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India's Judiciary as the Protector of Life and Personal Liberty: A Citizen's View

Prabhakar Sinha

Art. 21 of the Constitution guarantees the right to life and personal liberty. The judiciary has been entrusted with the sacred duty of ensuring that they are not violated. To effectively discharge this duty the apex court has been empowered to entertain writ petitions directly from the affected citizens and issue necessary directions to the State. The High Courts have also been vested with similar power. In fact, Art.32, which empowers the citizens to directly approach the apex court against violation of fundamental rights, has itself been made a fundamental right. Thus, the framers of the Constitution accorded the highest possible priority to the right to life and personal liberty of the people, and made sincere efforts to ensure their protection against arbitrary and illegitimate attack by the Executive by vesting enormous power in the judiciary to carry out the mandate of the Constitution.

But more than six decades after India became a Republic, the hope of the framers of the Constitution that the judiciary would live up to their expectation stands belied and the trust reposed in it negated. Though estimates of extrajudicial killings by different agencies may vary, even the lower number appears as an ugly blot on democratic India's face. According to Human Rights Watch, most of the 10000 (ten thousand) persons killed in encounters in Punjab since 1980 were victims of killing in fake encounters. Similarly, Kashmir Bar Association President Mian Abdul Quayoom, has claimed that most of the 10000 (ten thousand) persons who went missing in J & K were killed in fake encounters. The discovery of mass cremations and mass graves in Punjab and J & K lends credence to these statements. Extrajudicial killings continue to be carried on in the states which are facing insurgency or Maoists' challenge. It is not easy to quantify the killings due to the policy of cover up followed by the governments concerned, which have been surreptitiously sanctioning these extrajudicial killings. Besides these, the killing of innocent unarmed persons by the police and security forces are done in broad day light without any sense of shame or guilt. Firing on the demonstrations of unarmed persons killing and maiming them in retaliation for pelting of stones or hurling of brickbats at the police or security forces has been sanctioned as policy justifying the killings in the name of self defence. Unlike the killing in fake encounters, these murders, which have become the order of the day, are not even treated as an issue worth a meaningful discussion by the political class.

The attack on personal liberty of the people under ordinary and extraordinary

laws has been going on even after the declaration of India as a Republic and adoption of the Constitution guaranteeing the right to life and personal liberty. The Preventive Detention Act was enacted in 1950 and continued till 1969 concurrently with the Defence of India Act (DIA) for a number of years. The DIA was introduced in 1962 in the aftermath of the Chinese invasion, but continued till 1969 though the conflict with China had ended years ago. The notorious MISA (Maintenance of Internal Security Act) was enacted in 1971 under the pretext of maintaining internal security. However, it was later repealed in 1978 by the Janata Party's Government whose members had been its victim only to be resurrected in a more draconian 'avatar' as The National Security Act, 1980 by Indira Gandhi. The TADA [Terrorist and Disruptive Activities (Prevention) Act] was introduced in 1985 to curb the Khalistan movement in Punjab, but in 1987 it was extended to cover the whole of the country. It was repealed in 1995 when there was unanimity among the political parties that it had been grossly and widely misused. However, it was replaced by an equally or more draconian POTA (The Prevention of Terrorism Act) which was first introduced in 2001 as an ordinance. Much earlier in 1967, was enacted UAPA [The Unlawful Activities Prevention) Act], which was amended to make it more ferocious. In addition, the states have been enacting and misusing a plethora of their own draconian laws. A class by itself is the AFSPA (The Armed Forces Special Powers Act, 1958) spelling death and disaster in the Northeastern States and Jammu and Kashmir. Under it, the officers have been given a license to kill with impunity by simply declaring that they did it in the course of discharging their duty.

Indira Gandhi misused MISA and detained 35,000 persons including all the leaders of the of opposition to protect her throne against public pressure asking her to step down as Prime Minister following the judgment of Allahabad High Court holding her guilty of corrupt electoral practice and unseating her. 76,000 persons were detained under TADA all over the country including in the states where there was no terrorism. Of these, 19,000 persons were detained in Gujarat, where there was no trace of terrorism at the time. Out of the 76,000 persons arrested under TADA only 1% could be convicted though the onus to prove their innocence was on the accused. POTA was similarly misused with impunity. The classic example of misuse of the law is the detention of Vaiko, a Tamil Nadu M.P. and Raghuraj Pratap Singh, an M.L.A. from U.P. Both were detained because Jayalalithaa and Mayawati the C.M. of TN and UP respectively had some scores to settle with them. None of the two was a terrorist.

It is public knowledge that people continue to be killed in fake encounters. The draconian and ordinary laws continue to be misused at such a massive scale that even the conscience of the politicians is temporarily outraged as happened in the case of MISA, TADA and POTA, but the conscience of the judiciary remains unaffected. In fact, the outrage in the Parliament at the massive misuse of these laws is a severe and serious indictment of the judiciary, which declared them constitutional with full knowledge that they have been playing havoc with the life and personal liberty of the people and will continue to do the same if they are not de-fanged by introducing foolproof safeguards against their misuse and severe punishment to the recalcitrant misusing them.

It is beyond a layman to judge the (legal) merit of the verdicts of the apex court, and to do so would also be an exercise in futility since it is the apex court which has the authority to say the last word on any law. However, a citizen has the same right to judge the role and performance of the judiciary as a wing of the State as he has of judging the role of the Executive and the Legislature. The Constitution guarantees the right to life and personal liberty to the people and has entrusted the judiciary, specially the apex court with, the responsibility of protecting them. Thus, it is a citizen's right to demand from the Judiciary that they must carry out the mandate of the Constitution to protect his life and personal liberty instead of giving sanction to the laws and practices meant to destroy them. If the Judiciary had paid due attention to the intent of the framers of the Constitution, they would have realized that the constituent Assembly earnestly wanted the right enshrined under Art. 21 fully protected. It would be insulting to hold that the framers of the Constitution deliberately played a fraud on the people and intended to give a license to the Executive to arm itself with draconian laws to deprive the people of their life and personal liberty while appearing to be anxious to protect them. Had the judiciary been of the view that in any interpretation of the law the end could not be sacrificed for the means, they would have quashed any law or practice with the potential to deprive the people of their life and personal liberty. The effect of the verdicts of the apex court on MISA, TADA, POTA, UAPA and AFSPA has given the impression that Art. 21 mandates that the State should first arm itself with draconian laws and then take the life and personal liberty of the people. No interpretation of Art.21, which states that 'no person shall be deprived of his life or personal liberty except according to the procedure established by law' can be more perverse.

There is no doubt that the judiciary has been acting in good faith, but it has not been consistent in its approach. Generally, it has tended to go by the letter of the law sacrificing the spirit and its larger goal, but in some cases it has so

departed from the letter of the Constitution that one finds it impossible to accept that the judgment follows the Constitution. In 1976, the apex court taking the literal meaning of the relevant Article of the Constitution held that (ADM Jabalpur v Shukla Shivakant) during the emergency when Art. 21 was suspended, a person lost his right to life and personal liberty, and the State could deprive him of them at its sweet will. Similarly, in 1982 (S.P.Gupta v Union of India) the apex court held that in the appointment of the judges of the High Court, the opinion of the Chief Justice did not enjoy any primacy over the opinion of the other two authorities to be consulted. It was also held that the President was only required to consult the Chief Justice of India and the others concerned, but was free to act disregarding their opinion. However, in the 1993 judgment (The Advocates on Record Association case) the apex court took a U-turn and held that the President was bound by the recommendation of the Chief Justice of India representing the view of the collegiums consisting of the CJI and other two senior-most judges of the Supreme Court. What is most unusual is the interpretation of the expression Chief Justice of India to mean the CJI and two other senior-most judges of the apex court. This was virtually rewriting the Constitution. Earlier also, the Supreme Court had held (Keshavanand Bharti, 1973) that Parliament could amend any part of the Constitution but without adversely affecting the 'Basic features' of the Constitution. The expression 'basic feature' does not occur anywhere in the Constitution and is an innovation or legal fiction. In fact, the basic features have not yet been exhaustively enumerated and new ones may be added by the apex court in the future.

It should be clear from these instances that the judiciary has not been consistently conservative in interpreting the Constitution and statutes and has occasionally taken the radical step of virtually rewriting the Constitution where it felt such a drastic step was required in larger public interest. Thus, if the people continue to be killed in fake encounters or disappearing without let and hindrance or are languishing in jail under the dreaded draconian laws, it is because the judiciary does not accord the same value to the life and personal liberty of the people which it accorded to the issues for which it virtually rewrote the Constitution. Thus, the blame for depriving us of our life and personal liberty must be shared by the judiciary which has not only failed to protect them, but has declared draconian laws and practices constitutional and lawful without de-fanging them to eliminate the possibility of their unbridled misuse. The life and personal liberty of the people are far more precious than the principles and values the apex court tried to save by virtually rewriting the constitution on several occasions, and they must be protected. They can be protected without rewriting the Constitution. ❑

From the Archives:

Supreme Court Judgement on Armed Forces (Special Powers) Act: Need for Debate

S. Ravindra Bhat, Advocate, Supreme Court

[Since its enactment the Armed Forces (Special Powers) Act, 1958 remains a very controversial Act, like Section 124A (IPC) known as the Sedition Law, the UAPA (the new avatar of POTA, TADA, MISA and the like), and several Special Security and Order Laws in force in various States), all of which have been blatantly misused to gag the dissenting voice of the people's movements. The AFSPA still continues to be a major irritant in several parts of the country, including in Jammu and Kashmir where its withdrawal has been demanded from the State even by the Chief Minister, Omar Abdullah, and not only Irom Sharmila, who has been on hunger strike in Manipur for more than ten years but also human rights activists all over the country have been continuously protesting against its continuance, describing it as one of the most 'draconian' laws, it becomes imperative to revisit the arguments given by the apex Court for its continuance in its judgement which came long after the petition was initially filed – so that the role of the Judiciary as the protector of the Fundamental and human rights of the people can be reassessed. The following article, which appeared in the PUCL Bulletin, January 1998 is being reproduced here as it examines the issues involved in depth. It also brings into focus the issue of continuance of other 'gag' laws against which also the democratic, and rights conscious people have been protesting, though their protests go unheard by the executive, the legislative and also the judicial wing of the State.

1 *Christof Heyns, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, who visited India between 19-30 March 2012, recommending repeal of the AFSPA in his press note released at the conclusion of his visit, also observed*:

"The Armed Forces are deployed in so-called 'disturbed areas' in the North East and in Jammu and Kashmir.

The Armed Forces (Special Powers) Act (AFSPA) in effect allows the state to override rights in the 'disturbed areas' in a much more intrusive way than would be the case under a state of emergency, since the right to life is in effect suspended, and this is done without the safeguards applicable to states of emergency.

AFSPA – continuously in force since 1958 (different states have their own versions as well) in the North East and since 1990 in Jammu and Kashmir – has become a symbol of

excessive state power. I have heard extensive evidence of action taken under this law that resulted in innocent lives being lost, in Jammu and Kashmir and in Assam, where witnesses from neighbouring states also assembled. This law was described to me as 'hated' and a member of a state human rights commission called it 'draconian'.

A law such as AFSPA has no role to play in a democracy and should be scrapped. The repeal of this law will not only bring domestic law more in line with international standards, but also send out a powerful message that instead of a military approach the government is committed to respect for the right to life of all people of the country.

The government-appointed Jeevan Reddy Committee and the Administrative Reform Commission have both called for its repeal; as have political leaders of states where the Act applies. The NHRC told me during our meeting that they are in favour of its repeal and that they have commented in their submission to the 2012 UPR that AFSPA often leads to the violation of human rights. It is therefore difficult to understand how the Supreme Court, which has been so progressive other areas, also concerning the right to life, could have ruled in 1997 that AFSPA did not violate the Constitution – although they tried, seemingly with little success, to mitigate its impact by issuing guidelines on how it is to be implemented.

AFSPA clearly violates International Law. A number of UN treaty bodies have pronounced it to be in violation of International Law, namely HRC (1997), CEDAW (2007), CERD (2007), and CESCR (2008). My predecessor has also called for its repeal.

The widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict with a concomitant permissive approach in respect of the use of lethal force. This is also difficult to reconcile in the long run with India's insistence that it is not engaged in armed conflict.

Accountability is circumvented by invoking AFSPA's requirement of obtaining prior sanction from the Central government before any civil prosecutions can be initiated against armed forces personnel. The information received through Right to Information applications, shows that this immunity provision effectively blocks any prosecution of members of the armed forces. The Centre has for example never granted sanction for civil prosecution of a member of the armed forces in Jammu and Kashmir."

Besides this, Christof Heyns has recommended to the Indian State to: "Repeal the following laws or bring them otherwise into conformity with the applicable international standards, including the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and the Basic Principles on Extrajudicial Executions: Jammu and Kashmir Public Safety Act; Jammu and Kashmir Disturbed Areas Act, 2005; Section 197 of the Code of Criminal Procedure Act; provisions of Unlawful Activities Prevention Act, 1967; and the Chhattisgarh Special Public Security Act 2005."

– Mahi Pal Singh]

The recent Judgement of the Supreme Court in the petitions filed by Naga People's Movement of Human Rights, in which the constitutional validity of the provisions of the Armed forces (Special Powers) Act, 1958 has been considered, needs to be debated, as it raises new dimensions in the dialogue on civil rights.

The occasion for examination of the validity of the Act arose out of a letter-petition addressed to the Court in 1982. That was converted into a petition under Article 32. A few other petitions were also filed. The appeals from decisions of the Guwahati High Court were also directed to be taken up. Interestingly, the reference to five-Judge Bench, made sometimes in 1983, languished. The Court was able to find time to hear these matters after 14 years. Such delays and their effect on the enforcement of fundamental rights, is a matter of serious concern requiring critical examination.

The matters raised issues of constitutional import. For reasons of space I cannot examine them here. The provisions were challenged broadly on grounds of legislative competence – violation of Part XVII (which contains emergency provisions) of the Constitution. The plea was that the Act amounted to legislating or institutionalising an internal emergency, sans the attendant safeguards of affirmation and review by a special majority in Parliament, and a definitive time frame. The other grounds of challenge included the plea that the Act conferred independent powers on the Armed Forces and therefore supplanted, rater than aiding or supplementing civil power.

The Court has ruled that none of the provisions of the Act can be charactertised as arbitrary. It has also held that the provisions themselves contain sufficient guidelines for the exercise of power conferred on the armed forces.

The most important part of the Judgement, which is essentially the focus of the civil rights discourse, deals with the powers contained in Sections 4 and 5 of the Act, and the immunities enacted in Section 6.

Section 4, broadly speaking, empowers a Commissioned officer, non-commissioned officer, or Warrant Officer or any person of equivalent rank to act as specified below:

(a) If the concerned officer is of opinion that it is necessary to maintain public order, after giving such due warning as he may consider necessary "fire upon, or use such force, even to the causing of death" against any person acting in contravention of any law or order in force, in a disturbed area, prohibiting assembly of five or more persons, or the carrying of weapons or things capable of being used as weapons;

(b) If he is of opinion to destroy any arms dump, or fortified area, or any structure from where armed attacks are made or likely to be made, or any structure used as framing camps for armed volunteers or utilized as hide-out by armed gangs or absconder wanted for any offence;

(c) Arrest any person without warrant who has, or is likely to commit a cognizable offence, or against whom reasonable suspicion exists for

having committed, or is about to commit such an offence, and use such force as is necessary to effect the arrest;
(d) Enter, and search without warrant any premises to make such arrest, or to recover any person wrongfully restrained or confined, and to recover arms, explosives, etc. kept unlawfully, and use such force as it necessary.
The provision, conferring sweeping powers on members of the armed forces, was challenged as arbitrary, violative of the right to life, lacking in fair procedure, and procedurally unreasonable. The Court has repelled the change, and felt that:
(a) Legislative guideline controlling the use of force and power, in the provision, particularly Section 4(a) exists. The Court has held that the precondition for use of power is existence of either a prohibitory order under section 144 Cr. P. C., or a notification prohibiting carrying of arms, under the Arms Act. The Court has also held that a list of guidelines, known as Do's and Don'ts, issued by army authorities can be read as part of the guidelines which further restrict the condition for use of powers, under Section 4 (a) to (d). A direction to incorporate guidelines contained in other decisions of the Court in the list of "Do's and Don'ts" has been made. (b) The Court has held that the provisions of Criminal Procedure Code, which deal with search and seizure, require to be observed while exercising power under Section 4 (d).
What is singularly disturbing about the decision is not the question it has addressed, but rather the issues it has left unanswered. The provision as well as list of "Do's and Don'ts" (the incorporation of which in the Act is part of a salvaging effort – since these guidelines are not statutory, nor does a provision in the Act exist to frame Rules – contain no mechanism of impartial grievance redressal. The Court has observed that violation of Do's and Don'ts would render the person concerned liable for action under the Army Act. That raised further questions. The Army Act, and other enactments such as BSF Act, CRPF Act etc. concern themselves primarily with the raising of the force, and matters of discipline, etc. They are complete codes, enacted on the assumption that contact between the forces, and the citizenry is minimal. Such an assumption, however, cannot extend to disturbed areas, where the Act is applied, since normal day-to-day lives of citizens are affected by the armed forces, which maintain contact with the citizenry. Therefore, the need to have an independent, and impartial adjudicatory mechanism that looks into the role of such armed forces, while exercising powers under the Act, becomes critical. Similarly no procedure is prescribed about matters required to be done before exercise of such powers, either as conditions precedent, or after the event, as in other parts of the country, where at each step, the police and civil authorities are required to document, and are called to account for every action concerning personal liberties. Such provisions are, for instance, contained in the Criminal Procedure Code, requiring documentation of arrest, investigation and reporting of each stage of step to a judicial authority. Such or a similar body of regulations alone can amount to safeguards ensuring a citizen's life and liberties, since the authority would be accountable, as a matter of law, to an impartial judicial tribunal. The judgement has however, left the entire matter regarding investigation into the use/abuse of powers to the authorities of the armed forces themselves. The factors which may impel such authorities to take a decision to take action in such complaints, and the procedure to be followed vis-à-vis the citizen, in those instances, are not spelt out. As a matter of fact, the procedure for a private citizen's right to move army authorities for justice simply does not exist. In any given case, of alleged torture, or wrongful causing of death, neither the 'Do's and Don'ts' extracted in the Judgement, nor the provisions of the Act require an investigation and accounting, nor are the army authorities obliged to take action. The result is that there is no procedure to compel army authorities to take action, or inquire into complaints, if they decide not to. Another fact of this problem is that the authorities under the Army Act and similar enactment are primarily superior officers. The adjudicatory mechanism prescribed under those enactments is aimed at the objectives of those special Acts, viz. maintenance of discipline. Hence, the nature of the Tribunal cannot be conceivably equated with those which a citizen has a right to demand. Such tribunals or bodies may pass muster, in the event of challenge by members of armed forces, since they cannot claim all fundamental rights, in view of Article 33. However, such would not be the case with the citizen, whose right to life, and right against arbitrariness includes the Rule of Law, a crucial component of which is excess to an independent and efficacious justice delivery system. These areas have not been addressed by the Court.
The judgement proceeds on certain assumptions, all of which appear to be well founded. For instance, the Court has held that the army and civil authorities have to act in co-operation. There is no provision in the Act requiring such obligation; it does not even enable subordinate legislation. In the absence of any definite guidelines, disclosed or existing, the Act would be used as it stands. It confers independent powers. This, coupled with the fact that the armed forces strictly follow the chain of command rule, whereby any officer or member of the force is required to obey the orders of his superiors in the unit/group only, and none else, is a stark reality which the court did not take into account. The practical result is that the exhortation of civil and army personnel will co-operate would be difficult to achieve, if past instances are a pointer. As armed forces

personnel, on his assessment of a particular situation, may direct firing upon an assembly of persons. That assessment may not be agreed to by the local District Magistrate. Yet, the members of the forces would be obliged to fire, and obey their superior's orders, till he decides otherwise. This is best exemplified by instances like the heavy and totally uncalled for mortar shelling of Kohima by an army convoy, which misread a tyre-burst as an ambush by militants. The civil authorities including the DIG called for restraint, and stoppage of shelling which was disregarded, since the officers in the army did not agree with that assessment. This led to loss of innocent lives, and injury to several others. Equally, the court's observation that armed forces personnel should use minimum force, ignores the training received by them, which is aimed at battle-preparedness at all times. Regarding concepts like use of minimum force and use of force, any responsible officer would agree that such a requirement would undermine the battle preparedness, and also the morale of the forces. This important aspect was essential to be kept in mind while examining the validity of Section 4.

The petitions filed before the Court had raised factual grievances, and documented instances of abuse of powers under the Act. The documents included the reports of judicial commissions, as well as reports by human rights bodies. Details were given. The Union of India made a statement denying the instances, and also stated that wherever instances were found to be correct, remedial action had been taken. The Court, beyond recording these, has not entered any verdict. It has merely left the matter to the authorities. In the event of no outcome the victims are expected to make yet another litigative foray, the outcome of which would not only be unknown, but in all probability, also equally delayed.

The judgment contains a few silver linings, such as the declaration that a notification declaring an area as disturbed, cannot continue indefinitely, and has to be reviewed every six months; that armed forces should not be deployed for prolonged periods; the direction to the army and Central Government to update the 'Do's and Don'ts' to bring them in line with other decisions of the Court; the requirement of stating reasons while disposing applications for sanction (to prosecute particularly the members of the forces, under section 6 of the Act). The practical impact of these directions is a matter to be seen in times to come.

The reluctance of the court to interfere with powers at a time when it has stepped in and shown willingness to expand the citizen's rights, in the past few years, in the arena of personal liberties, renders a discordant note. It is unfortunate that such a discordant note should have come during the nation's 50th year of independence.

(*Published in the* PUCL Bulletin*, January 1998*) ❑

PUDR Press Release: 5 March 2012

Impunity as the Flip Side of Normalcy

People's Union for Democratic Rights is outraged at the brazen claim advanced by the Indian Army that let alone sanction for prosecution, no civil administration can even register a FIR against army personnel without sanction of the Central government. During the hearing on CBI's complaint against the army for shielding their personnel accused of fake encounter (following the Chattisinghpora massacre of thirty-six Sikhs on 19-20 March 2000), the Supreme Court questioned the army about it. The Court asked why the Army neither let the civil court prosecute seven officers and jawans accused of killing five locals of Pathribal nor court martial them. In response, the counsel for the army reportedly said, 'We cannot take over the case. The armed forces are bound to protect their men.' Thus, twelve years after the crime was committed, the apex court is deciding whether or not the army is correct in shielding killers.

The Pathribal killing of 25 March 2000 has had a chequered history, not the least because the army fought to prevent CBI from prosecuting its personnel. Nine days later, on 3 April 2000, people protesting Pathribal killings were fired at by the CRPF at Barakpora, killing seven and injuring fifteen persons. Two days later, the National Conference government ordered an enquiry and DNA samples were taken. In March 2002, it was found that the samples had been tampered with. By April 2002, it became clear that the five killed were not 'foreigners', let alone militants, but only five out of seventeen local villagers picked up between 21-24 March 2000 by the army in the name of tracking the culprits of the Chattisinghpora massacre of Sikhs. It was only in November 2002 that the Justice GA Kuchay Commission was constituted to enquire into the entire incident and, following its report in December 2002, the state government asked CBI in January 2003 to take up the investigation. CBI submitted its finding accusing five army personnel of seven Rashtriya Rifles including one Braigadier, a Lt Colonel and two Majors, apart from a Subedar, of the heinous crime. Once CBI filed a charge-sheet and prosecution was to begin in the sessions court, the Army challenged it on the grounds that the Central government's sanction had not been obtained for prosecuting its personnel. And it is this matter which is being heard by the apex court twelve years after the incident.

This case once again brings focus

on the critical issue of impunity provided by the Armed Forces Special Powers Act. A debate has been raging around whether to withdraw AFSPA from four out of the twenty-two districts where it is in force. On 21 October 2011, the chief minister of Jammu and Kashmir had famously said that 'within the next few days', AFSPA and Disturbed Area Act would be revoked from four districts. He also claimed that once the council of ministers advise the state Governor to revoke AFSPA and DAA, he is obliged to follow that advice. However, the union law ministry held otherwise, that the Governor of J&K is empowered to overrule any decision on this matter offered by the council of ministers and that on his/her discretion the Governor can take a decision about whether to remove AFSPA and DAA. This has also lifted the veil of autonomy which J&K allegedly enjoys under Article 370.

With even partial lifting of AFSPA and DAA ruled out and with the army pitching for immunity from investigation of its role in an incident by a civilian agency, the issue of impunity as well as de-militarisation of J&K, i.e., rollback of extraordinary laws and reduction as well as withdrawal of Armed Force of the Union from so called 'internal security' duties has been pushed into a distant future.

PUDR is aware that mere withdrawal of AFSPA will in itself not end the state of impunity. The regime of impunity covers the state police force whose senior most officer implicated in custodial killing escapes prosecution because no magistrate dares order registration of the crime naming him. The same force also claim that there is 'social sanction' for extra-judicial killings such as that of human rights activist Jalil Andrabi. They also believe in 'brain draining' Kashmiri youth of any idea of 'Azaadi'. This highlights that 'the more things change, the more they remain the same'. Neither is there any movement to resolve the J&K dispute nor is there any relaxation in the tight control the authorities maintain where freedom of expression, assembly and association are concerned. The obtrusive security force presence still maintains surveillance of public and private lives of people.

PUDR, therefore, expresses its deep concern at the policy of drift that has taken over and apathy of the authorities when it comes to a crackdown on acts of brutal crime committed by security forces. This has come to define India's policy on J&K where even the elected representatives or the representative government are powerless to bring the perpetrators of heinous crimes to justice and helpless to end the state of impunity. This brings out how a colonial approach seems to prevail where J&K is concerned, one where constitutional propriety and political wisdom are given a go-by in order, as the army's counter-insurgency doctrine suggests, in order to 'transform the will and attitude' of the people.

Paramjeet Singh and **Preeti Chauhan**, Secretaries PUDR ❑

Press Statement on the Uproar in Parliament over Ambedkar Cartoon

The uproar in the Parliament, the demand for action against those responsible for the inclusion of a cartoon published in 1949 in an NCERT text book and vandalisation of Prof. Palshikar's office (who was the Chief Adviser of the NCERT) do not augur well for the future of democracy in India. No democracy can survive without a deep commitment to the spirit of tolerance, and it is this spirit of tolerance which is being attacked in the Parliament. While one can appreciate the feeling of outrage of some persons at the cartoon, one cannot accept their right to attack freedom of speech and expression and strike at the very root of democracy. Such individuals may be reminded that many of them themselves have exercised their right to free speech and expression by speech and acts against Mahatma Gandhi with impunity though Mahatma Gandhi is revered by an overwhelming number of people all over the world. They were right in exercising their right but are absolutely wrong in denying the same to the others. The members of Parliament and the others demanding action against all and sundry are not aware of the irony that while claiming to stand up for Ambedkar, they are destroying the values for which he stood and got enshrined in the Constitution. PUCL urges the members of Parliament involved to show more maturity and respect for democratic values and refrain from childish behaviour unbecoming of Members of Parliament.

Prabhakar Sinha,
President, PUCL National,
May 15, 2012 ❑

Regarding Enrollment of Members

PUCL National office gets a large number of requests for membership. This should please be noted that the PUCL National office does not enroll any member directly except at the instance of the National President/ General Secretary as an exception. Prospective members are advised to contact their respective state or district unit for being enrolled as a member of the organisation. - **General Secretary,** PUCL National ❑

The Cartoon Controversy - A Severe Blow to Democracy

Rajindar Sachar

The country has just witnessed a Shakespearan tragedy when both Houses of Parliament self-patted themselves and resolved to keep the dignity of Parliament at the highest. The members were, however, forgetful of the shameful furore in Parliament on May 11 over the reproduction of a cartoon in 1949 by Shankar depicting the delay in finalising the Constitution (which was done on November 26, 1949) and which has been included in the NCERT textbooks on political science of Class XI — the cartoon was alleged to have insulted Nehru and Dr Ambedkar.

The more worrying aspect was the almost craven response of the HRD Minister that he was directing the NCERT to stop the distribution of these textbooks and to review the same. He even gratuitously said that the government would review all the cartoons and this year the present textbooks would not be distributed. How sad? The sneezing irrelevant remark of a legislator is enough to give them shivers down the spine and to agree to delete the cartoons, ignoring the fact that these had been selected by two of our respected social scientists. Such is the panic of caste-based politics that apparently even sober legislators of all parties jumped in to support the suppression of the cartoon oblivious to the fact that both Nehru and Ambedkar took this cartoon as an expression of a right of free speech guaranteed to Indian citizens. It may help the legislators to know that Nehru had inaugurated Shankar's Weekly much earlier in 1948 and encouraged the cartoonist by openly telling him, "Do not spare me, Shankar". And Shankar went about the work but never did Pt Nehru or Parliament take any objection.

It was a surprisingly puerile and deliberately provocative suggestion by a lone Member of Parliament (picked up immediately by all the parties, panic-ridden as they are by election phobia) that the cartoon should be treated as a casteist slur on Ambedkar. How ironic that these self-proclaimed admirers of Ambedkar want to pigeon-hole him as a Dalit leader while in reality Dr Ambedkar's contribution to Constitution-making has been universally recognised and, in fact, was openly praised and complimented when President Rajendra Prasad, speaking during the closing address in the Constituent Assembly, said, "We could never make a decision which was or could be so right as when we put him on drafting committee and made him a Chairman. He has added lustre to the work which he has done."

The response of Dr Ambedkar was equally gracious when he said, "I feel so overwhelmed that I cannot find adequate words to express my gratitude to them. I am grateful to the Constituent Assembly reposing in me so much trust and confidence and have chosen me as their instrument and given me this opportunity of serving the country." How can then small self-appointed Dalit leaders dare to say that the contribution of Dr Ambedkar was not fully recognised during his lifetime.

Let me remind everyone that Dr Lohia, himself one of the tallest leaders of India, had openly stated that he considered Dr Ambedkar as the next biggest leader after Mahatma Gandhi that modern India had produced.

It pains one to say that while the country is so proud of its Fundamental Rights, including the Right of Speech and Press, the discussion in Parliament should have revolved on how to suppress the freedom of the Press by deleting the cartoon and also interfering with the freedom of the students to know about the trends and currents at the time the Constitution was being framed. This action of Parliament is antithetical to the strongly held view of Pt Nehru who said, "You do not change anything, you merely suppress the public manifestation of certain things thereby causing the idea and thought underlying them to spread further."

The argument of the parliamentarians that these cartoons will spread a wrong notion of the politicians is a self-serving congratulatory observation and is an insult to the independent and wise thinking of teachers and students themselves. Have we not already had in our country the unfortunate results of yielding to the threats of goons in banning the globally recognised paintings of Hussain who unfortunately, even after his death, could not have his paintings shown at an exhibition arranged by a government-appointed body on the unacceptable excuse that the organisers could not save the paintings from being damaged at the instance of some unruly elements.

The intolerance against certain opinions is spoiling the free atmosphere at the universities as was demonstrated when Delhi University banned the teaching of three Ramayanas, a very researched and documented version by a well-known historian. The present discussion, if it leads to the deletion of these passages from the textbooks, would strike at one of our proudest Fundamental Right of Freedom of Speech, a constituent of democracy. It is well to remind everyone what John Stuart Mill in his essay on liberty expressed the need “for allowing even erroneous opinions to be expressed on the ground that the correct ones become more firmly established by what may

be called the dialectical process of a struggle with wrong ones which expose errors."

The Supreme Court has also emphasised that "intellectual advances made by our civilisation would have been impossible without freedom of speech and expression. The court has drawn its strength from the well-known expression of democratic faith expressed by the great French philosopher, Voltaire, "I do not agree with a word you say but I will defend to death your right to say it." The court has reminded that "Champions of human freedom of thought and expression through ages have relied that intellectual paralysis creeps over society which denies, in however subtle form, due freedom of thought and expression to its members."

Dr Ambedkar was conscious of the danger to the dignity of an individual in our political system and gave the warning thus: "There is nothing wrong in being grateful to great men who have rendered life-long services to the country. But there are limits to gratefulness….. no nation can be grateful at the cost of liberty." This caution is far more necessary in the case of India than in the case of any other country. For in India Bhakti or what may be called path of devotion or hero worship plays a part in its politics unlike in any other country in the world. Bhakti in religion may be a road to the salvation of the soul. But in politics Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship". ❑

Organisational Advisory

It has been noticed that some members/persons have been sending slanderous emails aimed at character assassinations of some PUCL members or functionaries to the National PUCL as well as to a large number of persons not connected with our organization. Such malicious communications are incompatible with the culture of any organization of decent and civilized persons and are totally unacceptable. Obsessed with the malicious intent of tarnishing the image of their targets, the senders of these mails have tarnished the image of PUCL by creating a totally wrong impression that the organization harbours such persons in its fold. PUCL would welcome any criticism of its functionaries and members made without malice in a decent language , tone and temper but would not entertain communications made in an unacceptable language or containing slanderous material aimed at character assassination.

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

A New Opening for Abolition of Death Penalty

Rajindar Sachar

India is persisting in retaining death penalty notwithstanding that so far 139 countries, from all regions of the world, have abolished the death penalty and 150 have put a moratorium on death penalty. UN has passed a resolution on 20th September, 2010 appealing to all nations to observe moratorium on death penalty if they are not agreeable to pass a legislation abolishing death penalty.

Recently by a curious turn of events a slight clink seems to have crept in against a look like formidable wall of opposition to the abolition of death penalty. I am referring to the case of Balwant Singh Rajoana who was awarded death penalty for assassination of the Punjab Chief Minister Beant Singh in 1995. Rajoana did not appeal against his conviction nor did he file a mercy petition before the President for commutation of his sentence. High Court confirmed his death sentence in 2007.

Badal Government did not take any interest in this case nor was this an issue in the recent election in Punjab. But recently the Jathedars of the holy and universally respected Akal Takhat chose to give a Hukumnana to Badal to commute the sentence of Rajoana. From press reports it appears that Rajoana made it clear that he was not asking for mercy and wanted to be hanged. Why the Jathedars so acted is a matter which I am quite sure all well wishers and devotees of Akal Takhat will consider seriously considering that Punjab has witnessed disturbing scenes and lot of tension and even Police have had to intervene in some places.

Obviously because of political compulsion the Punjab Chief Minister Badal met the President seeking mercy so as not to hang Rajoana and the execution has been stayed for the time being.

Another petition filed in the Supreme Court as a PIL seeking mercy for Rajoana was dismissed by the Court observing that such a petition was not maintainable.

I may make it clear that I am a confirmed believer in the abolition of death penalty. I am pointing out only the convoluted action of Badal Government in acting in this manner rather than in the straight forward constitutional manner which is open to it.

I was glad to read in the press an official statement by the Shiromani Akali Dal the ruling party Government stating that it was against the death penalty "as it is the ultimate denial of human rights and it violates the right to life". If so I would suggest a straight

constitutional method namely the Punjab Government should have a law passed by the Punjab Assembly amending the Indian Penal Code and providing that punishment for death will be life imprisonment instead of present death or imprisonment of life as provided in the Indian Penal Code. Our Constitution has concurrent list which enables both the Parliament and the State Assembly to pass legislation. Entry No. 1 in the list includes all matters including the Indian Penal Code at the commencement of the Constitution. Thus both the Centre and State can legislate and provide for various sentences under the Indian Penal Code. Of course if the Punjab Government was to amend the Indian Penal Code for providing only imprisonment for life it may prima facie run counter to the Indian Penal Code but for such a situation Article 254 of the Constitution itself provides a remedy namely – that in such a case the State Law may be reserved for consideration of the President and if it has received his consent, that law shall prevail in that State. The result will be that if Badal Government genuinely acts, Indian Penal Code will only provide for imprisonment for life and not death in the State of Punjab. This will serve both the purpose of Rajoana not being hanged but also set a healthy precedent for the rest of the country to also abolish death penalty.

It is thus clear that notwithstanding retention the death penalty in the Indian Penal Code a central legislation, Punjab Government can pass a law providing for only imprisonment of life under the Indian Penal Code and send it for approval to the President. It will then be for the Centre to take the decision and if it is does not approve of the Punjab Government suggestion atleast Badal Government would be able to say that it not only tried to lead in the field for human rights for abolishing the death penalty but also in the process tried to avoid the execution of Rajoana.

That states in our Constitution can take different views on the question of death penalty is not in doubt. The example of USA is apposite. The USA consists of 50 states. While at the federal (i.e. central; level, imposition of death sentence has been upheld as a constitutionally valid punishment, 13 states as also the District of Columbia, have prohibited and banned death sentence.

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

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

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

The Punjab Government should not have any second thought about the support both on moral and legal ground for the abolition of death penalty – in Gandhi's India who said that "I cannot in all conscience agree to anyone being sent to the gallows, God alone can take life because he alone gives it". Similarly Dr. Ambedkar said, "I think that having regard to this fact, the proper thing for this country to do is to abolish the death sentence altogether". Similarly the socialist and leader Jai Parkash Narain said that, "..death sentence is no remedy for such crimes."

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

Will the Badal Government bring in the necessary amendment as mentioned above – if it does not it will expose it to the charge that all this drama of appealing to the President for mercy for Rajoana is a political gimmick and not any larger considerations of human right. ❑

PUDR Releases CDRO Report:

The Terror of Law: UAPA and the Myth of National Security

The Terror of Law is a CDRO (Coordination of Democratic Rights Organization) report which shows how and why the UAPA curbs the freedoms provided by Article 19 [Protection of Freedoms] for expression, assembly and association against one section of political opinion. Like its predecessors TADA & POTA did, UAPA virtually disenfranchises a section of the people. The report points out that freedom of expression is not an individual right but a collective right of groups, unions and political parties to disseminate their views and mobilize people. This is particularly important, as the report argues, since six decades of constitutional democracy have failed to implement the Directive Principles of State Policy. The connection between the failure of promises and curbing of political freedoms guaranteed under the Constitution (Art. 19, 21) is brought out through a study of how the first amendment (1951) and the sixteenth amendment (1963) to the Constitution played a catalytic role in marginalizing the importance of Directive Principles and in attacking freedoms.

Terror of Law demonstrates that the

purpose of the UAPA is not to curb heinous behavior or crime but to outlaw ideologies and groups which threaten the status quo while exonerating other ideologies from its purview despite their record of heinous crimes. A brief summary of the main points are given below:

1. "Reasonable Restrictions": Enacted first in 1967, the UAPA enables the Central government to impose "reasonable restrictions" on the right to association. It, of course, targets those organizations which are seen as posing a threat, or potential threat, to the country's "sovereignty and integrity". Accordingly, the law includes secession within the definition of "unlawful activity" [S. 2 (f)], adds S.153 A and B, IPC, within "unlawful association" [S. 2 (g)] and offers wide and sweeping provision of banning "terrorist organizations" (S. 35) to the Central government. Since what constitutes a "terrorist act" has been construed in such a way that it covers "any act with intent to threaten or likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people", its wide scope allows ample opportunity to the Executive to act arbitrarily and/ or with bias.

The original UAPA did not contain the clause to ban organizations either because they promoted "enmity between different groups" or for "imputations prejudicial to national integration". This was added through an amendment in 1972. The original UAPA gave powers to the Centre to impose an all-India ban on associations. The powers of the state governments to ban organizations were not affected because "maintenance of public order" had been read by the apex court to represent the lower end of "threat to security of state". With amendments in 1972 and the incorporation of POTA provisions in 2004 and the amendments introduced in 2008, the grounds under which an organization can be banned expanded in the UAPA.

2. Imposing of Bans: The bans imposed in such a cavalier manner, however, have huge ramifications for the life and liberty of citizens and for their political rights and for democracy. For the ban makes it an offence to have any kind of association with the proscribed organization (s. 10). In the case of an organization banned as terrorist, the provisions are still wider and harsher (S. 38). Since the section does not even make the distinction between criminal association and legitimate association or activity, a wide section of people are brought in who can be punished with a sentence of 10 years' imprisonment without having been part of a single violent act. Activities become crimes as "support" to such organization is deemed as such (S. 39). What is sought to be curbed is not the banned organization but the issues championed by the banned organization. Thus the opposition to the government policy of creating organizations like the Salwa Judum, of creating armed groups through hiring of SPOs, can conveniently be labelled as one which furthers the activity of the banned organization.

What is particularly pernicious is that while the procedure for banning an association is wide and arbitrary, the procedure for un-banning is a byzantine maze which denies any possibility for the ban to get lifted unless the government itself decides to do so. If the proposed amendments to extend the period of ban from 2 to 5 years for a new category of crime under the ambit of "economic security" are brought in which will target trade unions and working class struggles, then the footprint of the UAPA will bring every one other than Hindu right wing and parochial organizations under its baleful purview.

3. Arbitrary Procedures: Instead of enforcing procedures that check the arbitrariness and subjectivity written into its provisions, the UAPA does the opposite. It increases the police powers of arrest, search and seizure [S.43A, 43B], makes all offences cognizable [S.14, 43D(1)], enhances the period of detention [S.43D(2)], overturns the established norms for grant of police custody [S.43D(2)], undermines the power of the court to require attendance of prisoners [S.43D(3)], denies the provision for anticipatory bail [S.43D(4)], enhances the restrictions on bail [S.43D(5)], presumes guilt of the accused [S.43E], permits in-camera trial and withholding the identity of the witness [S.44] and allows intercepted communications to be used as evidence [S.46]. Each of these measures promotes greater laxity on the part of the law enforcers. Arrest without a warrant is permitted for any offence under this Act. Since a large number of offences defined in the UAPA have little to do with what a person does, and more to do with how the government interprets or what it wishes to believe, this blanket power to arrest is an invitation for misuse. By permitting police custody at any stage during the investigation, the UAPA attempts to gag the accused and prevent him from stating anything that may be inconvenient for the police or the government. To make matters worse in this regard, the UAPA stipulates that S.268 of the Cr.P.C. shall apply to every offence under the Act. This means that the court loses the power to direct the officer in charge of a prison to produce a detained person in court for answering to a charge, or for examination as a witness.

4. Preventive Detention: Every liberal and democratic judicial system declares an accused guilty only after the judge declares so after the completion of the trial. Therefore it fixes a reasonable amount of maximum time that an accused may be kept in jail for till the police completes its investigation and submits its findings before the court. Till the completion of the investigation the detention of the accused is only preventive. And preventive detention is prohibited by Article 22 of the Constitution. Hence, the duration of this detention is a

matter of serious concern. The Cr.P.C. allows a maximum period of 90 days in case of an offence carrying a punishment of 10 years or above, and 60 days in other cases. Under the UAPA all offences, including the most minor ones, carry a 90 day detention. Add to this the provision [S.43D(2)(b)] that it can be extended by another 90 days, and we have a full-blown law for preventive detention, that puts to shame even the draconian National Security Act, in having no checks at all.

By so doing the UAPA overturns the basic principle of division of power between the Executive, the Legislature and the Judiciary. It confers such extraordinary authority on the Executive that they can at their whim, as BJP led NDA government did in 2001 to ban SIMI, proscribe organizations which in their subjective understanding are anathema to them. Indeed the illegitimacy of the UAPA, under the principles of natural justice, is available in the fact that whereas SIMI was banned in 2001 when there was not a single instance of SIMI being implicated in terror crimes, abundance of evidence of involvement of Hindutva groups in mass crimes, crimes against humanity, etc., for over six decades, did not result in any action against them!

5. Heinous Crimes: The report shows that there are two ways in which the Executive fights against heinous crimes such as bomb blasts which target civilians. The normal law or IPC and other Acts are used for Hindutva terror groups which allow even conspirators, against whom there is prima facie evidence, to escape because they occupy positions of power in Hindutva's mother organization, the RSS. The extraordinary way is reserved for non-Hindutva groups whose members, or the kith and kin of members/ supporters/ sympathizers, face the brunt of the government's hostility and witch-hunt. The best illustration of this is found in the kid glove treatment meted out to RSS Pracharak, Indervesh, who escaped interrogation and incarceration for being linked to Hindutva terror which carried out a series of bomb attacks which resulted in scores of killings, simply because Hindutva organization/s are not banned.

It is worth pointing out that the UNSC did ban some of the groups primarily because they caused large scale civilian deaths, an act of heinous crime in itself. But they failed to curb such crimes because they did not declare that many agencies belonging to permanent members of the UNSC ought to be covered under this. It also failed to note that those whose hands are already bloodied by heinous crimes against humanity are prime advocates for proscribing those entities disliked by them.

5. V.G. Row Judgment: The report draws strength from a judgment which was given in 1952, a year after the passage of the First amendment in 1951. In the VG Row versus the State of Madras (1952) case, a five member bench of the Supreme Court expressed concern at the unbridled powers vested with the government to ban organizations. The significance of the judgment lay in the manner in which the apex court read down the 1908 Act which permits the provincial governments to impose ban on organizations. In paragraph 17, the Supreme Court held that "The right to form association or unions has such wide and varied scope for its exercise, and its curtailment is fraught with such potential reactions in the religious, political and economic fields, that the vesting of authority in the executive government to impose restriction on such right without allowing the grounds of such imposition both in their factual and legal aspect to be duly tested in a judicial inquiry, is strong element which, in our opinion, must be taken into account in judging the reasonableness of the restriction imposed". It further held that "The formula of subjective satisfaction of the Government or of its officers, with an Advisory Board thrown in to review the materials on which the Government seeks to override a basic freedom guaranteed to the citizen, may be viewed as reasonable only in very exceptional circumstances and within the narrowest limits, and cannot receive judicial approval as a general pattern of reasonable restriction on fundamentals rights."

Conclusion: The report denounces the politics of ban, the use of draconian laws to silence dissent, restrictions imposed on freedom of expression, assembly and association under one or another excuse, all of which flows out of the gun of the rulers, raised in favour of foreign and Indian capital, and trained against people who question or oppose them. CL-DR groups are of the firm conviction that if the government has a case backed by evidence to declare an ideology as criminal or proscribe an organization it should be able to prosecute the organization and allow the courts to decide rather than preventing the organization from carrying on with their political mobilisation and propagation on mere whim of the authorities. The report strongly contests the manner in which political and ideological differences are made unlawful which erase the specific contexts which cause and prolong conflict. The report argues for a separation between crime and expression as it allows for dialogue, which can go a long way in resolving such conflicts saving tens of thousands of lives. In all conflicts there was an original moment, such as in the Naga peoples struggle among others, where peaceful resolution was available. Instead by taking recourse to military suppression and criminalizing dissent the State effectively throttled this possibility.

The report demands an immediate and unconditional repeal of the UAPA.

Preeti Chauhan, Paramjeet Singh,
Secretaries, PUDR ❑

PUCL UP: Convention Report

Uttar Pradesh State PUCL Convention

The Convention of the UP PUCL was held at Varanasi on 22 April 2012. In the Convention the State General Secretary Ms. Vandana Mishra and Secretaries of various District Units presented their report.

After the presentation of the report and discussion on all the reports presented in the Convention, the election for the UP State PUCL Executive was held in which **Chitaranjan Singh** was elected as President, **Ms. Vandana Mishra** as General Secretary, Ajit Singh, Fateh Bahadur, Akhilesh Sinha, Ram Kumar and K.K. Darapuri as Vice-Presidents, Vikas Shakya Adv., Ranjit Singh Adv., T.D. Bhaskar, Vijaya Chawala and Ms. Seema Azad (presently in Judicial Custody) as Organising Secretaries and Sharad Mehrotra as Organising Secretary respectively.

Ravi Kiran Jain, National Vice-President and **O.D. Singh,** former General Secretary of the State PUCL, were also president in the Convention. The Convention also elected Chitaranjan Singh, Ram Kumar, Ajit Singh, Dr. Akhilesh Sinha and Vijaya Chawala as Members of the National Council.

Report by: **Chitaranjan Singh** ❑

PUCL TN and Puducherry: Convention Report

PUCL Tamil Nadu and Puducherry State Convention

PUCL Tamilnadu and Puducherry State Convention was held at Chennai on 24 and 25 March 2012. The Convention mainly focused on "People's struggle for livelihood and human rights".

National Secretaries Kavita Srivastava and Dr. V.Suresh, Karnataka PUCL President D'sa, Kerala PUCL Secretary Pouran,MP of Sri Lanka Tamil National Alliance Sumantharnand rights activist Anton Komes, Dr. Pukazhenthi, Pro Sivakumar and PUCL activists were addressed in the two day Convention.

Inthe inaugural session Prof. Saraswathi welcomed the guests and delegates. PUCL Secretary S. Balamurugan presided over the meeting and PUCL activist C.R. Bijoy delivered his inaugural speech about resource politics in India and people's struggles. Kavita Srivastava in her address expressed her anguish at the state repression on the poor and indigenous people including tribal women like Soni Sodi who faced humiliation at the hands of the Chhattisgarh police while in custody. She questioned the state's attitude which undermined the rights of the people

The Karnataka PUCL President D'Sa said that Srilankanwar on the Tamil civilian population which resulted in the killing of more than a lakh people in 2009 was a war crime which is not an issue of the Tamils but of human rights. Karnataka PUCL extended its solidarity and support for the cause of the people. He also spoke about the attitude of fanatic rulers in Karnataka and their violation of the rights of the people there.

The Kerala PUCL Secretary Pouran suggested that Tamil and Malayalam people walk towards harmony and prosperity in the Mullai Periyar water dispute issues. He also reveled that water is becoming a profitable commodity rather than a natural resource most essential for the people to enjoy their right of livelihood.

Prof Sivakumar elaborately explained the UN human rights resolution against Srilanka and shared his first hand information on the issue.

Prof. Saraswathi shared her experience at world women's conference. The post lunch session was an organizational session. Various district representatives and office bearers presented their reports on their respective district issues.

On 25th March 2012 the 1st session focused on the U.N. resolution against Srilanka. PUCL Vice President G. Kurinchi presided over the session. Srilankan Tamil MP Mr. Sumantharan in his speech enlightened the audience on the Srilankan government's anti Tamil attitude and diminishing Tamil aspirations and the necessity of political struggles towards political solutions. PUCL national Secretary Dr. V. Suresh talked about the pathetic condition of Tamils in northern Sri Lanka on the basis of his experience during his recent visit to Jaffna in Sri Lanka.

In the session about people's struggle against Kudankulam nuclear plant, presided over by T.S.S. Maniformer scientist of the department of atomic energy Mr. Sridhar, rights activist Anton Komesh and Dr. Pukazhenthi explained the issues involved in the people's struggle and the legitimacy of the right of the people to dissent and struggle against the Kudamkulam nuclear plant and their right to protest in order to protect their present and future generations from the hazards of radiation.

In the evening a public meeting was organized at Sadras Loyola college auditorium on the rights of the minorities. Kavita Srivatsava, Srilankan MP Sumanthiran, Prof Jawaharulla the sitting MLA of Ramnad constituency addressed the meeting. Despite being in the 4th day of his indefinite fast at Kudankulam, Udayakumar, the leader ofthe Kudamkulam struggle committee addressedthe meeting through phone about the people' anti nuke struggle.

The following resolutions were

unanimously adopted:

1) The PUCL condemns the Tamil Nadu government and the central government for their high-handed action against the peaceful non-violent struggle of the Kudankulam people. PUCL appeals to the governments for immediate withdrawal of allthe false cases in various sectionsincludingsedition law foisted against 3000 struggling people. PUCL also demands stopping of work as reasonable apprehensions prevail over the safety and livelihood of the local population.

2) PUCL condemns the brutal repression by police of the dalit people at Tamilnadu's Paramakudi town on11.9.2011 on the death anniversary of the dalit icon Immanuvel Sekaran who had gathered there for the memorial meeting organized in his honour. The police opened fire against the people and killed six people. The police action was out and out illegal. It could be averted, but the police acted as upper caste goons and used excessive force without any justification. PUCL demands appropriate action to punish the guilty police officers.

3) PUCL notes that the U. N. Human Rights Commission resolution against Srilanka in the wake of one lakh Tamil people killed in the last phase of war against the Tamils in Srilanka in 2009 was inadequate. PUCL is afraid that unless an independent internationalhuman rights body enquires into the human rights violation of EelamTamil people in Srilanka, the government of Srilanka would cover up all its heinous crimes. PUCL also notes that the report of the Secretary General's panel of experts on accountability in Srilanka dated 31 March 2011 was an important document for proper enquiry and adjudication in this human rights violation issue. Its findings on the ground situation have to be taken into account for any further action in the matter. PUCL demands that international human rights groups and other rights groups should join together and demand an impartial enquiry as stated in the above said U.N expert panel report.

4) PUCL Tamilnadu urges the state government to take appropriate steps to prevent fake encounter killings by police. Fake encounters always result in eroding values of democracy and are utter acts of grabbing powers of judiciary.

5) PUCL Tamilnadu condemns the recent order of the police that all migrant workers in Tamilnadu have to get themselves registered by providing to the police their names, fingerprints and photos. The police also ordered all the house owners of migrant labourers to revel details of their tenants in the nearest police station. PUCL resolves that it is against the constitutional norms and an unlawful act. The state government so far has not shown any interest to implement inter state migrant labourers act but took hectic steps to brand all migrant workers as potential criminals. PUCL demands that the government should take steps to safeguard the personal liberty, dignity equality of migrant workers.

6) PUCL Tamilnadu notes with dismay that the central government failed to declare the recent Thane cyclone disaster as national disaster. Besides, it did not provide adequate relief to the victims nor did it take appropriate rehabilitation measures despite the fact that the cyclone uprooted almost all trees and standing crops and devastated people's livelihood. PUCL also condemns the central government's steps motherly attitude towards the states and demands appropriate relief wherever necessary.

7) PUCL urges the Tamilnadu state government to take appropriate steps for the effective functioning of the unorganized labour welfare board. Several lakhs of unorganized labourers face hardships in getting pension, compensation etc. in case of accidents and other welfare measures also need to be taken.

The State Convention elected its state office bearers as follows: **Prof Saraswathi** - President, **S.Balamurugan** - General Secretary, **G.Kurinji** - Vice President, **Nagasaila** - Vice president, **Veera Baghu** – Joint secretary, **K. Saravanan** - Treasurer, **S. Balamurugan**, General Secretary PUCL Tamil Nadu & Pudhuvai ❑

PUCL National Council Meeting on 4-5 August 2012

In a meeting of the office bearers of the PUCL held at the national PUCL Office on 29 April 2012 it was decided to hold the next National Council Meeting at the **Gandhi Peace Foundation,** 223, Deendayal Upadhyaya Marg, New Delhi on **4-5 August 2012 (Saturday-Sunday)** to hold the election of the National Executive of the PUCL. Detailed agenda of the meeting will soon be sent to all the National Council Members. General Secretaries of all the State Branches are requested to convey it to the National Council Members. They are also requested to send to the National Office the list of NC Members who will participate in the meeting so that necessary arrangements may be planned accordingly.

It was also decided that the National Convention will be organized some time later as per the PUCL Constitution. Members who will require accommodation for the NC meeting are also requested to convey their requirement at the earliest so that rooms may be booked accordingly.

Mahi Pal Singh, Secretary, PUCL ❑

PUCL Gujarat: 4th May 2012

Suresh Mehta and Sanat Mehta express sorrow on the degeneration of democratic values & Subversion of Constitution No remedy except to awaken and mobilize people's opinion

On the occasion of Gujarat State's Foundation Day and International Labour Day, a people's convention under the chairmanship of Prakash N. Shah was organized on 1st May. Main theme of this convention was "Lawless Administration in Gujarat". There is a gross and flagrant violation of people's constitutional rights and freedom of expression among the people of Gujarat as well as constant disregard of democracy and constitution and hence it was decided in this convention to awaken and mobilize people's opinion in the coming days. In this convention, it was decided to bring out pamphlet titled "Vichare Gujarat" so as to spread and propagate prevalent factual position amongst all the people, to convene people's conventions at every taluka head quarter and to organize a convention at Shamalaji in the month of June, to discuss and deliberate on the issues facing the Adivasi community.

Addressing the august gathering of over 100 representatives participating in the convention from different districts of Gujarat, Former Chief Minister Suresh Mehta informed as to how the present ruling party is disregarding the core values of the constitution and how the ruling regime is making mockery of the democratic values and enumerated illustrations on all this. He elaborately talked, right from the denial of raising questions in the legislative assembly up to not tabling the report on Human Rights Commission in the assembly session. He added that extravagant expenditure was incurred on 'Sadbhavana Fasting Mission' without any sanction or approval. The fact that report of the C.A.G. was tabled in the assembly at the last minute has overstepped or crossed the limit of callousness on the part of the State Govt. and hence advocated that there is no way out but to mobilize and awaken people's opinion.

Former Finance Minister Sanat Mehta expressed concerns about squeezing or constricting of democracy. He expressed sorrow about deterioration of democracy. He informed, to-day many agitations have become successful like Mahuva agitation, GEPIL agitation at Surat, protest agitation against Bhadreshwar Power Plant, agitation against mining near Ghogha etc. Such protests or agitations are being successfully launched and carried on at the grass root level and for that there is need to rouse the strength of local leaders and to propagate people's sentiments. He laid emphasis on bringing about transformation with the collective strength of all. He called for restoration of democracy and to be prepared for confrontation to preserve and promote democratic values.

General Secretary of Farmers Samaj, Jayesh Patel talked on farmers' woes, Dr. Vidhyut Joshi talked on Narmada Project as an attractive or fascinating dream, Ila Pathak talked about unsafe conditions of the women, Dr. Shakeel Ahmed lamented on problems facing the minorities, Advocate Dr. Ameeben Yajnik dwelt on Sick Gujarat and on equal wages for equal work Advocate Dr. Rajendra Shukla, Tejabhai Desai wondered about where is the grazing land? On these, subjects, Speakers delivered apposite speeches. PUCL's General Secretary, Gautam Thaker appealed to shake off feelings of scare and fear and to remain committed for restoration of democratic values.

Gautam Thaker, General Secretary, PUCL Gujarat ❑

How long will the 6000 Jharkhandi Adivasis languish in jail?

Most of the arrests are in violation of SC decisions

Stan Swamy

"Mere membership of a banned organisation will not make a person a criminal," Supreme Court on 3rd February 2011 (Criminal Appeal No(s). 889 OF 2007)

"Mere possession of Maoist literature does not make a person a Maoist," Supreme Court, while granting bail to Dr. Binayak Sen on 15th April 2011.

Context: in Jharkhand, during the past ten years, **550 young men & women were killed** by the police & para-military forces as being Naxalites (Hindustan Times, Ranchi edition, 18.4. 2011)

There are now **about 6000 Adivasis in jail** (Ajay Sharma in Hindustan, 08.02.2012). The charge against the majority of them is that **"Maoist literature" was found in their possession** and that they are **"helpers of Maoists".**

The sad fact in Jharkhand is that in very many cases the police have arrested young men and women precisely because they had some "naxalite literature" in their possession. What exactly constitutes 'naxalite literature' has

not been defined. The question is: *Is any written material that is critical of the Government and its functioning forbidden in our democratic society? Is putting out pamphlets calling on people to resist displacement an offence? Is announcing rallies and public meetings to protest indiscriminate arrests of young people improper? Is calling on people to assert their rights on their jal, jangal, jamin not allowed?*

What the police usually do is arrest a person on the alleged reason of having Naxal literature and then add on other clauses of the penal code on the hapless victim. Very sad to say, hundreds of young men and women are languishing in the different jails of Jharkhand under this accusation.

It is the urgent need of the hour that an independent commission is appointed to examine all the cases under this accusation and free them.

1. Mere membership of a banned organisation will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence. (3 February 2011)

The court rejected the doctrine of **'guilt by association'**. Mere membership of a banned organisation will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence

It is common knowledge that very many young men & women are held in prison on the suspicion of being "helpers of Naxalites". After arresting them other penal clauses are added on. It is an easy label that can be put on any one whom the police want to catch. It does not require any proof or witness. Let us keep in mind that they are not even members of any Naxalite outfit. Supreme Court says even membership in a banned organisation does not make a person a criminal. How far removed are the law and order forces from the judiciary!

Even if there is a modicum of humanity left in the Govt. and the police, these young men and women should be set free.

2. Supreme Court's directives for arresting persons are ignored by police

The SC has issued very clear directives to the police in the process of arresting a person and has spelt out the rights of the arrestee / prisoner. In a judgment known as 'D.K. Basu judgment' passed on 8 March 2005, [D.K. Basu vs. State of West Bengal (1997) 1 SCC 216] the SC gives the following guidelines:

In view of the increasing incidence of violence and torture in custody, the Supreme Court of India has laid down **11 specific requirements and procedures that the police and other agencies have to follow for the arrest, detention and interrogation of any person.** These are:

1 Police arresting and interrogating suspects should wear "accurate, visible and clear" identification and name tags, and details of interrogating police officers should be recorded in a register.

2 A memo of arrest must be prepared at the time of arrest. This should:
- have the time and date of arrest.
- be attested by∝ at least one witness who may either be a family member of the person arrested or a respectable person of the locality where the arrest was made.
- be counter-signed by the person arrested.

1 The person arrested, detained or being interrogated has a right to have a relative, friend or well-wisher informed as soon as practicable, of the arrest and the place of detention or custody. If the person to be informed has signed the arrest memo as a witness this is not required.

2 Where the friend or relative of the person arrested lives outside the district, the time and place of arrest and venue of custody must be notified by police within 8 to 12 hours after arrest. This should be done by a telegram through the District Legal Aid Authority and the concerned police station.

3 The person arrested should be told of the right to have someone informed of the arrest, as soon as the arrest or detention is made.

4 An entry must be made in the diary at the place of detention about the arrest, the name of the person informed and the name and particulars of the police officers in whose custody the person arrested is.

5 The person being arrested can request a physical examination at the time of arrest. Minor and major injuries if any should be recorded. The "Inspection Memo" should be signed by the person arrested as well as the arresting police officer. A copy of this memo must be given to the person arrested.

6 The person arrested must have a medical examination by a qualified doctor every 48 hours during detention. This should be done by a doctor who is on the panel, which must be constituted by the Director of Health Services of every State.

7 Copies of all documents including the arrest memo have to be sent to the Area Magistrate (Ilaqa Magistrate) for his record.

8 The person arrested has a right to meet a lawyer during the interrogation, although not for the whole time.

9 There should be a police control room in every District and State headquarters where information regarding the arrest and the place of custody of the person arrested must be sent by the arresting officer. This must be done within 12 hours of the arrest. The control room should

prominently display the information on a notice board.

These requirements were issued to the Director General of Police and the Home Secretary of every State. They were obliged to circulate the requirements to every police station under their charge. Every police station in the country had to display these guidelines prominently. The judgment also encouraged that the requirements be broadcast through radio and television and pamphlets in local languages be distributed to spread awareness.

Failure to comply with these requirements would make the concerned official liable for departmental action. Not following these directions constitutes contempt of the Supreme Court, which is a serious offence, punishable by Imprisonment and fine. This contempt of court petition can be filed in any High Court.

These requirements are in addition to other rights and rules, such as:

- The right to be informed at the time of arrest of the offence for which the person is being arrested.
- The right to be presented before a magistrate within 24 hours of the arrest.
- The right not to be ill-treated or tortured during arrest or in custody.
- Confessions made in police custody cannot be used as evidence against the accused.
-A boy under 15 years of age and women cannot be called to the police station only for questioning.

The important question is: **under which law or penal code the police & para-military forces are arresting young men & women as part of their anti-naxal operations? It is very clear they are not abiding by the SC ruling. As such they should be sued for contempt of court.**

3. 'To get Bail is a right of the prisoner' . . . but who will bail them out?

Getting bail is not within the reach of most 'under trial prisoners'. For one thing, the lower courts consistently refuse to grant bails even for the simplest of cases. That means the prisoner has to approach the High Court, and some times the Supreme Court to get bail. The second factor is the expense involved. An average expense at the level of the High Court is between ten to twenty thousand rupees. Now how many Adivasi families can afford this expense is a big question. In fact most of them are not even in a position to come to the jail and meet their dear ones. At the same time, the govt does not reach out to them by providing free legal aid. In short, the 6000 and more Adivasi under trial prisoners are just condemned to languish in jail for years to come. It is important to remember that of those who have been arrested under UAPA and CL-17 as part of Operation Green Hunt, there has not been even a single conviction. We can be sure that when the trial will take place, most of them will be acquitted. Regrettably there is no time limit within which the trial has to take place. **Justice delayed is justice denied.**

To conclude, it is no use taking this issue to the govt. because it is itself doing this injustice. The only other possibilities, in my opinion, are that we make this the agenda of the Jharkhandi People's Movements and explore ways of making a legal case and access the judiciary at the High Court / Supreme Court level and demand that an independent committee of legal & human rights activists examine all the cases and place their findings in public domain.

10 March 2012 ❑

PUCL Tamil Nadu and Puducherry representation sent to different officials: 21.3.2012

To

1. The Chief Secretary, Government of Tamil Nadu, Fort St. George, Chennai 600009.
2. The Director General of Police, Rajaji Salai, Chennai 600004.
3. The Principal Secretary, Home, Government of Tamil Nadu, Fort St. George, Chennai 600009.
4. District Collector, Tirunelveli District, Tirunelveli.
5. Superintendent of Police, Tirunelveli District, Tirunelveli.
6. Commanding Officer, Indian Coast Guard, Tamil Nadu, Chennai.

Sub: Blockade enforced by TN Police and District Administration of Idinthakrai and Koodankulam Villages, Tirunelveli District from 18th March, 2012; Total prohibition of movement of Citizens, stoppage of essential supplies resulting in humanitarian crisis -

Demand Resumption of Essential Supplies permitting free movement of citizens, withdrawal of police force and return to normalcy – regarding.

Dear Sirs / Madam,

We bring to your attention the total breakdown of rule of law and constitutional scheme in the villages of Idinthakarai, Koodankulam and neighbouring villages of Radhapuram Taluka pursuant to unprecedented and unprovoked action of Tamil Nadu Government moving in more than 5,000 armed policemen into the area from 18th March, 2012 onwards.

We are constrained to point out that today's newspaper reports highlight that the Koodankulam Nuclear Power Plant (KNPP) has started functioning and there is no obstacle or obstruction to the free entry and exit of employees, engineers and specialists into the plant.

While so, it is strange as to why Idinthakarai village, which is 4 km away from the KNPP, where the villagers have been peacefully protesting for the last several months, is completely sealed by armed police. We learn that Police checkpoints have been placed at all entry points to the village restricting movement of local people creating

huge fear psychosis. It should be noted that currently there are more than 25,000 people in Idinthakarai village.

In fact, PUCL is greatly concerned that using the ruse of people's agitation the police have promulgated orders u/s 144 Cr.P.C. restricting the movement of people in the entire area of Radhapuram taluka. We fail to understand the rationale and legitimacy of such a prohibitory order when the agitation of the local villagers has been in an area 4-5 km away from the KNPP site and has been totally non-violent and Gandhian in character.

PUCL is concerned with the reports pouring in that all essential supplies such as drinking water, milk, vegetables, provisions and medical supplies have been stopped as a result of the police blockade. Drinking water is supplied to Idinthakarai through tanker lorries as well as through pipelines from Vijayapathi, Thomas Mandapam and Koodankulam. We are informed that the police and district administration have prevented the supply of drinking water through these pipelines and have stopped movement of tanker lorries. We reliably learn that the Pump Operator responsible for supply of drinking water through the OHT has been forced by the police to part with the key to the water pumping room. Thus the police in effect, are in control of the pump room and are ensuring that no water is supplied to the village. This is a totally unwarranted and illegal action on the part of the State Police and administration.

We are informed that the ground water in the area is completely saline and generally unfit for human consumption. Because of the total stoppage of water supply the people, including women, children, elderly and those who are ill are forced to drink unpotable saline ground water resulting in further health problems. Even this supply has been blocked due to deliberate cutting off of electricity to the village thereby preventing the people from operating their water pumps.

It is pertinent to point here that the last few weeks have seen a very hot sun and the heat has been unbearable. When some fishermen sought to bring in water for the Idinthakarai villagers by boats the Indian Coast Guard blocked the boats and prevented the transport of water to Idinthakarai village.

This is most condemnable. We wish to point out it is a well recognised principle of human rights law and humanitarian laws, as also the Geneva Conventions, that even during times of armed conflict or war, supplies of essential commodities like water, medicines and food should not be prevented.

Vegetables and provisions are also in short supply as all supply lines have been choked due to the police blockade. We understand that even milk supply has been obstructed by the police who are stationed in large number on all the main entry points to the village.

We are deeply disturbed by the information that school children who are currently appearing for their Higher Secondary Board exams have been prevented from going to school for no fault of theirs. The Bishop Roche Higher Secondary School located in Idinthakarai has children from surrounding villages studying in the school. Currently the 12th Std. Board exams are going on. The Idinthakarai children are appearing for the exams under these very strained circumstances where they do not even have adequate food to eat and clean water to drink. Unfortunately more than 25 children from neighbouring villages are being prevented from attending school and sitting for the exams because of the police blockade and obstruction.

Students from Idinthakarai studying in colleges outside Idinthakarai are also unable to attend college because of the blockade. A couple of students who were going to college were picked up by the police and detained for a whole day. This has caused tremendous fear amongst students who are now scared to venture out of their homes. It is pertinent to point out that the end semester exams are due very shortly and the police action has seriously affected their academic thereby affecting their future.

The only decent medical facility available in Idinthakarai is a 10-bed hospital, the Lourdes Hospital. There is no water and power supply to the hospital. The doctors and staff are providing medical aid to the local population under very trying circumstances by making do with available medical supplies which are fast depleting. This is causing a serious health crisis.

We are informed that a pregnant woman, by name Vennila d/o Savarimuthu, aged 29 years from Idinthakarai, developed labour pain at about 8.30 pm yesterday, 20th march, 2012. The closest hospital with adequate medical facilities is in Thisayanvilai village, about 20 km away from Idinthakarai. When her family members sought to take her to the Thisayanvilai hospital they were prevented by the police from leaving Idinthakarai. We learn that it was only due to the intervention of local media people that the police eventually permitted her to be taken to the Hospital; but this was after a harrowing delay of more than 1 hour.

We are very concerned that the police since this morning have been preventing the entry of local media into the area, thereby creating a situation where strong arm tactics of the police against peacefully protesting villagers can be effectuated without oversight by the media. Considering the armed build up and the aggressive actions of the Tamil Nadu Government and police, we have grave fears for the personal safety and lives of the local villagers, and in particular, those locals who have been leading the non-violent and democratic campaign against the nuclear power plant. It is very unfortunate that the State Government is treating its own citizens as criminals and their villages as a war affected disturbed zone requiring war time strategy of 'cordon-clear-crush'.

PUCL also wants to point out that when a group of lawyers sought to

visit Idinthakrai to get instructions for moving bail applications in respect of 47 women who were arrested and remanded to judicial custody they were denied entry by the police. This amounts to denying even access to courts and legal redress to the people of Idinthakarai and other villages.

The proclamation under sec. 144 Cr.P.C. issued in respect of the entire Radhapuram Taluka, Tirunelveli District is an abuse of the powers granted u/s 144 Cr.P.C. It is pertinent to point out that the powers u/s 144 Cr.P.C. can be invoked only for the purpose of immediate prevention of nuisance or injury to any person lawfully employed or danger to human life, health or safety or a disturbance of public tranquillity or riot or affray. We reliably learn that no notice has been given to the persons against whom the order has been directed.

The situation in Radhapuram Taluka does not satisfy the requirements for promulgation of the said order u/s 144 Cr.P.C. There have been peaceful protests for more than 6 months and there is no threat or danger to any human life, health or safety nor is there any disturbance of public tranquillity or fear of riot or affray. Hence the situation in Idinthakarai and Koodankulam villages in particular, and in Radhapuram Taluka in general, can hardly be termed an emergency warranting an order u/s 144 Cr.P.C.

In fact it is the proclamation orders u/s 144 Cr.P.C. and the consequential police and state action of barricading the village if Iddinthikarai which has disturbed public tranquillity and is causing threat to human life, health and safety.

PUCL states that this action of the Police and the State Government is a violation of the fundamental rights of the people of Idinthakarai guaranteed under Articles 14, 19, 21 and 22(1) of the Indian Constitution.

1. On behalf of the PUCL, we request you to immediately restore the supply of all essential services including supply of drinking water, milk, vegetables and provisions, medical supplies and power supply.

2. PUCL also requests that the police blockades of Idinthakarai should be lifted immediately and the free movement of the people in Idinthakarai should not in any way be restricted or denied.

3. We request that the people of Idinthakarai and other villages in Radhapuram taluk are permitted access to lawyers and access to legal redress.

4. PUCL also requests that the media be freely allowed to enter the area and meet the people so as to independently report about events to ensure transparency and accountability and at as a check on police and state excesses.

5. PUCL also requests you to immediately revoke the orders issued u/s 144 Cr.P.C. and thereby restore normalcy.

Yours sincerely,

V. Suresh, President, PUCL Tamil Nadu and Puduvai ❑

A Decade of Gujarat Carnage 2002

Ram Puniyani

India has witnessed many an act of communal violence. Starting from the Jabalpur riot of 1961 to the last major one of Kandhmal (August 2008). Many innocent lives have been lost in the name of religion. Amongst these the Gujarat carnage is a sort of marker. It came in the backdrop of massive Anti Sikh pogrom of 1984, the anti Muslim violence of post Babri demolition and the horrific burning of Pastor Graham Steward Stains in Kandhmal. It was a quantitative and qualitative departure from the other major carnages which have rocked the country.

To begin with the burning of Sabarmati S 6 coach was cleverly projected to be an act done by neighboring Muslims and in turn the violence was directed against the Muslim population of Gujarat, on the ground that the Hindu sentiments were hurt. A section of Hindu community was deliberately incited by the decision of the state to take the burnt bodies of victims in a procession, against the advice of the collector of the city. The Bandh call given by VHP created the ground for violence. Here the social engineering was at its worst display, and dalits and Adivasis were mobilized to unleash violence against the hapless innocent Muslims, accompanied by the propaganda which demonized the Muslim community as a whole. While in earlier acts of violence, the state police have been an accomplice and the silent onlooker to the violence, here a sort of active collusion of the state machinery and the communal forces was on display.

The BJP ruled state Government had unrestricted run in the state as the Central Government was being ruled by the BJP led NDA and the other allies of the BJP were too enamoured by the spoils of power to spoil the broth by speaking out. Modi had already instructed the officials to sit back when the Hindu backlash took place. The leading light of socialist movement, George Fernandez, went to the extent of taking the violence against minority women in the stride by saying that rape is nothing new and it happens in such situations. What more was needed for the rioters to run amuck and to central BJP leadership to let things go on as they did. The pattern of violence against women was particularly horrific, targeting at their reproductive organs and shaming them to no end.

While the architect of the Gujarat pogrom Narnedra Modi kept saying that violence has been controlled in three days, and central BJP leadership patted him for this, the matter of fact was that violence went on and on painfully for a long time, uncontrolled and unrestricted. The attitude of the BJP controlled state was pathetic and showed religious bias in relief and rehabilitation work

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too. The compensations given to the minorities were abysmally low, and the state quickly retreated from the refugee camps on the ground that the refugee camps are 'child production centers', hitting the minorities where it hurt most. The biases against them were on full display. The atmosphere was created by communal forces in such a manner that the riot victims could not go back to their houses as the people in their areas demanded a written undertaking from them, that they would withdraw the cases filed in the context of violence and that they would not file any new cases. Most of the police machinery either refused to register FIRs or if registered they kept enough loopholes for the criminals to get away. It was in this atmosphere that the process of getting justice became a close to impossible task. The communalized state apparatus, the attitude of police and judiciary led the Supreme Court to direct the shifting of cases away from Gujarat. The investigation against Narendra Modi by the state police was an impossible task and so the Special Investigation team was constituted. Unfortunately, that also did not help the matters. Accompanying all this violence and the attitude of the state government the minorities started feeling extremely insecure. They were boycotted in trade and other social spaces. The result is the sprawling slum of Juhapura as the symbol of polarization of communities along religious lines. The total dislocation of the monitories created multiple problems at the level of education and sources of livelihood for the minorities.

The religious polarization and section of media has created a Halo around Narendra Modi, while strictures against him are coming by, about his failure to protect places of religious worship of minorities, the malafide intentions of state in filing cases against social activist Teesta Setalvad, many another cases are still pending, crying for justice for the victims of Gujarat. Having consolidated the section of majority community behind him, assured of their ongoing support, Modi started the high profile propaganda about development and has been trying to distract the attention from the havoc which he has wrought in the state. The big capitalists are finding the state of Gujarat as a happy hunting ground for massive state subsidies, so the media controlled by them is singing praises and modulating popular opinion in his favor, creating a larger than life size image, development man, in order to suppress his role in the violence against minorities.

In this dismal scenario, there have been many an examples of victims and social activists standing for the cause of justice and doing the practically impossible task of getting justice for violence victims despite all the efforts to turn them hostile and protect the guilty of the communal crimes. While the massive propaganda and state policies are trying to turn the minorities into second class citizens, there are efforts which have gone on simultaneously to retrieve the democratic values in the face of such adverse intimidating situation created by the communal forces. Lately, apart from Court judgments, the civil society response has been picking up and the civil society is trying to overcome the stifling situation and trying to make its voice louder. While we are nowhere close to what should ideally be there in a democratic set up, the responses of civil society and social action groups are noteworthy in the matters of getting justice for victims and in the matters of recreating the liberal space which has been undermined by the communal forces. Time alone will tell if democratic values will be successfully brought in this 'Hindu Rashtra in one state'. ❑

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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