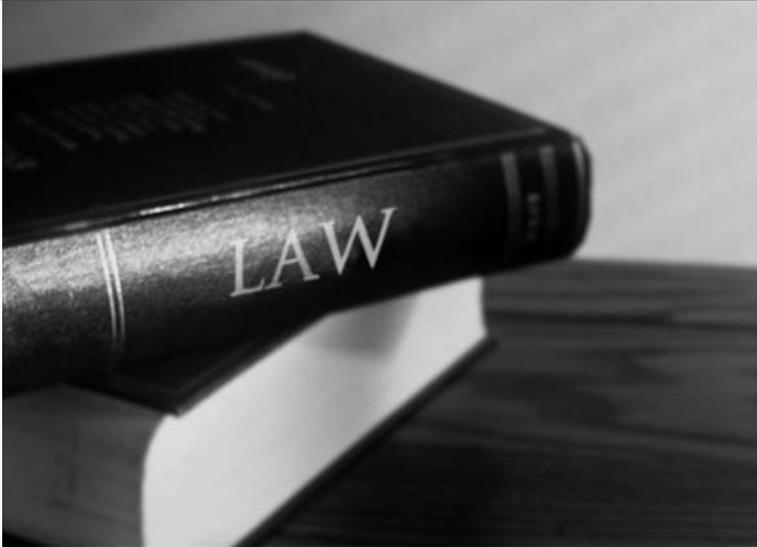


Dead Man Walking: Sovereignty and the Supreme Court in the Age of Terror

MAYUR SURESH



Terrorism has become the most worrying feature of contemporary life... Though violent behaviour is not new, the present day 'terrorism' in its full incarnation has obtained a different character and poses extraordinary challenges to the civilised world. The basic edifices of a modern state, such as democracy, state security, rule of law, sovereignty and integrity, basic human rights, etc., are under the attack of terrorism. Though the phenomenon of terrorism is complex, a terrorist act is easily identifiable when it does occur. The core meaning of the term is clear even if its exact frontiers are not...

Justice Rajendra Babu in *People's Union for Civil Liberties (PUCL) v. Union of India*, 2004

We have in recent times been assaulted by many 'necessary' violent state actions given sanction by the Supreme Court of India. Encroachments on public lands, i.e., 'slums', are demolished, commercial establishments are sealed by municipal authorities, and people accused of violating national security are sentenced to death. While undertaking these, the Court continually invokes the logic of necessity, according to which slum dwellers, owners of 'illegal' shops, and terrorists, are figures whose presence foretells the collapse of society, the destruction of the city and the erosion of the rule of law. Hence something must be done about these particular citizens and outlaws. It's a matter of necessity.

The logic of 'necessity' refers to something that is lacking in the present moment, or a new problem that requires attention. Hence, the statement 'something must be done' is often preceded by an anxiety over government apathy or inaction, or a gap in the law, or the emergence of a new situation, an extraordinary event such as a suicide bombing or armed attack by terrorists, which the existing order cannot handle. And as the current debates surrounding terror legislation show us, the 'ordinary' strategy is no longer sufficient in dealing with the disturbing new situation. Thus necessity spawns 'exceptional' inventions, laws and technologies of power.

As the violent consequences of the Supreme Court's order indicate, the law's 'other' is not violence – instead, law and violence are immediately implicated *in* each other. As asserted by legal scholar Robert Cover:

Legal interpretation takes place in a field of pain and death. This is true in several senses. Legal interpretive acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life. Interpretations in law also constitute justifications for violence which has already occurred or which is about to occur. When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organised, social practices of violence. Neither legal interpretation nor the violence it occasions may be properly understood apart from one another.¹

In other words, violence is not *exceptional* to the law, but is *essential* to it.

If violence and law cannot be properly understood apart from each other, how are we to understand the violence that is unleashed by the pronouncements of the Supreme Court?

We could argue, like many good constitutionalists, that the Supreme Court is crossing the boundaries set by the Constitution and is not paying attention to the separation of powers doctrine. Instead of restricting itself to looking into questions of interpretation and the validity of laws, it has entered into the domain of creating and executing the law. These arguments elide over the violence that follows Supreme Court pronouncements, and are confined to the sterile debate of whether these actions are valid under the Constitution.

Or we could challenge the monopoly of the Supreme Court to speak in the language of the law, much like the Delhi state legislator who broke open the shops sealed at the order of the Supreme Court, declaring: "As a people's representative I owed a duty to protect their interests. I know your [the Supreme Court's] order is illegal and not good for the people. So I broke open the seals"².

Taking the argument further, we could even allege that the actions of the Supreme Court violate the fundamental rights of citizens. I argue here that the actions of the Supreme Court can be understood as *biopolitical*, as theorised by Foucault in the first volume of *The History of Sexuality* (1984) and developed by Agamben (1993). According to Foucault, this form of control occurred through the development of the disciplines of the body and the

regulation of the population. The first of these focused on the individual human body, increasing its usefulness and economic integration through “the optimisation of its capabilities”; the second focused on the collective body: “births and mortality, the level of health, life expectancy and longevity” and the environmental variables that controlled them. The result was that the animal life of man, far from being irrelevant to politics, now became its subject through the most sophisticated political techniques.³

The first part of my essay posits that the language of rights, often invoked to protect citizens against actions of the state, in fact allows the Supreme Court to determine which lives have rights and which have none; that the ability to uphold the Right to Life gives the court the power over death. In the Age of Terrorism, when the spectre of people who wage war against the sovereign People (as in the Constitution’s “We the People”), the Supreme Court must tease out the difference between loyal, legally-inscribed, legitimate citizens and those ‘others’ who wage war upon these citizens and the state – namely, terrorists. Given the uncertain terrain upon which citizenship in India rests, the Supreme Court’s efforts to support the state erasure of terrorists can be understood as a commitment to ensuring that a more perfect citizenship can emerge.

Rites of Life and the Power of Death

Prior to popular sovereignty emerging as a mode of governance, sovereignty was juridically and politically located in the figure of the ‘Sovereign’. Giorgio Agamben (1998) argues that law has traditionally had the power to actively separate “political” beings (citizens) from “bare life” (bodies). Bare life, in this conception of politics, is that which must be transformed, via the state, into the “good life” – i.e., bare life is that which is supposedly excluded from the higher aims of the state, yet is included precisely so that it may be transformed into this “good life”. Sovereignty, then, is conceived from ancient times as a “state of exception”. According to Agamben, *biopower* (the state’s regulation of its subjects through numerous and diverse techniques for achieving the subjugations of bodies and the control of populations), which takes the bare lives of the citizens into its political calculations, may be more marked in the modern state. Within this framing, the Sovereign is the one who decides the exception, and re-includes within the law precisely what had been excluded from it. Since sovereignty is exhaustively defined by its ability to decide the exception, it follows that “the inclusion of bare life in the political realm constitutes the original – if concealed – nucleus of sovereign power. It can even be said that the production of a biopolitical body is the original activity of sovereign power”⁴.

The Sovereign, as Agamben observes, had two bodies – the juridical and the physical. Such a division finds place in the rhetoric of the colonial Penal Code as well, in which certain offences explicitly qualified as attacks against sovereignty. As noted by the High Court of Nagpur in 1946:

There are two kinds of levying war: one against the person of the King, to imprison, to dethrone, or to kill him; or to make him change measures, or remove

counsellors; the other, which is said to be levied against the majesty of the King, or, in other words, against him in his regal capacity; as when a multitude rise and assemble to attain by force and violence any object of a general public nature; that is levying war against the majesty of the King; and most reasonably so held, because it tends to dissolve all the bonds of society, to destroy property, and to overturn government; and by force of arms, to restrain the King from reigning, according to law.⁵

Thus the “bare life” of the Sovereign, his physical body, was immediately political.

The inscription of the life of the Sovereign in the realm of politics continued after India gained independence in 1947, but in a different form. Since India was described in the Constitution as a “sovereign democratic republic”, sovereignty could no longer be located in the body of a single person, the King or Queen, but was dispersed amongst all the citizens of the new nation, the ‘People’. The movement from princely sovereignty to popular sovereignty is caused not merely by the abolition of the Prince, but also with the investment of rights in the newly created citizen. The Right to Life thus represents the immediate politicisation of the life of the sovereign People.

Since Article 21 of the Constitution of India states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”, existential interpretations of “life” have consistently been offered and contested in the courts and have found place in judgments. For instance, in the case of *Kartar Singh v. State of Uttar Pradesh*, the Supreme Court stated:

By the term ‘life’ as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world. By the term ‘liberty’ as used in the provision, something more is meant than mere freedom from physical restraint or the bonds of a prison.⁶

In other cases, the Supreme Court has held that “life” means the right to live with human dignity, and would include all those aspects of existence that go to make human life meaningful, complete and worth living – tradition, culture, heritage; it also implies the right to food, water, a safe and clean environment, medical care and shelter.

In *Homo Sacer* (1998),⁷ Agamben examines in detail the two Greek words for ‘life’. *Zoë* denoted the simple fact of living, common to all living beings; *bios* denoted a form or way of living proper to an individual or group. In ancient Greece, the proper place of *bios* was in the city/*polis*, whereas *zoë* was confined to the reproductive sphere of the home.

The Supreme Court in contemporary India, much like the ancient Greeks, gestures towards defining a proper way of living. In telling us that the Right to Life is not about supporting “mere animal existence”, and that this right includes all that which gives meaning

to human life and makes it worth living, the Supreme Court approximates what is implied in *bios*. Therefore, implicitly excluded from the juridical meaning of “life” is life as “mere animal existence” – in other words, as “bare life”.

Foucault (1984) declares that with modernity, the simple fact of ‘bare’ living, which was once excluded from the city, comes to be what is at stake in politics:

For millennia man remained what he was for Aristotle: a living animal with the additional capacity for political existence; modern man is an animal whose politics calls his existence as a living being into question.⁸

In modernity, a nation’s health and biological life become a problem for sovereign power:

For the first time in history, no doubt, biological existence was reflected in political existence; the fact of living was no longer an inaccessible substrate that only emerged from time to time, amid the randomness of death and its fatality; part of it passed into knowledge’s field of control and power’s sphere of intervention. Power would no longer be dealing simply with legal subjects over whom the ultimate dominion was death, but with living beings and the mastery it would be able to be applied at the level of life itself; it was the taking charge of life, even more than the threat of death, that gave power its access to even the body.⁹

And hence, modern ‘life’ is inscribed into the political through a number of rituals – the filling out of a birth certificate, being vaccinated against disease, counted in a census, and documenting noticeable marks on our bodies.

Agamben analyses the various ways in which bare life has been/is scripted into the political. He finds it interesting that habeas corpus is a presentation of the physical body (*corpus*), not of the person (*homo*). He goes on to argue that the declaration of rights, which are held out to be the strongest defence against the might of the sovereign, and which declare that man by reason of his birth possesses these rights, represents the inscription of the birth, a fact of *natural* life, into the realm of the *political*.

The declaration of rights is viewed as the rite of passage by which the transformation of divinely authorised royal sovereignty to national sovereignty is accomplished; and the simple fact of birth is projected as the bearer of sovereignty. By virtue of his birth, the *subject* becomes the *citizen*, and it is at this point that *zoë* and *bios* are indistinguishable.

If modernity thus collapses the distinction between *zoë* and *bios*, and if the Right to Life, which human rights activists hold out as the shield that protects life, represents the inscription of bare life into the political, then the ability to decide what constitutes proper life also represents the power over death. Simply put, if a decision can be made on the value of a life and what makes life worth living, it implies that decisions can also be taken to establish *which* life can be seen as valueless/not worth living. Hence, as Agamben argues, in the classical world the sovereign who decides on the state of exception has the power to decide the point at which life may be destroyed without this act being seen as homicide; while in the age of biopolitics this power is transformed into the power to decide

the point at which life ceases to become politically relevant. Life, invested with the principal of sovereignty through the declaration of rights, now becomes the place of the sovereign decision on the exception.

In this regard, when we consider the hagiographies of the Supreme Court, we are told of the immense value of its judgments affirming the various meanings of the Right to Life, and various ways that the Right to Life can be performed. Human rights activists and lawyers hold out this Right to Life as *the* greatest protection against the violence of the state. Yet at the same time, we fail to see the violence that is *caused* by its orders, and the extinction that is then visited upon life.

We should not see this merely as a contradiction or as hypocrisy, or as a discerning application of law. We must, instead, see that the biopolitical consequence of the Right to Life is in fact the power over death.

Law's Confessional: "I Am Violence"

Exceptional times call for extraordinary laws. One such instance is the extraordinary feature of Section 32 in the now-repealed Prevention of Terrorism Act (POTA), that was signed into law in 2002. Unlike the ordinary law contained in Section 25 of the Indian Evidence Act, which states that "No confession made to a police officer shall be proved as against a person accused of any offence", this section allows a confession to be recorded by a police officer not below a certain rank.



Opponents argued that it violated principles of fair trial and allowed the police to use methods of torture towards securing a conviction. For instance, a report by the People's Union for Civil Liberties (PUCL) argues:

Under the Evidence Act ordinarily applicable, it is a central tenet that confessions to the police are not admissible as evidence because they can be easily extracted by torture. Similarly under the ordinary legal procedure, telephone interception may not be produced as primary evidence against an accused... confessions before a police officer being admissible as evidence, even if they are later retracted or denied, generates immense possibility of torture and abuse.¹⁰

In both the PUCL case¹¹ in which the constitutionality of POTA was challenged, and in the earlier cited Kartar Singh case in which the provisions of the Terrorism and Disruptive Activities (Prevention) Act, 1987 (TADA) were challenged, the sections relating to confessions were attacked on the basis that they undermined the rule of law, and more particularly, that they violated the accused's fundamental rights. The Supreme Court in response held that in both these cases the provisions were constitutionally valid, as they did not offend the principle of the rule of law and did not violate fundamental rights. While the Supreme Court upheld the provisions in both these cases, a high level of anxiety remained over the impact of these provisions in undermining the rule of law, on the right to fair trial, or on enabling the violation of the Right to Life by effectively allowing torture and abuse of prisoners.

We are thus confronted with a paradoxical situation where a duly enacted and constitutionally valid *law* is opposed on the basis that it violates the *rule of law*.

Other exceptional laws also evoke a similar anxiety. For example, Section 4 (a) of the Armed Forces Special Powers Act, 1958 (AFSPA) gives the power to an army officer of a particular rank the power to fire upon, to the extent of causing death, any person who is acting in contravention of certain prohibitory orders. A PUCL report on the AFSPA highlights the 'extra-judicial' killings, and documents instances of abuse and torture at the hands of the armed forces. The report then argues, "[...] the strength of any country claiming itself as 'democratic' lies in upholding the supremacy of the judiciary and primacy of the rule of law. It requires putting in place effective criminal-law provisions to deter the commission of offences against the innocents, and punishment for breaches of such provisions while exercising executive powers; and not in providing the arbitrary powers to the law enforcement personnel to be law unto themselves"¹². Here again, we are confronted with the stark fact that the Supreme Court upheld the validity of the entire Act. It not only stated that the Act was procedurally valid, i.e., Parliament was competent to enact this legislation, but also that the provisions of the statute were substantively valid, in that they did not violate any fundamental rights. Both sides of the debate on the validity of these extraordinary laws claim that their position is the constitutionally valid one; they both claim the authority for their interpretation of the meaning of the 'rule of law'.

The tension between the two positions exposes a deeper concern over violence and the law. In his study of martial law in the British colonial state, Nasser Hussain argues that there was a constant tussle between those who believed that the only state that could be established in the colony was a more civilised despotism with scope for large executive discretion, meaning latitude for violence by the state, and those who argued for a system of rule of law. Hussain asserts that the colonial state used martial law to establish the rule of law, a system with which the native population was thought to be unfamiliar. He also posits that martial law produced a high level of associated anxiety because such a regime exposed the *originary* violence of the state, and threatened to reveal it as based on the violence of conquest. The anxiety is rooted in a perception that an emergency/exception not only requires a special law, but also reveals something threateningly elemental about the nature of law itself – that law is not sufficient to restore the order of the state; and only violence, or the brute power of the sovereign, can impose and maintain the rule of law. The overt violence of the law provokes further anxiety that the violent imposition of the law will actually be visible, and hence real.¹³

The link between law, violence and sovereignty can be understood by once again considering what Agamben famously calls the “state of exception”, and its relation to a ‘normal’ situation. He directs us towards what he terms the *paradox* of sovereignty. Beginning with jurist/political theorist Carl Schmitt’s concept of the Sovereign being the one who decides the exception, Agamben declares:

If the Sovereign is truly the one to whom the juridical order grants the power proclaiming the state of exception, therefore suspending the order’s own validity, then the Sovereign stands outside the juridical order but nevertheless belongs to it, since it is up to him to decide if the constitution is to be suspended.¹⁴

Agamben attempts to resolve this by stating that the sovereign is neither inside nor outside of the law. Instead, the sovereign sphere resides at the point of *indistinction* between the rule of law and the state of exception.

In his “Critique of Violence” (1921), Walter Benjamin identifies a crucial issue, believing that it “would remain open whether violence, as a principle, could be a moral means even to just ends”. He claims that violence occurs where exception and rule become indistinguishable, and terms the link between violence and right “naked/mere life (*bloßes Leben*)”. Naked life is thus the element that, in a state of exception, holds the most intimate relation to sovereignty. Taking his cue from Benjamin’s theses that violence posits the law *and* preserves the law (“*rechtserhaltende Gewalt*”, a law-preserving violence, i.e., violence that is not the *result* of law but rather is *given* with the very form of law), Agamben declares:

The violence exercised in the state of exception neither simply posits law, but rather conserves it in suspending it and posits it in excepting itself from it... Sovereign violence opens up a zone of indistinction between law and nature, outside and inside, violence and the law.¹⁵

Thus, the contestation over whether these 'exceptional' laws violate the principle of rule of law masks the anxiety over the inability to distinguish between violence and the law, and lays bare the law as violence. This concern is alluded to in the Parliament Attack case:

The ground realities cannot be ignored. It is an undeniable fact that the police in our country still resort to crude methods of investigation... Complaints of violation of human rights by resorting to dubious methods of investigation... are being heard day in and day out. Even many amongst the public tacitly endorse the use of violence by police against the criminals. In this scenario, we have serious doubts whether it would be safe to concede the power of recording confessions to the police officers to be used in evidence against the accused making the confession and the co-accused.¹⁶

Extraordinary laws lead to such anxiety not merely because they lead to an erosion of the rule of law, or merely because torture undermines a regime of rights. Instead, the fear of abuse and torture as a result of these laws not only blurs the distinction between law and violence, but also exposes that law and violence are imbricated in one another even in 'unexceptional' states and times. Such laws put into full view the fact that law *is* the originary violence of the state, and that concepts such as 'rule of law' only serve to disguise this violence.

On Frontiers of War

On 31 December 2006, the Indian Army released a document interestingly titled "Doctrine of Sub-Conventional Operations". Its opening passage reads:

Total war as an instrument of state policy has become less relevant than ever before... However, this has given further impetus to sub-conventional operations as the predominant form of warfare. Sub-conventional warfare is a generic term encompassing all armed conflicts that are above the level of peaceful coexistence amongst states and below the threshold of war. It includes militancy, insurgency, proxy war and terrorism that may be employed as a means in an insurrectionist movement or undertaken independently.¹⁷

The Doctrine then states that a distinctive feature of this sub-conventional warfare is the blurring of lines between the "Front and the Rear; Strategic and Tactical Actions; and Combatants and Non-combatants".

Thus, according to this document, war today has no frontier; it is being waged everywhere, and the line between friend and enemy is no longer clear. The Doctrine further recommends that in this new situation, there needs to be a "change in the soldier's mindset from fighting the enemy in a conventional conflict, for which he is trained, to fighting his own people".

The only other figure who fights his own people is the terrorist. Indeed attacking 'people' is the defining characteristic of a terrorist. For example, Section 3(1) of POTA reads:

Whoever with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing

by using bombs... or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community.¹⁸

Killing people, or harming the life of the community thus makes one a 'terrorist'.

The soldier on the frontiers of this new war therefore is duty-bound to destroy terrorists, some of whom may be "his own people". In turn, the terrorist is characterised by the fact that he kills the sovereign People/citizens. If, as the Doctrine states, the line between combatant and non-combatant is blurred, then to distinguish between terrorists on the one hand, and the sovereign People on the other, becomes a paramount biopolitical imperative.

Jaya Kasibhatla argues that in postcolonial states the category of the citizen is something that does not exist, but is something that is yet to be attained and is in the process of being created:

In traditional contract theory, it is assumed that the parties who enter into an agreement have no reason to enter the contract unless they have something to gain. The postcolonial constitution was framed as a contract that promoted liberal equality through the recognition of historical inequality... the Indian Constitution frames itself in a moment of historical inequality in order to make the ideal contractual moment possible in the future, if not suggesting outright that such a moment can only be fictional.¹⁹

Moreover, Kasibhatla points out that in the drafting of the emergency provisions of the Indian Constitution, the rights-bearing citizen was the figure that was invoked in justifying the abrogation of rights in an emergency – that if emergent citizens were allowed to exercise their rights during an emergency, then the needs of the state to combat the emergency would be compromised. A condition of emergency activates the idea that the body of the citizen is dangerous and intractable, and that the 'rights' that adhere to the citizen function as loaded weapons, cocked and ready to be used against the state. The emergent citizen, much like the terrorist, is thus the figure that threatens to shatter the sovereign order.

Here citizen and terrorist appear as similar figures, their functionality blended. But if in modernity the politicisation and preservation of the sovereign life of citizens is the crucial biopolitical task, a frontier *must* be erected between citizen and terrorist.

The Parliament Attack case presents us with the way in which citizen and terrorist come to be cast as oppositional figures. The court justifies the imposition of the death sentence upon Mohammed Afzal, the prime accused, thus:

In the instant case, there can be no doubt that the most appropriate punishment is death sentence... The present case, which has no parallel in the history of Indian Republic, presents us in crystal clear terms, a spectacle of rarest of rare cases. The very idea of attacking and overpowering a sovereign democratic institution by using powerful arms and explosives and imperilling the safety of a multitude of

peoples' representatives, constitutional functionaries and officials of Government of India and engaging into a combat with security forces is a terrorist act of gravest severity... The gravity of the crime conceived by the conspirators with the potential of causing enormous casualties and dislocating the functioning of the Government, as well as disrupting normal life of the people of India, is something that cannot be described in words. The incident, which resulted in heavy casualties, had shaken the entire nation and the collective conscience of society will only be satisfied if capital punishment is awarded to the offender. The challenge to the unity, integrity and sovereignty of India by these acts of terrorists and conspirators, can only be compensated by giving the maximum punishment to the person who is proved to be the conspirator in this treacherous act. The appellant, who is a surrendered militant and who was bent upon repeating the acts of treason against the nation, is a menace to society and his life should become extinct. Accordingly, we uphold the death sentence.²⁰

Here the body of the nation comes to stand in for the body of those who perished in the attack on Parliament. The physical attack on the "people's" representatives thus becomes an attack on the sovereign body of the nation itself. However, an attack on this body of the Sovereign People simultaneously produces its subversive foil, the terrorist – thus enabling Afzal to be described as "a menace to society", and one whose "life should become extinct".

He is not to be 'killed', or 'murdered', but to "become extinct".

The imbrication of the body of the sovereign people into the body of parliament is not merely allegorical, or a trope necessary to the argument of the prosecution. It is *fundamental* to the biopolitical task of the Supreme Court. Thus, Mohammed Afzal's case exposes a fundamental biopolitical fracture that liberal constitutionalism seeks to hide with the manufacture of a mythical unified 'People'. According to Agamben:

It is as if what we call people were in reality not a unitary subject but a dialectical oscillation between two poles: on the one hand, the set of the People as a whole political body and on the other, the subset of the people as a fragmentary multiplicity of needy and excluded bodies; or again on the one hand, an inclusion that claims to be total, and on the other, an exclusion that is clearly hopeless; at one extreme the total state of integrated and sovereign citizens, and at the other the preserve of the wretched, the oppressed and the defeated.²¹

If the 'people' are at war with the 'People', then one of them is the repository of sovereignty, and the other is transformed into an uneasy presence, its existence an unbearable disgrace. And if in the postcolony citizenship is an emergent process, the Supreme Court's biopolitical task of producing true, undivided and sovereign citizens may be achieved through the strategic marginalisation of "the wretched, the oppressed and the defeated". The project of making the poor classes succumb to powerful capitalist forces of 'development', through court orders for the demolition of slums or the sealing of

commercial establishments in the interest of civic 'improvement', reproduces notions of a "people" rendered "extinct" via subtle and overt forms of state coercion.

Editors' Note

For other accounts of 'legal' torture, see Warisha Farasat, "Locating Torture in Jammu and Kashmir" and Pramod K. Nayar, "Borderline Bodies", pp. 187-198 and 199-210 in this volume. Also see A. Bimol Akoijam, "Another 9/11, Another Act of Terror: The 'Embedded Disorder' of the AFSPA", in *Sarai Reader 05: Bare Acts* (CSDS, 2005, Delhi), pp. 481-91. Reader 05 online text: http://www.sarai.net/reader/reader_05.html

Notes

1. Robert Cover. "Violence and the Word". In *Yale Law Journal* 95, p. 1601 (1986).
2. "Three-month jail for Delhi BJP MLA". In *The Hindu*. Online text at <http://www.hindu.com/2007/04/11/stories/2007041105930100.htm>. Accessed 3 May 2007.
3. As cited in Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford University Press, 1998, Stanford).
4. *Ibid.*
5. *Maganlal Radhakrishnan v. Emperor* (AIR 1946 Nag 173). Hence Section 121 of the Penal Code punished any act seen as waging war against the King – i.e., also including anyone who waged war against the King's forces, or arrayed an army against the King's army or attacked sovereign institutions such as the police, or government buildings. Section 124, on the other hand, protected the physical body of the King against physical harm.
6. 1994 (3) SCC 569.
7. Agamben, *op. cit.*, p. 1.
8. Michel Foucault. *The History of Sexuality, Volume I: An Introduction*. Trans. Robert Hurley (Pantheon, 1984, New York), p. 188.
9. *Ibid.*, p. 142.
10. People's Union for Civil Liberties, POTA Court Judgment in the 13 December case; <http://www.pucl.org/Topics/Law/2003/parliament-case.htm>. Accessed 3 May 2007.
11. 2004 (9) SCC 580.
12. "An Analysis of the Armed Forces Special Powers Act, 1958". See <http://www.pucl.org/Topics/Law/2005/afspa.htm>.
13. Nasser Hussain. "The Jurisprudence of Emergency: Sovereignty and the Rule of Law in British India". Doctoral thesis (1995).
14. Agamben, *op. cit.*, p. 15.
15. *Ibid.*, p. 64.
16. 2005 (11) SCC 600.

17. Available at http://indianarmy.nic.in/indar_doctrine.htm. Accessed 15 May 2007. Also see Gautam Navlakha, "Doctrine of Sub-Conventional Operations: A Critique", in *Economic and Political Weekly*, Vol. XLII, No. 14 (7 April 2007).
18. Prevention Of Terrorism Act, 2002.
19. Jaya Nandita Kasibhatla. "Constituting the State of Exception: Law and Literature in Postcolonial India". Doctoral thesis (2005).
20. 2005 (11) SCC 600.
21. Agamben, op. cit., p. 177.

References

Agamben, Giorgio. *Homo Sacer: Sovereign Power and Bare Life*. Trans. Daniel Heller-Roazen (Stanford University Press, 1998, Stanford).

Benjamin, Walter. "Critique of Violence". Trans. Edmund Jephcott. In *Selected Writings, Vol. 1: 1913-1926* (Belknap/Harvard University Press, 1996, Cambridge).

Foucault, Michel. *The History of Sexuality, Volume I: An Introduction*. Trans. Robert Hurley (Pantheon, 1984, New York).