

Freedom Fettered

Arrest and Detention of journalist, Iftikhar Gilani

Peoples Union for Democratic Rights, Delhi

September 2002

Preface

A year ago a number of journalist organisations as well as the Editors Guilds were vociferously campaigning against the promulgation of the Prevention of Terrorism Act (POTA). They found in POTA certain clauses which seemed to be aimed directly against media organisations and media persons. The opposition to the law subsided after the offending sections relating to the disclosure of sources and reporting of views of terrorist organisations were dropped by the government.

The fear from POTA was derived from the decade long experience of TADA from 1985 to 1995 which saw media personnel from at least eight states charged under the law. TADA, it may be recalled, did not contain any provision specifically aimed against journalists. But its application against the Assam based newspapers found two journalists charged under the law. The lapsing of TADA offered no respite for the journals. More journalists and the editor of *Saadin* were detained under the National Security Act in 1997 for months on end. Each of the detention orders was struck down by the judicial review mandatory under the NSA. But the continued harassment finally led to the closure of the periodical.

For a law to be amenable for use as a weapon to silence the media does not require the law to include specific clauses aimed against journalists. Any law allowing for arrest on imprecisely defined charges, detention for long periods, restrictions on bail, curbs on access to judicial redress, or admissibility of flimsy evidence is sufficient to intimidate, harass, and even convict a free citizen. The same can be the fate of a media person on one unfortunate day.

It happened for the dotcom company Tehelka when it decided to expose corruption in high places. Laws ranging from the Wildlife Protection Act to sections of the IPC relating to assault on a public servant served the purpose of keeping journalists in detention. Collective protests from the media were able to secure the freedom of one of the journalists. Less known and continuing to date are the effects of the attack on the Faridabad based workers' newspaper *Mazdoor Morcha* last year. When it published reports on corruption in the state bureaucracy and particularly the Senior Superintendent of Police, Faridabad, the bureaucracy swung into action. The editor was charged and arrested first for deliberately inflating the newspaper's print order and then for obtaining government advertisements through intimidating and misleading the authorities. Publication of the newspaper remained suspended till the editor obtained his release. But by then all printers in Faridabad, fearing police reprisals, refused to print the newspaper. When a printer from Delhi printed one issue, he was whisked away by the Faridabad police and coerced to deny that the paper was printed at his press. The editor was then charged for using a fake print line.

Journalists in Gujarat, not willing to toe the government line on the recent genocide, face a more subtle yet more ominous threat from a different quarter. People close to the ruling party visit journalist's homes to "advice" against such reporting. In doing so, the threat in their advice is real. Similar powerful groups with support within the government were

successful in 1988 in killing the journalist Umesh Dobhal in Pauri district for reporting against the liquor mafia. Another journalist who paid with his life for commitment to his profession was Ghulam Rasool, a journalist from *Udayam*, exposing the role of the police in slum evictions land grabbing around the twin cities of Hyderabad and Secunderabad involving senior police officers. He was abducted from the city by the police in December 1991 and killed in a fake encounter 20 kms. outside the city. Thus laws are not the only means used to curb the freedom of the press.

But laws alone are not sufficient either as a means to suppress the media. A whole web of lies, half-truths and rumour is spun to obfuscate the reality of the suppression. 'Threats to the nation's security, integrity' and similar other phrases help construct a pliable public opinion that remains mute in the face of such suppression.

Thus when plainclothes policemen and others raided Iftikhar Gilani's house, they were certain they could carry this through. The Delhi Bureau Chief of the *Kashmir Times* and the Indian correspondent for the Pakistan based daily, *The Nation*, Iftikhar Gilani is not only a journalist but also a Kashmiri. The raids in his house leading to his arrest and detention under different sections of different laws are bizarre in themselves. PUDR conducted a fact finding into the incident and met the family and the police. Following is a brief report which draws attention to the ways in which the State converts a journalistic act of information gathering first into a crime concerning national security and then in addition into an offence related to pornography.

The Night Without End

In the early hours of 9 June at 4.45 a.m., a group of Income Tax officers (possibly including men from the Intelligence Bureau) descended on Syed Iftikhar Gilani, his wife Aanisa and their two children in their house in Khirki Extention, Malviya Nagar. When the raid started in the morning at Gilani's house, simultaneous raids were conducted in the houses of Gilani's father in law, Hurriyat leader Syed Ali Shah Gilani, and his relatives in Srinagar. In Delhi, the house of another Hurriyat leader, G.M. Bhatt in the same area as Gilani's, was also raided. The purpose of the raids was ostensibly to locate evidence of Hawala transactions, and prove that Hawala money was filtering into the major cities from the valley.

The raid in Gilani's house started in the morning and continued till late in the evening during which a total of 100-150 persons participated in the raid, in batches of 15-20 persons at a time. The family, meanwhile, was confined to a room and their movements watched over by women officials. In the course of the raid, the IT officials switched on the television and all watched the news of the arrest of SAS Gilani in Srinagar under POTA. Shortly after, Iftikhar was arrested at around 9.30 p.m. by two police officers from the Special Cell of Delhi Police. The arrest was based on the information the IT team had stumbled upon, while looking through his computer for evidence on hawala transactions. The police claim that Iftikhar possessed sensitive documents relating to defence and national security which are violative of the Official Secrets Act (OSA).

Iftikhar was kept in police remand for a week after he was produced in court before a Metropolitan Magistrate. On 18 June he was remanded to judicial custody. In the following days fellow journalists across the city took up the case forcefully and brought attention to the manner in which Iftikhar was detained and tortured in judicial custody.

Initially Iftikhar was lodged for two days in the high-risk cell meant for convicts and hardened criminals and was tortured and beaten by inmates and jail wardens and had fainted twice. Iftikhar informed his wife about the beating and believed that it had been done at the provocation of the IB officials. On his part, the Superintendent of the jail explained away the beating as hostility that fellow prisoners have for those charged with heinous crimes or with anti national or terrorist activities. Protests against his detention by fellow journalists forced the Minister of Information and Broadcasting to speak to the DGP who in turn made a rare visit to the jail and met Iftikhar personally. Two days later he was shifted to the ward meant for first time prisoners. Nevertheless, Gilani was denied access to the library on the grounds that he would get the opportunity to meet hardened criminals and pass “information”. Similarly, food and reading material from home was not allowed to him and his personal belongings were also stolen. As the mandatory 90 days drew to a close, he was shifted to a better cell from where he has access to the library.

Currently, the matter is in court of the Metropolitan Magistrate, Sangita Dhingra Sehgal. For three months his remand has been extended and he has been denied bail. In the course of these three months, the police have changed their mind about the relevant law that should be used against Gilani. After it became clear that the case against him for possessing “highly sensitive” document was none other than an excerpt from a widely circulated Pakistani publication, the police changed gears and slapped an obscenity case against him. This time, the evidence for pornography was 11 VCDs and emails recovered during the raids on 9th June.

The Sticky Web of Legality

Iftikhar Gilani was charged under sections 3 (spying) and 9 (attempt to abet the commission of offence) of the Official Secrets Act (OSA), section 120B of the IPC (sedition) and under the Pornography Act. The OSA, like many other acts is an old and outdated one. (SEE BOX) However, its provisions such as those on spying are useful for the state to suppress uncomfortable questions on official policies. Besides punishing those who actively question official policies, the OSA allows for holding a person guilty if he or she is in possession of any document that is “calculated to be or might be or is intended to be, directly or indirectly, useful to the enemy”. By a strange logic through an interpretation made in 1986, section 3 of OSA makes a ‘secret’ anything that may be public. This has been done through incorporation of expressions such as ‘national security’, ‘national sovereignty’, ‘national interest’ etc. Thus, the reach and range of this section is wide enough to cover the activities of any citizen concerned with information gathering on the ground that the information possessed is “secret” and “classified”. The web of legality is so accommodative that even the normal and commonplace sticks in,

and seems to fall into a pattern of crime, and the commonplace becomes suspect and treacherous.

Consider the facts of the present case. Iftikhar Gilani downloaded a file from the Internet which the IT officials chanced upon during the raid. According to the prosecution, the incriminating file titled 'Forces' relates to defence matters, and "contains the strength of troops Army and Paramilitary forces deployed by the Indian government in Jammu and Kashmir". The prosecution went on to say that the file in question is "*calculated to be or intended to be directly or indirectly useful to enemy country and disclosure of which to unauthorised persons may be prejudicial to the safety and integrity of India*"[emphasis added]. Now while the prosecution was convinced that it had a watertight case against Gilani for possessing a secret document, it overlooked one simple fact: that the concerned document is part of a published document viz., 'Denial of Freedom and Human Rights- A Review of Indian Repression in Kashmir' by Dr. Nazir Kamal, under the aegis of the Institute of Strategic Studies, Islamabad. The document was published in 1996 and initially circulated in a human rights conference in Geneva and then mailed to at least 10 institutes in India including some run by the Indian government viz., Institute of Defence Studies and Analysis and the Indian Council of World Affairs.

That the police botched up the case is more than apparent. But what is incredible is the manner in which the investigation proceeded and equally the way in which the prosecution argued its case in the court. The IT officials had no expertise on the matter but the Special Cell was more than happy to have the IT Department as its alibi. For buttressing the case against Gilani, the investigating authorities approached the Military Intelligence and the latter gave a stamp of authority to the assumptions of the Special Cell, by affirming that the information was 'directly' useful to the enemy country (Pakistan). The Military Intelligence, however, took their own share of indulgence in speculations, by stating authoritatively that the information on the file 'appears to be compiled by an agent, specifically task (sic) to observe and report the strength and location of troops' (prosecution response). At the same time they admitted that the said information is not on their files. Surely, if the information is classified, and if it reflects the actual ground situation, there ought to be some concrete source from which it could have been availed or stolen.

The defence counsel pointed out to the Magistrate that the document was available on the Internet and was of a public nature and accessible to anyone. The defence also pointed out that the *Outlook* magazine in its 2nd June issue had carried, among other things, details of India's military preparedness. The purpose was to show that if none of this material which deals with the contemporary situation, is banned or proscribed, and is commonly available, written about, read and discussed, then how could possession of similar material, outdated by six years constitute a crime. Moreover, if the document was so sensitive, then why wasn't it proscribed six years ago. The Delhi Union of Journalists has taken a position that the data shown in the document was highly inflated and that Gilani had downloaded the file in order to prove Pakistan's defamation propaganda against India.

A Question of Patriotism

But then Iftikhar Gilani is a Kashmiri Muslim, an identity which he cannot escape, because he won't be allowed to. As a Kashmiri Muslim journalist working for a Pakistani daily, the investigating agency believes that it has a strong case against him. The emails that Gilani received from 'different persons' in Pakistan, have 'confirmed' in the opinion of the prosecution, his 'direct relations' with 'anti national forces'. The list continues. Gilani, the police and prosecution argue, is anti national because he had accompanied President Musharraf during his visit to India and that his trip was financed by Pakistan. Further, when the prosecution was placed on the back foot because the defence had strongly contested the charge of 'classified' document, it pulled out the charge of obscenity on the basis of 11 VCDs and a dubious email from among 6000 other emails attributed to his account. The officials took the plea that it took them time to present this 'evidence' as they had to recover the material from the IT Department which had confiscated it. The prosecution claimed the recovery of 'blank visa forms for Pakistan' as evidence of his anti national activities. The police are now trying to put other charges pertaining to undisclosed income and inexplicable financial transactions including the charge that the house that the Gilanis bought last year was worth 13 lakhs.

Each of these charges is flimsy and cannot stand scrutiny. As a journalist, Iftikhar will be receiving hundreds of emails from dozens of people. And as an Indian correspondent for *The Nation*, Iftikhar accompanied President Musharraf and his trip was naturally paid by the newspaper. The family asserts that the VCDs were not recovered from the house and that the house that they had bought costs two and half lakhs. And as an Indian journalist working with a Pakistani daily, the presence of 'blank visa forms' is obvious and not suspicious. The charges by themselves are preposterous and absurd. In a desperate bid to ward off the embarrassment that the police faced over the OSA, the ludicrous charge of obscenity was made on the ground that Gilani's computer had evidence of pornographic materials. As the editorial of the *Indian Express* pointed out (on 15th July) that "by this token, half the computer owning public in this country could be hauled up and placed behind bars, given the wide prevalence of cyber sleaze".

Perhaps the reason behind this ham handed investigation lies elsewhere. It must be noted that Gilani was arrested on the same day as his father in law. Iftikhar's relations with Syed Ali Shah Gilani were given a lot of prominence, as it was widely believed that he subscribed to politics of separatism. A few days after Iftikhar's arrest, the *Hindustan Times* (12th June) reported that he had admitted in the city court that "he was an agent of Pakistan's ISI" and had "nodded in assent" when asked by the Magistrate if his "admission" could be recorded. Also carried in quotes (implying verbatim reproduction) was a further admission by Gilani, obviously narrated to the reporter by "senior police officers", that Syed Ali Shah Gilani was so "impressed by (Gilani's) motivation and dedication to the sense of jihad" that he married his daughter to him. There was in fact no such "confession" from Gilani at any stage, nor has the prosecution claimed to have possession of it. His defence has explicitly argued against his having any links with the movement in Kashmir, and his colleagues in *Kashmir Times* and elsewhere have vouched for his being a "thorough professional" having "no truck with SAS Gilani's politics".

Misrepresenting Iftikhar Gilani's politics is not the fault of the media alone. The prisoners who beat him up demonstrated this, and so has the legal process which promises to tie Gilani up in web of legalities, till there can be no escape. They can of course play a game with him, keep him guessing, for the next 'surprise' that may be hurled at him. The FIR, under the provisions of the OSA remains a 'secret', which means that while the accused remains in a perpetual state of anxiety, the police have all the time they need to conjure up new charges. The charge of obscenity puts a question mark on Gilani's moral credibility as a person, trying to show that the "Kashmiri Muslim", who is "anti-national", is also "morally depraved"—he not only watches pornography; he invites and incites others into decadence.

The circumstances of the case, as well as the manner in which it has unfolded over the last couple of months, shows that Iftikhar Gilani is being victimized simply because he is a Kashmiri Muslim and is related to the Hurriyat leader, SAS Gilani presently detained in a Ranchi jail under POTA. The way in which the raids were conducted in Delhi and in Srinagar and the subsequent arrests conjures a picture in which Iftikhar is made to appear as part of a large conspiracy spearheaded by the Hurriyat leader. Indeed, it is this picture of widespread and deep-rooted conspiracy, of the involvement of the entire family in the crime that lends credibility to the efforts of the Farookh Abdullah government to rid itself of the Hurriyat leadership before the Assembly elections. In the process, the fundamental freedom of expression of an Indian citizen has been violated, an archaic law preserved and the professional and family life of an ordinary Indian shattered. Iftikhar's accreditation has been cancelled, his professional and moral credibility given a blow and his job with Radio Deutsche, Germany jeopardised. An only son in a family with three siblings in Baramullah, Iftikhar cannot even attend his sister's wedding in September. Even if he were to attend on parole, he fears for his life in Kashmir. At the end of it the police may not be able to make a case against Iftikhar, and he may be eventually released. By the end of the night which began on 9th June, however, his life and world would have changed completely.

Official Secrets Act, 1923

Tailor-made for Misuse

The first step towards the enactment of an Official Secrets Act was taken in 1889 (The Indian Official Secrets Act, 1889), by the colonial state to manage the affairs of country where the "Government had to face the menace of spying by citizens of the country". Later the Official Secrets Act, 1911, a British Act, was brought in. The Officials Secrets Act, 1923 was a consolidation of these two.

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As this report goes to print, the chargesheet was filed by the police on 7 September two days prior to the maximum period allowed by law. Iftikhar Gilani is alleged to have committed crimes under sections 3 and 9 of the Official Secrets Act and sections 120-B and 292 of the IPC. However in addition to the charges mentioned in the report, the

chargesheet also alleges that Geelani was asked to keep a watch on the thoughts and activities of the earlier People's Conference chief, Abdul Gani Lone, and JKLF leader Yasin Malik. He is also alleged to have collected data on human rights violations in J&K. However the supporting documents concern the human rights violations in Gilgit in POK by the Pakistani government.

Relevant Sections

Section 3: Penalties for Spying: (1) If any person for any purpose prejudicial to the safety or interests of the State—

- a. approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or
- b. makes any sketch, plan, model or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch plan, model, article, or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy [or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States]. (inserted by Act 24 of 1967, sec. 4).

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.

Section 9: Attempts, incitements, etc. -- Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed the offence.

In 1986 in its judgement in a case (Ram Swaroop Verma v State Cr.LJ 526 Del) the court further widened the scope of section 3 by ruling that the term 'enemy' included unfriendly states. Further the same judgement held that the secret information need not be a secret. Any information, the disclosure of which is likely to affect the sovereignty and integrity of India, the security of state or friendly relations with a foreign state, or is useful to an enemy, comes under the purview of section 3. Section 4 makes matters worse since possession of a document that is published and available to the general public is no defence if the person has relations with foreign agents.