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Assault on Choice

Y P Chhibbar

Of late there is a surge in attacks on two facets of a plural democratic society in our country. One, there is an increasing intolerance of inter-caste and inter religion marriages. Two, there is an increasing intolerance of freedom of expression. Works of Art, films, writings, etc., are being targeted.

It appears that having failed to capture the imagination of the people in National politics on the questions of 'social cleansing' and 'religious one-ness' (if one is allowed to coin such a phrase) the decadent groups have changed their strategy. On the social scene they have started upholding the practices like caste and *gotra* based relationships through newly formed splinter groups and at places are imposing "Honour" practices and relationships.

In the arena of freedom of expression works of Art, literary works, etc., are being targeted. It seems that a sections of our society thinks that 'culture' and 'traditions' are so fickle and fragile that one painting, one novel, or story will change or destroy it for posterity. The latest examples are from Vadodra and Dehradun. In Vadodra the 'private censor' army invaded the examination process of the University and wanted a student to change his presentation for examination! In Dehradun a religious organisation has issued an edict that no inter-religion marriages should be performed in their places of worship!

World over there is a trend towards open-ness, towards erasing the boundaries in social fabric, but diehard backward looking guardians of old values are making repeated attempts to resist the winds of change. Poet Iqbal had once said, (may be in a moment of resistance to westernisation) *Saare jahaan ko jisne ilmo-hunar diyaa thaa, meraa vatan vahi hai, meraa vatan vahi hai, laut peechhe ki taraf ai gardishe ayyaam tu, phir dikhaa de ai tasavvur vahi subah-shaam tu* (one which had given knowledge and art to the whole world, that is my county, that is my country. Turn back, the wheel of destiny, show me, o wheel of change the same morning and evening). This seems to have become the song of resistance to change!

One does understand that social change is very slow and very painful. But one also has to understand this is an ongoing struggle. We have to beware that the other name of such attempts to 'save' 'culture' and 'traditions' is "looking backwards". Segments of society that exhort others to look backwards for inspiration by using tactics to paralyse society and social institutions, have to be exposed in a proper, logical manner, not by slogans alone.

For many it has been a riddle as to how Iqbal's *vatan* that was the beacon of knowledge for the whole world, stagnated, and that the rest of the world went ahead and became a beacon for Iqbal's *vatan*. Marx had given a convincing answer. *(…on page 11)*

Mass Terror in Nandigram: PUCL

Dibakar Bhattacharya

A medical team led by People's Health visited Nandigram on 8 April 2007. Dibakar Bhattacharya, Advocate Calcutta High Court joined that team on behalf of PUCL, West Bengal. The purpose of the visit was to provide treatment and relief to the affected villagers.

From Nandigram Police Station, the team proceeded towards Sonaehura village, on the way, eight roadways have been digged to obstruct the entry of police forces and CPI (M) goons in police costume. Besides, several barricades are made by stone, lamp post and tree trunk. Local people paved the way for team's car by putting wooden deck on the digged road. The local people were anxious, as at any time CPI (M)'s action squad men may launch attack.

After starting the Medical camp, we reached the house of Biswajit Maity who was killed on 7 January along with Bharat Mondal, S K Salim, Biswajit's father, mother, a brother aged eight were there. They described how Biswajit (12) was gunned down, they also named those who fired. An active worker of CPI (M), his father said, the killers are all CPI (M) men. Biswajit's grandfather (83) was also a member of undivided CPI. Next destination was Bharat Mondal's house. Father, mother, wife, a brother, two daughters, a son comprise Bharat's family. Bharat's brother carried the sign of a wounded leg made by bullet. Father said, he was offered money, he rejected the offer saying that he would not touch anything offered by killer government. Bharat's parents gave the names of the killers. Bharat's cousin Puspendu was killed on 14 March, after 5 days his dead body was left in Tamluk Hospital Morgue by the killers. Their aunt showed us a locked house of Ashoke Mondal, a CPI (M) leader. Ashoke has propagated that his house was attacked and demolished by land agitators and he is not allowed to stay in his village. She herself was leader of Mahila Samity, women wing of CPI (M).

Then we had talks with 10-12 students of Khejuri. They said, some 70 persons of Khejuri have taken shelter in Nandigram since they are with Jami Raksha Committee. They had been driven away from Khejuri. In Nandigram and Tamluk hospital we have seen injured men, women whose husbands are missing. In Gokul Nagar, Gangra, Adhikaripara village women still feel terrorised. After 14 March attack, many of them took shelter in pond, many were dragged away and raped in front of their husbands, children. Their relatives were afraid to send them to hospital for treatment.

The villagers feel terrorised, anytime another joint attack by Police CPI (M) forces may be launched, they fear. They can not go out of village, food stuffs, vegetables are not allowed to enter into the village. Every evening bombing and firing sounds are heard from the side of Khejuri. In fact, an all out barricade exist in villages dominated by Jami Raksha Committee.

List of Dead Persons: (Male - 9, Female - 2, Muslim - 2, Not identified – 1)

Sonachura: Joydeb Das, s/o Haradhan; Rakhal Giri s/o Pratap; Supria Jana (F) W/o Sukumar. **Gangra:** Ratan Das, s/o Kanai; Pranab Mondal, s/o Pulin; **Soudkhali:** Pralay Giri, s/o Sarbeswar; **Jadubarichak**: S K Imdadul Islam (Muslim), s/o S K Monirul; **Kalicharanpur:** Basanti Kar (F), w/o Gorachand; **7 No. Jalpaiguri:** Badal Mondal S/o Lt. Gobardhan, Gobinda Das, s/o Bhanu Charan; Imadul Khan, (Muslim) s/o Abduldaian; **Keshabpur**: Uttam Kumar Pal (Sambhu), s/o Rabindranath; Panchanan Das, s/o Gunadhar. One person – Not identified.

List of Missing Persons: (Male- 22, Female - 6, Child 1)

Sonachura: Subrata Patra s/o Lalmohan; Sahadeb Mali, s/o Mahendra; Amiya Bera, s/o Nilmani; Joydeb Jana, s/o Haradhan; Srimanta Manna, s/o Bhagyadha; Kalobaran Samanta, s/o Sukesh; Indrajit Mali, s/o Pranab; Kanai Maity, s/o Sankar; Ganesh Maity, s/o Sankar; Ghanga Das, s/o Sankar; Prabir Mondal, s/o Sankar; Baria Monda!, s/o Prabir, Rakhal Giri, s/o Pratap, Anjali Das (F), w/o Mrityunjay; Kanaklata Das (F), s/o Rabin. **Soudkhali:** Prajapati Hazra, s/o Haripada, Parikshit Dhara, s/o Haripada; Pralaya Giri, s/o Naba, Purna Ch. Majhi. **Kalicharanpur:** Sunil Das, s/o Panchanan; Kalibala Patra, s/o Nishi, Swapana Patra (F), w/o Bidhan; Kalpana Patra (F), w/o Bibhuti; **7 No. Jalpaiguri:** Rabindaranath Das, s/o Bhanu; Subrata Samanta, s/o Pranab. **Gokulnagar:** Subrata Bijli (Children, 4), s/o Sudarshan; Sabitri Bijli (F), w/o Sudarshan; Kabita Das (F), w/o Nitai. **Roynagar:** Durgapada Maity, s/o Ramhar.

List of Injured Persons (Female): Muslim

7 No. Jalpaiguri: Supiiabibi (25), w/o Seidul Khan; Sarita Bibi (30), w/o S K Manjur; Nadira Bibi (21) w/o Dolu; Rahiman Bibi(40), w/o S K Jamsed; Rahiman Bibi (35), w/o S K Samad Ali. **Garchakraberia:** Narjina Biibi (35), w/o S K Samsul.

List of Injured Persons (Female): Minority

7 No. Jalpaiguri: Lakshirani Barman (30), w/o Anil; Tapasi Manna (30), w/o Gurupada; Lalibala Das (45), w/o Chittranjan; Kajal Ghorai (25), w/o Ratan; Radha Pakira (50), w/o Kishor;

Shayamali Manna (30), w/o Susanta; Sumati Samanta (32), w/o Vidyut; Sumana Samata (30), w/o Vidyut.

Kalicharanpur: Bhabani Giri (35), w/o Jitendra; Kavita Jana (40), w/o Rasbehari; Minati Das (40), w/o Nava Kumar; Kalpana Jana (40), w/o Nandalal; Kajal Majhi (35), w/o Vikash; Renubala Kar (50), w/o Rampada; Arati Maiti (33), w/o Tapan. **Nakchirachar:** Arti Mondal (52), w/o Jharu. **Sonachura:** Anubha Khanra (35), w/o Rasbehari; Supriya Jana (40), w/o Shukumar; Jadadhatri (50), w/o Swades; Lakshmi Roy (30), w/o Debkumar; Satyabala Mondal (45), w/o Anadi; Sandhya Maity (50), w/o Prabhonjon; Suprabha Patra (22), w/o Mohan; Bidyut Basanta (48), w/o Mahadeb; Manshi Ptra (30), w/o Sushil; Jagadhatri Maity (45), w/o Swades; Sandharani Bhunia (48), w/o Ananta; AnnapurnaKajli (55) w/o Bhagyadhar; Lali Mondal (60), w/o Panchanan; Narmada Shee (60), w/o Gobardhan.

Gangra: Joshanadas (60), w/o Purnachandra; Dhatri Mondal (30) w/o Krishanapada; Kusum Mondal (55), w/o Lt. Swapan; Chanchala Sasmal (50), w/o Monoranjan; Prabhati Das (45) w/o Purna; Sumati Patra (55), w/o Srimanta; Kajal Rani Das (35), w/o Narayan; Anju Dhara (50) w/o Mathurprasad. **Saudkhali:** Shyamali Roy (42), w/o Prithiraj; Madhuri Ari (45), w/o Mahendra; Mitali Pramanik (28), w/o Bhudav; Sandhya Cher (35), w/o Ravin; Sankari Kajli (24), w/o Tapash; Revati Raoy (25), w/o Tapan; Jamuna Ari (32), w/o Pradip; Bijali Dhapar (38), w/o Sudharsan; Shakuntala Dhapar (40), w/o Mukul; Lata Dhapar (32), w/o Bhagadhar; Tunabala Roy (35), w/o Kamal Kanti; Pratima Char (35), w/o Bhakti; Prbati Dhapar (34), w/o Rammohan; Pranati Mandal (51), w/o Pulin; Gauri Mondal (30), w/o Sudarshan; Rina Bera (25), w/o Nishikanta; Nilimadas (37), w/o Sanjay; Swarsati Manna (45), w/o Sunil; Prbhati Kajli (25), w/o Sukumar; Srihari Kajli (15), D/o Amiiya; Smt Dola Pati (28), w/o Haradhan; Madhuri Dhapar (25), w/o Chandan. **Gokulnagar:** Arati Das (35), w/o Subhendu; Lata Mondal (25), w/o Swapan; Samomyee Das (25), w/o Shambhu; Kanchan Mal (50), w/o Sripati; Gitanjali Eijali (40), w/o Anangamohan; Bijli Manna (30), w/o Gorachand; Subhankri Rani Majhi (35), w/o Bhanu; Gouri Pradhan (27), w/o Jaidev; Kavita Das Adhikarii (50), w/o Subodh; Radha Rani Ari (43), w/o Pratap; Janaki Das Adhikari (63), w/o Sukanta; Jamuna Das (27), w/o Laxmikanta; Kavita Das Adhikari (35), w/o Salil. **Keshabpur:** Banashri Acharjee (35), w/o Chandan; Namita Das (55), w/o Prabhas; **Nandigram:** Shyamali Mahato (50), w/o Gobinda; Arati Sau (45).

List of Injured Persons (Male): Muslim

7 No. Jalpaiguri: Sk Majahar (40), s/o Sk Rahaman; Sk Sahadat (56), s/o Sk Naused; Sk Ashak (25), s/o Sk Jainuddin; Imadul Khan (20), s/o Dayan; Sk Ahammed (38), s/o Sk Abdul Mannan; Sk Rafikul Lslam (16), s/o Sk Jamshed; Sk Samsuddin Sha (36), s/o Bhelu. **Nakchirachar:** Saiful Khan (55), s/o Jalal. **Saudkhali:** Sk Nurmahammad s/o Lt. Sk Sadhik. **Kanchanngar:** Sk Sultan (32), s/o Lt Sk Talebn. **Gopimohanpur:** Moslem Mallik (68), s/o Sk Jasimuddin. **Mahammadpur:** Samirul Mahammad (20), s/o Sk Nazrul. **Bardjamtala:** Sk Saddam Hossain (20), s/o Sk Sarajul; Sk Samirul (25), s/o Sk Amiruddin; Sk Saharul (35).

List of Injured Persons (Male): Minority

7 No. Jalpaiguri: Gobinda Das (30) s/o Bhanucharan; Sahadeb Jana, (30), s/o Paresh; Abhit Maity, (30), s/o Jitendra. **Kalicharanpur:** Joydeb Moadal (56); Abhijit Giri (22), s/o Pratap; Parikhit Maity (52), S/o Abinassh; Ashok Jana (38), s/o Bomkash; Sriharii Ch. Samanta (55), s/o Bijoy; Narayan Patra (40). **Garchakraberia:** Sudhir Ari (77), s/o Bhusan. **Sonachura:** Rasbehari Khanra (55), s/o Iswar; Gopal Das (30), s/o Mrityunjoy; Achinta Monal (30), s/o Kishori Mohan; Shubranshu Patra (33), s/o Subhas; Gopal Majhi (20), s/o Santosh; Monoranjan Giri (62), s/o Srinivas; Nathuram Bhunia (26), s/o Mahitosh; Narugopal Middya (24), s/o Subal; Srikanta Mondal (30), s/o Gonesh; Niranjan Das (35), s/o Radhakrishna; Laxmikanta Gayen (22), s/o Ramhari; Gopal Giri (30), s/o Banamali; Subodh Patra (41), s/o Bhupati; Gobinda Paik (35), s/o Jagdish; Santosh Das s/o Bankim; Ravin Monal (33), s/o Radhesyam; Satyaranjan Manna (25), s/o Arabinda. **Gangra:** Subodh Das (50), s/o Gangadhar (Balupata); Prasenjit Karan (25), s/o Nirmal; Prithis Das (35), s/o Panachandra; Sanjiv Giri (25), s/o Bijoy; Ratan Das (30), s/o Kanai; Ravi Das (21), s/o Parimal; Raghunath Das (32), s/o Kanai; Krishnapada Mondal (34), s/o Sudhanshu. **Saudkhali:** Manisankar Maity (22), s/o Swadsh; Monmatha Das (40), s/o Lt. Sanatan; Tusharkanti Jana 30, s/o Ramhari; Gurupada Bera (30), s/o Shyam; Kalipada Guru (24), s/o Ajit; Balai Ari (50), s/o Banimadhab; Jadab Bijali (28), s/o Amulya; Sankar Dandapath (24) s/o Banabenari; Ranadhir Garu (40) s/o Bankim; Rabin Jana (18), s/o Lt. Akhay. **Gokulnagar:** Prankrishana Das (52), s/o Suran; Sunil Das Adhikari (55) s/o Bhupali; Srimanta Mondal (25) s/o Joydeb. **Parulbari:** Prasanta Maity (40), s/o Baneswar. **Kanchannagar:** Tarun Santra (24), s/o Maddhu. **Osmanchak:** Laxmikanta Das (24), s/o Abhibhusan. **Purusottampur:** Aniimesh Hazara (21), s/o Kalipada. **Amratala:** Biswajiit Das (16), s/o Bimal. ❑

Pandit Kunji Lal Dubey Memorial Lecture, 2007:

The Indian Polity: Separation of Powers

Justice J S Verma (Former Chief Justice of India)

Lecture by J S Verma, former Chief Justice of India at Rani Durgavati Vishwavidyalaya, Jabalpur on 24 March 2007

I deem it a privilege to be invited to deliver this memorial lecture. Apart from the general knowledge I had of Pandit Kunji Lal Dubey as a public figure of national eminence, I came to know more of him vicariously because of my close association with his son Justice K K Dube, who was my senior, both in the Bar and on the Bench of the Madhya Pradesh High Court. Later, I also came to know personally another of his son, Vishwanath Dube through K.K. Dube. Both of them gave me the affection of a brother. I am, therefore, grateful to the Vice-Chancellor of Rani Durgavati Vishwavidyalaya, Jabalpur for giving me this opportunity to pay homage to an eminent countryman.

Pt. K.L. Dubey was by profession a lawyer, whose national fervour drew him to the freedom struggle, and he suffered the consequential hardships including incarceration. With the advent of freedom he was elected member of the State Legislative Assembly from Jabalpur for several terms to become a Cabinet Minister and also the Speaker of the Assembly. His contribution to education was also significant. He was honorary Vice-Chancellor of Nagpur University; founder Vice-Chancellor of Jabalpur University and Chairman of Inter University Board of India, Burma and Ceylon. For his public service, he was conferred the Padma Bhushan in 1964.Above all, he was a gentleman who carried all the honours with dignity and humility—an uncommon virtue these days.

The versatile personality of Pt. K.L. Dubey, imbibing a judicious blend of the essential traits of the different limbs of the polity has provided an obvious choice of the topic for this talk. He combined in him the judicious approach of the Speaker with the acumen of the political executive as a minister to control the legislature. If that be an ingredient of our polity, I see no reason for any conflict between the different limbs of governance, which are all meant to serve the common purpose of public good deriving their authority from the common source—Constitution of India depicting the will of the political sovereign: 'We the People of India'. Each limb has a clear role in the constitutional scheme. Hence, this topic for the talk because of the emerging current debate on the issue!

II

Nature of Indian Polity

The Constituent Assembly had before it the dream of solving the basic problems that beset the people of India. It attempted to encapsulate that vision in framing the Constitution of India. In the scheme of parliamentary democracy adopted in the Constitution, the representative form of government envisages a participatory role of the people in governance. The principle of collective responsibility is primary, which highlights the citizenship duty for the preservance of the Constitution.

The Constitution also adopts the advanced constitutional practice of resorting to abeyances or silence of the constitution, by leaving some gaps or grey areas to be filled later by developing healthy conventions in the working of the Constitution. Silences in the Constitution are hedges to prevent rigid postures being taken by the constitutional authorities, promoting a climate conducive for mutual respect to accommodate the viewpoint of others. The concept is of a joint and participatory role of all authorities involved in governance, instead of an exclusive primacy of any one in the process.

The principle of collective responsibility to serve the common purpose of public good in a liberal democracy is a significant feature. Absolute power in any single public functionary being anathema in a democracy is eschewed. This is a basic constituent principle of the Indian polity.

Political sovereignty in our system vests in the people. The sovereign will of the people finds expression through their chosen representatives in the Parliament. The President of India is a part of the Parliament and also the head of the Executive. However, the President is only the constitutional head who acts on the *'aid and advice'* of the Union Council of Ministers. The real political executive is the Council of Ministers, which also controls the Lok Sabha wherein lies the real legislative power. Parliament exercises political and financial control over the Executive. Similar is the scheme for the States.

The federal scheme is of distribution of legislative power between the Union and the States according to the three Lists in the Seventh Schedule of the Constitution. The residuary power is in the Union. Article 356 provides for President's rule in a State if the government in the State cannot be carried on in accordance with the Constitution. This provision was meant for use sparingly, but every Union government has belied that hope

India has a unified judiciary with the Supreme Court at the apex. It is the custodian of individual rights and freedoms,

with power of judicial review of legislation to determine its validity. It is the final arbiter of the meaning of the Constitution and the laws. The Indian parliament's power of legislation is subject to judicial review, unlike that of the British Parliament. Even the power to amend the Constitution is subject to judicial review on the limited ground of the indestructible *'basic structure'.*

The real supremacy in India is of the Constitution, and not of any organ that is a creature of the Constitution. The Constitution has delineated the boundaries of each organ indicating the complementarity between them to serve the constitutional purpose. The claim of supremacy by any of the three organs is misplaced in the constitutional scheme. It is educative to recall the note of caution in the speech of Dr. Rajendra Prasad as the Chairman in the concluding session of the Constituent Assembly, wherein he said:

"…Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way the country is administered. That will depend upon the men who administer it…"

Rule of law is the bedrock of democracy, and a principle that controls the exercise of public power. It acts as a constraint on arbitrary exercise of power. A characteristic of the rule of law is best described by the well-known adage: *"Be you ever so high, the law is above you".* This is our constitutional philosophy.

The claim of supremacy by any one organ vis-à-vis the others ignore this warning and are contrary to the spirit of the Constitution. To prevent any acrimony on this account, emphasis was laid in Aristotle's Politics on the education of every citizen in the 'spirit of the constitution'. This education is an imperative fundamental duty of every citizen.

III

Scheme of Separation of Powers

In India, the doctrine of separation of powers is not adopted in its absolute rigidity, but the *'essence'* of that doctrine with the doctrine of constitutional limitation and trust implicit in the scheme was duly recognized in the **Delhi Laws case, AIR 1951 SC 332.** Separation of judiciary from the executive is mandated in article 50 of the Constitution, with the independence of judiciary as a necessary corollary: **Chandra Mohan v. State of U.P., AIR 1966 SC 1987.** Later, the doctrine of separation of powers was elevated to the status of a basic feature of the Constitution in **Indira Gandhi v. Raj Narain, AIR 1975 SC 2299**, wherein it was observed, thus:

"…the exercise by the legislature of what is purely and indubitably

a judicial function is impossible to sustain in the context even of

our co-operative federalism which contains no rigid distribution of

powers but which provides a system of salutary checks and balances".

This concept is now a recognized part of the basic structure of the Constitution, and is at the core of the constitutional scheme: **State of Bihar v. Bal Mukund, AIR 2000 SC 1296.**

The British parliamentary system has been adopted in India, wherein the political executive controls the Parliament. The Cabinet or Council of Ministers enjoys a majority in the legislature and virtually controls both the legislature and the executive. Like the British Cabinet, it is *'a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part'.*

The Parliament's power to legislate, its constituent power, its role during emergencies, and its interface with the judiciary, the executive and the State legislatures and other public authorities indicate a wide sweep of its powers. However, the constitutional limitation is provided by the powers of the other organs that act as the checks and balances. These are in the form of distribution of legislative powers between the Union and the States, the justiciable fundamental rights, power of judicial review with an independent judiciary, and the limitation under the *'basic structure'* doctrine. The control of the parliament by the political executive—the cabinet, is in addition to the legal control.

Reference to some instances to illustrate the participatory and not exclusionary role of each organ in governance is useful.

Laws made by the Parliament and State Legislatures, including constitutional amendments are subject to judicial review, which is a basic feature of the Constitution. Entries 77 to 79 and 95 in the Union List empower Parliament to legislate in respect of the specified matters relating to the judiciary. Articles 124 to 128 and 217 to 225 relating to appointments, salaries etc., and the removal of Supreme Court and High Court Judges provide for a participatory role of the judiciary, the legislature and the executive. The judiciary adjudicates election disputes relating to validity of membership of Parliament and the State legislatures. Decisions of the Speaker under the Anti-Defection Law are subject to judicial review. All executive actions are subject to judicial review. Instances of the rule-making power of the judiciary and the executive, subordinate legislation, and the legislature's power to punish for breach of privilege of the House are a part of the scheme.

It is not necessary to multiply similar instances. The list given is not exhaustive but only illustrative of the point.

There are inherent checks and balances to keep every organ

within the limits of constitutional power. The grey areas are meant to be covered by healthy conventions developed on the basis of mutual respect keeping in view the common purpose to be served by the exercise of that power. Many such conventions have been developed, those remaining need to be expedited to avoid any semblance of conflict.

IV

Areas of Concern

Some areas of concern giving rise to the impression of a potential for conflict between the judiciary and the other organs in the context of separation of powers need a closer look. The Lok Sabha Speaker, Somnath Chatterjee, an eminent lawyer has voiced this concern in recent times. Many other knowledgeable persons whose views cannot be ignored share a similar impression. In an article titled **'With due respect, Lordships',** published in *The Indian Express*, dated 12 March 2007, Pratap Bhanu Mehta, President of the Centre for Policy Research has said: *"The evidence of judicial overreach is now too overwhelming to be ignored";* and he concludes: *"It has to be admitted that the line between appropriate judicial intervention and judicial overreach is often tricky…courts are doing things because they can, not because they are right, legal or just".* Indeed, strong words requiring urgent circumspection by the judiciary.

There can be no quarrel with the above observation that 'the line between appropriate judicial intervention and judicial overreach is often tricky'. For that reason, greater expertise and self restraint of the judiciary is needed in the borderline cases eschewing personal predilections and emotive responses. Inappropriate judicial intervention results in judicial adhocism or judicial tyranny because of inadequate expertise in dealing with the matter. Judiciary itself must provide the solution for this aberration. Continuing judicial education may be the answer! It appears the National Judicial Academy at Bhopal has now commenced that process.

Such matters come to the judiciary in the garb of Public Interest Litigation, which need greater scrutiny to satisfy the test of bona fides of the cause as well as of the petitioner. It is time the Supreme Court framed Rules to ensure consistency in approach of the Court in all PIL giving statutory force to the several judicial orders made in this behalf. The High Courts should follow the same practice by amending their Rules to prevent adhocism and inconsistency. A decade earlier, an exercise to amend the Supreme Court Rules was made for this purpose and a Draft was duly prepared during my tenure. I am not aware of the further steps that remained to be taken for its implementation. That draft with modification, if necessary in the light of future experience needs to be resurrected.

A related aspect pertains to deliberate misuse of the judicial process by some vested interests to settle political scores, or to shift the responsibility to the judiciary for deciding some delicate political issue found inconvenient by the political executive for decision.

This area of concern labeled Judicial Activism requires a closer look.

V

Judicial Activism

Judicial intervention is legitimate when it comes within the scope of permissible judicial review. The thin dividing line demarcating appropriate and inappropriate judicial intervention is drawn on the basis of functions allocated to the different branches by the Constitution. In the borderline cases, a legal question at the core determines the need for judicial intervention. Purely political questions and policy matters not involving decision of a core legal issue are outside the domain of judiciary.

The US Supreme Court laid down a pragmatic test in **Baker v. Carr, 369 US 186 (1962)** for judicial intervention in matters with a political hue, apart from those expressly allocated to another branch. It held that the controversy before the Court must have a *'justiciable cause of action'* and should not suffer from *'a lack of judicially discoverable and manageable standards for resolving it'.* This is a pre-requisite for judicial intervention. Otherwise, the policy of *'judicial hands-off'* should govern, because such a matter is required to be dealt with by another branch. The position under the Indian Constitution is similar. I had taken the same restricted view in my separate opinion relating to judicial review of a proclamation under article 356 of the Constitution in **SR Bommai v. Union of India, AIR 1994 SC 1918,** dissociating from the wider view taken in the majority opinion.

Instances abound of resort to the judicial process because of the failure or inaction of the designated authority to discharge its legal obligation. Absence of any remedy in that situation would drive the aggrieved to resort to some extra-legal remedy leading to the negation of the rule of law, unless the judiciary intervened. More often, it is the judicial intervention in such situations that causes the apprehension of judicial ascendancy disturbing the delicate balance of separation of powers.

The power of the superior judiciary to issue *'mandamus'* or a suitable direction to the concerned public authority commanding performance of its legal obligation is the remedy in the case of such institutional failure. However, there is a clear distinction between commanding performance by the concerned authority and the judiciary taking over that function itself. The former, and not the

latter, is legitimate judicial intervention. The judiciary to retain its credibility must not obliterate this fine distinction.

The principles of general law must govern the exercise of judicial power even under articles 32 and 226 of the Constitution because they are the constitutional remedies for the enforcement of constitutional and other legal rights. For this reason, a fair insight into the general law is a part of the requisite equipment for proper exercise of that power. The principles regulating the exercise of the discretionary power under the Specific Relief Act and the circumstances in which the court would decline relief must be borne in mind. It is settled that the court would not issue an infructuous writ or make an order incapable of enforcement by it, or for which there are no judicially manageable standards. Adhering to these basic norms to avoid the pitfalls can prevent legitimate criticism of some judicial interventions.

A classic instance of accepted legitimate judicial intervention in a situation of this kind is the well-known **Hawala case, AIR 1998 SC 889,** which has withstood the test of times. In that case the Supreme Court developed the new concept of *'continuing mandamus'* to compel the CBI to investigate the criminal charges leveled against some high dignitaries because of its inaction for years, which was a clear violation of at least article 14. However, the court rejected the repeated plea for taking over the investigation and having it done by a new body under its supervision, instead of by the CBI. Acceptance of that plea would have been an inappropriate judicial intervention. In order to avoid any possible misuse of the judicial process by any vested interest, the Court appointed a Senior Advocate as *amicus curiae* denuding the original petitioners of the status of *dominus litus* to control the proceedings. This practice has come to be followed in similar matters.

The Hawala case had a larger impact on the polity. It reinforced the need for probity in public life and of accountability of public men; and affirming people's fundamental right to corruption-free governance it evolved a public law remedy for the enforcement of that right with accountability of public men. It also triggered the process for systemic improvement in the quality of governance by giving autonomy to the CBI in the performance of its statutory function, and stressing the need for similar improvement of the entire police force and other law enforcement agencies. However, the ultimate performance will depend on the quality of the men who work the system.

Appropriate judicial intervention or legitimate judicial activism is that, which is founded on an established or evolved juristic principle having precedent value and performed within judicially manageable standards. It should only compel performance of duty by the designated authority in case of its inaction or failure, while a takeover by the judiciary of the function allocated to another branch is inappropriate. In a complex matter combining several functions, and having a core legal issue that is separable and amenable to judicial review, the judiciary must entertain only the legitimate part leaving the rest for the consequential action by the concerned branch. The famous US Supreme Court decision of Marshall C.J. in **Marbury v. Madison, (1803) 5 US 137** asserting the power of judicial review without risking non-compliance of its order, is an example of judicial statesmanship.

Judicial Activism is appropriate when it is in the domain of legitimate judicial review. It should be neither judicial adhocism nor judicial tyranny. In my view, these are the broad parameters for testing the propriety and legitimacy of judicial interventions.

VI

Some significant specific instances of judicial interventions that have invited criticism, and a few in which the judiciary was deliberately misused by some vested interest, may now be referred. Objectivity being a basic trait expected of the judiciary, it must govern the needed introspection, occasioned by the criticism leveled against some of its recent interventions on the ground of erosion of the constituent principle of separation of powers.

Executive Functions

Instances are cited of judicial intervention in matters entirely within the domain of the executive, including policy decisions. It may be said at the outset, that if the judicial dictate is only to compel the executive to perform its function, without taking over the task itself, it cannot be faulted because the power to issue a *'mandamus'* is vested in the judiciary. The scrutiny is needed only of the acts of the judiciary seen as transgressing the dividing line.

Some instances attracting legitimate criticism need mention to illustrate the point. Judiciary has intervened to question a 'mysterious car' racing down the Tughlaq Road in Delhi, allotment of a particular bungalow to a Judge, specific bungalows for the Judge's pool, monkeys capering colonies to stray cattle on the streets, cleaning public conveniences, and levying congestion charges at peak hours at airports with heavy traffic etc., under the threat of use of contempt power to enforce compliance of its orders. Misuse of the contempt power to force railway authorities to give reservation in a train is an extreme instance.

Another category relates to illegal constructions or encroachments on public lands

and in the Lutyen's Bungalow Zone in Delhi. The judiciary has stepped in, not only to direct the designated authorities to perform their duty, but it has also taken over the implementation of the programme through non-statutory committees formed by it. The judiciary is controlling the large scale sealing operations of commercial premises in unauthorized areas of Delhi.

The implications of judiciary's involvement in this process, which is essentially an executive function, are wide. Several questions arise: What and where is the remedy for any illegality committed in these operations? Are there judicially manageable standards for this exercise? Judiciary having no machinery for implementation of the orders; what happens in the event of refusal or failure of the executive to co-operate? Has the judiciary kept in view the provisions of the general law, particularly the Specific Relief Act which provides that in certain circumstances the discretionary relief must be refused, even though it is legal to grant it? Without considering these and related questions, judicial intervention may attract the vice of *adhocism* or tyranny. It would then, suffer from the defect of want of juristic base to have precedent value. Inconsistency of decisions in such matters resulting in discrimination is another aspect. Want of legitimacy of judicial intervention is the casualty. These pitfalls must be avoided. It is not necessary to multiply such instances. The above list is illustrative and not exhaustive.

Reference to a few instances of judicial intervention, which have had a positive effect on the quality of governance, is apposite in this context.

A glaring instance of positive impact is that relating to environment and forests. The state obligation for protection and improvement of environment and safeguarding of forests and wildlife is a principle fundamental in governance under article 48A; and this is also a fundamental duty of every citizen under article 51A. A serious global threat to the environment and forests, coupled with the apathy and inertia of the executive to take prompt precautionary measures compelled judicial intervention. The orders made by the Supreme Court in **TN Godavarman, AIR 1997 SC 1228** and the other related cases had the desired positive effect, which is self-evident.

Another positive impact is the awakening of the executive to perform its duty so that there may not remain the need for any further judicial intervention of this kind. There is a media report (*The Times of India*, New Delhi Edn., March 19, 2007) saying that the Government of India is preparing to enact the Environment Tribunal Act, 2006 for setting up separate green courts, regional tribunals and one National Environmental Tribunal to handle all cases relating to forests, environment, water and air etc. and the laws relating to them. Naturally, the special authorities set up by the court orders to deal with those issues would then be not necessary. The Tribunals are to be headed by a judicial member, with technical experts being the other members. Whatever be the emotion that triggered this positive response in the executive, it is a welcome development to improve the quality of governance!

I believe there is a similar positive response of the other branches to the Supreme Court decision in the **Vishakha case, AIR 1997 SC 3011**, which defines *'sexual harassment'* and gives directions to curb the social evil at workplaces. The executive has taken the steps, accordingly; and there is a move to enact the needed legislation to cover the field. The decision clearly says, that it would operate only till enactment of the needed legislation, which was a clear statement that the judiciary was operating in virgin territory for the enforcement of fundamental rights, and not in the occupied field.

There are instances of both kinds. The good ones need to be emulated, and those not so, are to be corrected and avoided in future.

Legislative Functions

The main areas of apprehension of conflict between the judiciary and the legislature relate to the Speaker's jurisdiction under the Anti-Defection Law; administration of the secretariat of the legislatures; the proceedings in the legislatures, and privileges of the members of the Parliament and the State Legislatures; judicial review of the proclamation under article 356; and judicial review of the laws.

The Constitution gives a clear indication of the desired mutual respect and comity between the judiciary and the legislatures by the provisions in articles 121, 122, 211, 212 and 361. These provisions restrict any discussion in the Parliament or a State legislature with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for the removal of the Judge; similarly the proceedings in Parliament or a State legislature shall not be called in question in courts on the ground of any alleged irregularity of procedure, nor any officer or member shall be subject to any court's jurisdiction in respect of the exercise by him of those powers; and immunity from courts is provided to the President and Governor for the exercise and performance of the powers and duties of his office. This is the broad feature of the area of exclusive dominance of legislative and judicial power, which must guide both branches in this debate.

Speaker's jurisdiction under the Anti-Defection Law

This potential of conflict in this area has been averted considerably by the decision in **Kihota Hollohan, AIR 1993 SC 412**, which struck down the provision in the Tenth Schedule of the Constitution excluding judicial review of the Speaker's decision on the issue of defection. So long as the courts refrain from intervening at the interim stage of the proceedings before the Speaker, there can be no reasonable apprehension of any conflict.

Administration of the Secretariat of Legislatures

This sphere of executive function of the Speaker has to be separated from the legislative activity of the House. Speaker's status in this respect is akin to that of the Chief Justice in administrative matters. Just as the administrative acts of the Chief Justice or the Court are subject to judicial review on permissible grounds, so is judicial review available against the administrative acts of the Speaker relating to his secretariat. Awareness of this distinction on both sides will prevent conflict.

An incident involving the then Manipur Speaker, H. Borobabu Singh, soon after the above Kihota decision illustrates the point. An employee of the secretariat challenged in the Court an administrative act of the Speaker on the ground of violation of his fundamental right. The Speaker refused to honour the Court's order made on judicial review. This led to a contempt proceeding, which also was ignored by the Speaker. The Supreme Court was constrained to direct the personal appearance of the Speaker in his capacity as the administrative head of the secretariat to uphold the majesty and the rule of law. However, as soon as the Speaker appeared in the Court and its order was obeyed, the Court promptly discharged the notice and closed the matter, observing that it was only concerned with obedience of the Court's order maintaining the dignity of the Speaker's office. Fortunately, the message appears to have gone home. The need is for mutual respect between all concerned.

Proceedings in Legislatures & Privileges of the Members

This is a delicate area with potential for conflict, unless both sides practice self-restraint and are circumspect in taking their stands. Ordinarily, after the Supreme Court decision in the Presidential Reference made in **Keshav Singh's case, AIR 1965 SC 745** there is no room for ambiguity and conflict, provided both the branches adhere to those parameters relating to judicial review of the proceedings in legislatures. Unfortunately, some hard cases appear to have made bad law, which needs correction. Similarly, the issue of privileges of the members has recently caused problems. Here, the absence of codified privileges creates problems, because any claim of a new privilege requires interpretation of the Constitution, which is a function of the judiciary and that is a sensitive area. The thing to remember is that the Supreme Court is the final arbiter of the meaning of the Constitution, and the legislature is the sole arbiter of the validity of any proceedings in the House. With this perception and mutual respect on both sides, there should be no problem.

Re: Proceedings

The recent Interim Order dated 9 March 2005 made by the Supreme Court in the Jharkhand Assembly case has been subject to considerable adverse comment, not only by the Speaker of Lok Sabha, but also by some eminent lawyers and jurists. With due respect, I am inclined to agree with them on this issue. By its order, the Court fixed the date for the session of the Legislature, its one-point agenda to have a floor test; issued directions to the Speaker relating to conduct of the proceedings; and ordered video-recording of the proceedings with direction to send a copy to the Court. Apparently, the Court in making this order followed an earlier non-speaking order in **Jagadambika Pal**, **AIR 1998SC 998**, relating to the UP Assembly which was a mere ad hoc order with no precedent value.

It is sufficient to say that the Court overlooked the earlier binding decisions of larger Benches laying down the parameters of separation of powers between the judiciary and the legislatures relating to immunity of the proceedings from judicial review. It was not a matter amenable to judicial intervention. If the Court felt that 'judicial hands off' was not warranted to save the democratic process, it could have asked Counsel to take instructions from the Governor and report the same day whether he would pre-pone the date of the session and direct the floor test. I am sure, the Governor would have taken the hint and done the needful making Court intervention unnecessary. That would have been an act of judicial statesmanship. I do hope, the Supreme Court itself would soon correct the aberration of the above orders in the Jharkhand and UP cases.

The exclusion of judicial review in matters relating to the conduct of its business by the legislatures and the validity of the proceedings is settled by the specific constitutional provisions interpreted in several judgments, beginning with **M.S.M. Sharma, AIR 1959 SC 395,** and **Keshav Singh's case AIR 1965 SC 745**. There is no occasion to upset the applecart. The principle of *stare decisis* and rules of judicial discipline must govern.

Re: Privileges

This is another sensitive area. It continues so, because of the failure to codify the privileges as

required by articles 105 and 194. Naturally, whenever there is a claim of a new privilege that is not specifically recognized, the need is to interpret the Constitution to decide that question. Once a privilege is so recognized, the exercise of that privilege is to be controlled by the legislature, immune from judicial review. Supreme Court being the final arbiter of the meaning of the Constitution, decision on the question of existence of the privilege is in the domain of the judiciary; and, thereafter, its exercise is within the legislature's domain. This is the basic constitutional premise.

The recent judgment dated, 10 January 2007 in the matter relating to expulsion of some Members of Parliament for taking bribes to put questions in Parliament, labelled as 'cash for query' case, has evoked a mixed response. The Court held that legislatures must have the power to expel members for misconduct as a self-cleansing measure. Thus, this privilege was upheld rejecting the challenge of absence of such a power in the House. This has been duly acclaimed.

The other part of the judgment holding that legislatures cannot claim immunity from limited judicial review of the exercise of that power causes concern. Howsoever limited be the judicial scrutiny, availability of judicial review in that area erodes the separation of powers and immunity of the proceedings asserted by the Constitution. I do hope the Court will have occasion to re-examine this part of the judgment, and it will remove the area of potential conflict.

As reported by the media, when the matter came to the Supreme Court, it issued a letter of request to the Presiding Officers of both Houses of Parliament expecting their assistance in deciding the important constitutional issues. The media reported that the Speaker of Lok Sabha chose to take no notice of it, taking the view that the Court had no jurisdiction even to entertain the matter. I wish that opportunity were not missed to directly assist the Court and advise it that even if it had jurisdiction over the first part, the second part of the matter was not amenable to judicial review.

VII

Judicial Review of Proclamation under Article 356

The Supreme Court in **SR Bommai, AIR 1994 SC 1918,** has upheld justiciability of the proclamation under article 356. There is unanimity on the broad issue of justiciability, even though there is difference in the separate opinions on the scope and extent of permissible judicial review. In my separate opinion in that case, I have upheld only a limited judicial review confined to cases amenable to the strict objective test, calling for 'judicial hands off' in the remaining cases wherein even an element of subjectivity is involved in the decision to invoke article 356. I also relied on the test of judicially manageable standards to determine the area of justiciability. I continue to hold the same view even now.

In my view, the Constitution does not envisage judicial review as the only mode for the correction of every wrong, and it has left that task in the political matters, which have no judicially manageable standards, for correction by the political process that is better equipped for the purpose. This part of the constitutional scheme is to be remembered by all branches.

The invocation of the power under article 356 recently in relation to Bihar and the Supreme Court decision in 2006 on its validity is a case needing specific mention. The proclamation under article 356 and dissolution of the Bihar Assembly were challenged in the Supreme Court. The challenge was entertained and fresh elections were not interrupted. The fresh electoral verdict was clearly against the exercise of power under article 356.

The Supreme Court delivered a divided judgment after the electoral verdict. The majority opinion, in substance, held invalid the invocation of article 356 and fastened the blame on the Bihar Governor for his report saying that it misled the Union Government. However, the Governor alone was criticized and not the Union Government. It further said, that in the circumstances of the case no further relief need be granted. The separate minority opinion of K.G. Balakrishnan J. (as he then was) relied on my opinion in S.R. Bommai case to differ from the majority saying that the case was not amenable to judicial intervention.

The doubts arising from the majority view are many: If the proclamation could be held invalid and the Governor faulted for his report, why was the Union Government spared, when it was the deciding authority not bound to act merely on the Governor's report? What useful purpose was served by entertaining the petition and not stopping fresh elections, which were bound to complicate the issue of ultimate relief if the challenge succeeded, as it did? Does this case not indicate the lack of judicially manageable standards on the basis of the larger scope of judicial intervention according to the majority view in SR Bommai's case? Is there not the need to re-examine the scope of judicial review of a proclamation under article 356 in the light of the recent experience in the Bihar case?

The facts of the Bihar case show that an element of subjectivity was involved in taking the final decision to invoke article 356 and the strict objective test was not available. There were no judicially manageable standards to enable judicial intervention. The

correction could be made politically by a fresh electoral verdict, as did happen. This would appear to be the real reason for the inability to grant any substantial relief even after upholding the allegation of misuse of power. The final outcome on this occasion, despite judicial intervention was the same, that is, correction by the political remedy of electoral verdict.

For the present, it is better to leave this issue at this stage with a note of caution expecting the different branches to be more circumspect in the exercise of their respective power.

VIII

Judicial Review of the Laws

Article 13 read with the constitutional remedies expressly provide for judicial review of the laws, and the authority in the judiciary to invalidate the inconsistent laws. Making of laws is a legislative function, and determination of their validity is a judicial function. This is a settled constituent principle. It is also settled judicially, that a law declared invalid can be revalidated by the legislature removing the ground of invalidity, but the legislature has no power to merely overrule the judicial verdict. A proper appreciation of this basic premise can avoid many misunderstandings and reduce the area of conflict.

A brief reference to the recent Supreme Court judgment dated 11 January 2007 in **I.R. Coelho case** is called for. The nine-Judge Bench clearly said that the validity of article 31B was not before it and a mere possibility of its abuse is not relevant to determine the validity of a provision. Having said so, the Court proceeded to hold that though article 31B operated as an exception to Part III, it provided only a restricted immunity to the laws inserted in the Ninth Schedule after the decision in Keshavananda Bharti case on 24 April 1973. It concluded, that article 31B despite its wide language, cannot confer unlimited or unregulated immunity.

The above view leaves several questions unanswered, and raises many doubts. It has dangerous potential reminiscent of the situation that led to the First Amendment of the Constitution. Once the validity of article 31B was assumed at the threshold, all that flowed directly from it had to be accepted. More so, because it was rightly read as an exception to Part III. On this view, the clear meaning of the language in article 31B could not be restricted on the basis of a later judgment that did not deal with this aspect. So long as article 31 B remains and is read as carving out an exception within Part III, what its clear and plain language says must logically follow. With due respect, I am unable to appreciate the logic of the view taken.

There are some other questions needing attention, which do not appear to have been considered. Article 31B was inserted by the First Amendment in 1951 made by the Provisional Parliament, which was in substance the continuation of the Constituent Assembly. It was meant and stated to be an exception to Part III, as observed in the above decision. It was inserted in Part III itself. Are these facts not sufficient to treat the Part III guarantees subject to the restriction within it by article 31B, as a part of the basic structure? At any rate, is it possible to ignore article 31B while it remains in the Constitution? In that view, can any insertion in the Ninth Schedule be challenged on any ground other than of colourable exercise of that power? Let us hope the cloud would be cleared soon to avoid any possible conflict in the future.

IX

Conclusion

The scheme of separation of powers in its essence, and not with rigidity is indication of a culture of joint responsibility of all branches of governance to work together for serving the common purpose indicated in the directive principles, which are the principles fundamental in governance to guide them. Certain gaps and grey areas in the Constitution are constitutional abeyances or hedges to prevent rigid postures and to promote a spirit of co-operation with mutual respect. Healthy conventions developed in the working of the Constitution as envisaged by Dr. Rajendra Prasad are intended to fill those gaps. This has been done to a great extent till now, and the effort needs to continue.

The above result is best achieved by all the branches treating the powers vested in them as the means to discharge their constitutional obligation or duty to serve the common purpose of realizing the vision of a welfare state with inclusive democracy. Power is egocentric while duty evokes humility. Clash of egos is best avoided by the perception of power as duty. Human psychology is receptive to the idea of sharing responsibility, but not to that of sharing power. Such a perception would be conducive to promotion of the constitutional ethos.

Pandit Kunji Lal Dubey brought to bear this ethos in his personality. He provides an example of public service. The need is contextual. I join everyone in acknowledging and paying tribute to his contribution in clean public life. ❑

(…from page 1) He maintained that India's caste system, which prohibited vertical social mobility, and the tendency to look backwards, were two, amongst others, prominent reasons of stagnation. We may or may not be Marxists, but the argument has strength.

Point is that time has come to make choices. The choice in the present context is that we protect the freedoms guaranteed in our Constitution, or, we use extra-Constitutional methods and put hurdles in the way of those who make choices, within the framework of the Constitution, that we don't approve.

The choice is between forward looking change and backward looking inspirations. ❑

Women and Entrepreneurship

Nancy Agarwal

Economic development of a country, to a large extent, depends on human resources. But human resources alone will not produce economic development - there must be dynamic entrepreneurs. **Entrepreneurs** have been referred to as the human agents needed to mobilize capital, to exploit natural resources, to create markets and to carry on trade. An entrepreneur is very often considered as a person who sets up his own business or enterprise. The development of indigenous entrepreneurship is imperative for a country committed to socio-economic development of the nation. **Women entrepreneurs** may be defined as the women who initiate, organize, and run business enterprise. The government of India has defined **women enterprises** as "an industrial unit where one or more women entrepreneurs have not less than 51% financial holding."

Types of Women Entrepreneurs

1. **Natural Entrepreneurs** - Those women who take business as profession on their own either by self-planning or motivated through money factor and also for keeping themselves busy.

2. **Generated Entrepreneurs** - Those women who have been encouraged and trained through specialized training programmes such as the Entrepreneurship Development Programmes (EDP) to set up independent business.

3. **Forced Entrepreneurs** - Those women who are compelled by circumstances such as the death of father or husband with responsibilities falling on them to take over the existing business.

4. ***Benami*** **Entrepreneurs** - Those women who are acting as a façade for business of their husband or brothers.

Empowerment of Women

For elevating the status of women in our society economic empowerment is a *sine qua non* and one possible approach towards achieving this end could be through entrepreneurship development.

The World Bank defines **empowerment** as "the process of increasing the capacity of individuals or groups to make choices and to transform those choices into desired actions and outcomes. Central to this process are actions which build both individual and collective assets and improve the efficiency and fairness of the organizational and institutional context, which govern the use of these assets."

Thus, for empowerment women require a set of assets and capabilities at the individual level (such as health, education, and employment) and at collective level (such as the ability to organize and mobilize to take action to solve their problems). Empowerment of Indian women is intrinsically linked to their status in society. The major hurdle in empowering Indian women is the vicious circle of poverty and patriarchal mindsets of the people in the society and the way to overcome these hurdles is women entrepreneurship.

Benefits of Women Entrepreneurship

Women constitute almost half of the population of India and the contribution of this population in socio-economic development of a country is vital.

1. It is necessary to develop entrepreneurship in women and encourage them to take up independent income-generating activities so that the significant workforce of the country may be utilized more efficiently in order to increase production and per capita income then only this vicious circle could be broken.

2. Moreover entrepreneurship development among women can be considered a possible approach to economic empowerment of women. A woman as entrepreneur is economically more powerful than as a mere worker or an employee because ownership not only confers control over assets but also gives her the freedom to take decisions. This will uplift her social status also.

3. Through entrepreneurship development a woman will not generate income for herself but also will generate employment for other women in the locality. This will have a multiplier effect in the generation of income and poverty alleviation.

Steps Taken to Enhance Women Entrepreneurship

According to Women's Financial Network at Siebert, women start business at two times the rate of men. While women are starting business at faster rates than men, they find it harder at the outset to grow their businesses and access venture capital.

So to help and encourage large participation of women in economic ventures certain steps have been taken:

1. **Cooperatives**

Cooperatives are autonomous organizations of persons united voluntarily to meet their common, economic, social and cultural needs and aspirations through jointly owned and democratically controlled enterprises. Though cooperation has been part of our heritage, formal beginning of the movement was started in 1904 by enacting Cooperative Credit Societies Act. The objective of this act was to provide relief to farmers and needy persons from exploitative money lenders. Cooperatives can be visualized as ideal vehicles for bringing about a social transformation in the society through greater participation of women. There are number of cooperatives owned, managed and controlled by women successfully. E.g.: *a. Shri Mahila Sewa Sahakari Bank Ltd*., Ahmedabad-Gujarat, *b. Shri Mahila Griha Udyog Lijjat Papad* - Mumbai, and *c. Uttranchal Mahila Dairy Vikas Nigam*, Almora-Uttranchal.

2. **SIDBI**

Assistance to women entrepreneurs especially the rural poor women is one of the thrust areas of Small Industries Development Bank of India (SIDBI) policy. It has formulated many schemes for the benefit of women entrepreneurs.

a. **Re-finance Scheme** - The scheme has been formulated with the twin objectives of i) providing training and extension services support to women entrepreneurs through comprehensive package suiting their skills and socio-economic status and ii) extending financial assistance on liberal terms to enable them to set up industrial units in the small scale sector.

b. **Development Scheme**

i. Mahila Vikas Nidhi - The Scheme envisages support to voluntary Associations for on lending to rural poor individuals/groups for setting up micro industrial enterprises.

ii. Entrepreneurship Development Programmes for Women - Financial assistance is given to agencies for conducting entrepreneurship development for women.

iii. Assistance to Associations of Women Entrepreneurs - Financial assistance is also extended by SIDBI on selective basis to the association of women entrepreneurs for conducting buyer-seller meets, seminars, exhibitions etc.

3. **Self Help Group**

Self Help Group is a viable organized set up to disburse micro credit to the rural women and encourage them in entrepreneurial activities. SHGs and micro credit are the solutions to speed up the socio-economic development of poor women.

4. **Commercial Banks**

All nationalized banks have a women cell which deals with women entrepreneurs only. Following are the tasks of the cell:

a. To monitor the progress made by the bank in financing women entrepreneurs.

b. To collect and disseminate information to branches about the various facilities given by SIDBI, NABARD and government agencies to women entrepreneurs.

c. To organize entrepreneurship training programme for women entrepreneurs.

d. To explore the possibilities of bringing about specific schemes for women entrepreneurs, and

e. To establish liaison with non-government organizations, Intermediate Micro Finance Institutions, SHGs etc.

5. **NGOs**

The NGOs (Non-Governmental Organizations) are groups of persons organized on the basis of voluntary membership without state control, for the achievement of some common interests of citizens. The major NGOs in rural entrepreneurship development are AWAKE (Assistance of Women Entrepreneurs of Karnataka), WASME (World Assembly for Small and Medium Entrepreneurs) etc.

6. **Programmes by Government**

The government of India is implementing the following programmes for promotion of entrepreneurship in general and particularly among women.

a. Prime Minister's Rozgar Yojana (PMRY).

b. Rural Employment Generation Programme (REGP).

c. Support to Training and Employment Programme for Women (STEP).

d. Construction of Technology Parks for Women.

Problems Faced

The above measures have not been able to acquire substantive equality.

1. Despite plethora of programmes aimed at socio-economic emancipation of women, their participation in decision making process is not satisfactory at all levels. It is very sad to mention that only a fraction (2%) of the total cooperatives is "all women cooperatives".

2. Moreover, the assumption that access to credit automatically leads to empowerment does not hold true, as women face wider disadvantages and inequalities in accessing information, social networks and other resources. In addition, providing women with access to credit does not ensure that they maintain control over their loans and over the benefits of the investment. There are women who act as a front for men who are excluded from access to credit.

3. Despite training programmes there exists a vast pool of literate but untrained women work force. In 2001-2002, though the gross enrollment of girls in classes I-XII was 50.29%, it was only 6.71% in higher education including polytechnic.

Solutions

So in order to see more women taken to entrepreneurship in India, it is the rural sector that has to be opened up. Women entrepreneurs need to "start small but think big". We can start at a lower level by providing little education, resources and skills to give them the opportunity to start small cottage industries. Even making pickles or handicrafts can result in entrepreneurship. All forms of gender discrimination should be eliminated and thus women should be allowed to enjoy not only the *de jure* but also *de facto* rights and fundamental freedom at par.

It is difficult but not impossible to bring women at par with men. Bhagwati Amin, an Indian woman, who is running her *aam ras* business in US has offered her husband three times the salary he was drawing from his job at AT&T to join her food business. Take examples of Kiran Mazumdar Shaw, Chairman and Managing Director, Biocon or Jyoti Naik, the

President of Lijjat Papad or Ekta Kapoor – all are the icons in the field of women entrepreneurship.

Conclusion

Once the traditional hurdles are crossed women will be more confident to take risks and face challenges. Later it is possible to expand the horizon of their business. The future will, no doubt, see women establishing industrial establishments bigger in their own right.

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Letter:

Shri Arjun Singh, Minister, Ministry of Human Resources Development

Dear Shri Arjun Singh,

People's Union for Civil Liberties (PUCL) is sending this letter in view of the urgency which has arisen with regard to the filling up of seats for admissions in the Central Educational Institutions for SCs and STs. PUCL, as you must be aware, was founded by late Shri Jai Prakash Narain and has been fighting for protection of Legal and Constitutional rights of the poor, the down trodden, and the oppressed.

The issue with regard to the reservation for OBCs/SCs and STs in the Central Educational Institutions has been pending in the Supreme Court. The next date of hearing is 8th May 2007.

There were 124377 seats, including those for the reserved category of SCs and STs, before the Central Educational Institutions (Reservations in Admission) Act, 2006 was adopted. The Government created extra seats for the year 2007-08, i.e., 12216, including 157 in the IIMs and 1788 in the IITs. Out of 12216 additional seats, 9468 are for the OBCs, 1832 for SCs, and 916 for the STs.

You are aware that in the challenge of the provisions of Central Educational Institutions (Reservations in Admission) Act, 2006, an order dated 29.3.2007 was passed by the Supreme Court. Para 41 of the said order is very relevant and is reproduced below:

"**41**. In the background of what has been explained above, it would be desirable *to keep in hold the operation of the Act so far as it relate to Section 6 thereof for the OBCs category only. We make it clear that we are not staying operation of the Statute, particularly, Section 6, as far as the Scheduled Castes and Scheduled Tribes candidates are concerned.* It would be permissible for the respondent-Union of India to initiate or continue process, if any, for determining on a broad based foundation "Other Backward Classes" notwithstanding pendency of the cases before this Court and without prejudice to the issues involved."

It is thus quite clear, that there is no stay as far as filling up of seats for SCs and STs is concerned, meaning thereby, that the Government can go ahead and fill up the 1832 seats for SCs and 916 for the STs, total 2748 seats. We are surprised that so far the Government has not taken any steps to fill up the seats reserved for SCs and STs. We find that, in absence of any bar and there being no stay by the Supreme Court, the SC/ST candidates should not be deprived of the benefit in this very academic session on an erroneous impression that there is a restraint on filling up of OBC quota.

We hope that Government will clarify its stand immediately on this important aspect and issue necessary directions for immediate implementation.

We are also enclosing a copy of a letter that our former President, (Justice) Rajindar Sachar (Rtd.), has written to the Prime Minster in this regard. With warm regards, Yours sincerely. – **K G Kannabiran**, President, **Y P Chhibbar**, Ph D, General Secretary, May 4 2007

Encl: Letter to the Prime Minister by Shri Rajindar Sachar

To

Hon'ble Shri Manmohan Singh, Prime Minister of India, New Delhi.

Dear Shri Prime Minister,

Knowing fully well that you have a very busy schedule more so in the parliament session, I would not be disturbing you had I not felt that the matter is of urgency and requires your immediate attention.

As you know Govt. of India has created extra seats for IIMs and other Central Educational Institutions for the benefit of OBCs/SCs and STs. The same has been challenged in the Supreme Court and the court has given a stay of admissions in the extra seats for OBC. The position before the Central Educational Institutions (Reservations in Admission) Act, 2006 was that there were 124377 seats including

those for the reserved category for Scheduled Castes and Scheduled Tribes. Government increased the said seats by 27% to be carried out in three years. Thus the extra seats created for 2007-08 are 12216 including 157 in the IIMs and 1788 in the IITs. *Of the 12216 additional seats 9468 are for the OBCs 1832 for SCs and 916 for the STs.* The Supreme Court in its order has stayed the operation of 2006 Act in so far as increase for OBC seats is concerned. But at the same time the Court has clarified that it is not staying the operation of the Act as far as the SCs and STs are concerned. The relevant part of the original order dated 29th March, 2007 in Para 41 is reproduced:

"**41**. In the background of what has been explained above, it would be *desirable to keep in hold the operation of the Act so far as it relate to Section 6 thereof for the OBCs category only. We make it clear that we are not staying operation of the Statute, particularly, Section 6 as far as the Scheduled Castes and Scheduled Tribes candidates are concerned.* It would be permissible for the respondent-Union of India to initiate or continue process, if any, for determining on a broad based foundation "Other Backward Classes" notwithstanding pendency of the cases before this Court and without prejudice to the issues involved."

Though the Government tried some days back the Supreme Court declined to modify the order. The matter is now to be heard again on 8th of May of 2007. Of course if the Supreme Court agrees to vacate the stay, matter would take a different perspective. But if the Court reiterate its stand, I feel that the Govt. should ask for specific clarification that it can go ahead with filling up of 1832 seats (for Scheduled Caste) and 916 (for Scheduled Tribe) total 2748 seats for which no stay has been granted, from this very session, and filling up of OBC quota will be as per the final order by the court. I feel that in view of the fact that in its earlier order the Court has already exempted SC/ST from the order of restraint there should be no problem for the Govt. to obtain this clarification. This will enable the Govt. to fill up the quota for SC/ST (a total of 2748 seats). Management of Institution can certainly have no objection because they had already made arrangement for filling up 12160 seats, had the Supreme Court not passed a restraint order.

I am sorry to trespasses on your valuable time but feel strongly that not filling up seats reserved for SC/ST (the most neglected sector of our society) from this very session itself when there is no restraint against them, would be a great injustice. I see no justification as to why this quota should not be filled up from this very academic session simply because of the restraint on filling up of OBC quota because of stay order by the Court.

My purpose in writing this is to place the social aspect of the problem so that necessary direction could be given before the matter is heard on 8th May, 2007.

Once again my apologies for trespassing on your time. With best regards. – **Rajindar Sachar**, 2 May 2007 ❑

Press Statement:

PUCL Pushes for Filling of Seats of SCs and STs

"The President and Secretary of the PUCL have addressed a letter to Shri Arjun Singh, Minister of Human Resources Development and Ms Meira Kumar, Minister of Social Justice and Empowerment underlining the fact that the Supreme Court order of March 29, 2007 does not stay the filling up the seats of SCs and STs, and does so far the seats of OBCs only, in the Central Educational Institutions. There are 1832 seats for SCs and 916 seats for STs lying vacant. The PUCL has expressed surprise that so far the Government had not taken any steps to fill up these 2748 seats for SCs and STs. The PUCL has urged the Government to clarify its stand immediately and to issue necessary directions for immediate implementation.

"The former President of the PUCL, (Justice) Rajindar Sachar (Rtd.), has also written a letter to Prime Minister in this regard".

– **Y P Chhibbar**, Ph D, General Secretary, May 5 2007 ❑

Karnataka:

Special Fees: High Court Issues Emergent Notice to University of Mysore

Admitting a Writ Petition filed by Wayanad District (Kerala) Committee of PUCL against the 'special fees' collected by the University of Mysore, Karnataka. HC issued emergent notice to the Secretary, Higher Education Department of Karnataka and the Registrar, University of Mysore. The case is now posted for hearing after the court vacation.

The University of Mysore has been charging exorbitant sums as 'Special Fees' from non-Karnataka students. Last year, the amount so collected from each student was Rs.3300/- for under graduate studies. Students hailing from Karnataka are not required to pay the same. The practice of collecting special fees does not

exist in other Universities in Karnataka or elsewhere in the country. Similarly, the eligibility fee collected by Mysore University from under graduate students last year was Rs.1550/-. Whereas the eligibility fees collected by neighboring Universities are: Bangalore (Rs.1000); Mangalore (Rs.1200); Madras (Rs.200) and Kannur (Rs.25).

Based on a report of the Fact Finding Team (FFT) appointed by PUCL, a legal notice was served on the University on July 31 2006 stating that violation of Article 15 (1) of the constitution (Discrimination of Citizen on the Basis of Place of Birth) is involved in the collection of 'special fees'. The notice asked the University to stop forthwith the practice and to refund the amount so collected. However in its reply the University stated that it has absolute discretion in the matter and refused to stop collecting the 'special fees'. Subsequently in December last PUCL filed the WP in Karnataka High Court in the larger interest of the general public, particularly the student community of India, praying for quashing the concerned University notification issued on 23rd March 2006, and to refund the amount collected.

The matter came up for hearing before a Division Bench headed by the Chief Justice of Karnataka on 29.03.07, and after the preliminary hearing, Court issued emergent notice to the Respondents.

Hundreds of students who flock to the heritage city of Mysore for higher education from neighboring states, particularly a large number from Kerala, have been victims of discrimination for the past several years. – **Stephen Mathew,** President, PUCL Wayanad ❑

Gujarat:

Memorandum to Gujarat Governor: Fundamental Right of Freedom of Speech

To, Shri Navalkishore Sharma, Governor of Gujarat, Raj Bhawan, Gandhi Nagar, Gujarat.

Respected Sir,

We, the concerned citizens and organisations take this liberty to bring to your Honour's notice our deep anguish and protest against the State Government inaction or connivance to the undemocratic assault by a small group of fanatical elements upon the fundamental right of freedom of speech and expression of the people of Gujarat.

It is a matter of great concern and regret that after 2002 communal holocaust, the atmosphere in Gujarat is surcharged with intolerance, hatred, hostility, and violence against the Muslim Community and socio-democratic forces fighting for basic human rights, and unfortunately the Government itself and its allied political/social groups encourage, support, collude, connive or show indifference to these fascist methods.

The latest example is non-screening of a film *Parzania* based upon a real tragedy involving a Parsi family in the Naroda-Patiya massacre on 28th February, 2002. The film is one of the best depictions of what overtook an innocent Parsi trapped in surrounding mob violence. It is artistically, emotionally, socially and politically a well balanced and a well directed film. Its social mission is to remind the people of Gujarat of the senseless violence, killings of innocents, incitement of the fanatics, complicity of the police, indifference or talent support of the Government, failure of the courts and silence of the majority, so that we may not forget history and may be encouraged and motivated not to repeat it.

We believe that freedom of speech and expression guaranteed to every citizen by Art. 19 (1) (a) of the Constitution, buttressed by the Universal Declaration of Human Rights (1948) and International Covenant or Civil and Political Rights (1966) and as interpreted by our Supreme Court includes right of the people to know and to be informed of all public affairs in society, economy and polity, besides the right of the authors and producers of films to publish and circulate it, and the owners of the theatres to exhibit it. This right of the people also directly flows from the open society and democratic polity, as held by our Supreme Court. This freedom is the very soul of a democratic society and in information age of the 20th and 21st century. It is therefore imperative that no one has a right to deny deprived or destroy this freedom. The State has not only no right or privilege to take away or restrict this right except, protect and fulfil this right by all means at his commands. This includes the duty of the State to protect our freedom from attacks or assaults by non state actors having money power and muscle power.

We believe that a few groups have created an atmosphere of fear, intimidation and terror against those who want to exhibit the film or those who want to see it, and the Government is either conniving or condoning it or has decided to be a mute spectator. This is nothing but a flagrant violation of citizens' fundamental human rights, which must be condemned and stopped. Today it may be a cause of small film, but tomorrow it may be other things and in course of time it may envelope the whole

society facing forcing it to be closed society controlled and supervised by big brother. This is what is known as the "danger of incrimentalism" which imperceptibly increases by inches and finally engulfs the whole thing. By then, it would be too late. It is necessary and urgent go see that this evil should be nipped in the bud and effective steps must be taken to curb and eliminate this State-supported private censorship.

We also believe that the Governor of the State, is, no doubt, constitutional head of the State and the power governance vests in the Council of Ministers, it is equally true that the Governor is under an oath to protect, defend and preserve the Constitution and has, like the King or Queen of England, enjoyed the more effective privileges, namely to advise, to encourage and to warn. The exercise of this power or privilege from the exalted position of the Chief Executive will go along way to persuade, enlighten and deter the Government in power. This would not be constitutionally, legally, politically or morally considered as interference in the day today functioning of the government. It would not be obstructive interference, but beneficial intervention by a high dignitary.

We, therefore, urge upon Your Honour to be remind the Government of its Constitutional and legal duties and the dangerous consequences of the failure of the Government to act firmly by threatening all those who indulge in threats and intimidation and by assuring all who want to enjoy and exercise their freedom and right that they will be firmly protected, this intervention will be constitutionally legal, politically correct, morally right and humanly noble.

We have firm faith and trust in your Honour's commitment to the Constitution and its noble values. – **Prof J S Bandukwalla, President, Gujarat PUCL; Girish Patel, Lokadhikar Sangh; Prakash N Shah, Editor, *Nirikshak*; Gautam Thaker, Secretary, Gujarat PUCL; Kiran Trivedi, Secretary, Gujarat Lekhak Mandal.**

Organisational Office bearers who have endorsed above views: Dwarika Nath Rath (Movement for secular democracy); Hiren Gandhi, Jeyesh Solanki etc., (Samvedan Sankrutik Karyakram); Father Cedrik Prakash (Prashant); Sarup Dhru (Darshan); Harinesh Pandya (Janpath); Sukhdev Patel (Ganatar); Indukumar Jani (Naya Marg); Rajni Dave (Bhoomiputra Pakshik); Gujarat Sarvodaya Mandal; Damyanti Parikh (Mahila Punruthan Sangh); Stalin K (Drishti Media Arts and Human Rights); Saumya Joshi (Fade in Theatre); Father Vergese Paul (Gujarat Christian Press Council); Mahadev Vidrohi (Abhikram); Manaviya Technology Forum; Pariyavaran Suraksha Samiti. – April 4, 2007 ❑

Punjab Human Rights Committee and Others:

Memorandum to *Rashtrapati* and Others

Submitted to Hon'ble Dr A P J Abdul Kalam, President of India, Dr Manmohan Singh, Prime Minister of India and Mr. Som Nath Chatterjee, Speaker Lok Sabha New Delhi, jointly by Punjab Janta Party, Punjab Human Rights Committee, and Kissan Union on 10.4.07 through registered post

We, the following undersigned hereby submit a memorandum for your kind information, immediate enquiry, and action. The signatories feel that never before, since independence, any democratic institution like State Assembly or Parliament was so shamelessly misused and defrauded people jointly by majority of its members owing allegiance to political parties irrespective of political affiliation as has been done by about 92 Punjab Assembly (MLAs) and Parliament Members (MPs).

1. That about 92 Member Legislative Assembly (MLAs) and a few Members of Parliament (MPs) formed a housing society in the name of Punjab Co-Operative House Building Society for construction of houses for its members in 2002. Its members included leaders of Alkali Dal, Congress, BJP, CPI and BSP.

2. That in the present Akali-BJP government, the State Assembly has 16 Akali Dal, 6 BJP, 4 Congress MLAs as members of housing society formed under the president ship of S. Charanjit Singh Atwall present Deputy Speaker of Lok Sabha. Apart from these three Akali Dal MPs are also its members.

3. That Congress government under Capt Amarinder Singh issued an ordinance banning the purchase and sale of any land near Chandigarh including village Kansal. Three colonizers who violated this ordinance were sent to jail.

4. That the housing society formed by MLAs and MPs purchased a piece of land in village Kansal measuring about 22 acres in five and a quarter crore rupees. This society openly violated Punjab Land Holding Act for which three colonizers were sent to jail.

5. After the purchase of land all the housing society member MLAs and MPs started exerting pressure and resorted to arm twisting of then Chief Minister Punjab Capt Amarinder Singh for diluting the ordinance banning the purchase and sale of land near Chandigarh that also including village Kansal, the ordinance gradually became ineffective and almost removed by the Chief Minister.

6. That dilution of ordinance attracted colonizers and land sharks towards making a kill on the land around Chandigarh including village Kansal which commands very high price that when the ordinance banning purchase and sale of land near Chandigarh was completely diluted, the eyes of many colonizers including the Tatas fell upon the land in village Kansal and elsewhere as well.

7. That the price of land near Chandigarh rocketed like any thing. The members of newly formed housing society began looking for colonizers to sell their society land to make fortunes.

8. That ultimately during the last two months of the Congress government in Punjab, a sale deed with M/S Tata Housing Builders was materialized. Each MLA and MP members of Punjabi Co-Operative House Building Society executed an agreement separately on a stamp paper with M/S Tata House Builders. According to the agreement M/S Tata House Builders will give one super deluxe constructed flat measuring 2200 sq feet to each member. Apart from this each member will get 82 lakh rupees in cash from the said builder in instalments.

9. That M/S Tata House Builders will be allowed to use the remaining land after the construction of deluxe flats for the society members for residential flats for other customers.

10. That in this way the elected members of democratic institutions of Punjab Assembly and Parliament of India were jointly and shamelessly involved in misusing and defrauding the democratic institutions.

This misdeed of the elected people's representatives really exposes the progressive degeneration, degradation and decay of moral, ethical and social values by those who were obliged to serve the people honestly and work for the progress and development of the state thus they the people's representatives have committed a serious offence and breech of trust of the people who voted them to power for good, honest, efficient, transparent and corruption free governance.

When the fence starts eating the crops, God save the country! Such actions of politicians aided by inactivity of spineless bureaucracy have lead to progressive erosion of faith of people in politicians and governance as a whole. Failure of the state to curb corrupt practices has compelled us to write to your good self for immediate and strong action to restore our faith in democracy and political system of India otherwise the caravan of corrupt, selfish, self-centered and apathic politicians will go on with ever increasing speed and swelling their ranks enormously.

So we the following signatories demand immediate high level investigation into the multi-crore land scam and disqualification of all MLAs and MPs found involved in this scam. – **Ved Prakash Gupta**, General Secretary, Punjab Human Rights Committee ❑

Letter:

Encounter Killings and Non-Lethal Bullets

Dear Sir,

The latest in the encounter row is the fake encounter (being highlighted in Indian media) of Sohrabuddin and of its eye witnesses his wife Kausar Bi and Tulsi, by senior police officers of the States of Gujarat, Rajasthan & Andhra Pradesh.

This is an evidence of the fact that fake encounter is becoming a growing industry for the man of arms of Indian State where money, promotion, rewards, awards, subservience to political masters are the main motive of such fake encounter killings by police and military of India.

But communal angle renders it gorier where fake encounters of Muslims are tacitly approved (at times even manifestly by demonstrations as is the case in this encounter of Sohrabuddin & Kausar Bi) not only by communal minded political parties but also by large section of communally prejudiced Hindus.

In the instant case even policemen reportedly resorted to protest (by skipping their meals in police mess) against arrest of senior police officer of Rajasthan, who has been arrested for fake encounter of Sohrabuddin.

Hence in such a sorry state of 'Rule of law' in India a time has come when a high power institution, National Human Rights Commission (NHRC) whose Chairman is mandated to be an ex-Chief Justice of India, as a rule ought to take the responsibility of enquiring/investigating every encounter of a civilian by police or military and ought to give a clean chit if it is a genuine and not a fake encounter otherwise ought to ensure proper punishment to the guilty member of police or military in case of a fake encounter.

NHRC has adequate jurisdiction & power under The Protection of Human Rights Act, 1993 to carry out this task and may initiate the proceedings *suo-motto* or on the complaint of the surviving member/friend of the encountered.

But it will be still better if NHRC legally bind Governments of India and of all its States that when ever any encounter of a civilian is done by police or military then it will be reported to NHRC by the Governments under which they function.

NHRC in all its wisdom ought to realize that apart from being a matter of highest importance

regarding human rights this fake encounter trend is bringing a bad name also to the constitutionally ordained Secularism of India because majority of encountered civilians are from minority community, the Muslims.

Secondly, it is absurd that the civilians who are legally expected to be brought before judiciary for their trial of any offence (however serious) are dealt by police & military by lethal bullets (and not by non-lethal bullets) and thus extinguishing not only the accused but also other important evidences & clues which might have surfaced, had encountered left alive.

Hence, NHRC ought to recommend to Government of India and to all State Governments to ensure that police and military, on civilian duty, use only non-lethal bullets (like rubber bullets, etc.) against civilians in all their actions / operations. Yours truly – **Hem Raj Jain** ❑

Letter:

Khushwant Singh to the Rescue of Tasleema Nasreen

Even at the age of 92, Khushwant Singh, the Grand old man of India, still continues to write every week regularly his thought provoking and iconoclastic column supporting good causes. On February 20, he came out with strong support of beleaguered Tasleema Nasreen's request to the Government of India to grant her a permit to reside permanently in India and protect her life. The government granted extension of her visa for six months only. After the expiry of the visa where is she to go? She cannot return to Bangladesh, her land of birth, where a *fatwa* issued by the fanatical clerics to kill her still hangs on her head. She cannot indefinitely reside in the Western countries though liberal countries like Sweden or Norway are willing to give her a permanent residence. She is a writer in Bengali and she feels at home among the Bengali intellectuals and Kolkata is like a heaven to her. Several Bangladeshi who illegally enter India for employment get ration cards and even voting rights. Why not Tasleema?

Recently Tasleema incurred the wrath of Indian Islamic fundamentalists by writing an article in the *Outlook* urging upon the Muslim woman to discard the *burqa* and even to burn the same. Khuswant says he is also of the same view and writes that "Segregation of women is a relic of the medieval past and should be discarded in the interest of Muslim communities…" It is assumed that the matter concerns the Muslims only. This is not so. It concerns all of us, because Muslims are an integral part of our society."

Burqa and *ghunghat* worn by non-muslims in front of elders in the house or stranger males are symbols of women's slavery and possessiveness of men over their women as if they are their chattels. Liberated Muslim women, belonging to the rich and powerful elite in all countries, human rights activists, intellectuals and sportsperson have discarded *burqa* with immunity. It is confined to illiterate and poor Muslims women in the name of religion. Why?

I have written on this subject in the past calling upon humanists and human rights activists but this time there is a strong support from Khuswant Singh. – **M A Rane**, Mumbai, March 4, 2007 ❑

Letter:

Visitor, Delhi University on Sexual Harassment

Shri A P J Abdul Kalam, President of India, Visitor, Delhi University, Rashtrapati Bhawan, Delhi 110 004

Sir,

The PUCL is an organisation concerned with Human Rights and Civil Liberties. It was founded by late Shri Jayaprakash Narayan and its first General Secretary was Shri Krishan Kant and the first working President was Justice V M Tarkunde.

We would like to bring to your notice the deplorable conditions for working women in Delhi University. Now and then some case gets some mention in the press. If ever some female employee or student gathers enough courage to complain, the case is hushed up.

After the Vishakha Judgement of Justice J S Verma, in some respects, a change has taken place. The Vishakha Judgement has laid down guidelines for proceeding in such cases. We are aware that in our society women are taught and trained to keep quiet, to submit, or to quit, because, the social atmosphere turns the complainant into an accused. There was some ray of hope in a recent case reported in Dyal Singh College where when the woman teacher concerned complained, the Principal appointed a Committee on the lines suggested in the Vishakha Judgement and after much dilly dallying the University punished the male teacher who had perpetrated indignity on his female colleague.

Recently another case has been reported from the Gandhi Bhawan in the University wherein the OSD, Ms Anamika Sharma, is reported to have complained against the honorary Director of Gandhi Bhawan who also happens to be the Professor and Head of a Department in the University. Another case has been reported from the Urdu department of the University.

We realise that what is happening in the University is a reflection of the conditions prevailing in our society in general. But we also agree with the section of the opinion in the University fraternity that these complaints are only the tip of the iceberg.

This letter has two purposes. First, the Delhi University comprises more than 75 colleges. It has female

teachers in large numbers. We suggest that every College and every Department should have structures laid down in the Vishakha Judgement. The whole network may be related to one Apex committee at the University level. The Principals and the Heads of Departments may be asked to attend training courses on how to instil confidence amongst female employees so as not to accept indignities and harassment silently. Secondly, appropriate initiatives from the Visitor, Sir, will send a message down the line that such harassment is not to be tolerated and that dignity of woman in Delhi University will be protected. Warm regards. Sincerely Yours. – **Y P Chhibbar**, Ph D, General Secretary, May 6 2007 ❑

News: Binayak Sen's Arrest:

PUCL Delegation Calls on Home Minister

A PUCL delegation comprising Dr Pushkar Raj, National PUCL Secretary, and Ms Kavita Srivastava, General Secretary, Rajasthan PUCL, and others to urge him to use his good offices to ensure the safety of Dr Binayak Sen, a National Vice-President of the PUCL and the General Secretary of Chhattisgarh PUCL and others. It may be mentioned here that Dr Binayak Sen was arrested on 14th May 2007. The PUCL is concerned about the safety of the arrested people because of the recent revelations of a number of fake encounter deaths.

It may be mentioned here that the PUCL has already sent the case to the National Human Rights Commission.

The Home Minister Shri Shivraj Patil advised the delegation to make representations to the National Human Rights Commission, the State Human Rights Commission, and also to move the relevant Court. – **Y P Chhibbar**, Ph D, General Secretary ❑

Press Statement:

Concern about the Safety of Dr Binayak Sen

Dr Y P Chhibbar, General Secretary, People's Union for Civil Liberties, has issued the following statement:

"The PUCL strongly condemns the arrest of the General Secretary of the Chhattisgarh State branch of the PUCL, Dr Binayak Sen, on trumped up charges under the Chhattisgarh Special Public Security Act 2005 and the Unlawful Activities (Prevention) Act, 1967 as amended in 2004. These laws do not have provisions like bail, appeal, etc.

"The PUCL is specially concerned on the development of events in the wake of the wave of custodial violence cases unfolding in various parts of the country after the revelation of the fake encounter case of Sohrabuddin Sheikh in Gujarat.

"The PUCL is also concerned about the illegal detention of Shri Piyush Guha, who has been in detention for more than a week in contravention of Supreme Court guidelines.

"The National General Secretary of the PUCL has sent the case to the National Human Rights Commission.

"The undersigned has been receiving anxious enquiries about the wellbeing of Dr Binayak Sen from all over the country from members of the PUCL and also from other fraternal organisations. He is thankful to all of them and appeals to them to send letters of concern to the NHRC and the Chief Minister of Chhattisgarh". – **Y P Chhibbar**, Ph D, General Secretary, May 15 2007 ❑

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