equity shares, loans from banks, the "dealership deposits" amounting to a couple of crores; the acquisition of land and the objectives, if any, by the Commanding Officer of the airfield at Gurgaon; the business undertaken by the concerns and the contracts awarded to them; the foreign collaboration deals, and, "the nature and extent of assets" held by Mr. Sanjay Gandhi.

The last term would be relevant, anyway. The fact that Mr. Gandhi was in politics makes it more so and is in accord with the precedents set so well by earlier Commissions of Inquiry. Those concerned in the affairs of these concerns know what the inquiry will be about. The Lok Sabha debated their affairs on at least two occasions, on December 22, 1972 and May 16, 1973, while on nearly 30 other occasions they were the subject of question and answer in the Lok Sabha alone. The discussion in the press especially from 1973 to 1975, is another story.

But this inquiry should not be mixed up with any in regard to the growth of the "extra-Constitutional Centre of Power", except where it touches the fortunes of the concerns. There is, doubtless, need for a thorough exposure of that abnormality by itself and of the well settled norms of administration in government and in the public sector. That can well form the subject, not so much of a Commission of Inquiry, as of an administrative inquiry whose report can be published for public edification.

There is precedent too, for an inquiry into the Nagarwala case by a Commission of Inquiry. The Kapur Commission on the murder of Gandhiji and the Chandrachud Commission on that of Mr. Deen Dayal Upadhyaya were undertaken despite the fact that there had been a trial concerning the incidents. As Mr. Justice Chandrachud remarked, "My inquiry is what a criminal trial cannot be. I can conduct a probe into the real truth." A trial is confined to the issue whether the accused is guilty.

In the Nagarwala case the issues were far wider and graver than his culpability. The highly irregular manner in which Rs. 60 lakhs were withdrawn from the State Bank of India by its Chief Cashier, Mr. V.P. Malhotra, on May 24, 1971 and handed over to Mr. R. S. Nagarwala on the basis of a telephone call purporting to be from the Prime Minister, the bizarre confession made by Mr. Nagarwala of the "hoax" he had played merely because, when in the vicinity of the Bank, "on the spur of the moment, my heart started racing and my blood ran hot with excitement of adventure", and the haste with which the confession was recorded and the trial conducted call for a probe.

The Session Judge Mr. R. N. Agarwal, ordered a retrial on July 21, 1971 and observed that the trial had been "conducted in undue haste and this has resulted in miscarriage of justice." Five days later Mr. Nagarwala was released on bail but preferred to stay in prison, so fearful was he of his personal safety. He died on March 2, 1972, a few months after the second trial had begun. His death, as that of the DSP K.D. Kashyap, has been the subject of much comment. The suspicions need to be removed, including those in regard to the papers found missing in the second trial. But what is of fundamental importance is the truth about the delivery of Rs. 60 lakhs by Mr. Malhotra. How did it happen at all? The matter was mentioned in the Lok Sabha on May 26, 1971 but a debate was successfully put off till May 20, 1972. It was admitted on behalf of the Government that Mr. Malhotra had, indeed, behaved in a "strange manner."

Mr. Malhotra was discharged by the court but was dismissed from the State Bank on November 21, 1972 after a disciplinary inquiry. That he retained the confidence of men in high places and found a job under their auspices after his dismissal is strange still. As for Mr. Bansi Lai, an inquiry was long overdue. One hopes it would cover charges in report of his stewardship of the Defence Ministry as well.

There is, however, one singularly sordid aspect of the administration during the emergency which deserves a full inquiry. It is the infliction of torture on detenus and suspects.

26. SHAH COMMISSION REPORT


The Shah Commission has suggested a periodic review of all laws by the legislatures to ensure that the powers conferred on public servants are not abused or misused as had happened during the dark days of the emergency.

In its final report presented to Parliament it has observed that unless public servants work for and establish a reputation of "political neutrality", the citizens will have no confidence in the impartiality and fairness of the services.

The manner in which MISA detentions were ordered by the detaining authorities at different levels during the emergency should be a lesson to the people's representatives in the legislatures as to how a statute, initially well conceived, may be misused for purposes totally alien to its objects and the intention of its farmers.

The Commission feels that some mechanism must be devised to ensure that enactments do not interfere with the normal lives of the citizens and that these enactments are subject to periodic review by the Parliament. An
enactment once it comes on the statute book should not be allowed to be forgotten. Its operation should be kept constantly under review.

There should be built-in provisions to remind the legislators and public servants exercising authority under the statute, for periodic reviews by the legislatures so that the initial aims and objects of the Act are not perverted.

The memorandum of action by the Central Government, also tabled in Parliament, said it had been decided to forward the report to the Haryana and Karnataca Governments for initiating legal, departmental and remedial or other consequential administrative action in specific cases mentioned in the report.

The State Governments and Union Territory administrations are being asked to ensure that the emergency excesses inquiry authorities set up by them complete their inquiries by the end of December, 1978, as suggested by the Commission, and the complaints left over should be dealt with through normal administrative channels thereafter.

The Centre would also request the State to formulate and implement on a priority basis measures for improving the prevailing conditions in jails. The Government has also decided that the general observations made by the Commission would be examined in depth with a view to initiating consequential administrative or corrective action as may be required.

The third and final report runs into 11 chapters, dealing with wrongful confinement and torture of Mr. Lawrence Fernandes, six cases from Haryana including the illegal detention of Mr. Murali Dhar Dalmia and a journalist, Mr. M. L. Kak, under former Defence Minister Bansi Lai's orders. Another chapter deals with abuse of authority in service matters. The Report also deals with the conditions in jails, implementation of the family planning programme and demolitions.

The Commission, headed by Mr. Justice J. C. Shah, has observed that it is imperative that public servants should adhere strictly only to their commitment to the programme of the party in power which should be in consonance with the provisions of the laws and the Constitution, without, in any way, compromising with the principle that public servants have to be politically neutral at all levels and at all times.

"It is expected of the services that they would render frank, informed and well-considered advise without being personally involved in their present position or their future advancement, however unpalatable such advice may be to the political head of the Ministry," Mr. Justice Shah has observed.

Referring to the case of Mr. Lawrence Fernandes, the Commission observes that it highlights not only the illegal detention and torture of an individual by the police but the subversion of an entire legal system, including the judicial process, by senior and responsible Government officers: "The concerned police

officers had by their conduct set a very poor example to the members of force which they represent. "By glibly telling lies on oath, they have attempted to put a premium on prejury. By their conduct they lowered themselves the eyes of the public gravely and the police force in particular and done more lasting damage to the credibility of the force as a whole."

The detention of Mr. Murali Dhar Dalmia highlighted the high-handed ness and arbitrary conduct of Mr. Bansi Lai in Haryana during the emergency. Various functionaries in the Government fabricated records and concocted grounds to justify an unjustifiable detention order to fulfill the design of the Commission, headed by Mr. Justice J. C. Shah, has observed.

The Chief Minister employed the authority and resources of the State to wreak his private grudge against a citizen in an unprincipled and unscrupulous manner and courts felt compelled to hold that they had no power to give relief.

Mr. Bansi Lai, even though he had ceased to be the Chief Minister in Haryana and had become Defence Minister, continued to exercise the same authority and power over the affairs of Haryana as he had done when he was Chief Minister.

"The power that he exercised and the manner in which he wielded it would rank him with mediaeval despots. He grossly misused his position abused his authority as Chief Minister in ordering the detention of Mr. Dal)

He continued to abuse his position even after he had ceased to be the Chief Minister and become Defence Minister," Mr. Justice Shah observed.

As regards the use of compulsion and force in implementing the family planning programme in Uttawar village, the Commission said a raid planned deliberately by the State officials because of the opposition of local population to submit to the sterilisation programme of the State Government. The Commission has, however, taken a lenient view of the matter since the raid was planned by the officers at the behest of higher authorities, does not minimise the gravity and illegality of what was done to the pec of the village both in terms of the raids, and sterilisation and the cutting of electricity.

"What happened during the emergency was the subversion of a system administration," says the report. Responsible officials admitted to the fact that large-scale fabrication of records concerning various individuals and mat to subserve the interests of a few. Effort should be made by the authoriti at the Centre and in the States to devise means to ensure that the concocted records are not used again to the disadvantage or detriment of the individual concerned.

"It is necessary to face the situation squarely that not all the excesses and improprieties committed during the emergency originated at the politi