

**STATE AND THE VIOLATION OF
HUMAN RIGHTS IN PUNJAB (1983-93)**

**Dissertation submitted to the Jawaharlal Nehru University, New Delhi
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MASTER OF PHILOSOPHY

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CERTIFICATE

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This is his own work.

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(Rajesh Mall)

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INTRODUCTION

Among the states of India, Punjab occupies a rather different place. Historically speaking, it has always been at the forefront of Indian history especially that of North India. Perhaps, no other state in the country has witnessed as much of bloodshed down the ages as Punjab has. This story of bloodshed of and by the people of Punjab - Sikhs in particular - in pre-British India, pre-independence India and during partition continued in a free India as well.

However, the saga of blood-bath in Punjab in independent India evokes far more sorrow than at any other point of time, including the horrors of partition. The violence during partition was at best a large-scale riot, an example of the inner brute of man coming out. But the violence which took place in Punjab throughout the 1980s and early 1990s stands a class apart from all the preceding spells of violence. For it had a rather peculiar actor-cum-opponent involved; namely the Indian State.

The State actively engaged itself in acts of violence against its own citizens, all in the name of fighting terrorism. People who looked upto the State for protection from the "self-styled" protectors of the Sikh faith were in fact indiscriminately and irresponsibly pushed into the crossfire by the former. The record of the largest democracy in the world in protecting the life, liberty and dignity of its citizens, especially during the decade of terrorism in Punjab, would seem/suggest to be the most abysmal among all the democracies of the world worth their name.

The post-independence State in India began with the mission of changing the life situations of its members and bringing them to terms with a rapidly-changing modern, scientific world at the earliest. During the late sixties this mission was conceded to the politics of opportunism. The only objective henceforth appeared to be capturing power through winning elections - whatever be the cost - and maintaining the government, if not

necessarily the mandate, despite all the opposition. During the leadership of Indira Gandhi was initiated the malpractice of doing away with political opponents even through undemocratic and extra-constitutional means. The declaration of Emergency in 1975 was the epitome of this flouting of democratic principles, constitutional norms and parliamentary practices.

The present work is an attempt to look into the dynamics of terrorism in Punjab between 1983-1993 and violation of human rights by the State in its backdrop. The flouting of laws and rules by the Indian State - an act widely held responsible for creating a monster in the form of "terrorism" - and thereafter the all-out attempt on its part to kill this monster disregarding all democratic and constitutional norms are the basic reference points of this study. While acknowledging the fact that a problem as complex as the one Punjab encountered broadly in the form of terrorism during the 1980s and early 1990s in a product of multiple factors which range from political to cultural to trans-national, the present work due to obvious limits and interest focuses primarily on the issue of terrorism in Punjab and violation of human rights by the State in tackling the menace of militancy/terrorism.

But then, the question of human rights in Punjab is very complex. There were violations of human rights by the State in the context of containing terrorism. Threats of violence and sympathies with contending parties responsible for violation of rights of various sections of the society make the analysis of the question somewhat partisan in nature.

On the one hand several Acts enacted by the State such as National Security Act, Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985, Disturbed Areas Act, Armed Forces (Special Powers) Act provided unprecedented powers to the security forces to search, arrest, detain and even kill people suspected to be terrorists. On the other, militants, terrorists indulged in brutal terrorist acts harming mainly the innocent civilians. Thus both the government and militants violated human rights. However, the fact

recognised under international human rights law is that whatever brutal acts terrorists indulge in, it does not justify violations by government agencies.

It may be useful to define human rights especially in the context in which it has been used or implied for this study. Human rights would mean as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution of India or embodied in the international covenants and enforceable by the courts in the country.

The choice to Punjab for this study is deliberate. Punjab revealed during the period of study (1983-93) a critical encounter between State precept (Constitutional obligations) and practice on the issue of terrorism. It is important because Punjab was not merely a problem of law and order as was stressed time and again by the government. Or to say that the only violence it experienced was those of the terrorists would be to see one side of the story. The State used questionable means to fight the menace of terrorism in the state.

The Punjab story is one of broken promises; political misdeeds, mishandling as well as organised repression by the State in India. It's a sad tale of how the loyal sons of the land were turned into separatists and then hunted like animals. In the final analysis as we would see, the State stands as the main culprit.

Initially the State failed to shoulder its responsibility, then it took to repression to deal with a complex problem and in the end it brazenly defended and justified its acts.

The measures through and methods by which peace was brought to the strife-torn State though with highly questionable means is now being projected as a (successful) model. Without learning any meaningful lessons from the Punjab experience the same ways are being used in other parts of the country.

Although the problem in Punjab started in the late 1970s and continued to linger on even after 1993 in one way or the other, yet the period

between (rather just before) Operation Blue Star and mid-1993 witnessed the most violent phase. This was also the period when the Indian State resorted to counter-terrorism/State terrorism to deal with terrorism in Punjab. This was the phase when the State frequently indulged in the violation of human rights of its citizens. Therefore the focus of the present study is mainly the period between 1983 and 1993.

The present study is divided into three Chapters.

The **first Chapter** broadly looks into the causes which gave rise to terrorism in the State. The element of militancy has always been a factor in Sikh history ever since the Khalsa *panth* started by Guru Gobind Singh in 1699 A.D. which not only helped the Sikhs in getting distinct identity *vis-a-vis* the Hindus but also turned them into a martial race. However, owing to various contradictions which developed over a period of time in the Sikh society and politics forced a section of the Sikhs initially to extremism and at a later stage to terrorism. The general hypothesis of this Chapter is that there was a complex mixture of factors, accentuated over a long historical process which gave birth to a violent militant movement in Punjab bordering on secessionism. The Chapter also discusses the fallout of the Green Revolution and its role in laying the grounds for terrorism.

Althusser's theory of over-determinism has been used as a conceptual framework of this Chapter. Broadly it means that contradictions are manifest in several spheres of society which can bring about an upheaval or revolution. However, each in itself is complete/sufficient to bring about change. At times several of them cohere together.

The **second Chapter** elaborates on legal measures adopted by the State to curb terrorism in the State, primarily through promulgation of Ordinances, Acts and special laws through Parliament. It also discusses the immunity of the security forces particularly the police for all their acts of omission and commission. It focuses on the limitations and ineffectiveness of the laws when it comes to the violation of human rights by the State and

its agencies on one hand and the massive and unaccountable power handed to the executive wing of the government, mainly the police. A series of preventive detention laws were enacted to assist the security apparatus.

Broadly it is an attempt to elucidate the efforts on the part of the Indian State to legislate to repress. The Westminster model allows ample space for the majority party in the legislature to get draconian laws passed with relative ease. The Rajiv Gandhi government (1984-89) which enjoyed a two-thirds majority in the Lok Sabha faced practically no difficulty in having black laws as TADA, 59th Amendment Act passed in the Parliament to deal with the Punjab problem. This Chapter attempts to show how the sweeping and arbitrary powers with no accountability granted to the security forces under these laws prepared the ground for the violation of human rights of the people.

The **third and final Chapter** which is the key Chapter of this present study attempts to deal with the actual violation of human rights in Punjab and responsibility of the Indian State in this regard. This Chapter would point out despite its claim to adhering to the Rule of Law and assurance of guaranteeing human rights to its citizens, the Indian State has frequently and unhesitatingly indulged in the most illegitimate and extra-constitutional acts of violence against its own citizens and flouting their human rights at will. Indeed in fighting terrorism, the State indulged in a terror of its own.

The Chapter relying on materials sourced from various judgements of courts, independent commissions of inquiry, the National Human Rights Commission (NHRC), independent human rights organisations (like Amnesty International, Asiawatch etc.), newspaper reports et al which not only substantiate the charge of human rights violation by the State but also elaborate the methods and the ways by which such violations took place. It also attempts to read through the statements of various police officers, politicians/leaders, civil servants etc. which reveals their acceptance of

human rights violation on the one hand, and the failure to rectify it on the other.

The present study is primarily based upon secondary material. Books, journals and newspaper clippings have been used as the major sources of information in this study. The methodology used in analysing this information is mainly descriptive and analytical.

CHAPTER I

CAUSES FOR THE RISE OF MILITANCY IN PUNJAB

Given the structure of nationalist discourse in India, the study of secessionist movement in the state of Punjab presents some intriguing facts. The study of such anti-state movement leads one to understand not only the flaws of our nationalist discourse but also the basic problems and distortions in our approach towards building a nation-state.

The 80s decade was the worst years for Punjab. It witnessed the worst form of secessionist movement led by reactionary forces and the retaliation by the Indian State leading to the death of thousands of people. The echoes of Punjab's cries of agony were heard everywhere, across the country. Violence and terrorism were the order of the day. Both the sides i.e. the militants and the State committed serious violation of human rights.

As to what exactly were the factors that led to the rise and growth of militant, secessionist movement in Punjab, is the central question of this Chapter. In the attempt to find answers for the already posed question, it is argued in the following that the reasons were not only political or only economic or social. It was, infact, the interplay of many factors that ultimately led to the rise of militant movement in Punjab.

Marx made attempts to understand society by analysing its economic base. He opined that superstructure is the manifestation of the base. Engels, however, realised the limitations of the above and tried to correct it. But, it was at the hands of Louis Althusser, a French Marxist, who by combining the structuralism of Levi Strauss and Marxism bridged the false dichotomy between the base and the superstructure.

In the present analysis of the rise of militant and violent secessionist movement in Punjab, the framework of Althusser's concept of over-determinism has been used. It was not only the political or the economic but

a combination of several factors that led to the growth and rise of militancy in Punjab during the early 80s.

I

First and foremost are the economic factors in which one has to necessarily and invariably trace the genesis of militancy in Punjab. Though the primacy of economic factors which form the “base” or “sub-structural” aspects of the system remain unquestionable but at certain point of time, superstructural aspects like politics, culture, language, religion etc. assume an “autonomy” of their own.¹

Punjab was chosen as the area where Borlaug’s Green Revolution was to be implemented in India. It had, at that time, all the infrastructure needed for the implementation of this project. Little did the government know that later on this very Green Revolution would create such socio-economic conditions which would be conducive for the rise of the militant movement.² The Green Revolution, for its success needed high technological input. It needed less labour and more of capital. With capital-intensive agriculture, the ratio of landless workers in the total agriculture workforce rose from 9.1 % in 1961 to 20.1 % in 1971 and 32.1 % in 1981.³ This was partly because of eviction of tenants by owner cultivators, partly because of displacement of rural artisans like weavers, potters, cobblers, oilmen etc.⁴ and partly because of distress sale of land by marginal farmers. According to an estimate, 24 % of small peasants and 31.1 % of marginal peasants lived below the poverty line.⁵ The fruits of the Green Revolution had been

¹ Singh, Gopal, *Politics of Sikh Homeland 1940-1990*, 1994, Ajanta, Delhi, p 84

² For more on these lines, see Frankel, Francine R. *India's Green Revolution: Economic gains and political costs*, 1971, Princeton; Sen, Bandhudas, *The Green Revolution in India: A Perspective*, 1974, New Delhi; Beteille, Andre, *Studies in Agrarian Social Structures; Essays on the Green Revolution*, 1980, New Delhi; *EPW*, May 22, 1982; *EPW*, Jan 22, 1983; *EPW*, Jan 7, 1984; *EPW*, April 27, 1984 and Johar, R.S. and Khanna, J.S., Edited by, *Studies in Punjab Economy*, 1983, GNDU, Amritsar

³ Punjab statistical abstract of these years

⁴ Gill, Sucha Singh, “Capitalism in Punjab Agriculture”, in Johar and Khanna, Edited by, op cit, pp 74-5

⁵ *EPW*, May 22, 1988, p 876

grabbed by just 20 % of capitalist farmers who own more than 60 % of the total land.⁶ In the prevalent set-up of co-operative societies, rural banks and other credit institutions of the government, it was the rich farmers who were able to secure loan at low rates of interest whereas the small peasant, being a defaulter in the very first instance, had to borrow ultimately from the traditional moneylenders, or other sources of unorganised money market at a higher rate of interest. This process led to the distress sale of their land to the rich farmers.⁷

The introduction of Green Revolution and capitalist farming thus transformed a section of the peasantry having greater ownership of land and command over capital resources, into capitalist farmers. These farmers found their family labour insufficient to carry on work on their farms. Hence, a major part of their work was handled by hired agricultural workers (most of whom were migrants from Bihar, Orissa and eastern UP willing to work for meagre wages). A lot of surplus was generated using this type of farming technique.

From the above discussion it is clear that the Green Revolution sharpened the cleavage between classes. These classes existed earlier also but, the Green Revolution helped in making the distinction between them more sharp, distinct and visible. Only the landed aristocracy or the rich farmer gained economically whereas the peasantry, the real workers on the land became poor and poorer because of exploitation and debt trap.⁸ The existence of such classes proved damaging for the society in Punjab. The youths of both these sections had their own reasons for indulging into terrorist activities. One more fallout of this was that migration of farm workers to Punjab (from Orissa, UP and Bihar, as stated earlier) created the fear that in due course some of them would decide to settle permanently and

⁶ Puri, Harish K., op cit, p 112

⁷ Gill, Sucha Singh, "Capitalism in Punjab Agriculture", *PSE Economic Analyst*, December, 1980

⁸ Singh, Gopal, op cit, p 85

even enrol themselves on the voter's list. This lent, later on, credibility to the propaganda that Sikhs, like some tribes in the North-east, would become a minority in their own state.⁹

By 1974 Punjab had 78 % of its primary school age children in school second only to Kerala at 96 %. Literacy rose from 27.1 % in 1961 to 41 % in 1981 and was projected to hit the 50 % mark by the mid-1980s. And the number of students enrolled in colleges in Punjab rose from 35,000 in 1964-65 to over 1,10,000 in the mid-1970s.¹⁰ Unfortunately higher education did not translate into economic gains for many of the rural Sikh youth, as distortions in the Punjab's economy, and particularly the disparity between substantial agricultural growth and a retarded industrial sector, led to significant levels of unemployment among educated youth.¹¹

A disturbing development in the economy of Punjab has been what some scholars have termed as "disjunction" between agriculture and industry. What it meant was that one does not feed the other, that agriculturally Punjab was highly developed while industrially quite backward.¹² Historically Punjab has been an agricultural state. Industrially it has never been strong. Whatever it had went to Haryana after the division of Punjabi Suba in 1966, which created the state. In 1970s Punjab experienced growth in the small industries sector. But this sector is not very broad-based and the growth of employment in these industries was negligible. Furthermore, the distribution of gains has been concentrated in Amritsar, Ludhiana and Patiala districts.¹³

⁹ Marwah, Ved, *Uncivil Wars Pathology of Terrorism in India*, 1995, Centre for Policy Research, New Delhi & Indus: An imprint of HarperCollins India, New Delhi, p 7

¹⁰ Jaffrey, Robin, *What's Happening to India?*, 1986, McMillan Press, London, p 80

¹¹ Telford, Hamish, "The Political Economy of Punjab: Creating space for Sikh militancy", *Asian Survey*, November 1992, p 979

¹² No heavy industry was assigned to Punjab. The argument given in the fifties and sixties was that Punjab was in the firing range of Pakistan. Singh, Gopal, op cit, p 85

¹³ Johar, R.S., "Decentralisation of Industrial Development with special reference Punjab" in Johar and Khanna, op cit, pp 216-218

The situation for large-scale industry in Punjab was even worse. Even agro-industry was underdeveloped relative to the agricultural sector. Punjab accounted for 17 % of India's cotton production but had only 0.6 % of the looms and 1.3 % of the spindles. It produced 3.63 % of India's sugarcane output but only 1.3 % of India's sugar. Punjab with only 1.6 % of the nation's area and about 2 % of the population, accounted for 73 % of the country's procurement of wheat and 48 % of its rice. But the bulk of its processed food are imported from other states. Major industrial supplies like iron, steel, coal and coke have to be imported from outside the state. Even the small-scale industries that had started to develop, the majority of raw materials had to be imported from other states.

The retarded industrial development of Punjab coupled with an expanding education system was the prime reason for high levels of unemployed college and University graduates. In general, unemployment among the unskilled workforce in Punjab was not a serious problem.¹⁴ In 1978, there were an estimated 1,85,000 educated unemployed youth in Punjab and Gill¹⁵ projected no conceivable rate of growth that could absorb the massive numbers of educated unemployed. So by the later 1970s, the future for the first generation of youth was bleak. Their education was not reaping financial benefits due to unemployment, the urban environment in which they were attending college was alienating, and finally the Akali Dal was engaged in political activities that bore little direct relationship to their demands. Thus the message of Sant Bhindranwale appeared very attractive to the educated unemployed¹⁶ as well as the rural unemployed youth.¹⁷

¹⁴ Gill, K.S., "Employment and unemployment in Punjab" in Johar and Khanna, op cit, pp 301-04

¹⁵ ibid

¹⁶ Telford, Hamish, op cit, p 981

¹⁷ Besides other things, Bhindranwale attacked the vulgar and dehumanising culture of the neo-rich and invoked the rural population to listen to *gurbani* and *shabad kirtan* rather than filthy and highly vulgarised Punjabi songs. Singh, Gopal, op cit, p 87

Educated youth had all the reasons, thus, to join the ranks of the militants. Poor youth, on the other side, had nothing to lose from the set-up that was created as a result of the Green Revolution. They too, thus, joined the ranks of the militants. It was at one point of time that most lucrative job for the unemployed youths of Punjab. Hence the objective conditions at that time were such that a section of Sikh youth preferred to take up arms for their defined or undefined cause.¹⁸

Due to the impact of the Green Revolution and capitalist farming methods, crops were produced for the market. The peasants came into contact with the traders and the government. The middleman earn a huge profit in the transactions. Therefore, the peasants as a whole had contradictions with the traders. In this contradiction, peasantry was led by the capitalist farmers, who in turn were supporters of the Akali Dal.

In this context, the demand for more powers to the State were being sought. It has to mentioned here that in the present set-up, it is the Centre that fixes the price of agricultural commodities on the recommendations of the Agricultural Price Commission. The issue of minimum support price is a sensitive issue for the farmers. Even today this issue is a major cause of concern in the Centre-State relations. On many of economic questions, the peasantry came into direct conflict with the government machinery. The non-fulfilment of their demands was construed by the peasantry/farmers as an indication of the government's indifference towards them. The questions of subsidy, agriculture extension services, support price, water, electricity etc. were core economic issues that agitated the minds of the farmers. These factors added to the already brewing discontent in society.

While the economic contradiction was growing in the society, political factors did not take proper cognisance of the problem. The contradiction was between the rich peasantry and the small peasantry, between traders and peasants, between peasants and the government,

¹⁸ Singh, Gopal, op cit, p 87

between Sikhs and the Hindus, between modernists and traditionalist, between secular and the communal. It is hard to delineate which of contradictions developed and matured together. The contradictions in Punjab were, to use Althusser's term "overdeveloped". Each of them was in itself capable enough of initiating a militant and violent movement in Punjab.

II

According to C.P. Bhambhri,¹⁹ the Akali agitation in Punjab was the manifestation of the contradictions between traditionalists and the modernists. Government planning and social legislation are the two basic pillars of modernisation in India and one of the essential goals under the Constitution is that the deprived strata of society should be brought in the social mainstream. The process of modernisation creates fear and insecurity among the people. This fear is exploited by the vested interests which capitalise on their ignorance. All struggles against modernisation in India during the last fifty years have been anti-government because government is the fountainhead of modernisation in the country. Since government is the chief instrument of modernisation in India, all movements which stand for the defence of religion and old tradition have to be active in politics. Politics is the battlefield for the modernists as well as the traditionalists.

Akali Dal represents the traditionalist and anti-modernist forces whereas the Indian State and the Congress part represented the progressive and modernist forces of that time. The contradiction between the traditionalist and modernist was manifest in the form of schisms between the Akali Dal on one hand and the Congress and the Indian State on the other. It is evident from the fact that while the militant movement was at its peak, the main targets of terrorists were the progressive forces represented by the Congress, the Communists, social workers and instruments of the Indian State.

¹⁹ Bhambhri, C.P., *Indian Politics Since Independence*, 1994, Shipra, New Delhi, pp 307-

The above-mentioned framework of Bhambhri gives an altogether new interpretation to the rise of the militant movement. It throws light on one of the important aspects of militancy but the approach is not all comprehensive. There were many other contradictions also, apart from this one.

Prior to the last quarter of the 19th century, the Sikh community did not demarcate themselves from the Hindu community. Through a searching examination of historical material, Harjot Oberoi²⁰ shows that early period Sikh tradition was not unduly concerned with establishing distinct religious boundary.²¹ There was nothing unusual about such a position within the Indian cultural environment, where there were strong traditions of ambiguity and fluidity within definitions of religious identity.

However, a dramatic change came about with the rise of Khalsa in the 18th century; sections of the Sikh population now consciously began to push for a distinct and separate religious culture. Yet the growing hegemony of Khalsa Sikh did not put an end to religious fluidity within Sikh tradition. Large number of Sikhs continued to interpret and re-interpret Sikh tradition differently from the Khalsa Sikh, with the result that there was immense diversity within the Sikh society for much of the 19th century. In the absence of a centralised church and religious hierarchy, there existed a heterogeneity in religious beliefs, rituals and lifestyles. Most Sikhs moved in and out of the multiple identities grounded in local, regional, religious and secular loyalties. Consequently, religious identities were highly blurred and several competing definitions of who constituted a Sikh were possible.

By the closing decade of the 19th century, the Singh Sabha, a wide-ranging religious movement, began to view the multiplicity in the Sikh

²⁰ Oberoi, Harjot, *The construction of religious boundaries: culture, identity and diversity in the Sikh tradition*, 1994, Oxford University Press, Oxford

²¹ For more on creation of Punjabi identity see Gupta, Dipankar, *The Context of Ethnicity: Sikh Identity in a Comparative Perspective*, 1996, Oxford University Press, Delhi and Bombal, K.R., "Ethno-nationalism" in *Punjab Journal of Politics*, July-December, 1993

identity with suspicion and hostility. Social and cultural forces unleashed by the Raj helped the Singh Sabha's powerful project to recast Sikh tradition and purge it of diversity. There now appeared a systematised discourse of what it meant to be a Sikh and a new cultural elite aggressively usurped the right to represent others within the tradition. Their ethno-centric logic subsumed other identities and dissolved alternative ideals under a monolithic, codified and closed culture. Those who deviated from this new great tradition were displaced towards the margins of Sikh religious culture and replaced by people who espoused the identity of modern Sikhism.

With the demarcation of religious boundaries the notion of we and they developed over time. Individuals were seen as part of one or the other religious community. The contradictions between traders and peasants was visualised on communal lines as contradictions between the Hindus and the Sikhs. This was so because majority of the traders were Hindus and majority among the farmers were Sikhs. Even the Sikh traders had to face stiff competition from the Hindu traders. Also, the majority of the Sikh population was concentrated in rural areas and the Hindus in urban areas. The rural-urban divide was used for communal conflagration.

An analysis based on the 1971 census data showed that 69.37 % of the Sikhs were concentrated in rural areas and were mainly cultivators. 66.39 % of the Hindus live in urban areas and specialise in non-agricultural occupations such as trade, industry, services and others. In the urban-based occupations Hindus are over-represented and Sikhs under-represented. This is shown in the following table.²²

²² *EPW*, May 22, 1982

Representation of Hindus and Sikhs in towns of different functional categories in Punjab

Functional categories	Hindus	Sikhs
Manufacturing	1.50	0.48
Trade	1.85	0.53
Services	1.60	0.50
Diversified	1.40	0.60
All	1.67	0.54

This table shows that Sikhs are under-represented and the Hindus over-represented in the urban and modern occupations. Sikhs already in the occupation have to survive in the face of stiff competition with their Hindu counterparts. This explains the contradictions between urban Sikh traders (Bhapas) and Hindu traders. In the matter of fresh entries into jobs control over the government machinery helps a lot. This finds expression through the main contradiction between peasantry and traders and monopolists.²³ The above-mentioned contradictions were used very tactfully and cunningly by the militant organisations to flare-up communal passions and intensify the demand for a separate country on the basis of religion.

III

Militancy in the Punjab is closely linked with the politics in the State. The Akali Dal, from its inception, has been fighting openly for

²³ *EPW*, April 7, 1984, p 606. In Punjab, agriculture is controlled, by and large, by Sikh Jat peasantry and naturally they are in majority in all rural areas. But trade, business and industry, to a great extent, is controlled by Hindus of urban areas, and therefore, in almost all the big towns Hindus are in a majority. The terms of trade are in favour of business and industry and both the input and output of agriculture are routed through the urban section. So, the exploitation of peasantry here as elsewhere in India by trade, business and industry is natural. But, this exploitation gets easily "communalised" because of demographic situation in rural and urban areas. Singh Gopal, op cit, p 93

political power by espousing the cause of Sikh religion.²⁴ They considered religion and politics as inseparable. This was atleast the viewpoint of majority factions of the Akali Dal. Its leadership has been composed of two streams: the Jathedars and the Moderates. While the two share a religious commitment, the area of their activities has been distinct. The Jathedars have been mostly involved in the affairs of the *gurdwaras* and management of the Shiromani Gurdwara Prabandhak Committee (SGPC); the moderates have been active participants in electoral politics. But they have had to lean on cadres and use the platform of *gurdwaras* at the time of elections.²⁵

Ever since the Akali Dal replaced the Singh Sabhas, the formation of Punjabi Suba was a dream for its leaders. After independence Master Tara Singh an urban Sikh raised the demand for Punjabi Suba by which he meant a Sikh homeland. The government at the Centre, led by Jawaharlal Nehru and Punjab by Pratap Singh Kairon considered Master Tara Singh to be a communalist and never conceded an inch of his demands.²⁶ It was the time when the dominant leadership of the Akali Dal was drawn from the urban middle class.²⁷ Master Tara Singh went on a fast to compel the government to concede the demand of Punjabi Suba. He considered Congress as an organisation of Hindu reactionaries and threatened to launch an agitation to demand an increase of Sikh recruitment into the Army, the formation of a Punjabi speaking state and safeguarding of the Sikh interests in PEPSU.²⁸

In order to weaken the Akali movement, the Congress which considered it to be a communal and secessionist movement, tried to weaken

²⁴ Marwah, Ved, op cit, p 152

²⁵ *Seminar*, p 14

²⁶ Brass, Paul R., "Punjab Crisis and unity of India" in Kohli, Atul, Edited by, *India's Democracy An analysis of changing state-society relations*, 1991, Orient Longman, Delhi, p 177

²⁷ *EPW*, April 7, 1984, p 606

²⁸ Kumar, Ram Narayan, & Sieberer, Georg, *The Sikh Struggle Origin, Evolution and Present Phase*, 1991, Chanakya Publications, Delhi, pp 176-77

it by dividing the Akali leadership.²⁹ They tried to discredit Master Tara Singh and displace the more extremist, communalist, potential secessionist leader with Sant Fateh Singh, no less militant but non-communalist, non-secessionist leader.³⁰ The Congress was successful in its plan. By 1962 Sant Fateh Singh became the undisputed leader of the Akali Dal. And the party had moved away from Master Tara Singh's demand, for a 56 % majority state and called for a new Punjab state on the basis of language and culture, without any consideration of the percentage of Sikh's population in it.³¹ The secular strategy was adopted to placate an Indian government suspicious of religious demands after the 1947 partition, and it paid dividends almost immediately. Punjabi Suba was won in 1966 when it was divided into a linguistically Punjabi state and the two Hindi-speaking states of Haryana and Himachal Pradesh. In the new Punjab, Sikhs formed 60 % of the population compared to 33 % prior to the division. The Akalis believed that their electoral possibilities would be considerably enhanced.

The main contenders for power in Punjab were the Congress (I) and the Akali Dal. Akali Dal being far weaker than the Congress (I) had Jan Sangh (the BJP) as its alliance partner. Fearful of the alliance, the Congress has thus promoted defections and splits within Akali ranks in order to weaken its prospects for gaining an electoral victory or to bring down an Akali led government on those occasions when the Akali Dal has defeated the Congress in the Legislative Assembly elections. The two Akali-Jan Sangh coalition governments that were formed between 1967 and 1972 were brought down by factional quarrels within the Akali Dal. On both of these

²⁹ Pettigrew, Joyce, "A description of the discrepancy between Sikh political ideas and Sikh political practice" in Aronoff, M.J., Edited by, *Ideology and interest: The dialectic of politics*, 1980, Transaction Books, New Jersey, pp 151-192

³⁰ Brass, Paul R., op cit, p 177

³¹ Puri, Harish, "Akali Politics: Emerging Compulsions" in Wallace, Paul and Chopra, S., Edited by, *Political Dynamics and Crisis in Punjab*, 1988, GNDU, Amritsar, p 306

occasions, Congress was instrumental in bringing down the government. Until recently, party divisions did not reflect or promote a polarization between Hindus and the Sikhs in Punjab. Although Sikhs are a majority in the state and the Akali Dal is also a minority party. The Congress, as a majority party, has drawn support from both Hindus and Sikhs. The Akali Dal, in order to match the Congress, has had to seek political alliances with the Hindu-based Jan Sangh (BJP). Party politics, therefore, have normally tended to moderate Hindu Sikh political polarization and to work against the entrenchment of communal divisions.³²

The Akali Dal realised that it was unable to defeat the Congress at the polls with its past agendas that it had carried. In order to broaden its mass base it sought to appease the fundamentalist sections of the rural Jat-Sikh peasantry and also some sections of the urban Sikh population. In this endeavour, in 1974 the much debated and criticised Anandpur Sahib Resolution was passed by the Akali Dal. It became the basis for future Akali politics.

After Emergency, the Congress lost some ground in Punjab. And in order to weaken the already factionalised Akali leadership, Congress planned the raising of an alternative Sikh leadership. After a lot of discussion and search, Sant Jarnail Singh Bhindranwale was chosen to implement Congress' plans.³³ As the head of the historic and widely respected Damdami Taksal, he had a readymade status in the Sikh community. As a rigid fundamentalist, he could capitalise on the compromises with Sikh religious interests that the Akali Dal leaders were bound to make to stay in power. Though he proved not to be especially effective in weakening the Akali Dal by conventional political means, his violent confrontation methods did prove useful to the Congress, at first,³⁴ at least. Bhindranwale

³² Brass, Paul R., op cit, p 179

³³ Tully, Mark and Jacob, Satish, *Amritsar: Mrs. Gandhi's Last Battle*, 1985, Rupa by arrangement with Pan Books, London, pp 52-62

³⁴ Brass, Paul R., op cit, p 181

precipitated a violent clash between the militant Sikhs and the heterodox Nirankari sect in April 1978 in which 16 persons including 13 Sikhs were killed. This was the starting point of the tragic events in Punjab. It also marked the beginning of the radicalization of Sikh politics that swept through the Punjab into the 1980s and into the 1990s.³⁵

The Akali Dal leaders in the Akali-Janata government were divided because as defenders of Sikh orthodoxy, they could not disassociate themselves from a movement against a heretical sect. On the other hand, as coalition partners in the Punjab government, they could not openly support lawlessness.³⁶ The factional divisions within the Akali Dal in turn contributed to its defeat and the victory of the Congress in the 1980 elections.

In a broader perspective the support for Bhindranwale “also meant that criminal actions, manipulation of the police and the judiciary, and the use of violence were considered acceptable tactics by Congressmen, by the police, and by its allies to defeat and discredit the Akali Dal.”³⁷

Ever since the attack in the Nirankari convention, which brought him to the fore, Bhindranwale had kept up his campaign against the sect.³⁸ The Nirankaris were a convenient target for Bhindranwale to launch a movement, gain legitimacy, and mobilise followers for a wider political goal: hegemony in the Sikh community.³⁹

When the Darbara Singh led Congress (I) government came to power in Punjab in 1980, the time was ripe to put an end to Bhindranwale’s activities.⁴⁰ However, he was too useful in factional conflict both in the Akali Dal and the Congress to deal with easily. For example, Zail Singh, the Home Minister in Indira Gandhi’s cabinet, openly defended Bhindranwale, first by stating in Parliament that Bhindranwale had nothing to do with the

³⁵ Telford, Hamish, op cit, p 981

³⁶ Tully, Mark and Jacob, Satish, op cit, p 59

³⁷ Brass, Paul R., op cit, p 180

³⁸ Tully, Mark and Jacob, Satish, op cit, p 65

³⁹ Telford, Hamish, op cit, p 976



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murder of Baba Gurucharan Singh, the head of the Nirankaris and second when Darbara Singh, the political rival of Zail Singh tried to arrest Bhindranwale for the murder of Lala Jagat Narain, the proprietor of influential Punjabi daily *Ajit* in 1981, Zail Singh got it prevented. On the other hand, Gurucharan Singh Tohra, leader of one faction in Akali Dal saw Bhindranwale as a useful ally in his struggles with Longowal-Badal faction. As the leader of SGPC, it was he who permitted Bhindranwale to move into the Golden Temple complex with his men and his arms.⁴¹ Over a period of time Bhindranwale and others started making more blatant use of premises of the Golden Temple. Apart from summarily deciding industrial and land disputes and even personal feuds, Bhindranwale in his daily meeting started making venomous speeches thereby instigating communal hatred. He even advocated killing of Hindus. Simultaneously the militants were engaging selective targets and attacking conscientious police officers who were doing their duty of enforcing the law.⁴² One instance of great significance was the murder of Deputy Inspector General of Police, A.S. Atwal in 1983 outside the Golden Temple complex just as he came out after offering prayers. The militants even danced around his body in full public view and the police dared not to take away the body as it lay there for several hours. Instead of reacting immediately to this gruesome murder, the Punjab government hesitated. It tried to seek orders from the Union Home Ministry, as they did not want to take any action for which they could be blamed later by the Union Home Minister. A matter which should have normally been decided at the administrative level went up the highest political level and yet no decision was taken for hours. Hence it was evident that Bhindranwale's supporters were challenging the authorities openly from inside the Golden Temple. The Rule of Law in Punjab was given a go for political

⁴⁰ Brass, Paul R., op cit, p 181

⁴¹ ibid, p 182

⁴² Sharma, D. P., *The Punjab Story Decade of Turmoil*, 1996, APH Publishing House, New Delhi, p 64,



expediency.⁴³ Atwal was allegedly on the hitlist of Bhindranwale. It was generally felt that the Central government made a mistake by not entering the Temple and arresting Sant Bhindranwale immediately after the murder. Very few Sikhs would have raised an objection.⁴⁴ By the last quarter of 1983 Bhindranwale had taken sanctuary in the Akal Takht within the Golden Temple itself.

Within a year, the extremists had full control over the situation in Punjab. They were dictating terms. They had consolidated their position in the Golden Temple. Despite the fact that 150 companies of constabulary forces posted around the Punjab, including 90 around the Golden Temple itself, they “failed to check the massive induction of arms into the Golden Temple or the apparently free movement of people suspected to be terrorists.”⁴⁵ Bhindranwale was known to be openly smuggling arms, ammunitions and explosives inside the Golden Temple, but the government was turning a blind eye, scared that any action would alienate the Sikh votes.⁴⁶ Hence from being a leader of fundamentalists, Bhindranwale was now emerging as a leader of the entire Sikh community, which helped in further polarizing Hindus and Sikhs on communal lines.

Sant Jarnail Singh Bhindranwale thus emerges as the central figure in the discussions and analysis of the violent confrontations that occurred with increasing frequency in the period from 1981 to June 1984. Though he was brought into politics by the Congress, yet over a period of time he “developed this own line, his own methods, and increasing support that made him an independent political force, feared by all politicians in the Punjab, who ultimately reached such a pass that they were willing to take no action that Bhindranwale might oppose and become incapable of participating effectively in a political process gone completely out of control

⁴³ Marwah, Ved, op cit, p

⁴⁴ Sharma, D.P., op cit, p 64

⁴⁵ *EPW*, June 2-9, 1984, p 865

⁴⁶ Marwah, Ved, op cit, p 167

and dominated by violence.⁴⁷ The elimination of Nirankari chief and Lala Jagat Narain, and the special treatment given to him while trying to arrest him along with other events not only brought him to the centre stage of Akali politics but confirmed the growing belief among the Sikh masses that the Sant was an man 'extraordinaire'. In the eyes of the Sikhs, he became an important person worth following.⁴⁸

It has also been argued that he possessed a "charismatic appeal" and gave religious expression to broad-based rural discontent and anger over the recent history of alleged discrimination against Sikhs in the Punjab, including police harassment and violence, in response to the Akali political movements. As Bhindranwale's message evolved, it came to have two distinct political strands. In his speeches, he argued that Sikhs were suffering internal decline and external threat.⁴⁹ Stressing the distinct religious identity of Sikhs (from Hindus), he pointed out to the assimilation dangers and hence the threat of Sikhs losing their identity. "The Hindus are trying to enslave us; atrocities against the Sikhs are increasing day by day under the Hindu imperialist rulers of New Delhi; the Sikhs have never felt so humiliated, not even during the reign of the Moghul emperors and British colonialists. How long can the Sikhs tolerate injustice?", he asked.⁵⁰ He reminded the Sikhs about their militant tradition, justified the violent twist in his movement and openly declared that the elimination of all heretics and those who opposed his demands was his foremost task. The movement which was originally started for settling scores with the Nirankaris was converted into a movement for a separate Sikh state.⁵¹

Neither the Congress leaders nor the Akalis had ever imagined that a person like Bhindranwale, so completely innocent of playing politics,

⁴⁷ A composite view. Quoted in Brass, Paul R., op cit, p

⁴⁸ Sharma, D.P., op cit, p 27

⁴⁹ Telford, Hamish, op cit, p 975

⁵⁰ Nayar, Kuldip and Singh, Khuswant, *Tragedy of Punjab*, p 73

⁵¹ Marwah, Ved, op cit, p 162

would one day take over the Sikh leadership; in fact his domination of Sikh politics was almost complete. He made both these parties quite irrelevant in Sikh politics.⁵²

Broadly then, Bhindranwale was successful in exploiting as well as widening the various contradictions in society, economy and politics of Punjab. It was largely because of his role and later the over-reaction of the Central government - after a long spell of indecisiveness as well as the turning a blind eye to the threat of terrorism - that the Punjab problem assumed a distinct militant and violent shape in the years to come.

⁵² *ibid*

CHAPTER II

THE POWER OF LEGISLATION AND LAWS

Over the years since independence, the state in India has acquired sweeping and arbitrary powers, mostly through legislation i.e. through amendments to the Constitution or enacting new laws. These have ostensibly been enacted to tackle the rising insurgency, militancy, terrorism, deteriorating law and order situation etc. in various parts of the country which pose threat to the “unity and integrity” of the nation.

It has been felt that since independence, the government has been passing Bills, making acts and promulgating ordinances which take away the rights of the people. These extraordinary laws are violative of fundamental rights, they are devoid of natural justice and rest arbitrary powers in the hands of the authorities. In short, these laws are anti-democratic and should have no place in a democratic set up.

The general feeling of the State and its agencies has been that ordinary laws are not adequate to control the existing situation in the country. It is also felt by them that courts are either liberal or callous in punishing or granting bail to criminals. Hence the repeated recourse to harsher laws.

Says a commentator: “Nothing has grown as fat and fast as the State in independent India. It wields enormous coercive power over the citizens by the laws it has enacted in the name of national security”.⁵³ Lately it has armed itself with harsher and draconian laws such as Terrorist and Disruptive Activities (Prevention) Act (now erstwhile), National Security Act (NSA) etc.

Haragopal and Balagopal say that an analysis of the constitutional amendments over a period of time points out to the continuous abridgement of fundamental rights. The evidence, they emphasise “suggests that Indian

⁵³ *The Illustrated Weekly of India*, August 23, 1987

society continues to experience trends of authoritarian rule.⁵⁴ The State's general response to fight endemic instability, of which terrorism and the manner in which it was tackled by the State (say, for example in Punjab) was a major factor, has been the increased use of repressive apparatus and extension of repressive legislation which has gradually led to the progressive erosion of civil liberties.

A web of structures, quite within the constitutional and legislative framework, in fact, allows tyrannical use of power by the coercive apparatus under the garb of democratic norms. These structures include the imposition of emergency rule, emergency legislation broadening powers of the State, assigning civil functions to the military and the police establishment; abrogation of constitutional rights and freedoms, emasculation of the judiciary; denial of due process of law by resorting to arrests without warrant, unexplained disappearances and extra legal executions, suspension of *habeas corpus* and other legal remedies, granting immunity to security officers; enacting laws which provide for preventive detention and which change the law of evidence.⁵⁵

Thus in the light of the above it can be argued that much of the legitimacy as well as the sanction for violent acts or deeds, which the state so frequently indulges in is directly or indirectly sourced from the Constitution itself. P. Padmanabhan says: "The Indian Constitution is peculiar. It gives enough of opportunities to the Executive and the Legislative to bring in enactments which negates the very rights which it is supposed to confer on the people."⁵⁶ Elaborating on this A. R. Desai says

⁵³ *The Illustrated Weekly of India*, August 23, 1987

⁵⁴ Haragopal, G., and Balagopal, K., "Civil Liberties Movement and the State in India" in Mohanty, Manoranjan, Mukherji, Partha Nath with Tornquist, Olle, Editors, *People's Rights Social Movements and the State in the Third World*, 1998, Sage Publications, Delhi, p 359

⁵⁵ Diokno, Socorro I., Chapter 2, in Saksena, K. P., Editor, *Human Rights Perspectives and Challenges In 1990 and Beyond*, 1994, Lancer Books, New Delhi, p 15

⁵⁶ "Undemocratic Elements in the Constitution", in Desai, A. R., Edited by, *Violation of Democratic Rights in India*, 1986, Popular Prakashan, Delhi, p 15

that, through the Preamble, the Directive Principles and the sections on fundamental rights, the Constitution has provided a substantial body of rights to Indians. Yet, the powers given in Schedule 7 of the same document - to legislate for preventive detention⁵⁷ - are draconian and violative of the basic, internationally accepted principles of human rights and justice. Articles 350-360, relating to Emergency provisions and Article 368(5) concerning the powers of the Executive to amend the Constitution also, in effect, amount to curb on those very rights that it seeks to enshrine.⁵⁸

It has to be particularly noted here that quite many of the draconian legislations in particular, and the legal and criminal law framework in general owe their origins from the British laws operational in India, before Independence. Simply put, they are a legacy of the British and despite the fact that those laws were created for a slave country, they remain unaltered broadly, till date. "Laws, regulations and powers of agencies of enforcement, conceived under the British regime, were designed to meet the requirements different from those of post-independence India ... With some cosmetic changes, we are still continuing with the same institutional framework of legal and administrative standards, though conditions have changed radically. The ethos, psychology and values of a free people are substantially different from those of a subjugated population. In terms of peace and order, it has been a costly omission not to make fundamental changes in laws, and

⁵⁷ Most of the laws as mentioned later in the Chapter fall under the category of Preventive Detention, a legacy of the British. It was "extensively used against the political dissidents during the post-colonial period. The Supreme Court in 1980 in Mahendra Chharia's case had rather helplessly said: "The power of preventive detention is a draconian power justified only in the interest of public security and order and it is tolerated in a free society as a necessary evil." Later Justice Mahajan of the apex court held that it was "repugnant to democratic constitution and they cannot be found to exist in any of the democratic countries of the world". Mukhoty, Gobinda "The Indian Constitution and Civil Liberties", in Desai, A. R., Edited by, *Violation of Democratic Rights in India*, 1986, Popular Prakashan, Bombay

⁵⁸ *Seminar* 405, May 1993, p 64

to reformulate the powers and functions of government agencies, in order to control and prevent violence which is incidental to social change.”⁵⁹

As a commentator says, the system cannot function in the same anti-people manner as it used to under the colonial rule.⁶⁰ Elaborating on this it has been said “When we entered our first year of independence we did not make a clear break with our colonial past. The legal and administrative structures were totally British Indian and judicial system was a mere continuation of what the British had set up. The repressive legal structure created by the British to deal with the struggle for freedom (called terrorism by the British), and to contain the non-co-operation, civil disobedience movements, still continue on the statute book and continue to be enforced in independent India.⁶¹ Sumanta Banerjee says that “large sections of laws with anti-democratic elements evolved by the British were retained in entirety by those in power after independence.”⁶²

Hence, the state quite like during the colonial days is armed with massive powers, most of which is unchecked and unaccountable, and gives it enough scope to indulge in a terror of its own. As Randhir Singh remarks: “It is thus that state-terrorism, spreading within democratic forms and without them, is contributing to the rise of an authoritarian, ever more repressive and anti-people state in India.

State terrorism consists of the security forces acting much beyond their legal powers - arresting suspects without producing them before any magistrate, subjecting them to torture and sometimes killing them by fake encounters, going berserk when any of their colleagues is killed...besides indulging in other atrocities such as ... rape.⁶³

⁵⁹ Rajgopal, P. R., *Social Change and Violence: The Indian Experience*, 1987, Uppal Publishing House, New Delhi for the Centre for Policy Research, New Delhi, p 332

⁶⁰ *Economic and Political Weekly (EPW)*, October 3, 1992

⁶¹ *EPW*, March 23, 1996, p 707

⁶² *Seminar* 405, May 1993, p 64

⁶³ *The Radical Humanist*, December, 1991

This vast ensemble of laws and amendments which give unbridled power to the executive apparatus of the State provide for “new structures of authority, new hierarchy of courts, new legal procedures, new range of offences, new and stiffer penalties, new detentions without trial and new and harsher powers for the police, paramilitary forces and the Army. New restrictions have come to be imposed on the life and liberties of the people in violation of old and established constitutional safeguards and new authorisation provided for the lawlessness of the state, including extra-judicial kidnappings, ‘missing’ and killings known as encounters and along with ‘custodial deaths’.”⁶⁴

However, several problems have arisen on account of the above.

Firstly, to think that only a draconian law can protect the integrity and survival of a nation or its legal order is to almost betray lack of faith in the Rule of Law. The harsher the law the greater is the threat to liberty and human dignity.⁶⁵ In fact, these laws have severely curtailed the civil, democratic and fundamental rights of the ordinary citizens which is enshrined in the Constitution.

Secondly, it has been felt that one of the reasons why human rights are frequently violated is the grant of arbitrary powers to the security forces through extraordinary laws such as TADA, NSA, Armed Forces (Special Powers) Act etc.⁶⁶ It makes it easier for them to act beyond the bounds of law and they can justify their illegal acts under the provisions of these acts. The provisions of the acts are such that they cannot be brought to the book for offence committed under these laws. Thus, these laws, in practical terms provide immunity to the police for crimes committed by them and accords them a status which puts them beyond the reach of citizens and the ordinary legal process. Even without using such laws the security forces

⁶⁴ *Economic and Political Weekly*, February 8, 1992

⁶⁵ *EPW*, June 15, 1996, p 1441

⁶⁶ *Radical Humanist*, May 1992, p 1

violate human rights of citizens by arbitrary detention, torture, custodial deaths, rapes and fake encounters.⁶⁷

Thirdly, the legal and judicial recourse, thanks to these laws, is so heavily loaded in favour of the State that it is virtually next to impossible to prove one's innocence. Hence, if arrested under these laws an innocent person cannot escape detention in jail even if he were to be finally not convicted at all.

Fourthly, no monetary compensation is provided to the victims of Executive's excesses.⁶⁸ Innocent victims who are illegally incarcerated or tortured/raped/killed in police custody are not eligible for any compensation, except for in rare cases and that too only recently after much public outcry or Public Interest Litigations (PIL), leave alone bringing the guilty officials to book. The government has resisted all attempts to establish the right to monetary compensation for wrongful actions by their agents and officers. It has argued that the state is not liable for the acts of its officers when discharging "sovereign functions".⁶⁹

Fifthly, is the massive misuse of these laws. As it has been felt that time and again such laws have been come with ostensible purpose and have been used for entirely different purpose. It is this ostensible purpose that is

⁶⁷ Gill, Sucha Singh, "State, Democratic Movement and Human Rights in India", *Indian Journal of Human Rights*, July-December, 1997, p 30

⁶⁸ On June 23, 1979, while submitting a unilateral decision against torture and its prohibition, the government stated that it reserved the right not to pay compensation to the victims of torture. *EPW*, June 15, 1996, p 1442. However, a decision of the Supreme Court in *Saheli vs Commissioner of Police*, 1990 (1) SCC 422 stated that compensation be ordered to be paid by the concerned government when its policemen cause bodily harm including battery, assault, false imprisonment, physical injury and death. *The Radical Humanist*, May 1992, p 2. Under the existing laws, victims of police torture or next of kin of those killed in police custody, have no statutory right to compensation. *EPW*, February 8, 1992, p 284

⁶⁹ "Indian courts have rarely awarded compensation to victims of human rights violations because the courts have held for many years that the state was not liable for the acts of its officers when discharging 'sovereign functions' of the State." Amnesty International, *Current Concerns*, October, 1990 (ASA/20/21/90), p 4.

projected so as to get public support for such laws. For example, TADA, which was initially enacted to combat terrorism in Punjab was later extended to nearly 16 of the 25 states, most of which, say Gujarat for example did not face the problem of terrorism.

Fifthly, these acts also directly helped in the brutalization of the state executive apparatus, namely the police, paramilitary and the army. Protected by these laws, which give them extraordinary powers of arrest and to kill with impunity, leave alone accountability, the security forces themselves let loose a reign of terror.

Extraordinary laws in Punjab to combat terrorism

Keeping the above in mind, let us have a look at the multiplicity of laws that were in operation, at one point of time or the other in Punjab during the decade of militancy, which clearly gave the government arbitrary powers. The backdrop of militancy, insurgency and terrorism in Punjab provided the greatest lever to the state to enact laws which not only suspended the normal political process in the state but empowered the security forces to take draconian measures to contain them. Between 1983-88 roughly 25 Acts had been passed by the Parliament (since the state was under President's Rule for most of the time), and several others operational, in respect of Punjab alone. They included among others

1. Disturbed Areas (Special Courts) Act 1976
2. Chandigarh Disturbed Areas Act, 1983
3. Armed Forces (Punjab & Chandigarh) Special Powers Act, 1983
4. Punjab Disturbed Areas Act, 1983
5. Arms (Amendment) Act 1983
6. Terrorist Affected Areas (Special Courts) Act, 1984
7. 48th Amendment to the Constitution Act, 1984
8. Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985
9. Provision for Security Belt, under Article 249, 1986

10. 59th Amendment, 1988

These laws gave massive and arbitrary powers to the executive apparatus, mainly the police, and the para-military and the army. The violation of human rights on a large scale in Punjab can be properly understood in the backdrop of these laws. An assessment of ordinary legal safeguards and the lacunae as discussed later in the chapter would put the violation of human rights in Punjab in a proper perspective. Some of these acts are discussed below.

The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983 & Punjab Disturbed Areas Act, 1983

The Acts authorized the Governor or the Central Government to declare the whole or any part of the state to be a “disturbed area”. During most of the period of militancy in Punjab, the state or significant parts of it were considered disturbed areas. In such an area, the act empowered “any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces” to

“After giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons of things capable of being used as weapons or of fire-arms, ammunition or explosive substances.”⁷⁰

Under these laws the security forces are also protected from being held liable for extra-judicial executions. Both Acts provide, “No suit, prosecution, or other legal proceedings shall be instituted except with the previous sanction of the State government against any person in respect of anything done or purporting to be done in exercise of the powers conferred

⁷⁰ *Dead Silence The legacy of abuses in Punjab, Human Rights Watch/Asia, p 23*

(by the acts).”⁷¹ Although, the government says that laws only require prior sanction for prosecution, in fact prosecutions have been extremely rare, if they have taken place at all.

Terrorist Affected Areas (Special Courts) Act, 1984

On July 14, 1984, the Government promulgated this Ordinance (which later became an Act) with the Parliament due to meet in another 10 days. The provisions of this Ordinance/Act could apply to any area in the country which was declared by the Central government (the Centre was not bound to consult the state government in this regard) to be a terrorist affected area. At that time, the whole of Punjab was declared such an area.

The main purpose of the Act was to set up special courts for the speedy trial of certain offences in terrorist affected areas so that the Courts may sit at places other than the usual court rooms, the trials may be held in camera and the names of the witnesses may not be disclosed. The Central Government can constitute Additional Special Courts outside the State concerned, at the behest of that State government.

The manner in which ‘terrorist’ has been defined under section 2 (h) of this Act, was such that it could apply to anyone, be it peasants, students et al. Given the provisions it could virtually be used in any situation and against anybody.

The term terrorist could be applied to any person who causes disruption of services or means of communications essential to the community if he does so “for coercing or overawing the government established by law. Thus, for example, a body of workers who bring about a strike in the railways or in the postal department with a view to coerce the government to accept their demands would come under the definition of terrorist and the area affected by the strike could be declared as a terrorist affected area.

⁷¹ ibid

The amended act provided for the extension of the ordinary period of investigation from 15 to 30 days, and where grounds are shown, to one year instead of 50 or 60 days. Thus a person arrested for an alleged offence could remain in custody for a whole year without charge-sheet being filed against him in a court of law.

It also provided that an arrested person may be produced before an executive magistrate and not necessarily before a judicial magistrate. It needs to be noted here that executive magistrates are appointed by the government and are hence amenable to executive influence.

The accused tried under the act cannot get anticipatory bail made under Section 438 of the criminal procedure Code. An ordinary bail could be possible only when a public prosecutor had been heard by the court. It also provides that no person accused of an offence scheduled under this Act shall be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of the alleged offence and further that he is not likely to commit "any offence" while on bail.

Under this Act, if a person is alleged to have committed an offence under section 121, 121A or 122 of the Indian Penal Code (sedition and connected charges) in a disturbed area and if the prosecution shows that the accused person was at a place where fire-arms or explosives were used in an attack on the police or the armed forces, the accused shall be presumed to have committed the alleged offence unless he proves his innocence. Thus it throws the burden on the accused to establish his innocence.

In addition to all this, in the case of anybody accused of 'waging war against the state', the person would have the onus of proving his or her innocence, in a summary trial. Against all this the only appeal lies to the Supreme Court (not to the High Court) that too within 30 days, as against the usual 90 days. Such a charge is punishable by death.

Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985

This was considered to be one of the most draconian of laws ever passed in independent India.⁷² TADA was originally enacted in May 1985 and was to last for two years. Through subsequent amendments (it was amended thrice, twice in 1985 itself and once in 1987) it was made stringent and given a fresh lease of life for five times until it was forced to expire by an adverse public opinion throughout the country in May 1995.

The Act did not spell out who a terrorist was. It only defined the expressions terrorist activities and disruptive activities and even those definitions were wide enough to cover activities private or public, violent or non-violent.⁷³

The government changed the basic legal system of India with its anti-terrorist Act, TADA. For the first time, a person accused was presumed guilty, even by association, until proved innocent. The Indian criminal law, it has to be noted here, after its British model, is accusatorial in character. The accused is innocent unless proved guilty. However, this act made it inquisitorial, like French and Italian Criminal laws.

An amendment in 1987 in this Act made it admissible for the first time in the country's legal history, a confession made to a police officer, of the rank of Superintendent of Police (SP). This was contrary to the Indian Evidence Act, 1872 and made police work easy.⁷⁴

The Constitution clearly says that no one shall be compelled to give evidence against himself (Article 20 (3)). There are provisions in the Code of

⁷² "... Indian history's harshest piece of legislation." *Mainstream*, September 3, 1994, p 11

⁷³ *ibid*

⁷⁴ In this context it is worthwhile to note the comments of the Supreme Court: "Whatever may be said for and against the submission with regard to the admissibility of a confession made before a police officer, we cannot avoid but saying that we - with years of experience both at the Bar and on the Bench - have frequently dealt with cases of atrocity and brutality practised by some overzealous police officers resorting to inhuman, barbaric, archaic and drastic method of treating suspects, in their anxiety to collect evidence by hook or crook and wrenching a decision in their favour." *EPW*, June 15, 1996, p 1441

Criminal Procedure (Cr. P. C.) which prohibit statements made to the police from being used as evidence (section 162, 163). Only confessions made voluntarily by the accused are admitted as evidence and that too if such a confession is made before a magistrate and upon being told by such magistrate that the accused was not bound to make it and that it would be used as evidence against him if he made it (section 164 (4) Cr. P. C.)⁷⁵. Rules of the police code of conduct lay down: "The police should not usurp the functions of judiciary and sit in judgement cases. Nor should they avenge individuals and punish the accused."⁷⁶

A. G. Noorani points out that even the Britishers considered the police force their own instrument, to be untrustworthy to receive confessions and bared such confessions under the Indian Evidence Act.⁷⁷

The Act then, virtually empowered the Union Government to make any officer in its civil services a policeman by conferring on him the powers of arrest, investigation and prosecution.

There was no clause in TADA referring to the speedy disposal of cases. Under ordinary laws trial should be finished within six months. But under TADA, an accused could be practically be detained in jail for nearly 3 to 4 years while charges had yet to be framed against him.⁷⁸

TADA completely eliminates the jurisdiction of the high courts. The appeal against the sentence and conviction is to the Supreme Court. The remand period is one year and bail applications can be made only to the designated courts.⁷⁹

⁷⁵ *EPW*, October 3, 1992

⁷⁶ "... the grant of arbitrary powers given to the police by TADA are justly described as amounting to 'state terrorism'." "Worse, TADA has grounded the criminal-investigation process completely with a police force notorious for lethargy opting for the shortcut that TADA provides." *Mainstream*, Sept. 3, 1994, pp 14-15

⁷⁷ P. Chidambaram reportedly said in Parliament, "We have lived with this law for 115 years and cried down our policemen." *EPW*, September 5-12, 1987, p 1521

⁷⁸ *The Illustrated Weekly of India*, April 18-24, 1992, pp 6-8

⁷⁹ *EPW*, September 26, 1992, p 2094

“In its attack on democratic rights,” says Randhir Singh, “TADA undermines almost every safeguard provided by the Indian Constitution and violates principles of liberal jurisprudence and natural justice - its definition of terrorist and disruptive activities is wide enough to cover anything and everything that those in authority may choose to find embarrassing, inconvenient or undesirable.”⁸⁰ Hence TADA allows officials to misuse their authority lawfully, something which they could not do according to democratic norms.⁸¹

Even the Supreme Court, while ruling in March 1994 that TADA was constitutional,⁸² confirmed that police had frequently abused the Act in order to circumvent the ordinary legal safeguards.⁸³

National Security Act (NSA), 1984

After it was amended in 1984 (through ordinance 5 & 6 in April and June, respectively) the NSA permits the detention of persons without charge or trial for up to one year. A detainee held under the act has virtually no opportunity to file a *habeas corpus* petition until the grounds for detention are communicated to him. Because the amended Act extends the period before which a detainee must be informed of the grounds for his detention from ten to fifteen days, it effectively prolongs the period before which a detainee has recourse to *habeas corpus*. Though this extended period of detention was to be used only “in exceptional circumstances”, but then it

⁸⁰ *EPW*, February 8, 1992, p 283

⁸¹ *The Illustrated Weekly of India*, April 18-24, 1992, pp 6-8

⁸² “TADA was upheld by the court, true; but it was repealed under pressure of public opinion and cast a lasting shock on the confidence in the summit court even as the judicial validation of the Emergency, with its fatal fangs biting human rights, left an indelible strain on the apex court.” *The Hindu*, Delhi, August 3, 1998

⁸³ *Amnesty International Report 1995*, p 157. TADA was regarded as a law which conveniently cut inconvenient corners of the common law and made up for gaps in crime control and investigation. As a commentator remarks: “TADA was a godsend because of the drastic differences in its bail provisions and trial procedures *vis-a-vis* the penal laws, it bypassed the normal process of inquiry and prosecution and it came in handy to show results to political leaders and the media who clamour for swift action.” Even the National Human Rights Commission - a statutory body - had decided to challenge the constitutional validity of the Act. *Mainstream*, September 3, 1994, pp 11-12

would not be difficult for the detaining authority to discover some exceptional circumstances to explain the delay.

This Act also provided that the case of a person detained under this act should be submitted to the Advisory Board. In 1987 again an amendment was made in its application to Punjab and the Union Territory of Chandigarh. It provided that notwithstanding any order of a court a detainee may be detained without obtaining the opinion of the Advisory Board for a period longer than three months but not exceeding six months from the date of his detention where such a person had been detained with a view to preventing him from acting in any disturbed area in any manner prejudicial to the defence of India, the security of India or the state.

Practically it meant that for six months the government could lock up any person in Punjab without trial and without a reference to an Advisory Board. If the board finds the grounds for detention insufficient, the government is to revoke the detention orders and release the detainee "forthwith". Even so, a person may have been detained under the act for nearly six months before that decision is reached. Furthermore, the detainee has no right to appear before the advisory board, and the findings of the advisory board are confidential.

The amended act also revises Section 14 (2) of the 1980 NSA which had required that a fresh detention order could only be issued if new facts arose. Under the amended act, detention orders may be renewed on the original grounds, provided the total period of detention does not exceed twelve months.

Unlike in the original act, the amended act provided that the advisory Board was to consist of three persons "who are qualified to be appointed as judges of a High Court". This allowed the scope for "government nominees" in the Advisory Board as in the original act provided for a chairman who shall be a serving judge of the high court of

that state while the other members could be serving or retired judges of any high court.

The amendment was necessitated by the fact that the old section (14 A) was struck down by the Punjab and Haryana High Court on the ground that it did not comply with Article 22 (7) of the Constitution which empowers Parliament to prescribe the maximum period of detention as also the procedure to be followed by the Advisory Board.

59th Amendment Act, 1988

Passed on March 23, 1988 this Constitution Amendment Bill enabled the Government to extend the President's Rule in the state beyond one year. With the amendment by incorporation of Article 359A, the President could declare Emergency even in the absence of armed rebellion,⁸⁴ if he was satisfied that the integrity of India is threatened by internal disturbance in the whole or any part of Punjab. Article 21 of the Constitution which guaranteed that no person shall be deprived of his life and liberty except according to the procedure established by the law was suspended.⁸⁵ "This amendment took away the constitutional right to life in Punjab ostensibly to give teeth to security operations."⁸⁶ It also made possible for the government to issue a Presidential Order under Article 358 of the Constitution prohibiting publication of information or discussions about

⁸⁴ Article 352 of the Constitution provides for declaration of Emergency in a situation of armed rebellion besides war or external aggression against the country. Kumar, Ram Narayan, & Sieberer, Georg, *The Sikh Struggle Origin, Evolution and Present Phase*, 1991, Chanakya Publications, Delhi, p 288

⁸⁵ "When this amendment Bill was introduced the then Opposition leaders said that the Central government had a sinister design to use the situation in Punjab as a excuse to acquire powers to promulgate Emergency in the country. But when the Home Minister assured them that the Bill was meant only for Punjab, they acquiesced. During the Emergency between June 1975 to March 1977, the Akali Dal of Punjab was the only party in India to effectively protest against the measure." *Seminar* 398, October 1992

⁸⁶ Gupta, Dipankar, *The Context of Ethnicity: Sikh Identity in a Comparative Perspective*, 1996, Oxford University Press, Delhi, p 82

Punjab in any part of the country and movement of persons from other parts of India into Punjab without the prior permission of the government.⁸⁷

Later, however, it was noted, "Although the 59th Amendment has since lapsed,⁸⁸ it is clear from the case studies of state atrocities in Punjab compiled by human rights organisations that the sovereignty of the Indian state is not limited by the rule of law."⁸⁹

Police and the Law

To maintain order and peace in society and to prevent, detect and control crime, the state provides its law enforcement machinery, particularly the police, with wide ranging powers. If used arbitrarily, the powers could impinge on the dignity and the liberty of the individual.⁹⁰

As a part of these developments, the police apparatus has come to acquire autonomy from the Rule of Law and Constitutional norms.⁹¹

Despite the fact that nearly all the above mentioned acts give sweeping and arbitrary powers to the police, they quite frequently act beyond the ambit of law. No law authorises the police to torture suspects, to kill them in fake encounters, or tamper with post-mortem reports or not conduct them at all., prevent the dead bodies from being given to relatives or disallow the dead body to be inspected by doctors. In the case of Punjab, the above and much more was widely practised by the Army and the police.

An honest government would make sure that every dead body is not only handed over to the relatives of the person killed but examined or

⁸⁷ Kumar, Ram Narayan, & Sieberer, Georg, op. cit. p 288

⁸⁸ It was repealed by the National Front coalition government in December, 1989, which had replaced the Congress (I) government in November, 1989.

⁸⁹ *Seminar* 398, October 1992

⁹⁰ Subramanian, Dr. S, *Human Rights International Challenges Vol I*, 1997, Manas Publications, Delhi, Chapter 15

⁹¹ Haragopal, G., "Bureaucracy, Rule of Law and Human Rights", *The Indian Journal of Public Administration*, July-September, 1994, Vol. XL, No. 3

photographed by an independent team of doctors and photographers so that the terrorist who killed them can be caught.

In fact, Article 4 of the United Nations' Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 says that: each state party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person who constitutes complicity or participation in torture.⁹² Though the NHRC, which is a statutory body has urged the government, it is yet to ratify this convention.

Article 5 of the Universal Declaration of Human Rights, which has been incorporated into the International Covenant on Civil and Political Rights (Article 7) says: "No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment. India ratified this covenant in 1979 and therefore the right not to be tortured cannot be derogated by any law or by any practice."⁹³

In fact, in the same year the government deposited with the UN a unilateral declaration against torture, in which it said that it would comply with the rules of prohibition of torture laid down in the declaration and assured to implement its provisions through legislative and other effective measures. It is significant to note here that India took the initiative urging other member states of the UN to make such a declaration on torture.⁹⁴

Ordinarily, torture is a crime under the law. Sections 330 & 331 of the Indian Penal code provide imprisonment for up to 10 years for anyone convicted of causing hurt to extort a confession or information about an offence. Section 302 makes murder liable to life imprisonment or death. Section 29 of the Police Act, 1861, makes a police officer who commits "any unwarrantable personal violence to any person in his custody" liable to loss of pay for three months or imprisonment not exceeding three months.

⁹² *EPW*, June 15, 1996, p 1442

⁹³ *ibid*

⁹⁴ *ibid*

Section 176 of the Code of Criminal Procedure makes it compulsory for the executive magistrate to hold an inquiry into the cause of death of any person while in custody of the police. However, in many areas, the senior police inspectors themselves are the executive magistrates.⁹⁵ It is also required by law that a record be maintained of any person detained in prison. The law also directs for a proper post-mortem and a notice to be given to the nearest relative and they should be allowed to remain present at the inquiry, however, there is no provision for making the inquiry report public or to challenge the findings in appeal or to take any steps for the aggrieved party. Ajit Singh Bains, a retired judge of Punjab High Court says: “When a police officer tortures another citizen in a police state, he escapes and in exercising that legal right he infringes upon the constitutional protection given to his fellow citizen.

On the use of force, the law says that the police have only the right to defend and use such power as may be necessary to avoid any injury to themselves, or to any person or property.

Immunity to government servants

The rule of law is that how ever high one may be, the law is above him. Hence in theory at least it recognises that nobody is above the law and whosoever commits an offence should be tried and punished without prejudice.⁹⁶ In a broader perspective, this implies that the state which is a legal entity and which has a duty to protect its citizens, also acts within the purview of laws and behaves lawfully. Hence if a government official violates a law or indulges in any criminal act, the law should work against him and he too must be punished in the same fashion.⁹⁷

⁹⁵ *ibid.* The Central Government announced in May 1994 that it was considering a legal amendment that would require judicial enquiries into all deaths in custody. However, by the end of the 1994 it had not been passed. *Amnesty International Report 1995*, p 157

⁹⁶ *Seminar*, 398, October, 1992, p 37

⁹⁷ *ibid* p 36

Public servants, however, including police and executive magistrates, enjoy considerable protection from prosecution. Section 197 of the Criminal Procedure Code, provides that a public servant cannot be prosecuted without prior permission of the government - either state or central which employs them. Often such permission is withheld as the guilty public servant could be either obeying instructions of his superior or the crime is possibly ordered by the same authority who is to grant permission for prosecution.⁹⁸

That protection was further strengthened with the Parliament's adoption of the Code of Criminal Procedure (Amendment) Bill in September, 1991. This protects all government officers from any prosecution for actions taken in the course of duty when a state is under direct rule from the Central government. In those states, officials may be prosecuted only with the central government's permission.⁹⁹

In 1956, the Law Commission had recommended that state liability should be the rule and sovereign immunity, the exception.¹⁰⁰ Human rights organisations, have insisted time and again that government officials should abide by the law, just as government officials expect citizens to act in accordance with the law.

A government's role is to protect its citizens and to punish criminals. When the demarcation line between terrorist action and government action vanishes, or when a government functioning behaves like a terrorist, he becomes more dangerous than the terrorist, since the law works against the latter but not against the government official who takes the

⁹⁸ *ibid* p 37

⁹⁹ Summing up their experience the UN Working group on Enforced or Involuntary Disappearances pointed out "The working group's experience over the past 10 years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violation, whether civilian or military, will become all the more brazen when they are not held to account before a country of law." *EPW*, March 23, 1996, p 707

¹⁰⁰ The recommendation as suggested in its first report urged that immunity be relaxed, though it remains unimplemented. Amnesty International, *Current Concerns*, October, 1990 (ASA/20/21/90), p 4

law into his own hands. If the rulers themselves direct their officers to disobey the law, then there are no safeguards left in the legal machinery.¹⁰¹

Thus the above points out to a contradictory and yet a realistic situation. As Upendra Baxi, the noted legal and constitutional expert says, “While the nation state celebrates its commitment to the rule of law, it also allows space for (for what I have elsewhere called) ‘surplus repression’, or the reign of terror. It is historically validated that rule of law coexists ‘peacefully’ with the reign of terror (Baxi 1993:85.94).¹⁰² In an almost similar vein Rajni Kothari considered the Indian state as an armed wall against democracy, with an increasing proclivity to crush protests with force.

Commenting on this high-handed approach of the State apparatus it has been remarked: “The thinking and philosophy in the state circles, particularly the coercive apparatus is that the constitutional norms and legal niceties are meant only for the law abiding citizens rather than the law violating forces. In fact, the repressive laws are passed on only those assumptions. At one stage, they feel that any law can be handicap in performing their order maintenance function . They demand that unless they are armed with arbitrary power, they would not be able to handle an ‘anarchic’ situation. They carry this argument to its logical limit and equate private or political violence with state violence. Once this logic is accepted, the torture through third-degree methods, the encounter deaths, the lock-up deaths, ... all become a part of their effort to restore law and order.¹⁰³

This reminds of, as many theorists still define, the state in terms of its monopoly on the use of violence considered legitimate. For example Max Weber’s classic statement : “The state is considered the sole source of the ‘right’ to use violence... The state is a relation of men dominating men, a

¹⁰¹ *Seminar*, 398, October, 1992, p 38

¹⁰² Baxi, Upendra, “The State and Human Rights”, in Mohanty, Manoranjan, Mukherji, Partha Nath with Tornquist, Olle, Editors, op cit p 336

¹⁰³ Haragopal, G., and Balagopal, K., “Civil Liberties Movement and the State in India” in Mohanty, Manoranjan, Mukherji, Partha Nath, op cit p 366

relation supported by means of legitimate (i.e. that is considered to be legitimate) violence.”

Quite many regard the State in independent India as one of the major perpetrators of violence over its own citizens. “Despite the state’s declared profession of adherence to *ahimsa* or non-violence (which it invokes from historical precedents like Buddha and Ashoka, down to Gandhi) - by formulating official symbols and rhetoric that represent their doctrine, in practice the Indian state has repeatedly resorted to the language of violence in trying to resolve these contradiction that plague Indian society.¹⁰⁴ Sumanta Banerjee says that governments have allowed issues to fester, acting - often with high levels of violence and brutality against innocent civilians - only when militant agitation grows... Violent state counter measures, insomuch as they single out visible ordinary citizens rather than invisible terrorists, have alienated the population and filled the rank of terrorist groups.¹⁰⁵

Randhir Singh remarks: “Looming large over all these forms of private violence in our society is the violence that the Indian state has come to represent today. The issue here is not its inherently violent nature as a state, or the violence implicit in the socio-economic structures this state normally defends, violently or otherwise. What needs to be noticed here is its emergence as the single largest perpetrator of violence on the people today.

Such is the explicit material expression of this violence in recent years that scholars and laymen alike have been compelled to speak of ‘state terror’ or the ‘terrorist state’ in contemporary India. There is the ever-growing draconian legislation and the ever-expanding apparatus of repression and the ruthless use of both” in all parts of the country.

¹⁰⁴ Banerjee, Sumanta, “The Politics of Violence in the Indian State and Society”, in Rupesinghe, Kumar & Mumtaz, Khawar, op cit, *Internal Conflicts in South Asia*, 1996, Sage Publications, New Delhi / International Peace Research Institute, Oslo, p 82

¹⁰⁵ Rupesinghe, Kumar & Mumtaz, Khawar, op cit, p xiv

Hence, violence by the state and its agencies is at times much more harsher and destructive. However, the terms “terror” and “terrorism” have generally been confined to the use of violence by individuals and marginal groups. “Many of those who use ‘terrorist’ as a term of denunciation apply it, ...to their opponents and refuse to apply it to the acts of their own government, even when such governmental action is as clearly violent, intended to spread fear, or expectably proclitic of the killing of non-combatants.

Simultaneously state terrorism is not seen as another form of terrorism, it rationalised and defended, public sanction secured for it, as a means of countering this threat. Compelled to admit the obviously lawless and terrorist acts of the state, they are justified simply as a necessary counter-terrorism.

The media has portrayed the state as the “embodiment of rationality” and hence its force as legitimate, while the terrorists are quintessentially irrational and the violence they use are not “legitimate”. Constant coverage of this nature helps to create a sensibility and frame of mind that allows greater freedom of action by the state.¹⁰⁶

“Terrorism is not recognised as a *genuine political problem* - but continues to be seen as a law and order problem. Firm action, the hard option persists as the only viable solution. Counter terrorism reappears, again and again, as the easier option. The vested interests that have grown around this option, involving the police and the paramilitary forces, bureaucracy, politicians and sundry other dubious elements, only facilitate persistence of this option - and State terrorism continues.¹⁰⁷ The behaviour of governments, which were conceived as essentially secular and non-

¹⁰⁶ Schlesinger, Philip, “Terrorism, the media and the liberal democratic state A critique of orthodoxy” in Yonah, Alexander, Edited by, *Terrorism in Ireland*, 1984, Croon Helm, London, pp 213-32

¹⁰⁷ *Economic and Political Weekly*, February 8, 1992, p 283

partisan mediators between various sectors of society, has degenerated to a point where state actors have increasingly contributed to social strife.¹⁰⁸

A repressive apparatus consisting of the police, paramilitary forces and the Army have been increased steadily and these have contributed to the “built-in violence” in the structure of the Indian State. As it has been remarked that one of the “potential defenders of civil society - the military and the police - have been primary actors in the partisan and brutal repression of internal conflicts, which has been ‘legitimised’ by the promulgation of numerous laws that restrict individual and group rights and exacerbate tensions...¹⁰⁹ During the last two decades, the coercive apparatus has come to occupy considerable political and administrative space. This is, undoubtedly, negation of both the democratic process and constitutional governance.¹¹⁰ Most of the paramilitary forces have been used all these years and still continue to be used - to tackle civil disturbances within India.¹¹¹

C.P. Bhambhri says: “Unfortunately failure to accommodate has led to a situation where politics of coercion as concretised by the bureaucratic and police apparatus of the Indian state has emerged more significant than the politics of accommodation.¹¹² “What we confront today is not the crisis of politics but its virtual elimination. The last decade has marked the beginning of the Indian state that has not only deprived society of basic consensus but which has eschewed any scope of dialogue from it. The violence, the fear, the repression, the rhetoric of double speak, are symptom

¹⁰⁸ Rupesinghe, Kumar & Mumtaz, Khawar, op cit, p xi

¹⁰⁹ ibid

¹¹⁰ Haragopal, G., “Bureaucracy, Rule of Law and Human Rights”, *The Indian Journal of Public Administration*, July-September, 1994, Vol. XL, No. 3

¹¹¹ Banerjee, Sumanta, “The Politics of Violence in the Indian State and Society”, in Rupesinghe, Kumar & Mumtaz, Khawar, op cit, p 85

¹¹² Bhambhri, C. P., “Constitutional Democratic State in India: A Critique”, *The Indian Journal of Public Administration*, July-September, 1994, Vol. XL, No. 3

not of crisis but the end of politics... It marks the decline of state from an adjudicator of interests to a criminal persona.”¹¹³

In the case of Punjab, which is the area of study for this dissertation, it was once remarked: “The language of the gun is thus becoming a decisive force in political discourse in India. It is gradually edging out debates in a democratic framework, and suppressing dissent in the traditional humanitarian variety. Both the Indian state and its armed opponents in Punjab... refuse to provide any neutral space for expression of disagreements. This trend of intolerance of democratic dissent was inaugurated in Indian politics by the post-independence state in general, and in particular by the Congress party which has it for most of the time since 1947.”¹¹⁴

¹¹³ Kothari, Rajni, *Politics and The People In Search of a Humane India, Volume II*, 1990, Aspect Publications, London / Ajanta Publications, Delhi, p 439

¹¹⁴ Banerjee, Sumanta, “The Politics of Violence ...”, op cit, p 89

CHAPTER III
VIOLATION OF HUMAN RIGHTS BY THE STATE
IN PUNJAB (1983-93)

“The only turmoil in Punjab are the acts of violence by terrorists who have been indiscriminate in their butchery of all communities.”

(Statement issued by the Indian Embassy in Washington, in March 1989 on the issue of granting permission to Amnesty International to visit Punjab to have a first hand account of human rights violations in the state, by the state security apparatus).¹¹⁵

“We don’t torture anybody. I can be very categorical about that. Wherever we have had complaints of torture we have had it checked and we have not found it to be true”

(Prime Minister, Rajiv Gandhi, on the issue of India’s human rights record in an interview to the BBC TV, January, 1988).¹¹⁶

The year 1993 was a watershed year in the history and politics of Punjab. On the one hand, though, it marked the end of a tragic phase of “terrorism” and “insurgency” and the beginning of the restoration of normalcy, yet on the other, and more importantly, it was this time when the people of Punjab started coming out in increasing numbers to narrate the horrifying stories of what may be called “state terrorism” and the gross violation of human rights by the state security apparatus, especially by the Punjab Police.

¹¹⁵ *The Tribune*, Chandigarh, 22 March 1989

¹¹⁶ *Human Rights in India The updated Amnesty International Report*, Vistaar Publications in association with Amnesty International, 1993, p 1. Commenting on the above statement it has been said: “It was part of Rajiv Gandhi’s distinct style to make a false assertion in the most confident manner in the foolish belief that he could “brazen it out”. *Frontline*, April 24, 1992. Yet another scholar remarks that such statements “expose the mendacity of the spokesmen of our government - ranging from the Prime Minister himself to the bureaucrats.” *Seminar* 405, May 1993, p 61. In fact, even as late as in April 1992, Union Minister of State for Home, M M Jacob had reportedly stated: “Police atrocity is a term seldom used in Punjab. The Punjab police is very moderate and very well behaved.” *The Illustrated Weekly of India*, April 18-24, 1992

Between 1984 and 1993 near about 10,000 persons lost their lives and a much larger number were wounded or left disabled for life. There are evidences to believe now that a sizeable number of these deaths and injuries was the result of “state terrorism”. Most of these deaths attributed to the state security apparatus occurred either in police custody or in staged encounters. These encounters show the presence of the state’s extra-judicial methods to curb the barest of human rights at will and with impunity. The violation of human rights with the consent and encouragement of political and official top brass of the state (Punjab) and of the Indian state uncovers the ugliest face of the state in independent India.

Indeed, Punjab suffered, wounded and bled much more at the hands of the state than those of the “separatists” and “terrorists” during these years of darkness between 1984 and 1993.

Among the counter-insurgency offensives, the most important was “Operation Rakshak II” (Protector) which was launched in 1991-92 and which very swiftly and successfully destroyed most of the militant groups in Punjab by mid-1993. Despite the enthusiastic and loud talk about this Operation by the senior security personnels, the reality remains that this Operation represented the extreme example of a policy in which all kinds of means were justified to fight “terrorism”. It not only permitted illegal detention and interrogation but also torture and murder in custody or in a staged encounter. The killing of real, suspected or projected “terrorists” by the security forces was encouraged by a system of monetary rewards which gave every policeman an incentive to kill and earn. This provided a good enough reason to every *policewalla* to kill at will and project the dead as a terrorist. The brutality of the extra-judicial tactics of the state security apparatus in Punjab reached such heights that not merely the real or suspected terrorists and their sympathisers were targeted but also the common people were victimised for their crime of living in an area visited by the “terrorists” as also the family members of a “terrorist”. Sometimes the

cruel and barbaric methods applied to extort confession from detainees were capable of putting even Gaestapo to shame. Understandably, the purpose behind such acts was to create an atmosphere of terror so that nobody would dare to join, help or support the separatists and that nobody could point out the high-handedness of the state security apparatus. That the common people of Punjab could muster up courage to speak out their woes inflicted by the security force only after 1993 and not before it, is in itself an indicator of the atmosphere of terror created by the security forces in the state of Punjab.

In fact, the government never tried to completely deny the charges of human rights violations but counter-argued that “the Sikh militants too had been responsible for human rights abuses.” Even the senior police and civil authorities in the state and the Union government (Punjab for most of the time was under President’s Rule) acknowledged that staged encounters and other malpractice had been widespread, but they justified such brutality as the only practical means available to fight terrorism.

Observers of developments in Punjab, in fact, see a close relationship between the escalation of separatist militancy and the steady augmentation of state violence outside the established procedure of law.¹¹⁷ A series of special laws not only suspended the normal political process in the state but empowered the security forces to take draconian measures to contain disorder and insurgency.¹¹⁸ When the security forces transgress the very law they fight to restore, what follows is, revulsion, revenge and further alienation. To contend that the administration and the judiciary had retreated into hiding and should now be taken to task for their cowardice, is to beg the explanation. The Administration and the judiciary can only deliver only when the police and the security forces are able to maintain law and order and the rule of law. Nor should anyone expect the Indian Judiciary to go

¹¹⁷ Kumar, Ram Narayan, & Sieberer, Georg, *The Sikh Struggle Origin, Evolution and Present Phase*, 1991, Chanakya Publications, Delhi, p 297

¹¹⁸ Singh, Gurharpal, “Punjab since 1984 Disorder, Order, and Legitimacy”, *Asian Survey*, April, 1996, p 411

anything else other than the evidence on record. It was the failure of the police to gather evidence that led to the promulgation of the most barbaric of laws: TADA. The Indian law itself was made to stand on its head where now, a person was presumed guilty, even by association, until proved innocent. In those painful years we fought militants or presumed militants but not militancy.

Indira Gandhi too in a speech had said that if the Sikhs demanded a homeland than Sikhs living outside the Punjab would be subjected to civil violence, thereby admitting that the state was unable to protect its citizens.¹¹⁹

Governor SS Ray had a taste of public outrage against state terrorism when a public meeting he had called near Batala turned into an anti-police rally. People's anger and resentment showed no bounds and nearly 40 *sarpanchs* who had resigned from their posts in protest against 'state terrorism' called the whole policy a matter of national shame.¹²⁰

The Congress (I) formed a government in the state in 1992 but real authority for all matters related to the conflict remained with the Director General of Police (DGP), K.P.S. Gill. Immediately after the election, Gill launched an all-out campaign against the militants, expanding a bounty system of cash rewards for police officials who killed important militants. By August, the entire security forces in Punjab were operating jointly under the command of the DGP. It needs to be noted here that in late 1991, the whole of Punjab was designated a "disturbed" area, giving the army extensive powers to act in aid of the civilian forces, including the power to detain people without the approval of courts.¹²¹

¹¹⁹ "Time, Self, and Community: Features of the Sikh Militant Discourse", in Jayaram, N. and Saberwal, Satish, edited by, *Social Conflict*, 1996, Oxford University Press, Delhi, pp 188-89

¹²⁰ Karim, Maj. Gen. Afsir, *Counter-Terrorism: The Pakistan Factor*, 1991, Lancer International, New Delhi; Page 56

¹²¹ *Human Rights in India The updated Amnesty International Report*, op cit, p 29

Operation Blue Star (June 5-7, 1984), undertaken by the Indian Army to flush out the militants out of the Golden Temple in Amritsar, was the turning point in the separatist movement in Punjab. Two more events following it, finally cemented terrorism in the state. The first of these two was, almost simultaneously launched with Operation Blue Star, the Operation Woodrose, again an army operation, to flush out the militants from their hideouts in the State especially the countryside and the second was the anti-Sikh riots of November, 1984 in the wake of Prime Minister, Indira Gandhi's assassination by two of her Sikh bodyguards, which took place mainly in Delhi. In these riots thousands of innocent Sikhs were butchered allegedly with the tacit connivance of the police and the politicians.

Dipankar Gupta writes: "The militancy of the 1980s also developed gradually, crystallising first with Operation Blue star and then firming up with the November 1984 massacres."¹²² Putting this dramatically, K.P.S. Gill says: "Over the entire period of the terrorist movement in Punjab, the two most significant victories for the cause of Khalistan were not won by the militants, but inflicted - through acts of commission and omission - upon the nation by its own Government." "The first of these," he continues, "was Operation Blue Star, the second, the anti-Sikh riots of 1984."¹²³ "A deep psychological alienation" of the Sikhs was caused by these two events.¹²⁴

Blue Star coming at the end of extended period of stupefying inaction, constituted the worst form of over-reaction that could have been contrived.¹²⁵ As later events conclusively proved that this operation was not only flawed in its very conception but marred by poor planning and

¹²² Gupta, Dipankar, *The Context of Ethnicity: Sikh Identity in a Comparative Perspective*, 1996, Oxford University Press, Delhi, p 128

¹²³ Gill, K. P. S., *Punjab: The Knights of Falsehood*, 1997, Har-Anand Publications, Delhi, p 86

¹²⁴ Bose, Sugata & Jalal, Ayesha, *Modern South Asia: History, Culture & Political Economy*, 1998, Oxford University Press, Delhi, p 225

¹²⁵ *ibid*, p 86

execution.¹²⁶ According to Khushwant Singh: “As far as the competence of the Army less said the better. In an age when handful of Israeli and German commandos could, through a well-planned action overcome well-entrenched enemy thousands of miles away from them, the best of our Generals could do was to storm the Temple complex with tanks and armoured cars, blast the Akal Takht to get at Bhindranwale and about 200 of his men. In the crossfire upwards of 5,000 people, a majority of them pilgrims, including women and children lost their lives. Far from doing a competent job, our Army Commanders botched up a simple operation.”¹²⁷

The Operation itself commenced less than three days later on the arrival of the Army, under political pressure, indeed, in a state of hysteria, long before it could dig in and make a realistic evaluation of the situation.¹²⁸ The total casualties, according to one source, in the whole state during this clean up operation, as on June 30, 1984 were:

* Army: 92 killed and 287 wounded

* Militants and civilians: 554 killed, 121 wounded and 4,712 apprehended.¹²⁹

In the encounter, Bhindranwale was killed¹³⁰ along with a large number of innocent pilgrims. The Golden Temple itself was badly damaged, and the adjoining Akal Takht (the traditional seat of temporal power) was completely destroyed. Sikhs in general were horrified by this Operation and were strikingly unanimous in their condemnation of the Operation as an unnecessary overkill. In their view there were less sensational methods available to the Army to get the militants, without damaging the temple so

¹²⁶ Karim, op cit, p 35

¹²⁷ Quoted in *ibid*

¹²⁸ Gill, K. P. S., op cit, p 88

¹²⁹ Sharma, D. P., *The Punjab Story Decade of Turmoil*, 1996, APH Publishing House, New Delhi, p 75. “According to the Government’s White Paper, 4,712 persons were killed and 10,000 arrested in the Operation.” Marwah, Ved, *Uncivil Wars Pathology of Terrorism in India*, 1995, Centre for Policy Research, New Delhi & Indus: An imprint of HarperCollins Publishers India, New Delhi, p 175

¹³⁰ “Bhindranwale overnight became the hero he had never been when alive.” Akbar, M. J., *India: The Siege within Challenges to a Nation’s unity*, 1996, UBSPD, New Delhi, p 201

extensively, and without killing innocent pilgrims who had gathered there that week to celebrate Guru Arjan Dev's martyrdom. According to most estimates over 400 such pilgrims died though it is hard to get an accurate confirmation of this figure.¹³¹ The immediate reaction of this Operation was the alienation of the Sikh community from the national mainstream.

The Sikh psyche was unprecedentedly wounded and their anger knew no bounds. The assault was therefore widely seen as a deliberate attempt to humiliate their community rather than as a necessary step to curb extremist violence. For many Sikhs, substantial damage to sacred property became a powerful symbol of official repression¹³²

Immediately after the Operation, the *Indian Express* wrote: "It is imperative that a salve be applied to the hurt collective psyche of this proud and valiant community before any lasting damage is done. What started as a Punjab question and the got enmeshed in terrorist violence cannot be allowed to fester and become a Sikh problem."¹³³

More importantly, as Asfir Karim points out, "Despite random violence and acts of defiance sometimes bordering on sheer madness, organised terrorism had not taken roots in Punjab before Operation Blue Star."¹³⁴ It was the impact of this Operation and its "lasting adverse effect on the Sikh masses, which put a majority of unemployed Sikh youth on the road to organised terrorism."¹³⁵ Swaran Singh, a Congress (I) loyalist for years, commented that the sanctity of the Golden Temple was first defiled by the extremists and then by the government. "Two wrongs," he added, "do not make a right."¹³⁶ B. S. Danewalia says, "Bhindranwale's death did not

¹³¹ Gupta, Dipankar, op cit, p 77

¹³² Kapur, Rajiv A., *Sikh Separatism: The Politics of Faith*, 1987, Vikas Publishing House, Delhi, p 235

¹³³ Tully, Mark and Jacob, Satish, *Amritsar: Mrs. Gandhi's Last Battle*, 1985, Rupa by arrangement with Pan Books, London, p 206

¹³⁴ Karim, op cit, p 36

¹³⁵ *ibid*

¹³⁶ *Amrit Bazar Patrika*, Calcutta, 17 June 1984

mitigate chaos; it laid the foundations of yet more to come. State terror would take over.”¹³⁷

Later, in the same year prime minister, Indira Gandhi was assassinated by her Sikh bodyguards “letting loose large-scale massacres of Sikhs in Delhi and elsewhere. In Delhi alone over 1,800 Sikhs were killed.” But what really added to Sikh minority anguish was the participation of Congress functionaries in the killing, and the government’s reluctance to bring the guilty to trial.¹³⁸ Rajiv Gandhi gave militant sentiments further reason to come out in the open when, in one of his first public meeting after being elected Prime Minister, he declared that when a giant tree falls the earth is bound to tremble. The Sikhs read this statement to mean that the killings following the assassination of Indira Gandhi were a natural outcome and need not necessarily be deplored or castigated.”¹³⁹

The Ranganath Mishra Commission of Enquiry (set up in April 1985) to probe into the excesses committed against the Sikhs “criticised the Police commissioner and his officers for having failed to act as a professional force.” Later, yet another - Jain-Aggarwal Committee - confirmed that the police had “colluded” in the killings and recommended action against 298 police officials for criminal negligence of duty” and indicted two senior Congress (I) party leaders. Police had failed to intervene and subsequently failed to register reports, allowing those responsible to escape punishment, it noted.¹⁴⁰ Nothing happened, however. But “it taught the Sikhs a lesson to learn to defend themselves, in the future.”¹⁴¹ “It is in this context,” writes Dipankar Gupta, “that one must seek to comprehend the

¹³⁷ Danewalia, B. S., *Police and Politics in the 20th Century Punjab*, 1997, Ajanta Publications, Delhi, p 431

¹³⁸ Gupta, Dipankar, op cit, p 77

¹³⁹ *ibid*, p 127

¹⁴⁰ Amnesty International, *Report 1994*, p 159

¹⁴¹ Danewalia, op cit, p 435

development of militancy in contemporary Sikh identity. First, their awareness of being a minority was not simply in terms of numbers, but in the added realization that there was a concerted persecution of the community by the Hindu majority.”¹⁴²

Operation Woodrose was launched simultaneously with Operation Blue star throughout Punjab. “It was, however, as Danewalia notes, “against the civil Sikh population in Punjab. It was carried out in the countryside of the border districts to stamp out the terrorists. There were large scale dragnet operations to search and seize any Sikh wearing a Kirpan or a flowing beard or flaunting a saffron turban... the hunt for baptised Sikhs in the rural Punjab continued for many months.”

On the modus operandi, he says: “The security forces in Punjab would descend on a village, arrest young males, suspect or hirsute, destroying their belongings; all this was permitted to the police. The laws were changed to permit promiscuous searches and arrests. Then the arrested were tortured in all conceivable ways. The short cut was to round up suspects and book them as accused under TADA. The rule of law was out of fashion. The terrorist violence was probable condemned by a majority of intellectuals but state terrorism was encouraged by a maddened section of the population and irresponsible bureaucracy. Police stations became torture houses.”¹⁴³

That Operation Bluestar should be followed by the less commented upon Operation Woodrose was inevitable. This caused further deep injury, through the countryside and villages of Punjab. The army was then entrusted with the impossible task of clearing Punjab of terrorists, it was then the *de-facto* ruler of Punjab. It went through those village, with patently harmful

¹⁴² Gupta, Dipankar, op cit, p 127

¹⁴³ Danewalia, op cit, p 434

consequences, attempting to fulfil a mandate for which it had neither the training nor the ability.¹⁴⁴

Operation Woodrose made the Sikhs in the countryside, especially in the Majha belt, feel like hunted animals. Countless young men preferred to flee than face capture and worse. Those left behind - women, children and the aged - suffered indignities, often imprisonment, for refusing to disclose the whereabouts of the young men.¹⁴⁵ Commenting on this Operation, it has been noted: "The Central Government's aggressive policy in Punjab which was largely meant for the gallery outside the province, also stoked the fire of terrorist militancy. Between 1986-87, Operation Woodrose systematically terrorised the youth between the ages 16-20 driving many youngsters closer to extremist point of view."¹⁴⁶

One incident deserves a mention, here. Surjit Singh Penta was the commander of the Bhindranwale Tiger Force, a particularly brutal terrorist organisation. He had recently (the year in mention was 1988) led an attack on a children's birthday party in Delhi, shooting thirteen of the guests dead. Penta was barely twenty. He had been an outstanding athlete, training to represent India, when his parents were arrested on suspicion of harbouring a terrorist. That turned him against the Indian police and drove him in the hands of the Sikh militants.¹⁴⁷

In the early years when terrorism was taking root, in many parts of Punjab "a state of chaos and repressive police methods combined to create a mood of overwhelming despair in the Sikh masses. Anger and resentment against the authorities made Sant Bhindranwale even more popular and the demand of a Sikh state now gained currency, even amongst the moderates and Sikh intellectuals."¹⁴⁸

¹⁴⁴ *Seminar*, 345, May, 1988

¹⁴⁵ *Seminar*, 398, October, 1992

¹⁴⁶ Gupta, Dipankar, op cit, p 81

¹⁴⁷ Tully, Mark, *No Full Stops In India*. 1992, Penguin Books India, New Delhi, p 170

¹⁴⁸ Karim, op cit, p 33

Putting this a bit differently Ved Marwah says: “A number of studies have shown that a large number of young Sikhs decided to join the terrorists movement, not because in the blind faith in the pseudo-Sikhism being propagated by Bhindranwale and the Akalis, but with the intention of seeking vengeance against alleged atrocities of some policemen.”¹⁴⁹

All these events which singled out the Sikhs in particular, for no fault of theirs would ultimately lead to the cycle of violence in the state for the years to come. As an author says: “A firm foundation was laid for revenge and Sikh militancy.”¹⁵⁰

In fact the use of torture in Punjab has been officially confirmed on occasions more than once. In 1985, a judge visiting Nabha Central Jail reported that “detainees had had a log rolled over their thighs or their legs pulled apart”.¹⁵¹ Justice S S Sodhi led a judicial investigation in February 1989 in Amritsar jail. He found that many detainees had been tortured by police when kept in illegal detention preceding formal arrest.¹⁵²

The turning point in Punjab came with Operation Rakshak II which was launched during 1991–92, which aimed not only to fight terrorism, but to

¹⁴⁹ *The Pioneer*, New Delhi, 27 September, 1997

¹⁵⁰ Danewalia, op cit, p 430

¹⁵¹ Amnesty International, *Report 1986*, p 223. In May 1986, Justice Tiwana in his judicial investigation report identified 21 police officials by name against whom there was *prima facie* evidence that they had tortured 90 Sikh detainees held in Kothi jail, Sangrur in Punjab between May 1984 and March 1985. However, no prosecution of police officials took place. Amnesty International, *Current Concerns*, October, 1990 (ASA/20/21/90), p 4

¹⁵² *Human Rights in India The updated Amnesty International Report*, Vistaar Publications in association with Amnesty International, 1993, p 31

physically eliminate terrorists. According to Satyapal Dang, CPI leader and noted for his courageous fight against terrorism, senior police officers were instructed not only to kill terrorists summarily, rather than arrest them, but also target their families. This was interrupted by some to mean that they too must be harassed, even eliminated. The Taran Taran Police, according to Dang, was guilty of this, an even rewarded killings. Bribery and extortion became rampant as the police were given extra-constitutional powers.”¹⁵³ According to Dang, the Punjab Police fell into three categories: those who used these powers discriminatingly to raid and, where necessary, kill known terrorists while leaving others unharmed; those who targeted suspects and harbourers as well as known terrorists and their families; and those who did not hesitate to torture and kill innocent people as “counter-terror” measure.¹⁵⁴

The government resorted to various means to strengthen the “security state” established in Punjab. For example, “Publicity of terrorist crimes was very helpful to the government which needed public sanction to introduce new measures or repression in Punjab. Several reports indicated that the government agencies not only gave maximum publicity to separatist terrorism but it also helped it to acquire grit. Not only manipulation of the media, but infiltration and even stage managing terrorist outrages were part of the government policy to sustain the anti-Sikh hysteria.”¹⁵⁵

Another was the use of “Cats” - a euphemism used for a militant turned under cover police agent. The system began in the mid-80s on the time-tested set-a-thief-to-catch-a-thief principle, and was gradually fine-tuned into one of the most effective weapons against terrorism.¹⁵⁶ In fact, Cats were extensively used and formed the pivot of Punjab DGP KPS Gill’s post-91 anti-terrorism strategy. Defending this system, Gill had then insisted,

¹⁵³ *Frontline*, 11 July, 1997

¹⁵⁴ *ibid*

¹⁵⁵ Kumar, Ram Narayan, & Sieberer, Georg, *op cit*, p 277

¹⁵⁶ *India Today*, 15 December, 1995, Page 100

“There is no illegality in using a criminal to catch another one.”¹⁵⁷ An intelligence official said, “Owing to their terrorist background, the ‘Cats’ are the only people who can catch the straws in the wind.”¹⁵⁸ However, human rights activists termed the system an “instrument of State terror”. Inderjeet Singh Jaijee, Convenor of the Chandigarh-based MASR said, “The ‘cats’ are nothing but police vigilante hired for bounty killing.” Civil liberties activist Ranjan Lakhan pal said: “The ‘cat’ is now out of the bag and it exposes a grossly illegal practice of the Punjab Police.”¹⁵⁹ Punjab’s erstwhile Advocate General said, “One cannot be a proclaimed offender and police informer at the same time.”¹⁶⁰

In reply to a star question in the State Assembly, Beant Singh, the Chief Minister said that between January 1991 and end of 1992 41,684 Punjab policemen were given monetary awards and 68 received medals for their role in fighting insurgency. Later, another 10,000 to 15,000 awards were given to the Punjab Police. Most of these awards related to the killings of terrorists.¹⁶¹ The secret service fund soared from Rs 20 lakhs in 1980 to about Rs 30 crores in 1994.¹⁶² In November, 1995 one Harpreet Singh appeared in Punjab High Court to tell his tale that he was alive and the reward of Rs 10 lakh was disbursed for his fake “killing” in encounter.¹⁶³

In March 1993, i.e. after the militant movement had been virtually defeated, K.P.S. Gill explained his victorious strategy as “putting the Jat

¹⁵⁷ *ibid*

¹⁵⁸ *ibid*. Added to these official policemen are the corrupt villagers - a new bred of tyrants, who have become police informers. These are apparently those who “volunteer information”, which the DIG Police, Gill admits, “have been crucial to the police’s recent success.” *The Radical Humanist*, June 1993, p 16

¹⁵⁹ *India Today*, 15 December, 1995, p 100. Some civilian officers are inducted into the police force as “Special Police Officers (SPO)”, and they are provided with sophisticated weapons. Then they are sent to villages to kill terrorists. The SPOs have nobody supervise their acts or to control them and they kill at random in order to receive financial rewards. *The Sikh Review*, January, 1993, p 43

¹⁶⁰ *India Today*, 15 December, 1995, p 100

¹⁶¹ *The Tribune*, Chandigarh, 1 July, 1997

¹⁶² Danewalia, *op cit*, p 467

¹⁶³ *ibid*

Sikh against Jat Sikh” placing “local Jat boys” in the frontline. It has to be noted here that the Punjab Police mainly consists mainly of Sikhs, many of them are Jats by caste. As “the Jats have much the same attitude to life, crime, power and law as the Pathans in the Frontier,” this would lead to victory (Gupta & Sandhu 1993)

The most public explanation for the restoration of order in Punjab credits the security forces’ effective anti-terrorist policies. Although anti-terrorism had become the main thrust of the Centre’s policy after May 1987, it was only in mid-92 that the security forces achieved an impressive breakthrough. Nevertheless, the policy had been vigorously pursued in what Ribeiro called a form of “bullet for bullet”¹⁶⁴, which led to a number of major changes. The security apparatus in Punjab, was reorganised. In addition to the Central Reserve Police Force (CRPF), the Border Security Force (BSF), and the regular use of the Army, the Punjab Police was strengthened with the creation of new senior posts and mass recruitment at constable and special constable levels. Anti-terrorist legislation - the National Security Act (1980), Punjab Disturbed Areas Ordinance Act (1983), Terrorist Areas (Special Court) Act (1984), and TADA (1985) - was rigorously enforced with official approval for a “shoot to kill” policy when known offenders were apprehended. Moreover, counter-insurgency was given a high priority with the employment of irregular hit squads intended to infiltrate and liquidate terrorist organisations.¹⁶⁵

Under Gill, the police recruited from some of the same villages as the militants, looking for young men whose families had suffered at the

¹⁶⁴ “But Ribeiro had simply coined the phrase. The policy was more the creation of K. P. S. Gill who served as Additional Director General of Police with Ribeiro and later as the DG.” Joshi, Manoj, “Combating Terrorism in Punjab Indian Democracy in Crisis”, *Conflict Studies*, 261, May 1993, p 15

¹⁶⁵ Singh, Gurharpal, “Punjab since 1984 Disorder, Order, and Legitimacy”, *Asian Survey*, April, 1996, p 413

hands of the militants (Gupta and Sandhu 1993). The police used other counter-insurgency methods than those described above. In any case, the chief of police explained its victory to the reference to the strategy mentioned above. The fact that statal counter-insurgency strategy was modelled on a theory of feuds and revenge may well have been critical for the repression of the militants, but the human right implications for this strategy were disastrous. A village feud writ and large and fought with modern weapons cannot but violate human rights. The strategy chosen left little room for teaching the police to respect human rights.¹⁶⁶

Commenting on the efficacy of the anti-terrorists operation in Punjab, an analyst says: "But paradoxically enough, one of the contributing factors that has swelled the ranks of the terrorists in Punjab is the very nature of the State's anti-terrorist operations. Such operations ... invariably direct themselves against the easily visible ordinary citizens instead of the invisible armed insurgents. Thus, the innocent victims of State repression become increasingly alienated from an unpopular administration; many among them - particularly the youth - go underground and join the insurgents, either for protection or for vengeance."¹⁶⁷

Similarly it was said that militant leaders had been killed and the government claimed that "normalcy" had returned to the state. During this campaign, however, extra-judicial killings¹⁶⁸ and disappearances of civilians suspected militants escalated. Detainees in police custody were subjected to

¹⁶⁶ *ibid*

¹⁶⁷ Banerjee, Sumanta, "The Politics of violence in the Indian State and Society", in Rupesinghe, Kumar and Mumtaz, Khawar, edited by, *Internal Conflicts in South Asia*, 1996, Sage Publications, New Delhi, p 88

¹⁶⁸ From the Sirhind canal alone, when its water was stopped for repairs, some dozens were fished out - all Sikhs in their youth - their hands tied behind their backs, feet bound, stripped to the waist. Such "bodies are a common sight," writes Nabin Garewal, a meticulous reporter who had walked eight to ten kilometres all along the Kotla branch of the Sirhind canal, and talking to villagers enroute, discovered this horrifying fact. Interestingly, several young men had disappeared from the interrogation centres facing the canal just before the Punjab elections (in February 1992) were held, ... *The Radical Humanist*, June 1993, p 16

severe beating, crushing of the leg muscles with a heavy wooden roller, stretching of the legs, suspension, and electric shocks.¹⁶⁹

Similarly the harsh police measures and the so-called bullet for bullet tactics not only failed to deter the terrorists but gradually hurt the common man who came in direct cross fire of harsh police action and terrorist bullets.¹⁷⁰ This further widened the scope of the conflict and by using force against its own people, the state created fresh motives for Sikh youth to take to terrorism.¹⁷¹

Aggressive anti-terrorism, however, was not without its limitations. For one, though the policy's effectiveness against leading militants was quite marked, it lacked subtlety in dealing with the militant's support structures. One set of figures available suggests that the casualty rate between 1984 and 1994 was 60.8 % terrorist, 31 % civilian, and 8.2 % security forces. Thus the main victims of violence in Punjab were not the security forces but civilians and terrorists. A more detailed assessment of figures for the elimination of terrorists in the first six months of 1992 suggests that the ratio of "hardcore" terrorists to "non-hardcore" terrorists killed varied from 1:9 to 1:18, respectively. Methods may have been employed for sound reasons - instil fear and discourage further recruitment by militants - but the outcome

¹⁶⁹ *Human Rights Watch World Report 1993*, p 170. "As a matter of routine, the persons who are arrested are subjected to torture systematically... Torture is inflicted everywhere - in police stations, custodial places and in jails. The best experts in the art of inflicting physical torture are obviously the staff of Central Interrogation Agency. We were told by their victims that they were subjected to torture in the following manner: * Their legs are pulled apart to 180 degrees so as to cause intense pain as well as damage to the muscles. * A heavy metal or wooden round stake is rolled over the thighs and ankles of the prisoner; often the police men sit or stand on the rolling stick in order to make it unbearably heavy. * Electric shocks given to the genitals, to the head, ears and legs. * Prolonged severe beatings with leather whips or metal rods. * The victim's hands are tied behind his back and he is suspended by his arms on a wall or from the ceiling. * Threat of rape or other sexual abuse on the victim." Raaflaub, Hansruell & Spaar, Hans Peter, "Rights and Wrongs in Punjab: A Swiss Agency Report", *The Sikh Review*, January, 1993, p 42

¹⁷⁰ Karim, op cit, p 40

¹⁷¹ *ibid*, p 33

suggests more blunderbuss approach. Concern at such “effectiveness” was expressed by even sections of the Army.”¹⁷²

Similarly commenting on the various laws that were in operation in the strife-torn state to combat terrorism, it has been commented: “The chief use of the Acts was not to apprehend and try terrorists under the law, but to enable the state to detain people for the duration of the political crisis and to prevent the detainees from being released on bail. Very few people were tried and convicted. According to official figures released in 1994, of 67000-odd detained since 1985 only 8000 cases were tried and only 725 persons were convicted” (Noorani 1994; 12). In Punjab the conviction rate was 0.37 percent among 14,557 detainees.¹⁷³

There continue to be significant human rights abuses, despite extensive constitutional and statutory safeguards. Many of these abuses are generated by intense social tensions, violent secessionist movements, authorities’ attempts to repress them, and deficient police methods and training.¹⁷⁴ But the modern state has been a major agent of violence against its own citizens.

NS Saksena, a former DG, CRPF commenting on how to tackle terrorism writes: “Quite a few would like to hand over the problem to half-a-dozen K.P.S. Gills and give them blank cheques”. “The Gill method,” he cautions, “is a shortcut”.¹⁷⁵

¹⁷² Singh, Gurharpal, *Asian Survey*, April, 1996, pp 414-15

¹⁷³ Madsen, Stig Toft, *State, Society and Human Rights in South Asia*, 1996, Manohar, Delhi, p 200

¹⁷⁴ Subramanian, Dr. S, *Human Rights International Challenges Vol II*, 1997, Manas Publications, Delhi

¹⁷⁵ *The Hindu*, New Delhi, 11 November, 1997. Harcharan Singh Brar took over as the chief minister of Punjab, following Beant Singh’s assassination. It was reported in January 1996 that, “Gill failed to establish a rapport with the new chief minister, who unlike Beant refused to give him carte blanche. Brar made it known that he intended to restore the rule of law, which under Beant had become a casualty thanks to the Punjab Police Chief’s high handed ways.” Gill, it needs to be mentioned here was given no extension of service unlike twice in the past on his retirement on December 31, 1995. *India Today*, January 31, 1996

Commenting on the logic of terror, it was said: "Its power lay in the fact that it need not discriminate between the innocent and the guilty. The logic of terror is not the logic of punishment. In the terror process, no one can be secure for the category of transgressions is in fact demolished. Anyone can be a victim no matter what action he chooses."¹⁷⁶ Another reason was the increasing efficiency and ruthlessness of the Punjab Police. Between 1984 and 1994 the strength of the regular Punjab Police force more than doubled and the budget of the forces rose sharply.

According to one Gurjeet Singh, a lawyer living near the Golden temple: "During Blue Star the army used to shoot at sight anyone in the street. We were not allowed out for twenty days. They searched every house in the area regularly, and if they found a saffron turban like the militants used to wear they would shoot any young man in that house. When some militants did escape from the Golden Temple, the army forced some residents of this area to strip as a humiliation."¹⁷⁷

After 1987, an analyst says that "from all available evidence it would appear that the main cause was the alienation of the Sikh youth due to the establishment of "Police state" bereft of appropriate political or economic measures. The two elements which took centre stage were police repression and brutal terrorist violence.

The right to life and liberty of the people in Punjab has been under violation for a long time before the Parliament amended the Constitution empowering the state to suspend them. From May 1987 to February 1992, Punjab was under President's Rule, was quasi-militarised with a de-facto "police raj". The level of violence increased dramatically from 1987 onward, with the death toll rising steadily from 1,333 in 1987 to 5,265 in 1991 before falling to 3,883 in 1992 and 871 in 1993. During these years, Punjab was

¹⁷⁶ Kothari, Rajni, *Politics and The People In Search of a Humane India, Volume II*, 1990, Aspect Publications, London / Ajanta Publications, Delhi, p 448

¹⁷⁷ Tully, *No Full... op cit*, p 164

often referred to as an “area of darkness” where virtual civil war conditions prevailed.¹⁷⁸

In March 1988 the Lok Sabha passed the 59th Amendment to the Constitution Bill.¹⁷⁹ Which enabled the Government to extend the President’s Rule in the state beyond one year; to impose emergency on the ground of “internal disturbance” and to suspend Article 21 of the Constitution which guarantees that no person shall be deprived of his life of liberty except according to the procedure established by the law.

“This amendment took away the constitutional right to life in Punjab ostensibly to give teeth to security operations. In the background of growing terrorist violence it was good timing on the part of the government to inveigle in emergency resolutions. Regardless of whether or not the amendment was to be implemented in Punjab, it was meant to convince the nation at large that the Congress deserved extraordinary support in view of escalating Sikh terrorism. But in Punjab it only succeeded in alienating general Sikh sentiments even further.”¹⁸⁰

In 1989 repression by the police reached a new high.¹⁸¹ It was at this time that “differences between senior police officers on such policies and frequent circumvention of laws came in the open when Chaman Lal, a

¹⁷⁸ Singh, Gurharpal, op cit, p 411

¹⁷⁹ Kumar, Ram Narayan, & Sieberer, Georg, op cit, p 287

¹⁸⁰ Gupta, Dipankar, op cit, p 82

¹⁸¹ “The Punjab administration had inkling of police excesses.” In order to check harassment of innocents at the hands of police and para-military forces Punjab Government issued in September 1989, broad guidelines to all the Senior Superintendent of Police (SSP), DIG and IG. The directives, which were framed on the recommendation of a committee headed by Additional DGP, *inter-alia* included that women and children will not be brought to police stations, people picked up on mere suspicion of links with militants would not be subjected to harsh treatment, whenever a suspect is brought for questioning to the police station, the relatives and respectable persons in the locality would be informed et al. “Despite clear directives issued it was generally observed that many in the police force did not bother about the guidelines and continued their game of hunting innocents for money and other benefits.” Sharma, D. P., op cit, pp 300-301

senior police officer resigned in protest against large scale repression ordered by K.P.S. Gill, DGP, Punjab. He made some fundamental points in the breakdown of the judicial process due to the police becoming arbiters of the people's fate. In a news conference before his resignation he said: "I find that the people are by and large against the terrorists. But they are not with us either, which reflects on the lack of professional competence on the part of the security forces and the government. We must remember that we can only contain terror. We must take care never to alienate the people."¹⁸²

Something similar, quite ironically, was echoed by Ribeiro, the erstwhile DGP, Punjab and who had advocated the "bullet-for-bullet-policy" - giving the police the right to fire if they were fired upon - said after Operation Black Thunder, in 1988: "Gill is being far too harsh. He thinks only of fighting terrorists, not of fighting terrorism. The police are turning the people against them, and you can't fight terrorism unless the people are on your side."¹⁸³

During the phase of terrorism, women too were the victims of state terrorism. The problem became so acute that in 1989 the Governor of Punjab instructed the police not to bring any women to a police station for questioning. They were only to interrogate women in front of village elders or similar representatives of the community.¹⁸⁴

After 1992, when the Congress (I) government took charge in the state, massive amounts of money were pumped into the anti-militancy offence to win over terrorists. Also, hefty targets were put on the heads of hardcore terrorists at large, encouraging "Cats" to provide information about

¹⁸² Karim, op cit, p 56

¹⁸³ Tully, Mark, *No Full Stops...* op cit, p 161. On his retirement in October, 1989, he was reported to have said: "You cannot win the war against terrorism till you have the people on your side... I would have been a happier person while leaving Punjab if police officers, policemen and government servants had understood this concept and followed it." "People do not feel that we are on their side." *Seminar* 401, Jan. 1993, pp 35-41

¹⁸⁴ *Human Rights in India The updated Amnesty International Report*, Vistaar Publications in association with Amnesty International, 1993, p 30

them. In 1994, Satnam Singh Manak moved the Punjab and Haryana High Court claiming “reward” for the terrorist he said he had killed while working as a “Cat”. He alleged that the hefty rewards on terrorists heads were mostly pocketed by police officials.¹⁸⁵

Here it could be noted that, in fact, Bhindranwale too effectively used the instances of police excesses to strengthen his arguments. At one meeting, for example, he pointed to an old man who was present in the congregation and stated that the man had been dragged to the police station in Ferozepur along with his daughter and they were forced to have sexual contact. According to Veena Das, local knowledge of police atrocities and its reiteration in the context of narratives of the community is very important in our understanding of how state comes to be experienced in everyday life and how this experience is transformed in making of a violent community. Once the community becomes the conduit through which the individual experience of having been violated can be seen as the experience of the whole community, the next step is to explain the violence committed by the community against others as a response to injustice.¹⁸⁶

In the aftermath of the conflict, the National Human Rights Commission has held out the promise of justice for those who have suffered police atrocities. It has become quite apparent now that TADA had been massively misused in Punjab. The Punjab High Court admitted 58 petitions of alleged murder by the police (Vinayak 1994). The NHRC recommended that “in Punjab, it means the restoration of the authority of magistrates and the authority of magistrates and the judiciary over the police.”¹⁸⁷

¹⁸⁵ *India Today*, 15 December, 1995, p 100

¹⁸⁶ “Time, Self, and Community: Features of the Sikh Militant Discourse”, in Jayaram, N. and Saberwal, Satish, edited by, *Social Conflict*, 1996, Oxford University Press, Delhi, p 186

¹⁸⁷ Subramanian, Dr. S, *Human Rights ... Vol II*, op cit, p 367. “Judicial paralysis, as we have already noted, helped to create a situation in which use of extra-constitutional powers became essential.” *Mainstream*, June 21, 1993, p 11

The Central Bureau of Investigation (CBI) is undertook a probe into the alleged disposal of over 1,000 unclaimed bodies by the Punjab Police during 1990-95. It submitted its fifth and final report on 12 December 1996 to the Supreme Court¹⁸⁸ indicting the State police for mass cremation. The CBI confirmed that records from two crematoria in Taran Taran in two years (1992-93 & 1993-94) alone show that the police cremated at their expense a total of 2,097 persons.¹⁸⁹ It was able to identify 585 of the bodies cremated unclaimed and unidentified. The CBI could also partially identify 274 bodies.¹⁹⁰

In 1997, the Supreme Court directed the NHRC to examine “related issues”, including compensation for the victim’s families. However, at the end of the year, the NHRC’s role was challenged in the Supreme Court by the Central Government, thereby delaying progress in investigations.¹⁹¹ The CBI also completed, in 1996, its inquiry into the abduction of J.S. Khalra, a lawyer and Human rights activist, who “disappeared” in 1995 after filing a petition in the Supreme Court about the cremations. The inquiry concluded that he had been picked up by the police and thereafter there was no trace of him.¹⁹²

In April 1994 when the NHRC Chairman, Justice Ranganath Mishra visited Punjab, he himself was a witness to an ugly truth. During his three day stay there, the Commission was flooded with over 400 petitions against the Punjab Police, prompting him to say that even though normalcy had returned to the state, the police’s conduct was still far from normal. In a

¹⁸⁸ “Worse than genocide,” Supreme Court Justices Kuldeep Singh and Saghir Ahmed were moved to say after reading the CBI report on the Taran Taran disappearances, “we shudder to think of such a thing happening in a democracy”. *Frontline*, November 29, 1996, p 45

¹⁸⁹ *Frontline*, July 11, 1997

¹⁹⁰ *News Time*, Hyderabad, 18 February, 1997

¹⁹¹ Amnesty International, *Report 1998*, p 195

¹⁹² Amnesty International, *Report 1997*, p 179

similar editorial comment the *News Time*, Hyderabad said “And true normalcy in the state can only be claimed after the *khaki* militancy of the state police forces has been ended and normalcy brought into the police-public relations.¹⁹³

One incident deserves a mention here. Swaran Kaur and her sister were arrested by police in Punjab as they travelled to meet the members of the NHRC. They were released only after the NHRC Chairman intervened on their behalf. Later, she told the Chairman that she and members of her family had been tortured and harassed by the police after her husband was killed in 1992 and that seven relatives, including her two-year-old child, were in police custody.¹⁹⁴ On September 15, 1994, a three-judge bench of the Supreme Court passed severe strictures against the Punjab Police and its DGP, KPS Gill and ordered a CBI probe into the abduction and a “presumable liquidation” of seven members of a family by “errant and unchecked members of the police force.”¹⁹⁵ As the then State’s chief secretary, A S Chatha admitted “complaints against the police are pouring in. Peace has encouraged people to express them boldly.”¹⁹⁶

A section of Punjab Police had demanded that cops be protected from prosecution by the judiciary, trial or arrest or be granted immunity for whatever they did during the days of terrorism. This was in connection with nearly 123 Punjab Police officials, including six SPs facing trial for taking alleged “illegal steps” against terrorists while 2,555 petitions have been filed against them by human rights organisations.¹⁹⁷ According to a commentator,

¹⁹³ *The Asian Age*, New Delhi, 21 April, 1994

¹⁹⁴ Amnesty International, *Report 1995*, p 157

¹⁹⁵ Singh, K. P., “Human Rights in Third World Countries”, in Paul, Devika and Nizami, Prof. Z. A., edited by, *Human Rights In Third World Countries*, 1994, KIRS Publications, Delhi, p 9

¹⁹⁶ *India Today*, 15 August, 1994, pp 62-63

¹⁹⁷ Quoting Union Home Ministry officials in *The Times of India*, New Delhi, 3 September, 1997

it shows that during the days of terrorism the Punjab Police enjoyed unbridled power and remained outside the orbit of the law of the land.¹⁹⁸

The Punjab and Haryana High Court had so far taken cognisance of 58 petitions pertaining to 62 disappearances.¹⁹⁹ And about a dozen petitions against the Punjab Police were listed in the Supreme Court of India.²⁰⁰ As reported in September 1995, out of the 20 district police chiefs in Punjab 14 were facing charges based on writ petitions filed by relatives of those allegedly killed by the police in fake encounters. Then, Gill too had admitted: "These writ petitions are a problem area."²⁰¹

One case, that of Ajit Singh Sandhu, former SSP of Taran Taran - one of the worst affected areas of Punjab during terrorism - who committed suicide in May, 1997 deserves a mention here. He, along with three of his colleagues was put behind by bars on the Supreme Court's order for their alleged role in the abduction and murder of Kuljit Singh, who was the *sarpanch* of Dhatt village. All the four were represented by sections of the media as key perpetrators of genocide carried out to end the Khalistan insurgency. It was the first time that the Supreme Court had directed the State to make an arrest, rather than leave that decision to the police.²⁰²

Interestingly, K.P.S. Gill demanded that the State investigate the record of human rights organisations instead of investigating police excesses. This is part of five-point charter of demands he placed before Home Minister Indrajit Gupta in June 1997. The other demands were that cases against Punjab policemen be tried outside the State; that the government provide legal aid to them; that it equalise the compensation paid to the families of police and civilian victims of terrorist violence; and that section 197 of

¹⁹⁸ *The Tribune*, Chandigarh, 29 May, 1997

¹⁹⁹ *India Today*, 15 December, 1994, p 120

²⁰⁰ *India Today*, 15 August, 1994

²⁰¹ *India Today*, 30 September, 1995

²⁰² *Frontline*, January 24, 1997, p 41

Criminal Procedure Code (CrPC) be amended to give police officials on duty immunity from prosecution.²⁰³

However, Harwant Singh, a retired Lt. General of the Army says: "Here is for Sandhu a image larger than life. At one time Mr Jagmohan too had convinced himself that but for him India would have lost Kashmir."²⁰⁴ Yet many hold an altogether different view and speak of Sandhu's acts of commission, corruption and barbaric methods of torture, kidnapping and ransom, fake encounters, elimination and custodial deaths etc., which would put to shame any civilized society. It is alleged that of the 43 odd civil cases against him, many had little to do with terrorism.²⁰⁵ Dr. Mahip Singh, a Sikh intellectual and litteratuer remarks, "Sandhu was not incarcerated by rights activists but an order of the Supreme Court of India."²⁰⁶

In fact in September 1997, the Centre had asked the Punjab government to get the former's approval before sanctioning prosecution of a police officer for any offence committed during the period when the state was under President's rule. In this connection, it was reported that the Union Home Ministry was considering a proposal to amend the Punjab Disturbed Area's Act to provide for prior sanction by the Centre, in place of the state government, if prosecution is being contemplated against police officers. Home Ministry officials maintained that this suggestion had come from Punjab's DGP, P C Dogra.²⁰⁷

An earlier attempt in this regard deserves a mention here. In 1991 when the spectre of some non-Congress government coming over the head of

²⁰³ *Frontline*, July 11, 1997, p 108

²⁰⁴ *The Tribune*, Chandigarh, 1 July, 1997. K.P. S. Gill, had reportedly said in his defence: "He fought militancy when no one else was willing to accept the risky and daunting task in the terrorist infested Taran Taran. "Had we lost control over this district, Punjab's secession would have become an inevitability. Had we lost Punjab, Kashmir would have certainly followed," adds Gill.

²⁰⁵ *ibid*

²⁰⁶ *The Asian Age*, New Delhi, 16 June, 1997

²⁰⁷ *The Times of India*, New Delhi, 3 September, 1997

the Punjab Police as a result of the elections which was aborted on the last day - the guilty police officers and members of the para-military forces became nervous. They knew that if any genuine representative government of the people of Punjab is formed as a result of the then expected free elections - the elected government would owe it to the people to inquire into allegations of cold-blooded murders, abduction, loot and rape by the policemen, and it would be well nigh impossible for most of them to save themselves. So much was the hold of the police upon the Central Government that overnight, they got an Ordinance issued from the President of India taking away the powers of the state government to sanction any prosecution and even to departmentally punish any police officer for any offence committed by him in Punjab during those disturbed years.²⁰⁸

A commentator says that the then chief minister of Punjab, Beant Singh's excuse to safeguard the police is that it is fighting a grave battle in Punjab bravely. He had categorically indicated that the "lopsided, biased and anti-national" attitude of human right organisations in Punjab would not be tolerated."²⁰⁹ Defending the indicted police personnel (in some case) he was reported declaring that in the war against terrorists "any bad action should have been forgotten as it is done in the case of the armed forces." In a similar vein some had argued that what occurred in Punjab between 1984 and 1995 was nothing short of war, hence the plea for immunity. Praful Bidwai notes: "The argument that rules of conduct do not apply in war situations is simply wrong. They do. Even professional soldiers are court-martialled for use of excessive force, or for targeting non-combatants. The

²⁰⁸ Grover, Verinder, edited by, *The Story of Punjab Yesterday and Today Volume II*, 1995, Deep & Deep, Delhi, p 609

²⁰⁹ *The Telegraph*, Calcutta, 27 April, 1992. One incident deserves a mention here. A. S. Bains, a retired Judge of the Punjab and Haryana High Court, and a human rights activist was arrested on 3rd April, 1992 and was brought in handcuffs before the magistrate. It shows that "the Beant Singh government has not the least regard for civil liberties and human rights." Tarkunde, V. M., "Police and Human Rights", *The Radical Humanist*, May 1992, p 1

police are certainly meant to be more restrained when dealing with citizens, our own citizens.²¹⁰

However, there are many who believe that the guilty police officials should be brought to the book. According to one opinion: “if accountability is the essence of democracy, no civilised society can allow a bunch of persons to be above the law. Those who have demanded that they be granted immunity from prosecution know that the laws of the land do not permit such perversity. So they are defending of the powers that be that they either enact a law to protect them or amend the laws concerned.²¹¹ As Praful Bidwai, the noted columnist says: “It is well established that acting on State’s orders, or in its best interests, is no defence against non-judicial killings”²¹².

In 1995, the Supreme Court of India in an eye-opening judgement, condemned the Punjab administration for the gross defilement of human rights they indulged in two years ago. A contingent of Punjab Police, without informing the government of West Bengal had shot down a couple in cold blood, suspected for acts of terrorism in Punjab. They then whisked away the bullet ridden bodies, again without the leave of the government of West Bengal, and dumped them at a place, the identity of which is still not disclosed. The apex Court had ordered the prosecution of the five policemen involved on the charge of murder.²¹³

Amnesty International which brings out updated reports on human rights in several countries including India says that “when confronted with such criticism India has routinely invoked state sovereignty arguing that India’s own codes and structures will control excesses.

²¹⁰ *Frontline*, July 11, 1997, p 109

²¹¹ *The Hindustan Times*, New Delhi, 6 June, 1997

²¹² *The Asian Age*, New Delhi, 16 June, 1997

²¹³ “Whatever the manner terrorists conducted themselves, a democratic regime must in all circumstances confirm to the rule of law,” the Supreme Court had observed in its judgement. *The Telegraph*, Calcutta, 3 May, 1995

In Punjab, the Amnesty International report 1991 pointed to human rights violations of 42 specific cases to which the government's response was a general denial.²¹⁴ Leaders of the Movement Against State Repression (MASR) say: "Similarly Delhi has rejected Amnesty International's allegations about extra-judicial killings in staged encounters. The MASR has sighted cases of about 100 people killed by so-called militants in cross firing in one year, while being taken for recovery of arms in police vehicles. In all, in such cases, not a single policeman was killed. They had advised the state not to compound the evil by adding lie to the crime."²¹⁵ Ram Singh Billing, a journalist and a member of Punjab Human Rights Organisation, was detained by Police in Sangrur in January 1992. The authorities later denied he was ever in custody. He was believed to have died as a result of torture.²¹⁶

Praful Bidwai notes: "Indeed it is important to distinguish between human rights violations by a democratic state and by terrorist groups. The latter make no claim to democratic legitimacy or to broad popular allegiance. The state is usually overwhelmingly more powerful than them and hence its excesses have much larger consequences, against which citizens have little defence. States must be held more, not less, accountable for observance of human rights. No one expected pro-Bhindranwale Khalistanis to be anything but disgustingly brutal in their methods. But the police were expected to behave differently."²¹⁷

True, the police and Indian Army were at a tremendous disadvantage in Punjab, but that cannot justify deliberate extra-judicial

²¹⁴ Gupta, Vijay K., edited by, *Perspectives on Human Rights*, Vikas Publishing House, Delhi

²¹⁵ *The Hindustan Times*, 11 April, 1992

²¹⁶ *Human Rights Watch World Report*, 1993, p 172

²¹⁷ *Frontline*, July 11, 1997, p 109

killings. Much less does it justify retribution for the acts of terrorists. Retribution, or eye-for-eye “justice”, is a morally repulsive doctrine that has no place in any society that aspires to be civilised. The duty of a constitutional state is to defend the law against the lawless, not to become lawless itself.²¹⁸

The consequences of the Punjab conflict have been far reaching not only in the state but throughout India. Repressive security legislation enacted in response to the crisis has been used to restrict fundamental rights not only in other areas of conflict, say for example, Kashmir, but against peaceful critics of government policy in Gujarat, Tamil Nadu, Delhi and elsewhere in India. In Punjab, ten years of unfulfilled political reforms and escalating violence in the state fostered a culture of lawlessness and corruption to which the police became inured; their resort to torture and murder had become institutionalised and accepted at senior official levels of government.²¹⁹

²¹⁸ *ibid*

²¹⁹ *Dead Silence ... op cit, p 6*

CONCLUSION

There now exists a substantive body of evidence that the government and its agencies - security forces in general and the police in particular - in Punjab have made special efforts to cover-up human rights violations and prevent them from being punished. Hence, because they have been so blatantly violated, the question of violation of human rights by the State has assumed considerable significance in India in recent years. Efforts of various non-governmental organisations, individuals, statutory bodies like the NHRC, various judgements of the courts, especially the Supreme Court et al have not only identified and confirmed but also helped in raising meaningful concern for the violation of human rights of ordinary citizens. Broadly it signifies the rise of democratic consciousness.

Theoretically speaking, States/governments are looked upon as agencies of human rights protection against violation from any other source. The preceding Chapter, however, would suggest that the State whose primary duty is to ensure respect for law and protect the human rights of its citizens is rather seen as the main violator of it. Of the State organs, the greatest culprit perhaps, is the Executive. It is therefore, rather paradoxical that the State which is the guarantor of human rights can at times turn its violator. One would have thought human rights have to be safeguarded by the State rather than against the State. Since the State and its agencies are the guardians of the interests and safeguards enshrined in the Constitution, "guarding the guardians" poses a peculiarly problematic issue both of principles and practices, particularly in a democratic society. However, the irony is, as the case of Punjab reveals the law enforcing agencies are simply not conscious of the concept of human rights in general.

Violation of human rights by the State must be viewed with more seriousness in view of the fact that it lays claim to democratic legitimacy,

adherence to the Rule of Law, as well as to broad popular allegiance. Besides, the Constitution entrusts the State with the obligation of upholding human rights.

A democratic State, considering its resources, responsibilities and legitimacy is much more powerful than any other group in society and hence excesses committed by it have much larger consequences, against which citizens have little defence. Since it swears allegiance to the Rule of Law, the duty of a democratic State is to defend the law against the lawless, not to become lawless itself. Otherwise the very foundations of natural justice and democratic polity would be jeopardized.

As the previous Chapter shows, there are a variety of ways in which governments violate human rights. In the case of Punjab several legislations were passed which not only gave arbitrary powers of arrest and detention but also allowed considerable space for its misuse. Draconian laws such Terrorist and Disruptive Activities (Prevention) Act, 1985, Armed Forces (Special Powers) Act, National Security Act (1980) took away the life, liberty and dignity of the people on flimsy grounds in several cases.

To a considerable extent, it can be said that in the case of Punjab these laws were a necessity considering the fact that near civil war conditions prevailed in the State. Keeping in mind the external support received by militants from across the border, it must be conceded that the police and the Army were at a tremendous disadvantage in Punjab. Apart from that, there were several instances during the phase of militancy in the State, for instance the brutal killing of DIG A.S. Atwal, the murderous attempt on DGP Ribiero and subsequent targeted killings of policemen and their relatives by the militants dented the morale and effectiveness of the Punjab Police. Also to be taken note is the fact the Punjab Police had the unenviable task of fighting terrorists without adequate judicial support. The judiciary often failed to help detain known terrorists and granted them bail

under duress. Broadly, in all fairness it must be said that the Punjab Police had to face one of the worst law and order situations as well as organised terrorism anywhere in the country.

However, later as the police force was strengthened through increase in numbers, incorporation of sophisticated weapons and support from the Army and the para-military forces, it got brutalised as it freely indulged in vengeance and reprisal killings of militants and suspects, many of whom were innocent. Hence the police resorted to the methods of the militants.

The high-handedness and the brutal methods of the police not only alienated the general masses in Punjab but was also responsible for swelling the ranks of terrorists. Alleged police excesses led to retaliatory violence and reactive terrorism. When the security forces transgress the very law they fight to restore, what follows is revulsion, revenge and further alienation. In the case of Punjab, since the law failed to take its own course and the police behaved in a lawless manner, it was little wonder then that some among the innocent victims took the law into their hands to mete out punishment to the offenders.

There are compelling moral and legal reasons as to why such misdeeds must not go unpunished. At the core of the argument is the issue of accountability for the acts of omission and commission by the police. Moreover, it is a requirement of natural justice particularly because in the case of Punjab acts of exceptional criminality on a large scale are involved. Full accountability for the actions of guilty officials, many of whom are still in positions of authority is a must. Unless their involvement in gross human rights violations is understood more widely and punished accordingly, the Punjab Police and their colleagues will not be deterred from using the same methods again, as indeed so happens. As the various courts, particularly the Supreme Court, settle the various cases of alleged human rights violation by

the police in Punjab, it could further expose the brutalities of the police. It could, perhaps also press the government to provide information about the whereabouts and status of the victims (whether alive or dead) to their families and also monetary compensation for the injuries and losses suffered. Little wonder then as to why the police are asking for legal immunity for all their acts during the phase of terrorism.

It needs to be emphasised the working in the best interests of the State or ignoring wrong-doings on part of the police lest it “demoralise” the entire force can be no justification or excuse for the police excesses which on the whole created a climate of political repression in Punjab. The drastic measures and methods adopted by the likes of K.P.S. Gill may have been successful to a large extent but then the means were not in consonance with the norms of morality of a democratic society. Clearly the means and the methods applied to tackle terrorism went far beyond anti-terrorist tactics. Hence the police (in particular) contributed in no lesser way to the violence and brutality which were indulged in supposedly by the terrorist and militants only. On the whole it led to the brutalization of the administration and civil society. Overall it calls for systemic reforms in the entire police set-up itself. A drastic change has to be brought about in the methods, mindset and approach of the police particularly when it comes to tackling terrorism.

Another area of concern is the “law and order” approach. While it is true that law and order constitutes the most important component of the militant problem, yet it does not explain the problem in its entirety. As it was applied in the case of Punjab this approach seems not only a short-cut but the over-simplification of a complex problem. It helped those at the helm of affairs to ignore political solutions for such problems. Efforts on the law and order front should have been to the extent of instilling confidence in the minds of the masses and to create an environment which would be conducive to initiate political and other measures. The tragedy of Punjab

appears to be that the government had been reacting to *events* without evolving a long-term plan or strategy covering all aspects of the problem. Decisions were taken following a particular incident or outrage.

Instead, in the name of restoring law and order, a massive deployment of security forces in every nook and corner of the state, enactment of a plethora of draconian laws, resorting to various extra-constitutional methods as torture, kidnappings, encounter killings, rape, custody deaths, establishment of a near “police raj” not only restricted the free movement and fundamental rights of individuals but was like declaring a war on its own citizens in the State. A great degree of political skill is needed to deal with such problems, not just strong armies and a tough police force. In Punjab, it appears that it was not acts of terrorism, but the panic response of the government that achieved for the terrorists their aim of destabilising the political system. The government’s indifference and the lack of firm approach in dealing with terrorism in the initial stages, and then reacting in a manner in which it did, displayed its total lack of understanding about the nature of terrorism. What the law and order approach really meant in Punjab was order at any cost, never mind the law, certainly not human rights.

Perhaps because of the above, today the decade-long carnage which was purely seen in terms of either religious fundamentalism or communal politics, or still better brutal deeds of militants has now, unlike earlier, been replaced by images of police brutality and evil state apparatus. The acts of brutality/excesses committed by the police were not some isolated incidents, aberrations or stray acts. At some point of time or the other, it had either been pointed out or confirmed or accepted by nearly all those who really mattered. This encompasses the courts, judicial investigations, senior police officers themselves who were involved in the fight against terrorism,

political leaders, independent human rights organisations and activists, the press et al.

In fact, human rights issues assumed an important place in public debate in India in 1992 as government officials found themselves pressed to respond to international and domestic criticism of India's human rights record. However, successive governments have failed to address this issue adequately. In fact, the various investigations or commissions of inquiry and the likewise appear more as a response to public pressure than as a systematic means of addressing and preventing human rights violations.

Article 21 of the Constitution (ironically, even this was suspended in Punjab for a year or so) says that nobody may be deprived of life and liberty except by process established by law. Sections 330 and 331 of the Indian Penal Code (IPC) say that torture of an individual to extract information is a crime punishable with upto 10 years of imprisonment. Death due to torture tantamounts to murder as defined in Section 302 of the IPC for which the maximum punishment is death. Hence the logical and lawful course for the government in the event of death in police custody or for that matter torture is to arrest the concerned official and to prosecute him under the above sections. However, this has been done only in rare instances as in the case of Punjab.

Judicial investigations are normally under public pressure and even when they confirm misdeeds by officials, no punishment is meted out to them on one hand and it makes no difference to the victim's family on the other. Since in the rarest of cases, officials are at the most transferred or suspended, they cannot be restrained to commit the same in the future. Correcting human rights abuses/violations hence is never an issue for the State.

Thus it is the pressure exerted by human rights organisations, the Courts and press that has strengthened the power of the ordinary citizen

against the arbitrariness of power. For now they are exposing the “official versions”, investigating carefully what governments are actually doing and are compelling the State and the authorities in general to be accountable to their own citizens. There exists the need, as the lessons of Punjab would teach us, to strengthen the civil society, democratic institutions and the accountability process.

The Courts, in particular the Supreme Court of India has removed many substantial and procedural inhibitions in the way of seeking remedies in cases of human rights violations. A few instances have been mentioned in the previous Chapter. The Supreme Court of India has indeed lived up to its reputation as the supreme court for Indians. It has been able to take rights (and their violations) seriously only because it has been, to some extent, able to take people’s suffering seriously. However, it is pertinent to note here that the Judiciary which should be the last line of defence against human rights violations cannot be turned into the first line of defence.

Repressive security legislation or the enactment of various draconian laws has opened a Pandora’s box as these have and are being used rampantly. There can be no better example than Punjab, to say the least. What were brought as legislations to deal with emergency and extraordinary situations are being applied sundry and everywhere. Above all such legislation marks the elimination of fair trial components from the statute book. Needless to say that they snatch away the fundamental rights of the citizens and dilute the democratic essence of the Constitution. Such laws, as the case of Punjab would suggest have become more a part of the disease than a remedy for which it is supposedly enacted. It also points out to the inherent contradiction in all these laws which takes away the spirit of law itself.

Both the purpose (for which they were used) and effectiveness of such laws in Punjab has been highly questionable and dubious. It enabled the

police to detain people for the duration of the crisis and prevent them from being released on bail. In fact, very few people, who were appointed under the Act were tried and convicted. That the conviction rate of the people detained between 1985 and 1994 was only 0.37 per cent proves the above point.

Long years of militant violence, the broad collapse of civil authority accompanied by the expansion of oppressive State machinery and the operation of a large number of legal restrictions not only made the political process in the State very fragile but also laid the foundations for the police violating the norms of civil society. In a broader sense, as the study would suggest, the threat of terrorism was projected much more than it actually was and in that backdrop the state was able to indulge in a violence which was perhaps much more harsher and destructive than the terrorists'. Hence the government can't be absolved of the responsibility of committing massive crimes - gross violations of human rights - committed by it in the name of fighting terrorism. The unfettered powers coupled with the immunity enjoyed by the police made the State's capacity for committing human rights violations much more brazen than that by the terrorists. In the case of Punjab it was a situation of massive power, without any checks or accountability.

In a broader perspective it could be well said that the methodology employed in fighting terrorism, the sweeping and arbitrary powers coupled with their misuse by the police and a wide array of draconian legislations during the phase of militancy in Punjab have serious and far-reaching implications for the whole country. The free hand given to the Punjab Police may well become a model for application elsewhere in the country. It would appear that recourse to murder and torture by the police has been sanctioned by the State as an acceptable means to combating political violence.

Terrorism and violence may have come to an end in Punjab as of now, but the Punjab problem remains to be satisfactorily resolved. The key

issues of the Punjab accord, for example sharing of river waters, transfer of Chandigarh to Punjab et al still remain unimplemented. At a broader level, the contradictions in the society and politics of Punjab existing between traders and peasants, Akalis and the Congress, Hindus and the Sikhs, traditionalists and the modernists have yet not been done away with. These could erupt again or create problems, if not in the immediate future.

Finally it can be said that totalitarian strategies for curbing terrorism, as in the case of Punjab, hold very dangerous portents for the future. Unlimited as well as extra-constitutional powers had led to correspondingly high levels of brutality and corruption. The police, armed with draconian laws, sophisticated arms, assisted by the Army actively supported by the government eventually turned the tide against the militants. However, there is little doubt that it was done with scant respect/regard for the niceties of the laws or consideration of human rights. It was a tooth and claw battle in which the police emerged victorious but with stains of blood on its hands.

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