

**Inside:**

**EDITORIAL:**  
Maoists Insurgency and Freedom of Expression - K G Kannabiran (1)

**ARTICLES, REPORTS & DOCUMENTS:**  
Abolish Death Penalty - Rajindar Sachar (4); A Note on Dr. Ram Manohar Lohia's Views on Caste - R.M. Pal (7); Intern's Report: Violence against Women: Issue of Honor Killing - Somrita Ray and Ankita Bose (9); Equality of Opportunity by People's Participation in Human Development - Ravi Kiran Jain (14).

**PRESS STATEMENTS, LETTERS AND NEWS:**  
Justice Sachar to Participate in Kashmir Conference at Washington (USA) (3) ; PUCI statement on the Killing of Raj Kumar Azad and Hem Chandra Pandey (5) ; Jharkhand PUCI: (1) Press Release - S.R.Nag (5) ; (2) Letter to NHRC - Nishant Akhilesh (6) ; Delhi PUCI: Undeclared Emergency in the Country (6) ; Invitation Letter for National Convention on 4-5 September 2010 (9) ; Minutes of the PUCI Executive Meeting held in Delhi on 18 July 2010 (19) .

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## Maoists Insurgency and Freedom of Expression K G Kannabiran

Look at the recent events that engulfed our administration. April 16: 76 CRPF Jawans and local policemen killed; May 9 25000 sq km of forest area of Bastar were implanted with mines according to the DGP of Chattisgarh; May 16 eight informers killed; May 17 : 35 dead. We feel these deaths could have been avoided if your governance were to be in tune with the Constitution. Instead what your Government had done is to reduce the issues raised by the Maoists into a public order issue and left it to the Para Military forces to deal with Maoist Politics. After every incident what we do is to gather around various electronic media outfits and shed tears for the dead and this has become a routine and a compulsive ritual.

We are in the twenty first century with development in various spheres of human activity and more particularly in the cyber electronic and in the field of manufacture of arms and explosives and other Auxiliary devices. The entire Indian Military might was held at bay on 26/11 by a mere handful of people and the fire power they wielded, and this fact does not disappear with the hanging of Ajmal Kasab. It should be realized that the state alone does not have the monopoly over fire power.

When Charu Majumdar led the armed revolt of Naxalbari he told his cadre to use indigenous weapons for individual annihilation. Now you find the Maoists who are the followers of Charu Majumdar getting expertly trained in ballistics and have become experts in making and planting IED's and training in the areas they occupy and the expertise with which they assault appears to be much better than those that pay for their training in Khadakvasla and other Army schools. This is not flattery of Maoists but to defuse the Government's blinkered vision and assumptions that they alone are experts in the field. No assessment can be dubbed as flattery. I always am reminded of what Churchill, a sworn enemy of Stalin ideologically said on the latter's death. Talking about Stalin, Churchill said he came to power when the country had a wooden plough and left it as a first rate nuclear power. He was not flattering Stalin. Assessments will be made by the people outside the close circle of Maoists or the Governments. Many find much to agree with comrade Azad's remarks in the widely reported response. They read Azad's Statement (it was published in the Hindu and other print media and their web-sites) saying that the Home Minister did not take note of the human rights violations of the people by Government forces while dealing with Maoists. Comrade Ganapathy, their party leader, pointed out that the Government should adhere atleast to the Constitution ..... There is nothing wrong in asking the Government to adhere to their

Constitution, which they obviously are not and in another place he remarked the the Government has consigned the Constitution to the Dust Bin. It is unfortunate that they should point out these lapses in our governance. If any person concurs with this assessment would he be branded as a Maoist as the governments have alleged in the case of Binayak Sen., TG Ajay , Dr. Rati Rao in Bangalore , Kirit Roy in WB or Seema Azad in Allahabad?

It was during the Emergency 1975 that people became conscious of their rights and liberties. Lok Nayak J P founded the PUCL and several other fraternal civil liberties & Democratic Rights organizations came into being. Without reference to the political parties these organizations have been campaigning for rights of the people, helping them to enforce their rights either politically or by approaching the Court if the Court can give relief . These organizations are committed to compel the governments and their instrumentalities to respect human rights and human dignity and campaign for enforcing mandated obligations in the Constitution. As the third preamble to the Declaration of Human Rights points out, human rights have to be enforced to prevent arbitrary autocratic tyrannies from emerging. Rights activism cannot by itself bring about social transformation but preserve democratic governance and prepare the country for a swift transformation into a better world which Brecht talked about.

We are also aware that in areas of turbulence the Government unleashes repression and the activities of Human Rights activists will always be at its height. Several human rights activists are killed during such activities. The present accusation of PUCL or other Human Rights Activist is nothing new. The arrests and accusations that have

been made were attempts to silence political protests and protests by Human Rights Activist.

In our country the assault on rights commenced with the Naxalbari uprising in 1968. From the commencement whether in Andhra after the emergence Srikalulam, the policy adopted by the Government was liquidation and arrests of whom they considered sympathizers. The same policy liquidation was rigorously practiced where in West Bengal quite a few hundreds were killed. There was no organization to raise their voices in protest against the on going atrocities. These two states were in the grip of fascist methods of governance. The absence of protest gave legitimacy to their extrajudicial and arbitrary killings and illegal custody and brutal treatment. Here the various tourist guest houses became the detention places of persons held in illegal custody. These brutalities were slowly exposed but the conditions of living of the tribals and majority of people never changed. Their governance gave reasons for people to get ready with arms for social change, and their brutal practices on arrested suspect and the practice of liquidation of dissent have given the reason for organizing a strong human rights and civil liberties movement. The prohibition of land transfers in tribal areas in the Schedule V areas and land reforms did reduce adherence to politics of violence for some time revolutionary movement was at work but they were lying low for some time.

In a severe form these movements have again re-emerged after globalization and the government parting with large tracts of land displacing the poor in Singur, Nandigram and Lalgarh areas. Maoists revolutionaries equipped with arms and explosives have emerged to confront the fully equipped State forces. After losing

monopoly over arms and ammunitions the Government has been mauled in the confrontation heavily. Maoist declared that they are present in fifteen States. It would be totally wrong to assume that poor peoples are not behind them. The presence of Maoists ensure dignity to their person and the officials at the rural level respect them as citizens and persons.

The Government unable to deal with the issue thrown up by the Maoist insurgency is under an illusion that force is the only solution. One cannot go about saying like the Home Minister that the Maoists have around fifty leaders and that if they are targeted they are finished. That was what Vengal Rao thought when around three hundred leaders were killed in encounters in the Srikakulam phase of Naxalite movement The movement survived for over four to five decades. Political movements do not get eliminated by liquidating the leaders . From the same people fresh leaders emerge. When in 1975 people tried to suppress speech people fought against such practices whether they be covert or overt. The Home Minister's accusation that some intellectuals are sympathetic or his admonition that they should choose their words; these are not answers to governance when assessments are made or criticisms are offered to the manner in which people are governed.

This is not the classical Hitler-Mussolini type of fascism. This is administrative and friendly fascism where silence is enforced by laying emphasis on cultivating a law abiding quality by the people on pain of incarceration. This would be possible of compliance without any rider, if the elected people in governance and opposition, true to their oath are Constitution abiding, engaged In furtherance of work for economic democracy set out in the Directives

on state policy. If the Government does not perform its fundamental obligations there will be protests and revolts.

The other aspect which is used as leverage to silence politics is the casualty suffered by public servants viz the police forces. I have set out the particulars at the beginning itself. We feel these deaths could have been avoided if our governance were to be in tune with the Constitutional obligations set out in the Directives (part IV of the Constitution) and the tribal rights. Instead what the Governments have done is to reduce the issues raised by the Maoists into a public order issue and left it to the Para Military forces to deal with Maoist Politics. After every incident what we do is to gather around various electronic media outfits and shed tears for the dead and this has become a compulsive routine and ritual.. We do, as human rights activists, are upset by such large scale casualties suffered by the State forces, who join these forces in pursuit of their Right to life. We also look beyond these causalities and at the real causes for the violent protests. If you compare sections 3,4 &5 of the SEZ Act and their application with the Directives Principles of State Policy you will realize how unconstitutional are your development policies and your governance.

The attack on State servants is not new to this country alone. Such situations have cropped up in England and is written about. "The Social reconstruction of state

servants as perennial victims of violence has become normalized to the point where it is now taken for granted by the majority of academics, politicians, media experts, policy makers and the public. This deeply embedded, common-sense view of the everyday danger faced by the police is immensely important or understanding the ideological role that violence plays in the reproduction of a deeply divided social disorder. This point becomes even more significant when considering the deaths of state servants. These events have a social and symbolic significance that extends far beyond the demise of the individual or individuals concerned. When police officers are killed on duty, as happened in England at Sheppard Bush in 1960, in Black Pool in 1971, in inner London in 1985 and in Manchester in 2003, these killings come to represent "potent symbols of lawlessness" in a society that is alleged to be degraded and scarred by the hostility of the deviant of authority and order." (State talk State violence: Work and Violence in U K Joe Sim and Steve Tombs article Socialist Register 2009.)

But then Home Minister might say any hostile opinion from citizen groups may hinder the operation against the Maoists. Harold Laski deals with this situation very convincingly. "Does hostile opinion mean hostility to the inception of the war, the methods of prosecution, to the end at which it aims?..... If a man believes that peace by

negotiation is preferable to victory in the field because of the human cost that the victory entails, has he no obligations to fellow citizens who are paying that cost?" To limit opinions in periods of large social disorders would be to give complete authority to the state and dispense without obligations to fellow citizens at large. It would also amount to imposition of moral moratorium on free speech. The organizations like PUCL and others should prevent such moratorium being imposed and if imposed to fight and dismantle it.

From the Rowlatt Act to the Unlawful Activities (Prevention) Act 1967 as amended by the Act of 2004 has been the cloak that is donned by State force. In 'Violence as Moral Action (Law' violence : Amherst series in Law, Jurisprudence and Social Thought) Robert Weisberg writes " Olivecrona calls it" a fatal illusion " to think violence is alien to the law just because it is contingent, in the background, just as it is false to distinguish law from the slightly less malign concept of force. Any effort to distinguish the commands of law from the common sense notion of forceful violence is a residue of hoary metaphysical illusions about law. Law, for this realist, is a social fact, not a platonic cloud, and as such includes violence..... Law is precisely a body of rules-rules that help shape ideas about rights -- and it is use of force that must be monopolized by the organization" Law has seldom been independent of force. □

## **Justice Sachar to Participate in Kashmir Conference at Washington (U.S.A.) On 29th & 30th July, 2010**

Justice Rajindar Sachar, Former President, *Peoples Union for Civil Liberties* has been invited by Kashmir American Council, Washington (U.S.A.) to participate in 11th International Kashmir Peace Conference. The Conference is being held at Washington on 29th and 30th July, 2010. The subject of the conference is "Kashmir issue - its impact on Regional and International dimension - and a way forward."

– Pushkar Raj, General Secretary □

# Abolish Death Penalty

## Rajindar Sachar

The call of former President Dr. A.P.J. Kalam to the government of India to hold public consultation on the desirability of retaining death penalty has not received adequate media attention. This is unfortunate because we can no longer play hide and seek game with the straightforward question of abolition of death penalty.

Great leaders of the world have voiced their opposition to death penalty. Thus Gandhiji said; "I do regard death sentence as contrary to ahimsa. Only He takes it who gives it."

Freedom fighter and Socialist leader Jayaprakash Narayan said, "To my mind, it is ultimately a question of respect for life and human approach to those who commit grievous hurts to others. Death sentence is no remedy for such crimes."

Dr. Ambedkar during the constituent Assembly debates said, "I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether."

The High Commissioner for Human Rights, Louise Arbour called the death penalty ".....a sanction that should have no place in any society that claims to value human rights and the inviolability of the person".

President Eduardo Frei of Chile said; "I cannot believe that to defend life and punish the person that kills, the State should in its turn kill. The death penalty is as inhuman as the crime which motivates it."

Apart from human right there is pragmatic and practical wisdom which dictates against retention of death penalty. Our people are usually talked into silence by the pro capital punishment lobby that it is only in "rarest of rare cases" as decided by

the Supreme Court that death penalty is given, suggesting as if since the law propounded this restriction, number of execution have been considerably reduced. Unfortunately facts belie this, ironically, after the rarest of rare doctrine was propounded in 1980 Supreme Court confirmed death penalty in 40 per cent of cases in the period 1980- 90 whereas it was 37.7% in 1970-80. For the High Courts the figures confirming death sentence rose from 59% in 1970-80 to 65% during 1980- 90.

The vociferous opposition to abolition of death penalty springs from myth that it can lead to increase of murders. Facts show otherwise. Thus, in 1945-50 the State of Travancore, which had no death penalty, had 962 murders whereas during 1950-55, when death sentence was introduced, there were 967 murders.

In Canada, after the abolition of death penalty in 1976, the homicide rate has declined. In 2000, there were 542 homicides in Canada - 16 less than in 1998 and 159 less than in 1975 (one year prior to the abolition of capital punishment).

A survey conducted by the United Nations in 1988 concluded that research has failed to provide any evidence that executions have a greater deterrent effect than life imprisonment.

In 1997, the Attorney General of Massachusetts (USA) said, "there is not a shred of credible evidence that the death penalty lowers the murder rate. In fact, without the death penalty the murder rate in Massachusetts is about half the national average."

A survey released in September 2000 by The New York Times found that during the last 20 years the homicide rate in the states with death

penalty has been 48 per cent to 101 per cent higher than in the states without death penalty.

The death penalty has been abolished since 1965 in U.K. The membership of European Union is dependent on having no death penalty. This has been done obviously in the confidence that murders do not get automatically reduced by retaining death penalty.

The South African Constitutional Court unanimously ruled in 1995 that the death penalty was unconstitutional as it constitutes "cruel, inhuman or degrading treatment or punishment".

The grievous danger of irreversibility and innocents being executed is no panic reaction considering that 500 people have been executed in the United States since the Supreme Court reinstated the death penalty in 1976.

Since 1973, 123 prisoners have been released in the USA after evidence emerged of their innocence of the crimes for which they were sentenced to death.

Baldus report prepared in the United States found that if a homicide victim was white, his or her killer was four times more likely to get the death sentence than if the victim were black. The same disadvantage will occur in India in case of Dalit and the Poor.

This very question was asked of the Home Ministry in 2005 by President Dr. A.P.J. Kalam - why all those on death row were the poorest of the poor, remains well known but officially unacknowledged.

So far 133 countries, from all regions of the world, have abolished the death penalty in law or in practice and only 25 countries carried out executions in 2006, a recorded 1591 executions compared to 2105 in 2005.

The community of states has adopted four international treaties providing for the abolition of the death penalty. The Second Optional Protocol to the International Covenant on Civil and Political Rights and the Protocol to the American Convention on Human Rights provide for the total abolition of the death penalty but allow states wishing to do so to retain the death penalty in wartime as an exception.

"There are no exact figures of executions having taken place. However in 1989 the Attorney General of India informed the Supreme Court that between 1974 and 1978, 29 persons were executed. The government announced in Parliament that 35

executions had been carried out in the three years between 1982 and 1985. And in 1997 the Attorney General of India informed the UN Human Rights Committee that between 1991 and 1995, 17 executions had been carried out.

On 29th November 2006, in a response to a question in the Rajya Sabha (Upper House) of the Parliament, the Minister of Home Affairs reported that at present mercy petitions of 44 persons were pending before the President of India, a number of which had been pending since 1998 and 1999." (vide Lethal Lottery Publication by Amnesty International India & PUCL - Tamil Nadu and Puducherry - 2008)

The last execution took place on

August, 2004. Even in a judgment in 2006 in Alok Nath the Supreme Court when it candidly admitted that the so called rarest of rarest case for imposing capital punishment was too vague and stated "No sentencing policy in clear terms has been evolved by the Supreme Court". Is that not enough reason for abolishing the death penalty because otherwise vagaries and fancies will determine the Sentencing.

World opinion is now almost wholly veering round to the abolition of death penalty. Is it not embarrassingly shameful that our land of Lord. Gautam Buddha, Lord. Mahavir and the apostle of Non violence, Gandhi should present such a negative face against Human Rights which embody Right to life. □

## **PUCL statement on the Killing of Raj Kumar Azad and Hem Chandra Pandey**

The PUCL condemns the killing of CPI (Maoist) spokesperson Chemkuri Raj Kumar Azad and the Delhi based Uttarakhand Journalist, Hem Chandra Pandey, who were killed in the forest area of Adilabad on the 2nd of July, 2010 by the Andhra Pradesh Police.

Reports from various sources lend credence to the large perception amongst the public that the encounter story put forth by the AP State police is unacceptable and it

is quite plausible that the incident is a case of fake encounter.

In the present case nobody from police side was injured. Nor are any reports of any injuries on the side of Maoists except two killed even though a large scale exchange of fire was reported between the two parties. According to press reports the villagers near the encounter site did not hear the sound of any continuous gunshot.

All these facts need to be

independently verified.

If the Central Government is genuine in its peace efforts, the minimum bonafide it needs to show is the setting up of a judicial enquiry by a retired Supreme Court Judge.

In the event of its failure to do so, the Government's bonafide, that it is keen to have peace talks and mutual ceasefire would obviously be suspect and unacceptable to the people of this county.

**Prabhakar Sinha**, President;  
**Pushkar Raj**, General Secretary □

### **Jharkhand PUCL: Press Release**

PUCL, Jamshedpur by this press release addressed to common people of the district wishes to draw the kind attention of all concerned that People's Union for Civil Liberties is a citizens' forum founded by late Jay Prakash Narayan in 1975 during emergency with solemn objective to promote and protect the Human Rights and Fundamental Freedoms of the citizens of this country including foreigners to the extent the fundamental rights accrues to them as per the mandate of our Constitution.

PUCL also wishes to draw the kind attention of the citizens and all concerned that PUCL as a human rights organization is not mandated by its own constitution to solicit funding either from foreign sources or from Government or Statutory Bodies or from big business houses. We wish to clarify that we have no corpus of any fund nor we seek to build any in future too. PUCL funds its activities through contribution from its members, close supporters/ well wishers and that too to fund specific activities. In the event of organizing

State or National Level program we occasionally solicit small contributions from individuals, business houses just to meet the budgeted expenditure for that specific program and not any kind of general funding to finance our general activities.

We wish to clarify further that we place our accounts in our General Body Meetings at all levels i.e., District, State and National. As ours is a citizens' forum all our activities including finances are open to all and therefore, any body can seek such

information from us.

With reference to a news items published in local newspapers recently claiming that some people have extorted money in the name of our Organisation from some Ration Dealers in the Patamda area, we wish to clarify that we as Human Rights Organisation have nothing to do with any nefarious activities of any individual, Such individuals who

**Letter:**

To,

The Chairperson, National Human Rights Commission, Faridkot House, Copernicus Marg, New Delhi.

June 7, 2010

**Subject: Illegal Detention of M Bimal Kumar. aged 22 and Sunni Kumar Sharma aged 24 for the last 15-16 days- Your immediate intervention required.**

Dear Sir,

This has reference to my telephonic talk with Mr. Parashar (law division) yesterday night on 05.06.2010. We have received two complains one from Mr. Parashnath Sharma and the other Mr. N Prakash Rao of illegal arrest and detention of their sons referred above for the last about 15 - 16 days. They were arrested on 22.05.2010.

We constituted a committee to investigate the complaints. When we spoke on telephone to the Police Station Incharge of Kadma on 05.06.2010 evening and then represented with our team he did not explain the reason for such arrests and detention and simply said that he was releasing Sunni Sharma. Sunni Sharma was released on our intervention on Saturday night and his vehicle was released the next morning i.e. on Sunday.

However, he did not release M Bimal

committed any act which is immoral or criminal are responsible for their own acts and should be dealt strictly as per the law of the land.

However, we take this opportunity to inform and make an earnest request to all concerned that in case of any such nefarious activities by any individual should be informed to the senior office bearers

Kumar till now and when our team again inquired about his release on the afternoon of Sunday the 6<sup>th</sup> June 2010 he informed that he would seek the permission of his senior and may release him in an hour. However, he thereafter was not available at the PS. Our team tried to meet him again in the evening by visiting the PS again however he was not available in the PS. When contacted on his mobile he again assured his release. However, till now he has not been released.

It has been alleged in the complaint that both of them were picked by police personnel not in police uniform and were taken to the Kadma PS in a Bolero vehicle bearing no number **in complete disregard of custodial right guidelines of hon'ble Supreme Court. We have not investigated this allegation and are in the process of verifying the same.**

However, when our team visited the PS it was found by the team that no board was displayed on Custodial rights guidelines as enunciated by hon'ble Supreme Court in D.K. Basu vs. State of West Bengal in 1997. When inquired, the official present refused to comment. The PS incharge also did not deny allegation contained in the complaint made to us by the victims.

of the State and the District of our Organisation and/or such information may be sent at our office at 23, H6, I.C.Road, B.H. Area, Kadma-831005 Jamshedpur near Ganesh Puja Maidan and Telephone Number 0657/2232563 and, Mobile Number 09204888003.

S.R.Nag, General Secretary, Singhbhum Dist. (Jharkhand) □

We have been told by the victims that when they met SP, Jamshedpur complaining about such kidnap, illegal arrest and detention, SP advised them to register an FIR with the kadma PS. When the victims went to register a complaint the officials only received the paper without registering the same or providing any number for such an FIR for obvious reason. We are in the process of verifying the same. As the matter is very serious we refer this immediately for your urgent intervention in the same.

We have also received several similar complaints including the complaint of a missing man named Javed Hussain, aged 20 years who was picked by the district police in similar fashion on 24.01.2010. However, as the investigations on those complaints have not been completed we are not referring the same at this stage however, we have mentioned the same to apprise of the seriousness of the situation prevailing in East Singhbhum district. We again request you to take immediate action to provide remedy and relief to the victims.

Thanking you,

Sincerely yours,

Nishant Akhilesh, President, Jharkhand PUCL □

**Delhi PUCL: Anti-Emergency Day Meeting Report**

## Undeclared Emergency in the Country

An anti-emergency day meeting was jointly organised by Delhi PUCL and Jan Hastakshep at Gandhi Peace Foundation, New Delhi on 26 June 2010 to commemorate

the imposition of Emergency rule in the country at midnight of 25-26 June 1975 under which thousands of opposition leaders including Lok Nayak Jayaprakash Narayan were

arrested and fundamental rights, including the right to life, of the people were suspended.

The meeting was presided over

jointly by Dr. George Mathew, President, Delhi PUCL and Dr. N.K.Bhattacharya of Jan Hastakshep. About 100 people attended the meeting.

Veteran socialist leader Surendra Mohan, Ravi Kiran Jain, Vice-President of National PUCL, Dr. Aparna, Pankaj Singh and Jaspal Siddhu addressed the audience.

All the speakers were of the opinion that Emergency-like situation prevailed in the country as human rights activists defending civil liberties of the people and even ordinary people who are protesting against displacement from their homelands are being targeted by the State and are being arrested under

the black laws like the Unlawful Activities (Prevention) Act (UAPA).

Surendra Mohan said that many people fighting for their land and other rights are being branded as 'Maoists' and 'Naxalites' and are being thrown into jails although they do not indulge in any violent protests. Ravi Kiran Jain said that human rights activists were being intimidated and put behind the bars for raising the voice of the suffering masses, particularly those belonging to the deprived sections of our society. Even the judiciary, he said, was not doing its duty of defending the sanctity of the fundamental rights. As a result anti-democratic Acts were being passed by the legislatures without the fear of their being struck down by the

judiciary.

A resolution was adopted at the meeting condemning unleashing of para-military and police forces for the benefit of multi-national corporations. The resolution also demanded repealing of the black laws like the Armed Forces (Special Powers) Act which were being used by various governments to intimidate innocent people and human rights defenders.

At the end of the meeting Mahi Pal Singh thanked all the speakers, the audience and Surendra Kumar, Secretary, G.P.F. for their co-operation in making the meeting successful.

Mahi Pal Singh, General Secretary, Delhi PUCL. □

## **A Note on Dr. Ram Manohar Lohia's Views on Caste**

**R.M. Pal**

Since the time I took over as editor of the PUCL Bulletin, I gave the utmost importance to the eradication of the twin evils in India, Caste and Communalism (i.e. societal violation of Human Rights caused by these two evils). It is a matter of great regret that these two evils continue to threaten the very existence of our country even though our leaders including Pandit Nehru and even Gandhi had announced that these two evils would disappear once the British left. Most of my articles written on these two evils have been included in my recently published book Human Rights Issues and Other Radical Essays published by Aakar Books. Those who have come down heavily on the Brahmanical religion remain my gurus. When I came in contact with M N Roy, one day I said rather abruptly that I had a very sad experience with a Brahmin family. The family compelled me to wash my plates after having a meal at their place. Since then, I have found it difficult to have any respect and tolerance for a Brahmin. Roy at once interjected and said 'you mean

the brahmanical religion and not any individual Brahmin'. Since that day I began to examine the tenets of the brahmanical religion or what I later called the Sanskrit Hinduism.

Since the time of my association with PUCL, I have been studying the literature on the subject. And whoever has said anything substantial I have read with great interest. It is in this spirit that I came to read Dr. Lohia's book on caste and found it interesting. I must narrate an incident in this context. Once I wrote an editorial in the PUCL Bulletin on the question of caste and concluded that the human rights situation in our country will not improve until caste is abolished lock, stock and barrel. And for that we need a philosophical revolution. In a PUCL conference held in Mumbai which was presided over by the then PUCL president Justice Rajendar Sachar, the well known Indo-Anglian creative writer and intellectual Prof. Nissim Ezekiel, made some very critical comments on the editorial.

My political guru described caste as an ugly relic of the past.

Dr. Lohia does not use this expression but his conclusion is almost the same. I must narrate another incident in this context when M N Roy started his ambitious quarterly magazine of ideas, The Marxian Way, which influenced my thinking on caste in our country. He sent a circular letter to many intellectuals in the country to join the editorial team. He also wrote to Dr. Ambedkar. In Dr. Ambedkar's reply, now a moth eaten letter preserved in the M N Roy archives in the Nehru memorial museum and library, he wrote that he would be happy to contribute articles but in his present position (member of the Viceroy's executive council) it is not advisable that his name should appear as member of editorial committee.

In the very first issue of the Marxian Way, Roy published two articles; one Caste system and India's Future by diplomat historian K.M.Panikkar, two Jyotirao Phule - Rebel and Rationalist by the great Maharastrian rationalist and philosopher Tarkateertha Laxman Shastri Joshi.

That Dr. Lohia is all for abolition of caste can be seen even from a reading of the contents of the book. I may quote here what M N Roy wrote in his editorial note on the article 'The Caste System' which is of relevance today in the context of abolishing caste. A trenchant criticism of cultural nationalism, Mr. Panikkar's contribution suggests that freedom cannot come to India unless it is forced on her. Though not exactly in these words but in effect Mr. Panikkar declares that only a revolution can pull down the hoary structure of the caste ridden Hindu society which holds a majority of Indian people in cultural and spiritual servitude. (I may mention here in passing that a careful reading of Dr. Ambedkar's writings on this subject hold more or less the same view). Here the problem of freedom results from the absence of the urge for freedom. Freedom has not become an ideal, but it is a necessity. Therefore, it must be enforced by a small group utilizing the secular power of the state. Revolutionary dictatorship speculated, perhaps unwittingly, as the condition for freedom. Evidently, this bold view is not compatible with formal democracy and what is known as constitutionalism. Apart from that familiar controversy there is a more fundamental question which is not new. An original analysis of the caste system leads to the conclusion that this ugly relic of the past can be cleared away only by the secular authority of the state. Here Roy raises a fundamental question, can a social revolution take place before a philosophical revolution has disrupted the authority of traditional values? The history of Europe has answered the question in the negative. The spiritual value inspiring the required philosophical revolution is the urge for freedom which is identical with their biological struggle for existence.

Let me now get to Dr. Lohia. He begins his essays thus: 'The Indian people are the saddest on earth.

They are so because they are also the poorest and most diseased. Another equally important reason however consists in the peculiar bent their spirit has received. I am convinced that two segregations of caste and women are primarily responsible for this decline of the spirit. The president of the Indian Republic publicly bathed the feet of two hundred Brahmins in the holy city of Banaras. To bathe another's feet publicly is vulgar. To restrict this vulgar privilege to the caste of Brahmins should be a punishable offence. To include among this privileged caste a majority of no learning nor character is a complete loss of discrimination, an inevitable accompaniment of the caste system and lunacy.'

Dr. Lohia entered into a correspondence with Dr. Ambedkar. His letter in this context to Mr. Madhu Limaye is extremely important. Let me quote a few lines. 'You can well understand my sorrow at Dr. Ambedkar's sudden death has been and is somewhat personal. It had always been my ambition to draw him into our fold. Not only organizationally but also in full ideological sense and that moment seemed to be approaching. Dr. Ambedkar was to me a great man in Indian politics and apart from Gandhiji as the greatest of caste Hindus. This fact has always given me solace and confidence that the caste system of Hinduism could one day be destroyed. I have always been trying to communicate to the Harijans of India an idea which is basic with me. Dr. Ambedkar and Mr. Jagjeevanram are the two modern Harijans in India. Dr. Ambedkar was learned, a man of integrity, courage and independence. He could be shown to the outside world as a symbol of upright India. He refused to become a leader of non-Harijans. I can well understand the agony of last 5000 years to their continuing impact on Harijans. Such a great Indian as Dr. Ambedkar, I had hoped, would someday be able to rise above

the situation, but death came early. Mr. Jagjeevanram maintains an apparent goodwill towards all Indians and Hindus and although he is known to flatter the caste Hindus when he deals with them, he is reported to sing to the bitter tunes of hatred in exclusivity.'

Dr. Lohia concludes this letter by suggesting that if Dr. Ambedkar were alive today we all would welcome him not merely as a leader of scheduled castes but as a leader of India as a whole. It is in this context I may refer to the situation that obtains today. During the last general elections the NDA leader Mr. L K Advani and his right hand man Mr. George Fernandes (a devoted disciple of Dr. Lohia) went to all political formations asking them to join NDA in a coalition, but scrupulously avoided Mayawati. If Dr. Lohia were alive today, I venture to suggest that his first task would have been to find ways and means to stop Rahul Gandhi from becoming the leader of the Congress and thus bring an end to the Gandhi-Nehru dynastic rule. Now that he is no more, I only hope that his disciples will prevail upon Mr. Mulayam Singh Yadav, a great and devoted follower of Dr. Lohia, to join hands with Mayawati. I also hope that Dr. Lohia's disciples would prevail upon Lalu Prasad Yadav to join hands with Mayawati and defeat dynastic rule in Bihar. Once UP and Bihar defeat the members of the dynastic rule (the Congress) the Government in New Delhi will come into the hands of Mulayam Singh Yadav, Lalu Prasad Yadav and Mayawati.

Dr. Lohia wanted to bring about a change in Indian polity through the parliamentary form of democracy, whereas his friend and colleague Jayprakash Narayan wanted to reconstruct Indian polity by introducing a new Indian political theory of partyless politics and democracy. Since we cannot dispense with the present system, let us hope Dr. Lohia's followers urge

on leaders like Mulayam Singh, George Fernandes and Lalu Prasad Yadav to stop the rise of Rahul Gandhi and Sonia Gandhi and join an Ambedkarite like Mayawati.

I may conclude Dr. Lohia's approach to caste system by quoting from his discussions with Mr. E V Ramaswamy Naicker. Dr. Lohia went all the way to Madras to meet and have a talk with Mr. Naicker who was at that time undergoing six months' prison sentence on a charge of inciting his followers to violence against Brahmins. That took place in Madras General Hospital where Mr. Naicker was lodged and lasted for an hour. The conversation took place in Hindi and Tamil (Mr. G Murahari acted as the interpreter).

Mr. Naicker: I never incited my followers to violence. The Prime Minister while speaking at a public meeting has done injustice to me by

saying that I was mad and that I must get the maximum punishment.

Dr. Lohia: Indeed injustice has been done to you. A case of contempt of court can be instituted against Mr. Nehru, for the case is subjudice. Lohia added that it should be stated in clear terms that there should be no violence against individual Brahmins. Lohia further added I am with you in the fight to eradicate the caste system and I am prepared to go to jail with you. I would also welcome if a movement is started for removal of caste name plates. Burning photographs of Gandhi and violence against individual Brahmins must stop. Lohia concludes thus: The main purpose of my talk with Naicker was to persuade him to accept the Unity of India. I have admiration for two qualities of Mr. Naicker. He is a man of action and he had a burning sense of resistance to injustice. I told Mr.

Naicker that I stood for the destruction of caste. Mere caste reform would not suffice. I promised to accompany Mr. Naicker in a campaign even breaking laws for achieving this object.

I have written this essay by way of paying my homage to great Indians like M N Roy, Lohia, Ambedkar and Mahatma Phule for their life long struggle to abolish caste. What I have written about Dr. Lohia's book on caste, clearly indicates that Dr. Lohia was all for abolition of caste. I may mention here that if Gandhi were alive today he might not have agreed with everything that Lohia has written in his book. I therefore appeal to Lohia's disciples, many of whom are acknowledged intellectuals, to find out what Gandhi has said about caste and also to find out how their leader Dr. Lohia is nearer the truth in regard to caste. □

## Invitation Letter for National Convention on 4-5 September 2010

Dear Colleague,

PUCL National Council and National Convention meeting will be held on 4 and 5 September 2010 (Saturday and Sunday) at Gandhi Peace Foundation, New Delhi-110002. The General Secretaries of all the state units are requested to convey this to all the members of the National Council (however a separate letter is being sent to inform them about this). All the members of the PUCL are cordially invited to the Convention on 5 Sept. State unit office bearers are also requested to send at the earliest the details about the number of people who will come to Delhi to attend the National Council and Convention. This is necessitated for logistical purpose.

With thanks

- Pushkar Raj, General Secretary

To: All States Presidents and General Secretaries □

### Intern's Report:

## Violence Against Women: Issue of Honor Killing Somrita Ray and Ankita Bose\*

### Introduction

Honor crimes are acts of violence, usually murder, mostly committed by male family members predominantly against female, who are perceived to have brought dishonor upon the family. A woman can be targeted by individuals within her family for a variety of reasons, including: refusing to enter into an arranged marriage, being the victim

of a sexual assault, seeking a divorce — even from an abusive husband, or (allegedly) committing adultery. The mere perception that a woman has behaved in a specific way to “dishonor” her family, is sufficient to trigger an attack. For example, honor killings can sometimes target those who choose boyfriends, lovers or spouses outside of their family's ethnic and/

or religious community. Some women who adopt the customs (or religion) of an outside group, may also be more likely to be victims. Furthermore, in certain cultures a raped single woman will garner no bride price if she marries, and thus be considered “worthless” to the family. There is some evidence that homosexuality can also be grounds for honor killing by relatives. Several

cases have been suspected but not confirmed.

Many hold the practice to be self-contradictory, since an honor killing is sometimes justified by its participants or supporters, as an attempt to uphold the morals of a religion or a code, which at the same time generally forbids killing as morally wrong.

### **Women as Property**

Women are considered the property of the males in their family irrespective of their class, ethnic, or religious group. The owner of the property has the right to decide its fate. The concept of ownership has turned women into a commodity which can be exchanged, bought and sold.

Honor killings are perpetrated for a wide range of offenses. Marital infidelity, pre-marital sex, flirting, or even failing to serve a meal on time can all be perceived as impugning the family honor.

In a society where most marriages are arranged by fathers and brothers and money is often exchanged, a woman's desire to choose her own husband—or to seek a divorce—can be viewed as a major act of defiance that damages the honor of the man who negotiated the deal.

Honor killings of women reflect long standing patriarchal traditions. Patriarchal tradition casts the male as the sole protector of the female so he must have total control of her. If his protection is violated, he loses honor because either he failed to protect her or he failed to bring her up correctly. Clearly, the vulnerability of women around the world to this type of violence will only be reduced when these patriarchal mindsets are challenged and effectively confronted.

Women accused by family members of bringing dishonor to their families are rarely given the opportunity to prove their innocence. In many countries where the practice is condoned or at least ignored, there are few shelters and very little legal protection.

### **Indian Scenario**

Honor-killings are widespread in some of the economically advanced States of India. Perpetrated under the garb of saving the “honor” of the community, caste or family, such incidents often occur. And the State governments are not keen to take a stern action against these crimes. The acts of violence include public lynching of couples, murder of either the man or the woman concerned, murder made to appear as suicide, public beatings, humiliation, blackening of the face, forcing couples or their families to eat excreta or drink urine, forced incarceration, social boycotts and the levying of fines.

The largest number of cases was found to have occurred in Punjab, Haryana and Uttar Pradesh. One reason for the increased visibility of such crimes is the trend of more and more girls joining educational institutions, meeting others from different backgrounds and castes and establishing relationships beyond the confines of caste and community. Such individuals, both boys and girls, are being targeted so that none dares to breach the barriers of castes and communities. Significantly, in the majority of cases it is the economically and socially dominant castes that organize, instigate and abet such acts of retribution.

People are sometimes murdered in Northern India, mainly in the Indian state of Punjab and Haryana for marrying without their family's acceptance and in some cases for marrying outside their caste or religion. Among Rajputs, marriages with other caste male/female instigate killings of the married couple and family. This is unique form of honor killing related to the militant culture of ethnic Rajputs, who, despite the forces of modernization and the pressures of decolonization, subscribe to medieval views concerning the “preservation” of perceived “purity” of their lineage. In Haryana, for example, a couple of such incidents still occur every

year. Bhagalpur in the northern Indian state of Bihar has also been notorious for honor killings. Recent cases include a 16-year-old girl, Imrana, from Bhojpur who was set on fire inside her house in a case of what the police called ‘moral vigilantism’. The victim had screamed for help for about 20 minutes before neighbors arrived, only to find her still smoldering. She was admitted to a local hospital, where she later succumbed to her injuries. In another case in May 2008, Jayvirsingh Bhadodiya shot his daughter Vandana Bhadodiya and struck her in the head with an axe.

In Muzaffarnagar district in western Uttar Pradesh, at least 13 honor killings occurred within nine months in 2003. In 2002, while 10 such killings were reported, 35 couples were declared missing. It was estimated that Haryana and Punjab alone account for 10 per cent of all honor killings in the country. It is not surprising that no such category of crime exists in government records. In fact, there is refusal even to recognize this phenomenon. Data for such incidents are seldom available and they would mostly be classified under the category of general crimes. Moreover, most of such cases go unreported and, even when reported, often first information reports are not filed and post-mortems are not conducted.

Caste panchayats have come to play an increasingly important role in Haryana and elsewhere, especially in situations where political patronage also exists. Central to the theme of honor and violence is the subordinate position of girls and women in all castes and communities. A woman's chastity is the “honor” of the community and she has no sovereign right over her body at any point of her life. The retribution is particularly swift and brutal if she crosses caste and class barriers to choose a lower-caste man as her partner.

Honor killings are rare to non-existent in South India, and the western Indian states of Maharashtra and

Gujarat. In 1990, the National Commission for Women set up a statutory body in order to address the issues of honor killings among some ethnic groups in North India. This body reviewed constitutional, legal and other provisions as well as challenges women face. The NCW's activism has contributed significantly towards the reduction of honor killings in rural areas of North India. According to Pakistani activists Hina Jilani and Eman M. Ahmed, Indian women are considerably better protected against honor killings by Indian law and government than Pakistani women, and they have suggested that governments of countries affected by honor killings use Indian law as a model in order to prevent honor killings in their respective societies.

#### **Case Study: Manoj and Babli, Haryana, Karnal District**

The recent verdict given by the additional session's judge of Karnal district, Haryana on Manoj and Babli honor killing case is a milestone in the fight against patriarchal and feudal *khap panchayats*. The *khap panchayats* have come vociferously against the verdict and recently organized a *maha khap* in Uttar Pradesh to show their might. News of more honor killings are also pouring in. The following is a brief attempt to identify the different forces behind the political clout of the *khaps* in light of the issue of honor killings.

Manoj and Babli ( a married couple and residents of Kaithal in Haryana) were killed in June 2007 after they married on the basis of their own choice and ran away from their village. They were blamed of breaking the village exogamy and *gotra* rule imposed by the *khap panchayats*. According to this rule the boy and girl of same village and same *gotra* could not marry as they were part of a "brother and sister" relationship. When Manoj and Babli eloped and married, a false complaint against Manoj was lodged that he had kidnapped Babli. When the couple

was hiding, police used to come to Manoj's house in search of them regularly and used to abuse Manoj's widowed mother and his two young sisters. Because of this Manoj and Babli had to come out in public and had to appear in front of the District Magistrate to whom Babli explained that she had married Manoj out of her own will. After this, the Magistrate had ordered proper police protection for the couple. Yet when they were returning home, their bus was stopped and they were abducted and later killed. Their bodies were thrown into a canal.

The Karnal District court ordered the execution of the five perpetrators while giving a life sentence to the *khap* (local caste-based council) head who ordered the killings of Manoj and Babli.

There are several cases like Manoj and Babli in Haryana which came to light often, while many more are hushed up. Several couples are being harassed by these caste (*Khap*) panchayats. In Haryana, U.P, Punjab and Rajasthan these *khap* panchayats are functioning from a very long time. There are certain codes developed by these caste panchayats which needs to be followed while two persons are marrying. Caste endogamy, village exogamy and *gotra* (sub caste) exogamy are some of the codes made by these caste panchayats, which they want to implement effectively. Any married couple who broke such codes while marrying is punished by the order of *khaps*. These panchayats are based on caste groupings and membership to these panchayats is exclusively for male members of that particular caste. Decisions taken by these caste panchayats are always patriarchal and cattiest in nature. These caste panchayats have a record of giving very insensitive judgments and especially for the backward castes and people belonging to lower economic strata. Many argue that these *khap* panchayats were functioning in a very positive manner in past and

judgments given by them were for the betterment of the society. If one agrees to their constructive approach of the past, a question naturally arises that why the same caste panchayats are giving such regressive judgments now? In spite of being illegal bodies, these *khap* panchayats are functioning openly and violating law and order of the country. From where are they deriving so much of power? Why are they not afraid of police and law? These are some of the questions that need to be answered.

#### **Khap Panchayat in Karnal**

Identity politics is now very well rooted in Indian democracy. Many regional parties and as well as national parties at regional level are using identity politics as a source for vote banks. These *khap* panchayats are nothing other than sources for votes and parties depend heavily on diktats issued by them during elections. That's why none of the major political parties ever condemned these honor killings. Present Chief Minister Bhupinder Hooda of Haryana, went one step ahead and called such matters as family matters, where government can't interfere. These are the politicians in Haryana who at the time of elections go and take *pagdis* from their *khap* panchayats which is considered to be a honor. Their social conduct answers for the silence observed by many political parties in Haryana following the verdict in the Manoj Babli case.

Such kind of support by political parties is making these *khap* panchayats more powerful. At the time when they should rethink about their decisions regarding honor crimes, they had called for an all *khap* meeting in U.P where they reached the highest level of audacity by reiterating their demand to amend the Hindu Marriage Act (HMA). They have threatened for more violent actions if the Act is not amended. They are also going to challenge the verdict in higher courts and have asked all Jat families to contribute 10 rupees each to fight this case

ahead. This was not the first time when these *khaps* had demanded amendments in the HMA. Just before the last Lok Sabha elections a similar all-*khap* meeting had demanded and declared that they will vote for the party which amends the HMA. It is clear that whatever the Home Minister of the Congress party led UPA central government says inside the Parliament against the practice of 'honour crimes', in Haryana their party needs to rethink about their linkages with *khaps*.

In complete contrast to the main political parties, the grassroots women's movements have played an exemplary role in the Manoj-Babli case. In Haryana these practices are not new and post 1990s we can see repetition of such cases of honor killings. Many cases come to media and those are highlighted to a certain extent. This is the first time that such a serious punishment has come out and also a member of a caste panchayat has been punished. The Manoj and Babli murder case was fought by Manoj's mother and sister. When they decided that they want to fight this case they were ostracized by the village leaders. Nobody came in support of this family. In an interview given to media, Manoj's sister acknowledged the fact that at that time only the All India Democratic Women's Association (AIDWA) came forward to support and help them. They started generating public support for them and their case. Firstly the battle was to ensure that a FIR is lodged. I recall my memories of the AIDWA office in Rohtak, during visits, with several placards written with the message "arrest Ganga Raj". AIDWA had organized a huge protest demonstration to ensure that all these culprits are arrested - especially Ganga Raj.

One more thing that needs to be highlighted in the case of Manoj and Babli honor killing is the role of media. During past years we have seen the media playing a crucial role in dealing with some sensitive issues and highlighting it in order to

create pressure for justice. But these cases of honor killings never got the much needed attention from the national media. When such cases happen in Delhi or any other big cities it is highlighted and such news are sustained for a longer time. The Arushi murder case is one of the examples where the media gave undue attention to the case which created problems for investigation and was insensitive to the family which lost their daughter. The media's urban bias is reflected from the fact that it does not hesitate to broadcast and highlight the so called candle light fight of urban middle class, while ignoring many similar cases of small towns and rural India. The fight for justice by Chandrapati (Manoj's mother) was never entertained by national media till this verdict came. Today every news paper is trying to show the courage of Manoj's mother, but the time when she needed the support of the larger community, none of the media organs, except for some honorable exceptions, were projecting her fight against these feudal and patriarchal *khap panchayats*.

The media should not ignore any fight against injustice. Nor should it be blind towards forms of injustice, and take it up only when the issue reaches a culmination in the form of justice given in the highest court. Every honorable fight for justice, fought in villages deserve more than symbolic coverage, for they carry important and transformative political messages against the feudal order in most villages, and thus the nation. There is a need for the media to be more vigilant even in this case; as the session's judge adjudicating this case has asked for her own transfer following threats by the patriarchal *khap panchayats*.

The fight against such patriarchal and feudal *khap panchayats* is much needed in present when more and more young couples want to exert their right of choice. These couples should be given proper protection and at the larger level, an environment needs to be created

which is caste and gender just. For this the role of government, political parties and organizations which are working at grass root level becomes very important. AIDWA is one of the women's organizations which due to their constant intervention in Haryana where such cases are at a maximum, had ensured that the Home Minister had to give a statement that 'Honor Killings' should be treated as a separate crime. The recent verdict by a district court in Haryana in the Manoj- Babli case is one step ahead for a gender and caste just society.

#### **Effect of the case**

As the case above cited becomes first in which a death sentence is awarded, public focus has come on the issue of honor killing. It is being debated in media more frequently than earlier. Therefore the government has also taken note of the matter. According to the Prime Minister, the Centre's proposed amendment to the Indian Penal Code to make honor killings a "distinct offence" has evoked mixed reactions from legal experts with some backing the move and others saying there is no need for a separate law.

Law Minister M Veerappa Moily had earlier said that his ministry has given a go-ahead to the proposal by the Home Ministry to amend IPC and that a bill in this regard would be moved in the coming Budget session of Parliament after getting the Cabinet's nod.

The proposal has been welcomed by some leading legal experts, saying it would attract everyone's attention to the social evil committed in the name of saving the honor of the community, caste or family.

Welcoming the proposed amendment, senior Supreme Court lawyer P N Lekhi said, Offences like honor killing are social offences and strict laws are needed to combat them and along with amending the IPC, what needs to be emphasized upon is to educate people as law alone does not act as a deterrent.

#### **Conclusion**

Different societies in India are

increasingly facing the problem of honor killing, to which the state authorities like panchayats and police are a party. Thus in such an ailing situation it is very important that such incidents are taken care of properly by the state and also the society. Such crimes can only be eradicated by:

1. Putting very serious penal sanctions.
2. Active police and panchayat body; as these crimes are mainly confined to rural/village areas.
3. Imparting education to the village people at large.
4. Active participation of the

NGO's relating to women empowerment.

5. Judiciary must be positive on such cases.

Research from around the world point to the fact that violence against women can only be combated if there is a healthy partnership between women's groups and the state apparatus. While women's groups must protect their independence, on certain issues they have to work effectively with the criminal justice system, joining forces to protect the rights of women victims. Moreover, law is an important tool but it is one of the

many strategies available to us. While fighting for justice through the legal system, we should also try and put in place education policies, health strategies and community level programs that promote equality between men and women and teach non violent methods of resolving conflict. A multipronged approach to violence against women will result in far reaching changes, transforming attitudes and practices so that men and women can live in equality and dignity.

*\*(The writers are students of 1st year B.B.A. LL.B. KIIT Law School, Bhubaneswar. They interned with PUCL in summer 2010. □*

***PUCL has been advocating for a robust institutional mechanism for the support and Protection of Human Rights Defenders. To this end PUCL had submitted a detailed petition to the National Human Rights Commission (NHRC) and has raised this issue during the core meeting of NGOs affiliated to NHRC. Acting on the plea of several other rights groups as well the Commission has finally set up a Focal Point for Human Rights Defenders. The aggrieved can approach the mentioned cell. Following is the communication received from NHRC on this issue. General Secretary.***

**NHRC Letter: 1)**

No. 7(8) 2009-coord.  
National Human Rights Commission  
(Coordination Section)  
Faridkot House, Copernicus Marg,  
Delhi – 110001  
Dated: 4<sup>th</sup> June, 2010  
Subject: Setting up a Focal Point for human rights defenders at NHRC – one of the recommendations of the Workshop on Human Rights Defenders organized on 12.10.2009 by the National Human Rights

Commission at New Delhi  
In pursuance of the recommendations of the Workshop on Human Rights Defenders organized on 12.10.2009 by the National Human Rights Commission at New Delhi, **a Focal Point human rights defenders has been set up in the National Human Rights Commission.**

**2. Shri A.K Parashar, Deputy Registrar (Law)** will be the Focal

Point for Human Rights Defenders. The Human Rights Defenders can access the **Focal Point** through the following phone No., Fax No. and e.mail Id:

- 1) Mobile No. 9810298900;
- 2) Fax No. 23384012;
- 3) E.mail id- [hrd-nhrc@nic.in](mailto:hrd-nhrc@nic.in)

Yours faithfully,  
Sd./-

(B.S. Nagar) Under Secretary (Coord)  
Tele: 28070446 □

***PUCL has been concerned about the delay in deciding the cases by NHRC. It is pertinent to note that cases sent to NHRC have to be accorded an urgency as invariably the matter pertains to serious human rights violation. However one is peeved to note that the cases take a very long time to decide, sometimes years. Following is an example of such case. - General Secretary***

**NHRC Letter: 2)**

Case No. 1016/20/2004-2005  
03 June 2010  
To,  
Dr. Y.P.Chhibar, General Secretary,  
PUCL, 81, Sahayoga Apartments,  
Mayur vihar-1, Delhi  
C/o Sh. Chaman Lal, Special  
Rapporteur, NHRC Delhi,  
Sir / Madam,  
With reference to your complaint

dated 09/08/2004, I am directed to say that the matter was considered by the Commission on 26/04/2010. The Commission has made the following directions.  
*Under Secretary, Home (HR) Department, Govt. of Rajasthan has submitted a report dated 12.3.2010 stating that Mohd. Sadiq, son of Bhai Khan was sent to Wagah Border on*

*9<sup>th</sup> September, 2005 and he was handed over to the Pak Rangers on 12<sup>th</sup> September, 2005.*

*Since Mohd. Sadiq, son of Bhai Khan has been already repatriated to Pakistan. No action is called for. The case is closed.*

This is for your information.  
Yours faithfully,  
Sd./-

Deputy Registrar (Law) □

# Equality of Opportunity by People's Participation in Human Development

Ravi Kiran Jain

*"Nations like stars, are entitled to eclipse. All is well, provided the light returns and the eclipse does not become endless night."*-Victor Hugo

The Constitution of India as initially enacted preferred Representative Democracy. There was a centralized system of governance. India is a union of states. The States as they existed when we achieved independence and we became republic were the result of historic accidents. The size and the population of the territory of India and its states became the reason to adopt Representative Democracy. Experience of 60 years of working of Constitution shows that Representative Democracy prevents people's participation in matters of formulation of policies and Governance on Directive Principles. As the root meaning of the word indicates, Democracy is the "rule of the people." A Representative Democracy is not the "rule of the people."

Alongwith achieving independence India was also partitioned. There was an immediate need of a centralized system. The States were also to be reorganized. Mahatma Gandhi having disappeared from the scene only 12 months after the first meeting of the Constituent Assembly, Jawahar Lal Nehru and Sardar Patel succeeded in having their way to have a strong centre which we inherited from the Britishers. The modern Indian State was the product of a freedom struggle. It adopted a written, liberal democratic Constitution but retained the colonial administrative, police and judicial structures without recasting them to meet the changed situation. The village-based system, as a unit of social organization, panchayats and its cottage industries that were to provide consumer goods, food and the basic human needs, however, became a casualty. A highly-centralized system, instead came into being. The federal Constitution of India recognized in Part XIV, chapter 1, Services under the Union

and the States for the posts "in connection with the affairs of the union or of any state." Part V of the Constitution is relating to union and Part VI relates to the states. It may be noticed here that after the 73rd and 74th Constitution Amendment Acts Part IX and Part IX-A have been inserted after 43 years of the working of the Constitution. These parts relate to The Panchayats and The Municipalities respectively. It may further be noticed here that under Part XIV Chapter 1 the Services under the Union and the States and the posts in connection with the affairs of the Union or of any State, cannot be construed to mean that the Services are for the affairs of the Panchayats and the Municipalities. Therefore, the bureaucratic structure which has been recognized under Part XIV Chapter 1 has no relation with the affairs of the Panchayats and the Municipalities. It is only for the centralized system of governance which is envisaged under the Constitution before the 73rd and 74th Constitution Amendment Acts that the services were recognized. The decentralized governance does not envisage a bureaucratic interference.

The structure of government changes constantly in some countries, sometimes rapidly and dramatically through administrative reforms and reorganization, sometimes slowly and imperceptibly through the interaction of social, administrative and political forces. In India the structure of government has not changed at all since we became independent in 1947. It has not changed even after the 73rd and 74th Constitution Amendment Acts in as much as the two Amendment Acts exist only on the statute book with no political will to devolve the powers on the institutions at the grass root to function as institutions of self governance. The usual connotation of 'government' is political. The word is often used interchangeably with 'state'. The notion of government involves a fundamental relation of ruling and being ruled, of command and obedience. The basic question

about government is; what is the origin of government, its nature and necessity? What ends does government serve and how do these ends define its scope and limits? What is distinction between good and bad government, between legitimate and illegitimate, or just and unjust? What are the forms of government, of good government and bad government? These questions are related. In our country, the origin of the government is the Constitution of India. The origin, nature and necessity of government having a bearing on its ends and limits, have all been defined in the Constitution of India.

The Indian Constitution embodies many of the core values that have been part of the Indian ethos. It has resolved to secure to all its citizens justice, equality, liberty and fraternity. The preamble to the Constitution of India seeks to establish what Mahatma Gandhi described as "The India of my Dreams":

"I shall work for an India in which the poorest shall feel that it is their country, in whose making they have an effective voice, an India in which there shall be no high class or low class of people; an India in which all communities shall live in perfect harmony. There can be no room in such an India for the curse of untouchability or the curse of intoxicating drinks and drugs. Women will enjoy the same rights as men. We shall be at peace with all the rest of the world. This is the India of my dreams."

The Preamble and Part IV of the Constitution represents the origin, the purpose, the nature, necessity and the ends which the government would seek to serve and how these ends would be defined and the scope and limits of those powers. The Preamble can be divided into three parts by reference to its qualitative characteristics. The first part is declaratory, whereby the people of India in their Constituent Assembly adopted, enacted and gave to themselves this Constitution, i.e. the

Constitution of India. The second part is resolutionary, whereby people of India solemnly resolved to constitute India into a sovereign, socialist, secular and democratic Republic. The third part is promissory, a commitment by the people of India to ensure all its citizens the four objectives mentioned in the Preamble i.e. justice, liberty, equality and fraternity, accompanied by an assurance of the dignity of the individual and dignity of the nation.

The word 'governance' has appeared only in Part IV which relates to Directive Principles of State Policy, wherein it is provided that the principles contained in that part are "fundamental in the governance of the country." Part III and Part IV of the Constitution provide for Fundamental Rights and Directive Principles of State Policy. The Fundamental Rights contained in Part III were said to be enforceable through the Courts. The Directive Principles of State Policy were not enforceable through the courts but the principles therein laid down were nevertheless fundamental in the governance of the country and it is the duty of the State to apply these principles in making laws. Unfortunately the directives remained confined to the statute book of the Constitution of India and have not been enforced at all. The governance has never been on the Fundamental Principles contained therein.

The State under the Directives had to promote the welfare of the people by securing and protecting as effective as it may a social order in which Justice, social, economic and political had to inform all the institutions of the national life. The State was required to minimize the inequalities in income, and dare to eliminate inequalities in status, facilities and opportunities. The State had to direct its policies towards securing that the citizens, men and women, equally, have the right to an adequate means of livelihood, the children are given opportunities and facilities to develop in a healthy manner. Article 45 mandated the State to provide within a period of 10 years every child primary education till they completed the age of six years. It means that by 25th January,

1960 every child below the age of six years in this country was supposed to be given primary education.

The most necessary condition of equality which the status of citizenship demands is equality of educational opportunity from the moment of the birth of a citizen. The moment any child takes birth, he becomes a citizen of this country and is entitled to be governed on the Fundamental Principles of governance contained in Part IV of the Constitution of India which is evident by the provision that the State shall provide "within a period of 10 years", "free and compulsory education for all children until they complete the age of 14 years." (Art. 14) and the provision contained in Art. 39(f) which reads as follows: The state shall, in particular, direct its policy towards securing:-that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

According to MILL, it is "almost a self-evident axiom that the State should require and compel the education, up to a certain standard, of every human being who is born its citizen." All men may not be endowed with the same native abilities or talents, but all born with enough intelligence to become citizens deserve the sort of education which fits them for the life of political freedom. The way in which it recognizes and discharges its educational responsibility tests the sincerity of modern democracy. Universal schooling by itself is not sufficient. Democracy also needs what MILL calls "school of public spirit." It is only by participating in the functions of government that men can become competent as citizens. N R Narayana Murthy in his recently published book "A Better India A Better World" concedes: "More than 300 million Indians are still prey to hunger, illiteracy and disease, and 51% of India's children are still under-nourished." What will it take for India to bridge this great divide? When will the fruits of development reach the poorest of the poor, and wipe the

tears of the eyes of every man, woman and child, as Mahatama Gandhi had dreamt? And how should this, our greatest challenge ever be negotiated?

In the Sunday Magazine of August 9, 2009 of The Hindu Vimala Ramchandran noticed in an article:- "Starting with our Prime Minister Manmohan Singh, everyone in the government and those engaged with education acknowledge that an overwhelming majority of our young people (14-20 years) are not attending any educational institution - schools, technical training institutions, colleges, universities etc.

What does our education system (formal, not-so-formal, private) provide? (Schools, industrial/vocational training institutions and colleges/universities (professional and general). Look around and it becomes more than obvious that there are really no educational opportunities for those who have either dropped out, or have been pushed out of the system.

Who are these young people? Again, there is little disagreement over the fact that an overwhelming majority of these young people are from poor and disadvantaged communities, living in villages, tribal hamlets, desert, hilly and remote habitations in rural areas. In the cities and in peri-urban areas - these young people are most likely to be new or seasonal migrants in search of work. There is considerable body of evidence that reveals that children of families displaced by natural and man-made disasters, children of people affected with social strife and conflict and children of single/widowed women and those who have lost their parents to a disease (including HIV and AIDS) constitute the bulk of drop outs. Within each of the above groups that girls are more likely to be in a majority.

What are these millions of young people doing? A large proportion of girls are married; those who are not are engaged in some kind of work. Boys are engaged in some kind of work; if they find it in these troubled times. Most often these young people have little to do. They are under-employed or unemployed and

given the quality of education they did receive, the chances are that they do not have the knowledge, skills or confidence to seek new avenues for employment or self-employment.

Given that there are millions of school drop outs and school push outs in the country, is it not time that those who wish to make an impact turn their attention from trying to cajole and push government to exploring avenues to create meaningful educational opportunities for the young people out of school in rural and urban areas who are desperately seeking opportunities to learn and to grow?"

If there had been governance in accordance with the Fundamental Principles right from the day a child was born it would have ensured equality of opportunity and no conscious effort would have required to ensure the Fundamental Rights contained in Article 15 which provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Reading Art.15 and Art.39 (f) shows that no extra effort would be required by the State to ensure the enforcement of Fundamental Rights. More than 59 years have passed since we adopted a Constitution which directed the State to endeavor, to provide, 'within a period of 10 years', 'free and compulsory education for all children until they complete the age of 14 years'.

Men, women and children must be the centre of attention-with development woven around people and not people around development. Moreover, development must be anticipatory, and for this, people must have the opportunity to invest in the development of their capabilities-in their health, education and training. They must also have the opportunities to put their capabilities to use- to be fully involved in all aspects of life, to express themselves freely and actively. The development should be of men, women and children. Such a development is human development.

The prefix "Human" before the word "Development" is important. A further question arises: What is Human

Development? The answer is: "Human Development is development of the people for the people by the people. Development of the people means investing in human capabilities, whether in education or health or skills, so that they can work productively. Development for the people means ensuring that the economic growth they generate is distributed widely and fairly. The issues of population, consumption, technology, environment and sustainability are interlinked with the issue of human development, like health, education family planning etc. And development by the people means a decentralized system of governance where the people participate in its process--something, which was conceived by the 73rd and the 74th Constitutional Amendments, providing for governance by locally elected representatives at the urban and rural grassroots. But it has been literally rendered ineffective on account of the centralized political authority where none other than the corrupt bureaucrats set the agenda for development of the people even at the grassroots, and while they do so, they are seen now to be working more and more under the control and supervision of the World Bank and multinational corporations. In other words, the development agenda is now being imposed on the people not only from the centralized political authority at the top in India, but also from those who are at the commanding position in the West and its financial institutions who think that they alone can determine what is good governance for the people.

Also people themselves should be able to freely cooperate and participate in the implementation of such programmes of education and reconstruction. A spirit of self-reliance rather than excessive dependence on a centralized authority should be cultivated.

The Indian government's education approach has been clumsy and unwieldy. The focus of government in school education on building infrastructure, with little emphasis on teachers' training, educational achievements and performance measurement. As a result the total number of illiterates continued to

grow, even as states haplessly built school after ineffective school-schools that were hollow promises, with little teaching taking place within the buildings. Our education policies, as the writer Amit Varma put it, 'have funded schools, not schooling.' (Amit Varma, 'Fund Schooling, Not Schools', Mint, 20 September 2007)

In a paper titled The Functional Primary School, J. P. Naik, the most acknowledgeable person on education in India writes: "the existing model of the primary school favours the well-to-do... and harms the interest of the masses, the bulk of whose children are converted into "failures" and "dropouts". If primary education is to be made universal, the traditional model of the primary school should be radically modified.... The introduction of a single set of textbooks uniformly in all primary schools...tends to standardize content and to make variations to suit local conditions almost impossible. It is necessary to give up all such trends to centralize authority in curriculum construction and to give freedom to schools to adjust the curriculum to the local environment... This will make it possible to have a curriculum for every primary school which stimulates children and attracts the support of the parents."

Since independence what has taken shape is a system of education oriented towards the aspirations of relatively prosperous urban middle class and, therefore, unrelated to the needs and requirements of the majority of our rural population. Naturally, the promise held out in our Constitution remains grossly unfulfilled. Now the right to education is sought to be brought as a Fundamental Right to be enshrined in the Constitution. It is not at all important to make education a Fundamental Right or to plead for universal literacy. What is important and essential is to relate education for the people to an aim and a program clearly understood and accepted by the people. If integrated rural development is the aim, as it ought to be, the methods and contents of education for the villagers must be so framed that they subserve and are seen to subserve

that aim. If the kids in rural schools are asked a question that what they would like to be when they grow up, the answers would be varied- 'engineer', 'teacher', 'policeman' and, increasingly, 'computer' engineer. But one aspiration that they would never express is 'farmer'- their parents hope that the lives of their children will be different from the subsistence livelihoods that they as farmers have endured, and they and their children see these schools as their way out. The poor in India have to fight pitched battles to secure their minimum human, social and legal rights under the Constitution and the general and specific laws of the land. Development-related struggles for land, minimum wages, social justice and dignity by the poor along with their demand for the fair implementation of the limited rural development projects and schemes by the government, often bring them into conflict with the police and administrative machinery, which, frequently, in collusion with the rural power structure, inflicts enormous state violence against the poor and commits large-scale human rights violations. A degree of militancy on the part of the poor in pressing for their constitutionally guaranteed minimum human, social and legal rights is understandable in a developing democracy, but district-level development and police officials are often indifferent to such concerns. For about 60 long years, the governments of this country - Central as well as States - have been negligent and have been putting aside the Directive Principles of State Policy which has resulted in great economic and social disparity and deprivation of the basic rights like education, health, right to work etc; this deprivation of the basic rights is the root cause of population explosion. It started appearing in 1960s that the centralized system of governance which we adopted in our Constitution was not fit to achieve the Directive Principles of State Policy. Dr. Ram Manohar Lohia used to speak of Chokhambha Raj. In 1963, Dr. Ram Manohar Lohia initiated a famous debate of two and a half annas of 27 crore people of this country when the total

population of this country was about 50 crores. Jawahar Lal Nehru said in reply that it was 6 annas. Till 1967 any common man could aspire to contest the election of Lok Sabha and become Member of Parliament. Till 1971, the elections of the Parliament and the various assemblies were held simultaneously in 1952, 1957, 1962 and 1967. In 1971 suddenly Indira Gandhi delinked the elections of the Parliament from the election of assemblies, dissolved the Parliament to do so, gave the slogan of Garibi Hatao and dumped money in the election. By doing so, she made the central government too strong. It is during Indira era which has been described by Granville Austin in "Working a Democratic Constitution" as "A new era, one that would be marked by confrontation over institutional and personal power" that the centralized system of governance reached to its all time heights. Granville Austin observed:- "Self evidently, essential issues of Constitutional governance underlay her actions in these confrontations. Individual rights were pitted against the society's need for a social revolution, as they had been in Nehru's time. The increased central authority over the states ended the 'bargaining federalism' of the Nehru years.

The Indira era may be divided into three periods i.e. from 1971-1977, from 1980-1984 and from 1984-1989 (during which Rajiv Gandhi was the Prime Minister for he had also led the country in Indira tradition.

The centralization of power and corruption are the two faces of same coin. In spite of false promise to the people in 1971, the people of this country had an urge till 1989 when removal of corruption was made a central issue of politics, and thereafter, the former President of India Shri Venkataraman in his book My Presidential Years observed as follows:-

"J.R.D. Tata made a courtesy call on me. We had known each other from the days when I was in the Planning Commission and had developed a mutual regard for each other. Commenting on Rajiv's statement on Bofors in Parliament,

Tata said that though it was quite possible that neither Rajiv nor members of his family had received any consideration in the gun and other defence deals, it would be difficult to deny the receipt of commissions by the Congress Party. He felt that since 1980 industrialists had not been approached for political contributions and that the general feeling among them was that the party was financed by commissions on deals."

The aforesaid observation fortifies the submission that centralized power lead to concentration of power in hands which leads to corruption and if there is corruption, the fundamental principle of governance can not be Directive Principles of State Policy, but the greed and lust of political leaders and bureaucrats. There cannot be any political will of corrupt politicians to govern the country on the fundamental principles in a centralized system of governance.

If the rulers of this country are not free from corruption, there cannot be any good governance. The bureaucracy of this country, where corruption has seeped in, has taken the people of this country into the trap of global powers. Globalization is destructive of Right to Development. By becoming member of W.T.O., no longer the Directive Principles are fundamental in the governance of country and "in making laws" but the dictates of W.T.O. which have become fundamental, in as much as there are clauses in treaty that has forced our Parliament to enact laws in tune with the provisions of W.T.O.

"We, the people of India" were caught in the cobweb of globalization when the government led by Chandra Shekhar found that the problem of India's balance of payments had become acute and he had to start negotiations with the I.M.F. thereafter, the Congress government with Dr. Manmohan Singh as finance minister announced new economic policies which departed widely from the theory of Welfare State. The negotiations with the I.M.F. and the World Bank resulted in large immediate credits. These two financial institutions give loan on their satisfaction that the borrowing

country is "on the right path in its economic, fiscal and industrial reform." Under the guise of reaching a satisfaction that the borrowing country is "on the right path", these institutions monitor the economic and industrial development. Now the World Bank gives guidelines which have become "fundamental in the governance of the country", and not the Directive Principles. Various governments since 1991 are committing a breach of faith by violating fundamental norms and principles on which the citizens of this country were to secure for themselves social, economic and political justice. Now the World Bank gives periodical reports. It examines our "economic performance". Our government provides to the World Bank a free access to all its institutions and official records. The World Bank declared that it conducted studies "as per of the continuing analysis by the Bank of the economic and related conditions of our country." (A World Bank Country Study: India Sustaining Rapid Economic Growth, July, 1997) In its so-called report "India: Reducing Poverty Accelerating Development- A World Bank Country Study" (Oxford University Press, 2000), the World Bank has suggested ways to meet 'long-term challenges of poverty-reduction and development. It is not merely a suggestion. It is a document of our economic slavery.

One may feel aghast by a careful perusal of this report which is revealing of the fact that all successive governments have absolutely surrendered our country's development agenda in the hands of the World Bank. It is crystal clear by this report that now it is under the World Bank's dictates that the issues of basic education, health, agriculture, industry, infrastructure, etc., are taken up. This report says that it was discussed with the Government of India on August 10,

1999. It runs into 260 pages and is very elaborate. It is not possible to believe that such a bulky document containing so many aspects could have been discussed only in a day. It is not mentioned in the so-called report as to who was representing the Government of India in this discussion. May be that it was only some bureaucrat. It is not merely a report, but a long-term agenda claiming to give guidelines to "We, the people of India", on how to reduce our poverty, improve our health, impart education to the poor, how to develop infrastructure and how to have "a good governance". Now the "governance" is being done in accordance with the monitoring of the World Bank, and not on the Directive Principles, contained in Part IV, which according to the Constitution, are fundamental in 'governance'. There is hardly any aspect of human activity, relevant for economic and social development, that has not been dealt within this so-called report.

Soon after Dr. Manmohan Singh became the Prime Minister, the World Bank President, James D. Wolfenshon made a visit to India (Nov. 17-18, 2004) and had the audacity to claim that "When I think of India, I also see a very critical role for this country in a very much more immediate fight - the global fight against poverty. The simple fact is that the world cannot win this fight if India does not win it." He further observed, "that is not all, India's huge number of illiterate people, children out of school, people suffering from communicable diseases, infant and maternal deaths, all amount to massive proportions of the problems, its antiquated infrastructure, the lack of livelihood opportunities in rural areas, improving health and education outcomes, and ensuring public services, like electricity, water, sanitation and others are efficiently delivered, especially to poor people." We often come across in news

reports that some World Bank team is coming to meet the Chief Minister of some state or the other, and that team would present "Development Challenges' faced by some state governments or the other so that they seek financial assistance (read, loan) from the World Bank in the areas of power, roads, water supply, sanitation, waste resource management, livelihood project and so on, and the assistance offered is of hundreds of millions in one go.

The Union government as well as the state governments are selling out our natural resources to the multinationals. With a nexus between the political leadership and the bureaucracy in the country, the World Bank-IMF-WTO are killing the livelihood and traditional methods of production and cottage industry as well as environment and democracy itself. This process is creating unemployment, recession, scarcity of raw materials and haphazard industrial growth which is making the country economically bankrupt. It is bringing new opportunities to expand the market and spread the technology "through management expertise from above" which is bringing undesired results and also making skilled and unskilled workers jobless.

Sovereignty means that the people shall decide how to develop themselves. However, the process of globalization is creating unemployment, recession, scarcity of raw materials and a haphazard industrial growth and making this country economically bankrupt and it has put us in the cobweb of multinationals with a total loss of sovereignty, both political and economic, on account of liberalization and globalization.

The State is in retreat everywhere and power is being transferred from the political class of this country to the multinationals. That is happening under the garb of liberalization and globalization. Power is being

### **Tarkunde Memorial Lecture on 3rd September 2010**

Tarkunde Memorial Lecture will be jointly organised by Tarkunde Memorial Foundation in association with People's Union for Civil Liberties on 3rd September 2010 at 5.00 p.m. at the Auditorium, India International Centre, New Delhi by Mr. Ram Chander Guha on the "*Current Crisis of Liberalism*". All are cordially invited.  
- Pushkar Raj, General Secretary.

transferred to the business class, first to the Indian business class, and through it, to foreign business, led by multinationals.

In 1991 when Chandrashekhar became Prime Minister he found our coffers empty. This was obviously the result of the corruption resulting from the centralized system of governance through bureaucrats. Two years after were enacted the 73rd and 74th Constitution Amendment Acts which, as aforesaid are continuing only on the statute book of the Constitution of India with no political

will to devolve necessary powers on the institutions of local self government created under these two amendment acts.

These two Constitution Amendment Acts signify a major attempt to redefine people as the true basis of State authority, and return to them their powers for determining their own destiny and course of development. It will be wrong to characterize these amendments merely as measures of administrative change or reordering finances. In essence, they represent a conscious attempt towards multi-

level democratic governance. Given the vast diversity and rising aspirations across the country, the destinies of the people cannot be orchestrated exclusively by the Central and State governments. The message inherent in these two Amendments is that the Parliament and the Assemblies alone cannot be the arbiters at all levels; we need our Panchayats and Municipalities as much.

**To be continued in the next issue...**

## Minutes of the PUCL Executive Meeting held in Delhi on 18 July 2010

The following people attended the meeting

Rajindar Sachar, Prabhakar Sinha, Pushkar Raj, Sanjay Parikh, Ravi Kiran Jain, Kavita Srivastava, Ajit Jha, Mahipal Singh, Suraj Dev Basant, Jaipal Nehra, Shiv Kant Gorakhpuri, D. Jagannathan and Fr. T.K.Jonh.

The meeting decided the following.

- Every State units should contribute for the National Council meeting on 4 and 5 September 2010. It could be minimum ranging from 5000/- and more as per capacity of the state unit. About Rs. 100/- could be asked from delegates as registration fee per day.
- PUCL has taken up several cases in different High Courts and the Supreme Court. These cases

have led to important policy changes at the state and national level. A compilation of such cases will be taken up. National office will write to all the state units asking them to send any case that they might have taken up in the court. They should directly send them to Sanjay Parikh with a copy to national office.

- Write a letter to the *Civil Liberties & Human Rights Trust* asking for money Rs. 15000/- for the purpose of national office contribution to the ensuring Council meeting expenses. Write a letter to Shri D. Jagannathan for advertisement for the '*Bulletin*'.
- Delhi PUCL unit will look after the organizing of National Council and Convention meeting

on 4-5 September 2010.

- The first day will be national Council meeting from 4 o'clock afternoon onwards and in the second day will be discussion on the theme '**Attack on Life, Liberty and Democratic Rights**'.
- Interaction with students of Delhi programme will be executed by the Delhi unit. The unit will look into possibilities of putting together the logistics that might be involved in programme execution. A letter to this effect should go to the Delhi unit formally.
- Press list is to be updated: Kavita will coordinate with the national office and decide a time and update the press list of the national office.

Pushkar Raj, General Secretary □

*It is being noted that there is some ambiguity amongst some of the PUCL members on PUCL stand on issue of violence. Following are two resolutions passed a few years back that clarify the organisation's stand on the subject.*  
- General Secretary.

### Question of violence

#### (a) Resolution of the National Convention held on March 7, 1982, at Madras (now Chennai)

"The PUCL reaffirms its faith in the democratic way of life.

"It appeals to all to use to the utmost the agencies and methods available in an open society. Apart from other factors, violence, even for laudable objectives, will legitimise counter-violence by the State and

other groups.

"It reaffirms that even those who have taken to violence are entitled to due process of law. We believe that this commitment is the very faith of an open society and also that adhering to this commitment is an effective way of converting all to the democratic and peaceful way of transforming our society".

#### (b) Statement adopted at the National Convention held at Pune

#### on May 26 & 27, 1990

"With the increasing resort to violent agitations, terrorism, and insurrectionary and associated devices to attain political ends, and as a sequel the response of the state machinery the basic civil liberties and human rights of the great majority in the country are in jeopardy and are likely to get further curtailed by the State on the one hand and the perpetrators of violence on the other.

“The present state of affairs in Jammu and Kashmir, the Punjab, the North-east, and other parts of the country, especially in Andhra Pradesh and Maharashtra, range from virtual insurrection to organised terrorism. The late, hasty, panicky, inarticulate, and *ad-hoc* reactions of the governments, both at the centre and in the States, amount to unleashing measure which not only aggravate the situation but, because of their very nature, constitute a frontal attack on residual civil liberties. Even with all the goodwill, which is not that widely prevalent among the law enforcing authorities, they may find themselves in an unenviable position of liquidating the rights of the citizen for what may appear to them and their mentors, a higher cause.

“It must be recognised that such movements do not emerge without warning and without some cause and therefore a minimal mass base, and one of the main aims of such movements is to prevent the exercise on the rights by their adversaries. Not to generate advance signals of warnings and to respond to them promptly and the inability of the democratic body politic to resolve an issue involved within the democratic framework is a reflection, in general, on its inadequacies and, in particular, a failure of the State apparatus in the country.

“The persistence of these trends over extended areas are a threat to the integrity of the country, to its nascent democratic polity, and to the very survival of civil liberties and human rights.

“In this context, it should be specially noted that those indulging in violence, terrorism, and insurrection are not belligerents but citizens of the country and hence the principal objective of the State response should be to bring them into main stream of democratic polity by neutralising the effectiveness of their ill-conceived strategy.

“The Convention therefore calls upon:

(i) The public and all political parties to demand creation of suitable institutional framework in order to resolve underlying causes in a peaceful and humane manner and where already violence and insurrection have raised their head, to organise masses to isolate the ‘other’ side, erode their bases, instil confidence among the community in their ability to combat unarmed the ‘other’ side. Without political mobilisation on a large scale, mere law and order approach to these problems will be woefully inadequate.

(ii) The Central and the State governments to initiate steps that will ensure the credibility, the integrity, and accountability of the government machinery at various levels not necessarily confined to administrative hierarchy, and

(iii) In the context of the specific situation in Jammu and Kashmir, Punjab, and other parts where sporadic terrorism is being witnessed, to associate and involve credible persons from different parts of the country, not as decision-makers, in various organised ways with all the ‘law enforcing’ measures. This will mean their being live witnesses, sounding boards, and reviewing agencies in the case of arrests, detention, interrogation and firings. Similar arrangements should be made to facilitate reporting on the activities of the violent agitators, terrorists, and insurrectionists. These measures which ensure continuous monitoring of developments should act more as effective deterrent than post-mortem of the traditional time consuming, judicial and quasi-judicial, agencies.

“The convention also calls upon all champions of civil liberties and members of the PUCL in particular, without identifying with any of the involved groups, to take vigorous and prompt initiative on these matters and act as catalysts in the creation of new institutions and fresh practices that will promote and consolidate their principal cause.” □

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