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Inside :

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The Implication of the Threat to Judiciary's Independence

Prabhakar Sinha

Both the Law Minister Kapil Sibal and the Leader of the BJP in the Rajya Sabha, Arun Jaitley, have attacked the Supreme Court for inaction against Justice Mr A.K. Ganguly without pointing out its omission. In fact, Arun Jaitley has reportedly insinuated that the apex court would have acted differently had the case involved a politician. Their aim was not to right the alleged wrong of the apex court but to demoralize the judiciary with a purpose. The history of attempt to demoralize and undermine the independence of the judiciary and make it subservient to the executive (government) is not new or recent. As early as in the early seventies Indira Gandhi gave an open call for a 'committed judiciary', i.e., a judiciary not committed to the constitution but to the government. She was not content to give the call only but vigourously pursued her sinister goal. When the Supreme Court rejected the claim of her government (in Keshavanad Bharti v State of Kerala) that Parliament had unfettered power to amend any part (including the Fundamental Rights) of the constitution by a 7:6 majority, she retaliated by superseding three of the senior judges who were part of the majority and appointing Justice Mr A.N.Ray as the Chief Justice of India. The superseded judges resigned. The message given was loud and clear: either obey or be prepared to pay the price for independence. The message did not go in vain. Its effect was clearly seen when the Supreme Court held (ADM, Jabalpur v Shivkant Shukla, 1976) that when Art.21 was suspended during the emergency, the right to life and personal liberty itself was suspended and a person had no legal remedy even if a policeman kills him for personal reasons. It was a frightened judiciary which sacrificed the life and personal liberty of the people at the altar of the political masters. The fear was not the threat to their life or personal liberty, but related to their career and also of unenvisaged consequences. Justice Mr H.R. Khanna was the only judge to have the courage of conviction to give a dissenting judgment disregarding his personal interest. Indira Gandhi punished him by superseding him and elevating a judge junior to him as the Chief Justice of India.

When Indira Gandhi returned to power in 1980, the judiciary again appeared to act under her fear. Though witness to the evil consequences of the absolute power of appointment and transfer of High Court judges and appointment of Supreme Court judges remaining in the hands of the executive, it still held (S.P.Gupta v Union of India, 1982) that the President had the unfettered power to disregard even the unanimous recommendation of the others concerned (Chief Justice of India, the Chief Justice of the High Court concerned and the Governor of the concerned state in the appointment of H.C. judges and that of the CJI in appointment of judges of S.C. and transfer of the judges of H.C.). The bench was headed by Justice Mr P.N. Bhagwati, who was one of the judges who had given the disgraceful

judgment depriving the people of India of their right to life and personal liberty. He had also written a personal letter to Indira Gandhi eulogizing her when she returned to power in 1980,which was unbecoming of a judge of the apex court. Following this judgment, the government used its power to pack the higher judiciary with men of straw with unwelcome consequences for the people.

The situation changed in 1993 (S.C Advocates on Record Association v Union of India), when the Supreme Court snatched the power of appointment to higher judiciary as well as of transfer of High Court judges from the executive and arrogated it to itself. It held that the recommendation of the collegium consisting of the Chief Justice of India and four senior-most judges of the Supreme Court would be binding on the President. It is widely believed that this system has resulted in large-scale appointment of undeserving persons to High Courts, many of whom are related to judges. Taking advantage of the dissatisfaction with the present system the political class has initiated a move to change it by amending the constitution and vesting the power of appointment to higher judiciary and of transfer of High Court judges to a Judicial Appointment Commission. The Judicial Appointment Commission Bill, 2013, which has already been passed by the Rajya Sabha provides for a Judicial Appointment Commission consisting of the Chief Justice of India, two senior-most judges of the Supreme Court, the Law Minister and two eminent persons selected by a panel consisting of the Prime Minister, the Chief Justice of India and the Leader of the opposition. There is also a dangerous and sinister provision that this provision can be modified or altered by Parliament by an ordinary law, which means that it can also be changed by promulgating an ordinance. Thus at any time the composition of the Commission can be changed by a government which wants to have supremacy in the appointment of judges of the High Courts and the Supreme Court. Even under the present bill the primacy of the judiciary has been taken away. There will be three judges and three others including the Law Minister without the CJI (Chief Justice of India) having a casting vote. Consequently, judges appointed by the JAC (Judicial Appointment Commission) will be beholden to not only the judges but also politicians.

Ideally, the judges should be persons of unimpeachable character, but if all of them do not possess that high a moral character and many are amenable to influence, the influence of politicians would be far more dangerous than that of the judges. It is simply because the judges have to deal with political issues and politicians almost on a daily basis where political influence can have very baneful consequences which is not the case with the judges.

The independence of the judiciary is under greater threat now than in the past. When the Congress had the monopoly of power and the opposition's prospect of coming to power appeared remote, they needed an independent judiciary for their own security. Indira Gandhi's fear made them stand for an independent judiciary, constitutional values and human rights. The weakening of the Congress Party and most of the major opposition parties in power in states, the political class has a common fear of an independent judiciary. The fear now unites them in seeking the common goal of weakening the judiciary.

When the apex court held that the candidates seeking election to any legislature must furnish information regarding their educational qualification, income and criminal cases against them at the time of filing their nomination papers, they joined hands and the Parliament inserted a provision in The Representation of the People Act asking the candidates to disobey the courts and the Election Commission and furnish only information required under the Act and the rule. It was only after the apex court on the petition of the PUCL held the provision to be unconstitutional that the candidates furnished the information. Recently, when the apex court held that a legislator ceased to be a member of a legislature if convicted of any offence and sentenced to imprisonment for not less than two years, they again joined hands to undo the judgment by amending the Act. It did not materialize due to their immediate conflict of interest. The political class has a common interest in weakening the judiciary and making it pliant, because they have the same policy of robbing the natural resources of the country to enrich the already filthy rich and letting loose a reign of terror against the poor who protest. They all want a judiciary which would declare Salwa Judum to be legal, would declare the loot in 2G scam, the Coalgate and other scams a policy matter beyond its jurisdiction as publicly claimed by the Prime Minister (Man Mohan Singh). They want a demoralized and pliant judiciary acquiescing in their loot and plunder and unlawful repression of those who complain, or protest against their victimization.

An independent judiciary may not be crucial for the judges, but it is very crucial for the common man. The judges are public servants appointed under certain terms and conditions. If their service conditions are lawfully changed, a few may quit but the rest will continue to do their job. It is for the society to create conditions for them to be able to act independently and impartially and do their job without fear. It is for them to do their job honestly rising above temptations. The judges can speak only through their judgment and are not expected to allow their self-interest to determine their judgments. It is in the interest of the people to protect the independence of the judiciary to ensure that the judges may function without fear or favour.

The judgment of a scared judiciary leaving the life and personal liberty of the entire nation at the mercy of an authoritarian ruler (ADM Jabalpur) with its evil consequences should act as an eye opener leaving no room for indifference or complacency to the question of the independence of the judiciary. ❑

PUCL Statement on SC Judgment reversing Naaz ruling of Delhi High Court
"Repeal S.377 IPC ! Use of s.377 IPC is itself an abuse!"

New Delhi: 12.12.2013

The People's Union of Civil Liberties is shocked and expresses its deepest disappointment at the judgment of the Supreme Court in *'Suresh Kumar Kaushal v Naz Foundation'* delivered on December 11th, 2013, reversing the Delhi High Court judgment of 2009 which had recognized that Lesbian, Gay, Bisexual, Transgender (LGBT) persons are full citizens of India.

We wish to point out that the key constitutional issue underlying the challenge of sec. 377 IPC, is that sec. 377 essentially discriminates between people on the basis of their sexual orientation thereby criminalizing same-sex relations. Thus by affirming the constitutional validity of the outdated section 377 of the IPC, introduced 153 years ago, the Supreme Court has once again reinstated a discriminatory law which violates the right to equality, privacy and dignity and the freedom of speech and expression of a section of the Indian citizens, by criminalizing same sex consensual relationships in private. The effect of the SC ruling has once again relegated LGBT persons to the status of `second class citizens' because of their sexual orientation and reduced them to what the Delhi High Court evocatively referred to as **'unapprehended felons'.**

The observations of the Supreme Court that in last 150 years there have been only 200 reported prosecutions is neither here nor there. Firstly, that there are only a few prosecutions is no reason to have a provision which is otherwise unconstitutional. Further, cases of harassment, victimization and torture of LGBT persons seldom translate into `reported prosecutions'. Thus PUCL wishes to point out that using the number of reported prosecutions as the basis for upholding constitutional vires of any provision is unreasonable and dangerous precedent.

The PUCL is of the opinion that the Delhi High Court judgment was legally robust when it held that section 377 was violative of Articles 21, 14, 15 of the Constitution. The key reasons put forward by the Delhi High Court for reading down sec. 377 IPC have unfortunately not been fully considered or answered by the Supreme Court while upholding the constitutionality of the provision. World over there is recognition that sexual preferences are not an aberration and need to be considered as part of a natural orientation. It is with this progressive understanding that even Britain, from where sec. 377 IPC originated, has repealed such ante-diluvian provisions and is in the process of legalizing same-sex marriages. In the ultimate analysis medieval morality appears to have prevailed over constitutional guarantees.

The SC court erred in concluding that mere abuse of a penal provision does not warrant declaring it unconstitutional. In stating this, the court lost sight of the fact that in the instant case the **use of S. 377 against consenting adults is itself an abuse.** PUCL in its report `Human rights violations against sexuality minorities in India' as far back as 2003 (http://www.pucl.org/Topics/Gender/2003/sexual-minorities.pdf) has documented the persecution, torture and atrocities faced by LGBT community at the hands of the State for the sole reason of their sexual orientation. Such persecution is legalized and therefore legitimized by the existence of S.377 IPC in the statute books. The SC has unfortunately added the weight of its authority to such persecution! In PUCL's view, the judgment will therefore only strengthen the homophobic mindset which exists in a section of Indian society.

PUCL reiterates its position that sec. 377 IPC should be repealed and does not have a place in the law books of a modern India.

PUCL also calls upon political parties to undo the historic injustice done to the LGBT community and immediately repeal S 377 IPC in the current session of Parliament itself.

Prabhakar Sinha, President; **Dr. V. Suresh,** National General Secretary; **Kavita Srivastava,** National Secretary ❑

Press Statement urging Justice Mr. Ganguly to Resign

7th December 2013

In view of the a committee of three Supreme Court judges holding Justice (Retired) Mr. A.K. Ganguly guilty of "an act of unwelcome behaviour (unwelcome verbal /non verbal conduct of sexual nature) with an intern, the People's Union for Civil Liberties urges Justice Mr. Ganguly to gracefully tender his resignation from the post of the Chairperson of the West Bengal Human Rights Commission to uphold the dignity of the high office that he holds and also to uphold the rule of law.

Sd./-

Prabhakar Sinha, President ❑

Press Statement on the Tehelka Sexual Assault Case

02.12.2013

The PUCL

1. Expresses Solidarity with the struggle of the Tehelka Journalist who raised her voice against Rape and Intimidation by the Ex-Editor Tarun Tejpal.

2. Demands fair investigation and early charge sheet into the matter, from the Goa Police.

3. Considers Six Day of Custodial interrogation of Tarun Tejpal granted by the Goa Judicial Magistrate Court unnecessary and invidious.

4. Appeals that police custody and the case not become a tool in the hands of BJP administered Goa police to settle scores with Tejpal.

The People's Union for Civil Liberties from the very beginning has supported the complaint of the woman journalist of Tehelka magazine who accused the editor of Tehelka, Tarun Tejpal, of rape and sexual assault. PUCL salutes her courage for breaking the silence on rape and sexual intimidation carried out by her senior colleague and editor. We have also admired the consistent and principled manner in which the young girl stated her case, initially via internal emails within Tehelka, and later on to the media, neither allowing vituperation or anger at the blatant violation of her body to sensationalise her case or to prevaricate about the fact of the offence having been committed. Through her dignified stand she stands as a model to all women who suffer similar sexual violence, that the dignity of a woman's body cannot be a plaything for anybody howsoever influential and powerful they be. By the same token, we also denounce the vilification campaign carried out by Tarun Tejpal and his lawyers against the complainant by seeking to impute that the entire crime was actually a `consensual' act or at trying to trivialise the crime by calling it "light hearted banter".

PUCL wishes to point out that Tehelka, which has extensively covered cases of sexual harassment in the work place and sexual violence, has itself not constituted an independent internal complaints committee as mandated by the Vishakha Guidelines laid down by the Supreme Court to look into allegations of sexual harassment in the work place. This is most unfortunate and unacceptable. We especially note with concern the response of the Managing Editor, Shoma Choudhury whom the woman journalist first approached with her complaint of rape and sexual assault by Tarun Tejpal. As the Managing Editor, Shoma Choudhury, had an institutional responsibility under the criminal laws as also under the Visakha guidelines to report the crime forthwith; instead the response was one of diverting, diluting and covering up the incident. Such a response akin to how most male dominated institutions respond to such accusations, is not just unfortunate but also unacceptable and to be denounced.

We therefore once again raise our voice in support of the demand for the implementation of Vishakha Guidelines, which are an effort towards enforcing sexual harassment-free workplace norms for all women, particularly for women in the media; as also other sectors, all over India.

Six Days Custodial Interrogation: Unnecessary and a tool to harass Tejpal?

While we support the prosecution of Tarun Tejpal, we at the same time would like to express our concern over the granting of six days police custody of the accused by the Judicial Magistrate to the Goa State police. The grant of PC has to be seen in the background of the complainant having recorded a sec. 164 Criminal Procedure Code statement before the local Magistrate and the police having seized all the relevant emails and other records including CC Video tapes form the hotel. The accused, Tarun Tejpal, has already been questioned by the police.

Considering the very limited frame of reference of the complainant's case, the legality of granting days PC is questionable. What causes concern is that some papers report that the 6-days are required to extract a confession out of Tarun Tejpal. Whatever the veracity of this, we are concerned that force may be used to extract an involuntary confession This is totally against the law and unacceptable.

It is also difficult not to ignore the allegation that the prosecution is using the judicial process as a tool to humiliate and harass the accused. We clarify that in the present case the evidence that needs to be collected could have been gathered in a day and the accused ought to have been sent into judicial custody. In any case, we hope that no further extension of Police custody is granted at the end of the current remand period. We also call upon the Goa police not to indulge in torture or in any way, maltreatment of the accused Tarun Tejpal.

PUCL would like to stress that the criminal justice system, and the police who are its administrators, are under a constitutional obligation to remain unbiased, independent and committed to the truth. The police are also under a constitutional duty to implement the law without fear or favour of the ruling government. Unfortunately, in the current case, we cannot lose sight of the conflict-ridden and acrimonious relations between the ruling BJP government and the Tehelka magazine. We are concerned that this specific case of sexual violence and assault on a woman journalist may become politicized and become the basis for settling scores by the ruling BJP government against Tarun Tejpal. If this were to happen, it will seriously weaken the case of the woman journalist, divert attention from the serious nature of such sexual assaults and in the end denigrate the entire criminal justice system.

PUCL condemns and expresses concern over the vandalisation of residence of Shoma Choudhary, former Executive Editor of Tehelka by some members of the BJP last week. This is unacceptable and anti-democratic act.

In conclusion, PUCL calls upon all

political parties, organisations and other groups to respect the sensitivities of the victims and the serious nature of the rape case and to desist from creating further controversies.

Sd/-

Prabhakar Sinha, President; **Dr. V Suresh,** General Secretary; **Kavita Srivastava,** National Secretary ❑

"NWMI Demands Institutional Redress of Sexual Harassment and Assault"

Atonement is Insufficient: The Rule of Law Must Prevail

21 November 2013

Recent developments at the weekly news magazine *Tehelka*demonstrate that media houses have a long way to go in ensuring safety for women media professionals.

A journalist working with *Tehelka*revealed that she was sexually assaulted by the editor, Tarun Tejpal, on two occasions on 7 and 8 November 2013. The repeated harassment and assault over two days took place during *Tehelka's*"Think" festival in Goa where the journalist was carrying out her professional duties. While Tarun Tejpal is purportedly "atoning" for what he terms "an error of judgement" by stepping down as editor for six months, we believe that this is simply not enough. Institutional mechanisms must be set in place to investigate the complaint of sexual assault, prosecute the perpetrator, and deal with future cases.

Sexual harassment of women journalists at the workplace is not new. The NWMI has issued several statements over the years in response to specific cases but also calling upon all media houses to comply with the law, which has been in existence since the Vishaka Guidelines were issued by the Supreme Court of India in 1997. There has been plenty of time and opportunity for media houses to establish the necessary mechanisms, as required by the law.

More recently, the Sexual Harassment at the Workplace (Prevention, Prohibition and Redressal) Act, 2013, which was signed into law on 22 April, is a significant civil remedy that recognises women's right to a safe work environment free of sexual harassment. The onus is on the employer, who is responsible for ensuring such an environment and is to be held liable in case of any violations. If the complainant wishes to pursue criminal prosecution, the employer is also duty bound to assist her in doing so.

In this case it appears that Tarun Tejpal's actions go beyond sexual harassment and fall under the definition of sexual assault, according the new Criminal Law Amendment, 2013.

More and more courageous women are speaking out about sexual harassment at the workplace, by judges, politicians, and senior journalists. It is high time that mechanisms were set put in place, as required under the law, to ensure that the rule of law operates and perpetrators are brought to justice. Recent experiences in Sun TV, Doordarshan and All India Radio, to name just a few, revealed that not only private media organisations but even the state/public broadcasters were not compliant with the law.

The NWMI demands that media houses across the country comply with the law by setting upof organisation with relevant knowledge and experience in dealing with such matters. It should be noted that the internal comsexual harassment complaints and redressal committees within the workplace that include at least one member external to theplaint mechanism is to be set in place and its existence made known to all employees irrespective of whether or not a complaint has been made or is anticipated.Compliance with the law is the very least that mediawomen expect of the media which are, after all, supposed to be the watchdogs of society.

While Tarun Tejpal and senior management atTehelkamay prefer to view the matter of sexual assault on a colleague as an "internal" issue to be compensated for with "atonement and penance," we demand institutional action that will not only ensure justice for the complainant in this particular instance but also lead to real organisational reform that will benefit all employees in the future.

We demand:

-Setting up of a Complaints Committee by all media houses, including Tehelka, to deal with sexual harassment at the workplace

-An independent inquiry into the incident of sexual harassment/ assault during the "Think" festival and punishment for the guilty in accordance with the law

-Assistance from the organisation in filing a case under theCriminal Law (Amendment) Act, 2013, should the survivor in this instance wish to initiate criminal proceedings.

We believe the news media, which cover the transgressions of other members/sections of society, have a responsibility to look within, too. At the same time we think it is important for the media to refrain from circulating details that could reveal the survivor's identity and/or are merely titillating and do not serve any public purpose.

Sincerely,

Ammu Joseph, Bangalore; **Laxmi Murthy,** Bangalore; **Kalpana Sharma,** Mumbai; **Sameera Khan,** Mumbai; **Rajashri Dasgupta,** Kolkata; **Neha Dixit,** New Delhi; **Kavin Malar,** Chennai, **Kavitha Muralidharan,** Chennai; **Satyavati Kondaveeti,** Hyderabad, Kiran Shaheen ❑

Say No To Social Sector Budget Cuts - Public Forum

Dear friends and colleagues,

Yesterday (11 December 2013) the Pension Parishad organised a forum to discuss the proposed "fiscal consolidation" that will lead to huge social sector budget cuts. The Rural Development Minister Shri. Jayram Ramesh has described these as "savage cuts" that "will severely jeopardies the implementation of flagship programmes" (See letter attached). The forum saw the coming together of several eminent economists, academics, lawyers, politicians and civil society groups.

Prominent members of civil society leading fights for issues such as food, education, health, water, dalit rights, adivasi rights, and child welfare presented their case and discussed what it would mean to their struggles and to the larger communities if these budget cuts were to be implemented.

We thank all of you for your support and solidarity. For those of you who could not make it to the event, we once again request you to please sign/endorse the letter to the Prime Minister attached below.

Your endorsement will strengthen this fight and help stop the poor from the suffering that these cuts would impose on them.

Open Letter To The Prime Minister

It was prominently reported in the media a few weeks ago that the Finance Ministry of the Government of India, was likely to mandate significant expenditure cuts across the board, ostensibly to rein in fiscal deficit and wasteful expenditure. Such a move raises several disturbing questions related to both to its underlying presumed economic wisdom and its procedural propriety.

We do not wish to get into a detailed discussion of the relevant issues here but would like to flag a few pertinent points in the following letter and urge the Government of India to rethink its reported move. In particular we strongly feel that the promise of universal old age pension for elderly workers from unorganised sector, which has been long overdue, should be fulfilled.

1. Such cuts typically occur in social sector ministries and schemes. As reported in the media, the Finance Ministry has already proposed expenditure cuts amounting to around Rs 15,000 crore for Rural Development Ministry and Rs 5,500 crore for the education sector which falls under the Ministry of Human Resources Development. In addition, ministries are reportedly being told to limit their last quarter spending to below the average of the first three quarters and a further cut of same by around 20 percent might be imposed.

2. Expenditure cuts have been specifically proposed for these sectors in light of surplus unspent funds that they had accumulated in the previous fiscal year. We must ask why unspent funds existed with these ministries and whether it relates to implementation failures by the government at various levels.

3. Further, in event of existing surplus funds, what is the rationale for not using same to address the urgent and pressing issue of universal old age pension across India which can benefit the elderly population coming from the unorganised sector?

4. The main reason for the present state of the fiscal deficit has been inadequate revenue mobilization in light of liberal taxation policies followed by the government. Therefore, reducing expenditure to match the declining revenues receipts on account of liberal taxation policies is tantamount to asking the poor to bear a disproportionate share of this fiscal consolidation burden. Also, it needs to be mentioned that projecting low revenue receipts on basis of low tax revenues before the end of the fiscal year might be misinformed as tax revenue collection increases considerably over the last few months of the fiscal year when many direct tax collections occur.

5. The Constitution explicitly mandates the democratic oversight of the raising of resources and spending by government, with the underlying principle for being that resource raising and spending patterns of the government must be subject to popular scrutiny through a broad consultative process. Thus, in addition, a consultative mechanism with concerned ministries is strongly desired before going for such policy measures.

6. We must remember that the incumbent UPA government, agreeing with the Pension Parishad demands earlier this year had assured and promised to universalize (with exclusions) and upscale the monthly old age pension amount to a dignified level for ensuring economic independency to senior citizens.

7. Suggested policy measures, as reported in the media, also neglect previous statements by the Finance Minister who had assured a poor-friendly fiscal consolidation roadmap for the next five years.

8. Hence, in light of these observations it becomes pertinent to ask if the present fiscal consolidation strategy, at the cost of social sector expenditure and by neglect of old age pension, is at all a strategy of "inclusive growth" as emphasized by the government regularly. Also, it raises a serious doubt about government's claim regarding insufficiency of funds and its concern regarding the welfare of elderly from the unorganized sector, many of whom did not even receive basic minimum wages during their productive years.

We urge you as the Prime Minister:

A. To ensure that no budget cuts are made from any social sector funds and that there is no reduction in the funds allocated for the social sector

B. To ensure that unspent balances and savings are used to fulfill the promises to universalize pensions and enhance pension amounts for the elderly with exclusions.

C. To institute a consultative process to deliberate measures for increasing

revenues

D. To make sure that all such budgetary processes should henceforth be subjected to a pre budget consultative process

Signed: Aruna Roy, Baba Adhav, Akhila Sivadasa, Utsa Patnaik, Prabhat Patnaik, Jayati Ghosh, Ravi Srivastava, Praveen Jha, Nikhil Dey, Brinda Karat, Poornima Chikarmane, Amrita Chhachhi, Seema Mustafa, National Alliance for Peoples Movements (NAPM), Madhuresh Kumar, Mary John, Mathew Cherian, Himanshu Thakkar, K.P. Shankaram, Ram Singh Parmar, Pradeep Priyadarshan, Jaya Bharti, Neha Saigal, J Deshpande, Kiran Shaheen, Sudeshna Sengupta, Rted. Air Marshal PK Dey, Asha Dey, SWARAJ group, Karnataka ❑

Landmark Order in PUCL's Petition - Punjab and Haryana High Court Directs the Haryana Government to Re-examine the provisions which had put an absolute bar on grant of Parole and Furlough to a category of prisoners

5th December 2013

The Division Bench of the Punjab and Haryana High Court consisting of the Chief Justice and Justice AG Masih, in a land mark judgment in a PIL filed by human rights organization PUCL (People's Union for Civil Liberties), issued a direction to the State Government to reexamine the newly inserted provisions of the Haryana Prisoners Good Conduct (Temporary Release) Act so as to eliminate the absolute bar to grant parole and furlough to "hardcore prisoners". The decision is bound to bring cheer to thousands of prisoners languishing in the Haryana's jails, who had been barred from even being considered for the concession of temporary release through parole and furlough. This Act had been amended last year to create a fairly wider category of "hardcore prisoners" which were to be absolutely barred under Section 5A of the Act from being released on parole or furlough.

The Court stated there should be a median between absolute bar and absolute discretion. It further stated that while the State may impose conditions for grant of parole and furlough, in order to prevent misuse of parole etc, there cannot be an absolute bar from even being considered for parole or furlough. It also stated that misuse of temporary release/parole provisions and irrational release from prison must also stop. The Court relied on a Division Bench judgment of the Delhi High Court, in the case of Dinesh Kumar v Govt. Of Nct Of Delhi where similar Furlough guidelines which barred certain classes of prisoners absolutely had been declared unconstitutional being an infringement of Article 14 of the Constitution as it had been held that "..Clause 26.4 of Guidelines, 2010 in the present form does not stand judicial scrutiny which makes persons persons ineligible for furlough merely on the basis of the nature of crime committed by them. It would amount to snatching their right to at least consider their cases for grant of furlough."

The Court stated that care must be taken while deciding to granting furlough and parole and stated that every case must be decided on its merits.

The State Counsel, AAG Haryana, said that a long time was needed to comply with the Court's orders stating that they had to collect information and material regarding hardcore prisoners and parole jumpers in order to reexamine the matter. To this the Bench quipped that if you didn't have material earlier, on what basis did you bring about this amendment under challenge? The Court disposed off the petition and gave the State about two months to comply with its orders to reexamine the issue i.e. by February 28, 2014.

Counsel for the Petitioner, Advocate Arjun Sheoran had argued that a blanket bar under Section 5A is arbitrary and unjust and thus violative of Article 14 and 21 of the Constitution as each prisoner who has displayed good conduct in prison, must be at least considered for being granted parole and furlough. He had also argued that good conduct in prison and not the crime committed is the paramount/relevant criteria for getting Furlough and Parole because as per the Act. This is because, after the application of reformatory methods while in prison, there is rebuttable presumption that the convict has reformed and thus the original crime committed, even if serious, must not preclude the convict from being considered for parole or furlough.

He also argued that the definition and category of "Hardcore Prisoner" is arbitrary and fanciful as several of the crimes it includes cannot be said to hardcore or dangerous while several others which could be categorized as equally, if not more dangerous and violent have been left out

He also stated that as per the report of the CAG's Report on Haryana's prisons, 98.1 % report back only about 1.9% prisoners did not report back. Furthermore he stated that stricter compliance of existing laws to prevent misuse of parole and harsher laws were the answer to problem of convicts jumping parole, because as per the CAG Report the Haryana Police and Prisons department needs to increase coordination, ensure registration of FIRs, forfeit bonds of sureties of such convicts jumping parole, instead of unnecessarily and arbitrarily covering up for their mistakes by barring several convicts from getting parole.

It was also argued that there was factual basis to say that only hardcore prisoners are more likely to jump parole or commit crimes compared to non hardcore prisoners.

Petitioner's counsel Arjun Sheoran apprised the court to the fact that it

has been proved world over and also noted by the Supreme Court of India that Parole/Furlough are part of the rehabilitative and reformatory process and arbitrary non-grant of it leads to indiscipline, recidivism, maladjustment of prisoners, violence. He said that the blanket ban on hardcore prisoners from even being considered for parole or furlough would lead to indiscipline inside jail as there would remain no worthy system of incentivizing good conduct in jails.

He said that with no way of maintaining familial and societal ties during long period of incarceration would also lead to increased propensity for violence in jails, maladjustment of prisoners when they are finally released and consequently would increase the chances of recidivism. Thus, the Amendment Act would have detrimental effects on the society as a whole.

It may be noted PUCL is India's largest civil liberties and human rights organization and was founded in 1976 by Sh. Jayaprakash Narayan and this matter was filed by PUCL's Haryana Unit.

Arjun Sheoran, Spokesperson, Peoples' Union for Civil Liberties, Punjab and Haryana ❑

Paper sent by V. Suresh, General Secretary, PUCL to be read out at the seminar organised by PUCL Bihar:

Preface

Greetings to friends in PUCL, Bihar on the occasion of the one-day Seminar on **`Right to Justice for Poor People'.** I congratulate the state unit for organising this Seminar. This is a most appropriate time for PUCL to initiate a debate on the criminal justice system in the wake of the acquittal by the Patna High court of all the 26 persons convicted by the trial court for having killed 53 dalits and 5 fishing community people on 1st December, 1997. We need to ask some hard questions of the nature of the CJS, especially in terms of how it secures justice for the poor. We need to equally discuss the key principles on which the CJS is based on. And while we rush to criticise the way a decision has been given in one case, we need to be equally circumspect in demanding changes which will alter the delicate checks and balances inbuilt into the CJS.

I thank the State unit for inviting me to write this note for the seminar as it has spurred me to consolidate my thoughts on the subject of how to ensure the criminal justice system remains robust, based on Indian constitutional principles and respectful of national and international human rights and humanitarian norms.

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"When Dalit blood flows ... can there be justice"? Ranvir Sena, Laxmanpur Bathe massacre, Mass Acquittals and Reflections on the Criminal Justice System

V. Suresh, General Secretary, PUCL

7th December, 2013

Introduction

Bihar is no stranger to violent crimes. But what happened on 1st December, 1997 in a remote village Laxmanpur Bathe of Jehanabad[1] district, was an unparalleled slaughter of Dalits by upper caste people belonging to the Ranvir Sena. In orgy of ferocious blood letting at about 1030 pm on 1.12.1997, over 150-180 armed members of the Ranvir Sena crossed the river Sone, entered Laxmanpur Bathe and the dalit settlement and under cover of darkness smashed into houses killing everyone they came across. None was spared including infants, some just one year old. The children were thrown up in the air and speared. Teen age girls were raped after which their breasts were cut and shot through their vagina and killed. In all, officially, 53 dalits were slaughtered and killed including 27 women, 16 children and 10 men. Additionally 5 fishermen from the Mallah caste, who ferried some of the Sena killers across the Sone were also killed in a most gruesome manner - by cutting their necks. The killing was a sequel to simmering land and wages dispute between the landless labourer SC communities and the Bhumihar landlords; the extremely poor SCs were demanding higher wages and also allocation of land from the government, which was opposed by the upper caste land lords.

Laxmanpur Bathe was an unusual caste carnage in the sense that it was not the first, and definitely not the last either; but the massacre was the result of a coldly diabolical plan hatched by the upper caste land owners in the area who, with the support of the armed militia of the landlords, the Ranvir Sena, decided to teach the Dalits a lesson in a dramatic, massive massacre which would "teach others not to rebel or raise their voices". (HRW, 1999, 62). Ironically, Laxmanpur Bathe's SCs were so poor that they lacked all basic facilities like electricity, lived in inaccessible areas with nothing resembling roads and puccca constructions. The conflict arose because the poor labourers started organising themselves and demanding better wages and improved work conditions.

The sheer brutality, bestiality and scale of the massacre was not matched with similar interest on the part of the police and state authorities to launch an intensive manhunt to nab the killers and bring them to justice. In any case the FIR was registered at 230 pm on 2.12.1997 at the Mehandia police station. As mandated by the law, the FIR was sent and received by the Chief Judicial Magistrate (CJM) at Jehanabad some 50-60 km away only on 4.12.1997. The first arrest of one Ashok Singh was made only at

525 pm on 3.12.1997, that too only after the then Chief Minister Rabri Devi, visited the village and reviewed security situation and police action. The first charge sheet was field on 27.2.1998 naming 48 accused and listing 152 witnesses. A supplementary charge sheet was also filed on 9.7.1998 naming an additional 2 accused. The CJM, Jehanabad committed the case for trial by the Sessions Court on 6.1.1999. Initially the case was listed for trial before the I Additional Sessions Judge, Jehanabad but subsequently transferred on 13.12.1999 to the 2nd Additional Sessions Judge, Patna following an order by the Patna High Court. However the trial was not conducted for many years forcing the High Court to pass directions on 29.11.2008 to expedite trial. Subsequently the trial was transferred yet again tot he court of the Additional Sessions Judge 3 in Patna by High court order dated 5.12.2008.

Astonishingly the charges were framed only on 23.12.2008 and 28.1.2009, a full 11 years after the incident. There were 45 accused. 91 witnesses were examined of whom 17 witnesses were eye witnesses, 4 were injured eye witnesses. 38 witnesses turned hostile. The rest were official witnesses including 2 Investigating Officers (IOs).

On 7.4.2010 the trial court delivered its verdict convicting 26 accused, awarding death penalty to 16 people and rigorous life imprisonment to 10 persons; the rest of the accused were acquitted.

Since death sentences had been awarded the matter was referred to the Patna High court for confirmation proceedings. On 9th October, 2013 the Division Bench consisting of justices VN Sinha and AK Lal, acquitted all the 26 accused on the following grounds:

(i) The delay of 2 days in the FIR dated 2.12.1997 reaching the Chief Judicial Magistrate was not properly explained and therefore it was doubtful if it was genuine and could be believed;

(ii) The statements of the eye witnesses, including the injured eye witnesses, could not be relied upon and believed as there was (a) delay in recording of statements of eye witnesses immediately after the event by the IO, (b) identification of the accused was improbable in view of the darkness prevailing, (c) key witnesses were not produced in the court, (d) fact of recording of statements of eye witnesses on 2.12.1997 could not be believed as there was no mention in the Case Diary of the police. The effect of all these infirmities, according to the High Court, was that the list of names of accused was subsequently added and there was doubt if they at all participated in the attack. The Prosecution witnesses were therefore held not to be reliable and believed.

(iii) There were serious lapses on the part of Investigating Officer (IO) including in not having "any clue" about the assailants and making no effort to track the accused on both sides of the river Sone and stopping only with arresting accused from 2 villages, Kamta and Chanda; not explaining delay in sending FIR to court or about delayed recording of statement of eye witnesses which led to doubts about the false implication of accused by the eye and injured witnesses.

(iv) The motive for the massacre being the aim of "establishing their hegemony" and as arising out of land and wage dispute was held to be "far fetched" with no concrete evidence regarding the disputes and therefore was fully disbelieved.

In disbelieving and throwing out the entire prosecution case, despite the availability of injured eye witnesses, the court had little to say or comment about the nature of the carnage itself. The sheer brutality of the killings happening n a context of a region soaked in caste conflicts or the fact that the bulk of the dead (53) were all SCs or the lowest castes (fishing community) raised the possibility of the assailants coming only from upper castes, did not seem to both the court as something requiring judicial intervention, as a consequence of their conclusion that the prosecution case was bereft of evidence and had to be thrown out.

Curiously, the High Court did not answer the demand of the Government counsel that in the event it concluded that there were serious lapses on the part of the Investigating Officers (IOs) the Court should then order the prosecution of the 2 IOs who conducted investigation under sections 182 and 195A of the Indian Penal Code.

The High Court also had nothing to say by way of directing that the Bihar state enquire into the entire failure of the criminal justice system by fixing responsibility and accountability on the different state authorities who were collectively responsible for the massive failure of prosecution leading to the wholesale mass acquittals. The court, it seems, had no interest to go beyond the narrow confines of criminal jurisprudence and procedure beyond pronouncing verdict by evaluating the evidence before the court.

Did not the court have any role in laying down guidelines to prevent similar failures on the part of prosecution in other cases of mass murders, carnages and massacres? Did not the court see the need to lay down norms which would fix responsibility on IOs and police authorities for biased or compromised investigation and shoddy evidence gathering?

In the end Laxmanpur Bathe is a triple tragedy for the Dalit victims of the entire area. First by the systemic discrimination, deprivation, indignity and violence that they have to endure on a daily basis; secondly by having suffered indescribable violence including in families losing three generations of family members;finally, in having suffered murders for which they cannot hope for justice.

Justice for Victims of Laxmanpur-Bathe: Lessons for the Human Rights Movement

Was the High court correct in its conclusion that the prosecution case in Laxmanpur Bathe massacres cannot be believed and had to be thrown out completely?

What is the consequence of the verdict? Will it not embolden the upper castes and landed gentry of

Bihar (and elsewhere too as caste animosity is a common experience all across India) to more violently or aggressively suppress the Dalits and poor labour class and peasantry seeking more equitable and dignified wage levels and conditions of work?

Is there any lesson from the High Court verdict for the human rights movement? For if it can happen in a case involving 58 murder victims, what will be the fate in cases involving lesser numbers and intensity of violence?

While the final word has not been said as regards the acquittal by the High Court as the matter will invariably be appealed in the Supreme Court, we nevertheless need to take note of the lessons that the entire case offers, in order that victims of caste / communal / class violence may be more vigilant to ensure that victims of violence get justice and persons guilty of committing crimes are made accountable for their acts.

We shall turn our attention to some key operational aspects of the criminal justice system.

"The Law defines the Crime, the state defines the offender"

One of the key elements in the common law criminal justice system which is followed in India is that while the criminal law defines what constitutes an offence, the authority for invoking the law vests solely with the state, represented by the police. In principle, the police, as the law enforcers, while being administratively under the control of the government (political executive) are functionally expected to operate independently while enforcing the law, and in a free and fair, unbiased and non-partisan manner. While the reality is far from the ideal situation, we need to understand the consequence of this dictum.

In effect the laws of the land leaves it to the discretion of the police and the government to administer criminal law in each state. It is axiomatic that where discretion powers exist, unless there are clear guidelines which will pin accountability for partisan or biased exercise of discretion, the authority which discretionary powers provides is always open to misuse, abuse or incorrect use. In a context of rampant caste, communal and other politics this naturally means that the authority of law is liable to partial or discriminatory use.

In other words, the administration of the criminal justice system is liable to be used for partisan purposes. In the political context that prevails in India today filled with caste, communal and regional mobilisations and machinations, the law is bound to be and actually is abused as a weapon or instrument of political manipulation, repression and at times, as a terror weapon too, by ruling parties and the caste or community groups which are dominant in such political arrangements.

There is thus great need to have (i) remedial measures and (ii) independent oversight mechanisms in the law itself which will speedily identify wrongful use or abuse of authority, fix accountability by punishing the power holders for such systemic abuse and misuse and also provide for rectifying such errors deliberately or consciously introduced.

Lack of Legal Provision fixing responsibility on chain of investigating officials

A big lacuna in the criminal justice system is that there is provision making the chain of police officials in charge of criminal investigation responsible for the process of evidence gathering covering all aspects of investigation from chemical and forensic examination, documentary and other evidence gathering, testimonies of witnesses and all other forms of evidence which can be used in proof of prosecution case. So much so, even when a trial or appellate court come to a finding based on scrutiny of evidence placed before the court that there has been deliberate sabotage of criminal investigation to ensure that either real accused escape legal liability for their criminal acts or to frame innocent people in false prosecutions, none of the officials are held culpable.

There is clearly a distinction between genuine errors made in the course of investigation and lapses pointed out by courts over which there may be two or several opinions from instances when after scrutiny of evidence it is clear that there has been a deliberate attempt to subvert the law and legal process for the sake of compromising the case. In such cases, the officials should be made liable for their lapses, of course, after giving them due opportunity to explain their conduct.

The critical aspect to be noticed here is that the entire chain of officials from the immediate IO to the senior officials monitoring the investigation ought to be held liable. For ultimately it is the failure of the entire criminal justice system which stands exposed when the entire prosecution case is thrown out by the court appreciating the evidence completely, as has happened in the Laxmanpur Bathe case. It is appalling that the persons who committed the gruesome massacres and murders of 58 persons can escape the law with such impunity.

This is indicated by the following finding of the High Court:

"In view of the conduct of the prosecution not to record the police statement of the eye-witnesses on 2.12.1997, there appears substance in the submission of the learned counsel for the appellants that had the witnesses been aware about the name of the miscreants, their police statement ought to have been recorded on 2.12.1997. Failure to record the police statement of the eye-witnesses on 2.12.1997 becomes relevant in the light of the unexplained delay in reaching the FIR, Ext.21 to the court of CJM, Jehanabad on 4.12.1997". (para 71, page 39, HC Patna Judgment)

It is a matter of concern that in the Laxmanpur Bathe appeal case too, the High Court which elaborately deals with what clearly appears to be lapses in the criminal investigation does not deem it necessary to hold the IOs personally liable for the slip shod investigation.

"It also appears that Investigating Officer having secured the arrest, surrender of the fardbeyan named accused, stopped further investigation to track the accused persons who crossed river Sone and

went towards Sahar area in village Mathia, Chhotaki Kharaon, Barki Kharaon, Lodipur. Aforesaid conduct of the Investigating Officer is indicative of the fact that he was absolutely clueless about the identity of the assailants who having perpetrated heinous crime causing death of 58 innocent persons crossed the river Sone and went towards Sahar area. **There was absolutely no reason for the Investigating Officer not to pursue the lead,** evidence found on both the banks of the river Sone to track the assailants who crossed the river Sone and went towards Sahar area with the help of Officer-in-charge, Sahar P.S. and S.P. Bhojpur with whom he was already in contact as is evident from his own evidence in paragraphs 36, 6. It appears the effort to track the assailants in Sahar area met dead end, the first Investigating Officer P.W.85 thought it appropriate to implicate these appellants residents of place of occurrence village Bathe, adjoining village Kamta and Chanda **by antedating the fardbeyan,** as there is no viable explanation for the delayed receipt of the FIR in Jehanabad court on 4.12.1997".

(para 73, page 41, HC Patna Judgment)

In effect the High Court had concluded, based on a detailed analysis of the evidence that the IO (PW 85) had committed a crime by falsely implicating the 26 accused knowing fully well that they were not involved in the offence. This is a serious abuse of power and authority by the police officials with serious consequences for if the death penalty had been confirmed they would have had to face the gallows. Yet the Division Bench of the Patna High Court which threw out the Laxmanpur Bathe case did not consider it necessary to hold the police officials responsible for such gross subversion of the law!

Why did the Division Bench not Order Re-investigation in Laxmanpur Bathe massacres?

One of the key requirements of criminal justice system is to so as to ensure that the investigation may lead to establishing culpability of persons who have truly committed the crime in court during trial. This is to be achieved by maintaining the balance between strictly following the prescribed procedures for gathering evidence while also taking all efforts to ensure that all aspects of investigation are covered by due diligence.

The Laxmanpur Bathe carnage is by no stretch an ordinary case of multiple murders. There is sufficient evidence before the court which indicates pre-meditated conspiracy and plan to attack the dalit habitation in the dead of night to kill as many of the dalits as possible. Eventually this led to indiscriminately savage attacks including killing several one-year old infants in the most horrifying fashion.

Having come to a conclusion that the case of the prosecution had to be thrown out, it remains a relevant question as to why the High Court did not think the Laxmanpur Bathe case, considering its magnitude, was a fit and appropriate case to order re-investigation.

Conclusion of Guilt: Does Caste Bias colour appreciation of evidence?

One of the most critical issues arising from an analysis of the Division Bench ruling is the question of the extent to which `caste or community bias or prejudice' may have influenced the judges while evaluating the evidence brought before court. There is no denying the fact that for an average Indian, caste, community and other cultural identities do play an important role in influencing our intellectual and behavioural responses to action of `others'. The challenge in the judicial sphere is to ensure that during the process of evaluating evidence on issues before the court, these biases or prejudged notions, stereotyped mindsets and prejudices do not colour the judicial appreciation of the evidence.

The Supreme Court discussed this as follows:

"We also notice that while Judges tend to be extremely harsh in dealing with murders committed on account of religious factors **they tend to become more conservative and almost apologetic in the case of murders arising out of caste** on the premise (as in this very case) that society should be given time so that the necessary change comes about in the normal course. Has this hands off approach led to the creation of the casteless utopia or even a perceptible movement in that direction? The answer is an emphatic no as would be clear from mushrooming caste based organizations controlled and manipulated by self appointed Commissars who have arrogated to themselves the right to be the sole arbiters and defenders of their castes with the license to kill and maim to enforce their diktats and bring in line those who dare to deviate. Resultantly the idyllic situation that we perceive is as distant as ever. In this background is it appropriate that we throw up our hands in despair waiting ad infinitum or optimistically a millennium or two for the day when good sense would prevail by a normal evolutionary process or is it our duty to help out by a push and a prod through the criminal justice system? We feel that there can be only one answer to this question.." (emphasis ours).

.. Maya Kaur vs State of Maharashtra, 2007(12) SCC 654, para 26.

The difficulty is in establishing that bias has clouded appreciation of evidence in the process of arriving at a conclusion about the prosecution case. The only way to establish this is by a rigorous analysis of the judgments of the same bench of judges and the manner of treatment of similar fact situations, as for example in cases where there are delays in FIRs, both in registration or in the FIR reaching the Judicial magistrate's court.

Thus while it is a moot issue as to whether caste bias influenced the appreciation of evidence in the Laxmanpur Bathe appeal case, there are a few similarities to be found in the judgments of the Patna High Court while dealing with other cases of mass dalit massacres. It is interesting to note that in the last 2 years (2012-13), the Patna High Court has acquitted all the upper caste accused in 3 other cases of mass Dalit murders in Bihar. As the following table shows, there is an intriguing congruence of common

reasons for disbelieving the prosecution case including, (i) delay in FIR reaching court and hence FIR cannot be believed; and (ii) not believing the eye witness testimonies due to infirmities or contradictions in their testimonies; (iii) non recording the statements of eye witnesses at the earliest point in time even though they were available thereby making their testimony of participation of specifically named accused doubtful.

In a recent decision, the Supreme Court in `Arumugam Servai vs State of Tamil Nadu' (2011(6) SCC 405) pointed out that it is "not a universal rule that once FIR is found with discrepancy the whole prosecution case, as a rule, has to be thrown out. Such can never be the law". In the present case of Laxmanpur bathe, the issue of delay in sending the FIR to the CJM court will have to be considered keeping in mind the remoteness and inaccessibility of the region, the fact that 58 persons were killed, the acute sense of fear amongst the dalits who survived and the immediacy of restoring sense of confidence amongst the victims. In fact the Trial Court considered and discussed the issues of delayed FIR reaching the CJM, Jehanabad's court and recording of witness statement before arriving at its conclusion holding 26 persons guilty. "The IO had a hectic schedule in view of the magnitude of the crime" was the way in which the Trial Court considered the same issues which the High Court found in favour of the accused.

The following table highlights how in cases of mass murders issues of delay in FIR have consistently been the key issue for the appellate court to disbelieve the prosecution case against the upper caste assailants.

Caste Massacres of Dalits Where Upper Caste / Ranvir Sena Accused were Acquitted by Patna High Court, 2012-13

Case: Occurrence of massacre	Bench of the Patna High Court	Reasons for acquittal (as stated by the HC)
Lakshmanpur -Bathe (Death reference 5 of 2010) 45 accused, 26 Convicted (16-Death Penalty and 10 Rigorous Life Imprisonment.) **All 26 acquitted.**	V N Sinha, A K Lal (Judgment delivered on Oct 9, 2013)	1. Delay in FIR dated 2.12.1997 reaching CJM, Jehanabad court only on 4.12.1997. 2. The first FIR filed didn't name the accused. The names were subsequently added. No acceptable reason as to why the names weren't mentioned initially. Hence, not reliable. (para 65-71) 3. Eyewitness testimonies doubted due to discrepancies in police diary and oral testimony. 4. Once the 26 convicts were arrested, investigations stopped. Shows intent of police to frame. (Para 71-72) 5. Labour dispute between accused and deceased as reason for killings not accepted as no concrete evidence has been provided to prove the same. (Para 75) **Note:** Government Counsel sought prosecution of IOs u/s 182 and 195A IPC for defective investigation but no order passed.
Mianpur (Govt Appeal No. 11 of 2008) 11 accused, 9 convicted (All received life imprisonment) **8 /9 accused acquitted.**	V N Sinha & A K Lal (Judgment delivered on 3rd July 2013)	1. Rejection of eye-witness accounts. This occurred during the night time, only moon light and no other source of light. Witnesses were hiding from the accused. Therefore, could not have seen them. 2. Unexplained two day delay in the dispatch of FIR to Court. Possibility that the FIR was tampered with cannot be ruled out. **Note:** Demand by Prosecutor for action against IO for poor investigation. No action.
Nagri Bazar (death reference no. 10 of 2010) 16 accused, 11 convicted (3 - Death Penalty 8 - Life Imprisonment) **All 11 acquitted by HC.**	VN Sinha AK Lal (Judgment delivered on 1st March 2013)	1. Eye witness testimonies rejected The killings happened in the night. Therefore, when there is no light and the eye-witnesses themselves are in hiding, they could not have clearly seen the individuals to identify them. Hence, the testimonies are rejected. 2. Delay of 36 hours in filing of FIR and sending FIR to Court suggests the possibility of doctoring. This possibility has not been disproven by the Prosecution.
Bathani Tola (Death reference No. 7 of 2010). 68 accused, 23 convictions (3- Death Penalty, 20 - Life Imprisonment) **All 23 accused acquitted.**	NP Singh AK Singh (Judgment delivered on 30th March 2012)	1. Delay of 12 hours in filing of FIR. 2. Eye- witness testimonies unreliable. Discrepancies in description of injuries suffered was reason for rejection of testimony. 3. Delay in filing could be because they wanted to frame the accused. No information to disprove this line of thought given.

Source: NS Tanvi: Study of Recent Judgments of Patna High Court in caste murders. (2013, work in progress)

Caste bias or shoddy investigations? Caution before diluting evidentiary principles

What could explain the acquittals of upper caste accused convicted by trial courts of being involved in mass murders of large number of dalits? Could it be due to caste bias or prejudice influencing the assessment of evidence by the judges? Or could it be that the quality of investigation was so shoddy and defective that the evidence gathered cannot be considered at all. In such a scenario, seeking conviction on the ground of scale of murders alone, cannot be the yard stick. It will be necessary for the court, once it comes to a conclusion that the investigation was shoddy and compromised to then examine the conduct of the IOs to determine whether the errors were errors due to (a) incompetence on the part of the investigating authorities or (b) were due to deliberate attempts to subvert fair and independent investigation by making procedural mistakes as would compromise the quality and nature of evidence gathered and / or (c) there were external pressures brought on to the investigating authorities

A curious twist which makes the task of examining patterns in judicial appreciation of facts in caste conflicts in Bihar difficult is that in cases involving dalits convicted for attacks on upper caste people, the appellate court invariably has confirmed the convictions awarded to the dalit accused. For example in the Bhadasi murder case in which Police and workers clashed or the Bodhani Soda case where dalits were implicated in the mass deaths of upper castes, conviction awarded by trial courts of the dalit accused were confirmed.

While in criminal law, it is an axiomatic principle that while no two criminal cases are alike and at best may only share similarities of fact situations, it nevertheless is intriguing to explain different types of police investigation in cases where dalits are victims from those in which they are named accused. So can it be said that the police act efficiently when upper caste people are victims of retaliatory or aggressive attacks by dalits or working class organisations while they are lackadaisical when the victims are dalits and the aggressors the upper caste or their militia arm, the Ranvir Sena?

Viewed thus, it is clear that it is difficult to brush aside the charge that the police are partial when it comes to investigating cases when dalits are victims and the aggressors or assailant are upper caste from those when the dalits are named as the accused.

It is in this context that we need to exercise caution before demanding reversal of time tested principles guiding evaluation of evidence on grounds alone of the large number of death caused in the mass murders or massacres. This translates into the following legal question: in the context of evidence indicating shoddy investigation by the IO, what should be the rules governing assessment of evidence gathered and presented to court? Under what circumstances should the court order reinvestigation? How should liability of the IO and the entire chain of command of police officials monitoring investigation be fixed?

There are no quick fix solutions to the larger malaise of bad governance and compromised administration that exists in large parts of India today. While we should concentrate on improving the manner of governance functionaries, we should be chary of demanding changes in laws.

References:

HRW, 1999, `Broken People: Caste Violence against India's "Untouchables"', Human Rights Watch, Washington, USA.

Ravindra Singh Vs. State of Bihar, decided by the patna High Court on 9th October, 2013 available at http://indiankanoon.org/docfragment/27569281/?formInput=laxmanpur%20bathe (accessed on 5th December, 2013).

[1] Subsequent to the incident, districts were reconstituted and now Laxmanpur Bathe comes in Arwal district.

Dr. V. Suresh, National General Secretary, PUCL - People's Union for Civil Liberties, ❑

On International Human Rights Day, 10 December Statement from the AHRC: December 8, 2013

India: Where Freedom & Dignity Remain a Mirage

Human Rights Day commemorates the adoption of the Universal Declaration of Human Rights on December 10, 1948, which declares freedom and equality for every human being in the world. The Indian constitution, adopted by the people of independent India a year later, guarantees each Indian citizen right to life with human dignity, reflecting core values of the Universal Declaration.

Law-enforcement agencies are the frontline state apparatus, which guarantee the protection, promotion, and fulfillment of human rights to citizens. Any critical assessment of a democratic state must examine the functioning of these agencies, most importantly, the police. Therefore, apart from reflecting on national events and the legislative contortions of criminal politicians, the AHRC has examined India's law-enforcement vis-à-vis the normative rule of law guarantees that it promises its citizens. AHRC has used its assessment of India's justice institution framework to ascertain the country's larger human rights landscape.

The picture that emerges is not pretty.

The very mention of the police, the primary complaint registering entity in India's justice system, generates

fear and repulsion in Indians. Any person approaching the police runs the risk of being humiliated, tortured, raped, shouted at, and implicated in fabricated charges. Rare is the Indian who wishes to approach a police station, as complainant, witness, or as an accused. Those that have no choice scramble for help from local politicians or try to ascertain the going bribe rates.

What dignity can the Indian state provide to its citizens, when, today, 64 years after its celebrated constitution came into being, the primary agency in its justice framework, is itself in a state of enforced rot?

Take for instance the subject of sexual assault in India. The gang rape and subsequent death of a medical student in December 2012 raised phenomenal debate all over the country and across the globe. However, sexual violence remains strong as ever. This is because the fundamental defects in the day-to-day functioning of the central component in the law enforcement framework, the police, has not been addressed.

AHRC is deeply concerned about the fact that despite several legislative amendments made early this year, women in the country prefer not to approach law enforcement agencies seeking justice. AHRC demands a thorough review of India's criminal justice policy. The foundational premise of criminal justice reform must be the certainty of punishment, not the severity of it. This correct premise will reduce crime.

AHRC is deeply concerned that, so far, India's policy on police reforms is, in fact, not to have any policy. The country's diversity in terms of caste, language, culture, and ethnicity breeds a wide range of human rights problems, making it a complex region for administration of justice. Excessive use of force, including lethal force in crime 'investigation' is, however, the defining character of the law enforcement agencies.

The state exonerates such practice, granting impunity for crimes like torture, extrajudicial killings, and custodial death by statute. This year too, AHRC reported a substantial number of such cases, including those involving torture and custodial death, committed by the police and security forces in India.

Draconian laws like the Armed Forces (Special Powers) Act, 1958, are being dragged on to ravage new generations, never mind the ruin already left in their wake. Statutory impunity built into such laws, and, in fact, their very nature, has contributed to India's appalling human rights record.

Human dignity cannot be ensured if torture is not declared a crime. Yet another year has passed by and torture is not criminalised, though the promise is renewed every year without fail. In 2012, during the Universal Periodic Review at the UN, the Government of India informed the Council that the Prevention of Torture Bill 2012 will be made into a law once the definition of torture is fully reflected in domestic legislation. It is still not known when the Bill will be converted into law. The ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is overdue - the country being a signatory to the Convention since 1997.

Institutional reforms are an essential part of modern democracy. Calls for reforms in the country - especially when privileges and non-transparent power of policy makers are targeted - are opposed vehemently to nip them in the bud. Reforms initiated by the Supreme Court of India, such as removing criminals from the political landscape and bringing greater transparency to political parties has met staunch opposition.

In June this year, in line with public opinion that overwhelmingly supports greater transparency in governance, the Central Information Commission (CIC), in a ruling, brought six national political parties under the remit of Section 2 of Right to Information Act, 2005, by defining them as public authorities. However, the government proposed a Bill in Parliament to negate the order and is waiting for it to be converted into a law.

In the prevailing conditions in India, human rights defenders who assist victims in their pursuit of justice are easily silenced by threats to their life and person. AHRC has documented cases this year where human rights defenders have been harassed. They have been summoned and monitored by state police, without legal sanction, and arbitrarily detained on fabricated charges.

While the world celebrates the concept of human rights with dignity, freedom and equality today, they remain a challenge in India. ❑

Statement from *Thma-U-Rangli-Juki* (TUR), an organisation based in Shillong, Meghalaya forwarded AHRC: 10.12.2013

Challenge the Draconian Black Laws in Meghalaya

Thma-U-Rangli-Juki (TUR), a progressive people's organisation, will hold a street corner meeting on the draconian Meghalaya Preventive Detention Act (MPDA), 1995 and Meghalaya Maintenance of Public Order Act (MMPO) to observe International Human Rights Day on 10th December at Khyndai Lad, Shillong at 2 p.m. This will kick off the state wide campaign against attacks on people's right to protest and expose the blatant misuse of these black laws by a corrupt and authoritarian State Governmentto silence any form of dissent and the government's constant illegal infringement on the civil and political liberties of the people of the state. TUR invites all citizens to join this meeting and share their views and experiences.

TUR's POSITION PAPER

* CHALLENGE THE DRACONIAN BLACK LAWS IN MEGHALAYA*

10th December, International Human Rights Day, is the day commemorating the adoption of Universal Declaration of Human Rights (UDHR) by theUnited Nations General Assembly in 1948. UDHR represents the universal recognition that all of us are born free and our

basic rights and fundamental freedomscannot be taken away by anyone.

But in Meghalaya, International Human Rights Day has been reduced to either government organizations taking oaths to protect human rights or some well funded NGO organizing some meaningless pageantry and competitions like Run from Human Rights or a rally where people hold unread placards. But these managed events hide rampant violations of human rights that our system condones. Consider just some of them:

Forcible Destruction of people's houses in Umsawli for theNew Shillong Township Custodial Deaths in Jowai Police Station Increasing unlawful surveillance and invasion of privacy of citizens Attack on freedom of expression by prosecuting opinions expressed in thepress and social media and banning of films Extralegal murders through Fake Encounters

The list can go on and on. Ratherthan protecting people's human rights and expanding their freedoms, theMeghalaya government actually presides over a regime of systemic and systematic everyday violations of people's Rights. For instance, laws like theMeghalaya Preventive Detention Act (MPDA), 1995 and Meghalaya Maintenance of Public Order Act (MMPO), are laws that have institutionalized human rights violations. IfInternational Human Rights Day has to have any meaning in Meghalaya, we have to start challenging these legal cultures of 'rights violation'.

The government claims that these laws are needed to ensure peace and security of the people. But experience has shown that these draconian black laws givethe government unlimited power to choose the group, the section, the political opinion to label as criminal and to attack with'legal' violence of preventive detention, legal ostracism and financial extortion. Forexample, apart from many innocent lives it has destroyed, MPDA has been (ab)used to arrest carjackers, pickpockets, people protesting government corruption and uranium mining, common thieves and small time mischief makers. Therange of 'criminals' that MPDA seeks to detain revealsthe unlimited authoritarian nature of the law.

These laws are designed to be abused, because they subvert every tenet of democratic norms. They violate constitutional rights and legal provisions meant to protect the individual. By suspending all the legal safeguards for the individual, who is asked to prove his/her innocence without any legal representation or knowledge of the crime s/he is supposed to have committed, laws like MPDA are anightmarish erasure of all that is considered civilized legal behaviour.

These laws define Unlawful Activities in such a vague manner, as to allow the government to get away with anything, and forcing common citizens to live under a state of constant fear and rather that ensuring security makes all and sundry insecure. People don't know which act of theirs could be declared 'illegal' by the government. In spite of blatant disregard of Human Rights by the state, thepropaganda machinery of the government, including its many civil society collaborators, project those charged under these laws as dangerous criminals. These public misinformation campaigns then feed the sense of public fear and insecurity. This state of fear allows the powerful to get away with any abuse of their position and power. These draconian black laws are designed not to provide peace and security to the people but to create a permanent condition of fear, insecurity and public disorder.

Existence of laws like MPDA and MMPO in our state has slowly and silently eroded legal procedures and constrained democratic spaces by curbing the individual and collective expression of dissent. The logicaloutcome of such arbitrary laws then is to push through anti-people development policies by the government and to silence people at large when those policies threaten their land, resources, and livelihood, allowing the elites to protect their privileges and push forward their plans which will usher in grave inequalities.

For further information, please contact email: angelatarun@gmail.com <mailto:angelatarun@gmail.com>; , akharshiing@yahoo.com <mailto:akharshiing@yahoo.com> and phone: +91-9863097754

Asian Human Rights Commission, Hong Kong ❑

Statement jointly issued by womens' rights organisations and citizens groups at Jantar Mantar in New Delhi at a protest demonstration against Narendra Modi government's snooping of woman in Gujarat

November 18, 2013 | New Delhi

We strongly condemn the illegal, unconstitutional and essentially anti-women snooping conducted by the Gujarat government as revealed in the recent media expose'. We collectively demand that a CBI inquiry should be initiated in the case at the earliest as it concerns the future of our democracy and polity. The direct involvement of the opposition party's prime ministerial candidate in such brazen and fundamental violation of democratic rights and the party's shameless defence is totally unacceptable.

Illegal surveillance is a serious crime, a violation of Constitutional rights.

When done to a woman, especially to probe her personal life and relationships, it's often stalking - violence against women.

But what when an elected head of

state, his Home Minister, and a posse of senior cops stalk a woman obsessively wherever she goes? When taxpayer's money is spent on cops following the woman around on flights, in hotels and malls, when her phone is illegally tapped? Do we even have a word to describe this kind of terrifying, arbitrary misuse of state power?

The 'Saheb' tapes reveal that Gujarat Home Minister Amit Shah monitored the snooping on the woman by his top cops, reporting every movement of hers to 'Saheb'. Saheb himself, it is revealed, had his own surveillance mechanism to verify the cops' diligence.

Who is 'Saheb'? The tapes don't say. But the defence trotted out by the BJP has actually revealed more than the tapes do. They are citing the statement issued by the woman's father, that the surveillance was actually a favour done by 'family friend' Modi for the woman's 'safety', and this 'family matter' should not be policiticised.

The father's statement actually confirms that the tapes are genuine and 'Saheb' is in fact, the Gujarat CM, Modi. This is an admission of - and a lame excuse for - an appalling violation of constitutional entitlements of privacy and personal freedom.

The BJP's defence is painting a graphic picture of their notions of 'women's safety', where illegal surveillance of a daughter at state cost, personally monitored by the head of state and Home Ministry, is perfectly in order for a father to expect and receive. It is another matter whether the father's explanation actually explains the chilling transcripts, where the Home Minister talks vengefully of jailing a young man the woman is meeting, 'for as long as Vanjara is jailed.'

In its ridiculous defence, the BJP has argued that the women's father had asked for security which the Gujarat state had to duly provide. This diaboloical answer only raises further questions: where are the documents supporting that the father made such request? Even if he did, is it constitutional to snoop on a women to provide security to her? On the contrary, the tapes reveal malicious intentions, not security concern. The conversation shows that Mansi was not only kept in dark but the police was actually trying to lay a trap to find out what she was upto. The tapes clearly reveal that Amit Shah's 'Saheb' was particularly interested in knowing who 'Madhuri' was meeting. With or without consent, stalking and snooping against citizens is a gross violation of the fundamental constitutional rights. Snooping against a women on behest of her father is also unconstitutional and only exposes the deeply patriarchal and undemocratic mindset.

The BJP's claim about security is exposed further by the fact that Gujarat has seen a steep rise in crime against woman in the recent years - a 7% increase in rape over last one year. Gujarat has the lowest conviction rate for dowry killings in India: 0.0%. Conviction rates in crime against women are dismal and much below the national average.

The Home Ministry of the Gujarat Government was already implicated in a communal pogrom and a series of staged encounter killings. And now we have evidence of this illegal stalking of a woman. The Government that could not respond to Ehsan Jafri's desperate SOS calls now tells us that they put their crack police corps and Home Ministry at the service of a 'worried father'.

The truth about this chilling instance of state-sponsored stalking must be known. The conspiracy of silence around it must be broken, and patriarchal defences of it may be welcomed by the khaps and the Sangh's moral policing mobs, but never by common citizens and women. The BJP's shameless justification for its Prime Ministerial candidate's criminal acts deserves a wider public condemnation and reinforces our conviction for the need of defeating and politically isolating such anti-women, communal and undemocratic forces.

AIDWA, AIPWA, NFIW, ANHAD, CPA, BMMA, AISA, JSSF and many other groups and individuals. ❑

SC notice to Centre, West Bengal over IT Act

Saturday, Nov 23, 2013

The Supreme Court on Friday sought response from the Centre and the West Bengal government over a PIL challenging a provision in the Information Technology Act that provides for a maximum three-year jail term for posting offensive online speeches or writings.

A Bench led by Justice R M Lodha issued notices to the state government and Ministries of Home Affairs, Law and Justice and Communications and Information Technology on a petition filed by the NGO, Peoples' Union for Civil Liberties (PUCL).

The West Bengal government has been asked to respond to the allegation of the "illegal arrest" of Jadavpur University professor Ambikesh Mahapatra and his neighbour in April last year for allegedly circulating defamatory emails directed at Chief Minister Mamata Banerjee. The duo were later released on bail.

The court, however, turned down a plea of advocate Sanjay Parikh to issue a notice for immediate stay on the operation of the impugned rule. The Bench said that it would consider the request only after receiving replies from all the parties.

The court also directed for tagging the PUCL petition with a bunch of other PILs that have challenged various provisions of the IT Act. Besides Section 66A of the Act that gives punitive power to police, the PUCL has challenged certain provisions of Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules and Information Technology (Intermediaries Guidelines) Rules that deal with the blocking of websites.

The petition also sought a direction from the court for the formation of a committee of experts in law and IT to review fresh complaints under Section 66A of the of the IT Act. It said that no FIR be registered till the court decides the PIL and added that the reasons for blocking the websites be displayed by the designated authorities during the pendency of the petition. The petition termed the provisions as being violative of Articles 14 (right to equality), 19 (freedom of speech and expression) and 21 (right to life) of the Constitution.

Courtesy: Express News Service, New Delhi

***Sanjay Parikh, Advocate who represented the PUCL case before the court, has sent the following note. For information, it is being published here.* – Ed.**

NOTE

Writ Petition filed by the People's Union for Civil Liberties (PUCL) challenging Section 66A of the Information Technology Act, 2000, The Information Technology (Procedure and safeguard for Blocking for Access of Information by Public) Rules 2009, and The Information Technology (Intermediary Guidelines) Rules 2011, came up for hearing before the Supreme Court (Justice RM Lodha and Justice S.K. Singh). The Court was pleased to issue notice in the writ petition which was argued by Mr. Sanjay Parikh along with Ms. Karuna Nundy, Advocates, appearing for PUCL.

In the writ petition, it is, inter alia, stated that the provisions contained in Section 66A of the Information Technology Act, 2000 are vague and undefined, though the offence is cognizable and provides for a maximum of three years imprisonment. It is submitted in the petition that Section 66A violates freedom of speech under Article 19(1)(a) of the Constitution and that the restrictions imposed under Section 66A do not fall within permissible categories of Article 19(2). The petitioner has also said that blocking of information is done arbitrarily, without notice to the author of the content and that while exercising powers in emergency, no post-decisional hearing is provided. Not only that, no information is provided at the site which is blocked, even reasons are not given, for allowing the public to raise their objections. The Intermediary Rules are, as they exist, effectively result in censorship by private online service providers. The petitioner - PUCL, has given several instances to show how the provisions have been misused, including in the case of Aseem Trivedi- a cartoonist, Prof. Ambikesh Mahapatra, Mr. Subrata Sengupta and others. ❑

PUCL Gujarat and other Concerned Citizens: Press Release: 31st October 2013

CM Narendra Modi's Tacit Admission of Fear: Detains Activists without Charges Ahead of his Visit

On 30th October 2013, 4 activists, Rohit Prajapati, Trupti Shah, Amrish Brahmbhatta and Sudhir Biniwale were put under house arrest by Rajpipla police even before they had reached the venue of the symbolic protest, in their own houses (not at the venue of the CM's public meeting). The symbolic protest was to be in the form of a daylong hunger strike. They were not to assemble at any public place or sit on dharna at any public place. The sit-in protest in their own homes was aimed at protecting their land, forest, livelihood, river, (jal, jangal jamin, nadi, janavar). They were followed by police vehicles right from Devalia chokadi when they were travelling from Vadodara to Rajpipla. When they reached the Rajpipla Social Service Society campus they (the police) were standing guard outside the place as if the activists were criminals. No policemen told them why they were holding guard or what the charges against them were. Other activists and villagers from more than 7 villages were also detained. from their homes by the police, again without pressing any formal charges. At midnight many prominent activists viz. Lakhan Musafir, Dhirendra Soneji, Dipen Desai, Rameshbhai Tadvi from Indravarna village, Shaileshbai Tadvi from Vagadia village, Vikrambhai Tadvi and 2 others form Kevadia and other

villagers were detained illegally. As of 6 a.m. on 31st morning we know that at least 10 other people from 5 more villages were detained and taken to various police stations. More police action is also apprehended.

This is one of the clearest admissions by the CM and his team of their fear of people's voices and the entire administration bending over backwards to 'protect' the CM. The CM Mr. Narendra Modi has always operated under fear and thus has clamped down hard on activists and rights defenders. This is one more instance of the CM not wanting to hear the people's voices from his

own state and not allowing them to be heard by the rest of the world. CM Narendra Modi's talk of 'daring' and 'boldness' is entirely devoid of substance and is empty rhetoric, much like an adolescent's bombast It is also one of the clearest evidences, if one cares to heed it, that Gujarat is today reeling under a state of "undeclared Emergency", working much like the Congress dispensation in 1975. Summary detentions without charges, or on trumped up charges, routine denials of permissions for public demonstrations and protests, selected targeting of human rights and civil rights activists, name-calling and myth-making are the order of the day - and all these can be substantiated with evidence by us, unlike the CM who cannot

substantiate a single charge that he makes against those he dislikes.

If the CM has any sense of propriety and public responsibility, then we challenge him to answer the following questions:

1. Why was the police following the activists from Vadodara?
2. Why were Rohit Prajapati, Trupti Shah, Amrish Bhrambhatta and Sudhir Biniwale not allowed to get out of the RSSS campus and prohibited from proceeding to Kevadia?
3. Why are no charges framed against them?
4. Why were people from the villages in the Kevadia area rounded up on 30th evening?
5. What are the charges against them?

We strongly protest against this illegal police action against the activists and against the constitutional violation of the freedoms of expression, movement, and association. We also urge all others to register similar protests against the high-handed and authoritarian dispensation that is the government of CM Narendra Modi in Gujarat today.

Gautam Thakar, Mahesh Pandya, Jimmy C. Dabhi, Rajnibhai Dave, Persis Ginwalla, Raju Deepti, Deepti Raju, Prakash N. Shah, Sarup Dhruv, Prasad Chacko, Fr. Rajeev, SJ, Hiren Gandhi, Fr. Cedric Prakash, Priyanka Christian, Kishore Chaudhary, Rajnikant Gamit, Fr. Vinayak Jadav, Sunil Gamit, Imran Pathan, Vasudev Charupa, Joseph Patelia, Ramesh Borisa, Sheznaz Ansari, Gaurang Raval, Sagar Rabari, Lalji Desai, Swati Desai, Anand Mazgaonka, ❑

PUCL Gujarat: Press Conference Dt.10-12-2013

Scrutiny of EVMs being used for Elections in India. Report of the Scientific Scrutiny by Experts

Back to Ballot is the only remedy.

The main aim of the 'Peoples' Union for Civil Liberties' (PUCL), Gujarat, is to preserve the democratic values and to establish the same in the people's mindset. The organization believes that the democracy is a system of life and beauty of its life lies in the diversity and differences of opinions. Hence, wherever there are points / issues concerning the general public at large or where the points / issues concerning the human or constitutional rights which have become sensitive among the public, the organization remains alive to them and certainly engages itself in giving guidance for bringing such issues to the fore in the correction direction / perspective and to arouse or awaken public awareness.

In our democracy and political system, electoral process is an important and integral part. People's representatives getting elected on this basis have been working for the task of nation building. At such a time, it is very essential and mandatory that electoral system and its process is just and free. It should be entirely transparent and foolproof and far too above any kind of doubts.

Democracy is a way of life and to form a democratic society in its true sense for selection of people's representatives, election process is its integral part. To ensure that election is conducted in a free and just manner, on the one hand, tactics like temptation, threat, caste-communalism, character assassination, liquor etc. should not be used and on the other hand it is very essential and inevitable that the entire electoral process arrangements are transparent and free from and far too above any kind of doubts.

In the recent elections of Gujarat Legislature in the year 2012, doubts about credibility of EVM were expressed from all over and we had also received wide-ranging complaints. Some complaints were based on the experience and some complaints were of such a nature that it was not possible to rationally and logically reply. Some complaints were based on the analysis of results but were having substance in them.

The outcome of Gujarat Legislature elections in the year 2012 were startling to some extent which gave rise to the doubts in the pubic mind at various stages in respect of the electoral process. When the shocking fact came to light that electronic voting machines being used in India are susceptible to be tampered with, then the 'PUCL' Gujarat, felt that the matter should be exhaustively inquired into by the experts and their conclusions / outcome should be placed before the concerned authorities and other stakeholders in the larger interest of the public.

Realizing that to arrive at certain conclusion out of the above, it is necessary to make scientific scrutiny, a Committee consisting of engineers having technological knowledge and those supporting democracy, was formed by the PUCL in the interest of the nation as a whole.

In this context, to conduct scientific scrutiny of the EVM, a Committee consisting of engineers having knowledge in this technology, was constituted by PUCL (Gujarat). In this Committee, following members rendered their honorary services for which we are thankful to them:

Rahul Mehta, Ahmedabad (B Tech, Computer Science, IIT Delhi; MS, Computer Science, Rutgers - New Jersey State Univ.); Balendu Vaghela, Rajkot; (Computer Technologist - Expert); Raju Dipti, Gandhinagar (M.E.), Mahesh Pandya, Ahmedabad (B.E. - Environment Engineer)

The above members were assigned following points for scrutiny.

1. Are the EVMs being used in the election process in India immune or above any kind of doubts?
2. Whether the above arrangements are technically

satisfactory and defect-free or foolproof?

3. Are there any possibilities of tampering with the EVMs on a large scale? Whether there is scope for any improvement?
4. Whether free and just polls can be entirely possibly by this method alone? If no, then what can be suggested in this matter?

Frequent interactions with all the friends were made as also interviews were held and meetings for discussions and deliberations took place. One questionnaire was prepared and sent out to certain associates and as a part of conclusions derived from it, certain serious doubts and issues were revealed about the EVMs being used in India. Series of meetings were held for over six months and opinions were solicited about this at various stages.

In the 2012 Gujarat Legislature Assembly elections, widespread discontent and complaints were noticed in respect of the EVMs. Some complaints were based on the experience and some were such whose answers were inexplicable on the anvil of principles or logic. Looking at the analysis of the election results also some complaints do have substance in them.

Let us have a look at the quotes of some newspapers during that point of time.

a) The conspiracy of setting in the EVMs in Padra, (Dist. Baroda) got exposed. The votes registered were found to be more than those which were cast. 44 votes were cast in the EVM but after the counting, 111 Nos. of votes were reported.

Gujarat To-day 22-10-10

b) The experts also recognized and endorsed to the questions raised against the EVM in Gujarat. The experts in the field of such technology, including the EVM accepted that no technology is foolproof and it is very easy to tamper with the EVMs.

.. Jay Hind; 27-10-2010

c) Votes outnumber voters at five polling booths in Surat. Total figure of voting was more than the number of voters registered. Collector promises action.

DNA. October 12, 2010

d) America felicitates the researcher who made presentation about the defects in the EVMs being used in India for the elections. Vemuru had recently made a startling revealing about security related flaws in the E-voting machines being used in India. Vemuru had been felicitated with Pioneer Award for the year 2010 at the San Francisco based Head Quarter of Civil Liberties Group of America.

Sambhav Metro; 25-10-2010

Findings and Recommendation

In the backdrop of the above, this study has been undertaken with an aim of making the whole process transparent, answerable and credible and to strengthen the democracy. The Findings and Recommendation put forth in the above context by the experts are as under:

(1) There is a storm of protest against the EVM. This method is such that even the voter himself does not know in whose favor he is casting his vote. Hence for free and just pole, it is inevitable to go back to the system of voting by the back to ballot.

(2) The fact that the Election Commission has admitted that there is scope for improvement in the present system, proves that the system is not foolproof.

(3) Every citizen of the country has a right to know whether the polling process being carried on by the autonomous body such as Election Commission is impartial, credible and foolproof or not. In this context, when these questions are raised at different stages then instead of giving clear and proper replies, the Election Commission is giving roundabout and defensive replies. Why the Election Commission is not ready and willing to offer these EVMs for scientific scrutiny by the impartial experts in the electronic field, knowledgeable persons in this line and the experts to prove that the same are tamper-proof and foolproof and thus to prove its credibility and answerability. In the countries such as Germany and others, the Governments have indeed done this. It is our demand that enough opportunity may be provided for scientific scrutiny of the EVM by the impartial technologists of electronic field, knowledgeable persons and the experts.

(4) Many countries of the world do not consider the EVM as reliable. Then why is there adamant and stubborn insistence for its use in India alone? The study of EVM was carried out for California State of America. On seeing that the result is negative, ban on use of EVM for election purposes was imposed by the California Government. Not only in California, use of EVM is banned in 21 other States of America. This has also been the case in Europe and other countries from which we had accepted this kind of method and they themselves are opposing it then we must learn from it and it is inevitable for us to go back to the polling by back to ballot paper method.

(5) When a case was filed in the Supreme Court against the Election Commission by raising doubts about credibility of the EVM, then later on, Election Commission admitted and confessed about the defect and advanced a contention / claim that new types of EVMs have been got ready. But to bring the same into implementation and looking to the need of the time, energy and finances there does not appear to be any possibility of using it during the parliamentary elections for the year 2014. Even if, this " Voter Verifier Paper Audit Trail (VVPAT) System is brought under implementation, then in the event of demand for recounting by any defeated candidate, voting slips will have to be counted which may result into

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double labour. In the general elections, there will be a need of 13 lac No. of VVPAT which will possible involve need of about Rs. 1,692.13 crores and it is not possible to manufacture in coming six months. Hence in order to conduct free and fair polls, it will be inevitable to take recourse to "back to ballot" method for voting, in which there will be expenditure of only Rs. 700 to 800 crores.

(6) The basis of decision for making use of EVM in India was taken in mysterious circumstances without taking into confidence the technicians and the stakeholders and is incorrect in itself. Moreover, having regard to sovereignty of the State, it is not proper that chip of the EVM is produced in a foreign country.

Partial and necessary data of the Experts is enclosed herewith.

In the circumstances when the Election Commission itself has indirectly admitted that the EVM is not foolproof for free and fair polling process where is the sense in rigidly sticking to this process in the forthcoming elections? In the end, if nothing is possible, then in order to repose the credibility, is not it necessary to organize the forthcoming elections with the Dual System instead of conducting it in the present dubious atmosphere or circumstances?

It is our feeling that instead of being dependant on a foreign country it is essential and inevitable to embrace or adopt the system where ballot papers are printed or prepared in our own country.

This views expressed by the expert team seems to be logical and reasonable. We accept their views as findings, although we are not associated with any political party.

This has been published in good faith and in larger public interest for mobilizing and influencing public opinion among the public bodies at large, through the various organizations such as Election Commission, different political parties, media - press, awakened citizens' organizations etc.

Gautam Thaker, General Secretary, PUCL Gujarat: 10th December 2013 (Human Rights Day), Ahmedabad

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Opinion of the committee

We have been handed over with the task to opine on below stated four issues pertaining to election process by EVM Technology:

1. Whether the EVM Machines used in Election process in India are beyond doubt?
2. Whether the EVM process is full proof and satisfactory?
3. Whether there are possibilities, in tampering with the EVM machines in big way? and whether the process system requires the corrections.
4. Whether fair and free elections are completely possible in present EVM system? If no, what suggestions could be made?

Our opinion on these four points are as under:

1. No; 2. No; 3. Yes; 4. No and as per our recommendations.

Rahul Mehta, Ahmedabad (B Tech, Computer Science, IIT Delhi; MS, Computer Science, Rutgers-New Jersey State Univ.); **Balendu Vaghela,** Rajkot; (Computer Technologist-Expert); **Raju Dipti,** Gandhinagar (M.E.), **Mahesh Pandya,** Ahmedabad (B.E.-Environment Engineer) ❑

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Regd. Office :
270-A, Patparganj
Opp. Anandlok Apartments
Mayur Vihar-I, Delhi-110091
Tel.: 22750014
Fax:(PP) 42151459
E-mail : puclnat@gmail.com
puclnat@yahoo.com
Website : www.pucl.org

PEOPLE'S UNION FOR CIVIL LIBERTIES

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