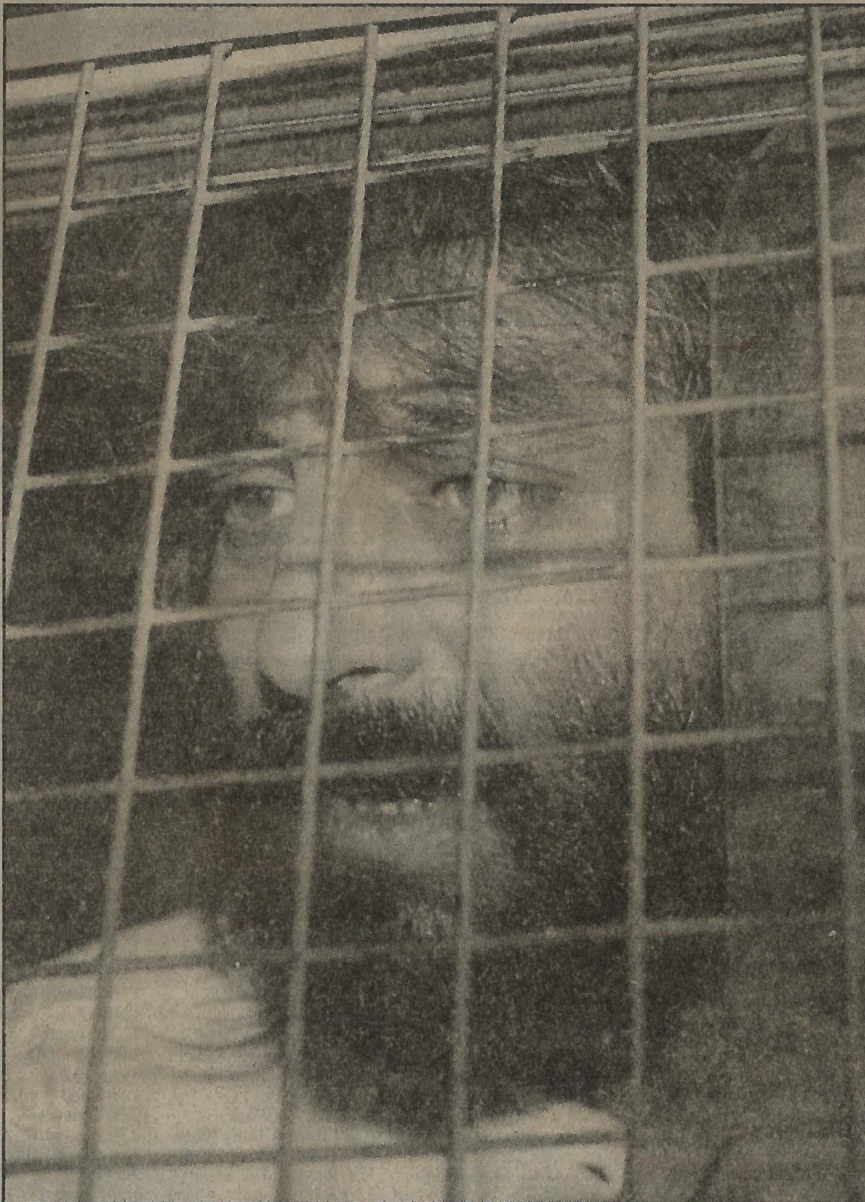


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# Law and human rights

## It's unfair, harmful to the masses

Of course we are enraged at the killing of innocent people — bus or train passengers, wayside labourers, farmers... — whoever does it and for whatever reason. But we don't want this to be answered by a law that may very well end up punishing innocent people for the crime. This is why the old Tada and the new Pota are to be opposed, writes K BALAGOPAL



Sanjay Dutt was arrested in 1993 under Tada in connection with the Mumbai blasts

Ever since the demise of Tada in 1995, human rights organisations have been campaigning against every proposal to bring a new anti-terrorism law. The efforts at resurrecting Tada have never caused surprise since the old Tada was allowed by Parliament to lapse in the year 1995, not because of a principled concern for rights denied by that law but because of a political fear of fallout from its unbridled use. Nobody was surprised, therefore, when Tamil Nadu tried out a State legislation named Prevention of Terrorism Act (Pota), which was vigorously opposed by human rights groups, and ultimately dropped for various reasons, nor is anybody surprised now about the Centre's attempt to bring in a fresh law, also to be named Pota.

The campaign against the proposed legislation has acquired legitimacy in the eyes of public only after the National Human Rights Commission came out against it. Some sections of opinion makers, including the Press, have come out openly against the NHRC for its allegedly 'irresponsible' stand, but the NHRC has only done what any human rights body is expected to do. It has refused to be brow-beaten by rabble-rousing patriotism to agree to sacrifice the rights of some for the rights of others, but has insisted on balancing all rights. That is the significance of NHRC's stand that ordinary laws are sufficient to tackle terrorism, if properly used.

Most people have probably understood this opinion as an appreciative comment on the efficacy of ordinary law — and some have for that reason questioned its wisdom by quoting the figures pertaining to successful prosecutions — but its real significance lies elsewhere. Ordinary law does a careful and elaborate balancing act to give equal protection to the rights of the suspects as well as the victims of crime, as required by the Fundamental Right in Article 14 of the Constitution of India which says that all persons shall be equally protected by the law. This right the Constitution-makers intentionally gave to all persons, and not merely to citizens, let alone patriotic citizens as defined by the official patriots.

Of course, all of us are enraged at the killing of innocent people — bus or train passengers, wayside labourers, farmers ploughing fields — whoever does it and for whatever reason. This is what most people understand as terrorism. But we would not want this to be answered by a law that may very well end up punishing equally innocent persons for the crime. That would be a second outrage and not a protection against the first.

This is one important reason why the old Tada and the new Pota are to be opposed. Pota practically mandates incarceration of the accused throughout the period of investigation and trial, allows a secret trial inside a high security prison, permits a confession given in custody to a police officer to be used as evidence, keeps the identity of witnesses secret from the accused even in the witness stand, and on certain conditions put the burden of proving innocence upon the accused.

This is a prescription for unfairness. We may well end up sending innocent persons to the gallows as an answer to the killing of innocent persons.

The second reason is the definition of a

terrorist act. For common people terrorism conveys an image of arbitrary and unjustifiable violence perpetrated against innocent and unsuspecting people. This image is made effective use of by all governments to obtain social sanction for anti-terrorism laws, but that is not how Pota defines 'terrorism'. Without quoting chapter and verse it may be briefly said that terrorism is defined as militancy that uses arms or explosives, with an intent that is political or social. All political and social militancy is terrorism, even if it is very selective in its targets and is careful never to injure inno-

cent people. Or even if it never indulges in mass killing of anyone, including its targeted enemies. Of course there will be many who will object to all militancy, even if it is careful not to injure innocent people. But the issue here is not whether militancy is good or bad, but whether it is permissible to take advantage of popular revulsion for indiscriminate killings and make a law that permits unfair and unjust treatment of persons involved in any kind of political or social militancy in the guise of answering that revulsion.

We have seen how Muslim youth who

were enraged with the demolition of the Babri Masjid became victims of Tada, and in our own State we have seen thousands of rural poverty-stricken militants of the Naxalite groups becoming victims of Tada. Why should these persons who have some reason for their grievances be deprived of a fair trial that every smuggler and black marketer gets, and why should this specially disadvantageous position of political and social militancy be justified by a clever play upon the images carried in the popular mind of random and arbitrary massacres?

India is racked by militancy of many varieties. Most people are upset by this, and there is certainly nothing to be very happy about it, for it would be ideal if democracy and democratic institutions could provide an adequate outlet for those grievances. However, since we will never solve any problem that we do not understand in the first place, it is necessary to understand that this outbreak of militancy has strong social and political roots and causes.

There is no way that such causes can be tackled by the force of weapons or the force of unfair laws. The small State of Nagaland has defied the might of the Indian army for 50 years, and the valley of Kashmir whose total population is equal to that of our city of Hyderabad, has been doing so for a decade. Our rulers have realised the futility of branding the problem as solely a problem of violence and/or fanaticism and have decided to hold talks to get at the root of the issue. The talks in Kashmir are faltering but the talks with the Naga militants are in better shape. This should at least teach us that it is plain crime, and that too more heinous crime than smuggling and bootlegging, and therefore that it demands laws harsher than those available to suspects in other crimes. Such an attitude will only further destroy faith in democracy and rule of law — why should any one care much for rule of law when the law is palpably unjust towards them? And serve to reinforce the attraction of militancy.

When we speak of social and political militancy, we are not merely referring to an attribute of the militants, namely that they are moved by some social or political vision or grievance, right or wrong, good or bad. We are also looking at the fact that the phenomenon has a social base of supporters. These are not armed militants but ordinary people who find the vision of the militants agreeable and therefore support and shelter them. Acts such as Tada or Pota inflict immense harm on these masses. The havoc wrought by Tada on the rural poor of the districts of Andhra Pradesh where the Naxalites are active is still fresh in our minds. And the same can be said about not just Kashmir, Punjab and the North-East, but also the land of Veerappan where many poor forest dwellers have been jailed under Tada on the grounds that they have abetted his crimes.

Let us therefore oppose the new anti-terrorism bill and insist that Indian State and Society should understand militancy primarily in social and political terms and deal with it as such, while responding to its acts of violence through ordinary law which gives equal protection to the rights of both sides.

(The writer is a Human Right Activist)