

Inside :

Human Rights and their Ominous Omission during the 2014 Lok Sabha Election Campaign - Prabhakar Sinha (1)

ARTICLES, REPORTS, AND DOCUMENTS:
Phenomenon of June '75 - M.G. Devasahayam (5); Towards Decentralised Governance: Implement the 73rd and 74th amendments to the Constitution - Rajindar Sachar (6); Debating Secularism in a Communalized Society - Ram Puniyani (7); INDIA: A Law against Torture is of No Use - Bijo Francis (9); Gujarat's Movement for Secular Democracy "Clarifies": It is Not An NGO; Does Not Receive Foreign Funds (12); INDIA: Where Police Ignore Distress Calls - Avinash Pandey (13); Narmada Oustees Demand revocation of raise of the SSP height (15); Opposed by Narendra Modi, Biometric National Population Register (NPR) is Aadhaar by Another Name (17); Fatwas and Muslim Women - Irfan Engineer (19).

PRESS STATEMENTS, LETTERS AND NEWS :
PUCL GS's Letter regarding National Council Meeting at GPF, Delhi (4); Civil Society Groups Assert Freedom of Expression, Assembly and Association: Demand that Government Respond to the Malicious IB Report" (10); Newly Elected Office-bearers of the Chhattisgarh PUCL (13); Statement of Concern on SLAPP Cases Filed Against Authors, Journalists and Publishers (14); NBA Press Note on Sardar Sarovar Dam Height: (16).

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Human Rights and their Ominous Omission during the 2014 Lok Sabha Election Campaign

Prabhakar Sinha

The 2014 election campaign for the Lok Sabha has been one of the longest and the fiercest witnessed so far. In the no-hold-barred campaign, all issues which the contesting parties felt would win them support were raised. Development, employment, corruption, nepotism, secularism, and myriad other issues were highlighted, but human rights were conspicuous by their absence. Neither did any party promise to protect them nor attack the ruling parties for the gross and rampant violations of human rights in their respective states. Even in Chhattisgarh, Orissa, West Bengal Jharkhand, Andhra Pradesh and Maharashtra, where the violations of human rights have been rampant, they were not made an election issue. The glaring omission is ominous and does not augur well for the future of human rights in the days to come. The reason for the silence clearly means that the political class has arrived at a consensus that it is a non-issue and also in their assessment this violation of human rights is not going to cost them votes. Thus, there are no takers in the political class for human rights, and the onus to protect them is solely on the human rights movement.

This phenomenon may appear intriguing in a country in which only a few decades ago, Indira Gandhi, who had clamped the emergency to illegitimately remain Prime Minister and perpetuate her authoritarian rule, was determinedly opposed and democratically thrown out of power. But on hindsight, it does not appear puzzling. Indira Gandhi imposed the emergency on the country on 25 June, 1975 to thwart the nationwide agitation for her resignation following the Allahabad High Court judgment quashing her election to the Lok Sabha for corrupt practices and unseating her. In a mid night swoop, she detained thousands including J.P. and the top leaders of the political parties opposing her. The members of various organizations like the RSS, Anand Marg, Jamate Islami and many others were also later detained in large numbers. She changed the law of election to nullify the judgment against her, suspended fundamental rights including the right to life and personal liberties, distorted the Constitution, intimidated the judiciary and took all measures to suppress any opposition to her illegal and illegitimate rule.

There was no popular uprising in the country against her dictatorship.

There was quiet all around and many of the detained leaders were thoroughly demoralized and were willing to compromise for obtaining their release from detention and participation in the existing authoritarian set up. It was only J.P.'s uncompromising stand which prevented an abject surrender. Most of the political leaders were willing to compromise because they had no commitment to democratic values but only to their own democratic rights and political future. In fact, they had not been opposed to the massacre of hundreds of Naxals or the killing of Communists during the Telangana movement and the other acts of suppression by the ruling Congress in the past. There existed a consensus among the mainstream political parties on dealing with the emerging political forces challenging the existing order with an iron hand, disregarding their democratic rights and democratic values themselves. Thus, it was not that the democratic rights of the people were trampled upon for the first time in the country, but it was for the first time that one section of the political class had brutally attacked another section breaking the consensus not to resort to intolerable anti-democratic measures against one another. Thus, when the Janata governments came to power at the centre and the states, while remedying certain gross distortion of the emergency days, they did not evince any noticeable change in their approach to the democratic rights of the people.

An authoritarian leader assumes unbridled power to use it for her/his own purpose, but the power is widely and arbitrarily exercised and abused by the entire administrative machinery for purposes for which they were not acquired. Thus the administration abused the sweeping power at its disposal against the

common man in various ways causing bitterness and anger in the people which they kept concealed due to the fear of further repression. The apparent peace and quiet on the surface probably misled Indira Gandhi and her coterie into believing that all was well with the people and an election could be safely held. The suppressed anger of the people found its expression in the 1977 election to the Lok Sabha in which Indira Gandhi along with her party was decisively defeated.

However, within a span of only three years the same people brought her back to power in 1980 clearly indicating that they saw no basic difference in the character of the two groups of the political class and perceived the difference only in terms of their conduct. What the masses could realize decades ago, the rest are in the process of realizing now.

Haunted by the bitter memory of the days of the emergency, the political parties opposed to Indira Gandhi realized the need and necessity of civil liberties organizations with many of their leaders joining or supporting them. However, when by the end of 1980s, the monopoly of the Congress on power ended and the opposition parties themselves began to come to power alone or in a coalition with other parties, their interest in civil liberties not only waned but they became indistinguishable from the Congress in treating human rights with utter contempt and ruthlessness.

Human rights are everyone's need but they are the greatest need of the weak - the poor and the downtrodden because it is they who suffer maximum indignity, privation and incapacity to get even what is their minimal right. The media which are owned by the rich cannot speak for them, specially, because defending their human rights is in

direct conflict with the interest of their owners. They cannot support any subsidy because their owners oppose it, they cannot support the Land Acquisition Law, which denies their owners the benefit of getting land for a song. They cannot campaign against the displacement or massacre of the Adivasis living on their own land because it goes against the mining interest of their rapacious masters. In fact, they can support no cause howsoever humane or just if it eats into their master's profit. Since the media have been accepted as business, they have been resorting to paid news, blackmail and worse taking advantage of the freedom guaranteed to them to strengthen democracy and promote the national interest. The privilege granted to the media to strengthen democracy and the nation is shamelessly being employed to subvert democracy for making money and serving the interest of their owners. While the media are free from governmental control, the editors, reporters and the others running them have been made completely subservient to their masters. Thus to expect the media to promote human rights is living in a fool's paradise. Publishing a few reports of human rights violation or hosting a debate on some such incident in the electronic media for TRP are not the same thing as campaigning against violation of human rights or promoting them.

In a country where 100 crores or more people live on Rs 50.00 or less a day, the middle class is a highly privileged segment of society. It is strong enough to resist encroachment of its own rights and facilities but is indifferent to the lot of the poor. Since the economic interest of the urban educated middle class, especially the youth, is largely dependent on the pro-rich existing model of development, it is

supportive of the model and identifies with the privileged rather than the underdog. The notion of all being equal has not been part of the Indian tradition, which had been grading the people for centuries as high or low on the basis of their birth. All these taken together have created a gulf between the middle class and the poor making it difficult for them to identify with the underdog and be moved by their misery caused by the denial of their human rights.

The common man is apathetic. His apathy is born of ignorance. He is not aware that many of his rights, which are denied to him, are his human rights. There is a general perception that human rights have no concern for the common man and the common man need not be concerned about human rights. It is because he hears of the violation of human rights only in the context of killing in fake encounters, custodial deaths, sudden disappearances, indiscriminate detention under black laws and such other unusual contexts. Had he heard of human rights in his own context, under ordinary circumstances, he would have realized their relevance and value for himself and would have not been so indifferent.

The human rights organizations have also contributed to the misconception and apathy. They kept their eyes closed to the rampant violations of the rights of the common man acting on the assumption that whatever has been happening to them in daily life under the ordinary laws of the land involved no violation of their rights. With the coming into effect of the Constitution, every Indian became a respectable citizen of the country entitled to equality of status regardless of differences in wealth, education and power, but he continues to be treated with contempt as an inferior being. .. He

is declared to be the master of the bureaucrats but has to cower and cringe before his so called servants. He trembles before the police who are employed to protect and serve him. He is publicly abused and beaten by a policeman and has no remedy but to helplessly submit to the public humiliation. He can be implicated in false cases by the rich or the influential and be sent behind the bars without committing any crime. He remains languishing in the jail in sub human condition for periods longer than what his offence warrants because he cannot afford the bail or a lawyer. He is made to starve by attending the never ending proceedings of the court which prevent him from going to work. He has to submit to atrocities of the rich because he cannot buy justice which his tormentors can. For him the fundamental rights are like a mirage never to be gained because the High Courts and the Supreme Court which are empowered to protect them are way beyond his means. The right to free expression is unknown to him because he cannot afford the instant price he has to pay for not keeping his mouth shut. The right to privacy is a luxury unknown to him because any policeman may enter his hutment without a warning at any time of the day or night. He lives in a world in which to mention any right invites instant punishment. He has no rights in fact though he has many in the law. He is not a claimant for any right but is only a supplicant forced to beg for them. **But it is only this mute multitude which, when aroused, can protect democracy and human rights. But for the human rights organizations, they have not been a human rights issue important enough to merit their attention.**

The preamble of the Universal Declaration of Human Rights begins with the categorical statement that

'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world', but the human rights movement in India ignores this basic human right, and ironically hopes to protect and promote human rights on the foundation of inequality of the status and inequality of dignity of the human person.

The human rights organizations have raised their bar so high that they have excluded more than 100 crores of our people and their human rights from their focus. There is no fault in concentrating on the politically targeted victims under black laws or their extra-judicial killings and giving them top priority, but to exclude the human rights of the masses from their area of interest is a serious omission dealing a serious blow to the concept of universality of human rights itself. This unprincipled omission, if allowed to persist, will further isolate and marginalize the human rights organizations and movement. The bar needs to be lowered to include in our agenda human rights of all beginning with the last man, and all issues adversely impacting human rights. The inclusive approach is the only remedy against the indifference of the people to the suffering of the victims of the human rights violations who are not one of their own. If human rights become a common cause of all the people, attack on human rights anywhere in the country would be felt as an attack on or a threat to their own rights. This inclusive approach is the only way to make human rights a common cause of all Indians demolishing the barriers which divide them. This alone would unite them to fight together for their human rights, which, in fact, are their common cause. □

General Secretary's Letter regarding National Council Meeting at Gandhi Peace Foundation, New Delhi

To All General Secretaries/ other office bearers/ Convenors of State Units; National Office bearers

Please see the following list of NC members that each state is entitled to based on updated membership for each state with the National Office as of 20th June, 2014, as was decided in the Bilaspur National Executive meeting.

We will send to each state unit separately the list of members as available with the National Office as of that date. If there are any discrepancies please do inform and contact us so that we can verify and sort out the discrepancy.

Please note that the list of NC members representing each state should be sent to the NO by 23rd August, 2014. If there is going to be a delay of a few days, please inform us in advance.

We hope you will appreciate the work that has gone into streamlining the membership lists and other activities. This has not been an easy task. Thanks to the meticulous records maintained by Babita and Ashok, and the efforts of Mahipalji, we have been able to put together the lists. We seek all of your indulgence in case there are some discrepancies. It will take us a year

more for all activities of PUCL to be fully streamlined in the spirit of the Constitution.

With regards and in solidarity,
V. Suresh, General Secretary,
PUCL

PS: We remind all members to make travel arrangements to reach Delhi for the NC meeting to take place on **13th and 14th of September, 2014** (Saturday and Sunday) at the **Gandhi Peace Foundation**, 223, Deen Dayal Upadhyaya Marg, Near ITO, New Delhi-110002

PUCL Total Members all States Listwise upto March 31, 2014 and updated as on 20th June, 2014

| S.No | State | L/P | LB/ PB/D | MB | M | Total | No. of NC Members eligible in ratio of 1 NC: 50 state members |
|------|---------------------|------------|-------------|------------|-------------|-------------|---|
| 1 | Andhra Pradesh | 38 | 36 | 05 | 285 | 367 | 7 |
| 2 | Bihar | 79 | 33 | 18 | 618 | 748 | 15 |
| 3 | Chhattisgarh | 10 | 03 | 04 | 187 | 204 | 4 |
| 4 | Delhi | 106 | 79 | 54 | 52 | 291 | 6 |
| 5 | Goa | 02 | 0 | 0 | 0 | 02 | – |
| 6 | Gujarat | 15 | 20 | 18 | 50 | 103 | 2 |
| 7 | Haryana | 11 | 07 | 0 | 0 | 18 | – |
| 8 | Himachal Pradesh | 02 | 0 | 0 | 0 | 02 | – |
| 9 | Jammu & Kashmir | 02 | 0 | 0 | 0 | 02 | – |
| 10 | Jharkhand | 50 | 23 | 3 | 86 | 163 | 3 |
| 11 | Karnataka | 122 | 84 | 03 | 0 | 209 | 4 |
| 12 | Kerala | 50 | 04 | 08 | 113 | 175 | 4 |
| 13 | Madhya Pradesh | 15 | 05 | 04 | 19 | 43 | 1 |
| 14 | Maharashtra | 135 | 13 | 08 | 0 | 156 | 3 |
| 15 | Mumbai | 58 | 37 | 0 | 8 | 103 | 2 |
| 16 | Orissa | 06 | 08 | 02 | 01 | 17 | 1 |
| 17 | Puducherry | 01 | 01 | 0 | 0 | 02 | – |
| 18 | Punjab & Chandigarh | 20 | 10 | 01 | 15 | 46 | 1 |
| 19 | Rajasthan | 69 | 39 | 01 | 275 | 384 | 8 |
| 21 | Tamil Nadu | 17 | 79 | 02 | 399 | 497 | 10 |
| 22 | Uttar Pradesh | 92 | 39 | 39 | 141 | 311 | 6 |
| 23 | Uttarakhand | 02 | 05 | 0 | 0 | 7 | – |
| 24 | West Bengal | 09 | 10 | 7 | 51 | 77 | 2 |
| | Total: | 911 | 535 | 177 | 2300 | 3927 | 79 |

M – Annual Member

L/P/D – Life Member/Patron Member/ Donor

MB – Member & Bul. Subscriber

LB/PB – Life/Patron Member & Bul. Subscriber

Note: States where no activity has been undertaken in last two years or where there has been no response from people who had represented the state earlier, have not been included in list above showing number of NC members for that state. □

Phenomenon of June '75

M. G. Devasahayam*

Repeating historical blunders like 'militarization' is self-destructive and can spell doom to a democracy that has just given a decisive mandate to a new government and is brimming with fresh hopes, not of destruction, but of creation - M G Devasahayam

The 'National Emergency', imposed on 26 June 1975, could be described as an instrument by Prime Minister Indira Gandhi and her coterie to 'govern a democratic polity through despotic means'. The natural corollary was extinction of democratic space during the 21-month Emergency rule. Unfortunately, instead of learning lessons from this sordid era, successive governments have been resorting to 'Emergency style' repression and oppression, with the country just falling short of being a 'police state'. On its part, neighbouring Sri Lanka has made Emergency an integral part of governance with its democratic space evaporating and graduating from 'police state' to a 'militarised' nation.

With all kinds of draconian laws, gross human rights violations and massive para-military mobilization to flush out the tribals from the vast Dandakaranya forests falling in seven states ~ Maharashtra, Andhra Pradesh, Odisha, Chhattisgarh, Jharkand, Bihar, West Bengal ~ India has no doubt been morphing into a 'police state'. Because of its sheer size, it is virtually impossible to militarise the entire country. This is the contrast.

But there are many commonalities. In June 2009, just after the Sri Lankan government's pogrom against the Tamils, an e-mail message was circulated among Jawaharlal Nehru University's civil

rights groups. It read ~ "In the post-election scenario, the UPA government has declared its intention to crush all groups seen to be involved in 'terrorist' activities. It is in this context that the Superintendent of Police in one of the districts in Chhattisgarh had declared that they will follow the Sri Lankan model to decimate the Maoists and other groups supporting them."

In May 2010, Sri Lanka formally offered India the 'expertise' of its armed forces to fight the Maoists. According to Sri Lankan authorities, after their victory against the LTTE the Lankan forces were probably the most combat hardened in the world in fighting large-sized guerrilla outfits like the Maoists. This offer coincided with India's then Home Minister P Chidambaram seeking a 'larger mandate' to use the armed forces to crush the tribals and quell India's 'largest security threat' as described by the then Prime Minister Manmohan Singh.

It is in these and other similar contexts that one has to analyse India's Emergency, proclaimed on the midnight of 25-26 June 1975. Even after four decades, this dark era is haunting the nation and virtual conditions of Emergency have been evident. When the state threatened Maoist sympathisers with imprisonment under the repressive Unlawful Activities (Prevention) Act, civil rights activists retorted: "We consider this as an attack on civil society reminiscent of 'Emergency' era."

In the gruesome Bhopal episode, those faulting Rajiv Gandhi for the 'escapade' of Union Carbide chief Warren Anderson were dubbed as 'unpatriotic' by Congress minions, reminiscent of Emergency days when anyone criticising Indira Gandhi was imprisoned.

These and other apprehensions had prompted writer Arundhati Roy to make a tongue-in-cheek remark: "June 26, 2010 is the 35th anniversary of the Emergency. Perhaps the Indian people should declare (because the government certainly won't) that this country is in a state of Emergency. (On second thoughts did it ever go away?)"

A reality check on this phenomenon called 'Emergency' that extinguished freedom and liberty in a large and vibrant democracy is therefore in order. With presidential proclamation, Fundamental Rights under Article 14 (Equality before Law), Article 21 (Protection of Life and Personal Liberty) and several clauses of Article 22 (Protection against detentions) of the Constitution stood suspended. In addition, Parliament enacted several autocratic laws and the Executive ordered many stringent measures to tighten the noose around people's neck. Maintenance of Internal Security Act and Rules were prohibited from reviewing them, leave alone giving any relief to the detainees.

During the Emergency's 21-month run, the Press was severely muffled. People moved in hushed silence, stunned and traumatised by the harrowing goings-on. The bulk of the civil service crawled when asked to bend. The higher judiciary bowed to the dust and was willing to rule that under the Emergency regime citizens did not even have the 'right to life'. Politicians of all hue and colour, barring honourable exceptions, lay supine and prostrate. As for citizens, an arbitrary and arrogant state turned them into mere 'subjects'.

The most apt description of India's Emergency comes from the civil

rights stalwart Rajni Kothari: "It was a state off-limits, a government that hijacked the whole edifice of the state, a ruling party and leader who in effect treated the state as their personal estate. It was the imposition of a highly concentrated apparatus of power on a fundamentally federal society and the turning over of this centralized apparatus for personal survival and family aggrandizement. It was one big swoop overtaking the whole country spreading a psychosis of fear and terror with the new upstarts (Sanjay and all) storming away through whatever came their way, pulling it all down and calling boo to it all. And it happened in this country after 28 years of democratic functioning".

In July 1975, the Government of India brought out a review document titled 'Why Emergency?' This 'white-lie paper' inter alia said: "The declaration of Emergency and the various actions taken by the Government to restore discipline, order and stability in the country have been welcomed by people from various strata of Indian society. The Prime Minister has said that the attempt of the Government is to put democracy back on the rails."

But public thought otherwise. In early 1977 when Emergency ended and the general election to Parliament was held, an enraged electorate routed the ruling party and an Opposition combine came to power with near two-third majority. But in Sri Lanka, the opposite happened. The President won a comfortable second term and the ruling party a near two-third majority in Parliament. This was probably because only the war had ended, but Emergency continued.

With despotic and dynastic dispensations in common, India and Sri Lanka were 'good' companions. In 2009 these countries had a joint venture (JV) in the jungles of Vavuniya. With 'expertise' provided by India, the Sri Lankan army exhibited barbaric ruthlessness in decimating thousands of Tamils seeking a dignified, democratic existence. Former Ambassador MK Bhadrakumar describes it as 'blood not only on our hands, but our whole body and deeper down, our conscience'. Revelling on this orgy of destruction, Sri Lanka had the audacity to offer their 'expertise' for a reverse JV in the forests of Dandakaranya. And there were quite a few takers in the UPA

government for this JV.

What about the NDA government? The resounding language one recalls after the new government has taken over is nerve-racking: "Left-wing extremists (euphemism for Maoists) are enemies of the nation.... There is no room to treat them anything other than being enemies of the state who have to be fought, vanquished and neutralized." One only needs to add "using the might of the military"! Will the reverse JV be formalised now for 'developing' tribal areas by 'destroying' the forests? Indeed, a big poser.

'Police state' itself is a fearsome legacy of the Emergency. Militarization would be far worse. Winston Churchill famously said: "Those that fail to learn from history are doomed to repeat it." Repeating historical blunders like 'militarization' is self-destructive and can spell doom to a democracy that has just given a decisive mandate to a new government and is brimming with fresh hopes, not of destruction, but of creation.

**The writer is a retired IAS officer
Courtesy The Statesman, 26 Jun 2014 □*

Towards Decentralised Governance

Implement the 73rd and 74th amendments to the Constitution

Rajindar Sachar

Some neo-liberals have argued that Central Government schemes are wasteful and more autonomy should be given to the states for state-level schemes. It has also been suggested that the Planning Commission as such be abolished. To give greater autonomy to the states is a good suggestion. But these neo-liberal economists, while rightly critical of the role of the Planning Commission, need to be reminded that the alternative is not a market economy but carrying out the mandate of the 73rd and 74th Constitution Amendments.

Article 280 of the Constitution authorises the President of India to constitute a Finance Commission

whose duty is to make recommendations regarding the distribution of the net proceeds of taxes and grants out of the Consolidated Fund of India between the Union and the states.

Since the Finance Commissions are appointed for a certain period, there was left no other mechanism to sort out differences between the Centre and states over their rights in case of a conflict. This task is being performed at present by the Planning Commission of India. The question being raised is under what legal authority is the Planning Commission assuming these powers. Legally and constitutionally, there seems to be none.

A critique of the Planning Commission by Mr. Ravi Kiran Jain, vice-president of the Peoples Union for Civil Liberties, points out that within seven weeks of the adoption of the Constitution the government set up the Planning Commission of India by a resolution. The resolution specifically refers to the Fundamental Rights and the Directive Principles of State Policy. It was specifically mentioned in the government resolution that its "success will depend on the extent to which it enlists the association and cooperation of the people at all levels" (emphasis supplied). In spite of this warning the Planning Commission, which was supposed

to make plans in association with people at all levels, developed a top unitary approach resulting in Mr. K. Santhanam, a member of the Constituent Assembly, commenting that the Planning Commission's undefined position and wide terms of reference had led it to becoming the economic Cabinet, not merely for the Union but also for the states. This cabalism of planning at the Central level might have had some plausibility in the initial period, but soon perversion in centralised planning started creeping in. Now when the states are ruled by different political parties, resentment and perversions are growing.

This reality has been expressed strongly by a 14th Finance Commission member, Mr Gounda Rao, who said "Centralised planning is a negation of federalism - nor does it make any sense for approving the plans of the States". In reality after the 73rd and 74th Amendments to the Constitution of India (1993) which inserted articles 243A to 243ZG, continuance of the Planning Commission has become untenable, if not illegal. These provisions mandate the legislatures of the states to endow panchayats with powers to the preparation of plans for economic development and social justice and also to provide power to impose taxes by the panchayat.

A similar provision for the municipalities is provided in part IXA of the Constitution of India in Article 243 to 243ZG. Article 243 D mandates the constitution of a District Planning Committee to consolidate the plans between those

prepared by the panchayats and municipalities in the district and to prepare a draft development plan for the district as a whole (emphasis supplied).

Article 243(I) provides for the constitution of the State Finance Commission within one year of commencement the Act of 1992 and thereafter on the expiry of every fifth year to make recommendations on the principles which should govern the distribution of the net proceeds of taxes and tolls between the state and the panchayats.

A brief look at the 73rd and 74th Constitution Amendments shows the directive for a functioning four-pillar State (or "Chaukhoata Raj" as enunciated by Dr. Lohia decades ago). Along with the 11th and 12th Schedule the amendments mandate the state to devolve powers and responsibilities upon the panchayats and municipalities concerning, among others, rural housing, drinking water, markets, secondary education and planning for economic and social development, roads, bridges, urban planning and town planning.

Unfortunately, these commands of the 73rd and 74th Amendments are being ignored viciously. The result is that though the provisions in the Constitution require the functioning of a decentralised democracy, the trickery by the political parties not to relax their stranglehold has resulted in denying real power to the people to manage their own affairs at the panchayat and municipal levels. To meet this challenge of deprivation of political power to the masses there is need for a strong political

action and a mass education programme. But the pessimistic part is that in the parliamentary elections of 2014, except the Socialist Party (India), no other party even raised the question of a four-pillar state as envisaged by the 73rd and 74th Amendments of the Constitution.

Considering that the states at present are treated as supplicants standing with begging bowls before the Planning Commission, it is in the interest of the non-BJP governments in particular to demand the implementation of the 73rd and 74th Amendments which will entitle them to the revenues from the Consolidated Fund of India. But for this to succeed the states also must shed their quasi-imperial attitude and share power and revenue with the municipalities and panchayats as is mandated by Article 243 ZD. As such states have a constitutional mandate and power which cannot be interfered by the dictates of the Central Planning Commission which does not enjoy even a statutory standing.

In the present set-up where the Central Government is threatening to concentrate all powers in its own hands and is out to build corporate-centric big industrial ventures, the Opposition-ruled states have a ready-made shield to preserve their resources by honestly implementing the 73rd and 74th Constitution Amendments empowering the panchayats and municipalities.

The writer is a former Chief Justice, High Court of Delhi

Courtesy

The Tribune, June 28, 2014 □

Debating Secularism in a Communalized Society

Ram Puniyani

In the aftermath of the recent elections Congress, Communist parties, Samajvadi and Lalu's RJD, which can be called secular in some sense; bit the dust. In the review of defeat the major opposition party Congress, which has been in power for maximum number of years, one major opinion from its top leader

A.K. Antony came forth to say that the secularism practiced by Congress was seen more as an appeasement of minorities (read Muslims) and so the large sections turned against it emasculating it to a mere 19% votes with 44 seats in Lok Sabha. In a free for all; different opinions on secularism and failure

of Congress are coming forth.

BJP with glee and confident assertion came to claim that it has the correct opinion of secularism, "We (BJP) have always said secularism should mean justice for all, appeasement of none, discrimination against none" Ironically this assertion, which

negates the very concept of a democratic and secular society, has come to be perceived by many as 'the secularism'. Many commentators opined that Modi could demonstrate the hypocrisy of secularism and went on to take the cake of power. Sometimes victory can be taken as the proof of correctness!

In Indian scenario, secularism has been a much debated word, more so after Independence. At the time of Independence critics went on to say that state is not curbing religious practices in official places and called it an erosion of secularism. What we see today in most public places, the pantheon of Hindu deities adorning the Government offices and vehicles, and is passé' was criticized by many earlier. Hindu practices like Bhumi Pujan (worshipping land) before construction of Government buildings became part of 'normal practice'. Sarswati Puja, Surya Namaskar in some Government outfits by now is becoming a matter of routine. When Nehru was asked by Andre Malraux about such religious practices going around, Nehru did confess that we have a secular constitution but the society is in the grip of religiosity. Today a Prime Minister-elect performing a Ganga Aarti is part of the official menu and the tables are turned on those who question such practice of secularism by state and party.

As such the beginning of secular values and practices has been very different in India. While the Kingdoms and feudal lords were ruling in close alliance with religious clergy, the process of secularization in India began with the coming of industrialization and modern education during the British period. With the rise of newer classes, the industrialists, workers and modern educated classes, the concept of India, 'India as a nation in the making' started coming up. The kings and feudal lords, who were later joined in by a section of elite upper caste/educated section of society came up with communal outfits, Muslim League and Hindu Mahasabha-RSS. While the rising

classes were all inclusive, incorporating people of all religions, the latter declining sections-communal formations were restricted to Muslims or Hindu elite respectively. The triangle of British policy of divide and rule on one hand and Muslim and Hindu communalists on the other led to the formation of Pakistan in the name of Islam and 'India that is Bharat' on the basis of plural, secular values. While Pakistan went through a painfully long trajectory where after the demise of Quaid-e-Azam Jinnah, a leader with secular soul in the communal body of Muslim League, led to the blunt and assertive upsurge of communalism, Islamic Fundamentalism, dominated by Mullahs and Military in the driving seat. It went through different ups and downs; its situation worsened by the US intervention which went on strengthening the communal elements there. Lately the secular elements in Pakistan are trying to come up from the stranglehold of the domination of Islamic fundamentalism.

In India the trajectory had been very different. After Independence the communal outfit Hindu Mahasabha soon went into oblivion; while the progenitor of Hindu nationalism, RSS went on to float different organizations to achieve its goal of Hindu Rashtra. Initially it helped to form Bhartiya Jansangh with elements drawn from Hindu Mahasabha, later RSS was in total command and though it was not in the forefront in electoral arena, it kept spreading 'adverse common sense' against Muslims in the beginning and later against Christians. The communal version of history was made popular, 'Muslims are more loyal to Pakistan', and the atrocities of Muslim kings became the cannon fodder of painting the negative image of today's Muslim minority.

In this scenario three factors shaped the nature of things to come. One, the wide prevalence of adverse 'social common sense' against Muslims became part of social thinking. Two, the communal

violence in which; most of the victims have been Muslims; shook the deeper psyche of the community. This in turn led to strengthening of orthodox elements and dominance of Mullahs and communal politics within Muslim community. The third factor was the marginalization of Muslim community in the economic and social sphere. It is in this backdrop that Congress tried to walk the talk of secularism and faced severe obstacles. Irrespective of the propaganda that Congress is responsible for communal violence; those on ground know the reality of the impact of communal politics. Congress itself had many communal elements within and the leadership at times played an opportunistic role by compromising with communalism on regular basis. So Congress did try the things which in a democratic society a secular dispensation should be doing. In the matters of communal violence against Muslims and in the matters of economic issues, but its attempts were half hearted due to the factors outlined above. As an umbrella party with secular ideology and plethora of communal opportunist elements within, it could not go far in taking the affirmative action for the community so instead it went on appeasing the orthodox elements, as was most visible in Shah Bano case. The community as a whole remained a victim of violence on one side and discrimination on the other. The statistics about violence data and reports like Gopal Singh Commission, Sachar Committee and Rangnath Mishra Commission tell the story not only of the Muslim community but of the travails through which our democracy had to pass, where a big chunk of population remained neglected.

While all this was on, the communal elements sensing the possibility of coming to power through polarization of society, took up identity issues on regular basis, Ram Temple issue being the major one. They were successful in projecting that Congress is appeasing the Muslims. As a matter

of fact, Congress policies have not benefitted the Muslim community in any way. The words and pronouncements of Congress fell on the hard rock of communalized polity. Making the statements like 'They have a first right on national resources' was used to show the partisanship of Congress. As a matter of fact seen in the context of a caring state, to say that weaker sections have first right on national resources should be the sign of a state committed to welfare of all. So Congress dilemma of wanting to implement secular policies, protection of minorities and affirmative action for them, fell flat.

At the same time it did give a handle to the communal opponents to project as if Congress is there only for Muslims. The UPA I and II showed that the caring affirmative action was targeted not only for Muslims but also for other different disadvantaged sections of society as well. Same way the attempt to bring Communal violence prevention bill was nullified through a vicious propaganda.

So Mr. Antony may be partly right, but the problem is deeper. It relates to the semi-secularized society, the ascendancy of communal politics, majority and minority both, and so

finally landing up to mere electoral arithmetic of talking (not implementing) of schemes to win over the minority votes. Congress has not kept up the ideological commitment to secular values. Its workers hardly think differently on the issues related to communal propaganda. Many of its leaders come from communal stock, for many others standing upright for secular values is not important at all. There is a serious need for introspection, not only for Congress but for all those wanting to uphold the values emerging from our National movement for freedom. □

INDIA: A Law against Torture is of No Use

Bijo Francis

Four years have passed since the Government of India mooted the idea of drafting a legislation criminalising torture. The Prevention of Torture Act, 2010, after being passed by the lower house of the Indian Parliament, was discussed in the upper house.

The upper house constituted a Parliamentary Select Committee to review the law, a process undertaken with active civil society participation. The report of the Committee suggested a comprehensive review of the proposed law, and since then nothing has been heard about the law.

Today, June 26, the UN International Day in support of victims of torture, rather than push for an Anti-torture Act, it is more important that India introspect on whether a law, however strong it may appear on paper, will be of any use.

Torture is a crime. It is a serious crime, which, in international law, is considered a crime against humanity. Yet, acts of torture are committed in India daily. The crime is endemic in the country and it goes unreported and unpunished.

Just as in any other crime, the complaint, investigation, and prosecution require a functional criminal justice system. And, this is precisely what India lacks.

The country's criminal justice system is a farce. Investigation agencies lack resources and adequate skill to undertake crime investigation. The country's police service is no place for a self-respecting officer. India's policing has not progressed beyond the colonial construct that was used for social control in the colony. And this control was achieved through the use of brute force with impunity. Torture, amongst other forms of violence committed by the uniformed officer in the colony and post-colony, is the most terrifying tool used. Investigations in India begin and end with torture.

The state of affairs in the prosecution department is equally appalling. It is of such nature that police officers on court duty often refer to the prosecutors' office as their public toilet, since this is what the officers find the prosecutors' office most convenient for. State prosecutors in India are not appointed on merit, but on the assessment of their political allegiance.

These officers are underpaid, ill trained, and, like their counterparts in the police, are deeply corrupt. Prosecutors who receive both state salaries and bribe money - from streams of accused seeking bail and for weakening the prosecution - is

common in India's crowded court verandas. Anyone in India who has had to pay a fine in court for a petty traffic offense knows that the money paid, in addition to fulfilling the petty fine, has been split as a bribe for the prosecutor, the court clerk, and the relevant police officer. Often, this money includes a bribe for the magistrate as well.

In addition to the general concern of delay and overcrowding in courts, India's judiciary is corrupt to the core. Indians pay tax to employ corrupt judges, from the Magistrate's Court to the Supreme Court. Every Chief Justice who has thus far served the country has agreed to this shameful fact.

With the criminal justice apparatus of the country in such an appalling state, what use is there in a law against torture? India doesn't lack laws. Good and bad, convoluted and archaic, the country has all forms of it in place. What is absent in India is respect for the concept of justice.

A culture of justice cannot be instilled via a new law. It has to be taught by establishing institutions that can deliver justice without fail. In India this is unfortunately not a priority.

June 26, 2014

Article received from the Asian Human Rights Commission □

Public Statement: 03-07-2014

Civil Society Groups Assert Freedom of Expression, Assembly and Association: Demand that Government Respond to the Malicious IB Report"

We, as individuals, people's organisations, citizens groups, trade unions and mass movements came together on June 26, 2014 at Indian Social Institute, New Delhi to reiterate our deep conviction about the importance of preserving and nurturing spaces for social dissent and the freedoms of association, assembly and expression as the essential hallmarks of a democratic society. Indian social life has been enriched greatly by the wide and rich variety of engagements of people's organisations, committed to just, equitable and sustainable development, peace, social justice and gender, class, caste and communal equality; and issues ranging from the rights of marginalised communities, dalits and tribal rights, gender rights, religious minorities, sexual minorities, disability, displacement, homelessness, forest rights, right to food and health, environment and ecosystem and human rights, secularism, welfare and rights, and transnational corporations and their impact, and increasing poverty in the country.

In this context, the gathering expressed its disquiet and concern over the report of Indian Intelligence Bureau (IB) on the role of development organisations, people's movements, human rights organisations, and peace and justice activists. This report which made shrill and unsubstantiated claims was deliberately leaked to spur a medial trial, and is therefore a barely disguised official attempt to discourage and intimidate the democratic rights of citizens to express dissent with dominant state policies and to protest. The report particularly targets organisations which question the corporate-led development model and the nuclear policy, and champion environmental and labour rights. We are dismayed by the dubious manner with which the Indian Intelligence Bureau has maligned, demonised and

criminalised many greatly respected social Activists and groups in this country who have committed their lives for a social cause. We see this move as an attempt to restrict democratic space for civil society action and silence dissenting voices of individuals, organisations, social movements and trade unions. It is also an attempt to stifle the voices of the defenders of human rights who represent the voiceless, marginalised sections of the society. We strongly feel that it is our right and moral duty to collectively raise and represent the voice of invisible majority of this country. We endorse the statements of Greenpeace, People's Union for Civil Liberties (PUCL), Mazdoor Kisan Shakti Sangathan (MKSS), Navdanya, Concerned Citizens and others and express our complete solidarity with them and the fears and apprehensions they have raised to be faced by the civil society groups in future.

The Supreme Court of India's judgments have also upheld from time to time the constitutionality of the rights of dissent and free expression. These also find affirmation in many recent international frameworks of the United Nations and its Special Rapporteurs. In the last couple of years engagement of mainstream media and social media with the pressing social and economic issues has taken place on enormous scale despite the increasing control of corporate houses on media. Therefore we believe that the attacks of this nature especially the IB's current report is essentially a handiwork of both transnationals and big Indian business interests driven by profit motive.

We are also concerned with the accountability of institutions like the Intelligence Bureau which till today functions within an indeterminate legal framework. This assumes all

the more importance in the prevailing national scenario where the national security management policy has been purposefully left ambiguous and therefore remains undefined. We also demand that report of the L.P. Singh Committee instituted after the emergency in 1977 on the misuse of intelligence agencies should be made public.

We, as part of civil society groups simultaneously uphold the value of transparency within this sector whether we are locally funded or foreign funded organisations.

We demand that the present government should either own or at least respond to the parentage of this IB Report which to our knowledge was initiated by the past UPA government.

We are also striving for an open-ended platform, broad alliance and solidarity across all sections of the society and especially those engaged in the fight for equality, equity, secularism, pluralism, right to association, right to assembly and freedom of expression. Therefore, we now stand united at this critical stage in all solidarity at the local and national levels with all those organisations mentioned in the IB Report with a sense of hope and not despair.

We have decided to initiate a Secretariat to be based temporarily in Indian Social Institute (ISI), New Delhi to assist Human Rights Defenders with about 20 advisors representing various thematic engagements. Any individual or organisation in any part of the country who feel aggrieved by any action which infringes their right to assembly and association, freedom of expression are invited to approach the Secretariat for further course of action, including legal action for which we shall also form a legal defence fund.

We are giving a collective nationwide call for diverse course of action at the district and state levels on August 9, 2014 to mark the

celebration of our assertion and celebration of public action reclaiming the republic with its core ideas of freedom, pluralism, just, sustainable and equitable development, and peace, across the country.

Public Statement Issued in Gujarat by Gautam Thaker, General Secretary, PUCL Gujarat. Endorsed by: Anita Soni; Aayomi Sharma ANHAD; Abha Bhaiya Jagori Rural charitable Trust; Achin Vanaik CNDP; Ajaya Kumar Singh Odisha Forum for Social Action; Ajay Kumar VB Rights; Ajita Hoshi N. Indian Social Institute; Aloka Kujur, Social Awareness For Democratic Art And Research; Amitabh Behar NFI; Anand Kumar PHA Foundation/ Christian Aid; Anastasia Sneha Gill, National Council Dalit Christian; Anil Chaudhary Indian Social Action Forum (INSAF); Anil Kumar National Forum for Housing Rights; Anil Kumar Indian Social Institute; Annie Raja National Federation of Indian Women; Anuja Naik International Justice Mission; Anuvinda Varkey ED, Christian Coalition for Health; Anton Gomes, National Union of Fisherman Tamil Nadu; Archana Dwivedi NIRANTAR; Aruna Roy MPKO; Ashish Gupta OFA/PGSOCHIFOAM Asia; Ashok Choudhary AIUFWP; Ashraf CYC; Aubrey Corda Self Employed Indian Citizen; Ayantika Das Indian Social Action Forum (INSAF); B. Roy CWDS; Battini Rao People's Alliance for Democracy and Secularism (PADS); Beenu Rawat Sama Resource Group for Women & Health; Benny M.V. IGSSS; Bhanskar Prabhuh Mahiti Adhikar Munch, Mumbai; Bhanwar Singh Chadana Astha Sansthan; Bhavar Meghvanshi MKSS; Bhavna Sharma ANHAD; Bipin bihari barik Individual, Freelancing Social Worker; Bipin Rai Action India; Bombay Catholic Sabha Bombay Catholic Sabha; Britto. M.A. Vaan Muhil; 38 Buta Singh Bairagi Rehnuma Centre Punjab (A Facilitation and Entitlement Centre for Vulnerable Groups); Carol Geeta SASVIKA; Cedric Prakash PRASHANT (A Centre for Human Rights, Justice and Peace); Chandni Tandon Population foundation of India, programme officer; Chandranath Dani Human Rights Defenders AlertIndia (HRDA); Charles Irudayam JPD Office, CBCI; Chirsto Mathews Individual; Corlis Gonsalves Don Bosco Tech Institute; D K Manavalan AFPRO;

D.K. Giri Voters Party; David Amalanadane Individual; David D'Souza PUCL, Karnataka; Deepak Xavier OXFAM, India; Dhirendra Panda Civil Society Forum on Human on Human Rights (CSFHR); Dhiviyr Sangat; Divya Raghunandan Greenpeace, India; Dr. K.S. Subramanian Individual; Dr. Mira Shiva INES/Diverse Women for Diversity; Dr. Vandana Shiva Navdanya, Durga Nandini Amnesty International India; Enakshi Ganguli HAQ: Centre for Child Rights; Erwin Lazrado Premal Jyoti; Gnana Robinson PEACE Trust; Gautam Mody NTVI; Gautam Thaker PUCL Gujarat; Gilbert Rodrigo Tamilnadu Pondy Fisher People Federation; Geetha JAGORI; Gopal Individual; Gopi Krishnan Greenpeace Bangalore; HarshMander Aman Biradari; Helen Saldanha Individual; Henri Tiphagne Human Rights Defenders Alert. India; Hiren Gandhi DARSHAN; Indu Prakash Singh NFHR / SAM:BKS; Imran Khan ANHAD; Jai Sen CACIM, India Institute for Critical Action: Centre in Movement; John Dayal AICC-AICU; John Tharakan Oota, Wellsprings; Joseph Valiaparambil SWAD; Joseph Xavier Indian Social Institute; Joshy Jose Break Through, Joy Karayampuram Indian Social Institute; Julia George Streevani; K P John National Council of YMCA OFF India; Kalpana David YWCA; Kamal RTI Manch; Kamalkant Indian Social Institute; Kathir EVIDENCE; Kavita Srivastava PUCL; Kiriti Roy MASUM; Neeta Pandya JAAG/AZAD; Lenin Raghuvanshi PVCHR; Liris Thomas Alliance Defending Freedom; M.S. Sanparsi Individual; Madhuresh NAPM; Mahesh Pandya Paryavaran Mitra; Malika Viridi MAATI, Munsiri, Uttarakhand; Mallika Sinha AHNAD; Madhu JAGORI; Manan ANHAD; Manas Jena Development Initiative; Maneesh L?5AS, Shaikhsarai II; Manisha Sethi Jamia Millia Islamia; Mansi Sharma Individual; Manu Alphonse Social Watch, TN; Mehul Dabhi NCDHR; Mimroth P.L. Centre for Dalit Rights; Mona Das VasantKunj, New Delhi; Nalini Abraham Individual, Medical Doctor; Nandini Rao No More/WSS; Narayanan CHANGE India; Narendra Mohanty Campaign Against Fabricated Cases (CAFC) ; Naveen Fernandes Fund Manager PMS; Navin AA; Nayantara Sheoran Individual; Neelam Singh Foundation for Rural Recovery and Development;

(FORRAD); Neha Saigal Green Peace; Nikhil Dey MKSS; Nirmala Karunan Greenpeace, Bangalore; Ovais Sultak Khan PADS; P K M Swamy CEO/EMF India; P.B.D'Sa PUCL, Karnataka; Padmini Kumar Joint Women's Programme; Parul Mahilayen Pragati Ki Ore; Parvinder Singh Oxfam India; Pascal Tirkey Indian Social Institute; Paul D'souza Indian Social Institute; Paunta S. Kapur ASWS; Peter Celestine Bishop of Jammu & Srinagar; Poonam Muthaiya Individual; Praavita MKSS; Pradipta Nayak Odisha Human Rights Protection Foundation (OHRPF); Praful Bidwai CNDP; Prafulla samantara Lok Shakti Abhiyan; Pramod Singh Christian Legal Association; Pranab Indigenous Peoples Forum; Prasad Chacko HumanDevelopment and Research Centre; Prasanna Mansingh CSFHR; Prashant Bhushan Lawyer; Praveen Jose Agency for Integrated Development Initiative; Preeti Majumdar IGSSS; Princy Joseph Bandhna Campaign; Rachna Atri Individual; Radhika Ganesh School for Democracy/MKSS; Rafi Malek Individual; Rafiul Rahman Individual; Raghav Menon Amnesty International; Raghuvir Pradhan Ekta Parishad; Ramesh Nathan V.A. National Dalit Movement For Justice (NDMJ) NCDHR; Ramesh Sharma INSAF; Rameshwar Palweel Indian Social Institute; Ran Aatar Singh Individual; Ratna VANI; Ratnes Indian Social Institute; Renuka Indian Social Institute; Rita Manchanda SAFHR; Ruben Minj Indian Social Institute; Rukmini Sekhar Solidarity Campaigner; S.K. Dutta NIT – Arunachal Pradesh Registrar & Prof.; Sandeep HRLN; Sandeep Prakash Jedhe UTTHAN TRUST; Sanjai Sharma HRLN; Sanjeev Delhi Forum; Sannybhai JESA; Santosh Sharma Naxi Uthan Samiti; Saroop Dhruv DARSHAN; Satyababu P M C; Saurabh Sharma Josh; Sebastian Kunnath CHAI; Shabnam Hashmi ANHAD; Shanti Ranjan Behera Martin Luther King Centre for Democracy & Human Rights; Sheba Tejani CSDS; Shib Cheruvellil AID, India; Shipra Nigam No More Campaign; Shivshankar Ray ANHAD; Siprian Kiro Indian Social Institute; Smarika Sigh Schumacher's; Sonali Khan Break Through; Sr. Tresa Paul Indian Social Institute; Stan Swamy Jharkhand Bachao Andolan; Subrat Das CBGA; Suchi Pande MKSS; Suneeta Dhar Jagori; Susan Abraham

Foundation for Rural Recovery and Development, (FORRAD); **Sudha Varghese Nari Gunjan**; **Syed Mahar Ul Hasan United Reformers Organization Bhopal.**(URO); **Tanushree Gangopadhyay** Individual, Media Person; **Tehmina Arora** ADF, India; **Thomas Job JRS**; **Thomas Pallithanam** People's Action For Rural Awakening; **Trideep Pais** Lawyer;

Tushar Chakraborty, Forum Against Monopolistic Aggression (FAMA); **Upneet Kaur Mangat** Centre for Human Rights & Duties, Punjab University, Chandigarh; **Urmimala Dutta** Civil Engineer; **Usha Nischal Mahilayen** Pragati Ki Ore; **V Suresh PUCL**; **Vanita Mukherjee Pusal**; **Varghese Theckanath** Montfort Social Institute; **Vasantha** Tamilnadu

Women's Movement; **Vasanthi Devi** Association for India's Development (AID?India); **Victor Joseph Raj HOPE**; **Vijayesh Lal Evangelical Fellowship of India**; **Vina Lobo SPWD**; **Vincent Manoharan** Chairperson – NFDLRM; **Virginia Saldanha** Indian Christian Women's Movement; **Zulaikha jabin** ANHAD □

Gujarat's Movement for Secular Democracy "Clarifies": It is Not an NGO; Does Not Receive Foreign Funds

By Our Representative

The Movement for Secular Democracy (MSD), a Gujarat-based non-profit organization, has clarified in a letter to the President of India, Pranab Kumar Mukherjee, that it "is not an NGO and does not receive any foreign funds". The letter comes in the wake of the recent Intelligence Bureau (IB) report, submitted to the Prime Minister's Office, "Impact of NGOs on Development", naming MSD as one of the many NGOs which are allegedly involved in anti-developmental activities and are receiving foreign funds.

Calling itself as "a broadest platform of the citizens of the civil society of Gujarat", the MSD has said, "The IB report is designed to muzzle the voices of the citizens defending secularism and democracy inscribed in the Constitution of our country." Signed by prominent citizens, intellectuals and activists led by veteran Gujarati litterateur Prakash N Shah and Gandhian Chunibhai Vaidya, the MSD said, they have signed a "memorandum, which explains the historic role of MSD in Gujarat for the cause of communal harmony".

Releasing the memorandum, the MSD says, the organization has been fighting for "peace and justice since 1993 and defending secular democracy, and stood by the victims in communal violence." The signature campaign, in which 100 persons signed up, began on June 25, the day on which national emergency was imposed by Indira Gandhi in 1975.

"Severely condemning" the IB report on the MSD, the memorandum said, the organization was formed in the wake of the communal riots in 1980s and the Babri Demolition incident of December 1992, which "created a

frenzied communal atmosphere in Gujarat and the entire country..." It added, "Shocked by events, eminent citizens of almost all fields of Gujarat formed a voluntary, non-party civil society movement and named it as MSD."

"Contrary to IB's version, MSD is neither a NGO nor it has any relationship with foreign funding", the memorandum said, adding, it is "purely a citizen's civil society movement committed to the constitutional values of secular democracy." It recalled, "In the inaugural speech of this convention, former member of Planning Commission and well known political analyst, Rajni Kothari advocated for democracy against mobocracy and eminent Sarvodaya leader Narayanbhai Desai appealed for unity against autocracy".

Claiming that the MSD "openly and courageously presented its views on all social, political and economic issues", the memorandum said, "The MSD exposed the communal attitude and decisions of several groups and the state government and its machinery after 1993. It also continued the campaign to protect secular democracy against these attacks."

It further said, "The carnage of 2002 posed a challenge to the MSD. We had to pass through a very critical period to save the civil society from an all out communal attack. But in this trying period, The MSD made all to rally round all the democratic and secular forces and raised the voice against irresponsible and communal attitude of the ruling party in the state with all intensity."

"Further", the memorandum said, the

MSD "thrived to create a consensus over rehabilitation and justice to the carnage victims." In 2002, it experienced "total breakdown of law and order in Gujarat. The intensity of the activism and advocacy of MSD in 2002 has obviously annoyed the communal elements and those elements who wanted to reap political mileage out of communal identity."

Pointing out that "justice for the 2002 carnage victims and desire of peace and amity in the society has been the main slogan of the MSD to which it has firmly adhered to till this date", the MSD said, several human rights and civil liberties movements, especially the People's Union for Civil Liberties (PUCL), have stood by the MSD.

Also objecting to the PUCL's name in the IB report, the memorandum said, "PUCL is well known civil liberties voluntary organisation founded jointly by Jayaprakash Narayan and Justice Tarkunde", and it is "shocking that such a reputed civil liberties organization has been linked with NGO and foreign funds."

Signatories to the memorandum include: Rajmohan Gandhi, Dr Romila Thaper, Prof Yogendra Yadav, Dr Mallika Sarabhai, Dr JS Bandukwala, Prof Gulam Mohammad Sheikh, Prof Dhaval Mehta, Prof Dinesh Shukla, advocate Girish Patel, Fr. Cedric Prakash, Gautam Thaker, Prof Svati Joshi, Gagan Sethi, Prof Ghanshyam Shah, Dr Ram Puniyani, Prof Abid Shamsi, Sukla Sen, Manishi Jani, Dr Saroop Dhruv, Prof Rohit Shukla, Dr Trupti Shah, Dilip Chandulal, Dwarika Nath Rath and others.

Courtesy Counterview, 4 July, 14 □

INDIA: Where Police Ignore Distress Calls

Avinash Pandey

The phone calls were going unanswered.

A group of men had broken into a female friend's house and were holding her hostage. I was frantically calling the Senior Superintendent of Police, the local police station, and officials in the district administration. Every passing minute sent shivers down my spine. I thought to myself: what are these police stations for, if they cannot respond to such emergencies?

This is one of countless stories from India, where women's bodies are treated as sites of honour, to be maligned or defended. The younger brother of the hostage had fallen in love and married a girl. The couple had eloped. This was not a caste conflict case. In fact, the couple belonged to the same caste. It was the girl's decision to choose her life partner on her own that had irked her family members, self-designated custodians of the girl's autonomy in a patriarchal society. It was this insult they wanted to avenge. Members of the affronted family had, therefore, broken into this female friend's house in the dead of night.

The group confiscated her phone and prevented her from seeking help. She was repeatedly told to divulge details on where the couple was hiding. They threatened her with rape and with being paraded naked if she did not provide the needed information. She, however, had no clue where the couple was hiding. She asked for her phone, using the excuse that another friend

might know about the couple's location.

This phone call allowed her to inform a friend about her predicament. This friend, in turn, tried to contact every possible person who could help, beginning with the local police. And, this is how I also learned of the dangerous hostage situation.

The police did not answer any calls, leaving us all flummoxed. Other friends in the media and in the women's movement were contacted who were finally able to reach the police and make them act. The hostage situation was broken the following morning. The hostage was rescued, thankfully before she got violated. But, this was only possible because the woman was well connected and her friend could reach people in positions of influence promptly. What would have happened to an ordinary woman with no such contacts is anybody's guess.

This incident took place in a country that has seen an outpouring of anger against sexual violence after the brutal gang rape and subsequent death of a young girl in Delhi in December 2012. The protests had shaken the government into action; a new law resulted and heightened security for women across India was promised.

That the changes have been cosmetic is betrayed in continuing stories of violence against women being committed in the country. Uttar Pradesh, the most populous province of the country, has been in

the news for a spate of gang rapes and murders. Neighbouring Madhya Pradesh has not been in news, despite being the rape capital of the country, as per official statistics. Even places considered safer for women in the past have seen a rise in incidents of sexual violence. Mumbai, for instance, has recently seen a passenger attacking a female

bus conductor and tearing her clothes in broad daylight.

The new law, evidently, has not worked on the ground. Laws, however well drafted, need working institutions for enforcement, and if the institutions are defunct, and/or deviant, the laws are bound to fail. What law would save a woman from rape if, when she is held hostage, the agencies meant to protect citizens in distress fail to respond? Introducing new and harsher laws is not going to curb sexual violence in India. One thing that can have a decisive impact is a radical restructuring of the criminal justice system, i.e. by making it responsive and responsible. Having dedicated teams to respond to emergencies might be a beginning. But, until impartial investigations ending in timely convictions become the norm, nothing will change. Till then, we make do with police stations that prefer not to respond to distress calls.

June 27, 2014

Mr. Pandey, alias **Samar** is Programme Coordinator, Right to Food Programme, AHRC □

Newly Elected Office-bearers of the Chhattisgarh PUCL

On 6th July 2014 we have elected the following as new post bearers of the Chhattisgarh PUCL for the period 2014-16: **President** - Lakhan Singh; **Vice Presidents** - Himanshu Kumar, Degree Prasad Chouhan; **General Secretary** - Sudha Bharadwaj; **Joint Secretary** - Ajay TG; **Treasurer** - Shri AP Josy.
Sudha Bharadwaj, General Secretary. Chhattisgarh State unit

Statement of Concern on SLAPP Cases Filed Against Authors, Journalists and Publishers

We, the undersigned condemn the threats of defamation cases served on authors, journalists and now as publishers in writing.

We have read the book "Gas Wars: Crony Capitalism and the Ambanis" co-authored and published by Paranjay Guha Thakurta and the review article "Ambani ki dukaan?" by Sucheta Dalal, Managing Editor of moneylife magazine website and her messages on twitter and we found nothing defamatory either in the book or in the articles and tweets. The impeccable credentials of Paranjay Guha Thakurta and Sucheta Dalal have been exemplary for Indian journalism in the era of paid news, embedded journalism and draconian corporate control over media.

We note that both the book and the article are based on information that is readily available to everybody in the public domain.

We are outraged by the assault on freedom of press and public interest through threatening letters. The attempt to intimidate journalists who report truth which commercial czars is quite reprehensible.

We express our support to the authors and publishers in question who have exercised their right to free expression enshrined in Article 19(1) (a) of the Constitution of India. The day such voices are silenced that would be a black day for Indian journalism and democracy.

We have observed that the authors have been fair to Late Dhirubhai Ambani, Mukesh Ambani and Anil Ambani and their companies, by providing their version of events and circumstances.

Among other issues, the core issue that this scholarly and rigorously referenced book and the articles in question raise is: who all are colluding with to deprive present and future generations of Indians of their claims of the natural resources of

the country?

We have pondered over the questions like: "If gas price is low as per correct production rate then, why should Indians pay higher price of gas? Who wants Indians to pay price of Indian natural resource as per US price rate?" We observe that the legal notices from Mukesh Ambani and Anil Ambani and their companies through their lawyers will have us accept that raising such questions is defamatory.

While delivering the speech at the award of Nobel Prize for Literature in 2005, Harold Pinter said, "I believe that despite the enormous odds which exist, unflinching, unswerving, fierce intellectual determination, as citizens, to define the real truth of our lives and our societies is a crucial obligation which devolves upon us all. It is in fact mandatory. If such a determination is not embodied in our political vision we have no hope of restoring what is so nearly lost to us - the dignity of man." Paranjay Guha Thakurta, his co-authors and Sucheta Dalal and her colleagues have done their duty as citizens, writers and as purveyors of truth.

This undemocratic act by these richest persons of our country and the artificial persons-the companies-they run is totally unacceptable, deplorable and constitutes an illegitimate advance against citizens' rights.

Signatories: Prof. Jayati Ghosh, Jawaharlal Nehru University, New Delhi; Githa Hariharan, Writer; Garga Chatterjee, Indian Statistical Institute; Seema Mustafa, Editor, The Citizen, www.thecitizen.in; Chittaroopa Palit, Narmada Bachao Andolan; Prof. Ayesha Kidwai, Jawaharlal Nehru University, New Delhi; Arun Kumar, Former Member, Press Council of India (Xlth Term), General Secretary, Bihar Working Journalists Union, Member, National Executive Committee and Indian Journalists Union; Prof. Kamal Mitra Chenoy, Jawaharlal Nehru

University, New Delhi; Noor Zaheer Zaheer, Writer and Researcher; Preeti Sampat, Anthropologist, City University of New York; Siddharth Varadarajan, Journalist & Former Editor, The Hindu; 12. Prof. (Dr) Mohan Rao, Jawaharlal Nehru University, New Delhi; Mitali Saran, Writer & Columnist; Subhash Gatade, author and human rights activist; Dr. Malem Ningthouja, Campaign for Peace & Democracy, Manipur; Irfan Engineer, Director, Institute of Peace Studies and Conflict Resolution, Mumbai; Mukul, Dube, Writer, Photographer and Social Activist; Gautam Navlakha, Human Rights Activist & Journalist, Delhi; Omair Ahmad, Author; Trupti Shah, Activist, Gujarat; Himanshu Thakkar, South Asia Network on Dams, Rivers and People (SANDRP); Kamayani Bali Mahabal, Feminist and Human rights activist, Mumbai; Faisal Khan, National Alliance of People's Movements; Yashwant, Editor, <http://bhadas4media.com/>, NCR; Pushpraj, Journalist and Author of Nandigram Diary, Patna; Rohit Prajapati, Activist, Gujarat; Xavier Dias, Editor, Khan Kaneej Aur ADHIKAR (Mines, minerals & RIGHTS), Jharkhand; Prithvi Raj Sharma, founder member of Indian Community Activists network (ICAN); Dilip Simeon, Historian and author of Revolution Highway, Delhi; Gopal Krishna, independent researcher, journalist and social activist; Dr Babu Rao Kalapala, Scientist; Dipak Dholakia, Citizens' Solidarity—Forum for Water and Sanitation (CS-FWS); Kiran Shaheen, Memoirist and activist; Sudhir Pattnaik, Writer and Media Person, Bhubaneswar; Sankara Narayanan, social activist; Persis Ginwalla, Social activist, Ahmedabad; B.R. Bapuji, Professor (Retired), University of Hyderabad; M. Thimma Reddy, People's Monitoring Group on Electricity Regulation, Hyderabad; Shweta Tripathi, Social Activist; R.Subbarao, Social Activist, Secunderabad; Sagar Rabari, Jamin Adhikar Andolan, Gujarat (JAAG); Krishnakant, Social activist, Gujarat; Ashok Tankashala, Journalist and Writer, Hyderabad; Dr Paresh R. Vaidya, Scientist □

Narmada Oustees Demand revocation of raise of the SSP height: New Delhi, June 24, 2014

Narmada Oustees converge in National Capital: Warn Govt. of India

Demand revocation of raise of the SSP height: Rehabilitation of 2.5 people

PM must keep up poll promises of 'acche din' and 'inclusive development': NDA Govt. must abide by law & judicial orders

Jantar Mantar, New Delhi, June 24: Hundreds of oustees from the Sardar Sarovar Dam (SSP) affected villages in the states of Madhya Pradesh, Maharashtra and Gujarat reached the national capital today to challenge the absolutely illegal and undemocratic decision of the newly formed NDA Government to raise the height of SSP from 122 mts to 138.68 mts and consign 2.5 lakh people – tribals, farmers, fish workers, potters, landless to a watery grave, without ensuing land and livelihood based rehabilitation as per the Narmada Tribunal Award, state policies, action plans, judgements of the Supreme Court and Orders of the Grievance Redressal Authorities.

People from the oldest civilization of the world gathered at the protest site since Tuesday morning and denounced the outrageous manner in which the new Govt., within just three weeks of assuming power, has chosen to disregard the legitimate questions and concerns raised by a 3 decades old social movement. This hasty decision, has actually raised more questions about the 'statesmanship of the Prime Minister', the political and economic motives and the sheer insensitivity of the BJP-led Govt. towards farmers and the entire rural landscape. We would like to ask:

1. Is the move really for the benefit of the farmers of Gujarat or for the corporates and industries that have been eyeing the Narmada waters and command area land for very long?
2. Why has the Govt. hurried with this decision without complying with the legal and judicial stipulations on environmental safeguards and rehabilitation of thousands of families?
3. If in the past 30 years, especially 13 years of Mr. Modi's rule in Gujarat, less than 30% of the canal

network has been constructed, why this rush to submergence 245 villages, without any roadmap for using the waters, without adequate canal network in place?

4. Had this pre-mature decision been taken to submerge the ongoing judicial inquiry into the massive 1000 crore corruption in M.P, exposing fake registries and a huge nexus?

5. Have the concerned Ministers and officials even cared to visit the flourishing villages, the uninhabitable R&R sites and assess the field reality before taking this decision in one stroke?

6. Have all the states and parties to the issue, including affected people at the centre and their organization been taken into confidence?

7. Will the 'sacrifice' of Narmada valley really reach the needy farmers of Kutch or Saurashtra or will feed into the profits of the corporates?

8. With 90,000 crores as the estimated final cost of the Project, have the claims of benefits on irrigation and power actually been realized?

"Where is out land? Where is our livelihood? Where will we go? Is there any rule of law in the country?" These were questions that people asked and stated that the decision to permit "*construction of piers, overhead bridge and installation of gates in a raised position on the SSP*", was actually not taken by the 'Narmada Control Authority' on 12th June, but was already taken on 16th May! **The decision violates the legal imperative that "no one's property can be submerged without full and fair rehabilitation"**. Despite having the most progressive law on rehabilitation, the SSP-affected had to struggle for their rights over years, which led to 11,000 families receiving land in Gujarat and

Maharashtra, hardly 30 families in M.P. and establishment of about 200 resettlement sites. **However, thousands of families residing in the submergence areas of the three states are yet to receive proper rehabilitation benefits including cultivable land, house plots, civic amenities at resettlement sites, alternative livelihood etc.**

It is obvious that the nexus of officers and their agents, who duped thousands of oustees will have to face anything upto punishment when the Justice Jha Commission inquiry report is out and would like the whole process to be sabotaged. We condemn the political expediency inter-state politics that has pushed this decision, while ignoring the law of the land and committing judicial contempt. While Shri Narendra Modi has been promising the country of 'acche din' and 'inclusive development', through his electoral campaigns, one is shocked and pained to know of his government's U-turn, within barely a month of his assuming office!

The people of the valley will not take this decision lying down and will stand up on the streets, in the Courts, in the capital and across the country, challenging the same. The people are however, determined to face the authorities, at the highest level and seek answers. **The Former Prime Minister has assured the Supreme Court in 2006 that there would be full compliance with the Narmada Award, no submergence without rehabilitation. Mr. Modi ji will have to keep up the promise of the PM's office to the Apex Court and cannot go back. On the one hand Gujarat Govt. plans to de-notify 4 lakh hectares of land from the command area and reserve it for corporates, and on the other**

hand justify the arbitrary decision to raise the dam height to 139.68 mtrs, while less than 20% of the dam waters are utilized!! The decision-making on SSP, leads us to some more critical questions of national import:

1. Will the decision on Sardar Sarovar be indicative of the development paradigm of Mr. Narendra Modi led-NDA Govt?

2. Will legitimate questions about people's lives, livelihoods, environment, corruption and benefits of mega projects and the unholy political-contractor-official nexus be pushed under the carpet in the garb of 'development' lollypops?

3. Will the 'growth' mantra quell all concerns relating to democracy, sustainability and equity?

As we raise these questions, we also know the State would immediately brand us as 'anti-development and anti national, but

asserting the rights of farmers and workers; the tillers and toilers cannot be anti-development, we assert. We expect a reasonable opportunity to be heard and present the field reality, with all documentary evidence to the concerned authorities and Ministries. If SSP can go ahead, it can only be, as per law and by ensuing people's rights not against the law. We demand Govt. of India to:

1. Immediately withdraw the decision of 12th June, to raise the height of SSP by 17 mtrs.

2. Undertake a comprehensive, participatory assessment of SSP: including the status of benefits, rehabilitation and environmental compliance as per law.

3. Provide land and livelihood based rehabilitation to all the affected families in the three states, as per the NWDTA, state policies, action plans and judicial orders.

4. Initiate the canal construction work in Gujarat in order to utilize the water already ponded upto 122 mts and stop any diversion of command area land and SSP water to industries and cities, by violating the Award.

This will be the beginning of a new phase of the struggle, in which the masses and progressive forces of the country will not be mere witnesses, but participants since the onslaught on people's rights will have to be countered and challenged across the country. We appeal to the PM to show true statesmanship and establish a precedent by responding to the demands of the people from the Narmada valley. This will be his true ode to Sardar Patel.

Medha Patkar, Kamla Yadav, Hirdaram Bavlya, Bhagirath Dhangar, Jamsing □

NBA Press Note on Sardar Sarovar Dam Height:

Sardar Sarovar Dam Height not to be Increased until Action is taken on the Jha Commission Enquiry Report

Jabalpur High Court issues notice to Centre and the State governments on the petition filed by Narmada Bachao Andolan: Next hearing on 25th July

Badwani / Jabalpur, July 9:

Narmada Bachao Andolan filed a petition in the Jabalpur High Court on July 8, challenging the June 12th order of the Narmada Control Authority to raise the height of the Sardar Sarovar Dam by 17 meters, citing the ongoing enquiry into 1000 Crores corruption in Rehabilitation of Sardar Sarovar affected families and the right to life and livelihood of two hundred fifty thousand still residing in the submergence area. The enquiry is being conducted by Justice S.S. Jha Commission, constituted by the Madhya Pradesh High Court in 2008. The High Court admitted the petition filed by NBA and issued notices to the Principal Secretary, Madhya Pradesh, Vice Chairman Narmada Valley Development Authority and the

Chairman of the Narmada Control Authority.

It is to be noted that 2,500 fake registries have been unearthed in purchasing of land for the rehabilitation of the project affected families. This has resulted in nearly 1000 Cr corruption affecting thousands of families, who didn't get their due. The statement of the affected families, those who sold their land and other interested parties has been recorded in last five years. The argument on the report prepared by an organisation called Maulana Azad National Institute of Technology, Bhopal authorised by the Commission, is still going on over the serious irregularities in the construction work of 88 rehabilitation sites. Infact, the enquiry by Jha Commission is at a critical stage. However, ignoring the ongoing processes, the order to increase the height of the dam is a gross violation of HC and SC orders. This is a conspiracy to protect the middlemen

and government officials involved in the irregularities and corruption in the process of rehabilitation of project affected families.

While, accepting the petition of the NBA, Honourable High Court ordered that all the parties must respond by July 18th, 2014 and the next hearing date was fixed for July 25th, 2014. Medha Patkar pleaded on behalf of the Narmada Bachao Andolan, Advocate R N. Singh argued for the MP State Government and Advocate Sayyed Naqvi for the Union government.

NBA welcomes the directions of the Court in the matter. By accepting NBA's petition HC set aside the earlier decision of inappropriately quashing the corruption related PIL in Feb. 2014. This has revived the original petition of NBA demanding investigation in the corruption in R&R, being heard for past Seven years.

Meera, Rahul Yadav, Bhagiram □

Opposed by Narendra Modi, Biometric National Population Register (NPR) is Aadhaar by Another Name

How Rajnath Singh is wrong about Biometric NPR and the Prime Minister is right?

No lessons being learnt from misuse of electoral database and census data by Big Data companies

In a letter written to Minister of Home Affairs (MHA), Citizens Forum for Civil Liberties (CFCL) has submitted that Shri Narendra Modi had opposed biometric National Population Register (NPR) in his letter to Dr Manmohan Singh on October 6, 2011. It has argued that MHA's support for 12 digit biometric aadhaar number generating NPR makes Indians worse than prisoners, violates Citizenship Act, Census Act and constitutional rights.

Isn't there a compelling reason for MHA, RGI and all the concerned ministers and officials in the government to read the letter of Shri Narendra Modi to understand why he had opposed biometric NPR not? How can MHA deprive itself of the wisdom of Shri Modi without facing any consequence? If this government does not reconcile its actions in the light of Shri Modi's letter, it will tantamount to breach of citizens' trust. It will set a dangerous and unhealthy precedent and in future no one will believe even the written words of political leaders.

The MHA's must explain as how is India's NPR for identity cards different from Identity Cards that has been abandoned in UK. There is a need to guard against ID Card cartels and learn from the fate of such databases in Egypt, Pakistan and Greece. It must set up a committee to examine why countries like China, Australia and France abandoned such ID projects.

CFCL had appeared before the Parliamentary Standing Committee (PSC) on Finance that examined the National Identification Authority of India Bill to legalize and legitimize aadhaar scheme. The PSC endorsed the concerns about national security and citizens rights and questioned and trashed the scheme.

The parliamentary committee had categorically raised question about

the absence of legal mandate for biometric data collection. The parliamentary committee's report observes, "The collection of biometric information and its linkage with personal information of individuals without amendment to the Citizenship Act, 1955 as well as the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003, appears to be beyond the scope of subordinate legislation, which needs to be examined in detail by Parliament."

Notably, the PSC's report revealed that "Bharatiya - Automated Finger Print Identification System (AFSI), was launched in January, 2009, being funded by the Department of Information Technology, Ministry of Communications and Information Technology, for collection of biometric information of the people of the country." But admittedly the same is not being used by UIDAI because according to the Government, "The quality, nature and manner of collection of biometric data by other biometric projects may not be of the nature that can be used for the purpose of the aadhaar scheme and hence it may not be possible to use the fingerprints captured under the Bhartiya-AFSI project." It is bizarre as why the parliamentary committee did not question AFSI program of Ministry of Communications and Information Technology headed by A Raja. How can this program be allowed to continue without "amendment to the Citizenship Act, 1955"?

Despite such observation of the parliamentary committee, MHA's support for NPR is quite inexcusable. Besides the Ministry of Planning in their written reply stated, "UIDAI is adopting a multiple registrar approach and the Registrar General of India (RGI) will be one of the Registrars of the UIDAI. To synergize the two exercises, an Inter Ministerial Coordination Committee has been set up to minimize duplication. The UIDAI is making all efforts to synergize with National Population Register (NPR) exercise." This recorded reply illustrates that NDA government's proposal for NPR and UPA government's aadhaar is simply the

same rose with different names.

It is quite clear from the conceptual design that aadhaar and NPR is one and the same. This feigned ignorance seems to demonstrate the collusion between BJP and Congress on biometrically profiling Indians. Admittedly, biometric data is a property. It is not surprising that property dealers of all shapes and shades are visible on the horizon.

The examination of the terms of reference of UIDAI reveals it all. The entire political class and citizenry was taken for a ride regarding a so called turf war between the Ministry of Home Affairs and UIDAI which media was made to understand that got resolved by dividing the Indian population in two parts of 60 crore for coverage under aadhaar and the rest under National Population Register (NPR) which also generates Aadhaar number. The fact is the terms of reference of the UIDAI mandated it "take necessary steps to ensure collation of National Population Register (NPR) with UID (as per approved strategy)", to "identify new partner/user agencies", to "issue necessary instructions to agencies that undertake creation of databases... (to) enable collation and correlation with UID and its partner databases" and UIDAI "shall own and operate the database". The executive notification dated January 28, 2009 that set up UIDAI mentions this. The entire exercise has been staged to hoodwink unsuspecting Indians.

If there was still any doubt about the oneness of NPR and aadhaar, the report of Press Trust of India of January 30, 2014 revealed the proposal of the Planning Commission to allow UIDAI to start enrolments in areas other than 18 states and Union Territories allocated to it. The Commission's proposal is based on the view that this is required to speed up collection of biometrics details of residents and for issuing them Aadhaar numbers as well as a National Multi-purpose Identity Cards (NMIC) based on NPR. It was reported, "The Commission discussed the proposal with Registrar General of India (RGI) under the Ministry of Home Affairs. They have agreed that UIDAI can be allowed to

enrol in some states where they are collecting biometrics details of resident, to speed up enrolments."

It may be noted that the states and union territories where RGI is enrolling residents and collecting their biometrics details under NPR are Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Jammu & Kashmir, Meghalaya, Mizoram, Odisha, Tamil Nadu, Uttar Pradesh, Uttarakhand and West Bengal, Andaman and Nicobar Islands, Dadar and Nagar Haveli and Lakshadweep. Notably, RGI is also enrolling residents in Udupi, Gadag, Uttara Kannada, Haveri, Davangere, Bangalore rural, Chikkabalur and Kodagu districts of Karnataka. So far 14 crore Indians have been enrolled under NPR.

UIDAI has been enrolling residents in Andhra Pradesh, Goa, Chandigarh, Daman and Diu, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Delhi, Puducherry, Punjab, Rajasthan, Sikkim and Tripura. It claims that so far it has enrolled 63 crore Indians.

Both NPR and aadhaar are online databases by design.

Now that it has been established that surveillance agencies of USA, UK and their allies have dismantled firewalls created for online privacy and encrypted Internet communications, the new government must dismantle the illegitimate biometric database to undo the damage done to Indians by the previous government.

In its letter CFCL said, "even as the surveillance infrastructure that was bulldozed by the previous

government unfolded in India, UK's Deputy Prime Minister Nick Clegg said in a speech in British House of Commons said, "This government will end the culture of spying on its citizens. It is outrageous that decent, law-abiding people are regularly treated as if they have something to hide. It has to stop. So there will be no ID card scheme. No national identity register, a halt to second generation biometric passports," He added, "We won't hold your internet and email records when there is just no reason to do so. Britain must not be a country where our children grow up so used to their liberty being infringed that they accept it without question. Schools will not take children's fingerprints without even asking their parent's consent. This will be a government that is proud when British citizens stand up against illegitimate advances of the state." The speech of the British Deputy Prime Minister is available at http://news.bbc.co.uk/2/hi/uk_news/politics/8691753.stm It added, "it is quite significant to take note of these developments to avoid the fate of Shri Tony Blair and his UK's Identity Cards Act, 2006. Both have been abandoned."

During the election campaign, BJP opposed biometric aadhaar in strongest words. Now it is apparent that the MHA has accepted aadhaar as irreversible and as a face saving stance it will have citizens believe that it will not accept biometric aadhaar but will gladly do so if it is mentioned as biometric NPR unmindful of Shri Modi's opposition to it.

The technological drive to ensure mastery over human beings is not

merely a by-product of a faulty political economy but also of a world view which believes in the absolute control. It has become more and more apparent that genocides, ecodisasters and ethnocides are but the underside of corrupt sciences and psychopathic technologies wedded to new secular hierarchies, which have reduced major civilization to the status of a set of empty rituals, observes Ashish Nandy in his book *The Intimate Enemy: Loss and Recovery of Self under Colonialism*.

The lessons from database based genocides are part of recent world history should not be forgotten in the face of a large section of complicit and partisan corporate media especially those that regularly received advertisements from UIDAI and its partners.

The MHA's initiative for biometric NPR reveals that no lessons are being learnt from misuse of online electoral database and census data by Big Data companies. The companies like FourthLion Technologies and Modak Analytics have collected and analysed electoral data in the absence of any data protection law. The latter analysed 18 tera bytes of data and built India's first Big Data-based Electoral Data Repository system and vetted about data related to 81 crore people to help our client understand the electorate on a wide variety of aspects such as caste, gender, age and economic status. We used all the publicly available data provided by Election Commission and Census figures.

Gopal Krishna, Citizens Forum for Civil Liberties (CFCL) □

Fatwas and Muslim Women

Irfan Engineer

The Supreme Court on 7th July 2014 ruled that fatwas had no legal sanctity and the defiance of fatwas would not have civil or criminal consequences as it had no place in independent India under our constitutional scheme. Though the Apex Court did not injunct Islamic religious authorities like the Dar-ul-Uloom Deoband, Dar-ul-Qaza or Nizam-e-Qaza from issuing fatwa as issuance of fatwas per se were not illegal in its opinion, it clarified that "it is not a decree, not binding on the court or the state or

the individual. It is not sanctioned under our constitutional scheme".

The Supreme Court seems to have taken balanced view by clarifying that the fatwas may be issued by any religious authority or individual but it cannot be enforced and the courts would disregard it. The Apex Court cannot prevent anybody from expressing her/his religious views as Article 25 of the Constitution guarantees freedom of every person to freely profess, practice and propagate religion of her/his choice.

Those views however cannot be enforced on a third person through any means. However, given the state of literacy, education and socio-economic backwardness of the community, lack of security, having very limited access to secular institutions, the poor in the community take the opinion of the even improperly trained imams (prayer leaders of the mosque) are prone to accept fatwas as divine law. Religious organizations and institutions play prominent role in their daily lives

providing solace and support. Women are more vulnerable given the patriarchal values and huge gender based inequality within the community. A bizarre fatwa was issued by the imam of a mosque in Assam. A woman shared her husband's dream in which he pronounced the word talaq (divorce) thrice with her neighbour. Both - husband and wife had laughed off the dream. The dream was reported by the neighbour to the imam who promptly issued fatwa that such a pronouncement even in a dream amounted to irrevocable divorce and the husband and wife were haram (prohibited) to each other and must separate immediately. Such a ridiculous fatwa also carried weight for the community and can cause irreparable damage. There is no homogeneity in fatwas and often contradictory fatwas are issued by muftis and imams based on one of the four school of jurisprudence they belong to - Hanafi, Hanbali, Shafi or Maliki among the Sunnis or a Shia Ulema would follow their respective jurisprudence, viz. Ja'fri, Ismaili or Zaidi.

There is lot of misunderstanding about fatwas. Fatwa and mediation in matrimonial disputes are separate issues. The former is done by Dar-ul Ifta whereas the latter is done by Dar-ul-Qaza or Nizam-e-Qaza and often by biradari based mediations. Mediation by Dar-ul-Qaza is often popularly referred to as shari' adalat or sharia courts. The petitioner - Adv. Vishwa Lochan Madan had approached Supreme Court with a prayer to ban the shari'a courts, qazis, naib qazis from functioning and thereby dictating social behaviour of citizens.

Fatwa – Fatwa in Arabic literally means opinion. Fatwa is opinion of the issuer on some issue of shari'a or the other. As there is no clergy in Islam, the opinion is not binding, howsoever learned and qualified the issuer of the fatwa may have been. A fatwa issued by Dar-ul Ifta normally ends with the words "but Allah knows better" after the opinion is expressed. These words itself shows that the issues accepts the opinion expressed in the fatwa to be his best judgment on the issue, but not binding, as Allah knows better than him.

Fatwa is issued in response to a query

about matters relating to everyday life in accordance with shari'a. The query may emanate from any person, even a third person unconcerned with the query. Often journalists approach a local imam of a mosque with minimum training in Islamic religious affairs for his opinion on matter pertaining to a third person. The objective may not be to educate himself with the opinion of the maulvi but to publish the "fatwa" later for TRP of his channel or increase the sale of his paper. Other media then pick up and discuss the "fatwa" for days and weeks if not months. Fatwa on Imrana was sought by a journalist and not by Imrana or her husband or Imrana's rapist father-in-law.

Fatwa can only be given by Islamic scholars on the basis of Islamic law. The persons authorised to give fatwas hold position of mufti. Person issuing fatwa should have pure intention to guide the seeker of fatwa; he should have deep insight; equanimity and tranquillity; he should have a firm religious background and deep knowledge and should be aware of daily life and contemporary issues. Allama Iqbal suggested in his Reconstruction of Religious Thought in Islam that every generation of Muslims should re-think the issues and legislate according to their own needs. Poorly paid imams of mosques in rural area often do not meet these qualifications. They are not men of vision nor understand the issues involved and follow the rule book mechanically. A fatwa encompasses every aspect of life such as creed, worship, transactions, the economy, family, politics, governance, etc.

A fatwa may relate to an individual's conduct or to the community as a whole. Maulana Hussain Ahmad Madani collected 100 fatwas issued by Ulemas of various sects against partition of the country and published the compilation. Madani argued that it was sin to call a geographical area as "pak" or holy as the Muslim country was sought to be called Pakistan. Allah's entire creation was holy. He also argued that the first state which the Prophet of Islam built was based on the concept of composite nationalism as in the Madinese covenant, the Muslims, Christians and Jews agreed to jointly defend Madina if attacked by its enemies but

at the same time, all were free to follow their faith and religion. Indian nationalism too was composite with all faiths co-existing and flourishing and Muslims enjoyed freedom of conscience. He toured length and breadth of the country addressing public meetings and educating Muslims that it was their religious duty to oppose creation of Pakistan.

Similarly there have been numerous fatwas to oppose terrorism targeting innocents issued by Ulama in India as well as others in Islamic world. In the Mardin conference 15 leading scholars from countries including Saudi Arabia, Turkey, India, Senegal, Kuwait, Iran, Morocco and Indonesia gathered. Among them were Bosnian Grand Mufti Mustafa Ceric, Sheikh Abdullah bin Bayyah of Mauritania and Yemeni Sheikh Habib Ali al-Jifri and rejected the earlier fatwa of Imam Ibn Taimiyyah that was used by Osama bin Laden and his followers in support of their jihad. Imam Ibn Taimiyyah's fatwa justified use of violence against an unjust ruler in the circumstances when the only way to address injustice and to bring about regime change was to use counter violence. Imam Hanbal had prohibited rebellion against an unjust ruler as it would promote anarchy and bloodshed. The Mardin conference rejected mindless violence targeting innocents and non-combatants condemned terrorism. In a democracy other means of changing unjust regimes is possible. Such fatwas merit little attention in the media - both, for the lack of knowledge, and because they go against the conventional wisdom that Islam is a backward, violent and aggressive religion. Media also thrives on negative news. Coverage of conflicts rather than events that are conducive to harmony and peace increase the TRPs.

Fatwas and Muslim women

However, everything is not hunky dory within the community. The Muftis issuing fatwas mechanically follow the rules of their respective jurisprudence without applying their mind to the changed context and circumstances in which the fatwas are sought. To be fair to the Dar 'ul Ifta, the problem lies with the fact that the doors of ijtehad (creative interpretation and application of teachings of Islam to changed

circumstances) have been closed during the medieval period itself. In India, Islamic jurisprudence was an evolving science till the colonization of the country under British. The Warren Hastings' Plan of 1772 provided for establishment of civil and criminal courts and protected the right of Hindus and Muslims to apply their own personal laws in inheritance, marriage etc. In the year 1791 under directions of Hastings, Charles Hamilton translated from Arabic the Hedaya (The Guide) into English. With the reliance of the British courts on written text, the evolution of shari'a came to a halt. Darul Uloom Deoband was established by Maulana Muhammad Qasim Nanotvi and others to conserve the faith against the possible western onslaught.

Since then, the fatwas issued by the Darul Ifta established by Darul Uloom have been drawing from wahabi conservative Islam and Hanafi School of jurisprudence. Muslim Women have been worst sufferers as the conservative fatwas restrict their freedom and liberties. Women in the fatwas are conceived as duty bearers towards their husbands having little rights. Moreover, the fatwas enable men to exercise considerable control over the bodies of their wives and control their movement reducing them to object for sexual gratification for their husbands, bearing them children and carrying out domestic chores. Needless to say this does not necessarily reflect the true spirit of Islam. Dr. Asghar Ali Engineer would argue that Holy Quran gives equal rights to Muslim women and complete freedom to earn their livelihood, right to manage their earnings and use it as they please without any obligation, right to maintenance from their husbands, wear clothes they liked except they were require them not to display their zeenah (bodily charms and adornments), right to unilaterally divorce their husbands (khula), right (nay, duty) to acquire knowledge, right to pray in mosque and even lead mix group of namazis in mosque, liberty to act and officiate as Qazis, etc. For lack of space, we are not giving references.

Recently a fatwa was issued which called women working in establishments with other male colleagues to be haram if their earnings were not necessary to maintain the family, and if it was, they should be covered from head to toe during their working hours! A fatwa was issued banning a popular all-girls Kashmiri band leading to its disbanding. Viewing of most TV channels, listening to Music, etc have been prohibited by fatwas. What was most disturbing was the fatwa that restricted women from entering even sufi dargahs - a most inclusive space. In August 2005, Darul Uloom issued a fatwa forbidding women from voting, and if they must, they should wear a veil. This would of course prohibit them from contesting elections. Thankfully, the community does not always subject themselves to these fatwas.

What should we do?

First of all, we must welcome the Supreme Court Judgment which reminds the Muslim community that though it is not unconstitutional to issue fatwas, they are merely opinions of the issuer and not binding on anybody. The Apex Court has also advised the institutions and persons inclined to issue fatwas, not to do so at the instance of a third person or party unconnected with the opinion to be expressed as there is ample scope for mischief.

We must particularly educate the women in particular and the community in general, particularly in the rural and semi-urban areas, that fawas are not binding, and wherever possible, hold celebratory meetings welcoming the Apex Court judgment on the issue. The courts functioning under the constitutional framework have done far more for Muslim women's rights and entitlements and without deviating from Islamic principles - be it on the issue of granting maintenance to divorced Muslim women, holding oral pronouncement of divorce in one sitting illegal, custody of children, right of inheritance, protection of Muslim women facing domestic violence etc. Muslim women should utilize all spaces where they get better rights.

□

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