail to the Registrar of Supreme Court who sent the case to Legal Aid Committee. The main contention of the appeal filed, in vain, was plain and simple. TADA 1985 has no provisions similar to S.5 of TADA 1987 under which conviction took place. TADA 1987 received Presidential Assent on 3 September 1987. Some of the sections including S.5, came into effect only on that date. But according to the prosecution the offence was committed on 28th March. In other words Laxmikantam was convicted for an offence which became an offence under an Act that came into effect six months later. A mere reading of the Act and the petition would suffice to realise that the Designated Court had made a grave error of judgement. But the case came up for hearing only in October 1992. By then, Laxmikantam had practically completed his term. Hence Justice S.R. Pandian, Justice S. Mohan and Justice S.P. Bharucha observed that 'the question now urged before us is merely academic.... We are not inclined to go into the question of law and accordingly the appeal is dismissed' (Dasari Laxmikantam Vs State of Andhra Pradesh SC: Criminal Appeal No.

701 of 1990). Who made it academic ? Of course the honourable Supreme Court itself. The petition was filed in June 1989 when there were still three more years left. But it came up for hearing only when it was too late. A draconian legislation with no checks and balances, can make an Act retroactive. It can even make *tendu* leaves bloom in spring. But it can not bring back time itself.

Dasari Laxmikantam was the harbinger of the peoples' organisation among the tribals of central forest region. Himself a nontribal from plains south of the river, he entered Adilabad many decades ago as a petty trader selling tobacco to the tribals. Such small traders usually end up as big landowners in tribal areas. Instead Laxmikantam emerged as an organiser. He and his organisation gave a sense of dignity to the people stifled by ecological and social oppression. In the process he became a legend. In all the countless legal papers of his case that we perused he was described also by his alias name, Porakala Dora, 'Lord of the bushes', as he was known among the people. He certainly committed offences, as defined by the law. But in the end he was convicted for an offence that didn't exist under an Act that was yet to come into force. By the time the apex court recognised it, this political account of a social struggle becomes 'merely academic'. Such then, are the tragi-comic tales of tribal India and perhaps of terrorism too.

FARMERS LEADER

Balbir Singh of Bharatiya Kisan Union (BKU) was arrested under TADA on 2 September 1985. BKU had given a call for *Rail Roko Abhiyan* on the same day. About 1500 persons gathered on the forenoon near the railway line in village Siwah, Karnal, Haryana. Police claimed that the crowd became violent and attempted to cause damage to the railway line. They opened fire killing one farmer and injuring others. The incident took

place around 4.30 in the evening. Thereafter, the police story becomes bizzare. We shall let the Supreme Court judgement delivered later describe it.

"One man had died on account of the shooting and several persons had sustained injuries on account of lathicharge. Nevertheless the crowd had not dispersed but continued to remain at the scene to carry on their agitation. In such circumstances it is natural for the police force to have remained in strength at the scene to maintain effective control over the demonstrators and to safeguard the railway line. Curiously enough, the entire force comprised of a Deputy Superintendent of Police, Inspectors, Sub Inspectors, Assistant Sub Inspectors, Head Constables and Constables is said to have left the place en mass . . ." Only two intelligence constables were left. Effectively they were the only two prosecution witnesses to what was supposed to have happened after the firing. Four hours later, around 8 or 8.30 p.m., Balbir Singh arrived on the scene. Balbir Singh holds the degrees of M.A. and B.T. and is a retired lieutenant from the army. Later he joined the Haryana Education Department. At that time, he was working as a teacher Government Senior Secondary School at Sanauli Khurd, but was residing at Siwah where the incident took place.

Late in the evening he came from school, and addressed the gathering. He was supposed to have 'incited them to violence'. He was charged under Section 4 of TADA. In the trial, prosecution relied on the version given by the two intelligence constables. The speech of Balbir Singh quoted was based on their 'rough notes' made soon after it was delivered. One of the constables when asked how he identified the accused, stated that Balbir Singh, before he began his speech 'introduced himself to the demonstrators by giving out his name, address and occupation'. There was no other corroborative material or investigation presented to the court. The Designated

Court convicted him. He was given three years of rigorous imprisonment (State of Haryana Vs Balbir Singh; Misc. Sessions Case (D) No. 1072 of 1985; Karnal Designated Court; 11 March 1986).

A few months later in October, Supreme Court set aside the order and released Balbir Singh. Later Justice A.P. Sen and Justice S. Natarajan gave the reasoned judgement (Balbir Singh Vs State of Haryana 1987 1 SCC 533). The learned judges were 'constrained to observe that it is highly regrettable that the authorities concerned should have launched a prosecution under the Act in a manner which can easily be termed as cavalier'. Noting and listing the drastic provisions of TADA, the judges ruled that the 'investigation of the cases under the Act has not only to be thorough but also of a high order'.

Balbir Singh's case is one of the earliest TADA cases in the country. He was arrested three months after the Act came into force, convicted in March 1986. Supreme Court released him in October, before the second extension. It laid down some norms, and underscored the caution needed in applying the Act in the investigation of TADA cases. If this judicial advice had been integrated into the Act, thousands would have been saved untold suffering. Instead each time the Act was extended, the government has made it worse.

A JUDGE

Ajit Singh Bains is the Chairman of Punjab Human Rights Organisation. Recently he also contested, unsuccessfully, as a candidate backed by Shiromani Akal Dal (Mann) in the by elections to the Jalandhar Lok Sabha constituency.

At around 9 a.m. of 3 April 1992 he was taken into custody by a joint team of Chandigarh and Punjab police. He was picked up while he was returning from the Golf Club. The police forced themselves into his car and

TADA: The Crucial Sections

Section 3: Punishment for terrorist acts

(1) Whoever with intent to overawe the government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of property or disruption of any supplies of services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the government or any other person to do or abstain from doing any act, commits a terrorist act.

(2) Whoever commits a terrorist act, shall, --

(i) if such act has resulted in the death of any person, the punishable with death or imprisonment for life and shall also be liable to fine;

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

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

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

Section 4: Punishment for disruptive activities

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

(2) For the purposes of sub-section (1), "disruptive

activity" means any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, -

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

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

Explanation - For the purpose of this sub-section, -

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

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

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

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

(b) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt,

the killing or the destruction of any person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity within the meaning of this section.

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

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

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

handcuffed him. One of them drove the car to the police post in Sector 11. He was pushed, abused and kicked with boots. Later he was taken to the police station at Mohali, a Chandigarh suburb, but in the Ropar district of Punjab. In the afternoon he was again shifted. This time to Ropar police station. And at night he was taken to the police station at Anandpur Sahib. Next morning he was taken to an interrogation centre in Ropar. He was abused and was made to stand for two hours in the sun. Thereafter he was taken to a Rest House maintained by Punjab Tourism. Apparently a place for torture, police showed to Bains a naked young man badly tortured, and lying in an unconscious state. He was warned that this would be his fate too, if he did not cooperate.

Meanwhile his family made frantic efforts to trace him. Late in the evening the Home Secretary confirmed that Bains was in police custody, but did not give any further details. The following afternoon, around the same time Bains was in Ropar, the family was asked to come to meet him at the SSP office in Ropar. While they were in Ropar, unknown to them at that time, Bains was brought back to Chandigarh, to his house. A contingent of around a hundred armed policemen raided the house and conducted search operations. While the search was on, Mr. G.S. Garewal former Advocate General and now practicing at High Court visited the house. He protested the handcuffing of Bains, in vain. Two hours of ransacking later, the party left. Throughout this ordeal Bains was not allowed to sit and remained handcuffed. Just as the police were leaving the family returned. They were not allowed to talk to him.

The family moved the High Court in a habeus corpus petition. In their response police claimed that Bains was arrested on 4th evening, a full 34 hours after his actual arrest and showed his arrest as legally valid. Justice J.B. Garg then ordered an enquiry by the sessions judge into the illegal handcuffing of

Bains. The results of the enquiry have not yet been made public.

Ajit Singh Bains was charged, among other things, under TADA. Hence there was no need to produce him before a judicial magistrate. Instead he was produced before an executive magistrate, the Deputy Commissioner of Ropar. He was remanded to two days of police custody. Subsequently on April 7 he was produced before a Sub Divisional Judicial Magistrate who remanded him to judicial custody.

The First Information Report (FIR) on the basis of which Bains was arrested makes interesting reading (No. 41; Dt. 31-3-1992; PS Anandpur Sahib). It refers to a meeting held on the day of Holla Mohalla, 18 March at Gurudwara Keshgarh Sahib. Some speeches advocating Khalistan were made in that meeting. The offences charged were sedition [124-A]; promoting enmity between different religious groups [S. 153-A]; making statements to induce people to commit offences against state and public tranquility [S. 505 (1)(b)-all IPC]. And TADA [S. 3 and 4]. Various leaders of Sikh organisations, numbering seven, figure in the FIR. The charges against them relate not to any act of violence but to speeches and statements allegedly made. Bains is not accused of making any offending speech either. He, according to police account after his arrest, participated in the meeting. But his name appears nowhere in the FIR.

Aged 70 at the time of his arrest, Justice Ajit Singh Bains is a retired judge of the Punjab and Haryana High Court. He is the chairman of Punjab Human Rights Organisation. He is quite a well known figure in the state. The charges against him even if true are frivolous. Yet this was the treatment meted out to the most famous and respected of the over 13,000 TADA detainees in the state.

AN ADVOCATE

Mian Abdul Qayoom (42) has been since

1986, President of Jammu and Kashmir Bar Association. On 30 July 1990 he was arrested by men of Border Security Force. He was blindfolded for long periods and was interrogated for six days. Meanwhile the Bar Association moved a habeas corpus petition in the High Court. On 5 August he was taken by helicopter to Jammu. There, at Hira Nagar jail, he was served detention orders under the Jammu and Kashmir Public Safety Act. He was to be detained for two years. Subsequently he was shifted to Udhampur jail, 29 kms. from Jammu. The Bar Association challenged his detention. The grounds of his detention accuse him of 'propagating secession and demanding the right of self determination for the people of Jammu and Kashmir'. The state government's attitude towards the petition by the Bar Association is best summed up by Justice S.M. Rizvi (Kashmir Bar Association Vs State of Jammu and Kashmir; H.C.P. No. 504/1990). "... the state respondent took no interest in defending the case. . . Despite ample opportunities given to the respondent, nobody came forward to argue the case. . . The case was admitted as far back as 21.8.90 and... for the last six months the case was hanging for hearing. . . It is not known to the court as to when the detenu was taken into custody. . . The detention order is not on the file. . . The respondent did not produce even the record pertaining to the detention . . ." The court ordered his release. Advocates from the Bar Association travelled to Udhampur with the

court order. The jail authorities refused to release him.

Instead he was taken to the Joint Interrogation Centre at Jammu. There he was informed that he was being detained under sections 3 and 4 of TADA. On 19 February the Designated Court at Jammu was moved for bail. The charges under TADA against Mian Abdul Qayoom, in addition to repeating some of the earlier charges, include the charge that he negotiated for the release of Dr. Rubia Syeed. She was kidnapped by the militants and the negotiations were initiated, at the behest of her father, the then Union Home Minister Mufti Mohammad Syeed, that is by the government itself! The FIR in this case was dated September 1990, when he was already in jail. The Designated Court released him on bail on 1 March.

Meanwhile Mian Abdul was shifted to Kathua district jail, on the Jammu-Punjab border. By the time advocates reached the jail with bail orders, he was again served detention orders under the Public Safety Act. Bar Association again challenged the detention. The state respondent this time was far more successful in its inability to respond. The petition went through many adjournments. The period of his detention was to expire on 28 February 1992. But the order was revoked a week earlier. Instead of being released he was again served arrest orders in jail itself, again under sections 3 and 4 of TADA. The Designated Court at Srinagar released him on bail. But the jail authorities refused to release him. Srinagar lawyers went on strike. Finally he was released on 23 February 1992. Nineteen months after his arrest.

That, however, is not the end of the story. The state government challenged his release on bail in Supreme Court. The apex court brought this story to some sort of a terminating point. It dismissed the appeal by the state and confirmed the bail order. For the last so many years the main argument of the government is that there is no respect for rule of law in Kashmir valley. Indeed.

Extra-Marital Relations and TADA

No. 65/89, Wanaparthi P.S., Mahboobnagar: "The accused met Wanaparthi Municipal Chairman, B. Laxmaiah (Congress-I) and warned him against his personal affairs and asked him to maintain good terms with his concubine Anantalaxmi"; S. 147 and 506 IPC and S. 3 and 4 TADA

A JOURNALIST

On 8 February 1993 Parag Kumar Das, editor of *Boodhbar* a popular weekly in Assamese published from Guwahati was arrested. Along with him the printer of the weekly, Nripendra Sarma and the publisher Krishna Kanta Baruah, were also arrested. All of them were produced secretly before a magistrate at the 4th Assam Police Battalion camp at Kahilipara. This expression 'produced before magistrate' in Assam is a somewhat odd description for what actually happens. The arrested usually are taken to army interrogation centres, temporary camps of security forces, armed police battalions and such other places. Then the magistrates are called there. In that sense it is the magistrates that are produced before the accused! All the three arrested in this case are charged under TADA.

The arrests generated unprecedented public condemnation throughout the state. Cutting across political differences and professional backgrounds everyone joined together. All leading dailies of the state came out with blank editorials as a mark of protest. A Joint Action Committee (JAC) was formed with journalists, writers and intellectuals.

The following week end JAC held a public meeting at the Guwahati Press Club. Hundreds of people attended it. Leading intellectuals, writers, journalists and opposition leaders attended the meeting. A 40 member committee was formed to fight for the repeal of black laws like TADA. The meeting ended at around 1.30 p.m. Just as the gathering was dispersing a large contingent of armed police surrounded the Press Club and closed in on the gate. The two additional city Superintendents of Police accompanying made it clear that they wanted to arrest another journalist, again charged under TADA.

The journalist was Atanu Bhuyan of *Ajir Batori*. He was wanted in a case registered at Sibsagar (Case No. 55/93). His offence was that during the Assam Sahitya Sabha Session he reported that ULFA had

put up posters criticising the Sabha. The gathering at the Press Club tried to prevail upon the police that arresting a journalist under TADA at the Press Club where a meeting was being held against TADA would not be in the order of things. A group of leading journalists even suggested that Atanu Bhuyan would himself appear before the police outside the Press Club after the gathering had dispersed. In the meantime the city SP Mr. Ashim Kumar Roy arrived with another contingent of armed police. He ordered a lathicharge, manhandled two lady journalists, dragged out Atanu Bhuyan from the car he was sitting in. He abused, and pushed around the persons present. The list of persons who suffered humiliation and lathis in this incident reads like a Who's Who of Assam's intellectuals. It appears that the SP Ashim Roy was in a state of intoxication. Quite obviously, not just with power.

The incident added fuel to the fire. Mass protest meetings were held all over the state. Later the government withdrew the case against Atanu Bhuyan unconditionally. Meanwhile on the orders of the High Court Parag Das was shifted to Guwahati Medical College Hospital. Next day his photograph chained to the hospital bed appeared in the press. Eventually he, along with Nripendra Sarma and Krishna Kanta Baruah, was set free on bail by the Designated Court. The case is pending.

A STUDENT

Tree Felling in aid of Terrorism

No. 2/91, Jarewanty P.S., Gadchiroli: The accused Deraji Kule Naroti (25), Barsu Ghasi Naroti (30) and Meso Katya Naroti (14); associates of Naxalites, illegally cutting trees belonging to the government and placing them on the road to block traffic with a view to create terror among the people. S. 143 and 341 IPC, S. 26/2 Forest Act and S. 3 and 4 TADA

On 19 November 1992 a shooting incident took place at Nagaland House, New Delhi. Mr. S.C. Jamir, then former Chief Minister of the state was injured in the incident. (Mr. Jamir subsequently became the Chief Minister of the state once again.) Police suspected the hand of National Socialist Council of Nagaland in the attempt on his life. NSCN is a north eastern insurgent group, outlawed in 1990, operating primarily in Nagaland and Naga areas of Manipur. Tangkhul Naga tribe is believed to be sympathetic to the group. So the Special Staff Unit of Delhi police in charge of the case began arresting, for questioning, students of this particular tribe in Delhi. Soon it became a generalised hunt for all Naga and Manipur students. As the students later pointed out, all north east students are the same for Delhi Police.

The students from the region are spread in two polytechnics and three universities; Delhi, Jawaharlal Nehru and Jamia Milia Universities. Most of them, especially those from Delhi University, stay in rented rooms in the vicinity of their colleges due to the lack of sufficient hostel accommodation. Police began raiding these rooms at odd hours and picked up students at random. Since technically they were not residing in the university hostels the authorities also were not informed. These raids became a nightmare for the students for almost three weeks till the Supreme

Court was moved. Among the earliest to be arrested was Samuel Zimik of Delhi College of Arts and Commerce. He was detained illegally for almost a week, hung upside down, punched on the spine and beaten on the soles of the feet. Ungshungmi Shimrany was picked up from his Outram Lines home late in the evening and was interrogated. Altogether over 35 students including some lady students were picked up by the police.

On 7 December George Wangnaorar from Law Faculty, along with other students was summoned to Parliament Street police station from where the Special Staff Unit usually operates. Others were let off the same night, but not George. Earlier on 4 December Wisdom Kamodang, a post graduate student of Sociology from Delhi School of Economics, was taken by the police. Both were kept in Parliament Street police station. Their classmates and local guardians were allowed to meet them. But their detention was not official or legal. As time passed anxiety and tension mounted among their friends. It may be recalled during that week public attention was focussed on the situation after the demolition of Babri Masjid. The students managed to meet the Vice Chancellor and represented the matter to him. Finally on 17 December Naga People's Movement for Human Rights (NPMHR) in association with People's Union for Democratic Rights, moved a habeas corpus petition in the Supreme Court (NPMHR and another Vs Commissioner of Police, Delhi and others; Cr.W.P.No. 678-79 of 1992). Normally in habeas corpus cases state is given 24 hours to respond. But in this case the Supreme Court in what can be described as a rather strange order gave Delhi police two weeks time to respond. The notice was served on them immediately on 17 December. Thereafter the two students were shifted from Parliament Street police station causing great anxiety among all concerned. A group of Delhi University professors approached the Vice Chan-

The Youngest Terrorist?

No. 126/91, Udalguri P.S. (Assam); under S. 120-B IPC, S. 3 The Unlawful Activities (Prevention) Act read with S. 25 (1A) (IAA)/27 Indian Arms Act; read with S. 3, 4 and 5 TADA.

Name of the accused: Paresh Kalita, arrested on 3-11-91.

Age at the time of arrest: 12 years

cellor. NPMHR and PUDR scheduled their press conference on 22 December.

The evening of the press conference, George Wangnaorar was quietly released. Later police claimed that he "had been summoned under Section 160 Cr.P.C. (Police Officer's power to require attendance of witnesses), but had not been arrested." They also denied his illegal detention. In the meantime the case of Wisdom Kamodang took a more dramatic turn.

Two days before our press conference, the police held a press conference with great fanfare and announced that they had made a breakthrough in the S.C Jamir attempt to murder case. They claimed that they arrested a prime suspect on the evening of 18th December at the crossing near Indian Institute of Technology. He is Wisdom Kamodang, shown to have been arrested fourteen days after his actual arrest and a full forty eight hours after the Supreme Court issued a notice to the police. Media reported the SC order on 17th itself. Yet when the police held their high profile press conference no one pointed out (with one exception) that they were lying.

Twenty one year old Wisdom Kamodang hails from Nampisha village in Ukhrul district. He allegedly conspired with two others, declared absconders, to assassinate Mr. Jamir (FIR No. 270/92 PS Tughlak Road). He is charged with attempt to murder [S. 307], criminal conspiracy [S. 120-B; IPC] and terrorist and disruptive activities [S. 3 and 4 TADA].

TRADE UNIONISTS

Reliance Industries Limited is among the most well known of the corporate groups in the country. Its meteoric rise within a very short span is marked with a number of controversies. The Group's flagship company is the Vimal Mills at Ahmedabad. In September 1986 the full bench of Industrial Tribunal of the city granted an award to all the cotton textile mill workers. As a result all composite

textile mills of Ahmedabad, including silk mills as well as mills taken over by the National Textile Corporation and Gujarat State Textile Corporation have implemented the award. Only Vimal Mills refused. The workers demanded an ad hoc interim increase in wage of Rs. 70. On 17 July 1987 all the 6,000 workers of the mill went on strike.

The workers formed a Ladat Samiti (struggle committee). Their union was part of Gujarat Mazdoor Panchayat and is associated with the Hind Mazdoor Kisan Panchayat (HMKP). The strike was declared illegal. The Union went to High Court and obtained a stay on that notification. That was when TADA struck the workers.

The High Court order, in effect, preempted any victimisation. It was served on the management on 21 August. When managements are legally cornered they resort to illegal methods. Here TADA came in handy. The very next day an FIR was launched in which six union leaders and '20-25 other culprits' were mentioned. They were alleged to have beaten up a supervisor in a bus.

The arrested workers moved a bail application before the Designated Court at Ahmedabad. It was rejected. They appealed to High Court which took a position that it has no jurisdiction even in bail matters. The workers moved a Special Leave Petition in the Supreme Court. (This was later clubbed with other cases: Usmanbhai Dawoodbhai Memon and others Vs State of Gujarat).

Under the leadership of Hind Mazdoor Kisan Panchayat the Union took up the larger question of applying the Act to trade union movement and civil rights of citizens; both inside the court and outside. Its petition in the Supreme Court was among the earliest such moves to challenge the constitutional validity of the Act. It also forcefully pointed out that a draconian legislation like TADA must have clearly identified areas of applicability. Unfortunately however neither the Gujarat High Court nor the Supreme Court

addressed these questions raised in the Union's petition. Instead the Supreme Court merely confined itself to the question of High Court's jurisdiction over bail matters under TADA. In the event the court did grant bail to these workers.

Outside the court, the Union took initiative to form a solidarity committee whose main demand was that TADA should not be

used against trade union activities. Cutting across political and other barriers, all unions joined the struggle. Over 42,000 workers spread in 600 units in Naroda industrial belt of Ahmedabad went on strike as part of a bandh call on 17 September 1987. This perhaps is the only instance where an organised trade union went on strike against TADA. Eventually all the workers were acquitted.

Who Are The Terrorists?

Advocates

D. Veerasekaran, High Court, Madras
 Mian Abdul Qayoom, Srinagar
 Ms. Shabnam Lone, Supreme Court
 Sukhdev Singh Gill, Advocate, Shimla
 T. V. Marudhanayagam, High Court, Madras

Cabinet Ministers (former)

Subbulakshmi Jagadesan, DMK,
 Tamil Nadu
 Prakash Singh Badal, Akali Dal, Punjab
 Prem Singh Chandumajra, Akali Dal, Punjab

Civil Libertarians

Dr. A. Ramanadham, APCLC (since killed)
 Justice Ajit Singh Bains, PHRO
 Dr. K. Balagopal, APCLC
 Dr. N. Babayya, KCLC

Civil Servants (Serving or retired)

Faid Mustakin Khan, constable, Gumadevi
 P.S., Maharashtra
 Gurumesh Bishnoi, former Chairman,
 Public Service Commission, Haryana
 Hemant Kondiba Jadhav, constable,
 Gumadevi P.S., Maharashtra

R. Nagarajan, former Home Secretary,
 Tamil Nadu
 S.N. Thapa, Additional Collector, Customs,
 Maharashtra

Film World

Hanif Kadawala, Producer, Bombay
 Jones Moholia, Film maker, Guwahati
 Samir Hingora, Producer, Bombay
 Sanjay Dutt, Actor, Bombay

Legislators (current or former)

B. Satyanarayana Reddy, Telugu Desam,
 A.P.
 Hari Singh, SJP, Haryana
 Hitendra Thakur, Congress(I), Maharashtra
 Joyanta Rongpi, M.P., ASDC, Assam
 Om Prakash Jindal, HVP, Haryana
 Parameshwar Brahma, BLP, Assam
 Pramila Rani Brahma, BLP, Assam
 Simranjit Singh Mann, Akali Dal, Punjab
 Suresh Kalani, Congress(I), Maharashtra
 Tezendra Narzores, BLP, Assam

Media Personnel

Al Haj Naj Ansari, *Mashiq ki Awaz*, Delhi

Al Haz Sayed Ali, *Mashiq ki Awaz*, Delhi
 Atanu Bhuyan, *Ajir Batori*, Assam
 Digavalli Sivakumar, *Gautami Times*,
 Rajamundry, A.P.

Dilwant Singh Dhillon, *Blast*, Punjab
 Khalid Ansari, *Midday*, Bombay
 Krishnakant Barua, *Budhbar*, Guwahati
 N. Ramanaiah, *Eenadu*, Adilabad, A.P.
 Nripendra Sarma, *Budhbar*, Guwahati
 Parag Das, *Budhwar*, Guwahati
 Prem Raj, Kondagaon, Bastar, M.P.
 S. Ramalinga Reddy, *Udayam*, Medak, A.P.
 Ms. Sansam Ongbi Belu, *Lanmei Thanbel*,
 Manipur

Shaheed Siddiqui, *Nai Dunia*, Delhi
 Sukhdev Singh, *Dignity*, Chandigarh
 Vithal Dampo, freelance, Bombay
 V.T. Rajashekhar, *Dalit Voice*, Bangalore

Students

Shailendra Gogoi, Students Union,
 Naharkatiya, Assam
 Shahabuddin Gory, Jawaharlal Nehru
 University, Delhi
 Wisdom Kamodang, Delhi University, Delhi

Writers and Artistes

Anjali Doimari, radio artiste and actress,
 Guwahati
 Gaddar, poet and singer, A.P.
 Harisingh Gohain, theatre artiste, Tinsukia
 Peruchitrana, writer, Madras
 Varavara Rao, poet and critic, Hyderabad

Others

Dr. Abdul Ahad Guru, (since killed),
 Cardiologist, Srinagar

Aruchamy, DK, Tamil Nadu
 Balbir Singh, BKU, Haryana
 Bhai Manjit Singh, AISSF, Punjab
 Bhoopalan, Radical Youth League,
 Tamil Nadu

B.N. Singh, IPF, Palamu, Bihar
 Deen Dayal Bhullar, Congress(I), Terai, U.P.
 Gurcharan Singh Tohra, SGPC, Punjab
 Harchand Singh Brar, Terai, U.P.
 Captain Harcharan Singh Rode, Akali Dal,
 Punjab

Prof. Harminde Singh, Akali Dal, Delhi
 Jagdish Sharma, IPF, Palamu, Bihar
 Joginder Singh, Akali Dal, Punjab
 Kartar Singh, Akali Dal, Punjab
 Mallu Kapu Bogami, Congress(I),
 Chandrapur, Maharashtra
 Manphool Singh, Congress(I), Haryana
 Sardar Mohan Singh, Congress(I), Terai,
 U.P.

Ramakrishnan, D.K., Tamil Nadu
 Rama Subban, trade unionist, Madras
 Ranji Lal, Congress(I), Hissar
 Shisupalan, DK, Dharmapuri, Tamil Nadu
 Siddhartha Phukhan, ULFA, Assam
 T. Marimuthu, DMK, Coimbatore,
 Tamil Nadu

Tulsi Gogoi, AGP, Assam
 V. Ravichandran, DMK, Tamil Nadu
 Vir Bahadur Singh, Akali Dal, Delhi

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

USE AND MISUSE

The foremost feature of implementation of TADA is the number of administrative and judicial howlers that mark its functioning. In 1985, when the Act first came into force, the government simply forgot to frame the necessary Rules. The Act received the assent of President of India in May that year. Normally Rules under legislation are passed immediately afterwards. In this case they were placed before the Parliament, eighteen months later, in November 1986! This kind of blunder is unprecedented in the history of law making and legislature in the country. Similarly, when the new version of the Act came into force in 1987 the government did not specify the jurisdiction of old Designated Courts concerning the new Act. In any dispute over their jurisdiction the decision, not of the Supreme Court, but that of central government, 'shall be final' [S. 9(3)]. Since the government did not exercise its power a number of cases remained committed before the courts that had no jurisdiction over them. Take the case of Karamjit Singh, Delhi. His case went to the then Designated Court of B.N. Chaturvedi in 1986. After the new version came into force the case was transferred to the new Designated Court of R.L. Chugh. But this court can not try offences committed prior to 1987. Three procrastinating years later the case went back to B.N. Chaturvedi. Karamjit Singh was accused in the case of attempt to shoot the then Prime Minister Rajiv Gandhi at Rajghat. An even more absurd instance is from Rajasthan. TADA was used in November 1989 in Kota and other places, after the communal disturbances. But the necessary order notifying the area as affected and constituting Designated Courts [S. 9] was issued on 16 March 1990. In other words police were busy implementing the Act even before it came into force, till

somebody discovered the lapse five months later. In Tamil Nadu the assassination of EPRLF leader Padmanabha was registered as an ordinary murder case in June 1990. More than a year later the case was converted into a TADA case, with retrospective effect. In the case of Adilabad tribal leader the 1987 Act was applied retroactively in blatant violation of the constitution [A. 20(1)]. Thus in many respects TADA represents the epitome of the pathological state of affairs that has afflicted our judicial administration.

APPLICABILITY

Film star Sanjay Dutt is accused of acquiring an unlicensed AK-56 rifle. He is not charged with any act of terrorism or disruption. Is TADA applicable then? Why not try him under Arms Act? These questions are crucial. Nowhere in the Act an attempt is made to define and delimit the area of its applicability, leaving behind vexing questions.

As early as 1985 the Supreme Court emphasized the need for caution and thorough investigation in TADA cases (Haryana farmers leader, Balbir Singh case). Years later in the Sanjay Dutt case, while releasing him on bail Justice Vyas and Justice B.N. Naik of Bombay High Court declared that they were of 'the prima facie view that TADA is not applicable'. The courts in all these years are grappling with the question of the applicability of TADA. Without much success as it appears.

The single largest source of widespread use of TADA is Section 5 under which various offences listed under Arms Act and similar acts are covered. Jaloba was arrested for possessing illegal arms. There was no charge of terrorism or disruption against him. He was convicted. Supreme Court while con-

firming the order, held that once an area is notified under TADA all offences listed under S. 5 become exclusively triable by Designated Court (Jaloba Vs. State of Haryana 1989 Supp(2) SCC 197). To say the least this is a peculiar order. If all offences involving arms and violence are TADA offences, it makes appropriate section of IPC redundant. By implication it takes away the specificity of 'terrorism'. Fortunately however, this position was not followed in any case thereafter. In one case in Bombay Justice A.D. Mae and Justice M.L. Pendse categorically held that 'mere illegal possession of specified arms and ammunition in a notified area did not automatically make the provisions of the Act applicable' (Narendra Govind Mangela Vs Vasai Police Station; unreported case; Bombay High Court; September 1991). In Delhi five persons were charged under TADA for possessing illegal arms. While releasing them on bail the Designated judge P.R. Thakur held that 'ordinary crimes by ordinary criminals require to be tried by ordinary courts'. (23 September 1990, Shahdara Designated Court). The Designated Court at Guwahati questioned the validity of applying TADA in case of as many as 248 out of the 700 persons charge sheeted (June 1992).

In many remote areas the Designated Courts are presided over by sitting Sessions judges. Their susceptibility to the influence of local police officers is quite well known in our country. They routinely go by prosecution charges without examining the validity of applying the Act. We even found a ridiculous case where the Designated judge questioned the validity of applying the Act and then went ahead to convict the person under the Act. The Supreme Court, while acquitting him observed, "We are at loss to find out what the trial judge has really meant" [Anil Sanjeev Hegde vs State of Maharashtra SCC supp (2) 1992 230]. In many such cases Supreme Court held that the Act is not applicable. In our survey of relevant judgements,

we found only one notable exception. The case relates to the assassination of a Sikh leader in Hyderabad and was a fallout of Bidar disturbances in September 1988. Here the Designated Court held that TADA was not applicable, but the apex court reversed the order [State of A.P. vs Eshar Singh and others 1992 (3) Scale 89].

The ambiguities concerning the applicability of TADA originate from the Act itself. At present it is left to the wisdom of police officials. Despite many court interventions, no identifiable set of guidelines are available. It is for this reason, we believe that misuse of TADA is structurally woven into the Act. If the accused are rich and famous they have the resources to tap the wisdom of the higher courts. If they are poor they suffer the wisdom of the police.

THE DESIGNATED COURTS

Constituted exclusively for the purposes of the Act Designated Courts are the first courts in TADA cases. For many, they are also the last courts. The location of these courts, the area and extent of their jurisdiction is left to the discretion of the government. Thus there is no uniform pattern. In Assam, Jammu and Kashmir, and Uttar Pradesh there is only one Designated Court for the entire state. In Andhra Pradesh, Gujarat and other places there is one for each district. In some metropolitan cities like Delhi and Ahmedabad there are three for the city.

There seems to be no logic that informs number of Designated Courts and their location. It is possible to argue that in some cases, it was decided by the threat posed by the militants (see the reports on Assam, Punjab, and Jammu and Kashmir, for instance). But elsewhere no such threat to judicial process is suggested even by the government's own accounts. For the accused and their families it entails further misery. For the advocates it creates difficulties. The entire administration of justice becomes vexatious and cum-

TADA in Courts

1. Balbir Singh Vs State of Haryana 1987 1 SCC 533
2. Sukhdev Singh Vs Union Territory of Chandigarh 1987 AIR Punjab and Haryana 5.
3. Louise Fernandes Vs Union of India 1988 1 SCC 201
4. Selvanathan alias Raghavan Vs State 1988 LW (Cri) 503
5. Bimal Kaur Khalsa Vs Union of India 1988 AIR Punjab and Haryana 95
6. Usmanbhai Dawoodbhai Memon Vs State of Gujarat 1988 2 Scc 271
7. Abdula Pochamma Vs State of Andhra Pradesh 1989 Supp (2) SCC 152
8. Jaloba Vs State of Haryana 1989 Sipp (2) SCC 197
9. Niranjn Singh Karam Singh Panjabi Vs Jitendra Dhimraj Bijja 1990 AIR SC 1962
10. State of Punjab Vs Kewal Singh 1990 Supp SCC 147
11. State of Maharastra Vs Anand Chintamani Dighe 1990 AIR SC 625
12. Harbans Singh Vs State of UP 1991 AIR SC 531
13. Moolchand Vs State; Director, CBI 1991 Supp(2) SCC 101
14. Dillawar Hussain Vs State of Gujarat 1991 1 SCC 253
15. Erram Santosh Reddy Vs State of Andhra Pradesh 1991 AIR 9 SC 1672
16. Kathula Somulu Vs State of Andhra Pradesh 1991 AIR 9 SC 1556
17. Anil Sanjeev Hegde Vs State of Maharastra 1991 SCC Supp (2) 230
18. Paras Ram Vs State of Haryana 1992 SCC 662
19. State of Andhra Pradesh Vs S.Eshar Singh and others 1992 (3) SCALE 89
20. State of Maharashtra vs Sukhdev Singh and others 1992 3 SCC 701
21. Union of India Vs Mohmmad Sadiq Rather 1993 ADIR SC 379
22. Kartar Singh Vs State of Punjab 1993 AIR SC 341

Note: The list is not exhaustive. Many cases, relating to bail, are not reported.

bersome by this illogical choice of location and number of the Designated Courts. The worst is the case of Uttar Pradesh, India's largest state. The court there is presided over by a sitting sessions judge whose main pre-occupation, naturally, is his own job. In addition he is also the sole Designated judge for the entire state. Worse, the court sits two days at Lucknow and two days at Bareilly. At the present rate it would take an entire generation to dispose off the cases. Among the most poignant cases is that of Bastar, Madhya Pradesh, a district that is larger than the state of Kerala. Initially the Designated Court used to be at Raipur. Subsequently it was shifted to district headquarters, Jagdalpur. An MP PUCL team discovered in 1989 that for every listless adjournment the adivasis from far off south Bastar

come to the court on foot. The distance is about 150 kilometres. Similarly, for all the tribal districts in Vidharbha region, the nearest Designated Court is Nagpur.

BAIL

Before granting bail in TADA the Court has to satisfy itself that there are reasonable grounds for believing that the accused is not guilty of offences and that he is not likely to commit any offence while on bail. There is simply no way by which any judge can arrive at such a conclusion unless he is presented with some material. But the prosecution need not present any such material (including chargesheet) upto one year. Mohan Inder Singh was arrested on 19 January 1988. He was charged with offences under Passport Act. According to the prosecution he was

'preparing for terrorist activity'. On hearing the application for bail, the Designated Court, Ajmer held that bail could not be granted until two witnesses in Canada were examined (1 March 1990).

The restrictive clauses relating to bail and remand have become the most controversial feature of the Act over time. The crucial sections relating to executive magistrates, remand period and bail were held ultra vires of the Constitution by a full bench of Punjab and Haryana High Court (Bimal Kaur Khalsa Vs Union of India AIR 1988 Punjab & Haryana 95). Central government obtained a stay on the order from the Supreme Court. Meanwhile in another case Supreme Court in a far reaching order ruled that High Courts have no jurisdiction in bail matters also. In this case a large variety of TADA appeals from Ahmedabad were clubbed together. Gujarat government, represented by Justice P.S. Poti, argued that High Courts have no jurisdiction in bail matters in TADA cases, which the Supreme Court has upheld [Usmanabhai Dawoodbhai Memon and others Vs State of Gujarat 1988 2 Sc 271]. Most Designated Courts are known to reject bail applications in a routine manner. Eliminating the High Courts even in bail matters perhaps does not matter to the high profile militant groups, with national and international backing. But the vast majority of ordinary people have no resources and access to the Supreme Court located in the national capital. In fact it would be instructive to look at those who managed to reach the Supreme Court. And those who could not.

HIGH COURTS

An appeal from the Designated Court goes directly to the Supreme Court under the Act. Supreme Court makes it more difficult by applying it to even bail petitions. However all is not lost. The accused can still approach the High Courts on matters related to applicability of the Act, chargesheet, and FIR [A.

226 and 227 Constitution]. Unfortunately not all High Courts are sensitive to this issue. Many of them are routinely dismissing all TADA related cases. Among the notable exceptions are High Courts at Madras and Bombay. That was how Sanjay Dutt got his bail, in High Court.

IN CAMERA TRIAL

The trial under the Act is in camera. Telugu poet Varavara Rao (Accused-14) applied for bail in the Ramanagar conspiracy case covered by TADA. The prosecution while opposing it attempted to convince the judge that there were reasonable grounds to suspect that he was guilty since a part of the evidence was in the writing of A-14. It was later discovered that the original chargesheet mentioned the handwriting of A-4, another accused. The photostat copy of the charge sheet supplied to the court had been tampered with: A-4 was made into A-14. The potential for such manipulations are bound to increase manifold once trials are not open.

CONFESSIONS

Ordinary law prohibits torture and use of third degree methods by police. Confessions made before them are not admissible as evidence in court either. Police in our country, throughout the length and breadth of the land, are infamous for torture. TADA provides a legal motive for torture - in that confessions made before police officers (Superintendent of Police and above) are admissible as evidence. This is nothing short of inviting the police to indulge in torture. Its effects need not be spelled out. In one case in Chandigarh the court observed "... it appears that the recovery of these firearms was not affected in the manner alleged by these witnesses ... the attestation of the witnesses figures right at the bottom of this paper which clearly shows that the attestation was obtained on the foot of this paper when it was blank and that is why in order to fill up the

The Misleading Numbers

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

Note: NF - The Act was not in force at that point of time

NG - The Act is in force but the figures were not given

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

Source: Parliament Replies; relevant volumes.

NOTE ON THE UNRELIABILITY OF THIS TABLE

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

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

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

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

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

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

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

gap between the attestation of the witnesses the spacing of lines interse had become wider towards the fag end of the document " (State Vs. Sher Singh; Designated Court, Chandigarh, 17 November 1987). Behind this circumlocutory account of the sanitised legal document lies perhaps a tale of torture. TADA intensifies third degree methods by providing an incentive. BJP member of Rajya Sabha, Jaswant Singh, precisely stated these reasons and moved an amendment to remove the clause relating to the confessions (Rajya Sabha, 26 February 1989). But it was rejected by the government.

TO WHAT END

TADA is meant to act as a check on terrorism and defend the unity and integrity of the country. It is on these grounds the draconian means are justified by the government. But the ultimate outcome of this all pervasive legislation is that it has become self defeating.

The single most striking feature of the implementation of the Act is the pathetically low rate of convictions. We have gathered some information, from diverse sources to examine this phenomenon. Nowhere is the rate of convictions more than one percent (see Table - TADA: Cases and Convictions). The low rate of convictions it is suggested is due to the failure of judicial process or threats to it. This explanation cannot altogether be dismissed. Those who deny the existence of the possibility of threat to judicial process by the armed opposition groups are guilty of deception. This problem, however, is confined at best to Punjab and to a far lesser extent, Kashmir valley. The real reason why there are fewer convictions is because there are fewer cases that reach the stage of trial.

Upto the end of 1987, in the country as a whole only 25 cases reached the final stage and convictions were 40 percent. In Rajasthan the rate of convictions was 38 percent. In Punjab 50 percent. (Lok Sabha; 24 August

1987). In Gujarat, upto the end of 1990, 288 cases reached the final stage, of which about 50 percent resulted in convictions. According to the National Crime Records Bureau, in 1990, 127 were decided of which about 9 percent resulted in convictions. In other words the low rate of convictions reflects the low rate of cases that reach the stage of trial and judgement. Who is responsible for it?

The police, according to the National Crimes Records Bureau of the Home Ministry. In 1990 the police dropped cases against as many as 31 percent of the total 5685 persons arrested. Only 12 percent were chargesheeted and trials completed only in case of four percent. Some of the cases were withdrawn during the course of the trial. In others, the trial did not proceed because the police did not complete their investigation. The investigation of the few cases which were completed was also weak, cavalier and perfunctory. The most illustrative case is that of the General Vaidya assassination case referred

to earlier. On a number of occasions courts have adversely commented on the investigation. Some of the most glaring instances are from, of all places, Punjab (see report on Punjab). Thus neither the judicial process nor the threat to it can be held responsible for the low rate of conviction.

Police don't file chargesheets since they are not obliged to do so upto an year. The investigation can be perfunctory, since the trial is not open. Gathering supportive evidence need not be thorough since confessions made before police are admissible as evidence. The police can be casual because scope for appeal and revision is limited. Each single draconian provision of the Act, thus has made police and prosecution less, not more, serious about what the government describes as terrorism. As an 'extraordinary legislation to meet an extraordinary situation', TADA has failed. And it has failed because it is an extraordinary legislation.

TADA: Cases and Convictions

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

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

POWER AND PERCEPTION

As a measure to prevent 'terrorist and disruptive activities', whether TADA is of any use or not is open to debate. But not perhaps its disastrous consequences, after these eight years. The focal point of any meaningful discussion on the Act now are not its draconian features; nor the problems it could not solve. But the devastating damage it is causing to our polity.

Foremost among them is the communal or sectarian features of its implementation. Or its perceptions. Since the Act, initially, was supposed to be used against Khalistanis, Sikhs became its first victims. Almost all of the accused in Punjab are Sikhs. Not all of them are necessarily connected with Khalistani activities. So is the case with a number of those arrested in Delhi, Uttar Pradesh and other places. In Gujarat and Rajasthan, the overwhelming majority of the people arrested are Muslims. In the large scale organised violence against Muslims, and linguistic minorities in Bombay riots the Act was not invoked. But soon after the bomb blasts, it was Muslims who became the victims. Add to them the figures of those arrested in Kashmir who happen to be Muslims. In a different terrain in the central forest region, the brunt of the Act was born by the tribals. In the contiguous regions of Vidarbha, Telangana, Godavari and Bastar forests, an estimated three thousand tribals have been detained. So is the case with tribal communities in Assam and Manipur.

It is possible to argue that in all these cases the ethnic or religious background is merely incidental. And that they were all arrested, not because they belong to a religious or ethnic minority, but because they were involved in 'terrorist and disruptive activities'. But two factors go against it. Firstly it would be extremely difficult to sustain this argument in all cases. In places like Gujarat

and Rajasthan, there are no gray areas of ambiguity. The Act was used against Muslims because they were Muslims. So is the case with Sikhs in Terai region (see next chapter for details). Secondly in any process of communalisation perceptions play a crucial role. A statement of intent or a matter of interpretation is of no use when communities begin to perceive discrimination. Their perceptions are also strengthened by the fact that in comparable situations TADA was not invoked against Hindu communal forces.

Apart from aspects relating to implementation of the Act, certain policy initiatives of the government also contributed to these perceptions. The Minority Commission in its Report, 1986-87, suggested enhancement of punishment in communal violence, stringent measures to effectively enforce Arms Act and measures to curb the growth of 'senas'. In the 'Action Note', placed along with the report, in the Parliament, the government took the stand that adequate provisions exist in the Indian Penal Code to deal with communal violence referred to by the Commission, that adequate clauses exist in the Arms Act, and that senas cannot be curbed since 'under Article 19 of the Constitution freedom is guaranteed to form associations' (Lok Sabha, 2 December 1991). In other words, when it comes to draconian measures suggested by the Minorities Commission, the government used all the arguments that we are giving against TADA! This kind of blatant duplicity, coupled with the way the Act is being implemented has led to a situation where the Act and the perceptions about it are increasingly following the familiar ethnic and communal divisions of our society. Repressive legislation is bad. But far worse when its use or perception follows a sectarian line. The moment in popular perception any law becomes sectarian then rule of law col-

Women and TADA

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

lapses, leading to a state of anarchy. Such a state of anarchy is being brought in by a legislation that is supposed to prevent it.

TADA also encourages the kind of violence that it ostensibly seeks to curb in more direct ways. Take the case of kidnappings. The legislation, with such unrestricted powers, is nothing but a legalised form of kidnapping. And in turn it encourages them.

As a form of political protest, kidnappings raise fundamental moral questions. Usually the victims are unarmed civilians who can not be directly held responsible for state policies. The disturbing features of some

of the acts of kidnapping have raised ethical dilemmas even among those who are otherwise considered sympathetic to the cause of the armed groups. On some occasions kidnappings have led to somewhat debilitating debates within the democratic sections in Kashmir, Delhi, Andhra and Assam. Not all kidnappings, one should also note are connected with political demands. Some of them are mere 'money actions'. Despite all the negative features and the popular resentment against them, kidnappings have emerged as a major new form for the armed opposition groups. To some extent TADA has contributed to this process.

Take the more well known among the kidnapping cases in Jammu and Kashmir; Dr. Rubia Syeed, daughter of the then Home Minister Mufti Mohammad Syeed (December 1989), K. Doraiswamy, executive of Indian Oil Corporation (June 1991), S.L. Khosla of New India Assurance Company (August 1991), K.C. Gupta of Punjab National Bank (September 1991), Tassaduq Dev, brother in law of a Union Minister and A.K. Dhar Director, Regional Research Laboratory, Srinagar (January 1992). Together, in these cases government exchanged 22 militants under detention. All of them were detainees under TADA or J.K. Public Safety Act. Similar is the case in Andhra Pradesh. Among the more well known of the kidnapping cases are those of the seven IAS officers (December 1987); M. Venkateswara Rao, MLA (December 1989); V. Mohan Gowd, MLA (May 1990); Sudhir Kumar, MLA (March 1991); and P. Balaraju, MLA (February 1993). In return the government exchanged militants of the CPI(M-L) People's War Group. All of them were TADA detainees. In some cases where, in government perception, the kidnapped persons were not influential enough, the government refused to release the militants. And the unfortunate victims were killed by the militants. They include Malhar Rao, Mandal Praja Parishad President in Andhra

(June 1989), Mushirul Haq, Vice Chancellor, Srinagar University and H.L. Khera of Hindustan Machine Tools (both in April 1990) in Jammu and Kashmir. To put it bluntly TADA is a legalised form of kidnapping which in turn has led to other kidnapping that effectively became a 'habeus corpus' to produce those who were languishing in jail. This by no means morally justifies the actions of the armed opposition groups where unarmed civilians, and family members of policy makers, are being subjected to agony. Nevertheless there is no point in denying that extraordinary legislations tend to breed extraordinary forms of violence.

All this discussion about the Act and armed opposition groups should not let us forget that members of such groups form but a minor fraction of the total detainees. The range of social and political movements organisations and groups against whom TADA has been invoked is truly extraordinary. Farmers movement in Haryana, trade union movement in Gujarat, peasant struggle in Andhra and Bihar, tribal movements in Maharashtra, Madhya Pradesh, and Andhra Pradesh, ordinary urban crime, parliamentary political opposition, national and ethnic struggles in the border regions - the list is inexhaustible. We have given a somewhat incomplete list of organisations affected that speaks for itself (see Reach and Range of TADA).

This applies to the range of people arrested under the Act. They include academicians, civil rights activists, poets, artists, journalists, MLAs, student leaders, advocates, trade unionists, peasant leaders and political activists (see the list: Who Are The Terrorists?)

The sweeping range and reach of TADA can only be understood in the powers that it grants. For the police, it is a convenient tool to do away with all existing democratic checks and balances. For the political party in power, it is an instrument to suppress any form of

dissent and opposition, including parliamentary opposition. Intense competition for power, with no holds barred, has become the hallmark of political culture in recent decades. Once in power, parties stick to it by any means, fair or foul. It is in such an environment that TADA has become a useful weapon for practically every major political party that came to power in the last eight years.

The Congress(I) used it against its opponents without any restraint. In Delhi, during the elections to the Delhi Gurudwara Prabhandak Committee (DGPC), in 1987, TADA was used to detain one of the Akali Dal leaders Bir Bahadur Singh. The 69 year old man was arrested under the Act to force him to support the then Congress(I) backed Barnala group in the DGPC elections. But soon after, when President's Rule was imposed in Punjab in May 1987, Prem Singh Chandumajra, a cabinet minister in the dismissed Barnala government became a victim of the Act. In Haryana, an opposition MLA of Haryana Vikas Party, Om Prakash Jindal was charged under the Act in 1991. More than a year later Hari Singh, the SJP leader who unsuccessfully contested against Bhajan Lal, currently Chief Minister, was charged. In Tripura the Act was brought into force in the wake of violence by the All Tripura Tribal Force (ATTF) in October 1991. Soon after, it was the cadres of CPI(M) who were arrested under it. In Assam, three MLAs of Bodoland Legislature Party were arrested in connection with bomb blasts in Guwahati and Dispur. But after the agreement was signed with a section of the Bodos, the cases were withdrawn. The Act also figures, quite characteristically in the factional battles of Congress(I). The arrest of Suresh Kalani, MLA from Ulhasnagar who is known for his connections with the underworld was believed to be guided by the factional considerations of the then Chief Minister Sudhakar Rao Naik. And the arrest of Sanjay Dutt was seen by some as a move to settle scores with his

father Sunil Dutt, M.P.

The use of TADA as a instrument of day to day parliamentary politics is not confined to Congress(I). Take the case of Assam. Prafulla Kumar Mohanta and Birgu Kumar Phukan who later became Chief Minister and Home Minister respectively were both products of All Guwahati Students Union (AGSU), an affiliate of All Assam Students Union (AASU). When TADA was brought into force in the state the then general secretary AGSU became one of the first victims. Later the AGP government used the Act extensively against Bodos and Karbis. Associates of AGP themselves were arrested after Congress(I) came back to power. In Andhra Pradesh during the disturbances following the murder of Congress(I) legislator Vangaviti Mohana Ranga Rao, cases under the Act were launched against Congress(I) associates by the Telugu Desam government. The TADA charges were subsequently withdrawn. Telugu Desam government used the Act so extensively that the BJP member of Lok Sabha from Warangal vehemently opposed its use in 1989. Subsequently when the well known advocate and MP E. Ayyapu Reddy of Telugu Desam presented one of the most well argued cases against the Act in Parliament, Union Minister P. Chidambaram silenced him by simply giving him details of how the Telugu Desam government was using the Act (Lok Sabha, 10 May 1989). In Haryana the Lok Dal-BJP government used it against a Hissar Congress(I) leader Ranji Lal. Later, while acquitting him, the High Court indicted the police and the government for the misuse of the Act. Similarly in Hissar Bhajan Lal's brother and 21 others were charged under the Act by the Janata Dal government. Years later they were acquitted by the Designated Court. Janata Dal government in Bihar is using the Act against the peasant movement led by Naxalites. Among those arrested

were leaders of Indian Peoples Front in Palamu. The record of Janata Party leader Dr. Subramanya Swamy is even more strange. He was the Law Minister in the short lived Chandrashekhar government. It was that government which recommended the extension of the Act through a Presidential Ordinance in May 1991. Shortly afterwards the Ordinance came to Rajya Sabha in the form of a bill, as required by the statute. By then Congress(I) was back in power. In Rajya Sabha the resolution disapproving TADA was moved by Dr. Subramanyam Swamy ! The Left Front parties in West Bengal invoked the Act against Gorkhaland agitation in 1988-89. Recently two days after the left parties staged a walk out in Rajya Sabha in protest against the extension of the Act, the Left Front government invoked it for the city of Calcutta. The AIADMK government, headed by Jayalalitha applied the Act with retrospective effect in Padmanabha murder case to detain a former cabinet minister of DMK government. The BJP government in Uttar Pradesh used the Act most indiscriminately against Sikhs in Terai region. Even local BJP leaders publicly condemned some of these arrests. It led to the strange spectacle of the BJP Chief Minister, Kalyan Singh receiving a complaint of misuse of TADA from a Congress(I) Chief Minister whose state has an unenviable record of TADA arrests, Beant Singh of Punjab!

It is only in the light of these accounts that one can really appreciate the debate over the misuse of TADA. Quite simply, if you invoke it against your opponent it is 'use' for you and 'misuse' for your opponent. Or the reverse. Since the sides do not remain the same always, use or misuse becomes a matter of interpretation. Based on transient political preferences. By enabling this TADA has destroyed the philosophical foundations of our constitution.

Reach and Range of TADA

Andhra Pradesh

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

Arunachal Pradesh

United Liberation Movement of Arunachal

Assam

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

Bihar

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

Delhi

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

Gujarat

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

Haryana

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

Jammu and Kashmir

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

Karnataka

C.P.I.(M-L)
Karnataka Civil Liberties Committee (KCLC)
Progressive Youth Centre (PYC)

Liberation Tigers of Tamil Eelam (LTTE)

Madhya Pradesh

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

Maharashtra

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

Manipur

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

Punjab

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

Tamil Nadu

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

Tripura

All Tripura Tribal Force
CPI(M)

Uttar Pradesh

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

West Bengal

Gorkha National Liberation Front (GNLF)

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

REPORTS FROM STATES

TADA is a central legislation but it is implemented by the state governments. It is the latter that normally issue the required order notifying the state under the Act, and constitute the Designated Courts. The responsibility for the use and misuse of the legislation thus lies with the states. This section gives accounts of the implementation of the Act in some states.

Our reports however are constrained by our ability to gather the information. Or, to be more precise, the lack of it. Material gathered by us and our friends in a number of Designated Courts, legal documents from them and from the High Courts, interactions with advocates and activists, survey of regional media and debates in state assemblies are the sources for these reports. The extent and nature of our reports on states here do not reflect the extent of the use of the Act, but our limitations.

The major category of victims of the Act, and its immediate or ostensible context vary from state to state. In many states, the TADA detainees do not fall into any identifiable category. The number of Designated Courts in each state vary. So is the process after filing a case. In some instances, police themselves are notifying the cases as 'declared untraced'. To follow up a case or to gather information about it is particularly difficult in the tribal districts of Andhra Pradesh, Madhya Pradesh and Maharashtra and in some of the north eastern states. As noted earlier, the complex range of problems, tensions, organisations and movements that attracted TADA is extraordinarily wide. In fact there is nothing in common between them, except that they all are affected by TADA. It is the specific features of its implementation in each state that the following reports attempt to recapture.

ANDHRA PRADESH

Andhra Pradesh, outside of the northern states, was among the first where TADA was brought into force. The state was notified in August 1985 itself. Within two years 840 cases were registered. The immediate context for invoking the Act in the state is the Marxist-Leninist movement, also known as Naxalite movement. The movement originated in the late sixties, in the Agency areas of Srikakulam district. In the last decade it has taken strong roots in the Telangana region, especially in the tribal areas contiguous to the central forest region. And also in the Agency areas of Visakhapatnam and East Godavari forests.

At the outset one should note the process by which Naxalites became 'terrorists'. Right from the early sixties they were described as 'extremists'. For a while the term 'Naxalite' was used as a pejorative word. But later the term acquired legitimacy. In the dominant discourse the description continued to be 'extremists'. Subsequently at the national level the term 'terrorists' gained currency with all its evocative power in public mind. This new term became handy for the state. Thus in the official account, in 1980 all the 139 offences, relating to the movement, were described as offences by 'extremists'. A decade later, in 1989, the total offences became 592. Of them as many as 70 percent were listed as offences by 'terrorists'. In other words TADA has now become the major repressive legislation to suppress the movement. These changing terms of discourse perhaps give their own account about the Marxist-Leninist movement. The insights offered by the compulsions of the state to periodically search for terms that seek to delegitimise the movement are not merely a

matter of academic interest. At the root of it lies the very idea of applying TADA against the Marxist-Leninist movement. Not once in the last eight years the movement as such figures in the Statement of Objects and Reasons. Individual instances of violence apart, movements of this kind have never been part of the official notion of terrorism. Firstly Naxalites have never been accused of receiving help from abroad as for instance is the case with border region movements. Secondly they do not exactly fit into the caricature of those threatening the 'unity and integrity of the country'. Their movement, by all accounts, is rooted in the oppressive social structures of our society. In fact in a recent discussion CPI member Chaturanan Mishra strongly and forcefully opposed the idea of using TADA against Naxalites. In response the Home Minister conceded that the movement is located in socio-economic problems (Rajya Sabha Debates; 28 April 1993). Yet the Act has been extensively used against the movement in Andhra Pradesh.

One feature of the movement, relevant in this context, is its popular social base. In effect it means that the victims of the Act are not just the whole time organisers of various Naxalite groups. In fact these constitute but a fraction of the total detainees. It is the large mass of poor people who are arrested. The more dramatic forms of Naxalite violence usually take place in plain areas or in urban centres. But it is tribals who constitute the single largest category of TADA detainees in the state. From 1985 to 1989 for instance 5,415 persons were charged under the Act. Nearly 50 percent of them were from one single tribal district, Adilabad. Next in order were the tribal areas of Karimnagar, Warangal, Khammam, Visakhapatnam and East Godavari.

Thus over time TADA has become a weapon to suppress the mass movements of oppressed people in backward regions. In Adilabad during the drought, three years

ago, it was extensively used against agitating tribals. In Warangal, in December 1990 about 5,000 people gheraoed the police station at Narmeta demanding the release of a Naxalite leader detained illegally. Police opened fire in which two persons were killed. In this instance three TADA cases were launched in which altogether 658 people were charged. Upto the end of August 1991, 224 cases were launched in Warangal in which at least 1,542 people were charged. In Karimnagar during 1990-91 when landless poor attempted to cultivate the public land and surplus land of the landlords, they were detained under TADA. By the time they came out on bail the standing crop had withered.

The routine use of the Act against large masses of people had its inevitable fall out. It has led to trivial and ridiculous cases. We have already referred to two instances. In a similar fashion eight Radicals (as the Naxalites of the People's War Group are known) were supposed to have deflated the tyre of a passenger bus and written slogans "Implementation Reservations and Bring Down Prices". That is the sum and substance of the charge against them when they were arrested on 26 April 1991 (Cr.No. 2/91; Karempudi P.S.). It is difficult to fathom how this case attracts section 4(1) of TADA that deals with 'sovereignty and territorial integrity of India'. The accused could not obtain bail for almost an year.

The Naxalite movement however is not the only one against whom TADA is invoked. There is one case against suspected LTTE sympathisers (Cr.No. 5/93; Harbour P.S. Visakhapatnam). There are some cases against alleged Sikh terrorists in Hyderabad. The Act was also used by the Telugu Desam government against Congress(I) and vice versa. At least four journalists were arrested under the Act. They include the infamous case of brutal and abominable torture and arrest under TADA of Digavalli Sivaram Kumar, *Gautami Times*. Among the major

instances was the use of the Act in communal violence in Hyderabad city. It was also extensively used in village factional battles. Some parts of the state, like Rayalseema and Guntur district in the delta, are quite notorious for armed clashes between village factions that some times carry on to the next generation. Some of Andhra's most famous politicians like the present Chief Minister and Home Minister, have a long track record of involvement in these feudal wars. The Act was used in these kinds of cases also. In one such fight in Guntur district (Cr.No. 17/92 Rentachintala P.S.) as many as 61 were charged under TADA. In the district at least 12 TADA FIRs mention that they relate to 'village faction fights'. However it appears that recently the government has instructed the police not to use the Act in such cases.

Given this context it is not surprising that the actual legal process under the Act has become very tardy. Take Andhra's most famous TADA case, assassination of Sub Inspector Yadagiri Reddy at Warangal. Reddy was killed admittedly by the People's War Group on 2 September 1985. The FIR launched that day did not mention any names. The following day, his funeral procession, comprising of armed police, turned violent and shot dead Dr. A. Ramanadham, much respected pediatrician, and leader of A.P. Civil Liberties Committee. (No action has been taken so far in this case.) The police added a second FIR on 7 September in the Yadagiri Reddy murder case. In the intervening period on 5 September TADA came into force in Warangal. The second FIR was under TADA. It named Dr. Ramanadham, Dr. Varavara Rao, Dr. K. Balagopal and nine others. Four of the nine were later killed in fake encounters. One of them has been recently released in exchange for the kidnapped MLA from Paderu. Others are absconding. The only two accused who remained, on bail, are Varavara Rao and Balagopal. Eight years have passed. The police have not even filed a charge sheet

in this case.

This pattern is common in the state. In the first two years 840 cases were registered in which only 268 were eventually challaned. Of them trial was completed only in 77 cases. They resulted in the acquittal of 216 persons and conviction of 19 persons. If anything the entire process seems to have slowed down further in recent years. In Visakhapatnam district, for which details are available, altogether in the last eight years about 60 cases were launched in which at least 318 people were charged. Only six cases were committed to court. Judgement was delivered only in three cases. In two of them the accused were convicted of other offences, but were acquitted under TADA charges.

ASSAM

Assam was not represented in the Lok Sabha when the Act was first introduced. Nor does its name figure in the original 'Statement of Objects and Reasons'. Subsequently Assam Ganasangram Parishad (AGP) came to power in the state. AGP opposed the Act when it was extended in 1987 and 1989.

But the AGP government invoked the Act in April 1989. Initially there was only one Designated Court at Guwahati. Later as the number of arrests increased, one such court as set up in each district. The government used the Act against tribal communities. Most of the arrested belonged to the Bodo groups. Karbis, under the leadership of the Autonomous State Demand Council (ASDC) were also arrested. Others include Cachar Karimgunj Students Union leaders. Altogether 1870 persons were detained under the Act during the AGP rule. Some of them were members of ULFA. There were allegations that Designated Courts were pressurised to release ULFA detainees on bail. Then once again Guwahati became the centre for the sole Designated Court in the state. It remains so till today.

Subsequently the AGP government was

dismissed in November 1990, and the major insurgent group United Liberation Front of Assam (ULFA) was banned. Army intervened. During this period a large number of people in the Brahmaputra valley were arrested by the army, tortured and were sent to jail under TADA. At the peak of army operations there were over 7,000 persons detained under the Act. In an overwhelmingly large number of cases, the charge sheets were never filed. By 8 June 1992 only 700 people were charge-sheeted. The Designated Court questioned the validity of applying the Act in the case of as many as 245 persons. Meanwhile Congress(I) government, headed by Hiteswar Saikia came to power in July 1991. Among those arrested under TADA was Tulsi Gogoi, the AGP candidate who contested, unsuccessfully, against Hiteswar Saikia. The government also used the Act against three MLAs of the Bodoland Legislature Party: Ms. Premila Rani Brahma, Mr. Parameshwar Brahma and Mr. Tezendra Nazary. They were allegedly connected with the bomb blasts in Guwahati in November 1992. But subsequently the cases were withdrawn. The Act was also used against journalists in the state.

TADA was used in the wake of communal violence in the state that followed the demolition of Babri Masjid in December 1992. A number of people were arrested in Nowgong. Around 100 persons were arrested in Jamunamukh Police Station limits alone. Here again police applied the Act with utter contempt for the law. One of the arrested persons, for instance, was Abdul Khaleque. He was alleged to have participated in the riots that took place on 8 December. But as the Designated Court pointed out later, he was in jail since 9 September, under a different TADA case, registered in the same police station (Cr.No.78/92, Jamunamukh P.S.)

The Hiteswar Saikia government is also involved in a bizarre case of kidnapping that ended up with TADA. Bolin Bardoloi, an executive of Tata Tea company was kidnapped

by Bodo Security Force on 7 April 1993, demanding money in return. The kidnapping generated a lot of commotion and attention. Bardoloi, it should be noted, is the son of Gopinath Bardoloi, the famous leader of modern Assam. As the pressure mounted on the issue the government first arrested two persons Uttam Koch and Bakul Soner under TADA accusing them of being involved in the kidnapping. (Cr.No. 182/93: Dispur P.S.). Soon after however the Designated Court set them free on bail seriously questioning the prosecution story. Subsequently within a span of few hours on 27 April, in three separate instances four persons were kidnapped. They included Subodh Doimari and Ms. Anjali Doimari. They are brother and sister of Rajan Doimari, chairman of Bodo Security Force. Ms. Anjali, an announcer in Guwahati station of All India Radio is also acting in a film directed by the well known film maker Jones Moholia. He and his 16 year old son, Jerry were also kidnapped. Both AIR and Doordarshan attributed the kidnappings to 'underground extremists'. Apart from the police, Chief Minister Saikia himself appealed to the people to help authorities locate the kidnapped persons. Five days later, on 2 May, Jones Moholia managed to send a message written on the back of a used envelope, that they were being confined in Jorhat police station. There was a public furore. On 4 May finally the government, in response to the habeas corpus petition, filed an affidavit in Guwahati High Court stating that all the four were arrested by police themselves under TADA. Police gave a long winded explanation why they wanted to keep the arrests a secret. But that still does not explain the Chief Minister's issuing a public appeal against their kidnapping, when they were arrested by the police. The state's role in the kidnappings was widely condemned. A few days later when their bail applications came up before the Designated Court, the prosecution did not oppose. They were all granted

bail. (We would like to add that at the time of writing this report Bolin Bordoloi himself has not yet been released by the Bodo group.)

The government provided the following details about TADA from the time it assumed office (31 July 1991) to 18 February 1993 (Answer to Question No. 217; Assam Legislative Assembly proceedings; 22 March 1993). Total number of persons arrested were 3483 of which 3055 persons were granted bail. Not a single person has been convicted so far.

DELHI

The Act came into force in Delhi immediately after its promulgation, in May 1985. As of April 1993, 916 cases are pending at the three Designated Courts in the city; Tis Hazari (741); Patiala House (160) and Shahdara (15). Approximately 1500 people, excluding those declared absconders, have been arrested under the Act.

Persons suspected of involvement with Khalistani groups, Kashmir insurgent groups, political leaders belonging to Akali Dal groups and a stray case of Naga 'extremists' are among those arrested. However as we shall see they constitute a minority.

The cases relating to Khalistani groups are somewhat complicated. A number of those arrested in Delhi, under TADA, are transferred to Punjab. Not all of them necessarily have any cases pending against them in the city. Similarly some of those arrested in Punjab and elsewhere have their cases in Delhi. Among the well known cases of Akali Dal leaders were the arrest of Bir Bahadur Singh and Professor Harmeet Singh of Delhi University. In March 1991 Shahabuddin Gory, a student of Jawaharlal Nehru University was arrested along with others. They are accused of being involved with Kashmir militants. Similar is the case of Ms. Shabnam Lone (28). She is the daughter of well known Kashmir leader Abdul Ghani Lone, who himself was under TADA earlier in Kashmir. She is an advocate working as a junior with Mr. K.K.

Venugopal, one of the leading lights of SC Bar Association. She was arrested in the early hours of 24 July 1992, under TADA. Mr. Venugopal and the Bar Association moved the Court by 10 a.m. In an unprecedented move a constitutional bench of the court asked the Attorney General to present the government's case within four hours. When it was told that Ms. Lone was arrested under TADA, it directed the Designated Court to take up the bail petition immediately. By evening she was released on bail. Recently the government also withdrew the case. The extraordinary manner in which the apex court moved in this case to protect the rights of a citizen impressed many people. Unfortunately however there seems to be no uniform pattern in it. We have already recounted the case of the Delhi University student in whose illegal detention case the court gave as much as two weeks time to the police in a habeas corpus petition.

The large majority of those arrested under the Act are ordinary criminals not in any way connected with what are described as terrorist and disruptive activities. Among them were members of dacoit gangs, like those of Madan Bhayya and Tyagi. Petty criminals, burglars, thieves, conmen - are all booked under the Act. Virendra Singh, Brijesh Kumar, Satvinder Singh, Krishna Pal Singh, Shazad and Shakir were all arrested, in separate cases and were charged under Arms Act alongwith TADA. While setting them free on bail the Designated judge P.R. Thakur observed 'ordinary crimes by ordinary criminals require to be tried by ordinary courts. The Designated Courts under TADA are special courts constituted to try special crimes committed by special class of criminals. . . . None of the accused persons were even remotely or indirectly alleged to be engaged in any terrorist act or disruptive activity or associated with any terrorist or disruptional organisations. . . . The legislature never intended the application of the

provisions of TADA to such persons who were miles away from terrorist acts and disruptive activity. . . . The provisions of TADA are intended to be invoked only in those conditions when and where ordinary law and ordinary machinery has failed. The stringent and harsh provisions of TADA can legitimately be applied only against those persons who are terrorists or disruptionists. . . . If innocent persons are rounded up under the provisions of TADA the police itself becomes guilty of terrorism. . . .' (Shahdara Designated Court; 23 September 1990)

Even after such a clear and categorical order by the court, the Delhi police continued to use the Act in a whimsical manner. In September 1991 a student was stabbed in the elections to the Delhi University Students Union (DUSU) in Atma Ram Sanatan Dharma college. Four persons were arrested, including two students of the college, all of them under TADA. Subsequently the then Secretary, Home, Delhi Administration, Mr. Ashok Nath sent a letter to the Deputy Commissioner of Police (DCP) in the capital urging them to impose TADA with 'utmost care'. In fact the letter even mentions that 'in future prior approval of the Administration needs to be taken to invoke the Act' (This letter dated 14 October 1991 was produced in the court in an arms case under Jama Masjid police). The police after a while seem to have ignored both the letter and the spirit of this letter. In October 1992 the principal of a tutorial college was murdered in Rajouri Garden. The accused in this case was charged with murder and also TADA. More recently newspapers have reported arrest under TADA of those allegedly connected with dacoity, burglary and auto-lifting. In all these kinds of cases some variety of arms or sometimes explosives are used. By virtue of sections 5 and 6 of TADA they are all clubbed under TADA offences. Most of the accused denied of bail spend at least one year in jail, till police file the charge sheet. In fact they do not

actually pursue the cases. For them, in the inimitable words of a Senior Delhi police official 'TADA is NSA without review'. It is a way to lock up people without trial.

Given the kind of cases, the manner in which case files gather dust and given also the fact that some cases are intricately connected with those in the Designated Courts of Punjab, Chandigarh, Haryana, Uttar Pradesh and Jammu, it is difficult to trace the actual judicial process in Delhi. We were unable to gather all the information in all the three Designated Courts in the last eight years. However the following information given in Rajya Sabha (August 1992) by M.M. Jacob may serve as an indicator. In 1990-92, 838 persons were arrested under TADA. Of them only 144 are connected with militant activities. Out of these two were transferred to Punjab, one died, three were acquitted and only one was convicted.

GUJARAT

Gujarat now tops the list of TADA prisoners in the country. Late last year the figure (14094) was slightly less than that of Punjab (14457). But upto the end of May, this year, 3452 more were arrested in the state.

Recurring communal violence provided the immediate context for the extensive use of the Act. But such violence is not the only occasion for it. Among the cases that came up to Supreme Court, for instance, was that of a dispute between a landlord and tenant. Similarly there was a conflict over a milk booth which figures in the TADA cases from Ahmedabad. The Act, in many states, has become a substitute for the Indian Penal Code. In Gujarat even civil disputes are attracting TADA provisions!! That also indicates the remarkable elasticity of the Act itself.

We have earlier given the account of workers of Vimal Mills Union. In a similar fashion the Act was also used against agitating farmers. About 80 farmers of Kalol,

Mehsana were rounded up under TADA when they organised a *rasta roko*. About 70 landless labourers of the Morvi village were charged when they demanded the land that is due to them. In one village in Anand, Malej, about 700 persons were arrested under the Act.

It was also used against underworld gangs who have close connection with Bombay gangs. The famous shooting incident in J.J. Hospital, Bombay, for instance had its fallout in the state. The incident involved the gang of smuggler Dawood Ibrahim, now India's most wanted Non-Resident Indian. One of his key figures was transferred from the Civil Hospital Surat to J.J. Hospital just before the incident, on the recommendation of a doctor. Subsequently in October 1992 police detained the doctor himself under TADA. Incidentally, according to newspaper reports, the doctor who recommended the surgery to the henchman of Dawood Ibrahim, is a gynaecologist.

TADA in Gujarat is primarily associated with communal violence. Overtime it acquired a communal image as it was mostly Muslims who became its victims. Among them was a 15 year old mentally retarded boy arrested under the Act from Baroda. In a

1986 riot case from Ahmedabad the details given in the Supreme Court petition are quite revealing. Initially '1500-2000 mob' figure in the FIR. Later police named and charge-sheeted 150-200. Subsequently charges were pressed against only 63 persons. The Designated Court has acquitted 56 of them. The rest were acquitted by the Supreme Court (Dilawar Hussain Vs State of Gujarat 1991 1 SCC 253). In this case the petitioners also challenged the applicability of TADA in riot related cases. Unfortunately the Court did not address this question in its order. In many ways TADA has become a way of extracting money for the police. The rate for not applying TADA ranges from Rs. 1,000 to Rs. 20,000. Muslims from well off families pay up. It is the poor who end up as 'terrorists and disruptionists'.

In the recent riots in Odhav, an industrial area in Ahmedabad, a funeral procession of a Hindu constable turned violent. Muslims in the area were attacked, their houses burnt and looted. But subsequently it was the survivors who were arrested under the Act. When a well known figure, Ibrahimhai Ghaswala (whose factory was burnt in the arson) was arrested under the Act a delegation of prominent Muslims met

TADA in Gujarat

No. of cases registered	2,167
Cases dropped, cancelled or declared untraced by the police	25%
Cases pending investigation with the police	26%
Cases challaned	49%
of which	
Withdrawn from the court by the prosecution	16%
Pending trial	20%
Cases decided	13%
No. of persons arrested	11,957
No. convicted, but acquitted of TADA charges	81
No. of persons convicted in TADA offences	18 (0.15%)

Note: Data relates to 1985 - 31 December 1990

the Chief Minister who promised the withdrawal of the case. It is not yet withdrawn.

Gujarat in fact has a long history of unkept promises and routine reviews. In 1987 soon after the public protest over the arrest of Reliance workers, a review of all TADA cases was promised. Even Union Minister, P. Chidambaram gave assurances. The government was to evolve some guidelines. They were never issued. By 1990 an active agitation against the use of the Act in the state developed. Soon after a convention in Baroda, the government announced another review. It also announced that the powers to invoke the Act will be taken from local police, and would now rest with the Director General of Police. In 1991 a three member committee was appointed to review the cases. It was headed by Balakrishnan, Additional Secretary, Home. The committee reviewed 836 cases and recommended the release of 602 persons (Gujarat Assembly Proceedings, 4 January 1992).

The use of TADA in communal violence is not always confined to Muslims. In the Baroda riots quite a few BJP and VHP activists were detained under TADA. The Hindu organisations immediately raised a hue and cry. They also announced a bandh call in Baroda. L.K. Advani raised the matter in Lok Sabha. Quietly TADA cases against Hindu communalists were dropped, later.

The case of recent riots is more complicated. According to the official figures (from 6 December 1992 to 31 May 1993) 3,452 persons were arrested in communal disturbances. 1759 of them were Hindus, while the rest were Muslims. But this figure is somewhat misleading, as our field investigations revealed. The prosecution's opposition to bail, that plays a crucial part in TADA, is not that strong in the Hindu communalist cases. In other words some of the culprits were back aggravating the fear and insecurity of the minorities. We should also note that they are some persistent complaints of communal bias against some of the judges of the Designated

Courts. More significantly TADA part of the charges are being withdrawn in case of Hindu communalists. Thus a case which initially is recorded as a TADA case, and is shown as such in official figures, does not necessarily remain so in practice. Individually police chiefs, in some places, are taking care to ensure that the Act will not be used in a communal manner. But on the whole our enquiries in the riot affected areas of Ahmedabad and Surat have made us aware of complicated subterfuges by the establishment that in the end, are contributing to the popular perception of the Act as communal.

Ahmedabad city has three Designated Courts, and one for the cases from the district. Besides there is one each for every district. Available accounts suggest that largest number of accused are from Ahmedabad, Baroda, Surat and Rajkot. The police establishment, as elsewhere, blames the judiciary for all ills. In 1990 Lok Adhikar Sangh filed a public interest petition in Gujarat High Court. In response J.J. Merceda, P.I.C.I.D. Crime, Gujarat filed an Affidavit-in-Reply. It included details furnished by Deputy Secretary, Home Department, for the period 1985 to 31 December 1990. (Lok Adhikar Sangh Vs State of Gujarat, SCL No. 216 of 1990). The data is an eloquent testimony to the most ridiculous manner in which the police are following the TADA cases in the state. Only 13 percent of the cases managed to reach the final stage. Only 18 out of a total of 11,957 were convicted under the Act.

Gujarat, let it be noted for the record, is not particularly known for the kind of terrorist and disruptive activities against which the Act was brought into force. There are hardly any organised armed groups active in the state. The communal violence that the state is suffering from is not particularly unique to the state. We made a serious attempt to find out what exactly are the government's own reasons for use of TADA in the state. Tucked away in an Assembly debate, in

January, 1992, we found a statement by Jitender Shah, Minister for Home: "The Act is needed in the state because of security problems in the sensitive Kutch border district". Any comment would be superfluous.

JAMMU AND KASHMIR

In the most recent extension of the Act, in its 'Statement of Objects and Reasons', the government mentioned the situation in Kashmir as one of the originating causes of TADA. This however, is not true. The original version in 1985 explicitly stated that 'provided that so much of this Act as relates to terrorist acts shall not apply to the state of Jammu and Kashmir' [S. 1(1)(c)]. That clause was deleted in the 1987 Act. But even before the term of 1985 Act expired it was brought into force in Jammu and Kashmir, in 1986 itself, a constitutional subterfuge that has been part of the history of the state. With or without the much maligned Article 370 of the Constitution.

The immediate context of TADA then was, not the situation in the valley, but that in Ladakh. Buddhists in Ladakh have been agitating for Union Territory status. Although there are no armed insurgent groups in Ladakh, there have been some incidents of violence in this on and off struggle. It was in the light of some such incidents that TADA was invoked in the state. The arrested belong to Ladakh Action Committee and Ladakh Buddhist Association.

By 1987 the Act came into force all over the state. Initially there were two Designated Courts; Srinagar and Jammu. This caused a lot of suffering to the families of the arrested in Ladakh, India's largest district. In Ladakh, travel even to the district headquarters Leh is difficult for most part of the year. Subsequently, as the situation in the valley became more volatile, the Srinagar court was also abolished in May 1990. Jammu remained the sole Designated Court for the entire state.

By now the majority of TADA detainees

in the state belong to Kashmir Valley. (Although between them it is the JK Public Safety Act that is being used more extensively). Some of the detainees from the state were also transferred to prisons outside the state to far away places, like Jodhpur in Rajasthan, Satna in Madhya Pradesh and Coimbatore in Tamil Nadu.

Not all the people arrested under the Act in the state are connected with any acts of violence. Some of them however could be sympathetic to the cause, given the popular base of the struggle in Kashmir. The families of hundreds of such youth faced hardship due to the abolition of the Designated Court at Srinagar. The legal community also resented the move. Soon the demand for a Designated Court at Srinagar snowballed into a mass movement; the only one of its kind in the country. It was part of the demands, that was acceded, of the two month long government employees strike in September-November 1990. Eventually the government bowed to the pressure and the Designated Court was reestablished at Srinagar, in December 1990. But in a quixotic move the government did not transfer the cases from Jammu to Srinagar. That forced the lawyers at Srinagar to go on strike in April 1991. Later the cases were transferred. That however is not the end of the story. Srinagar court is made subordinate to the one at Jammu. To the best of our understanding there is no scope within the Act to create a hierarchy between the Designated Courts. Its validity is suspect. Anyhow as a result of this hierarchial division, all bail applications have to be initially moved at Jammu. The process of transferring cases from Jammu to Srinagar is vexatious, expensive and frustrating.

The controversy over the location of the Designated Court in the state is linked to the problems of militancy. The government contention is that witnesses, and even judges are under threat and intimidation at Srinagar. In this regard some specific cases are cited as

examples of judicial process being coerced; cases relating to the assassination of four Air Force officials, Doordarshan Director Lassa Kaul; HMT executive H.L. Khara; Kashmir University Vice Chancellor Mushir Ul Haq. But they are equally forceful instances of how the pressure of security forces is coercing the judicial process, especially at Jammu court. Very often court orders are not respected. Even after a bail is granted, and even when no other cases are pending, the detainees are not released. This phenomenon of administration officials simply refusing to respect court directives is somewhat unique. Technically they invite contempt proceedings. But it is difficult to initiate them in Kashmir. The Designated Judge Habibullah Bhat, himself a victim of raid and humiliation by Border Security Force (BSF), is on record having said 'I have not proceeded on the contempt side for compelling personal reasons. I am a small creature. I cannot enter the battlefield of contempt against the top brass of the administration and powers in-charge of security.'

We would like to end this brief note on TADA in the state with a word of caution. Legislation, not even a repressive legislation, is not the main instrument of repression in Kashmir. It is the killing of unarmed civilians, in extra-constitutional violence that is the dominant feature in the state. Hence any account of the process relating to rule of law here is pathetically irrelevant.

MAHARASHTRA

Bombay in recent months came to occupy centre stage in TADA cases in Maharashtra. But the Act was first invoked in 1986 in Vidarbha region. Tribals arrested in the region outnumber the head line hogging mafia gangs and film stars of the metropolis.

In Bombay-Pune belt the Act was first invoked in 1987 and was confined to khalistanis. In the initial years the permission of state government was made a prior require-

TADA in Bombay

Year	Persons Arrested
1987	9
1990	136
1991	265
1992	174
1993	411

ment before applying the Act. But in August 1990 police commissioners in Bombay and Thane were given direct powers. That was when urban crime became the focus of the Act. At first small fry from well known gangs were arrested. Later all kinds of petty criminals involved in cases of Arms Act, street brawls, theft, extortions and others were routinely booked under the Act. The use of the Act against gangs, like those of Dawood Ibrahim, Arun Gwali and Amar Naik also became more extensive. Organised crime gangs in Bombay are organically linked to real estate, financiers and politicians from Congress(I) and Shiv Sena. In 1990 Anand Chintamanu Dighe, chief of Thane Shiv Sena was arrested under TADA. Among those arrested under the Act last year were Congress(I) legislators, Hirendra Thakur (Virar) and Suresh Kalani (Ulhas Nagar); Municipal Corporation Presidents, Bhaskar Thakur (Virar) and Jayant Surarao (Bhiwandi). One of the Thakur brothers was arrested in Delhi recently.

However it was the bomb blasts in March this year that unleashed TADA on wider scale. The revulsion against the reprehensible blasts gave popular consent to police to use the Act indiscriminately. Much the same way bomb blasts in Delhi had done eight years ago. According to official figures 165 persons were arrested under the Act in connection with the blasts. This excludes those arrested in the same period but are not charged with any connection with the bomb

blasts, like Sunjay Dutt. The latter category includes 246 persons.

It is also in this phase that, for the first time, allegations of communal bias in the use of TADA came to the fore in the state. Part of the perception was due to the context. There were widespread allegations against the police of aiding and abetting Hindu communal mobs in the riots that followed the demolition of Babri Masjid. One must also note that Bal Thackeray, the Shiv Sena chief who openly instigated and owned the mob violence throughout the dramatic two months has not been touched by the long arm of the state so far. Police also went on arresting Muslims since the prime suspects in the bomb blasts were Muslims. Police, helped with media, have contributed to incorrect popular no-

tions. Mafia gangs in Bombay are not built on communal lines, whoever might be their leaders. Most of the aides of Dawood Ibrahim, like those arrested in Delhi recently, for instance, were Hindus. Yet after the blasts the Bombay police managed to give a communal colouring to the use of TADA. These gangs played a crucial role in the criminalisation of politics in Maharashtra. And now a law and the law and order agencies are getting communalised. Its implications, to a cosmopolitan city like Bombay, are ominous.

Vidarbha

Like the adjoining forest areas in Andhra Pradesh and Madhya Pradesh, it is the tribals who form the bulk of the TADA detainees in Gadchiroli, Chandrapur and Bhandara districts of Vidarbha region. The immediate context was provided by the movement led by Marxist-Leninists. Their leading organisation, Adivasi Kisan Shetmazdur Sangh (AKSS) has a wide support base among the two major tribal communities; Madias and Gonds.

The first known case in the region, and in Maharashtra, was that of Mallu Kapu Bogami in January 1986. A leading spokesperson of the Madia community, Bogami was charged under TADA for giving an 'inflammatory speech'. It appears that a few days earlier he gave a speech in a public meeting in which he criticised the local administration and in passing praised Naxalites for successfully focussing public attention on the tribal problems. Bogami was then taluk secretary of Congress(I) and a member of Zila Parishad. Beginning with this arrest in Gadchiroli, the Act was extensively used in Chandrapur and in recent years in Bhandara.

Naxalite guerilla squads in these forests are believed to be involved in many acts of violence that include murder, kidnapping and a few cases of bomb blasts in which policemen were killed. All these cases are

A Circumstantial Joke?

Soon after the blasts police traced the shipment of arms and explosives to smugglers activities on the Konkan coast. Five customs officials were arrested under TADA for their connections with the Memon brothers, prime suspects in the bomb blast cases. Thereafter police went berserk in the villages around Raigarh. In April they found some 'projectiles' in the river bed near Valvati village. They arrested and tortured a number of Muslims in the village. Among them was a 65 year old Iqbal Haspatel and his family. They were all charged under TADA. Three weeks later army authorities, to whom the 'projectiles' were sent confirmed what the poor villagers were maintaining right from the beginning. The so called projectiles were spindles. It appears they have fallen into the river when a truck overturned a few years ago. The case was withdrawn. After the story broke out in the press, Konkan area DIG Ulhas Joshi dismissed the episode as a 'circumstantial joke'. How many such jokes lie in waiting behind TADA?

booked under TADA. As elsewhere they form a minor fraction of the total cases. We have examined about 47 cases relating to 1991-93 from all the three districts, in which at least 221 people are accused. Of them only 14 cases against 41 persons can be described as those relating to serious acts of violence. Leaving aside for the moment the simple fact that all acts of violence do not become 'terrorist and disruptive activities', it is quite clear that the Act is primarily directed against any legitimate form of activity by the people. In these areas one should also note that majority of the Naxalite organisers themselves are tribals.

One of the distinctive features of these forests, is the clubbing of various sections of Forest Act along with TADA. (For instance; Cr.No. 70/90; Ettapalli P.S. and Cr.No. 2/91 Jarewanti P.S.). In many of the forest areas of the country there simply is no way for the tribals to lead their normal life without violating one or other provision of Forest Act or regulations. Once those too are clubbed with TADA, there is no end to the process. Tribals are also more vulnerable to the Arms Act, and thus TADA. Basam Kotlu and four others were hunting wild bear in Rajura when a police party opened fire on them mistaking them to be Naxalites. Kotlu died on the spot. Others were arrested under TADA. Needless to add they were carrying 'unlicensed arms'. It is also revealing to note that two sections of IPC figure frequently in FIRs here: S.434 and 435. The first deals with 'destroying or moving any land mark fixed by the authority of a public servant' and the second relates to 'causing damage to agricultural produce'. Thus TADA here is directed against ordinary day to day economic life of the people. Besides a number of them are charged, simply, with 'giving food and shelter to extremists'.

One of the aggravating factors is the extent of corruption among the police. Threat of detaining under TADA is a potential source of income for police from the local thana to the senior police officers. It is perhaps not out of

context here to mention that a superintendent of police of Gadchiroli, Shri Badiya was suspended after Anti-Corruption Bureau found lakhs of rupees of unaccounted cash in his house. In July 1987, Bomanna, a Naxalite organiser was killed in a so called encounter at Motla Tekda, Sironcha. As is the practice a spate of arrests followed the incident. It was reported that Inspector B.D. Dhurve went around villages in the area charging money from villagers for not booking them under TADA. He apparently collected about Rs. 50,000/- from the poor tribals of the area (A Report on TADA in Gadchiroli, by a team of Committee for the Protection of Democratic Rights gives details of his collection in a graphic manner). Those who could not pay were arrested. Thus about 32 persons became accused under the Act in this case. More recently when the police dropped the TADA part of the charges in a murder case at Rajura, press reported that Rs. 10,000/- was paid to the police. Later police reintroduced the charge (Cr.No. 4/91; P.S. Rajura). We do not know whether, as honesty demands, they paid the money back or not.

The sole Designated Court for these areas was at Chanda till recently. In 1992 Nagpur city itself was brought under the purview of TADA. In February 1993 the Designated Court at Nagpur was made the sole court for all the five districts of the division. Obtaining bail, providing sureties, attending the case at hearing - in all matters the situation became worse for the tribals. As elsewhere police are not simply interested in pursuing the case once they managed to detain persons under the Act. In February four persons were arrested by Duggipar police (Bhandara). They were accused of being party to a Naxalite attack on a Range Forest Office at Chikhali. While releasing them on bail, judge V.M. Damle of the Designated Court has noted that after remaining absent for so many times the Investigating Officer happened to remain present, but failed to

establish the complicity of the applicants to the incident (State of Maharashtra Vs Tilshiram Gahane and others The Designated Court; Nagpur; 16th June 1993).

In a number of FIRs the expression 'and others' is routinely added to those named as accused. Later some persons are included in the case. So it is difficult to arrive at a final figure of those arrested under the Act. In 1986-87, about 100 were arrested, according to the CPDR report. Subsequently, according to newspaper accounts, about 150 were arrested. Recently in the period 1991-93, approximately 300-400 were arrested in the entire region. In some cases the accused were released on bail. The cases against some of them are not being actively pursued by the police especially in old cases. As of May 1993 there are 300 TADA prisoners in Nagpur jail.

PUNJAB

Militant groups seeking secession from India and subscribing to the idea of Khalistan, came to the fore in Punjab in the eighties. The turning point in their emergence was the entry of army, into the sacred place of Sikhs world over, the Golden Temple at Amritsar. The army action, 'Operation Blue Star', was meant to stop functioning of these groups from the Gurudwara. Since then they spread out, and many armed Khalistani groups mushroomed. Their activities also spread from Punjab to Chandigarh, Haryana, Delhi, parts of Uttar Pradesh and other places. Their acts of violence included killing of select police and administration officials, political leaders, popular leftist activists. But the more striking feature of Khalistani violence is the random killing of large number of unarmed Hindus in bomb blasts and shootouts. In the wake of these activities three legislations were promulgated in the state. First was the Disturbed Area Act that is still in force. Second was the Terrorist Affected Areas (Special Courts) Act 1984. The government did not extend it when its term expired. Third

was TADA. The activities of Khalistani groups provided the initial impetus to the Act in 1985. By the time its life ended in May 1987 about 1,927 people were arrested under it.

TADA was invoked, essentially, against four sets of people in the state. First were those directly connected with Khalistani violence. To this one should also add those who are suspected to be involved with Khalistani groups, but not directly in violence. Second were those belonging to parliamentary opposition who are not involved, and who are not accused of being involved, in acts of violence. Into this category fall the large number of leaders of various factions of Akali Dal and Shiromani Gurudwara Prabandhak Committee (SGPC). The third set were those people

TADA in Punjab

District	Arrested
1. Faridkot	1,755
2. Amritsar	1,689
3. Taran Taran	1,534
4. Batala	1,428
5. Ferozpur	1,030
6. Majitha	946
7. Jalandhar	648
8. Patiala	611
9. Hoshiarpur	576
10. Jagraon	572
11. Gurdaspur	488
12. Kapurthala	454
13. Sangrur	415
14. Ropar	336
15. Barnala	231
16. Khanna	200
17. Bathinda	59
18. GRP	52
Total	13,024

Note: Data as on 15 March 1992

GRP - Government Railway Police

Source: Punjab Vidhan Sabha; 30 March 1992

belonging to other democratic opposition. They include leaders of some trade unions and Bharatiya Kisan Union. The fourth and perhaps the largest category of persons were ordinary Sikh youth especially in rural areas who were picked up under TADA as part of generalised repression. In an abominable practice Punjab police detained under TADA, the family members of wanted militants.

Initially there were only four Designated Courts in the state. Later their number went up. Some of the TADA detainees, and their cases were transferred to Courts outside the state. Notable among them were Bareilly in Uttar Pradesh and Ajmer in Rajasthan. Within the state some of those described as 'hardcore militants' are tried at the prisons specially set up in the high security jails at Amritsar, Sangrur and Nabha.

At the peak of Khalistani violence, that has now abated, the atmosphere of terror has adversely affected the judicial process. As many as nine judicial officers were killed in the period 1986-92. In some districts like Amritsar even senior police officials were forced to retract from their statements concerning the killing of their colleagues.

No less significant is the part played by the police investigation. In a much publicised action, known as Operation Black Thunder, police entered Golden Temple in May 1988. 172 persons were taken into custody, all charged under TADA. A year later police themselves dropped the cases against 62 of them. Only 110 were challaned. They included 16 women and 12 children. In the event cases were not made against all of them. Nor proper challans were filed. As a result cases against a further 64 were dropped. So fifteen months later only 46 persons were committed to trial, including six women. Only four were granted bail. All of them jumped it. Two of others died. So in effect only 40 remained. They were all accused for different offences under different provisions of law. According to a simple, and eminently sen-

sible, procedure of law a separate charge sheet has to be filed for a distinct offence (S. 218, Cr.P.C). Police did not file them. Instead all offences of all persons were clubbed together. Here again the prosecution did not seek to establish that these offences were connected with each other. In a way that is understandable since they were, in the first place, not connected. In the end there was absolutely no way left for the court to convict the accused, because of these infirmities in investigation and prosecution. This fact was noted, ruefully, by Shri S.S. Grewal judge of the Designated Court at Amritsar while acquitting them (24 January 1991). None of them however were released anyway, since they had other cases pending against them. This judgement in such a famous case as 'Operation Black Thunder' caused much resentment among the police. Incensed by it, the police even withdrew the security provided to the judge the same evening, exposing him to a grave threat. Later it was restored, due to government intervention.

It is this context of threat by militants in the peak period, and absolute lack of responsibility by police that informs the judicial process in TADA cases in Punjab.

RAJASTHAN

Rajasthan was one of the states that figures in the initial 'Statement of Objects and Reasons' in 1985 when the Act was brought into force. Some of the cases of the Khalistani militants were transferred to the state in early years. Within the state however the Act was first used in Kota riots, November 1989. The notification, required under the Act was issued five months later on 16 March 1990. By then BJP came to power in the state.

The use of the Act against Muslims in the state was widely reported. There were repeated questions in Parliament. The BJP government consistently denied the allegation. We have collected some information

Zero Hour

Ayub Khan, Congress (I) raised the question of misuse of the Act in Rajasthan.

S.B. Chavan: I asked for a report from the state government after the matter was brought to my notice. If innocent people have been detained without cause the centre would certainly take action.

L.K. Advani: The Government which was so quick to respond to allegation about the Rajasthan government has refused to respond to demands for early elections in Delhi. There is no question of TADA being misused in any BJP ruled states.

Lok Sabha
29th August 1992.

relating to the period November 1989-90. The cases are from Kasba Manoharpur and Kasba Chaksu police stations, Jaipur; Kethuni, Makbara, Gunman Pura, Railway colony, Dadabari police stations, Kota; and Bhavani Manali and Sarola police stations, Jhalwara. In all there were 84 accused in the cases launched in this period in these police stations. They include one Imam, three principals of madrasas, three local journalists, 56 labourers, mostly in construction work, 4 students, 23 small shopkeepers, and two retired government employees. One of the persons arrested under the Arms Act, for having a knife at his work place, was a meat seller. All the 84 were Muslims. A year later Digvijay Singh, Home Minister disclosed in the Assembly that of the 228 persons arrested thus far, no charges were established against 178 persons. His figures also confirm the earlier pattern. Of the 228, 101 were Muslims, 96 were Sikhs and 3 were Hindus (Rajasthan State Assembly Debates: 18 March 1991). In March 1993, the Governor announced a review of all TADA cases 'taking realistic and sympathetic attitude.' Recently, in July 1993, the government has withdrawn cases against 72 persons.

TAMIL NADU

Tamil Nadu is the latest state to join the long list of TADA states in the country. The Act came into force in June 1991 soon after the assassination of the former Prime Minister Rajiv Gandhi. Sri Lankan insurgent group, Liberation Tigers of Tamil Eelam (LTTE) is believed to be behind the assassination. The group is banned under the Unlawful Activities (Prevention) Act, 1967.

Initially there was only one Designated Court at Madras. Currently there are four such courts; Poonmalle, meant exclusively for Rajiv Gandhi assassination case; two in Madras city functioning in High Court premises and fourth in Coimbatore.

About 150 people were charged under the Act of which 30-35 are Sri Lankan Tamils. They are accused in Rajiv Gandhi case, Padmanabha assassination case and the cases against Tamil National Retrieval Force, believed to be connected with LTTE.

The most controversial use of TADA in the state is the case of assassination of EPRLF leader Padmanabha. He was killed in June 1990. At that time it was registered as an ordinary murder case. Subsequently on 16 August 1991, it was converted into a TADA case. This retrospective application of the Act is seen by many as an instrument of political vendetta against the Dravida Munnetra Kazhagam (DMK). Among those arrested in the case were Ms. Subbulakshmi and her husband Jagadesan. Ms. Subbulakshmi was a cabinet minister in the DMK government. R. Nagarajan, former Home Secretary, was also arrested in this case. V. Ravichandran, younger brother of noted parliamentarian V. Gopalaswami, T. Marimuthu, secretary, DMK Coimbatore were also among those arrested. In a similar fashion members of a Muslim youth organisation and PMK affiliated trade union were arrested. In February 1993, former Chief Minister, M. Karunanidhi, DMK submitted a memorandum to the governor giving details of what he described as 'the

systematic abuse of TADA by the Jayalalitha government'.

Among the less reported use of the Act are cases against the Marxist-Leninists. Five members of People's Art and Literary Association (PALA), and seven members of Radical Youth League were arrested under the Act. On 16th October 1991, Arivoli, an activist of RYL was arrested by the police of Annamalai Nagar Police Station. The police station achieved notoriety because of the rape of a woman Padmini and the death, in custody, of her husband. The activist was arrested for pasting posters which the police claimed would have disturbed 'peace and public tranquility'. Similarly six persons were arrested on 7th November 1992 in Panruti in South Arcot district for pasting posters. In both the cases the Designated Courts questioned the applicability of TADA. Court strictures, public protest, campaign by civil rights organisations forced the government to stop using the Act against those pasting posters.

The most atrocious use of the Act in the state was against the poet and well known scholar, Peruchitrana. He was an advocate of the cause of self determination for Tamils for many years. Author of a hundred books, he edits two journals.

Special Investigation Team (SIT) of Central Bureau of Investigation (CBI) is dealing with the Rajiv Gandhi case. Otherwise TADA cases are being dealt with by the 'Q' branch police of the state. Significantly in June 1992, within a year of promulgating the Act, when the time for filling charge-sheets came, the 'Q' branch dropped as many as 11 out of 25 cases it registered. Police themselves dropping cases, use of the Act against political opposition and to suppress the legitimate protest activities, Designated Courts questioning the applicability of the Act - in all respects the newest state to use TADA has joined the ranks of others in a short span of time.

UTTAR PRADESH

Uttar Pradesh has two sets of TADA prisoners, those transferred from other states, and those arrested in the state for offences within the state. The sole Designated Court in the state has its sittings two days a week at Lucknow and two days at Bareilly.

A number of militants from Punjab are lodged in the central prison at Bareilly. In the initial years they were kept in horrible conditions in the jail. For months together their cases never came up for hearing. They were also locked up in their cells with fetters on for 24 hours of the day. In 1989 a case was filed in Supreme Court against their ill treatment. In March 1991 the court ordered the state to remove the fetters and increase security to the prison if necessary. (Harbans Singh and Others Vs State of Uttar Pradesh, AIR 1991 SC 531)

In the state itself the Act was widely used in the Terai region. The region became the focal point of Khalistani violence in recent years. Shootouts, killing of Hindus at random, bomb blasts have become frequent. The BJP government invoked TADA in the wake of these acts. But characteristically it became a generalised repression against the Sikh community. Many of them settlers from the time of partition, Sikhs in the region have pioneered modern farming techniques. In November 1992, after a bomb blast, large number of them were picked up by the police. They included Harchand Singh Brar, 72, Director of Terai Development Board, Deen Dayal Bhullar, President of Congress(I) and Sardar Mohan Singh another leader of Congress(I). The arrest of these leaders, who are also first generation settlers and respected elders of their community led to widespread condemnation. Punjab Chief Minister, Beant Singh raised the issue with Kalyan Singh, the then Chief Minister of the state. Yograj Passi Chairman of the Municipal Corporation and his father, the local BJP MP also

condemned the arrests and demanded the withdrawal of the cases against them. Altogether till late last year 118 persons were arrested under TADA in Terai, of whom 116 were Sikhs.

OTHERS

In Bihar the Janata Dal government invoked the Act against Marxist-Leninist movement, in October 1991. About 118 were arrested in Gaya, 58 Jehanabad and 200 in Palamu. Most of the arrested are landless poor suspected to be sympathetic to the Naxalites. However there are some exceptions. One such was the arrest of Ramadhar Singh 'Diamond', leader of Sawarna Liberation Front, a landlord army. In Tripura the Act came in the name of the insurgent group All Tripura Tribal Force in October 1991. But it was used by Congress(I), then in power against members of Left Front, especially CPI(M). The Left Front government in West Bengal invoked the Act in Darjeeling during the Gorkhaland agitation. The notifications here follow the course of talks between GNLF and Left Front government. The Act was

invoked in June 1987, suspended in August, re-invoked in December, and suspended again in May 1988. It may be recalled that suspension or withdrawal of the notification does not affect the pending TADA cases. They will continue 'as if this Act had not expired' [S. 4]. More recently the Left Front government notified Calcutta city under the Act, on 29th April 1993. In Karnataka the Act was brought into force in 1989. Among the earliest victims was Nagari Babyya of Bangalore University, a civil rights activist. Youth belonging to PYL, a Naxalite affiliated organisation, were also arrested. Subsequently the Bangarappa government used it extensively in Bangalore riots in November 1990. There were allegations that it was used primarily against Muslims. In Goa the state was notified on 1st May 1992, in the wake of agitation against Konkan railway project. Among other states, for which we do not have detailed information are Arunachal Pradesh, Chandigarh, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Mizoram, Meghalaya and Nagaland.

Recent Changes

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

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

Resistance

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

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

CONCLUSION

It should by now be clear that TADA has permeated to all levels of our social and political life. In sheer magnitude its dimensions are staggering. At present 23 out of the 24 metropolitan cities are notified areas. Altogether 782 million people (93 percent of the country's total) are covered by the Act. That such a perverse and pervasive legislation should so quietly percolate into the lives of so many of us is indeed frightening. But perhaps more frightening is that most of us are unaware of its true nature. In fact many are persuaded to believe that it is warranted by the current political context.

Contemporary political and social life is marked by its seeming amorality, irrationality and violence. It is this context which brought TADA into our midst, with public consent. People directly experience this context in their day to day life. But then, they are also denied any interventionist role in it. Nor do they have the space to come to terms with it on their own. For, they are fed, day in and day out with a collage of words, events and evocative images. It is the cumulative impact of this cacophony that makes TADA appear as a necessity. We often forget that the power to make a legislation like this is never a mere legislative power. It is integral to a larger power structure that includes the power to coin words and construct images, and to give specific meanings to them. It is also the power to shape public mind and its way of looking at things.

The resistance to such power must necessarily include in its campaign the First Information Reports recorded, the forlorn judgements in far away Designated Courts, the factual details and the figures, the inconstant interventions in the Parliament, the human accounts and the tragi-comic tales and - in an extended sense - the truth about

the dynamics of the working of the legislation.

TADA is working on false premises since the overwhelming majority of its victims do not fall into the category of even government's own caricature of terrorists. It is accompanied by duplicity. For, it is operating at a time when influential criminals are going scot free while ordinary people are being made to suffer in the name of law and order. This law and this social order.

TADA has failed to check terrorism precisely because of its draconian features. And is contributing to further degeneration of the criminal justice system. It is self defeating because it leading further to the anarchy that it is supposed to prevent. It is undemocratic because it violates all known principles of a democratic social order. In the end TADA is state terrorism marked by bad conscience and evil intent. The Indian state has thus acquired enormous powers to pick and choose the individual, the group, the class or the community and, hit them with legislated violence.

To the thousands of men and women charged under the Act, the legal labyrinth is self perpetuating. They are usually denied bail. When they are out on bail they live on borrowed freedom, waiting at least for a charge sheet. There simply is no way for them to figure out when their case will eventually come to trial. Nor do they know their day of deliverance from this Kafkaesque world.

A 12 year old child from Udalguri who is detained as a terrorist, and two self confessed terrorists from Pune against whom the state could not prove charges of terrorism; an adivasi who walks all the way from Konta to Jagdalpur across Bastar for every adjournment and a doctor from Warangal who gets charged posthumously with a retroactive leg-

isolation; a 69 year old widow from Baroda who dared to complain against police and 15 year old mentally retarded boy from the same city; a lawyer from his valley of misfortune who negotiates with militants at the behest of the government and a Designated judge who ruefully watches his orders being flouted with contempt by the security forces; a tribal organiser who rekindles the dignity of people in central forests and a promethean advocate from Telengana who died fighting for his clients - are some of the cases recounted in this report. Social visionaries and anti socials; civil libertarians and crooks; poets and conmen; secessionists and scoundrels; peasant revolutionaries and petty thieves - all coalesce into one category: *terrorists*. All social values, political principles, and ethical consideration lose their way in the world of TADA.

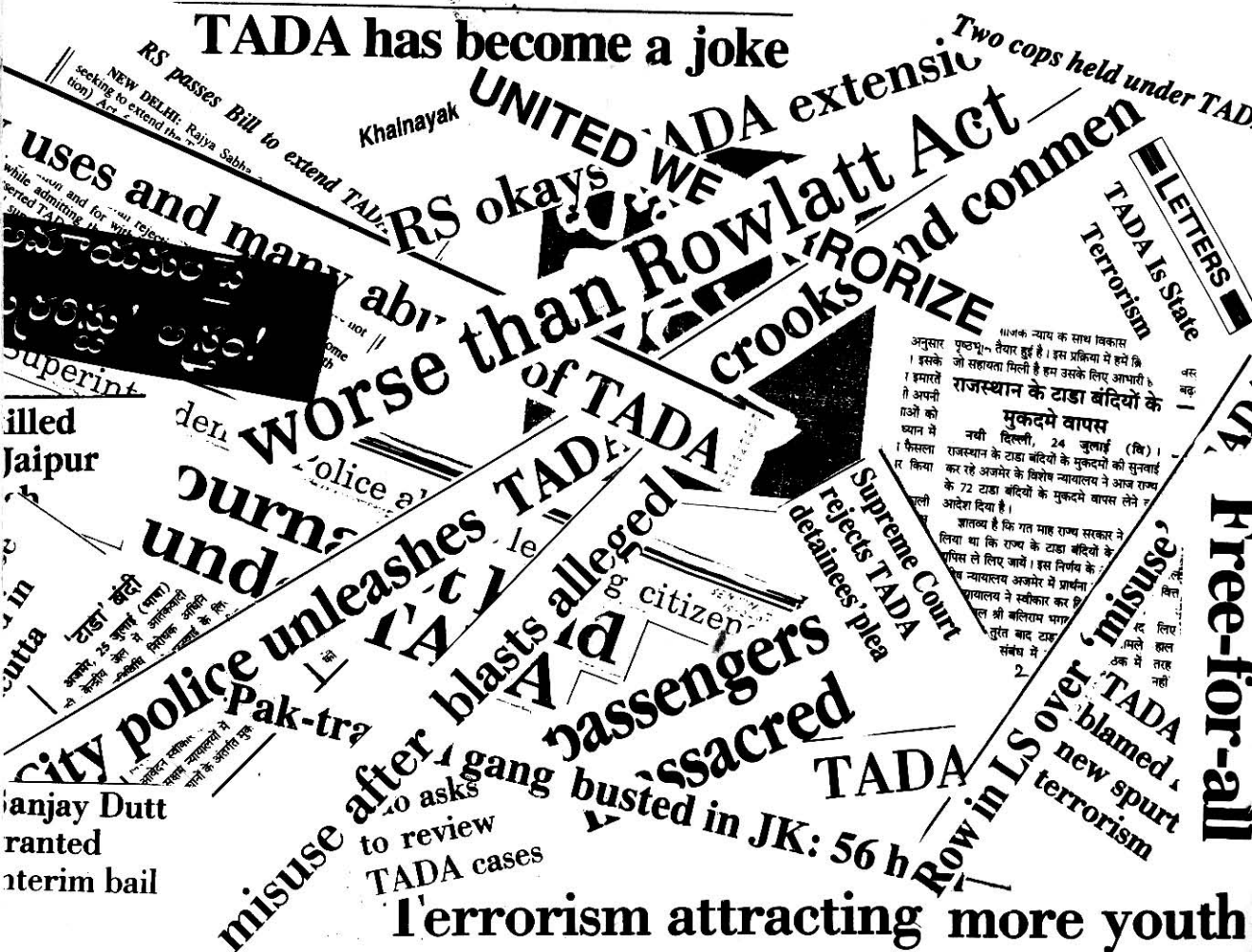
TADA indeed has created a world of its own, a judicial hierarchy of its own and, a republic of its own within our democratic republic. To most of us this world is invisible. Once in a while it appears before us as a passing headline or a fleeting episode. They may provide us with a shock here and a joke there. The invoking of the Act may appear to us as use today and misuse tomorrow. But that is besides the point. What matters is the life and living of haunted men and women who are condemned to its boundless realm. What matters now is the immeasurable violence and damage to the individual, to the social fabric and to the polity being caused by TADA.

Hence People's Union for Democratic Rights demands the complete and unconditional repeal of this black act.

After such knowledge, what forgiveness?

There is nothing in this law which provides against arbitrary detention or procedure for hearing the complaints of the detainees.

G. RAMASWAMI
the then Attorney General
On TADA,
before UN Human Rights Commission
27 March 1991.



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