

A Tough Law for Other People's Crime

The state that has enacted a fresh law to control crime syndicates in Andhra Pradesh is not an innocent victim of such syndicates nor a beleaguered administration frustrated by mafia gangs beyond its control. It is itself a major patron and protector of a variety of crime syndicates, notwithstanding the air of injured innocence it puts on when asked to explain its latest legislative adventure.

K BALAGOPAL

Hindu mythology knows of demons with instantly and indefinitely resuscitative heads, Ravana being the most numerously endowed of them. Chop them as energetically as you will, they are back again ere your sword is sheathed. The Terrorist and Disruptive Activities (Prevention) Act (TADA) is one such modern demon. It is perhaps in the fitness of the perverse logic of our times that its latest clone, an act for the control of organised crime syndicates or gangs, was passed by the Andhra Pradesh legislative assembly almost on the eve of Ramanavami, the festival which purportedly celebrates the final vanquishing of Ravana's cephalic plenitude.

For Chandra Babu Naidu, however, the demon is not his legislation but the organised crime syndicates which he is determined to vanquish, so that the state may be the more attractive to prospective investors. After all, he is looking for upwards of Rs 30,000 crore of capital to flow into this state in the next 20 years, to realise his vision of a golden Andhra Pradesh, and he believes that an atmosphere free of gun-wielding extortionists and ghutka-chewing dons is a must for that.

As with all such demonology, a closer look at its terms and instruments raises uncomfortable questions about who is the demon, who is the vanquisher, who is the Evil One and who is protecting the world from that One. It may not always be the case that the myth is susceptible to straightforward subversion, namely that the demon is in fact the virtuous one

and the putative saviour the evil one, but quite often it turns out that the real relation between the two is something else than what is said, and the real significance of the instruments of the war lies somewhere else.

Organised Crime Syndicates

Let us, for instance, take a look at the organised crime syndicates of Andhra Pradesh. The expression is self-explanatory, and the law (AP Control of Organised Crime Act, 2001) merely puts in specific numbers: if two or more persons use violence or the threat of violence or other unlawful means again and again for their benefit or undue advantage, then they are called an organised crime syndicate. 'Again and again' is given concrete content by saying that the second time their offence is taken cognisance of by a court, they enter an organised crime syndicate, and enter the purview of the new law.

For instance, the Rayalaseema districts have long been notorious for armed rural factions led by (mostly) Reddy landlords/village headmen. The phenomenon goes back to earliest living memory and beyond, but after independence it has gradually extended beyond the village frontiers and has invaded electoral politics, development works contracts, real estate and finance deals. All these issues symbolising modernity, development and democracy are mediated by the armed might of these village factions grown into quite modern mafias, whose style of operation still has a rural ambience, an earthy smell. Much has been made by Chandra Babu's

government of the ill effect this violence has had – or is likely to have – on developmental efforts, and this seemingly genuine concern is one of the reasons proffered for the new legislation.

For instance, Larsen & Toubro had a bad time with the cement factory it set up near Tadipatri in Anantapur district a couple of years ago. It almost decided to give up and go away, unable to cope with the heavy handed demands made on it for allotment of civil works, not to mention plain extortion. Gangs led or supported by local factionists (as the leaders of these armed gangs have been known since British times) would drive up to the local manager's office in jeeps or tractors and demand, on pain of having the office wrecked, that the work of laying a road connecting the factory with the nearest high way, or a link railway track connecting it to the Chennai-Mumbai main line, or even the work of building a compound wall, should be allotted to them at the price acceptable to them, and no talk of quality control, if you please! L & T must be familiar with the urban mafias of Mumbai and Gujarat, but it appears to have found the unpredictability of the numerous rural gangs of Anantapur a bit too much. As the factory is located at the limestone-rich trijunction of the three main Rayalaseema districts of Anantapur, Kurnool and Cuddapah, the rulers of the state were understandably apprehensive that the travails of L & T would hit the development prospects of that mineral-rich region hard. A good enough reason for a law to control organised crime syndicates?

But who or which were the main gangs that gave a rough time to Larsen & Toubro at Tadipatri? The major tormentor and the main beneficiary of the arm-twisting methods of making quick money at L&T's expense was Paritala Ravindra, a Telugu Desam Party (TDP) legislator from Penukonda in Anantapur district. Of the sundry other operators the most feared were local toughs from the village of Gundlasingavaram in neighbouring Kurnool district functioning under the umbrella of the late Bejjam Satyam Reddy (alive at that time but recently dispatched to his heavenly abode with the aid of a couple of explosives by his Congress opponents) who was a leader of the Telugu

Desam Party from its inception till his death. His son Parthasarathi Reddy is now the TDP legislator from Panyam in Kurnool district.

Who Controls Whom?

Who, therefore, is trying to control whom?

This is not an isolate instance. Paritala Ravindra is, without doubt, the most feared person in Anantapur district. You have only to walk up to any business place in the district and mention his name and demand money, and you will get it 99 times out of 100. He is today a TDP legislator and was even a minister for a short while, but much of the fear his name evokes is because – unusually for a factionist – he has in his support an underground group that calls itself a naxalite party. Once upon a time he was close to the CPI(ML) (Peoples War), and as he drew away from that party and grew into a TDP leader, a section of that party too broke away and functions as his ‘underground’ wing, armed with automatic weapons, landmines and all. Chandra Babu Naidu benefits politically from having such fearsome leaders and legislators in his party, notwithstanding the anguished noises he periodically makes about organised crime and its deleterious effect on development.

The neighbouring district of Kurnool is an even worse instance of this hypocrisy. Both the members of parliament from the district (and both of them are from the TDP) and the majority of the MLAs are either themselves factionists, or they belong to the families of factionists. One of them, K E Prabhakar, who belongs to the faction that has been instrumental in wrecking peace and democracy in the western taluks of Kurnool in its tug of war with the Congress leader Vijayabhaskar Reddy, is minister for minor irrigation in the state cabinet. The member of parliament from Nandyal, Bhuma Nagi Reddy, runs a reign of unbelievable terror in his native taluk of Allagadda, where his wife is the MLA. (And his father-in-law SV Subba Reddy is MLA from Pathikonda in the same district, and was until recently a minister in the state cabinet.) The anxiety expressed by Chandra Babu about the political and social destruction wrought by these factionists does not extend to refusing tickets to these worthies, come election time. He says he is helpless because if he avoids them the Congress will patronise them, but the truth is that both the parties

have decided that patronising violent political gangs is the shortest road to electoral success. That way, you don't have to go around promising people a borewell here, a road there and a primary health centre elsewhere to get votes. In fact you need do nothing at all for the people to get votes. If you have given your party's ticket to a candidate belonging to or supported by a sufficiently well provisioned gang, the people who vote at their peril will know better than to vote for anyone else.

The TDP and the Congress therefore have no intention of cutting off their links with these ‘organised crime syndicates’, which has the consequence that the police are loath to touch these gangs. And then of course the leaders and the police can get together and blame the criminal justice system for being too lax, and speak wistfully of good old TADA which they miss so much. Is it possible to believe that they wish to use the new law against these gangs whom they protected assiduously from coming to harm under the old law? Or is the nostalgia for TADA indicative of a general wish for a law with ‘teeth’, as against the ‘toothless’ laws handed down to us by the British? And who would then be the loser?

Not without Official Patronage

Let us go on to other organised crime syndicates. Bootlegging (Andhra Pradesh is a dry state for country liquor), land grabbing, extortion, and drug-peddling are the other crimes frequently referred to by Chandra Babu Naidu in the service of his defence of a draconian legislation to curb organised crime. Without going into examples or instances – for instance that Chandra Babu Naidu's own brother Ramamurthy Naidu is widely accused of being an ace bootlegger of the district of Chittoor which has an extensive border with Tamil Nadu – it can be said that these are not crimes that can be committed without some degree of official patronage. And they are too profitable for the political class to keep away from them. Theft and murder you can commit on your own, but not bootlegging which requires facilities for manufacturing liquor, storing it, transporting it and vending it. The same is true of tending poppy fields, collecting the crop and transporting it, whether processed or unprocessed. Land that is grabbed cannot be rolled up, put under the arm and taken away to be hidden somewhere. It must be protected from not only other encroachers,

but also the law, and built up with necessary permissions and sanctions to yield the full benefit. No one innocent of political connections and patronage of the right kind can get into such crimes.

Withal, these activities are immensely profitable. May be there are better societies whose political elite will neither stoop to such activities nor allow the perpetrators of these offences into its ranks, but the India that we know is not one such society. Our political class is closely intertwined with these ‘organised crime syndicates’, and the Telugu Desam Party of Chandra Babu Naidu is no more an exception than the Congress or the BJP, whatever his umpteen admirers among the globalisation crowd may think.

The relevance of all this is not merely to point to the hypocrisy that will not cut off links with this species of crime but will use it as an excuse for a harsh law, but also to raise the question as to the reasons for the alleged inadequacy of the normal law to deal with such organised crime. Given the political and administrative will to use the law as effectively as its terms will permit against these syndicates, the law would succeed at least as much against them as it does against plebeian dacoit gangs, whose members are mostly from the most despised communities of Hindu society, and have no protection or patronage of any sort, or even sympathy within the courts of law. If the terms do not permit more ‘effective’ action, then that is the price that civilised social existence pays for being civilised, namely, that even the most hardened criminal suspect must get a fair trial, a salutary value that persons of Chandra Babu's ilk who measure civilisation exclusively by the opportunities it provides for enrichment, are wont to describe as the ‘laxity’ of the law.

Where that will is lacking, so that policemen in the full know of things will not even book an FIR, there is no point in blaming the law. The state legislature of Andhra Pradesh is frequently witness to seemingly high minded debates on the criminalisation of politics and the links between politics and the mafias of various types. The honourable members are cautious not to go beyond a point in naming names or quoting facts, for all of them live in glass houses. For those viewers of the debate on television channels who know the history of the high sounding participants in the debate, the whole thing is bound to look ridiculous beyond tolerance. Only two things are in fact needed

to put an end to the really harmful categories of 'crime syndicates'. The first is that the political class makes a vow to keep away from the gangs and never to patronise them in any way, but this is the one thing our political bosses will never do. Condemnation of the legal principles of natural justice and fairness in action as 'laxity' lies ill in such hypocritical mouths. The second is that the people at large should understand that by making recourse to the 'services' of these gangs, as people not infrequently do, for getting done summarily what would otherwise take a long time, or for settling their petty scores without consideration of justice and fairness, a weakness that is sometimes ineluctable in the given circumstances but as often as not wanton, they are abetting a cancerous growth that is not only harmful in itself, but helps justify harsh methods of governance. Of course, one is referring here only to such of the 'crime syndicates' that fall within the terms of the new law as are in truth harmful to society, and not all that may come within those very elastic terms, of which more later.

Counter-Insurgent Gangs

But it is time now to talk of a very recent organised crime syndicate that has come up in Andhra Pradesh. These are the counter-insurgent gangs of criminalised former naxalites in tow with hardened informers and policemen on the kill. Modelled on the 'renegade' gangs of Kashmir and 'Sulfa' of Assam, these gangs are centred around former naxalite militants now ready to join the state in hunting down their ex-comrades plus all who are suspected of aiding them. Not all of them are mercenaries, for many of them seem to have their own reasons, good or bad, for hating their former parties. Two of them, Kathula Sammaiah and Jadala Nagaraju, are former underground squad members of the Peoples War who massacred their fellow squad members and walked over to the police to be received with open arms and cash rewards. Others, such as Md Nayeemuddin, Bayyapu Sammi Reddy, Tirupathi Balanna, etc, joined hands with the police after leaving their parent party in less violent circumstances. They have the patronage of the police and the licence that comes therefrom to commit crimes of extortion, intimidation and murder. For themselves, they make a lot of money by these means. Kathula Sammaiah has already become one of the

most sought after fixers of real estate and finance deals in Hyderabad, for everybody knows that he is a killer with the backing of the police, and a former underground naxalite to boot. Bayyapu Sammi Reddy, to a lesser extent, has slipped into a similar role vis-a-vis civil contracts and contractors in Karimnagar district where he was a district committee member of the Peoples War hardly a year ago. The police patronise them with the expectation if not an explicit understanding that given their hatred for their former politics, they will use the licence given to them to attack the overground friends of the naxalite groups and other democratic activists, and thereby serve as the state's civilian surrogates. They have already struck terror by killing two activists of Andhra Pradesh Civil Liberties Committee (APCLC), T Purushotham at Hyderabad on November 23 last year and Md Azam Ali at Nalgonda on February 18 this year, and openly declaring a short list of targets that includes the well known poet Varavara Rao and another APCLC activist and teacher at Osmania University, G Lakshman. To complete the comparison with the Kashmir renegades, the state actively proposes to take them into the police force. Jadala Nagaraju has already been baptised into the force, and his sizeable gang lives inside the police headquarters at Karimnagar, equipped with mobile phones and automatic weapons.

The police department has vehemently denied its connection with these gangs, and puts out contingent explanations for instances to the contrary. But there is reason to believe that efforts in the direction of creating and patronising a 'civilian' vigilante group to be used against the naxalites have been on in this state for at least 15 years now. It was successful though not very effective for a short while in the first half of the 90s in Medak district under the aegis of a particularly unscrupulous police officer who was the superintendent of police there, though the attempt petered out due to various reasons, not least the physical elimination of the group's members by the Peoples War. It was also tried with even less success in Nizamabad for a short while in the early 90s by another superintendent of police, who fancied himself a crusader in khakhi setting the world right in utter disregard of the law. A former dacoit used in this cause was soon killed by the police themselves, apparently because he got too big for his boots.

That the effort could not possibly succeed as easily with the naxalite movement as with the Hizbul Mujahideen and the Ulfa is no doubt a consequence of the more deeply political character and the relatively greater integrity of the naxalite movement and its cadre. By the same token, the fact that the police are now successful reflects ill on the way things now are with that movement.

The ranks of these degenerate former militants are augmented by informers under threat from the naxalites. They function in close proximity with the police, a fact sought to be justified with the explanation that since they are threatened by the naxalites, the police have a duty to ensure their safety. The duty evidently goes much farther, to the point of aiding, abetting or watching silently when these threatened ex-militants and informers take revenge or indulge in attacks in advance upon the naxalites, or even other activists allegedly helping the naxalites. Since they have already committed two murders, they are an 'organised crime syndicate' in the language of the new law, but they are a syndicate sponsored and patronised by the very same government which has now made a law to control all such syndicates.

The advantage the police get from encouraging such private killers is that the killing can be passed off as the private revenge of groups inimical to the naxalites, which adopt the same policy of violence as the naxalites do. Indeed, the fiction is taken quite far by the counter-insurgent gang calling itself CPI-ML (Green Tigers-Kranthi Sena), so that the police can now say that it is one naxalite group killing sympathisers of another, and what can the hapless police do except to arrest both categories of outlaws and bring them before the law? The lie is given to this pretence by many facts, but the most unambiguous of them is that the person who regularly issues press statements from Warangal styling himself Haribhushan, secretary of the group, owning up to the murders committed by them and issuing fresh lists of targets, is in reality one Javed who was definitely a policeman till a couple of years ago. Whether he is still in the force or has been conveniently discharged with this assignment is not very clear at the moment, but it is not difficult to hazard a guess. It must be added that the indiscriminate killing of lower level police personnel by the Peoples War has created a situation wherein a sizeable number of the constable rank who have lost their

friends are willing to serve in the counter-insurgent gangs.

In summary, then, the state that has enacted a fresh law to control crime syndicates is not an innocent victim of such syndicates nor a beleaguered administration frustrated by mafia gangs beyond its control. It is itself a major patron and protector of a variety of crime syndicates, notwithstanding the air of injured honesty it puts on when asked to explain its latest legislative adventure.

The New Law

Let us then take a look at the terms of the new law, though there is nothing new about it, procedurally speaking, if one has seen TADA. That procedure, evidently, answers minimally to the demand for 'teeth' that is frequently made on behalf of the criminal justice system, and that is why it turns up again and again. Secret trials, custodial confessions rendered admissible in evidence, near-impossibility of getting bail, evidence of witnesses permitted to be recorded anonymously, presumption of guilt drawn in certain circumstances: this is a policeman's charter of unfairness. That all these provisions of TADA are reproduced verbatim in this new law shows two things: one, that these perversions of fair trial procedure are exactly what all the police-minded critics of our criminal justice system always wanted, terrorism or no terrorism, organised crime or no organised crime; and two, that Chandra Babu's administration is too impatient to wait for the rickety coalition in Delhi to pass the renovated TADA, approved by the Law Commission and awaiting formal enactment. Of course, Andhra Pradesh is not alone in this impatience. As Telugu Desam leaders repeatedly pointed out in the course of their answer to their Congress critics, it was Maharashtra which first gave itself such an Act, followed by Karnataka and AP is only copying their bills almost verbatim.

It may be thought that since terrorism and organised crime are not entirely identical, this law cannot serve the same purpose as TADA, but it must be remembered that while the stated objects may not be identical, the legal definition has an in-built elasticity that would enable either term to be stretched to practically cover the other. Indeed, those who have had the educative experience of conversation with policemen and other proponents of 'tough' legislation know that the term that frequently recurs in such conversations is 'organised

crime' and not merely terrorism. It is said again and again that 19th century notions of procedural justice are all right for old fashioned crime but the recent growth of organised crime needs tougher laws. The term organised crime as used in such discussions includes but goes beyond terrorism as commonly understood. The Law Commission's recent working paper on the new anti-terrorism bill is in fact an eloquent though not a particularly ably argued plea in support of this view.

The argument is not really very convincing. 'Tough' procedural law in the trial of criminal offences invariably means putting faith in the fairness of the police. That the police will not, for the sake of a conviction, extract false confessions on pain of permanent injury; that they will not manufacture a fingerprint to take advantage of the clause of presumption; that they will not slip in false evidence under the cloak of the anonymity permitted to witnesses; that they will not invent the ingredients of an FIR to bring a person within the purview of the 'tough' law that results in denial of bail till the whole trial is over, are all assumptions that are extremely unrealistic in the given culture of policing in India. Unless it is declared that we are no longer particular that the innocent shall not be punished, and that the accused is put to no more harassment than is essential for effective investigation of crime, and perhaps we even believe that the possibility of non-involved persons being convicted or subjected to needless harassment is a salutary deterrent for crime, the very malleable, manageable and corrupt police force of our country should itself be a deterrent to such a line of thought.

Police Highly Ideological

However, corruption and malleability is not all. The police is a highly ideological force, a fact that is hidden by its brute power. It is often the police who decide which crimes are truly serious, which crimes must never go undetected. It is they who decide which criminal deserves no indulgence whatsoever from society. The slant they put upon crime reporting by the very fact that it is their views of crime that are reported gives us our understanding of crime. This ideological role played by the police is mediated by society's dominant ideology or ideologies, since all institutions of the state are carriers thereof, as much as all 'mainstream' institutions, whether private or public. And so if the

power to decide when and how they will misuse their power is put in the hands of the police force, the despised, the powerless and the marginalised will be the direct sufferers.

Ideology is not always a direct or straightforward outgrowth of power, but this much can be said: that it is often congruent with power. Once we recognise that the discretion put in the hands of the police is the most worrisome thing about 'tough' criminal law, we will have to supplement that understanding with the fact that the police as a force is accessible to the powerful, the rich and the socially dominant. 'Tough' criminal law, therefore, becomes a force in the hands of the dominant groups of society.

This is apart from the fact that it is in principle objectionable that procedural norms of natural justice are given up for whatever reason. The growth of such principles marks civilisational advance as much as technological development. It is unpardonable to jettison them because one Chandra Babu thinks they come in the way of a 10 per cent rate of growth for the state's economy. I say this knowing full well that it is more common in the radical circles in which the human rights concern is uncomfortably inscribed to regard such norms not as a civilisational advance but as hegemonic instruments of legitimisation or elements integral to modernity's discourse of brute power.

And then there is the more commonly expressed concern of misuse of the law, i.e., its use against groups other than the bootleggers, the land-grabbers, the extortionists, the factionists and the mafia in whose name it is enacted. There is plenty of scope for misuse in this sense – though it may not at all have been not intended – of the provisions of the Act. The naxalites are obviously an 'organised crime syndicate', in terms of this Act. As far as they are concerned, TADA is back with full vigour. In addition to the penal provisions pertaining to imprisonment which are taken straight from TADA, there is the additional and totally new punishment of a huge fine. The Act says nothing about the maximum fine, but for each offence, there is a minimum fine that ranges from Rs 1 to 5 lakh. The naxalite underground may be able to pay such fine, since they do collect huge amounts by means that may well be politically unexceptionable but are offences under the law of extortion. But their overground sympathisers, writers, printers of their literature, etc, who are all

liable to be caught in the web of 'abetment' would find the fine of Rs 5 lakh provided for abetment much more of a deterrent than the imprisonment clause. And whatever police propaganda may say, not all of them have the kind of relations with the underground that would ensure that the latter pays their fine.

Of course, the provisions concerning the astronomical figures of fine are so badly drafted that they will probably have to be modified substantially once they come up for judicial scrutiny. I am saying this knowing full well that our judiciary is more than happy to sail with the executive in the matter of 'tough' criminal law – but that is as yet in the future.

Unsung Victims

But the naxalites, and other organised political activists habituated to even the slightest militancy – Nanjundaswamy's farmers addicted to breaking up the furniture of multinational agribusiness companies will fit straight in the definition of an organised crime syndicate in Karnataka – will at least have the sympathy of right-minded sections of the public in the face of this assault by means of an uncivilised statute, but there are some victims whose pains are likely to remain unsung. There is a whole underworld of organised breakers of the law in our country consisting of people of the most despised communities of Hindu society. The crimes of robbery, dacoity, and small-scale bootlegging are their exclusive preserve. These groups indubitably answer the definition of organised crime syndicates. They have very little sympathy in society, not only among the rich but even the poorer classes, not only because even those who have a little property are understandably concerned about losing it, but also because the castes these groups belong to are despised by Hindu society, even if not all of them are panchamas in the formal sense. Few tears are shed when their rights, substantive or procedural, are violated inside the police stations, courts and jails. Even existing procedural law with its civilised norms is rarely as civilised when it faces them as its terms would mandate. And even otherwise 'liberal' judges are never as liberal when trying them. A whole cloud of darkness is likely to descend upon these most unfortunate people. Such of the Muslim youth of the state, especially Hyderabad and the neighbouring Telangana districts, who appear to be drawing close

in increasing numbers to militant Islamic organisations, and who were among the main victims of TADA in the past, may also have to be bracketed with these people.

The question is: how many people are really concerned about all this? There is a perceptible mood of impatience not only among the rulers but also much of public opinion with all obstacles to the one-dimensional notion of development mandated by globalisation. Scruples that raise questions or doubts about the consequences of this imperative are seen as a drag on development. Though this impatience speaks the language of reason and rationality, much of it is driven by the hunger for power: India is a 'potential giant', it can be an 'economic superpower', are expressions commonly heard these days. Small wonder that this view sits comfortably with the Sangh parivar, the one political group that has always defined the goals of the nation unambiguously in terms of power. The impatience of this idiom of power with procedural liberality in criminal law is of a piece with its impatience with fiscal liberality in the matter of social welfare. The two fit together and add up to tough-talking modernisers like Chandra Babu who cut down unabashedly on welfare spending and enact draconian laws. That there is also an instrumental or functional connection between the two is perhaps less important than this from the view point of social consent.

Threat to Press Freedom

A final word about the success with which Chandra Babu has managed to get passed the provisions in the bill that throttle press freedom severely. In the past, whenever a bill such as this containing

provisions inimical to the freedom of the press was sought to be enacted, the press has risen as one to get those provisions dropped. This time round, the press in Andhra Pradesh evinced little interest in doing so. Chandra Babu is reputed to be the most able 'manager' of press-government relations. If that is not the reason behind this unusual success, then it must be put down to either plain apathy or a collusive self-abnegation on the part of the press.

Consider the provisions: the Act says plainly that publication of handouts given by organised crime syndicates, or of news communicated by them is deemed to be included in the meaning of abetment of their offences. And the punishment is a minimum of five years in prison and a minimum fine of Rs 5 lakh. The police alone will hereafter have the right in law to speak about the crime syndicates, and what they say will be the only truth. Even if the syndicates were all truly criminal in the moral sense of that term, this would be objectionable, for a society needs to understand crime as much as anything else, and as realistically as anything else. Reserving to any one, in particular the brutal arm of the state, the exclusive right to talk about it would have disastrous consequences. But considering that a sizeable part of the organised crime targeted by the Act is going to be something different, to a slight or large degree, than crime in the moral sense, the appropriation by the police of the exclusive right to speak to the public on it is most objectionable. Yet that is the law now, and the press has strangely let it pass. Perhaps they are confident that the bigger papers will be exempted from this prohibition by the common consent of their proprietors and the chief minister, but that can be of slight consolation to the public. **EPW**