

# PUBLIC

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## *Editorial:*

# IISUNSET OF HUMANITY"

One of our young friends from Hyderabad in a brief note on communal riots in Hyderabad (published elsewhere in this Issue) writes: As we quarrel over temples and masjids, we march on surely into the "sunset of humanity". If young intellectuals have come to this conclusion we have reason to feel greatly disturbed and distressed over the communal holocaust that has been going on in many parts of the country. The kind of chauvinism exhibited by a large number of activists from the majority community, the cultural background and the general atmosphere that obtain in the country today, are sure signs of the rise of fascism. (Remember, an intelligent educated people like the Germans under Hitler). Let us therefore remember that unless the cultural and psychological precondition for the rise of fascism is removed, no alarm against it will be heeded. We must view the communalism of the majority community against this background, for the communalism of the minority community, as it exists today, will not give rise to fascism.

News of brutal killings from many parts of the country, and lies and insinuations that have been systematically spread by a section of the media, must make human rights activists sit up. We may, in this context, only refer to what happened at Aligarh.

## ALIGARH MUSLIM UNIVERCITY.

Concocted stories by a section of the Hindi Press, particularly by the daily AAJ, published front page headlines to the effect that 74 persons including 28 patients were killed in Jawaharlal Nehru Medical College Hospital of the Muslim University. This report was denied (for it was an absolutely false news) by the University and its Vice Chancellor Professor Faruqui, and also by the District Magistrate, on Doordarshan; yet AAJ continued to publish false stories about the Hospital, and surprisingly in its editorial on Dec. 13, 1990, the paper alleged that the District Administration of Aligarh has confirmed the rumour. And this, inspite of the statement issued by Professor K.P. Singh of University that no untoward incidents

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happened **against** Hindu students. Even Doordarshan played a foul game: for example, a fabricated story was flashed in the TV news that the police chowki in front of the University hostel was mobbed and two police men were stabbed. Furthermore, Doordarshan announced that the University had issued orders that hostels be evacuated-the University never did so. Where did Doordarshan get the news? It is anybody's guess! Against such deliberate lies, the faculty members and students of the University did a commendable job in trying to diffuse the confusion. It is distressing to note that the academics and the medical fraternity in the country have not raised even a little finger in protest.

Does the State exist? If it does, criminal action must be taken against the media which spread rumours to bring a bad name to the university. More importantly, such fabricated stories and lies are deliberate attempts to cut at the roots of human rights, for communal riots are nothing but violation of human rights. And, we have reason to believe that the situation in other riot-affected areas are not different.

**KYA HUA IS SHAHAR KO?**  
-GR.R. BABU

*(An young intellectual, Babu is a rationalist and humanist from Hyderabad.iEditor)*

As we all looked on helplessly with benumbed senses, Hyderabad went mad for yet another time. As terror took over everyone, infants were killed, pregnant women doused with petrol and burnt, sons killed in front of their mothers; while whole families were slaughtered, their houses were looted and set afire.

Keshav Rao Jadhav made a film KYA HUA IS SHAHAR KO after the 1984 communal riots, exploring the origin of communal riots in the old city of Hyderabad. But this time, even the new city was dragged into the communal frenzy. "All the people shown on television and the people whose photographs appeared in newspapers were of Hindus," says one 'kllowledgebly'. Salhauddin Owaisi finds the Hindus guilty of the same crimes. And so vultures begin to descend, to prey on the corpses; while the burnt houses are still smouldering. A friend(a House Surgeon in Osmania General Hospital, a Hindu) says that the majority of people stabbed were Muslims. Another says that former Minister Shiv Shankar's son was responsible. Chenna Reddy, now deposed, says, "the hooligans came from Vijayawada". And while accusations go on in the narrow bylanes, communal tension feeds on the instigations of local leaders. Cassettes (from both the communities) blaring out slogans in the nights with background recordings of women shrieking and wailing. Cassettes made to create terror.

Now war has broken out, and this time we hear of no Hindu saving Moslems, or of Moslems helping their Hindu neighbours. Even relief parties are organised on the basis of religion.

**ANNOUNCEMENT****SOUTH ASIAN FORUM FOR HUMAN RIGHTS**

Delegates from South Asia to the World Congress of Human Rights at New Delhi Dec 10'15, 1990, met informally to discuss the possibility of forming a coordinating body for human rights groups of the South Asian region. Several attempts have been made in the past but were all too over-ambitious. Delegates felt that a beginning should be made on a modest and realistic basis. The ideas discussed at the meeting will be circulated to all the human rights NGGs of the region for their information and comments. After these are received and collected another communication will follow.

In order to begin the work of co-ordination immediately the delegates accepted Father Timm, President of the Coordinating Council for Human Rights in Bangladesh as Convenor of an informal group to be called SOUTH ASIAN FORUM FOR HUMAN RIGHTS. The meeting also decided to bring out a monthly newsletter to circulate human rights news and views from the SAARC countries. Representatives were chosen from each country to gather and submit the news reports.

The Peoples Union for Civil Liberties in New Delhi offered to begin publication of the South Asian Forum as a regular supplement to its own monthly, the PUCL BULLETIN. However, the PUCL will have no other responsibilities for the Forum.

All communications should be Addressed to :

Pr R. W. Timm, Convenor, SAFHR,

Box 5, DHAKA-1000 (Bangladesh).

Fr. R.W. Timm

**AN URGENT REQUEST TO ALL OFFICE BEARERS OF PUCL IN  
STATES AND LOCAL BRANCHES**

All thoughtful people are terribly disturbed over the communal holocaust engulfing a large part of the country. I know members of the PUCL and other like-minded people are doing their best to bring back sanity. The President and other members in Delhi thought that I should address a letter to all office-bearers to coordinate the activities of their branches, who are making efforts to stop communal riots, ease tension, give help to those who have suffered, institute enquires wherever necessary and possible. PUCL seek help and cooperation of local citizens in these activities.

I will be grateful if office-bearers kindly send reports of their efforts for publication in the PUCL BULLETIN.

New Delhi,  
Dec. 19-1990

Y. P. Chhibbar,  
General Secretary, PUCL

## Detention Without Fair Trial ADMINISTRATIVE or PREVENTIVE DETENTION

Rajindar Sachar

*(Paper read at World Congress of Human Rights held at New Delhi-r-December /0-15, 1990)*

The Paper deals with the state of law in various countries of the world with regard to detention without trial. The question whether the procedure of trial before judicial Tribunal is fair or not is not the subject matter of this Paper. We are only concerned with the aspect of denial of liberty and freedom to a person without a public trial. How far is it constitutionally permissible and proper for the State to detain persons without formally charging them before a court of law? And even if it is permissible (and as will be shown later-it is now almost universally accepted as a fact of life) as to what safeguards must nevertheless be read into the law of Preventive Detention, and how far these comply with the minimum requirement of Universal Declaration of Human Rights 1948 and various international covenants, are questions which need to be debated.

It is now accepted that Proclamation of Universal Declaration of Human Rights by General Assembly of the United Nations set a common standard of achievements for the people and nations to the end that every individual and every organ of society keep this Declaration promises that everyone has the right to life, liberty and security of person. Article 9 further mandates that no one shall be subjected to arbitrary arrest, detention or exile. Article 11 further provides that everyone charged with a penal offence has right to be presumed innocent until proved guilty according to the law in public trial at which he has had all the guarantees that are necessary for his defence. The international covenant on civil and political rights 1966 gives further teeth to the Universal Declaration. Thus Para 1 of Article 9 provides that everyone has the right of liberty and security of person. No one shall

be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Para 2 of Article 9 further provides that anyone who is arrested shall be informed at the time of arrest of the reasons for his arrest and shall be promptly informed of any charges against him. Para 4 of Article 9 gives a right to anyone who is deprived of his liberty by arrest or detention to take proceedings before a court in order that that court may decide without delay on the lawfulness of his detention and order release if the detention is not lawful. Para 5 of Article 9 further provides that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

It will be seen that if one was to interpret the spirit of Universal Declaration and the covenants there should be no scope for a person to be detained or arrested without the matter being tried before the normal judicial tribunals. But unfortunately whatever one's predilection may be the fact of the matter is that administrative detentions are accepted as an inevitable part of any modern State. Thus almost all countries, even those who consider themselves fully democratic, permits detention at the sole satisfaction of the executive authorities. We are thus faced with a situation where the principles of administrative detention is an acceptable item in almost all countries.

The effort of Human Rights Organisations and activists should be directed towards making it certain that the conditions subject to which the administrative detentions are permitted conform to well established norms laid down by the international covenants.

It has been found that in too many countries resort to the power to detain administratively is becoming quite common not only during a period of emergency but in normal time on the apparent excuse to maintain internal security or law and order. Too many such detentions are rightly claimed to be nothing else but a means of stifling political dissent and criticism against the existing political rulers. These trends rightly claimed the attention of the international bodies.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities in Paragraph 1 of its resolution 7 (XXVII) of 20 August 1974 decided to review annually developments relating to the human rights of persons subjected to any form of detention or imprisonment, taking into account any reliably attested information from Governments, the specialised agencies.

"Administrative detention" is one which has been ordered by the executive alone and the power of decision rests solely with the administrative authority, even if a remedy subsequently does exist in the courts. The courts are then responsible only for considering the lawfulness of this decision and/or its proper enforcement, but not for taking the decision itself in the first instance.

"Preventive Detention" means that detention of a person without trial in such circumstances that the evidence in possession of the Authority is not sufficient to make a legal charge or to secure conviction by legal proof, but may still be sufficient to justify his detention. While the object of punitive detention is to punish a person for what he has done, the object of preventive detention is to prevent him from doing something which is allegedly prejudicial to the maintenance of public order or security of State. The object of preventive detention is said to prevent the individual not merely from acting in a particular way, but from achieving a particular object. No offence is proved, nor any charge formulated and the justification is suspicion or reasonable probability and not criminal conviction which only can be warranted by legal evidence. On this view, if the detention is challenged in courts, they are likely to accept that the

object being to prevent the person from acting in a manner prejudicial to public order, the security of the State or the like, his past conduct and antecedents may form the basis of an order of detention if they reveal a tendency to do such acts and that it is not necessary for the State to establish actual breach of public order etc. having been caused by his acts, Administrative detention, therefore, gives broad and often discretionary powers to the administrative authorities, which can use them merely on the basis of presumptions if they deem it necessary and are not bound to give the detainee any reasons for their decision. The fact that in some countries persons are detained simply on the order of a representative of the police or security forces leaves them wide open to all kinds of abuses, especially if they are imprisoned because of their opposition to the Government.

From the point of view of typology and the purposes of administrative detention, the inquiries undertaken suggest five cases in which such detention is found to be used significantly. They are: (a) Situations threatening public order and State security, notably during crises; (b) measures relating to the status of foreigners, including asylum-seekers and refugees; (c) detention for the purposes of "Political re-education"; (d) disciplinary measures; and (e) measures to combat social maladjustment.

*(To be continued)*

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## Announcement

The membership fee of the PUCL has been revised with effect from August 1, 1990 as follows;

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|----------------------------------------------------------|------|
| 1. Yearly membership for Students<br>and weaker sections | 10/- |
| 2. Yearly membership for all others                      | 20/- |
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## COMMUNAL VIOLENCE IN GODHARA, GUJARAT

*(Report prepared by Justice S. L. Talati with members-Messrs Ghanshyam Pandit, Advocate, Gujarat High Court; Ashok Chatterjee, National Institute of Design, Ahmedabad; Prof. Gulam Mohammad Shaikh, Dean Faculty of Fine Arts; Prof. Anil Gupta Indian Institute of Management; Professor Iftikhar, M. S. University; Ravindra Kumar, M. S. University.)*

### The Background

Prior to Oct. 30 rumours had been spreading in the rural hinterland of Godhara that Muslims were planning to attack the Hindus in the villages where a minority of Muslims lived. Such rumours in the wake of Masjid-Temple controversy were neither scotched by the administration (which must have been aware if all the people in the area knew about it) nor any preventive step was taken to arrange inter-community dialogue. On Oct. 31, eight Muslims who had shops at different points along the road from Godhara to Kadedara had come to the village to take care of their shop. They had apprehended that their shops might be burned or damaged. People had dug up trenches on the road from Godhara to block the movement of any heavy vehicle. Eight Muslims were on three mobykes. Their families or relatives in the near by villages had already left for Godhara. They started for Godhara and found a mob of local villagers on their way. Apprehending trouble they turned back and found another mob on its way nearing them. The Muslims seeing them surrounded entered an open house nearby and bolted the house from inside. The mob by this time came together, surrounded the house and burned it. The Muslims fired in self-defence and tried to run out of the house because heat was increasing. They were killed before they could go very far. Villagers were very clear that there was no provocation from the Muslims. It was a case of heightened anxiety fuelled by the rumours.

In November first week a Hindu shop owner went to his shop in the Muslim area and did not return home. His body was found next day in a drain. On Nov 23, a vegetable vender near police chowki no 2 was attacked. He ran to safety after he was injured. On Nov. 29, the shop of a Hindu tailor situated on the border line between Hindu and Bohra Muslim area was attacked by a group of allegedly Muslims at around 4pm. The assistant of the tailor was killed. The tailor tried first to push the assailants out, not being able to do that, he ran out of the shop after breaking open a glass panel. He was chased and attacked from behind. But he survived and is in the hospital. These assailants then moved towards the school. Wards of the children had come to know about the tension and started taking their wards out of the school. Bohra lady teachers took the permission of the principal to go to their houses located nearby. Principal in a very valiant attempt tried to save all the teachers by taking them to a separate room. Meanwhile the assailant came shouting the name of the principal. They killed two teachers and the third died in the hospital. Several Hindu lady teachers were given shelter by Bohra Muslim neighbours and teachers.

After two days when the body of the principal arrived home after post mortem, Hindus became restive, lost patience and started attacking a row of Bohra Muslim houses on the border of Hindu and Muslim settlements in the Bhorwad area and just adjacent to the tailor's shop. The looting and the burning of the houses continued for several hours. The attacking crowd drilled big holes in the walls of some of the houses which they could not break open. Police allegedly prevented other Muslims to come to the rescue of these Muslims. However, no one was injured though one particular family tried to extinguish the fire through their individual efforts.

The funeral procession of the teachers was also

attacked that day in the evening by some miscreants. One of the mourners was fired at from the top of a house as apparent from the direction of the bullet in the body (Seen in the X-ray).

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We visited Godhra and get first hand information about the factual aspect and know the truth and to try to help in restoring peace in the area.

We met injured persons, Joly Tailor, Rameshbhai Patel (both in civil Hospital), teachers of Saifi School, Shashikantbhai, Advocate Rajnikant, members of the families whose houses were burnt and robbed in affected areas We also went to Kadadara and met the Sarpanch and others at that place.

It is not necessary to narrate all the facts as they are now know and they are already reported in the press also. The aim or object of this report is to see that such instances are not repeated and the atmosphere which is vitiated in Godhra is improved. What we found was that there is distrust between the communities. We also found that in some cases people belonging to one community did help persons of the other community but such instances are becoming less common and forces of division are having the upper hand. We in this report do not propose to enter into the follies of the past or the reasons of the present mess, We only desire to highlight certain aspects which require urgent consideration.

(1) It is now known that on 31-11-90 within the Jurisdiction of Morwa police Station 8 innocent persons were done to death and the authorities had to give shelter to about 70 persons in the compound of the District Magistrate. The District Authorities were fully aware that this incident is likely to have repercussions in Godhra city. (We could not meet any person taking shelter in the compound of the Dist. Magistrate as they had left the compound and whereabouts were not known.

(2) If there was any doubt, that was removed by the discovery of the dead body of a Coal Merchant of Godhra from near Bedia village which is situated in Kalol Taluka, in early November. (3) On 23-11-90 the shop

of a vegetable vendor was attacked and the shop keeper was murderously attacked and he escaped death by sheer luck. This shop is very near police chowky No.2 and from near this Place one enters where there is mixed population of Jains and Bohras and thereafter comes in the area occupied by Bohras who are from merchant community and who love - peace, though occassionally there are minor quarrels amongst them because of reformist and non-reformist ideology. (4) After Kadadara the second major incident occured on 29.11. '90, the day on which the shop of Jolly Tailor was attacked at 4 P.M. He was seriously injured and is still lying in Civil Hospital. His employee was murdered and soon thereafter 4 teachers were murdered in Saifi School. (5) After the first incident at Kadadara on 31,10, '90 when repercussions had started in Godhra, and instances were taking place, particularly the attack on the shop of the vegetable vendor did it not occur to intelligence department that the trouble is proceeding towards Boharwad and which has escape and/or entry route from behind Meshari river? (6) This means that IB was ignorant Police personnel at Chowkey No.2 did not come to know that Jolly Tailer's shop was attacked and the attackers had moved in Boharwad. When parents of 600 children could remove their children from the School, police personnel at Chowky No. 2 could not remove 14 teachers from the school or the police perhaps came to know about the incident after the incident was over and the culprits had run away. (7) In any case burning of Bohra shops and robbing them occurred two days after 29.11. '90 and at a place near police chowky No. 2 and this could have been prevented by police, and the culprits arrested. (8) We may note here that teachers who ran for life from the school were given shelter by Bohras in their houses and were allowed to go only when the situation became safe for their return to their houses.

The question is whether there exists intelligent department in police and if yes, whether it works at Godhra; and the next question is about their own intelligence and competency, This applies to police

personnel at police chowky No. 2 also. The following are the reasons :

(a) Oodhra has a history of being riot prone area. (b) From 30.10. '90 serious trouble started in villages in Godhra Taluka which resulted in murders, arson and migration. (c) Repercussions started in mixed locality near Bohrwad near Police Chowky No. 2 and the vegetable shop keeper was attacked in his shop. (d) In spite of this, there was no patrolling near mixed locality around Bohrwad. (e) If intelligence department worked properly after the attack at Jolly Tailor's shop, lives of teachers could have been saved, and so also the incidence of burning and robbing of Bohra shops.

In our opinion the following steps should be taken urgently to restore credibility and confidence in the minds of the citizens of Godhra: (1) The concerned Minister should make a public statement accepting the lethargy and fault of the department in as much as preventive steps were not taken. (2) Government must pay exemplary compensation to the relatives of the deceased and not usual amount which is paid in every death. Everyone must feel that the Government has paid compensatory costs.

(1) Injured persons-Joily Tailor, Vegetable Vendor, and Rameshbhai, who was injured on 2.12.1990 must also be compensated. (2) Compensation should also be given to the nearest of kith and kin of Shri Bavisi whose body was found at Bedia (3) Compensation should also be given to the nearest of kith and kin of 8 persons who died at Kactadara.(4) Compensation also must be given to property owners and occupiers who suffered loss due to arson. (5) Police should investigate and find out as to who was the person who fired causing injury to Rarneshbhai Patel we understand the bullet removed from the body of Shri Patel is already with Police. (6) Marwari families are still taking shelter in college premises. Arrangements must be made so that they may be able to return to their respective homes.

We may also observe as under:

Preventive detention may be necessary but it helps to solve the problem temporarily. They are released gradually and no stigma is attached to such detention and they are free as good citizens.

There should be investigators whose task must be to collect evidence and see that persons indulging in offences like murder, arson, robbery etc. are prosecuted and punished. This is the only sure way to enforce law and order. A criminal must know that he will be jailed and punished and not detained for a few months and let out without a stigma.

We have suggested certain steps to be taken by the school trust and we hope that if they will act upon it, beginning will be made to ease the situation.

We are struck by the fact that the relatives of the dead and the suffers whom we met during our visit expressed no animosity towards any community. Instead, their concern was for justice to be seen to be done and for peace to be restored so that life in Godhra can be resumed with safety and dignity for all citizens.

We may state that it is necessary to restore confidence, create goodwill, remove suspicion and hatred destroying the germs of violence from the minds of men so that solid foundations of peace and brother hood could be established. This might take time Voluntary organisations and peace-loving citizens can play a greater role and we will try to help the people and organisation in creating good atmosphere for peace,

We hope the Government will help the force of peace and do nothing to hinder them. Government is wedded to secularism but this requires to be practised rather than preached,

We hope this is made clear to IB and police officers who are on action, competency, cleverness, impartiality hard work, devotion to duty. these are some things expected from those who are public servants. Lack of anyone of them is likely to remove credibility which is more necessary in difficult days.

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## POLICE EXCESSES AGAINST A JOURNALIST

A fact finding committee of PUCL, Gumur district, consisting Mr. C. Narendra, State Joint Secretary, Mr. K.V. Nagarjuna, Advocate and Mr. P.V S.R. Anianeyulu, Lecturer, on police excesses against the Correspondent of Eenadu, a leading telugu daily, Mr. B. Srinivasa Rao at Dachepalli of Gantur district, in Dachepalli police station.

The Committee felt that the police excesses were highly unwarranted. The mere transfer of those erring police personnel is only an eye-wash to face the public uproar. They must be immediately suspended and prosecution should be lodged against them.

The committee felt that the police resorted to such inhuman behaviour of causing body injuries, was with a grudge against the press correspondent, who has been filing stories on failure of the police in meeting the threat of Radicals in that area.

The facts are that on November 10, 1990 the police got information on a corpse lying about three furlong away from the Dachepalli and Maadinepadu road and took possession of it. Mr. Srinivasa Rao, along with nearby Gurazala correspondent of his newspaper, Mr. Rajendra Prasad, went to Dachepalli police station to get detained information about the death at 10 a.m. They met the Circle Inspector of Police, Mr. K. Babu Rao. Sub Inspector. Mr. Ramesh Babu and Head Constable Mr. Victor Babu were also present. Mr. Babu Rao told the correspondents that he will give details about the corpse in another ten minutes.

When they were waiting on the bench in the verandah of the police station, they were told by a constable to wait for some more time. Thereupon they went to a nearby cinema hall. After some time head constable Mr. Victor Babu came to the theatre and told Mr. Srinivasa Rao that the Police Inspector is calling him. When he went to the police station without any provocation, he was beaten by the CI, SI and HC and was kept there. Around 4.30 PM he was seen on the streets with handcuffs, to the utter dismay of the entire village.

Mr. Srinivasa Rao later said that he was brutally assaulted for no fault of his. He was accused by the police for writing news about radicals movement in that region. The police even threatened him saying that they know more about him. When he showed wounds inflicted on his body to the magistrate, he was sent to Macherla hospital. The police filed a false case against him.

After a big public uproar, the public observed a bandh in Dachepalli and Gurazala towns, and all party leaders condemned the incident and started relay hunger strike, the police transferred those three police personnel. The PUCL demanded to prosecute those officers for unwarranted assault on a journalist and suspend them meanwhile.

Chalasanani Narendra  
Staff correspondent, Andhra Prabha  
Indian Express

Amnesty International AI Index ASA 20/21/90

## AMNESTY INTERNATIONAL'S MAIN CONCERNS IN INDIA

1. The detention of thousands of political prisoners, among them some prisoners of conscience, under preventive detention or "anti-terrorist" laws.

(*India; A review of human rights violations*), ... describes the various laws under which political prisoners are held and Amnesty International's concerns about the lack of number of basic safeguards to protect detainees. The main laws permitting preventive detention<sup>1</sup> in India are the *National Security Act* (NSA), 1980, and, in Jammu and Kashmir, the *Jammu and Kashmir Public Safety Act*, 1978; both permit up to one year's detention without trial or charge on loosely defined grounds of notional security (since the report was written, an amendment to the National Security Act permitting detention without trial for two years in Punjab, has lapsed). Although these laws provide some safeguards to detainees—they have the right to be informed of the grounds of detention within ten days of the arrest and to have their detention reviewed by an Advisory Board within seven weeks from that date, the Board's recommendation being binding on the government—the government has failed to take steps of strengthen the constitutional protection of the rights of detainees: section 3 of the Constitution 44th Amendment Act<sup>1</sup> which had obtained parliamentary and thereafter Presidential assent in 1978, has still not been brought into force. (The Amendment Act strengthens safeguards in preventive detention laws and requires that the Advisory Board—reviewing cases of detention—consist only of sitting judges of the higher judiciary).

Moreover, existing preventive detention laws fall short of international standards laid down in the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by the General Assembly in Resolution 43/173 of December 1988). For example, contrary to Principles 11 and 24 there is no provision in the NSA which obliges the detaining authorities to bring detained persons promptly before a judicial or other authority or to be granted prompt access to medical examination after arrest.

Precise estimates of the thousands of political prisoners held are difficult to give because of the large numbers involved and because a substantial number of those arrested are released shortly after arrest. Official statistics have sometimes not been consistent: as one example, officials in New Delhi announced in January 1990 that 12,000 people were being held in connection with political activities in the state of Punjab, although state of officials put the figure at that time at 6,000.

2. Safeguards for fair trial.

Amnesty International has few details about the conduct of trials of political prisoners, since most are held in preventive or prolonged pre-trial detention. But the trial procedures under the *Terrorist and Disruptive Activities (Prevention) Act* (TADA) are cause for concern, because they lack certain minimum legal safeguards for fair trial. As described in (*India a review of human rights violations*), section 3.3, trials take place before special courts sitting *in camera*, the identity of witnesses can be kept secret and appeal is only to the Supreme Court. There are changes in the normal rules regarding evidence and the accused is

1 In India, preventive detention is ordered by the Executive—the central or state government—to prevent people from acting in a manner loosely defined as "prejudicial to the defence ... or the security of India" or "prejudicial to the maintenance of public order".

presumed guilty in four situations specified in the Act. Those arrested under the Act's provisions need not appear before a judicial officer after arrest, but can be brought before an executive magistrate instead. Trials of political prisoners can and have taken place inside prison: the trial of 379 Sikh detainees under the provisions of the Act was conducted in 1985 entirely inside Jodhpur Jail, Rajasthan, and was suspended in July that year after the public prosecutor asked for a blanket court order to delete the names of all witnesses in police statements. Other defendants held under the provisions of the Act have complained that it is hard to obtain legal assistance for their defence. On 1 May 1990 the then Governor of Jammu and Kashmir abolished—apparently without giving any reasons—the only "Designated Court" established in the Kashmir division, in Srinagar, to try cases under the Act. From that date, all trials had to take place in Jammu, several hundred miles to the south, where there is little support for the demands for an independent Kashmir with which the accused under TADA are associated. Many have reportedly complained of their inability to find lawyers to defend them.

### 3. The widespread use of torture to extract information or statements.

Many victims of torture are political prisoners or are people belonging to India's underprivileged groups: the Scheduled Castes and Scheduled Tribes, arrested on suspicion or having committed criminal offences. The victims of torture are men, women and children; in the case of women, most allegations concern rape by the police. So far, Amnesty International has been denied permission to assess the allegations on the spot, but the reports of torture are persistent, affidavits received have been generally consistent in detailing the methods of torture applied and the circumstances in which torture takes place. Reports of torture have, in some cases, been confirmed by judges carrying out official investigations. Torture allegations were the subject of a judicial investigation by the Bombay High Court—the local magistrate failing to investigate—the

Court concluding there was *prima facie* evidence of police torture. But, to Amnesty International's knowledge, no prosecutions of individual police officials identified by judicial officers as responsible for the torture have taken place and the victims are not known to have received compensation.

Most allegations of torture of political prisoners have been received this year from Punjab and Kashmir: the case of *Balkar Singh* is a typical example of many cases of torture in Punjab, in which legal safeguards to protect detainees were disregarded. But torture of people arrested on political grounds also occurs elsewhere in India: "*Operation Bluebird*": *A case study of torture and extrajudicial executions in Manipur* is a detailed study of the torture of villagers—elderly men, women and children—and the harassment and torture to which they were later subjected for bringing legal action for compensation. In response to the detailed allegations of torture which were raised by the United Nations Special Rapporteur on Torture during 1989, the Indian government simply responded by dismissing them, saying that they were deliberately made to discredit the police and Assam Rifles, who were accused of committing them. However, when a Canadian doctor visited Balkar Singh, who had complained of torture, in detention he was refused permission to carry out a medical examination. The allegations of torture were later found to be consistent with medical examination carried out in Canada after Balkar Singh's release.

Deaths in custody of people arrested on suspicion of committing criminal offences is a widespread phenomenon and such cases have been regularly reported from all Indian states. Over 50 such deaths were monitored by Amnesty International in the Indian press during 1989, and the actual number is believed to be far higher. Whereas some form of investigation into such deaths is usually carried out, comprehensive judicial investigations are rare and Amnesty International knows of only one case in which the police officials

responsible were convicted, two policemen were reportedly sentenced to undergo between five and eight years' imprisonment for causing the death of Kashinath Nayak in Orissa in 1985. They were convicted of culpable homicide.

In cases where judicial inquiries have been held, these have sometimes shown that police officials have tried to conceal evidence of police responsibility (or torture causing death, for example by falsifying or destroying police records or by putting pressure on doctors so that the texts of *postmortem* or medical reports falsely corroborate the police version of how the victim died in police custody.

Death penalty,

On average, a dozen judicial executions are carried out each year in India. Amnesty International's concerns are about capital punishment and particularly that an innocent man may have been executed for political reasons. The report, *The Death Penalty*, concludes that those eventually executed are mostly poor and illiterate and expresses concern that people can be sentenced to death for "terrorist acts" under procedures which severely curtail normal legal safeguards (these procedures allow for a reversal of the burden of proof and limit possibilities of appeal). The government rarely publishes data on executions, and does not publish up-to-date figures of the numbers of executions carried out each year. In its report Amnesty International calls for the abolition of the death penalty. Because of the secrecy surrounding most executions, it urges the government to publish data on executions on a yearly basis, as requested by the United Nations Economic and Social Council in resolution 1989/64 of 24 May 1989, and to implement a recommendation made by the Law Commission in 1967, that the execution of offenders below the age of 18 years when committing the offence be prohibited in law.

## A Report on the annual conference of the Maharashtra unit of PUCL

The Annual Conference of the Maharashtra Unit of the PUCL was held at Pune on 7th October, 1990. In the General Body Meeting held at the beginning the Office bearers for the new year were elected. Mr. Taherbhai Poonawala was reelected as the President. Smt. Vidya Bai, Shri N.Y. Dole and Vilas Wagh were elected as Vice-Presidents. Shri Lanke was elected as Treasurer while Shri Rajendra Vora and Smt Sita Bhatia were elected as Secretaries. Afterwards Shri R P Nene Secretary, presented the report of the last year and Shri Lanke presented the accounts.

The Conference was inaugurated by the veteran socialist leader Shri Vinayakrao Kulkarni. In his inaugural address Shri Kulkarni stressed the need to reconcile the contradiction between theory and practice, autonomy and centralisation, individual and society and a contradiction in the process of transformation.

The first session was devoted to a discussion on the issue of reservation of seats for women in the local government elections in Maharashtra. Dr. Vidut Bhagwat, Smt. Vidya Bal, Smt. Asha Shaikh, Shri Hemant Ggkhale and Dr. H.K. Paranjpe expressed their views on the topic. The pros and cons of reservation for women in the local elections were discussed by the speakers.

In the Second Session the performance of the National Front Government was taken up for discussion. Three policies were chosen for discussion by Dr. S P. Sathe, Dr. HK. Paranjpe and Dr. Jaya Sagade. They were Freedom of Judiciary, the Piasar Bharati Bill and the National Commission on Women.

Members of the PUCL, social and political workers and intellectuals from Poona city participated in the discussions in both the sessions.

24th October, 1990

Taherbhai Poonawala, President  
Rajendra Vora, Secretary,  
PUCL, Maharashtra

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## Co-ordination Committee on Kashmir

A Coordination Committee on Kashmir has been recently constituted to systematically monitor the human rights situation in the State of Jammu and Kashmir, with a view to bridge the information gap which exists between the people of that State and the rest of the country. The Committee shall endeavour to collect and disseminate authentic information on human rights violations in all forms (i) by the State. (ii) by Kashmiri militants, and (iii) by other national or international agencies. The Committee will take all possible care to collect objectively accurate facts and events and publish them in a Bulletin on Kashmir. While upholding the democratic rights of the people of Jammu and Kashmir, the Committee will appeal to them to see that their movement for freedom becomes peaceful and non-violent. The Committee hopes that these efforts may contribute to the emergence of a situation in which it may be possible for the representatives of the Kashmir people and those of the Government of India to enter into a meaningful dialogue.

We appeal to all citizens and voluntary organizations who are concerned with the Kashmir problem to contact Mr. N.D. Pancholi, Secretary of the Coordination Committee, 1182, Chatta Madan Goral, Maliwara, Chandni Chowk, Delhi-110 006.

New Delhi. V.M. Tarkunde,  
Iqbal A. Ansari,  
Dated: Nov. 04, 1990. Chairman and Vice Chairman

## PRESS-RELEASE

### Violent Attack on Meeting at Allahabad

A meeting organized by the Forum for Social Justice at Allahabad on Thursday last near the High Court was disrupted with the help of the police and the dias was burnt. The disrupters had their weapons stored inside the High Court compound. When the meeting started again some distance away the police resorted to lathl-charge when a few young people provoked the police. When the leader of the Forum went them to pacify they were also severely beaten up. The injured included Shri Surendra Mohan, ex-M.P"

Shri Ram Pujan Patel, MP and former Central Minister, Shri Bhagwant Prasad, a former judge, and some MLAs. One lawyer Shri Kadam Singh Yadav, was earlier severely beaten up inside the High Court compound and the policerefused to intervene on the plea that they could not enter the High Court premises.

This is the second such instance-s-the first being the attack on Shri V P. Singh and others at Bhopal. The PUCL deplores such attempts by a section of the citizens to silence those who are opposed to their views. Freedom to express one's opinion is the very foundation of democratic rights and it is the duty of the state governments and the Central Government to protect this right.

Rajindar Sachar  
President.

8/12/90

Y P. Chhibbar  
General Secretary

### Appeal for Peace and Amity

The Sudden communal flareup at a number of places in the country simultaneously is alarming and highly distressing. In Andhra Pradesh, Gujarat, and Uttar Pradesh many people have lost their lives and widespread destruction of property has rendered still more people destitute. This human misery could have been avoided, at least partially, if the intelligence services and the security forces had been alert. At some places the security forces have been repeatedly blamed for being partisan. The ultimate responsibility for all such lapses rests with the respective State governments.

Some sections of the press have also acted in a highly irresponsible manner and added fuel to fire. The PUCL urges the Editors' Guild, The Press Council of India, and various journalists' unions to take up such lapses in their fora and devise means so that the media does not become an instrument of communal hatred.

The PUCL urges all sections of society to maintain peace and communal harmony.

The PUCL calls upon the central government to institute a high level judicial enquiry commission to go into the causes of the present communal flare-up in all the States concerned and to recommend measures against the guilty.

17.12.90

Rajindar Sachar  
President

Y.P. Chhibbar  
Gen. Secretary