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Inside :

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Latest Lokpal Bill - Vital Changes Still Needed

Rajindar Sachar

The much awaited Cabinet approved Lok Pal Bill is no surprise. The decision to exclude the Prime Minister is maintained, notwithstanding the proclaimed stand of S. Manmohan Singh the Prime Minister since 2004 that he wants to be included, but has had to yield because of the cabinet decision. This surrender of ones conscientious opinion on a matter of vital public importance at the altar of petty considerations of party politics ill serves Prime Ministers reputation because inspite of all the scams in the present govt. even his worst opponents preface their criticism by reiterating their faith in his personal integrity. His well wishers still hope that the Prime Minister will still assert himself and respect the sentiments of the masses than that of a small coterie for whom party is above the nation and principled politics secondary. Why should he be the whipping boy - let his successor when time comes face the people's wrath by suggesting a change.

The argument that if allegation of corruption against Prime Minister are allowed to be examined by Lokpal, it will prejudicially affect the working of the government is a non starter. Bofors scandal was not about the quality of guns purchased, but the pay off received in lieu thereof. Similarly Kargil coffins scandal was not about the quality of the product but about the alleged pay offs. The tragic comic provision that the Prime Minister will be covered after he demits office is like bolting the stable after the horses have run away. Can there be more callous absurdity in public life than a corrupt Prime Minister continuing in office with immunity. If this decision on Prime Ministers exclusion is not modified a veritable storm will ensue.

Keeping judiciary out may be acceptable provided simultaneously legislation like Judicial Standards and Accountability Bill and other connected Bills are similarly brought in legislation. One may call this legislation as LokPal (Judiciary).

Members of parliament are putting their case for exclusion from the Lokpal Bill by seeking cover under Article 105 of the Constitution, and for this they apparently have some marginal support from the widely criticized majority judgment of (3 against 2) on in Narsimma Rao case (1999) (I believe the matter is referred to a larger bench) - it may apparently be technically correct but it is certainly morally reprehensible conduct and can not certainly be pleaded by MP to be excluded from the jurisdiction of LopPal.

The minority Judgment very apty pointed out the absurdity of the argument that Article 105(2) exempts the legislator from being convicted

on a charge of taking bribes and observed that this interpretation could lead to charter for corruption so as to elevate Members of Parliament as "super-citizens, immune from criminal responsibility".

It would indeed be ironic if a claim for immunity from prosecution founded on the need to ensure the independence of Members of parliament in exercising their right to speak or cast their vote in Parliament, could be put forward by a Member who has bartered away his independence by agreeing to speak or vote in a particular manner in lieu of illegal gratification that has been paid or promised. By claiming the immunity such a Member would only be seeking a licence to indulge in such corrupt conduct.

In other countries such a conduct of MPs is treated as criminal. Thus as far back as 1875 Australian Courts have taken the view that an attempt to bribe a member of the legislature assembly in order to influence his vote was a criminal offence and that there is no difference at paying money to member of parliament to use his vote in a particular manner and paying him money for the said purpose outside parliament.

The exemption of MP from ambit of LokPal would make a mockery of the legislation - Public already has a low opinion of legislators. Their criminal antecedents already casts a doubt on their honest working.

Amazing that the cabinet did not heed even the pain and anguish of Vice President of India who speaking at All India whips conference gave warning of danger in public life thus; "Most important issue of concern today is the decreasing credibility of our legislatures as effective institutions capable of delivering public good and contributing effective formulation of laws". "Exactly 23% of MPs elected in 2004 had criminal cases registered against them - over half of these cases could lead to imprisonment of five years or more. The situation is worse in the case of MLAs," failing to discharge its two fold brief, legislate and deliberate, and that the country's top lawmaking body had fallen short of people's expectations."

The cynicism of political parties is shown by the facts that inspite of this warning in recent state elections which show another trend to criminal nexus in elections, thus of 824 newly elected MLAs of recent elections in the States a total of 257 have criminal cases pending against them.

In view of the above one expects sensitivity of legislators that they should take steps to seek the Amendment of Article 105 of our Constitution. I have one more suggestion. As is well known the politicalization of criminal is a stark and dangerous reality. Even in parliament there are nearly over 100 M.Ps. having criminal cases pending against them. There has been demand that tainted persons should not be allowed to contest elections. I feel that the law of LokPal should provide that whenever Lo Pal takes a decision, after having the matter investigated that the legislator has to be prosecuted for his misdemeanor, he should be deemed to be ineligible to continue as legislator till he is proved innocent.

A serious flaw in government Bill is the denial of power to Lokpal to prosecute those accused of corruption. This is totally unacceptable. No self respecting person will agree to be on LokPal Body if his decisions are subject to control by government.

If all parties could simultaneously agree to provide a strong Lok Ayukat, much criticism of the lower officials not being included under Lokpal will disappear. (Personally I myself feel that extending jurisdiction of Lokpal right from the lowest official may hinder expeditious working of Lokpal) - Lok Ayukat should be able to do so. But in this BJP would have to come in open because Modi is resisting constituting Lok Ayukat at Gujarat for the last 9 years.

The power for removal of a Lokpal should be vested in the 7 Judge Bench of the Supreme Court of India.

The Government should not treat Lokpal Bill as a battle of people versus the Parliament, as some indiscrete remarks of some Ministers seems to suggest. Government needs to be humble enough to recognize that power to take the ultimate decisions rests with the real sovereign under our constitution - namely the people and not the temporary occupant government which remains subordinate to the people. ❑

Gujarat PUCL:

Press Release 08-08-11

Convention of Unorganized Workers

A Convention of 'Gujarat Unorganized Workers" was held here at Gujarat Vidhyapeeth on July, 30. This convention was addressed by the labour leaders from Maharashtra, Kerala, Tamil Nadu, besides from Gujarat. Organizers of this Convention, Gautam Thaker of PUCL and Vipul Pandya, General Secretary of Construction Workers' Union informed that Gujarat Govt. receives labour cess amount from the factory owners and industries to be used for the welfare of the labourers and workers. This amount of Rs. 250 crores is received during a year. Out of this, Gujarat Govt. has been spending only few crores. They stated that as per recommendations of the Supreme Court announced in January 2010, every State has to constitute Social Security Board for welfare of the workers. Gujarat Govt. has not constituted such a Board. In this convention, Gitaben Ramkrishnan of Tamil Nadu, as a co-convener of National Steering Committee for unorganized workers, Miraiben Chatterjee of SEWA, Jayantilal Panchal of Hind Majdoor

Panchayat and advocate Girish Patel made representations.

Shri Girish Patel informed that in Gujarat, Minimum Wages are not being paid to the unorganized workers. Maternity mortality rate in Gujarat including the women workers is higher in comparison to that of Maharashtra, Andhra, Kerala and Tamil Nadu.

Labour Department Officer of Gujarat, Shri Vivek Bhatt, Asst. Commissioner of Rural Labour Department who attended this convention gave detailed information about Gujarat Government's schemes formulated for the unorganized workers. He stated that although Social Security Board has not been constituted in Gujarat, preparations are on for constituting this Board. Preparations are also on for issuing smart cards to the unorganized workers. It was informed in this convention that the number of unorganized workers in India is of the order of 42 crores. In Gujarat, there are 2 crores 7 lacs. These unorganized workers are engaged in construction, diamond cutting and polishing, chemicals, power looms, ship breaking industry, agriculture etc. sectors. Especially labourers working in Kutch region are unorganized. These unorganized workers are not given the rights such as Minimum Wages, Health Safety, Identity Cards etc. There is not enough strength of officers, employees, factory inspectors required for implementation of labour laws in Gujarat. Therefore, these unorganized workers do not get their benefits and rights. During discussions in the convention it was proposed that:

A memorandum will be given to Govt. of Gujarat on following points.

1. After reaching an agreement on the minimum social security cover, this cover or scope may be extended to include all the workers of the unorganized sectors. In this, health insurance, pension, life and accident insurance, maternity benefits provided under the law may be included. The coverage or reach of the present social scheme for workers of the unorganized sectors may be studied and appropriate changes therein may be suggested. Common features among the various similar schemes may also be studied.

2. Registration of workers may be immediately taken up on hand and all workers be issued portable smart cards like those issued under the Rural Swashthya Bima Yojana.

3. Social Security Board may be constituted in Gujarat.

4. Discussions should be held about employment status and prospects of new forms of bonded labour, forced labour systems and migrant labourers presently prevailing in Gujarat.

5. Discussions and deliberations should be held with unions on the aspects of provisions and implementation of "The Unorganized Workers' Social Security Law, 2008" Gujarat.

6. Review about the steps taken for the welfare of unorganized sector workers in the State should be taken up.

7. Appointments of required No. of officers, employees and Factory Inspectors should be made to ensure implementation of labour laws in Gujarat.

Gautam Thaker, General Secretary, PUCL Gujarat ❑

PUCL Karnataka:

Defending Rights, Expanding Freedoms

Know your constitution Workshop - Why every citizen needs to know the Indian constitution! Facilitator: Dr Suresh V, National Secretary, *People's Union for Civil Liberties* Sunday June, 19 2011 - Indian Social Institute Bangalore

With every brand new day starting with the reality bites of arbitrary government policies, high-handed police actions, judicial apathy and corporate takeover of land and other resources, the future of human rights and civil liberties seem uncertain in our country. In many places across the country, men and women who stand up for human and social rights of people become highly vulnerable to the vindictive action by the state apparatus.

In this context, it is of utmost important for human rights and civil liberties defenders and those associated with all kind of peoples and social movements to know the fundamentals of our constitution and what rights, entitlements and safeguards the constitution of India provides to us, the citizens of India.

The workshop organized by PUCL Bangalore and facilitated by Dr Suresh V, National Secretary of PUCL on this topic came across as extremely useful with loads of practical learning and points to takeaway.

Audience

The audience for the workshop was a great mix of seasoned human rights activists, greenhorns like self, members of the minority communities such as Muslims, Christians and sexual minorities and students. It provided a great platform for cross learning and useful interaction within the group.

Content

The workshop focused primarily on preamble, fundamental rights, fundamental duties and directive principles of state policy. Suresh also explained various kinds of rights viz. fundamental, constitutional, and legislative and their relative importance. He also discussed the pulls and pressures within the constituent assembly and various influences that finally shaped the constitution. The historical significance and contexts of many of these laws from the days of European enlightenment to the modern era were also briefly touched upon building overall perspective on our constitution. The nuanced differences between the ways

constitution treats the citizen vs. persons (foreigners included) in general was also explained in detail.

Apart from that it also looked at the essential principles of criminal law. Finally it dwelled on the importance of first complaint and do's and don'ts of writing a complaint. Suresh went beyond theoretical understanding of these concepts and enumerated applications of these principles with real life scenarios and examples.

Structure

It all started with a group interaction. Participants were divided into multiple groups such as Dalits, Adivasis, Traders, Big Farmers, Industrialists, Minorities, Sexual Minorities etc and they were asked to write their own constitution in order to answer three fundamental questions;

What are the various rights of the respective groups that they want protected?

What is the role of the government and what should be the limits and checks on it in relation with the group's rights?

What are the specific policy initiatives that they would to happen vis-à-vis their groups?

The groups were asked to make a presentation on these points. With this first interaction, it was established that constitution is not some legislative piece of paper but a living political document that has to respond to the different pulls, pressures and interests; legitimate and not so legitimate, of various groups within the diverse mosaic called Indian union.

The group interaction and presentations were followed by presentation by Suresh on the specifics of constitution such as fundamental rights, duties, directive principles and criminal law. Kannada translations were done on regular intervals by the few members of the audience as a large number of participants were Kannada speaking.

This was followed by a very interesting intervention by few members within the audience. They orchestrated and simulated a real life confrontation between the people present. The incident was used as backdrop for writing a police complaint.

Post this participants were asked to rate the complaints written by their colleagues based on the criteria explained by Suresh. This explained the essentials of the complaint in absolutely crystal fashion.

Using mix of multiple approaches such as group interactions and presentations, lecture with regular translations, real life incident simulations and participant activities, it became much easier for people to understand especially those who had no formal or prior grounding in law.

Key Take Away

Workshop proved to be extremely useful in more ways than one.

First and foremost, it gave a sense of hope that all said and done, we do have a living vanguard that we can bank on in the event of oppression by those who hold or are attached to the strings of powers.

Second, it enables us to look at our rights as entitlements that we can demand and not as doles and giveaways by those sitting on the high tables.

And finally, going beyond the theory it gives us small, practical tools that we should be aware of and use in our line of defense of human rights and civil liberties. ❑

Letter to Hon'ble members of Parliament:

Questioning the Continuance of Dr. Manmohan Singh in the Office of Prime Minister

Ravi Kiran Jain

On the floor of the House, the Prime Minister Dr. Manmohan Singh has expressed in the last session of the parliament, that it is the Coalition Compulsion on account of which he was not able to take an effective step to stop the activities of his Cabinet colleague Raja, who was involved in 2 G spectrum Scam. It means that in order to keep him in majority a Prime Minister may ignore unconstitutional act of his Cabinet colleague.

There was a lot of hue and cry in the Parliament on this issue in the last session which is also likely to continue in the coming sessions and since Dr. Manmohan Singh commands the majority, by heading a coalition Govt., if he does not resign he will set a wrong Parliamentary practice of not resigning although owning collective responsibility of the cabinet in a parliamentary democracy.

The founding fathers of our Constitution seemed to be aware of providing a mechanism to deal with a situation like this and it is that scheme of the Constitution which is required to be brought to the notice of the President of India by hedding light on the obscure by the members of the Lok Sabha and suggest her to exercise her powers to dismiss the Prime Minister in the present situation. Those Hon'ble members of Lok Sabha who are in opposition or some of them should file a memorandum before the President of India, inviting her attention to her powers to dismiss the Prime Minister Dr. Manmohan Singh .The Constitutional scheme is like this;

Under Article 53 of Constitution the executive power of the Union vests in the President. The President of India is also a constituent of the Parliament in as much as Article 79 of Constitution provides that the Parliament consists of the President

and two Houses to be known respectively as the Council of States and House of the People.

Article 75(1) of the Constitution provides that the P rime Minister shall be appointed by the President and other ministers shall be appointed by him on the advice of the Prime Minister. Article 75(2) of the Constitution provides that the **"Ministers shall hold office during the pleasure of the President".** Article 75(3) speaks of collective responsibility of the Council of Ministers.

The Supreme Court in State of Karnataka v Union of India, AIR 1978 SC 68 has held: "The object of collective responsibility is to make the whole body of persons holding ministerial office collectively, or, if one may so put it, "vicariously responsible for such acts of the others, as are referable to their collective violation so that, even if an individual may not be personally responsible for it, yet he will be deemed to share the responsibility with those who may have actually committed some wrong.

Article 367(1) reads as follows:

367 (1) INTERPRETATION -Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an act of the Legislature of the Dominion of India.

Section (16) of the General Clauses Act is relevant and read as follows:

"Where, by any [Central Act] or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having [for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed [whether by itself or any other authority] in exercise of that power.

Article 78 is most relevant which reads as follows:

"It shall be the duty of the of the Prime Minister –

(a) To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;

(b) To furnish such information relating to the administration of the affairs of the Union and proposals for legislations as the President may call for ; and

(c) If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

In the context of the power of the Chief Justice Under Article 229 of the Constitution, which provides that the appointment of officers and servants of the High Court shall be made by the Chief Justice of the court, the Supreme Court in, Pradyut Kumar Vs Chief Justice of Calcutta, 1956 AIR 285 has ruled as follows :

"It must be mentioned, at this stage, that so far as the power of dismissal is concerned, the position under the Constitution of 1950 is not open to any argument or doubt. Article 229(1) which in terms vests the power of appointment in the Chief Justice is equally effective to vest in him the power of dismissal.

This results from S.16 General Clauses Act which by virtue of Article 367(1) of the Constitution applies to the construction of the word "appointment" in Art. 229(1). Section 16(1), General Clauses Act clearly provides that the power of "appointment" includes the power "to suspend or dismiss".

The Supreme Court in the aforesaid judgment has considered the application of Article 367(1) of the Constitution to the construction of the word " appointment" in relation to the powers of the Chief Justice to appoint officers and servant of High Court, but so far as the constitutional scheme in relation to the power of appointment of a Prime Minister and other Ministers by the President is concerned, there are other provisions also namely, Article 53, 75(1), 75(2), 75(3) and 78, which read together, leave no room for doubt, that the President of India does has the power to dismiss the Prime Minister. It may be emphasized here even at the cost of some repetition that ministers hold office **during the pleasure of the President** .There is a collective responsibility of the Council of Ministers. The Prime Minister is the first among the equals. He is appointed by the President, and other ministers are appointed by the President on his advice. In order to ensure the holding of the ministers, **"during the pleasure of the President"**, it has been made the **Duty of the Prime Minister**, under article 78 of Constitution:

(d) To communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;

(e) To furnish such information relating to the administration of the affairs of the Union and proposals for legislations as the President may call for ; and

(f) If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

The President exercises his/her functions in accordance with the advice of the council of Ministers appointed by the President. The power to appoint the Council of

Ministers has to be exercised by the President independently as head of the State to enable him or her to have a council of ministers which may advice him to exercise those powers.

Except in the case of appointment of Chaudhary Charan Singh as Prime Minister in 1979 by Neelam Sanjeeva Reddy there has never been any problem in exercise of this power by the various Presidents of India from 1952 to 1989, as one party or the other used to have absolute majority.

The era of Coalition Govts. started from 1989. Since then all the Govts. have been coalition Govts. R. Venkataraman was the President during the initial period of coalition Govts. and he had to his credit the appointments of as many as 3 Prime Ministers of coalition Govts.

In his celebrated book "My Presidential Years" R. Venkataraman has observed:-

"In my view, the President is not a Public Service Commission examining the merits of candidates for the Prime Minister's office. He has only to satisfy himself whether the person chosen as Prime Minister has prima facie strength in the Lok Sabha to carry on the government and is free from any proven constitutional disability. To allow the President to stray from this narrow path would lead to a distortion of the Constitution. He further said in the same book: "while the monarchy in Britain is hereditary and unconnected with parties, the President of India is elected by the majority party and his actions could be partisan or liable to be questioned as partisan. On the other hand, if he followed strictly the criterion of calling the largest party, he would avoid the charge of partisanship. Besides, the President would not be able to play politics by calling a party other than the largest on the basis of his subjective assessment that such a party, in his opinion, was capable of providing a stable govt."

It is thus clear that the President of India while appointing a Prime Minister has only to satisfy himself whether the person chosen as Prime Minister by him prima facie has strength in the Lok Sabha to carry on the Govt. After a person is appointed as Prime Minister and proves majority to form a Govt. the person appointed remains under the constant scrutiny of the President of India.

V.P. Singh was appointed by Venkataraman as the first Prime Minister of India of a coalition Govt. It is interesting to see in his book as to how he did it:

"At about 7 p.m, V.P. Singh, Madhu Dandvate, Dinesh Goswami and a few others called on me. Dandvate, who was the chairman of the meeting which elected V.P. Singh as leader, handed over to me a letter to the effect . He also handed over another letter saying that the BJP with 85 members and the Left Front with 52 members had pledged their support to a National Front government .I replied that "As the largest single party had not staked its claim to form the government, I invite you (V.P.Singh) as the leader of the second largest party to form the government and take a vote of confidence of the House within 21-30 days". V.P. Singh wished to have 30 days and I agreed."

Thereafter he appointed Chandrashekhar as the second Prime Minister of a coalition Govt. on 10th Nov 1990. Following communiqué was issued by Rashtrapati Bhawan on that day:

"Consequent on the fall of the National Front government headed by Shri V.P. Singh, the President asked the Leader of the Opposition and the Congress (i) whether he was able to form a viable government . The Congress (I) did not stake a claim for forming the government but offered unconditional support to Shri Chandra Shekhar……

The President has therefore invited Shri Chandra Shekhar to form the Government and prove his majority in the House of the People on or before 30 November, 1990."

The trend had been set and the criteria had been laid down by R. Venkataraman for the successive Presidents of India to exercise the power of appointment of a Prime Minister. On that criteria were appointed even Deve Gowda and I.K. Gujaral. But for the fact that the largest single party nominated these two persons to be appointed Prime Minister they would not have been so appointed. They did not represent the majority opinion of the People of India, as those persons appointed as Prime Ministers who were appointed during the period prior to Coalition Era.

Dr. Manmohan Singh has never been elected as a member of Lok Sabha . He had been thrust upon by the largest single party of UPA. Therefore, like Deve Gowda and I.K.Gujral he has been appointed by the President of India on the criteria laid down by R.Venkataraman and he also does not represent the People of India .

The compulsion of coalition, is likely to continue as in the near future, no party seem to be able to secure a majority in the Lok Sabha . This compulsion of coalition cannot be permitted to be an excuse for succeeding Prime Ministers. Dr. Manmohan Singh must have resigned. He cannot continue to be the Prime Minister with impunity for the misdeeds of his Cabinet colleague Raja.

The President of India is the true representative of the People .He is elected by an electoral college consisting of – (a) The elected members of both Houses of Parliament (b) the elected members of the Legislative Assemblies of the States. Article 55 of the Constitution provides that as far as practicable there shall be uniformity in the scale of representation of different states at the Election of the President, and

for the purpose of securing such uniformity, the number of votes which each elected member of Parliament and Legislative Assembly of each State is entitled to cast at such election, has to be determined in a manner provided in that Article, and the election of the President is held in accordance of the system of Proportional Representation by means of Single Transferable Vote. Hence, the President of India truly represents **"We the People of India".**

It is **"We the People of India"** who authorize him to appoint a Prime Minister who has to hold office **"during the Pleasure of the President"** and is given input by the Prime Minister by making it his duty Under Article 78 to inform the President relevant information on the basis of which the President shall exercise the **"Pleasure"**.

In any case, the President has an option of asking the Prime Minister to resign even if she does not straight away wish to dismiss him, to give way to appoint another Prime Minister .The power to appoint a Prime Minister subject to his proving the majority is there. But merely because a person appointed as Prime Minister commands majority cannot lead to the conclusion that the President of India will become a mute spectator. In the situation like this, the attention of the President of India should be invited so that she may see that this Prime Minister is removed and she appoints another Prime Minister, may be on the same criteria on which Prime Ministers have been appointed during the era of coalition Governments that is by selecting another person to be appointed as Prime minister who is nominated by the largest single party subject to his or her proving the majority in the Lok Sabha. ❑

Press Release: July 31, 2011

Preventing Dharna at Jantar Mantar for an Effective Lokpal Act

PUCL strongly condemns the arbitrary and unbridled misuse of S. 144 of CrPC to negate the fundamental right to free speech and expression and assemble peaceably guaranteed under Art.19 of the Constitution to prevent people from offering Dharna at Jantar Mantar(where such Dharna has always been offered in the past) to demand an effective Lokpal Act to curb corruption. It is a matter of grave concern that the governments in democratic India have been resorting to indiscriminate and arbitrary use of this provision to prevent the people from exercising their fundamental rights and gag the voice of dissent. In fact, S 144 of CrPC continues to be arbitrarily used to virtually supersede Art.19 of the Constitution, which guarantees civil liberties, often resulting in death and injury in avoidable clashes between the police and security forces on the one hand and unarmed protesters on the other. PUCL demands that the government must frame rules to regulate the use of S. 144 and punish those guilty of its misuse. It is time the arbitrary and unbridled use of this provision is stopped and those resorting to it made accountable.

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

Press Release: August 16, 2011

Arrest of Anna Hazare and Other Activists

PUCL strongly condemns the arrest of Anna Hazare and other activists before their proposed fast for an effective Lokpal legislation. In a democracy every citizen has a right to articulate his set of demands in a peaceful manner. Besides, the constitution of India provides every citizen of the country a fundamental right to protest against the government policies. It is unconstitutional for the administration to proscribe the method of protest when it is absolutely peaceful and put severe conditions which make the said right meaningless. In other words by arresting the mentioned activists, the government of the day is guilty of violating the constitution of India.

PUCL views it with grave concern that the police could not present any legal basis to arrest the civil society activists except that they had orders from above. This shows that rule of law has fully been undermined by the Delhi police, which is a condemnable act. PUCL also notes with concern that the dimension of suppression of civil rightsby all the governments in the country -states and the central- has enormously widened- now even peaceful fasting protests are being criminalised and crushed. This is a worrying trend for the Indian democracy as right to register peaceful protest is the ultimate weapon in the hands of millions of ordinary citizens to register their dissent against the anti-people policies. PUCL demands immediate release of the activists from administrative custody.

PUCL calls upon all the human rights organisations, movements and democracy loving citizensto come together and chalk out a strategy to fight this menace of highhandedness by the state that is bent on silencing all the dissenting voices and severely cripples our constitutionally guaranteed rights.

Prabhakar Sinha, President; **Pushkar Raj,** General Secretary; **Kavita Srivastava,** Secretary ❑

Press Release: August 16, 2011

Justice Rajindar Sachar, Former President, *People's Union for Civil Liberties* and **Kuldip Nayar,** President, *Citizens for Democracy* has issued the following statement:

The arrest of Anna Hazare and his companions is completely unconstitutional and undemocratic. The right to peaceful protest and demonstration is a fundamental right guaranteed by our Constitution. Government's action is a blatant provocation to the people and thereby to find excuse to resort to even more anti people policies. It is not disputed that the necessity for Lokpal institution is universal, including the Government. There may be and are some serious different views on the various clauses of the Act. If in spite of this, unanimously the Government has taken to this undemocratic steps, it discloses the ugly face of the Government and is against the Citizens' right to enjoy their fundamental rights. All people irrespective of their party affiliations and political groupings must register their strong protest at this action of the Government.

The lame excuse of Central Government to hide behind the skirts of local police is a shameful act. The conditions by police to limit audience to 5000 is unheard of when public meetings are held. Congress has been holding its protest in U.P. violative of Section 144 Cr. P.C. orders of State Government and even issuing statements of rape and murder (which are found to be untrue) by the top leadership of congress party. If that is permissible in U.P. how does it become illegal in Delhi - such double faced policies by the Governments are fatal for democratic rights.

We call upon the Government to release Anna Hazare and others and permit every one to hold meetings and peaceful protest, which are basic rights in a democracy and must be trusted at all costs.

We are convening a meeting of various groups who are also participating in various people's movements to come together at once and formulate a programme for joint action against the unconstitutional steps of the government, targeting various people's movements. ❑

Karnataka PUCL: Press Statement:

Visit by PUCL-Bangalore to POSCO Affected Areas

A five member team of PUCL Bangalore visited the POSCO project villages of Govindpur, Dhinkia and Patana between July 22-24, 2011on a solidarity visit with people's struggle against the POSCO project and to probe large-scale forced acquisition of lands by the State for the proposed POSCO steel pant in the region. The team found a truly strong and democratic people's movement convinced of their legitimate rights and firmly resolved not to give up their lands or livelihoods for the benefit of either a foreign company or an arguably larger common good for the people of the State. The movement is continuing to gain momentum as villagers from different hamlets take turns to safeguard their lands from attempts to destroy their betel plantations. Most people we spoke to were determined not to give up their lands, even at the cost of their lives. Participation of people's organizations from all over the country is adding strength to the local resolve even as the movement is facing increasing threats from the state which is moving into the area by a massive clearance of surrounding forest lands. The large majority of these villages are not ready to leave the forest lands on which they have been cultivating betel vines and cashew for centuries because it will destroy their livelihoods and consequently their very existence.

On July 24th we found five vans and four jeeps filled with armed police stationed in Gadakujang near Mahaveer Chowk purportedly for maintaining the law and order situation in the area. The Dy SP, Jagatsinghpur and Tahsildar Kailash Chandra of Tirutwar refused to divulge any further information. We observed large scale tree clearance under strong and armed paramilitary supervision. In later conversations with the DC and the SP, we gathered that the police presence was to facilitate the clearance of forest land by IDCO. We were also informed by the DC that it was not necessary for the district administration to either consult or obtain authorization from the village panchayats since they were acting under the mandate given to the police by the constitution. The SP also maintained that the police would continue assisting the tree clearance operation till all the POSCO lands were cleared. In other words, this clearing operation was being conducted in complete disregard of the wishes of the local communities.

The team also visited the transit camp set up by POSCO where the so-called pro-POSCO families from Dhinkia and Patana are housed. They all seemed to suggest that POSCO will bring complete ruin to these villages in spite of their being labeled as 'Pro-POSCO'. We spoke to Praful Mohanti, the spokesperson for the community in the transit camp. We found the displaced people are living under inhuman conditions. They have suffered for the last four years in overcrowded, unhygienic living conditions with only Rs20 per person per day for sustaining life. They said that their children are unable to attend school and no medical facilities are available to them. Most people there were

unemployed and showed a keen interest in returning to their homes and previous lifestyles. We feel that people in this transit camp are victims of the same State-Corporate nexus that is breaking up of communities in this area, and leading to loss of homes, lands, and livelihoods.

PUCL strongly condemns the State of Odisha for its policies that serve the financial interests of corporations. Such policies deliberately harm people's interests and their fundamental right to pursue lives of liberty and dignity. PUCL condemns the use of armed police for promoting corporate interests in complete disregard of the democratically voiced wishes and interests and legitimate rights of the people of the area. We demand an immediate withdrawal of all armed personnel and a halt to all human rights violations in the area. We call for an immediate halt to the cutting down of thousands of trees which are vital to the local ecology and the economic independence of the people of this region. PUCL also demands that the Odisha government to listen to the democratic voices of the villagers and hence uphold the democratic values of this nation.

Ms. Arati Choksi, General Secretary, PUCL Bangalore ❑

NAPM Extends Support to Anti-Corruption Movement and Demand for an Effective Lokpal

August 14, New Delhi: Anna Hazare Ji and many others across India will be starting their fast from August 16th in Delhi demanding an effective Lokpal. NAPM supports the people's movement for a corruption-free India and urges the citizens of the country to plunge into this struggle. NAPM, along with other organisations is holding relay fast, human chains, public meetings and other programmes, in Chennai, Pune, Mumbai, Narmada Valley, Hyderabad, Guwahati, Bhubaneshwar, Bangalore, Mysore, Mou, Balia, Allahabad, Muzzafarnagar and other places. We urge our members and supporters to join this call and challenge the corrupt and defensive governments at the Centre and the states.

We strongly disapprove of the way in which government has been trying to put severe restrictions on holding peaceful protests in the capital, and Delhi Police under the garb of implementing the Supreme Court's Guidelines is imposing unnecessary conditions on protests, as it did early this month on SANGHARSH anti-land acquisition protest, AISA-DYF anti-corruption protest and others. For an independent democratic country like ours, imposition and insistence on police permission and strict guidelines for holding peaceful protests and Sataygraha seems completely contradictory and only shows shrinking spaces for democratic freedom of expression and curb on fundamental rights of its citizens.

The public outrage at the scandal-a-day record of Governments of all political hues whether it is the Central Government or that of Maharashtra, Karnataka, Bihar or others and the groundswell of support to concrete action culminating in the Lokpal debate is a welcome sign for our democracy. This is an opportune moment for effective systemic measures to deal with both 'bhrashtachar' and 'atyachaar' (corruption & oppression / systemic violence) at all levels. The powers-that-be (not just Governments but businesses, corporations and other entities too) must defer to public opinion, as people do not only have a 'vote' but also a 'voice'. Governments cannot use the excuse that 'being elected'; it is the only agency with legitimacy.

We are conscious that the campaign for an effective Lokpal against corruption is not a full and final solution to all that ails our country today. It should be viewed as part of an ongoing process that can be built upon by various groups using myriad democratic styles, strategies, issues and foci. The raising of consciousness can only benefit democratic processes and hopefully constructive engagement will broaden the agenda of the current campaign to include issues of governance, secularism and most important communities control over *jal (water) jangal (forests), jameen (land), khanij (minerals) and of course, mehnat (hard work) of* the toiling masses, who are the actual contributors to this nation' s development .

We also recognize and re-stress the reality that it is this large section of the Indian population; the gareeb, shoshit, peedit, shramik that faces the brunt of corruption most, day in and day out, in their battle for survival with dignity and we need to reach out to them. We can't limit corruption only in monetary terms, but deal with it in terms of the systemic oppression, inequity and inhumanity perpetuated by political and non-political entities all. We are of the strong view that the battle against corruption is located within the wider struggles against corporatization, capitalism, communalism, casteism, patriarchy, criminality and consumerism which are challenges that any well-meaning, truly democratic public platform must address.

NAPM along with many of its struggling comrades and supporters has been at the forefront of the struggle against corruption, exposing the fraud in rationing in Assam, rehabilitation in Narmada Valley, and irregularities in Lavasa or Adarsh Housing Society among many others. Our struggle is against the loot of natural wealth and human dignity by corporations and state under a destructive and completely unsustainable development paradigm.

We hold that the Lokpal bill drafted by the Government is toothless and defeats the very purpose it is meant

for. We believe that any law to deal with corruption must be comprehensive and provide for expeditious action and deal with corruption not only at the higher executive level but also at mid and lower levels and bring in politicians and corporations too in its ambit. Action at this moment can help deepen our discourse and enlarge the scope of campaign to encompass issues such as governance, development planning from the grassroots, opposition to violent and oppressive development projects, secular ethos etc. The Lokpal Bill is with the Parliamentary Standing Committee and we appeal to the people of India to submit their opinions on the Bill, which will have to radically address many of the gaps in the present Government Draft.

NAPM calls upon the Government to pay heed to the diversity of voices and respect the evolving public opinion to introduce a series of fool-proof, effective anti-corruption measures and pass a strong Lokpal Bill, dealing with corruption at all levels, after holding participatory and wide-spread consultations. We also call upon the people of India to take forward this struggle against corruption in whatever democratic way possible, by respecting the plurality and diversity of the country.

Medha Patkar, Sandeep Pandey, Prafulla Samantara, Maj Gen Sudhir Vombatkere, Suniti S R, Sister Celia, P Chennaiah, Ramakrishna Raju, Suhas Kolhekar, Akhil Gogoi, Anand Mazgaonkar, Rajendra Ravi, Madhuresh Kumar ❑

Gujarat PUCL:

Open Letter to the Central Home Minister and the Chief Minister of Gujarat

Shri P. Chidambram
The Home Minister,
Government of India,
New Delhi.

Shri Narendra Modi
The Chief Minister,
Government of Gujarat, Gandhinagar.

Sirs,

You both are the higher authorities at your respective levels. So, on the eve of Independence Day, on behalf of all citizens of Gujarat, we would like to place before you our view point very clearly, in the context of your recent statements and counter statements. Before we begin we would like to remind you that if you are the legal sovereign, then the citizens are political sovereign.

We believe it has been correctly said by the Central Home Minister within his jurisdiction that if the IPS officers of Gujarat State have any complain, the Centre can constitutionally intervene. While the Chief Minister of Gujarat has counter posed that such intervention would amount to the violation of Federal laws.

In this condition the Chief Minister of Gujarat and former Home Minister of Government of India during the year 2002 (who has been elected as MP from Gujarat) have to answer some fundamental questions to the civil society of Gujarat as well as the entire country. Contrary to their argument now, the behavior of the top leadership of the state during 2002 registered their dissent to Supreme Court, the Election Commission and behaving as if Gujarat is autonomous and not an integral part of Indian Federal System. The then Central Home Minister could neither check those maneuvers nor make them follow the advice of then Prime Minister to fulfill 'RAJDHARMA'. Albeit He promised in the Lok Sabha, be it for the name sake that we would not hesitate to constitutionally intervene in the matter of Gujarat as per Article 355.

The few top Police officers have now come forward against the autocratic measures of the Govt. of Gujarat in 2002.The State Government is attempting to gag their voice. .Under the circumstances, true to the promise of former Central Home Minister, it becomes constitutional duty of the Central Government to intervene per the Article 355 of our Constitution.

One the one hand the State Govt. is making hue and cry about the Central Govt's intervention and on the other hand the it is not serious about it's Constitutional obligation, which make the people to believe that both the Governments have least concern for the freedom, well being and the security of the people. It seems as if they are engaged in fake dual in the name Federalism.

Further, in the of non-co-operative behavior of Police regarding proposed indefinite fast by Anna Hazare, who has recently emerged as the National Conscience in protest against Corruption, the Prime Minister said to deal with respective State Police. This is clear shirking off the Center's responsibility towards the National Opinion regarding widespread Peoples' Movement for Strong Lokpal.

On the other hand The Chief Minister of Gujarat, who is attempting to project himself as a leading supporter of Anna Hazare, shows no concern about appointment of Lokayukta in the state.

Enough is enough. Please understand that political sovereign are the people and you are legal sovereign and must fulfill your duty as Legal Sovereign. This will be a real gift from you to the nation on the occasion of 65th Independence Day.

Prakash N Shah, Acting President PUCL Gujarat, **Dwarikanath Rath** Coordinator, Lok Andolan Gujarat, **GautamThaker,** General Secretary PUCL Gujarat ❑

Intern's Report:

Recent Laws that Contributed in the Field of Human Rights

Monalisa Minz*

Domestic Violence Act 2005

Domestic Violence Act 2005 is the first significant attempt in India to recognise domestic abuse as a punishable offence, to extend its provisions to those in live-in relationships, and to provide for emergency relief for the victims, in addition to legal recourse.

Domestic violence is among the most prevalent and among the least reported forms of cruel behaviour. Till the year 2005, remedies available to a victim of domestic violence in the civil courts (divorce) and criminal courts (vide Section 498A of the Indian Penal Code) were limited. There was no emergency relief available to the victim; the remedies that were available were linked to matrimonial proceedings; and the court proceedings were always protracted, during which period the victim was invariably at the mercy of the abuser. Also the relationships outside marriage were not recognised. This set of circumstances ensured that a majority of women preferred to suffer in silence. It is essentially to address these anomalies that the Protection of Women from Domestic Violence Act was passed.

Section 2(a) of the Act will help any woman who is or has been in a domestic relationship with the 'respondent' in the case. It empowers women to file a case against a person with whom she is having a 'domestic relationship' in a 'shared household', and who has subjected her to 'domestic violence'. Children are also covered by the Act; they too can file a case against a parent or parents who are tormenting or torturing them, physically, mentally, or economically. Any person can file a complaint on behalf of a child.

Section 3 of the law says any act/ conduct/omission/commission that harms or injures or has the potential to harm or injure will be considered 'domestic violence'. Under this, the law considers physical, sexual, emotional, verbal, psychological, and economic abuse or threats of the same. Even a single act of commission or omission may constitute domestic violence — in other words; women do not have to suffer a prolonged period of abuse before taking recourse to the law. An important aspect of this law is that it aims to ensure that an aggrieved wife, who takes recourse to the law, cannot be harassed for doing so. Thus, if a husband is accused of any of the above forms of violence, he cannot during the pending disposal of the case prohibit/restrict the wife's continued access to resources/ facilities to which she is entitled by virtue of the domestic relationship, including access to the shared household. In short, a husband cannot take away her jewellery or money, or throw her out of the house while they are having a dispute.

Rights of a woman under this act:-

1. The law is so liberal and forward-looking that it recognises a woman's right to reside in the shared household with her husband or a partner even when a dispute is on. Thus, it legislates against husbands who throw their wives out of the house when there is a dispute. Such an action by a husband will now be deemed illegal, not merely unethical.
2. Even if she is a victim of domestic violence, she retains right to live in 'shared homes' that is, a home she shares with the abusive partner. It gives all married women or female partners in a domestic relationship the right to reside in a home that is known in legal terms as the shared household, applies whether or not she has any right, title or beneficial interest in the same.
3. The law provides that if an abused woman requires, she has to be provided alternate accommodation and in such situations, the accommodation and her maintenance has to be paid for by her husband or partner.
4. The law, significantly, recognises the need of the abused woman for emergency relief, which will have to be provided by the husband. A woman cannot be stopped from making a complaint/application alleging domestic violence. She has the right to the services and assistance of the Protection Officer and Service Providers, stipulated under the provisions of the law.
5. A woman who is the victim of domestic violence will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her own complaint under Section498A of the Indian Penal Code.
6. It provides a large number of options for legal redressal. She can claim through the courts Protection Orders, Residence Orders, Monetary Relief, Custody Order for her children, Compensation Order and Interim/ Ex parte Orders.
7. If a husband violates any of the above rights of the aggrieved woman, it will be deemed a punishable offence. Charges under Section 498A can be framed by the magistrate, in addition to the charges under this Act. Further, the offences are cognisable and non-bailable.

Punishment for violation of the rights enumerated above could extend to one year's imprisonment and/or a maximum fine of Rs 20,000.

Forest Rights Act 2005

Millions of people live in and near India's forest lands, but have no legal right to their homes, lands or livelihoods. A few government officials have all power over forests and forest dwellers. The result! Both forests and people die. This Act recognizes forest dwellers' rights and makes conservation more accountable.

Under the Indian Forest Act, areas were often declared to be "government forests" without recording who lived in these areas, what land they were using, what uses they made of the forest and so on. 82% of Madhya forest blocks and 40% of Orissa's reserved forests were never surveyed; similarly 60% of India's national parks have till today (sometimes after 25 years, as in Sariska) not completed their process of enquiry and settlement of rights. As the Tiger Task Force of the Government of India put it, "in the name of conservation, what has been carried out is a completely illegal and unconstitutional land acquisition programme"

The Indian Forest Act, 1927, India's main forest law, had nothing to do with conservation. It was created to serve the British need for timber. It sought to override customary rights and forest management systems by declaring forests state property and exploiting their timber. The law says that, at the time a "forest" is declared, a single official (the Forest Settlement Officer) is to enquire into and "settle" the land and forest rights people had in that area. These all-powerful officials unsurprisingly either did nothing or recorded only the rights of powerful communities. The same model was subsequently built into the Wild Life Protection Act, passed in 1972, with similar consequences.

The Forest Rights Act basically does two things:

- Grants legal recognition to the rights of traditional forest dwelling communities, partially correcting the injustice caused by the forest laws.
- Makes a beginning towards giving communities and the public a voice in forest and wildlife conservation.

The law recognizes four types of rights:

1. No one gets rights to any land that they have not been cultivating prior to December 13, 2005 and that they are not cultivating right now. Those who are cultivating land but don't have document can claim up to 4 hectares, as long as they are cultivating the land themselves for a livelihood. Those who have a patta or a government lease, but whose land has been illegally taken by the Forest Department or whose land is the subject of a dispute between Forest and Revenue Departments, can claim those lands under section 3(1)(f) and (g)).
2. There is no question of granting 4 hectares of land to every family. If I am cultivating half a hectare on December 13, 2005, I receive title to that half a hectare alone; and if I am cultivating nothing, I receive nothing. If I am cultivating more than 4 hectares without documents or a dispute, I receive title to only four hectares.

   The land cannot be sold or transferred to anyone except by inheritance.
3. The law secondly provides for rights to use and/or collect the following:
   a. Minor forest produce things like tendu patta, herbs, medicinal plants etc "that has been traditionally collected. This does not include timber.
   b. Grazing grounds and water bodies (sections 3)
   c. Traditional areas of use by nomadic or pastoralist communities i.e. communities that move with their herds, as opposed to practicing settled agriculture.
4. Though the forest is supposed to belong to all of us, till date no one except the Forest Department had a right to protect it. If the Forest Department should decide to destroy it, or to hand it over to someone who would, stopping them was a criminal offence.

   For the first time, this law also gives the community the right to protect and manage the forest. Section 3(1) (i) provide a right and a power to conserve community forest resources, while section 5 gives the community a general power to protect wildlife, forests, etc. This is vital for the thousands of village communities who are protecting their forests and wildlife against threats from forest mafias, industries and land grabbers, most of whom operate in connivance with the Forest Department.

Juvenile Justice (Care and Protection of Children) Act, 2000

Many crimes are committed by children in India, at the same time crimes are being done against them. Children related laws and issues continue to pose serious concern in different parts of the country. In the years 2003 - 2004, India witnessed a rise of 7.9 percent in offences committed by minors. These offences include arson, theft and cheating by minors who are in the age group of 16 to 18 years. Indian law addresses the issue through the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act was enforced in April 2001 and replaced the Juvenile Justice Act, 1986. The Act has laid down a uniform juvenile justice system throughout India.

Juvenile' is the legal term used for children who are found to act in conflict with the prevailing Indian law. Under the Juvenile Justice (Care and Protection of Children) Act, 2000, a minor (below 18 years) who has supposedly violated the provisions of Indian law is known as a juvenile. Two special authorities are established to deal with children in this context:

Child Welfare Committee: The committee has been set as per the provisions of the section 29, of the Act, for providing support to those children who are in need of care and protection.

Juvenile Justice Board (JJB): The Board deals with the child offenders, who have violated Indian law.

The Act aims to promote child friendly juvenile justice in the country. Some important points highlighted in the Act are:

1. A child who has allegedly executed a crime is known as 'child in conflict with law' and not a criminal or accused.
2. A juvenile can be detained, but cannot be arrested.
3. A juvenile cannot be put under trial, but only under inquiry.
4. A juvenile who is kept in police custody shall be presented before the Juvenile Justice Board and shall not be produced before any regular Court of Magistrate.

Prohibition of Child Marriage Act, 2006

The Act defines a child as a person who if male is below the age of 21 years of if female is below the age of 18 years. In a marriage, when either of the party is a child, it is considered to be a child marriage. It is not necessary that both the parties have to be children for the marriage to be a child marriage. It is sufficient for one of the parties to be a child, for the marriage to be a child marriage.

Unlike the earlier legislation, wherein there was no provision for the voidability of the marriage, the new legislation makes the child marriage voidable at the option of contracting party who was a child at the time of marriage i.e. the child who has been married off has the option to go to the court of appropriate jurisdiction (district court or family court, as the case may be) and get his/her marriage declared cancelled. Further, there were only punishments prescribed for individuals getting into child marriage i.e. for the male adult, for the guardians who solemnized the marriage and for individuals who conduct or perform the marriage in any manner.

However, the punishment was a meager simple imprisonment up to three months and fine.

This option can be exercised by the child who has been married off and not by anybody else. If the child is still a minor at the time of filing the petition, the guardian can file the petition along with the Child Marriage Prohibition officer for him. Further, a limitation period of two years from the date of attaining majority has been imposed.

While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money. Further, no order for nullity shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

Section 4 of the Act makes a provision for maintenance and residence to female contracting party to child marriage. If the child marriage is cancelled or nullified as under S. 3, then the district court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party to such marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage.

It is not unknown that the methods of contraceptives and birth control are not very popular amongst the rural society, especially after marriage. Thus, young brides give birth to babies almost immediately after marriage. Section 5 also makes provision for custody and maintenance of children of child marriages. It gives the discretion to make a suitable order for the custody of such children. Undoubtedly, while making an order for the custody of a child under this section, the welfare and best interests of the child shall be the paramount consideration to be given by the district court.

An order for custody of a child may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child, and such other orders as the district court may, in the interest of the child, deem proper. The district court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians.

To dive further into the problems and consequences of child marriage, another issue that could arise, would be the legitimacy of the children born under a child marriage where such marriage has been declared to be null.

This question is answered by Section 6 of this Act. It declares that every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes.

The punishments for a male adult marrying a child shall be rigorous imprisonment up to two years or fine up to one lakh rupees or both.

The punishment for solemnizing a child marriage in the form of performing the child marriage or abetting in any form shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

The appropriate forum is the district court where the defendant or child resides, or where the marriage was solemnized or where the parties last resided or where the petitioner is residing on the date of presentation of petition. It is worth mentioning that this is in deference of the normal procedural rule that the case is to be filed either where the defendant resides or where the cause of action arises, but not where the petitioner resides.

Biological Diversity Act 2002

India passed the Biological Diversity Act in both Houses of Parliament in December 2002. Presidential consent followed a couple of months later. This legislation was drafted to fulfill India's commitment to the Convention on Biological Diversity (CBD) that was signed in 1992.

Main areas of concern of the act:-

1. To prevent bio-piracy
2. Illegal hunting and poaching
3. Conservation of endangered species of plants, animals, birds and other creatures.
4. Conservation of traditional knowledge of medicinal use of certain plants.
5. Preserve the habitat of the species that would enable them to increase their numbers soon.
6. Restrict bio based trade which has high commercial value and makes traders deplete the natural resources at an alarming rate.
7. It aims not only preservation of wildlife and their habitat but also a check on water, air and land pollution.
8. Its agenda is conservation of biodiversity, its sustainable use and equitable sharing of the benefits from such use.

To achieve this, it put in place a three-tier institutional structure: a National Biodiversity Authority (NBA), based in Chennai; State Biodiversity Boards (SBBs) in every State; and Biodiversity Management Committees (BMCs) at panchayat / municipality levels. It lays out clear procedures for access to biodiversity, further elaborated through the 2004 Rules, and has clauses on conservation and knowledge protection. The Ministry of Environment and Forest (MoEF) is the nodal agency[1].

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1. Kalpavriksh Environment Action Group
2. Unni Krishnan v. State of Andhra Pradesh
3. Central Advisory Board of Education Committee

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On the 35th anniversary of the imposition of Emergency rule in the country:

PUCL: It's History of Struggle in Fighting the Structures

Mahi Pal Singh

Contd. from the last issue ….

Why to Remember the Emergency?

It would be a happy turn of events if we were no more required to recall such events, if they really became a matter of the past, never to recur again. But as things stand today the danger to our civil and political rights has not diminished a bit even after the 44th Constitutional Amendment to Article 359 disabling the President from suspending Articles 20 and 21 of the Constitution of India, thereby denying him the power to forfeit the fundamental right to life and liberty of any person even during a period of promulgation of Emergency in the country. Although promulgation of Emergency has been made more difficult, than it was in 1975, because the 44th Amendment has introduced 'armed rebellion' in place of 'internal disturbance' as the condition for such a promulgation, and such a promulgation has also to be endorsed by a special majority in Parliament, yet there have been lesser laws which have been depriving people of the country of their basic civil and political rights with impunity, and what is worse, they do not require any such sanction of 'special majority' in Parliament for their imposition.

But for those who suffered the excesses of the Emergency, it will always remain a nightmarish experience never to be forgotten. But the young generation can hardly understand the importance of keeping its memories alive; we must not forget that those events took place thirty-five years ago. How can the youth of today know that "the darkest chapter in the history of independent India was written on the midnight of 25-26 June, 1975?" and that "With the imposition of the Emergency on that day, thousands of people including the opposition leaders were arrested and put in jail, and all the important fundamental rights were suspended. There were violations of all standards of morality, justice, and freedom; acts of barbarism and violence were committed. With the promulgation of the Emergency, all rights and justice, civil liberties, law and order were

trodden under feet. The Emergency waged war upon democracy. Excesses that were committed were not accidental, but the logical and deliberate acts of an authoritarian political philosophy. The object of this philosophy was the destruction of all freedoms, and triumph of the strong." (Remembering the Emergency – Dr. R.M. Pal, PUCL Bulletin, June 1997).

We have to remember that the Emergency was imposed in the country because on a petition filed by Late Sh. Raj Narayan who had been defeated in a parliamentary election by Mrs. Indira Gandhi, the then Prime Minister, from Rai Bareily, in its judgement delivered on June 12, 1975, the Allahabad High Court had held Mrs. Gandhi guilty of corrupt practices in her election, and declared her election as null and void, and that at a meeting on June 25, all opposition leaders had declared that if she did not quit as the Prime Minister of the country, they would start a civil disobedience movement from June 29. Defying the court judgement and making a mockery of the rule of law, Mrs. Gandhi declared a state of Emergency in the country, usurping all authority into her own hands, suspending fundamental rights including the right to life and liberty only to perpetuate her illegal, immoral and authoritarian rule by ruthlessly silencing all opposition by putting all opposition leaders behind the bars, without warrants or charge-sheets and for periods nobody knew how long, and also gagging all the national press, first by ordering their electric supply to be cut and then through the introduction of very stringent censorship laws which did not allow anything to be published against the Prime Minister or her decisions, or any of the excesses perpetrated by her or her son Sanjay Gandhi, who enjoyed the status of an extra-constitutional authority and whose orders, as a member of the Nehru family wrote later, "sometimes verging on criminality were obeyed without question." Under his leadership the Youth Congress, the youth wing of the Congress (Indira), had acquired the notoriety as a band of goons and its leaders as the unelected executives of the areas under their command, and government officers including police SHOs thought it to be their most solemn duty to obey their word of mouth as if it had come from the Prime Minister herself. Such was the atmosphere during the Emergency regime of Mrs. Gandhi and her infamous son Sanjay Gandhi that one could not move freely, talk freely or breathe freely in this very democratic country of ours. What is even more disturbing is that "the fundamental lack of commitment to the values of freedom and democracy, tolerance of dissent, and the capacity to look beyond one's immediate interests which had made the intellectuals, with a few honourable exceptions, accept the Emergency and abide by its soul destroying demands." (Remembering the Emergency).

What the imposition of the Emergency did to the right to life with the connivance of the judiciary, whose independence had already been compromised, is best described by M.A. Rane in his article **Emergency, Lawyers, Judges** quoted below:

"The news of the declaration of the Emergency during the night of 25/ 26th June 1975 was not published in the morning papers of Delhi of June 26, as electric supply to the Feroze Shah Road, where most of the presses of the newspapers in the capital were located. Most of the people learnt of this declaration and of the midnight arrest of number of leaders, including ailing Jayaprakash Narayan, Morarji Desai, Vajpayee, Advani, Madhu Dandavate, and several others from the announcement by the BBC in the early morning of 26th. In the course of the day censorship was clamped on the newspapers all over India. Lawyers all over India protested and abstained from attending the court on 26th June 1975. They passed resolutions condemning the declaration of Emergency and arrest of leaders like Jayaprakash Narayan, Morarji Desai and others. Since then the lawyers carried on a relentless battle against the Emergency and the consequent suspension of the fundamental rights. Eminent persons like Chief Justice Chagla, Chief Justice C.J. Shah, Justice V.M. Tarkunde, Jethmalani and others led the lawyers. A small section of lawyers like Rajani Patel, who were in Congress, supported the emergency rule. Some lawyers who were members of the RSS were detained under MISA on the very first day. Those who offered Satyagraha were also detained subsequently. More than a lakh of persons were illegally detained under MISA. Some of the earliest Habeas Corpus Petitions filed in the High Court on behalf of the detenues succeeded. The Delhi High Court released Kuldip Nayar and a group old Congressmen led by Bhimsen Sachar and six others who had just addressed a letter to Mrs. Gandhi protesting against the declaration of Emergency and arrest of Jayaprakash Narayan and other leaders. Soli Sorabjee argued their Habeas Corpus petitions. The Judges who released them were ultimately penalized. The senior Judge of the Bench was transferred to some other High Court and the junior Judge, Justice Agarwal, who was not confirmed and was reverted back to his office as District Judge. Chief Justice Chagla argued the Habeas Corpus petitions of Vajpayee and Madhu Dandavate in Karnataka High Court and got them released. However, fresh orders of detention were passed against them and they were rearrested. Morarji Desai and RSS detenues did not file Habeas Corpus petition as a matter of principle. However, petitions were filed on behalf of a large number of political detenues belonging to different political parties. In the Bombay High Court number of Habeas Corpus petitions were filed and the High Court directed the detenues to remain present on every occasion in the High Court. The result was the relatives of the detenues could meet them in the corridors of the High Court on such occasions. Other High Courts also released the detenues, taking a view

that wherever it was found that the detaining authority had not applied their minds or that the orders were malafide, the detention orders were quashed and the detenues were set at liberty. Such decisions were given by all High Courts, except the Kerala High Court, notwithstanding the drastic amendment in the MISA prohibiting filing of petitions even on grounds of malafides. The petitions were also filed on behalf of detenues for certain facilities. Mrinal Gore, who at the beginning was underground but later arrested, was detained in the prison at Akola where there was no separate cell for female detenues. She was lodged in the part of the prison meant for lunatic females. A petition was filed in the High Court challenging the same. More than 150 lawyers appeared for the detenues with the sole object of indicating their solidarity against deprivation of civil liberties by the Government under the emergency rule. The Bombay High Court directed the Government to transfer her from Akola prison to Dhule prison where there was arrangement for the detention of female political detenues.

"The Government filed appeals in the Supreme Court against the judgements of the High Courts releasing the detenues. The case is known as ADM Jabalpur or Habeas Corpus Case. All the appeals were heard by a bench of the senior-most five Judges of the Supreme Court presided over by the Chief Justice A.N. Ray. The other members of the Bench were Justices Khanna, Beg, Chandrachud and Bhagwati. A number of leading lawyers appeared for the detenues. Majority of the Judges, with the exception of Justice Khanna, upheld the constitutional validity of the Presidential order dated 25.6.1975 declaring Emergency and barring maintainability of the petitions for writs of Habeas Corpus as well as constitutional validity of the drastic provisions of MISA. Each one of the Judges gave his separate opinion. **An inconvenient question was raised before the Judges as to whether the rule of law was abrogated and if an officer shot a person dead without authority of law whether the same could not be questioned in the court of law. The majority Judges fumbled in answering this query and it was held that article 21 was the sole repository of the right of personal liberty and as the article 21 was suspended during the Emergency by Presidential order no Habeas Corpus petition could be filed**. If the majority had accepted the dissenting view of Justice Khanna and upheld the contention of the citizens, the lawyers could have been able to get released 90 per cent of the detenues detained under the MISA during the Emergency. It was worth noting the Chief Justice Ray, presiding over the bench, was a Judge who had superseded three other Judges and the other four Judges of the bench were entitled to be promoted as Chief Justices if the convention of seniority was followed. Therefore, the prospect of the four Judges of the bench of being promoted as Chief Justices was hanging in the balance. If any of them decided against the Government he stood the risk of being superseded. This event actually took place as Justice Khanna was superseded in February 1977 and his junior Justice Beg was promoted as Chief Justice of India. There was every reason to believe that the judgement of the majority of Judges in the Habeas Corpus case was the direct fall out of supersession of the three Judges that took place in April 1973, and of the power arrogated by the Union Government to itself in appointing and promoting Judges of the High Courts and the Supreme Court."

If democracy as a form of government, by and of the people, and its cardinal values like civil liberties and political rights, the freedom of the press, the right to profess any faith and the right to elect any government are to be preserved and protected, the people themselves have to exercise an eternal vigilance to ensure that those in power do not succeed in subverting the democratic system to satisfy their greed to stick to power through unconstitutional, corrupt or divisive means because all shades of politicians and political parties have adopted these means to come to power, and once in power, to stick to it. If Mrs. Gandhi's Emergency regime was an example of the first kind, Narsimha Rao's government was an example of the second and Narendra Modi's present government in Gujarat is an example of the third kind. Atal Behari Vajpayee's NDA (National Democratic Alliance) government also came to power riding the chariot of Hindutva, moving on the wheels of the divisive agenda of building the Ram temple at the site where Babri Masjid stood earlier at Ayodhya, to consolidate the majority Hindu vote and garner its support for achieving its narrow political end of capturing power, and his government also made a frantic effort of sticking to power by adopting the corrupt means of spending something like Rs. Seven hundred and fifty crores from the public exchequer to boost his own image, and his party's, through the 'Feel-good' and 'India Shining' campaigns. It is a different matter that these slogans invented by the think tanks of the BJP could not befool the uneducated and poor people of this country who thwarted their attempts to regain power at the Centre. To quote once again Dr. Pal from the article cited above, "We must take note of increasing corruption, manipulative politics, and other evils in the system which have been systematically eroding the values of democracy and destroying it."

Anti-democratic Draconian Laws in the Garb of Public Order Laws

In the name of bringing under control various terrorist and disruptive activities, the state of India has brought about various legislations and Acts ever since the country got independence in 1947. While it is true that various groups in different parts of the country took to arms or indulged in unconstitutional methods to press their demands, the methods adopted by the state to bring them into the mainstream have also been dubious. While nobody having a faith in the rule of law can and should support the use of arms to press any demands, however legitimate they

might be, it is also equally true that a serious attempt has never been made to understand their problems, or to find out the compelling reasons which might have made them take to arms against the state. Poor, deprived people who had hoped to get a better deal at the hands of local rulers after attaining independence from foreign rulers, felt neglected and cheated when nothing was done to improve their conditions and they continued to suffer from starvation and disease. Their appeals of SOS continued to go unheeded and unheard and when they tried to organize themselves into a movement to force the powers that be to listen to their voices they got bullets in reply. When out of desperation they took to arms, they got Maintenance of Internal Security Act (MISA), Terrorist and Disruptive Activities (Prevention) Act (TADA), National Security Act (NSA), Armed Forces (Special Powers) Act (AFSPA) and Prevention of Terrorist Act (POTA). While it is true that all these special Acts came into being with the purported intention of bringing under control only those few who were thought to be uncontrollable otherwise, and that too for a limited time and purpose, the fact remains that all such people could well have been brought under control under the ordinary criminal law, under sections 121 to 130, 153A, 294 and 295 of IPC. Another fact that cannot be contradicted is that all of them have invariably been used for a much longer period than they were originally planned to exist for. And the most dangerous common factor amongst them is that all of them have been used against the most innocent people to deprive them of their life and liberty, when these hapless people have tried to voice their grievances, and that too for excruciatingly long periods. Those in power, to subvert democracy, which they professed to protect, have misused all of them. All of them have been used ruthlessly against the people they were supposed to protect, to silence the voice of dissent, to crush the right to demonstrate against injustice and to decimate political opposition.

For example, TADA, which came into existence a decade after the imposition of Emergency in June 1975, following the assassination of Prime Minister Indira Gandhi which in turn was followed by a ruthless collective massacre of the members of the Sikh community, is still considered by the Sikh community as an Act which was brought into force as a measure of continuing vengeance against Punjab. It was later extended to Kashmir, Andhra Pradesh, Assam, and LTTE Tamils in Tamil Nadu and against Muslims after the demolition of Babri Masjid. This Act has been perhaps the most criticized law ever since independence. It was also one of the most 'lawless' laws along with the Armed Forces (Special Powers) Act and N.S.A. It gave wide powers to the police to arrest and to detain people without trial under its custody for periods, which could run up to one year and confessions made before a senior police officer were admissible as evidence before the court of law. The Act thus made a mockery of civil liberties and the fundamental rights of the people as laid down in the Constitution of India, and in fact, of democracy itself.

The following statistics prove beyond any doubt how this law was misused against the so-called 'terrorists': "This law was abused in almost every state for silencing activists and political opponents. According to the NHRC 165 men above the age of 75 years, 160 women, and 43 children below the age of 15 years were detained under this Act until the end of 1994, and the oldest detainee was an 83 years old woman in Gujarat," ('Open Letter to the Prime Minister for the Repeal of TADA' by K.G. Kannabiran – PUCL Bulletin, May, 1995.)

Within a short period of its passage by the Parliament, POTA also achieved the same notoriety, which was earlier enjoyed by TADA, and the list of those arrested under it in a short period in Chhatisgarh alone read like the list given above. Its misuse to silence the opposition is exemplified by the detention of Vaiko, a prominent opposition leader in Tamil Nadu, by J. Jaylalithhaa's government, and his release by the POTA court under the directions of the Supreme Court, as the charges framed against him were not found tenable under the POTA. The very fact that of the 76,166 persons arrested under the TADA till 1995, when the Act was allowed to lapse, only 843 (that is only 1.11 per cent) were convicted, as per Union Home Ministry's own statistics, is enough to show how widely and wildly the Act was misused to deprive people of their right to life and liberty by various governments.

After 26/11 of the year 2008 when Mumbai came under the terror attack by terrorists sent from across the border killing more than a hundred people and injuring about 400 at several prominent places, the Central government came out with a new avatar of the POTA in the garb of Unlawful Activities Prevention (Amendment) Act [UAPA] which has the same kind of draconian Sections as the POTA, particularly Sections 38, 39 and 40 as they lay the onus of proving 'not guilty' on the accused which is against the very tenet of justice: 'innocent till proved guilty'. This Act has also been used so far against innocent persons or those human rights activists who raise the issues of the most deprived sections of our society, especially the tribal people of Chhatisgarh, Jharkhand, Orissa, West Bengal and Andhra Pradesh where the government has waged a war against them in the name of fighting the Maoists because that is a very convenient way of doing away with them and silencing the voices which go against the interests of the political class for which awarding mining contracts in these mineral rich regions has been a source of big corruption for which it has gained unprecedented notoriety in recent years. While PUCL strongly opposes this model of exclusive development, it supports and demands inclusive development in which the tribal owners of the land and resources are equal partners in development and the whole process is transparent and corruption free.

Armed Forces (Special Powers) Act, 1958, a Tool to Subvert Democracy in the Northeastern States

The Armed Forces (Special Powers) Act [AFPSA] which has been in force for fifty two years since 1958 is in clear violation of the letter and spirit of the Constitution and has led to an undeclared Emergency and Martial law in the North-Eastern states of the country. The AFSPA has been responsible for the untold misery, death, rape and torture and the denial of civil and political rights to the people of Nagaland, Manipur and Assam. Extra-judicial killings have become the order of the day there and people are denied their civil and political rights because the armed forces there enjoy unfettered powers over areas declared as 'disturbed area' prohibiting the assembly of five or more people. The citizen is wholly dependent upon the whimsical and subjective satisfaction of a warrant officer or a non-commissioned officer who becomes the ultimate officer to define "order" and determines the steps to be taken to maintain "order". Under Section 4(a) of the Act if the concerned officer is of the opinion that it is necessary to maintain public order, after giving such due warning as he may consider necessary "fire upon, or use such force, even to the causing of death," and under sub-section (c) arrest any person without warrant who has, or is likely to commit a cognizable offence; and under sub-section (d) enter, and search without warrant any premises to make such arrest."

Article 21 of the Indian Constitution guarantees the right to life to all people. It reads, "No person shall be deprived of his life or personal liberty except according to procedure established by law." Judicial interpretation that "procedure established by law" means a "fair, just and reasonable law" has been part of Indian jurisprudence since the 1978 case of Maneka Gandhi. This decision overrules the 1950 A.K. Gopalan case, which had found that any law enacted by Parliament, met the requirement of "procedure established by law".

Under section 4(a) of the AFSPA, which grants armed forces personnel the power to shoot to kill, the constitutional right to life is violated. This law is not fair, just or reasonable because it allows the armed forces to use an excessive amount of force.

Justice requires that the use of force be justified by a need for self-defense and a minimum level of proportionality. As pointed out by the UN Human Rights Commission, since "assembly" is not defined, it could well be a lawful assembly, such as a family gathering, and since "weapon" is not defined it could include a stone. This shows how wide the interpretation of the offences may be, illustrating that the use of force is disproportionate and irrational.

Explaining the AFSPA bill in the Lok Sabha in 1958, the Union Home Minister had stated that the Act was subject to the provisions of the Constitution and the Cr.P.C.. He said, "These persons (military personnel) have the authority to act only within the limits that have been prescribed generally in the Cr.P.C. or in the Constitution." If this is the case, then why was the AFSPA not drafted to say "use of minimum force" as done in the Cr.P.C.? If the government truly means to have the armed forces comply with criminal procedure, than the AFSPA should have a specific clause making this compliance mandatory. Further it should also train the armed forces in this procedure.

Sections 130 and 131 of Chapter X of the Cr.P.C. sets out the conditions under which the armed forces may be called in to disperse an assembly. These two sections have several safeguards, which are lacking in the Act. Under section 130, the armed forces officers are to follow the directives of the Magistrate and use as little force as necessary in doing so. Under Section 131, when no Executive Magistrate can be contacted, the armed forces may disperse the assembly but if it becomes possible to contact an Executive Magistrate at any point, the armed forces must do so. Section 131 only gives the armed forces the power to arrest and confine. Moreover, it is only commissioned or gazetted officers who may give the command to disperse such an assembly, whereas in the AFSPA even non-commissioned officers are given this power. The AFSPA grants wider powers than the Cr.P.C. for dispersal of an assembly.

Moreover, dispersal of assemblies under Chapter X of the Cr.P.C. is slightly more justifiable than dispersal under Section 4(a) of the AFSPA. Sections 129-131 refer to the unlawful assemblies as ones which "manifestly endanger" public security. Under the AFSPA the assembly is only classified as "unlawful" leaving open the possibility that even peaceful assemblies can be dispersed by use of force.

Cont. ..... Pg. 20

Organisational Queries

We receive from time to time queries/requests from new members regarding the PUCL identity card and also regarding the privileges of the Life members and Patron members as compared to Annual members.

The three types of membership, i.e., *Yearly, Life,* and *Patron,* do not represent a hierarchy of membership. All members are equal. Life membership and Patron membership simply afford an opportunity to those who desire to contribute some extra money to the PUCL to strengthen its financial position. No membership carries any privilege. All members shoulder the burden of fulfilling the aims and objects of the PUCL. The PUCL does not issue any identity cards to its members as they are not supposed to take initiative independently.

Pushkar Raj, General Secretary ❑

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Cont. ..... Pg. 18

However, the worst part of it all is that to take action under Section 4(a) of the Act the officer needs no permission from a superior and is not answerable to anyone. Under Section 197 of the Code of Criminal Procedure (Cr.P.C.) no court can take cognizance of an offence alleged to have been committed by a public servant or member of the Armed Forces while acting or purporting to act in the discharge of his official duty except with the previous sanction of the central or state government whereas the permission of the central government has to be obtained to prosecute a military officer under Section 7 of the Armed Forces (Special Powers) Act, which practically means that people have no right to approach the court and launch prosecution for atrocities committed by any such officer. Even various commissions of enquiry appointed by the government have found security forces guilty of gross human rights violations but in most of the cases the guilty officials have not been prosecuted for the offences committed by them.

Several incidents show how the Border Security Force (BSF) and army personnel abuse their powers in the North East. In April 1995, a villager in West Tripura was riding near a border outpost when a soldier asked him to stop. The villager did not stop and the soldier shot him dead. Even more grotesque were the killings in Kohima on 5 March 1995. The Rastriya Rifles (National Rifles) mistook the sound of a tyre burst from their own convoy as a bomb attack and began firing indiscriminately in the town. The Assam Rifles and the CRPF who were camped two kilometers away heard the gunshots and also began firing.

The firing lasted for more than one hour, resulting in the death of seven innocent civilians. 22 persons were also seriously injured. Among those killed were two girls aged three and a half and eight years old. The injured also included 7 minors. Mortars were used even though using mortars in a civilian area is prohibited even under army rules.

In Manipur, where AFSPA was extended 33 years ago in the name of fighting militancy, successive governments have retained it and there have been complaints of military excesses from the people. A 30 years old woman, Thangjam Manorama, was arrested on 11 July 2004 and allegedly gang raped and killed by 17 Assam Rifles personnel. Students supported by many NGOs and human rights organizations there have been agitating for action against the guilty as well as for the repeal of AFSPA which has become a tool in the hands of rifle wielding criminals to perpetrate such crimes. A Judicial Enquiry Commission headed by C. Upendra, the District and Sessions Court judge was instituted which submitted its report long ago but the Assam Rifles moved the Gauhati High Court challenging the legality of the Commission because Section 5 of the AFSPA says that the State government cannot prosecute the personnel of the armed forces without a prior permission from the Union government. The shows the highhanded impunity enjoyed by the personnel of the armed forces even against the most horrible kind of human rights violation. The saving grace, however, came on 31 August 2010 when the High Court directed the Manipur government that it was at liberty to act on the report of the C. Upendra Judicial Inquiry Commission. However, it was a lone case in which the Judicial Commission was established and such Commissions are not ordered in all such cases. As a result, most of the cases, even of the gravest nature of human rights violation, go unreported, un-enquired and unpunished. In the wake of more than a hundred agitating young men having been killed in police and para-military forces' firing in the last one month in Kashmir, now even the Chief Minister of the State, Omar Abdullah, has demanded amendment in AFSPA or its partial withdrawal from the State on 8 September 2010.

(***To be continued...)***

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