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## Clean Politics Demands No Corporate Funding to Political Parties

Rajindar Sachar

Recently there has been heated public debate on TV about donations being made by corporate sector to various political parties for elections, mainly to congress and B.J.P. and to some others -depending on which area particular company has more stakes. Previously there used to be somewhat hesitancy in admitting corporate - political monetary axis, but no longer. One industrialist unashamedly boasting that he gave donations to both the parties but of equal amount. Another donor was more cautious but complained that it should not be disclosed publically - clever thinking because of the uncertainty of which party may come to power. Such cynicism of money power playing a dominant role in the elections and the people accepting it as a normal feature is a matter of grave concern for clean politics.

It is unfortunate that there is almost no public debate on corporate money power muddying the political process in the country. In Companies Act 1913, there was no statutory provision banning donation being made by political parties. The High Courts thus had no option but to hold that donations to political parties could be made, it felt uncomfortable and warned of the dangers involved, Chagla C.J. of Bombay High Court warned. "It is our duty to draw the attention of Parliament to the great danger inherent in permitting companies to make contribution to the funds of political parties. It is a danger which may grow apace and which may ultimately overwhelm and even throttle democracy in this country."

Similarly Calcutta High Court warned "Its dangers are manifold. In the bid for political favouritism by the bait of money the company which will be the highest bidder may secure the most unfair advantage over the rival trader companies. Thirdly it will mark the advent and entry of the voice of the big business in politics and in the political life of the country."

Regrettably Parliament ignored this warning and added in 1960 Sec. 293A to the Companies Act permitting them to contribute to political parties 5% of net profits. The danger signs were visible immediately and Santhanam Committee Report 1962 recommended a total ban on all donations by companies to political parties because of the public belief in the prevalence of corruption at high political levels has been strengthened by the manner in which funds are collected by political parties, especially at the time of elections.

However no action was taken till the Parliament became a more diverse body till 1969 and then Parliament was forced to impose a total ban on contribution by companies to political (on page 11...)

## Special National Convention of PUCL

PUCL Special National Convention was held in Delhi on 21 and 22 March 2009. The Convention was attended by delegates from 15 states from all over the country. The two days' Convention deliberated on several issues including human rights situation in the country in the light of repressive laws, issues impacting human rights in the country and the role of PUCL, and its organizational matters. Besides various resolutions on significant human rights issues in the country were also passed.

President of PUCL, Shri KG Kannabiran said that it should be the endeavor 'of the human rights activists to expand the constituency of constitutional value system and democratic values. He emphasized on first five parts of the Constitution that should form core of operationalisation of the political system in the country. Regretting the assault on human rights defenders in various parts of the country he warned that this would lead to diminishing boundaries of freedom in various forms guaranteed in the constitution under the fundamental rights. In similar vein Prabhakar Sinha, Vice President of PUCL, stressed constant vigil by groups like PUCL on the functioning of state apparatus. He opined that normal adherence of law must be constantly monitored by human rights organizations.

Rajindar Sachar, former President of PUCL said that none of the political parties in particular respect human rights, be it the issue repressive laws, policies impacting marginalized people or fighting poverty, which is the biggest violator of human rights, genuinely that his biggest violator of human rights. He disagreed that establishing of National Investigation Agency will bring some radical changes in the fight of terrorism in the country, as,

according to him, very constitution of this agency is flawed.

George Mathew, President of Delhi PUCL, suggested that in the light of new developments in the world, like expanding tentacles of globalization and increasing power of the state, PUCL needs to be conceptualized as a movement. And, according to him, this can happen if the organization is able to attract more youth in its fold. Ravi Kiran Jain, Vice President of PUCL, stressed that unless and until decentralization of planning and its execution does not become a catchword and right to development is not recognized and demanded by a large number of people the real social, economic and political change will not occur.

In the Special Convention several resolutions were passed. The resolution on repressive laws demanded that UAPA (Amendment Act 2008) is a serious blow to the human rights environment of the country and a potential danger to the civil liberties of ordinary citizens of the country that must be revoked unconditionally. Passing a resolution on 'None of the Above' option in Electronic Voting Machines (EVMs) during election, the organization demanded that it is voter's right of expression under the constitution [Article 19 (1) (a)] to vote in favor of any of the candidates, and if he feels that his casting vote in favour of a candidate, owing to his tainted background, will not sub serve the purpose of democracy, then not to vote in favour of any of them. PUCL also demanded in its resolution on Dr. Binayak Sen, General Secretary of Chhattisgarh PUCL, his unconditional release, dropping all the charges against him and urgently getting him examined by doctors of either AIIMS or CMC Vellore in light of his deteriorating health. The Convention also resolved that it is of the utmost

importance in public interest that the judges of High Courts and Supreme Court declare 'their assets in public. This will sub serve the purpose of transparency, accountability and faith of the people in the judicial institutions. Apart from this resolution on Kerala migrant workers and anti-people displacement policies of Jharkhand government were also passed. Sri Lankan situation came for special attention and a special resolution on the situation in Sri Lanka demanding a peaceful and negotiated settlement of the ethnic problem was passed.

All the State unit office bearers made a presentation at the Convention on situation of human rights in their respective States.

In the end PUCL National General Secretary Pushkar Raj appealed to all the State branches of the PUCL to increase their membership amongst the marginalized groups like minorities, women and dalits and expand the base of the organization with enhanced membership so that PUCL could be more visible. He called for enlisting more youth in the organization so as to induce it with dynamism and meeting the new challenges that human rights organizations are facing from various quarters in contemporary society. - **Pushkar Raj**, General Secretary

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# Resolutions Passed on Various Issues in the PUCL Special National Convention Held at New Delhi on 21-22 March 2009

## **Right to Negative Voting**

PUCL resolves and endorses the view of the Election Commission about providing 'None of the Above' option in the Electronic Voting Machines (EVM) and that it should be made available in the forthcoming elections. The provision for 'None of the Above' already exists in rule 49-0, the only provision required is for maintaining its secrecy. No distinction can be made between a voter who votes for a particular candidate and a voter who does not, as far as direct election are concerned, where maintaining secrecy of vote is a must. Further, it is voter's right to expression under the Constitution, Article (19) (a), not to vote in favor of any of the candidates, if he feels that his casting vote in favor of a candidate, owing to his tainted background, will not subserve the purpose of democracy. By not casting his vote for any of the candidates by pressing the 'None of the Above' option button a voter endorses the purity of the democratic process.

## **Right to Information with regard to the Declaration of Assets by High Court and Supreme Court Judges**

PUCL National Conference resolves that it is of utmost importance and in the public interest, that as constitutional functionaries and trustees on behalf of the people, the High Court and Supreme Court judges should declare their assets in public. This will sub serve the purpose of transparency, accountability and faith of the people in the Judicial institutions. The disclosure shall certainly enhance the stature and the majesty of the Institution. It also resolves that the Legislators, Parliamentarians and Ministers should also regularly declare their assets, and this information should be available in the public domain.

## **Resolution of Dr Binayak Sen's Release**

The People's Union for Civil Liberties demands the unconditional release of Dr Binayak Sen, Vice-President of National PUCL and General Secretary, Chhattisgarh branch. Dr Binayak Sen a practitioner in the area of Public Health was arrested on May 14, 2007 on trumped up charges, alleging that he was supporting Maoists, under various sections of CSPSA 2005, UAPA 2004 and waging war against State under IPC sections.

The PUCL looks upon Binayak's arrest as an attack on a Human Rights defender and the organization. In the trial which has now been underway for eleven months, in which more than 58 witnesses have deposed, including more than 6 main prosecution witnesses turning hostile, completely demolishes the prosecution case. Not a single witness supported the police case. It is shocking to observe that the Government of Chhattisgarh in desperation brought in a second charge-sheet after eighteen months of his arrest. The prosecution has openly fabricated and tampered with the evidence. We condemn it. It is also shocking to learn that despite the loss of 25 Kilograms of weight and a coronary heart ailment, Dr Sen is not being examined by specialists in their respective fields, in spite of repeated appeals by Dr Sen. It is clear that Dr Sen has been in imprisonment simply to silence his voice and that of the PUCL to expose the gross violations of Human Rights being committed by the State of Chhattisgarh in the name of Salwa Judum, forcibly evicting the people from their forest and fields and keeping them as captives in camps, raising a question mark on the utility of the Chhattisgarh Special Public Security Act, 2005.

We demand of both the State and Central government to immediately release Dr Binayak Sen, withdraw all the charges against him and urgently get him examined by doctors of All MS or CMC, Vellore.

We also demand that the false case against Ajay TG, an executive member of PUCL Chhattisgarh and film maker, be withdrawn. He was also arrested by the Chhattisgarh police under CSPSA, 2005 on 5th May 2008 and given statutory bail, as the prosecutor failed to file a charge-sheet against him, which has not been filed even till today. We demand that the case be closed immediately.

We also demand that the Chhattisgarh Special Public Security Act 2005 also be repealed. It is a danger for the democracy of the country.

## **Resolution against Black Laws**

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, 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.

#### **Resolution on the Sri Lankan Situation**

"The Sri Lankan government in the name of waging war against terror has unleashed gross human rights violations against innocent Tamils rendering over

hundred thousand dead, over 10 million as refugees and over 500 thousand people internally displaced without any basic necessities. Over 230 thousand people are in Vanni region alone without safe drinking water, life saving drugs, food and shelter.

"Sri Lankan army continues with its aerial/carpet bombing on the so-called safe zones killing 50 to 60 Tamils every day. It is waging war against its own people using cluster bombs and chemical weapons, banner internationally. Hospitals, make-shift schools and places of worship are not spared. We are afraid that the Sri Lankan government is pursuing this genocidal war to obliterate mass of Tamils in the Vanni region.

"The international community is unaware of all the details of the war crime, as international agencies, including ICRC and journalists, have been barred from having any access to the conflict zone. Even the Sinhalese journalists and human rights activists are of the opinion that the people in the Vanni region are afraid to come over to the 'safe zones' as the existing ones have become detention camps and death camps.

"Hence, we appeal to the United Nations Human Rights Council to intervene in the issue invoking the UN clause of 'Right to Protect' by the international community and facilitate the following:

A. To stop immediately the human rights violation, genocidal war and create a conducive atmosphere for a political settlement and initiate criminal proceedings for genocide against Sri Lankan Government by the Secretary General of the UN, before International Criminal Court, under International Criminal Code. This request is made as the State party is the offender and they will not prefer the complaint.

B. Institute an International Monitoring Body to supervise the formation of safe zone to shelter the people from the conflict zones.

C. To provide medical and other necessities directly to the suffering people through UN agencies.

D. To facilitate the international media to visit the conflict zones for an impartial reporting of the existing situation."

#### **Displacement in Jharkhand**

The special PUCL National Convention resolves that one of the serious failures of the Jharkhand Government is its unwillingness to address the increasing displacement and land alienation of the *Adivasi/ Moolvasi* people of the state. While the state government has been busy formulating its industrial and mining policies, it has paid scant regard for the thousands of *Adivasi* families who are being displaced and thrown on the streets. The Jharkhand government has not taken the trouble to even come out with any 'rehabilitation' policy. With industry and mining being privatized; it is left to these private companies to decide what they are willing to pay to the displaced families and that too without any dialogue with the displaced people. PUCL demands that this must stop and the state must desist from forcibly occupying people's land and wherever people are willing to part with their land willingly they should be paid adequate compensation on market value and ensure their future economic security by concrete partnership mechanisms in the future development of the region.

#### **Kerala Migrant Workers**

PUCL special National Convention regrets to note that the plight of the migrant workers in Kerala as well in other parts of the country is pathetic. The real estates mafias and the building contractors are exploiting the situation to their economic advantage.

PUCL demands that the government of India and the state governments implement the provisions of the 'Migrant Workers (Regulation of Employment and Services Condition) Act 1979 in letter and spirit so that the working conditions and basic human rights conditions of millions of migrant workers who are forced to work in the un-organized sector across the country, would become better. -

**Pushkar Raj, General Secretary**

# SPEECH BY NAVANETHEM PILLAY, HIGH COMMISSIONER FOR HUMAN RIGHTS, DURING HER VISIT TO INDIA

National Human Rights Commission, New Delhi, 23 March 2009.

Distinguished Members of the National Human Rights Commission and State Commissions,

Dear Colleagues,  
Ladies and Gentlemen,

I would like to sincerely thank the Government of India for its kind hospitality during my visit, and the National Human Rights Commission for organizing this important gathering.

I am very pleased to be with you today and to share some thoughts on the occasion of my first visit to India as High Commissioner for Human Rights. I feel a profound affinity with this great country and its people not only because my ancestors hailed from here, but also because, as a non-white South African who grew up under the apartheid regime, I, too, have endured oppression and multiple forms of discrimination. I, too, have known poverty and the unrelenting bite of prejudice and brutality.

Thanks to the leadership and inspiring determination of Mahatma Gandhi and Nelson Mandela, both of our peoples were able to shed colonialism and the repressive rule of the few. We leaped out of the crippling disadvantage of dependence and successfully pursued our dream of self-reliance.

In India and South Africa we truly stand on the shoulders of those two giants. They taught us that ideals and aspirations can prevail over the constraints of seemingly immutable circumstances, violence and oppression. We owe them the formidable, empowering change that has transformed geopolitics, the landscape of social relations, and our very lives. We owe them our trust in

the power of dreams to reinvent reality and make the world a more just and hospitable place for all.

Their vision and legacy has inspired and now permeates a thick grid of human rights laws, institutions, mechanisms, global advocacy campaigns, and grassroots networks. Indeed, there is a direct correlation between the ideals that sustained the freedom movement in India, and those that in 1948 were enshrined in the Universal Declaration of Human Rights. Such ideals continued to bolster the quest for liberty and rights of oppressed people all over the world.

Dear Colleagues,

Today, the strength of India's democratic and legal institutions, as well as that of a highly engaged civil society and a free press, rests on solid foundations. Indeed, India must be proud of its national protection system, which includes the National Human Rights Commission. The Commission has played a prominent leadership role among national institutions at the regional and international level.

Together with state-level commissions and specialized bodies on women, caste, and tribal issues, this Commission is a catalyst in providing redress and sensitizing administrative and law enforcement bodies on human rights. The National Action Plan it is developing should provide a framework for bringing a rights-based approach to all government policies and programmes.

In this context, I wish to also commend the adoption of the landmark Right to Information Act of 2005 which increases accountability and transparency through the disclosure of information requested by rights holders regarding the conduct of government.

For its part, India's judiciary strives to enforce human rights, to provide relief to individuals, and ensure that government implements constitutionally guaranteed rights, including economic, social and cultural rights, as well as women's rights.

In groundbreaking judgments, the Supreme Court of India has interpreted the right to life to include nutrition, clothing and shelter. In another case concerning the issues of inadequate drought relief and chronic hunger and under-nutrition, the Supreme Court has directed the government to implement food relief programmes to halt starvation, supply schools with mid-day meals, and provide subsidized grain to millions of destitute households.

I am also impressed with the *Vishaka v. State of Rajasthan* case which, I am sure, is well known to many of you, as it encapsulated and addressed some of the challenges of multiple forms of discrimination, as well as violence against women. Let me simply recall here that in *Vishaka v. State of Rajasthan*, the Supreme Court reversed the judgment of a lower tribunal which had acquitted the five aggressors of a rape victim because the tribunal did not find it credible that upper caste men would sexually abuse a lower caste woman. The woman appealed to the Supreme Court which ruled in her favor on the ground that the local government had neglected to protect her constitutional rights. Crucially, the case engendered legislative changes benefiting working women and promoted greater enforcement of women's rights.

Yet despite all these gains, the challenges that India faces, as is the case in many other countries, are manifold. Some of these challenges concern execution;

some are rooted in structural national problems; others yet can be ascribed to the responsibilities (and public expectations) that pertain to an influential global player such as India. Allow me to expand on these topics.

**Challenges in Execution** Economic liberalization and rapid economic growth have transformed many sectors of Indian society, but benefits and dividends have not always been shared equally. Poverty is still a grinding reality for millions of people in India. Deep, widespread and longstanding asymmetries in power, participation and wealth are now exacerbated by the global economic crisis. These inequalities are also compounded by the persistence of gaps in the implementation of the higher courts' decisions, of the recommendations of the NHRC, and of national laws and policies that promote and protect human rights and seek to support the most vulnerable. Such gaps are reflected in the work of the NHRC and human rights defenders in various states where the administration of justice and economic development has produced uneven results.

These discrepancies and shortcomings in implementation have emerged in the course of the Universal Periodic Review process (UPR) conducted by the Human Rights Council, the pre-eminent intergovernmental body, which is mandated to promote and protect human rights. The UPR is a mechanism that allows for the examination of all UN Member States' records regarding human rights. It is based on information provided by governments, intergovernmental bodies and civil society. India underwent such review in April 2008. Remarkably, a group of 200 Indian nongovernmental organizations forwarded a joint submission for the UPR, underscoring the significance of the review and its potential to mobilize public opinion towards

spurring positive change.

I urge India to pay heed to the recommendations that stemmed from the UPR. It should also welcome the visits of independent experts, known as special rapporteurs, who can help the government identify and address pitfalls in implementation, as well as structural obstacles standing in the way of human rights.

The country's protection toolbox could also benefit from the ratification of the optional protocols to human rights treaties, such as CEDAW and CRC, which establish "complaint procedures." These are mechanisms that can be used by individuals to report their human rights concerns by engaging those international bodies which are the custodians of human rights treaties and which monitor their implementation. I urge India to accede to such important instruments.

Moreover, India should repeal those dated and colonial-era laws that breach contemporary international human rights standards. These range from laws which provide the security forces with excessive emergency powers, including the Armed Forces Special Powers Act, to laws that criminalize homosexuality. Such legal vestiges of a bygone era are at odds with the vibrant dynamics and forward thrust of large sectors of the Indian polity.

#### **Structural National Problems**

As the Supreme Court has pointed out, India is "a country of people with the largest number of religions and languages living together and forming a nation." This diversity - and its potential for igniting competing claims and even strife - makes closing protection gaps and leveling the implementation playing field all the more important.

Although India enjoys an array of laws and institutions designed to combat all forms of discrimination, religious and caste-based prejudices remain entrenched. In many states

long-standing grievances of minorities, lower castes, or the poor have turned into violence.

Of particular concern is caste-based discrimination which is still deplorably widespread, despite efforts by the government and the judiciary to eradicate this practice. I note that in 2006, Prime Minister Man Mohan Singh strongly condemned the practice of "untouchability" and compared it with apartheid. Moreover, Dalits, as well as tribal peoples, continue to live in abject poverty. Policies and measures that have been established to ensure relief for these groups, their access to justice, and accountability for perpetrators of abuses against them, have neither sufficiently alleviated their conditions, nor have they satisfactorily curtailed the climate of impunity that enables human rights violations. This is an area where India can not only address its own challenges nationally, but show leadership in combating caste-based discrimination globally.

Both internal and external terrorist threats have led to counter-terrorist measures that put human rights at risk. The horrific terrorist attack in Mumbai has also polarized society and risks stoking suspicions against the Muslim community. It is imperative to counter violent religious extremism of any kind by insisting on peaceful coexistence, tolerance and acceptance of diversity.

In the past two decades, hundreds of cases of disappearances have been reported in Kashmir. These cases must be properly investigated in order to bring a sense of closure to the families who for far too long have been awaiting news—any news.

I am aware of the landmark report by the Sachar Committee on the socio-economic status of the Muslim minority, and I encourage

the Government to follow up on its important recommendations. An important step in this direction would be the adoption of a new Equal Opportunities Bill. The legislation would establish an ombudsman system to deal with grievances of "deprived groups" in line with the Sachar Committee recommendations, and would be a first step towards establishing a broader system to uphold equality of opportunity for women and other groups.

Finally, let me point out that progress in women's rights must be defended. Sixty years ago, as the drafters of the Universal Declaration of Human Rights got down to work, it was the Indian delegate, Hansa Mehta, who ensured that women's equal entitlement to human rights would not be merely subsumed under the "rights of all men" catch-all expression. She knew that a gender-implicit reference might be interpreted to the exclusion of women.

Since then, the space for women's rights in India has expanded in law and practice. Thanks to the vigorous advocacy of women's groups, in 2005 India adopted the innovative Protection of Women from Domestic Violence Act, which recognizes marital rape as a form of domestic violence. While criminal law has still not been amended to enable women to file rape cases against husbands or sexual partners, victims are given access to new remedies, including protection orders or injunctions against abusers. There is, however, pressure on the part of conservative groups to undermine the applications of the Act. Such pressure must be resisted. At the same time, women's vehicles of recourse, as well as the menu of available remedies, must be widened.

Another empowering factor has been vibrant activism, especially by young women and newer constituencies, against attempts to

constrain their sexuality and conduct on the basis of obscenity laws. Not surprisingly, also on this topic, advocates of traditional values and anti-secular forces have engineered a significant backlash against women. This phenomenon is not unique to India. Here - as elsewhere - urgent countermeasures are required to bolster the rights, participation, and position of women in society.

India's economic growth has drawn many women from all backgrounds into the public and economic sphere, thus contributing to their visibility, economic empowerment and participation. I commend initiatives such as SEWA, the Self-Employed Women's Association. SEWA's network of women's cooperatives, pursuing the Gandhian ideal of self-help and self-sufficiency, should be an inspiration to those who seek efficient and just ways to promote women's entrepreneurship and resourcefulness.

We must now ensure that the current financial and economic crises are not used as pretexts to undercut gains in women's empowerment that make a society grow as a whole. There are already indications that in some countries recession is hitting harder those sectors where women are the predominant component of the workforce. Measures to respond to the economic downturn must not crowd-out women's interests. Rather, they should strengthen women's participation through farsighted policies and public investment in areas where women's skills could either be brought to fruition or retooled. Crucially, such measures must take into account women's ideas and initiatives to alleviate hardship and jumpstart recovery.

#### **Responsibilities of a Global Player**

As the largest democracy in the

world, India plays a commensurate role on the international scene. With influence, of course, come responsibilities. An immediate opportunity for powerful advocacy is fast approaching in the human rights calendar. In less than a month the Durban Review Conference on racism, racial discrimination, xenophobia and related intolerance will take place in Geneva.

I have called for participation of all UN Member States in this important world conference. I have appealed to all States never to lose sight of the overall goal of the conference, that is, an assessment of implementation of the Durban Declaration and Programme of Action to combat racism and intolerance (DDPA) which States adopted by consensus in 2001.

Stepping up efforts and accelerating the pace of compliance with the DDPA is of paramount importance. The goal of attaining discrimination-free societies must override differences and reconcile diverse perspectives. As the Chair of the Asian Group within the Human Rights Council, India must exercise all its leverage to ensure that the outcome of the review conference is successful.

As it acts in its influential regional capacity, India should, at the same time, exercise its independent and individual judgment as a leading member of the Human Rights Council; whenever appropriate and necessary.

I encourage India to speak out on its own, as well as in concert with others, whenever the human rights agenda that it cherishes and seeks to pursue domestically becomes of concern elsewhere. I urge India to continue to support freedom and rights wherever they are at stake, and particularly regarding the alarming situations in

its own region, such as those in Sri Lanka and Myanmar.

Ladies and Gentlemen, the years to come are crucial for sowing the seeds of an improved international partnership that, by drawing on individual and collective resourcefulness and strengths, can meet the global challenges of poverty, discrimination, conflict, scarcity of natural resources, recession, and climate change.

Allow me now to briefly illustrate my Office's own contribution to fighting these threats and work for the universal affirmation of all human rights.

If the Human Rights Council is the premier intergovernmental body for the promotion and the protection of human rights, the Office of the High Commissioner for Human Rights, as part of the United Nations Secretariat,

is the leading international advocate and independent champion.

As the UN Secretary-General noted, since its creation in 1993, the Office of the High Commissioner has grown to become a powerful engine for change. It has expanded dramatically, elevated the profile of human rights all over the world, provided expertise for capacity building to States and within the United Nations system, and preserved the autonomy of judgment and scope of action that are indispensable to human rights work and advocacy.

Today, OHCHR is in a unique position to assist governments and civil society in their efforts to protect and promote human rights. The expansion of our field offices and presence in 50 countries, as well as the increasing and deepening

interaction with UN agencies and other crucial partners in government, international organizations and civil society that my Office has undertaken, are important steps in this direction. With these steps we can more readily strive for practical cooperation leading to the creation of national systems which promote human rights and provide protection and recourse for victims of human rights violations.

Dear Colleagues, let me conclude by emphasizing that I intend to seek every opportunity to work closely with India on national, regional and global human rights concerns and priorities. In this pursuit, I will be guided by Mahatma Gandhi's appeal to responsibility and initiative. To put it in his immortal words: "We must be the change we wish to see." Thank you.

## Memorandum Submitted by PUCL on Sri Lankan Tamils to UN High Commissioner for Human Rights, Ms Navaneetham Pillay

Shri K.G. Kannabiran, National President, PUCL and Justice Rajindar Sachar (Retd), former President, PUCL submitted a memorandum to the UN High Commissioner for Human Rights, Ms. Navaneetham Pillay, on the worsening human rights violations in Sri Lanka, on 22 March, 2009. Following is the text of the memorandum:

'The Sri Lankan government in the name of waging war against terror has unleashed gross human rights violations against innocent Tamils rendering over hundred thousand dead, over 10 million as refugees and over 500 thousand people Internally Displaced without any basic necessities. Over 230 thousand people are in Vanni region alone without safe drinking water, life saving drugs, food and shelter.

"Sri Lankan Army continues with their aerial/carpet bombing on the so-called safe zones killing 50 to 60 Tamils every day. It is waging war

against its own people using cluster bombs and chemical weapons, banner internationally. Hospitals, make-shift schools and places of worship are not spared. We are afraid that the Sri Lankan government is pursuing this genocidal war to obliterate mass of Tamils in the Vanni region.

"The international community is unaware of all the details of the war crime, as international agencies, including ICRC and journalists, have been barred from having any access to the conflict zone. Even the Sinhalese journalists and human rights activists are of the opinion that the people in the Vanni region are afraid to come over to the 'safe zones' as the existing ones have become detention camps and death camps.

"Hence, we appeal to the United Nations Human Rights Council to intervene in the issue invoking the UN clause of 'Right to Protect' by the international community and facilitate the following:

A) To stop immediately the human rights violation, genocidal war and create a conducive atmosphere for a political settlement and initiate criminal proceedings for genocide against Sri Lankan Government by the Secretary General of the UN, before International Criminal Court, under International Criminal Code. This request is made as the State party is the offender and they will not prefer the complaint.

B) Institute an International Monitoring Body to supervise the formation of safe zone to shelter the people from the conflict zones.

C) To provide medical and other necessities directly to the suffering people through UN agencies.

D) To facilitate the international media to visit the conflict zones for an impartial reporting of the existing situation." - 22 March 2009

*(These statements were prepared by us in PUCL-Tamil Nadu.)*

The press statement is a shorter version of longer Memorandum sent to the UN Secretary general, UN High Commissioner for Human Rights and the PM of India and other Heads of South Asian Governments:

**Statement Issued by Shri V.R. Krishna Iyer, former Judge, Supreme Court of India regarding the humanitarian crisis and mass deaths of civilians in Vanni Region on 9<sup>th</sup> April 2009**

**Message**

I do not take sides in this message with the LITE or the Srilankan Government although there have been violent excesses on both sides resulting huge loss of life, property and tremendous suffering which I hate as one who stands for human rights. I pity the beautiful island of Srilanka which has now been a criminal field of carnage and butchery and savagery. Day after day, the Srilankan Government since the days of its Independence been guilty of discrimination against Tamils as a class and the fuel for this fury and extremism and terrorism by the LTTE was the terrible discrimination in many dimensions against the Tamil Minority. A fair federal system would have been perhaps the finest political, solution where justice, social, economic and political evenly managed, would have created a highly developed and prosperous island but that was not to be. Even now statesmanship of Srilankan Government should have declared a glorious federal state unilaterally. Currently claiming victory the State Government in Colombo is inflicting untold slaughter tragedies, killing daily bleeding lives and indescribable human suffering. International law, so far as the Tamils are concerned, is the vanishing point of humanist jurisprudence. Sovereignty does not

authorize internal atrocity and incalculable casualty. I plead with moral indignation with the Buddhist Colombo Cabinet in power that militarized torture of a minority in Jafna will never be lasting if Rome and Greece and London have fallen, Colombo cannot survive by brute force. Please declare immediate cessation of military operation under international supervision. Humanity, not legality, is the process of Buddhism and Shaivism. The world around should intervene to see that justice is done.

*The most satisfactory ideal I have ever been able to form of justice is embodied in the picture of a judge courageous enough "to give the devil his due," whether he be in the right or in the wrong.* -John F Dillon -**V.R. Krishna Iyer**, April 8, 2009

*Statement was received for Release to press by Mr. Kurinji, Vice-President, People's Union for Civil Liberties, Tamil Nadu and Puducherry by e-mail from Shri Krishna Iyer on 9<sup>th</sup> April, 2009. Released to the Press by Dr. V. Suresh, President, PUCL-Tamil Nadu.*

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**Press Statement (10<sup>th</sup> April, 2009)**

Contents of Appeal from concerned citizens of South Asia to halt the mass murder of Sri Lankan Tamils in the Vanni Area of North Sri Lanka.

Appeal is addressed to: Respected Mr. Ban Ki Moon, UN Secretary General; Respected Ms Navi Pillay, UN High Commissioner for Human Rights; Dr. Manmohan Singh, Prime Minister of India and Heads of Government of South Asian Countries.

We are appalled at reports of mass deaths of Sri Lankan Tamils trapped in a small area of the Vanni region in northern Sri Lanka. Both electronic and print media have

reported the death of over 700 Tamils in the last couple of days, with only a section of them being identified as LTTE cadres, meaning thereby that a vast number of those killed are civilians trapped in the area. There are serious apprehensions that thermobaric bomb - a bomb that uses a fuel-air explosive capable of creating overpressures equal to an atomic bomb - has been used in this mass killing.

For the last several weeks, we have expressed our concerns about this imminent massacre. In fact we pointed out that the possibilities of almost close to 150,000 Tamilians getting affected was not just most probable but real. We also pointed out that the Sri Lankan Government had been dangling this as the fruit of its declared 'war on terror' as the 'final victory' - and that the Government was pushing for the 'final solution' before the soon-to-ensue Sinhala New year day falling on 14th April, 2009.

Our worst fears are turning true. The sheer scale of artillery and explosive attacks and the massive deaths of Tamils points out to the grave situation of the Vanni region becoming the graveyard for thousands of Tamil civilians. Now the perceived usage of thermobaric bomb by the mindless Sri Lankan Army and Government has taken the situation beyond limits. Sri Lanka President Rajapakse himself has threatened 'complete rout and annihilation' of Tamils.

Sri Lanka has turned a terror state though they keep blaming LTTE as a terrorist outfit. The brazen and insulting manner by which Sri Lankan authorities have attacked any person or agency seeking accountability of the Sri Lankan Government to human rights standards can be gauged by the fact that several British Parliamentarians were forced to

take up the issue of being branded terrorists by the Sri Lankan officials in a debate in the UK House of Commons! Even Louise Arbor, the former UN High Commissioner for Human Rights and UN Special Rapporteur on Extra Judicial, Summary or Arbitrary Executions, Philip Alston were not spared. The reality is that the Sri Lankan Government has utilised the so-called 'war on terror' as a cover to systematically destroy all democratic processes and institutions in Sri Lanka. Government and its minions have turned the state into a terror apparatus, crushing not just the Tamils, but also others challenging its actions. As a result, numerous non-Tamil, Sinhalese citizens have also fallen prey to the Sri Lankan terror state. Journalists have been the major targets with 19 journalists, both Tamil and Sinhala being killed in the last 2 years, over 35 exiled, driven away from the country or silenced, and numerous publications closed down. The assassination of Lasantha Wickramathunge, Editor of Sunday Leader, a widely respected Sri Lankan weekly in January highlights the fate of anyone challenging the ruling dispensation.

Respected and expert UN bodies have investigated and brought out reports about different aspects of the breakdown of democratic and judicial systems. Recently, on 9th February, 2009, 10 top UN Experts issued a statement sharing the deep concern of the United Nations High Commissioner for Human Rights over the rapidly deteriorating conditions facing civilians in the Vanni region and the significant number of civilian casualties. They also deplored the restrictions on humanitarian access to conflict areas which heightens the ongoing serious violations of the most basic economic and social rights.

We are extremely concerned that in this racist genocide war Sri Lankan

government is using banned and illegal weapons and ammunitions, including thermobaric bombs which kills vast numbers of people across a wide territory. Sri Lanka security forces have a long record of using cluster bombs and engaging in aerial targeted bombings of civilian areas which are banned under the Geneva Conventions. Sri Lankan Government has never denied the use of cluster bombs. Across the world there is a tremendous outpouring of anguish and agony at the prospects that surviving Tamil civilians will be mass annihilated through the use of weapons of mass destruction. It is therefore very critical that the UN urgently intervene and restrain the Sri Lankan Government from using banned bombs, explosives and weaponry.

It is very important that the truth about the actual use of these 'weapons of mass destruction' including thermo baric bombs be independently verified and its source of supply identified. If indeed these horrific weapons have been used, the international community should immediately initiate prosecution of the highest functionaries of the Sri Lankan state and the Government of the country that supplied these bombs for commission of war crimes and crimes against humanity.

We would also like to point out that the humanitarian crisis has been made worse because the Sri Lankan Government has banned independent observers of UN agencies, the ICRC and other independent institutions from operating in the war zone. It is of utmost importance that independent observers are sent both to monitor the situation as also to ensure humanitarian aid reaches the area.

The innocent Tamil civilians have been living a precarious life without food, water and health supplies for the last several weeks. Emaciated, starved, severely malnourished and

seriously injured, the women, children, aged persons and remaining men are already dying. They deserve the protection that can be offered by concerned world citizens who by demanding an end to the war will also be asserting a chance for these innocent men, women and children to live.

As citizens of South Asia, we therefore demand that the UN and the International Community, effectively intervene to ensure immediate cessation of the brutal and savage war in Sri Lanka and ensure immediate humanitarian relief to the suffering thousands caught in the middle of the war. We also call upon the as also the Governments in the South Asian region, viz., the Government of India, Pakistan, Bangladesh, Nepal, Bhutan and Maldives to intervene forcefully to stop the genocidal war that threatens peace not just in Sri Lanka, but in all of South Asia.

**Appeal is Jointly Issued by:**

K.G. Kannabiran, National President, PUCL, Hyderabad; Justice Rajindar Sachar, former chief Justice, Delhi High Court, Arundhati Roy, New Delhi, Pushkar Raj, General Secretary, PUCL; Pamela Philipose, Women's Feature Service; Swami Agnivesh, New Delhi, Prof. Amit Bhaduri, Professor Emeritus, Jawaharlal Nehru University, New Delhi, Rt Rev. P J Lawrence, Bishop of Church of South India, Diocese of Nandyal, Praful Bidwai, Columnist, New Delhi, Sumit Chakravorty, Editor, Mainstream Weekly, New Delhi; Tapan Bose, New Delhi; Rita Manchanda, South Asia Forum for Human Rights, Nepal; Prof Kamal Mitra Chenoy, School of International Studies and President, JNU Teachers Association, Jawaharlal Nehru University, New Delhi; Ernest Deenadayalan, Bangalore; Pradip Prabhu, Kashtakari Sanghatana, Dahanu/Mumbai; Prashant Bhushan Advocate, Supreme

Court, New Delhi, M.G. Devasahayam IAS (Retd), Chennai, Sukumar Murlidharan, Journalist, New Delhi, Rev. Dhyanchand Carr, Madurai, Henri Tiphagne, People's Watch, Madurai, MSS Pandian, Chennai, Sushil Pyakurel, Former Commissioner, Human Rights Commission of Nepal, Kathmandu, Mubashir Hasan, Lahore, Pakistan and others.

*The Statement of Concerned South Asian Citizens is being released to the press in Chennai by: Dr. V. Suresh, President, People's Union for Civil Liberties. (PUCL)-Tamil Nadu/Puducherry a*

(from page 1...) parties -Madhu Limaye the Socialist M.P. was the dominant voice for banning corporate funding statement and objects of this amendment were given as follows:

A view has been expressed that such contributions have a tendency to corrupt political life and to adversely affect healthy growth of democracy in the country, and it has been gaining ground with the passage of time. It is, therefore, proposed to ban such contributions." An attempt made in 1976 to modify the law but failed.

In 1978 the Govt. of India constituted a High Powered Expert Committee to review Companies Act 1956 and Monopolies Act. It was presided over by a judge of Delhi High Court. Amongst its members were some of the top lawyers, Industrials Houses trade Union leaders, and accountants. It unanimously recommended that the ban on donations by companies to political parties should continue. - 'The Report worked once this is permitted, the danger the democracy can be well visualized; namely, politics being dictated by the interests of large companies which by the very nature of it, would be able to contribute more funds as compared to the smaller companies."

Notwithstanding the warning Section 293A was amended in 1985

and Board of Directors was authorized to make donation to political parties. That law still continues. It is unfortunate that while other democracies recognize the danger of money power playing an unhealthy part in Elections, we are still continuing with it. Thus in U.S.A. under the Federal Election Campaign Act 1971 it is unlawful for any corporation to make or for any candidate for president, Vice President, Senate, Congress to receive any contribution is prohibited and it is unlawful for any company to make any contribution to political parties.

It is beyond doubt that contribution by companies is given not because of any ideological reason but really as a device to be in the good books of the ruling party. Thus; between 1966 to 1969, 75 companies paid down Rs.1.87 Crore out of which Rs.144 Lakhs were given to the ruling party, the ruling Congress Party in 1967 alone received Rs.87 Lakhs.

Perception and reality has not changed - thus we find that in 2003 - n 2004 BJP got 90 crores as against Congress at 65 crores. The peak of BJP was 155 crores in 2004-05 down, to 137 crores in 2007-08. The rise in the share of the Congress Party during this period was phenomenal uprise starting from 2002-03 at 53 crores^ up swinging to Rs.265 crores in 2007-08. More significant of Corporate political nexus is illustrated by corporate donation to BSP of Mayawati rising in 2002-03 from 10.9 crores to Rs. 55.6 crores in 2007-08. Does one need more proof of invidious entry of corporate sector in our body politic and of the dangerous consequences?

Another infirmity is the vesting in Board of Directors the power to choose a political party, for giving contribution. Why, it is legitimately asked, the decision to utilize corporate funds be determined by a coterie of 10 or 15 Directors rather

than that of thousands of shareholders who are the real owners of the company?

A further question 'relates to the legitimate demands of the workers in the company to have a say for distribution of corporate funds - in (the Supreme Court has recognized their right in funds of the company).

All these problems are bound to become more controversial as actual working of utilization of these funds becomes public. A straightforward, honest, equitable solution is to ban the corporate funding of political parties, as in USA and UK. Clean politics mandates this as a minimum prerequisite by all political parties. Let electorate demand that manifestos of the parties include such a provision - let them give straight answer immediately.

### **Smitu Kothari Passes Away**

Smith Kothari, a well known social activist and scholar passed away on 23<sup>rd</sup> March 2009. He died of a cardiac attack in New Delhi after a brief illness. Smitu Kothari was closely associated with the PUCL as one of its most active members and was part of *PUCL Bulletin's* editorial team in its initial years and nurtured it with a steady foundation that has stood it good for decades now.

Smitu Kothari was one of the founders of *Lokayan* (Dialogue of the People). Trained in Physics, Communication, and Sociology, he was involved in ecological, cultural, and human rights issues striving to collectively forge a national and global alternative that is socially just and ecologically sane.

He has been a visiting professor at Cornell and Princeton Universities. He has published extensively on critiques of contemporary economic and cultural development, developmental displacement, people's governance and social movements. Smitu was always a source of inspiration and support to people's movements and struggles in India. It is an irreparable loss to PUCL and People's movements in the country.

— **Pushkar Raj**, General Secretary

Letter:

## Detention of Dr. Binayak Sen

On the Detention of Dr. Binayak Sen on Completion of Two Years  
in Jail on 14<sup>th</sup> May, 2009

(Dr. Binayak Sen, Vice-President, National PUCL and General Secretary, Chhattisgarh PUCL, a graduate of CMC Vellore and a practising doctor, was arrested on May 14, 2007 in Bilaspur under the Chhattisgarh Special Public Safety Act as well as the Unlawful Activities (Prevention) Act and the Indian Penal Code. His bail petition is likely to come up for hearing before the Supreme Court on 27 April 2009. Even after almost two years of his arrest on concocted charges, he is languishing in jail in spite of failing health. We publish herewith two letters written by two eminent former Judges and Human Rights activists for his release).

**Letter written by (Justice) Rajindar Sachar, Retired Chief Justice of Delhi High Court and a Former President of National PUCL to Shri Manmohan Singh, Prime Minister of India:**

To

Hon'ble Shri Manmohan Singh  
Prime Minister of India, 7 Race  
Course Road, New Delhi

Dear Mr. Prime Minister, I am herewith sending a copy of the letter I have written to Chief Minister of Chhattisgarh. Needless to add the continuing deteriorating health of Dr. Binayak Sen is a matter of great urgent worry not only to PUCL but to all human right activists in India and abroad. With best regards. Yours sincerely. -Rajindar Sachar, April 21, 2009

**Copy of the letter to the Chief Minister, Chhattisgarh:**

To

Hon'ble Chief Minister, State of  
Chhattisgarh, Chief Minister House,  
Raipur, Chhattisgarh

Dear Chief Minister,

I am herewith sending you a copy of letter sent by Justice Krishna Iyer to Shri Manmohan Singh, Prime Minister of India (published in *Hindu* dated, 19/04/2009). This letter deals with continued detention and prosecution of Vice President of PUCL - Binayak Sen. You must be knowing that he is being prosecuted under Chhattisgarh State Public Security Act, 2005. PUCL has consistently maintained that all charges against Binayak Sen are false and concocted. We should have thought that with the exposure of there being no credible evidence produced so far in the Court, Public Prosecutor would have moved for withdraws of the case. But he has evidently not done so.

In the meanwhile application has been moved in the courts emphasizing that Binayak Sen needs immediate medical treatment for his heart ailment which can only be done in Delhi or Vellore - obviously in this Binayak's wish has to be the deciding factor. I am herewith requesting you that because of the danger posed to Binayak Sen's life he must be immediately released on bail (even if P.P. is not willing to withdraw the case). I know state government cannot direct P.P. to withdraw the case. But in law and on human consideration state has a legitimate duty and full power to direct the P.P. not to oppose the bail application - this in no way is interference in the proceedings of trial, but is only a humanitarian act expected of any civilized government.

I hope this will receive your immediate attention. With best regards. Yours sincerely.

—Rajindar Sachar

### **V.R. Krishna Iyer's plea on Behalf of Dr. Binayak Sen**

*(The text of the letter written by (Justice) V.R. Krishna Iyer, former Supreme Court Judge, to Prime Minister Man Mohan Singh, dated April 17, 2009):*

I would like to bring to your attention a case of grave injustice which is a cause of much shame to Indian democracy: that of Dr. Binayak Sen, the well known paediatrician and defender of human rights.

This good doctor has been incarcerated in a Raipur jail for nearly two years now under the Chhattisgarh State Public Security Act, 2005. Among the charges against Dr. Sen, who is renowned worldwide for his public health work among the rural poor, are "treason and waging war against the state."

Chhattisgarh State prosecutors claim that Binayak, as part of an unproven conspiracy, passed on a set of letters from Narayan Sanyal, a senior Maoist leader who is in the Raipur jail, to Piyush Guha, a local businessman with allegedly close links to the left-Wing extremists. He was supposed to have done this while visiting Sanayal in prison both in his capacity as a human rights activist and as a doctor treating him for various medical ailments.

The trial of Dr. Sen, which began in a Raipur Sessions Court late April 2008, has, however, not thrown up even a shred of evidence to justify any of these charges against him. By March 23 2009, of the 83 witnesses listed for deposition by the prosecution as part of the original charge-sheet, 16 were dropped by the prosecutors themselves and six declared 'hostile', while 61 others have deposed without corroborating any of the

accusations against Dr. Sen. Irrespective of the merits of case against Dr. Sen, there are very disturbing aspects to the way the trial process has been carried out so far.

As if all this were not enough, Dr. Sen has also been repeatedly denied bail by the Bilaspur High Court (in September 2007 and December 2008). And the Supreme Court of India rejected his special leave petition to have the bail application heard before it (in December 2007).

Given the paucity of evidence in the trial of Dr. Sen so far, in all fairness the Raipur court should have dismissed the case against him altogether by now. Certainly the weakness of the prosecution's position should entitle him to at least grant of bail. Dr. Sen is a person of international standing and reputation, with a record of impeccable

behaviour throughout his distinguished career. In May 2008, in an unprecedented move 22 Nobel Prize winners even signed a public statement calling him a 'professional colleague' and asking for his release.

Normally bail is refused only in cases where courts believe an accused can tamper with evidence, prejudice witnesses or run away. In Dr. Sen's case none of these apply, as shown by the simple fact that at the time of his arrest he chose to come to the Chhattisgarh police voluntarily and made no attempt to abscond despite knowing about his possible detention.

Today Dr. Sen, a diabetic who is also hypertensive, is himself in urgent need of medical treatment for his deteriorating heart condition. In recent weeks his health has worsened and a doctor appointed by

the court to examine him recommended that he be transferred to Vellore for an angiography and perhaps, if needed, an angioplasty or coronary artery bypass graft without further delay.

Instead of recognising their social contributions, the Indian state, by wrongly branding Dr. Sen and many other human rights defenders like him as 'terrorists', is madding a complete mockery of not just democratic norms and fair governance but its entire anti-terrorist strategy and operations.

The repeated denial of bail which results in 'punishment by trial' constitutes an even graver threat to Indian society. The sheer injustice involved will only breed cynicism among ordinary citizens about the credibility and efficacy of Indian democracy itself.

Press Statement by Arundhati Roy:

## Issued at the Raipur Satyagraha for the Release of Dr Binayak Sen

Dr Binayak Sen has been in prison for 22 months, arrested under one of India's most draconian laws, the Chhattisgarh Special Public Security Act. This Act has such a vague, diffused definition of 'Unlawful Activity' that it renders every person guilty unless he or she can prove their innocence. Dr Sen's bail application was dismissed twice, both times at the very outset, by the High Court of Chhattisgarh and by the Supreme Court of India. On neither occasion was there a discussion on the merits of the case. On the 2<sup>nd</sup> of December 2008 the High Court of Chhattisgarh once again turned down his bail application, without a discussion on the merits of the case, saying that there had been no change in circumstances.

But there has been a change in circumstances. To begin with, the charge sheet has been filed. 64 witnesses have been examined by the prosecution. Not one of them has

provided legally admissible evidence to support the accusations in the charge sheet. Even the jail officials, the Superintendent and the Jailer, who were called as witnesses by the Prosecution, have ruled out the possibility of Dr Sen being a carrier of letters given to him by Narayan Sanyal (said to be a senior Maoist leader) who is a high security prisoner in Raipur Jail. (It should be mentioned here that Narayan Sanyal has a medical condition that requires surgical intervention from time to time, which is why the jail authorities permitted Dr Sen to visit him regularly.)

That Dr Sen should continue to be in prison when the case against him has almost completely fallen through says a great deal about the very grave situation in Chhattisgarh today. There is a civil war in this state. Hundreds are being killed and imprisoned.

Hundreds of thousands of the

poorest of the poor are hiding in the forests, fearing for their lives. They have no access to food, to markets, to schools or healthcare. The thousands who have been moved into the camps of the government-backed peoples' militia, the Salwa Judum, are also trapped in sordid encampments, which have to be guarded by armed police. Hatred, violence and brutality is being cynically spread, pitting the poor against the poorest.

There is very little doubt that Dr Sen is in prison because he spoke out against this policy of the State Government, because he opposed the formation of the Salwa Judum. His incarceration is meant to silence dissent, and criminalize democratic space. It is meant to create a wall of silence around the civil war in Chhattisgarh. It is meant to absorb all our attention so that the stories (*on page20...*)

## Anand Patwardhan's Report on *Satyagrah* to Free Dr Binayak Sen

On Monday, March 16, the first batch of *satyagrahis* marched through Raipur towards the Central Jail where Dr. Binayak Sen has been wrongfully incarcerated for almost two years.

Flanked by the police, we walked for 2 kilometers with our banners, shouting "Free Binayak!" Onlookers seemed surprised by our open support of someone who has been painted a dreaded "Naxalite" but slowly, caution seemed to dissipate and I noticed a few nods and fleeting smiles.

Chhattisgarh's long history of progressive struggles is evident in the many statues of Bhagat Singh and Veer Narayan Singh that dot Raipur. But today fear is in the air. The state is in a brutal fight against Naxalites and even mildly Left political opinion and all criticism of police atrocities is relentlessly crushed.

Dr. Binayak was one who dared to write against the notorious Salwa Judum — a program in which the state has armed and trained a vigilante army of *adivasis* to fight other *adivasis* who have joined the Naxalites. The resulting civil war is traumatizing the people. Perhaps pointing this out landed Binayak in jail on the trumped-up charge of being a Naxalite. The excuse came when Binayak donned his other hat, that of a physician to the poor. Over three decades Binayak worked amongst the *adivasis* of Chhattisgarh, virtually as a barefoot doctor. Later he became state secretary of the People's Union for Civil Liberties (founded in 1977 by Jayaprakash Narayan).

On a prison visit he came across an ailing elderly man Narayan Sanyal, jailed on suspicion of being a Naxalite, and began to treat him. After Binayak's anti-Salwa Judum reports

were published, he was arrested on the charge of carrying letters to and from Sanyal. That every visit involved elaborate jail supervision and frisking seems to be of no consequence to either the local or the Supreme Court both of which have denied Binayak bail without bothering to give reasons.

Filmmaker Ajay TG also found himself behind bars for 3 months simply because he attended Binayak's trial and because he dared to make a film about Binayak. Police innuendo was that Ajay too was a Naxalite. Mysteriously once Ajay's case was highlighted nationally he was released without a single charge!

On Monday, Ajay was present as Magsaysay award winner Dr. Sandeep Pandey, trade unionist Thankappan, activists from Bombay, Delhi, Gujarat, Kargil, Kashmir and 35 village activists from Hardoi, UP courted arrest. The police was remarkably gentle and respectful with us. The presence of TV cameras may have helped as also perhaps the bad press the Government has been receiving ever since 22 Nobel Prize winners across the globe wrote to the Indian government calling for Binayak's release.

By late afternoon the *satyagrahis* were freed. That night, a screening of our film *Ram Ke Naam* was organized in a workers slum on the outskirts of Raipur. The electricity from the illegal line that lights the *basti* was woefully inadequate to run the projector. Then someone found a solution. The line to the *basti* was re-diverted to concentrate power in the projector. Not only did the film run smoothly but our audience expanded as everyone came out of their huts to the only available source of light!

The next morning the trial resumed. At noon Binayak and his co-accused were whisked into court

under armed guard. Binayak has shaved off his beard and looks younger than his last photo but the lines on his face have deepened. He seemed really happy to see us old friends and new supporters.

At the trial the police tripped all over themselves under cross-examination. Soon the prosecution asked one of its own star witnesses to withdraw his statement. I didn't understand the logic but it clearly points to a weakening of their case as their witness couldn't stand scrutiny. The real shock came towards the end. Binayak told the judge that he was in mortal danger from heart trouble and accused the court of taking no action though he had raised this at the last hearing. A visibly angered judge ejected the accused and the trial ended for the day. Binayak's wife Ilina confirmed that he has had angina problems since 2004. Is Binayak not entitled to medical treatment of his choice even when he is prepared to bear expenses? If the state cites security issues to deny vital care, only sustained public pressure can help.

So on March 23, the day Bhagat Singh, Rajguru and Sukhdev were martyred, another batch of over 50 people were arrested in Raipur. They included Binayak's mother, many survivors of the Bhopal Gas Tragedy of 1984, filmmaker Amar Kanwar and poet Vinay Mahajan. Next Monday a new batch of *safyaora/i/s* from various parts of the country will court arrest and so it will continue week after week till it yields results or till India runs out of democratic citizens willing to make the effort to stand by one of the most dedicated doctors and outstanding citizens this country has seen. - *Courtesy The Indian Express, 4 April 2009*

## Cultural Policing in Dakshina Kannada: Vigilante Attacks on Women and Minorities, 2008-09

### Introduction

It was only after the continuous telecast of the images of the women who were subjected to an horrific assault by cadres of the Sri Ram Sena in a pub in Mangalore on 24.01.09 that public attention gravitated towards what was happening in Mangalore. However, for months before this incident, The Hindu and many other newspapers of the region had reported many incidents of cultural policing wherein boys and girls from different religious communities were attacked merely for being together.

The sense we got from activists based in Dakshina Kannada was that there was a lot more to what was happening there than was apparent in the sporadic incidents which made it to the national press. We felt that the kind of incidents which were coming to the surface, be it the attack on women in the pub or attacks on anyone who dared to cross religious boundaries and interact, point to a new phase of communal politics, which we designate by the term "cultural policing", which refers to policing the boundaries of appropriate behaviour for men and women undertaken by self-styled vigilante groups.

The PUCL Karnataka constituted a fact-finding team in order to try and understand how this cultural policing is being carried out, its gravity and extent, and the impact of this form of cultural policing on the polity and society of Dakshina Kannada. The members of the fact-finding team were:

1. Ramdas Rao, PUCL, Karnataka
2. Shakun Mohini, Vimochana
3. B.N. Usha, Hengasara Hakkinu Sangha
4. Arvind Narrain, Alternative Law Forum

The team visited Mangalore from 19 February to 21 February 2009, and conducted interviews with various key groups, including members of the Hindutva groups such as Sri Ram Sena and RSS sanchalaks, as well as activists from a diverse social spectrum, including political and social activists, students and student union activists, academics and educationalists, and journalists. We also spoke to the then Superintendent of Police, Dakshina Kannada district, Satish Kumar.

The key gap in this fact-finding investigation turned out to be the victims of cultural policing, none of whom were willing to come forward and give testimony. The difficulty itself points to the continuing atmosphere of fear and intimidation prevailing in Dakshina Kannada district as well as the long term impact of being so brutally assaulted. It should be noted that most of those who were assaulted were just ordinary human beings going about their normal business of life when they were accosted so violently.

### Background and Context

Dakshina Kannada has generally been seen as a very progressive district on most socio-economic indicators. The Dakshina Kannada district is in the forefront in education. Primary and secondary education has reached every section of society. The district's literacy rate is far above the national average. The district has also made tremendous progress in higher education (degree classes and above), especially in the field of professional education. A host of educational institutes offering courses in Medicine, Engineering, Pharmacy, Nursing, Hotel and Catering, Law and Management are located in this district. Students from different parts of India flock to Dakshina Kannada and Udupi districts because of high standards of education. The progressive nature of Dakshina Kannada on gender issues is also attested to by the fact that 2001 census the sex ratio is 1022 females per 1000 males.

The current communal tensions in Dakshina district have their roots in the region's rapid development since the 1970's. The advent of the land reforms created new spaces for different castes and communities to operate in and compete with each other. Dominant social groups like Konkani Brahmins, Bunts and Christians found opportunities in new ventures like banking, education, or new industries like tiles, cashew nuts and fishing; many Bunts moved away to places like Mumbai to establish 'Udipi' hotels. Backward castes like Mogaveeras and Billavas, who were freed from dependent tenancy, moved into small businesses like fishing, where they

had to contend with the Bearys, an ethnic Muslim community which has a sizable presence in Dakshina Kannada, forming 15% of the total population, with a heavy concentration in districts like Mangalore, Bantwal, Belthangady, Surathkal, areas which have become communally sensitive. The Gulf boom of the 1970's and the new industrialization enabled the Beary community to enter the newer economy and markets through petty businesses (textiles and grocery), middle-level businesses (hotel and spices economy), and even capital-intensive businesses. All this produced disgruntlement among upwardly mobile elements of the backward communities, and led to a discourse of marginalization, creating the conditions for communal mobilization and communal identity.

The sense of deprivation and competition among these groups, which is really a sense of frustration with the existing pattern of inequitable development, is being systematically transformed into hatred through the cadre-based politics of the Sangh. In every village in Dakshina Kannada, whenever religious or cultural functions are organized (e.g. Bhuta worship), they have become completely saffronized. The structure of the Sangh Parivar combined with systematic work has ensured that its institutions have now infiltrated into every village and participate in almost all activities. Thus, the culture of this area has steadily become very fundamentalist with the last 15 years seeing the emergence of a strong anti-minority feeling. This has preceded the coming of BJP to power and attests to the cadre-based work of the Sangh.

The formation of the first coalition government with the BJP as a junior partner in February 2006 and the installment of the first BJP Government in the South in May 2008 marked an important bench mark in the politics of the Hindu Right in Karnataka. Close to completing a year in office, the BJP govt. has taken numerous actions that establish its anti-secular agenda. Within months of the swearing in of the Yeddyurappa Government, there were orchestrated

attacks on churches by Bajrang Dal activists and the Karnataka Government was deeply complicit in not taking any action against the attackers. The Chief Minister, Yeddyurappa and the Home Minister, V.S. Acharya made a series of statements that in effect sought to minimize the extent of the attacks and to deflect attention by repeatedly referring to the 'spontaneous anger' of the people due to conversions, which according to them were responsible for the attacks. The other action of the BJP, both as a junior member of the coalition headed by Kumaraswamy as well as by the present administration, was to withdraw cases against many Sangh Parivar activists that had been filed on the specific ground of inciting hatred against communities on grounds of religion (Sec. 153-A) of the IPC. The rise of Sri Rama Sena and other outfits, such as Hindu Jagran Vedike, Hindu Jannajagriti Samithi, Sanathan Sanstha, and so on, points to the emergence of a radical project of the Sangh Parivar to move towards the stage of an armed offensive to realize its fascist objectives. Equally, this offensive is part of a long-standing Hindutva project of restructuring and redefining the ideal Hindu woman, and, in the current context, of confronting what the Sangh Parivar calls "the love jehad", i.e., a perceived Muslim strategy to defile the Indian woman.

Most of these new Hindutva organizations have cadres (mostly men) drawn from lower castes or OBC, who are disenchanted with the rigidly Brahminical structure of the RSS. They are quite anti-brahminical, and anti-caste; in fact, many of their cadres encourage inter-caste marriages. Yet they have been saffronized through activities such as *bhajana* mandate, *brahma kalasa*, *jeevodhara* and so on. At the same time, the *Ram Sena* often joins leftist struggles for economic causes (e.g. struggles against water privatization, SEZ, workers' retrenchment and so on), but actively recruits dalits for Hindutva.

All this indicates that the Ambedkarite ideology hasn't percolated to the dalit masses. As Lolaksha, a dalit leader of Ahinda, remarked, many dalits have been recruited as "the foot soldiers" of the Sangh Parivar which is using Muslims and Christian as bogeys to frighten dalits. According to Lolaksha, this also indicates the failure of secular liberal

politics in Karnataka. Progressive organizations have been unable to draw many dalits into their struggles.

The Amnesia Pub Incident (24.01.09)

According to one of the victims of the attack, around 4 pm. on January 24, a group of over 40 people, wearing saffron headbands and scarves, came in through the main gate and approached the bouncer of the Amnesia Pub, which is located in a posh, crowded up market locality of Mangalore. Before barging into the pub, the mob went into a huddle and prayed silently. Then they began raising slogans '*Bharat Mata ki Jai*,' '*Jai Sri Ram*,' '*Bajrang Dal ki Jal* and '*Sri Ram Sena ki Jai*.' "Once inside, they went straight for the women guests. They rounded them up at the centre of the dance floor and then started beating them mercilessly," she said. After the initial beating, some of the assailants began to single out some of them and molested them. "We have been molested and humiliated in the name of God and country by people who obviously have no regard for either of the two," she told The Hindu.

One of the facts to note about the attack was it was well orchestrated with the media receiving advance notice of the attack. In fact the attack began only after the TV cameras were well stationed to cover the attack in all the details. It took place around 4 pm. and was observed by numerous passersby. Among the large number of people who watched this brazen day light attack, there was only one person, Pavan Kumar Shetty, who jumped to the defence of the girls who were being assaulted. Recalling the events, Pawan Kumar explains: "I could not bear to stand and watch. I just ran into the attacking mob to get their attention away from the girls." Video clippings show the entire mob turning its fury on Pawan Kumar, allowing the women to escape. According to him, there were over a hundred bystanders, "but not one of them did anything to prevent the attack." Had the people united against the attackers, they could have easily chased them away. Instead, "Everyone was falling over one another to get a glimpse of the action. It was like a cricket match."

One key reason for the Mangalore Pub incident becoming a national scandal was that the footage was captured on TV and aired on all major

national networks. Otherwise, it might well have been condemned to obscurity as were numerous other incidents of cultural policing which have taken place in Dakshina Kannada.

The national level attention compelled some action from the government. An FIR was registered in the matter on 24.01.09 under Sections 143 (being a member of an unlawful assembly), 147 (rioting), 323 (voluntarily causing hurt), 448 (house trespass), 504 (insult intended to provoke breach of the peace), 354 (outraging modesty of a woman), 506 (criminal intimidation) read with 149 (if offence is committed by a member of unlawful assembly, all others members of assembly shall be guilty of offence). It should be noted that all the sections booked against what the FIR describes as '10-12 unknown persons' are bailable, save Sec 506 which is non bailable because of a Karnataka amendment.

The Mangalore police initially arrested 10 people. Subsequently, another sixteen people were arrested. All the accused including Prasad Attavar, the Sri Ram Sena Vice President, were released on bail on 31.01.09 itself.

The Aftermath of the Amnesia Attack Response of the Sri Ram Sena

Speaking about the attacks, Sri Ram Sena chief Muthalik made a series of contradictory statements all of which sought to minimize, explain and even justify the attack:

- 'The incident is not so big for it to become a national issue. This is just a plan to discredit the BJP government.'

- "It is not in our culture to take drugs and dance naked."

- "The way [Sri Ram Sena acted] has been wrong. I apologize for this. The way should not be like that. But it is our right to save our mothers and daughters,"

"Pub-culture is not our culture...Media should highlight and show the aim behind our act to the society."

The Valentine Day's Offensive The impunity with which the Sri Ram Sena was able to carry out the attack and the weak state response combined with the national spotlight being on the Sri Ram Sena seems to have emboldened the Sena Chief to

initiate another offensive which was aimed at preventing the celebration of Valentine's Day on February 14, 2009.

In a press conference, Pramod Muthalik announced: "Couples seen displaying affection in public would be whisked to a temple and married off; if a boy and girl seen together are found to be siblings, they would be made to exchange a rakhi, Sena activists will be accompanied by priests and, if any couple is seen in public, they would take them to the nearest temple and solemnize the wedding. We will also register the marriage in the nearest office of the marriage registrar."

When Muthalik threatened to disrupt the Valentine's day celebrations, he widened the ambit of the threat that he posed. What might previously have been seen as an incident (horrific as it was) that was basically confined to Mangalore now became a state-wide threat. A message of fear was sought to be sent out across Karnataka that the Sri Ram Sena would function as a moral and cultural custodian of values, and would see to it that it would enforce its brand of Indian culture across Karnataka.

**Continuing Attacks with Renewed Impunity**

While, on the one hand, the Sangh Parivar in its public statements distanced itself from the Sri Ram Sena, on the other hand its affiliates saw no problem in brazenly intimidating and silencing all voices of opposition to the actions of the Sena. The State Government's apathetic attitude to taking action against those responsible for the pub attacks has sent out a clear message that the state, despite its protestations to the contrary, will not come down firmly on those who take the law into their own hands.

In the time period since the Mangalore pub attacks up to 25 Feb. 2009, there have been seven further incidents of cultural policing reported in the English press and a further seven incidents which have not been reported in the English press but have been covered by the local editions of the Kannada press.

Of course, even to see the pub attack as the starting point of vigilantism would be incorrect as the pub attack itself was preceded by a series of incidents of moral policing. A survey of the English press from 2.09.08 to 25.02.09 shows that there were 22 incidents of cultural

policing reported from the Dakshina Kannada region. A survey of the local Kannada Press from 1.08.08 to 15.02.09 reveals that there were 48 incidents in which self-styled vigilante groups took the law into their own hands. The pub attack is really a part of a larger series of assaults all of which are about policing the boundaries of appropriate behaviour for both men and women undertaken by self-styled vigilante groups.

The fact that there were at least ten reported incidents of cultural policing even after the attack on women in Amnesia highlights the continuing impunity that vigilante groups enjoy.

**Understanding Cultural Policing in Dakshina Kannada**

Numerous questions emerge in the context of the series of incidents outlined above. Firstly, there is the question of how is it done. How does anyone know that a boy and girl from different religions are sitting together on a bus, or for that matter are having juice in a restaurant? How does anyone know that this boy and girl from different communities are interacting? The only way this works is that the various vigilante groups in Mangalore have formed an extensive intelligence network involving bus conductors, time-keepers and bus cleaners in all private buses who pass on information to the Bajrang Dal cadres who then take action. Similarly, there are other sources in public places like restaurants or hotels or parks that are able to spot and report on social interactions which they perceive as transgressing the moral code. All this speaks of a very effective information system percolating down to the level of all public places, including transportation systems, bus stands, restaurants and hotels.

This level of social surveillance that gets converted into a daily vigilantism is truly frightening in its implications. Human rights groups often use the analogy of the state functioning as an Orwellian Big Brother. Dakshina Kannada seems to have reversed the scenario of the State being big brother with society itself taking on that function.

The cultural policing described above covers a wide gamut of behaviour, right from going to dance classes to picnics to talking to boys and girls from different religions to love between boys and girls from different religions.

However, when these strictures are imposed on not just boy-girl love affairs or marriages but interaction between members of different religious communities, cultural policing takes on a different dimension. Cultural policing also targets women in particular and lays down norms with respect to public spaces they can occupy and the clothes which they can wear.

Another point to be made about the phenomenon of cultural policing is that its targets are predominantly young people. From Muslim boys as young as eight who have been attacked for wearing the Muslim cap to college students travelling by bus to young professionals having a juice together, it's the young who have come under vicious attack. Perhaps we need to think of these young people not just as victims but indeed as agents of social transformation who through their everyday acts of fraternal living are fulfilling the promise of the Indian Constitution and thereby imperiling the ideological agenda of those who see India differently. It is the everyday acts of living in a multi-religious society that are currently being rigorously policed and ordered by vigilante Hindutva groups.

**Role of Organizations Professing Hindutva**

Of course the fact that transgressions of moral codes are noticed and observed by local society is inevitable in any local context. What is different in the contemporary Dakshina Kannada context is that these transgressions are not just tacitly observed but reported to groups who then take action to 'punish' the transgressors. The significant factor responsible for cultural policing in Dakshina Kannada is the unhindered presence of groups such as the Bajrang Dal and the many other Hindu vigilante groups which openly state that they will not tolerate violations of what they perceive to be the moral code. For example, the Bajrang Dal has claimed responsibility for several of these incidents. The district head of the organization, Sudarshan Moodbidri, claimed that the outfit had "solved" over 200 cases in the last two months where Hindus were "caught" committing the "immoral" act of interacting with members of other communities. Mr. Moodbidri said, "Sometimes it becomes necessary to use force. Fear of such action should

deter such misadventures. Girls reform themselves once they are thrashed and humiliated in public, but boys are tougher to control.” (The Hindu, 7.09.08)

In many cases these attacks are clearly offences under the Indian Penal Code of criminal intimidation (Sec. 506), outraging the modesty of a woman (Sec. 354) and causing hurt (Sec. 323). The fact that they continue to enjoy impunity for committing offences under the IPC merely because they have adopted the garb of ‘custodians of culture’ has emboldened many others to form more vigilante groups.

As one observer, who has been covering the events in Dakshina Kannada, put it, “Today saffron is the colour of power. You just walk around with a big red *tilak* and see how people treat you. Right from the shop keeper to the bus conductor to the policeman, everybody gives you respect. Without the *tilak* you are nothing, with the *tilak* you become a power structure.” Munir Kattipalya of the DYFI echoes this sentiment when he says, “This district is not only communalized but also progressively criminalized.”

What is indicated by such statements is that there is a strong link between communalization and criminalization. It is precisely because the state has chosen not to act when criminal activities are perpetrated under the garb of religion that criminal elements now feel that they have the sanction to perpetrate criminal activities by using the garb of religion. This possibly explains the proliferation of vigilante groups in Dakshina Kannada.

This state inaction also progressively emboldens the vigilante groups to widen the circle of criminal activities into an armed offensive. Journalist Sanjana has reported: “On 23 April, 2008, at the Nehru Maidan in the heart of Mangalore, the Hindu Janajagrithi Samithi and Sri Ram Sena held a meeting with restricted access. The venue was cordoned off and non Hindus were not allowed, though Hindu journalists were allowed. Three things which they did in this meeting were a display of rifles, air guns and pistols, a photo exhibit of Hindu victims of ‘terrorism’ like Godhra and the Kashmir Pandits issue and also undertook a recruitment drive. Such Dharma Jagruthi Sabhas have been held in Goa,

Karnataka, Andhra Pradesh, Pune etc. BJP MLA’s like C.T. Ravi and Leila Devi have attended these programmes. There is a connection between these various groups.” In the opinion of Sanjana, “We are witnessing the next stage of radicalization of right wing organizations with the formation of Sanathan Sanstha, Abhinav Bharat, Hindu Jana Jagran Samithi and Sri Ram Sena all of which have affinities with each other. It is also clear that the BJP for political gain wants to maintain a distance from these organizations. It is a tenuous tension-filled relationship.”

#### **Role of the Police**

The police themselves in Dakshina Kannada inspire little confidence. There is a widespread perception that the police are indeed part of the problem. With respect to cultural policing in particular, which often involves the commission of offences such as criminal intimidation, causing hurt, and outraging the modesty of a woman, the response of senior police officers as reported in the media has been grossly inadequate. When confronted by the failure of the District Administration to take action against self-styled vigilante groups that have violated the criminal law with such impunity, the Inspector-General of Police (Western Range) A.M. Prasad said that there was no provision under the Code of Criminal Procedure (Cr.P.C) to book cases against the vigilantes. Of late, these groups had begun to bring their victims to the police station demanding that they be booked for their “crimes”. “Everyone has the right to complain to the police when they think that someone has violated the law,” Mr. Prasad said. (*The Hindu*, 29.11.08) Prasad’s statement willfully ignores the fact that it’s the complainants who are violating not only the criminal law but basic safeguards of the Constitution of India by targeting behaviour and action which come within the ambit of Constitutional protections. Before they hand over to the police those they see as immoral, these groups invariably resort to intimidating gestures, beating, assaults and even sexual abuse. None of these gestures are deemed actionable by the police who seem to treat those who file the complaint as beyond reproach. When Prasad blithely asserts that “their legal *locus standi* was sound,” he is ignoring both the criminal law dimension of moral policing as well as

the far more significant Constitutional law dimension of the right to privacy, the right to intimate association and the right to freedom of expression.

Surely, the police cannot be complicit in the violation of law to enforce morality. Such a situation is the very antithesis of a secular state.

#### **Role of the Media**

The role of the regional press and its complicity in issues of cultural policing has also come in for sustained criticism. The regional press in Dakshina Kannada has played a key role in fomenting communal hatred through its often biased and one-sided reporting. It is also complicit in cultural policing through its one-sided reporting. For instance, *Jaya Kirana* is one of the newspapers that has extensively covered incidents of communal tensions in Dakshina Kannada. The language of the news reports—for example, the use of phrases such as “the boy and girl were caught engaging in immoral activities,” “they were caught engaging in pleasurable activities” as well as the use of Kannada words such as *rasa leele*, *maja udayisalu banda*, *chakkanda aaduthiida* - imparts a tone of moral censure as well as a certain prurience to what we might otherwise see as an exercise of fundamental rights.

All these reports are loaded with words such as ‘vulgar’, ‘immoral’, ‘skimpy dresses’, ‘having fun’, ‘trapping girls’, which derive from regressive notions of sexual and caste/racial purity.

#### **Role of the Public**

While we earlier delineated how cultural policing works and how it relies upon a network of surveillance based in society, what has also to be mentioned is the role of the wider society which is not directly involved in these attacks.

A journalist in Dakshina Kannada observes: “Their support is not that great. How many people are involved in these incidents? Not a large number, the vast majority of people do not actively participate in these incidents.”

Yet, regardless of the limited support these groups enjoy from the people, what is apparent in terms of the attitude of the larger public is an unwillingness to get involved even when blatantly unconstitutional actions are being perpetrated.

The cultural critic Lata Mani observes, 'When people fail to mobilize and stand up to fascist forces it is not a sign of tacit agreement. It may be out of fear; or a hope that it will all die down soon. Even when there appears to be broader support for hate groups, it is often short lived.'

However, the fact that at the end of the day it is only a limited number of people that are involved in these actions and that a firm response by even a few members of the public can make a difference provides a window of hope. In this context, the story of Pawan Kumar Shetty and his brave attempt to protect the girls who were attacked in the pub attack is instructive.

#### **Impact of Cultural Policing**

The main impact of cultural policing is to spread a climate of fear across Dakshina Kannada. This increases the sense of insecurity of ordinary people. People begin to think twice about performing many ordinary actions such as going out for dinner or going to a dance class or having a juice by the wayside. When members of our team spoke to the students of Aloysius College and University College, Mangalore, they articulated this sense of unease about the situation in Mangalore today. For instance, here was a typical reaction from a girl: "The change in Mangalore since this pub incident happened is that girls are scared to go out. Previously when I went out around 8.30 pm. nobody would say anything. Now autos keep asking me where I am going and whether I need a drop. It's really none of their business. I don't think anyone other than my family has the right to ask me these questions. Today the youth are silent. Youth spirit is not there at all."

While the students of St Aloysius articulated the sense of unease about where Mangalore was going, the minority students of University College articulated a more direct sense of violation. Due to the actions of these various groups, Muslim students are actively discouraged from going to state run educational institutions. Muslim boys are targeted as terrorist and Muslim girls are harassed for wearing the *burka*. In short the minority community is being told that educational spaces which are managed and funded by the state are to be cleansed of the Muslim presence. The agenda of the vigilante groups is both about controlling women's expression

and curbing the minority community's right to express their religious identity.

Thus, the cultural policing, potentially, has consequences much beyond the immediate acts. It rends the social fabric, increases the distance between communities, and has financial implications for Mangalore in terms of job losses since it adversely affects Mangalore's reputation as an educational hub.

#### **Cultural Policing Leading to Social Apartheid: Violation of the Constitutional Order**

While it's important to look at how cultural policing violates the criminal law with impunity, what is of greater and immense significance is how this becomes the wider phenomenon of social apartheid which violates the basic promise of the Constitution.

What is specific to the idea of apartheid is that it takes the idea of segregation which is present in society and converts it into law. The Indian Constitution is premised upon a rejection of both the idea of a segregation authored by law and a segregation sanctioned by society. It expressly takes on the mandate of producing one people who freely interact with each other in a spirit of fraternity. In fact one can read Art 17 which expressly punishes the practice of untouchability in any form as the Constitution's abiding commitment to the idea of fraternity.

Cultural policing, in its insistence that communities should not interact with each other and in its attempts to punish all those who try to live out the meaning of the Preamble's promise of 'fraternity', is a fundamental attack on the very Constitutional order. The promise of fraternity held out in the Preamble is what is contested at its base by this form of action. What moral policing wants to produce are monolithic self-enclosed communities with no form of social interaction between them. It is antithetical to the idea of 'We, the people of India' and insists that India is no more one nation, but rather a collection of separate peoples.

Cultural policing in turn leads to forms of 'social apartheid.' By 'social apartheid,' what we mean is a policing of community boundaries through laying down what manners of dress and what manners of expression are appropriate for each self-enclosed community. While the conventional understanding of

apartheid as it was practiced in South Africa refers to a structure of segregation of the people of South Africa through law, by social apartheid, we mean a practice of segregating communities on the basis of religion and gender by self-styled vigilante groups as well as prescribing appropriate behaviour and conduct for the separate communities. Social apartheid is successful only because it has the implicit support of the state, and hence enjoys immunity for its patently lawless actions. It's important to stress that social apartheid is not just about segregating communities but it is equally concerned about the culture, dress, and deportment of individuals within the community. It follows that those who are policing the boundaries have no hesitation in inflicting violence against members of their own community—as we saw in the Mangalore pub attacks.

It's shocking that sixty years after independence, the vision of the framers of the Constitution is sought to be so completely repudiated by organizations which are bent on ripping out the heart of Indian Constitutionalism.

The foregoing analysis calls to mind the fact that cultural policing as a phenomenon is not so much about violating any one of the fundamental rights but is really about attacking the core of what it means to be a citizen under the Indian Constitution. It is a systematic attack on the idea of India as a Constitutional democracy that guarantees to all its citizens rights and liberties. It systematically attempts to reduce India to a warring series of peoples who are coerced into only relating to each other as enemies. Any attempt at questioning this image of India as a series of self-enclosed, separate, and hermetically-sealed communities, be it through acts of love and affection, or fellow feeling and brotherhood, is dealt with by intimidation, violence and coercion.

#### **Response of Karnataka State Human Rights Commission**

The only state institution to have grasped the serious implications of this form of social apartheid produced by cultural policing is the State Human Rights Commission. The Commission has taken *suo motu* action and visited Dakshina Kannada District and come out with a damning rebuke of the functioning of the State Government.

In its analysis the Commission observes: "It appears that these outfits and groups have emerged in recent times in the coastal districts, particularly in the Dakshina Kannada District, and have assumed the role of a parallel instrumentalities of governance, and their highhanded actions include attacking places of worship, attacking girls and boys visiting pubs, attacking Hindu girls found speaking to boys belonging to other religions, preventing Muslim girls from entering the premises of educational institutions if they wear *burka* and similar other illegal acts." The Commission describes these acts as an "instance of highhanded, unconstitutional, illegal act on the part of these groups. If what is reported in the press is true, it would undeniably violate the basic human rights, fundamental rights guaranteed to the Indian citizens."

However in spite of the State Human Rights Commission issuing such a strong rebuke to the State Government, the Government has chosen not to act on any of its recommendations.

#### Select Recommendations

To the State Government (including the District Administration and the District Police Administration)

1. Acknowledge that there is a serious breakdown of the Constitutional machinery in Dakshina Kannada and take action to ensure that this breakdown is rectified.

2. Ensure that there is no parallel administration to the Government of Karnataka and in particular take stern action as per the provisions of the Indian Penal Code against members of the Bajrang Dal, Hindu Jagran Vedike, Hindu Jagran Samithi, ABVP, Sri Ram Sena and any other group.

3. Reinstate the cases that have been withdrawn by the BJP administration against all those who have been involved in disturbing the communal peace in Karnataka.

4. Ensure that citizens enjoy security of life and dignity even as they try and live out the meaning of the Preamble's promise of liberty, equality and fraternity

5. Protect citizens' right to engage in loving or romantic relationships which cut across barriers of religion.

6. Protect citizens' rights to occupy the public space with other people of their choice, regardless of religion or sex.

7. Protect citizens' rights to religious expression by wearing apparel of their choice.

8. Protect in particular women's freedom of expression which includes the right to wear clothing of their choice, make friends with those of their choice, and to express their romantic affection for partners of their choice.

9. Extermination of all those who have been repeatedly involved in these criminal acts of moral policing.

10. Ensure that any group or individual who detain or harass anyone on grounds of violation of a moral code are themselves immediately arrested on grounds of disturbing the public peace and interfering with the free exercise of rights by all citizens under the Indian Constitution by committing offences under the Indian Penal Code.

11. Issue a circular that FIR's are registered against all those whose acts of cultural policing have involved the commission of criminal acts like intimidation, wrongful confinement, simple hurt and sexual harassment.

(from page 13...)

of the hundreds of other nameless, faceless people - those without lawyers, without the attention of journalists - who are starving and dying in the forests, go unnoticed and unrecorded.

Tomorrow is World Health Day. Dr Binayak Sen spent the best part of his life working among the poorest people in India, who live far away from the government's attentions, with no access to clinics, hospitals, doctors or medicines. He has saved thousands from certain death from malaria, diarrhea, and other easily treatable illnesses. And yet, he is the one in jail, while those who boast openly about mass murder are free to go about their business, and even stand for elections.

What does this say about us? About whom we are and where we're going? - April 6 2009, Raipur, Chhattisgarh

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