Striking Terror

The Tamil Nadu Prevention of Terrorist Activities Bill and Its Implications

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Introduction

On 30 May 1998, the Tamil Nadu State Assembly gave its assent to the Tamil Nadu Prevention of Terrorist Activities Bill, 1998 (hereafter POTA). The Governor has passed the Bill to the President for assent. The contents of the Bill are a rehash of the Terrorist and Disruptive Activities (Prevention) Act (TADA) which was promulgated 13 years ago in May 1985.

In 1985, the Khalistani movement, and in particular 'transistor bomb' blasts in Delhi and elsewhere were cited as the immediate context for the creation of such a law. This time around however the Statement of Objects and Reasons for the POTA does not cite any particular incidents of crime or the activities of any particular organisation that have prompted the promulgation of this law. A paragraph of vague and incorrect statements is presented to cover this lacuna. "Terrorist activities in the State have caused concern to the government to maintain law and order. . . . As there is no effective provision in the existing laws to deal with such terrorist activities, the government have decided to enact a separate legislation for the purpose."

Despite the citing of specific incidents for the introduction of TADA in 1985 and for its re-introduction in 1987, the Act never remained limited in its scope to such incidents and organisations. By refraining from identifying the reasons for the enactment today, the POTA threatens to be far wider in scope, encompassing any and every form of political opposition uncomfortable for the ruling party.

Newspapers however reported that the Act is aimed at curbing activities of communal and fundamentalist outfits. The recent bomb blasts in Coimbatore in February serve to provide legitimacy to this enactment.

But the threat posed by the POTA is far graver than the erstwhile TADA for two reasons. Firstly, the official pronouncements that have closely followed this Act. Barely a fortnight after the passing of the POTA, the Union Home Minister, L.K. Advani, concluding a meeting of Chief Ministers of the states of Andhra Pradesh, Maharashtra, Madhya Pradesh and Orissa, urged the state governments to promulgate legislations similar to the POTA to tackle violent activities of Naxalite organisations in their respective states. Thus, the provisions of POTA will not only be replicated in other states but also create the space for newer and more stringent clauses. Separate states governments will redefine their version of POTA according to their own whims and fancies. A glimpse of this future is provided in the bills drafted by the Andhra Pradesh

government (see back cover). Bringing in of such provisions through separate state legislations aim to divide and weaken the struggles waged by people against them.

Secondly, the POTA is accompanied by a vigorous state propaganda intended to deny the social and economic basis for struggles being waged by oppressed sections of the people. In particular, the Home Minister has argued that agrarian struggles are unrelated to the social and economic structure in the countryside, and that such analyses only provide legitimacy to these struggles. And that the government aims to perceive the agrarian struggles solely as problems of law and order and deal with them as such. This is aptly reflected in the statement of the Union Agriculture Minister, Som Pal, after the presentation of the Union Budget, that land reforms are no longer required. While the government wishes to wash its hands off from questions of social justice and development, the promulagation of laws like the POTA aim to target the very same socially and economically oppressed sections with legislated violence. In sum this implies that nearly a century of social science research, writings of social reformers, poets and writers is to be sidelined, if required by force, so that the government can unleash its propaganda and violence without opposition.

When TADA was enacted, not a single political party opposed it in Parliament. A decade of its operation provoked opposition and demands for its repeal from large sections of the people and a wide variety of organisations, and finally even by parliamentary political parties. These sustained protests achieved its lapsing in May 1995. Three years later, the POTA was passed amid stiff opposition from leftist political parties and walkout from the Assembly by members of the Pattali Makkal Kachi (PMK), Indian National League, and Pudhiya Tamizhagam. The lessons of TADA must not be relearnt through agonizing hardships perpetrated on the poor once again. This report is an effort in this direction.

PUDR appeals to all people concerned with safeguarding democracy and justice to send their protests to the President.

The Bill

The Tamil Nadu Prevention of Terrorist Activities Bill, 1998 is more or less a copy of one of the most draconianian legislations of this country – the infamous TADA. The resemblance is striking – except for some minor changes here and there, almost all the provisions of TADA have been included in this Act. A critique of POTA, therefore, is not only very similar to that of TADA

but can be substantiated by almost a decade long experience of TADA in various parts of the country.

Given below is a critique of the provisions of this Bill.

I. What is Terrorism?

POTA defines a 'terrorist act' as anything done using any conceivable weapon which causes harm or is likely to harm to any person or property, and which is done with 'intent to strike terror' or to 'adversely affect the harmony amongst different sections of people' [S. 2(g)]. Among others, a trade union resisting goondas of the management falls squarely within this definition. For, organising workers against the management is a task dictated to a trade union by the logic of its existence. The definition is imprecise, and therefore all encompassing. The net being laid is, however, much wider than the definition suggests. Abetment of a terrorist act, membership of a terrorist organisation, or holding of property obtained from terrorist funds also fall within the purview of the Bill [S. 3(2)]. These categories together extend the reach of this legislation to just about any person or organisation. Abetment includes communication, association, or rendering assistance to any person believed to be assisting terrorists, or the publishing or distribution of any document likely to assist such persons, even where the person is unaware and unintending [S. 2(a)]. Terrorist organisation remains wholly undefined. If it is meant to include any organisation any one of whose members is accused of a 'terrorist act', the ambit of the Bill extends to every person economically and socially deprived and unwilling to continue existing as such. The clause on property derived from 'terrorist funds' is specially designed to include family members and friends of those accused of 'terrorist acts'.

Sweeping as the reach and range of this Bill may be, it is not expected that all people falling within the ambit would be booked under this legislation. In other words, those booked would be selectively identified. That the crime being defined as 'terrorism' is not unique to this Bill, overlap as it does with the existing law, provides immense scope for its arbitrary application by the police and the ruling party. Thus the definition provides the State agencies the power to decide which political opinion is 'legitimate' and 'acceptable', violating thereby the fundamental freedoms enshrined in Article 19 of our Constitution.

II. Area Affected

POTA lacks a clause for declaring an area 'terrorist affected' within which area the legislation becomes operative, as was the case with TADA. Therefore, POTA would apply to the whole of the state of Tamil Nadu once the state

government issues a notification [S. 1(2)]. There is no specified time limit for which the notification is to remain operative; it can do so for as long as the law is operative. The legislation has been enacted for a period of five years, surpassing TADA in this regard which was enacted for two years. There can be no rationale for the application of POTA over the state as a whole, nor for a longer period, if the problem to be dealt with concerns specific incidents of special crimes. In fact such provisions are deliberately enacted in order to quell any kind of opposition in any corner of the state as well as to postpone any debate in the Assembly on the working of the law and its impact on the people.

III. Punishment

The minimum punishment for any offence under POTA is three years imprisonment, with fines ranging from one lakh rupees to ten lakh rupees [S. 3 & 4]. This punishment in prison term is the same for a person convicted for a 'terrorist act', as well as for those who 'abet', or those merely possessing a fire-arm. The monetary fine is for some unknown reason higher for the latter. Across the board award of such a harsh punishment without considering the extent of culpability, seriously affects the penal framework linking gravity of crimes with punishments. Another issue concerns the large monetary fines contemplated in this Bill, since contrary to prison terms, the impact of fines depends on the convict's financial standing. For poor people, unable to earn such an amount in a whole lifetime, imposition of fines would effectively mean additional prison terms, making such a provision antithetical to equality before law. Furthermore, a 'terrorist act' resulting in death is punishable with death penalty or imprionment for life and also with fine upto ten lakh rupees. Given the vagueness and imprecision inherent in the definition of the term 'terrorist act', this clause defeats the limitation on capital punishment to be awarded only in the 'rarest of rare cases' as held by the Supreme Court.

IV. Procedure

Once booked under POTA, the situation for the accused is far from being conducive to fair trial. It is ironical that the procedure being adopted for sentencing people to harsher punishments is made less rigorous rather than being made more rigorous. In fact the Bill seeks to supplant the existing system of criminal justice with an alternative set of courts, evidence and trial procedures.

(a) Designated Courts: All cases with charges under the POTA are required to be tried only by the Designated Courts to be constituted by the state government specifically for this purpose [S. 7(1)]. But apart from cases under POTA, the Designated Court would have the power to try any other connected offence

with which the accused is charged [S. 10(1)]. Trials for any offence under POTA would have precedence over any other case against the accused [S. 15]. The court may decide to conduct its proceedings at any place other than its ordinary place of sitting, and the government would decide the number and location of such courts. The appeal against any order of the Designated Court has to be filed within a month [S. 17(2)].

The constitution of such courts by itself prejudices against the accused. All cases brought before the POTA Designated Court are supposed to be heinous crimes of 'terrorism'. The same is bound to weigh heavy on the mind of a judge in a Designated Court and who would then refrain from releasing accused even where it is plainly visible that charges are fabricated. The provision that other connected charges would also be tried by this court would adversely affect the trial of even non-POTA cases for the same reason, and also due to other unjust procedures which would become applicable. Similarly, the provision for giving precedence to POTA cases can become an easy method to delay other trials. The number of such courts remaining unspecified coupled with the possibility of the court choosing its place of sitting may force accused and their families to travel long distances for each hearing, or being unable to arrange a lawyer of their choice. The need of a lawyer itself is done away with by the provision that the Designated courts can proceed with the trial in the absence of the accused and their pleader [S. 12(4)].

(b) Cognizance: In normal cases, under the Code of Criminal Procedure (Cr.P.C.), the Sessions Court can take cognizance of an offence only when the case is committed to it by a magistrate. POTA, however, permits the Designated Court to take cognizance of any offence solely upon receiving a complaint of offences which constitute such offence or upon a police report of such facts [S. 12(1)]. This provision surreptitiously relaxes the condition that the permission of the police officers of the rank of Deputy Superintendent or Commissioner is essential before registering the case, a condition whose incorporation the Supreme Court insisted upon while delivering its judgement on TADA.

(c) Summary Trial: These are trials in which many of the safeguards essential for ensuring fairness are lacking. For instance, the entire evidence against the accused need not be recorded, and only that necessary for reaching conviction is placed on record. Similarly, the judgement needs to cite only that part of the evidence which has been employed for reaching the conclusion. In addition, the task of writing the judgement may itself be delegated by the magistrate to a non-judicial officer. Such procedure carries with it the grave risk of convicting

an innocent. For this reason the Cr.P.C. restricts the use of summary trials to non-cognizable minor offences and disallows imprisonment beyond two months. Under POTA all offences are cognizable. The Designated court is empowered to summarily try virtually any offence and award a prison term of two years [S. 18(1)]. The inclusion of such a procedure only reveals the design of the ruling parties to attack their political opponents, whether or not they are guilty of any crime.

(d) *In Camera* Trial: Another technique which biases the case against the accused is the provision that the Designated Court may hold its proceedings *in camera*. Trial can be proceeded while withholding the identity of witnesses. The names and addresses of the witnesses need not be recorded in the judgement or in any other record accessible to the public [S. 14] and publication of the court proceedings can be banned. Trials need to be open to the public since this exerts a pressure on the prosecution and the court to judiciously follow the letter and spirit of the law. Reporting of proceedings in the press is essential for it keeps the public at large informed, and can bring forth crucial witnesses. Additionally, investigations by the press may reveal new facts. The denial of public trial on the ostensible reason of protecting witnesses erodes the possibility of a fair trial and the chance of manipulation increases many times over.

(e) The Burden of Proof: The principle of natural justice assumes any accused to be innocent unless proved guilty. POTA negates this basic principle of our legal system. The burden of proving oneself innocent is shifted onto the accused if there is reason to believe that the material recovered from the accused was used in the commission of an offence, or if any evidence related to an accused was found at the site of the offence [S. 20(1)], or else if it is proved that the accused rendered financial assistance to a person even reasonably suspected of committing an offence [S. 20(2)]. This procedure can be followed for all offences listed in section 3 including offences of 'abetment'. The clause regarding financial assistance does not even require that the accused intends to assist the 'terrorist act'. The shifting of the burden of proof, in general, is an unfailing means to book and convict any innocent who generally lack any proof of their innocence.

(f) Bail and Remand: Under POTA every accused is to remain in jail even before the trial starts for a minimum period ranging from two to six months. The above has been achieved by extending the time limit for police to file charge sheets from 15, 60 and 90 days under the Cr.P.C. to 60, 180 and 180 days respectively [S.18 (2)]. The court can extend this to a year by recording

reasons for such extention. Further, once arrested under POTA, it would be virually impossible for an accused to get bail since the court is required to satisfy itself that the accused is both not guilty and is not likely to commit *any* offence while on bail [S.18(6)]. It is beyond comprehension how the court can be sure of the innocence of an accused before the trial starts and also about the possiblity that an accused will not commit *any* offence while on bail! The safest bet then is not to grant bail.

The Act has also eliminated the provision of anticipatory bail [S. 18(5)]. The provision for anticipatory bail was introduced in 1973 in the Cr.P.C. to prevent unnecessary detention and harassment of innocents. It was therfore a new right for the citizens. Its denial in the case of those accused under POTA amounts to discrimination, apart from violating Article 21.

(g) Confession : One of the most drastic provisions of POTA relates to admissibility of confessions made to the police. A police officer not lower in rank than a Superitendent of Police may record a confession either in writing or on any mechanical devices which are admissible as evidence during trial [S. 13(1)]. Every one is aware of the beating meted out to people in police custody. Such methods can easily be employed to force the accused to confess to a crime they may not have committed. The methods would include threats, manipulation and third degree torture. In fact in some of the TADA cases it was observed that the police took signatures of the accused on blank papers and later filled in 'confessions'.

A confession is considered an extremely important piece of evidence, for the sole reason that it is assumed to have been given by the accused in a state of extreme remorse. Therefore an atmosphere free from duress is essential during its recording. Which is the reason why confessions are only to be recorded by a judicial magistrate who has no personal motive to achieve a conviction or an acquittal. The police, on the contrary, is the prosecution agency. Police confessions cannot be assumed to be worthy of trust, merely because the police says so. Therefore there can be no logical argument to support the admissibility of confessions recorded by the police.

Such a drastic provision can lead even to a death sentence. In the Rajiv Gandhi murder case, 26 people were awarded death sentence by the TADA court based mainly on the confessional statements made to the police by 17 of the accused. Even though the 17 accused retracted their confessions alleging the use of force by the police, the court held them admissible since the policeman recording the confession stated that the atmosphere was free and the statements were

The Supreme C

TADA was enforced in April 1985. More than 400 writ petitions, special leave petitions and appeals challenging the constitutionality of the Act were filed in the Supreme Court in the subsequent years. These were finally heard by a constitution bench of the court in February and March 1994, after almost nine years of unbridled legislated violence perpetrated by that law. The judgement held that 'terrorism' by nature holds a serious threat to the country and cannot be described as a mere problem of law and order. Therefore 'terrorism' does not fall within the ambit of powers vested with the state government. Only the central government can promulgate a law to deal with it. The judgement states that 'terrorism' could fall in the ambit of 'Defence of India' which falls in the sole jurisdiction of the Parliament. Going by the SC judgement therefore, the introduction of POTA Bill by the Tamil Nadu government lacks legislative competence.

Three judgements were delivered – the majority judgement by three members and two minority judgements. While TADA was upheld, the judgement included minor amendments and guidelines to protect the innocent and safeguard fundamental rights. The POTA enactment blatantly violates these minimal guidelines.

Notification :

The judgement took strong objection to the practice of state governments which had notified all entire states as 'terrorist affected' and no notified areas were ever denotified. The judges ruled that an area could be declared 'terrorist affected' only on the recommendations of a review committee, and continuation of such notification would depend on the conclusions of periodic reviews by this committee. This check on arbitrary use finds no mention in POTA. This law, lacking any provision for notification, automatically comes into force over the entire state.

Definition of 'Abet' :

The judgement ruled that the definition of "abet" in TADA was vague and imprecise and to remove the anomaly recommended that 'abettors' should be shown "to have actual knowledge or have reasons to believe" that they are engaged in assisting terrorists or disruptionists. This amendement which makes it mandatory to prove actual intent or knowledge of the abettor has not been incorporated in POTA.

Court and POTA

Forfeiture of Property :
The judgement had suggested that the Designated court should ensure that exercise of powers under this clause is allowed only with a written order with the property specified therein, and that the property should belong specifically to the accused. These guidelines do not find mention in the new Bill.

Bail:
The judgement had upheld the restrictions on bail imposed by TADA. Subsequently on 13 July 1994, another Supreme Court bench, ruled that it was an 'indefeasible and absolute right' of the accused to be entitled to bail if the charge sheet is not filed within 180 days. The framers of the POTA have chosen to bypass this ruling.

Police Confessions :
The most contentious provision of TADA – the admissibility of confessions made to a police officer as evidence – was upheld on the basis of a narrow majority of 3:2. Two judges attacked the provision on account of it being criminal, unjust, violative of the safeguards guaranteed under the Constitution. Justice Ramaswamy felt that confessions recorded in custodial interrogation "definitely excite suspicion" and Justice Sahai pointed to the contradiction that "what is inadmissible for a murder under section 302 is admissible even against a person who 'abets' or possesses arms". Even the majority judgement acknowleged that the police officers often resort to inhumane, barbaric, archaic and drastic methods.

In view of this the judgement laid down certain checks for preventing abuse of power at the hands of the police. Among them was the guideline that the accused alongwith the statement of confession should be produced before CJM or CMM without unreasonable delay. The magistrate should take note of any complaint of torture made by the accused and in case of such complaint get the accused medically examined before medical officer not lower in rank than of an assistant civil surgeon. The police officer has to record the statement in the language of the accused and has to respect his right to silence and has to file affidavit for seeking custody, and delayed custody pretrial interrogation. POTA disregards these guidelines.

The enactment of POTA has put a question mark on the role and effectiveness of the judiciary. Will the court wait for another 400 petitions to pile up to impose similar minor checks or will it charge the legislature for contempt of court?

given willingly. Therefore giving police the power to record confessions inevitably facilitates blatant abuse of such power and enhances the use of custodial torture.

(h) Seizure of property: In TADA initially, only the forfeiture of property of the convicted was permissible. But in the amendment made in 1993, it was made quite wide and vague. The amendment made a person holding the property derived or obtained from commission of any terrorist act or acquired through terrorist funds also liable and such property could also be seized. The property related provisions of TADA (amendment 1993) have been incorporated in POTA [Sections 2(e), 5, 3(2)]. Because of the sufficiently vague definitions of 'terrorist act' and hence of 'terrorist funds', these provisions would make it possible to seize property of just about anyone, as the concerned person need not even be accused. Such provisions could also become a source of extra income for the police.

(i) **Continuation after Expiry:** POTA contains a clause for the institution, continuation or enforcement of investigation, legal proceeding, or remedy and also imposition of penalty as if the act had not expired [S.1(3)]. This means that even though the legislature may decide not to extend the law because of its objectionable provisions, those arrested earlier would continue to suffer the same procedures and punishments. The existence of a similar clause in TADA resulted in many people being charged under TADA after its lapsing. Many FIRs registered before the lapsing of TADA often listed a number of unnamed accused under the category of 'and others'. Leave alone names, even their number was sometimes not specified. POTA, like TADA, also threatens a long period of continued misuse even after its lapsing.

POTA is being brought in on vague premises with vague and wide definitions, extraordinary powers to the police, and non-inclusion of the checks and balances of the normal Codes. When legislated, it would lead to an enhancement in custodial violence, prolonged detention, both due to delays in investigation and prosecution, on a very large scale. With this Bill the Tamil Nadu government will acquire an instrument for preventive detention which would be used to suppress all dissent in an arbitrary and uncontrolled fashion. POTA is unconstitutional because it is violative of the principles of equality before law [Art. 14], right to life and personal liberty [Art. 21], and freedom of expression and association [Art. 19] guaranteed under the Constitution.

Lessons From History

The preceding discussion on POTA makes it abundantly clear that, like TADA, misuse in structured into this new law. The deletion of disruptive activities [S. 4, TADA] and the clause regarding the sovereignty of the nation [S.3(1)], gives POTA a more specific task of coping with 'terrorism' within the boundaries of the state. Consequently, POTA is geared towards a more targetted application with the state government as the final authority on all matters. And while the question is no longer about the defence of the nation, the question is still about terrorism: terrorist acts, gangs, arms, funds and property.Though its implementation is yet to be experienced, the decade long history of TADA is adequate to foretell that the experience is likely to be repeated.

When TADA was first introduced in 1985, it was initially conceived of as a temporary measure for two years. But the Act was extended four times and remained in operation for ten years before it was officially allowed to lapse in May 1995. By the end of the decade, 23 out of the 25 states and two of the seven union territories had been notified under the Act. More than 95 percent of the population had come under its purview.

I. Scope and Applicability

By the end of nine years 76,166 persons had been arrested under the Act. It was impossible to sustain a rational argument that the arrested had indeed committed grave offences for which they had to be booked under TADA. But then it was impossible to sustain a rational argument for its repeated extension or its immense scope and applicability. And yet, that is exactly what happened. Such was the regime of TADA. While militancy was cited as the initial argument, subsequent extensions made use of other specific incidents or problems. By the end, TADA was being used to combat almost each and every conceivable kind of problem – all forms of militancy, communal riots, trade union activities, different kinds of agitations, demonstrations and protests and even local disputes such as those between landlords and tenants. In short, TADA had become a joke and a farce. For its users, however, it was a heady instrument of power.

The sheer anarchy that was unleashed collapsed all distinctions between the different situations for which it was being used. When no distinction is retained between bomb blasts and naxalite movement, between workers agitation and communal riots, and between lawyers' protest and political parties opposition, then, different histories, struggles, methods and motivations are all reduced to one definition. The definition of terrorism. And since indiscriminate application is built into the very definition of terrorism, all categories of of-

fences and crimes could be dealt with under it. Sometimes the extent to which it went was ridiculous. For instance, in Vidharbha, a tribal dominated area, four tribals were arrested under the Act. They were hunting wild boar and the police arrested them for carrying "unlicensed arms". In Assam, J.N. Bora was booked under the Act for publishing an article in a weekly which argued for a separate Assam. The editor, Parag Das (who was later allegedly killed by the state sponsored militant outfit, SULFA, in May 1996), was also booked under the Act. The police however, forgot to check that the said article was written half a century ago. Moreover, the author had been dead for several years.

In the course of legal history, TADA will be remembered not only for its draconian provisions but also for the judicial blunders that accompanied the Act. When it was first enacted the government did not provide the rules. And they were not made available for the next eighteen months. When the Act was re-enacted in 1987, the government did not specify the jurisdiction of the existing Designated courts under the new Act. These blunders often translated themselves into action. For instance, in Rajasthan, even before an area was officially notified, the Act had come into existence.

Naturally, use and misuse lost their relevance. Since the ambit did not leave anyone untouched, its reach and range was phenomenal.

II. Preventive Detention

As the Act allowed for unchecked police powers, in real terms it meant all possible forms of police terror and violence. The power to arrest without warrant required no prior judicial sanction. The admissibility of police confession as evidence meant that custodial violence was inscribed into the workings of the Act. And since bail was a highly restricted matter, the unstated objective of the Act was preventive detention.

As a preventive detention measure it acted very effectively. Large numbers of people were arrested and stayed in custody without their case being committed to trial. After nine years of its operation, 876 persons had spent between one year and seven years in jail without the police having filed chargesheets before the courts. Of these 215 people had spent over two years and 72 over three years in jail.

Since charge sheets were not required to be filed for a whole year the police invariably took that long. For this period the police was not compelled to produce the accused before a judicial magistrate or file a proper charge. The case of Laxmikantam, a tribal leader, is telling. He was picked up under pa-

tently false charges and kept in illegal police custody for over a month. Once charged under TADA, the police did not bring him before the Designated court for full twenty months. Thus, the power to arrest and detain without proper investigation became routine. Which is why 54% of the total number of cases filed by the police were dropped by the police itself. And 15% of the cases which reached the trial stage were dropped by the courts as they were found to be baseless or lacking in evidence.

Trivialising of investigation was the logical outcome. The enhanced powers given to the police made it less serious about its own work. Despite the data available, the police was never once censured for its shoddy investigations. A check introduced in 1993 made the permission of the SP mandatory for filing of charges and also for launching prosecution. However, in actual practice it became a routine phenomenon as was evident from the unconcerned fashion with which the then Commissioner of Police in Delhi, N.B. Kaushal gave consent for prosecution. When asked, he could not even remember the number of cases in which he had given his assent.

Underlying this farce was untold human suffering which is bound to a legislation like this. In Punjab for instance, the Act was used against the families of wanted militants and large numbers of ordinary rural youth were detained. Following the Babri Masjid demolition and the subsequent bomb blasts, hundreds of Muslims were booked under the Act. Once an area was notified (and this was done in the most cavalier fashion) just about anyone residing could be picked up and arrested. The Act, thus, had the power of transforming the lives of people living under its shadow. A few hastily scribbled lines in an FIR could change an ordinary person into a suspected terrorist. The hardships on common people and the human tragedy that were entailed far exceeded any other "misuse" of the Act.

III. Speedy Trial

Each provision by itself bred an enormous contempt for normal law and its procedure. Together they made a travesty of justice. Since normal procedures of trial and prosecution were deemed inadequate in providing speedy justice, the law envisaged the setting up of special courts to deal with these offences exclusively. Not only was the power of the High Court taken away, the appointment of the judges, the manner in which these courts were constituted, their right to try non TADA offences, conduct summary trials and transfer cases to other courts – all these ensured arbitrariness and lawlessness at the judicial level.

Coupled with the power of the police to detain people, the restriction on bail matters meant that there were very few avenues of redressal for the accused. Ironically, the provision for speedy trial defeated its own logic. Given the fact that the police had the licence of not filing charge sheets for a year, the 'speedy' trial could hardly begin immediately. In actual practice it meant an inordinate delay. Till September 1994, a total of 2,582 undertrials had spent anything between one and nine years in various jails of which 890 had spent two years, 704 had spent three and 383 had spent four years. Their cases had dragged on without completion. The most telling example of judicial delay can be found in the case of Rakesh Kumar. He was arrested in Delhi in 1986 for carrying a button activated knife. He was in jail for four years before charges were filed. After another four years of trial he was finally acquitted. Quite clearly, the police and the courts co-operated in detaining him.

In ordinary circumstances, delay during trial is a normal feature and it causes immense hardships and harassment to the accused. TADA worsened this situation because it legalised inordinate periods of detention in the name of speedy trial. The totally arbitrary manner in which the courts were set up, compounded the misery of the poor for it meant long distances, time and money.

IV. Conviction

The most devastating comment on the failure of the Act came from its own results. The failure of the extraordinary law was evident from its pathetically low rate of conviction. By 1991, the total number of arrests stood at 35,538 and only 318 (0.89 %) had been convicted. By 1994, the number of arrests had doubled and stood at over 76,000. Again, only 843 (1.11%) had been convicted.

The reasons behind the abysmal failure were manifold. Since many were arrested on false and frivolous charges, there was little evidence against them. Further, the shoddy investigation also helped in acquittal. Till June 1994, the police had filed 49,858 cases. Of these 22,493 were dropped as the police failed to file charge sheets. And as has been stated earlier, trials could go on for years. Trials were completed in only 8,510 cases by 1994. 94% of these cases resulted in acquittal. And even those who conformed to the government's own definition of 'terrorist' were rarely convicted under it. The case of Sukha and Jinda, the prime accused in the General Vaidya murder case, is well known. Both confessed to their crime and proclaimed themselves as khalistani militants in court. Yet, the court could not gather sufficient evidence against them to convict them under TADA. They were finally convicted for murder under

the normal law.

V. Protests

Criticisms of the rampant and arbitrary use of the various sections dogged the Act since the time of its enactment. Amendments were made, but these were double edged. Some did restrict the arbitrary use to a limited degree. Others, however, provided clauses for greater misuse. Review Committees were set up but the ad hoc manner in which they were constituted and the arbitrary process of selecting cases for scrutiny ended up confusing the issue. And when TADA was challenged in the Supreme Court, the Court simply upheld it with few modifications.

Notwithstanding the defence that was provided by the law makers for the continuation of the Act, in common perception it had already become a communal and a sectarian tool to be used against sections of people. Not only was it seen as anti Muslim, it was also anti Sikh, anti dalit, anti tribal, anti naxalite and anti poor. In short, it was anti people. Sporadic protests by those who had been held under it started in different corners of the country. Hunger strikes by Sikh detenues in Ajmer, strikes by workers in Ahmedabad and protests by lawyers in Punjab and Kashmir, continuously drew attention to the inherently arbitrary nature of the Act and its lawless application. In this context, the detailed documentation done by different civil rights organisations substantiated the need for repeal. By the end of the decade, the opposition to the Act had reached a national level. The Parliament was forced to officially lapse the Act in May 1995.

Thus the regime of TADA ended. Yet it isn't quite over. The retroactive aspect of the Act continues to haunt the lives of those who are condemned under it. The most infamous example of the posthumous effects of TADA is the Rajiv Gandhi assassination case where all 26 accused have been awarded death sentence by the Designated Court in September 1997.

Conclusion

Extraordinary legislations like POTA, are justified on the grounds that ordinary life is under extraordinary threat. Undoubtedly, contemporary social and political life is marked by lawless acts. Growing criminality on the one hand, and systematic assaults and attacks on sections of people create fear and insecurity. Aided and abetted by a corrupt and criminal police force, terror is a

daily fact in the lives of women, dalits, religious minorities, unorganized workers and other vulnerable sections. Yet, these acts of terror, such as rapes, assaults on dalits by upper castes, attacks on workers by hired thugs, or police torture do not constitute "extraordinary threat". Instead, devoid of social and historical sense, terrorism is defined as an unspecified yet henious crime. Images of mindless violence are presented as reasons for enacting laws which have stringent provisions. And public consent is derived by repeatedly drawing upon these images.

Extraordinary threat, and not ordinary terror, becomes the basis for bringing in laws such as POTA. People's fear and insecurity becomes the context for enacting laws which are meant to be used against the people. The unspecified threat to law and order becomes the justification for giving enhanced powers to the police and enhanced punishments to a new section of people identified as "terrorist". And so, within the ordinary lived terror, a new and more powerful terror is created in the name of law and order.

Needless to say, law and order can hardly be the answer to the range of social and political issues encompassed within acts of violence. If anything, law and order provides the argument for not addressing the issues involved. The deeper and more complex questions which require political will for solving are made unnecessary on the grounds that law and order needs to be maintained. It then allows for, as in POTA, a targetted application not only against the supposed perpetrators but also against those who are vaguely associated with the acts. In short, the ambit is wide enough to hold a whole section of people in the name of terrorism.

The justification for special laws also rests on the premise that normal laws are not stringent enough to deal with such crimes. But POTA does not state as to what is lacking in normal laws which makes them unsuitable, except that trials need to provide speedy justice. However, the way in which POTA amends normal law provides a glimpse of what is purported to be lacking in the normal laws. These changes are mainly in the sphere of longer detentions, admissibility of unreliable evidence, assumption of guilt, and imprecise trial procedures. In no conceivable way do such changes increase the possibility of punishing criminals who would otherwise escape the law. They do however immensely increase the possibility of innocent people serving long prison sentences. And also the power of our rulers to decide which person or crime poses a grave danger to society.

That justice should be provided speedily is a felt need. It is required, not

so much to punish offenders, as to protect innocents from unnecessary harassment and undue incarceration. POTA attempts to coalesce these two by obliterating the difference between innocent and the guilty

Thus POTA, built on false premises, incapable of meeting its ostensible purpose, can only do irrepairable damage to peoples lives and our democracy. By giving unbridled powers to the government and the police, POTA threatens to erode the legitimacy of the state to arbitrate in social conflicts

We demand that the POTA Bill be withdrawn.

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Hoodlum Days Ahead

While the T.N. Prevention of Terrorist Activities Bill awaits President's assent the Andhra Pradesh Government has followed suit. It has drafted two separate bills with provisions more drasic and of wider scope, ostensibly to curb the activity of CPI(ML) parties, commonly referred to as Naxalites.

The first bill called A.P. Banned Organisations (Prevention and Restrictions) Bill, contains provisions similar to TADA. The Bill provides for a minimum punishment of 5 years and confiscation of property of any person sheltering or having knowledge about any member of a banned organisation. This is aimed at targetting the poor peasants and tribals whose demands are raised by the Naxalite parties and who form the strength of these organisations.

The secong bill namely the A.P. Prevention of Unlawful Activities Bill defines an unlawful activity as any activity done to create terror or insecurity or waging of war by a banned organisation. The definition solely defines a crime of intent. Any criminal offence could be brought within the ambit of such definition depending on the whims and fancies of the rulers. Even peaceful democratic protest would be targetted.

The Bill contains provisions for banning the publication of any document - in print or electronic media - which can incite commission of an offence. Which written word bears such potential is left to be decided by the enforcing authorities. The bill seeks an effective ban on any work of a writer, journalist, academician, poet, or artist that may raise issues of poverty and hunger, drought and displacement, or police tortures and fake encounters. It is a blatant suppression of the freedom of expression.

The District Magistrate would be empowered to curb the entry of any organisation or individual into any educational institution, hospital, industry, place of work or the office any unions of students or staff. This provision is designed to break any union or association raising issues embarrassing for the government. It violates the fundamental right to form unions and associations.

The Bill breaks every rule in the Cr.P.C., allows police remands for a period of sixty days, imprisonment upto a year before the filing of chargesheet and by insurmountable restrictions on the granting of bail. The bill thus provides for long periods of preventive detention without any safeguards as are applicable even to the National Security Act. It also facilitates more inhuman forms of custodial torture. It violates the right to life.

The Bill gives the police the power to fire to the extent of causing death to prevent commission of any offence under this Bill. The provision legitimizes the fake police encounters which have been perfected by the A.P. police. The bill seeks to pave the way for a full-scale police state.

Demand immediate halt on the A.P. bills