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Privatization of Water: An Unconstitutional and Failed Venture

Rajindar Sachar

India is governed by a written constitution and any policy decision; programme by the Central or the State government must be within the constitutional parameter of the constitution.

The State under our constitution is mandated to protect the Human Rights. Any Government policy, which seeks to shift this responsibility from the State to the private sector, would be, without anything more, unconstitutional and hence impermissible.

United Nations, since its inception, has accepted that water is a 'human right'. In 2010, the General Assembly adopted a resolution declaring the Right to Water and Sanitation a human right.

The Supreme Court has held that Article 21 of the constitution includes the human Right of citizen to Water and Sanitation. In that view of the matter per se any proposal to privatize water would be unconstitutional. Is it not therefore a matter of concern that Indian State should be working towards privatising the water supply, which really amounts to abdicating its duty to enforce Human Rights. Ever since the National Water Policy 2002 was formulated, there have been attempts in India to privatize and commoditize water.

Water problem and its peculiarities in supply, distributions are all misdirected against the supply to the poor. I am however highlighting the position in Delhi, which is enforcing privatization of Water Supply policy which is meant to cater to the affluent at the cost of the poor namely 70% of households in Delhi with a monthly per capita of expenditure of less than Rs. 1500, the poverty line accepted by the Planning Commission.

The whole exercise by the Delhi government is to give exploitive profits to the private party. Thus, according to public information it costs Delhi Jal Board Rs. 15 per litre to obtain water - but it has agreed to supply the water to the private company at about Rs. 1.50 per litre. There is then further benefit to the Company by permitting an automatic annual increase by 10% in water billing by the private company. In the new tariff apart from water charges a sewage charge of 60% is also imposed, notwithstanding that the replacement, if any of pipes will be by Delhi Jal Board. But most astounding is the introduction of service charges, apart from billing for water consumption. This service charge is a shamefaced attempt to give extra money because the consumer is paying separately for consumption anyway. To see the unconsciensability of it, as an example, on a consumption charge of say Rs. 170 per month there will be added a service

charge of Rs. 320 per month There is no explanation of what & how service charge can be imposed apart from the consumption charges.

Another unabashed provision to favour the private company is to divide colonies into District Metered Areas (DMAs), on the pretext that water would be provided to the DMAs by private companies at all times/ days (24x7). But there is an ill conceived catch so as to benefit private companies, as the performance of the water company will be assessed not on the basis of whether water was received 24x7 in every house or not, but on the basis of whether the water company provided 24x7 water at the input of each DMA or not. The water company can also divert water from one area to another within the same DMA. This would neither affect the performance of the company nor be treated as a violation of any of the license conditions. The water company will try to maximize revenues by diverting water to big hotels, industries etc, who would purchase water in bulk at higher revenues.

The Delhi Jal Board should be looking into more worthwhile function. It supplies 850 million gallons of drinking water per day more than its installed capacity. Its treatment facility provides for only 5.4 million gallons a day - the rest of the untreated water is one of the major sources of the pollution of Yamuna.

The Delhi government is inspired by the World Bank-supported 24x7 water supply pilot projects as, for example, in Hubli- Dharwad. But the Report of the Working Group on Urban Water Supply and Sanitation for the 12th Plan has pointed out that the initial project period was 2004-08 and was then extended to 2011. Reaching 10 per cent of the twin cities' existing connections took 7 years.

Water privatization and other similar schemes to benefit Big Corporations are the brainchild of World Bank. Though initially the countries succumbed to this pressure, the anger of the masses at the deprivation of life giving water to them and instead to benefit the Big Corporation has unleashed a world movement of re-municipalisations of the water supply in several cities, most notably Paris (which re-commenced with public water management in January 2010) due to cost-saving potential. The re-municipalisation got off to a promising start - Water tariffs were reduced by 8 percent in 2011. Two countries are making water privatization illegal: Uruguay, and the Netherlands. In both cases, the new laws prohibit not only the sale of water systems but also the delegation of the operation of water supply to private companies.

As recent as October 2012 many civil society organizations have protested to the President of European Commission to stop imposing the policy of privatization of Water.

The newly formed municipal corporations in Delhi have also demanded that water supply be handed over to them. It is for legally impermissible Delhi Government to ignore the global trend towards re-municipalisation and to invite private companies to play a larger role in so essential a public utility as the supply and distribution of water. The so-called PPPs are a hardly concealed cover for public-private sharing of risk and profit such that there would be predominantly public risk and predominantly private profit.

A pervious attempt to privatize water was made in 2005. At that time in August 2005 when World Bank President Paul Wolfowitz visited Delhi, he was confronted with vociferous protests against 'the Bank's policies and conditionalities of water privatization through the back door' - a clear message of 'Hands Off Water.' Why is it being revived now - are the forthcoming elections in Delhi and the urgent need for getting big donations the real secret? Any continuance of water privatization policy will remain suspect. ❑

XI PUCL National Convention at Jaipur

People's Insecurity in the name of National Security:

Citizens' Rights, Democracy and State Terrorism, Jaipur

1st and 2nd December, 2012 (Saturday & Sunday)

Conference Venue: Swami Kumaranand Bhawan, Hathroi Gadh, Near Vidhayakpuri Police Station, Behind Church Road, Jaipur, Rajasthan.

Lodging Venue: Shri Prem Prakash Vishram Grah, Amrapura Sthan, MIRoad, Opposite OM Towers, Jaipur, Rajasthan (hardly a few hundred metres from the Conference venue)

Jaipur conference contacts: **Prem Krishna Sharma:** 0141 2206139, 9414055811;

Kavita Srivastava: 0141-2591408, 09351562965; **Harold Singh:** 9314871749 and 9829856789;

Pappu: 9887158183; **Malvika:** 7742794190

Email Address: <pucl.rajasthan@gmail.com>, <kavisriv@gmail.com

Tentative Programme Schedule

01st December, 2012 (Saturday)

930 to 1030 pm — **Registration**

Inaugural Session

Welcome - Rajasthan State Unit

Overview of Conference, PUCL's Path Ahead

– V. Suresh, National General Secretary

Inaugural Keynote Address

– Teesta Setalvad, Journalist, Communalism Combat

President's Address

– Prof. Prabhakar Sinha, National President

1200 to 1215 pm — **Tea / Coffee Break**

1215 to 0145 pm — **Session 1**

Anti Democratic Laws and Experiences of Combating State Terrorism with special emphasis on anti-Sedition laws and UAPA

Presenter - Dr. V. Suresh, National General Secretary

Reflection - Panel of Discussants

Discussions from the floor.

0145 to 0300 pm — **Lunch**

0300 to 0500 pm — **Session 2**

Politics of Communalism and Terrorism

Presenter - Kavita Srivastava, GS, Raj. State

Reflection - Panel of Discussants

Discussions from the floor.

0530 to 0730 pm — **Session 3**

Politics of resource Grabbing - In the name of development

Presenters - Ravikiran Jain, National Vice-President

– CR Bijoy / TN Representative

Reflection - Panel of Discussants

Discussions from the floor.

2nd December, 2012 (Sunday)

NOTE: A Suggestion is that we put up a wall in one part of the Convention which will be the place where each participant as also the state units can list out issues and challenges before the PUCL. These will be segregated and listed out to begin the discussion about strengthening PUCL.

REIMAGINING PUCL

Strengthening and Rebuilding PUCL - Issues, Challenges, Strategies

0930 to 1130 am — Presentation from each state about challenges before the PUCL - critical discussion on points of convergence, divergence and difference.

1200 - 0130 pm — Key Organisational Issues - Listing and Discussion

0130 to 0230 pm — Lunch

0230 to 0430 pm — Organisational Issues - Continued

0430 to 0530 pm — Closing the Convention.

Press Statement: November 19, 2012

PUCL Statement on the Choice of Speaker for the 6th Tarkunde Memorial Lecture

The Tarkunde Memorial Foundation has been organising the Annual Tarkunde memorial lectures in New Delhi for the last 5 years or so. In view of the long association of Justice Tarkunde with the PUCL, the name of PUCL was included as a co-host of the Memorial Lectures.

We have come to know that the next and 6th Tarkunde Memorial Lecture is to be delivered by Mr. Nandan Nilekani, Chairman, UIDAI on 23rd November, 2012.

In the past, the PUCL has been very critical of the UIDAI project and unequivocally opposed the project on grounds of being an unacceptable intrusion by the State into citizens' right to privacy, as having questionable motives and constituting a serious threat to human rights, amongst other reasons. We have also opposed UIDAI as being part of a larger corporate-centric and driven project seeking to push technocratic solution to critical issues of governance failures, which cannot be rectified by UIDAI.

The PUCL would like to clarify that it did not have any role or knowledge in the selection by the Tarkunde Memorial Foundation of Mr. Nandan Nilekani as the speaker. The PUCL reiterates its opposition to the UID.

Prof. Prabhakar Sinha, President, PUCL; **Dr. V. Suresh,** National General Secretary (Elect), PUCL ❑

Press Statement: November 22, 2012

Call to the Nation: Abolition of Death Penalty - A Time for National Reflection

The secretive and stealthy hanging of Ajmal Kasab in Pune's Yerwada Prison yesterday, 21st November, 2012, brings to an end the legal process involved in trying Kasab for the brutal assault by trained terrorists from across the border on Mumbai, the commercial capital of India which left 166 persons dead.

The Mumbai carnage of November 2008, more popularly abbreviated to a single term `26/11,' constitutes one of the most heinous and deliberate attempts in recent years to cause mass mayhem and terror in India. Kasab was the only member of the terrorist team sent from Pakistan apprehended alive; he was caught on film diabolically using his modern automatic weapon in a cold blooded fashion, killing numerous people. The hanging, and the trial and legal proceedings which preceded it, admittedly complied with existing laws which permit death penalty, and cannot be faulted as such. While it may be argued, as many do that the hanging will help in an `emotional closure' to the families of victims of 26/11, there are others who point out that other key issues still remain to be addressed. Families of victims in specific, as also other concerned citizens, have pointed out that Kasab was only a foot soldier and not the mastermind, who still remain at large.

We cannot also lose sight of the fact the reality that the backdrop of the 26/11 incidents is also the festering and unresolved internal conflict inside Kashmir, which provides an easy emotive tool for demagogues to indoctrinate and turn youth to become cold blooded `jihadi' killers. To them, the execution will not be a deterrence.

The extensive legal process ending with the hanging of Kasab is pointed out as a triumph of the of `rule of law process' in India. In the same breath this is also contrasted to the lack of such situation in neighbouring Pakistan. This discourse is however very worrisome; it borders on `triumphalism' on the one hand, and on the other, it amounts to an attempt to `avenge' or seek `vengeance', and `eye for an eye and tooth for a tooth' mentality, which worldview has been rejected as dangerous amongst a majority of 110 countries worldwide which have prohibited death penalty in their countries.

Such triumphalist discourse is also worrying for it hides behind emotive terminology very harsh truths of failure and miscarriage of justice in other incidents of mass killings that have occurred in India. The `cry for justice' still remains a silent pouring of helpless anger in the hearts and souls of thousands of families of victims in incidents like planned and cold blooded slaughter of over 3000 Sikhs during the anti-Sikh riots of 1984, the massacre of hundreds of Muslims in the wake of the Babri Masjid demolition in 1992-93 (which ironically occurred in Mumbai also), the 2002 post-Godhra anti-Muslim carnage in Gujarat which saw over 2,000 Muslims killed and thousands more rendered homeless and more recently in Kokrajhar in Assam. A stark reality is the cynical manipulation and subversion of police investigation by ruling political parties and the executive to help masterminds and perpetrators escape the clutches of the law.

In the surcharged emotional atmosphere in the wake of Kasab's hanging, even raising questions

about the usefulness of hanging Kasab is considered to be `traitorous', unpatriotic and anti-national. We in the PUCL nevertheless feel that this is a moment in our nation's history when we need to pause and ponder, and reflect on the values that we, as a nation, should uphold, particularly relating to crime and punishment, justice and equity. We need to be conscious of the fact that a nation consumed by outrage and filled with a sense of retribution easily confuses "punishment and revenge, justice and vendetta". We, as a nation, need to begin a dispassionate public debate on the death penalty without judgmental, indignant, righteous or moralist overtones.

PUCL has always taken a principled stand against the death sentence as being anti-thetical to the land of ahimsa and non-violence, as constituting an arbitrary, capricious and unreliable punishment and that at the end of the day, the type of sentence that will be awarded depends very much on many factors, apart from the case itself. PUCL and Amnesty International have published a major study of the entire body of judgments of the Supreme Court of India on death penalty between 1950-2008 which unambiguously shows that there is so much arbitrariness in the application of `rarest of rare' doctrine in death penalty cases that in the ultimate analysis, death sentence constitutes a `lethal lottery'.

It may not be out of context to highlight that just two days before Kasab was hanged, on 19th November, 2012, the Supreme Court of India pointed out to the fact that in practice, the application of `rarest of rare cases' doctrine to award death penalty was seriously arbitrary warranting a rethink of the death penalty in India.

It is also well recognised now that there can never ever be a guarantee against legal mistakes and improper application of legal principles while awarding death sentences. Very importantly, the Supreme Court of India in the case of `Santosh Kr. Bariar v. State of Maharashtra', (2009) has explicitly stated that 6 previous judgments of the Supreme Court between 1996 to 2009 in which death sentences were confirmed on 13 people, were found to be `per incuriam' meaning thereby, were rendered in ignorance of law. The Supreme court held that the reasoning for confirming death sentences in theses cases conflicted with the 5 judge constitutional bench decision in Bachan Singh v. State of Punjab (1980), which upheld the constitutionality of the death sentence in India and laid down the guidelines to be followed before awarding death sentence by any court in India.

It should be pointed out that of the 13 convicts awarded death sentence based on this per incuriam reasoning, 2 persons, Ravji @ Ramchandra was hanged on 4.5.1996 and Surja Ram in 5.4.1997. The fate of the others is pending decision on their mercy petitions. In the meantime a group of 7 - 8 former High Court judges have written to the President of India pointing out to the legal infirmity in the award of death sentences to these convicts and seeking rectification of judicial mistake by commuting their death sentences to life imprisonment. A very troubling question remains: how do we render justice to men who were hanged based on a wrong application of the law?

It is for such reasons, amongst others, that PUCL has long argued that it is extremely unsafe and uncivilised to retain death penalty in our statutes.

It will be useful to refer to the stand on death penalty taken by 3 of India's foremost leaders of the independence struggle.

Mahatma Gandhi said,

> "I do regard death sentence as contrary to ahimsa. Only he takes it who gives it. All punishment is repugnant to ahimsa. Under a State governed according to the principles of ahimsa, therefore, a murderer would be sent to a penitentiary and there be given a chance of reforming himself. All crime is a form of disease and should be treated as such".

Speaking before the Constituent Assembly of India on 3rd June, 1949, the architect of India's constitution, Dr. Ambedkar, pointed out,

> "... I would much rather support the abolition of death sentence itself. That I think is the proper course to follow, so that it will end this controversy. After all this country by and large believes in the principles of non-violence, It has been its ancient tradition, and although people may not be following in actual practice, they certainly adhere to the principle of non-violence as a moral mandate which they ought to observe as dar as they possibly can and I think that having regard to this fact, the proper thing for this county to do is to abolish the death sentence altogether".

Jayaprakash Narayan wrote more poignantly that,

> "To my mind, it is ultimately a question for the respect for life and human approach to those who commit grievous hurt to others. Death sentence is no remedy for such crimes. A more humane and constructive remedy is to remove the culprit concerned from the normal milieu and treat him as a mental case ... They may be kept in prison houses till they die a natural death. This may cast a heavier economic burden on society than hanging. But I have

no doubt that a humane treatment even of a murderer will enhance man's dignity and make society more humane". (emphasis ours).

PUCL calls upon all Indians to use the present situation as a moment of national reflection, a period of serious dialogue and discussion on the values and ethics which we as a nation of Buddha and Ashoka, who epitomised humane governance, dharma and ahimsa, should accept and follow. The best tribute we can pay to the 166 persons who lost their lives due to the 26/11 Mumbai carnage is to rebuild the nation in a way that equity and justice, dharma and ahimsa prevails; in which there is no soil for discrimination and prejudice, and in which all Indians irrespective of caste, community, creed, gender or any other diversity, can live peacefully and with dignity.

We firmly believe that mercy and compassion are key values of a humane society, which are also recognised in the Indian Constitution. We also hold that abolishing death penalty is not a sign of weakness. Rather it is a stand which arises from a sense of moral authority. It is when law in tempered with mercy that true justice is done. Bereft of mercy our society would be impoverished and inhuman; mercy is quintessentially a human quality, not found elsewhere in the natural world. Excluding a fellow human being from the entitlement to mercy will make our society more blood thirsty, unforgiving and violent. We owe a duty to leave a better and less vengeful world for our children by curbing our instinct for retribution. That way we become a more humane and compassionate society. Recalling Rabindranath Tagore's vision in the `Gitanjali', let us re-make India into a `haven of peace' in which future generations of Indians will rejoice and flourish.

Prof. Prabhakar Sinha, President, PUCL; **Dr. V. Suresh,** General Secretary (Elect), PUCL ❑

Notes on the Organizational Aspects and Challenges before PUCL Today Based on the discussion at the National Council Meet

I Context: The context of human rights and civil liberties has undergone vast changes since the initial days of formation of People's Union of Civil Liberties and Democratic Rights, as the organization was named earlier. Indeed the global discourse on human rights has also broadened and deepened in the meanwhile. There are, among others, three important Conventions/declarations which came later, namely, Convention on Elimination of All Forms of Discrimination against Women (CEDAW, 1979), Convention on Rights of the Child (1989), and Geneva Declaration on Development as a Human Right (1993). The international debate was picked up in India too, and within PUCL as well. Even as the major faction of PUCLDR started calling itself People's Union for Civil Liberties (PUCL) from November 1980, it did not shy away from the larger questions raised as human rights issues. Over the last two decades two more sets of changes have redefined the human rights scenario in the country- one set on the positive side, and the other generally on the negative side. On the positive side we have a number of progressive legislations conferring or clarifying several rights, including Right to Information Act, MNREGA Act, RTE etc, reinforced by several progressive judgements of the Court (say, for example in the Vishakha case). The enactment of NHRC Act followed by establishment of NHRC and many SHRCs has further sanctified the concept of human rights in India. Yet, ironically, in the post-1991 era of liberalized economic policies, newer threats have emerged for the human rights of common man. Not only that, there is an evidence of increasing intolerance among state functionaries in relation to human rights issues. The gap between promises of legislation and reality of access to rights seems to widen day by day.

These contextual changes inevitably influence the choice and priorities of issues to be addressed by the PUCL. In turn, this should induce us to think about the organizational structure as well as style of functioning. Indeed this process has been going on, but it would be useful to examine all these questions consciously and carefully. PUCL has not only a reputation of its own, but also many strengths, of which we take legitimate pride and which needs to nourished further. At the same time it will not be prudent to rest on past glory and shy away from changes which may be desirable in the altered environment, specially with regard to the role and character of present day state.

However, before we think of agenda resetting or organizational restructuring, it is necessary to take a re-look at our present role and status.

II PUCL: Past and present: From its inception PUCL was meant to become an inclusive group, sharing a common concern for civil liberties, irrespective of their ideological differences. By implication the idea of inclusion enshrined in its early vision was basically political, but with the changing concerns of PUCL today this welcome feature of PUCL may have to be reworked. Keeping together a diverse flock may not be an easy idea, and the difficulties may compound by attempting to bring in a broader range of issues, concerns and groups. Yet this is a challenge we have to face. Constitution may be a great help at

the initial stages, but need for amendments may soon arise.

PUCL strongly believes in the use of peaceful and constitutional means for resolving outstanding issues. It seeks to promote a harmonious dialogic culture and democratic ways of life. It largely believes in the rule of law, and would seek to get the laws changed if they militate against principles of human rights. In a nutshell, this is the organizational approach and style of PUCL. But the working of the organization often brings it face to face against the government of the day, and indeed the state system as a whole, including its machinery and institutions. PUCL seeks to maintain an independence and neutrality, and it has been a major strength.

By the strength of PUCL we may mean its size, presence, activities and potency to make an impact. If it is in a way determined by the cohesion and clarity in the organization, it depends even more on its credibility, integrity and courage. For both, and more for the latter part the character of leadership is crucial. PUCL was led by some stalwarts in the beginning, and it was a different age, but now the nature of organization, its processes and activities will count for much more. In some ways it is competing with a host of organizations which include NGOs, CSOs, community-specific groups and networks etc apart from political groups. Media has meanwhile become large, pervasive and garrulous. It brings to limelight hitherto hidden cases of human rights violations, though often they also spread misinformation. Working of PUCL has become more difficult because of these factors, yet if it can maintain its clean, neutral and responsible image, it may not be so difficult to stand out.

Broadly speaking the role of PUCL can be defined at three levels, namely, mediatory, educative and interventionist. Of course, these roles are often overlapping, and the emphasis varies from state to state. As human rights defenders PUCL, through its members, mediates between the victims and various agencies of state. PUCL reports are sent to concerned state functionaries and agencies, including NHRC/SHRCs, Election Commission etc. Enquiry reports of PUCL have also an educative purpose, for bringing truth to light and clarifying ground issues. Through its publications, studies, seminars, conferences, meetings, or organizational work it has played a seminal role in spreading the idea of civil liberties and human rights. In fact through its programs and activities, PUCL addresses (and guides) the victims and activists as much as it speaks to the state and its agencies. Occasionally it has sought to make direct intervention through PILs or other legitimate means.

III. Some Organizational dilemmas and their possible resolution: One of the dilemmas of PUCL stems from the attempt to create a common platform for promoting the cause of human rights regardless of ideological predilections on political and economic issues. Members can come from diverse political outfits and may have divergent views on several matters of importance. Sometimes there could be issues of dual membership, and some members may be inclined to favour the line of the primary organization they come from. While with a little sustained effort and clear understanding these problems can be largely overcome (Bihar state unit has been a good example), in general, adherence to PUCL constitution and code of neutrality could be the key to resolve the dilemma.

The small membership, limited financial resources and sometimes, lack of continuity in its engagement with specific human rights issues are some of the organizational weaknesses of PUCL. If there is need of expansion of organization, secretariat at the national and state levels need strengthening. Finance may be a constraint, but refusal to seek financial support from political groups or other agencies helps in enhancing the moral strength of organization, and maintaining its total independence, and on no account there should be a compromise on basics.

Unevenness in the working of PUCL in different states and districts need not be a major point of worry, because human rights issues may take different forms in different places. While on some issues of national importance common programs can be taken up sometimes, on many issues states or even the districts will have to take a call. While district units or even state units may be generally to take up individual cases of violation of rights, given their

Dharam Vir Is No More

The PUCL informs its members with a deep sense of grief that Dharam Vir, a highly learned member of the PUCL, National Council member and Secretary, PUCL-Delhi breathed his last on 16th November 2012 in a hospital in Delhi. He was a very active member of the PUCL and worked hard to promote the cause of Civil Liberties in Delhi. He was on life support system and dialysis for the last eighteen days because of kidney failure. He was 64 years old and is survived by his wife, a son and a daughter.

The whole PUCL family condoles his death and pays its tributes to his memory. We also pay our sympathies to his bereaved family and friends. - **Mahi Pal Singh** Secretary, PUCL

magnitude and variety, issues relating to legislations, policies, institutions or emerging patterns of violations have to be examined and analyzed at the national level. Often sustained campaigns will need to be mounted, of course, drawing upon the resources and support of state and district units. For example, at this juncture, sedition law has again become important because of its rampant use by the state machinery to curb protests or even the democratic right to dissent. Increasing vulnerability of marginalized groups, individually or as a community, and frequent denial of their rights by powerful groups with the connivance of state is yet another area calling for national or statewide campaigns.

One more dilemma of PUCL is in respect of joint programs or activities. Given the distinctive identity and style of PUCL it may be safe to act on its own, and avoid joint action, yet in many areas there could be strong case for complementary efforts on the part of PUCL and some other groups/networks and it may not always be prudent to keep a distance. While no general decision can be taken, issue-based joint work may sometimes be undertaken only after careful thought, and that too with organizations whose style, and agenda are compatible.

IV. Tasks ahead: While PUCL must continue to take up the civil liberties issues with which it began its journey, it should go on broadening its agenda to meet the demands of situation and expectations of common man. It is heartening to note that it has already happened, and in different states host of new issues have been taken up during the last one decade or more. Apart from state repression in various forms, old and new, issues relating to food and hunger, health and nutrition, education, rights of child, or dalits, or women, or tribals etc have to be paid due attention. All these will be important for meeting the expectations of the common man.

PUCL should take a lead in explaining the scope of human rights and expose their violations across the country relentlessly. In turn, it will require PUCL needs a research wing and publication unit. Publication of PUCL bulletin has been a very useful activity of national PUCL which may be upgraded further in an innovative manner. The Research wing will function as a resource unit and clearinghouse of information, with a strong-networked base in the country.

It is welcome suggestion coming from different members that PUCL can bring out a National Report drawing upon its own report as well as a variety of government documents and/or reports of NHRC, SHRCs, NCW, NCPCR etc. Many more publications can be planned from time to time in different languages from different places to set an agenda on human rights in the country.

Prof. Vinay K. Kantha, Former President, Bihar PUCL ❑

Right to Life and Personal Liberty, the Draconian Laws and the Role of the Judiciary and the National Human Rights Commission

Ravi Kiran Jain

Art. 13(1) declares: All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of this inconsistency, be void". No draconian law would have been on the statute book after 26th Jan 1950 after this declaration in Article 13(1). Article 13(2), mandates: State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of this contravention, be void. Similarly no draconian law could have been enacted in India after 26th January 1950 n view of the mandate in Article 13(2)

The declaration made under Article 13(1) remains a dead letter in the statute book. No one proposed that all the repressive laws enacted (which were inconsistent with the fundamental right Chapter Part III) should lapse with the coming into force of the Constitution. We did not follow up with the repeal of various laws which were used against the people during the course of our struggle for independence, like sec 124 A IPC, Criminal Law Amendment Act 1908 and 1938, and the Prevention of Seditious Meetings Act 1917. (To mention only the notorious ones). All the laws passed by colonial rulers were retained specifically, including the penal laws to suppress the movement for independence. A legal structure designed to buttress, colonial rule became the legal structure of independent India.

In his book "The Wages of Impunity", K.G. Kannabiran described how A.K. Gopalan was charged for Sedition U/S 124A, IPC, a draconian Law enacted by the British Parliament, to be used against the leaders of the Freedom movement. Gopalan was charged for this offence, for his act of celebrating India's independence within jail premises joined by this fellow jail prisoners, by walking the length of the jail carrying the National Flag and addressing those who gathered there for 4 or 5 min. Gopalan was released on Oct. 12, 1947, only to be re-arrested on Dec 17 and this time under Preventive Detention Law. When the Constitution came into force, Gopalan continued in detention. When Gopalan sent a petition from jail to Supreme Court, his detention was brought under the Preventive Detention Act, 1950, which came into force on 26th Feb 1950. The Executive continued with the colonial tradition of arbitrariness

in booking Gopalan u/s 124 A, IPC and thereafter the legislature, protected the action of the Executive, by enacting, Preventive Detention Act, 1950, on 26th Feb 1950.

Unfortunately the judiciary too, continued, the colonial traditions, as can be illustrated by what happened in the case of A.K. Gopalan. This was the first case before the Supreme Court, in which the different Articles of Constitution of India, contained in the Chapter of Fundamental rights had come up for discussion. Much was expected, but there was total disillusionment. The court did not rise to the occasion.

Majority judgment held that Art. 22 was a self contained code and therefore a law of Preventive Detention did not have to satisfy the requirement of Article 19,14,21 and the argument that the provisions of Article 19 relating to various personal freedoms should be read into the provisions of Art. 21 and Art. 22 was rejected. The minority judges however disagreed with this view, taken by majority, by holding that Fundamental right of life and personal liberty, has many attributes, and some of them are found in Article 19. Article 21 covers a variety of rights including those, which are specifically provided U/A 19.

O Chinappa Reddy in Chapter IV of his book, the "Court and the Constitution of India (2008) described Gopalan's case as "NOT A GOOD BEGINNING" and then said: -

"The majority judges appeared to be still under the influence of the old colonial jurisprudence and oblivious to the fact what they were expounding was the jurisprudence of a new Constitution for people who had just freed themselves from colonial rule. One wishes that they had kept in mind the admonition of Lord Atkinson J in Liversidge v Anderson:

I view with apprehension the attitude of Judges who on a mere question of construction when face to face with claims involving the liberty of the subject show themselves more **executive minded than the executive**."

In first two decades (1950-70) many of the judges of the Supreme Court evolved a jurisprudence with a colonial mind set, and the principles of law propounded by them with such a mind set is still holding the field. The classic example is the concept of "Eminent Domain". It was in the *State of Bihar* vs. *Maharajadhiraja Sir Kameshwar Singh* decided on 2.5.1952, by a Constitution Bench headed by M. Patatanjali Shastri (CJ). Many eminent counsel of that era appeared in that case including Dr. B.R. Ambedkar. While evolving the principle of "Eminent Domain", the SC, did not refer to the relevant provisions of the Constitution of India. They traced the history of this term, "Eminent Domain" which originated in 1525. Hugo Grotius, who wrote of his power, his work "De Jure Belli et Pacis" as follows:

"The property of subjects is under the eminent domain of the State, so that the State or he who acts for it may use and even alienate and destroy such property."

Then they referred to some foreign authors like Kent on Constitutional Law of other countries. Quoting Kent, the Supreme Court, observed:

"Kent speaks of it as an inherent sovereign power. As an incident to this power of the State is the requirement that property shall not be taken for public use without just compensation"

What has been commented upon by (J) O. Chinnappa Reddy about majority judgment in A.K. Gopalan that the majority Judges appeared to be still under the influence of the old colonial jurisprudence and oblivious to the fact what they were expounding was the jurisprudence of a new Constitution for people who had just freed themselves from colonial rule is equally true about the interpretative technique adopted by the supreme court in evolving the jurisprudence of Eminent Domain by not referring to the relevant provisions of the Constitution of India and tracing the history of this term by referring to foreign authors like Kent on Constitutional Law of other countries.

The Constitution has been enacted by, "We the People of India". The state belongs to **us**; we do not belong to the State. The foreign authors on Constitutional Law of other countries speaking about the inherent sovereign power of the State about the concept of " Eminent Domain" is wholly obnoxious to the " Concept of Sovereignty", which according to the Indian Constitution lies with " We, the People of India". Our Constitution envisages a Republican India where every citizen stands endowed with rights and responsibilities for the development of the country. Planning for development is vital for democracy in India. But the manner in which it is done shows that it regards Indian citizens merely as objects of development decisions. They are accorded no role whatsoever in key developmental decisions and programmes. By evolving the concept of Eminent Domain the colonial legislation of 1894 to acquire land displacing hundreds of millions has been legitimized .If a person is displaced, he or she has a right of rehabilitation under article 21 of the Constitution. Article 21 provides that no person shall be deprived of his life or liberty except according to procedure established by law. There is no procedure established under the Land Acqusition Act or any other law to claim rehabilitation as a right and in the absence of such a law, it may be safely stated that the persons are displaced by acquisition of land without any fair procedure

This jurisprudence evolved by the SC is being used to legitimize the acquisition of land and consequential displacement of the people, on the basis that those who are misplaced are entitled only to compensation.

Then in 1962 the Constitutional validity of sec 124A IPC which defines the offence of sedition as 'to excite disaffection towards the Govt. established by law in India' by words, either spoken or written, or by signs or by visible representation, was upheld by a Constitution Bench of SC.

In the first two decades between 1950 and 1970 there were no

draconian laws enacted in India except the Preventive Detention Act 1950 and during 1962 Chinese war defence of India ordinance promulgated on 26th Oct 1962, which later on was replaced by Defence of India Act 1963.

These two decades after the Constitution were spent by the SC in defining the scope of fundamental rights. The interpretative techniques adopted were colonial. It was in 1970 in R.C. Cooper vs. UOI (AIR 1970 SC 564) that the minority view in Gopalan's case was approved which was noticed in Maneka Gandhi's case in (AIR 1978 SC 597) by taking a view that the majority view in Gopalan "must be held to have been over ruled". Granville Austin in his celebrated book "Working a Democratic Constitution" says: - "The Golak Nath ruling planted the seed, and the Court's decision in Princes and Bank Nationalization cases encouraged the growth, as Mrs. Gandhi's pronouncements after 1970 made it clear…. Mohan Kumar Mangalam's enthusiasm for a 'committed judiciary' and for supersession was well known. He spoke to R.C. Dutt in 1972 of supersession and placing on the Court 'Judges committed to basic principles." On 10.2.1970, bank nationalization case was decided in which Justice A.N. Ray, who was the August 1969 appointee as a Judge of the Supreme Court was the sole dissenter amongst the eleven judges. In mid 1972, Justice S.N. Dwivedi was appointed Judge of the Supreme Court 'with the declared purpose of overruling Golak Nath.'

In 1971, Indira Gandhi, politically shrewd as she was, was fully able to sense the impatience in the people to remove poverty gave a deceptive slogan of "*garibi hatao*" delinked the parliamentary elections from the assembly surprisingly by preopening the same, which otherwise were due in 1972, dumped huge amount of money in election for her party candidates and secured thumping majority giving severe blow to the process of political polarization on ideological basis. But even during that period, only a few had realized that poverty and disparity was not something which would be removed through any political jugglery of words, often used in this country to infuse illusory optimism among the poor masses by offering them such slogans (read lollypops). The hard truth is that poverty still stares in the faces of crores of hapless people of this country.

But at the same time between 1971 to 1977 during the personal rule of Indira Gandhi, a distribution of power on the three branches of Govt. was gravely disturbed and a process of dominating the Parliament and weakening the judiciary was started during this period by her. Granville Austin in *"Working a Democratic Constitution"* in Chapter 7-*"Indira Gandhi: In context and in power"* has said:

"The executive branch came to dominate Parliament to such a degree that Parliament lost any effective identity of its own. And, authority within the executive became concentrated in the Prime minister's office and then was exercised from Mrs. Gandhi's residence, to the exclusion of all but a few. The two branches, if still they could be called that, attacked the third branch, the judiciary, intending to end its function as a co-equal branch of Government."

31st October 1972- Hearing in Kesavananda Bharti starts which lasted until mid-March, some seventy working days. Granville Austin writes unusual happening in this case in his aforesaid work in following words:

"The composition of the Supreme Court at the time of Kesavananda provides a useful starting point for an examination of the 'unusual happenings' during the case to which Justice Chandrachud alluded. For Justice Reddy, these happenings had their origins well before the bench was formed. He thought Kumaramangalam, Ray, and Gokhale had begun 'packing' the court in 1971 in expectation of an attempt to overturn Golak Nath. As a result, Reddy believed that one judge was a Kumaramangalam nominee (probably Mathew), two were H.R. Gokhale nominees (probably Palekar and Chandrachud), two were nominees of S.S. Ray (possibly Beg and Mukherjea), and one was Sikri's (probably Khanna). One of these judges (probably Dwivedi) told Justice Reddy that he had been interviewed by Gokhale, Kumaramangalam, and S.S. Ray before his appointment. Madhu Limaye charged in the Lok Sabha that Justice Dwivedi came to the court with the declared purpose of overturning Golak Nath- but many judges and lawyers disliked the Golak Nath decision; this was not singular to Dwivedi.

The Kesavananda bench worked under continuous and sometimes intense pressures. The broadest of these was anxiety for the Court's viability and, by extension, of the judiciary as a co-equal branch of government. Several members of the bench felt this, and Justice Reddy referred in his opinion to 'the threat of the dire consequences which the Court would have to face if the judgment went against the Government'.

More intense pressure came directly from the government to assure a favourable ruling from the court. This took three forms, according to justices and advocates involved with and observing the proceedings: trying to discover the thinking of the judges; attempting to pre-determine the outcome of the case by influencing judges' opinions; and attempting to pre-determine its outcome by preventing a decision through prolonging the case beyond Sikri's retirement.

The government also attempted to shape individual judges' opinions according to participants in and observers of the case. Gokhale, Kumaramangalam, and Ray tried to influence judges, recalled Justice Reddy, citing a lunch that S.S. Ray and his wife had with Justice and Mrs. Mukherjea. A senior member of the Prime Minister's staff recalled

that there were attempts to influence the court. Pressures were 'unbelievable', Palkhivala remembered. According to several accounts, Justice Chandrachud, then aged fifty-three and a junior member of the bench, discussed the case with Gokhale and Gajendragadkar. And Chandrachud's opinion, submitted at the last moment, had been influenced by Gokhale, who, the story went, had hinted to him that his eventually becoming Chief Justice might be affected if he ruled against the government.

The government intended to pre-empt an adverse ruling by another device, according to a suspicion widespread at the time and not forgotten. Chief Justice Sikri's retirement date was 26 April 1973. Were the case not decided by then, it would have to be dropped or re-heard. Did the government attempt to drag out the case with this in view? 'I knew that Seervai, De, and others demanded much time for oral argument to prolong the case and to get a new bench,' remembered Anil Divan. 'Palkhivala and I discussed this.'

Justice Mirza Hameedullah Beg- from the Allahabad High Court, Trinity College, Cambridge, and later Chief Justice of India (1977-8) went to the hospital on 4 or 5 March with a heart ailment. Justice Reddy took him there, and Justice Grover and others visited him. Chief Justice Sikri went to the hospital to check on Beg's condition and obtained a certificate saying that Beg should rest a week and after two weeks could return to normal work. Sikri had to decide what to do.

Attempting to resolve the matter, the Chief Justice summoned his fellow-judges and both sides' advocates to a conference in his chambers. His announcement that he had decided to proceed without Beg evoked consternation and several reactions. Justice Beg returned to his duties, and the affair ended with a legacy of hard feelings.

On 24th April 1973, the Supreme Court by a thin majority of 7:6 upheld the basic structure of doctrine, which later on was affirmed in Indira Gandhi election case in 1975 and in the Minerva Mills and in Waman Rao cases in 1980 and 1981.

A day after the Kesavananda decision A.N. Ray appointed new Chief Justice of India by superceding three senior judges Shelat, Hegde and Grover. And thereby Mrs. Gandhi struck a grievous blow at democratic constitutionalism and also to the independence of the judiciary. It was described as 'the manifest attempt to undermine the Court's independence' in a statement by M.C. Seetalvad, M.C. Chagla, V.M. Tarkunde, former Chief Justice J.C. Shah and Palkhivala. The chain of events from the date of supersession till the judgment in S.P. Gupta case came shows how there crept in a permanent and sharp division in the judiciary as well as in the Bar and a race amongst the senior Judges to demonstrate who is more 'committed' began.

On 12th June 1975 came the judgment in the election petition of Raj Narain unseating Indira Gandhi by Justice JML Sinha. On the same day, V.N. Khare nephew and a junior in the chamber of S.C. Khare moved an application for stay of the judgment of High Court, which was granted to enable her to file an appeal in the Supreme Court till 22.6.1975. Had V.N. Khare not moved such an application Indira Gandhi would have gone forever.

On 26th June 1975, Prime Minister Indira Gandhi told the nation in a Radio broadcast that with parliament not in session, the President had declared an emergency because of the turmoil and incipient rebelling in the country.

Thousands were detained throughout the country. The detentions were challenged by filing petitions in the High Courts. Nine high courts out of thirteen decided in favour of detainees. In appeal in Supreme Court ADM Jabalpur case (also known as Habeas Corpus case) was decided on 28.4.1976. Granville writes about this case as follows: -

"Before Chief Justice Ray could hear the appeals from the ten high courts, he had to select a Bench. Delhi's perennial crop of rumours had it that, having failed to overturn Kesavananda; he would select colleagues likely to hold for the government. Worried about the composition of the bench, members of the Supreme Court Bar Association, several of whom would represent the detenus before the Court, took steps that became choice morsels of judicial lore. They arranged to have telegrams sent to the Chief Justice from around the country urging bench selection according to seniority. C.K. Daphtary, formerly Attorney General, called on Ray, told him of the rumours, and suggested he follow the seniority criterion. Annoyed by such temerity, Ray asked if there were precedent for this. As quick-witted as he was courageous, Daphtary replied that S.R. Das once had done so- knowing that Ray much admired the Chief Justice of late fifties. Although this precedent is elusive, Ray did select the bench according to seniority: himself and Justices H.R. Khanna, M.H. Beg, Y.V. Chandrachud, and P.N. Bhagwati. Many advocates and others were relieved. Surely, they calculated, Justices Khanna, Bhagwati, and Chandrachud would protect civil liberty. Chief Justice Ray and Justice Beg were expected to side with the government.

When the bench gave its decision on 28 April the detenus' lawyers found their calculations had gone awry. Two of the judges they hoped would find for the detenus, Justices Chandrachud and Bhagwati, did not. They, Beg, and Chief Justice Ray upheld the Government of India's position. Only Khanna dissented. Each judge wrote his own opinion. Although there was no single majority ruling, the four-judge majority held that no citizen had standing to move a writ of habeas corpus before a high court under Article 226 in light of the President's order if 27 June 1975 or to challenge a detention order as illegal, as factually or legally mala fide, or as based on extraneous considerations. Section 16A(9) of MISA (grounds for detention a matter of state and not to be revealed) was ruled constitutionally

valid. And the four judges held that Article 21 was the sole repository of rights of life and personal liberty against the state."

Why VY Chandrachud and PN Bhagwati sided with Chief Justice Ray and M.H. Beg? The story goes that PN Bhagwati was appointed High Court Judge prior to the appointment of YV Chandrachud as High Court Judge. But in the Supreme Court YV Chandrachud was appointed prior to PN Bhagwati. It became clear during the course of the hearing of the High Court case that Chief Justice Ray and MH Beg were going to decide in favour of the government and against the detainees. PN Bhagwati was said to have thought that there was already a precedent of supersession of three judges in 1973, and if he sided with Chief Justice Ray and MH Beg and the majority judgment comes in favour of the government, he would be able to become Chief Justice of India by superseding YV Chandrachud. YV Chandrachud smelt the move of PN Bhagwati and therefore he also sided with Chief Justice Ray and MH Beg to neutralize the factor, which was in mind of PN Bhagwati.

In January 1977, Justice H.R. Khanna was superseded as he was not made Chief Justice of India on his turn and he resigned.

Democratic Governence for a Short Period by Formation of Janata Government

When Mrs. Gandhi announced elections in 1977, the suppressed anger among the people against her burst out in the open. On 24th March 1977, two days after Mrs. Gandhi government had resigned and she had assumed a caretaker role, Morarji Desai took the oath as Prime Minister. "The Janata Party came to power on a wave of hyperbole, with talk of a second freedom from authoritarian rule and a resounding restoration of democracy. Almost from its first week in office, the party seemed determined to squander this good-will. It was soon noticed that in both the Centre and the States Janata ministers were grabbing the best government bungalows, raiding the Public Works Department for air-conditioners and carpets, organizing lavish parties and weddings for their relatives, running up huge telephones and electricity bills, travelling abroad at the slightest pretext (or no pretext at all) Even traditionally anti-Congress journals were writing about the 'death of idealism' within Janata, of how it had so quickly become a 'political party of the traditional type,' its members 'interested more and more in positions and perquisites and less and less in affecting society'. It was being said that while it had taken the Congress thirty years to abandon its principle, Janata had lost them within a year of its formation" says historian Ramchandra Guha in '*India after Gandhi*'. A problematic government from the beginning, the approaching end to Janata's carrier became painfully apparent in June 1979 as it bled from massive defection.

"Charan Singh's foolish Prime Ministerial ambitions came to an end on 20th August when Indira Gandhi pulled the rug from under him. Apparently calculating that she could bring about the elections that would return her to office. Upon learning this, Charan Singh's cabinet decided in emergency session not to face a vote, and Charan Singh drove to Rashtrapati Bhawan to tender the government's resignation. He advised the President to dissolve parliament and call elections. The Janata Party government thus could not survive on account of inherent contradictions within the political leaders, who by sheer opportunism had shared the power at the Centre", says Graneville Austin in 'Working a Democratic Constitution'

Re-Emergence of Indira Gandhi

Indira Gandhi's Congress (I) defeated the Janta Party in the election of 3rd January, 1980. During January 1980, Justice Bhagwati wrote a '"Dear Indiraji" letter to the Prime Minister. This congratulated her on her re-election and praised her "iron will… uncanny insight and dynamic vision, great administrative capacity and … heart which is identified with the misery of the poor and the weak"'. The Justice continued that '"the judicial system in our country is in a state of utter collapse… . [W]e should have a fresh and uninhibited look at … [it] and consider what structural and jurisdictional changes are necessary …"'.

The unfinished task of having a "committed" judiciary which Mrs. Gandhi wanted to accomplish during 1971 -77, was achieved on her re-emergence with the help of the judgment of a Constitution Bench of the SC headed by Justice Bhagwati in S.P. Gupta. Granville Austin described the situation as, "Given Mrs. Gandhi's past policies towards the judiciary, it was a small wonder that after 1980, the ever-simmering issue of judicial independence boiled again. After the emergence of Indira Gandhi, the train of events began in mid 1980 with the government intending to appoint the Chief Justice of each High Court from outside its jurisdiction. Addition judges appointed during Janta government were being given short-term extensions. The law minister Shiv Shankar issued a circular letter regarding the one-third of judges and Chief Justices from out of state. The controversy reached the Supreme Court and that is how came the S.P. Gupta case. Terrorists and Disruptive Activities (prevention) Act, 1985 was enacted during this period which lapsed on 24th May, 1987. On this date on which it was to be lapsed, Terrorists and disruptive activities (prevention) act 1987 came as a permanent act. On the same pattern came the state enactments like the UP Gangsters and Anti-Social Activities (Prevention) Act, 1986 in Uttar Pradesh. The constitutional validity of such enactments was upheld. There is a trite saying that ADM Jabalpur case was the blackest judgment in the constitutional history of this country. Those judgments which upheld the constitutional validity of the enactments made in post 1980 were blacker than the "blackest judgment" in Habeas Corpus case".

Two pronged strategy was adopted by the government, one was to enact repressive laws and the other to weaken the judiciary and making it

subversive to the executive with the help of the then 'committed judges', who would set the trend of upholding the constitutional validity of repressive laws enacted during this period, for a long time to come. Various state legislatures had passed their own preventive detention laws paralleling the centre's, as they often had since 1950 during this period. Or, they had enacted particularistic preventive detention laws: for the broad control of crimes (Bihar 1980-1); against communal and dangerous activities –social activities (Maharashtra 1981, Tamil Nadu 1982, Andhra Pradesh 1986); and anti –social activities (Gujarat 1985). Parliament had passed, with many states following suit, laws banning strikes and allowing arrests without a warrant and providing for summary trials (the 'essential services' acts). Attempting to deal with the situation in Punjab, Parliament passed laws other than those already mentioned – such as those establishing special courts for disturbed areas, the Armed Forces (Punjab and Chandigarh) Special Powers Act.

Oppressiveness being infectious, it spread to other civil liberties such as freedom of speech. The legislatures of Bihar and Tamil Nadu in 1982 passed laws restricting press freedom. The Bihar Act, reportedly passed in five minutes, provided for fines and imprisonment for possessing, selling, or publishing pictures, advertisements, or reports that are ' " grossly indecent or …[are] scurrilous or intended for blackmail" '

On March 19, 1986 in UP, the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, was enacted. Section 3 of this Act provides: - "A gangster, shall be punished with imprisonment of either description for a term which shall be less than two years and which may extend to ten years". "Gangster" has been defined in Section 2(c) of this Act as a member or leader or organizer of a gang.

The word "Gang" has been defined under Section 2(b) as a group of persons who act either singly or collectively, by violence, or threat or show of violence, or intimidation, or coercion or otherwise with the object of disturbing public order or of gaining any undue temporal, pecuniary, material or other advantage for himself or any other person, indulge in anti-social activities, namely-

(i) Offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Act No. 45 of 1860), or

(ii) Distilling or manufacturing or storing or transporting or importing or exporting or selling or distributing any liquor, or intoxicating or dangerous drugs, or other intoxicants or narcotics or cultivating any plant, in contravention of any of the provisions of the U.P. Excise Act, 1910 (U.P. Act No. 4 of 1910), or the Narcotic Drugs and Psychotropic Substances Act, 1985 (Act No. 61 of 1985), or any other law for the time being in force, or

(iii) Occupying or taking possession of immovable property otherwise than in accordance with law, or setting-up false claims for title or possession of immovable property whether in himself or any other person, or

….

(x) inciting others to resort to violence to disturb communal harmony, or

(xi) creating panic, alarm or terror in public, or

(xii) terrorizing or assaulting employees or owners or occupiers of public or private undertakings or factories and causing mischief in respect of their properties, or

The constitutional validity of this Act was challenged in a bunch of Writ Petitions which was heard by a full bench presided over by Justice K.C. Agarwal. Babu Jagdish Swaroop, an eminent constitutional lawyer and a former Solicitor General of India was the leading counsel. When he stood up to open his arguments, the presiding judge inquired from him "How much time you will take Mr. Jagdish Swaroop?". Mr. Jagdish Swaroop told that he would take minimum two days. But the bench did not permit him to cite judgments on which he would rely in support of his arguments. He was asked only to give the citations of those judgments, which the judges would note down and read before giving the judgment. Mr. Jagdish Swaroop was made to sit down even before the mid-day recess. Then my turn came. Same question was asked by the presiding judge: - "How much time you will take Mr. Jain?". I told the judges that if the lawyer of the stature of Mr. Jagdish Swaroop was made to sit without letting him to cite judgments, how could I take any time at all as I did not know to argue a full bench dealing with important constitutional question if the judges would not permit me to read the judgments to be cited in the court. I told that I would submit written submissions, which I did. The constitutional validity of the Act was upheld. If one reads the definitions of the word "Gang" and "Gangster" and the penal section 3, it is so obvious that the Act is hit by Articles 20(1), 20(2) and 21 of the Constitution.

During twenty-six years in which the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, remained on the statute book, the Police is booking thousands and thousands of persons under this Act in UP. The persons involved as accused by the police under Section 3 of this said Act are not easily granted bail. They languish in jails and ultimately acquitted. It is impossible to convict a person under Section 3 of this Act. I have made inquiries from the lawyers practicing purely in the criminal side in Allahabad High Court, and I have come to know that none of those lawyers have come across any conviction in any case since 1986 as none of them has filed any appeal against a conviction. On the same pattern was enacted TADA in 1985 and then in 1987. POTA has also been enacted on the same pattern. The constitutional validity of all such acts is challenged and is upheld by the courts. Are the judgments in all these cases upholding constitutional validity of repressive laws not blacker than the "blackest judgment" in the Habeas Corpus case given

during emergency? Repression during emergency was short lived. But the repression under these repressive laws which have been enacted after the re-emergence of Indira Gandhi in 1980 is much too severe and gives a free hand to the Police to indulge in excesses.

The sequence of events leading to the filing of Writ Petition by S.P. Gupta and many others and the judgment of Supreme Court in these cases was the part of that two-pronged strategy. Soon after S.P. Gupta the corrupt executive gained absolute power to appoint judges who would uphold the constitutional validity of repressive laws. Now these judges appointed by the executive are appointing executive minded judges. We can quite see the difference between those executive minded judges who gave majority judgment in Gopalan's case in 1950 and the executive minded judges appointed after S.P. Gupta case. The first beneficiary of S.P. Gupta case was Justice V.N. Khare, nephew of S.C. Khare who was appointed a permanent Judge of Allahabad High Court on 25.6.1983. The first beneficiary of S.P. Gupta being V.N. Khare who would become CJI, the last was S.H. Kapadia who was appointed a permanent Judge of Bombay High Court in 1993. V.N. Khare became member of collegiums in 2000 and became CJI on 19.12.2002 and retired as CJI in May 2004. S.H. Kapadia who was the last appointee between post S.P. Gupta and pre S.C. on Record would retire as CJI on 2012. Therefore the collegium of the Supreme Court would be dominated for a full period of twelve years between 2000 to 2012, i.e. when V.N. Khare became member of collegium, and S.H. Kapadia retires as CJI on 28.12.2012.

Loss of Political and Economic Sovereignty Starts (Since 1991)

In 1991 when Chandrashekhar became Prime Minister he found our coffers empty. This was obviously the result of the corruption resulting from the centralized system of **governance** through bureaucrats. Dr. Manmohan Singh became Finance Minister in Narsimha Rao govt in 1991 and was mastermind to start the process of so called reforms and we came into the trap of IMF and the World Bank. Various governments since 1991 are committing a breach of faith by violating fundamental norms and principles on which the citizens of this country were to secure for themselves social, economic and political justice. Now the World Bank gives periodical reports. It examines our "economic performance". Our government provides to the World Bank a free access to all its institutions and official records. The World Bank declared that it conducted studies "as per of the continuing analysis by the Bank of the economic and related conditions of our country." (A World Bank Country Study: India Sustaining Rapid Economic Growth, July, 1997) In its so-called report "India: Reducing Poverty Accelerating Development- A World Bank Country Study" (Oxford University Press, 2000), the World Bank has suggested ways to meet 'long-term challenges of poverty-reduction and development. It is not merely a suggestion. It is a document of our economic slavery.

Using 'Liberalization, Privatization and Globalization, the magic catch words, Prime Minister Narsimha Rao with Manmohan Singh as his finance minister took our country goes into the trap of IMF and the World Bank. Directive Principles of State Policy cease to be 'fundamental in the governance of the country'. The directives of the World Bank become fundamental.

On January 27, 1993, leaders of various political parties including Sarvashri Harkishan Singh Surjeet, Chandra Shekhar, Indrajit Gupta, Tridib Chaudhuri, Chitta Basu, Murasoli Maran and V.P. Singh wrote a joint letter to the Prime Minister which expressed the view that the Dunkel Draft would have an inimical impact on the economy and demanding setting up of a Joint Parliamentary Committee to examine its implications. In addition, 250 members of parliament, including Congress party members, and prominent citizens issued a joint public statement on the Uruguay ground of GATT Negotiations and the Special 301 provision of U.S. trade laws. However, the Government refused to respond to these demands for information and consultation by members of Parliament, politicians and citizens groups despite the irreversible impact of the Dunkel Draft on the Indian political economy.

On November 9, 1993, the National Working Group on Patent Laws and the Independent Initiative constituted a non-official judges panel entitled, the Peoples Commission on GATT, to examine the constitutional implications of the Draft Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations, in light of the social, economic and democratic framework of the Constitution, and prepare a report.

The members of the Commission were:

Justice V. R. Krishna Iyer, Judge, Supreme Court of India (Retd.); Justice O. Chinnappa Reddy, Judge, Supreme Court of India (Retd.); Justice D.A. Desai, Judge, Supreme Court of India (Retd.); Justice Rajindar Sachar, Chief Justice, Delhi High Court (Retd.).

In the concluding part of the report of People's Commission it was observed: "In short, the Union Parliament and the state legislatures have been ousted of their legislative sovereignty over an extraordinary range of matters. Even domestic agriculture, under the purview of the state governments, has been transferred wholesale to the WTO. The unavoidable conclusion is a loss 'of legislative and executive sovereignty and the increasing irrelevance of the Union Parliament as an instrument of governance. Worse still, all this has been accomplished without even the knowledge or consent of the Parliament, under circumstances in which the Prime Minister expressly stated that he would not wait for a

parliamentary debate pending negotiations. Negotiations were conducted in a clandestine and covert fashion and the only information ever provided to the people, that too at the end of the day, were statistics furnished by the OECD."

About the adverse effect of the Final Act on Fundamental Rights the Commission observed as follows:

"In view of the foregoing changes to existing laws required by the TRIPS Agreement and Agriculture Agreement and the anticipated effect on the price of medicines and self-sufficiency in food, we are of the view that the Final ACT will have a direct and inevitable effect on the fundamental right to life enshrined in Article 21 of the Constitution."

And then as follows:

"From both the narrow and wider perspectives, the Uruguay Round negotiations have been conducted by the Union of India in a way that has undermined democracy in ways inimical to fundamental rights and re-written India's constitution in ways subversive of its basic structure. The people for whom the Constitution exists have been excluded from knowledge of what is in store for them. The States have been denied consultation even though the Uruguay Round affects the latter's rights and responsibilities in that most crucial of areas- agriculture. The sovereignty of the nation has been bargained away. Such a treaty is not constitutionally binding within the Indian Constitutional system and, in the facts and circumstances, cannot be given effect to."

Role of National Human Rights Commission

On September 28, 1993, the Protection of Human Rights Ordinance, 1993 was promulgated which later on was replaced by an Act. This Act provides that there shall be a National Human Rights Commission at national level and there may be State Human Rights Commissions at state level. The National Commission consists of (a) a Chairperson who has been a Chief Justice of the Supreme Court, (b) one Member who is or has been, a Judge of the Supreme Court, (c) one Member who is, or has been, the Chief Justice of a High Court, and, (d) two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. Similarly a State Commission would consist of (a) a chairperson who has been a Chief Justice of a High Court, (b) two members who are or have been judge of a High Court, and, (c) two members to be appointed from amongst persons knowledge of, or practical experience in, matters relating to human rights.

Setting up Human Right Commissions at the national and state levels is a major departure from the Constitutional scheme. Fundamental rights are political in nature and their free exercise ought to be ensured by the courts. While the Directive Principles are non-justiciable, they are enforceable through the democratic process. There is no dearth of legal provisions to check human rights violations. The setting up of human right commissions is wholly illusory. If the govt. is really concerned about correcting its human right record, it has to take serious steps to re-build the existing institutions, namely the courts, instead of creating such an illusory institution. Human rights can never be realized by setting up such commissions without changing the existing social order. Rather than reducing human right violations, these commissions are being used o cover up such violations

The Protection of Human Rights Act, 1993 is a potent weapon in the hands of the executive to reward 'committed judges'. True it is that the judges are appointed by collegium. But a Chief Justice of India and Chief Justices of High Courts as well as judges of the Supreme Court can be rewarded by making them chairperson or members of the National Commission. Similarly, in states, Chief Justices and judges of High Courts can be rewarded by making them chair persons or members of the State Commissions.

POTA (Prevention Of Terrorism Act) was enacted in 2002. Its constitutional validity has been upheld by the Supreme Court in a judgment given on 16.12.2003 by a Division Bench comprising of Justice S. Rajendra Babu and Justice G.P. Mathur. This judgment is also blacker than the 'blackest judgment' in Habeas Corpus case. It may be seen here that Justice Rajendra Babu was made Chief Justice of India merely for six or seven working days before the summer vacations of 2004 so as to make him eligible for being rewarded with the chairpersonship of NHRR. Kindly compare it with the supersession of Justice H.R. Khanna in January 1977 for his courageous dissenting judgment in Habeas Corpus case, who would have a term of about three months as CJI. Justice S Rajendra Babu was not only made CJI but also made chairperson of NHRC for almost a full term.

It may also be seen here that Justice G.P. Mathur, his (Justice Rajendra Babu's) colleague in the Division Bench upholding the constitutional validity of POTA was made a member of NHRC and then he became acting chairperson of NHRC for more than a year to make the present CJI Justice K.G. Balakrishnan as chairperson for full five years just after his retirement on 12.5.2010.

In a similar way Chief Justices of High Courts, who look forward to become chairpersons of the State Human Rights Commissions (whether they are elevated to the Supreme Court or not) try to have cordial relations with the Chief Ministers of the States and other judges likewise who look forward to become members of a State Commission have cordial relations. 'Committed Judges' stand better chances to be appointed as chairpersons or the member of the National Human Rights Commission or State Human Rights Commissions.

It is obvious now that the Prevention of Human Rights Act 1993 is being used to reward 'committed judges'. ❑

Freedom of Press under Threat

Naveen Surinje a dynamic Journalist from Mangalore working for Kasturi TV has been arrested on cooked up grounds by Mangalore Police just because his report on the attack on a Birthday party by Communal Police Consisting of Bajarang Dal-goons with active collaboration of the Mangalore Police exposed the role of the Police in the attack.

The reason for arrest of Naveen was because he spoke the truth and nothing but the truth. When he called the Inspector of the jurisdictational Police Station to inform about the attack, the Inspector concerned did not receive the calls for nearly 15 minutes, but sent his men only after half an hour, things were clear to Naveen and he revealed it to the public.

This proved that the Police had prior information of the attack. Moreover when police reached the site the goons numbering about 30 had trespassed into the house and were assaulting and molesting and were virtually making the girls naked. The entire act was highly criminal but the police were simply enjoying the scene and chit-chatting with the attackers.

The most condemnable matter was, to add insult to injury, that the police did not arrest the culprits but arrested the innocent victims under the able guidance of Mr. Seemanth Kumar the Commissioner of Police who had expressed the same day that he would teach a lessen to Naveen, obviously because he knew that his links and allegiance to a local RSS leader would be exposed.

The grievance of Seemanth Kumar or the problem of Seemanth Kumar is he is not true to his profession; he is acting as per the directives of an RSS leader who stays in Kalladka near Puttur in Mangalore and who has been provoking Hindu youths to rebel and attack minorities. The place where the birthday party was held belongs to a Christian Minority lady.

We appeal to all activists to condemn and protest the arrest all over India. Attacks on the freedom of the press are on the increase, and people must rise in protest. We cannot allow this to happen again.

P.B D'Sa, President of PUCL Karnataka State. ❑

Letter to the Governor and Chief Minister of Karnataka

Copy to: HOME MINISTER, D.G. I.G.P, A.D.G.P PRISONS

It has been reported to us that one Ali and one Saheb, two Prisoners from Pakistan are on hunger strike in Gulbarga Jail because of extreme torture by Prison Officials, Please enquire and ensure that Human Rights of these Prisoners are not violated and take action against the culprits.

P.B D'Sa, President of PUCL Karnataka State. ❑

Note on Constitutional Challenge to Section 66A

(The controversy aroused by the detention of two young girls in a police station during the whole night and showing their arrest in the morning by the Thane police in Maharashtra merely for posting a comment regarding the bandh in Mumbai on the Facebook account on the occasion of the death of Balasaheb Thackeray, even after the remark which could hardly be considered a threat to the law and order or communal in nature was deleted after a Shiv Sena activist threatened one of the girls with dire consequences on telephone, has raised many concerns and questions on the action of the police and once again threatened the right to freedom of speech and expression. The PUCL condemns the act of the police and demands strict action against the erring officials. It is also time to examine the relevant provision in the Information Technology Act, 2000 under which the girls have been booked. Here we present a note on Section 66A of the Act sent by Apar Gupta before this incident took place, which examines the constitutionality of the provision. - **Mahi Pal Singh,** Secretary, PUCL***)***

Section 66A

1. Section 66A of the Information Technology Act, 2000 has been inserted by way of the Information Technology Amendment Act, 2008 which was passed by parliament on 27.10.2009. It reads as follows:

"66A. Punishment for sending offensive messages through communication service, etc.- Any person who sends, by means of a computer resource or a communication device, -

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently makes by making use of such computer resource or a communication device,

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages shall be punishable with imprisonment for a term, which may extend to three years and with fine.

Explanation: For the purposes of this section, terms "Electronic mail" and "Electronic Mail Message" means a

message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message."

Application of Section 66A

2. Section 66A has had a tremendous effect on curbing the fundamental right to freedom of speech and expression. This is most evident in its application to dissent in India especially at the behest of state authorities. Recently some instances have come to light where Section 66A has been applied liberally.

3. Some recent incidents where Section 66A has been applied include:

a. Professor in Kolkata

I. Facts: Jadavpur University professor Ambikesh Mohapatra, was arrested in April, 2011 for posting a cartoon on West Bengal chief minister Mamata Banerjee on the internet. The spoof parodying Satyajit Ray's detective flick, Sonar Kella (The Golden Fortress). The spoof has lines from the film, in which a boy called Mukul is duped by two criminals into believing that they caused a "wicked man" — who is actually a good person — to "vanish". In the spoof, the "wicked man" who has "vanished" is former railway minister Dinesh Trivedi, forced out of office by Banerjee in March.

II. Application of 66A: Based on this, Ambikesh Mohapatra was charged under under u/s 66A of the Information Technology Act, 2000; under Section 500 (defamation); 509 (insulting the modesty of a woman through word, gesture or act) and u/s114 (presence of abettor at the time of commission of offence

b. Aseem Trivedi and Cartoons Against Corruption

i. Facts: Aseem Trivedi was arrested in September, 2012 following a complaint filed against the cartoons authored by him which depicted national symbols in cartoons questioning corruption. Though the specific cartoon in the police complaint on which the arrest was made are not specified, his cartoons can still be accessed on https://www.facebook.com/cartoonsagainstcorruption

ii. Application of 66A: Based on this Aseem was charged under of section 66A of the Information Technology Act, 2000; 124A of the Indian Penal Code, 1860 (sedition); under Prevention of Insults of National Honour Act, 1971.

c. Heena Bakshi post on Chandigrah Traffic Police Webpage

i. Facts: After Heena Bakshi's car was stolen due to alleged harassment she wrote a post on the facebook page of the Chandigarh Traffic Police. The posted contained expletives, though they were not directed on the police directly. The post is extracted below:

""You people kill us with your 'nakaas' n check points. Harassing us if we are just driving around at night. But you have no fucking clue when somebody steals that car from under your eyes. The police started questioning me. If I was making this whole fuck up or if someone actually stole it (sic).""

ii. Application of 66A: Heena Bakshi was booked under Section 66A and Section 67 of the Information Technology Act, 2000.

Validity of Sec. 66A

4. Vagueness and beyond grounds specified under Article 19(2)

a. Offences under Sec. 66A are broad

i. The freedom of speech and expression is a fundamental right contained under Article 19(1)(a) which is subject to the "reasonable restrictions" contained within Article 19(2). Any restriction through law, which does not fall within the grounds for restricting speech as enumerated within Article 19(2), may be struck down as unconstitutional.

ii. Towards this, Sec. 66A of the Information Technology Act, 2000 contains broad phrases, which will not fall within the reasonable restrictions as contained under Article 19(2). The phrases include under, Sec. 66A(1) "grossly offensive" and "menacing character"; Sec. 66A(2) "annoyance, inconvenience." and Sec. 66A(3), "purpose of causing annoyance or inconvenience".

iii. These offences are broadly worded and do not contain any further definition by way of any proviso or explanation. In such case, linking them to the limitations under Article 19(2) becomes problematic as it states that, speech can be limited when, "in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, Public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence"

b. Offences under Sec. 66A are novel and do not contain any limitations

i. The phrases contained under Sec.66A which have been

highlighted are novel and do not find definition through the Information Technology Act, 2000. Further, the phrases do not have analogous provisions existing under other criminal laws or have been developed judicially. They in themselves are a wholly novel set of offences, which have been broadly prescribed under the Information Technology Act, 2000.

ii. Due to the absence of any definitions of "grossly offensive" or "menacing character", the offences under it are without any limitation. The absence of limitations itself is against Article 19(1)(a)/21 and as per the general rule that criminal statutes should be defined certainly and strictly construed. In as much due to the vague phrasing they are ripe for arbitrary application and can be struck down as unconstitutional as being vague.

c. Ingredients of offence under Sec. 66A are not specified

i. It is pertinent to mention that Sec. 66A does not contain one offence, but contains any possible offence which may be applied to any speech or content uploaded online. In as much Sec. 66A lacks any coherence and structure as to the commission of a single offence. Due to this lack of clarity it does not contain any definitive ingredients of an offence which are specified in its clauses.

ii. This is most noticeable in Sec. 66A(2), which contains a list of distinct grounds under which the section can be attracted. It is pertinent to mention that most of the grounds are not even specified for instance, "*annoyance*" or "*inconvenience*" does not contain any ingredients. Moreover, even for grounds for which analogous criminal offences may exist, there is no reference made to such distinct sections. For instance, it states "*criminal intimidation*" but does not make reference to Sec. 503 of the Indian Penal Code, 1860 which contains the offence of criminal intimidation.

5. Violation of constitutional limitations

a. Offence under Sec. 66A results in duplication

i. Not only are the offences under 66A not defined and broadly worded but even when the best construction is placed on them they result in a duplication of offences which are contained under existing penal laws which are adequate to check the commission of crimes and also contain legislative and judicially defined limitations. These limitations are in the sense of the ingredients which must be satisfied for the conviction as well as the safeguards and exceptions which can be pleaded.

ii. For instance, the first case of the Professor in Kolkata where he has been booked under u/s 66A of the Information Technology Act, 2000; under Section 500 (defamation); 509 (insulting the modesty of a woman through word, gesture or act). The ingredients for the offence of defamation as well as insulting the modesty of a woman are clearly contained under the Indian Penal Code. Also, Section 500 of the Indian Penal Code which contains the offence of defamation clearly contains exceptions under which an act of parody would clearly qualify. Sec. 66A due to its vague and broad phrasing and the absence of any ingredients and exceptions results in a more difficult burden which is placed on the accused.

iii. It may also be highlighted that provisions under the Indian Penal Code, 1860 are not limited to acts which done offline or not on an electronic network. Court have repeatedly and purposively interceded the provisions to apply with the advance in technology. Hence, it is evident that Sec. 66A results in duplication of existing penal provisions without any concomitant purpose and only makes the burden on the accused harsher.

b. Offence under Sec. 66A is non-cognizable

i. Another anomalous position is presented as the punishment which is prescribed under Sec. 66A is a term of imprisonment for 3 years. This makes it cognizable and non-bailable. Hence, even though the other provisions of penal law may contain a lesser punishment and hence may be non-cognizable and bailable, in which the accused will have more liberty, with the application of 66A the accused may fear arrest and the police seeking their custody.

ii. For instance, the punishment prescribed under Sec. 500 of the IPC, which contains the offence of defamation, is only for a period of two years. Hence it is non-cognizable and bailable. In such cases when a FIR is registered under it the police does not seek custody. However if the police also applies Sec. 66A to the same FIR then it can arrest the accused. This has happened in the case of the Professor in Kolkatta. Another instance is the case of Mangal Deswal, an Animal welfare officer who has been booked both under Sec. 500 of the IPC and 66A of the Information Technology Act.

c. Offence under Sec. 66A increases jail terms for existing offences

i. In addition to duplication of existing offence, Sec. 66A increases the jail terms excessively of existing offences. In the case of Heena Bakshi she could have been prosecuted under Sec. 294 of the Indian Penal Code, 1860 was most properly applicable as it contains a punishment for obscene songs and gestures. On conviction of an offence under Sec. 294 the punishment, which is prescribed, is an imprisonment for a period of three years. However, under Sec. 66A under which she is now booked, she can be now imprisoned for a period of 3 years.

d. Offence under Sec. 66A applies only to online speech

i. Sec. 66A as a section only applies to online speech. This presents a problematic outcome where the same speech may be legal offline but may be illegal online. This has the tendency to place an unreasonable restraint on a medium without a valid differentia or purpose.

It is my opinion that Section 66A of the Information Technology Act, 2000 due to its broad phrasing does not qualify within the reasonable restrictions as enumerated within Article 19(2) and even otherwise due to its arbitrariness offends Articles 14, 19 and 21 of the constitution of India. Further, the actual effects of the legislation have been demonstrated in actual cases where law enforcement and state governments have utilized the provision when recourse to other penal provisions fails. I suggest that a constitutional challenge to the provision by a civil rights organization seeking to narrow its scope and to seek judicial directions is necessary.

Apar Gupta ❑

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Press Statement: 20th November 2012

PUDR Condemning the Arrest of Facebook Users Questioning Shutdown of Mumbai

People's Union for Democratic Rights strongly condemns the arrest of two facebook users, Shaheen Dhada who questioned the total shut down of Mumbai for Bal Thakeray's funeral on Sunday, 18th November 2012, and Rini Shrinivasan, who indicated that she agrees with the post. Though they have been released on bail, the duo were initially charged under S. 295-A, IPC [outraging religious feelings] and S. 66A, IT Act [sending offensive messages through communication services etc.]. On 19th November, a rampaging mob, comprising 40-50 cadres of the Shiv Sena vandalized the clinic of Dr. Abdul Dhada, uncle of Shaheen Dhada. Despite withdrawing her post, the two were questioned by the police and arrested the following day, 20th November. Criticisms over the arrest compelled the police to modify the offence from u/s 295-A to S. 505 IPC [statement promoting and creating enmity and hatred among classes], order an internal probe into the matter and, detain a 'few persons' in connection with the incident of vandalism in Dr. Dhada's clinic.

Ironically, the arrests prove the validity of the facebook comment posted by Dhada. The news media's uncritical representation of the Mumbai shutdown after Thakeray's death as a spontaneous one resulting from 'respect' is called into question by the severity of the police action against the two women. If the Palghar shakha of the Shiv Sena had not reacted as strongly to Dhada's comment, perhaps the enforcement of the shutdown by the state machinery may never have been revealed.

Beginning with heavy police deployment when the rumour of Thakeray's death emerged late last week, and culminating in the Mumbai Police's call on Saturday evening to stay off roads and trains unless there is an emergency, very little of the shutdown was about 'respect'. It was mainly about fear. Mumbai citizens chose to stay home after having been beaten into powerlessness by years of hooliganism by the Shiv Sena, acting in collusion with the state machinery.

The right to freedom of expression is a fundamental right granted to all citizens and its brazen and illegal violation by officials of the state in collusion with fascist organizations is a crime. The fact that posting a critical comment online can lead to such repression is an indication of the extent of the Shiv Sena control and clout over the state administration. It is shameful that the young women have had to withdraw their post, even apologize for it, in a place where fascist goons have legitimated, circulated and acted upon the hate speeches of Bal Thakeray and his followers.

PUDR demands:

- **Immediate revocation of charges against Dhada and Shrinivasan**
- **Criminal proceedings against officials involved in the arrests**
- **Compensation to Dr. Dhada for financial losses**
- **Compensation to the two women for harassment and trauma**
- **Criminal proceedings against Shiv Sena activists involved in vandalism and intimidation.**

Preeti Chauhan, Paramjeet Singh, Secretaries, PUDR ❑

Regd. Office :
270-A, Patparganj
Opp. Anandlok Apartments
Mayur Vihar-I, Delhi-110091
Tel.: 22750014
Fax:(PP) 42151459
E-mail : puclnat@gmail.com
puclnat@yahoo.com
Website : www.pucl.org

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