

4-1-1989

The Perversion of Democracy in India: The Indian Government's Handling of Dissent in the Punjab

Michael L. Jackson

University at Buffalo School of Law (Student)

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/itpi>



Part of the [Comparative and Foreign Law Commons](#)

Recommended Citation

Michael L. Jackson, *The Perversion of Democracy in India: The Indian Government's Handling of Dissent in the Punjab*, 9 Buff. Envtl. L.J. 12 (1989).

Available at: <https://digitalcommons.law.buffalo.edu/itpi/vol9/iss1/4>

This Article is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in In the Public Interest by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

The Perversion of Democracy in India: The Indian Government's Handling of Dissent in the Punjab

Cover Page Footnote

Illustration by Arnie Bagchi

THE PERVERSION OF DEMOCRACY IN INDIA: THE INDIAN GOVERNMENT'S HANDLING OF DISSENT IN THE PUNJAB

Michael L. Jackson

INTRODUCTION¹

Tension between Sikhs and the Hindus in the Punjab is not new, and the brutal oppression of Sikhs by the Indian Government has been ordinary for years. So far as the Punjab is concerned, India is a nation that purports to be a democracy but behaves like a dictatorship.² The Indian government has utilized the legal system to control and repress Sikh dissent. The anti-terrorist laws passed there in the last eight years violate basic international human rights, all of which India claims to uphold.

This paper deals with the perversion of democracy in India in the limited context of the government's handling of Sikh dissent in the Punjab. The focus will be on legal means of repression, rather than an attempt to deal with the extra-legal means of repression, which are extensive.³

A very real and complicating factor in any analysis of India is the fact that it is a nation of nations.⁴ India is enormous, and it incorporates many cultures and a wealth of history.⁵ More than 15 million Sikhs live in India, and slightly over 12 million of them live in the Punjab, which is located in the northwest of India, bordering Pakistan. At the time of India's independence in 1947, the Punjab was divided in two. West Punjab became part of Pakistan and East Punjab became part of India. "After independence, the boundaries of several states were redrawn to create linguistic states on the basis of recommendations made by the States Reorganization Commission. However, the commission failed to recommend the application of the linguistic formula to Punjab."⁶ As a result, the Sikhs pushed for a Punjabi speaking state. After a prolonged and largely non-violent protest, in 1966, Punjab was divided into the present state of Punjab, Haryana, and Himachal Pradesh. Punjab and Haryana shared the City of Chandigarh as a capital. In the following years there were Sikh demonstrations for Chandigarh to be given over as a capital to Punjab.

Recent political conflict in the Punjab has centered around demands for greater autonomy, greater respect and recognition of the Sikh faith,⁷ and in its most extreme form, demands for a separate Sikh state, called Khalistan. The Sikh demands are articulated in the Anandpur Sahib resolution, a document put forth by the Akali Dal (one of the

Sikh political parties). The resolution, first drawn up in 1973, has been revised throughout the years. As an opposition party in 1981, the Akali Dal continued to push for these demands. The demands included:

1. handing Chandigarh over to Punjab;
2. revision of the distribution of Ravi-Beas river waters;⁸
3. installation of a broadcasting station at the Golden Temple, Amristar, for the relay of spiritual hymns and declaration of Amristar as a holy city;
4. strengthening the state powers in the federal Constitution by restricting the Central government's role to defense, foreign relations, currency and general communication.⁹

Another demand, though not in the Anandpur Sahib, was to amend Article 25 of the Indian Constitution on freedom of religion, so as to recognize the separate identity of the Sikhs.¹⁰ As agitations and demonstrations for the implementation of the Anandpur Sahib resolution increased, so did the violence which led to the imposition of direct rule¹¹ by the Central Government in October 1983. The culmination of the Indian aggression against the Sikhs came with the attack on the Golden Temple Complex, the Sikh's most sacred religious area, which began on 1 June 1984.

OPERATION BLUESTAR: THE ATTACK ON THE GOLDEN TEMPLE

The Akali Dal had been in negotiations with Indira Gandhi regarding the Anandpur Sahib resolution in May 1984.¹² Dharam, the author of *The Only Option for the Sikhs*, referred to these negotiations as farcical and empty, pointing out that the same time the negotiations were going on, Gandhi was sending all available Indian troops to the area of the Golden Temple Complex.¹³ Sant Jarnail Singh Bhindranwale, a Sikh leader, and some of his followers were there, as well as several thousand others there to celebrate a holy day. On 26 May 1984, Sikh representatives in meetings at the Golden Temple decided to launch a non-cooperation movement by withholding the out-flow of food grains from Punjab beginning 3 June 1984.¹⁴ On 27 May, Indira Gandhi gave the go-ahead for "Operation Blue Star," the attack on the Golden Temple.

Michael Jackson is a J.D. Candidate, May 1989, State University of New York at Buffalo School of Law.

Around the first of June, the press was excluded from all of Punjab, and the massacre began.¹⁵ While the Government "White Paper," the official report on the Golden Temple attack, said that the Sikhs started firing and the invasion didn't take place until 3 June, eyewitnesses claim that the government forces began heavy shelling on 1 June. On 19 July, the government reported that 493 civilians or terrorists had been killed in the operation; on 27 October, official sources raised the estimate to 1,000 dead.¹⁶ The authors of *Oppression in Punjab* put the number at around 8,000, with 12,000 more Sikhs being killed in related encounters shortly thereafter.¹⁷ Later in 1984, in retaliation for the attack on the Golden Temple, Indira Gandhi was assassinated by her trusted Sikh bodyguards.¹⁸

EARLY LEGISLATIVE RESPONSE TO SIKH DISSENT

The major thrust of the Indian government's attempt to control the Sikhs has been through the discrete process of the law. The government has passed and enforced a sequence of anti-terrorist laws designed to restrict movement, speech, and publication.¹⁹

The *National Security Act* [hereinafter *NSA*], passed in 1980, permitted preventive detention for brief periods. As amended in 1984²⁰ §3 of the *NSA* "permits detention without trial or charge for a maximum of two years in order to prevent broadly defined activities which are assumed to be 'prejudicial to the defense or security of India,' or the Punjab."²¹ A case arising under the 1980 version of the *NSA* would have to go before a review board after seven weeks; the amended version extends that to six months. A second amendment to the *NSA*²² "permits the continued detention of persons held under its provisions on fresh detention orders once the two year maximum period has expired;"²³ the government can extend detention much as we renew a library book. The new provisions also "inhibit the release of detainees by the courts by stipulating that, in order to release a detainee held under the *NSA*, courts must find all detention grounds invalid, rather than any one of the grounds, as previously."²⁴

Amnesty International has expressed concern that these statutes could easily be used to detain people who have done no more than peacefully express themselves. They also pointed out that India's current preventive detention legislation bypasses traditional safeguards which exist to prevent arbitrary and illegal detention.²⁵ It is clear that these laws provide a vehicle for the government to silence their adversaries and chill opposition.

The next substantial, freedom-limiting act passed was the *Terrorist Affected Areas (Special Courts) Act* [hereinafter *TAA*] of August 1984. This was enacted in spite of the government's claim that "Operation Blue Star" had "cured" terrorism. The *TAA* reversed the presumption of guilt, so that a defendant was presumed guilty until proven innocent. Trials were to be held in camera, and

witnesses' identities could be kept secret. At its inception there were 11 Special Courts in the Punjab. This act permitted Special Courts to be set up anywhere deemed to be "affected." The courts were for trying people, not only for offenses which involve the use of violence, but also for activities such as speech calling for change. Many ordinary offenses were put into the *TAA* to bring more conduct under control of the anti-terrorist laws.

Because these procedures were in violation of Article 14 of the *International Covenant on Civil and Political Rights*²⁶ which lays down minimum guarantees for a fair trial, Amnesty International was critical.²⁷ The *TAA*'s mandate that trials be held in camera was not discretionary. The putative justification of witness protection made little sense, but even if valid it was symptomatic of the attitude that only a minimal and highly prejudicial procedural process is owed by the government to people accused of crimes. Aside from "seriously inhibit[ing] defense lawyers' cross-examining witnesses to question the authenticity of their statements," trials held in camera "necessarily did not inspire the public confidence and lacked the legal safeguards implicit in an open trial where justice is not only done but can also be seen to be done."²⁸

Section 20 of the *TAA* modified §111 of the 1972 Indian Evidence Act by transferring to the accused the burden of proving his innocence. This applied to people arrested under the *TAA* for "waging war on the State" or "aiding and abetting the waging of war," and to individuals who were for any reason tried in Special Courts. The new Evidence Code section added by the *TAA*, 111A,²⁹ provided that a person found in an area deemed to be "disturbed" by the government be "presumed guilty of the offense allegedly committed merely if the prosecution could show that the accused was in a particular area at a particular time when firearms or explosives were being used against members of the armed forces or security forces. . ."³⁰

Thus, under this law, someone who happened to be near an incident could be arrested, detained indefinitely, tried in camera, and found guilty of having committed such acts without the prosecution ever having to set forth the elements of the alleged crime.³¹ This was worse than guilt by association; it was guilt by coincidence.³²

The aforementioned provision became a cause for concern because it "could be used to imprison journalists covering a news event or persons known for their views opposing the government in power or even innocent bystanders who happen to be present when a violent incident occurs . . ."³³ Indeed, the definition of "terrorist" as all those who disrupt service or means of communications with a view to causing fear to any section of the public or overawing the government established by law is overbroad. Any street activity which is a common mode of expression can disrupt various services, and hence can be called "terrorist."³⁴

The *TAA* also crucially restricted the right to appeal. Under ordinary Indian law, an appeal can be made to the higher court within 90 days of conviction, after which time

the defendant can appeal to the Supreme Court.³⁵ Under Article 14 of the TAA, a convicted defendant could appeal only to the Supreme Court, and that appeal had to be made within 30 days. This greatly limited the availability of appeal as a remedy for those convicted of "terrorist" acts, many of which carry a death penalty. It is indeed a travesty of justice when any person, innocent or guilty, is put to death by the state after having been legislatively precluded from contesting the conviction. It was, however, both a facile way to deal with the opposition and consonant with the general tone of the rest of the TAA.

Amnesty International reported that as of March 1985, 1785 cases had been tried in Punjab Special Courts, with 3264 still pending.³⁶ The legislation was drafted so that even if repealed or expired, charges instituted thereunder would remain and be tried in conformance with the TAA. Indeed, this legal structure began to resemble a "second class system of justice for political offenders."³⁷

1987 LEGISLATION

The *Special Courts Act* expired in 1987, and with it expired the Special Courts. But the entity of the Special Courts as well as most of the draconian elements of that Act were maintained in a new group of restrictive acts. The domain of such courts and the extent of police power were expanded.

The *Terrorist and Disruptive Activities (Prevention) Act* [hereinafter TDA] of 1987³⁸ extends to all of India. It is extremely broad and highly offensive to international norms of justice. It replaces the Special Courts with "Designated Courts." The TDA is written so that nearly any behavior which is contrary to government's policies is criminal.

The TDA permits a life prison term and confiscation of all property of anyone accused and convicted of abetting "terrorist" or "disruptionist activity." The definition for "abet" includes a wide range of activity, and it is clear from the statute that one needn't be even remotely complicit in a "terrorist" or "disruptionist" act to have "abetted" in its commission.³⁹ The meaning given "disruptive activity" in the TDA is particularly broad and frightening, as it severely restricts free speech.⁴⁰

Therefore, under the Act, merely asking a question in public about governmental territorial policy can be defined as illegal. Furthermore, one needn't only "abet" in order to be penalized for disruptionist activity. Section 4(1) reads:

Whoever commits or conspires or attempts to commit or abets, advocates, advises, 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 five years but which may extend to imprisonment for life and shall also be liable to fine.

As if speech were not sufficiently criminalized by the preceding sections, Section 4(3) reads:

... any action taken, whether by act or by speech or through any other media or in any other manner whatsoever, which-

- (a) advocates, advises, suggest 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 person bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servant shall be deemed to be a disruptive activity . . . [emphasis added].

The implications of §4(3) are far reaching: were a Sikh even to suggest that with a bloody coup orchestrated by God as a result of the continuous repression of his people, he could be convicted for having committed a disruptive activity. Moreover, a journalist could easily be punished under this definition as well for reporting the previously mentioned hypothetical prophesy, or even for merely reporting the existence of political dissent. Essentially, all criticism or collusion with anyone who has criticized the government is punishable under these sections. If one hides or attempts to hide another who has uttered words against the state or handed out leaflets proselytizing his views, he too can be imprisoned for life, under §4(4).

The definition of "terrorist act" is also quite broad; the primary difference between a "terrorist act" and a "disruptionist act" is that the former carries a death penalty. This section is drawn so that many actions which would normally fall under the regular penal code can be construed as "terrorist" and tried under this statute with its various abrogations of procedure. Section 3(1) reads:

Whoever with intent to overawe the Government as by law established or to strike terror in 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 . . . or other explosive devices . . . or firearms . . . in such manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to . . . **property or disruption of any supplies or services essential to the life of the community**, or detains any person and threatens . . . in order to compel the Government or **any other person** do do or abstain from doing any act, commits a terrorist act. [emphasis added].

If read conservatively, this section would cover acts traditionally called "terrorist". But it is also easy to conceive of ways to use this section to convict as "terrorists" people who have, using a weapon, committed any crime which involves forcing any person from doing or abstaining from any act. Any remotely creative prosecutor could satisfy the "intent to overawe" requirement of the definition in situations lacking any aspect of physical violence.

Prosecution under §3 is facilitated by those provisions stipulated in §21 of the *TDA*. Section 21 provides, for example, that if defendant's fingerprints were found at the site, or a confession is made by a co-accused that the accused had committed the offense, "the Designated Court shall presume, unless the contrary is proved, that the accused had committed such offense."⁴¹ Thus, in order to reverse the presumption of innocence against someone accused of terrorism in India, a mere accusation by one already accused will suffice. This functions as a supplement to the aforementioned §111A of the *Evidence Code*. Plainly, very little is needed to convict, condemn to death or to life imprisonment someone accused of a crime under the *TDA*.

There is also a provision for forfeiture of property.⁴² Section 8 states that where a person is convicted of any offence punishable under the *TDA*, in addition to any imprisonment or fine imposed, the Designated Court may "declare that any property, movable or immovable or both, belonging to the accused and specified in the order, shall stand forfeited to the Government free of all encumbrances."⁴³ Under §8(2) and (3), the government has the right to attach all properties belonging to anyone accused of any crime under the *TDA*, with such property being forfeited to the government upon conviction, or even if a warrant still is outstanding for the accused. If, within six months from the date of attachment, the defendant appears or is apprehended, and proves to the satisfaction of the court that he was unaware of the notice of proclamation against him, and was not hiding therefrom, he can have his property returned or the proceeds from its sale in the event it was sold. The costs incurred in consequence of the attachment are subtracted from value of the property before it is returned to him.

The *TDA* also provides for the imposition of Designated Courts, much like the Special Courts, in areas deemed "disturbed."⁴⁴ Those courts may order summary disposition for any crime punishable with imprisonment for a term not exceeding three years. A designated court may, for any offense:

if it thinks fit, and for reasons to be recorded by it, proceed with the trial in the absence of the accused **or his pleader** and record the evidence of any witness, subject to the right of the accused to recall the witness for cross examination. [§14(5), emphasis added].

The right to counsel is severely limited by this section, if not destroyed. The fact that a witness can be recalled for cross examination is of little consolation as §16, in addition to mandating trial in camera, provides that upon motion from the prosecutor, witness, or the court's own motion, the court may "take such measures as it deems fit for keeping the identity and address of any witness secret." (§16(2)). In the United States, a fair amount of protection is provided to informants, but there are also safeguards to insure that informants are not used to replace witnesses. But §16 provides that in court witnesses may be kept secret, so the distinction between informer and witness is effectively dissolved. The right of confrontation, which is fundamental to democracy, is simply abrogated.

The *TDA* further provides that a Designated Court can rule that "it is in the public interest to order that all or any of the proceedings pending before such a court shall not be published in any manner." (§16(3)(d)). This device makes critical examination of court actions impossible. What is not published cannot be quoted; what is not quoted cannot be argued. In the United States only the Federal Internal Security Court (FISC), which renders decisions on the permissibility of domestic surveillance, is permitted to render unpublished decisions.⁴⁵ But it is arguable whether FISC is a court at all, since its structure permits no adversary proceedings.⁴⁶ Conversely, the Indian courts are trying many ordinary crimes, and have no justification, ostensible or actual, for secrecy.

India may have based its constitution in large part on the American constitution,⁴⁷ but these procedures couldn't possibly be extrapolated from the American concept of due process.⁴⁸ In law, as in science, it is possible to prove positives, but it is nearly impossible to prove negatives. How, absent an unaltered tape recording, can you prove you didn't say something in a conversation? How, absent absolute evidence proving you were somewhere else, can you prove you weren't in a certain place at a certain time? How, under most circumstances, can you prove you didn't do something? These questions highlight why the burden in all non-totalitarian societies is on the prosecutor: the prosecutor claims a citizen acted in a certain way and it is incumbent upon the prosecutor to convince the court and jury (if there is one) that the claim is fact. Without such proof, a citizen is innocent.⁴⁹ The Indian anti-terrorist laws turn that reasoned and fair procedure topsy-turvy. The state, with all its power and all its resources, need only accuse; the accused, whose limited resources are limited further because of the confinement following arrest and the pre-conviction confiscation of his personal property, must prove a negative.

VICTIMS OF LAW

It isn't difficult to find similarities between India's handling of dissent and the procedures adopted in recent years by Israel and South Africa. In all three countries, when the

government seriously began to debilitate the opposition, it closed out the press and it created laws so that its most repressive actions were, in the context of those laws, fully legal. This is an effective means of dealing with opposition and minimizing negative reaction abroad.⁵⁰ Israel, which the United States refers to as the only democracy in the Middle East, now tightly regulates when and where news coverage will be allowed, and it censors what film and video images are allowed to leave the country for the world to see. Palestinians in the occupied territories who speak out against Israeli policy are deported after brief hearings, and the property of those accused of anti-government activity and the family of persons so accused can be and often is summarily destroyed;⁵¹ there are similar provisions in South Africa.⁵² In both India and South Africa, to speak against the nation is deemed contrary to public order. The Indian government's statutes make it possible for one uttering views against the established authority, or even privately espousing such views, to be convicted as a disruptionist and sent to jail for life.

Such brutal repression of free speech, free press, and free assembly, and suspension of all the usual rights of an accused, is hardly characteristic of a democracy; rather it is characteristic of dictatorships and totalitarian regimes.⁵³ Had exactly the same legislation been reported in Cuba, Nicaragua, or the Soviet Union, it is unlikely that the United States government would have maintained the official silence that has constituted its entire official response to the Indian anti-terrorist acts.⁵⁴ The stories of torture and systemic abuse of human rights perpetrated by the Indian government on Sikhs could, *mutatis mutandis*, be about Palestinians or Blacks in stories emanating from Israel and South Africa. The Sikh allegations of the Indians killing their own people to arouse anti-Sikh sentiment is reminiscent of the recent Israeli capitalization on the death of Tirza Porat, a young Israeli woman who was with a group who went to a Palestinian settlement specifically to provoke Palestinians (her partner told an ABC News that, "We were there to show them who owns the land"), and was killed by her Israeli guard.⁵⁵ The guard, who was under official edict to stay out of such areas, also killed a Palestinian child. Nonetheless, the Israelis blew up the houses of all Palestinians accused of being involved in the incident (including some who were shown to have saved the lives of several of the Israelis), destroyed the village's olive groves, and utilized the woman's death to rally support for the continued expulsion of the Palestinians.⁵⁶ After a while, the question of who is provoking whom in India becomes a tautological exercise. In the end, it doesn't matter. What matters is that a group of people numbering more than ten million are being brutally treated by the government of their country. The very legal system upon which India prides itself functions as the primary weapon in this battle.

CONCLUSION

A recent *New York Times* article describes the present situation in the Punjab as more explosive than ever. While in previous years there have been, say the police, about 500 "extremists" floating around, according to the police now there are upwards of 2,000. The senior intelligence officer interviewed said, "We kept on arresting, and the number kept on increasing."⁵⁷ In March 1988, according to Indian officials, 225 people were killed by "extremists."⁵⁸

Such "extremism" never exists in a vacuum. Quite often the government actions have been at least as "extreme" as the incidents that may have prompted them. Those demanding the separate state of Khalistan represent the fringe of Punjab activists. Were India willing to treat all of its citizens equally and to observe basic international norms of human rights,⁵⁹ much of the tension would evaporate immediately.

In early April 1988 it was reported that eighty to one hundred Sikhs wanted by the Indian Government were hiding in the Golden Temple Complex, but in contrast to June 1984 the police used restraint. An unidentified government official is quoted as saying that rather than send in the military again, they "hope [the new Sikh leaders] can bring the militants around to lower the threshold of violence . . . If it works, there can be talks to solve this problem within the framework of the Indian Constitution."⁶⁰

But things are not so simple. There is growing pressure on Rajiv Gandhi to declare a state of emergency in the Punjab to deal with the increasing agitation and killings of Hindu civilians. In March, 1988, the Indian Parliament approved a constitutional amendment that would allow the Government to declare an emergency in Punjab to battle the growing terrorism by Sikh separatists.⁶¹ If authority for suspension of ordinary rights is actually written into the constitution, an argument of unconstitutionality is foreclosed; but then India's image as the world's largest democracy becomes specious.

In the past, some moderate Sikhs who made conciliatory gestures to the Hindu government have been killed by other Sikhs, who insist on maintaining a more militant attitude toward the Government. Thus there is dissent amongst the Sikhs as well. It is abundantly clear that for any progress to be made, the Indian Government must begin to observe human rights in dealing with opposition and political dissent. Criminals should be tried under constitutional statutes. But, if statutes like the TDA, TAA, and NSA, can be enacted anytime there is palpable dissent, then the constitution is fatally flawed. The Indian Government must make the first move. The Indian government must, if peace within a democratic structure is what it desires, listen and go to much greater lengths to accede to the demands of the Sikhs. The Sikhs must receive a

measure of autonomy and respect, as least as much as the Hindus accord members of their own religion. The violence will continue until a feasible resolution is achieved. With the death of each Sikh or Hindu, such an accord becomes more and more remote.⁶³ The hatred runs deep, and will not subside with overbroad and oppressive law enforcement, which only exacerbates such hatred. Short-term conciliatory gestures will not solve this problem. Again, like Israel and South Africa, only a substantial political solution seen as legitimate by both sides will have any significant effect.

ENDNOTES

1 The research for this paper began during the summer of 1987 while I clerked for William M. Kunstler and Ronald L. Kuby. While working for Kunstler and Kuby, I had the opportunity to work on the cases of Ranjit Gill and Sukhminder Singh, two Sikhs who are being held by the United States Government for extradition to India.

2 Traditionally regarded as heroic fighters, the Sikhs are presently labelled as "terrorist" in North American media, and consequently critical analysis of Sikh dissent in major media areas is lacking.

3 The Amnesty International reports as well as other human rights oriented literature abound with reports of detention, torture, execution, and general maltreatment of Sikhs in India.

4 There are 16 officially recognized languages, 25 separate states, and over 800 million people in India.

5 Further complicating the matter is the fact that India has attempted to fit into the definition of a modern democratic nation, when it is possible that many of the terms forced into the equation are inapplicable. Despite the protections built into the Indian Constitution, for example, the caste system survives and is an institutionalized discriminatory system, perpetuated by and through the agency of the State.

6 International Commission of Jurists, *India: Situation in State of Punjab*, 36 *The Review* 7 (June 1986).

7 "The Sikh religion was founded nearly 500 years ago. Its basic tenets are faith in one God and acceptance of the teachings of the ten Gurus and of the Adi Granth ("Original Book") which contains the Hymns of the first five Sikh Gurus. In addition, a Sikh must believe in the necessity and importance of the *arnit*, or initiation, and must not adhere to any other religion. Though distinct from the Hindu religion, the Sikhs have long lived in harmony to the extent that intermarriages are common . . ." *Id.* at 7.

8 While fields are drying up in the Punjab, the Central Government is exporting their water to other states. **S.S. Dharam, The Only Option for the Sikhs**, Jaipur (1984). See also, *The Plunder of the Punjab*, World Sikh News., July 29, 1988 at 4, col. 2.

9 International Commission of Jurists, *supra* note 6, at 8.

10 *Id.*

11 When direct rule is imposed, the state government is dismissed by the Indian Parliament (Central Government) and the state is ruled by a representative of the Central Government. In the United States it would be the equivalent Mario Cuomo being dismissed by Congress, and New York being ruled by the Secretary of the Interior or some other federal official.

12 **Dharam**, *supra* note 8, at 25.

13 *Id.*

14 International Commission of Jurists, *supra* note 6, at 9.

15 Citizens for Democracy, **Oppression in Punjab** (U.S. Ed. 1986).

16 "India," *Amnesty International Report*, 1985, 1985.

17 For stories about atrocities perpetrated on the Sikhs during the assault on the Golden Temple see *supra* note 15, **Oppression in Punjab**, and **Dharam**, *supra* note 8. The reports describe such actions as tying the hands of Sikhs with their turbans; forcing them to lie down and shooting them; shooting children; and rape.

18 International Commission of Jurists, *supra* note 6, at 9.

19 Upon publication of **Oppression in Punjab** in India, publisher was arrested and all available copies were confiscated by government authorities. This is only mildly demonstrative of the government's manipulation of the press to silence dissent. **Oppression in Punjab**, *supra* note 15 at *Forward*.

20 National Security (Amendment) Act 1984, no.24 of 1984.

21 Amnesty International, India: *Sikh Detainees From the Punjab Held Since June 1984, Background to Their Arrest and Detention*, Internal Memorandum, (1 December 1986) (AI index: ASA 20/11/86), at 8. (Hereinafter "AI memo").

22 National Security Second Amendment Act No. 60 of 1984.

23 AI memo, *supra* note 21, at 8.

24 *Id.*

25 *Id.*

26 International Covenant on Civil and Political Rights, entered into force March 23, 1976, G.A. Res. 2200A, 21 U.N. GAOR, *Supp.* (No.16) 49, 52 U.N.Doc. A/6316 (1967).

27 AI memo, *supra* note 21, at 12.

28 AI memo, *supra* note 21, at 9.7

29 Section 111A reads:

Where a person accused of having committed any offence specified in subsection (2) [waging war, attempting to wage war or conspiracy to commit waging war], in

(a) any area declared to be a disturbed area under any enactment, for the time being in force, making provision of the suppression of disorder and restoration and maintenance of public order; or

(b) any area in which there has been, over a period of more than one month, extensive disturbance of the public peace, and it is shown that such person had been at a place in such area at a time when firearms or 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 acting in the discharge of their duties, **it shall be presumed, unless the contrary is shown, that such person had committed such offence.** [emphasis added].

AI memo, *supra* note 21, at 10.

30 *Id.*

31 *Id.*

32 Article 14(2) of the *International Covenant on Civil and Political Rights* states: "Every one charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." This fundamental principle of law is offended by such statutes.

33 AI memo, *supra* note 21, at 10.

34 **Dharam**, *supra* note 8, at 78.

35 AI memo, *supra* note 21, at 11.

36 Amnesty International, *Amnesty International Report 1986: India*, 219 at 222.

37 AI memo, *supra* note 21, at 1.

38 Gazette of India Extraordinary, *The Terrorist and Disruptive Activities (Prevention) Act* (1987), No.28 of 1987.

39 Paragraph 2 defines "abet" as:

(i) the communication or association with any person or class of persons who is engaged in assisting in **any manner** terrorists or disruptionists;

(ii) **the passing on, or publication of, without any lawful authority, any information** likely to assist the terrorists or disruptionists, and the passing on, or publication of, or distribution of any document or matter obtained from terrorists or disruptionists;

(iii) the rendering of any assistance, whether financial or otherwise, to terrorists or disruptionists. [emphasis added]

40 Paragraph 2 of the TDA states that:

(2) "disruptive activity" means any action taken, whether by act or by speech or through any other media or in any other 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 supports 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.** [emphasis added].

41 TDA, *supra* note 38 at §21.

42 TDA, *supra* note 38 at §8.

43 *Id.* §8(1)

44 TDA, *supra* note 38 at §9.

45 With FISC, however, the statutory presumption is that everything will be unpublished. The court has the right to order something published in certain circumstances. To this date, FISC has elected to publish one opinion. Gillian Brown *The Foreign Intelligence Surveillance Court*, 1988 (unpublished manuscript).

46 *Id.*

47 *American Influence on the Indian Constitution: Focus on Equal Protection of the Laws*, 17 *Colu. Hum. Rts. L. Rev.* 93 (1986) ("... no other nation has had a polity more receptive to the fundamental rights enshrined in the American Constitution, nor a judiciary more conscientious in its attempt to guard those rights, than India. Of all the fundamental rights incorporated into the Indian Constitution, the right to equal protection of the laws, has been, in many respects, the guarantee of the greatest importance to the people of the world's largest democracy. *Id.*

48 Except perhaps in the treatment of people accused of drug crimes, who can be subject to forfeitures under the "zero tolerance" policy.

49 The United States system is "accusatorial." "An accusatorial procedure requires the government to bear the burden of establishing the guilt of the accused, rather than the accused to bear the burden of establishing his innocence. As the Supreme Court has noted in *Murphy v. Waterfront Commission*, 378 U.S. 52, 84 S.Ct. 1594, 12 L.Ed.2d 678 (1964), an accusatorial system requires the 'government in its contest with the individual to shoulder the entire load.'", W. R. LaFave, J. H. Israel, *Criminal Procedure: Hornbook Series*, at 25 (1985).

50 Indeed, it is a device Hitler used extensively to minimize the external impact of the first major phase of Nazi repression. Until World War II actually started, the most repressive measures taken against citizens by the Nazis were dutifully enacted into law by the compliant Reichstag.

51 E. Playfair, *Demolition and Sealing of Houses as a Punitive Measure in the Israeli Occupied West Bank* (Law and the Service of Man, Occasional Paper #5, 1987, at 12).

52 S. M. Mokone, *Anatomy of Apartheid*, 98-147 (1980).

53 During the Iran/Contra hearings in July 1987, it was reported but never confirmed for security reasons, that Colonel North and the Federal Emergency Management Agency (CFEMA), had a plan to impose martial law in the event the United States had a "necessary but unpopular" invasion in Latin America. Reagan Advisors ran 'Secret' Government, *Miami Herald*, July 5, 1987. Were we to invade, this could be the method of dealing with mass disapproval. Even in the United States, those in power often accept this as necessary in a time of unpopular war. The model for suppressing dissent easily moves towards military action. Could dissent in the United States over domestic policies elicit a "clear and present danger" justification for a similar broadening of police powers?

54 When United States government officials refer to one of the United States' allies in such situations, language is carefully chosen to minimize the significance of the situation. Edward S. Herman and Noam Chomsky refer to this in the context of "client" and "non-client" states of the

United States. The victims of government atrocity in non-client states are "worthy" of extensive news reporting and outrage in the United States. The victims in client states, however, are "unworthy" and receive entirely different coverage in the United States media. **Edward S. Herman and Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media***, Pantheon, N.Y. (1988). A recent example was when President Reagan, in refusing to compare South Africa and Nicaragua, attributed the South African problem to "tribal separations." *Regan Hints at Four-Power Talks on South Africa*, Reuters Ltd. (August 13, 1986) Wednesday, P.M. cycle.

55 *Army Says Israeli Girl Was Killed by Her Guard*, *New York Times*, 9 April 1988, at 1.

56 *Id.*

57 *India Sees Hope in New Sikh Leaders*, *New York Times*, April 10, 1988 at 3, col 1.

58 *Id.*

59 See, generally, *The Universal Declaration of Human Rights*, adopted Dec. 10, 1948, G.A. Res. 217A, U.N.Doc. A/810 (1948).

60 *India Sees Hope in New Sikh Leaders supra* note 57.

61 *Gandhi Urged to Order Emergency In Punjab After 89 Die in a Week*, *New York Times*, April 2, 1988 at 1, col 6.

62 *International Commission of Jurists, supra* note 6, at 11.

63 The Indian People's Human Rights Commission, was established 10 January 1987. The objectives of this Commission are: 1) To establish the Indian People's Human Rights Tribunal, comprised of retired Supreme Court and High Court judges of India. The purpose of the tribunal will be to investigate reports of gross human rights violations committed by the state; (2) To receive complaints about violations, to investigate them or cause them to be investigated, with a view to preparing a preliminary report to be submitted to the Tribunal; (3) To publicize the work and implementation of the International Covenants and declarations against state violence, including extrajudicial killings, torture, illegal detention, and the recognition of political prisoner status for political prisoners. (Cite).

On January 10, 1987 the Tribunal sent several Judges to investigate allegations of police firing into a crowd at Arwal on April 19, 1986, killing 21 people. The crowd was a demonstration of landless and poor peasants protesting the expropriation of a small parcel of land on which nine families had lived. The Tribunal concluded that "The police power of the State exists for crushing the poor and the exploited and hence works openly in collusion with the exploiters". Thus institutionalized maltreatment is not limited to the Sikhs. It remains to be seen what effect the tribunal will have. If recent history is any indication, it may well be outlawed.