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No Work-No Pay for the Legislators – A Welcome Move

Rajindar Sachar

Press reports that Lok Sabha Speaker, wants to apply principle of "no work no pay" to those legislators who disrupt proceedings in the House has been universally welcomed. The legislators with cheek in their tongue term it as a abridgement of their Parliamentary privileges, but the masses find this self glorification laughable. The conduct of such legislators is a standing shame to the nation and calls for immediate action. A recent study by a civil society organization found that in the 13th Lok Sabha, time lost due to disruptions was 22.4 percent while in the 14th Lok Sabha which commenced in June 2004, it went up to 26 per cent. Each minute of Parliament costs about Rs.26035.

Under the Parliamentary rules, a legislator has to sign the attendance register when he comes in the morning. He is paid daily attendance honorarium of Rs.1000 per attendance irrespective of the fact that he may just attend for 5 minutes out of normal five hours daily sitting.

Dealing with delinquent individual legislator is manageable under the rule of procedure. The more serious problem is when gross disorderly conduct by large number of legislators makes the sittings of the legislatures impossible. In such a situation the Speaker perforce and against his inclination is forced to adjourn the House. The damage to the dignity of the House and the nation is for every one to see. But the legislators, still draw their daily allowance suffering no monitory loss. Is the Speaker powerless to direct no payment to legislators in such a case without a specific provision in the Rules of Procedure, which the legislators are not willing to change. I submit no. Though there is no specific rule permitting the Speaker to direct no payment to members in case the House is adjourned because of disorderly conduct, the Speaker would have inherent power to so direct. In Mays Parliamentary practice it is noted that the Speaker of the House of Commons (U.K.) has power to suspend for conduct falling below the standard House was entitled to expect and in certain cases, the practice is including withholding the member salary for the period of suspension. Admittedly the power to suspend House in case of members misconduct vests in the Speaker. Parliament has not codified the privileges of Legislators and thus the precedents of Speaker of House of Commons would be equally available in India. The principle of no-work, no pay can not be doubted because of the law laid down by Supreme Court (1990). In that case, the Bank of India employees went on 4 hour strike but joined the duty for the rest of the day. But the bank deducted the salary of for the whole day. *(on page 10…)*

Education in Delhi:

Rotten State of Education in Delhi

Y P Chhibbar

No one can say for sure whether the charge of "trafficking" or "pressurising students" for immoral purposes against a teacher of *Sarvodaya Kanyaa Vidyaalaya*, Turkman Gate was true or partially true. Only time would tell. But we do know that there is, "something rotten" (to borrow a phrase from *Hamlet* of Shakespeare) in the State of (Education Department of) Delhi Government.

We have been receiving, from time to time, information or complaints from teachers, students, guardians, Principals about the rampant negligence, corruption of different types, indiscipline, lack of facilities, and what not. But, everything, every information, is conveyed verbally. No teacher, no student, no guardian, or anyone else is prepared to give anything in writing. Such is the atmosphere of fear.

The information regarding sexual exploitation of boys and girls, or such things get published as they make sensational news. But other types of deplorable or condemnable conditions or incidents do not attract any publicity as they do not make good copy.

Everyone knows about schools being run in the open or in leaking tents or without blackboards, but few people know the deplorable conditions of the *puccaa* buildings. In many schools there are no electrical connections or there are electrical fittings without any current or classrooms without bulbs and/or fans. Grounds have no light and therefore the *chowkidaars* are afraid of taking rounds at night. If there is a boundary wall it is breached or can be easily jumped over.

There are schools where there are no water connections. Toilets do not work. Even in girls schools there is no water supply in the toilets and if the girls have to attend to their biological needs they have to go back home.

In many schools the teacher-Principal relationship is tenuous and has a negative effect on discipline and level of teaching. There are officials of the Education Department who are known for questionable practices. They come for inspections/rounds only to collect sweets, vegetables, or even cash available in some accounts to be operated by the Principals. The Education Department allocates huge funds every year for purchase of equipment, furniture, and the like. Slowly a wide network of supplier – official – Principal / Teachers has come into existence to siphon off funds. It is claimed by the suppliers, who operate the nexus that the cut goes to everyone in the Department.

In short, it is an open can of worms which everyone knows about but does not care to talk of. In such an atmosphere incidents like the one at Turkman Gate can go unabated, even if they are known to everyone.

An organisation like the PUCL is not equipped for intelligence gathering but the Press and the State government or the Local government are fully equipped to stem the rot. There has to be will to do it. ❑

Letter:

The Other Side of Justice

I want to draw the attention to some aspects regarding book *"The other side of Justice"* recently released at India International Centre in the presence of distinguish gathering. The book was released by Mr Fali S. Nariman, a distinguish Jurist. The book has caused aspersions against contemporary Judges of the Supreme Court and the High Court including myself. I have refuted the malicious and false allegations made against me in an open letter sent to Author of the book and copies to all concerned. A contempt petition has also been filled in Allahabad High Court against the Author and Publisher o0f the book which is pending. I have raised following issues of general importance regarding working of the higher Judiciary which need consideration of concerned persons of civil society:

1. The relationship between the Chief Justice of the High Court and other Judges for functioning of the High Court on Administrative side, which *inter alia* require consideration, as to whether the Chief Justice can act as a Boss over other Judges, as to whether exercising power of forming roster the Chief Justice can transfer any Judge of High Court indefinitely, arbitrarily or should this power be also governed by the High Court rules framed in this regard.

2. After passing of the resolution in a meeting of the Supreme Court Judges and Chief Justices of the High Court that policy of posting outside Chief Justice in the High Court should be stopped and a the Chief Justice should be of the same High Court, is it proper for Union of India to sit over the sad resolution and continue with the policy of outside Chief Justice.

3. Is the policy of transferring the Judges of one High Court to another High Court has done more harm than good or it needs reconsideration. – **R B Mehrotra**, Former Judge, High Court, Allahabad, 12 Sep 2007 ❑

Shaheed Niyogi Memorial Lecture 2007:

State Repression in the Era of Globalization

K G Kannabiran

"*We need to say what many of us know in experience that the struggle to learn, to describe, to understand, to educate, is a central and necessary part of our humanity. This struggle is not begun at second hand, after the reality had occurred. It is, in itself, a major way in which reality is continually formed and not changed. What we call society is not only a net work of political arrangements, but also a process of communication and learning."*

These words of Raymond Williams come to ones mind when we think of the approach of Shankar Guha Niyogi to organizing the unorganized workers. The union activities commenced by Shankar Guha Niyogi in the backward Chhattisgarh area were basically structured by his experience and from the beginning a learning process. He did not approach trade unionism as an avocation. But a continuous learning and teaching process. He took up the challenge of organizing the unorganized workers who had no experience of what collective strength can achieve and the bargaining capacity that flows out of the collective strength. He had to contend with the emerging corporate tigers like, Moolchand Shah and family and the Khaitans who had not made the transition from status to contract. They dealt with labour as the landlord would with his people in his fiefdom. Their running a capitalist enterprise did not make any difference. Niyogi had to perform the twin tasks of liberating the workmen from the feudal fetters and telling the employers that workers are freemen who had individually and collectively entered into contract, which imposed certain obligations including recognition of the Union of workers as the chief negotiator on behalf of the workmen. He asserted that a workman is a workman whether he is permanent, temporary, *badli,* casual or engaged on contract labour. His labour forms part of the value of the commodity he produced and this value he possesses is his life and therefore needs protection. He understood the entire legal system as regulating employer-labour relationship and that these laws should inform the contract between labour and management, and he also understood the job of a leader of the working class to enforce this law regulated contract. This very legitimate struggle for the workers of Moolchand Shah led to his murder. This they did after trying every illegitimate method available. They even consulted a management consultant who studied Niyogi as a person and advised him as to how he should be dealt with. When he waged the wage-struggles before the few factories Moolchand Shah have by Dharnas before the factory gates he was plagued with injunction orders from the lowest grade civil judges in the area for the consultants said that would keep him busy running from court to court. As per the advice of the consultant tarnishing his reputation in a big way was tried. But Niyogi was a man of impeccable integrity. All the industrial disputes he raised were declared incapable of reconciliation not because Niyogi was adamant and unyielding but because the employers never made their appearance in the conciliation proceedings. This has been the pattern of defiance of all labour laws that translated the fundamental obligations of the State set out in Part IV of the Constitution into enactments creating legal rights to the workmen, set up tribunals to adjudicate issues between the workers and employers. The latter always defied complying with these laws and, in fact, defied these laws by converting courts into law-and-order outposts and as obstructive devices to settlements and industrial peace. Niyogi was shot because he was insurgently operating these laws and the management found him a major obstacle for their emergence as a corporate tiger.

By the time Niyogi was killed (September 28, 1991), we had entered the liberalization phase. We were already talking the language of classical economics. We have entered the thicket political and economic contradictions. We have multinational corporations in the consumption fields as well. We also entered the era of the Terrorist. We have a Development model that does not concern itself with human development. The social and economic philosophy expounded by the Constitution is concerned with Distributive Justice; the Constitutional Statement of Human Development is explicitly spelt out in the Preamble; these should inform our understanding of Development.

The Constitution came after the Great Depression and the Second World War, as was the case in most colonial countries. Between the Great Depression and the end of the Second World War there was lot of rethinking done by Western Economists on how to save the capitalist system from Adam Smith' economics and the congenital periodic crisis it engenders. John Maynard Keynes found that this crisis could be avoided by placing in the hands of the people enough purchasing power which will fuel effective demand and which, in turn, will lead to an increase in employment. It was the result of this theorizing that led to the concept of a mixed

economy where the State took on the role of safeguarding the economic system from collapse. The economic perspective of the classical and the Keynesian period never paid any attention to distribution, Planning the economy and the erection of large public sector undertakings were opted to prevent large-scale unemployment. But under the Constitution it became mandatory to promote substantive equality among the people of the country who were no longer subjects but have become citizens, that is to say people in this country have become empowered for the first time in history to elect their own governments and to entrust to them through governance the task of enforcing the Constitutional mandate. Our mixed economy had a content of distributive justice, as our efforts were to achieve a Socialist Pattern of Society. Thus from the time we secured Independence and after the Constitution came into force there have been development programmes in the form of Five-Year Plans, National Industrial Policy and by legislation to ensure distributive justice. By law we liquidated the feudal structure, like the *zamindaris* etc. The First decade of the Constitution covering two Five-Year Plans was very encouraging. The achievement of the plans in the fields of agriculture, irrigation, power generation, transport, railways and highways was more than just satisfactory. The emphasis during the First Five-Year Plan period was economic stability and elimination of shortage of food, and acquisition of basic resources. The Second Five-Year Plan period emphasized expanding the industrialization programme to strengthen the capital base. Investment, agricultural and industrial production indices registered increases and everything appeared to be satisfactory and such condition ensured a measure of political stability. About eleven cases involving land reforms of the period were brought before the Court during this decade and except two in the years 1952 and 1953, in other cases was any provision invalidated by the Court.

The decade 1960 -1970 was a period of crisis for the country. The Third Five-Year Plan period was beset with crisis. The India-China War drove all available resources towards defense expenditure at the cost of development. Food production plummeted to 74 million tons from 88 million tons in 1964-65; and there was acute shortage of raw materials. Nehru, as one writer called him, the India's biggest fixed asset died in 1964. Relationships with Pakistan were none too good. The Third Five-Year Plan failed and the economy lost its equilibrium. The working of the planned economy, Mahalanobis Committee (1964) pointed out, partly helped the growth of economic power of big business in India. During this period there were diversions of resources to the privileged classes. At the political level, the deterioration in governance was visible. There was a struggle for power with in the Congress and ultimately the populists led by Indira Gandhi won. The Communist Party of India by 1968 split into four and the fourth split into a few more. But what is important is the battle for hegemony over India was on when Emergency in 1975 was imposed. The class that benefited by her regime was the enemy that was fighting against her in courts to defeat her populist politics out side. Comrade Nagi Reddy resigned his membership to the Legislative Assembly and turned revolutionary along with quite a few comrades and all of them barring those that were killed in encounters were prosecuted under various conspiracy cases. The popular discontent was taken notice of by the Naxalites who attempted to give a revolutionary edge to the discontent.

After the collapse of the Communist systems the world over the revolutionary and other Marxist movements received a set back. Finance capital and all the institutions, which represent finance capital, and Western capitalist countries, have come out openly to control economies in a big way. It is in this context that all the developing countries are asked to liberalize their economic frontiers and provide untrammeled access to global economic forces. After the Second World War capitalism doesn't come to us by Imperial conquests. The East India Company thought it was the White man's burden to civilize us and the West now comes to set governance of countries in democratic mode, even if these efforts result in a regular war or war-like operations. Such hegemony is also set up by Institutions shaped in Breton Woods or by institutions based on those principles. They knew that unexpurgated capitalism will spell disaster to the people and that it nearly took seven to eight decades to put out the specter that haunted Europe and some of them are dimly aware that this time it may haunt the world. Now they want to rule the world through Financial Institutions where these developed countries own the majority stock. They are run on the principle: One Dollar- One Vote! You need to pass a substantial resolution to effect a change in the functioning of these institutions, one would require 85% majority, and even then there cannot be radical change in their functioning. These are the effective tools with which the rich nations control the world. We know out of our own experience that arguing and reasoning with the World Bank could not reduce even by an inch the height of the Narmada Dam. As George Mnonbiot puts it

"It is hard to think of any issue of national importance which now stops at the national frontier. The World Trade Organization has extended its mandate so far that its decisions could come to govern everything from food labeling to railway timetables The World Bank and IMF have penetrated the poorer nations to the point at which they are, in some cases, telling their schools which brand of computers they should buy. The decisions being made by the Security Council will help to determine whether we live in peace or are perpetually subject to terrorism and war. Climate change, financial speculation, debt, deregulation reach us wherever we live. As everything has been globalize, except democracy the rulers of the world go about their business without reference to ourselves. Unsurprisingly, therefore, many - perhaps most - of the decisions they make conflict with the majority and reflect those of the dominant minority."

The new liberalization policies threw overboard Keynes along with Marx. Politics of liberalization does not concern itself with distribution and distributive justice. Nor do issues of ethics or morality govern it. When our political leaders and specialists now talk about development they only high light the narrower views of development, very often identifying or equating development with growth of gross national product, registering of small increases in the per capita incomes, or industrialization or the achievements in the high-tech field or beautification of urban and metropolitan areas or an increase of space for fast moving automobiles in state and national highways, or expansion of tourist areas and five star hotels. This cannot be described as development.

Globalization has not repealed the Indian Constitution and therefore our economic policies will have to be informed by the Constitutional value system. Globalization can not annual the Covenants on Civil and Political Rights, Economic Cultural and Social Rights, CEDAW, Convention against Torture, Declaration on the Right to Development among a host of other Humanitarian Conventions and Covenants read in conjunction with the countries' Constitution will have to be read as Human Development. It should be, as Amartya Sen points out, a process of expanding the real freedoms that people enjoy. He points out *"Viewing Development in terms of expanding substantive freedoms direct attention to the ends that make development important, rather than merely to some of the means that* inter alia*, play a prominent part in the process."*

Along with a broad perspective indigenous iniquities have to be taken into account. The Indian Constitution recognized bonded labour, child labour, untouchability and the consequent recognition of the traditional social oppression of not only the Scheduled Castes and the Tribes in the backward tracts called Scheduled areas. Access to market and social and economic opportunities can never be free and any Development ignoring these factors would only mean more affluent upper castes and the rise of religious fundamentalism leading to aggressive restraint on the Backward and Scheduled castes, the Scheduled Tribes and the Minorities from competing for a right to life by threat and violence. The social deprivation that takes place consequent to the iniquitous liberal reforms in a plural society where the *dalit* and minority communities are not allowed the economic space to grow and compete on equal terms with the majority community in any sphere has witnessed growth of terrorist violence and violence against dalits. Successively in two minority communities propensity to terrorism has been on display and to dismiss terrorism, as mere meaningless violence is to ignore the nature and character of the helplessness such deprivation generates within these communities, towards the majority community.

The UPA government never introduced an act to contain and counter terrorism and repeal the ACT, which was what was usually done. Such a course would have invited vociferous adverse criticism and the alliance would have cut a sorry figure. Instead it copied Chapter II to VI of the POTA into Chapter IV to VII of the Unlawful Activities (Prevention) Act 1967 by amending the long title by adding after the word "association" the words "for dealing with terrorist activities". By plagiarizing POTA they gain the advantage avoiding litigation about the constitutional validity of the law.

Along with this Mr Advani is feeling the absence of effective terrorist laws to counter the onslaught of terrorists. He accused the UPA of hastily repealing the POTA of which he was the architect. There was an election promise that POTA will be repealed by the UPA, just as earlier there was an election promise and TADA was repealed. BJP enacted POTA and said it has a human face. UPA enacted a law to repeal POTA by a separate enactment. There was even a saving clause providing for review of all pending cases under POTA.

This statute and the ones that preceded it are not the result of an independent exercise of legislative power of the Indian Parliament. The war on terror officially commenced on 9-12-94 when the United Nations General Assembly passed Resolution 49/60 delineating the measures to eliminate all forms of Terrorism. The Resolution recalled the Principles of International Law concerning Friendly Relations and Cooperation in accordance with

the Charter of the United Nations, and goes on to refer to various other Resolutions including International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The reference to the last two Covenants is to assure the World Public opinion that rights ensured by these Covenants will not be trampled upon and that this War on Terror shall not impede the forces of social change. The Resolution containing this solemn declaration was followed by twelve clauses divided into three sections. One of the clauses calls upon the member states "to fulfill obligations under the Charter of the U N and other provisions of International law" with respect to combating international terrorism and are urged to take effective and resolute measures in accordance with **relevant provisions of International law and international standards of human rights for the speedy and final elimination of international terrorism.** The resolution itself is very cleverly worded. It refers to the international standard and not according to the Covenants or the clauses in the Declaration of Human Rights. If we work out among various member countries the average respect for human rights the result will haunt us with pessimism and the prospect of a better world will appear very bleak.

Unfortunately the Government tried to suppress them as terrorists- the Sikh Community under the Terrorist and Destructive Activities (Prevention) Act and the Muslim Community under the POTA and the Unlawful Activities (Prevention) Act 1967 in which all the provisions dealing with terrorism in POTA were incorporated by a later Amendment to the Act after POTA was repealed The Organizations that are banned are the organizations of persons belonging to two minority communities. The unequal opportunities existing in the society was the reason for the non-emergence of an entrepreneurial class from these communities.

In addition to these the disproportionate growth of the Mafia is a major hindrance to Development. The problem is compounded by the Mafia entering governance and in all major developmental projects they are present and generally in connivance with the Ruling Clique. The Mafia emerges in Societies where there is a breakdown of the legal system or it is weak and ineffective. The Mafia who were originally the vote-gatherers for the politicians has now become the people's representatives. They enforce contracts, settle disputes and also provide hireling criminals to avenge unrequited crime. It has become the administrative practice to employ their services to annihilate militant extremism and the human rights activists. The distortions pointed out have to be eliminated if Development is to have any meaning. What we have now is consumer-democracy and not a parliamentary democracy.

"*Development has to be more concerned with enhancing the lives we lead and the freedoms we enjoy. Expanding the freedoms that we have reason to value not only makes life richer and more unfettered, but allows us to be fuller social persons, exercising our own volitions and interacting with - and influencing - the world in which we live."* (Amartya Sen)

To fight for freedom which enhances the living content and adds to human dignity needs tenacious struggle, the quality of tenacious struggle Niyogi carried on with the Moolchands, moving away from leftist cliches and jargon whether leftist or NGO, for the repression one has to face today has to cover a large and expanded spectrum of human rights. The environmental degradation we are suffering with no effective state regulation, the spoliation of earths resources the poisoning earth, water and air by the evolving global order, the acknowledged exponentially growing disparity between the affluent and the poor, and the policies these trends sponsor and support all are forms of repressions that need recognition by human rights activists as State Repressions, and as assault on our liberties by political activists and these need to be integrated as a collective struggle not only to be sectorally waged but also as a cooperative and collective struggle of all people.

A World or an Asian Social Forum may recognize the dangers ahead of the world people but can not without organizing for a determined struggle, conceptualizing the struggle and the campaign and also providing a vision of the structures that are to replace the present structures of dominance.

The UNDP Human Development Report 2003 sets out the stupendous tasks we have ahead of us. Around 25 million Americans riches are equivalent to two billion of the worlds poorest. Around 13 million children died on account of diarrhea in the one year ending 2003, every year over have a million women, one for every minute a day in pregnancy and child birth. These collective human tragedies and deaths are the crimes of the ideology of globalization just as much as starvation deaths and farmer's suicides in many parts of this country. These statistics should shame us for not reacting in righteous indignation. This shame should drive us to unite transcending our ideologies organizational loyalties and formulate a broad vision to work for a new order. Castro asserts that the world needs a new order. There is a need for a universal just democratic order. *"There is an order coming, one that can be seen coming at full speed unstoppable - it is the neo-liberalization going global. We have to start thinking about an order of a different kind and in the meantime denounce and struggle."* – 8 September 2007, Delhi ❑

On the Accountability of Elected Representatives:

A Note on the Attack on Tasleema Nasreen

K G Kannabiran & Kalpana Kannabiran

The attack on Tasleema Nasreen on 9th August 2007 in Hyderabad was greeted with shock and disbelief. The attack was widely condemned by a range of groups in Hyderabad. Asmita and Women's World organized a public meeting on 11 August at the Potti Sriramulu Telugu University where approximately 25 speakers – mostly creative writers, journalists and human rights activists – unequivocally condemned the attack and resolved to work towards petitioning the High Court for the removal of the legislators guilty of leading the attack.[1]

The facts are as follows. The Centre for Inquiry, a rationalist organization led by Mr Innaiah, organized a book release function for the Telugu translation of the book by Tasleema Nasreen, *Shodh* on Thursday, 9 August 2007 at 11.00 am at Press Club Khairatabad. It was a small function with an invited audience. Mr Innaiah, Chairperson of the Citizens for Inquiry, and Volga, award winning Telugu writer and poet, were present on the dais during the meeting. Tasleema Nasreen came to Hyderabad for the function.

Around 12 noon, after the meeting drew to a close, a crowd of about 20-30 persons from the All India Majlis Ittehadul Muslimeen began to crowd around the dais hurling everything they could find on Tasleema Nasreen. This assault was aggravated by unrestrained use of the worst kind of verbal abuse, all of which was captured on camera by the electronic media that was present there and telecast several times over. Legislator Akbaruddin Owaisi and former parliamentarian Sultan Salahuddin Owaisi went on camera after Tasleema was escorted to the airport justifying the violent attack and her forced departure from Hyderabad.

Electronic and photographic records of the incident as well as accounts by eyewitnesses point to the fact that the conduct of the four legislators and the members of the two political parties came within the meaning of offences defined in the Indian Penal Code namely Sections 147 and 18 (rioting with deadly weapons), 323 (voluntarily causing hurt), 427 (mischief causing damage to property), 452 (trespass after preparation for hurt, assault and wrongful restraint), and 506 (criminal intimidation) of Indian Penal Code read with Section 149 of Criminal Procedure Code. Sections 147, 148 and 506 of IPC are non-bail able offences. The police have also booked cases under these sections and the legislators were produced before the XIV Metropolitan Magistrate before being released on the same day.

Diversity, pluralism and tolerance are the major premise of our Constitution and the preconditions to national integrity in a plural society like ours. The only medium through which ideas of diversity and dissent may be expressed in a democratic society is through the fundamental right to free speech and expression. In Justice Jeevan Reddy's words: "For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them." (*Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal and Another*; 1995 AIR (SC) 1236) Any attempt to abridge this right to expression through recourse to collective violence is an assault on national integrity.

In the recent years we have witnessed a series of attacks by private groups – mostly belonging to various parties -- carrying out assaults on academicians, writers, artists, film makers, actors and journalists. A few years ago, a historian was faulted for not writing a "correct" history of Shivaji, leading to the attack on the reputed Ranade Library in Pune by Shiv Sainiks, and the destruction of valuable manuscripts. Christian representatives went on a representation to Mr Rajiv Gandhi when he was Prime Minister and put pressure on him to ban Nikos Kazantzakis' novel, *The Last Temptation of Christ*. More recently the same community went on a rampage against the screening of *Da Vinci Code*. In Gujarat the *Vishwa Hindu Parishad* went on a rampage against the art exhibition the MS University, Baroda destroying art works of a student, Chandrashekhar. Earlier paintings by noted artist MF Hussain met the same fate. Filmmaker Deepa Mehta was prevented from shooting her film *Water*, a testimony on the condition on widows in Varanasi, and was forced to shoot it at a secret location in Sri Lanka. Film actors Khushboo and Suhasini, were attacked in Tamil Nadu, for speaking on the need for sex education. In August 2007, Shiv Sainiks attacked *Outlook* a reputed weekly for including Bal Thackeray, among others in the list of "Rogues". In all these incidents we have found political parties and political leaders have played a key role in fuelling these attacks. Elected representatives who resort to use of collective violence must be debarred from holding public

office, mere prosecution for crimes committed being an insufficient remedy.

Against this background, this incident raises several very serious concerns for human dignity, the right of persons to life and liberty, freedom of movement and free speech, besides raising questions related to the conduct of elected representatives arising from their unrestrained use of hate speech, physical assault and death threats. Assaulting a foreign national with a valid visa and forcing her to leave the city is against all norms of democratic functioning and international relations besides being directly in violation of the protections available to foreigners under Article 21 of the Constitution of India especially as laid down in *Chandrima Das* (2000 AIR(SC) 988). The affirmation of the rights to life, personal liberty, freedom of movement and freedom of expression have been well enunciated in the Indian Constitution and protected by courts over several years.

A handful of persons to whatever community they belong decide what a writer or a poet should write about, what subjects should not be the subject matter of painting or writing., The first question that should engage our attention in these and other such events is the criminal intimidation against the artists or writers. Whether it happened to the historian of Shivaji or MF Hussein, Khushbu or Tasleema, these will have to be judged in terms of the liberal values the Constitution incorporates. By the Constitution we have entrusted to the State limited powers, the transgression of which enables us to act politically and also legally. Against arbitrary actions by the State we can by using our rights to free speech, freedom of association and assembly act politically against the State and approach the Court to prevent arbitrariness as also in the process have our rights properly defined. Thus against arbitrary actions of the State for violations of right to free speech extending to right to life we can resort to political and legal redress. It is really yet another matter as to how effective are these avenues of redress.

What should be done when sitting Members of the Legislature of the State or the Parliament direct a mob to maul a writer an artist or any other person what steps are open to check such obnoxious conduct for the citizens. One is, to accept it as ones fate and mutter to ourselves and the equally disgusted neighbour' people get the representatives they deserve' The more constructive way of looking at these problems is to take measures to rebuild institutions. The courts may be persuaded to drop its flabby liberal rhetoric and to firm up the jurisprudence on free speech and other right related concepts. Courts which innovated the onward march of the executive in decade of the seventies of the last century the Doctrine of Prospective Over ruling and the concept of Basic Structure of the Constitution can now on this issue which is confronting the country's people. How shall we deal with the political mafia or bandits who get elected to representative institutions at various levels in the State?

In this connection the steps taken to experiment in courts by Asmita Collective and Women's World India is quite interesting and worth debating. These steps if successful, has the possibility of moulding a political culture of disciplining the conduct of elected representatives. They filed a petition in the High Court of Andhra Pradesh under Article 226 to issue a *writ of quo warranto* seeking the removal of the four legislators and the cancellation of the registration of the AIMIM party by the Election Commission.

The primary issue raised in the petition is the public conduct of elected representatives: Members of the AP Legislative Assembly. Election law in India prescribes procedure for disqualification of candidates during elections in the Representation of People Act, 1951 and of elected members on five specifically stated grounds under Article 191 and under Schedule X of the Constitution. The Representation of People Act, 1951 under Section 8 prescribes grounds for disqualification of persons convicted for certain offences from membership of Parliament and state legislature. Schedule X of the Constitution details the procedure for disqualification on grounds of defection. Article 191 of the Constitution of India also sets out the ground for disqualification of members, but the court has also held that Article 191 does not exhaust the grounds of disqualification of members. Public misdemeanour, which includes rioting, criminal intimidation with deadly weapons and death threats do not find mention as explicit grounds of disqualification, but can be argued into the framework of accountability in wider terms.

There is generally no code of conduct prescribed for elected representatives *during their term of office*. The only regulation is the oath taken by them before entering office The prescribed oath for the legislator is found in the Third Schedule and we are of the view that weight should be attached to the oath taken. Legislators solemnly affirm true faith and allegiance to Constitution and undertake to work for the integrity of the nation. Therefore their conduct, while in office, should abide by the oath. The only punishment for perjury of the Constitutional oath in our view is immediate loss of office.

The Supreme Court has observed that "The trite saying that

'democracy is for the people, of the people and by the people' has to be remembered for ever. In a democratic republic, it is the will of the people that is paramount and becomes the basis of the authority of the Government. The will is expressed in periodic elections based on universal adult suffrage… The moment they put in papers for contesting the election, they are subjected to public gaze and public scrutiny". (Para 15, 2003 AIR (SC) 2363) By this token elected representatives become the link between the government and the people and are accountable to the people.

In the event of such representatives failing the test of good behaviour during their term the fact of public scrutiny and accountability must lead to forfeiture of office. The law as it stands does not specify procedure to enforce accountability during the incumbent's tenure in elected office, particularly with respect to public misbehaviour. Given this lacuna in the law, (the Constitution Makers never imagined that the elected representative would emerge from the mafia ranks!) we felt it was necessary to petition the court to lay down the law constructively in this particular case, which will also serve as an important precedent for future recourse to remedy should the unfortunate need arise.

In the absence of clearly prescribed procedure on this point, in our view the following grounds might be relevant.

The right to vote has been recognized as a fundamental right under Article 19 (1) of the Constitution. The Hon'ble Supreme Court in *People's Union for Civil Liberties (PUCL) & another Petitioners with Lok Satta and others and Association For Democratic Reforms v Union of India and another* (2003 AIR (SC) 2363), delineated this right as follows:

"The right to vote at the elections to the House of People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting… is a facet of the fundamental right enshrined in Article 19 (1) (a)".

Every fundamental right has implicit in it a remedy. Implicit in the right to vote, by that token, is the remedy of recall of elected representatives. The conditions of recall do not necessarily have to be confined to the grounds of disqualification stated in the Constitution or the Representation of People Act, 1951. Recall is a remedy that invokes not mere disqualification but forfeiture of office for not satisfying the grounds for continuance, of which failing the test of public scrutiny is the most important.

English law provided a proceeding to forfeit the office by a Writ of *Scire Facias* (which was replaced by *quo warranto*), an established medium for the determination that an office held 'during good behaviour' was terminated by misbehaviour: "When the Framers employed 'good behaviour', a common law term of ascertainable meaning, with no indication that they were employing it in a new and different sense, it might be presumed that they implicitly adopted the judicial enforcement machinery that traditionally went with it". (Raoul Berger*, Impeachment: Constitutional Problems,* p. 131)

Rioting with deadly weapons, voluntarily causing hurt, mischief causing damage to property, trespass after preparation for hurt, assault and wrongful restraint and criminal intimidation come within the meaning of grave misbehaviour and constitute failure of the public scrutiny test. Since the claim to enjoyment of public office **with undiminished perquisites and privileges** is on the implicit condition of good behaviour, we have sought the issue of the writ of *Quo Warranto* on grounds that the claim to office has now been forfeited through the aforementioned acts of misdemeanour.

The presumption in the holding of elected office is that the tenure is one that is limited by good behaviour, meaning thereby that whatever the period stipulated in law, it does also imply that the office can be forfeited on misbehavior whether the term is over or not, and the subsequent criminal processes following such forfeiture . That there is no express provision for termination should not become an insurmountable obstacle because the law has recognized time and again that where the end is required the means are authorized, even if not expressly stated. It is also tried that the disqualifications specified are not exhaustive. To quote the classic expression of Marshall, CJ: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." (Mc Culloch v Maryland, 4 Wheat (17 U.S.) 316, 421(1819)).

The oath stipulated for the Members of the Legislature shows that he is expected owe total allegiance to constitution and abide by it and the laws. When in 1963 the Parliament brought forward the Sixteenth Amendment it introduced amendments to the sub clauses that it would be reasonable restriction to legislate on the freedoms if it is made "in the interests of the sovereignty and integrity of India. They also brought about a corresponding Article 84 and Article 173 and the Third Schedule to the Constitution and the oath as amended read" solemnly affirm and bear true faith and allegiance to the Constitution as by law established **and that I will uphold the sovereignty and integrity of India** The Constitution

never permitted any entry to religious politics of any variety. The conduct of Bal Thackeray and the other four MLAs in Hyderabad have suffered a moral forfeiture and we are awaiting decision forfeiture by courts.

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[1]*Asmita Resource Centre For Women is an organization that is committed to the securing of equal rights for women under the constitutional scheme and an organization that has campaigned for the past sixteen years on women's right to free speech and their right against censorship by state and private actors. As part of its work, Asmita has provided counseling and legal aid to women victims of violence; has provided training to organizations in rural areas in Andhra on designing and implementing programmes that are gender sensitive; has supported networks of persons with disabilities in the state; and has organized women writers and published anthologies of creative writing by women, Dalit and Muslim writers, and has initiated sustained campaigns on secularism and diversity.*

Women's World [India] is part of a worldwide network of women writers that works to counter censorship and protects the right to free speech. Formally launched in 2003 Women's World [India] has more than 200 members and was one of the first to protest against the smear campaign against actor Khushboo in Tamil Nadu. It also protested against the ban by the West Bengal Government on Tasleema Nasreen's autobiography and offered Tasleema protection and support after the initial fatwa was taken up by Women's World [International]. Writers like Nabaneeta Dev Sen, Jeelani Bano, Mridula Garg, Rukmini Bhaya Nair, Abburi Chhaya Devi are members of the network. ❑

(from page 1…) Similarly, legislators who are paid daily allowance for attending the Session, at least for the good part of the day, but because of their own disorderly conduct thus forcing the Speaker to adjourn the House against his own violation can not in all fairness ask to be paid his daily allowance which would mean rewarding him for his misconduct. As Lord Denning in one of his judgements (1980), (no doubt dealing with the workmen but the principles would be applicable to legislators also) said: "I ask: is a man to be entitled to the wages for his work when he, with others, is dong his best to make it useless? Surely not. Wages are to be paid for services rendered, not for producing deliberate chaos. "The Supreme Court has accepted this interpretation of law and has held that "it is not only permissible for the employer to deduct wages for the hours or the days for which the employees are absent from duty but in cases such as the present, it is permissible to deduct wages for the whole day even if the absence is for a few hours." The legislators can not complain that why everyone should suffer because of disorderly conduct of a few delinquents. But a sobering reflection will remind them that legislators have passed laws imposing collective fine in a locality because of a few unsocial elements when admittedly majority of residents are law abiding. Courts have upheld such legislation the interest of general public good. Surely, legislators should not cavil at applying the same standard to themselves when they electorally claim that they are the true servants of the public.

A question can be asked that even if there is uncertainty about the law why at least the government party and certainly the Ministers who would be against the adjournment of the House, can not resort to the Gandhian method of self sacrifice especially when they are celebrating the centenary of Gandhian *Satyagrah*. If the government party or the Ministers were to announce that they will forego the daily allowance for the days that the House is suspended for disorderly conduct by opposition it would set a very high principled precedent and will shame the opposition into following either their example or to so behave that whatever the provocation, the House would not be adjourned. I may in this connection note the precedent of Mr. Kuldip Nayar, the eminent journalist and a nominated *Rajya Sabha* member (Retired) who during his term had written to the Chairman that he will not be drawing his daily allowance when the House is adjourned because of disorderly conduct. This request of his was accepted and no allowance was paid to him for those days. Thus a voluntary renunciation as a sort of self repentance and as tribute to the memory of the Father of the Nation should at least be practiced by the Ministers and the government party which claims to be inheritors of the Gandhian values.

I have no doubt that in such circumstances opposition too will also fall in line to avoid being called hypocrites, as Dr Ram Manohar Lohia used to describe those politicians whose words did not match their deeds.

There is one other alternative that I am suggesting, if the Speaker with his noble determination refuses to adjourn the House even if there is disorderly conduct and thus no work can be done yet automatically the government party will have to remain the House. If the opposition in those circumstances chooses to walk out it would invite the ridicule and the anger of the electorate. This moral force will then shame the legislators both in government and the opposition to calm down. I know my suggestions look unreal but what is happening in our legislatures is so embarrassing that it calls for different and innovative methodology. ❑

Equal Opportunity Commission – Is It Desirable?

Dr Asghar Ali Engineer

The Sachar Committee Report also recommends setting up of an equal opportunity commission to redress many of grievances minority community has. The Report says, "The Committee recommends that an Equal opportunity Commission (EOC) should be constituted to look into the grievances of the deprived groups."

Explaining the need for such a commission the Report says, "It is wrong to assume that there is an inevitable conflict between the interests of majority and minority communities in the country. This is flawed reasoning and assumption." It further continues, "Deprivation, poverty and discrimination may exist among all SRCs socio-religious categories, although in different proportions. But the fact of belonging to a minority community has, it cannot be denied, an in-built sensitivity to discrimination. This sensitivity is natural and may exist among religious minorities in any country."

The Report, therefore, goes on to say, recognizing this reality is not pandering to the minorities, nor sniping at the majority. This recognition is only an acceptance of reality…It is in that context that the Committee recommends that an Equal Opportunity Commission (EOC) should be constituted by the government to look into the grievances of the deprived groups."

The Sachar Committee derives its model from U.K. which has Race Relations Act, 1976. "While providing a redressal mechanism for different types of discrimination, this will give a further re-assurance to the minorities that any unfair action against them will invite vigilance of law."

The Sachar Committee Report, however, does not go into details of nature and structure of EOC. It has left it to be worked out by the government and its machinery. The Committee has also not thrown any light as to how will it differ from National Minorities Commission (NMC) in function as well as in structure. It is also not clear whether both i.e. EOC and NMC will exist together.

We can meanwhile make some suggestions in this respect. NMC, everyone knows, is hardly effective and has not succeeded in achieving its purpose. Its reports are not even tabled in Parliament and these reports are in no way binding to the Government of India. The people do not even come to know when the NMC submitted its report and what are its contents. Its reports are not even properly publicized.

Equal Opportunity Commission, on the other hand, as its name itself indicates can be very effective legal instrument to ensure that minorities should be ensured equal opportunities along with the majority in the country. In democracy all citizens, irrespective of their caste or creed or sex should have equal opportunities and our Constitution clearly provides for equal opportunities but it has never been observed in practice.

Despite constitutional provisions blatant discrimination has been practiced against minorities. And NMC is also toothless tiger and is unable to check these discriminatory practices in society. And in order for minorities to have sense of fair play and be sure of inclusiveness, EOC is badly needed indeed.

With greater literacy and awareness minorities are becoming more and more demanding and assertive of their rights. No democratically elected government can be insensitive to these demands. The universities are also starting new departments on exclusion and inclusion so that students can be sensitized to neglect of minorities and lower castes. This will further enhance awareness among minorities of being excluded from developmental processes.

India's fast growing economy is throwing up great deal of opportunities for jobs and entrepreneurship and if certain sections of population feels left out it can give rise to acute social tensions. These tensions can be smoothened out only if the aggrieved people have legal tool available to them to get their grievances redressed. It would have been much better if Sachar Committee had spelled out as to what could be structure of the EOC. But we can say it would be an effective legal tool available to aggrieved minority person or persons for redressal of any grievance.

Besides UK's Race Relations Act several other countries also have such legal instruments available like the USA. The US has Equal Employment Opportunity Commission. If it is proved that a minority person has been discriminated against in employment, he/she can complain and an investigation will be ordered and if discrimination is proved, he/she will be awarded due compensation.

It will be interesting to quote from Section 10 of EEOC. The African Americans, Hispaniacs and others are paid less than what white persons get for the same job. Median earnings for African Americans working at full time jobs were 75.9% of the medians for whites. The median earnings of Hispaniacs were 65.9% of the medians for whites and 86.8% of the median African Americans. There is also evidence that median earnings for individuals with disabilities are significantly lower

than median earnings for individuals without disabilities.

Thus it can be seen that there is concrete measurement of discrimination in employment which the equal opportunity in employment commission is supposed to redress. Similarly if a particular community or caste is left out in employment opportunities legal redressal could be ensured through such commissions. It is a well-known fact that minorities are being discriminated against in employment of all categories from highest to the lowest.

It is also a known fact that Muslims and lower castes are not able to find accommodation in housing societies in big cities like Mumbai. Mumbai has been ghettoized and polarised in terms of 'castes and communities'. Muslims find it nearly impossible to find accommodation in upper caste Hindu localities.

USA has a law to that effect too. The sec. 805. {42 U.S.C. 3605} Discrimination in Residential Real Estate-Related Transactions. (a) it shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such transaction, or in the terms or conditions, because of race, color, religion, sex, handicap, familial status, or national origin; (b) It defines "residential real estate-related transaction which includes making or purchasing loans or providing other financial assistance for purchasing, improving, repairing, or maintaining a dwelling or secured by residential real estate.

India is far from such legislations. It is a well-known fact that Muslims and Dalits find it extremely difficult to secure bank loans or loans from any housing agencies. They are not considered as credit worthy at all and authorities demand collaterals as guarantee though they know the economically weaker sections cannot provide such collaterals. Though Sachar Committee has recommended that Muslims be made available bank loans but even Reserve Bank and State Banks are resisting such demands.

Denmark too which has been recently in news for notorious cartoon controversy, has provisions for eradication of religion or race based discriminations. The Board for Ethnic Equality monitors Danish legislation, and the Documentation and Advisory Center on Racial Discrimination assists individual victims of racial and religious discrimination.

The Danish Parliament approved the first prohibition against hate speech in 1939. However, the wording was changed in 1971 in connection to the ratification of the UN Convention on the Elimination of All forms of Racial Discrimination (ICERD). Also, in 1971, the Act on Racial Discrimination was passed by Parliament, stating that a person commits a punishable offence if, while performing occupational or non-profit activities, he refuses to serve person the same conditions as others, due to that persons' race, color national or ethnic origin, or creed. The maximum penalty was specified as being a fine or simple detention or imprisonment for up to six months.

European countries are facing problems of racial or religious discrimination as people of Asia and Africa have been migrating to these countries in post-colonial era and they are legislating to ward off such discriminations. In India it is not the question of migration from other countries but minorities of Indian origin which have been living for centuries along with the majority community.

In a democracy such discriminatory practices cannot go on without creating serious political problems. The very fact that government of India had to appoint the Sachar Committee to go into problems of Muslims proves this. But it should not remain mere elections gimmick but its recommendation should be concretely implemented to give substantial relief to minority community.

Of all the recommendations constitution of EOC seems to be most urgent with proper legal powers for the commission so that all discriminatory practices against Muslims get minimized. ❑

Press Release: Dantewara Killings

An Appeal by the PUCL on Brutal Killings

The National President of the People's Union for Civil Liberties (PUCL) has issued the following appeal in the context of recent killings in the State:

"The news reported in the press about killings of 12 policemen on 30th August, 2007 at Errabore Pahar in Beejapur of Dantewara district of Chhattisgarh and the gouging of the eyes of three policemen post-mortem are abominable brutal acts deserving the outright condemnation. It is not what revolutionary violence is all about. We do think that it has become Police versus Maoists, and in this fight citizens have become silent spectators. And, if silence at all is to be broken, it is in such situations. This type of brutal situation does call for citizen's intervention, and we appeal to the people not be silent to such brutality either by the State or by the Maoists.

Enlightened people in the state should start thinking of methods of intervention to bring both parties to sense. Even a revolutionary movement which always moves in public sphere is also accountable and should not behave in a reckless and irresponsible manner.

We appeal to the Salwa Judum, Chhattisgarh State and Maoists that whatever their politics may be, it should stop such brutalities and inhuman behaviour." – **K G Kannabiran**, President, National PUCL; **Rajendra K Sail**, President, Chhattisgarh PUCL ❑

Consumer Rights — And Wrongs Against Them

Vivek Kumar Choudhary*

(A report based on the research material available in the PUCL Reference Library, Delhi)

Aims and Objectives: The report aims to scan various consumer-related cases reported in major newspapers of Delhi (from January 2006 to mid-April 2007) to find out the trends (viz. the kinds of consumer rights violation) that would follow out of them. The report also includes Consumer Check Points at appropriate places which may be explanatory or directional in nature and go into the intricacies of consumer rights. These are meant to act as a guide to the reader.

It is generally believed that a consumer is a person who only 'buys' something from a shop. But what follows from the Section 2(d) of the Consumer Protection Act, 1986, is that a consumer is a person who 'buys something' or hires any 'service' from another person. The rights which are possessed by a consumer against such contracts are called consumer rights, viz., the right to know about the prices and quality, right to bargain, right to get the quantity promised etc.

But, in the present scenario, it is quite evident that a majority of the consumers (66%) are not aware of their consumer rights[1]. It also shows that 82% of consumers are not aware of the Consumer Protection Act; which is enough to show that the consumers are highly vulnerable to getting cheated by the service providers. The analysis of the cases in this paper also brings out the fact that most of the parties who came to courts with their grievances were lawyers.

A Glance at the Year 2006

A total of 28 cases have been reported from Delhi in various newspapers[2], including one criminal case. Further break-up of these cases on the basis of their adjudicatory level is as follows:

Adjudicatory level: No. of cases, District Forum: 9, State Forum: 9, National Forum: 4, Supreme Court: 5, Sessions Court (FIR): 1.

- Out of the above 28 cases, 17 cases (60.71%) were reported against the corporates/private entities. Further break-up of these 17 cases according to the profile of the parties involved in them is as given in the following table:

Telecom Companies: 5, Cola/Whisky Companies: 3, Banks: 3, Hospitals: 2, Landlords: 1, Parking Contractors: 1, Coaching Centres: 1, Builders: 1.

In one case, Tata Tele-services were asked by the Delhi State Forum to pay Rs 7,500 to a consumer for disconnecting the phone connection and not providing certain free services as promised[3]. Earlier also, a fine of Rs 40,000 was imposed on the same company by the District Forum, for issuing false bills to another customer who had already got her services disconnected[4].

Consumer Checkpoint 1: *The District Forum held that the companies can't put the onus for clearing the bills on the customer even in the case of non-receipt of the bill.*

Another communication company Sify was, in a case, asked to pay a total of Rs 8,200 to a consumer for not providing him the speed of internet as promised[5]

In another harrowing incident, a fine of Rs 1.2 lakh was imposed on the soft drink company Pepsi when a customer found some dirt and a condom in its bottles[6]. It must be noted that it happened in the wake of reports in the recent past which suggested that these cola drinks had some amounts of pesticides in them. So, it is quite evident that these multinational companies risk the lives of the people for spinning huge amounts of money.

Consumer Checkpoint 2: *This case went a step ahead for the sake of the consumers when the Forum said that there was no need to produce the sale-receipt if it is not issued in normal day to day transactions.*

In another such case, a fine of the same amount was imposed on Coca-cola when a dead insect was found in their cola bottle[7]. What is worth seriously noting is that this company went on to commit perjury by denying that the brand 'Sprite' was their product.

There has also been a concern in case of banks/financial companies that resort to employing goondas for loan recovery, e.g., when Kotak Mahindra group was indicted in a criminal case when its musclemen robbed a 61 year old woman of her car[8].

In another case of its kind, the country's top medical institute/ hospital AIIMS was asked to pay Rs 2 lakh as compensation to the family of a woman who died because of the negligent angioplasty operation arising out of lack of adequate equipment[9].

Consumer Checkpoint 3: *(a) It was held that even a research institute can be treated as a service-provider; (b) The case also implied that in case of the death of the patient due to negligence of doctors, his legal heirs are entitled to obtain compensation.*

There was another distinct case wherein the Supreme Court gave a clear distinction between the Section 111 and Section 113 of the Transfer of Property Act[10].

Consumer Checkpoint 4: *The Supreme Court made it clear that mere acceptance of rent by the owner of the property after the expiry of the eviction notice would not amount to the waiver of such a notice unless a contrary intention of the owner is proved.*

In a major relief given to the students enrolled in the coaching centers, the Delhi State Consumer Forum held that these institutes can't charge the whole fees in advance by lump sum payment[11].

Consumer Checkpoint 5: *It was held that a student leaving the course mid-way is entitled to obtain the balance fees; and if they don't follow this decision then the erring officials can be sent to jail under the provisions of the Consumer Protection Act.*

In the wake of boom in the real estate sector, the Delhi State Consumer Forum came up with a historic judgment and dismissed the plea of the builders (DLF group) that huge difference in the prices of their plots in a particular area was a business strategy[12].

Consumer Checkpoint 6: *It can be inferred from the judgment that the builders can't charge unrealistically high prices of the property in the same location where other plots were sold by it at comparatively very lower prices.*

Apart from the coca-cola case mentioned above, the only other case of perjury by the service-providers was the Reliance Infocomm case where it had deposed falsely that it had provided new connection to one of its customers when he moved to a new place[13]. Because of this, the National Consumer Commission imposed a heavy fine of Rs 1.67 lakh on it. It is enough to prove how these giant corporates don't shy from lying even before the adjudicatory bodies to assert themselves as innocent.

• The rest of the cases, i.e., 11 (39.29%), were reported against the government bodies, the further break-up of which is as given under:

Postal Department: 3, Municipal Bodies: 2, Hospitals: 1, Electricity Department: 1, Railways: 1, Airlines: 1, Banks: 1, Income-Tax Department: 1.

In one of the cases regarding the Postal Department, a fine of Rs 10,000 was imposed on the General Post Office for not delivering the Speed-Post of a consumer to the required destination. What made the matters worse was that the officials of the Postal Department demanded bribe from the consumer which made this case a unique one among all the cases of the year 2006[14].

In yet another case of its kind, the Supreme Court gave the interpretation to the Section 214 and Section 244 of the Income Tax Act, 1961[15].

Consumer Checkpoint 7: *This case has set a very high-valued precedent when it asked the Income Tax Department to pay the interest on the amount due to the assessee; and even interest on the delayed payment of interest.*

In a revolutionary move, the Delhi State Consumer Forum imposed a fine of Rs 25,000 on the Northern Railway to be paid to one of its passengers who were beaten up by some goons in the train.

Consumer Checkpoint 8: *It was held by the Forum that every person affected by such happening on the course of his journey, would be entitled to claim compensation from the railway department.*

To get a deeper insight into the types of wrongs done against the consumers, the following data has been compiled from all the cases reported in 2006:

Number of Cases Involving: 1. Unsolicited communication to the consumers = 2; 2. Issue of false bills/ non-recognition of paid bills = 3; 3. Use of goondas for loan recovery = 1; 4. False promises to the consumer = 3; 5. Committing of perjury by the service- providers = 2; 6. Demand of bribe by the service- providing officials = 1; 7. Filing of frivolous/ malicious cases by the consumers = 0; 8. Negligent medical operations causing death = 3; 9. Adoption of anti-competitive/ unfair practices = 3

A Glance at the Year 2007 (Till April 17)

Till April 17, 2007, 17 cases have been reported. The breakup of these cases according to their adjudicatory level is as follows:

District Forum: 0, State Forum[16]: 7, National Forum: 0, High Court: 3, Supreme Court: 2, Sessions Court (FIR): 3, MACT[17]: 1, MRTPC[18]: 1.

It must be noted that a case of ICICI bank has been fragmented into 2 different cases, one civil and another criminal. In this case, the bank's agents, along with the police, robbed a man of his car which was taken on loan[19].

The further breakup of the above-mentioned cases according to the profile of the parties involved in them is as follows:

Banks: 8, Telecom Companies: 3, Hospitals: 3, Advocates: 1, Educational Bodies: 1, Accident Claim Tribunal: 1.

Further more, the following data for the year 2007 has been compiled to show the wrongs done against the consumers by the service providers:

Number of Cases Involving: 1. Unsolicited communication to the consumers = 3; 2. Issue of false bills/ non-recognition of paid bills = 0; 3. Use of goondas for loan recovery = 6; 4. False promises to the consumer = 0; 5. Committing of perjury by the service- providers = 0; 6. Demand of bribe by the service- providing officials = 1; 7. Filing of frivolous/ malicious cases by the consumers = 0; 8. Negligent medical operations causing death = 1; 9. Adoption of anti-competitive/ unfair practices = 1

An Overview of the Years 2006 & 2007

It can be inferred from the above data that as against only a single criminal case (regarding employing of goondas for loan recovery) reported in the whole year 2006, the number of such cases has tripled in the year 2007.

The number of cases reported in the year 2007 in just three and a half months is more than half of those reported in the year 2006.

Clearly, the most outstanding outcome is the huge surge in the number of cases involving banks and most of these were astonishingly concerned with the use of goondas for loan recovery.

The number of medical negligence cases has also tripled during this period.

A very important thing to be noted is that there has not been any report of a case where the consumer had filed a malicious/false case.

Other Relevant Data

A report shows that the worth of fake goods sold annually in India is equal to Rs 20,000 crore and that of the counterfeit automotive parts sold annually is equal to Rs 2,000 crore[20]. It implies that majority of the consumers are not aware of the importance of the BIS hallmark on the jewels. The same report also shows that 88% of gold jewellery sold has been found to be of a lower carat value than claimed by the sellers. Apart from this, 65% of the Indian watch market is unorganized which implies the presence of the smuggled and fake watches.

In the very important pharmaceutical sector, the pharmaceutical companies spend around $60 billion per year for drug promotion, which is an immoral and anti-competitive practice[21].

Some Reforms Mulled Over by the Government

There have been some encouraging steps mulled over by the Indian government which are given as under:

1. A Consumer Protection fund has been suggested for the welfare of the weak and exploited parties; wherein a penalty of Rs 500 or 0.5% of the court award is to be kept aside in this regard. Moreover, it was also planned that affluent sellers should not be allowed to hire lawyers unless the consumer himself is a lawyer or engages a one for his case. Plans were also footed to provide adequate costs to the customers rather than meagre costs[22].

2. The government is to unveil a comprehensive National Consumer Policy (NCP) to bring under its purview, the unregulated professions like plumbers, electricians and real estate agents etc.

Another notable thing is the planning to frame a Consumer Product Safety Act so as to bring in civil as well as criminal liability against the sale of dangerous goods.

3. The government has also chalked out plans for amending packaging regulations and the Companies Act apart from regulating the advertisements aimed for children below 14 years of age. The latter would be meant to protect children from sale of tobacco, alcohol and drugs etc.[23]

Although the government has planned the above reforms, but in addition to this, some rudimentary legal education (related to consumer rights) should also be imparted at the school level itself.

Critique

Despite the attractive plans of the government, the desired results are still very far off. A report says that Rs 57.99 lakh of funds are lying static with the Consumer Welfare Fund and another Rs 6.63 crore meant for increasing consumer awareness are lying unutilized.

Out of the Rs 9.35 crore released to the NGOs and Voluntary Consumer Organisations in 10 years till the end of March 2005 (in 26 states), only the state of Meghalaya has utilized it fully while Jammu & Kashmir, Haryana, Chandigarh and Kerala were lagging behind. Moreover, the fate of the Rs 6 crore accrued from deposits from appeals and revision petitions is still unknown[24].

This is not enough, as owing to our weak consumer protection laws, the pharmaceutical companies like Pfizer and Novartis have been reported to adopt unfair measures for drug-promotion, e.g., in the form of various campaigns[25].

Currently, as regards the fake goods, the laws provide only for their seizure and the search of premises. Whereas, the seizure of the plant and machinery used for such purposes should also be allowed.

Another harrowing fact is that around 15,000 cases are pending at various district *fora* in Delhi[26].

It is also disgusting to see the presence of friction between the government and the Consumer Fora. In one of such cases, the government took serious offence to the act of the President of the Delhi State Consumer Forum when he genuinely recommended the setting up of another bench of the State Forum and recruitment of additional judges and other staff, in order to clear the huge backlog of cases[27].

In fact, the consumer laws are meant for the benefit of the consumers but the state spends money of the taxpayers in litigating against them.

Lessons to be Learnt

We have a lot to learn from the western countries where the consumer related laws are very stringent. For example, owing to the stringent system of torts in America, there have been many cases of various companies taking back their defective products from the markets, even by bearing multi-billion dollar losses in order to save themselves from the high penalties by the government For example, in August 2006, *Dell* recalled its 4.1 million batteries after several incidents of them catching fire[28]. It was because the laws of their land have imbibed a sense of responsibility in the companies.

Last but not the least; pre-litigation mediation can also be a

modern-day solution to most of the consumer-related disputes so as to save precious time and money of the parties involved. This statement can be substantiated by the fact that court-referred mediation has already started showing positive results[29].

A Wrap-Up

It has by now, been concluded that a large number of the consumer disputes have been regarding unsolicited communication by telecom companies/ banks and use of goondas by the banks for loan recovery, although there has not been any dearth of other types of disputes. A closer look at the profiles of the above groups deciphers that the above cases are the negative attributes to the incessant boom in the Information Technology Sector and the Financial Sector in the country.

Regarding unsolicited communication, the TRAI has very recently forbidden all banks from making such calls and has called for maintaining a Do-Not-Call registry by the National Informatics Centre[30].On the other hand, the Supreme Court has also banned the use of musclemen for loan recovery, by terming it illegal.

So, at present, the ball is in the government's court as it has the onus of implementing the orders of the adjudicatory bodies. Looking at it in an optimistic way, if the government succeeds in implementing the above orders, then the saga of such cases will soon be over.

It has also been established that the Consumer Fora leave no stone unturned in order to give the consumer his due. But, if possible, the disputing parties should resort to pre-litigation mediation to expedite disposal of the case.

Finally, depending upon the nature of a case, the consumers can still dial the consumer helpline — 1800-11-4000.

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[1]*The Hindu,* 28th May 2006; [2]The newspapers referred to are *The Indian Express, The Hindu* and *Hindustan Times;* [3]*The Indian Express,* June 20, 2006; [4]*The Hindu,* November 14, 2006 *;* [5]*The Hindu,* November 26, 2006 *;* [6]*The Indian Express,* April 27, 2006 *;* [7]*Hindustan Times,* April 29, 2006 *;* [8]*Hindustan Times,* July 30, 2006; [9]*Hindustan Times,* August 24, 2006 *;* [10]*The Indian Express,* April 6, 2006 *;* [11]*The Indian Express,* October 25, 2006 *;* [12]*Hindustan Times,* November 24, 2006 *;* [13]*The Indian Express,* May 19, 2006 *;* [14]*The Hindu,* June 18, 2006 *;* [15]*Hindustan Times,* January 28, 2006 ; [16]Including one case in the UP State Forum ; [17]Stands for Motor Accidents Claim Tribunal ; [18]Stands for Monopolies and Restrictive Trade Practices Commission *;* [19]*The Indian Express,* January 24, 2006 *;* [20]*Hindustan Times,* July 17, 2006 *;* [21]*Hindustan Times,* June 27, 2006 *;* [22]*The Indian Express,* August 26, 2006 *;* [23]*Hindustan Times,* December 05, 2006 *;* [24]*The Hindu,* May 28, 2006 *;* [25]*Hindustan Times,* June 27, 2006 *;* [26]*Hindustan Times,* July 26, 2006; [27]*Hindustan Times,* July 26, 2006 ; [28]*The Indian Express,* August 17, 2006 *;* [29]*The Hindu,* February 08, 2006 *;* [30]*The Indian Express,* April 17, 2007;

**A student of The West Bengal National University of Juridical Sciences, Kolkata, an Intern with the PUCL National office, Delhi* ❑

Letter:

Shame on the Indian Media

Yogesh V Kamdar

I got the following e-mail from a friend of mine. The events mentioned here are a few months old; but I am reproducing the mail as it is. Something to think about..!!

By the time you read this news, the body of Major Manish Pitambare, who was shot dead at Anantnag, would have been cremated with full military honors.

On Tuesday, this news swept across all the news channels 'Sanjay Dutt relieved by court'. '*Sirf Munna* not a *bhai*', '*13 saal ka vanvaas khatam*' 'although found guilty for possession of armoury, Sanjay can breath sigh of relief as all the TADA charges against him are withdrawn'. Then many personalities like Salman Khan said 'He is a good person. We knew he will come out clean'. Mr Big B said: "Dutt's family and our family have relations for years, he's a good kid. He is like elder brother to Abhishek". His sister Priya Dutt said "we can sleep well tonight. It's a great relief".

In other news, Parliament was mad at Indian team for performing bad; Greg Chappell said something; Shah Rukh Khan replaces Amitabh in KBC and other such stuff. But most of the emphasis was given on Sanjay Dutt's "phoenix like" comeback from the ashes of terrorist charges. Surfing through the channels, one news on BBC startled me. It said: "Hizbul Mujahidin's most wanted terrorist 'Sohel Faisal' killed in Anantnag, India. Indian Major leading the operation lost his life in the process. Four others are injured".

It was past midnight, I started visiting the Indian channels, but Sanjay Dutt was still ruling. They were telling how Sanjay pleaded to the court saying 'I'm the sole bread earner for my family', 'I have a daughter who is studying in US' and so on. Then they showed how Sanjay was not wearing his lucky blue shirt while he was hearing the verdict and also how he went to every temple and prayed for the last few months. A suspect in Mumbai bomb blasts, convicted under armoury act... was being transformed into a hero.

Sure Sanjay Dutt has a daughter; sure he did not do any terrorist activity. Possessing an AK47 is considered too elementary

in terrorist community and also one who possesses an AK47 has a right to possess a pistol. So again, this is not such a big crime. Sure Sanjay Dutt went to all the temples; sure he did a lot of *Gandhigiri* but then...

Major Manish H Pitambare got the information from his sources about the terrorists' whereabouts. Wasting no time he attacked the camp, killed Hizbul Mujahidin's supremo and in the process lost his life to the bullets from an AK47. He is survived by a wife and daughter (just like Sanjay Dutt) who's only 18 months old.

Major Manish never said 'I have a daughter' before he took the decision to attack the terrorists in the darkest of nights. He never thought about having a family and he being the bread earner. No news channel covered this since they were too busy hyping a former drug addict, a suspect who's linked to bomb blasts which killed hundreds. Their aim was to show how he defied the TADA charges and they were so successful that his conviction in possession of armoury had no meaning. They also concluded that his parents in heaven must be happy and proud of him.

The parents of Major Manish are still living and they have to live rest of their lives without their beloved son. His daughter won't see her father again.*

*** Please forward this message around. I t is a shame that the news about Major Manish's death was given by BBC and not by any of the Indian channels.** ❑

Conspiracy to Squeeze Contract Labour in Chhattisgarh

Support the Heroic Struggle of Contract Workers of Chhattisgarh Against Illegal Exploitation by Holcim

Recently ten cement companies were in news in India for the notices issued to them for cartelisation, and the fact that they took advantage of their monopolistic stranglehold over the Indian market to cause abnormal price rises in cement. These very companies are also notorious in the eastern state of Chhattisgarh where they have flocked to plunder rich mineral reserves like limestone and coal, and of course….. "cheap and docile labour".

In the belt between Raipur and Bilaspur in Chhattisgarh, there are several flourishing mega cement companies – Ultratech, Grasim, Century, Ambuja and Lafarge – as well as the shell of the now defunct public sector Cement Corporation of India. Land acquisition for each of these companies has been a saga of agitations by villagers, mass arrests and lathicharges, and many broken promises. The acquisition for the Larsen & Toubro (now Ultratech) plant at Hirmi had come into prominence in the early 90s because of a movement by the *Bharat Jan Andolan* which was ruthlessly suppressed. This is despite the clauses of the official rehabilitation policy of the State of Chhattisgarh which lay down that for mega plants and mining projects - sporadic casual and contractual employment will not be considered to be proper rehabilitation, one person from each affected family must be given permanent employment in the company concerned; 1 to 3% of profits must be ploughed back into the area for peripheral development; provision must be made to make mineral resources available to local industry; and a separate fund allotted to restore the environment to its original state. Needless to say the violation of these provisions has been the rule not the exception, leading to widespread resentment of the surrounding rural populations.

The *Pragatisheel* Cement *Shramik Sangh*, a popular militant union affiliated to the mass political organisation *Chhattisgarh Mukti Morcha*, has been leading a powerful movement for the past four years now in Birla's Ultratech Cement plant, not only for the rights of workers under the labour laws, but also for the rights of peasants of the villages around the plant whose lands have been acquired. Through their 12 hour and 48 hours long strikes, tooldowns, road block demonstrations and processions, the workers have succeeded not only in implementing minimum wages and a 8 hour work day in the entire plant, resisting retrenchment owing to mechanisation, and generally pushing back the dictatorship of the management, but also succeeded in getting implemented some of the promises made to the surrounding peasantry like construction of roads and tanks, and reinstatement of children of peasants, who were initially given temporary contractual employment in lieu of land acquired, and then thrown out. A remarkable feature of this entire movement has been the participation and often leadership of working class and peasant women.

Over the last three years, in a whirlwind round of mergers and acquisitions, Swiss based Holcim has acquired 12 plants of the Associated Cement Companies in India in which the Tatas had a majority stake, thus capturing about 14% of Indian cement production capacities. In Chhattisgarh it now controls the ACC plant at Jamul (Bhilai) and the Ambuja plant in Raipur district. Learning a lesson from the nationwide outrage against multinational Honda after the brutal lathicharge at Gurgaon in 2005, and to maintain the goodwill of a seasoned market, Holcim has

chosen to remain with the brand name of "ACC" and avoid the stigma of being a "foreign company" while it flouts Indian laws with impunity. It has of course ensured that the Indian management have got a pay raise - personnel managers earning about Rs.30,000 now take home a pay packet of Rs.50,000, but when it comes to implementing the mandatory "Cement Wage Board" in favour of the workers, the record of Holcim is particularly sordid.

Right since 1978 there is a "Cement Wage Board" agreement in force in the Indian cement industry which is the result of negotiations between the All India Cement Manufacturers Association and a group of central trade unions in the cement industry, this agreement has been further ratified in 1983. According to this agreement, contract labour is prohibited in the entire production process in the cement industry all over India, and even in the limited areas in which it is permitted - such as the loading and unloading of raw materials, contract labour are to paid at the same wage rate as regular employees.

Contract labour in the ACC Jamul Cement Works, under the leadership of the Pragatisheel Cement Shramik Sangh (PCSS) founded by the legendary trade union leader of Chhattisgarh – Shankar Guha Niyogi, have been fighting a remarkably heroic battle for the last two decades for their regularisation and implementation of this award. In 1989 after a 56 day strike and indefinite hunger strike by Shankar Guha Niyogi, the coal-gypsum loading unloading workmen started getting cement wage board rates. In July 1992, after 17 industrial workers including 3 from ACC Jamul lost their lives in the brutal police firing on a *Rail Roko Satyagraha* during the historic "Bhilai movement" when workers of dozens of factories joined together against the illegal contract system, the ACC management was forced to regularize about 160 casual workmen. However the management continued with its adamancy of not negotiating with the PCSS, on the pretext that its pocket union (affiliated to a ruling (Congress) party) was the Representative Union provided for in the Madhya Pradesh Industrial Relations Act (MPIR Act).

After long agitations, finally in the year 2000, the State government referred the dispute of the workmen for regularisation to the State Industrial Court. Then started the vicious attack of the management to remove workmen from the reference list by illegal retrenchment, denying medical facilities and simply depriving them of work to force them to opt for the far from "voluntary" retirement. Even as the union struggled, and succeeded amidst endless adjournments, to obtain an interim order from the court not to change working conditions, the management managed to coerce about 300 workers who had been working for 2-3 decades in the cement production processes to resign. But many stuck stubbornly on. In the meantime the company silently changed hands and became a branch of Holcim. Many workers braved physical intimidation from pocket union goondas and supervisors to enter the witness box to testify to the sham and bogus nature of the volumes of licenses, work orders and contracts submitted by the management, and speak of the real conditions of their work. Finally on 28-2-06 the Industrial Court reached, in its own words, "the inescapable conclusion" that the 573 workmen deserved to be regularised since their contractual employment was a mere paper arrangement and the contractors mere name lenders. This included those who had been coerced to resign during the pendency of the reference. The company was directed also to implement the Cement Wage Board. Predictably the district administration was not able to "persuade" the management to implement this Award, so there was a total 18 hour blockade of the Jamul Cement Works on 18 April 2006. Some 11 General Managers of different Holcim plants all over the country, not to mention senior executives from the Swiss management, had to finally seek Union permission to leave the premises.

And now the latest scandal, revealing the clout of the international cement cartel in India in manipulating the judiciary…… Not able to defeat the Unions case on merits, and realising the far-reaching consequences of the ACC judgement namely the implementation of the Cement Wage Board and abolition of illegal contract system in all cement companies in Chhattisgarh; Holcim, Lafarge, Century, and Ultratech have got together and formed the Chhattisgarh Cement Manufacturers Association (CCMA). This Association has now challenged the very jurisdiction of the State Government to make a reference in the first place, in a writ petition in the Chhattisgarh High Court. That is, they are challenging the notification dated 31-12-60 bringing the cement industry under the purview of the MPIR Act, after more than 45 years! Not only is the judiciary, which in the normal course frowns upon a workman who comes even 6 months late, entertaining this petition, but the cement cartel has even managed to influence the concerned Respondent officer of the Central Government to support their case! If the CCMA succeeds in its conspiracy, it will intensify the attack against the already beleaguered working class of Chhattisgarh.

We appeal to all those who feel strongly about this kind of exploitative stranglehold of big corporations - particularly foreign

multinationals, to support the effort of the struggling contract workers in the cement industry in Chhattisgarh. Join the campaign against Holcim, Lafarge and Ultratech by exposing their misdeeds against workers, write protest letters to their corporate offices, write to the Chief Minister of Chhattisgarh, Labour Secretaries of the Central and State Government, most importantly join the workers in this crucial stage of their movement.

The Pragatisheel Cement Shramik Sangh will be observing the martyrdom day of Shaheed Shankar Guha Niyogi on 28th September in the cement belt of Chhattisgarh as a protest against the blood-sucking exploitation of multinationals. Please join us. – ***Pragatisheel* Cement *Shramik Sangh***, Chhattisgarh Mukti Morcha Office. Labour Camp, Jamul, Bhilai, Chhattisgarh, India. By E-Mail, 28 August 2007 ❑

Dumka (Jharkhand) PUCL Report:

Illegal Detention of Afghan Citizen

An Afghan citizen, Sabur Khan, who was in the custody of Dumka police for the last eight months, approached Dumka PUCL in March 2007 for getting him released from the city *Thaana*. The Dumka PUCL decided to take up this case as it was illegal detention without any charges.

A team of the PUCL met Sabur Khan, examined the court papers, and met the police officers on April 30 2007.

The PUCL enquiry brought to light the following facts:

1. Sabur Mohammed Khan (about 38 year of age) is a resident of village Sultani (Paktika, Afghanistan). He came to India in 1996. First he stayed in Dhanbad (Jharkhand) and started his business. He had along with him his brother Hayat Mohammed.

2. In the year 2000 he came to Mihijam (Jharkhand) in order to extend his cloth business further. He entered into a partnership with another Afghan citizen, Rajgul Khan, who has his business in Dumka. He used to send money to his family and mother back in Afghanistan.

There was no complaint of any type - either in connection with his business or from the neighbours, etc.

3. According to Sabur Khan initially the business was running smoothly. But later on some difference developed. Rajgul Khan along with Amal Khan started efforts to hurt the business interests of Sabur Khan and his brother Hayat Khan. During this while Rajgul Khan found an additional point of irritation when Sabur Khan and his brother failed to be of help in the marriage of Rajgul's son Ajamal Khan.

4. According to the records in the *Thaana* (entry No.437 dated 14th August 2001) Hayat Mohammed Khan, brother of Sabur Mohammed Khan, was arrested because of intelligence reports as a foreign citizen without valid papers, at Dudhani road by the Dumka city police. During the interrogation of Hayat Mohammed Khan the police also came to know about Sabur Mohammed Khan. Sabur Mohammed Khan was also arrested from Mihijam by the police. An FIR was filed against both the brothers for living in India illegally (entry No.132/01, Dumka *Nagar Thaana*, Foreigner's Act 1996, Section 14).

5. Both the brothers were sent to Dumka jail in judicial custody. Subsequently, the Jharkhand High Court released Hayat Mohammed Khan on bail after nine months of incarceration but the bail application of Sabur Mohammed Khan was rejected. Sabur Mohammed Khan was tried in Court. After the grant of bail Hayat Mohammed Khan continued to attend the court for about fifteen months. After that he became absent and was declared an absconder. The case against Sabur Khan was now heard separately. It is to be noted that the case was registered against both the brothers on August 14, 2001 and the charge sheet was filed on January 3, 2003, after about two years. All this while, Sabur Khan was confined in Dumka jail.

6. When Hayat Mohammed Khan absconded the case of Sabur Mohammed Khan was separated on May 28, 2005 and it continued for about one and half years and he was sentenced to three years jail and a fine of Rs.5,000/-.

7. According to the judgement Sabur Khan was sentenced for three years but he was kept in jail for five years and two months. He was released form Dumka jail on September 29, 2006. At the time of release the jail staff informed him that the *Nagar Thaana* police was making enquiries about him. Sabur Khan went to the *Thaana* to make enquiries. He was informed that since he had no valid papers to live in India, he will have to stay in the *Nagar Thaana*.

8. Ever since Sabur Khan was living in a barrack. He used to get his food from the police mess but he had no freedom. He lived there for seven months and the police could take no decision. Sabur Khan approached the Superintendent of Police, Special Crime Section, etc., but without any result. He had no freedom to organise his future.

9. He could contact a sister and brother in Afghanistan only after his release from jail. *(on next page…)*

PUCL Karnataka:

Attack on the Office of TV 9 Shows Collapse of Law and Order

We strongly condemn the dastardly attack by some miscreants on the offices of the television channel TV 9 in Mangalore on the night of July 22, 2007.

Freedom of expression of citizens and the media is guaranteed under the Constitution and is one of the most sacrosanct rights. It is under grave threat, this has been proved time and again, the last one being the attack on the offices of *Karavali Ale* and harassment of its Director couple by booking them under frivolous charges and delay in granting them bail for nearly a fortnight. *Till today the police have failed to identify the culprits and bring them to book.*

We see around us the builder mafia (with 64 illegal constructions in the city), the religious mafia (perpetrators of the Mangalore communal riots have not only not been punished but on the contrary, cases booked against most have been withdrawn by the government), and the transport mafia (with their unethical practices against KSRTC, goonda culture, blocking of the Bangalore-Mangalore passenger rail services) and the criminals mafia are ruling the roost. In great majority of cases, the police are either mute spectators or arrive at the scene too late or book the victims instead of the perpetrators.

The point we are trying to stress is that the guilty are going unpunished, law-abiding citizens are harassed, violations of human rights are on the increase and the lack of action/delayed action on the part of the state and the law-enforcement agencies has sent wrong signals to the miscreants and criminals that they can commit any crime and still get away with it.

In a way it is a virtual collapse of law and order in the Dakshina Kannada district and the state of Karnataka.

We demand a high level enquiry into the incident and quick punishment to the guilty in all cases including the present attack on TV 9. – **P B D'Sa**, President, PUCL Mangalore, 23 July 2007 ❑

(from page 19…) He was very much concerned about their well-being.

10. He was also concerned that his brother Hayat Khan, who was declared absconder, was untraceable and he was not sure whether he was alive. He requested the team of the PUCL the following: (a) either he should be sent immediately to Afghanistan, (b) or he should be released so that he may go Afghanistan himself, and (c) or he may be permitted to stay on in Mihijam so that he may rebuild his business and search his brother. He was prepared to accept any condition prescribed by the Government.

11. The PUCL team was told on April 30, 2007 by the DSP that Sabur Khan was living in the police station for his own safety as he had no valid papers.

12. The DSP also told the team that the *Thaana* in-charge was meeting the expenses on his food from his pocket.

13. DSP also told the team that the SP Dumka had written to the Home Department of Jharkhand Government seeking instructions regarding Sabur Khan.

14. The DSP said that the Home Department had not replied to the above letter though it was now six months. On being asked why no reminder was sent, the DSP said that only the SP could give a reply this point. Inspector Vidhi Chandra Ram told the team that Sabur Khan was a good person, he had no problems, and used to go to the mosque to offer his *Namaaz*.

15. The efforts to get Sabur Khan released were going on but the Sate Home Department was silent.

16. The PUCL team concluded that no officer of the administration in Dumka knew what to do with Sabur Khan. They probably thought that their responsibility was to feed him and to arrange his stay in the *Thaana*. They were content with waiting for some letter from the State Government. Sabur Khan had to spend five years in jail and then after his release, eight months in city *Thaana*, Dumka.

The pressure created by the PUCL investigation led to police becoming active and Sabur Khan was sent to Afghanistan in the month of June. – **Arvind Verma**, Secretary Dumka PUCL; **Fr Solomon**; and **Alok Kumar** ❑

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E-Mail: puclnat@yahoo.com
Website: www.pucl.org

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