BLACK LAWS 1984-85

PEOPLES UNION FOR CIVIL LIBERTIES
DELHI

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1985


THE ANTI-TERRORIST LAW IS A DISGRACE! ANYBODY CAN BE CALLED A TERRORIST!
MIND ACCOMPANYING ME TO THE POLICE STATION?
WHAT FOR?
I THINK YOU JUST COMMITTED AN ACT OF TERRORISM!

Introduction

The history of post-Independent India is replete with Ordinances and Acts which have seriously eroded the civil and democratic rights of the Indian people. While most of these legislations were enacted with a view to deal with specific issues, their actual implementation has directly affected the rights of trade unionists, voluntary activists and dissidents as well as the poor and the landless, the dalits and the tribals struggling for their basic rights.

Recent enactments have dramatically aggravated this situation. The deteriorating situation in Punjab, itself a creation primarily of the State and the ruling party, has prompted the government to bring in an additional set of repressive measures. What is worse, a carefully manipulated climate of opinion that is full of panic and fear have allowed these legislations to be passed almost without a whimper of protest. What is of grave concern is the almost complete lack of active opposition to these laws among democratic section of the public.

And now upon all this, comes the Terrorist and Disruptive Activities (Prevention) Bill, 1985 which was rushed through Parliament in a record time with almost the entire Opposition giving their assent—directly or through their silence. The Bill, popularly known as the "Anti-Terrorist Act", is the crowning act of a State which has symbolised growing oppression and terror against the people. It is thus not only undermining its own legitimacy but also undermining the whole Constitutional basis of a civil society. The earlier measures which have been put on the statute book over the years have so over-equipped the State and its ordinary functionaries with extraordinary powers that they are bound to be used against innocent people. And have been. This new Act will be too. Apart from the fact that it was wholly unnecessary.

Above all, the Act seeks to "terrorize" in a rather basic way—by terrorizing the mind, by making any dissent from mainstream thinking an *unpatriotic* act. Anyone can be called a "terrorist" (as with Naxalites in the past) and be damned. This particular *culture* that the Act seeks to promote is more pernicious than the Act itself. It is likely to muzzle the press, the judiciary, the middle class intelligentsia by simply alarming them beyond all reason. This has already happened. The conditioning of the press and the judiciary in recent years, following the Army action in Punjab, is only a forewarning of what is to follow. In turn, this is likely to at once terrorize and alienate ordinary members of minority communities, something that real "terrorists" will

in fact enjoy. And the moot point is that the Act will hardly put a stop to "terrorism". It will only dramatically curb the basic liberties of the people.

The People's Union for Civil Liberties has consequently decided to re-issue the *Black Laws* booklet (now out of print) to include the latest legislation.

A Brief History

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

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

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

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

Article 22 of the Constitution laid down the scheme under which a

preventive detention law could be enacted. The Preventive Detention Act was enacted in 1950 and it continued to be on the statute book until the Maintenance of Internal Security Act (MISA) came into existence in 1971. From 1950 to 1970, the Preventive Detention Act was reenacted seven times, each time the duration of the Act being three years. There was a gap of about a year when there was no Central law on the subject, though several States had PD laws. [Preventive Detention is different from detention under normal laws, i.e. the Indian Penal Code (I.P.C.) and the Criminal Procedure Code (Cr. P.C.). Under the I.P.C. and the Cr. P.C. persons are arrested for having committed acts violative of the law. Under Preventive Detention however, persons are arrested to prevent them from doing what the government does not wish them to do.]

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

And now, 38 years after Independence, the people of India have been subject to laws which violate all principles of natural justice. In some ways, they are worse than laws under the colonial regime. Not only do they subvert the right to fair trial but they can also be used against individuals and groups working for social and political justice.

This booklet contains the full texts of the Terrorist and Disruptive Activities (Prevention) Act, 1985, the National Security (Second Amendment) Ordinance 1984 and the Terrorist Affected Areas (Special Courts) Ordinance 1984, and a commentary on them by eminent Jurist, V.M. Tarkunde. We have also appended excerpts from a letter written by Gandhiji on March 1, 1919 on the Rowlatt Bills. An edited version of the use of the latter two (prepared by People's Union for Democratic Rights) is also included.

We believe that the present political system is bent upon subverting the principle of freedom and justice, and destruction of the fundamental rights of the individuals. There is an urgent need to build public opinion and to bring popular pressure against the black laws of 1984-85.

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

PEOPLE'S UNION FOR CIVIL LIBERTIES
(DELHI)

THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT (1985)

A Draconian Legislation

V.M. Tarkunde

Taking advantage of the natural public revulsion against the loss of innocent lives through the bomb blasts which were witnessed recently in Delhi and elsewhere, the Government of India has rushed through Parliament a truly draconian legislation called "The Terrorist and Disruptive Activities (Prevention) Bill, 1985", which is calculated to confer on the police and administrative authorities vast and arbitrary powers to interfere with the legitimate activities of citizens.

Section 5 of the bill enables the Central Government to make such rules "as appear to it necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities". Rules can be made under Section 5 to prevent the spread of any reports or the prosecution of any purpose "likely to prejudice maintenance of peaceful conditions", to regulate "the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas", to require any person "to comply with any scheme for the prevention, or for coping with, terrorist acts and preventive activities", and so forth.

Assumption of such vast coercive powers by the Executive is quite unnecessary for coping with terrorist acts and socially harmful activities. The ordinary law of the land, embodied in the Indian Penal Code and the Criminal Procedure Code, can easily deal firmly and adequately with terrorist acts and activities which are really disruptive.

The oppressive nature of the legislation is further brought out by the way it deals with persons who are merely suspected of

terrorist or disruptive acts. They can be produced after arrest before the executive (not judicial) magistrates. They cannot be released on bail except after notice to the Public Prosecutor and only if they satisfy the magistrate that they are innocent of the alleged offences. *If they are not released on bail, they will remain in jail for a whole year even if no charge sheets have been filed against them in any magistrate's court.*

Another harmful feature of the Bill is that the definition of "disruptive activity" is so wide as to include a mere expression of opinion, not accompanied by any violence or incitement to violence. Any Sikh who says that he agrees with the Anandpur Saheb Resolution, any Muslim who says that there should be a plebiscite in Jammu & Kashmir, any Naga or Mizo or Manipuri who says that the people of his or her state should have the right to selfdetermination, is guilty of "disruptive activity" and can be punished by a sentence which may extend to imprisonment for life and shall not be less than imprisonment for a term of three years.

Those who drafted this legislation have failed to realise that the unity and integrity of India can be maintained only by the spontaneous sense of loyalty and cooperation of the people of different regions of the country and not by recourse to oppression and coercion. Such draconian laws are counter-productive, because they drive secessionist movements underground, where they thrive on the dissatisfaction of the local populations. □

"Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he had all the guarantees necessary for his defence."

— Article 11 of the Universal Declaration of Human rights

Grabbing More and More Powers

S. Sahay
Editor, The Statesman, Delhi

What money is to unscrupulous traders, power is to politicians and bureaucrats. Any excuse is good enough to have more and more and in any case in excess of requirements of the situation. And what has once been grabbed has to be retained on one pretext or another.

Recall how preventive detention initially had annual life and how after being fitted into different grabs (MISA, National Security Act and what have you), it has become a permanent feature of our life. Recall how many extraordinary pieces of legislation have been enacted in recent years which deny citizens the right to be tried under the ordinary laws of the land. There are special laws to deal with smugglers, with economic offenders, with other anti-social elements. Not that these have curbed smuggling or economic offences, the political morality being what it is, but the remedy touted is to have still more power.

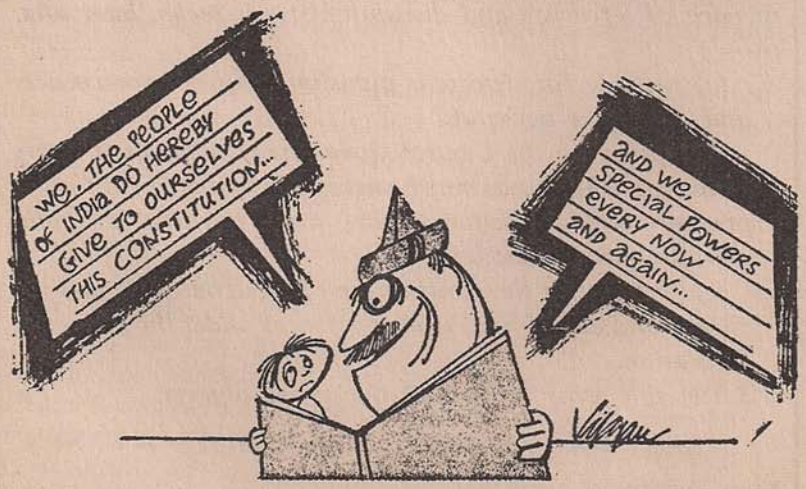
The recent planting of "transistor bombs" in Delhi and elsewhere gave the Government an opportunity to push through Parliament the Terrorist and Disruptive Activities (Prevention) Act. It is true that the Union Law Minister, Mr. Asoke Sen, was at pains to point out during the debate on the Bill that the measure was not intended to be against the Sikhs, that it included terrorism elsewhere in the North-East, for example. However, few will miss the proximity between the planting of the transistor bombs and the adoption of the Bill. The North-East has been a problem with us for over two decades. Why was not such a measure adopted earlier?

Mr. Sen was also at pains to assure Parliament that the Government did not intend to rule through extraordinary powers, that the measure would not last beyond two years. One can only say that one has heard all this before, especially in relation to the preventive laws.

Whether or not the Act will strike terror in the hearts of the terrorist remains to be seen, but it is sure to strike terror in the hearts of journalists and others. Even a District Magistrate can be authorized to

make steps to prevent the acquisition, possession or publication of any information likely to assist terrorists or disruptionists. He can also prohibit or regulate the use of postal, telegraph or telephonic services.

Since the borderline between terrorism and insurgency in Punjab is getting thinner and thinner, it is highly unlikely that the Terrorist Act will help the Government much. Will it then seek still more powers? □



THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT, 1985

STATEMENT OF OBJECTS AND REASONS

Terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh. Since the 10th May, 1985, the terrorists have expanded their activities to other parts of the country, i.e., Delhi, Haryana, Uttar Pradesh and Rajasthan as a result of which several innocent lives have been lost and many suffered serious injuries. In planting of explosive devices in trains, buses and public places, the object to terrorise, to create fear and panic in the minds of citizens and to disrupt communal peace and harmony is clearly discernible. This is a new and overt phase of terrorism which requires to be taken serious note of and dealt with effectively and expeditiously. The alarming increase in disruptive activities is also a matter of serious concern.

2. The Bill seeks to make provision for combating the menace of terrorists and disruptionists. It seeks, ***inter alia,*** *to—*

(a) provide for deterrent punishments for terrorist acts and disruptive activities;

(b) confer on the Central Government adequate powers to make such rules as may be necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities; and

(c) provide for the constitution of Designated Courts for speedy and expeditious trial of offences under the proposed legislation.

3. The Bill seeks to achieve the above objects.

A.K. SEN.

NEW DELHI;
The 17th May, 1985.

Part I

PRELIMINARY

1 (1) This Act may be called the Terrorist and Disruptive Activities (Prevention) Act, 1985.

(2) It extends to the whole of India, and it applies also—

(a) to citizens of India outside India;

(b) to persons in the service of the Government, wherever they may be; and

(c) to persons on ships and aircraft registered in India, wherever they may be:

Provided that so much of this Act as relates to terrorist acts shall not apply to the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and shall remain in force for a period of two years from the date of its commencement, but its expiry under the operation of this sub-section shall not affect—

(a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or

(c) any penalty, forefeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under his Act or of any order made under any such rule, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forefeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

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

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

(b) "Designated Court" means a Designated Court constituted under section 7;

(c) "disruptive activity" has the meaning assigned to it in section 4, and the expression "disruptionist" shall be construed accordingly;

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

(e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 11, and includes any person acting under the directions of the Public Prosecutor;

(f) "terrorist act" has the meaning assigned to it in sub-section (1) of section 3 and the expression "terrorist" shall be construed accordingly;

(g) words and expressions used but not defined in this Act and defined in the Code shall have the meaning respectively assigned to them in the Code.

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

Part II

PUNISHMENTS FOR, AND MEASURES FOR COPING WITH, TERRORIST AND DISRUPTIVE ACTIVITIES

3 (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 fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, commits a terrorist act.

(2) Whoever commits a terrorist act shall—

(i) if such act has resulted in the death of any person, be punishable with death;

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to empower the Central Government to make such rules as appear to it necessary or expedient for the prevention of and for coping with terrorist and disruptive activities. The particular matters in respect of which such rules may be made have been specified in sub-clause (2) of the clause. The rule making power under the clause is of sufficient amplitude to enable the Central Government to provide for stringent punishment within the limits specified in sub-clause (3) of clause 5 for contraventions of the rules and for other matters connected with such contraventions. The situations which arise as a result of terrorist and disruptive activities are of a very grave nature. Further, it is not possible to visualise the various types of situations which terrorists and disruptionists may create.

2. Sub-clause (2) of clause 18 of the Bill provides for the delegation by the Central Government of its powers and duties under the legislation to officers and the authorities subordinate to the Central Government and to State Governments and officers or authorities subordinate to State Governments as also to other authorities. Sub-Clause (3) of clause 18 seeks to confer power on a State Government to delegate the powers conferred on it by the legislation to its officers and authorities. The sub-clause also provides for sub-delegation by a State Government to its officers and authorities of the powers delegated to it by the Central Government. Provisions for delegation and sub-delegation on the lines provided in sub-clause (2) of clause 18 are necessary for securing effective adminstration of the legislation.

3. Clause 19 of the Bill seeks to empower the Supreme Court to frame such rules, if any, as it may deem necessary for carrying out the purposes of the bill relating to Designated Courts. The matters in respect of which the Supreme Court can make rules would relate to matters of detail or procedure. The power is sought to be conferred on the Supreme Court to enable it to provide for contingencies which it is not practicable to visualise and thereby secure the effective functioning of the Designated Court.

4. In the context of the circumstances as explained above, the delegation of legislative power involved is of a normal character.

(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 term of 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 three years but which may extend to term of life and shall also be liable to fine.

4 (1) Whoever commits or conspires or attempts to commit or abets, advocates, advises, incites 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 which shall not be less than three years but which may extend to term of 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 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 support 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 purposes of this sub-section—

(a) "cession" includes the admission or 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 persons bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servants shall be deemed to be a disruptive activity within the meaning of this section.

5 (1) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, and may empower any authority (being the Central Government or a State Government or the Administrator of a Union territory under article 239 of the Constitution or an officer of the Central Government not lower in rank than that of a Joint Secretary to that Government or an officer of a State Government not lower in rank than that of a District Magistrate or an officer competent to exercise under any law the powers of a District Magistrate) to make orders providing for, all or any of the following matters with respect to the purposes mentioned in that sub-section, namely:—

(a) preventing or prohibiting anything likely to facilitate the commission of terrorist acts or disruptive activities or prejudice the successful conduct of operations against terrorists or disruptionists including—

(i) communications with persons (whether within or outside India) instigating or abetting terrorist acts or disruptive activities or assisting in any manner terrorists or disruptionists;

(ii) acquisition, possession or publication, without lawful authority or excuse of information likely to assist terrorists or disruptionists;

(iii) rendering of any assistance, whether financial or otherwise, to terrorists or disruptiontists;

(b) preventing, with a view to coping with terrorist acts or disruptive activities, the spread without lawful authority or excuse, or reports or the prosecution of any purpose likely to cause disaffection or alarm or to prejudice maintenance of peaceful conditions in any area or part of India or to promote feelings of ill-will, enmity or hatred between different sections of the people of India;

(c) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(d) requiring any person or class of persons to comply with any scheme for the prevention of, or for coping with, terrorist acts or disruptive activities;

(e) ensuring the safety of persons and property;

(f) the demolition, destruction or rendering useless, in case of

necessity, of any building or other premises or any other property;

(g) prohibiting or regulating in any area traffic and the use of any vehicles or vessels or signals or any apparatus whatsoever;

(h) the control of movements within India of persons arriving in India from outside India;

(i) prohibiting or regulating the use of postal, telegraphic or telephonic services, including taking possession of such services, and the delaying, seizing, intercepting or interrupting of postal articles or telegraphic or telephonic messages;

(j) regulating the delivery, otherwise than by postal or telegraphic service, of postal articles and telegrams;

(k) regulating supplies and services essential to the life of the community;

(l) the requisitioning of services of persons for maintaining supplies and services essential to the life of the community;

(m) the provision, construction, maintenance or alteration of buildings, premises or other structures or excavations required for the conduct of operations against terrorists or disruptionsts;

(n) prohibiting or regulating the possession, use or disposal of—

(i) explosives, inflammable substances, corrosive and dangerous articles, arms and ammunitions;

(ii) vehicles and vessels;

(iii) wireless telegraphic apparatus;

(iv) photographic and signalling apparatus, or any means of recording or communicating information;

(o) preventing the disclosure of official secrets;

(p) prohibiting or regulating meetings, assemblies, fairs and processions;

(q) preventing or controlling any use of uniforms, whether official or otherwise, flags, official decorations like medals, badges and other insignia and anything similar thereto, where such use is calculated to deceive;

(r) ensuring the accuracy of any report or declaration legally required of any person;

(s) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purported to be or resembling an official person, official document or official property;

(t) the entry into, and search of, any place whatsoever reasonsably suspected of being used for harbouring terrorists or disruptionists or for manufacturing or storing anything for use for

purpose of terrorist acts or disruptive activities.

(3) The rules made under sub-section (1) may further—

(a) provide for the arrest and trial of persons contravening any of the rules or any order issued thereunder;

(b) provide that any contravention of, or any attempt to contravene, or any abetment of, or any attempt to abet the contravention of any of the provisions of the rules or any order issued under any such provision, shall be punishable with imprisonment for a term which may extend to seven years or for a term which may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine;

(c) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in clause (b) has been committed and for the adjudication of such seizure and forfeiture, whether by any court or by any other authority;

(d) confer powers and impose duties as respects any matter upon the Central Government or officers and authorities of the Central Government or upon any State Government or officers and authorities of the State Government;

(e) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules or any order made thereunder;

(f) provide for preventing contravention, obstruction and deception of, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules or any order made thereunder;

(g) prohibit attempts by any person to screen from punishment any one, other than the husband or wife of such person, contravening any of the rules or any order made thereunder;

(h) empower or direct any authority to take such action as may be specified in the rules or as may seem to such authority necessary for the purpose of ensuring the safety of persons and of property.

6 (1) If any person contravenes, in any area notified in this behalf by a State Government, any such provision of, or any such rule made under, the Arms Act, 1959, the Explosive Act, 1884, the Explosive Substances Act, 1908, or the Inflammable Substances Act, 1952, as may be notified in this behalf by the Central Government or by a State Government, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made

thereunder, be punishable with imprisonment for a term which may extend to ten years or, if his intention is to aid any terrorist or disruptionist, with death or imprisonment for a term which shall not be less than three years but which may extend to term of life, and shall also be liable to fine.

(2) For the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order shall be deemed to have contravened that provision.

Part III

Designated Courts

7 (1) The State Government may for the whole or any part of the State constitute one or more Designated Courts.

(2) A Designated Court shall be presided over by a judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court.

(3) The State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction in a Designated Court.

(4) A person shall not be qualified for appointment as a judge or an additional judge of a Designated Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.

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

(6) Where any additional judge or additional judges is or are appointed in a Designated Court, the judge of the Designated Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Designated Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

8 A Designated Court may, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than the ordinary place of its sitting, in the State in which it is constituted:

Provided that if the Public Prosecutor certifies to the Designated

How much cost for the Exchequer?

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for the constitution of Designated Courts by the State Governments and also for the appointments of the Judges and Additional Judges of those Courts. Clause 11 of the Bill provides for the appointments of the Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors by the State Governments.

2. The expenditures towards setting up of the Designated Courts and towards salaries and allowances of the Judges, Public Prosecutors and staff will be defrayed out of the Consolidated Funds of the States. The expenditure towards setting up of the Designated Courts in the Union territories will be defrayed out of the Consolidated Fund of India. The likely expenditure for each Designated Court and on the salaries and allowances of the Judges, Public Prosecutors, Additional Public Prosecutors staff, etc., over a period of six months is expected to be about rupees 3.57 lakhs, out of which rupees 1.72 lakhs will be of a recurring nature and rupees 1.85 lakhs of a non-recurring nature. As it is not possible at this stage to visualise the number of such Courts that may have to be established, it is not possible to give an estimate of the actual expenditure that may have to be incurred in this behalf.

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

9 (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed.

(2) The Central Government may, if satisfied on the recommendation of the State Government or otherwise that it is necessary or expedient in the public interest so to do, transfer with the concurrence of the Chief Justice of India (such concurrence to be obtained on a motion moved in that behalf by the Attorney-General of India) any case pending before a Designated Court in that State to a Designated Court in any other State.

(3) Where the whole or any part of the area within the local limits of the jurisdiction of a Designated Court has been declared to be, or forms part of, any area which has been declared to be a disturbed area under any enactment for the time being in force making provision for the suppression of disorder and restoration and maintenance of public order, and the Central Government is of opinion, whether on receipt of a report received from the Government of the State in which such court is located or otherwise, that the situation prevailing in the State is not conducive to fair, impartial or speedy trial within the State, of offences under this Act or the rules made thereunder which such court is competent to try, the Central Government may, with the concurrence of the Chief Justice of India, specify, by notification in the Official Gazette, in relation to such court (hereafter in this sub-section referred to as the local court) a Designated Court outside the State (hereinafter in this section referred to as the specified court), and thereupon—

(a) it shall not be competent, at any time during the period of operation of such notification, for such local court to exercise any jurisdiction in respect of, or try, any offence under this Act or the rules thereunder;

(b) the jurisdiction which would have been, but for the issue of such notification, exercisable by such local court in respect of such offences committed during the period of operation of such notification shall be exercisable by the specified court;

(c) all cases relating to such offences pending immediately before the date of issue of such notification before such local court shall stand transferred on that date to the specified court;

(d) all cases taken cognizance of by, or transferred to, the specified court under clause (b) or clause (c) shall be dealt with and tried in accordance with this Act (whether during the period of operation of such notification or thereafter) as if such offences had been committed within the local limits of the jurisdiction of the specified court or, as the case may be, transferred for trial to it under sub-section (2).

Explanation—A notification issued under this sub-section in relation to any local court shall cease to operate on the date on which the whole or, as the case may be, the aforementioned part of the area within the local limits of its jurisdiction, ceases to be a disturbed area.

10. (1) When trying any offence a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial of the offence is connected with such other offence.

(2) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule thereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

11 (1) For every Designated Court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

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

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

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

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

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

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

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Designated Court to pass a sentence of imprisonment for a term not exceeding two years.

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

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

(5) Subject to the other provisions of this Act, every case transferred to a Designated Court under sub-section (2) of section 9 shall be dealt with as if such case had been transferred under section 406 of the Code to such Designated Court.

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

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

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

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

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

(b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

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

(4) Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

14 The trial under this Act of any offence by a Designated Court shall have precedence over the trial of any other case against the accused in any other court (not being a Designated Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

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

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

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

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

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the

appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Part IV

MISCELLANEOUS

17 (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder subject to the modifications that—

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

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

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

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

(4) Nothing in section 438 of the code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act or any rule made thereunder.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless—

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

(b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing

that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

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

18 (1) Any power exercisable by a State Government under this Act may, after consultation with the State Government, be exercised by the Central Government with the same effect as if such power had been conferred directly on the Central Government and had been delegated by that Government to such State Government.

(2) The Central Government may, by notification in the Official Gazette, direct that any power (except the power under section 5 to make rules) or duty which by this Act or by any rule made under this Act is conferred or imposed on the Central Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also—

(a) by any officer of the Central Government not lower in rank than a Deputy Secretary to that Government, or

(b) by any State Government or by any officer of a State Government not lower in rank than a Sub-divisional Magistrate or Magistrate of the First Class.

(3) The State Government may, by notification in the Official Gazette, direct that any power which by this Act or by any rule made under this Act is conferred or imposed on the State Government or which being by this Act or any such rule conferred or imposed on the Central Government has been directed under sub-section (2) to be exercised or discharged by the State Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority subordinate to the State Government.

19. The Supreme Court may, by notification in the Official Gazette, make such rules, if any, as it may deem necessary for carrying out the positions of this Act relating to Designated Courts.

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

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

21. Every rule made by the Central Government under this Act shall

be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

22. The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

23 Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

24 No suit, prosecution or other legal proceeding shall lie against the Central Government or State Government or any officer or authority of the Central Government or State Government or any other authority to whom powers have been delegated under this Act for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder or any order issued under any such rule. □

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment as punishment".

—Article 5 of the Universal Declaration of Human Rights

1984

"Received your letter of the 8th July 1936. I am glad that you have hit upon a right plan to fight the black laws of the country. The country cannot even grow under the weight of the present lawless laws. I am with you in this noble task and I gladly allow you to include my name amongst the foundation members of the civil liberties union."

—Master Tara Singh to Pandit Jawaharlal Nehru on 14th July 1946

A Legal Commentary on Black Laws, 1984

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

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

The National Security Amendment Ordinance No. 5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

police custody whenever the police so desire.

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

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

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

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

V.M. TARKUNDE

What The Press Says

More and More Extraordinary Powers

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

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

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

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

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

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

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

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

S. SAHAY in *Statesman*

Too much power for police in Ordinance

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

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

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

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

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

Indian Express

Curbing Civil Liberties

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

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

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

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

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

Hindustan Times

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

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

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

Gandhiji's Letter on Rowlatt Bills

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

Sir,

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

* * *

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

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

The Satyagraha Vow

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

Rowlatt Act : Relevant Extracts

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

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

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

4. **Initiation of Proceedings**

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

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

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

5. **Constitution of Court**

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

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

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

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

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

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

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

26. **Reference to Investigating Authority**

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

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

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

(*Refer Clause* 12)

PART III

34. Powers Exercisable when Part III is in Force

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

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

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

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

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

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

35. **Arrest**

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

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

36. **Search**

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

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

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

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

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

(*Refer Clause* 14).

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