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TADA and Terrorism in India

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INTRODUCTION :

In modern history of India, the formal frame work for legal system starts in 1833, when the British government appointed the 'Indian Law Commission' with the aims and objectives of the study ofprevailing/ existing laws in India, the jurisdictions of the Courts present at the time & the basis and principles of the current laws. The newly appointed LawCommission of India was supposed to give anelaborate report as well suggestions,for the amendments and reforms in the laws that would be required to codify laws in India. One of the most important contributions of the Indian Law commission was the formation of the Indian Penal Code; this was submitted by Lord Macaulay in 1837 which became law in the year 1860 after almost thirty years of heavy deliberations. At the same time, they also wrote the Code of Criminal Procedure, 1861 which is the main procedural law in India, these laws became the basis on which our justice system functions, the principles of justice, equity and good conscience form the basis of these laws that are detailed in these Acts.

During the early 1980s, the growing terrorism specially in Punjab and North East states was a big challenge for the judicial system and the existing laws,To combat the growing challenge of terrorism, the Parliament passed the Terrorist and Disruptive Activities (Prevention) Act, 1985 ("TADA-I"). which received the assent of the President on 23-05-1985 and was published in the official Gazette of India also on 23-05-1985 and came into force on 24-05-1985 for a period of 2 years.It was the first anti-terrorism law introduced by the government for counter-terrorist activities. The act was implemented basically against the Khalistan movement.Since, TADA-I was about to expire on 23-05-1987, and both the house of Parliament was not in session and it was necessary to take immediate action, the President promulgated the Terrorist and Disruptive Activities (Prevention) Ordinance, 1987 on 23-05-1987 which came into force w.e.f 24-05-1987. while TADA-II repealed the above ordinance and received the assent of the President on 03-09-1987 and was published in the official Gazette on 03-09-1987.

The constitutional validity of TADA was challenged before the Hon'ble Supreme Court of India in the matter of Kartar Singh v State of Punjab (1994) 3

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SCC 569, wherein while upholding the constitutional validity of TADA, this Court observed that it was necessary to ensure that the provisions of TADA were not misused by the police agencies. whereas certain guidelines were set out by the Hon'ble Supreme Court to ensure that confessions obtained in pre-indictment interrogation by the police will be in conformity with the principles of fundamental fairness. The Hon'ble Supreme Court also indicated that the Central Government should take note of those guidelines by incorporating them in TADA and the Rules framed there under appropriate amendments. The Supreme Court also held in its supra-mentioned judgement that in order to prevent the misuse of the provisions of the questioned law i.e. TADA, there must be some Screening or Review Committees to ensure its fair implementation without any misuse.

In the lead judgment, Hon'ble Justice of Supreme Court Mr. Pandian. J held that:-

"265. In order to ensure higher level of scrutiny and applicability of TADA Act, there must be a screening Committee or a Review Committee constituted by the Central Government consisting of the Home Secretary, Law Secretary and other secretaries concerned of the various Departments to review all the TADA cases instituted by the Central Government as well as to have a quarterly administrative review, reviewing the States' action in the application of the TADA provisions in the respective. States, and the incidental questions arising in relation thereto. Similarly, there must be a Screening or Review Committee at the State level constituted by the respective States consisting of the Chief Secretary, Home Secretary, Law Secretary, Director General of Police (Law and Order) and other officials as the respective Government may think it fit, to review the action of the enforcing authorities under the Act and screen the cases registered under the provisions of the Act and decide the further course of action in every matter and so on."

The Central Government of India had enacted the Act in 1985, called the Terrorists and Disruptive Activities Prevention Act (TADA) to deal with terrorists and terrorism. Besides providing for conviction of the terrorists, the Act provided for designated courts which curtailed the usual rights of the accused persons was allowed to lapse in 1995.

In fact, TheCentral Governmenthas in fact gone a long way since February 1950 when the parliament was moved to adopt the Preventive Detention Act, 1950. This Act gave way to the Maintenance of Internal Security Act (MISA) in 1971 and to the National Security Act (NSA) in 1980. TADA, passed in 1985, was the deformed child of these ugly laws.

Under this act TADA, Special courts were set up to deal with the cases of terrorism and disruptive activities. The act had very few scope for the grant nof bail to the accused person who arrested under the provisions of this Act, the courts granted bail in a rare cases only. The TADA amendments made in 1987, further

empowered the law enforcement machineries, The Act allowed identification on the basis of a photograph, the burden of proof was shifted on the suspects or the accused, while in criminal law the prosecution has to prove its case, so in TADA cases onus was shifted from prosecution to accused person.

The most draconian provision of this Act is to allow the judicial admissions of the confessions during the police custody. The fact is very few accused persons were convicted for allegations under TADA up to May 1995. The only convictions were for illegal possession of arms and ammunition. it was claimed that TADA had not achieved anything in the fight against terrorism. The most glaring example of terrorists circumventing TADA was Operation Black Thunder in Assam in which all the 46 accused persons were discharged on a technicality.

The total number of persons arrested in the country under TADA from 1985 to August 1994 was 67,509 and up to January 1995 was 70,411. Out of this, 87.1 per cent cases pertained to five states-Gujarat, Punjab, Assam, Jammu and Kashmir, and Andhra Pradesh. The highest number of persons arrested was in Gujarat (24.3%), followed by Punjab (22.1%), Assam (16.0%), Jammu and Kashmir (13.8%) and Andhra Pradesh (10.9%).

The number of persons arrested in Maharashtra, Haryana, Manipur, Delhi and Uttar Pradesh in this period varied between 1,000 and 2,500 while in states like West Bengal, Rajasthan, Madhya Pradesh, Tamil Nadu and Karnataka, there numbers varied between 200 and 500. In Arunachal Pradesh, Bihar, Himachal Pradesh, Tripura, Mizoram, Meghalaya, etc. the number was less than even 100 (The Hindustan Times, January 29, 1995 and Frontline, September 23, 1994).

The total persons arrested under the provisions of TADA, less than 12 per cent were sent for trial and 0.81 per cent had resulted in conviction. Thus, since misuse as well abuse of TADA had become the norm and practice, momentum in favour of its repeal began to build up, as the supposed benefits accruing from it were overweighed by the instances of misuse.

It was alleged by a number of civil societies that A large number of innocent victims belonging to minority community in Gujarat, Maharashtra and several other parts of the country continued to languish behind the bars under TADA, often without knowing what the nature of the charge against them is". It was said that the misapplication of TADA was of sufficient gravity to warrant its repeal.

The Minorities Commission also pointed out in early 1994 the misapplication of TADA against religious minorities. The National Human Rights Commission lent its authority in August 1994 to the growing crescendo of demands for the repeal of TADA. The NHRC, arguing even in the Supreme Court against the legality of certain sec-tions in TADA, had asked for a complete review of this Act, because it considered the Act incompatible with the notion of the rule of law envisaged in the

Constitution.

The main criticisms against the Act were:

(1) TADA was widely misused with its draconian provisions against the minority communities by the state governments.

(2) It was misused by the police to languish any person for a long period without any accountability.

(3) It violated the general principles of criminal law that a confession before a police officer was admissible as substantial evidence and release of the accused on bail is extremely difficult.

(4) It provided a long jail term of no less than five years even for small offences like possession of certain types of weapons.

Counselled by these divergent views, the Government of India allowed the TADA to expire on May 23, 1995 and did not try to extend its life. A new Bill, called the Criminal Law (Amendment) Bill was introduced in Rajya Sabha on May 18, 1995 in place of TADA which sought to delete at least four provisions of TADA which were considered ob-noxious and which were allegedly misused by the police.It also incorporated a number of safeguards. However, this Bill was withdrawn by the government in June 1995.

The violence used by the terrorists, the demand for the secession of the states, and the increasing role of the neighbouring countries in supplying money, weapons and training to terrorists in India make it necessary that first of all the prevailing laws to deal with these situ-ations should be used wisely. Let there be a purposeful debate on the existing laws which have the capacity to protect the nation.

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