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K.G. Kannabiran Memorial Lecture - 9th November 2014, Chennai:

Safeguarding Security and Sovereignty Justice C.V. Wigneswaran*

Gurur Brahma.....

Honourable Chairman, distinguished guests,
My dear Bharathian brothers and sisters!

We are gathered here today to remember one of India's greatest human rights' leaders and jurist – the late Mr. K.G. Kannabiran. He was the President of your People's Union for Civil Liberties (PUCL) from the year 1994 to 2009. His period of office saw PUCL climbing to great heights as a human rights' organisation. He was, I am told, deeply humble and humane as a person, passionately and intensely committed to protecting democracy and human rights, not just in India but across the globe. He was absolutely fearless in opposing the stifling of freedom and crushing of dissent. He was an uncompromising professional when it came to law and legal practice. He had, no doubt, inspired many generations of human rights' activists and lawyers in India. Moreover he was a human rights' advocate in every sense. He spent the major part of his professional life as a Counsel for the Defence and was held in high esteem. He appeared for Naxalites, RSS members and all others who needed his assistance. In Andhra Pradesh alone he appeared on behalf of some five hundred detainees between 1975 and 1977. He gave opposition to the Emergency. He was elected as the President of the Andhra Pradesh Civil Liberties' Committee and served in that capacity for fifteen years. His association with the PUCL was legendary. He was able to articulate and advocate many legal principles that sought to give effect to the directive principles of the Indian Constitution.

He passed away in December 30, 2010.

To be invited to speak at *his* memorial oration, from across the Palk Strait, is indeed an honour, albeit, an intimidating one. Not only because of Mr. Kannabiran's stature or the dedicated and discerning audience gathered here today, but also because, having retired from the Supreme Court a decade ago and having borne the mantle of a politician for the last one year, perhaps I could face the charge that I have abandoned virtue for vice, reason for passion and justice for expediency!

Quite apart from my inadequacy to contribute meaningfully at the Memorial Oration of a humane being who has been described as the face of the civil rights' movement of the world's largest democracy, I must confess that speaking at an event organised by the PUCL, and particularly one in memory of Mr. Kannabiran, poses certain difficulties. Human rights' advocates tend to adopt a moral high ground in their discourses. It is often said that one adopts moral high ground when one has no other ground to rely on! Could that be the case with human rights' advocates - particularly those who often decry security and sovereignty? I, personally, cherish these values.

All too often human rights' advocates forget that it was that model of American virtue, Abraham Lincoln, who is credited with first using the phrase "the Constitution is not a suicide pact," when he suspended the writ of habeas corpus during the American Civil War. It was articulated formally in the legal context around ninety years later in Justice Jackson's dissent in a free speech case, *Terminiello v. City of Chicago*, where he chided the majority of the Court thus:

This Court has gone far toward accepting the doctrine that civil liberty means the removal of all restraints from these crowds and that all local attempts to maintain order are impairments of the liberty of the citizen. The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact.

There are many followers of this 'little practical wisdom' across the globe. In the aftermath of the attack on Pearl Harbour the US Supreme Court upheld as constitutional, curfews imposed on persons of Japanese descent in *Hirabayashi v. The United States* and supported the internment of more than 100,000 persons of Japanese descent through its well-known decision in *Korematsu v. The United States*. The respected Justice Hugo Black stated categorically that the case had nothing to do with racial prejudice thus:

Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be

segregated from the West Coast temporarily, and, finally, because Congress, reposing its confidence in this time of war in our military leaders — as inevitably it must — determined that they should have the power to do just this.(Unquote)

In the UK, in *Liversidge v. Anderson*, the House of Lords held that they would defer to the decision of the Home Secretary the question of whether he had reasonable cause to believe that the detention of Liversidge was necessary. The celebrated Lord Denning followed the decision in *R.V. Secretary of State, ex parte Hosenball*, in a deportation case, supporting judicial deference in matters of national security. In his work *Landmarks in the Law*, he termed *Liversidge* as a decision made against the background of the danger the UK was in at the time and the necessity to combat the enemies in their midst.

In Sri Lanka too our courts have amply demonstrated their *little practical wisdom*. When nearly three hundred and fifty thousand Tamils were incarcerated in open prison camps immediately after the end of the War, a public interest petition was filed claiming that there was no legal basis for such detention and that detention without detention orders was illegal. The Supreme Court and the Attorney General are reported to have queried, with what must have been of great concern to them, whether the Petitioners in the case were seeking to imperil the detainees further by insisting that detention orders be issued on them. The Attorney General on behalf of the State explained the great threat to security that these people could pose if they were allowed to get back into society for there were sure to be terrorists in their midst. Surely the lives of 22 million were worth more than the discomfort of a few hundred thousand? The Court reserved order on whether leave should be granted. That was five years ago. It still needs to be pronounced!

In essence are we not dealing with that famous law school conundrum of a ticking time bomb? Should we

torture a terrorist who has information on when a time bomb would explode and kill millions of innocent lives and thus save them or do we make a suicide pact with the bill of rights and die? Can any human rights' advocate, who claims to have the interests of humans at heart, claim that innocents should be sacrificed at the altar of blind subservience to the law? Of what use is liberty without security? Is not security the essence of all rights – the foundation upon which all other rights rest?

This brings us to our next question – who are those who seek to espouse these human rights' values? Are not human rights essentially a Western concept? Why should we, who have histories and civilisations that date back to antiquity, subscribe to new-found notions of countries that enslaved and colonised most of the world? Is this not neo-colonialism supported by NGOs that are simply "human rights' hit men"? What right do other countries and international organisations have to dictate terms to individual countries? Does it not infringe upon the sovereignty of States? Is not sovereignty the most sacred element of Public International Law – the foundation even? Are not slogans of R2P or Responsibility to Protect simply cloaks for imperialist interventions?

Mr. Dilip Sinha, the Permanent Representative of India to the United Nations in Geneva, in explaining India's abstention at the United Nations Human Rights Council vote on the Resolution on "Promoting reconciliation, accountability and human rights in Sri Lanka" in 2014, said

It has been India's firm belief that adopting an intrusive approach that undermines national sovereignty and institutions is counterproductive. Any significant departure from the core principle of constructive international dialogue and cooperation has the potential to undermine efforts of Human Rights' Council for promoting universal respect for the protection of human rights and fundamental freedoms.

The Sri Lankan Government's response was more direct:

Sri Lanka categorically and unreservedly rejects this draft resolution, as it challenges the sovereignty and independence of a Member State of the UN, violates principles of international law, based on profoundly flawed premises, and is inimical to the interests of the people of Sri Lanka.

The assault of human rights on sovereignty is not something only imagined by countries with a colonial hangover. Britain's former Lord Chief Justice, the aptronymic Baron Judge, recently said that the European Court of Human Rights is undemocratic and undermines the sovereignty of Parliament. He went on to say that

In any country which embraces the principle of democracy, and certainly in the United Kingdom, ultimate authority over constitutional and societal questions is not vested in a body of judges, however wise and distinguished, and even if the system for their appointment is beyond criticism.

It is not clear whether the learned Judge Baron Judge was implying that sovereignty is the province of only those countries that 'embrace the principle of democracy' -whatever that phrase might mean - but the idea is clear – the European Court of Human Rights is not welcome as it erodes parliamentary sovereignty. While parliamentary sovereignty is not the same as state sovereignty the critique is essentially the same.

Surely this is distinguished company following *little practical wisdom!* Should not human rights' advocates reassess their positions? Should not they endeavour to gain some *practical wisdom?*

Alas, I too seem to lack this *little practical wisdom!*

More than a decade ago as a Judge of the Supreme Court of Sri Lanka, I held, in *Nagamany Theivendran v. The Attorney General*, that confessions under the Prevention of Terrorism Act or PTA in Sri Lanka required **corroboration** to establish

the commission of the offence. The PTA, similar to the infamous Indian Terrorist and Disruptive Activities (Prevention) Act or TADA, made admissible, confessions made to police officers of a certain rank and imposed the burden of proving that any such statements were involuntary, on the accused. Perhaps it was my years of experience as an original court Judge, seeing the circumstances under which such confessions were coerced, that blunted my wisdom – for I was alone in my reasoning, though my brother judges agreed with me that the confession in that particular case lacked congruity and consistency. But they would not advocate corroboration.

Let us at this stage, look a little deeper at some of the cases highlighted by me earlier, for history is a patient teacher, repeating herself often. 40 years after *Hirabayashi and Korematsu* new information unearthed by Peter Irons, a political science professor, showed that the Government knew that there was no military reason for the exclusion order but withheld information from the US Supreme Court. The US Congress gave compensation to the surviving internees. The convictions were overturned though the Supreme Court decisions were not. US President Bill Clinton awarded the highest civilian honour – the Presidential Medal of Freedom – to Fred Korematsu in 1988. On the 24th of May 2011, the acting US Solicitor General confessed that the office of the Solicitor General had erred in the *Hirabayashi and Korematsu* cases and considered them blots on its history. A year later, US President Barack Obama awarded *Hirabayashi the Presidential* medal of freedom.

In England, it is Lord Atkins' famous dissent in *Liversidge v. Anderson* that chastised judges for being "more executive minded than the executive" that is the proper law today. His words were powerful:

In England, amidst the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been

one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law.

Lord Diplock held in a later case that **"the time has come to acknowledge openly that the majority of this House in *Liversidge v Anderson* were expediently and, at that time, perhaps, excusably wrong and the dissenting speech of Lord Atkin was right."**

In Sri Lanka, when the Presidential elections were announced in late 2009, shortly after the Attorney General's officers waxed eloquent on the perils of releasing the hundreds of thousands of hapless Tamils, nearly 250,000 were suddenly released. Those who were perilous to the entire nation as potential bloodthirsty terrorists were now safe voters! In one of its most cowardly acts, the Supreme Court of Sri Lanka is yet to make order on whether leave to proceed should be granted or not in this case even though five years have passed. To give this dastardly act some context, leave to proceed is usually granted or refused by Bench Orders of single sentences and reasons seldom given. To reserve order and not pronounce it for 5 years is an act of unforgiveable cowardice.

Let me hasten to add that the Supreme Court of Sri Lanka was not always lily-livered. In 1937 in the celebrated case of *In re Bracegirdle* the Court did not shy away from taking on the Governor of Ceylon in a *habeas corpus* application holding that the Governor's powers were not untrammelled and struck down the arrest and detention of Bracegirdle as illegal. Perhaps timorousness set in with the so-called autochthonous Constitution of 1972 or First Republican Sri Lankan Constitution, where judicial review was repealed and secularity snuffed out in contravention of the entrenched provisions of the previous Constitution. It was a Constitution that

was passed by excluding the Tamils not only from its creation and promulgation, but from its application as well. One of the reasons for abolishing the appeal to the Privy Council in the 1972 Constitution was the same reason that was articulated by Baron Judge in England recently – that recourse to a supra-national legal entity eroded sovereignty. The Government of the time was clearly concerned about the possibility of a repeat of the Privy Council decision in **Kodeswaran v. The Attorney General, (1969)**, which directed the Supreme Court to answer constitutional issues instead of hiding behind technicalities.

In India, as Mr. Kannabiran pointed out, the intellectual rigour displayed by the Indian Supreme Court in dealing with property rights was missing when dealing with the right to liberty, such as the rights to free speech, association and assembly. Some of its decisions were understandable – Justice A. N. Ray was pole vaulted over three senior judges and made Chief Justice - clearly for his role in leading the dissent in the **Kesavananda Barathi** case, where the majority held that Parliament's amendment power could not be utilised to alter the basic structure of the Constitution. When faced with serious intimidation and interference it stumbled, but then once the danger had passed the Indian Supreme Court took steps to safeguard itself from interference and took on a robust role.

In Sri Lanka we have taken things a step – or rather an entire flight of steps – further – when we impeached our Chief Justice last year. The Court of Appeal based on the Supreme Court's special interpretation on a reference made to it, struck down the impeachment without a judicial inquiry, as unconstitutional. The Chief Justice was given around 1000 pages of evidence at 4.30 p.m. and asked to present her defence by 1.30 p.m. the next day by the Parliamentary Select Committee that heard her matter. Eager witnesses were hurriedly summoned when the Chief Justice's legal team and the few honourable members of the Select

Committee walked out of the shambolic proceedings. Parliament proceeded to impeach the *de jure* Chief Justice and a *de facto* Chief Justice was put in her place. At the time of such appointment the Court of Appeal order supported by the Supreme Court's decision was in full force and effect. Not a single judge of the Supreme Court had the courage to refuse to sit with the *de facto* Chief Justice despite the judicial orders in existence that made the appointment a nullity. The Supreme Court itself thus disrespected its own judgement and in my view acted in contempt. To compound matters, the *de facto* Chief Justice himself nominated the Supreme Court Bench to hear the appeal preferred by the Attorney General against the Court of Appeal order that struck down the impeachment. Such was the blatant disregard for the edict of justice being seen to be done. The Supreme Court did not think it improper that the *de facto* Chief Justice, the direct beneficiary of the impeachment, could hear and determine cases, even though the appeal, which would determine the validity of his appointment, was pending. After several months the Supreme Court reversed its decision and that of the Court of Appeal and held that the impeachment was now valid. Since then a spate of political and highly irregular appointments have been made to the higher judiciary with scarcely a murmur from the Bench!

Getting back to the issue of national security, Professor Conor Gearty, pointed out **“The first concern is often now centered on security, with human rights fitting in the conversation only in so far as they can be seen not to detract from this prior focus”**. In an era of National Security primacy, rulers of all kinds have found it to be a sanctuary for the prosecution of their “own counter terrorism/insurgency” efforts suspending civil liberties and extending their authoritarian tendencies through the manipulation of the instruments of a democratic state.

Let us focus on the question that is oft asked of human rights' advocates.

Is not national security more important than liberties and freedoms?

In my view, the question is wrongly framed for National Security cannot be separated from liberties and freedoms. **People could be kept safe in a maximum-security prison – does that justify imprisonment?**

The issue arises from our understanding of security and from the manner in which we believe security concerns should be addressed. As Robert McNamara, former US Secretary of Defence once said **“We have come to identify “security” with exclusively military phenomena, and most particularly with military hardware. But it just isn't so.”** Looking at National Security and how it is pursued in the contemporary sense we could see that McNamara was not far off the mark. In an era of globalization and transnational threats ranging from Terrorism to Ebola, threats of all manner have become an issue of National Security. I would define it, not as “National Security”, which is really an euphemism for “Regime Security”, but “human Security”, which is the type of security I cherish. As the UNDP's 1994 Human Development Report argued, ensuring freedom from fear and freedom from want for all persons is the best path to tackle the problem of global insecurity. The definition of human security was framed along seven themes: economic security, food security, health security, environmental security, personal security, community security and political security.

According to a 2008 WHO study 3.4 million people die each year from water, sanitation and hygienic causes. Less than 18,000 people died around the world due to terrorism in 2013 and that year had a considerable spike because of an increase in violence in Iraq. Even snakebites kill more people than so called terrorist activities every year according to the WHO. Why is it that water security is not an issue? Why is hygiene not an issue?

I was very pleased to hear the recent emphasis placed by the Indian government on hygiene, going back to what Gandhiji did from his days in

South Africa. In Sri Lanka we have an epidemic of Chronic Kidney Disease, which has reached this stage because for nearly two decades nothing has been done about the problem, the root causes of which relate to water, nutrition and health facilities. Despite years of warning on the instability of the land in areas where low income groups have been provided line-housing from during British times, no action was taken resulting in the deaths of many unfortunate people two weeks ago in a land slide in Sri Lanka. I visited the affected area just a few days ago.

We may ask the question Post-war how many people have been killed due to private terrorist activities. What is the budget allocated to defence and what is the amount allocated to ensuring safe accommodation?

If security is viewed as Human Security instead of Regime Security we would be able to resolve many of the so-called tensions between liberty and security. As I mentioned earlier, the release of 250,000 Tamils who were held in open prisons without any legal basis just before the Presidential election in 2010 demonstrates a classic case of how Regime Security is given primacy. The people were incarcerated primarily to prevent the flow of information about the atrocities committed during the war and to ensure a change in the demography. Free flow of that information would have undermined the rhetoric of the “zero-casualty” and “humanitarian mission” and would have led to calls for prosecution for grave breaches of humanitarian law. The principle of command responsibility posed a serious risk to the regime. However, winning the election was a greater requirement for the regime and the possibility of gaining a significant number of votes as gratitude for release was the thinking behind the sudden release. If Human Security was at the forefront the release could have been expedited months earlier.

If Human Security were foremost in their mind the Government of Sri Lanka would not have engaged in the “bait and switch” chicanery by announcing to the world that it has abolished the draconian Emergency

Regulations in 2011, whilst persisting with the equally draconian PTA. In fact, as Human Rights Watch reported the then Attorney General had confirmed that the lapsing of the Emergency Regulations will **not** mean a change in detention practices, stating “No suspects will be released and there is no change even though the Emergency has been allowed to lapse.”

As I have repeated on numerous occasions the militarisation of the North of Sri Lanka, where I am the Chief Minister, takes place not due to any real security threat, but to maintain a stranglehold over the populace; to subjugate them and make them compliant; to stifle any form of democratic or political dissent. If Human Security were the guiding principle the military would not be taking over people’s lands, cultivating them with the owners having to buy the produce from their own land and building hotels and golf courses when the dwelling homes of the people devastated by the war remain like pock marks in the Northern landscape. Today cases involving more than 2100 petitioners are pending before the Court of Appeal and the Supreme Court regarding the acquisition of 6381 acres of land in Valikamam North where an illegal High Security Zone for the Sri Lankan armed forces has been set up. Despite such legal actions pending before the highest court in the country, the Army continues to destroy whatever is left of the buildings, homes, holy places or hallowed school premises inside the High Security Zone. In fact when I, as the Chief Minister, tried to visit such places of vandalism I was politely told by the armed personnel manning those areas to obtain permission from the Secretary of Defence who happens to be a brother of the President. Such is the sorry state of our sovereign State’s security concerns!

If Human Security was at the forefront the people would be allowed the freedom of association without needing to worry about the military – they need not grit their teeth and invite military officials even for school

functions. There would not be a need for foreign passport holders to obtain special permission to visit the North. This requirement was brought about barely a month ago – not because of any security threat but because of the UN inquiry and the fear that more evidence would be collected.

If Human Security was at the forefront, Sri Lanka would not have contributed to the lexicon with terms such as “white vanned” for government sponsored or sanctioned abductions and “grease devils” for trouble makers who escape from the civil authorities for unleashing terror on the general populace and mysteriously seeking refuge in Army camps. Surely it could be seen that these are counter-productive to security? We have long advocated a phased withdrawal of the military and the handing over of administrative matters to the civil forces according to a transparent timeline. How can Human Security exist when the people are under an occupying force? And indeed the North and East of Sri Lanka are under an occupying force!

If Human Security were at heart there would be no systematic and continual rape and torture of Tamil men and women by the Armed Forces as recent reports show. The BBC reported a man stating, **“They would put my testicles in the drawer and slam the drawer shut. Sometimes I became unconscious. Then they would bring someone and force me to have oral sex with him. Sometimes if we lost consciousness during the torture they would urinate on us”**. Another woman describes being photographed and fingerprinted and then kicked, beaten with batons and pipes, burned with hot wires and cigarettes, submerged in a barrel of water until she thought she would drown suffocated by having a petrol-soaked plastic bag put over her head, before being repeatedly raped by men in army uniform. Her relatives managed to bribe and secure her release after 20 days of this torture. Just a few days ago a man was arrested for trying to gather evidence for the investigations being carried out by the Office of the High

Commissioner for Human Rights. Is this evidence of Regime Security or Human Security? Or is this the new norm under which security imperatives rule the day? A norm under which embedding military in civilian life under the guise of civil-military programs blurring the boundaries between civilian and military life along the lines of highly militarised states like Pakistan and other states elsewhere?

This is what Mr. Kannabiran envisaged when he spoke of the State as a terrorist.

“State violence under the cover of ‘law and order’ and ‘security of the state’ has been far more extensive in scale and destructiveness than private violence. State violence does not come to an end with the abatement of private violence. It continues its course to ensure that there is no protest, because its purpose is political. The population must be reduced to apathy and conformism, because participation in decision making is viewed as a ‘threat to democracy’.

State violence in Sri Lanka continues. The Tamils, though the worst affected by far, are not the only ones. When poor Sinhalese from the South dared to protest about the contamination of their water in Weliveriya the military was unleashed on them with fatal results. Other minorities such as Muslims and Christians have been targeted with a view to project a government that is representative only of the Sinhala Buddhists and to portray new enemies and targets. As Plato observed in the Republic **“When [a tyrant] has disposed of foreign enemies by conquest or treaty, and there is nothing to fear from them, then he is always stirring up some war or the other, in order that people may require a leader.”**

In Sri Lanka as in Pakistan and other states, we are witnessing the growth of National Security apparatus as a distinct power centre within a democratic system where secrecy and industry’ interests dominate as the nexus between military, industry

and institutions of governance gain primacy. Lacking democratic oversight, the protection of democratic values and civil liberties has now become a process of bargaining with the dominant power centre, the security apparatus. In the case of Sri Lanka the fact that a single family controls the power centres, political and military, adds a new dimension to the state Mr. Kannabiran took on.

I state these instances because they give a clear view of how Regime Security supplants Human Security as a governing principle. The false dichotomy between security and freedoms can be avoided or minimised if Human Security becomes the guiding principle. I therefore respectfully disagree with Lord Denning when he held in **Hosenball**

There is a conflict here between the interests of national security on the one hand and the freedom of the individual on the other. The balance between these two is not for a court of law. It is for the Home Secretary. He is the person entrusted by Parliament with the task. In some parts of the world national security has on occasions been used as an excuse for all sorts of infringements of individual liberty. But not in England.

Lord Denning’s confidence in England is admirable but misplaced. Whether it be the trial of Sir Thomas More for treason in the 16th Century or the war in Iraq in the 21st there have been numerous dubious instances where National Security considerations have provided the cover for various activities. Lord Denning himself remarked in 1964 in resisting a claim that an official document should be privileged from disclosure, **“A practice seems to have grown up, that all a Home Secretary has to do is to give a certificate and pronounce a spell to make it taboo.”** I see no reason why the Defence Secretary will behave any differently from the Home Secretary!

I disagree with Lord Denning on his second assertion as well – that Courts

should defer to the judgement of the Executive. As Oliver Wendell Holmes said **the life of law has not been logic; it has been experience.** It is our different experiences that mould our opinions. Lord Denning seems to acknowledge this when he recognises that National Security is a convenient cover in many jurisdictions and to that extent we are in agreement. He doesn’t state what judges ought to do in those circumstances. Much of the UK case law tends to defer to the Executive on questions of security, possibly as a result of their confidence that the Executive would not misuse such power. I wonder whether the level of confidence will remain after the **Chilcot Report** on the inquiry into the war in Iraq is released.

The reason why I don’t think Court should be deferential to opinions of the Executive is mainly because of my experience with the Executive using National Security as a convenient cover and my understanding of how this has occurred throughout history, as I explained earlier. But equally important is the recognition that curbing individual freedoms and giving the Government excessive power is setting the stage for a tyrant to abuse that power. Well-meaning people tend to argue that restrictions on fundamental freedoms will have to be made to ensure the protection of the people themselves. Thus they will state that it is necessary at times to hold people without legal authority. What they fail to see is that every time such aberration takes place, the Government sets a precedent to breach the law. This empowers unscrupulous elements to abuse that power. Could the presence of J. Edgar Hoover as the Director of the FBI in the US at that time be the reason for the culture of misinformation and secrecy of **Korematsu and Hirayabashi**? Did that allow the hounding of “communists”? Could the Watergate scandal have arisen 30 years later because of the gradual rise in impunity of the Executive in the US? These are difficult questions to answer. I would, however, wager that

the Executive in Sri Lanka was emboldened by the series of decisions made by the Sri Lanka Supreme Court in supporting Bills and Constitutional amendments and holding with the Executive in Fundamental Rights' cases, so much so that the leader of that very Supreme Court herself became a victim of the Executive's wrath when she finally refused to tow the line. These are, in Mr. Kannabiran's words, the wages of impunity. Every time Courts sanction illegal acts or fail to scrutinise the acts of the Executive properly they contribute to the culture of impunity. Every such step strengthens the Executive and progressively weakens the judiciary and erodes democracy.

The Sri Lankan judiciary has fostered a culture of impunity in many ways; sometimes very insidiously. One practice was how the Supreme Court dealt with Fundamental Rights' cases dealing with illegal arrest and detention. The Court makes much fanfare in asking the Attorney General to check with the defence authorities to see if the person could be indicted or released and to expedite that process. The argument was that this was an efficient way of ensuring that the defence establishment and the Attorney General would evaluate the matters expeditiously. What this did was to allow arbitrary arrests and detentions to continue with no fear of consequences except in rare cases. It also ensured that there were no findings against the Government, which could be used in international fora to show the widespread human rights' abuses that were going on.

It gives me great pain to say that the Judiciary in Sri Lanka, of which I was a part for a quarter of a century, has failed in preventing a culture of impunity and has contributed directly to the Executive's authoritarian rise. The Judiciary also played a major role in foisting a second-class citizenship on the Tamil Speaking Peoples. It has shown a systemic bias against minorities as the recent research by three fearless lawyers show. Dr. de Almeida Guneratne, Kishali Pinto Jayawardena and Gehan Gunatilleke in their excellently researched book

The Judicial Mind in Sri Lanka – Responding to the Protection of Minority Rights describe how the judiciary as an institution failed the minorities in not only National Security cases but in relation to the language rights, land and housing rights and religious rights. The book authored by non-Tamils concludes that the rise of Tamil militancy in Sri Lanka cannot be divorced from institutional failure, including that of the Judiciary, to address genuine grievances, because, barring a few exceptions, the Judiciary's treatment of minorities was fundamentally different to the general dispensation on the issue. Their findings with regard to the Judiciary's role in public security related cases is also revealing. From 1947 to 1979 the Court did not appear to be racially biased but was conservative. From 1979 to 2009 (i.e. until the conclusion of the war) the Court was inconsistent in its findings but what is disturbing is that while the progressive cases were invariably those where majority community members were involved, the regressive and oppressive decisions tended to be where minority community members were involved. Post-war the Court transcended its anti-minority bias and instead became completely deferential towards the Executive.

The regressive and oppressive measures against the Tamils did not just occur in the judicial arena. It also extended to the legislative sphere. As I alluded to earlier, the 1972 Constitution

(a) made the Tamil speaking citizens of North and East of Sri Lanka second class citizens overnight;

(b) unilaterally abrogated the post independent pacts entered into by the elected Tamil Leadership with the majority community Prime Ministers to resolve the ethnic conflict such as the Bandaranaike – Chelvanayagam Pact of 1957 for Regional Councils in the North and East and then Dudley Senanayake-Chelvanayagam Pact of 1967 for devolution;

(c) it institutionalised structures of discrimination which resulted in the denial of right to land, right to education and rights to development

and resulting disillusionment and disenchantment and frustration of the Tamil youth and (d) made the Tamil leadership (against the backdrop of Sinhalisation of the governance structures in Sri Lanka to the detriment of the Tamils) unable to secure an equitable and sustainable political settlement via democratic means. Such were the main causal factors for the genesis of the rise of Tamil militancy in Sri Lanka.

This study on the failed judicial system and our experience with the constitutional process shows how over time impunity can grow and get out of control. The Courts would not have realised when they ignored the injustice heaped on minorities that they were setting the stage for injustice to be heaped on all communities in the future. This is a function of untrammelled power; evidence of the propensity for impunity to grow exponentially. It is precisely for this reason that I do not support deference to the Executive. I remain suspicious of the concentration of power and believe that the Judiciary must always have oversight over the functions of the Executive. It has to be constantly vigilant and should ensure that the Executive knows that it would have to justify its actions or be taken to task.

The answer to our first question then is recognising that the question is wrongly framed. We should take steps to address security concerns whilst ensuring liberties and freedoms. The first step is to inculcate the idea of Human Security into our thinking and ousting Regime Security from policy considerations. The second step is ensuring the rule of law and maintaining judicial oversight to ensure that no arm of the State is unaccountable or allowed to cloak itself in secrecy. This would ensure that there are no false dichotomies in *practice*. Judges and policy makers are not there to answer Law School conundrums but to address the issues before them. Let us postpone answering hypotheticals to the day we come across a case where liberties and freedoms cannot be adequately safeguarded whilst providing human security. **Courts**, as one of our more

illustrious Chief Justices held, **are not academies of law, but courts of justice.**

When one points out the injustices indulged in by the State, one is invariably termed a terrorist, naxalite, communist, imperialist, separatist or whatever term that is in vogue at the time to demonise and silence critics. Human Rights' organisations and civil society groups are oft termed western lackeys and conspirators. Critics are viewed as fifth columnists seeking to undermine the Sovereignty of State. This brings us to the question of Sovereignty.

At the outset I wish to point out that the labels and agendas of people who advocate human rights are largely irrelevant. In logic, arguments of this kind are termed *ad hominem* and are devoid of merit. Let us look at the substance of the argument instead.

Let us look at the principle of Sovereignty. Again I cherish this principle, but the sovereignty I cherish is that of the people and the rule of law and not that of the artificial construct of the State. Sovereignty of the State is the remnant of the divine right of Kings from the days when sovereigns ruled. What we should focus on is ensuring that the people are sovereign and that the rule of law is sovereign. The necessity for the rule of law and the consequence of the absence of it leading to a culture of impunity has already been discussed. How do we ensure that the people are Sovereign? What happens if the majority wish to impose their will on a minority? This is where we have to go back to our concept of Human Security to ensure that no group is disadvantaged and that there is political security.

It is easy to speak of Sovereignty of the State in lofty terms but that doesn't mean the world has to turn a blind eye as it did in Rwanda when nearly 800,000 Tutsies were massacred in just a hundred days? President Clinton considered it one of his greatest foreign policy failures. In a damning internal report by Charles Petrie, the UN was criticised for failing in its mandate to protect civilians in Sri Lanka in the final months of the War and the events were termed a

“grave failure” for the UN. Contriteness is admirable, but is not prevention preferable? If India had not intervened in 1971 would not the genocide of Bangladeshis continued unabated? A State is morally entitled to claim sovereignty only when it is ensuring the sovereignty of its people and the rule of law by ensuring Human Security. In my view Sovereignty of the State is a representative sovereignty sustained by the sovereignty of the people in that State. This is not to say that countries should be entitled to use internal disturbances as a ruse to interfere, but that Sovereignty should never be allowed to be a shield against violations of international law.

In any event, it should be understood that in today's context Sovereignty of the State has become largely irrelevant. As Luis Moreno Ocampo, the former Chief Prosecutor of the ICC for nearly a decade stated on BBC's Hard Talk around September 20th, 2014, the world order is changing where Sovereignty of States is being eroded with greater power being given to supra-national institutions. In an age of treaties and the recognition of greater *jus cogens* norms is Sovereignty still relevant? The very existence of international law in a sense is a restriction on State Sovereignty. For *pacta sunt servanda* to be obligatory as Customary International Law, States are the subjects of International Law and to that extent are not Sovereign. Still further in today's interconnected world the problem in one country spreads to another very fast, as can be seen in the Middle East. The cultural, linguistic and religious affinities across borders internationalise issues. The moment an issue in one country has trans - boundary effects the matter ceases to be a purely domestic issue and all countries affected by it have a stake in the matter. Let us take the situation of the Tamil-speaking peoples of Sri Lanka. They were majorities in their areas of historical habitation from time immemorial, but they became minorities in the context of the whole of Sri Lanka. They have been discriminated against, politically

marginalised, brutalised in war and even the Courts have a systemic bias against them and has consistently failed to protect them. Majoritarian policies have marginalised, disempowered and alienated them. How is their security preserved? How is their Sovereignty as human beings preserved, especially since the Sovereignty of the rule of law has been eroded?

As Avishai Margalit and Joseph Raz cogently argue, any idea of human well-being beyond the satisfaction of biological needs, must give consideration to culture, which is created by collectives. If culture is recognised then it follows that it should be protected politically. If it is entitled to protection, Collective Security is also an essential part of Human Security. If it is a part of Human Security then it is but rational that culturally cohesive groups should have the right to govern themselves, for it is only they who can best protect their culture. It is this right that is self-determination. This has been recognised by successive Sinhalese leaders in the past. Even though he was to pass the Sinhala Only Act 30 years later as the Island's Prime Minister, Mr. S.W.R.D. Bandaranayake, was reported by the Ceylon Morning Leader of 17th July 1926, to have argued that **“the Tamils, the Low-Country Sinhalese and the Kandyan Sinhalese had lived for over a thousand years in Ceylon and had not shown any tendency to merge. They preserved their language, their customs, and their religion”**, and to have stated firmly that he was **“convinced that some form of Federal Government would be the only solution”**.

When a group of people are threatened as a group it only strengthens their pre-existing right to self-determination. The level of threat that the Tamil Speaking Peoples have faced in Sri Lanka exponentially strengthens the right to self-determination.

In Sri Lanka national processes have failed and no reasonable person could be expected to have any confidence in the internal processes.

Barely a week ago even the usually euphemistic Commonwealth Secretary Mr. Kamallesh Sharma spoke of the lack of independence of the Elections Commissioner in Sri Lanka and the need for reduction of the Military activities in civilian life in the Northern Province. I know both these issues first hand.

It is a testament to the courage of my people in the Northern Province that they voted overwhelmingly for the Tamil National Alliance despite the terror and misinformation unleashed by the Sri Lankan military and associated militant groups. An entire newspaper was fabricated on the morning of the election, an entire village was prevented from voting, candidates were attacked, voters were bribed, beaten and intimidated and yet they voted. I have already spoken of the usurpation by the military of virtually every civilian activity in the Northern Province.

As I stated earlier, the judiciary has been beaten into submission – literally as well – the Secretary of the Judicial Services Commission who was seen as supportive of the impeached Chief Justice was assaulted outside his son's school. The public service has been completely politicised. Completing one year in office as the Chief Minister, I can attest to the interference by the Governor who was the Military Head of the Province during the War and the parallel administration that goes on. The Chief Secretary to the Provincial Council, the chief public servant in the province, was appointed in violation of the law and continues in service, despite our objections. Just recently when important mobile services were being arranged for our people the Chief Secretary kept away, along with several others, citing sudden meetings at the Presidential Secretariat. Projects are agreed on the basis of political expediency and as election gimmicks without carrying out comprehensive needs' assessments or having transparent overarching plans or engaging with the relevant stakeholders.

The Sri Lankan Government method of dealing with issues is showcased

with the way it is dealing with the UN investigation into violations of humanitarian and human rights' law. It attempted to canvass global opinion against the UNHRC Resolution and failed thrice. If Sri Lanka thinks that such a procedure undermines its Sovereignty and is illegal, it could request the General Assembly or the Security Council to refer the matter to the International Court of Justice for an Advisory Opinion. It could perhaps even seek to take the movers of the resolution before the ICJ, with their agreement, for a decision on the issue. As a worst-case scenario it could even withdraw from the UN, even though there are no formal provisions in the UN Charter for withdrawal. Instead Sri Lanka seeks to play the petulant scofflaw refusing to comply with its obligations. Worse still is the way in which it deals with the investigation itself.

In the last few weeks Sri Lanka is openly arresting and intimidating those who are trying to collect evidence for the investigation. The basis appears to be that the evidence is false – is that not a decision to be made at the stage of evaluation? If we had proof that the evidence was false – is not the best course of action to forward proof of such falsity to the Office of the High Commissioner of Human Rights? The State does not want to allow the evidence to leave the shores of the country – just as in the incarceration of the 350,000 Tamils, the primary aim was to let no evidence leave the shores.

So what can the Tamil Speaking Peoples of Sri Lanka do? They have no succour from the internal mechanisms. They have no confidence in the Judiciary, which not only has a history of holding against them, but which has become entirely subservient to the Executive in the last 5 years. I believe it was The Times that once opined of the House of Lords, **“If our liberties are to be protected by them, they would prove a leaky umbrella.”** We now have a sieve not merely a leaky umbrella. If the world had lent its ear to the plea of SJV Chelvanayagam in 1974, when he addressed the international community in his missive

to the Commonwealth Heads attending the 20th Commonwealth Conference in Sri Lanka in 1974, much tragedy could have been averted. Explaining the systematic marginalisation of the Tamils and arguing that decentralised structure of government alone will make it possible for a participatory democracy where power will be people's power rather than state power, he warned:

This memorandum is presented to you in the hope that through you, world conscience will be awakened to the present plight of the Tamils in this country, who are being systematically subjected to a denial of human rights, various forms of racial discrimination and other practices which could lead to the genocide of the Tamils.

What should other countries do when they see this type of injustice; this type of violation of the Charters and Conventions and Protocols that Sri Lanka has signed? What should India do given its ancient and shared history with Sri Lanka? What should India do when it has nearly a hundred thousand refugees from Sri Lanka whose individual and collective rights are being denied by Sri Lanka?

It was the trans-boundary effect of tens of thousands of refugees pouring into India, in addition to the violation of international humanitarian law that prompted India to intervene in Sri Lanka in the 1980s and incidentally the intervention was also geared towards India securing her National Security and National interest. The legal relationship between India and Sri Lanka has been cemented further through the Indo-Lanka Accord. Indo-Lanka accord is an international agreement between two countries and the Government of India played the role of representing the collective interests and rights of the Tamils of North East. Hence it could be stated the government of India had played the role of a guarantor and underwriter of the Accord, bearing in mind the key aims such as addressing Indian strategic interests, Sri Lankan Sovereignty and the collective rights of the Tamils of the North East.

The military, political and intelligence

assistance given by India to Sri Lanka during the final stages of the War, were clearly based on the premise and/or promise that there would be a meaningful political solution. Not only was that the promise made to India, on more than one occasion, but it was also the solemn undertaking issued to the international community of nations as represented by the Secretary General of the UN. As the Joint Statement issued by the Government of Sri Lanka and the Secretary General of the UN recorded in May 2009:

The Secretary-General welcomed the assurance of the President of Sri Lanka contained in his statement in Parliament on 19 May 2009 that a national solution acceptable to all sections of people will be evolved. President Rajapakse expressed his firm resolve to proceed with the implementation of the 13th Amendment, as well as to begin a broader dialogue with all parties, including the Tamil parties in the new circumstances, to further enhance this process and to bring about lasting peace and development in Sri Lanka.

The well being of the Tamils in Sri Lanka, thus, has an international dimension and cannot be suppressed on the basis of Sovereignty.

Perhaps when Mr. Sinha spoke about undermining domestic processes he was not fully aware of India's previous stances on issues as well as the domestic processes in Sri Lanka. India has taken country specific stances as dictated by principle as well as national interest. As Hardeep Puri, India's former representative to the United Nations noted in an opinion piece in the Hindu:

Following the anti-Tamil riots in Colombo in 1983, New Delhi mustered sufficient courage to spearhead a resolution against Sri Lanka in the Sub-Commission on Prevention of Discrimination and the Protection of Minorities. We vote in favour of similar resolutions against Israel only because they deal with gross and systematic

violations of human rights of Palestinian people in the occupied territories. We have never hesitated to take a position on country-specific resolutions whether on DPRK or Iran, whenever our national interest so demanded.

As regards the domestic processes, if the High Commissioner of Sri Lanka to the United Kingdom could be assaulted by a Member of Parliament of Sri Lanka in New York, if the victorious Army Commander could be dragged across the streets like a common criminal, if the Chief Justice could be impeached in a despicable manner, can there be any hope for Tamils? It was only because of India's insistence that elections were held in the Northern Province last year having been postponed every year since the end of the War. It was only because of pressure from the United Kingdom that a minion of the regime was prosecuted and convicted for murder and rape. In the absence of external pressure there can be no hope of the Sri Lankan Government changing its recalcitrant position. We, in the Northern Province, remain open to co-operation, but have only faced broken promises and interference.

India has legal and moral obligations to ensure the welfare of the citizens in Sri Lanka. It should do so by holding the Sri Lankan government to its promises to India and to its obligations under International Law. It should do so by lending its support to international processes that are in furtherance of justice and truth. It should do so by supporting the return of the rule of law and democracy to Sri Lanka. It should do so by prevailing upon the Sri Lankan government to stop the harassment and abuse of minorities; to return to civilian life; to reverse the militarisation. It should do so by urging the repeal of the odious Prevention of Terrorism Act of Sri Lanka, as India herself did with the TADA and the Prevention of Terrorism Act (POTA).

India's obligations apply *a fortiori* with regard to the vulnerable Tamils, towards whom it has a fiduciary duty. It should do so by ensuring that the Tamil Speaking Peoples are not

subject to torture and harassment; that their lands are returned; that the occupying force that is in their lands of habitual residence be withdrawn; that the urgent psycho-social needs of a war-ravaged society are addressed; that the safety of our women and children are ensured. It should do so by ensuring that the right of self-determination of the Tamil Speaking Peoples of Sri Lanka is realised within a united Sri Lanka. It should do so by ensuring that a proper 13 Plus Plus amendment is introduced into a Constitution shed of its unitary character. In so doing India would do well to take heed of the prophetic words of the Tamil leaders' letter of 28th October 1987 to Prime Minister Rajiv Gandhi, pointing out the violation of the Indo Lanka Accord and the insidious manner of the Sri Lankan government's dealings, the gross inadequacy of the 13th Amendment and the likelihood of abuse of its provisions. They predicted then that the North and the East would be separated, that the legislative powers of the Provincial Council will be sabotaged, that the Governor who was supposed to be ceremonial will play an interfering role, and the farcical nature of the 13th Amendment. India's actions as suggested would be in furtherance of Human Security and People's Sovereignty. It is critical to understand addressing the inadequacies of the 13th Amendment necessarily entails revising the Constitution bearing in mind that Sri Lanka is a multi-ethnic, multi-religious and multilingual society. It should recognise and enshrine the collective interests and rights of the fraternity of communities that comprise our beloved but bloodied isle. This is where lessons of constitution making by the far-sighted leaders of Bharat are indeed a shining example - the spirit and deed in which the multi-ethnic, multi-religious, Indian body politic was preserved through a secular constitution, perhaps based on the premise of unity in diversity in post independence India.

The PUCL has a proud tradition of upholding the values of Human Security and People's Sovereignty.

More importantly it appears to be acutely aware of the interconnectedness of our peoples. It has functioned on the basis that injustice anywhere is injustice to humanity. I am indeed indebted to the PUCL for its numerous efforts to ensure the realisation of these values vis-à-vis Sri Lankans. The PUCL has advocated that Sri Lanka be made accountable for war crimes; that the food and economic security of the one hundred thousand Sri Lankan Tamil

refugees in Tamil Nadu be ensured; that the steps to deport Lankan refugees should be stopped; that support be given to the UN Probe - the list is endless.

We share a common vision – that of Human Security and Sovereignty of the People and the rule of law. It is a lofty vision and as Justice Khanna proclaimed “**Eternal vigilance is the price of liberty and in the final analysis, its only keepers are the people. Imbecility of men, history**

teaches us, always invites the impudence of power.”

I salute Mr. Kannabiran's and the PUCL's eternal vigil.

Thank you

**Justice C.V. Wigneswaran is the Chief Minister, Northern Province, Sri Lanka and Retired Judge of the Supreme Court of Sri Lanka. This lecture was held at Vidyodaya School Auditorium, 1, Tirumalai Pillai Road, T. Nagar, Chennai, T.N. 600017 (Near Valluvar Kottam) on 9th November, 2014 at 11 am. □*

Living with the Nightmare

1984: FIRs Were Not Registered; Pressure Put on Delhi CJ

Rajindar Sachar

On the October 31, 1984, evening I was coming back after inspecting the Shahdara courts when I heard the tragic news of killing of Mrs. Indira Gandhi. The killing was done by two body guards posted at Mrs. Gandhi's residence. The court found that there was only conspiracy by three persons to kill Mrs. Gandhi. No other outside person was found to be involved in the conspiracy. But what followed the assassination was a nightmare which will ever haunt the nation - it was the calculated murder plan generated by the Congress party in power with about 3,000 Sikhs being butchered in cold blood. This unpardonable crime by a political party will remain a permanent scar of shame on those who committed and encouraged it.

I was then still a judge in the Delhi High Court. The situation outside was so horrible because mobs were going round Delhi targeting Sikhs - there was a total absence of law and order. Such was the unchecked situation that one of my colleagues in the Delhi High Court, a Sikh judge, and his family were accommodated in the lounge of the High Court as we could not assure them safety and protection in their home, which was less than 1 km from the High Court. The shame of this helplessness still haunts me.

The police were not recording FIRs and were placing all kinds of hindrances. An application complaining about this was moved before me. It is correct that normally an FIR has to be registered in the police station which has the jurisdiction over that particular locality. But in that fearful situation it was impossible for Sikhs from various areas to go to separate police stations to get FIRs recorded. So I issued notice and told the government advocate that I was ordering that all FIRs which had already been collected throughout Delhi by the People's Union for Civil Liberties (PUCL) would be taken to one police station (which the government might designate) and filed there. After this it would be for the government to distribute these FIRs to the respective police stations. To be honest, I knew my order was not strictly legal. But then circumstances were so extraordinary that not to have so acted would have been worse. It would have cast a shadow on the strength of the courts, which are expected to come to the aid of the oppressed at all times.

Another situation arose when people were demanding the appointment of a commission to inquire into the 1984 killings. A PIL was filed which came up before my Division Bench. The then Attorney

General appeared for the Union Government and argued against it. I, however, felt that it was an important matter and needed to be examined at a regular hearing. My colleague, Wad J., was also of the same opinion. So we fixed the matter for a regular hearing when the High Court was to reopen after a short vacation. But such was the panic in government circles that undue pressure was put on the then High Court Chief Justice. The result was that when the High Court opened after the vacation, I found that my roster had been changed; I was now put on the criminal side. The result was obvious - the matter could not be heard by me. The matter was then heard by another Bench and the petition was dismissed. But so great was the public pressure that the government itself appointed Justice Ranganath Misra Commission. But its findings shocked every impartial observer. As a matter of fact the conduct of the Union Government was such as to infuse no confidence right from the beginning. The PUCL had formed a committee of eminent citizens to oversee the matter. Its members included Justice S. M. Sikri, a former Chief Justice of India, and Mr. Govind Narain, a former Union Home Secretary. The committee wrote to Prime Minister

Rajiv Gandhi seeking a meeting so as to discuss important points with a view to ensuring that the Inquiry Commission complied with all legal norms so as to instill public confidence. But surprisingly Rajiv Gandhi did not even reply nor gave an interview to such an eminent committee - you can imagine the government's sickening partiality. So in disgust the committee members resigned. The expected hollowness of the Ranganath Misra report corroborated the fears of all of us about the partisan role played by then Congress Central Government.

The various questions raised by the PUCL in its report of 1984 have not even been answered up till now. "Men at the top in the administration and the ruling party displayed repeatedly a curious lack of concern often bordering on deliberate negligence of duty and responsibility throughout the period of October 31

to November 4. The newly sworn-in Home Minister P.V. Narasimha Roa was said to have assured BJP leader Atal Behari Vajpayee on the October 31 evening that "everything would be brought under control within a couple of hours".

But the PUCL committee has commented bitterly. "Soon after the assassination (October 31), we heard from a reliable source a meeting was held at 1 Safdarjung Road, the Prime Minister's official residence, where the then Lt. Governor P G Gavai, Congress (I) leader M L Fotedar and the Police Commissioner, among others, met. A senior police officer present at the meeting expressed the view that the Army should be called as otherwise there would be a holocaust. No attention was paid to the view."

The report continues: "As already mentioned earlier, till late night there were no signs of either curfew or Army, while miscreants were on the

rampage in front of the police. In the heart of the city - Connaught Circus - Sikh-owned shops were being set on fire right under the nose of heavy para-military and police pickets. We later heard that the DC of Faridabad had asked for the Army on November 1, but troops arrived only on November 3."

None of these questions have been answered till now. So when the Nanavati Commission was appointed, I had hoped that its terms of reference would be on the pattern of "Truth and Conciliation Commission" appointed in South Africa by Nelson Mandela. I still feel that this aspect should be followed by the Central Government because I am of the firm opinion that apart from punishing the guilty, it is important to know the real truth which is hidden in government files - human rights principles and justice to the families of victims demand this course. □

Gujarat PUCL: 3rd November 2014

Report of the PUCL, Gujarat Team on First Hand Information on the incidents of clashes and firing at Dabhel village of Jalalpur taluka in Navsari Gujarat

As regards clashes occurred at Dabhel village of Jalalpur taluka in Navsari Gujarat. on 7-10-14, it appears that clashes had taken place because of efforts of the cow protection organization which tried to prevent cow slaughter. Till now the news published by the local dailies did not appear to be entirely true and correct. As per the information gathered by the PUCL team on reaching the spot of the incidents, it was the day of pious festival (Bakra Id) of the muslim community. It is essential that on the occasion of Id festival senior police officers engaged by the Government for monitoring law and order situation exercise restraint and vigil. But in this episode, this practice was not followed and this incident had taken place and there is no doubt about it. During the visit

of the Dabhel village, information was gathered that most of the houses of Dabhel village were found to be locked. Entire village was found to be sleepy and quiet. Also it appeared that the entire village was gripped with sense of fear and terror.

Persons who were present in their houses in the village were afraid of giving replies to any kind of questions. Five houses were visited by PUCL team. Thereafter, a meeting was held with the muslim leaders of the village. In that very few people had remained present. From the submissions made by the village leaders who remained present in the meeting, following points had emerged.

- During the clashes in the Dabhel village, an attack was made on the police party in

which 4 (four) police personnel had sustained injuries. They are undergoing treatment in the hospital.

- Due to police firing, two persons have been wounded with bullets. They are also admitted in the hospital for treatment. - Day-by-day new persons are being arrested but they are innocent. - Arrests are made also from the villages other than Dabhel. - National President of the organization named, Jamiyat-e Ulam-e Hind is scheduled to make a visit to the village.
- The police personnel injured in the clashes are undergoing treatment in the Yashfin hospital situated in Navsari. In the same way, youths of Dabhel village

who had sustained injury of bullet wounds due to police firing are also taking treatment in the Yashfin hospital only.

- A memorandum has been sent by the organization named "Jamiyat-e Ulam-e Hind, Gujarat State" to the Chief Minister, Governor, D.G.P., Dy. Dist. General of Police, Dist. Supdt. of Police, Collector and the Prime Minister.
- The organization, Jamiyat-e Ulam-e Hind had published pamphlets appealing to desist from cow slaughter practice.
- Gujarat Muslim Gow Hifazat Committee, Bharuch had also published and distributed pamphlets at the place of incident i.e. Dabhel village, appealing to prevent cow slaughter.
- No kind of news have been published till date in any of the local newspapers expressing or extending moral support to the residents of Dabhel village.
- Combing is being carried out throughout the day by the police right from the day of the incident till this date on a daily basis. There are more number of police than the number of village population.
- An announcement was made by the police from the mosque asking all the people of the village to come out from their houses.
- During the incident in the village, for saving and giving protection to the police, shelter / refuge was provided inside the houses of the villagers.
- Search is made by demanding Identity Cards from everybody coming out from mosque after

offering prayers.

During the visit made by the PUCL team to the village spot after gathering information on the incident, information was also collected from the village heads-leaders. Thereafter, information was gathered after paying visit to inquire after the injured police personnel and the injured youths of Dabhel village.

Crux of the findings by the Inquiry Committee after their investigation As per the information gathered by the team of PUCL, Gujarat, during its visit to the spot of incident that is Dabhel village, talks by the team members to elicit information as also interactions with the two youths who sustained injuries during the clashes as also 4 (four) police personnel, an incident had taken place of butchering a cow in the village, before the clashes began in the incident of Dabhel village. According to first hand report of the police there were 28 accused, and during the clashes a crowd of 200 people had assembled. On hearing shots of the firing, people of the village had gathered together. On learning that two youths have been shot at, village people collected together, made assault on the police party. As per information gleaned from the village people and the village heads-leaders, village people had assaulted on the police party under an impression that some victim in the police firing has died. In an attempt to make arrest of the main accused it is neither legally essential nor necessary on the part of the police to take entire Dabhel village as hostage.

Observations and Demand

(1) Dabhel is one of the villages of

the State and the country. Police should not take entire village to hostage and should not treat it as an alien / enemy;

(2) No excesses should be made on the innocent people.

(3) Inquiry through a retired or a seating judge of the High Court should be instituted about incidents occurred in the village.

(4) Steps with immediate effect should be taken to check deteriorating law and order situation in the State.

Pareshbhai Chaudhary, Advocate (Convener of the Inquiry Committee of the P.U.C.L.) At & Post : Vedchhi, Tal. Valod, Dist. Tapi (Dt. 2nd November 2014)

A team of PUCL Gujarat had gathered first hand information on 11-10-14 on the clashes occurred at Dabhel village. This team consisted of the following persons respectively. (1) Manishaben Trivedi, 'Anahad', Ahmedabad; (2) Meenaben Chaudhary, Advocate, Vyara; (3) Rekhaben, Advocate, representative of C.S.J.; (4) Yusufbhai Shaikh, Activist, Baroda; (5) Harunbhai (VESMA), Advocate, Social Justice Centre, Ahmedabad; (6) Pareshbhai Chaudhary, Advocate, Social Justice Centre, Ahmedabad; (7) Deepakbhai Barot, Reporter, Dist. Navsari; (8) Manishbhai, of 'Anahad'.

This report was made public by holding a Press Conference at Ahmedabad on 3-11-14, which was addressed by the **Gautam Thaker**, of **PUCL**; **Manisha Trivedi** of **Anahad** and **Mahesh Pandya** of Gujarat Social Watch.

Gautam Thaker, General Secretary, PUCL Gujarat (Mobile: 09825382556) □

Attention! Delegates to PUCL National Convention in Patna on 6th - 7th December, 2014

Venue: Nav Jyoti Niketan, Kurji, Patna. **Landmark:** Near Kurji Hospital; venue is situated 7 km from Patna Junction Railway Station and similar distance from Airport. The weather is cold, so please come with sufficient and appropriate warm clothing. - **Praveen Kumar Madhu**, General Secretary, PUCL Bihar, **Mob.: 0983564364**

Pope Francis calls for Abolishing Death Penalty and Life Imprisonment

By Francis X. Rocca
Catholic News Service

Vatican City (CNS) -- Pope Francis called for abolition of the death penalty as well as life imprisonment, and denounced what he called a "penal populism" that promises to solve society's problems by punishing crime instead of pursuing social justice.

"It is impossible to imagine that states today cannot make use of another means than capital punishment to defend peoples' lives from an unjust aggressor," the pope said Oct. 23 in a meeting with representatives of the International Association of Penal Law.

"All Christians and people of good will are thus called today to struggle not only for abolition of the death penalty, whether it be legal or illegal and in all its forms, but also to improve prison conditions, out of respect for the human dignity of persons deprived of their liberty. And this, I connect with life imprisonment," he said. "Life imprisonment is a hidden death penalty."

The pope noted that the Vatican recently eliminated life imprisonment from its own penal code.

According to the Catechism of the Catholic Church, cited by Pope Francis in his talk, "the traditional teaching of the church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor," but modern advances in protecting society from dangerous criminals mean that "cases in which the execution of the offender is an absolute necessity are very rare, if not practically nonexistent."

The pope said that, although a number of countries have formally

abolished capital punishment, "the death penalty, illegally and to a varying extent, is applied all over the planet," because "extrajudicial executions" are often disguised as "clashes with offenders or presented as the undesired consequences of the reasonable, necessary and proportionate use of force to apply the law."

The pope denounced the detention of prisoners without trial, who he said account for more than 50 percent of all incarcerated people in some countries. He said maximum security prisons can be a form of torture, since their "principal characteristic is none other than external isolation," which can lead to "psychic and physical sufferings such as paranoia, anxiety, depression and weight loss and significantly increase the chance of suicide."

He also rebuked unspecified governments involved in kidnapping people for "illegal transportation to detention centers in which torture is practiced."

The pope said criminal penalties should not apply to children, and should be waived or limited for the elderly, who "on the basis of their very errors can offer lessons to the rest of society. We don't learn only from the virtues of saints but also from the failings and errors of sinners."

Pope Francis said contemporary societies overuse criminal punishment, partially out of a primitive tendency to offer up "sacrificial victims, accused of the disgraces that strike the community."

The pope said some politicians and members of the media promote "violence and revenge, public and

private, not only against those responsible for crimes, but also against those under suspicion, justified or not."

He denounced a growing tendency to think that the "most varied social problems can be resolved through public punishment ... that by means of that punishment we can obtain benefits that would require the implementation of another type of social policy, economic policy and policy of social inclusion."

Using techniques similar to those of racist regimes of the past, the pope said, unspecified forces today create "stereotypical figures that sum up the characteristics that society perceives as threatening."

Pope Francis concluded his talk by denouncing human trafficking and corruption, both crimes he said "could never be committed without the complicity, active or passive, of public authorities."

The pope spoke scathingly about the mentality of the typical corrupt person, whom he described as conceited, unable to accept criticism, and prompt to insult and even persecute those who disagree with him.

"The corrupt one does not perceive his own corruption. It is a little like what happens with bad breath: someone who has it hardly ever realizes it; other people notice and have to tell him," the pope said. "Corruption is an evil greater than sin. More than forgiveness, this evil needs to be cured."

[1] <http://www.catholicnews.com/data/stories/cns/1404377.htm> @ 24.10.2014

Pope Francis speaks during his general audience in St. Peter's Square Oct. 22. (CNS/Paul Haring) □

Draft Resolution of State Council Meeting

The PUCL State Council Meeting began at 11 AM held on 19th October 2014 in Loyola Hall, St. Joseph's College, Lalbagh Road, Bangalore.

Members present at the meeting: Dr. V Lakshminarayana, **President**, Y.J. Rajendra, **General Secretary**, Rati Rao, **Treasurer**, **Members:** Vittappa Gorantli, Arti, Gowru, ShashikanthRao, Jayanthi, Nataraj, Mumtaz Begum, Maridandaiah Buddha

Y J Rajendra welcomed the members and Dr. Lakshminarayana chaired the meeting, Dr. Rati Rao read out the minutes of the previous meeting and the action taken on it.

1. The report of progress made during July September presented by Dr. Arti, General Secretary Bangalore Chapter, Mr. Vittappa Gorantli, President, Koppal chapter and Dr. Rati Rao presented the reports of their respective Chapters
2. Dr. Lakshminarayana presented the highlights of the National Council meeting which was held on 13th & 14th September 2014 and the four thematic areas the national body adopted. Also gave brief note on the national convention to be held on 6th & 7th December 2014 in Patna, Bihar, any member shall participate with a delegate fee of Rs. 200, the food and accommodation will be provided by the organizers. All members are requested to encourage the members participate in it and book tickets in advance. The chapters are requested to bring display materials such as Fact Finding reports, publications,

photographs, etc. in the stall reserved for Karnataka chapter of PUCL.

3. Committee has taken the decision to welcome the government decision to reject the recommendations of Justice Somashekara Commission and resolved that a delegation team to meet Chief Minister with a memorandum to constitute a new Commission for the said purpose.

4. Committee appreciated the work done by PUCL with regard to safai karamcharis, however, keeping in view gross violation of the rights of Safai karamcharis and manual scavengers, the committee decided to take up this issue as state issue. It was decided to write to Deputy Commissioners and concerned officers to immediately and implement rehabilitation schemes under Manual Scavengers Rehabilitation Act 2013.

5. Committee while considering the work done by Bangalore chapter on the issue of land grabbing, expressed serious concern over increased such incidents all over the state in the name of development and creation of employment. It was resolved to hold a state level consultation meeting on the land grab and the land use policy.

6. It was resolved to constitute a Fact Finding Team with 20 people and camp there for four days in November / December to look into the nature and extent of violation of rights of Karnataka migrant workers living in Baina beach in Goa. Interested PUCL members shall

inform President well in advance.

7. The issue of commercialization and legalization of prostitution was discussed in the meeting; the committee adopted the resolution that the PUCL will oppose legalization of prostitution and condemn such decision taken by government or other organizations.

8. It was resolved that PUCL welcome willingness of Maoist activists coming out and joining mainstream to resume democratic discourse dialogue and positive response to this effect from government.

9. With regard to repeated attack on northeast people and students, the committee decided to hold a consultation meeting with representatives of their associations to understand and examine the nature and extent of attacks also to workout future course of actions / strategies.

10. It was clarified that the prescribed guidelines by National PUCL, prior to undertake any Fact Finding, the respective chapters shall consult State President & General Secretary or bringing such to their knowledge in advance. It will be ideal that a lawyer shall be a member of the team or before finalizing the report lawyer should be consulted.

11. PUCL as an organization / a body shall not be a member of any other organization, however, it was clarified that there is no restriction on the issue based participation with other organizations. The decision to this effect shall be taken in the meetings of respective chapters. □

PUCL BULLETIN FUND

It is proposed to raise a corpus fund to meet the increasing expenses of *PUCL Bulletin*. Please donate generously. Send your cheques favouring '**People's Union for Civil Liberties**'. Your contribution will be acknowledged in the *PUCL Bulletin*. – **General Secretary**

Press Statement on Attack on North-Eastern People

The attack on the Nagaland couple at Hessarghatta, Bangalore on 24th October 2014 by a gang of Kannada speaking miscreants is strongly condemned by the PUCL-Karnataka. They were insulted as being foreigners and physically assaulted. All the more the local police made them to run around various police stations under the pretext of jurisdiction is also highly reprehensible. Recently, in the same month at Byrathi cross in Bangalore two Manipuri youth were attacked by miscreants on the pretext of not knowing the Kannada

language. With these incidents very bad tradition is being built up in Karnataka. All these attacks are made on the basis of the physical features of the North Eastern people, which is racially motivated. Few years ago there was a massive exodus of the North Eastern people due to rumours and it took many months for their return. This episode should have awakened the Bangaloreans against the racial prejudices and prevented the attacks. Unfortunately, racial attacks are continuing frequently. These continuing racial attacks on

North Eastern community has made us to hang our heads in shame!

India is a multicultural and multi-racial country. The constitution guarantees the right to live in any part of the country. The time has come for the civil society to raise against miscreants who want to snatch this constitutional rights. PUCL calls upon people of Bangalore to raise to occasion and protect the North Eastern brethren. PUCL also urges the Government of Karnataka to contain miscreants. **Dr. V Lakshminarayan**, President, PUCL- Karnataka ☐

Rajasthan PUCL: Jaipur, 9th September, 2014

Letter sent to the Chairperson, National Human Rights Commission (NHRC), Delhi

Subject: Urging action against the Home Minister Shri Rajnath Singh for brazenly asking the police to carry out encounter killings and not follow the law of the land.

Dear Sir,

We wish to bring to your urgent notice some alarming statements made by the Minister of Home Affairs, Government of India, Shri Rajnath Singh in Jaipur on 3rd September 2014. Addressing the heads of Police Training Institutions at Police Training Academy, where the press was also invited, the Home Minister openly advocated the policy of carrying out encounters, while dealing with the problem Maoism and Maoists. In so doing, the Home Minister also reassured the police officers - to thunderous applause - that they would be protected from any enquiries initiated by the National Human Rights Commission. Here are translated excerpts from his speech:

"When I was the Chief Minister in UP, the Maoist problem was rearing its head in large swathes of UP, many police officers had been killed. As soon as I reached there I gathered my senior police officers

and told them that we must accept this challenge. The natural problem that the officer's face is: my officers said, that sir we are ready to "meet out", this challenge fully but the problem we face is that, we are put in the dock by other political parties, and the NHRC. We are asked questions and harassed. I told them, you don't worry, if we have to face the Human rights commission, I will do it in my capacity as Chief Minister of UP - I will not allow my police officers to face the NHRC. Those from UP cadre who may be present here will recognize this fact. The great achievement of crushing Maoism in UP - people still remember that. ..."

Further in the speech, Shri Singh proposes a "mathematical formula". He says:

"If a doctor treats a patient, the bliss that he experiences far exceeds the pleasure he may derive from delicious food. Likewise, in my estimation, the happiness that you experience after keeping a dreaded

criminal in jungle for days and then killing him, you will not get the same level of happiness even at your own wedding. "

Even though the HM says in his speech that law is supreme, this open exhortation to kill 'Maoists' and 'criminals' is a mockery of the Rule of Law. The Home Minister has blatantly told the senior officers of his police force, and especially those officers who impart training, that NHRC guidelines are to be ignored, and that the culture of impunity will thrive. When the Home Minister himself sends out this message to his police force, can we not expect severe and violent repression of those that his police will label as Maoists or criminals? Is it not the simple fact enshrined in our Constitution, that no matter how heinous the crime, all offenders are entitled to due process? Can a Minister sworn to upholding the Constitution so blatantly call for its violation?

We write to you with the hope that the NHRC will take note of this ridiculing of its guidelines in so brazen a manner by the Home Minister. We urge you to take action against him for explicitly asking the police to violate the law and advising

the heads of the Police Academies of the country to teach the police to commit atrocities and carrying out encounter killings on the people of India.

Thanking you,

Sincerely,

Prem Krishan Sharma, President and **Kavita Srivastava**, General Secretary, PUCL Rajasthan

Note: The Hard copy of the letter and the CD of the recording of the speech have been dispatched by hand. □

Citizens for Justice and Peace, Mumbai, October 6, 2014

Letter sent to the NHRC

To: Chairperson Balakrishnan, National Human Rights Commission, New Delhi

Dear Sir,

Extremely disturbing reports about the climate of abject fear that the poor and marginalised communities of JJ Colony, Bawana are living in following recent incidents. Prominent residents of Delhi have carried out an independent fact finding into allegations of cow slaughter and the systematic intimidation of local Muslims. The team consisted of Dr. Mrigank (Delhi Committee, Indian Federation of Trade Unions, IFTU), Poonam Kaushik (Gen. Secy. Pragatisheel Mahila Sangathan, PMS), Rajeev (Convener, Progressive Democratic Students' Union, PDSU) visited JJ Colony Bawana.

We urge Sir that the National Human Rights Commission carries out a suo moto inquiry into the incident and especially inquires into the following:-

From the above Report (below) the observations made are :

1. That the allegations that there is plan of cow slaughter is bogus. There is possibility of hiding the cows. And no cows were found.
2. That there is intimidation of Muslims and they are living amidst fear. The police protection is not enough.
3. That the organizations like Hindu Krantikari Sena are not spontaneous organizations. It is clear from the fact that among the main organizer was the nephew of BJP MLA. Also total inactivity of BJP MP is a clear indication.
4. That there is total communal

harmony in JJ Colony and even today they are together.

It is demanded that:

1. There should be enough police protection to prevent any untoward incident. There are about 15 places of sacrifice. Police should be deployed there also to prevent any mis-happenings.
2. The people inciting, and spreading rumours should be arrested booked.
3. Cases should be registered on the people who were involved in beating, stone pelting and guilty policemen should also be booked. Sir we urge that you look into these observations of the Independent report that is enclosed below.

Yours Sincerely

Teesta Setalvad, Secretary, Citizens for Justice and Peace, Mumbai

Report on Alleged Plan of Cow Slaughter in JJ Colony Bawana

A team comprising of Dr. Mrigank (Delhi Committee, Indian Federation of Trade Unions, IFTU), Poonam Kaushik (Gen. Secy. Pragatisheel Mahila Sangathan, PMS), Rajeev (Convener, Progressive Democratic Students' Union, PDSU) visited JJ Colony Bawana and made investigations into the reports of alleged planned cow slaughter and intimidation of Muslims.

Bawana JJ Colony is situated opposite CRPF Camp near Bawana City. It has resettled people, displaced from Yamuna Pushta, Saraswati Vihar, Laxmi Nagar etc. its population is about 1.5 lakh and about 70% are Muslims (as we were told). It is under Outer Delhi

district of Delhi Police and two Police stations covers the area. Bawana PS covers village and Narela covers JJ Colony. Mr. Udit raj of BJP is MP here, who was not even seen by the people. We were told by people that CPI (M-L) New Democracy has sent an urgent e-mail to Commissioner of Police, Delhi demanding urgent deployment of forces.

We reached JJ Colony and first met Noorul Qasim (Area President, Jamai E Ulema e Hind and President Madarsa Jamia Rahmana). He along with others narrated the incidents. We found that on 2nd of October, a mob of 200 odd youths invaded the Colony. They had 3-4 police constable with

them, as they called police on pretext of some cows being hidden in JJ Colony. They broke into four groups with one constable each. Obviously they found nothing. They caught a man with cow, who was bashed up. He turned out to be one Mahesh from A Block. He was a cowmen selling the milk. He told them his religion, but they refused to believe. Then he showed the pictures of Hindu gods in his room. They left him, and later JJ Colony. They threw stones and a boy was heart. This was done in presence of constable Ramkaran and Amit. His MLC was done, but no one knows if any case has been registered or not.

Next day, late in night (around 12:15

or so) a man from Bawana City came with two cows and tried to infiltrate them into JJ Colony. Alert, as the residents of JJ Colony, were caught him and handed over the man and cows to police. It seems that man was related to some cop and was treated like guest. Again, the residents were not aware if any case has been registered or not. SHO called both people at different times to police station. The people of JJ colony went later. They were intimidated and beaten right in police station in front of cops. Later when they told the same to SHO, he told that they should have called. They told him it was not possible in the hush up and he check in the CCTV footage. Finding it on CCTV, an action was promised. These people were accompanied by prominent Hindus of the area. We also talked to them One Mr. Paswan told us that it is a matter of colony where Muslims celebrates Diwali and Hindus participate in Eid. Even Muslim folks participated wholeheartedly in recently concluded Durga Pooja. He asserted that they will not allow outsiders to break harmony. We also talked to Dr. Mishra. He also echoed the same sentiments. Failing twice, these people put up a poster in the name of Hindu Krantikari Sena, showing a picture of cow slaughter and calling all cow loving people to a 'shapath samaroh'. This was to be held on Sunday at 12:00 noon at a cowshed in Hirevali village. Our team went

there and talked to people. They were about 250 youths from nearby villages like Herevali, Pooth Khurd, Bawana and Bajitpur. Among main organizers were nephew of Mr. Pawan Sharma (BJP MLA) and Mahendra. They told us many stories. Some of them were common propaganda like they keep 4 wives, increasing populations etc. and some unbelievable like there are truckloads of cows in JJ Colony. It is unbelievable, because the size of plots given to the residents of JJ colony are too small to hide cows and that too truckloads of them. Anyway, we talked to them, they had a swearing in ceremony of this outfit.

It is also reported by some people that minority residents of Bawana village are living in fear. As they are far less in numbers and are scattered all over. Many of them have left the houses and children are not going to schools. Even children from JJ Colony who studies at Bawana School are not going. Not just that, they have forced to stop Ajaan, and are even planning a Bhagat Singh ka Bhandara at the place, where namaz is to be held. From the above it is clear that:

1. That the allegations that there is plan of cow slaughter is bogus. There is possibility of hiding the cows. And no cows were found.
2. That there is intimidation of Muslims and they are living amidst fear. The police protection is not enough.

3. That the organizations like Hindu Krantikari Sena are not spontaneous organizations. It is clear from the fact that among the main organizer was the nephew of BJP MLA. Also total inactivity of BJP MP is a clear indication.

4. That there is total communal harmony in JJ Colony and even today they are together.

It is demanded that:

1. There should be enough police protection to prevent any untoward incident. There are about 15 places of sacrifice. Police should be deployed there also to prevent any mis-happenings.

2. The people inciting, and spreading rumours should be arrested booked.

3. Cases should be registered on the people who were involved in beating, stone pelting and guilty policemen should also be booked. Sincerely

Dr. Mrigank (Delhi Committee, Indian Federation of Trade Unions, IFTU); Poonam Kaushik (General Secretary, Pragatisheel Mahila Sangathan, PMS); Rajeev (Convener, Progressive Democratic Students' Union, PDSU); Dr Vikas Bajpai, Assistant Professor Centre for Social Medicine and Community Health, JNU, Delhi.

I am human, and all that concerns humankind concerns me - adopted from Bhagat Singh's quote "I am a man and all that concerns mankind concerns me".

Teesta Setalvad, 'Nirant', Juhu Tara Road, Juhu, Mumbai - 400 049 ☐

A Report by People's Union for Civil Liberties (PUCL), Vadodara:

Fuelling Enmities, Continuing Impunity: Fact-finding into the Violence in Vadodara, September 2014

.....Continued from the previous issue

Annexures to Report carried in November issue

List of Select Annexures

Annexure-4: [http://indianexpress.com/article/cities/ahmedabad/amid-talks-of-love-jihad-vadodara-garba-](http://indianexpress.com/article/cities/ahmedabad/amid-talks-of-love-jihad-vadodara-garba-organisers-tread-cautiously/99/)

Annexure-5: Letter written by 11 organisations of Gujarat to prevent hate campaign in the name of "Love Jihad" on 24-9-2014).

Annexure-6: (<http://www.counterview.net/2014/09/ahead-of-navratri-senior-gujarat.html?spref=fb>) Sep.24, 2014

Annexure 7: Memorandum Submitted by Concerned citizens of Vadodara to the Collector, Vadodara and the Police Commissioner, Vadodara dated 27.9.2014.

We, the citizens of Vadodara are shocked at the senseless communal violence that has rocked the city since the last two days.

We condemn the violence and appeal to the people of Vadodara, young and old, to please come forward and communicate with everyone you know, with all means available to you, and express solidarity with the idea of communal harmony and peaceful neighborhoods.

We also appeal to the administration and political parties in Vadodara to do all they can do to

bring peace and harmony in the city.

This is the same 'Nagar' where Aftabe Mausiki Ustad Faiyaz Kahn, Scholars like Maharshi Arvind, Pt. Shivkumar Shukla and great people like Acharya Vinoba Bhave, and Dr. Babasaheb Ambedkar have contributed to making the city vibrant.

We have world renowned M.S. University of Baroda. We have heritage building like Swami Vivekanand Memorial where Swami Vivekanand stayed for some time.

Yusuf Shaikh, AVHRS; **Ashok Gupta**, Vadodara Children Activity Centre; **Dhiru Mistry** Film maker, PUCL; **Dr. Juzur Bandukwala**, PUCL; **Dhiru Mistry** Vice President PUCL Vadodara; **Dr.Lancy Lobo**, Centre for Culture and Development, Vadodara; **Jaswantsinh Chauhan**, Social Activist;

Chinu. Srinivasan, Sahaj Shishumilap; **Reshma**, Sahiyar; **Kamal**, Sahiyar; **Amar Rana**, Social Activist; **Nisar Miyan**, Amjuman Imdade Bahami Bank; **Rita Choksi**, Sahiyar; **Abdul Qyayum**, Social Worker; **Tapan Dasgupta**, Social Worker; **Nagin Patel**, Social Worker; **Ashok Kahar**, Social Worker; **Shaukat Indori**, Social Worker; **Trupti Shah**, Sahiyar; **Rohit Prajapati**, Social Activist

Annexure-8: Letter from 'Concerned Citizens of Vadodara' to Mr. E. Radhakrishan, Commissioner of Police, Police Bhavan. Vadodara. Dated: 29 September 2014

Subject: Take concrete steps to bring normalcy in the city of Vadodara and take immediate

Contd. on page no. 20

PEOPLE'S UNION FOR CIVIL LIBERTIES

MEMBERSHIP FORM

The General Secretary,
People's Union for Civil Liberties

Dear friend,

I subscribe to the aims and objects of the People's Union for Civil Liberties and agree to abide by its Constitution. Please enroll me as a member.

I remit herewith Rs 50/- (yearly)/ 1000/- (Life)/ 2000/- (Patron) membership fee. [See Clause 3(c) and (d) of the Constitution].

I also remit herewith Rs.100/- at concessional rate as the subscription of the PUCL BULLETIN (optional).

I am not a member of any political party/I am a member of (Party).

Name : _____

Address : _____

State : _____ Pin Code : _____

E.mail : _____ Contact Phone : _____

Signature _____

NB: Please send money in the name of the 'People's Union for Civil Liberties', preferably by DD/MO. In case of outstation cheques, please add Rs. 70/-. Please do not send Postal Order. Always send the Membership Form to the State/local branch.

National Office: PUCL, 270-A, Patpar Ganj, Opposite Anand Lok Apartments (Gate-2), Mayur Vihar-I, Delhi-110091 (Phone: 011-2275 0014)

Contd. from page no. 19

actions in the cases of assault on women by police.

Sir, A team of social activists visited some of the affected areas on 27th September 2014 on the request of affected people. A detailed report of our visit is under process but after visiting the area we have personally discussed with you and informed you about the role of Police, (particularly plain cloth police, also known as D staff). The police should prevent violence and arrest those who undertake violence. Instead many people particularly women complaint about the verbal abuse and physical assault on them by police. The marks of injury were visible on their body. You had promised to look in to the matter and assured that this will not be repeated.

We are shocked to know that brutal police attacks are continued on the night of 27th September 2014. As per the complaint by Ms. Ashiyana Abdul Latif Shaikh (aged about 45 years) on the night of 27 around 2.00 a.m., police rounded up *moholla* in the area of Wadi Taiwada and entered the houses of people. About 8-10 plain clothed police who also covered their face with clothes having pipes and iron rods broke their door, window and entered her house. Broke fridge, lights and picked up her son Abdul Raheman (aged 19). When women from the house asked why they are picking him up they assaulted Ms. Ashiyana on head and hands, her younger daughter Mubina on back and legs and brutally assaulted Amrin Abdul Latif Shaikh (aged about 22). They torn Ms. Amrin Abdul Latif Shaikh cloths and beat her with iron rod on head, shoulder and back. Her situation was versioning and became unconscious so she was admitted in the Sayaji General

Hospital in the morning of 28-9-2014. In the hospital she mentioned about assault by police as reason for her injuries and also registered her complaint in the Police Station of the General Hospital. But the doctor mentions assault by "opposing party" in her case paper and she is not sure what police has mentioned in the FIR. They are not given either copy of FIR. She was discharged at about 2.00 p.m. on the same day.

While we are writing this, her mental and physical condition is very bad. Other women are also assaulted but have not yet gone even to hospital due to fear of further violence.

We tried to contact you on 28th September 2014 at your office and on your cell phone but could not get through. Today on 29th September 2014 we talked with you on your cell phone but could not get appointment, hence we are sending this Fax and Email.

The situation of Vadodara is vitiated by communal forces and the blatant violation of human rights by police will not save the situation.

We the undersigned expect immediate steps from you. We are peace loving citizens of Vadodara and are working for peace and harmony. We assure our cooperation.

C. C.: (i) Mr. S. K. Nanda, Additional Chief *Secretary- Home Department*, Government of Gujarat; (ii) Justice K. G. Balkrishanan, Chairperson, National Human Rights Commission, New Delhi

Trupti Shah, Reshma Vohra, Sahiyar (Stree Sanghatan), Vadodara; Ashok Gupta, Rohit Prajapati and S. Shrinivasan, PUCL, Vadodara; Shaukat Indori, Sabiha Hakim, Social Workers, Vadodara. (**Concluded**) □

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**PEOPLE'S UNION FOR
CIVIL LIBERTIES**

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