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Defending Human Rights-Not an Easy Job

K G Kannabiran

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An important fact, with reference to Binayak Sen is that he is not a sympathiser of Maoists. He is the elected General Secretary of the PUCL, Chhattisgarh unit and is a well known human rights activist in that area. He is a doctor who was treating the tribals and he was a colleague of Shankar Guha Niyogi, the famous trade unionist.

As a human rights activist he is a human rights defender. For a human rights defender, working for the protection of Human Rights, ensuring a violation free investigation is his duty. A human rights activist's job commences the moment a suspect is arrested, and he is entitled to see that the human rights of the suspect are not violated during the period the charge sheet is filed or he is let off. As is always the case, the human rights work by activists is seen as a hindrance to lawless investigation and when that takes place the HR activist raises his voice in protest. This protest is supposed to be raised invariably during investigation and when he is arrested and roped in as a suspect. We often find accusations against human rights people that they are supporters of terrorists. We human rights activists do raise our voice against illegal methods of investigation. But the criticism that we support terrorists shows a lack of understanding of the work of human rights activists and has always been a misconception. Quite a few of my colleagues, while I was a president of Andhra Pradesh Civil Liberties Committee (APCLC), were jailed and many were harassed until they gave up human rights work. K Balagopal was arrested, implicated in false cases, kidnapped and yet he continues his work. Andrabi, whom I knew quite well, was killed and his body was found in a stream. Jaswanth Singh Kalradis appeared. None of them were terrorists, nor Binayak Sen is. He found that the methods of dealing with persons who are suspected to be extremists were brutal and he had to be silenced so that he could not expose the police brutality.

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Between the arrest of a suspect and the filing of the charge sheet human rights violations take place. Have the Human Rights Activists the right to stop violation of human rights or not is the issue. I have been called a supporter of Naxal extremism all these five decades. I am respected by Naxalites (now Maoists) because defended their rights inside and outside the courts, but not their politics. I conducted their cases before different sessions judges and got acquittals, and that should speak volumes about the accusations and investigations made. The attempt should be to work for the recognition of human rights work and the police is too powerful an entity to overcome even by elected leaders. They threaten that they will work to rule and thus create law and order and public order problems, (on page 11...)

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Irreplaceable Dr Chhibbar

Prabhakar Sinha

It is no exaggeration to say that Or Chhibbar is irreplaceable. There is no likelihood of another person making the organization the whole of his life, as he did. For decades, his home remained the home of the national office leaving very little room for his own sake. While the documents, paper clippings, shelves and files occupied the place of pride in his Sahayoga Apartments flat at Mayur Vihar, he himself was content to confine himself to a little space in his living room. This self deprivation was an act of love and he never made it look like an act of self sacrifice. Though shifting of the office had been under consideration for some time due to his poor health, it parted from him only after his death.

Dr Chhibbar had been very ill for the last few years and made repeated request for finding his replacement, but we failed to find one for he was really irreplaceable. Nobody could be found capable of making the organization his whole life; for such deep devotion for a cause is an exception and not the rule. Emphasizing the desperate need to find another General Secretary, he informed the National Council at Allahabad in 2001 that his condition was such that he slept with his door unlocked lest he should die in his sleep and remain locked. There was an arrangement for one of his friends to ring him up every morning to ascertain that he was alive. He carried on even though the condition of his heart was so bad that he often felt an excruciating pain in his chest when he picked up the telephone. Only a few years ago, he suddenly had to undergo an emergency heart surgery. One of his close students, familiar with his condition persuaded him to see a specialist and his

condition was so precarious that he had to be immediately rushed to the operation theatre to save his life. But for that chance visit (of his student), he would have left us much earlier.

I met him for the first time during the National Convention at Jabalpur in 1984. He was, then, the Executive Secretary - a post finding no place in the constitution of the organization. It was intriguing to have a person occupying a post for which there was no provision in an organization which had a host of legal luminaries associated with it. The mystery was solved when I had a close look at the constitution. It envisages a General Secretary who will have all the power and responsibility and a President who will lead on the strength of his moral stature rather than the power of his office. This necessitated a General Secretary who devoted himself fully and single-handedly to the day to day work of the office as well as the expansion of the organization. No better person than Mr Tarkunde could have been found to head the organization but Mr Arun Shourie was too busy a person to shoulder the responsibility of the office of the General Secretary. So, Dr Chhibbar was inducted as the Executive Secretary, to be a proxy for the General Secretary, but for whom, the PUCL might have been still born. His performance was so exceptional that the organization discovered an effective and devoted Secretary General in him and elevated him to the post at the next election. He did not seek but was sought.

He was a stickler for norm and form which made it easy to work with him without personal intimacy. Norm and form are not an unnecessary nuisance or avoidable obstacle which may sometimes appear to be so, But

indispensable condition for smooth functioning of any big organization where the people do not interact on the basis of personal relationship. It provides the measure for distinguishing the right from the wrong when opinions differ and wards off friction among those acting in good faith. I had an excellent rapport with him without personal intimacy. I was mindful that the constitution does not empower a Vice President to act on his own and offered him no advice unless asked for, and strictly followed my policy of expressing my opinion on any matter only at the proper forum (i.e. the meetings of the Executive Committee, National Council or the National Convention). He, on his part, respected my views even when he did not always find them acceptable. One such occasion when I feared a strain between us was when Dr Chhibbar and Mr Kannabiran informed me one day before the meeting of the Executive Committee (held a few weeks before the Ahmedabad National Council meeting) at his apartment in Delhi that it was decided to elevate me as the President at the ensuing National Council meeting. Mr Surendra Mohan had also circulated a letter among the Executive Committee members, as he was unable to be in Delhi due to his prior commitment. I refrained from expressing any opinion telling them that I would give the proposal a thought. Later, he spoke to me on the telephone and pressed me hard. So, the next day when at the meeting of the Executive Committee I expressed my inability to be available for the office, I was apprehensive that it would definitely strain my relation with him. I was greatly relieved and happy to find that he did not hold it against me.

He often spoke to me about individual cases of human rights violation in Bihar and Jharkhand and asked me to do something about them - a lone woman from Bihar in trouble in Delhi or a young man living in Delhi out of fear of criminals in Bihar or something else of similar nature.

He had a very strong view on adhering to rules and correct procedure. Whenever he was directly approached by anyone from Bengal, Orissa, Tripura, Jharkhand or Bihar, he would direct him to contact me and also referred the matter to me. There were cases when some NGOs from Bengal or Orissa approached him with some proposal for collaboration with the PUCL, but he would invariably refer the matter to me for opinion, and there was no occasion when we disagreed. There was nothing personal in these interactions, he only followed the correct procedure and agreed with me because we thought alike on the issues.

There were occasions, though rare, when he spoke to me of things personal. Once, he proudly showed me a book authored by his son and

I do not know where to begin... and how to conclude.

I first met Yashpalji over 20 years ago when I became first an annual member and subsequently a life member of PUCL in the 1980s. I was living in Padrauna, UP then.

On his suggestion I convened the local/district chapter of PUCL there. Kr S P N Singh of the local Zam/ndar-family became the first President, while Mr Ajay P Srivastava was the General Secretary. I remained a Convenor. Regular (s)elections continued for a decade and under Mr YPC guidance we investigated and reported dowry deaths and

pollution by sugar mills in the

also showed me what he had said about his father (Dr Chhibbar) in the preface. He told

me about his son's wedding to which he had not invited anyone (except Mr Rajindar Sachar) because he was against pomp and show. He very fondly talked to me about his daughter, who was physically challenged and was living in the USA. He would show me the special arrangement he had to make for her when she visited him. Beneath his stern exterior he concealed a soft heart. I had a personal experience when he made it a point to come to the wedding of my niece (my younger brother's daughter, who used to live in the same block as his) -something he did not generally do. I seldom visited Delhi. Our interaction was only through the telephone. But lately I had stopped making calls to him for fear of putting him to strain. I received information about his health from the others who were concerned. It caused me anguish because I feared that my silence might be misconstrued as lack of concern but my consideration for him made me refrain from causing him any inconvenience. Sometime in October,

Mr Yash Pal Chhibbar

region apart from other local issues.

I was associated with this chapter until Padrauna became the headquarters of Kushinagar district. Soon thereafter I shifted to Calcutta, and thence to Jaipur (Rajasthan) about 12 years back.

In the meanwhile I represented UP, West Bengal and Rajasthan in stints.

Each time I was in Delhi I called on Mr YPC. Apart from his clarity on issues (wherein he helped clear my thoughts too) I remember the warmth with which he always met all of us. It was specially in his gripping handshake

that all his affection and warm

I had a call from him. He said in a very feeble voice, 'Prabhakarji, main brain mein cancer ke operation ke liye hospital jaa raha nun, Socha aapko namashkar kah lun.' I was speechless and couldn't say nothing. I sent a mail immediately to ease my conscience, but I doubt he could see it.

The PUCL has lost an irreplaceable pillar and many of us a good friend.

Organisational Decisions and Future Programmes

1. National Convention of PUCL to discuss all important issues facing the country: 21-22 March 2009 (Saturday & Sunday) from 10:00 a.m. to 5:00 p.m. at Indian Social Institute, Institutional Area, Lodhi Road, Delhi 110003.

2. 29th JP Memorial Lecture to be delivered by Prof Mushirul Hasan, Vice-Chancellor, Jamia Millia Islamia University at 5:00 p.m. at Gandhi Peace Foundation, I.T.O., New Delhi on March 23, 2009 (Monday).

heartedness came through.

All this flashed through my mind and I realised that suddenly a great human being and friend of the common man had gone from amongst us.

My last meeting with him was at Chittorgarh when he came for the Rajasthan State Convention. I was living there then. He fell ill there then, but he soldiered on during most of the sessions.

Lovers of people's rights, civil libertarians and I personally will always miss him and grieve for him - the humanist. - Arun D Khaitan, Jaipur, Rajasthan

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Indo-Pakistan War - Never

Rajindar Sachar

The results of Assembly elections have proved that Indian electorate has reached a mature understanding of terrorism as being a world phenomena as against anti Pakistan sentiment projected by the B.J.P. The cult of war cry, in the wake of Mumbai terrorist attack had inflated the ego of B.J.P. to imagine itself as a colossus. An electoral slap in reply, has proved President Lincoln's saying "You can fool all the people for some time, you can fool some people for all time - but you cannot fool all the people all the time" as true.

This is not meant in any way to lessen a whit the horrendous experience of Mumbai tragic killings by terrorists attack on 26th November 2008. It justifiably numbed and angered the nation, which saw the gruesome happenings live on T.V. for all these days. The security personnel and commandoes are fully entitled to our thankful respectful homage.

Indignation at the incompetence, sloth fullness and indifference of governmental agencies to national safety has rightly exploded. This perception now stands confirmed by the unalloyed but democratically correct admission of Chidambaram, the new Home Minister. Incompetence of the government should not be compounded by stifling civil liberties of the citizens.

But I am gravely worried at the sudden loss of trust between India and Pakistan. It is now an established fact that Mumbai attack had Pakistan link. It does speak poorly of Pakistan government that in the first instance it denied that terrorists were from Pakistan, and tried to play an unworthy smart card of India supplying proof of Pakistani connection, especially when Pakistan itself had been victim of

its home grown terrorists. The

various assassination attempts on Musharraf and the murder of Benazir Bhutto were obviously the work of Al-Qaeda, LeT and other Jehadi groups operating from Pakistan.

Initially President Asif Ali Zardari made the right noise - he talked of sending the head of Inter Services Intelligence (I.S.I.) (as was the understanding of Indian government). But then he recanted, apparently under pressure of I.S.I., which led to the demand for aggressive action in India,

Unthinkingly the government of India cowed under pressure and cut off all contacts which were mutually beneficial like peace talks on Silchin, Sir Creek, even trade talks have been put in abeyance. Who are we damaging but the average man in both the countries?

Things could have become worse but U.S.A., desperate about its Afghan venture going astray, moved in and pressurized Pak government to act, which has now arrested Lakhavi, the leader of terrorist gang and detained Masood Azhar. One regrets that Pakistan did not resort to these steps at the asking of India. This has not shown our independence of working - rather it has shown that both our countries as being subordinated to USA's global programme. I should have thought that after Pakistan's action, however reluctantly taken, greater trust will grow between both the countries. But so much is the mutual suspicion that a hoax call to President Zardari allegedly by Indian foreign minister, threatening him to take action against terrorists, was blown up in spite of immediate denial by India. Even more surprising is that the hot line which exists between the two Prime Ministers was not activated - this mystery apparently has not been

cleared, adding to further strain.

Unfortunately media is not acting responsibly by insisting on Govt. of India to demand the handing over of terrorists. One report, if true, that Indian government had even asked for handing over of Hamid Gul, the former I.S.I. Chief, shows a complete lack of realism. U.S.A. may behave in a similar vein and get away, because unfortunately Pakistan is a client State economically, especially with US war in Afghanistan determining the relationship. But surely saner thinking must tell us that India cannot and could not act, as some hawks are egging on Govt. of India to take near dangerous steps like limited strike in Pakistan territory on the plea of chasing the terrorists. Already suspicion has been so aroused in Pakistan that hundreds gathered at Pakistan Wagah border shouting anti India slogans - how sad it would make some of us, led by Kuldip Nayar, the eminent journalist, who have been lighting candles of peace on 14th August for over a decade and half, and which resulted, for the last two or three years, with an equal, genuine reciprocal gathering across Pak Wagah border as a bond of mutual friendship.

This mutual suspicion is suicidal. Terrorism is a danger to both countries. Pakistan has gruesome situation of terrorism on its own soil by the terrorists even targeting Shia prayer halls in Peshawar only a couple of days back. Pakistan is so much a victim of terrorism that in North Western Pakistan the number of terrorists attack against police has gone up from 113 in 2005 to 1820 last year. The carriage at Taj & Oberoi Hotel was in the same strain as the

terrorists did at Marriot Hotel in Islamabad.

Similarly European Union has sent a strong message and asked it to "fully cooperate" in investigating the "horrendous" terror attacks in Mumbai.

The well wishers of Indo-Pak friendship should not let the foul deeds of Al-Qaida or the newly named LeT or the latest of Jamat-ud-Dawa muddy our relations. The comment by some Indian artists proudly saying on TV (India) that they would not perform with Pak artists was objectionable, provocative and totally against the spirit of art. Similarly action by Pak government telling Ghulam Mohd, the singer not to go to India is equally unworthy.

We must cry a halt to these unnecessary jingoistic provocative actions. Let not our anger, at our government's inefficiency, make us insensitive to common safety and welfare. We have to accept that an average Pakistani wishes his democratic experiment to succeed, and his friendship with India to blossom (notwithstanding the I.S.I. tricks).

Any hawkish attitude in India ill befits the conciliatory and understanding statement of President Zardari, namely 'Mumbai' attacks were directed not only at India but also at Pakistan's new democratic government and "the peace process that we have initiated.

The mutual wrangling can create an unintended dangerous/ course when, like Mr. Qureshi, the foreign Minister of Pak, (who by qill reckoning is rightly considered a champion of Indo - Pak friendship because of compulsions at home and possibly hawkish sentiments going out of India, has had to say, "We do not want to impose war, but we are fully prepared in case war is imposed on us". This only shows how politicians in both countries wish to display sterner face forgetting that there is nothing more destructive for us than war between India and Pakistan - this is not an option, because it can only bring untold misery to both our countries.

Questions Arising from the Mumbai Terrorist Attack

Mahi Pal Singh

The terrorist attack of 26/11 on Mumbai by Pakistani terrorists, trained, abetted and supported by terrorist outfits based in Pakistan as well as by the Inter Services Intelligence (ISI) of Pakistan army, and connived at, if not directly supported by, even the civilian government of that country, has opened a Pandora's box of questions, answers to which must be found if we wish to avoid recurrence of a like event in future. The first and foremost question is whether our political class is really serious about ending terrorist attacks of all kinds and also whether it wishes to go about the job in a transparent manner and whether it really has the will to go a step or two forward in the right direction for ending this menace which takes a toll of innocent lives every time it occurs.

There has been a war cry from many quarters in India, some people talking of surgical strikes against the training camps of terrorists based across the border in Pakistan, Even our political masters have been saying that no option is closed - meaning thereby that the option of

waging a war is very much open, though the Indian Foreign Minister has at times himself admitted that it is not possible for India to pursue terrorists and their supporters across the border. That, in any case, is absolutely true also. If America, with all its force, has not been able to pursue Osama-bin-Laden, the leader of Al-Quaeda and the perpetrator of the 9/11 attack on the World Trade towers in the US in spite of the heavy presence of its forces in Afghanistan and its precision attacks across the border in Pakistan, how can India hope to pursue the perpetrators of the Mumbai attacks successfully by exercising the military option? It can only result in the larger numbers of innocent people losing their lives on both sides of the border, besides causing an irreparable loss to the Indo-Pak relations, which in any case are at its lowest ebb now. The supporters of the nuclear weapons should also realize, now at least, that these weapons have not given an edge to our position over Pakistan unless we decide to use these weapons, and if used, they can only

cause untold suffering and devastation on both sides, leaving neither of the two sides in a position to claim an edge over the other. War mongering and ever increasing weaponization are no solutions to any problem. They have only taken a heavy toll of the financial resources that could otherwise have been available for development and providing education and healthcare to the people, and generating opportunities for employment thereby reducing discontent and alienation among the masses.

Although in the long run India has been able to garner the support of many countries and succeeded in building a pressure on Pakistan to act against the perpetrators of the Mumbai attacks, its handling of the matter has not been appropriate. First, our Foreign Minister continued to claim from the beginning that they had provided the proofs of the involvement of Pakistani elements in the attack to Pakistan whereas Pakistan continuously denied

having received any such proofs. But when after about a month of the attack on Mumbai the chief of the Interpol, Mr. Nobel, declared at a press conference in Pakistan that India had not given any such evidence to the government of Pakistan, or to Interpol, regarding the involvement of Pakistani citizens in the attack, the news was absolutely embarrassing and shocking. What had been given was a list of about 40 suspected terrorists and their supporters stationed in Pakistan and their extradition to India for trial had been demanded. It is only after about 45 days of the incident that a dossier has now been given to Pakistan, along with other countries; containing whatever evidence India wishes to share with Pakistan. But what was even more shocking is the fact that no representative of the media, which had been so active in exploiting the terrorist attack for hyping the war theme, ever questioned Mr. Pranab Mukherjee, the External Affairs Minister, even after the revelation by Mr. Nobel, about the evidence he had been claiming to have given to Pakistan, or asked to clarify the position on what Mr. Nobel had said in Pakistan. Not that Pakistan would have done much had the evidence been provided to it, but what is equally worrying is that we do not question our own politicians about the claims that they make, and blindly accept as gospel truth whatever they tell us. Pakistan stands exposed in the eyes of the world for being insincere in taking action against the terrorist outfits like the Jamat-ud-Dawa and Lashkar-e-Taiba. But at the same time we must also learn to question if we wish to be sincere in our search for truth, if we have to effectively tackle such issues as terrorism.

It is because of our habit of not questioning that we easily accepted the argument by some sections of our politicians that a stringent law like the POTA is a must for effectively

tackling the menace of terrorism and our Parliament passed a law like the Unlawful Activities Prevention Act (Amendment) 2008, unanimously and without much debate, which was even in its earlier avatars nothing but a replica of POTA, which was scrapped by the UPA Government immediately after coming to power as part of a public promise, in the wake of strong protests against the history of its misuse against the minorities, other marginalized sections of society, people struggling against social and political injustices, working for human rights, and against the known opponents of those in power. In the amended act only the provision of legal admissibility of a "confession" made in police custody is left out. But, a most bizarre and anti-legal provision to treat, an accused as guilty till proved otherwise and not to be granted bail unless the court finds the accused prima facie innocent, has been added to it. This evidently runs counter to the recent Supreme Court directive that during a trial, granting of bail should be the norm, and rejection an exception. The basic presumption in law everywhere in the world is innocence of a person until proved guilty whereas this Act presumes a person guilty of such grave crimes as terrorism until he proves himself innocent if the police books him for such a crime, thereby shifting the onus of proving him guilty from the police to the victim of proving himself innocent.

We do not question our politicians and legislators why they thrust such dreadful laws upon us which almost always result in depriving the marginalized sections of our own society of their civil liberties and human rights and provide unlimited powers to the police to book even innocent people under stringent laws and keep them behind the bars for long periods of time, only to be released later by the courts for want of evidence which never existed, with

stigmas attached to them which deprive them of their normal position in society ever after, and such stringent laws almost never succeed in tackling terrorists against whom they are supposed to be used. Why do we not ask our lawmakers and administrators about the statistics and the history of success or failure of such laws in the past before they proceed to enact one more of such anti-people laws? Of course, the law implementing agencies will always demand such laws to cover up their failure to investigate, arrest and prosecute the perpetrators of terrorist activities, and fascist politicians willingly succumb, to such demands which empower them with additional legal authority to throttle the voices of dissent and dissatisfaction among the people. This results in the arrest and detention for long periods of innocent people like Dr. Bin yak Sen, the Vice-President of National PUCL and General Secretary of the State Branch of Chhattisgarh, who has been in jail for 18 months without bail, on concocted charges. The governments, in their arrogance of power, do not even heed the protesting voices of Nobel laureates, human rights activists and those in whose selfless service the Doctor has spent more than twenty-five long years working as a doctor.

Such laws are counterproductive in the long run and lead to greater dissatisfaction among the people, denial of democratic rights to the people, and impede scientific inquiry and economic growth of the country, thereby leading to obscurantism and religious fundamentalism and intolerance. Justice Markandey Katju, a Judge of the Supreme Court of India, writing in *The Hindu*, dated January, 2009 under the title 'Importance of liberty & democracy in India' observed: "To my mind, harsh and draconian laws will curb liberty. That will not

only violate the right to liberty granted by Article 21 of the Constitution. It will also lead to great evils such as an increase in corruption in the police and other law enforcing agencies, which will have much more opportunity to extort money from the citizens, apart from impeding scientific and economic growth."

Then there was a news report that perhaps the perpetrators of the crime in Mumbai had secured their safe landing through the sea route by bribing the coast guards and other law enforcing agencies who had taken them to be ordinary smugglers, which only proves that it is a standard practice to allow smugglers into the country after taking hush money from them, not caring for the fact that these smugglers, most of them narcotics smugglers, cause great damage to the country's economy and health of the youth, besides providing huge amounts of money to the D-company, which in turn pumps back this money for funding terrorist activities in the country. While it was an appreciable gesture of thankfulness to appreciate the Mumbai police for its brave handling of the Mumbai terrorists, it is surprising that nobody questioned the role of the same police in letting them in for money. The people of the country are with the administration for honouring those who made the supreme sacrifice while fighting the terrorists, they equally have 'the right to demand punishment to those who have been making money out of the whole bargain regardless of the danger they cause to the country. However, the media, which is supposed to be ever vigilant for the defence of democratic freedoms in its role as an important column of the democratic structure of our country, failed to question the administration and the police on behalf of the people.

Governments need to be reminded that voices of dissent

and protests, whether non-violent or violent, arising from within the country can only be effectively controlled by addressing the problems of people through dialogue and not through use of brutal force. Sovereignty of the people has always to be respected and serious effort has to be made in a transparent manner to fulfil their aspirations. Democratic and secular character of our polity has to be maintained and affirmative action has to be taken to help the marginalized sections of our society so that these sections also enjoy the fruits of freedom and development in an equitable manner along with the advantaged sections of our society. It can only be achieved by ensuring the rule of law and not the rule of those entrusted, by the people, with the responsibility of governing the country on their behalf.

Justice Katju has rightly observed, in the above quoted article: "Crime and terrorism cannot be eliminated by draconian laws. They can be eliminated only by the abolition of poverty and unemployment, which are the main sources of crime. Only rapid industrialization can abolish poverty and unemployment, which will largely eliminate crime and terrorism."

So far as dealing with jihadi terrorists from across the border is concerned, we have first to put our own house in order; we have to plug the holes through which they sneak into the country. We also have to address the problems of those who give shelter to them or become accomplices in their crimes because they nurture a grudge against the rulers of the country as a result of having been victims of communal violence or hatred in the past. Diplomatic efforts and international pressures can achieve what wars cannot achieve, as they can only bring more suffering and destruction to innocent people in the countries at

war in their wake. There are peace loving, conscientious and sane elements everywhere, which like to live a peaceful and dignified life themselves and wish the same kind of life for others. Such people would never like jihadi terrorists to invite war and suffering on their own people through their actions. An appeal to them to force their rulers to let them live in peace with dignity can be more effective than a nuclear weapon because the former will attack only the wrong doers from within, whereas the latter kills all, indiscriminately, as terrorists do in a terrorist attack. Fear of cut in economic aid by the U.S. under the new President, Barak Obama, has already started showing its effect on the rulers in Pakistan and action has been taken to close the headquarters of Jamat-ud-Dawa in Muridke. We have not reached the end of the road yet, and there is still hope. Let us hope that good sense will ultimately prevail, on both sides of course, and war will remain not one of the options but the last one, never really to be exercised, and an atmosphere of mutual cooperation for mutual well being will again start being built up. -30.01.2009

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Humanitarian Crisis in Northern Sri Lanka

Appeal to the United Nations: INVOKE R2P (Responsibility to Protect); Let UN Administer Safety Zones/Camps

The People's Union for Civil Liberties, Tamil Nadu & Puducherry, is extremely disturbed and concerned at the fast deteriorating humanitarian crisis, of the civilians trapped in the cross fire in Mullai Thivu between the Sri Lankan army & the LTTE.

The ICRC & the United Nations estimate that around 250,000 - 300,000 Internally Displaced Persons (IDPs)/civilians are currently trapped in and around the line of the military offensive. While we are conscious of the fact that the LTTE is equally responsible for the humanitarian crisis, we firmly believe that the Sri Lankan state has a greater responsibility to ensure the safety of its citizens.

The PUCL welcomes the demarcation of the safety zone by the Sri Lanka Government as a step to ensure safety of IDPs. But in our assessment, this is a step too small and taken too late. We feel that if the Safety Zones have to be truly meaningful they will have to be operated and managed by UN Agencies and the International Community and not run by the Sri Lankan Government.

The mere act of setting up Safety Zones under the control of the Sri Lankan army is not just a facetious act but also amounts to a tokenism. Its common knowledge that the existing camps set up in Vavuniya, Mannar and Jaffna under the control of the security forces have become virtual detention centres. There have been steady reports of pervasive violence and human rights abuse from within these camps. Since these camps are designated as high security camps humanitarian workers are denied access and rights violations take place with impunity. With such a track record, Safety Zones run by the Sri Lankan security forces can hardly instil confidence

amongst Tamils who have been suffering terrible experiences over the last year or so. Unless the Safety Zones/Camps are under the direct supervision of UN authorities, the camps will become an Asian version of Guantanamo Bay!

The news that Sri Lankan forces have bombarded Safety Zones/camps resulting in numerous deaths is not only shocking but also condemnable. Using the excuse of war expediency to bomb places of safety is both betrayal of people's faith and also unacceptable. It needs to be condemned.

Using the pretext of waging the 'war against terror' what has actually happened is the setting up of a vast network of police, para-military and military forces across the entire Island state which today have become institutionalized forces of terror. The UN Special Rapporteur on extrajudicial, Summary or Arbitrary Executions felt concerned enough to report that the police were engaged in summary executions and that torture was the main cause of deaths in police custody. More importantly he pointed out that the vast number of custodial deaths was caused not by rogue police but by ordinary police officers taking part in established routine¹. The working group on enforced or involuntary disappearances noted at the end of 2007 that there were 5516 outstanding cases. The working group also pointed out that the increase in reported cases of recent enforced disappearances seem to indicate a "wide spread pattern of disappearances"².

We would like to stress here that the state supported architecture of terror is terrorizing not just Sri Lankan Tamils of northern Sri Lanka but also all other Sri Lankans who may be seen as dissenters against the ruling

regime are seeking accountability from it. It may not be out of place here to refer to a letter dated April 20, 2008 signed by 13 civil society organizations (CSOs) of Sri Lanka to the Heads of Nations across the world seeking their support to vote out Sri Lanka from the UN Human Rights Council. The CSOs strikingly pointed out, "the government has permitted National Security concerns to outweigh the protection of fundamental rights, particularly of minorities of Sri Lanka. Emergency regulations currently in force enable arbitrary arrest and long term detention with out indictment, as well as torture. The fact that illegal detentions and torture also take place in cases not related to the conflict, only highlight the deep roots of the current Human Rights crisis".

It saddens us that the international community appears to have decided to play mute spectators to the dreadful drama of death and destruction that has befallen the Tamils of northern Sri Lanka. We would like to remind the world community that when a state fails to protect their populations and in fact acts inimical to a section of its own people then the international community has a responsibility to initiate political, diplomatic, economic and legal preventive steps.

This responsibility emanates from the historic declaration of world leaders in the September 2005 UN Summit on Responsibility to Protect which held that the international community has a "responsibility" to help protect civilian populations from genocide, war crimes, ethnic cleansing and crimes against humanity. As former UN Secretary General, Kofi Annan remarked on Oct 7, 2005 during his address to the UNHCR, "International inaction

has been recognised as unacceptable, especially where national governments are unwilling or unable to act... Our focus should really be on earlier, non-violent ways to prevent conflicts or political upheavals from reaching such a point".

We feel that the situation is already precarious with thousands of people being killed and many thousands more living insecure lives as a consequence of the policies followed by the Sri Lankan Government. It is of utmost importance that the International Community should intervene decisively at least now, and not to intervene later on after hundreds more have perished and thousands suffered privations and horrific human suffering. It will be a callous betrayal of the UN Charter if urgent measures are not initiated immediately to stop the humanitarian crisis.

PUCL takes strong exception to the superficial response of the Indian Government to this grave humanitarian crisis taking place in Sri Lanka. The recent visits of the Foreign Secretary, Shivashankar Menon and the External Affairs Minister, Pranab Mukherjee appears to be mere tokenism and have done little to engage the Sri Lankan government in addressing the well documented incidents of human rights violations committed with impunity by Sri Lankan security and official agencies. The deaths and suffering of Sri Lankan Tamils, and the plight of over 200,000 (Two lakhs) do not seem to be a priority issue in negotiations. The insincere approach of Government of India which remains a mute spectator to the continuing violence amounts to an abdication of its duties as a signatory to the Universal Declaration of Human Rights. We are distressed to note that Government of India is rendering technical and strategic support to the Sri Lankan

Government. We condemn this and demand that Indian Government forthwith stop all military aid to Sri Lanka.

PUCL calls upon the United Nations to invoke the doctrine of 'Responsibility to Protect and to proactively intervene in the Sri Lankan crisis on an emergency basis to prevent further aggravation of the humanitarian crisis.

PUCL also calls upon both the Sri Lankan Government and the LTTE to honour the Vienna Convention and ensure the safety of civilians.

PUCL urges the Sri Lankan Government which has a sovereign responsibility to protect its citizens from human rights violations and which responsibility takes precedence over military expediency to:

1. Create and expand Safety Zones and Safe Passages under the direct supervision of the ICRC and other UN Agencies.
2. Permit international observers to assess the humanitarian situation in the Vanni region of North as also Eastern regions and facilitate remedial measures.
3. Forthwith stop all extra judicial killings, abductions and disappearances of civilians, journalists and human rights defenders in the name of countering the LTTE.
4. Provide humanitarian aid especially immediate supply of essential drugs and medicines to hospitals in Vanni and in Vavuniya.
5. Rush food supplies to the northern areas and ensure safe water supply and adequate sanitation facilities with special focus on gender needs.
6. Ensure freedom of movement for those who have come out of the LTTE areas and are now living in the camps in Mannar and Vavuniya
7. Restore freedom of press and media.
8. Prosecute the killers of

Lasantha Wickrematunge, the editor of Sunday Leader, without any delay. Similarly launch effective investigations and prosecutions into the murder of other journalists and human rights defenders. - Dr. V. Suresh, President, PUCL-TN & Pudukkottai, Chennai, 31.1.2009

1 Para 10, page 6, "Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1", 8th April, 2008.

2 Working group, A/HRC/7/2, para.344 referred in para. 12, "Compilation Prepared by the Office of the High Commissioner for Human Rights, in accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1", 8th April, 2008

SELECTIONS FROM
PUCL BULLETIN,
VOLUME II

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Sri Lanka Crisis: PUCL Wants UN to Intervene

Special Correspondent

The People's Union for Civil Liberties on Saturday called upon the United Nations to invoke the doctrine of 'Responsibility to Protect' and intervene in the Sri Lankan crisis to prevent further "aggravation of humanitarian crisis" there. Addressing media persons, State president of the PUCL V. Suresh said that the situation in Sri Lanka was precarious with thousands of Tamils being killed and an equal number of people living insecure lives as a consequence of the policies followed by the Sri Lankan government.

Though safety zones had been set up, there were reports of violence and human rights abuse in the camps. As these zones were designated as high security camps, humanitarian workers were denied

access. Mr. Suresh said that the responsibility of the UN emanated from the historic declaration of 2005 September Summit, which held that the international community had a responsibility to help protect civilian populations from genocides, war crimes, ethnic cleansing and crimes against humanity.

Expand Safety Zones He wanted the UN to create and expand safety zones and ensure safe passage of civilians under the direct supervision of International Committee of Red Cross and other agencies permit international observers to assess the situation in Tamil areas and facilitate remedial measures (Published in The Hindu: 1st February, 2009). - Dr. V. Suresh and D. Nagasaila, Advocates President, PUCL-Tamil Nadu &

Pondicherry Advisor for Tamil Nadu to the Supreme Court Commissioner on Food Security

(from page 1...) The impunity that has become part of policing and governance in this country can only be eliminated when human rights activity has a full and free play. Then only there will be democracy and transparency. There is a rule - judge made rule -which says that pre-trial illegalities do not vitiate a criminal trial. How can Binayak Sen, then, establish his case when this rule still reigns supreme, even after human rights have been given a statutory status by the Protection of Human Rights Act 1993? HAVE YOU EVER HEARD OF THIS FOLKS? NOT EVEN THE NHRC AND ITS CHAIRPERSON, I am sure.

Comments on Terrorists by Justice Arijit Pasayat

—Judges, Advocates, and Terrorists

K G Kannabiran

Every judge of the Supreme Court before entering takes an oath where he says that he will bear true faith and allegiance to the Constitution, that he will uphold the Sovereignty and Integrity of India and that he will duly and faithfully and to the best of his ability, knowledge and judgment perform the duties of office without fear or favour or ill-will and he will uphold the Constitution and the laws. Justice Mr. Pasayat has taken this oath twice when he was appointed to the High Court and later when he was elevated to the Apex Court. It may be a routine but it is also a disciplinary code. It is also a restraint on his freedoms under Part three of the Constitution.

Four decades back I was arguing a case of commutation of death sentence into one of life before a Bench of AP High Court and the junior

judge on the Bench asked me "why should these Naxalites who want to overthrow the Constitutional Government be allowed to seek protection under the constitution?" I told him that when these issues come before the Court it is not their values that are on trial but the values of the society. Barring Article 19 all the other crucial articles on life, equality and liberty are available to all whether citizens or non-citizens. These are campaign materials for Constitutional Democracy. This was around forty years back. A judge has a right to write about terrorism in his judgment as part of adjudication. But the restraint of speech applies to the judge in all his public utterance. In one of his talks in a Seminar referring to terrorists he stated that they don't have human rights but only animal rights. As a judge he should be aware

that the Nazi leaders who perpetrated genocide as a policy were not killed by the Allies but a War Tribunal was constituted and they were tried and thereafter punished. In fact post second world war in the famous Sacco and Vanzetti trial justice Frankfurter formed Defence Committee for them when these Italian Radicals were denied defence.

The Decisions of the American Supreme Court during MacCarthy period of un-American activities accusations should form part of advocates' study during the period spent as apprentices to understand the values that enriched the profession. During the MacCarthy period lawyers and judges were quite hysterical. Under the Constitution Judges are not expected to speak like Justice Pasayat did. Nor can advocates resolve to deny defence to Islamic

terrorists or physically prevent advocates appearing for terror suspects. The Boycott resolutions so frequently passed in our courts against some accused would amount to professional

misconduct. It is unfortunate that the All India Bar Council did not play the role it was expected to.

Liberal values cannot spread without campaigning and- our courts are slowly ceasing to be campaigner

of liberal cause and the profession is not aware what liberal values are liberal because none of us read part III, IV and IVA of the Constitution. A reading of these might provoke us to read more.

Letter: 1

To
Hon'ble Justice Mr A Pasayat
Supreme Court of India
New Delhi
Sir,

A couple of days ago, I happened to watch a footage on a TV channel in which you were shown to express the view at a seminar that terrorists were *animals* and had no claim on human rights. Such a view of a Judge of the apex court held either due to ignorance or by conviction is a matter of grave concern to the citizens of the country. Under the Universal Declaration of Human

Rights, every member of the human society is entitled to human rights without any exception and is not required to possess any other qualification for their enjoyment but at the same time this does not give anyone the right to commit a crime including acts of terrorism and escape punishment. Thus the only (human) right of a person, accused of commission of a terrorist act, is to be tried fairly by an independent and impartial court of law and be punished or acquitted by it. He is also entitled to equality before the law and equal protection of the law. This is what

even our constitution guarantees to every citizen. I wonder if you are aware of the implication of your view. It means that a person accused of indulging in terrorism is not entitled to presumption of innocence and a fair trial and should be convicted even without sufficient proof. This, apart from leading to massive miscarriage of justice, would be contrary to the principle of rule of law and against the letter and spirit of our constitution. Yours faithfully. - Prabhakar Sinha, National Vice President PUCL, Nepali Kothi, Club Road, Muzaffarpur-842002, 29.01.2009

Letter: 2

Dear all,

Our president Mr. K G Kannabiran and Vice-President Mr. Prabhakar Sinha have sharply reacted when they happened to watch Mr. Justice Arjit Pasayat of Supreme Court of India over the electronic media saying that terrorists are animals and they have no human rights. Mr. Kannabiran has suggested to the Judge that if you hold such a view "you may quit the position you hold and politically fight terrorism. But no Judge can express the views you expressed and continue to occupy the position you are holding." Mr. Sinha has pointed out in his letter to the Judge that every member of the human society is entitled to human rights without any exception and, if what the Judge said is assumed to be correct, it would mean that "A person accused of indulging in terrorism is not entitled to presumption of innocence and a fair trial and should be convicted even

without sufficient proof. This apart it is against the letter and spirit of our Constitution." In my opinion giving such a statement by a sitting Judge of the Supreme Court amounts to 'misbehaviour' within the meaning of Article 124(5) of Constitution of India. It is a fit case in which the PUCL may initiate a signature campaign on a notice of motion for presenting an address to the President for removing Justice Arjit Pasayat so that it may be given to the House of the People in case it is signed by a Hundred or more members of the *Lok Sabha*, or to the Council of States if signed by fifty or more members of the *Rajya Sabha*. Mr Kannabiran prepared a note: "Judges Advocates and Terrorists" which has been circulated by forwarding it to all concerned with the PUCL by Mr. Pushkar Raj including you. Mr. Prabhakar Sinha's letter to the Judge has already been forwarded to you by Mr. Pushkar Raj. The last sentence of the note of Sri

Kannabiran reads: "A reading of these might provoke us to read more." After reading the aforesaid note of Sri Kannabiran in the light of the letters written to the Judge by him and Sri Prabhakar I came to the conclusion that giving the aforesaid statement by a sitting Judge of the Supreme Court is a clear case of "misbehaviour." I request those of you who are concerned with the PUCL to reread the note (Judges Advocates and Terrorists) and Sri Sinha's letter to the Judge, and if you agree with my view you may convey your agreement to Mr. Kannabiran, and if I hear from him thereafter to do so I will draft a notice on which the PUCL should start a signature campaign for initiating proceedings for his impeachment.

With regards, yours sincerely. - Ravi Kiran Jain, Senior Advocate, National Vice- President PUCL

Responses

Dear Ravi Kiran Ji,

I have seen the letters of Prabhakar Sinha and Kannabiran, and I agree with their views. I think that I communicated the same to them. As for impeachment, you know how difficult it is. The present Lok Sabha has only a short tenure now. Whatever is done, will have to be done by the next Lok Sabha. Secondly, the Congress Party and the BJP will agree more with the Judge's views than those expressed by Prabhakar Sinha or Kannabiran. It is therefore best to put it across through the media. - Surendra Mohan, XB-1, Sahvikas Aptts, IP Extn, Delhi

Dear Pushkar,

I have read Mr Kannabiran and Mr Sinha's responses to the comments of Justice Pasayat on the human rights of Terrorists. Just now I read Ravi Kiran's mail on what could be done. In fact I was thinking of writing to you on this when I saw Ravikiran's mail. I am not thorough on the technicality of any action on 'impeachment'. If it is ok we must go ahead with this.

Would like to hear from you soon on this. Regards. - Pramodini Pradhan, Convenor, PUCL Bhubaneswar

I fully endorse the views of Shri Kannabiran and Shri Sinha. The judge will be well-advised to resign his august office. - Raj Kishore, 53, Express Apartment, Mayur Kunj, Delhi - 110096

Letter:

Judicial Accountability and Transparency in Governance

To
Hon'ble Shri K G Balakrishnan,
Chief Justice of India,
New Delhi

Sir,

It has been widely reported in the media that the Supreme Court has challenged the orders of the Central Information Commission to disclose information about the assets of the judges which are with you. However, what has not been reported is the public perception of this move by the millions of concerned citizens like me. We believe that it is of paramount importance that the independence of the judiciary remains un-dented, its prestige unimpaired and public trust in it undiminished. To ensure this, the judiciary has to be extremely cautious in its functioning both inside and outside the court, especially, when several members of the higher judiciary including a former Chief Justice of India are alleged to have indulged in corrupt practices. Before deciding to challenge the orders of the Central Information Commission, you should have

(regardless of the legal position) considered whether the move was to inspire greater respect for and trust in the judiciary or produce the opposite result. To tell you the truth, the general impression is that there is so much to hide that an all out effort is being made at concealment regardless of the grave injury by this single act to the prestige of the judiciary. The impression may be wrong, and the decision might have been made purely on legal grounds, but if you win the case the injury to the judiciary might be far greater. Ms Gandhi had clamped the emergency using a provision of the Constitution and, to the best of my knowledge, it was not declared unconstitutional, but we, the people of India, did not agree. The judicial verdict in this case may be in your favour, but the people of India would, not agree. Any number of articles and statements attacking the judiciary would fail to produce the unfortunate result that pursuing this case in a court of law would do. May I request you to withdraw the case, disclose the information sought and save the image of the judiciary rather

than what, in your opinion, is its right not to disclose the information about the assets of the judges? Yours faithfully. - Prabhakar Sinha, Nepali Kothi, Club Road, Muzaffarpur-842002, January 19, 2009 Q

Organisational Queries

We receive from time to time queries/requests from new members regarding the PUCL identity card and also regarding the privileges of the Life members and Patron members as compared to Annual members. The three types of membership, i.e., Yearly, Life, and Patron, do not represent a hierarchy of membership. All members are equal. Life membership and Patron membership simply afford an opportunity to those who desire to contribute some extra money to the PUCL to strengthen its financial position. No membership carries any privilege. All members shoulder the burden of fulfilling the aims and objects of the PUCL. The PUCL does not issue any identity cards to its members as they are not supposed to take initiative independently. - Pushkar Raj, General Secretary

Day Long Dharna at Jantar Mantar

Demanding the Repeal of UAPA and the Release of Dr. Binayak Sen

The People's Union for Civil Liberties organized a day long dharna on 4th February 2009 at Jantar Mantar, New Delhi, demanding the withdrawal of the Unlawful Activities Prevention Act (UAPA, 2008 Amended), the release of Dr Binayak Sen who is in prison for the last 21 months and evolving a jurisprudence for Human Rights defenders in the country.

The Dharna had the participation of former PUCL President and former Chief Justice of Delhi High Court, Rajindar Sachar. Speaking on the occasion he condemned the passage of the Bill in less than ten minutes in the Parliament without any discussion despite the history of misuse of the draconian laws like POTA and TADA. He made it clear that the laws were not capable of fighting terrorism and Naxalism. Instead, many a time they worked as Terrorism Production Tools (POTA was called Production of Terrorism Act). Terrorism and Naxalism could only be fought by tackling the root causes of the problem. He called upon Dr. Man Mohan Singh to take back the amendments which tinkered with

Indian Jurisprudence. The presumption of the accused being guilty until proven innocent is contrary to Indian Jurisprudence. He also demanded that Dr. Binayak Sen be released. Not a shred of evidence had emerged in the trial where more than 45 substantive witnesses had deposed. The denial of bail to Dr. Sen reflects a shocking state of affairs in the justice administration system of our country. He said that the longer Binayak Sen stayed in the Raipur Jail, it would only expose the hypocrisy of all platforms of Justice. He also called upon the Indian State to evolve a Jurisprudence for Human Rights defenders as more than a hundred Human rights workers were in Indian jails while trying to enforce Human Rights of the poor in the country.

Present Rajya Sabha member Anwar Ali also supported these demands. He assured the group that he would bring together a delegation of MPs to meet the PM on these issues and also work for the release of Dr. Sen whose long detention he called extremely unjust.

Other speakers included PUCL National Secretaries, Ajit Jha and

Kavita Srivastava, Mahi Pal Singh, General Secretary, PUCL-Delhi, Paul Diwakar, National Convenor of the National Campaign for Dalit Human Rights, 'Yuva Manch' Editor Dr. AK Arun, Jan Swasthya Abhiyan member Dr. Mira Shiva, Kalpana Mehta from Saheli, Bhupender Singh Rawat from Jan Sangharsh Vahini, Vice President of Rajasthan PUCL Maulana Hanif and some members of the PUDR.

A memorandum addressed to the Prime Minister was presented to the PMO by a delegation led by Mahi Pal Singh, General Secretary, PUCL-Delhi.

The sit in finished with the resolve to come back when the Parliament would be in session to remind them that Dr Sen could not be denied justice for any longer now, and the draconian law UAPA had to be repealed without delay. It was also resolved that, if required, the PUCL would go to the Supreme Court to ensure the rejection of such a black law. -Pushkar Raj, General Secretary, PUCL National; Ajit Jha and Kavita Srivastava, Secretaries PUCL National; Mahi Pal Singh, General Secretary, Delhi PUCL

Text of the Memorandum Submitted to the Prime Minister after the Dharna

Dr. Man Mohan Singh, Honourable Prime Minister of India, New Delhi.

Subject: Demanding the repeal of Unlawful Activities Prevention Act, 2008, the release of Dr. Binayak Sen and evolving a jurisprudence for Human Rights Defenders in the country.

Sir,

The PUCL considers the 'unanimous' passage of the UAPA (Amendment) Act 2008 by the Parliament as a matter of great shame and concern. The UPA

Government, with the open support of the Opposition, has succeeded in peddling and passing this Draconian Act, which was even in its earlier avatars nothing but a replica of POTA. This was scrapped by the UPA Government immediately after coming to power in 2004 as part of the public promise made in the wake of strong opposition against its misuse. Those who had been victims of the misuse were the minorities, marginalized sections of society, known opponents of those in power including Social Activists and Human

Rights Workers.

The new amendments, brought in the wake of Mumbai attacks, have only left out from POTA the provision for legal admissibility of a "confession" made in police custody. The introduction of the most bizarre and anti-legal provision to treat **an accused as guilty till proved otherwise** and unless the court finds the accused prima facie innocent it won't grant any bail to the accused. In case of a "foreign national", bail provisions have been made much more stringent,

stringent, amounting to discrimination in equality before the law. This evidently runs counter to the recent Supreme Court directive that during a trial granting of bail should be the norm, and rejection an exception. In our opinion this law is nothing but POTA.

The new law blithely extends the remand period from 90 to 180 days and police custody from 15 to 30 days. In fact, under this law, detainees can be kept in custody indefinitely, because bail is denied even after 180 days unless the judge is convinced that the accused is not guilty, proving which is almost impossible at this stage.

Statutes giving extraordinary powers to the police are introduced to cater to 'exceptional' situations. However they are routinely used in 'ordinary cases' as in their application police is the sole judge. As it is police misuse of power is rampant and life and liberty of innocent citizens will be in serious jeopardy. This is evident from the fact that only 15% of people arrested under TADA were ever put on trial, and less than 2% ever convicted.

PUCL considers the UAPA (Amendment) Act 2008 as a serious blow to the human rights environment of the country and a real potential danger to civil liberties of ordinary

citizens of the country that must be revoked unconditionally. The PUCL is of the opinion that instead of helping contain terrorism, let alone eradicating, it will only further aggravate social tensions through legitimization of corrupt highhandedness of the police force' and targeting of specific segments of the society with full protections of the law.

- The PUCL demands the repeal of the Unlawful Activities (Prevention), 2008 Amended Act.

2. The PUCL is also deeply disturbed at the illegal and continued incarceration of its National Vice-President & State General Secretary, Dr. Binayak Sen under the Chhattisgarh Special Public Security Act of 2005 since May 14, 2007. It considers the rejection of bail to a human rights defender and one of the highly proclaimed doctors winning the most prestigious Dr. Jonathan Mann Award for Human Rights in 2008 as a shameful act of the justice delivery system in India.

- We demand the release of Dr. Sen.

Similarly, the illegal detention of renowned film maker Ajay TG, State Executive Committee Member of Chhattisgarh PUCL under the CSPA Act of 2005, by the State Government coupled with the failure of the State

to file the charge-sheet even after eight months is a clear-cut case of harassment of human rights activists by the State.

- We demand that Ajay TG's case be closed.

3. In our opinion today more than a hundred civil liberties and human rights activists as well as intellectuals and journalists find themselves in the various jails of the country. The State has been repeatedly identifying activities relating to civil liberties and human rights as extremist and criminal activity. If this be the case then how would one enforce Human Rights in the Country?

- We demand that respect for human rights and human rights defenders becomes an integral part of the criminal justice system and a Jurisprudence for Human Rights Defenders be formulated for our country.

We are, Justice Rajindar Sachar, former President PUCL; Shri Surendra Mohan, former Rajya Sabha MP;

Dr. George Mathew, President PUCL-Delhi; Dr. Pushkar Raj, General Secretary, National PUCL; Kavita Srivastava, Secretary, National PUCL, Ajit Jha, Secretary, National PUCL, Mahi Pal Singh, General Secretary, PUCL-Delhi and over sixty others.

Form IV

Delhi

Monthly

Pushkar Raj

Indian

270-A Patparganj, Opp. Anandlok Apartments, MayurVihar, Delhi-110.091

Same as in (3) above

Pushkar Raj, Indian; 270-A Patparganj, Opp. Anandlok Apartments, Mayur Vihar I, Delhi 110 091

People's Union for Civil Liberties

270-A Patparganj, Opp. Anandlok Apartments, Mayur Vihar I, Delhi 110 091

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I, PUSHKAR RAJ, HEREBY DECLARE THAT THE PARTICULARS GIVEN ABOVE ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. MARCH 1, 2009

- Pushkar Raj, Publisher

Humanist Responses to Major Indian Issues

R M Pal

(Ambedkar Centre of Mumbai and Centre for Social Change, Bandra Kuria Complex, Mumbai jointly organized a seminar on the subject on 10th January 2009. It was held at M.N. Roy Human Development Campus of the Centre. Dr R.M. Pal, former editor, The Radical Humanist and editor, PUCL Bulletin delivered this keynote address. The other main speakers were Mr. Roy Brown, former President IHEU, Prof. Ram Punyani, Mr. Biswas, former IPS Officer, Mr. Kamble from the Ambedkar Centre of Mumbai, Mr. Susonarkar, Prof. V.K. Sinha and Mrs. Sangeeta Mall. The concept paper written by Mr. V.B. Rawat and Dr. R.M. Pal appears elsewhere in the 'Bulletin'.)

Since the time I became editor of the PUCL Bulletin, a monthly magazine devoted to Human Rights and Civil Liberties, published by People's Union for Civil Liberties, I gave the utmost importance to societal violation of human rights caused by the caste system and communalism. I have been trying to make my own contribution to highlight human rights of Dalits and to that effect I requested the National Human Rights Commission to hold a brainstorming session on the subject. This session took place in Chennai in August 1996. My only satisfaction is that for the first time the subject became a part of the NHRC's agenda. The proceedings of the session were published in book form under the title 'Human Rights for Dalits' edited by me and my friend, Mr. G.S. Bhargava, and published by Gyan Publishing House, New Delhi. Before that at the UN World Congress on Human Rights in Vienna in 1993, I met Mr. Yogesh Varhade, organizer of the Ambedkar Centre for Justice and Peace operating from Toronto. Then came the Durban Conference in 2001.

It is usually agreed that caste-created Indian issues like untouchability cannot be tackled without abolishing caste. It is in this context that I would like to start by referring to a discussion on the subject years ago. I had the privilege of sharing a platform with Justice Krishna Iyer and the well-known Arya Samajist, Swami Agnivesh. Justice Iyer, with tears in his eyes, said that the Dalit problem could be solved if more judges from Scheduled Caste

communities were appointed. Agonies suggested that Dalits be given firearms so that they could teach the upper castes a lesson. I said that it was not possible to reform the Hindu society without abolishing the hierarchical system of i/amav/yayasMa/caste. The Arya Samaj is no doubt against the system. But the problem arises when the Arya Samaj and people like Swami Agnivesh affirm their faith in the theory of Karma, which is at the root of keeping the downtrodden under perpetual bondage. It does not admit of revolt against tyranny. It prevents one from shaping one's own destiny. The institution of caste has been the stumbling block to attaining social justice and human rights. The theory does not acknowledge the fact that every human being, given favourable conditions, is capable of developing unlimited powers of intellect, and that the conditions have not yet been created for those who deserve them the most. The caste system, an 'ugly relic of the past' as M N Roy described it, stands in the way of all progress. And let us be clear that India cannot sit in the comity of civilized nations until this system is abolished. I am sure the participants in this meet will take a look at the intellectual, moral and religious support that has been given to the caste system.

According to the laws of Manu, Brahma created the Brahmins, the Kshatriyas, the Vaishyas and the Sudras from his mouth, his arms, his thighs and his feet respectively. And this he did for the sake of prosperity in this world. He assigned separate

duties and occupations to them in order to protect the universe, the first three for teaching, protecting the citizens and trading. The Dalits are described as varnasankara, born out of the intermixture of the varnas, and they are outside the system. Furthermore, the laws prescribe that the penalty for a Brahmin killing a cow and killing a Shudra is the same. In fact killing a cow is a more heinous crime than killing a Shudra. Now let us go to the Gita. Lord Krishna tells Arjuna that the work of Brahmins, Kshatriyas, Vaishyas and the Shudras are different. The work of the Shudra is service. They all attain perfection when they find joy in their work. 'Greater is thine own work even if this is humble than the work of another even if this be great'. When a man does the work God gives him, no sin can touch this man; a man should not abandon his work because thou art in the bondage of Karma'. In this context I want to refer to an incident. When Gandhi once went to Delhi, he stayed in the Valmiki colony. He told all the valmikis that their work is the most noble one under the sun and added that in the next life he'd like to be born in the Valmiki community. The valmikis immediately replied, "Bapu, why do you have to wait for so long? Come along now and we'll give you all the equipment to do the job." They were referring to the job of cleaning toilets. Gandhi, incidentally, didn't come forward.

Many of our liberal intellectuals maintain that the caste system does not exist now and the grip of caste is loosening. One Mr. A N

Sattanathan belonging to a lower caste in Tamil Nadu has published a book 'Plain Speaking: Story of a Shudra'. He maintains in this book that the grip of caste has loosened even though he makes another' and contradictory revelation. According to him, he did outstandingly well in his university exams in History and applied for a teaching job at a college close to his home, run by the Jesuits. The Principal called him for a personal interview. He went there and the Principal told him, "You must be either an Iyer or Iyengar (Brahmin castes, for a man from a low caste cannot achieve such outstanding results."

In the end I would like to say a few words about the IHEU's proposed international conference on untouchability in London later this

year. Untouchability exists in other parts of the world, in Nigeria, Japan, Nepal, Bangladesh and Pakistan. I hope the IHEU will take account of the fact that untouchability in India is a very complex question and without a discussion as to how to abolish caste, untouchability cannot be removed from India. I may now refer to the 1948 Universal Declaration of Human Rights (UDHR) and indicate briefly how caste provisions are in conflict with the provisions of the UDHR. Our system gives different status to different people on the basis of birth. Our system requires a person to join the occupation of the caste to which he is born and this violates Article 23 (1). Our system does not permit certain sections of the people including women to learn Sanskrit, to read religious books, to be priests.

This is in contradiction to Article 18, which states that everyone has the right to freedom of thought and expression. Some people are forced to live on the outskirts of the village and this violates Article 13

This seminar has been conceived to address both the philosophical and on-the-ground realities of caste, for without the former, it will be impossible to find solutions to the latter. Therefore, the discussion on Gandhi and Ambedkar's respective approaches to the annihilation of caste become critical to any meaningful way forward.

Concept Paper for the seminar on Humanist Responses to Major Indian Issues.

Humanist Alternatives to Indian Issues

V B Rawat and R M Pal

World's biggest democracy suffers from various inadequacies despite proclaiming a secular constitution and free adult franchise immediately after independence. We declared ourselves as a socialist republic and untouchability was constitutionally abolished while women were given equal rights with men. That Dalits could get reservation in government jobs and minorities had the right to start their own public institutions.

Despite this, India saw worst kind of caste and religious violence. The upper caste goons in different states of India have massacred hundreds of Dalits in various cases of violence. These cases of violence have been simply against any kind of assertion of the Dalits. The more they assert their identity, the bigger the violence against them. Right from Kumher in Rajasthan to Lakshmanpur Bathe, Sadhupur, Tsundura, Karmchedu, India's upper caste hatred towards the Dalits is well known. This has grown recently as the Dalits now are

challenging the existing hegemonies and seeking participation in power structure.

With this growing assertion, the forces of the status quo in India, particularly those who believe in Brahminical supremacy, too have initiated that hate agenda. While the real targets are the Dalits, it is the Muslim and Christian minorities who are also on their hit list. The communal carnage in Gujarat is a blot, which cannot be erased from the minds of the civil society the world over, unless such issues are discussed in details. The Sangh/7 Parivar has also unleashed its hate agenda in Madhya Pradesh, Jharkhand, Rajasthan and Maharashtra also. In states like Uttar Pradesh, caste polarization has put a break on their growth but signals from the South are not encouraging for a secular India. Karnataka has become the entry point for Hindutva forces in the South.

The Hindutva and right wing forces in India are not growing with

the growth of BJP or Sangh Parivar itself, the so-called secular forces are not far behind in this development. Hundreds of Babas have entered into the fray and using this spiritual market for their own benefit. Any question at the authenticity of this spiritualism is met with dire consequences and people are suddenly in the street to protest under the garb of cultural sensibilities. It is not just Taslima Nasreen who has been hounded badly by the Muslims in India but any one who questions the 'norms' faces this retaliation.

The spiritual growth of India has deprived people of their power to think independently beyond their families and clans. The resistance to opening up is so strong that young couples are being hacked to death for bringing disrepute to their families. The sarva-dharma secularism keeps quiet on such issues, which are considered to be 'internal affair' of the community. Hence, nobody questions the wisdom of caste panchayats to order killings of young couples.

None came out openly to support Taslima Nasreen for her remarks. Such politically incorrect things have become the hallmark of our 'democratic secular' fabric.

Apart from this, our natural resources are under threat. The concept of SEZ has virtually ruined the lives of millions of farmers, predominantly the Dalit-Bahujan communities. It is the neo-colonization process where the private companies have been asked to take over the area where Indian laws would not be applicable, a free estate within the country. Voices of protest have been met with plain brutality. 'The economic globalization is therefore bringing inequalities and unrest in the country. Right from Maharashtra to Gujarat, West Bengal, Andhra Pradesh, Goa, Tamilnadu, Haryana, Orissa, SEZ are creating unrest. In Chhatisgarh and Jharkhand private companies like Mittals, Tatas, Poscos and Jindals have acquired huge tracks of land and have displaced millions of tribals. Reliance in Haryana and UP is doing the same thing. Our forests are already out of bound for tribals and trans-national corporations are controlling water.

The participation of Dalit-Bahujans in power is another subject, which has been a matter of great debate. The reservation is now a politicized issue and battle lines have been drawn between different caste groups. Reservation is considered as a soap given to the Dalits and tribals and they are considered inferior. But can any country survive or rest with peace without participation of these sections in power? Despite reservation, Dalits and OBCs are not being represented in our higher institutions of power. The casework of AIIMS is a clear example how the upper caste lobby is hell-bent to disallow them the benefit of reservation. Our courts are becoming shelter grounds for all those who are against social justice.

The anti-Muslim violence in the communal disturbances in India and the new laws enacted in the name of quelling terrorism has clearly one target and that is Muslims. Muslims who constitute second majority of India are not represented in our bureaucratic structure. Justice Sachar Committee report clearly indicated that Muslims' condition in India is worse than that of Dalits. Their representation in civil services and other government institutions is absolutely minimal. In numerous communal disturbances, Muslims have been virtually slaughtered by the police. It is understandable that the demand for Muslims' participation in power is not uncalled for. Yet, despite these known facts, the parties, courts, continue to object to the demand of reservation for Muslims in government services. Humanist Responses The religious tourism in India is increasing and so are the Babas. The humanist response in India is basically confined to these issues. Some of them take on to Sai Baba while others speak against some form of medicines or the other. But none of them speaks against caste violence against Dalits or the threat of communalism in India. It is tragic that on many points humanist viewpoints come closer to the Sangh Parivar. That happens because the humanist perception in India is still elitist and upper caste in nature and it tries to balance its act by terming both Hindu fundamentalism as equal to Muslim fundamentalism. It equates Christian issues of conversion to that of Hindus' right not to convert. We did not hear humanist voices on Gujarat. There is absolutely nothing that we heard as to why Christians were being attacked in Orissa and Chhatisgarh. By just focusing on the cult of superstition (which, though important, is not the most important issue), and attack on Sai Baba, we turn ourselves into an escapist mode. Why do we keep quiet on caste issues? In fact, we do not even keep

quiet. In fact, a majority of the humanists appear to be in the company of the upper caste Dalit haters. It is therefore important that with this seminar we bring a dialogue on the major issues confronting the country and what could be the humanist response to them. These major issues are:

1. Threat of communalism in India;
2. Violence against Dalits;
3. Participation in power structure: Dalits, OBCs and Muslims;
4. Right to choose one's faith;
5. Violence against religious minorities;
6. Globalization and threat to Dalit Bahujans;
7. Religious intolerance;
8. Work against superstition;
9. Humanists in the developmental agenda.

It is generally agreed that many of our social evils including untouchability cannot be eradicated unless the system of caste, the divinely ordained hierarchical system - Varna-system' disappears. The question is how to put an end to this ugly relic of the past. Some months ago there was a suggestion from certain quarters of the SC/ST Commission that the state should be asked to abolish the system. On the question of theory of Karma the Hindu social philosophers have provided a theoretical justification for the Varna/caste/ system. It is not realized that a lasting Hindu solidarity can be achieved by the elimination of caste concepts, for the very idea of caste stands for division not solidarity. Our Hindu philosophers do not also realize that the great urges for Hindu unity/solidarity cannot come from internal organization. People like 'Advani' who maintain that all Hindus must say with Garva (pride) that 'we are Hindus', and the hold of the convenient theories of 'Karma' and transmigration of

soul is so great on the Hindu mind that any hope of a movement against caste/vama system must come from the Hindu fold. Educated victims of the system believe that nothing but the most radical secular activity of the state can break the system.

One wonders that a good number of educated upper caste Hindus and even lower caste Hindu intellectuals have now come to hold the view that the authority of caste conception has started weakening in Hindu society. Honestly conducted research would however indicate that instead of weakening the authority is, in fact, strengthening. Our reformers and intellectuals may find the answer of this scenario instead of asking the state to abolish caste; whether one

likes it or not the Hindu reformers even Gandhi had a very strong revivalist background. The source of Hindu greatness and the golden edge of that greatness provided that motive. I feel that a fresh analysis of the Ambedkar-Gandhi debate on the question of annihilation of caste is necessary. As Prof Rodrigues has pointed out in his book 'Essential Writings of Ambedkar', that Gandhi advised his followers who were keen to take part in the reform movement that they should read Ambedkar's writings on the question of caste before they jump into the reform movement. What did Gandhi mean by this? One thing is certain, that Gandhi recognized the fact that Ambedkar's argument about annihilation of caste must not be

dismissed. It is learnt that the IHEU is going to hold an international conference in London on the question of untouchability that exist in many parts of the world like Nigeria and Japan. The leaders of IHEU should know that the question of untouchability in India (unlike anywhere else) is linked with the divinely ordained system of caste and related questions like the theory of Karma and the theory of transmigration of soul. Therefore, in India the question of untouchability can be tackled only if we take up the question of annihilation of caste as suggested by Dr Ambedkar, M.N. Roy and other intellectuals. As such, an intellectual meet must have a brainstorming session on this question.

Role of Police in Orissa Riots

Joseph Gathia*

(Prepared for All India Christian Consultation in December, 2008)

Prelude

In a writ petition filed before the Supreme Court of India, the Catholic, Archbishop Cheenath of Cuttack and Bhuvanashwar has alleged that the role of police has been doubtful. Christian victims of violence who reached Bhuvaneshwar, the capital of Orissa also alleged that state police have been mere spectators.

Attacks on Christians and their property and institutions began in Orissa's Kandhamal district following the killing of a Vishwa Hindu Parishad (World Hindu Council or VHP) leader, Swami Laxmanananda Saraswati, and four of his disciples on August 23. The police attributed the killing to Maoists group but this has not been accepted by the VHP. The Christian leaders say that more than 100 people have been killed and several thousand people have taken refuge in the temporary camps.

It is time to once more examine

the role of police in communal riots.

Background

Democracy and appeasement of politically influential sections go hand in hand, resulting in politicians taking control of the situation from the police hierarchy during riots or communal tension. The role of police in communal riots in general has been far from desirable. And in cases of attack on Christians in Orissa the story is not different. I have been covering communal riots in India since 1969. From Bhagalpur, Meerut-Maliyana in 1982 and 1987, the Delhi riots against Sikhs in 1984, the Mumbai riots of 1993, the Godhra-Gujrat riots of 2002, till Kandhamal, Orissa.. The civil society is faced with the same problem: the dubious role of law keeping agencies.

During Bhagalpur (Bihar) riots I saw the role of police, which was strongly biased against the minorities. In Meerut (Uttar Pradesh) I came across stories about the role of police

in 1982 and 1987. Ordinary citizens could not understand the role of police, which was worse than that of the rioters. In 1982 Meerut riots the PAC killed at point blank the only son of one Dr. Shabbir and made him load his dead body on the truck. They also eliminated several others hiding inside a house.

Justice Krishna Iyer also visited the riot affected areas of Meerut in 1987. The PAC commander was accused of having pulled out 23 young boys from their houses, loaded them on a truck, taken them near a canal outside the city, and having them shot dead before throwing their bodies into the canal. Two boys, who miraculously survived, later narrated the story of police brutality. It was a few years after the incident that an FIR was recorded during the Chief Ministership of Mulayam Singh Yadav. But nothing again moved beyond recording the FIR.

Similarly the role of police during the Mumbai riots of 1992-93 came under severe criticism by various human rights activists and organizations, and above all by the Srikrishna Commission which named 32 officers as guilty of anti minority bias. A high police official was even accused of being instrumental in killing some young Muslim boys. After much protest and threats of taking the matter to the UN, this high ranking police official was symbolically arrested but released immediately. No action was taken against him later too.

Intelligence agencies can seldom be faulted in the matter of reporting to governments of inflammatory speeches made by important politicians. The impact of such public utterances against any religion is incalculable. Such inflammatory speeches are prohibited under the Indian Penal Code. A prosecution in such cases requires government sanction. How many governments are quick to take decision in such cases?

How politicians take control of the situation from the police is well documented, at least in the case of 1984 Sikh riots, in the Nanavati Commission Report. In almost all cases the police ultimately take the blame for the tardiness that is obvious in taking a propagator of violence to court. We also know how court proceedings take an inordinate time to come to conclusions. The whole process is such that those who make fiery speeches, intended to incite communal feelings, are hardly bothered about legal action that can drag on endlessly. Who then is liable for building an ambience that is conducive to riots between religious groups? Who is responsible for ensuring that no attempt is made to promote communal disharmony? These are nagging questions that arise again and again when reports like those of Kandhmal, Orissa are debated.

I remember how an IAS officer, Harsh Mandar working in Gujarat with Actionaid India, resigned after seeing total disregard to the constitutional duties by the police force. Harsh Mandar later wrote in an article, "Numbed with disgust and horror, I returned from Gujarat ten days after the terror and massacre that convulsed the state. My heart is sickened, my soul wearied, my shoulders aching with the burden of shame and guilt." He further writes, "The unconscionable failures and active connivance of the state police and administrative machinery is also now widely acknowledged. The police are known to have misguided people straight into the hands of rioting mobs. They provided protective shields to crowds bent upon pillage, arson, rape and murder, and were deaf to the pleas of desperate Muslim victims, many of them women and children. There have been many reports of police firing directly at the minority community, which was the target of most of the mob violence."

It is not Harsh Mandar alone who writes about such role of the police. Mr. Julio Reibero, ex-Director General of Police, Maharashtra and Mr. Chaman Lal, ex DGP of Punjab even called them 'cowards' for having attacked helpless people including old men, women, and children.

Another top cop Vibhuti Narayan Rai, former Inspector General of Police in UP who has handled several riot situations maintains that "any riot can be controlled in 24 hours if the administration wants to". In an interview to The Times of India Mr. Rai stated that it is essential that the police should be seen to be objective. That's what sends the right message to the people."

(Due to constraint of space, the remaining part of this report will be published in the April, 2009 issue of the PUCL Bulletin - Editor)

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