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Criminal Justice Administration Needs Accountability

Mahi Pal Singh

In a significant judgement on 7 January 2014, which did not get much publicity in the media, a division bench of the Supreme Court consisting of Justices C.K. Prasad and J.S. Khehar directed the home department of every state government to formulate a procedure for taking action against all erring investigating or prosecuting officials who are found responsible for failure of a prosecution case on account of sheer negligence or because of culpable lapses. It is for the first time that the Supreme Court has ordered fastening of accountability on investigating officers and public prosecutors saying that they must face punishment if it was found that their deliberate lapses resulted in the acquittal of the accused in cases involving serious offences. The Apex Court gave this ruling in a case in which shoddy investigation and lack of evidence led to the acquittal of a man accused of luring a six-year-old girl to a field, and raping and killing her, also severing her feet to steal her anklets though the trial court at Ahmedabad had found the accused guilty and considering the case 'rarest of rare' awarded death sentence to the accused.

If this direction of the court is implemented within the given time limit of six months sincerely, it will be a first major reform in our criminal justice administration system because for the first time it will introduce the concept of accountability for the investigators in police and also for the prosecutors. So far, there has not been any accountability for the investigators for whatever they do: frame shoddy cases against politicians and mafia on the one hand because of the police-politician-mafia nexus and deep-rooted corruption in our police and prosecution machinery, because of which Ministers and legislators remain steadfastly in their seats after acquittal in even the serious-most crimes like rape, murder, dacoity, fanning communal hatred resulting in communal riots and mass killings etc., and on the other innocent people falsely implicated in various cases spend long periods of their life in jails merely because the prosecutors and the investigators do not present their cases and non-existent evidence before the court for long periods. The result is that innocent people who cannot afford to engage able lawyers perish in jails and even those who succeed in getting bail after several years and are ultimately acquitted of the unfounded charges, lose precious years of their life at the altar of our faulty and insensitive criminal justice administration system. The accused in the first case not only enjoy freedom but also continue to rule or dominate the society with their money and muscle power and also continue to enjoy respectability in society whereas in the latter case, even though acquitted at the end of the case, loose their respect in society, their much needed jobs, whatever money or property they and their families possessed earlier and of course their freedom and liberty for long periods. The greatest loss for the society at large is that not only the victims, but also their families and relations,

and sometimes their whole communities lose their faith in the justice administration system. No amount of compensation can undo or compensate them for their loss, though even that is not given to them. It goes without saying that the investigators who framed them in false cases are not held responsible for all the mess in the lives of the victims and never punished for their wanton and arbitrary acts leading to the sheer injustice meted out to the victims.

Some examples will bring out the horrendous truth of our failed justice administration system and the miseries suffered by the victims because of the unaccountability of our police force and the prosecutors.

Mohd. Amir Khan of Delhi, who was arrested at the age of 18 and implicated in 19 cases of terrorism like bomb blasts in Delhi and Ghaziabad, remained in jail for 14 years and in 2012 he was acquitted in 17 cases and released from jail. Reporting the case after his release, The Times of India dated 3 March 2012 wrote: "Of the 19 cases accusing him of masterminding the 1996-97 serial blasts, the most difficult to cope with related to the blasts in Frontier Mail in Ghaziabad killing two persons. It took nine years for the Ghaziabad court to initiate the trial against Mohammad Amir Khan. By the time the trial started in April 2007, his father, the sole breadwinner in the family, had passed away and his mother suffered a brain hemorrhage that left her paralyzed and speech impaired. The lawyer, who had been engaged by his debt-ridden mother Maimuni Bi to appear in Ghaziabad, abandoned him after a newspaper report branded Amir a Pakistani national. In fact, the press report created such prejudice against Amir that nobody from the Ghaziabad bar was willing to represent him. It was in such adverse circumstances that veteran human rights advocate N D Pancholi (a founder member of the PUCL and now President, PUCL-Delhi) came to his rescue in December 2007," and further, "Amir was incarcerated for 14 years in the prime of his youth, not just because of the charges trumped up by the police but because the safeguards built into the criminal justice did not work. It was an institutional failure across the board: the prosecution branch and the courts are to blame as much as the police for the tragic fate of Amir….The irony is that this very claim of the police - recovery of explosive material at Amir's instance - was rejected by the courts, including Delhi high court, in 17 of the 19 serial blast cases and, in fact, formed a major basis for his acquittal in all those cases."

If he were guilty of serious crimes like bomb blasts in which many people must have died, he should have been behind the bars as a matter of justice to those who were killed in those bomb blasts. But an innocent youngster, he spent 14 years in jail, without being proved guilty even in a single case, instead of going to school and college and thinking of a career in life, the period any one convicted of a serious crime like murder would have spent in jail. During this period his family lost all their money and property in fighting the cases slapped against him. They also lost all the respect the family could afford to earn in spite of their poverty and simple life in their earlier life, because the tag of 'terrorist' was affixed to the boy in the family. No one was held accountable for the destruction of the life of the young boy and the family.

No one was, again, held accountable in the Malegaon and Ajmer Dargah blasts and the Mecca Masjid terror attack cases in which several Muslim youths were arrested, on the basis of strong evidence as claimed by the police, kept in jail for nine long years and acquitted later only when the same police found that Pragya Singh Thakur, Lt. Colonel Srikant Purohit, Ram Narain Singh, Dayanand Pandey, Devendra Gupta and Chandrashekhar, belonging to the Hindutva outfits like the Hindu Jagaran Manch and Abhinav Bharat, were involved in the cases and not the Muslim youths who had been accused earlier. Nobody knows where all the evidence, on which basis the latter were arrested, evaporated.

In 2010 Om Prakash was released on the intervention of the court from Mainpuri jail in UP after 37 years of imprisonment without trial. He was arrested on the charge of murder. Om Prakash was less than 20 at the time of his arrest. His father owned the crime to save his son. Both were arrested and the father died in jail a few years later. Had the trial taken place and Om Prakash was convicted and awarded life imprisonment, he would have come out of jail a quarter of a century ago. In the last 37 years the trial could not even begin because the police failed to trace the papers of the case. And for this serious lapse on the part of the police, no action was taken against any police officer.

Because of his long confinement Om Prakash became insane. When he did finally come out of jail, he did not know who he was. He could not recognise his 80 years old mother, who was still happy to receive back her son in whatever condition he was at the time - a victim of gross state negligence.

Raja Ram, aged 70, spent 35 years in Faizabad jail and Varanasi mental hospital without being proved guilty. In yet another case 70-year-old Jagjivan Ram languished in prison for 36 years because his records were missing.

These few instances indicate that if there were a thorough investigation across the country in different jails, there would be many more under-trial prisoners languishing in jails without being convicted. No one has been held accountable in all the above-mentioned cases, much less punished.

It is nobody's case that the police should abdicate its duty to catch and prosecute law-breakers and criminals. It has, however, been seen that even in cases of abduction and extra-judicial killings the guilty police officers go scot-free while even the most innocent victims suffer for their (the policemen's) acts of omission and commission.

The detainees who prove to be innocent and are acquitted by the courts should be quite adequately compensated for the physical, emotional and social loss caused to them and their families, including the cost of litigation, which is exorbitant. Mere cosmetic police and judicial

reforms cannot cure our decayed justice administration system.

There should be a proper, accurate and scientific investigation and gathering of real evidence, not concocted one, to sustain a case before the trial court. However, what is essential to make the justice administration system transparent and corruption-free is to devise a system of accountability wherein the prosecuting officers are held responsible for causing unnecessary and illegal detention of the accused. We hope that the latest judgement of the Supreme Court will make a beginning in this direction. ❑

Press Statement: 21st January, 2014

PUCL Statement on Landmark Ruling of the Supreme Court on Commutation of Death Sentence

PUCL welcomes the landmark ruling of the Supreme Court today (21st January, 2014) authoritatively holding that inordinate delay in considering mercy or commutation petitions of death row convicts by the President of India / Governors will form a legal ground for commutation of the death sentences. The SCs judgment is historic for 2 other reasons: the apex court has held that apart from delay, the mental health condition of the convict, including schizophrenia and mental illness, as also solitary confinement are grounds warranting commutation.

Very significantly the SC has reversed the ruling of 12th April, 2013 of Justices Singhvi and Mukhopadhyaya in `Devinder Singh Bhullar's' case which made an invidious distinction by distinguishing terrorist crimes as being different from other crimes for which the constitutional remedies and also delay as ground for commutation will not apply. The Supreme Court has overruled this proposition holding that any person on death row, irrespective of whether it is mass murders or terrorist crimes, can equally appeal to the Supreme Court on grounds of delay.

In a noteworthy and a momentous way the SC, taking note of the controversy over the surreptitious, furtive and unconscionable manner in which Afzal Guru was hanged without informing his wife and family, has now held that the death row convict and his close family should be informed at least 14 days before the execution date about rejection of mercy petition so that he/they can take recourse to legal proceedings and also so that the prisoner can meet his wife, family and friends before the execution, partake of food he likes and be entitled to humane treatment. The court has also held that condemned prisoners are entitled to free legal aid to help draft mercy petitions and legally challenge its rejection. Post mortem of executed prisoners has also now been mandated to ascertain the manner in which hanging caused the death.

This ruling will give a new lease of life to the 4 Veerappan case death row prisoners as also others, and be of use to others including the 3 persons convicted in Rajiv Gandhi assassination case whose mercy petitions were pending for 11 years before being rejected.

The SC's ruling is a momentous ruling for asserting that human values and humane justice should ultimately be the cornerstones of modern, constitutional India. We hope this will mark a significant step towards eventually abolishing death penalty altogether from our law books.

Prabhakar Sinha, National President, PUCL; **V. Suresh,** National General Secretary, PUCL ❑

January 19, 2014

An Appeal to Readers and Members to send in their Comments, Suggestions and Ideas for making the *PUCL Bulletin* More Interactive

Greetings from the Editorial Board, *PUCL Bulletin*

***"Voting becomes fundamental to changing Governments and is also fundamental to bringing about a social transformation. The inarticulate right implied in this is the right to revolution. This extension is theoretical and one need not fear the possibility unless governance degenerates"* - K.G. Kannabiran,** former National President, PUCL.

"Unless governance deteriorates," Kannabiran's prescient words written just before the Lok Sabha elections in 2009, is pregnant with meaning as the country prepares for the next round of general elections. Governance, in India, has not just failed and degenerated; it has collapsed. It does not matter which party is in power; most governments, whether in the states or in the centre, have uniformly and flagrantly exhibited their disregard for the rule of law and with impunity have set about looting and plundering the country's resources. With impunity, the governments, and the mafia of corrupt and venal politician - bureaucrat - businessmen - goonda have launched a major offensive against the ordinary citizen, crushing them if they dared to protest or oppose them. On one hand we are witness to the era of the `mega scams' - coal scam, the 2G scam, the CWG scam and the list is endless; on the other, we are also witnesses to the valiant battles of ordinary citizens across India, fighting for their right to life - to live in peace, safety and security - in the places they have been living; from the Dongria Konds of Niyamgiri (Odisha) to the coastal communities fighting the POSCO steel plant in Odisha; the villagers of Jaitapur in Maharashtra or Koodankulam in Tamil Nadu united by their fight against nuclear power plants, a thousand mutinies are being waged daily. Occasionally news about these heroic struggles filters to the national media; to be forgotten even before the ink on their newsprint has dried.

Unfortunately these issues - of life and death, of the type of development path our country has adopted, about increasing disparity between poor and rich, about the impunity of the policeman who daily harasses ordinary citizens - which are crucial to the lives of the ordinary citizen will hardly receive any attention as the major parties ready them for the electoral battle ahead.

So how can we in the PUCL make use of the election context to widen the debate and discourse on human rights? Is there a possibility that we, as ordinary citizens, can demand that all the political parties declare their position on safeguarding, protecting and expanding human rights - of the dalits, of landless labourers, of farmers and fishermen, of women, of tribals displaced by development projects, of the crores of defenceless, voiceless marginalised peoples of India?

Can we go to the citizens with the message that elections is much more than merely voting; that voting is just one step towards participation in democracy. And that demanding compliance with well-recognised human rights principles is an essential step towards reclaiming democracy.

These issues will not be raised by the mainstream political parties during the election campaign. They have no time or interest in these issues. We are already witnessing the electioneering being reduced to a fight between personalities, rather than a debate over the vision of a future egalitarian, inclusive, equitable, sustainable and human rights affirming democracy.

It is thus the responsibility and task of the human rights movement to utilise the context of general elections to forcefully raise these issues in the public domain. It is a daunting task. But let us take inspiration from the lakhs of ordinary citizens who during the December, 2013 Delhi Assembly elections taught the main political parties a lesson by voting against them and ensuring that they did not come back to power. The victory of the Aaam Aadmi Party is as much a victory of the ordinary citizen who has signaled that they are sick, tired and disenchanted with the mainstream political parties who have only given them corrupt bureaucracies and technocracies, anti-people administration, bad-governance and a brutal, police raj. The AAP success is both a symbol of hope as also an assertion of the coming of age of a younger generation willing to openly challenge and fight inequitable and status quo relations. The signs are clear - there is a younger generation wanting to be heard; waiting to assert themselves. It will be wise to reach out to this new, young citizen-force and to imbue them with a human rights consciousness so that they will be the future vanguards of the human rights movement.

Over the last 2 decades, PUCL units in different states like in Tamil Nadu, Rajasthan etc have undertaken innovative and impactful ways of intervening during election processes to promote and safeguard human rights. In fact the National PUCL unit in 1989 had come out with a `Charter of Demands' of human rights demanding key policy interventions by the Central Government. These included that radio and TV institution should be put under control of autonomous, legally constituted agencies; repeal of draconian laws like the Terrorist and Disruptive Activities (Prevention) Act and so on. PUCL Rajasthan has played a key role in monitoring elections and PUCL Tamil Nadu has worked with other organisations to constitute citizens committees to monitor elections and ensure compliance with election laws and other laws of the land by all participants in the election process. Thus while PUCL itself does and will not endorse any political party or engage in campaigning or supporting any candidate, there are many ways by which PUCL can intervene from a human rights perspective. We invite our readers to share with us their experiences to ensure that election process was transparent, accountable and democratic.

Starting from this issue of the PUCL Bulletin, we plan to carry a few specially written articles on select human rights themes of topical interest. This issue focuses on the Central Monitoring System (CMS) a scary electronic eavesdropping programme launched by the Government of India similar to the PRISM programme of the US. Gautam Bhatia, explains in simple language what the CMS implies for free speech in India. Readers may remember that PUCL had filed a PIL in the SC in November, 2013 challenging sec. 66A of the Information Technology Act, 2000 which criminalizes even innocuous comments made in Facebook postings or email messages. Karuna Nundy has written a short summary of the key issues in the PUCL PIL for the benefit of readers and members.

We invite readers and members to send in their comments, suggestions and ideas for making the PUCL Bulleting more interactive and as a forum of exchange of views and ideas. We also request readers to suggest themes on which special articles could be requested by experts in the subjects.

V. Suresh, General Secretary, PUCL and Chief Editor, *PUCL Bulletin,* on behalf of the Editorial Board, *PUCL Bulletin* ❑

("You Will Be Under Surveillance 24X7, if the Indian Government succeeds with the Central Monitoring System. Should Fascism Replace the Constitution is an issue this article by Gautam Bhatia raises").

Surveillance and Constitutional Rights in India

Gautam Bhatia[1]

In May 2013, the Hindu revealed details about India's Central Monitoring System (CMS), a mass surveillance scheme run by the government. Through the CMS, the government will have access to both the content and the metadata (that is, details of call numbers, duration, time etc.) that goes through India's telecom networks. This would include the content of phone-calls, text messages, emails, tracking the

location of persons, and so on. As this essay points out, the ramifications are immense:

"With the C.M.S., the government will get centralized access to all communications metadata and content traversing through all telecom networks in India. This means that the government can listen to all your calls, track a mobile phone and its user's location, read all your text messages, personal e-mails and chat conversations. It can also see all your Google searches, Web site visits, usernames and passwords if your communications aren't encrypted."

And recently, newspapers have also been carrying reports about Netra - another surveillance system that is designed to track the use - over mobile phones - of words such as "attack", "bomb", "kill" etc. (which, as might be noticed, have perfectly legitimate uses), and track the caller and the location of the phone as well.

Even until ten years ago, telephones were only one - limited - source of communication. Now, however, mobile phones and email are ubiquitous, almost like extensions of our individual selves. The amount of personal information that is now communicated and stored in mobile phone records and in email accounts on the internet is truly staggering. To draw an analogy: the kind of surveillance CMS is capable of doing would be equivalent, twenty years ago, to a police officer visiting your house every evening, doing a top-to-bottom search of the premises, going through all your personal papers, diaries and other books, and compelling you to inform him about almost conversation you had during the day. This makes understanding the precise legal and constitutional problems with the CMS extremely important.

While I will go on to argue that the CMS is unconstitutional, there is an even more basic and preliminary concern: there is no law that authorizes the CMS. The Indian Telegraph Act authorizes specific, targeted surveillance of telephone networks, but does not permit bulk surveillance - that is, surveillance on a nation-wide scale, surveillance of people that are not suspected of any wrongdoing (the CMS and other such monitoring systems achieve this form of bulk surveillance by gaining access to the telephone records stored by service providers such as Airtel etc.). The absence of law is particularly damaging, because, as is obvious, a bulk surveillance program raises serious issues relating to the rights of privacy, free association and free expression. Decisions about whether, when and how to curtail citizens' rights in light of societal interests must be made by the most democratic branch of our government, the legislature, through a public process of deliberation, debate, dissent - and ultimately, a vote. The requirements of accountable, republican government demand that decisions that have a profound impact on citizens' basic rights be open to public scrutiny at all times. This is illustrated by the fact that under Articles 19 and 21, fundamental freedoms and the right to life and personal liberty can be curtailed only by law, or procedure established by law. This was recognized by the Supreme Court in the first Indian judgment that engaged with privacy in a meaningful way, Kharak Singh v State of UP[2]. In that case, the Court held that if there was no legislative backing for an act that infringed fundamental rights, it was automatically void. The protective umbrellas of Articles 19(2) to (6) would not even be applicable.

A second procedural problem with the CMS is the lack of oversight. Even in the United States, which has an elaborate internal spying system, surveillance requests must be approved by a Court (known as the FISA Court). In PUCL v Union of India[3], our most famous case of phone tapping, the Court held that at the very least, there would have to be effective administrative oversight of surveillance programs. Bear in mind, though, that PUCL was only about individual, targeted surveillance. Arguably, something as extensive and far-reaching as nation-wide, bulk surveillance would certainly need judicial oversight in order to effectively protect citizens' rights. To clarify: judicial oversight here means neither oversight by technical bodies of experts, or by commissions manned by former members of the judiciary; since the issue involves important constitutional rights, the oversight must be conducted by active members of the judiciary, as is the case in the United States.

There are, however, deeper problems with bulk surveillance, and these directly implicate our constitutional rights. Our Constitution guarantees to us, in Article 19(1)(c), the freedom of association. Under Article 19(1)(a), it guarantees the freedom of speech and expression. If the content of our communications is regularly in governmental hands, this is likely to have a severely detrimental effect upon our freedom to associate with individuals and organizations of our choice, and to express our views freely. This is known as the "chilling effect", and has been recognized in jurisdictions as diverse as the United States, Canada and Sri Lanka. The basic idea is that people are less likely to express unpopular views, and associate with unpopular groups, or groups against which the government is known to be hostile, if they know that their movements and behaviour are being tracked. In a very famous American case, NAACP v Alabama[4], the Alabama government demanded the membership lists of the NAACP, an organization litigating the rights of African-Americans. The United States Supreme Court ruled that this demand was unconstitutional, because the forced disclosure of membership lists of an organization that the government was publicly hostile towards would have a definite negative effect upon its right to associate and express its views freely. In India, for example, would one really be comfortable with associating with a group that - entirely legally - argued for Kashmiri self-determination in the hostile climate that exists today, unless one could be sure that the government was not listening in?

The chilling effect is exacerbated by

the presence of draconian laws on the register, that have been regularly abused (specially against stigmatized and stereotyped communities), such as POTA, TADA - and most of all - the UAPA. The UAPA, for instance, already criminalises merely voicing an opinion that might be construed to be against what the State considers to be the "territorial integrity" of India; with surveillance on the scale of CMS and Netra, the reach of the UAPA now potentially extends to the most private and personal of conversations, quite akin to the State entering the bedroom to regulate the modalities of sexual intercourse between consenting adults!

The freedom of association, like other Article 19 freedoms, is not absolute. It may be restricted in the interests of public order. The standard arguments that have been used for bulk surveillance have been that it's important for the government because it helps track terrorists - and it will almost certainly be argued, therefore, that the public order exception permits it. It is important to note, however, that the Supreme Court - rightly - has always required a rigorous standard to satisfy the public order exception. It has held that the link between the prohibited expression and public order must be like that of a "spark in a powder keg"[5] - for instance, free speech could be restricted if one was inciting an excited mob to mass violence, but not - as in the Supreme Court case of Lohia[6] - if a person was merely telling other people to break the law. Now, the actual function that bulk surveillance plays has been hotly disputed - the US, for instance, has still to convincingly show that surveillance was crucial in foiling terrorist plots. Whatever the evidence, it must be clear and convincing to a Court of law, using judicial standards of evaluating evidence, to justify a violation of free expression or the freedom to associate.

This leads us to the last constitutional issue: Article 21 guarantees to all citizens the right to life and personal liberty, and in a string of cases starting with Gobind v MP[7], the Court has included the right to privacy within Article 21's ambit. It is obvious that bulk surveillance infringes privacy: the question then is, is it justified? The Supreme Court has required a compelling State interest in order to justify a violation of privacy. Now, admittedly, stopping terrorism is a compelling State interest. But we also must examine another strand: the compelling State interest is an American doctrine, and it always goes along with a companion doctrine: that of narrow tailoring. This means that in cases of fundamental rights infringements, not only must the government demonstrate compelling State interest, but they must also show that the particular impugned program is the only way in which that compelling interest may be served - and that no other program that was less volative of citizens' rights would be sufficient to serve the envisioned goal. The government, therefore, would need to show that bulk surveillance is the only way of effectively stopping terrorists, and that a more targeted approach would not work. This would be difficult. In prior Supreme Court cases, surveillance has been upheld precisely because it has been targeted and individual-specific - for instance, surveillance of repeat offenders to prevent them from committing further crimes, as upheld in Gobind. It is difficult to argue that the government needs to listen in to all our conversations, all the time, wherever we might be, whoever we might be speaking to, and whatever we might say, in order to maintain security.

Therefore, to sum up: the absence of legislative backing, the lack of meaningful oversight, and a potentially unjustified breach of our fundamental rights to free speech, free association and privacy are some of the most serious flaws with the government's CMS scheme, and with bulk surveillance in general.

References:

1 *Law graduate from National Law School University f India, Bangalore and currently studying in Yale University.*
2 1964 SCR (1) 332.
3 AIR 1997 SC 568.
4 357 U.S. 449 (1958)
5 S. Rangarajan v. P. Jagjivan Ram, 1989 SCC (2) 574.
6 Superintendent, Central Prisons v. Ram Manohar Lohia, 1960 SCR (2) 821.
7 1975 SCR (3) 946. ❑

A Summary of the PUCL PIL filed in the Supreme Court challenging some provisions of the Information Technology Act, 2000 sent by Karuna Nundy, Advocate who along with Sanjay Parikh, National Vice-President appeared in the case:

Our criminal writ petition before the Supreme Court, :PUCL *v.* Union of India' [W.P. (Crl) 199/2013] challenges provisions and Rules under the Information Technology Act, 2000 that criminalise and otherwise trammel (i.e. restricts or restrains) free speech. The petition submits a civil liberties balance on free speech and internet regulation.

Aligning the IT Act 2000 with the Constitution of India is an exercise of the utmost urgency as speech on the internet is being secretly and arbitrarily censored, private companies have been mandated to bar certain speech or face the consequences and citizens are being arrested and criminalized for speaking truth to power and "annoying" those who are able to move police to act against them.

Website Blocking Rules

The Website Blocking Rules [formally known as, the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009] give government vast censorship powers. They allow the Department of Information Technology of the central government to secretly censor speech on the internet, without providing reasons for censorship and without informing the person who has written or uploaded the content.

The unreasonably secretive procedure for banning websites do

not, in addition, meet the natural justice standards for book banning under section 95 of the CrPC; e-books may thus be banned easily and secretively, immune to legal challenge as compared with their paper counterparts.

The petition seeks parity between blocking of websites and banning of books.

Intermediary Rules

The Intermediary Rules are formally known as the Information Technology (Intermediaries Guidelines) Rules, 2011. They govern the relationship between users and those who mediate internet access for users - such as Google, Yahoo, Facebook et al but also Airtel, MTNL, or the owner of a blog who hosts external content.

In their present form the Rules require intermediaries to take down content that is not prohibited anywhere else. In fact the terms are not defined anywhere, so intermediaries are required to take down internet content that is, by their own reckoning, "grossly harmful", "blasphemous", "invasive of another's privacy", "ethnically objectionable", "disparaging" etc or face civil or criminal consequences.

Section 66A

As we speak, any writing or speech that is "annoying" or "inconvenient" and is written or spoken on the internet (private emails included) or via SMS on a cellphone can send the writer/speaker to jail for upto three years. The offence is cognizable, so people "annoyed" or "inconvenienced" (among other things) need only persuade a police officer of their feeling under the law. The Central Government's only response to a series of legally reasoned petitions to them has been to kick the decision higher up the chain of police personnel i.e. they now require senior police officers to certify that speech is indeed annoying, inconvenient or falls within some of the other permissible categories to initiate criminal proceedings against a writer or speaker.

The consequences of this have brought the blunderbuss of the criminal law down on the lives of citizens.

Prof. Ambikesh Mahapatra of Jadavpur University and his ill, elderly friend, Subrata Sengupta are still facing criminal trial for emailing a cartoon based on Satyaji Ray's tale for children "Sonar Kella" to a group of their neighbours. The FIR against them was filed by someone who did not even receive the email, but took offence on behalf of the Chief Minister Mamata Bannerjee. The offence of defamation would never be satisfied as Section 499 of the Indian Penal Code contains exceptions under which an act of parody/ satire would clearly qualify. As such the trial is carrying on only under the vague and undefined section 66A of the IT Act.

The PUCL's petition seeks that speech be more freely allowed, and be fairly regulated by law only when constitutionally reasonable, under the 'golden triangle' of rights Article 19, 14 and 21.

On 22.11.2013 a bench of Justice R.M. Lodha and Justice Shiva Kirti Singh issued notice on our petition. A large number of citizens are now looking to the Peoples' Union of Civil Liberties to reinstate free speech on the new technological platforms.

Karuna Nundy, Advocate, Supreme Court of India ❑

Funds and Civil Liberties

V. Suresh

Dependence on institutional funding has depoliticized, monetized and corrupted much of the human rights work in India. While state-control of human rights funds is objectionable, rights movements will be durable and effective only when independent of big sponsors. A response to Ananth Guruswamy, Ravi Nair and James Ron and Archana Pandya.

Through the Foreign Contribution Regulation Act (FCRA), the government uses its powers to control flow of funds, policing what is essentially a financial transaction. Often, the FCRA is used to suppress rights activities, to intimidate and silence funded organizations who criticize state policy, expose rights abuses or challenge government action. It gives the government uncontrolled, discretionary powers to selectively favour groups by granting permissions for foreign funding. If perchance a human rights organization dissents against the state, then it is politically targeted; its FCRA permission is cancelled or denied. Outfits run by Hindutva right-wing groups like the RSS receive lots of foreign funds; FCRA constraints are rarely applied to them. The law is used only to stifle certain actions, and nurture other convenient political agenda. This itself is human rights violation, and I agree with Nair and Guruswamy that the FCRA must be repealed.

While I criticise the FCRA's stranglehold, a discussion on foreign funding would be incomplete if we ignored some of its impacts. Many funded groups do good campaigns, but the activities of many others are questionable. For them, human rights work is more a profession, than an expression of commitment.

Does human rights work in India need global funding? I believe not. People's Union for Civil Liberties (PUCL), with which I've been associated for over two decades, raises campaign-specific funds only from Indian sources. We do not accept institutional funding, global or Indian. We have a cap on individual contributions too, to encourage broad-based participation. This decision, made during PUCL's establishment in 1976, was driven by ethical and political considerations. The foremost is that human rights work should be voluntary, political, and reflect a personal and ethical commitment to strengthen democracy.

Dependence on funding and funding agencies, unfortunately, has crippled human rights work in India. It has begun to dictate the agenda of

human rights work, the issues chosen, and the strength and durability of campaigning. Funders' interests determine the flavour of the season, whether it is HIV/AIDS, education, child rights, women's rights, Dalit rights, or torture. Funding has turned human rights into a career, and it encourages project-based, apolitical involvement.

Institutional funding has promoted several unhealthy trends in human rights work in India. Firstly, it has led to the depoliticization of endemic human rights issues. Most violations are structural and chronic, but because of the pattern of funding interest, many NGOs only look at the manifestations of problems. They focus primarily on superficial, less contentious incidents of rights violations- on individual cases of torture instead of institutionalized abuse of police and state power; on child rights instead of poverty, land reforms, oppressive agrarian structure and unemployment; on incidents of women's rights violation instead of systemic patriarchy. The politics of issues are often dominated by many a funder's illusion that human rights work is humanist, sanitised, and beyond the political. In other words, development fixes are offered as the solutions for rights violations.

In Tamil Nadu, for example, after the tsunami on 26 December, 2004, activists realised that rehabilitation funds would only be available for some actions like distributing boats and nets, or housing. The administration only granted permissions to NGOs that did development work that didn't challenge the state's relief and rehabilitation measures. Barring a few notable exceptions, most funded organizations fell in line. Few questioned the state policy on rehabilitation, or caste-discrimination in relief operations. They didn't examine the tsunami in the context of coastal degradation, pollution or crisis afflicting the fisheries sector. The unprecedented and massive inflow of funds also fuelled shameful competition amongst funded-NGOs and compromises among local activists. Powerful collective community action was punctured by quick-fixes from NGOs flush with funds.

I emphasize that I'm not accusing all groups. But widespread corruption and ethical degeneration are real concerns that a debate on foreign funding should deal with.

Secondly, funding has monetized human rights action. NGOs pay- or in their words, compensate-labourers or farmers who attend protests. They give them travel fare, boarding, and minimum wages for the days they miss work. While I don't blame the participants for accepting such payment, this practise discourages the volunteerism that has driven Indian human rights movements for decades. It has kicked the wind out of sustained participation even in some iconic grass roots movements. People now ask: will you give me a biryani, a folder and a bag? If not compensated or incentivised, sometimes, they do not participate.

Democratic processes, which thrive on voluntary involvement and commitment can alone take the human rights movement forward. A few months ago, in Barwani in the central Indian state of Madhya Pradesh, a massive tribal protest mobilised people in thousands. Every participant contributed from her or his own pocket.

The culture of paying for attendance has permeated many movements and debilitated, to an extent, the organic, empowering process of grass roots democracy. Local movements - of Dalits, agricultural workers, women's groups - which hitherto relied on their own resources are, in recent years, being wooed by funding organizations offering to subsidize their agitations. This has sparked unhealthy competition amongst groups that earlier collaborated.

Thirdly, I worry about the emergence of a human rights career. Social workers too need a livelihood and form of sustenance; but I ask a moral and ethical question: what compromises are built into human rights becoming a profession? When it is a job, a human rights `employee' works for the first three years on tribal rights, and when offered a higher salary, he/she moves on to work child rights. This job-hopping erodes the seriousness, vision and long term commitment necessary for sustained human rights work, whose timeline for success is longer than in most other fields. When human rights professionals are parachuted into places for a few years, and are then asked to move elsewhere, their involvement and contribution never moves far. Their approach is '9-to-5', while civil liberties is a 24-hours, 365 days affair that directs the way you live life. The ideal is democratic involvement in human rights. You contribute whether you're a lawyer, advertising professional, construction worker, or businessman.

Fourthly, one cannot overstate the lack of accountability in the NGO sector. There are, of course, exceptions, but the painful, ugly reality is that funds are flushed away through corrupt or inefficient practices. Valuable human rights funds are largely spent on accommodation, travel, food, and salaries. The more funds go towards administrative, office or salary expenses, the less there is to help a rape victim or torture survivor. Indian NGOs are often personality-based; a good number are controlled by one individual or a family. Their lifestyles are often lavish and questionable. It is here that tremendous corruption resides.

Fifthly, and most worryingly for me, funding has begun to affect the priorities of human rights groups. We live in a severely repressive and anti-democratic context in India today. Ruling elites have joined the state to suppress and crush people's agitations. Independent, spontaneous protests against gang rape or corruption have been quelled with police force. Many Indian activists are today saddled with exhausting litigation and false prosecutions; entire communities like Tamil fishermen or Muslims have been branded as terrorists; and marginalised sections of society suffer state-sponsored brutality. Human rights work is caught in a nexus of industry, politics, and power.

Even in this challenging scenario, few funded humanitarian groups question state terrorism or corporate impunity, beyond making politically correct statements. Industry-related

issues like illegal mining, low wages, bans on factory unions, abuses by armed forces, villagers against coastal nuclear power plants are politically incendiary and receive little support.

Often, practices of funded organizations are determined by fund flow, and by the sponsor's ability or willingness to foot the bill. Taking on state or corporate systems requires independent, consistent support. Large sponsors rarely enable that.

I am engaged with PUCL because its core principles resonate with how I understand civil liberties: as a personal commitment that doesn't depend on the availability or dicta of institutional funding. During the 2004 parliamentary elections, PUCL's Tamil Nadu state unit launched a Citizen's Campaign for Peace and Harmony. This was in the backdrop of the 2002 anti-Muslim pogrom in Gujarat and the BJP's 'India Shining' campaign that threatened the secular fabric of the country. Many ordinary citizens contributed to the campaign for secularism and peace: advertising professionals designed creative ad inserts, posters, pamphlets, several newspapers gave free space. Over 12,000 people attended a music concert in which prominent singers, dramatists, and poets performed for free.

Citizens contribute in their own way, and while their particular contribution could be small, it bolsters the democratic fibre of society. PUCL has existed 37 years, and several mass movements for even longer, because of sustained, non-funded voluntary participation.

There are surely downsides to not being institutionally funded. Perhaps if we could afford to pay, there would be more full-time workers. Perhaps campaigns could run longer, or reach more people. We however attempt to overcome these limitations through innovation. The Internet has increased participation from the youth across economic and social backgrounds, and has made transmitting messages through petitions, media outreach, and advocacy more robust. And much cheaper.

Fund constraints do not constrain sincere work. The emergence in New Delhi of the new Aam Aadmi Party (AAP: Common Man's Party), has confirmed this once again. A bottom-up political party formed on an anti-corruption platform, all its workers are volunteers. Bangalore professionals made lakhs of phone calls to the party's potential voters. If this could be converted to money, I wonder how much that would be.

Campaigns such as abolishing death penalty, against repressive terrorism laws, against torture and encounter killings, or protecting rights defenders, to name just a few, have existed for decades. The commitment of people involved with these campaigns is organic and independent, irrespective of sponsorship. Human rights movements in India have been most successful when they're broad-based, voluntary, and political.

The human rights struggle is long, hard and demanding. The scale of human rights abuse could make many of us pessimistic or cynical. But across India, every day, a thousand mutinies are being launched by ordinary citizens who fight a principled battle, not because they are funded, but because they have a larger vision for democracy, for development, for India. These valiant, non-funded battles of a million ordinary dalits, adivasis, agricultural labourers, informal sector worker, students, women, and sexual minorities inspire me, and many others like me to continue the fight to reclaim democracy.

As told to Rohini Mohan

Courtesy: Open Democracy
6 January 2014 ❑

Chennai: 08-01-2014

Press Statement on Shootout of a Juvenile by a Chennai Police Inspector

PUCL is shocked to know that a 14 year old boy was shot in his throat by a duty Inspector of Neelankarai Police Station, Chennai while being interrogated in connection with a theft in a temple in the same area on 7th January evening. PUCL strongly condemns the highhanded, criminal and unacceptable act of R. Pushparaj, Inspector of Neelankarai Police Station and his subordinate officials.

We learn from the media that the boy, Thameem Ansari, of Vettuvankani was brought to the Police Station for interrogation in the early hours of 7th January and was detained without informing his family or friends about his arrest. It was during the course of his illegal detention that in the name of investigation the Police Inspector held a gun to the throat of the boy threatening to shoot unless he confessed to the crime. While the exact sequence of what happened next is yet to be established, it is clear that the Police Inspector pressed the trigger of the gun injuring the boy in his throat. The boy is now reportedly fighting for his life in a private hospital.

There is absolutely no justification for the Inspector to have threatened the boy at gun point. Doing so is not only illegal but also constitutes a serious crime and a human rights violation. The law does not permit torture as part of investigative tool, much less to threaten any person at gunpoint. WHAT THE INSPECTOR HAS DONE IS NOT JUST AN ACT OF OVERZEALOUSNESS BUT THE COMMISSION OF A CRIME AND AMOUNTS TO A GRAVE ABUS OF POLICE POWERS.

We condemn the story put out by the police that the Inspector was cleaning his gun when it suddenly went off as a `cock-and-bull story' meant to create confusion and cover up the dastardly crime committed by armed policemen.

It is learnt that an FIR is filed against the Inspector, R. Pushparaj under sec. 338 of IPC (Causing grievous hurt by act endangering life or personal safety of others). This is clearly inadequate and an attempt by the city police to water down the case against their own official. PUCL demands that Inspector R. Pushparaj and other policemen be prosecuted for offences u/section 307 IPC (Attempt to murder), Protection of Human Rights Act, 1993 and other provisions of law.

Disciplinary action like suspension is clearly not acceptable when a cognisable crime has taken place. A Constitution Bench of the Supreme Court has recently held that when a cognisable crime has occurred a FIR should be registered; waiting for an inquiry report from the RDO into the offence is not provided in the law and is also illegal. PUCL demands that the Inspector and other officials be arrested immediately. Eye witnesses and others should be immediately examined and their statements be recorded u/s 164 Cr.P.C. before a Judicial Magistrate so that later on they are not intimidated or bought over during trial.

The arrest of a juvenile and detaining him without informing his relatives or friends and threatening him with a revolver to make him confess are clear violations of the legal procedures to be followed under i) the Juvenile Justice (Care and Protection of Children) Act, 2000 ii) the Supreme Court Directives in the case of D.K Basu V State Of West Bengal AIR 1997 SC 610.

This incident also sheds light on how carelessly the juvenile offenders are being treated by our Police officials. In the case of `Sampurna Behrua vs Union Of India', the Supreme Court on October 12, 2011 directed that at least one police officer in every police station with the sensitivity and aptitude be given appropriate training and be designated as Juvenile or Child Welfare Officer, who will handle the juvenile in coordination with the police as provided under sub-section (2) of section 63 of the Juvenile Justice (Care and Protection of Children) Act, 2000. It is high time that the Tamil Nadu Police to take sincere efforts to train and appoint Juvenile Welfare officers in every police station in Tamil Nadu.

PUCL urges the Government of Tamil Nadu to take exemplary action against the police Inspector and personnel and should demonstrate openly that the rule of law will be implemented both in spirit and in law. It is also important for the government to show that no policeman is above the law and all policemen who abuse their powers given by law will have to face the legal consequences.

S. Balamurugan, State General Secretary; **V. Suresh,** National General Secretary, PUCL ❑

PUCL Delhi:
Press statement: 9th January 2014

PUCL Deplores Attack on AAP Office

PUCL strongly deplores the violent attack carried out by anti-social elements yesterday i.e. on 8th January, 2014 at the office of the AAP party situated at Ghaziabad. AAP party had clarified that the remarks made by Prashant Bhushan were made by him in his individual capacity and the party did not agree with the same, but strange enough, and in spite of the above clarification, the hoodlums targeted its office! One may agree or disagree with the opinion of a fellow citizen on crucial public issues, but in a democracy every one is entitled to express himself in a peaceful manner. Dissent, discussions and debates are the hallmark of a vibrant democracy and any attempt to silence opposite view can have only deleterious effect on it. Such anti-social elements who led the attack on the AAP office must be strictly dealt with in accordance with law.

PUCL strongly condemns the attack on AAP office and appeal to the people to raise their voice against such elements and organizations who indulged in criminal violence at AAP office.

N.D. Pancholi, President, PUCL Delhi ❑

Letter: IS MODI ABOVE LAW?
08.01.2014

To,

The Director,
The Central Bureau of Investigation
Plot No. 5-B, CGO Complex,
Lodhi Road, New Delhi - 110003

Respected Sir,

Namaskar.

IS MODI ABOVE LAW? - Is the question people of the country are asking the CBI?

Sending herewith the press cutting of Gujarat Daily News Paper "Gujarat Samachar" (having highest circulation in the State of Gujarat and has circulation abroad also) dated 15th December, 2013, Sunday titled "Tulsi Case Ma C.M.O. Viruddh Purava Hova Chata C.B.I. Pagla Nahi Le".

English translation of the newspaper report is also annexed herewith for your ready perusal.

The newspaper report is of a serious nature and directly points finger at the C.B.I. and its credibility.

The matter has become a talking point in Gujarat about C.B.I.'s integrity because of the non-response of any kind or denial by C.B.I. There are glaring points where it is felt that C.B.I. cannot choose to keep silence and the C.B.I. has to come out and give reply to the people of this country.

The points that are stated in the newspaper clipping are…

1. Telephonic talk upon which C.B.I. has relied on for one side and has now chosen to ignore the same evidence which is against the C.M.O.?

2. Is C.M.O. so supreme that it can override Rule of Law?

3. The C.B.I. is required to mention who was Officer on Duty in the C.M.O. and whether he has been examined by C.B.I. The newspaper report reveals that the Chief Minister Shri Modi made aware about the telephonic talks by C.M.O.

With reference to the attached newspaper article, it is very important and duty of the C.B.I. to gives explanation regarding its investigation which appears to be very selective as it uses the same set of evidence for some accused and chooses to ignore the same set of evidence applicable for some accused and for reasons best known to C.B.I. drops the accused from the investigation despite there being evidence against all accused.

The newspaper report as aforementioned has also given reason why the C.B.I. has not taken action against the C.M.O. The reason is the popularity of the Chief Minister Shri Modi and his party's victory in Rajasthan, other States and thereby coming out with an apprehension that

perhaps Shri Modi may win in the Lok-Sabha and can become P.M. and hence no action should be taken against him despite there being glaring evidence against the C.M.O.

If the facts presented in the newspaper article are true, does that mean that just because a person is popular, he cannot be prosecuted nor any action under law can be taken against him. The article shows that C.B.I. has not taken action only because of popularity of Shri Narendra Modi which is presumed to makes him above the rule of law and above law.

If this newspaper article is true then the matter is very serious as nobody is above Law and the Constitution of India. It is needless to say that "Rule of Law" is supreme in India. Under this circumstances, C.B.I. cannot keep its 'mouth shut' and must give its response and reasoning for not taking action against the C.M. O. despite there being glaring evidence on record

collected during investigation, to the people of this country.

If the newspaper report, which has presented facts, is not true then the C.B.I. is required to reply point by point to the article and rebut the charges made against the C.B.I. It is pertinent to note that the C.B.I.'s inaction against the Chief Minister Office will create immense distrust in the minds of the people.

It is, therefore, requested to give clarifications immediately regarding the claims made in the newspaper report to the people of this country as it will be in the favor of democracy and as per the requirement of democracy.

Awaiting your early reply.

Thanking you,

Yours truly,

Gautam Thaker, General Secretary, *PUCL* Gujarat; **Suresh Mehta,** *Prabuddh Nagrik Shakti Manch;* **Prakash N. Shah,** *Lok Andolan Gujarat;* **Mahesh Pandya,** *Gujarat Social Watch;* **Rajni Dave,** *Gujarat Sarvoday Mandal* ❑

Gujarat PUCL: Pressnote: 09-01-2014

Concerned Citizens Protest: False FIR against Teesta Setalvad

"You are my Enemy if you do not surrender to me" Raise your Voices against Such Tendencies

We the citizens of Gujarat condemn and reject the malicious and cheap tactics used to slander the reputation and standing of Teesta Setalvad and others with fabricated allegations of misappropriation of funds. The motivated method of misusing the police machinery has been deliberately chosen to obstruct Teesta's efforts to give legal recourse to the survivors of Gulberg massacres as well as in other cases.

These are clear-cut fascist attempts to register false cases against Teestaben and others. The facts are as follows:

These are part of the Modi government's efforts to block the legal remedies of appeal in the Gulberg case where the lower court recently accepted the SIT's closure report and clean chit. This is apparent from legal expert Arun Jaitley's open exhortation to close the case after a mere Magistrate court's order. Why does the prospect of an appeal to higher courts so frightening the Bharatiya Janata Party (BJP) and why is it so desperate in its efforts to block the legal remedies like higher court appeals?

What great political advantage is going to accrue from the efforts to make son of a helpless widow who also her husband, and who also lost his father in the violence in 2002, an accused and jail and imprison him? Vicious political tendencies surface when basic human rights are trampled and when voices and organizations struggling for their protection are wrongfully embroiled in false cases.

The efforts, which are also being made to draw in RB Sreekumar, a man with an exemplary career record and Father Cedric Prakash are also not going to succeed.

The browbeating tactics are condemnable. A clear reading shows that the FIR is motivated and indicates that no offence has been made out, it is clear that the complainant has not been deprived of a single paisa; newspaper reports show that the accounts of the organizations have been audited and submitted to relevant authorities. Nothing is to be gained from these motivated investigations.

These browbeating efforts are clearly aimed at mental harassment. They will not work. The courage of conviction will not be broken by these tactics. The victory of truth is justice.

"If you do not agree with me or surrender to me, you are my enemy." We need to vociferously protest these brazen tendencies.

We strongly condemn these fascist methods to stifle the course of justice. We also appeal to all others to come forward to raise voices for the protection of truth and democracy in the state.

Suresh Mehta, Convener, *Prabhuddh Nagrik Shakti Manch;* **Prakash N Shah,** Editor, *Nirikshak;* **Gautam Thaker,** General Secretary, *PUCL Gujarat;* **Rohit Shukla;** President, *Save Education Gujarat;* **Dwarikanath Rath,** Convener, *Lok Andolan Gujarat;* **Indubai Jani,** Editor, *Naya Marg;* **Rajni Dave,** *Gujarat Sarvodaya Mandal;* **Mahesh Pandya,** *Gujarat Social Watch;* **Meenakshi Joshi,** *Mahila Sanskriti Sanghathan.* ❑

PUCL TN & Puducherry:
Press Release: 14 December 2013

Facts on Issue of Eviction Notice to Non-Tribals in Attapady, Palakkad District, Kerala

Misinformation campaign

The present issue of the notice to restore the illegally occupied lands to the Adivasis in Attapady of Palakkad district in Kerala is mischievously interpreted as an 'anti-Tamil' action of the Kerala government. This gives another excuse to the Kerala government to deny the rights of Adivasis in general, and Irulas, the original inhabitants of Coimbatore, in particular. On field inquiry by PUCL Coimbatore, it has come to light that of the 167 orders passed since 1987, no appeals were filed in 52 cases. 77 non-tribal persons in these 52 cases were now issued notices of whom 19 are tamils and 58 are malayalis. Of them 13 (belonging to both tamil and Malayalam speaking people), have suo motto handed over their lands to the concerned Adivasis.

Background

The Adivasis of Attapady are primarily Irulas who are listed as Primitive Tribal Group in Tamilnadu. They were the original inhabitants of Coimbatore speaking a Dravidian dialect of tamil mixed with Kannada. They were forced to move to the hills with the invasion of Vijayanagar and Hoysala kings and later by Tipu Sultan. The major section of these Irulas settled in the Anaikatti hills of Tamilnadu and the adjacent hills of Attapady of Kerala. During the 1960s they constituted over 80 % of the population of Attapady. By the end of 1990s, they were reduced to a minority with invasions of land grabbers from the plains of Coimbatore side and Mannarghat of Palakkad district.

Article 244 in Para 5(2) of Schedule V titled 'Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes' makes it mandatory for the state to ensure total prohibition of transfer of land of Scheduled Tribes by Scheduled Tribes to others. U.N Dhebar Commission in 1960 recommended that all tribal land alienated since January 26, 1950 - the day the Constitution came into force - should be returned to the original adivasi owners. A meeting of state ministers on April 1, 1975 passed a resolution: "Legislation for prevention of land alienation should be undertaken immediately. "A number of States that did not have enacted laws. 23 States and Union Territories have laws to protect tribal land. Tamilnadu did not enact such a law till date denying this constitutional protection to the STs of Tamilnadu.

The 'Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act, 1975' was one such law enacted. The Rules were however notified in 1986. All transactions of Adivasi lands during the period 1960 to January 1, 1982 become invalid and are to be restored to the original owners. All transfer of lands from tribal to non-tribal was banned from 1982. Over 8000 applications for restoration of land were made by Adivasis for over 10,000 acres. Of these half of the applications were rejected with some pretext or other. Notices were issued to the non-tribals in all the approved applications. However, the Kerala government did not take effective steps to restore the lands in order to protect the encroachments of the powerful non-tribals. Consequent to the High Court order to implement the law and restore alienated land on a petition filed by Dr.Nalla Thambi in 1988, the government took action to subvert the law in favour of non-tribals by enacting 2 ordinances which were not approved by the Governor, and an amendment which the President returned saying it was unconstitutional. Later the government enacted 'The Kerala Restriction on Transfer by and Restoration of Lands to Scheduled Tribes Bill, 1999' under which no restoration of land is required if the non-tribal holding is within 2 ha of agricultural land. The Adivasis would be provided alternate land instead. Non-agricultural lands however are to be restored to Adivasis. This law was challenged by Dr.Nalla Thambi and others as being unjust and unconstitutional; the High Court struck down the law as unconstitutional. However, on appeal by the Kerala government (PUCL - Kerala too had petitioned the Supreme Court against this 1999 law on behalf of Adivasis), this law was upheld by the Supreme Court in 2009. The Court also asked the Government to implement the provisions of the new laws and those provisions not repealed by the new law, and report to the Supreme Court.

Since mid-2012 to mid-2013, about 54 Adivasi children died owing to severe malnutrition in Attappady. This led to an uproar in the State which came under immense pressure. A number of investigations were made. Land alienation and non-restoration of alienated lands were pointed out as the single most important reason. An Attapady package was announced by the Chief Minister led committee of Ministers. Land restoration was given priority. Once again notices were issued to the non-tribals who are illegally occupying Adivasi land.

PUCL demands enactment of a similar law in Tamilnadu as has been done in Kerala to protect the Scheduled Tribes of Tamilnadu from land alienation and to restore their alienated lands.

S. Balamurugan, General Secretary, PUCL Tamilnadu & Puducherry ❑

A fact-finding report into alleged crossfire between the police and Maoists in the districts of Koraput and Malkangiri in South Odisha

A five-member team of human rights activists and concerned citizens enquired into three recent cases of alleged crossfire between the police and Maoists in the districts of Koraput and Malkangiri in South Odisha.

The fact-finding team visited the villages and surrounding areas of Litiput village in Gunnepada panchayat of Lamtaput bloack, Koraput district; Chiliba village in Balel panchayat, also of Lamtaput block in Koraput district and Silakota in Bapanpalli panchayat of Podia block in Malkangiri district over two days on November 9 and 10, 2013 and spoke to a cross-section of people. The following is a brief report of the findings.

Contrary to the official police and establishment version, all three purported exchanges of fire did not take place. It is the fact-finding teams' view that in all three cases, the police, which consisted of the Border Security Force (BSF), Special Operations Group (SOG) and District Voluntary Force (DVF) personnel, opened unilateral fire on the now deceased resulting in the deaths. We will elucidate below each of the three incidents.

A Brief Report on Recent Fake Encounters in Koraput, Malkangiri Districts of South Odisha

Deba Ranjan

A five-member team of human rights activists and concerned citizens enquired into three recent cases of alleged crossfire between the police and Maoists in the districts of Koraput and Malkangiri in South Odisha. The three alleged encounters resulted in all in the death of 15 persons, all stated to be Maoists by the police. There were no casualties or injuries on the side of the police. The fact-finding team visited the villages and surrounding areas of Litiput village in Gunnepada panchayat of Lamtaput block, Koraput district; Chiliba village in Balel panchayat, also of Lamtaput block in Koraput district and Silakota in Bapanpalli panchayat of Podia block in Malkangiri district over two days on November 9 and 10, 2013 and spoke to a cross-section of people. The following is a brief report of the findings. A more detailed report will follow in due course.

Contrary to the official police and establishment version, all three purported exchanges of fire did not take place. It is the fact-finding teams' view that in all three cases, the police, which consisted of the Border Security Force (BSF), Special Operations Group (SOG) and District Voluntary Force (DVF) personnel, opened unilateral fire on the now deceased resulting in the deaths. We will elucidate below each of the three incidents.

Killing of An Adivasi farmer at Litiput

On the night of October 29, Gangadhar Kirsani (about 30), an adivasi farmer of the Gadaba tribe left home at Litiput after dinner along with his relative and close friend Samara Challan to watch over their ragi fields till morning. Their fields are located close to each other. This was their daily routine since about three weeks as it was harvest time and the crop was prone to devastation by monkeys, deer and wild boar. The two managed to get hold of a crab in the rivulet enroute their fields which they hoped to cook and eat while they stayed up the night to keep the wild animals at bay. They were also listening to music on their mobile and with the help of a torch were heading to their ragi fields which was less than half a km from the village. It was a little past 8 pm.

Their fields were only a furlong away when out of the blue and without any warning there was firing from towards the right. The burst hit Gangadhar who was walking in front. According to Samara who was just a few feet behind him, the firing was from a fairly short distance. He was lucky to escape the burst because there were some bushes between him and the BSF men who unleashed the firing.

A terrified Samara dropped to the ground and then managed to somehow run back to the village and inform others. By the time the villagers rushed to the spot in less than 15 minutes, Gangadhar was alive and lying at about 15 feet where he was initially hit. He was in all likelihood dragged or lifted there by the BSF personnel who then left.

The villagers picked up Gangadhar and brought him several metres away to the semi-pucca road from where they were making efforts to arrange a vehicle to take him to a hospital. He was still conscious and moaning saying "I will not survive, they have killed me". His relatives noticed about four bullet injuries on him one of which had pierced his stomach and exited. "His intestines had come out and there was a lot of blood", they told the fact-finding team. Gangadhar kept asking his aunt Dohona Kirsani repeatedly for water. He died soon after even before a vehicle could be brought to take him to a hospital. He passed away about 45 minutes after being shot.

The villagers then informed the local police, in this case the Machkund PS but there was no response from the police. The next morning (October 30), over a hundred villagers

from Littiput as well as several other villages in the area went to the Machkund PS. They submitted a written complaint to the Inspector Incharge (IIC) Mr Routray stating that Gangadhar, an innocent farmer with no links at all to the Maoists was killed by the BSF. They waited till about 2 pm but the police only kept stalling saying "we will come over soon". Angry villagers then shook up the grills at the police station and even broke a table. The police finally went at about 5 pm and shifted Gangadhar's body to the district headquarters. A post-mortem was conducted at the Koraput hospital and the body was handed over to Gangadhar's relatives. He was cremated the next day on October 31. Gangadhar, who raised millets and rice in about 4 acres of land, is survived by his wife Malathi and 2 young sons.

The villagers told the fact-finding team that the IIC handed over Rs 15,000 at Machkund to Gangadhar's cousin Jaggu Kirsani and Rs 35,000 in cash at Koraput the next day before the body was handed over. Several policemen also told them: "a wrong has been committed". The Lamtaput BDO also handed over a cheque of Rs 20,000 to Gangadhar's family.

While these are the plain facts of the case, the police put out the outlandish version that Gangadhar was killed during a counter-insurgency operation by the BSF. The DIG South-West Range S Dev Dutta Singh stated that: "Around 30 BSF men spotted 50 to 60 Maoists near Litiput around 9 pm. No sooner the Maoists saw the BSF men, they started firing and our men retaliated. The exchange of fire continued for 20 minutes. The rebels fired around 30 rounds. Gangadhar was killed in the gun-battle." The DIG went on to add that whether the deceased was with the Maoists or caught in the cross-fire was under investigation and "if Gangadhar is found to be innocent then he will be compensated as per the prevailing government norms."

The fact-finding team as no hesitation in stating that Gangadhar, an adivasi farmer, was shot dead by BSF personnel on the night of October 29 near his village of Littiput when he was going to keep watch over his fields along with Samara Challan. There was no exchange of fire with the Maoists as the police claim. This is a clear case of a blatant murder committed by the BSF.

Having opened fire without any provocation and killing an unarmed civilian, the police tried to put out the usual falsehood of an exchange of fire with the Maoists to explain away a case of murder. They cannot simply wash their hands off in this manner. The police cannot manufacture the story of an encounter and then close the case. The law and the Constitution dictate that in every case of an alleged encounter resulting in death the police personnel who have participated in the said encounter must be charged with the offence of having committed murder and prosecuted. In this case, the BSF personnel who participated in the said "counter-insurgency operation" and opened fire must be charged with appropriate sections of the law and proceeded against. It is not up to the DIG or any other police or paramilitary officer to decide upon the innocence or otherwise of Gangadhar. That is simply not their brief. It is only after registering of a case and proper investigation of the crime that a court will decide upon the matter.

Chiliba

On August 24 this year, the Malkangiri and Koraput police claimed that a dreaded Maoist leader Madhav alias G Ramulu who carried a Rs 4 lakh reward was killed in an encounter with security forces the day before (August 23). The police claimed that following a tip-off, a joint team of the Special Operations Group (SOG) and police from Malkangiri and Koraput districts were undertaking combing operations in the forest near Chiliba in Lamtaput block of Koraput district when they came upon a Maoist camp. The police then announced to the ultras that they were surrounded and they had better surrender but the Maoists fired at them upon which the police retaliated in self-defence. A fierce gun-battle ensued at the end of which Ramulu, a member of the Maoist Andhra-Odisha Border Special Zonal Committee was killed. The police also stated that four other ultras managed to escape and they were on the lookout for them. Putting out this version, the Malkangiri SP Akhileswar Singh stated that Ramulu was a top Naxalite who was involved in many incidents of murder, extortion and landmine blasts.

The police version about the death is pure concoction. Ramulu, who was indeed a Maoist underground functionary, had come alone to Chiliba village, in Balel panchayat, on August 22. He spent the night in a farmer's shed which is used to store grain. The police appear to have had precise information about his whereabouts. Towards noon on August 23, two policeman went into the shed and shot him dead. Soon after, the body was taken to Koraput via Lamtaput in a van that was earlier parked by the police at some distance from the village. The story of a fierce encounter resulting in the death of a top Maoist was then dished out for public consumption.

It is not our case that Ramulu was uninvolved in violence and killing of civilians and police personnel. He may well have been, but that in no way gives the police the right to kill him. The point is that the police did have the option of easily taking him into custody but they did not exercise that. They chose instead to kill him in a cold-blooded manner. Having done so, they took recourse to the fiction of "exchange of fire resulting in the death of a dreaded Maoist".

During our fact-finding, we also heard the view from several people including

journalists reporting from the area, both in Koraput and Malkangiri districts, that Ramulu was seeking to surrender to the government. We were told that he was actually in the process of working out the logistics of giving himself up when he was liquidated by the police.

Mass Killings of Maoists at Silakota

This was by far the biggest "encounter" in which 13 persons were gunned down by the SOG and District Voluntary Force (DVF) in a pre-dawn raid on September 14, 2013. Silakota is a village located deep in the reserve forest range by that name. It falls in Bapanpalli panchayat of Podia block in Malkangiri village. The area is about 10 km from the Sabari river with Sukma district of Chattisgarh on the other side.

Maoist armed squad members, said to belong to the Kalimela dalam and numbering about 20, came and set up camp about three furlongs away from Silakota village on the afternoon of September 13. The place they chose was in a small clearing in fairly thick forest which is ranged on two sides by hills. It is quite clear that the police had information about their presence and a raid was decided upon.

A joint party of the SOG and DVF went on foot to the area in the dead of night. At about 4 am on September 14, they surrounded the camp from three sides and without any warning whatsoever unleashed fire. Thirteen persons who were in all likelihood asleep, died while the others managed to escape beyond the hills.

The bodies of only five of the 13 killed were identified over the next couple of days and they were cremated in the presence of their families and a magistrate. The other eight were unidentified and unclaimed and they were also subsequently buried by the Malkangiri administration. While the five identified were said to be members of the Kalimela armed squad and native to Malkangiri district, it is also possible that among the remaining eight, there could be some civilians and even combatants from other districts of Odisha or even from other States like Andhra Pradesh or Chattisgarh. We are not aware of the local administration making serious attempts to get their identity known by at least publishing photographs in the media, among other things.

Given the large number of deaths, the Silakota "encounter" was widely publicized in the media. What is extremely objectionable is the manner in which senior police officials literally gloated over the killings. The Malkangiri SP Akhileswar Singh, who reportedly led the team that killed the 13 was quoted in the media as stating that: "There was no option of asking them to surrender. Even if I had asked them, do you think they would have? They would have shot back at me and we would have suffered casualties. It's jungle warfare." "It was an operation based on precise information. We reached the area by foot and took them out. The heavy downpour helped drown the sound of our movements. Since it was raining, even their sentries had taken shelter in the three tents that they had put up."

These statements reveal an utter lack of respect for the law. An encounter by definition means an exchange of fire. The SP's bluster, in effect, amounts to an admission that there was no such exchange of fire at Silakota. The firing was unilateral and only from the side of the police. It was therefore, clearly, a "fake encounter". In the law, this amounts to murder.

The Orissa DGP while stating that it was a major success in the police drive against the Maoists stated: "This is a stern warning to the Maoists of other States. They will face a similar fate if they enter Odisha." He then proceeded to even announce cash rewards to the SOG personnel who had taken part in the killings. These are highly irresponsible statements and actions.

Conclusion

In all the three incidents that we looked into, there was no exchange of fire leading to the deaths of a total of 15 people as claimed by the police. There was only unilateral and one-sided firing from the side of the police and special forces like the SOG resulting in the deaths. The assertion of the police that they were fired upon and they had to therefore retaliate in self-defence is nothing but a plain falsehood. Affecting a closure of the matter after making this assertion, and merely registering a case under section 307 of the IPC (attempt to murder) against the now deceased, makes for a complete mockery of the law. Even the mandatory magisterial enquiry into these killings by the administration is no substitute for criminal prosecution of those who took part in these killings.

What is immensely worrying is the level of militarisation in the Southern region of Odisha. Over the past four years, there has been a big ratcheting up of security operations in these parts. The number of BSF camps in Malkangiri and Koraput districts has gone up and more and more of these personnel are being pumped into the area. This is leading to immense injury to adivasis resident in the forest and to an unacceptable violation of the right to life and liberty. It is not our case that the Maoists do not indulge in violence. The police are indeed endowed with the task of meeting that violence as and when it occurs but they must do so in a manner that is totally respectful of the law. They cannot go around violating the law and indulging in extra-judicial killings and then closing the case after duly invoking the convenient concoction of "retaliation in self-defence".

The police are only as lawful or lawless as the government wants them to be. It is our considered view that the government, both at the

Centre and in Odisha has fashioned a policy of seeking to physically wipe out the Maoists. This is born out of a basic understanding that there is nothing to that movement except violence and criminality. In other words, despite official statements from time to time that the Maoist movement is not merely a law and order issue but one having strong socio-economic components, the attempt at the ground-level has always been to annihilate it with the help of Special Forces. This ruthless policy must end, not least because it results in extreme brutalisation of civilian non-combatants. The government must implement comprehensive policies that seriously and sincerely address issues of social and economic deprivation in the 5th Scheduled areas.

The fact-finding team's demands:

1. A case of homicide under 302 IPC must be booked against all police and special force personnel who participated in the killings at Litiput, Chiliba and the Silakota forest. The investigation into these killings must be handed over to the CBI or a criminal investigation team under the aegis of the National Human Rights Commission (NHRC).
2. We urge the Odisha State Human Rights Commission to take cognizance of the killing of Gangadhar Kirsani of Litiput village and issue appropriate orders. His family must be paid a compensation of not less that Rs 10 lakh. The administration must also ensure that his wife Malathi is given a government job without further delay.
3. The government must not ride roughshod over protective legislation meant for adivasis. The hard won rights of the adivasis must be fully respected and honoured and PESA, FRA and other statutes must be implemented in letter and spirit. Systematic policy interventions must be made to ameliorate the material conditions of the adivasis and other traditional forest dwellers in the 5th Scheduled areas.
4. The Maoist movement must be viewed as and addressed as a political movement and not as a mere outbreak of criminality. It must be acknowledged that this movement, though it does employ violence to further its goals, is one that has deep roots in material deprivation, social oppression and lack of freedom.
5. Government must stop its ongoing policy to decimate the Maoists militarily. Serious efforts must be made by both the Government and the Maoists to initiate steps that would lead up to an unconditional dialogue.

Members of the fact-finding team:

Nihar Das of *Ganatantrik Adhikar Suraksha Sangatan* (GASS), Orissa: **VS Krishna** and **N Amar** of the *Human Rights Forum* (Andhra Pradesh): **Deba Ranjan,** Writer, Social Activist and Film-Maker: **Debi Prasanna,** Social Activist. *(Forwarded by:* ***Sudha Bhardwaj****)* ❑

Press Statement from Public Hearing on Sexual Violence organized by Women in Governance [WinG-India] in Guwahati on January 8-9, 2014

New Laws to Protect Women Bring No Hope to Victims

New laws to protect women bring no hope to victims of sexual violence in Assam exclaimed a shocked panel of Jury members at the Public hearing on sexual violence

A two day State level Public hearing on sexual violence was organized by Women in Governance [Wing-India] in Guwahati on January 8-9th, 2014. 21 cases of sexual violence were deposed before an eminent Jury comprising of Manjula Pradeep (Dalit Rights Activist), Roshmi Goswami (Women Rights Activist) Rakhee Kalita (Academician), Gayatri Singh (Human Rights Lawyer), Babloo Loitongbam (Human Rights Activist), Henry Tiphagne (Human Rights Activist), Sabda Rabha (Human Rights Lawyer) gave strong recommendations on the legal mechanisms and also provided different social, economic and legal perspectives.

These 21 cases included gang rape, molestation, voyeurism, acid attack, marital rape, sexual assault and state induced sexual violence covered 11 districts of Assam- Cachar, Kamrup, Kokrajhar, Chirang, Tinsukia, Jorhat, Nagaon, Dibirugarh, Mangaldoi, NC Hills, Dima Hasao.

The members of the jury have heard the depositions and studied the documents of each case. Based on the hearing and the interaction with the victims and families, the Jury has prepared an interim report, which was shared with the media today in Guwahati.

The National and State Human Rights Institutions, the State and District Legal Services Authorities, the functionaries of the Criminal Justice Administration, the Child Welfare Committees seem to be in a 'conspiracy of silence' and serving the interest of the perpetrators of violence against women and continuing impunity. This is despite the array of new laws and rules and guidelines that exist in our country today, said Henri Tiphagne, lawyer, human rights trainer & defender, Honorary ED of People's Watch - India, Chairperson - Forum Asia (Bangkok), Exec Com member of the World Organization Against Torture [OMCT- Geneva] and presently the Convener of the Working Group on Human Rights in India and the UN

The failure and apathy of the existing State institutions in providing justice to the victims of sexual violence was clear in every case presented at the public hearing. Another Jury member, Manjula Pradeep, the Executive Director of Navsarjan, Gujarat expressed, to effectively address sexual assault we have to crack state impunity and ensure rule of law to bring justice for the victims.'

'North East has always been the guinea pig for all kinds of draconian laws in the name of security. But when it comes to the security of our women and girls, all the legal protection afforded by the new laws in the form of Criminal Law Amendment, the POCSO Act, the SC/ST Prevention of Atrocities Act etc. seems to blunted by deep patriarchal prejudice and apathy of the implementing agencies,' said Babloo Loitongbam, executive director of Human Rights Alert (HRA), Manipur.

Sabda Rabha, Advocate, Guwahati High Court, gave a call for civil society in Assam to play a pivotal role in monitoring cases of sexual violence and ensure a systemic overhaul to address the increasing violence against women. Further he added, the juvenile justice system seems to be in total shambles and without a proper institutional response, the victims of violence remain in great risk.'

Women in Governance-India, will follow up on the cases based on the Jury recommendations and will build pressure on the State institutions to provide justice for victims of sexual violence. The Jury will provide letters addressed to Human Rights Commissions and the Chief Justice of Guwahati High Court, pressing for immediate follow up of the cases presented at the Public hearing. 'It is a shocking state of affairs to note the prejudice of the legal fraternity and this needs to be addressed. There is an urgent need to ensure a fast track approach to the entire process of registration, investigation and prosecution. This is particularly imperative in contexts of protracted armed conflict in North East India, said Gayatri Singh, Co-founder, Human Rights and Law Network and Advocate, Bombay High Court.

Another member of the Jury, Rakhee Kalita, Fellow, in the Nehru Memorial Museum and Library at the Center for Contemporary Studies, New Delhi adds *that social exclusion and discrimination brings in multiple forms of violence on women from excluded communities and increases the barriers to justice.

Roshmi Goswami, a leader of feminist movement in South Asia said ' We need to send out a strong message of shifting the shame from victim-survivor and push and pin it firmly on the perpetrators. It is high time to end this impunity and societal victimization, which further threatens and intimidates the victims. Constant monitoring of gender bias and insensitivity of prosecutors and members of judiciary is imperative.'

The participants at the public hearing included family members of the victims, representatives of civil society organizations, students and members from WinG from various states of India.

Ms. Bondita Acharya ❑

Press Release: 1.01.2014

Land Acquisition Act, 1894 of British Legacy Comes to an End

This is the time to hail the struggle, salute the martyrs and take the people's movements forward.

Today along with the ending of the year 2013 the Act of British legacy on Land Acquisition, 1894 also came to an end. It was this Act that brought in undemocratic and unjust eviction and displacement of crores of our brethren as also martyrdom of many, dalits, adivasis, farmers, fish workers and others. The Act has led to uprootment of many communities and destroyed their socio-cultural environs including agriculture and livelihoods. It has led to destruction of ecosystems and natural resources, extracting and harnessing those but not benefitting the real needy populations. It has changed the paradigm of economies and development technologies, diverting the land, water, forest, aquatic and mineral wealth, toward cities and corporates more often than the poor and needy populations.

This Act is now replaced with a new Act, a part victory of decades long struggle of adivasis, dalits, farmers, fish workers as well as urban poor. The non-violent yet many militant struggles from Narmada to Nandigram, Koel Karo to Kalinganagar, POSCO to Vedanta, Mumbai slums to Ranchi, Hyderabad, Chennai and Bangalore have finally compelled the Central Government to change the legacy partly and bring in a new Act. This is the time to hail the struggle, salute the martyrs and take the people's movements forward.

The new Act brings in some space for Gram Sabhas' consent, consent of the 80% land-holders for private projects, Social Impact Analysis, upto 2.5 acres land per family to the adivasis in rehabilitation, and upholds minimization of land acquisition and diversion of multiple crop agricultural land etc. However, the Act has a number of short-comings and yet creates some space for people's participation, consultation to consent, in different projects at different levels. While welcoming the change, therefore, we must take oath to broaden and strengthen our struggles for right to natural resources and sustainable just development planning with those.

Hundreds of farmers and fish workers, adivasis and others celebrated the

end of British legacy by burning a torch and taking a resolve at the martyrs statue *(Shaheed Stamb)* at Barwani in the Narmada Valley, Madhya Pradesh. A small farmer and ardent struggler, Devram Kanera expressed deep faith in nonviolent struggle that has brought the result. He challenged the governments to show their might but appealed to them to follow the new Act and discard the inhuman ways and means to development. Advocate Prashant Patidar , Vijay Valvi, Jalal Bhai and other adivasis affected by the Sardar Sariovar Dam, Narmada Canals and the companies such as Ultratech Cement ushered in the Valley of Narmada expressed their vigour and commitment to save agriculture, millions of trees, the river and fish which are the rich resources in the valley of Narmada, threatened with destructive projects. No project can now be imposed upon us, unless we give consent as Gram Sabhas and affected population based on the social, economic and environmental appraisal.

Sardar Sarovar Project, people asserted would also come under the purview of this new act since the land acquired continues to be in possessions of the farmers till date. *"Punjipatiyo Ki Jagir Nahi, Yeh Desh Humara Hai",* was the voice raised by Kamla Behen, Meera Behen and others. Medha Patkar narrated the history of NBA and NAPM across the country that has finally created some political space for the Gram Sabhas and the Ward Sabhas, who can now have some opportunity to counter displacement in the name of development. *Jal, Jungle, Zameen Haq Andolan* should come up in every rural area to townships and cities wherever people have to stand and assert their rights. She appealed to the younger generation and all supporters standing for democracy and justice to join in whichever way possible. A torch-light *(Mashal)* was burnt amidst songs and slogans while a copy of the Land Acquisition Act, 1894 was burnt to ashes.

Kailash Awasya, Bhagirat Dhangar, Bilal Bhai, Chetan Salve, Meera ❑

Manmohan Singh has become a Threat to Environment and Public Health

Indian National Congress led Govt ignores environmental and occupational diseases and deaths

December 31, 2013: At last the Environment and forests Ministry has earned the privilege of being headed by a cabinet minister. But the irony is that Veerappa Moily's acceptance of the role of being an Environment & Forests Minister who has a regulatory role exposes his hypocrisy because as Minister of Petroleum & Natural Gas, he is a promoter of projects which are cause of environmental destruction.

There is manifest conflict of interest here because projects from Oil and Petroleum ministry come to environment ministry's expert appraisal committee for environment clearances. His appointment reveals that Dr Manmohan Singh, the Prime Minister has become a threat to environment and public health.

Moily's appointment as environment minister is more controversial than his appointment as Oil & Petroleum Minister by replacing S. Jaipal Reddy to pander to the interests of companies like Reliance Industries Ltd. The fact remains Reddy's integrity was unblemished and Jayanthi Natarajan's performance was not as good as Reddy or Jairam Ramesh, her predecessor.

How could Dr Manmohan Singh allow Moily to be a promoter as well as a regulator? Such gross conflict of interest exposes Dr Singh and Moily as few of the most insincere politicians in the country.

Till now the environment ministers were kept structurally weak so that whenever there is conflict between blind economic growth and ecology, the former is given precedence at the cost of the latter. The environment ministry has been designed to be structurally weaker than all the other ministries, which adversely impact the environment and poison our food chain. The fact of appointment of Moily, the promoter of environmentally destructive projects as the environment minister underlines that Prime Minister does not accord the priority,

environmental issues deserve. The Prime Minister is quite insensitive to the collapsing ecosystem.

It has been noted that as Oil & Petroleum Ministry, Moily has been writing to MoEF against expanding boundaries of Pushpagiri Wildlife Sanctuary in Dakshin Kannada, supported controversial Netravathi

Diversion project (Yettinahole Diversion Project) for his constituency of Chikkaballapur. As environment minister he is under structural compulsion to be disregard environmental concerns for electoral gains.

What is sad is that the Prime Minister has failed to realize that the threat to the integrity of the natural systems is a threat to human health, and such threats have become routine because of myopic industrial agriculture, blind urban development, regressive transport systems and criminal neglect of non-human species.

While legislative safeguards for environmental protection do seem to exist on paper, the role of the political class which is funded by corporations (under Companies Act, 2013 companies can pay up to 7.5 % of their annual profits to political parties) illustrates that homicidal ecological lawlessness that has led to rampant industrial pollution, soil erosion, agricultural pollution, and genetic erosion of plant resources

are quite crucial and merit more acknowledgment.

This is an anti-environment proposition because the donors are bound to seek lax environmental laws in return of their contribution to political parties. Unless there is state funding for political parties to fight elections, it is unlikely that the structural weakness in the environmental governance can be rectified. The payments to the Indian National Congress from these donors seem to have led to the appointment of Moily to safeguard their profits at any environmental cost.

Now little can be done to prevent ongoing of our contamination of blood, congenital disorders, preventable but incurable cancer or extinction of known and unknown living species on our planet. The Prime Minister and the Chairperson of Indian National Congress led United Progressive Alliance has failed to recognize the compelling logic to re-examine the premises of Industrial Growth and design a new one. In the developed world the model of development is under interrogation because of environmental problems.

Indian National Congress led Government failed to respond the crisis emerging from industrial pollution, vehicular pollution, land use change, mutilation of rivers, aquifers and diversion of agricultural land. Citizens have been forced to internalize the cost of environmental damage and pollution even as the human environmental cost of environmental destruction has been externalized for corporate profits. It was expected that the Government would take cognizance of the health indicators of the deteriorating environment in terms of a double burden of disease but under the leadership of Dr Singh it has been rendered spineless by the corporate contribution to its constituent parties.

As an Environment Minister, Moily would ensure that the status quo of land-water binary that has been created to deal with land resources and water resources separately as part of colonial legacy must be done away with and a genuine river basin approach is adopted which would also require rewriting of the industrial policy.

Being from Karnataka, the new minister is likely to pander to parochial interests by supporting the demand for catastrophic projects like interlinking of rivers. He is expected to aggravate the unhealthy legacy of bulldozing rivers, flood plains, forests, biodiversity, natural drainage etc as if citizens, forests and wildlife are irrelevant.

Dr Singh's policies have led to clearance for ecologically disastrous industrial projects. There was need to publish a database of environmental criminals and fugitives with their photographs and profiles with the name of the companies which fall under the 64 heavily polluting industries under the Red category (highly polluting industries), 34 moderately polluting industries ('Orange' category) and 54 'marginally' polluting units ('Green' category) and to publish a list of India's Most Wanted Environmental Criminals with wanted posters. But the Prime Minister is likely to connive and collude with the environmental criminals and fugitives. The new Government after 2014 elections will inherit a very sad legacy.

The Prime Minister has failed to stop transboundary movement of polluting technologies, hazardous wastes, creating an inventory of hazardous chemicals and wastes besides conducting an environmental health audit along with the ministry of health to ascertain the body burden through investigation of industrial chemicals, pollutants and pesticides in umbilical cord blood.

In one study in the US, of the 287 chemicals detected in umbilical cord blood, 180 were known to cause cancer in humans or animals, 217 are toxic to the brain and nervous system, and 208 cause birth defects or abnormal development in animal tests. Absence of such studies in India does not mean that a similar situation does not exist in India. Until and unless we diagnose the current unacknowledged crisis, how will he regulatory bodies predict, prevent and provide remedy.

Indian position on the UN's Rotterdam Convention meeting on hazardous chemicals with regard to cancer causing mineral fibers like chrysotile asbestos has become regressive under Dr Manmohan Singh Government.

India opposed the listing of chrysotile asbestos under Annex III of the Rotterdam Convention at the sixth meeting of Conference of Parties on May 8 in Geneva. Substances listed under Annex III of the Convention -- a global treaty to promote shared

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Organisational Queries

We receive from time to time queries/requests from new members regarding the PUCL identity card and also regarding the privileges of the **Life** members and **Patron** members as compared to **Annual** members.

The three types of membership, *i.e.,* ***Yearly***, ***Life***, and ***Patron***, do not represent a hierarchy of membership. All members are equal. Life membership and Patron membership simply afford an opportunity to those who desire to contribute some extra money to the PUCL to strengthen its financial position. No membership carries any privilege. All members shoulder the burden of fulfilling the aims and objects of the PUCL. The PUCL does not issue any identity cards to its members as they are not supposed to take initiative independently.

V. Suresh, National General Secretary, PUCL

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responsibilities in relation to import of hazardous chemicals -- require exporting countries to advise importing countries about the toxicity of the substances so that importers can give their prior informed consent for trade. During the fifth Conference of Parties in June 2011, the Indian delegation had agreed to the listing of chrysotile asbestos in the PIC list, but later took a U-turn. Indian delegation's position was inconsistent with domestic laws, which lists asbestos as a hazardous substance. In keeping with Indian laws when the UN's Chemical Review Committee of Rotterdam Convention recommended listing of white chrysotile asbestos as hazardous substance, it is incomprehensible as to why Indian delegation opposed its inclusion in the UN list. The only explanation appears to be the fact that the Indian delegation did not have a position independent of the asbestos industry's position, which has covered up and denied the scientific evidence that all asbestos can cause disease and death.

Although chrysotile asbestos banned in more than 50 countries, Indian National Congress led Government's patronage to this killer industry has led to an increase in consumption of asbestos in India. In India, import of asbestos rose from 253,382 tonnes in 2006 to 473,240 in 2012, a steep increase of 186 per cent in six years. This reveals that Dr Singh's government is anti-environment and anti-public health.

His Government has ignored global experiences of INTERPOL Environmental Crime Committee and its Working Groups on Wildlife Crime and Pollution Crime. India too needed similar approach but Dr Singh's government is dealing only with civil cases through National Green Tribunal which is hardly sufficient. In 1995, in one of its landmark judgments the Supreme Court in the matter of Indian Council for Enviro-Legal Action v. Union of India observed, "Environmental Courts having civil and criminal jurisdiction must be established to deal with the environmental issues in a speedy manner. Further, it must be manned by legally-trained persons/judicial officers." The Tribunal violates the court order by excluding criminal jurisdiction.

Dr Singh has failed to regulate pollution and environment crime. The 141-page report of the steering committee on the environment and forests sector for the eleventh five-year plan prepared by Planning Commission states: 'The number of polluting activities - and the quantum of pollution generated - has increased in the last several years. Furthermore, newer and newer environmental challenges are thrown up - from solid waste disposal, to disposal and recycling of hazardous waste, to toxins like mercury, dioxins and activities like ship-breaking to management of vehicular pollution.' Dr Singh's government failed to meet 'the regulatory challenge'. As a consequence environmental regulation has not kept pace with environmental crimes.

After serving for two years, Jayanthi Natarajan resigned from the post of junior minister of state for environment and forests on December 21, 2103. Veerappa Moily, the petroleum and natural gas minister, was given the additional charge of environment ministry.

Gopal Krishna, *Toxics Watch Alliance* (TWA) ❑

ATTENTION

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