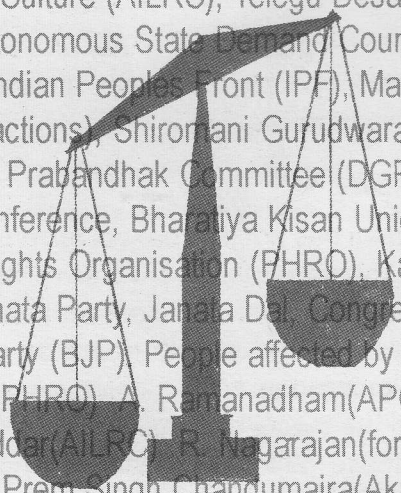
NOT ANOTHER TERRORIST LAW PLEASE!



a critique of the proposed Criminal Law Amendment Bill

PEOPLES UNION FOR DEMOCRATIC RIGHTS

DELHI, FEBRUARY 2000

What they said in Parliament

Rajya Sabha Debate on The Criminal Law Amendment Bill 1995, May 22 1995

Jaipal Reddy:

"In the last eight years terrorist and disruptive activities have grown. I would like to know whether TADA has had something to do with the growth of terrorism because we did not have such a flurry of terrorist activity when we passed this law. If it hasn't been responsible for giving a fillip to these activities it has certainly failed to prevent these activities".

Sushma Swaraj :

"We accept that TADA has not only been misused, but has been misused flagrantly... The fundamental root of misuse is this [Section 3]. Because this is where you begin to define a terrorist act. It is because of this definition that political opponents can be arrested under TADA...that TADA can be used on farmers...that innocent people can be caught under TADA and kept languishing for years. Your definition is so broad that any person - an ordinary criminal who could be charged under the IPC is also picked up under this act thus defeating its very purpose and intention."

Jagannath Mishra:

"We also accept that this law was used by the police for corrupt reasons, under pressure from local departments and for political ends and that innocent people have been arrested. People have to be saved from these police excesses, given protection".

Ram Jethmalani:

"... from 1985 ever since this statute was passed terrorism has not decreased; terrorism has increased in volume and in the extent of its operations...This shows that there is something wrong with your remedy. This shows that the crime you are dealing with is not susceptible of being dealt with these methods. I wish there were some educated people to advise the Home Minister, some persons who had some intimate knowledge of criminology, some people who had knowledge of the theory of legislation and the theory of penal legislation at that. They would have realised that terrorism is one of those rare and peculiar offences which does not lend itself to treatment by law, to treatment by more law and to treatment by more and more strict law... **You have created a law of which any decent person should be ashamed.**" *(Emphasis ours)*

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The Government intends enacting a new anti-terrorist law similar to the lapsed TADA in the present Budget session. Presently called the Criminal Law Amendment Bill (CLA), the new law being proposed intends to plug the loopholes in our criminal justice system and ensure that it deals effectively and stringently with 'terrorists'. Remand is extended. Confessions are admissible as evidence. Right to bail restricted. Punishments are enhanced. The trial procedure is prejudicial to the accused. The burden of proof is reversed. Appeals to the High Court are denied. And the crime itself is defined in such sweeping terms so that almost any crime could invite charges under this extraordinary law.

So that the law could be used arbitrarily against any kind of dissent and protests – from pamphleteering to writing a poem or singing a song or even simply being present at a particular place at a particular time. The extraordinary powers it confers on the police and the political party in power to deal with such 'actions' makes it a handy weapon against any political opponent. This becomes even easier since the law dismantles all safeguards, all checks and balances that are written into our criminal and judicial system and sets out separate procedures for investigating and trying these offences.

The experience of ten years of the working of TADA, which had virtually the same features, is enough to justify fears about the manner in which the present law will be used and abused. This experience is important precisely because TADA failed to check terrorism, allowed for sectarian and arbitrary use against political opponents, and gave rise to enormous police excesses and complete judicial apathy.

PUDR and other civil rights organisations have time and again attempted to chronicle the immense human suffering that the earlier TADA inflicted on hundreds of ordinary men and women detained under it. This suffering was not an outcome of 'stray cases of abuse', but built into the very structure of draconian laws. Wide spread protests and struggles of people all over India finally bore fruit as TADA was finally allowed to lapse in 1995. But even then the ghost of this act was never laid to rest. Till today people are languishing in jails under this 'dead' act.

And now we are faced with a new law on the same lines as TADA with even more severe provisions. This report is a critique of the proposed legislation. It sets out the reasons why we oppose this bill and demand its immediate and complete withdrawal.

We present this report in the hope that this might spark off some debate, contribute in some way to the building of an opinion against this new law and to a struggle demanding its unconditional withdrawal. Or else a perverse legislation, with the power to affect millions of lives, to tear apart the social fabric of civil society, to overturn the fundamental premises of the constitution, shall once again slip quietly into our midst.

For those who forget their past are condemned to relive it.

It is noteworthy that in the major cases that fit the government description of terrorist acts, convictions were finally not granted under TADA, *but under ordinary law*. These include Sukhdev Singh (Sukha) and Harjinder Singh (Jinda) the assassins of General Vaidya who were hanged in 1992. And more recently the accused in the Rajiv Gandhi assassination case, four of who presently face death sentence.

The mindless violence of many terrorist acts naturally creates revulsion and anger. This is what leads to the feeling that the crime itself is so dastardly that any charitable dispensation of safeguards is uncalled for. But as a matter of fact these safeguards are meant to apply to those who break the law and not those who abide by it. It is through these safeguards alone that rule of law can be established. Not by abandoning them.

How the New Law is Being Enacted

Between 1995 and now

The strong public opinion against TADA forced the Narasimha Rao Government to let this draconian legislation lapse, a decade after its inception. Even before TADA lapsed on May 23 1995, the government introduced the CLA, seeking to give a more permanent status to anti -terrorist legislation, on 18th May in the Rajya Sabha. It is a tribute to the growing popular opposition to this draconian law that the proposed bill was actually debated in the Rajya Sabha for about eight and a half hours over two days. This is more than any previous discussion in the parliament on TADA, either at its introduction or its subsequent extensions. The Government finally did not press for a vote on the bill pleading an 'absence of consensus'. At the time the BJP was the single party arguing most vociferously for a strong anti-terrorist law.

PUDR at the time had expressed its apprehensions about this proposed legislation which was seeking to restore the old TADA legislation with a new name, and in a more permanent manner. Since then the bill, fortunately has remained in cold storage. However different state governments tried to bring in similar draconian laws, for example in Tamil Nadu and Andhra Pradesh. Maharashtra succeeded in bringing in a such a law - the Maharashtra Control of Organized Crime Act (MCOCA) in 1999.

Now five years later, the present Vajpayee Government has resurrected the old CLA bill and intends enacting it in the coming budget session of the parliament.

Role of the BJP led regime

TADA has during its lifetime served as a useful weapon, in the hands of every major parliamentary party while in power, and came to be routinely invoked to stifle all forms of dissent and tackle political opponents. In that sense the record of the BJP is no better or worse than that of other parties.

But the way in which the bill is being brought in today, the kind of changes the Home Ministry has proposed and the implicit agenda that this Government seems to be pursuing heightens apprehensions about the manner in which this law will come to be used.

In the light of the glaring evidence of abuse of TADA and the widespread protests against the manner in which it was being used, the 1995 CLA bill had modified TADA in some crucial ways. The changes included

- removing the pernicious clause allowing confessions before police officials to be used as evidence,

- allowing the right to appeal in the High Court.
- removing the clauses that restricted the right to bail

These changes had sought to remove some of the most controversial features of the TADA. The present government has in a single stroke done away with these changes through an official order of the Home Ministry dated February 2, 1999, and restored the original draconian provisions of TADA.

Interestingly, the same official amendment also seeks to remove the phrase "to alienate any section of the people or to adversely affect the harmony amongst different sections of the people" from the definition of terrorist activity. The perception that TADA came to be used selectively to target minorities was one of the important factors that led the Government to decide not to extend it further. In the context of the present Government's continuous harping on religious fundamentalist militancy, which it equates solely with Islamic fundamentalist militancy, this amendment sounds ominous (The Law Commissions has recommended that this phrase be restored).

Hard Facts about A Strong Law

As of June 30, 1994 total persons arrested under TADA had crossed 76000. Of these 25% were dropped by the police itself without any charges being framed. Trials were completed in about 35% of the cases that were actually brought to trial. 95% of these trials ended in acquittals. *So that finally only about 1% of the arrested ended up being convicted.*

(Source: Home Ministry)

Two years after the lapse of TADA in 1997 the number of persons under arrest was 4528. Charges were dropped in 6% of these cases. At the end of the year challans had been filed only in 5% of these cases so that nearly 90% were still under investigation. There were 6709 TADA undertrials in the same year. Trials were completed only in about 6% of these cases. 65% of these resulted in acquittals! *That is 2.5 % of those being tried were convicted.*

This bill is also being brought in through an insidious mix of double speak and disinformation that has been the hallmark of the BJP. For example, the Home Minister L.K.Advani, in a meeting on January 7, ruled out categorically, the possibility of the Centre reviving TADA. He stated that 'Criminal law is a concurrent subject, the states can enact their own legislations on the pattern of TADA if they think it fit. Tamil Nadu has done it. So can others." (quoted in HT, Hindu, other newspapers; January 8). This at a time when the government was preparing to ensure the enactment of a new TADA in the coming budget session!

The role of the Law Commission:

The modified bill, with the pernicious provisions of TADA kept intact, was handed over to the Law Commission for its recommendations.

The Commission was asked to take "a holistic view on the need for a comprehensive anti-terrorism law in India after taking into consideration similar legislations enacted by various other countries faced with the problem of international terrorism". Nowhere does the Commission seem obliged to consider in forming its opinion, the record of TADA both its effectiveness in combating 'terrorism' through securing the actual convictions of 'terrorists' and the extent and magnitude of abuse and hardship that it has entailed. And so the 'holistic view' of the Law Commission, as evidenced in its background note does not include any review of the experience of ten years of TADA beyond citing some judgements including the Kartar Singh v/s State of Punjab judgement.

CRIMINAL LAW AMENDMENT BILL AT A GLANCE

SECTION	PROVISION	IMPLICATION
[S 1(3)]	law will be in operation for five years	excessively long period before legislative review
[S 1(3)]	prosecution under this law will continue even after its repeal	even repeal of law will not bring relief to the innocent detained under it
[S 3(5)]	membership of terrorist gang /organisation an offence	no definition of 'terrorist gang'
[S 3(4)]	punishes anyone who harbours or conceals an offender, or attempts to do so	will lead to harassment of relatives and friends, and foisting of false charges
[S 3(8)]	punishes failure to impart information about terrorist acts	act of omission made into an offence
[S 4]	punishes any action taken whether by act or speech or any other media	curtails freedom of speech and other rights
[S 4(1c)]	punishes a trade union or other mass movement if it questions sovereignty or supports secession	open peaceful movements also come in its purview
[S 4(2)]	punishes anyone who "commits or conspires to commit or attempts to commit or abets or advises or advocates"	tremendous scope for misuse due to vagueness
[S 5]	enhanced penalty for offences under all other laws	denies right to equal treatment under the law
[S 6]	allows confiscation of property by police	this power is normally with the judiciary, hence this will promote corruption
[S 6A]	confiscation can be ratified by executive authority or court.	conferring judicial powers on executive.
[S 6B]	confiscation of property even when person has not been prosecuted	punishment even without any charge

SECTION	PROVISION	IMPLICATION
[S 6G]	all powers of civil court given to executive Designated Authority	conferring judicial powers on executive.
[S 11A]	presumption of guilt for refusal to give handwriting, fingerprint, foootprint, blood sample, hair etc	denies the right to not be a witnesss against oneself
[S 13(2)]	summary trial	punishment upto two years when normally summary trials can sentence only upto 3 months
[S 13(5)]	trial in absence of accused or pleader	violates basic principle of natural justice
[S 14(3c)]	identity and address of witness not disclosed even during cross examination	no way to check authenticity of witness.
[S 15A]	admissibility of confessions to police	sanction to torture in custody
[S 18(2a)]	allows remand of upto six months without charges	will be misused for preventive detention
[S 18(2a)]	police custody of 30 days and can take back in custody in the 6 month period	existing laws allow police custody only in first fifteen days, will encourage torture by police
[S 18(6A)]	bail only if court believes he is not guilty	unreasonably stringent, effectively a denial of bail
[S 19]	appeal directly and solely with SC, and to be made within 30 days	curtails right of appeal, denies constitutional powers of High Court
[S 21]	presumption of guilt in certain cases	reversal of burden of proof, violates principles of natural justice
[S 26(c,d)]	power given to executive to create offences, mete out punishment and seize property	conferrment of excessive powers on executive
[S 27]	setting up of review committee	scrutiny is not independent but is conferred on the executive

The Law Commission has formally endorsed the proposed bill, after proposing some changes and additions of its own.

The manner in which the bill of such tremendous significance is being pushed through is shortcircuiting all scope for public debate on the issue. The role of the Law Commission is particularly dubious since *after* having come to a conclusion and made its recommendation it called two meetings ostensibly to 'discuss' the bill. The first was on December 20 and the second on January 29. Since the Bill had already been recommended for enactment these meetings served no purpose other than collecting certain views for the record and providing a figleaf of 'wider sanction' to this draconian law.

This procedure is meant to obfuscate the fact that a law, that will in a single stroke overturn principles of natural justice and destroy the constitutional structure that guarantees democratic rights, is being enacted without a wider public discussions. To the weight of the recommendations of a body like the Law Commission will be appended the sanction of views of 'experts'. The experts who gave their views include senior advocates, serving and retired bureaucrats and police officials. While inaugurating the meeting the NHRC Chairman Mr Justice (retd) J S Verma opined that while such a law should be reconciled with individual rights, public interest must take precedence over individual rights. This is coming from the chief of the institution that had earlier actively sought the repeal of the TADA because of the way it trampled on individual rights.

Nowhere in the present official discourse can we see even a faint glimmer of doubt, given the incontrovertible and acknowledged fact that this law in its previous version failed abysmally in its ostensible purpose of tackling the terrorist menace (*See Box of Quotes*). All that the BJP Home Minis-

Twelve years for what?

The Patel Nagar police picked up Karam Singh, Harnik Singh, Santok Singh, Major Singh, Baldev Singh Ujagar Singh, Kulwant Singh, Surinder Singh, Amarjeet Singh and J.S. Dhillon in 1987. They were charged under sections 3 and 4 of TADA. Confessions of three of them, Baldev Singh, Ujagar Singh and Karam Singh were apparently recorded by the DCP in September 1987. These confessional statements formed the basis of the prosecution case.

More than twelve years later, the Additional Sessions Judge R.C Yaduvanshi before whom the case was brought ruled on January 9 that these confessional statements were 'untrustworthy' and 'unreliable'. He observed that "the DCP is not aware about the place where the statements were recorded, by whom they were recorded, and the fact that there is nothing on record to show that sufficient time was given to the accused...". In short, nothing to dispel doubts that the accused had made the statement voluntarily'. The DCP concerned, Amod Kanth, is now Joint Police Commissioner (Southern Range). He claimed that the statement was recorded by somebody else at his instance. But somehow he could not name the scribe even on seeing the confessional statements. And that is not all he was unable to say who had produced the accused before him and by whom they were identified! To cap the courtroom farce a police officer, an Inspector Datta Ram, himself came forward to say that he had recorded the confession at the direction of the DCP.

And so after languishing in jail for twelve years the ten alleged 'terrorists' were finally acquitted. The paltry recompense for their suffering was a reprimand by the court to the chief investigating officer Inspector Jai Singh.

ter, LK Advani has acknowledged is that there had been "*a tendency* of *some* executives to misuse the provisions of TADA". And this while ruing the fact that this law which was the sole "specific central law dealing with terrorism was allowed to lapse since it came to be perceived as an anti minority legisla tion".

The past record of the easy passage of similar black laws does justify fears that the parliament wil not discuss or debate the provisions of the bill very seriously before enacting it in the coming budge session. The timing chosen for pressing for its enactment after five years is critical. And the looming debates on the questions of constitutional review and economic policies would affect the nature o discussion on this bill. As in the past when the extensions of TADA were invariably passed along with some other bill that deflected debate, the CLA too seems predestined for a similarly desultory enact ment.

And with its passage the fundamental tenets of the constitution would be thrown to the winds. And this could happen even without any procedure of 'constitutional review'.

What does the CLA Propose?

Divided into four parts and twenty seven sections the present CLA (with the changes recommended by the Law Commission) is a virtual replica of the provisions of the earlier TADA, with a few additiona draconian features and some largely cosmetic safeguards. Unlike TADA which came into force only when a particular area or state was 'notified' under the act, the new law is automatically in force throughout the length and breadth of the whole of India. Further the new law shall remain in force for a period of five years. So that the limited scope for regular legislative review, and for ensuring some accountability to the parliament also disappears.

The Boundless Realm: What are terrorist and disruptive activities?

The bill defines terrorist acts as those which are *intended* to –

– overawe the government
– or strike terror in the people
– or alienate or affect the harmony amongst different sections of the people
– or threaten the unity, integrity, security or sovereignty of India [S 3(1)]

Likewise disruptive activities are defined as any action *intended* 'to disrupt *directly or indirectly* the sovereignty and territorial integrity of India or support claims for secession or cession of any part o India' [S 4].

So under these definitions, a range of activities including any form of protest or any kind of activity – public or private, violent or non- violent –'whether by act or by speech, or through any other media' could come within its broad sweep. This includes harbouring terrorists or disruptionists, abetting o aiding an act preparatory to such acts, disrupting supplies or services, causing damage to property Membership of 'terrorist gangs and organisations' is an offence. So is the holding of property believed to be derived or obtained from terrorist activity or acquired through terrorist funds. Such property ca be seized or attached by the investigating officer with the approval of the Superintendent of Police even without a court order.

While the provision under TADA that made possession of arms in a notified area an offence unde this act has been removed certain new offences have been created. These include acts that involv loss or damage to inter-state or foreign commerce [S 3(6)], and threatening witnesses [S 3(7)]. Failur to inform the police about information 'known or believed to be of use in preventing a terrorist act o

securing the arrest of a person' will also invite punishment [S 3(8)] under the new law. So now acts of omission are also made liable to penal action.

Such broad and all-encompassing definitions are what allow such draconian laws to be used so arbitrarily. The outcome is not 'stray cases of abuse' because abuse is built into the structure of the act from the point where is sets out to define what offences come under sweeping reach.

Along with such sweeping definitions the act also allows for more stringent punishment. The minimum sentence is of five years imprisonment upto a maximum of life imprisonment for offences that have not resulted in death of any person. This means for example that making a speech, addressing a rally or taking part in a protest action could make a person liable for five years behind bars. Where death has occurred punishment is imprisonment for life or death.

The Kafkaesque Procedure

The heinous nature of the crime becomes the rationale for laying out a different criminal procedure. Overriding the Criminal Procedure Code, and the safeguards it provides to the accused, is justified on the grounds that the offender is not an ordinary criminal and needs more serious investigation.

Remand and Bail: An accused held under this law can be kept in police remand for upto 30 days and in judicial custody for upto six months without being charged. The right to bail is severely restricted. [S 18(5,6)] The court can grant bail only if is satisfied that there are reasonable grounds for believing that the accused is not guilty! Seeking anticipatory bail is not allowed. These provisions are intended to facilitate the investigation process and to check the attempts by the accused to thwart investigations if left loose.

Confessions: More pernicious, confessions made before police officers are admissible as evidence [S 15(A)] This is an invitation to custodial abuse and confessions resulting from torture. The safeguard proposed in the bill – that of admissibility only if made to a higher police official is no protection (See *Twelve Years for What).* A fact recognised by judicial pronouncements and decisions.

Burden of Proof: Further CLA blesses a regime of presumptions regarding the guilt of persons charged under it, reversing the burden of proof that a person is innocent until proved guilty. If arms or explosives *believed* to have been used to commit offences under this law, are found in the possession of a person, or if the persons fingerprints are found anywhere at the site of such an offence, or if a person is *believed* to have knowingly assisted financially or otherwise in the commission of such an offence, the court is directed to consider such a person guilty unless proved to the contrary [Section(21)]. Under the new proposal (Section 11A) if any person refuses to give a blood sample, handwriting or fingerprint, the court is directed to presume his guilt. The prosecution is not required to prove its case by application of standards. So for offences punishable even with death the police is not obliged to prove its case by application of the most basic standard of 'proof beyond reasonable doubt'.

Witness Protection: In order to protect witnesses from intimidation and threats, the identity of the witnesses can be kept secret even during cross examination [S 14 (2,3)]. For the same reason trials can proceed in camera at the discretion of the special courts [S14(1)].

Each of these draconian provisions that infringes on the rights of the accused, that overturns the fundamental principles of natural justice, is meant to allow the law to tackle what is a particularly heinous offence more effectively. But each and every draconian provision will only serve to make the police and prosecution less and not more serious about the 'extraordinary' offence being investigated.

Police need not file charge-sheets since they are not obliged to do so for upto six months. Gathering evidence need not be thorough since confessions are admissible as evidence. Investigation can be perfunctory since the trial is not open. Even hunting for witnesses is unnecessary since the 'protec-

tion of identity' clause gives a free rein to the police to use their stock witnesses and fabricate cases.

There have been countless instances in the recent past when the magistrates have rebuked the investigating officers for their conduct of investigations. The regime of laws like TADA and CLA only fuels this degeneration of the legal system. A recent seminar of Chiefs of State Police, CID, CBI and Forensic Scientists in Delhi recommended that amendments be made to the Indian Evidence Act and the CrPC allowing statements made to police officers to be admissible as evidence. Which only goes to show how the rot once it enters through 'special' laws can slowly invade the entire legal system.

Justice Denied

The bill seeks to overturn not only the CrPC but also institutes a separate judicial hierarchy in which the High Court is denied its constitutional role. This is being done on the plea of more expeditious disposal of cases. To this end again, presumably, wide ranging powers are granted to the executive and those of the judiciary curtailed.

Excessive powers to the executive: The executive has the power to frame rules, mete punishment, prescribe procedures, seize and confiscate property. It even has the powers of a civil court [S 26]. In short the executive can by mere orders and rules severely curtail fundamental rights even in matters for which the bill has made explicit provisions. In a departure from TADA these rules and orders do not even have to be placed before the legislature so that there is no accountability in framing such rules and orders. The basic constitutional principle of separation of judiciary and the executive is undermined. As also the checks and balances inherent in a fair and democratic system of justice

Trial procedure: It provides for the setting up of special courts, like the notorious designated courts, to be constituted by the central or state governments for trial of cases [S 9]. These can be presided over even by retired sessions judges. The location, and the area and extent of jurisdiction of these courts is left to the arbitrary discretion of the central government without specifying any criterion. If the designated courts set up to try TADA are any indication, these special courts are doomed to cumbersome caseloads and justice administration will be slow and protracted.

In order to facilitate more speedy trials it allows for summary trials [S 13(2)], and permits sentences of upto two years. The maximum sentence that the CrPC allows a court to pass in summary trials is three months.

What is worse, trials can take place even "in the absence of the accused or his/her pleader" [S 13(5)].

So after endless detention and confession by torture, there are Special courts and unknown witnesses and even a trial without a defense! This trial procedure set out in CLA militates against every principle of natural justice and fair trial.

Limited right to Appeal: After sentence is passed by the Special Courts, the accused have no right to move the High Courts for appeal. Only one appeal to the Supreme Court is provided for [S 17]. Moreover such appeals have to be made within 30 days, further eroding what is left of the right of appeal. This is true even where an absolute irrevocable sentence like the death penalty has been passed. The sentence is confirmed directly by the Supreme Court, doing away with one tier of judicial review and appeal.

The severely limited scope for appeal and revision implies that the access to judicial remedy has also been denied. This while providing for more enhanced punishments [S 5]. The constitutional right to equal treatment under the law is dispensed with.

And what about justice? Forget it. This is not a law for the delivery of justice. And even the stated

Rajiv Gandhi Assassination Case: The Bare Facts

Twenty Seven accused were arrested under sections of TADA by CBI
They were kept in illegal custody for between 6 to 16 days before being produced before a court
Court granted police remand for 60 days. The outcome of custody were of 17 confessions.
One accused died in custody.
All confessions were later withdrawn. Complaints of torture were made.
However these confessions became the basis of conviction. *All twenty six accused were sentenced to death by hanging.*
No appeal to High Court was permissible since accused were charged under TADA
Supreme Court acquitted all 26 of charges under TADA. Nineteen were acquitted of murder charges
Four of the convicted face death sentence
The basis of conviction are the same 17 confessions extracted through police torture. Confessions that are admissible as evidence under TADA but not under ordinary law
The Officer in charge of the CBI investigation D. R. Karthikeyan in this case is now Director General of the National Human Rights Commission.
The same NHRC that is now supposed to look into the petition dealing with the specific instances of torture in the course of the CBI investigation!

twin purposes – more effective investigation and speedy trials – that the draconian provisions are meant to serve are defeated by the logic of these provisions itself.

Small Comfort: Providing Safeguards!

The only substantive safeguards in the original version of this bill have been removed by the Central Government. These safeguards, mentioned earlier, had emerged directly from the public outcry against the rampant misuse of TADA.

With the removal of these safeguards, what little is still left is as follows:

The new bill provides for the setting up of review committees constituted by bureaucrats, at both the state and central level to review cases every three months [S 27]. Information recorded in the cases of all those arrested under this law have to be approved by these committees within 30 days of arrest [S 7A] But the power of scrutiny and review remains with the executive.

Punishment of upto one year imprisonment for corrupt or malicious action is provided for under this law [S 24]. But as a matter of fact this is a dilution of the relevant provision in ordinary law! The IPC [S 211] allows for punishment of upto two years in ordinary cases, and where the malicious charges are of an offence punishable with death or imprisonment for more than seven years, it allows for imprisonment of upto seven years. Of course it might be difficult to cite a single case where this section has been used against a police official!

Other safeguards include the provision that information about commission of offences under this law should be recorded only with the approval of the DGP [S19(1)] and that courts will take cognizance of offences only with the sanction of the state or central government [S 19(2)] (Under TADA approval of DSP and sanction of IGP was needed for cognizance of cases). There is in addition an unproven pre-sumption that by allowing only high level police officials to investigate such offences [S 20] some measures of protection against abuse are provided for.

Certain rights of the accused such as right to legal assistance, right that relatives are immediately

informed of arrest, the duty of the police to draw up a custody memo are spelled out [S 19A]. While welcome these safeguards only enact what have been ruled as essential rights of every accused, by the Supreme Court, and are yet violated with impunity, day after day. There is no effective mechanism or penalty to deal with such violations. In its absence these provisions are cosmetic.

Conclusion

No one denies that social and political life in India today is marked by a high level of violence. Social tensions increasingly are operating outside the framework of the constitution. There is a compelling sense of urgency as this growing violence begins to permeate our everyday living — through direct experience and through daily headlines and haunting images in media. Of late these images – those of a nation under siege — have become even more compelling with the looming specter of 'destabilising forces' from an 'enemy country'. It is this extraordinary context that demands another extraordinary law. Or so we are led to believe.

More so in the aftermath of hijack of IC814, when 'the soft state' has come under severe attack. But the truth is that a state is not soft simply because it accedes to the demands of hijackers. A soft state is one that cannot implement its own laws, or uphold the writ of its own constitution. In that sense it's a measure of the ineffectiveness of the state and its legal system that makes a state soft. A law like CLA seeks to 'legislate' such softness. It does so by giving sanction to the abandonment of both law and the constitution. It does so by fuelling further the degeneration of the legal system. It does so by legislating irreparable violence to the democratic fabric that holds society together. A soft state can be a highly repressive one. As its countless victims would testify.

And the 'problem' itself ranges from secessionist movements to thwarted regional aspirations, from armed opposition to social oppression to outbreaks of communal violence. They vary widely in terms of ideology, politics, approach and even scale of violence. All of these are uprooted from their specific historical and regional moorings and clubbed together in a catch-all category of 'terrorism'. Which acts like TADA and CLA are then supposed to deal with.

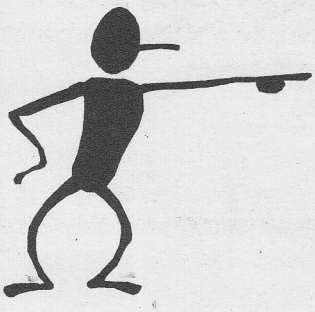
The law defines the crime in a manner that is so sweeping that it engulfs the entire spectrum of crimes under normal law and ordinary criminal justice system. It does so by defining the crime on the basis of 'motives' – or intent. The BJP MP Sushma Swaraj, while debating the Criminal Law Amendment Bill in the Rajya Sabha in 1995 put it well: "it is not the act that is punishable in itself, but the intention underlying the act that is punishable ... there should be no scope for pity for those who seek to question the unity and integrity of the country ... Such people do not deserve leniency". And this is the real philosophic justification for this extraordinary law.

For existing laws can deal with the all actual acts – murder, arson, bombblasts, sedition and even hijacks. What ordinary law does not do is punish 'intentions'. In ordinary law 'motives' are important in a legal sense in establishing a prosecution case or in determining the sentence to be awarded to an accused. But the peculiarity of both TADA and this new proposal is that the mere attribution of a motive to offences punishable under normal law is sufficient to bring into play a separate judicial machinery and a separate criminal procedure, right from the point of arrest through detention, trial and appeal and in the end, attract a more stringent punishment. Such motives do not even have to be proved.

That is why even narrowing the definition of intent cannot make this law less undemocratic.

It is this that makes the law particularly dangerous.

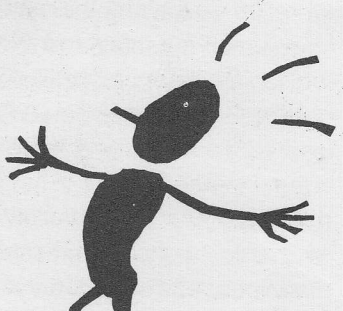
PUDR demands the complete and unconditional withdrawal of the proposed anti-terrorist law.



Are You a Terrorist?

Under this new law you too could be a 'terrorist' . Consider this ....

- ✘ A journalist who having interviewed a leader of a banned organisation refuses to divulge sources.
- ✘ A person distributing leaflets supporting the withdrawal of an unpopular measure of the central government.
- ✘ A filmmaker making a film on the plight of TADA detenues as part of a series on jails and jail conditions.
- ✘ Railway employees striking work in protest against moves to 'privatise' departments of the railways.
- ✘ Striking government employees who forcibly try to prevent another employee from breaking the strike.
- ✘ A bookseller stocking copies of a book that argues for people's nationality aspirations.
- ✘ A lawyer arguing the defence cases for those alleged to be members of banned organisations.
- ✘ Anyone who shares a platform or is even present at a meeting in which one of the speakers advocates holding a referendum in Kashmir.
- ✘ A TV newschannel covering a demonstration in any part of the country protesting against army atrocities in the Northeast.
- ✘ A television chat show that while discussing conflicts in the disturbed border regions allows a opinion expressing sympathy for a secessionist movement.
- ✘ A person who 'predicts' that the unpopular policies of a particular political party might provoke attacks on its leaders.
- ✘ A passenger whose fingerprints were found in a bus where a bomb-blast took place.



If for some reason you displease the powers that be, and you fall into any one of the above categories, you could be picked up under this new law!