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Why Weaken the Judiciary?

AIJS May Face Practical Problems

Justice Rajindar Sachar (Retd.)

It was thought the Central government had enough spat on its face in the shape of scandals concerning its various wings to which it should be giving maximum attention. But, sadly, it is preparing legislation to further emaciate the judiciary, obviously with a view to increasing the executive clout.

I am referring to the reported announcement by Veerappa Moiley, a former Law Minister, that the government would constitute an All-India Judicial Service (AIJS) on the pattern of the Indian Administrative Service (IAS) to fill 25 per cent of the posts in the lower judiciary in the states. The new recruits in the age group of 24-32 years will be posted as district judges. In its favour it is argued that this will improve the functioning of the High Courts and Supreme Court which will have younger judges. This is so notwithstanding the objections that have been registered by 11 out of 17 high courts and seven out of 20 states.

At present the control on the subordinate judiciary is vested exclusively in the respective High Courts. By creating an AIJS, motivated efforts are being made to take away the control of the High Courts over the District Judges and vest it in the National Commission which would include members of the executive - an undesirable development.

Earlier attempts made to constitute an AIJS in 1961, 1963 and 1965 failed because more than half of the states and the High Courts opposed it. In August 1969, then Chief Justice of India said that the proposal was not feasible in the face of the then obtaining provisions of the Constitution.

Even after the amendment of Article 312 by the forty-second amendment, expressly providing for the formation of an AIJS, the opposition to this idea from several High Courts and state governments has not abated.

The matter was considered at the Chief Justices' conference in 1985 but it was unanimously rejected as impractical. The National Commission to Review the Working of the Constitution raised serious doubts about the feasibility of the AIJS. It posed the question (relevant even at present) that already states are complaining of trespass on their rights by the Centre. In its opinion, it is not advisable to diminish them further by taking away the power of selection from the High Courts and by vesting it in a Central body. It highlighted the dangerous consequences if this proposal is carried out. If the idea is to induct bright and young persons to the service from the age group 24 to 32 years, such persons have to be posted soon after selection and training as district judges.

District judges not only try serious criminal cases like murder and dacoity but also exercise appellate jurisdiction in both criminal and civil matters. They also exercise original jurisdiction in certain civil matters. Would it be advisable to entrust the direct recruits of the said age group with such vast powers and would they be able to handle such a task? Another grave consequence of selecting district judges at the level of persons in the age group of 24 to 32 years would be that they would be ripe for being considered for appointment to the High Courts even before they may have reached the age of 40. Desirability of such possibility should also have to be kept in mind, particularly in view of the fact that the nature of the work at the level of the High Court is of a varied character involving fields not dealt with by district judges in the subordinate courts.

The proposal for creating an AIJS poses a grave danger to the independence of the judiciary by taking away the power of disciplinary action and control of the lower judiciary from the respective High Courts (which daily see their judgments in the course of their work) and vest it in a body like the National Judicial Commission, a Central organisation - the latter would have no competence to judge the nature and quality of subordinate courts. This AIJS proposal is a scarcely concealed attempt at trying to dominate and control the lower judiciary of all the states and take the disciplinary power away from the High Courts in which at present it vests.

Frankly, I fail to see the wisdom of abandoning the present practice. At present, one-third of the vacancies of district judges are filled through selections from the practicing lawyers made by all the High Court judges. This practice assures certain accepted standards of competence and good moral character by daily observing them rather than though a casual interview.

The question of unfamiliarity with the state language is impossible to overcome unless it is suggested by the insensitive bureaucracy-dominated government that we should go back to the period when India was a colony and accept English as a court language in all the states - an absurd and insulting suggestion. To take a practical look at the situation, at present all proceedings up to the district level are done in the state language. Some states like UP, Bihar and MP have Hindi as their state language. But in the rest of the country each state has a language of its own and is proud of it - a judge from outside the state would be a misfit. Judgments of the courts determine the liberty and rights of citizens - proficiency in language is a must. Their work is not like the noting done by administrative officers, who, though a person from outside the state, may acquire rudimentary working knowledge of the local language for their day-to-day work. Though at present the language used in the High Courts is English, all records, including judgments from lower court, are in the local language. A district judge from outside the state will not be in a position to give satisfactory performance resulting in dissatisfaction both among the litigants and the lawyers.

In fact, in the US, in many states the State Supreme Court justices, whether elected or appointed, are not posted outside the state even when there is common language -- English. No one has found fault with this practice. As it is, already, our judiciary is taunted with the backlog of arrears in the courts - the Supreme Court (52592 cases), High Courts (4017956) and lower courts (27119092). The total comes to 3.12 crore cases - this is mainly because of the refusal of the governments to sanction an additional number of judges as persistently asked by the various High Courts. Why then is this plan to further defame the judiciary by the government's own misconceived idea to constitute the unworkable AIJS? ❑

Lest we forget JP, the Savior of our Democracy:

'Freedom Is My Beacon'

M.G. Devasahayam

(*This article appears as Chapter I in the book 'India's Second Freedom-An Untold Saga' by M.G. Devasahayam published by Sidharth Publications, New Delhi. It is being reproduced here to pay our tributes to the Savior of our Democracy which had virtually slipped into a dictatorship with the imposition of the Emergency regime in 1975 and without the relentless fight for the restoration of democracy launched by Jayaprakash Narayan and his associates the country would have slipped into a permanent dictatorship. Indira Gandhi's name will always be associated with the imposition of Emergency in the country which was the darkest chapter of Indian democracy which cannot be forgotten by any person who loves freedom and democracy. And with the Emergency rule will remain associated the name of the greatest crusader for restoration of democracy in the country, JP. If we have to name the greatest person post independence in the country, it is Jayaprakash Narayan because he stands for the relentless fight for the restoration of the same democracy for which our forefathers fought against the British rule for a long time, suffered untold sufferings and even laid down their lives. Without his name being included in the list, no list of great men of India is complete nor is any history of the country complete, whether of pre-independence or of post-independence period. Those who love democracy, human rights and democratic values cannot afford to forget JP and by keeping their memories fresh we draw inspiration from such people to continue our movement to protect our democracy.* – **Mahi Pal Singh**)

"Freedom became one of the beacon lights of my life and it has remained so ever since. Freedom with the passing of years transcended the mere freedom of my country and embraced freedom of man everywhere and from every sort of trammel - above all it meant freedom of the human personality, freedom of the mind, freedom of the spirit. This freedom has become a passion of my life and I shall not see it compromised for bread, for security, for prosperity, for the glory of the state or for anything else". [**Lok Nayak Jayaprakash Narayan**]

What is more important, despite all trials and tribulations and its many imperfections is that India today is being ranked among the great democracies of the world and it is this commonality of free societies that may catapult the country in to an economic super power in the not so distant future. In fact, President Clinton came to India in March 2000 carrying this message and pronounced it loud and clear from the various fora that he addressed. The Vision Statement signed between the two great countries has this to say:

"We are two of the world's largest democracies. We are nations forged from many traditions and faiths, proving year after year that diversity is our strength. From vastly different origins and experiences, we have come to the same conclusions: that freedom and democracy are the strongest bases for both peace and prosperity. And that they are universal aspirations, constrained neither by culture nor levels of economic development".

After his week-long visit to India Clinton was convinced that, "the strong democratic traditions in the country had not only made it possible for the people of different religions and creeds to stay united but also provided equal opportunities of progress to all citizens". For him, "India is a model of a country that is proving that both freedom and improved economic lot of the poor under rapid development can go together". Summing up US President's visit and its impact, economist-columnist P.R. Brahmananda wrote: "Mr. Clinton's visit should only strengthen our pride and conviction in the workability of the democracy-development combination and should lead to further expansion of production and values".

This is not merely an American view. The whole world is looking at India from this perspective. Increasingly the two countries-India and Pakistan-which gained freedom and adopted democracy on the same day are being judged and evaluated by the democracy-development criteria. This is the view from Pakistan also as these remarks in one of their leading newspapers suggest: "The US concern about Pakistan relates to Washington's perception that the country might slip further into socio-economic chaos and political instability. Therefore, while the US looks at India as a democracy that is economically growing, and is increasingly confident of its place in the world, Pakistan is perceived as an increasingly dysfunctional and insecure country that needs to be helped before all hope is lost." So, at the dawn of the third millennium, freedom, the passion and 'beacon light' of Lok Nayak Jayaprakash Narayan has transcended time and space and become the 'glowing star' and 'guiding destiny' of the Indian Nation and its one billion people striving to find their legitimate place in the sun.

In the event, it is indeed ironical that in the run up to the new millennium, while 'Queen Empress' Indira Gandhi who trammeled India's fledgling democracy in the mid-seventies and sought to extinguish freedom by misusing State power was voted the 'woman of the Millennium' by a BBC poll, the 'humble recluse' Jayaprakash Narayan who defied 'death and disease' to restore democracy and make that precious freedom triumph again did not even find mention among the list of persons polled. JP had worked and marched, fought and died for the triumph of freedom in a country wherein live one-sixth of the human race. And he did it not once, but twice - fighting for freedom from alien rule under Gandhiji's leadership and later winning it back from a native autocracy.

This gift of JP has been ignored and his name is being virtually erased from public memory. This is happening even while India has a government at the Centre comprising ministers most of whom owe their political existence to this self effacing 'Second Mahatma'. This, in fact, is the trauma and tragedy of the Indian Nation, keeping its resourceful but miserable millions, at the bottom of the pit. We worship the high and the mighty or those anointed or propelled by them. We adulate self-seeking, corrupt power mongers calling them 'messiahs' and 'revolutionary leaders'. But we ignore and indeed humiliate sincere, honest and selfless people who have given everything for the country and its people, but did not seek anything in return. JP is one such person who sacrificed his everything-his youth, his family, his health and his life- so that this country attained freedom and later sustained it. Tragically today, he stands near totally forgotten, slighted and ignored by the very people whom he loved so intensely and passionately.

But this shall not be so and this Book "*India's Second Freedom – An untold saga*" is an effort in this direction. It is to tell the story of JP's complete transformation from total defeat to total defiance within the confines of the Chandigarh Jail at the height of 'Emergency' and how this led to India attaining its Second Freedom and restoration of that precious voice to its teeming millions. This story is no doubt for the intellectual elite, the bulk of whom intimidated by state tyranny, betrayed JP when he needed them most. But more so, this is for the common man who listened to the feeble yet eloquent voice of JP and rose with him to defeat dictatorship and restore freedom to this 'land of eternal suffering'.

The sordid saga of National Emergency [from June 1975 to

February 1977], which imposed dictatorship by suspending India's Constitution and depriving Fundamental Rights to its citizens, is the most devious and dubious chapter in India's 56 years existence as a Sovereign, Independent nation. Painfully so, since this was done with consummate ease and through a seemingly democratic process. For India and Indians, year 2002-03 is not an ordinary year at the beginning of a new Century and a new millennium. It is the commemoration of the resurgence of Indian democracy from the ashes and the centenary of the man who made it possible.

During the19 months of active emergency people moved in hushed silence, stunned and traumatised by the draconian goings on. Across the nation, groveling administrators, academicians, advocates and accountants vied with each other to sing paeans of glory to the emergency rulers, some signing pledges of loyalty and servitude in blood! Whisky swilling and pipe smoking social climbers and sycophants chanted in unison, "Discipline is preferable to Democracy" just because trains were running on time and they got parking lot at Connaught Place! The bulk of the civil service crawled when asked to bend. Higher echelons of Judiciary bowed to the dust and decreed that under emergency regime citizens did not even have the right to life. Politicians of all hue and colour, barring honourable exceptions, lay supine and prostrate. There was gloom all around and it looked as if everything was over and the world's largest democracy was slowly but surely drifting into dictatorship.

The happenings during the first five months of the emergency when JP was in captivity and lodged at the special ward of Chandigarh's Post-Graduate Institute of Medical Education & Research [PGI, temporarily notified as jail] were truly momentous in the sense that it revealed the true agenda of the 'democrats turned dictators', the deceit and duplicity of the ruling party mandarins and the extreme vulnerability of Indian elite and intellectuals to state power and tyranny. But for the rise of JP, and the common man finding an 'icon' in him, India would have irreversibly passed into 'dynastic autocracy' with Sanjay Gandhi 'inheriting' the mantle of power from that self anointed "Queen-Empress", Indira Priyadarshini Nehru-Gandhi.

All nations, most of all India, need a symbol, human or not, to which they can cleave when times are bad, which can unite them across barriers of caste, creed, clan and language. The mid seventies were bad days and through the draconian and repressive regime of national emergency and the 'era of discipline' positioned against 'anarchy and chaos', Mrs. Gandhi was building herself up into that National symbol, that icon. If she had succeeded, she would have got a clear mandate of the electorate in any ensuing election, since majority of voters would have voted for her instead of opting for a vacuum. When firmly in saddle, with emergency and autocracy endorsed by the electorate, the 'iconship' would have passed on to Sanjay Gandhi who was waiting in the wings. With age in his favour and his known dislike for the democratic process, India would have drifted from 'direct democracy' to 'directed democracy', a euphemism for dictatorship. *An alternative icon was needed to prevent this tragedy from happening and JP with his towering personality and his aura as the hero of 'Quit India' movement eminently filled the bill.*

JP's emergence as an alternate icon to take the nation back to Freedom and democracy was not an easy task. The Sarvodaya leader was out of circulation and public view for several years before he surfaced in 1974 to lead an uprising, which mostly involved the Youth. Mainly students spearheaded this uprising, popularly known as "JP movement". Outlining its raison d'etre JP wrote, "The movement was started with certain specific demands. The chief among them were: removal of corruption, curb on inflation, solution of the problem of unemployment and basic changes in the system of education". Emphasising on the movement's main thrust JP said, "We have always raised our voice against corruption. Prevention of corruption was the main aim of our movement". These were indeed genuine and unassailable demands and should have received positive response from any Government run on democratic principles. Instead, a power drunk ruling coterie chose to respond brutally with harsh repressive measures resulting in the strengthening and spreading of the JP movement.

The Allahabad High Court judgment of 12 June 1975 unseating Mrs. Gandhi from Parliament for 'corrupt practices' gave a big fillip to the Movement, which was poised to sweep the country. But before it could gain momentum Mrs. Gandhi struck and in one swift move declared emergency and incarcerated all worthwhile leaders who commanded public following. On top of the list was 'enemy number one of the state' Jayaprakash Narayan. By this time JP had come to symbolise the conscience of the Nation and uncompromising opposition to corruption and despotism which had become the hallmarks of Congress party and Governments. By locking up an ailing JP in confinement, the ruling coterie thought they could break his body and spirit and thereby eliminate the only hurdle they had in enjoying uninterrupted and unfettered power.

What 'man proposes God disposes'. In this case it was a woman proposing to be the icon of 700 million people and the unquestioned leader of the vast sub-continent of India for years to come and then pass it on to her chosen progeny. Using emergency as a whip to 'discipline the nation' and building herself up as "Indira is India", she would have eminently succeeded with individuals and institutions collapsing one by one and falling by the wayside. And, barring sporadic murmurs of dissent, she had no opposition whatsoever and all roads were clear as far as eyes could see.

But God has his own way of disposing. During the initial days of emergency, within the confines of the yet to be commissioned Intensive Care ward of the PGI, JP was a old, haggard, incoherent, disjointed and defeated individual who felt that all hopes were gone and Freedom in India stood extinguished. He had also mentally reconciled himself to die in confinement 'as a prisoner of Indira Gandhi'. But the Almighty and the Ultimate Arbiter had other ideas. In the manner of Moses in the Old Testament, He wanted this man, who once symbolised all that was fiery in India's Freedom struggle and all that was noble in pursuing a cause, to resurge, rise again and re-emerge as the nation's hope and the alternate icon to lead the people back to freedom and democracy. *For accomplishing this, He chose an insignificant instrument in me, then the District Magistrate cum Inspector General of Prison of Chandigarh and therefore the custodian of 'JP in Jail'.*

When I received 'prisoner JP' at the tarmac of Chandigarh's Air Force base on the night of 1st July 1975, emergency was just a few days old. JP had been taken into custody under the dreaded Maintenance of Internal Security Act by the District Magistrate, Delhi on 25/26 June night, moved around nearby areas of Haryana and Delhi's All India Institute of Medical Sciences, and was being brought to Chandigarh for safe custody and medical care. To me at that time JP was an enigma as well as a mystery. My memory of him as the 'Hazaribagh hero' of the forties was hazy and the perception of his recent campaign for 'total revolution' was rather confusing. The reception party of myself, Chandigarh Senior Superintendent of Police and the Air Force Station Commander was very courteous to JP and he was taken directly to the PGI Guest House, specially done up for the purpose. My first impression of the old man was that he was totally perplexed and did not know what was happening.

Something in my sub-conscience told me that JP was not an ordinary man and his days in confinement would one day be part of history. As I drove back home from PGI Guest House around midnight, my mind went back to the days of India celebrating Independence, when I was a tiny toddler. I vaguely remembered that in the far corner of the country where I belonged [Kanyakumari, the Land's End of India] it was JP's name, which was in everyone's lips. And his name was spoken in awe and admiration. Now also, within one year of his coming back to active public life, he has roused the people and their conscience, which was lying dormant all the while. In such a short period he had become the idol of the youth and the leader of a mass movement, which shook the Governments at their very foundation. There must be some thing extraordinary in this man and I should get to know him, I mused to myself. Besides, he is talking about 'power to the people' and 'honest and participatory governance', two things, which have been dear to my heart. There was another very important aspect. Though I was a Civil Servant administering the Emergency regime in the Union Territory, in my heart of hearts I did not like this 'trammeling' of Freedom since I was of the firm conviction that Democracy, howsoever imperfect, was the only thing we Indians could really be proud of.

So during the five months JP was in confinement at Chandigarh, I did come to know him very closely. And having understood the nobility of his struggle and the intensity of his commitment, partook in all matters concerning him and the State, shared his intimate thoughts and feelings, discussed political events and happenings, played 'Devil's Advocate', participated in brainstorming and strategy sessions, took charge of his mental and psychological well-being, initiated the reconciliation process between him and the Prime Minister and succeeded in reviving his faith in himself and his people which he was on the verge of losing. In short I became part and parcel of the transformation of the 'dare-devil hero' of the **first freedom** struggle from a 'defeated idol' in to an 'inspiring icon' who 16 months later led the Opposition forces successfully and won India its **second freedom**.

And, as if by divine inspiration, I kept a record of everything including events, happenings and documents of momentous nature having crucial bearing on the course of history in the post-emergency period. This Book is the outcome of this effort.

This book tells the story of the wretched and the venal days of India's democracy. The nineteen months of active Emergency were the darkest period since independence. These were months of severe press censorship, forced sterilization, impotency of intellectuals, and abject bureaucratic surrender marked by terror of the minions and slavery of the elite. During these months fundamental rights stood suspended, judiciary had become imbecile and the whole nation was made into a fascist type police state.

People of this great nation taken by surprise and totally dazed, suffered mutely only to strike back with vengeance as they did in early 1977, soundly defeating emergency minions and wiping out Mrs. Gandhi and her party in the Indo-Gangetic belt. This was as much a vote against Emergency, which was imposed on an unwilling nation, as it was a pledge to see that this kind of ravage and the resultant autocracy will never happen again.

Yet nearly three decades after this historic shame, the safety obsessed and status quo minded among the electorate continue to crave for 'dictators in the guise of democrats' to usher in 'revolution' and lead them to 'progress and prosperity'. This is evident from election results in Gujarat, Tamil Nadu, Uttar Pradesh and Bihar. The fact is that these 'status quoists' either do not know what dictatorship is or are totally alienated from the mainstream millions for whom freedom is far more precious than a few morsels of food.

There are several view points, some of them conflicting, as to the causes that led to this sordid saga of emergency and its outcome. But one fact is central. That is the acknowledgement of JP's national movement against corruption and misrule that had rattled Mrs. Gandhi and her Government so much as to push her into the anti-democratic step of declaring emergency and suspending fundamental rights. It is also acknowledged that despite his failing health JP relentlessly pursued the unification of opposition political parties under one banner and led them to victory in the 1977 polls thereby restoring India to Democracy.

JP, who emerged as the central figure of Indian politics in the seventies, made the difference between dictatorship and democracy. JP is compared with Mohandas Gandhi and has been given the affectionate title of 'Lok Nayak' by the people of this country. Judged from hindsight, in the service of the nation Lok Nayak is at par with the Mahatma. The intensity of passion and fire roused by JP's daring escape from Hazaribagh Jail in 1942 gave life to the Quit India movement launched by Mahatma Gandhi, leading to Independence in 1947. Thirty years later, in 1977, when the Mahatma was no more, JP almost single handedly put a distressed nation together, crafted a political blueprint, defied a well entrenched native regime far more powerful than the alien British, and restored India back to democracy. It is appropriate therefore to call JP the 'Second Mahatma'.

During the freedom struggle in all JP had spent over five years in jail, which has been well chronicled by JP himself or his co-prisoners. But JP had no co-prisoners in Chandigarh since it was detention in the ward of a super-specialty hospital declared as jail. JP did try and keep a diary of events in between bouts of demoralization, depression and ill health, but could manage only 60 days of entry during the 139 days he was in detention. And most of these entries are patchy and brief.

Till midnight of 25 June 1975, JP was a Messiah and the only hope of India's teeming millions for deliverance from stinking corruption and misrule. That was when India was a democracy. From that fateful midnight on under the autocratic regime of Mrs. Gandhi he was a villain and Enemy No:1 of the State. The 20 weeks JP was in detention saw the Indian nation and its people reeling under the weight of emergency excesses and deprivation of freedom and fundamental rights. These weeks also saw a frail old man in his mid-seventies brooding in the solitary confines of the PGI ward, summoning up the last reserves of the indomitable spirit that had egged him to scale the high walls of Hazaribagh jail and flare up the freedom struggle.

While the Emergency drama was for the whole world to see, the privilege of witnessing the intense struggle of the 'revolutionary in chains' was only mine. Not only did I see, I felt it and for a while I was part of it. This was so because, though I was a member of the elite Indian Administrative Service and the District Commissioner of Chandigarh, I was primarily a citizen of the country who valued freedom more than anything else.

Emergency and its excesses, and the arrogance of power displayed by emergency masters and minions are all public knowledge. So also the outcome of the 1977 polls that defeated the forces of fascism. But what is not known is the silent saga of defiance and determination with in the four walls of a PGI ward turned jail, which eventually opened up the floodgates of freedom. This book is the true story of this silent saga of which many a busybody had spread falsehoods and canards.

But why after so long? A good question and the answer is simple. Historical events of this magnitude must be allowed to cool off to facilitate a calm and dispassionate evaluation and analysis. In the heat of events or soon thereafter one tends to be biased and excited allowing errors and distortions to creep in. This actually happened in many of the quickies that rolled out from printing presses and publishing houses during the euphoria of Janata heydays. I too had my temptations, but I resisted them firmly.

It has been a long three decades since these events happened, time enough for a totally new generation to replace the old. All these years I had deliberately kept silent for some good reasons, which I guessed, would be valid by the year 2003 – the centenary year of JP: First, despite the realities and happenings in neighbouring Pakistan, Burma, Bangladesh and China, the timid, 'lotus eating' and laid-back populace of this country would take freedom and democracy for granted and give up the vigil required to upkeep these precious gifts; Second, historians and 'Intellectuals' would have written off JP as a 'champion of lost causes' and a 'failed revolutionary' or as JP's own chronicler Sunanda K. Datta-Ray puts it, "an inconvenient prophet"; Third, overwhelmed by politics of crime, cult and corruption, people would have forgotten JP who was not a power monger and who advocated probity and simplicity in public life; And finally, a whole new generation of people and politicians, particularly youth would have taken center-space for whom 'emergency' meant nothing and JP not even a speck in their memory.

Then it would be time to open up the wounds for the older generation to remember and the new ones to see as to how the nation has been bleeding and how freedom and democracy, which they all take for granted, was virtually extinguished and then restored by the indomitable spirit and sacrifice of a patriot called Jayaprakash Narayan.

This untold saga is being told to rekindle memories and inflame the passion and patriotism that marked great men like Jayaprakash Narayan, but for whom India would not be a free nation today. The Book is also a salute to the Lok Nayak on his birth centenary. ❑

Press Note: 6 August 2012

PUCL welcomes the Release of Seema Azad

The PUCL welcomes the suspension of sentence and granting of bail to Seema Azad, UP-PUCL Organizing Secretary, today the 6th August, 2012 morning from the Allahabad High Court. Her lawyer Ravi Kiran Jain told that it took no time for the Honourable Judges to suspend her sentence and grant her bail. The senior judge orally observed, when the prosecution was pushing for rejection, that this was a case of the right to hold different views which had space within Indian Democracy and the Indian Law. The names of the Judges are Justice Dharni Dhar Jha and Ashok Pal Singh.

The PUCL is extremely happy that Justice has finally prevailed and that the Allahabad High Court restored the Civil Liberties of Seema and her husband Vishwa Vijay, thus reversing the travesty of justice that the District Court and the prosecution had indulged in using section 121 of the IPC "waging war against State" along with various sections of the undemocratic law the Unlawful Activities Prevention Act (UAPA)to detain her in prison.

Seema had been convicted on the basis of heresay evidence, mobile sim and Maoist literature which the prosecution alleged had been found in her bag and her house. It maybe known that Seema was taken on an illegal remand after hundred and eighty days as the police had no evidence to charge sheet her. Also the evidence that was tampered with.

The PUCL would like to thank all the progressive groups, fellow citizens and the media which supported the struggle for the justice and release of Seema Azad and Vishwa Vijay and upholding the right to dissent in Indian Democracy.

It maybe known that on the 8th of June 2012 Additional District Judge, Sunil Kumar Singh, Presiding Officer of the District and Sessions Court, Allahabad, pronounced life imprisonment to 36 year old Seema Azad, writer and editor of Dastak (a monthly magazine) and the Organising Secretary of the People's Union for Civil Liberties, Uttar Pradesh branch, under sec 121 of the IPC, waging war against the Government of India and for offences related to being a member and supporter of a terrorist organization. Her husband Vishwa Vijay too was similarly sentenced. The Judgement had come exactly after the two had spent twenty-seven months (two years and three months) in Naini Jail. The exact sections under which she was convicted are (Sec. 13), for conspiracy to commit a terrorist act (Sec. 18), for being a member of a terrorist gang or organisation (Sec. 20), offence relating to membership of a terrorist organisation (Sec. 38), for giving support to a terrorist organisation (Sec. 39), and under the IPC for criminal conspiracy (S.120B), waging war against the government of India (S.121) and conspiracy to wage war against the government of India (S.121A).

Prabhakar Sinha (President), **V. Suresh, Mahi Pal Singh, Kavita Srivastava** and **Chitaranjan Singh** (all National Secretaries), PUCL National, New Delhi ❑

Waging of War: Case of Seema Azad

N.D. Pancholi

Seema Azad, Organising Secretary of PUCL (UP), alongwith her husband Vishwa Vijay, was arrested on 6th Feb. 2010, as per prosecution case at Allahabad Railway Station. The charge was that both were active members of the Indian Communist Party (Maoist) which is a banned organization and that both were actively involved in its activities. As a proof of their involvement, the prosecution claimed to have recovered lot of Maoist literature. However there was no evidence of their involvement in any offensive action -violent or non-violent. Both were charged under section 121,121-A, 120-B Indian Penal Code (IPC), and various sections of Unlawful Activities (Prevention) Act (UAPA). Both were convicted for sections 121 and 121-A IPC, and sections 13/18/20/38/39 of UAPA. Both were sentenced to life imprisonment under section 121 IPC and rigorous imprisonments ranging from five to ten years in other sections.

This article is mainly concerned about sections 121 and 121-A IPC. Section 121 is concerned about the offence of 'waging of war' against the Government of India and 121-A about conspiring to commit the offence of waging war or to conspire to overawe by means of criminal force or the show of criminal offence the Central government or the State government. Section 121 is the most serious offence in the Indian Penal Code and provides stringent punishment, i.e., death or life imprisonment. Supreme Court in the case of Parliament Attack case (2005 Crl.L.J.3950: State of NCT of Delhi Vs. Navjyot Sandhu) has discussed as to what constitutes 'waging of war against the state and has held that intention and purpose of the 'war-like operations directed against the Governmental machinery' is an important criterion and purpose must

be achieved by the use of force and arms. The most important thing is that the accused must participate in the 'war-like' operations in order to attract the charge of 'waging war'. Given this interpretation of the Apex court, there was no question of charging Seema and her husband for the offence of waging war because there was no allegation that both had participated in any war-like operation against the Indian Government. Similarly there was no evidence that they were part of any conspiracy to wage war against the Government of India and therefore there was no question of charging them with section 121-A. Both should have been discharged even at the initial stage of these two charges, including charges under UAPA. But shockingly, both were not only charged but even convicted, and sentenced to life imprisonment under section 121 IPC.

The anguish of the present writer is that a section of our judiciary, in free India, is using such sections as 121 and 121-A IPC in such manner that even British would not have done so when we were under foreign rule. The most celebrated case during British period relating to conspiracy to wage war is that of M.N. Roy, i.e., MANABENDRA NATH ROY Vs. EMPEROR: A.I.R. 1933, Allahabad 498. This case makes very interesting reading and is also significant from historical point of view as to how Marxism and communism was sought to be introduced and efforts were made to organize communist party within India from 1920 onward. Giving a brief history of the arrest of Roy concerned judge of the Allahabad High Court, i.e., Mr. Thom J. stated in the judgment:

"The appellant Manabendra Nath Roy was tried in the Court of Session at Cawnpore on a charge under S. 121-A, Penal code. He was convicted by the Additional Sessions Judge and sentenced to transportation for 12 years. The charge preferred against him was that on or about 9th May 1923 and before and after, that is to say, from the beginning of 1921 to the end of 1924 he formed a conspiracy and conspired to deprive the Kind-Emperor of his Sovereignty of British India by means of violent revolution. The case for the prosecution against the appellant is that between the years 1921 and 1924, in co-operation with a number of other persons in India, the appellant who was in Europe, resolved to embark upon an attempt to introduce the doctrine of communism into India, the final objective of the conspirators being to set up a communist state in India, a state which would be controlled by the workers and peasants. The institution of such a communist regime was to be preceded by the violent overthrow of the existing constitution in India and the destruction of the sovereignty of the King-emperor.

The means by which the appellant and his fellow conspirators attempted to compass their aims was to unite into one organization the extremist elements in India, revolutionaries, terrorists, the left wing of Congress, labour unions, etc. This organization was to be utilized for the purpose of promoting a revolution in which the masses of peasants and workers were to be the troops and chosen communists, the officers, the masses were to be won by promises to economic betterment; strikes were to be engineered and if possible riots and the like such as occurred at Chauri Chaura, among the Mohplas and in the Punjab. Revolutionaries and terrorists were also to be enlisted by promises. With this aim in view, the appellant got in touch with his fellow conspirators in India, when exactly, is uncertain, but it is clear that the period of the conspiracy was from 1921 to 1924. During these years the appellant was acting in conjunction with his friends in India in endeavouring to prepare the way for the violent overthrow of the Government of India. He was unable to come himself to India where he feared arrest. It was therefore necessary that he should make use of the post to get in touch with his fellow conspirators and during the years 1921 to 1923 therefore numerous letters passed between the appellant and his fellow conspirators. This correspondence did not escape the vigilance of the Intelligence Service of the Government of India. Numerous letters from the appellant to his fellow conspirators and from his fellow conspirators to the appellant were intercepted, some were retained by the authorities, others were copied or photographed and re-posted to the addressees.

This evidence consisted of (a) letters from the appellant to his associates in India and letters from them to him. These are the original letters which were intercepted and retained or found in the possession of the appellant's associates when they were arrested, (b) Copies of letters which were intercepted and either copied or photographed and re-posted, (c) Pamphlets, leaflets and other publications which accompanied the letters or were obtained from other sources."

The judge referred to host of pamphlets, letters and articles as well as the issues of the periodical "The Vanguard of Indian Independence" which Roy published from Europe. Large number of such material was produced as evidence against Roy and excerpts from them find place in the said judgment of the High Court. They make very interesting reading. To quote one from the judgment:

……"The appellant (M.N. Roy) refers to the meeting of the Congress (a meeting of the Communist

International) and states: "The Congress is well on the way. Delegates from almost all the countries are here, even far on Java is not excepted…I am in charge of the Eastern Section of the Congress, but 'here is no Indian delegation... We are having numerous preliminary conferences on the Eastern question which is one of the principal points of the Agenda. It is only here that one can get a true perspective not only on the working class movement in the West, but also on the revolutionary movement in the Eastern subject countries. It is too bad that our movement, which is the most powerful of the Colonial National Movements, should remain so isolated…. We were all very glad to know of the formation of the Socialist Labour Party...The question of forming a new party to assume the leadership of the Indian movement has been very much discussed here…. I take it for granted that the Socialist Labour Party of India…understands the necessity of International affiliation and believes that the Communist International is the only revolutionary International body. Therefore I am sure that you will like to know the attitude of the Communist International towards the Indian movement at the present stage. In consonance with the point of view of the Communist International I make the following propositions about the role the Socialist Labour Party of India should play…All Communists and Socialists should attempt to form a mass party embracing all the truly revolutionary element. In order that many available revolutionary elements are not frightened away by the name our party should have a "non offensive" name. We suggest "the Peoples Party". Of course, the social basis of this party will be the workers and peasants and the political direction of the party should be in the hand of the Communists and Socialists who alone can be the custodians of the interest of the toiling masses. But in order that the Communists and Socialists are not isolated in small sects and can take active and leading part in the mass struggle determining its course and destinies by revolutionary and courageous leadership, a legal apparatus of our activities is needed. The Peoples Party will provide this legal apparatus. It is to be anticipated that no powerful political party with a Communist name will be tolerated by the Government and the latter will be able to count upon the moral and even active support of the native bourgeoisie in prosecuting a Communist party. Hence the necessity of a dual organization - one legal and another illegal. The Communist nucleus should take a very active part in the formation of a mass party for revolutionary nationalist struggle.

"I have already written a pamphlet containing a popularized version of the programme we intend to put forward (This reference is to the pamphlet entitled "What do we want")."

The above case is called 'Kanpur conspiracy case' and other accused were Nalini Bhushan Das Gupta, Mohd. Shaukat Usmani, Muzaffar Ahmad and Sripat Amrit Dange. All of them were arrested earlier and charged under section 121-A i.e. conspiracy to wage war and sentenced to four years of rigorous imprisonment on 20th May 1924. Roy was the principal accused but could not be arrested as he was away in Europe and actively engaged in various important tasks being one of the important members of Presidium of the Communist International. However, later on he developed differences with the policy pursued by the Communist International which according to him was subordinating the interests of international communist movement to the interests of the Russian State. He returned to Indian incognito in December 1930 and was arrested in July 1931.

During trial Roy did not deny the host of documentary evidence produced by the prosecution against him. He admitted to be the author of such documents. His main contention was that since 'the British rule was established in India illegally by use of force, he and every Indian was entitled to throw the British out by using force.'

The significant point here is that even when Roy and his colleagues had admitted and claimed that they had every right to indulge in conspiracy to throw out the British rule in India, he and his colleagues were not charged by the British under section 121 IPC i.e. "waging of war against the King Emperor". It is shameful that in free India Indian citizens are charged for such stringent offence when there is no iota of evidence. Another significant point is that under section 121-A the colleagues of Roy were sentenced to only 4 years of imprisonment by the British while in free India life and death sentences are given for mere asking of the police, usually on fabricated evidence.

Roy was sentenced to 12 years of transportation by the session judge on the ground that he was the leader of the accused and that success of the conspiracy would have spelt disaster in India. But in appeal the High court reduced the sentence to six years on the ground that the sentence of 12 years was severe and that chances of success of the conspiracy were nil. However, in comparison our present rulers seem to be so terrified of the prospect that mere possession of so-called 'offensive literature' would shake the Indian State from its very foundation and therefore sentencing accused to life imprisonments were the best guarantees to protect it. ❑

A Few Words About PUCL*

Prabhakar Sinha

Friends,

Many of our members were born either after the Emergency or a few years earlier. In either case they may not be fully aware of the context which necessitated the formation of PUCL or the values it strives to promote and preserve. Many may not be quite conversant with its constitution or mode of its functioning. The latter is not unexpected as our constitution is very short and cannot be appreciated without understanding its spirit. In an appeal to our members issued a few months ago, I had tried to shed some light on the working of our constitution. A few words on this occasion would not be out of place.

PUCL was formed when the country was passing through an unprecedented crisis. In a midnight coup (25-26 June, 1975), Indira Gandhi declared internal emergency misusing the provision of the constitution in this regard, destroyed democracy and imposed her personal rule on the country. J.P. along with all the opposition leaders were thrown behind the bars, a complete censorship was imposed on the media and a reign of terror let loose by the administration. The slightest activity suspected of opposition to the dictatorship or a whisper for democracy or hostility to a politician supporting the emergency or to the lowliest of a government functionary landed one in jail. In such a situation, to form or join an organisation for the restoration of democracy was an act of great courage. Only people with deep conviction capable of making sacrifices joined it.

The constitution of PUCL contains some salient features whose origin is traceable to the experience of the struggle for the restoration of democracy. The struggle against Indira Gandhi's authoritarian rule was carried on by the people and parties with very different ideologies. They included the Socialists, the Marxists (not the C.P.I., which supported the emergency), the Jan Sangh, the Gandhians, the Sarvodayis and several others .In spite of their antagonistic beliefs, they united to fight for democracy. It is on account of this experience that the framers of the constitution of the PUCL thought of an organisation not consisting of only like minded people but of all those who are committed to 'the defence and promotion of civil liberties in India'. The members of political parties are eligible to be members but in their personal capacity and not as representatives of their respective parties. There is no conflict of interest among them as the Aims and Objects (Art.2) of the constitution of PUCL does not support any political party or its ideology or a plan to compete for power.

Despite this, initially it is not very easy for the people with diverse and even antagonistic views to work together. However, it has been possible because the members have been working in good faith without an ulterior motive. Difference of opinion is a natural and welcome phenomenon in any democratic organisation, more so in ours, which consists of such different individuals. However, the conflict of the views on any issue is easily resolved by reference to the constitution. When we sit as the PUCL, we speak on behalf of the PUCL and take the stand which flows from its constitution. For example, a Marxist does not believe in non-violence as a creed and believes in revolutions which may be violent, but he does not demand that the PUCL should not stick to its commitment to the use of only peaceful means In the same way, the PUCL does not demand that a person belonging to a party believing in violent revolution should not be its member. In fact, this dilemma was faced by the countries having different ideological positions while drafting the Universal Declaration of Human Rights. But in the interest of humanity, all the countries including Soviet Union under Stalin agreed to the draft which includes the right to property as a human right though to a Communist right to private property cannot be acceptable.

Thus, we are inclusive of persons who are committed to the defence and promotion of civil liberties regardless of their belief in 'political and economic institutions suitable for the country.' However, it is not open to those who may be interested in joining the organisation with an ulterior motive or whose entry may be inimical to the interest of the organisation. It is also not in keeping with he spirit of the organisation to enroll members who sign the membership form which contains the following pledge: 'I subscribe to the aims and objects of the People's Union of Liberties and agree to abide by its constitution'. The state units have to very cautious on two points. They should not deny membership to a person who is genuinely interested in protecting and promoting civil liberties in the country on account of his political views or other extraneous consideration or enroll persons who are not able to understand and appreciate our aims and objects and/ or the constitution. Many political parties have yielded to the temptation of increasing their membership by resorting to such bogus members and have lost their bearing.

An organisation born to fight authoritarianism is bound to be anti-authoritarian. This is amply reflected in our constitution. It confines the function of the National Convention to 'review the work of the organisation and lays down policies and programmes for future' and of the National Council to 'determine the policy and programme of the organisation, in conformity with the policies and programmes adopted by the National Convention.' Similarly, the Executive Committee is to 'promote the formation of branches of the organisation in every state in India.' It is evident that the constitution does not empower the national bodies to function as a 'High Command' and keep on intervening in the matters falling within the jurisdiction of the state or the district unit.

I want to emphasize this point because there has been persistent demand from interested persons for the intervention by the National bodies in matters falling within the exclusive jurisdiction of the state units. The PUCL at the national level must refrain from such intervention because it would be unconstitutional as well as fundamentally opposed to the anti-authoritarian spirit of our constitution. Sometimes, it may appear that an intervention by the national PUCL in the affairs of the state would be beneficial, but violation of the constitution and compromising principles are always destructive of an organisation in the long run. It is the duty of the state units to act according to the constitution and zealously guard their autonomy

It is very important to keep in mind that PUCL is committed to the use of peaceful means, to promote democratic way of life and work for securing the rule of law. These have significant implications for us. The ruling elite in our country is guilty of misusing the power of the state to serve their narrow interest at the cost of the people, but we cannot support removing them with violence and use of force. We can only support their removal by peaceful and democratic means. It is due to this that we cannot support struggles even for just causes but fought with arms.

The emphasis on the use only of peaceful and democratic means is very important for a very different reason also. There have been incidents in which the members of the PUCL took recourse to threats which were translated into action. There have been cases in which some of our members have resorted to character assassination of their colleagues for one reason or the other. No organisation of civilized persons specially, if it is committed to the use of peaceful and democratic means can or should allow such objectionable conduct. Difference of opinion is inevitable in any democratic organisation but it has to be debated in a civilized language and manner. The same is applicable to the ventilation of grievances.

It has to be borne in the mind that the PUCL has nothing to offer to its members except the satisfaction he may derive from serving a great cause; but this is not a sufficient reason for most of our members to accept insult and humiliation and continue to be with us. It also needs to be borne in the mind that nobody would resort to insulting colleagues, intimidation and use of force to stay in an organisation like the PUCL for love for civil liberties. In an organisation like ours only those would resort to such unacceptable methods who have some ulterior motive because PUCL has nothing to offer which may be worth so such unethical conduct.

Some members have a feeling that we should be able to do things as fast as funded organizations. It should be appreciated that PUCL and the funded organizations belong to two different species and are bound to have entirely different mode of working. However, it is important to remember that we are different without claiming that one is superior or inferior. The first difference is that funded organizations depend on their paid employees to execute a project for their funders. The services of their employees are available to them six or seven days a week. They have total control over them since the employees have no security of service. Besides, they have no financial constraint. A voluntary organisation like ours has to depend on its members for any work to be done. Our members who have to make a living can give only as much time as their circumstances allow. With voluntary members we cannot work for seven days a week at the rate of six or eight hours a day. Besides, we have to depend on small donations for meeting our expenses. It is also crucial to keep it in mind that we are not executing a particular project. Our object is to create consciousness among the people and inspire them to fight for their rights. I have chosen to draw attention to the difference between these two categories of organizations to end the feeling of demoralization I happened to notice in many members. The members of the PUCL have reasons to take pride in the voluntary work they have been doing because they belong to a rare class of people who are ready to serve the society without expecting any return and are ready to suffer in the service of the society as Dr Binayak Sen and Seema Azad have shown.

Before ending, I would like to repeat my appeal made to you a few months ago with a request to respond positively to enable the PUCL to meet the challenges before us.

**Paper presented by Prabhakar Sinha, President, PUCL at the National Council Meeting held at the Gandhi Peace Foundation, New Delhi on 4 August 2012.* ❑

General Secretary's Report*** - read out at the PUCL National Council Meeting on 4-5 August 2012 at Gandhi Peace Foundation, Delhi

Dear Colleagues,

I regret not being here personally to welcome you in this National Council meeting. However, here is a brief report of activities of the National PUCL from August 2011, Jaipur National Council meeting and May 2012. The details of activities in the month of June and July will be shared with you shortly after the reading of this report.

Friends, in the year gone by we are poorer by loss of sh. Sidney Pinto, who was our long time treasurer and donor. Today we pay homage to him for his valuable services to the PUCL. I request you to stand up and observe a two minutes' silence as a mark of respect to the departed soul.

During the period in question, challenges before the human rights' community in general and PUCL in particular have not lessened. In fact, they have grown considerably. The State continues to silence dissent by prosecuting and incarcerating human rights defenders in particular and people in general. Two glaring examples of this are the conviction of Seema Azad of UP-PUCL and arrest of Jaipal Nehra of Delhi-PUCL. The latter has been arrested in a case that pertains to a mass agitation which took place nearly three decades ago. I am sure these and related challenges will be deliberated in the present meeting in detail and strategy would be formulated to counter them.

As you all know, earlier in October last year, there was a police raid at the house of our secretary Kavita Srivastava which attracted wide scale condemnation from human rights organizations across the country. PUCL also represented on this to the NHRC. NHRC later sought responses from the relevant authorities and also asked Kavita Srivastava to present her version which was submitted to it. I hope that the subsequent developments on the case will be shared by Kavita Srivastava with the National Council. I mention this to highlight the fact that presently we have only limited avenues of recourse available to us in wake of a targeted persecution by the State, and we should do well in devising more imaginative ways to counter it. I have no hesitation to say that the role and response of NHRC in such cases have been less than appreciable.

PUCL participated in the meeting called by the NHRC to discuss India report to be presented at the UN Human Rights Council in wake of universal periodic review (UPR) that was scheduled to be held in May this year. I participated in the meeting and conveyed our deep disappointment at the fact that India had not implemented several recommendations from the 2008 review including ratifying the Convention on the Enforced Disappearance. This is shameful in the light of recently discovered mass graves in Jammu and Kashmir.

PUCL organized a meeting on 'Enforced Disappearances and Discovery of Mass Graves in Jammu and Kashmir' in October last year in which speakers from affected places like Punjab and Kashmir came and spoke demanding signing of the above mentioned convention and amendment to the Prevention of Torture Bill as per the recommendation of the Select Committee of the Rajya Sabha.

A convention against the Sedition law was held in Delhi by the end of January 2012. This well attended meeting was held jointly with several organizations across the country. The convention declared the launch of an all India campaign against sedition and other repressive laws.

Meanwhile, PUCL represented to the Petitions Committee of Rajya Sabha demanding repeal of the law on sedition. The committee sought a reply from the Home Ministry which in its response contended that since the law was upheld by the Supreme Court there was no merit in our representation. I again sent a rejoinder arguing that upholding of a law is not a valid reason for continuation of an anti-people law and it is for that very reason that we have approached the supreme forum of the people- the Parliament. However I have been informed by the officials two weeks back that the Chairman (the Vice-President) has disallowed the petition.

I have also represented to the said committee on the death penalty. But there has been a lukewarm response on it and it seems it has been put in the cold storage. However, this should not discourage us and we must keep pushing on the issues like these which are significant and core areas of our concern.

PUCL also represented to the Petition's Committee on large scale adulteration of food in the country affecting and endangering lives of a large number of people. In my absence, I requested Kavita Srivastava and Mahipal Singh to represent the PUCL. I have been informed that the submission was excellent. I thank them for the effort they made for making it successful.

Friends, the nuclear energy and its safety questions have assumed serious dimensions due to recent developments in Japan. It directly affects not only the present but future generations also. In this context, a Nuclear Safety Regulatory Authority Bill 2011 is pending before the parliament. The bill seeks to provide exemption under The Right to Information Act to these regulatory bodies categorizing them as intelligence and security organizations. PUCL wrote a letter to the Department related to parliamentary standing committee on Science, Technology, Environment and Forests demanding that it should recommend deletion of all clauses that seek to amend the RTI Act in this regard. I am given to understand that the matter has also been taken up by other organizations and it needs to be followed up. It is specially an important issue because it is on government's priority list and has many facets to it with a potential of directly affecting the lives of the common masses .

In September 2011, a terrorist attack took place at the Delhi High Court in which many people lost their lives and several got injured. We all know about the government's response to such incidents in apprehending the culprits and often we have pointed out lacunas in that. However government's response to the surviving victims and kith and kin of dead is also deplorable and insensitive in the form of a paltry compensation. PUCL wrote a letter to the Union Home Minister demanding for a comprehensive rehabilitation policy for such victims. As usual there has not been any response from the ministry.

In Chhattisgarh, rights situation continues to be grim. One of its manifestations is in the form of incarceration of Soni Sodi and the inhuman torture and sexual violence that she has been subjected to. There is a larger campaign going on at various levels for ensuring justice to her and also highlighting custodial sexual violence against women across the country. PUCL has been an active participant of this campaign and held a meeting on the issue in collaboration with many other organizations in Delhi at the end of March this year. It was a well attended meeting and I hope that PUCL will continue to be the part of this campaign in near future as well.

Organisational Matters

The financial health of the organisation though not precarious needs to be strengthened. As on 4 July, 2012 we have Rs. 1, 79, 417 in the savings account and Rs. 825,000 in fixed accounts. As for our expenses, there is a recurring expense of about Rs. 50 thousand per month for paying the rent for the office, salary of the two employees, publication of the bulletin and other miscellaneous expenses. In light of this we do need a robust corpus to keep functioning. I request the National Council members to contribute as per their capacity or the minimum Rs. one thousand per year as decided by the National Council earlier and also suggest imaginative ways to strengthen our financial resource base.

Here I take the opportunity to thank all our donors who continue to support us and enable us to continue to function in times when voluntary work has become extremely difficult. Special thanks are due to Shri Ajit Balakrishnan, who donated Rs. 3 lakh last year and donates regularly on monthly basis from the income received from one of his columns in a newspaper.

In regard to membership, as on July 2012, we have 3817 members. This includes 646 members who subscribe to our PUCL Bulletin. I request the National Council members to encourage more fellow members in their respective States to subscribe to the PUCL bulletin and contribute through writing in it to make it more representative. At present, we have presence in 24 States and Union Territories in the country with 12 functional State units.

For our future programmes I repeat my suggestion of last year to chalk out a concrete progragmme of strengthening the existing branches and reviving the non-functional branches. The State branches where revival is necessary are Madhya Pradesh, Mumbai, Orissa, West Bengal, and Uttarakhand. I should also mention here that I have not heard anything from our PUCL unit of Kerala for a long time even after repeated letters and there is a need to ascertain its status and health.

In the last meeting of the Council at Jaipur, the report on Jharkhand was discussed elaborately. As per the decisions taken in the Council meeting, a three member committee was constituted comprising Ajit Jha, Mahipal Singh and Surendra Kumar (Convener) to conduct the election which was not allowed to be conducted in August last year. (For the details, the report of the General Secretary presented at Jaipur may be perused). Later Mahipal Singh resigned from the committee. However, the other two members went to Ranchi in early April this year and facilitated conduct of elections on 12 April, 2012 and now a new executive committee of the State is in place and presently functioning. The new executive committee is advised (as per the decision taken at a meeting of National Secretaries and other office bearers attended by Prabhakar Sinha, Justice Rajindar Sachar, Dr Binayak Sen, Ravi Kiran Jain, Chitranjan Singh, Kavita Srivastava, Mahi Pal Singh, V. Suresh and myself) to be inclusive and adjusting in its functioning and should try to strengthen the activities of the organization in the State. The decision taken is as follows:

"It was decided that the new executive committee should be encouraged to be inclusive and adjusting in its functioning and it should try to strengthen the activities of the organisation in the state."

A member of Uttar Pradesh PUCL sent a letter to allege that some people were not called for the state convention recently held in Banaras. On the suggestion of Chitranjan Singh, President, UP-PUCL I sent a letter regarding this to the UP- PUCL General Secretary for information in this regard.

I should also mention that in the recent past there has been a tendency amongst some members to write letters on certain issues or leveling charges against some office bearers of the organization in an unacceptable language, tone and temper and circulating it all around even amongst people who are not even part of the organization. This is certainly not an acceptable behavior. It amounts to a slander campaign and tarnishing of image of the organization. All the organizational matters must be discussed and resolved democratically at proper organizational forums at appropriate level and time. Character assassination, intimidation or use of violence can have no place in any democratic organization, more so in an organisation committed "to uphold and promote by peaceful means civil liberties and the democratic way of life throughout India". Usually I have refrained from being drawn into it as far as possible though at times have reacted in line with the spirit of the constitution of PUCL. I am glad that quite a few issues of contention have been clarified by our President in his paper entitled 'An Appeal to the Esteemed Members'. I take this opportunity to encourage you to read it.

With these words I conclude and thank you all for a patient hearing and wish all the success to the meeting.

Pushkar Raj, General Secretary, PUCL National

**** The report may be read in the National Council meeting by one of the national office bearers on my behalf. Details of activities taken up in the month of June and July may separately be shared with the Council.*

Report of activities of the PUCL after the departure of Pushkar Raj to Australia:

After the conviction of Seema Azad and her husband on 8th June 2012 by an Additional Sessions Court of Allahabad the matter of miscarriage of justice in the case was discussed at the Anti-emergency Day Meeting held on 26th June 2012 at the Gandhi Peace Foundation, New Delhi. The anti-emergency day meeting is held every year to take stock of the state of civil liberties in the country but considering the judgment in the Seema Azad case it was decided to hold a bigger meeting in co-ordination with several human rights organizations including the PUCL, PUDR, Jan Hastakshep, Citizens for Democracy, Champa - The Amiya and B.G. Rao Foundation, Jan Sanskriti Manch, Samkaleen Teesri Duniya, NAPM, HRLM, AIPWA, NFFWFP, Safai Karmachari Andolan, INSAF, FFPHRD, AISA, Samyantar, Pratirodh.com, Vihan, PDFI along with several writers, activists and thinkers. As usual repeal of anti-people laws including the sedition law, Special Security Laws in force in various States, AFSPA, UAPA etc. was demanded. A Fact Sheet in the Seema Azad case was presented by Sh. Ravi Kiran Jain and a Critique of the Allahabad Court Judgment prepared jointly by the PUCL and the PUDR was also released on the occasion.

Mahi Pal Singh, Secretary, PUCL ❑

NHRC Raps States for Denying Silicosis Deaths

Issues show-cause notices to Jharkhand and Delhi for payment of monetary relief

Sayantan Bera

After a wait of six years, Sadhana Das, 45, finally has some hope of getting compensated. Her son Sasthi Das had died in 2006 after working for three years in a quartz crusher unit in East Singhbhum district of Jharkhand. He was only 25. The landless family had to sell household utensils after exhausting all its savings to pay for Sasthi's treatment. Sasthi and 21 of his fellow workers succumbed to silicosis, an irreversible lung disease, caused due to inhaling silica dust. The company, K K Minerals, shut shop and opened another unit a kilometre away in Musabani block. There is no known medical treatment for silicosis-victims report extreme weakness, breathing trouble, constant cough and weight loss, following which they die.

The National Human Rights Commission (NHRC), according to its press releases on 9 and 10 July, 2012, hauled up the state governments of Jharkhand and Delhi. NHRC's show-cause notice to the Jharkhand chief secretary asks the state to explain, "Why the next of kin of the 22 workers who died of silicosis be not recommended monetary relief". The commission has also sought a report on "action taken regarding medical treatment and rehabilitation of workers who are suffering from silicosis and are alive."

The show-cause notice issued to the Delhi chief secretary notes: "prima-facie it is established that the Government of NCT of Delhi has failed to protect the 21 workers out of 44 from the occupational disease caused due to inhaling of silica in dust." NHRC also wrote that subsequent to its notice to the Delhi government, it first denied that there was any case of silicosis among the mineworkers of Lal Kuan. NHRC then constituted a medical team, which confirmed silicosis. The issue was brought to the commission by PRASAR, a Delhi based non-profit organisation,

Silicosis is prevalent among workers involved in extraction and cutting of quartzite, gneiss, granite and slate, foundries, glass manufacturing plants, brick making, manufacture of pottery, porcelain, refractory materials and siliceous abrasives, road building, demolition work where potential sites of silica exist and blasting work using explosives.

"The magnitude of the problem can be gauged by the fact that Jharkhand has a mining history of 200 years. Presently, the state has 15,000 dust generating mines and units and our estimate is that over 2.5 million workers are suffering from silicosis," says Samit Kumar Carr, secretary general of the non-profit Occupational Safety and Health Association of Jharkhand (OSHAJ). Carr brought the plight of the families to the notice of NHRC and has painstakingly collected evidence-medical reports and X-ray plates-so that the families can receive compensation. "If compensation is awarded in one case, it will have ramifications for the entire country," he says.

Jharkhand suspended doctor for diagnosing silicosis

The NHRC order notes a claim from the chief secretary of Jharkhand in May 2011 that the state has no certifying surgeon who can diagnose silicosis. After the admission, NHRC handed him a letter from the deputy secretary of East Singhbhum, addressed to the principal secretary of Jharkhand (dated May 18, 2011). "It was mentioned in the letter that a team of doctors was constituted under the district mining officer in which six persons were found suffering from pneumoconiosis," notes NHRC. Pneumoconiosis is a broader category of occupational lung disease, of which silicosis is one.

A report submitted in March 2005 by a team of government doctors, signed by the in-charge of Musabani primary health centre, V Murli Krishna mentions the following in its conclusion: "All the above patients examined by us, have had exposure to fine stone dust particles for prolonged periods, unprotected. They developed silicosis, some in early stage, and some in progressive massive fibrotic stage. The only treatment available for silicosis is prevention and avoidance to fine dust exposure."

There were, in fact, eight people diagnosed by the medical team. All of them have died since. Sukhram Gop, who was diagnosed at "an early stage of silicosis", died in December 2005, eight months after the report was submitted. "We never received a paisa for his treatment or any compensation after his death. They suspended Krishna for two years and later transferred him to Jamshedpur," recalls Monika Gop, Sukhram's widow who is now struggling to get her daughters married.

The denial by the Jharkhand government raises questions about whose interests the state is protecting. Silicosis is a "notifiable" disease under the Factories Act of 1948, implying each case has to be reported to the district authorities so that compensation and preventive measures can be taken. Further, it is a compensable disease under the Workman's Compensation Act, 1923. For instance, Sasthi Das should have received nearly Rs 13 lakh in compensation.

About 30,000 silicosis deaths go unreported each year

"In India, millions who work in crusher units in Jharkhand, Gujarat, Rajasthan and other states are affected by silicosis. An estimated 30,000 die every year," says Samit Carr, a PUCL activist from Jharkhand. "But till date not a single family has received compensation. The disease could be prevented by using engineering controls like dust extraction devices which most units do not use to save costs. Doctors write tuberculosis instead of silicosis to avoid the legal obligation of reporting it to higher authorities," he adds. The rap from NHRC might change things for better. ❑

PUCL Karnataka: Press Release, 30 July 2012

Rowdyism and Moral Policing at Padil, Mangalore

We condemn the moral policing indulged into by Hindutva exponents, under the direction supervision of RSS. You may call them in any name but all that is happening in Karnataka and specially in and around the coastal districts under the guidance, supervision and encouragement of RSS supremo of Kalladka who is also financing the riots is anti national, anti secular and a against the integrity of the nation.

It will not stop because so far no serious action has been taken against the conspirator for all his acts and provocations in public.

Police cannot take any action against this man or his lieutenants as police have to depend on him for promotions, transfers, etc. When all ministers including the C.M. report to him how can we expect any lawful steps from the police.

A corporator who organized anti social elements to protest and make a scene at the spot demanding actions against the victims and the house owners, the Police instead of arresting him and others he was let free because of the pressure from the Sangh Parivar activists.

Police say they lathi charged and disbursed the crowd, while the right thing required was to arrest them for causing communal unrest and disturbance under section 153 a & b and section 295.

A time has now reached for the silent majority to come to the streets peacefully and protest in every street corners. All religious leaders should call for massive prayer meetings every evening at a fixed time for demanding action against the main conspirator, and main executors of the riots and violence. Every genuine Hindu who is a very peaceful and patriotic should come out of their shells and tell the politico religious hindus to shut up and stop their mischief and nuisance and anti national activities.

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

Testimonial Campaign Contribute to Eliminate Impunity for Perpetrators of Torture in India

(Justice) K.G. Balakrishnan

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," states Article 5 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948.

The prohibition of torture and other forms of ill-treatment has a special status in the international protection of human rights. It is included in a number of international and regional treaties and also forms part of customary international law, binding all States. The prohibition of torture is absolute and can never be justified in any circumstance. This prohibition is non-derogable, which means that a State is not permitted to temporarily limit the prohibition on torture under any circumstance

whatsoever, whether a state of war, internal political instability or any other public emergency. Further, the prohibition of torture is also recognized as a peremptory norm of international law, or *jus cogens*. In other words, it overrides any inconsistent provision in another treaty or customary law.

Considering the particular importance placed on the prohibition of torture, the traditional obligations of States to respect, to protect and to fulfill human rights is complemented by a further obligation to prevent torture and other forms of ill-treatment. States are required to take positive measures to prevent its occurrence. "In the case of torture, the requirement that States expeditiously institute national implementing measures is an integral part of the international obligation to prohibit this practice."

Torture is probably one of the most common forms of human rights violations. Those held in detention frequently experience torture in many different forms. But it can be prevented. Human rights and other social justice organizations have a critical role to play in preventing torture in places of detention. But to do so effectively, a clear understanding of what is torture and the mechanisms available to prevent it is necessary. Further, the aim of the testimony is to facilitate integration of traumatic experiences and restoration of self-esteem. It is also useful as it channels the victims into socially constructive actions like production of a document that could be used as indictment against the offenders. Testimonial campaign plays crucial role in fight for justice and helps the victims of casteist aggression, police torture, communal violence or any other kind of injustice, to come out of the trauma.

Definition

Torture, according to the 1984 United Nations Convention Against Torture (an advisory measure of the UN General Assembly) is: …any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidation or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions. — UN Convention Against Torture

This definition was restricted to apply only to nations and to government-sponsored torture and clearly limits the torture to that perpetrated, directly or indirectly, by those acting in an official capacity. It appears to exclude:

1. Torture perpetrated by gangs, hate groups, rebels or terrorists who ignore national or international mandates;

2. Random violence during war; and

3. Punishment allowed by national laws, even if the punishment uses techniques similar to those used by torturers such as mutilation or whipping when practiced as lawful punishment. Some professionals in the torture rehabilitation field believe that this definition is too restrictive and that the definition of politically motivated torture should be broadened to include all acts of organized violence.

In 1986, the World Health Organization working group introduced the concept of organized violence, which was defined as:

"The inter-human infliction of significant, avoidable pain and suffering by an organized group according to a declared or implied strategy and/or system of ideas and attitudes. It comprises any violent action that is unacceptable by general human standards, and relates to the victims' feelings. Organized violence includes "torture, cruel inhuman or degrading treatment or punishment" as in Article 5 of the United Nations Universal Declaration of Human Rights (1948). Imprisonment without trial, mock executions, hostage-taking, or any other form of violent deprivation of liberty, also falls under the heading of organized violence."

An even broader definition was used in the 1975 Declaration of Tokyo regarding the participation of medical professionals in acts of torture:

For the purpose of this Declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.

This definition includes torture as part of domestic violence or ritualistic abuse, as well as in criminal activities. Since 1973 Amnesty International has adopted the simplest, broadest definition of torture:

"Torture is the systematic and deliberate infliction of acute pain by one person on another, or on a third person, in order to accomplish the purpose of the former against the will of the latter."

Risk Factors

- In order to effectively address the root causes of torture and other forms of ill-treatment, a direct preventive strategy should begin with a thorough analysis of risk factors (those conditions that increase the possibility of torture occurring).
- The general political environment is an important factor to consider, as a lack of political will to prohibit torture, a lack of openness of governance; a lack of respect for the rule of law and high levels of corruption can all increase the risk of torture. The same is true for the

social and cultural environment. Where there is a culture of violence, or high public support to "get tough" on crime, the risk of torture occurring is also increased.

- The national legal framework should also be analyzed. In countries where torture is prohibited in the Constitution and in law, as well as being a specific offence under the criminal code the risk of torture might be lower than in countries where this is not the case. The analysis should also focus on the rules and regulations that apply to places where persons are deprived of their liberty, as well as the existence of appropriate legal safeguards. In addition, the way in which the legal framework is implemented in practice should be closely analysed.
- The organization and functioning of the criminal justice system is another important factor to consider. The level of independence of the judiciary, as well as the level of reliance on confessions in the criminal justice system, will have a direct influence on the risk of torture. As the risk of torture is higher during the initial period of detention, particular attention should be paid to law enforcement authorities. In this regard, the institutional culture, the role and functioning of the police and recruitment and training processes for officers can all positively or negatively influence the risk of torture. Finally, the overall institutional environment should be included in the analysis. The level of accountability and transparency of the authorities, the existence of public policies regarding crime prevention and the effectiveness of complaints mechanisms are factors that can reduce the risk of torture, along with effective independent external actors, such as NHRIs and civil society organizations.

Situations of Risk

- Any situation where a person is deprived of his or her liberty and when there is an imbalance of power, in which one person is totally dependent on another, constitutes a situation of risk. The risk of being tortured or ill-treated is higher at certain time during the period of a person's detention, such as the initial period of arrest and police custody, as well as during transfer from one place of detention to another. Situations where persons deprived of their liberty are held out of contact with others can also increase the risk of torture or ill-treatment, in particular incommunicado detention or solitary confinement.
- The risk of torture and other forms of ill-treatment exists within any closed facility; not only prisons and police stations but also, for example, psychiatric facilities, juvenile detention centres, immigration detention centres and transit zones in international ports.

Potential Victims

- It can be difficult to identify persons or groups who are at greater risk of torture and ill-treatment, as this can vary significantly according to the national context. In fact, any person could potentially be at risk. In general, however, vulnerable and disadvantaged groups within society – such as minority groups (racial, ethnic, religious or linguistic), women, minors, migrants, people with disabilities, the homeless and the poor – commonly face a higher risk of torture and ill-treatment.
- An effective preventive strategy requires a certain level of political will to combat torture, which is publicly stated and able to be monitored. In an Environment where torture is systematically used to silence political opposition, prevention initiatives are likely to fail or be used for political propaganda.
- It is important to stress that no State is immune from the risk of torture and ill-treatment. As a result, there is always a need to be vigilant and to develop and implement effective preventive strategies.

Torture of innocent people

One well-documented effect of torture is that its victims will say or do anything to escape the situation, including untrue "confessions" and implication of other without genuine knowledge, who may well then be tortured in turn. That information may have been extracted from the Birmingham Six through the use of police beatings was counterproductive because it made the convictions unsound, as the confessions were worthless. There are rare exceptions, such as Admiral James Stockdale, Medal of Honor recipient, who refused to provide information under torture.

Secrecy

Before the emergence of modern policing, torture was an important aspect of policing and the use of it was openly sanctioned and acknowledged by the authority. The Economist magazine proposed that one of the reasons torture endures is that torture does indeed work in some instances to extract information/confession, if those who are being tortured are indeed guilty. Depending on the culture, torture has at times been carried on in silence (official denial), semi-silence (known but not spoken about), or openly acknowledged in public (to instill fear and obedience).

In the 21st century, even when States sanction their interrogation methods, torturers often work outside the law. For this reason, some prefer methods that, while unpleasant, leave victims alive and unmarked. A victim with no visible damage may lack credibility when telling tales of torture, whereas a person missing fingernails or eyes can easily prove claims of torture. Mental torture, however can leave scars just as deep and long-lasting as physical torture. Professional torturers in some countries have used techniques such as electrical shock, asphyxiation, heat, cold, noise and sleep deprivation, which leave little evidence, although in other contexts torture frequently results in horrific mutilation or death. However the most common and prevalent form of torture worldwide

in both developed and under-developed countries is beating.

Effects of torture

The consequences of torture reach far beyond immediate pain. Many victims suffer from post-traumatic stress disorder (PTSD), which includes symptoms such as flashbacks (or intrusive thoughts), severe anxiety, insomnia, nightmares, depression and memory lapses, Torture victims often feel guilt and shame triggered by the humiliation they have endured. Many feel that they have betrayed themselves or their friends and family. All such symptoms are normal human responses to abnormal and inhuman treatment.

Organizations like the Freedom from Torture and the Center for Victims of Torture try to help survivors of torture obtain medical treatment and to gain forensic medical evidence to obtain political asylum in a safe country and/or to prosecute the perpetrators.

Torture is often difficult to prove, particularly when some time has passed between the event and a medical examination, or when the torturers are immune from prosecution. Many torturers around the world use methods designed to have maximum psychological impact while leaving only minimal physical traces. Medical and Human Rights Organizations worldwide have collaborated to produce the Istanbul Protocol, a document designed to common torture methods, consequences of torture, and medico-legal examination techniques. Typically deaths due to torture are shown in an autopsy as being due to "natural causes" like heart attach, inflammation, or embolism due to extreme stress.

For survivors, torture often leads to lasting mental and physical health problems.

Physical problems can be wide-ranging, e.g. sexually transmitted diseases, musculoskeletal problems, brain injury, post-traumatic epilepsy and dementia or chronic pain syndromes.

Mental health problems are equally wide-ranging; common are post-traumatic stress disorder, depression and anxiety disorder. Psychic deadness, erasure of inter subjectivity, refusal of meaning-making, perversion of agency, and an inability to bear desire constitute the core features of the post-traumatic psychic landscape of torture.

The most terrible, intractable, legacy of torture is the killing of desire – that is, of curiosity, of the impulse for connection and meaning-making, of the capacity for mutuality, of the tolerance for ambiguity and ambivalence. For these patients, to know another mind is unbearable. To connect with another is irrelevant. They are entrapped in what was born(e) during their trauma, as they perpetuate the erasure of meaning, re-enact the dynamics of annihilation through sadomasochistic, narcissistic, paranoid, or self-deadening modes of relating, and mobilize their agency toward warding off mutuality, goodness, hope and connection. In brief, they live to prove death. And it is this perversion of agency and desire that constitutes the deepest post-traumatic injury, and the most invisible and pernicious of human-rights violations.

Psychiatric treatment of torture-related medical problems might require a wide range of expertise and often specialized experience.

Fighting torture – A multi dimensional issue

There is no impartial mechanism for receiving complaints against torture. The complaints must be made to police authorities themselves. The National Commission for Police Reforms many years ago recommended that police in India should be made independent. However, the absence of political will has meant that these attempts have failed.

- Torture and fabrication of cases are closely linked. In attempting to save offenders for obvious reasons, the police implicate innocent people and impose any amount of cruelty and torture on them until a 'confession' is extracted.
- The prosecution system at time protects the perpetrators. Prosecutors should be independent, competent, and appointed through a judicious process to scrupulously uphold the cherished values enshrined in statutes.
- In the present criminal justice system in India, the victims or complainants have no decisive role in seeking redress. Everything depends on the mercy of the investigating officer and the state prosecutor, who are often subject to manipulations and malpractice. Therefore, the de facto complainants or victims, if they are resourceful and confident, should be allowed to appoint their own lawyers to conduct prosecution on their behalf.
- India not having ratified the Convention against Torture, its citizens do not have the opportunity to find recourse in remedies that are available under international law. Indian practices with respect to torture do not come under international scrutiny. Access to the UN Committee against Torture, and other mechanisms, is effectively denied people living in the largest democracy in the world. Since the country has also not signed the Optional Protocol to the International Covenant on Civil and Political Rights, its citizens also do not have the right to make individual complaints to the UN Human Rights Committee. The victims are trapped with the local system, which in every aspect militates against their rights. Many victims conclude that a justice system accessible to the poor of the land does not exist at all.
- Despite its many human rights groups, an effective and powerful campaign for the elimination of torture has yet to be developed in India. If we fail to protect ourselves from torture, which is the basis for

all other fundamental rights, we will not be able to vindicate any other rights.

- The concept of Human Rights Courts needs to be revamped and re-envisaged so that an effective mechanism can be introduced. Judges who sit in such courts need to have a through knowledge of human rights law and should be endowed with a deep sense of the sublime supremacy of human life over all else.
- The early ratification of the Convention against Torture is imperative if we wish to defend the human rights of torture victims. It is mandatory for any attempt at reforms in the police system as an effective mechanism for law enforcement and administration of justice.
- Meanwhile, it is highly necessary to document torture cases in a meticulous way. The lack of proper documentation only permits the unfettered continuance of barbaric methods of torture and acquittal of the culprits. Had there been proper documentation, it would not have been possible to hide the colossal and devastating atrocities of the police, whose constitutional mandate is to protect the people. NGOs should undertake scientific and systematic documentation of torture and follow-up on it.
- Modern communication systems offer tremendous opportunities for victims of torture to expose it to the rest of the world. Urgent Appeals have been quite successful at coordinating and combining domestic and international efforts to resist this atrocious encroachment on human rights. Hence human rights defenders and activists should be equipped and conversant with what information technology offers for the promotion of human rights activity anywhere in the world, less expensively and with greater efficiency.

The development of a comprehensive strategy for the prevention of torture and other ill-treatment requires an integrated approach composed of three broad, interrelated elements: legal framework, public policies and shared conceptions of best practice for prohibiting and preventing torture and other ill-treatment that is implemented by actors (e.g. judges and the police) relevant to efforts to prevent torture.

Implementation of the legal framework

Effective implementation requires practical measures to be taken on a range of levels to ensure that national laws regarding torture and ill-treatment are respected in practice.

Training and education

The different actors involved in implementing the legal framework, and in particular those within the criminal justice system (such as law enforcement officials, judges and detaining authorities), will require proper training – both initial and ongoing – regarding the normative framework and the development of operational practices that respect these norms.

Procedural measures

Procedural safeguards should be put in place and operate as intended, in particular for persons deprived of their liberty. This could include ensuring that all registers in places of detention are properly maintained and that there is a regular review of police codes of conducts.

Investigation and punishment

Allegations of torture must be promptly, impartially and effectively investigated, even in the absence of a formal complaint, and "the investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might be involved." Any breach of the law must be appropriately sanctioned. When this does not occur, a culture of impunity develops which can undermine both the force of the law and its implementation.

Taking action to tackle impunity is even more important in relation to torture and ill-treatment, as it is absolutely prohibited under all circumstances. The following actions may be taken:

- Strengthening the independence of the judiciary
- Establishing effective and accessible complaints mechanisms
- Ensuring access to free legal aid and legal assistance
- Promptly and effectively investigating allegations of torture or ill-treatment
- Ensuring those who breach the law are punished

Reparation for victims

Victims of torture and ill-treatment should be provided with full and effective reparation, including restitution, compensation, rehabilitation, satisfaction and a guarantee of non-repetition.

Financial compensation should be provided for economically assessable damages. Satisfaction can include a variety of measures, such as an official declaration to restore the dignity of the victim, a public apology or a commemoration and tribute to victims.

Control mechanisms

In addition to an effective legal framework, there is also a need to establish control mechanisms, as the risk of torture is present in all countries at all times. Control mechanisms can help identify areas of potential risk and propose possible safeguards. Internal administrative control mechanisms which are set up within an institution – such as police inspection services or prison inspection services – help monitor the functioning of State institutions and their respect for legislative norms and regulations. While very useful, internal control mechanisms are, by themselves, insufficient for this preventive work as they lack independence and have a more administrative monitoring

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function. In addition to internal control mechanisms, it is essential to set up independent mechanisms to visit places of detention.

The mere fact that independent bodies can enter places of detention, at any time, has a strong deterrent effect. The objective of these visits is not to document cases of torture or denounce the situation or the authorities. Instead the aim is to analyse the overall functioning of places of detention and provide constructive recommendations aimed at improving the treatment and conditions of detained persons.

The international human rights system also provides an important control mechanism, with relevant treaty bodies able to review and make recommendations regarding the State's legal framework wand its implementation.

Finally, the media and civil society organizations can contribute to an effective system of check and balances to prevent and prohibit torture. Responsible media reporting, public education campaigns and targeted awareness-raising initiatives can build greater knowledge and understanding of the issues, influence public opinion and help change the attitudes of stakeholders and decision makers.

Conclusion

It is the responsibility of the government to ensure the protection of rights of its citizens. It needs conviction, plans, strategies, education and proper implementation.

Lack of rights' education among both oppressors and victims has led to gross violation of rights. Government should take an initiative to teach human rights as a subject for all students in schools & colleges through a systematic curriculum. One has to fight for the justice for himself, his people and his community. We have succeeded in producing that kind of numerous individuals in this journey of struggle. To be a successful social transformation, there is a need of action from both the ends, i.e. from authorities and the people.

'Silence' is the biggest promoter of impunity. A well – informed, well-guided public can make a big change in the existing scenario.

Dr. Lenin's organization is doing a tremendous task by holding testimonial ceremonies where-in testimonials are read out and survivors are facilitated. It boosts up the moral and confidence among them. This creates and atmosphere of understanding among the survivors of different kind of violence and between different communities. They keep them following up as per UN standards, until everything becomes normal. We need several such organizations to testimonial campaign to its logical end. Use of the all the possible means to raise the voice for justice, especially Information Technology has to be utilized to amplify the unheard voice of people.

The long-pending Prevention of Torture Bill has been enacted by the Parliament recently. This step has underscored India's respect for human rights. The prevention of torture law is intended to align Indian law with the UN convention; the ratification of the convention will enable provisions in the convention to be part of Indian law.

The prevention of torture law is a much-needed step to embellish India's credentials as country with a sound criminal justice system.

Speech of (Justice) K.G. Balakrishnan, Hon'ble Chairperson, National Human Rights Commission, organized by People's Vigilance Committee on Human Rights on 12 July 2012 at India Habitat Centre, New Delhi. ❑

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