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PUCL Press Statement Condemning IB Report: 13th June 2014

## **PUCL Condemns IB Report Demand to Central Government: Do Not Criminalise Dissent**

People's Union for Civil Liberties condemns the attempt, in the guise of an Intelligence Bureau (IB) report submitted to the Prime Minister of India, to intimidate, slander, throttle and terrorise the voice of various citizens' groups, NGOs and individuals, who raise people's issues relating to the violations of their fundamental human rights guaranteed by the Indian constitution, concerns over violations of rights relating to their life, livelihood and well being and the life - threatening impact of 'destructive development' programmes adopted all across India. The groups - individuals, citizens groups, funded NGOs and non-funded mass movements - questioning the displacement of large populations and destruction of environment by mega projects and risk to human life and survival posed by nuclear reactors, mining of radio active minerals like uranium, the indiscriminate use of dirty sources of energy like coal and other hydro carbons and GMO have been tarred in the so called intelligence report as being a threat the 'national economic security' of India.

The dark irony and convoluted logic underlying the aforesaid IB report is that the Government wants citizens to blindly place trust and belief in the development paradigm advocated, particularly corporate led industrial expansionism, rapid urbanisation and rampant consumerism; this is notwithstanding the reality that the poor, excluded and marginalised sections are already facing immense hardships, exploitation and threat to their lives and well being because of the same policies. In actuality, the economic growth process has already resulted in increasing economic vulnerability, social marginalisation and insecurity of the common citizen threatened by the loss of their lives and livelihood, displacement from their habitats, their resultant pauperisation and the destruction of their environment.

The IB report also alleges that citizens opposing development projects are agents of western powers. This is based on a cruel and perverse logic! A government which is inviting foreign corporate investment from rich western countries wants Indian citizens to ignore the fact that these same corporate powers, supported by their countries, are seeking to climb out their own crippling, economic stagnation by investing through their corporate capital in all kinds of mega projects in India irrespective of their harmful consequences to Indians. The IB, and by extension the Government of India, is not just agreeable but supportive of looting and plundering of the nation's wealth in common resources, but is ready and

willing to use the might of state power to repress and suppress people's voices when they oppose such destructive development projects.

It is dark irony that those who repatriate profits earned in India by looting and plundering the nation's wealth are feted as 'patriots' and those citizens who assert India's and Indians' rights over our vast common resources and protest against destructive development are dubbed 'anti-national-economic interest'. Its a short distance from such typecasting to being arrested

as 'anti-national' and seditious.

Environmental degradation is a real concern and the poor of this country bear the brunt of its ill effects - rising temperatures, poor rains, lack of safe drinking water and exposure to pollution resulting in not only chronic illnesses among the living but also affecting the unborn. All that NGOs are doing is reminding the government of its commitments under the Rio Convention, Agenda 21 and other UN Declarations. The organizations and the individuals who oppose indiscriminate plundering and destruction of natural

resources are only fulfilling their fundamental duties under Article 51 A of the constitution which mandates that "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures".

The bogey of "foreign funding" is raised more to smear individual and groups challenging unfair, unjust inequitable and unsustainable state and corporate projects. The IB and the PMO know that all NGOs who receive funds from foreign sources

*Contd. on Page. 3*

Press Release: 17th June, 2014

## **PUCL seeks An Independent Review and Intervention by NHRC in Order to Stop the Continuing Persecution and Prosecution of Human Rights Defenders, Teesta Setalvad and Javed Anand of Citizens for Peace and Justice and others**

People's Union for Civil Liberties today filed a petition with the National Human Rights Commission seeking an independent review and intervention in respect of continuing persecution and prosecution of human rights defenders, Teesta Setalvad and Javed Anand of Citizens for Peace and Justice and others

The petition stressed that CJP and its office bearers Teesta Setalvad, Javed Anand and their team are human rights defenders. They have, despite threats of grave risk to their personal safety, ensured that the rule of law prevailed in the state of Gujarat at a time when the entire state machinery was subverted and all public officials either abdicated their constitutional and statutory functions or worse connived / actively participated with the perpetrators of terror and violence. PUCL believes that the repeated complaints that are being filed against these human rights defenders are only a consequence of their success in upholding the rule of law in Gujarat and ensuring multiple convictions, including that of Minister Maya Kodnani.

### **National and International Human Rights Obligations Towards Human Rights Defenders**

PUCL in its petition pointed out that under international human rights principles there is a duty cast upon every State to accord adequate protection to human rights defenders. The United Nations "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" (March, 1999) acknowledges that human rights defenders play a very important role in the promotion and protection of human rights and it is the duty of every State and its administrators to avoid criminalisation, stigmatisation, impediments, obstructions or restrictions on the work of human rights defenders.

Art. 18 of this Declaration stresses that "individuals, groups, institutions and non-governmental organisations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of

democratic societies, institutions and processes".

Further, in October 2009 the Hon'ble NHRC, recommended that it is the obligation of the State to protect human rights of all. Individuals, groups or associations who work for promotion and protection of human rights, commonly referred to as Human Rights Defenders, should also be provided protection by the State against any violence, threats, retaliation, adverse discrimination, pressure or any arbitrary action as a consequence of their activities for promotion & protection of human rights & fundamental freedom. NHRC and SHRCs can also play an important role in this regard. The Commission had also recommended that there is a need to set up a Focal Point for human rights defenders, preferably at NHRC, so that human rights defenders can reach out to it for support.

### **Contribution of Teesta Setalvad, Javed Anand and CJP**

The petition referred to the consistent efforts of Teesta Setalvad and the CJP team which has secured more than 110 convictions

so far with many other trials nearing completion.

It states that amongst the numerous cases pursued by Teesta Setalvad and the CJP, one of the most noteworthy cases is the Best Bakery case which initially ended in a total acquittal of all the accused, but got a fresh lease of life when an important eye witness to the incident Ms. Zahira Sheikh approached Teesta Setalvad and the CJP saying she had been coerced to resile on her eye witness testimony. It is the intervention of CJP as well as the NHRC which resulted in the Supreme Court directing a fresh trial. During the retrial the CJP also obtained orders for witness protection and appointment of special public prosecutors and eventually the trial court went on to convict 9 of the accused persons.

It is pertinent to point out that even as CJP and team strived to establish

the rule of law and ensured that perpetrators were punished, a slew of complaints and FIRs were foisted against them. Many complaints were later found to be unfounded upon inquiry by the Registrar General of the Supreme Court and by the various trial courts. . But more cases are being filed and the CJP and team are being hindered in their human rights work and unnecessarily harassed.

In the light of the background and context in which the cases/ complaints have been filed against Citizens for Justice and Peace and its Trustees Teesta Setalvad, Javed Anand, PUCL requested the NHRC to conduct an independent inquiry and review all the cases filed. It also urged the NHRC to recommend to the State of Gujarat that pending such review the Government of Gujarat should refrain from initiating any coercive action such as arrest,

*Contd. from Page. 2*

are subjected to the strict provisions of the Foreign Contribution (Regulation) Act, 2010 where clearances are given by the Home Department and subjected to periodic stringent audits by the central government agencies.

It is neither PUCL's nor anybody's case that the NGOs receiving foreign or for that matter, even domestic funding, should not be transparent and accountable for the funds they receive and subject to the laws of the land. Any, and all, organisations are duty bound to be held accountable under the law if they violate laws and regulations governing their funding. Instead of initiating prosecutions against organisations found to be breaking the law, hurling the kind of scurrilous insinuation resorted to by the government as made in the leaked intelligence report, is nothing but an attempt to throttle dissent from the dominant discourse on development. Much more sinister is the aim to silence people from their fundamental right to express dissent through words, non violent action, mobilisation, and forming

associations to further their views. While slandering them as foreign agents is the weapon of choice to intimidate NGOs receiving foreign funds, it was difficult to use against citizens' organisations not receiving any foreign or domestic institutional funding like the PUCL, which too has been targeted by the so called IB report. It is shocking that a criticism of the so called Gujarat model of development and its ill effect on the poor and the marginalised people, and the participation in a seminar on this topic, by the Gujarat PUCL and some other organisations, including Gandhian and Sarvodaya ones is alleged by the Intelligence Bureau to be anti national.

We only hope that this intelligence report is not a precursor to a more sinister anti democratic and repressive crackdown by the new government on dissent and other human and democratic rights of the people to further a corporate led economic agenda.

We would like to remind the new Central government, as also all the states, what the Supreme Court of

freezing of accounts etc or in any manner hindering the work of these human rights defenders.

The PUCL also requested the NHRC to recommend the initiation of criminal and disciplinary action against all policemen, prosecutors and government officials, and individuals against whom there is prima facie evidence of mala fide actions against human rights defenders like Teesta Setalvad, Javed Anand and others and to intervene in the matters/cases referred above, going on against human rights defenders Teesta Setalvad and Javed Anand so as to protect their rights as human rights defenders.

Sd./-

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

India pointed out in 'S. Rangarajan vs P. Jagjivan Ram' (1994):

"When men differ in opinion, both sides ought equally to have the advantage of being heard by the public." (Benjamin Franklin). If one is allowed to say that policy of the Government is good, another is with equal freedom entitled to say that it is bad. If one is allowed to support the governmental scheme, the other could as well say, that he will not support it. The different views are allowed to be expressed by proponents and opponent not because they are correct, or valid but because there is freedom in this country for expressing even differing views on any issue".

We therefore call upon the new BJP-led government to respect people's right to articulate their views, including their fundamental right to dissent and protest peaceably and in democratic manner.

Sd/-

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

## That Darkness Still Stalks Our Dreams

Amid the beginnings of an attempt to stifle all dissent, the PM must remember JP, one of his gurus

**M.G. Devasahayam\***

On the midnight of June 25, 1975, Prime Minister Indira Gandhi nearly destroyed India's democratic framework with a piece of paper that proclaimed a state of emergency. It was carried by her private secretary to the President, who meekly signed it. The misgovernance that followed extinguished freedom, suspended fundamental rights, fettered the press, suppressed dissent. More than one lakh citizens were illegally detained. Draconian laws followed. Democratic governance collapsed. At that time, I was the district magistrate of Chandigarh, a Union Territory governed by the Centre. The home ministry and the PMO were directly monitoring my "eminent prisoner", Jayaprakash Narain, India's tallest leader after Mohandas Gandhi, and now Enemy No. 1 of the state. He'd been arrested by the district magistrate of Delhi and sent to me for safe custody. So I had a ringside view of the Emergency, right from the corridors of power in Delhi to the streets of Chandigarh. Everyone could see the Emergency drama around them, but I—a member of the elite IAS, but primarily a freedom-loving citizen—had the opportunity to witness, feel and be a part of the intense struggle of JP, the "revolutionary in chains".

In my own humble way, I initiated certain moves for reconciliation between JP and Indira Gandhi so that the Emergency would be lifted and democracy restored at the earliest. I'd even roped in Sheikh Abdullah for the purpose through the good offices of Punjab chief minister Giani Zail Singh. These efforts were repeatedly sabotaged by an extra-constitutional authority at Delhi's pinnacle of power. Mysteriously, starting early November, the health of JP, who was lodged at the Postgraduate Institute of Medical Education and Research in Chandigarh, began to deteriorate sharply. I had every reason to

suspect that a conspiracy was on to incapacitate JP by damaging his kidneys and put him out of harm's way if not eliminate him. Probably, Delhi durbar felt that JP was the only person of moral stature who could challenge the dynasty. Later events proved me right.

By divine grace, I could defeat the conspiracy by playing hardball with the Centre with a pointed poser: "What if JP dies in detention?" That sent shivers in the PMO, for just a few weeks earlier, sleuths had rehearsed a "death-in-detention" drill. Within a week, JP was released on unconditional parole. In defiance of Delhi durbar, I commandeered seats on a flight and sent JP to Jaslok Hospital in Bombay with his brother Rajeshwar Prasad and friend Minoo Masani. We were just in time for his kidneys to be saved. JP lived for four more years, albeit on dialysis twice a week. For this audacity, I did incur the wrath of the 'dynasty' scion and his minions. But I had the honour of JP calling me "the son I never had" and Dr Manmohan Singh complimenting me, saying, "Deva, you did not merely save JP, you saved Indian democracy."

In the 1977 election, JP led the Janata combine and threw the Congress out of power. Needless to say, the conspiracy to damage JP's kidneys was never fully investigated and the Alva commission set up by Janata government was wound up under intense pressure from vested interests still owing allegiance to the Congress dynasty.

Be that as it may, a 'secret' IB report leaked on June 11 lists me among 'eminent persons' who are part of an anti-national, foreign-funded "Superior Network of pan-India NGOs", including Greenpeace and People's Union for Civil Liberties (PUCL). These NGOs are allegedly "taking down development", impacting GDP by three per cent

and endangering "national economic security" by articulating people-centric issues. Is that not the sort of language used during the Emergency? The PUCL, founded by that great patriot JP, responded that the report was an attempt to intimidate and kill dissent from those who raise an often lonely voice against life- and livelihood-destroying development programmes.

Indeed, I have been speaking up against big-ticket, forest-destroying, coast-ravaging and livelihood-killing projects such as Vedanta and Posco. Also against resource-guzzling, secretive and extremely expensive nuclear projects such as the 2,000 MW Koodankulam plant (to be expanded to 6,000 MW) and the 2,800 MW Gorakhpur plant (in Haryana).

I oppose the Koodankulam project because it has devastated the southeastern seabed and would rob lakhs of fisherfolk of a livelihood. It could also hang like a sword of Damocles over millions of project-affected people because of unsafe equipment. As recently as May 14, six personnel were seriously injured at the Koodankulam plant because of malfunctioning valves. I oppose the Gorakhpur project because the 320 cusecs of Bhakra canal water allotted to this plant would deprive 1.4 lakh acres of farmland of water. The region is semi-arid and the cotton, wheat, pulses and oilseeds grown here depend on irrigation from the canal. Farming supports the lives of about a million directly engaged in it here. Villages here are also the habitat of blackbuck (a "near-threatened" species) and the project will cause the animals immense harm. Another reason I oppose nuclear reactors is because post-Fukushima, they raise great worries about being a threat to life itself. Nuclear energy, which generates just one per cent of the country's needs, is not the answer

to India's electricity problems. It is also very expensive, if all costs-capital, construction, commissioning, operation, decommissioning and safe storage of spent-fuel-are honestly factored in.

This 'development' model is anti-poor. Opposing them, in fact, is in consonance with Prime Minister Narendra Modi's governance agenda, unveiled in the President's address to Parliament on June 9. It swears by 'sabka saath, sabka vikas' or inclusive development and goes on to say: "...my government commits itself to the goal of poverty elimination. With a firm belief that the first claim on development belongs to the poor, the government will focus its attention on those who need the basic necessities of life most urgently. It will take necessary steps to provide security in its entirety to all citizens, through empathy, support and empowerment." It is precisely these people-centric issues that the 'listed' individuals and NGOs are advancing. Intriguingly, the IB report was leaked the very day after this speech. Is it to scuttle Modi's pro-poor agenda? The jury is out!

Back to the Emergency. Even after four decades, this dark era continues to haunt the nation. Writing in Outlook in June 2010,

Arundhati Roy wrote: "June 26 is the 35th anniversary of the Emergency. Perhaps the Indian people should declare that this country is still in a state of Emergency." When the UPA government threatened Maoist sympathisers with imprisonment under the Unlawful Activities (Prevention) Act, rights activists retorted: "We consider this as an attack on civil society reminiscent of the Emergency era." Anchoring CNN-IBN's Face the Nation debate on the censorship of Prakash Jha's movie Raajneeti, Sagarika Ghosh's poser was, "Are we under Emergency?" What now, with some top guns pushing for a harsher POTA and the decimation of 'Maoists' by deploying the military?

Despite the fact that the Emergency is remembered and recalled whenever any blatantly unlawful act or excess is committed, people at large, particularly those of the younger generation, have no idea as to what it was all about. On the eve of the 36th anniversary of the Emergency, veteran journalist Kuldip Nayar wrote: "The new generation must understand that today's non-governance or misgovernance is the fallout of what Indira Gandhi had done 36 years ago by destroying an established democratic order.... How do you make the new generation relate to

the Emergency imposed some 36 years ago this week? I have been asked this question many a time...I do not have an answer." Nayar's anguish is proof enough as to how this crucial part of India's freedom-killing post--independence history has been pushed under the carpet!

At the peak of the Emergency, when Indira Gandhi proclaimed that "food is more important than freedom", JP had thundered: "Freedom became one of the beacon lights of my life and it has remained so ever since. Freedom...transcended the mere freedom of my country and embraced freedom of man everywhere and from every sort of trammel-above all it meant freedom of the human personality, freedom of the mind, freedom of the spirit. This freedom has become a passion of my life and I shall not see it compromised for bread, for security, for prosperity, for the glory of the state or for anything else."

According to some accounts, JP was Modi's guiding beacon during his long sociopolitical journey. Will Modi-who worshipped at the 'temple of democracy' before entering it-honour his icon's freedom agenda or let petty minds belittle it? This is the billion-people question for Modi!

*\*The writer is a former Army officer and IAS officer. He's now an activist.*

*Courtesy Outlook, June 30, 2014. □*

## A PM at work - Red Herrings Across The Trail

### Rajindar Sachar

NARENDRA Modi, like any newly-elected Prime Minister, is entitled to enjoy the usual honeymoon period of 100 days, both with the press and the public. Much as one would initially be reluctant to breach his privacy, developments are evolving at a startling pace. And if not taken notice of at the right time, things may take an unpleasant turn which will not be in the interest of the country. A muted response is not an option. Mr Modi has won a resounding victory, but a little modesty would be in order not least because his 31 per cent vote-share is the lowest-ever for any government. He did present

a moderate face up to the swearing-in ceremony, indeed the grandstanding in the midst of SAARC leaders and worldwide coverage. It must have been a letdown when within a few hours of taking over, his Minister of Minority Affairs, Najma Heptullah, committed a faux pas by stating "that Muslims are not a minority in the country" and that the Prime Minister's 15-point programme, which for decades has been part of every Central Budget, needs to be discontinued". This is a shocking statement and should have been immediately rebutted. Unfortunately, however, the Prime

Minister's silence persists.

Mr Modi has of course scored a first of sorts by not appointing a full-time Defence Minister. Finance and Defence are two of the most important ministries to be handled by an individual. Not having a separate Defence Minister has already led to an embarrassing situation. On 9 June, the Defence Ministry filed an affidavit in the Supreme Court in response to the challenge posed to the appointment of General Suhag as the next Army Chief. The Ministry's affidavit criticises VK Singh, the former Army

Chief and the present Minister of State for the North-East in the Modi government, for his remarks on General Suhag as "illegal and extraneous". Arun Jaitley has now clarified that General Suhag's appointment was final as the new government had accepted the appointment. A full-time Defence Minister might have saved the government from this embarrassment.

The appointment of the Attorney-General, a constitutional post, was announced last Thursday ~ after the Solicitor-General had already assumed office. This is quixotic. The Attorney-General is the head of the Union Government's legal team. The appointment of other law officers is like announcing a cricket team without naming the captain. Ever since 1950, law officers have never been appointed before the Attorney-General or without his approval. The present Law Minister is an experienced lawyer and parliamentarian. How did this embarrassing anomaly escape his attention?

The Prime Minister's address to the Secretaries has been lauded in the press. He has asked them to contact him at any time if they have any urgent matter to discuss. This might tend to suggest that Ministers are mere adjuncts to the Prime Minister. This is contrary to Article 74 of the Constitution, which requires the

President to act in accordance with the advice of the Council of Ministers. It is inherent in our constitutional scheme that the Prime Minister's personal advice is not legally correct, still less binding on the President. The advice has to be tendered by the Council of Ministers. This may be just a formality but is nevertheless essential for the running of the government in a democracy.

Going by media reports, some of the ministers were keen on meeting the Secretaries immediately after the Prime Minister's interaction... to know what Mr Modi had said. This was not a dignified thing to do. India follows the Westminster model. As the Foreign Secretary of the UK had said in 1968: "We will breach a very serious constitutional position if we start holding officials responsible for things that are done wrong. If things are wrongly done, then they are wrongly done by the ministers".

The joint address to both Houses has promised the Women's Reservation Bill. The Prime Minister has also iterated his faith in private enterprise. He has hinted at 100 percent FDI in defence production. Mr Modi's pro-business stance is reflected in the President's Address which has promised to provide tax relief to billionaires. Even Warren Buffet, the American billionaire, had once conceded that the rich should be taxed at a minimum rate of 35

percent. The French President taxes billionaires at the rate of 75 per cent. It would be erroneous to imagine that capital protection is the first priority. As Abraham Lincoln once pointed out, capital is only the fruit of labour, and could never have existed if labour had not first existed. Even liberal economists are highlighting the wide inequalities in America, Europe and Asia. This public announcement by the Modi government to dismantle the public sector is an attack on the basic structure of our Constitution. It will be disastrous if in the face of the media hype and a huge majority, the government is able to dismantle the structure of the welfare state and to defy the mandate of the Preamble of the Constitution that envisages India as a Socialist Republic.

The government ought not to ignore Dr. BR Ambedkar's warning in his concluding speech on 25 November 1949 ~ "How long should we continue to deny equality in our social and economic life? If we continue it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment, or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up".

*Courtesy The Statesman, Sunday, 15 June 2014* □

## **Modi Wins 2014 Elections: Victory of Development or Divisiveness**

**Ram Puniyani**

The results of Parliamentary Elections are very interesting. With 31% vote share BJP-Modi won 282 Parliament seats, Congress with 19% vote share got 44 seats, BSP polled 4.1 percent of votes and drew a total blank, the Trinamool Congress won 3.8 percent of vote share with 34 seats, Samajwadi Party won 3.4 percent with five MPs, AIADMK with 3.3 got 37 seats while CPI(M) with 3.3 percent of vote share got nine seats. We should note that

this time around Congress's 19.3% votes translated into 44 seats while during last general elections of 2009 BJP's 18.5% had fetched it 116 seats. That's a tale by itself, the crying need for electoral reforms which has been pending despite such glaring disparities which weaken the representative character of our Parliament. Many social activists have been asking for these reforms but in vain.

Modi has been of course the flavor

of the season and this time around it is being said that it was his plank of 'development' which attracted the voters to him, cutting across the caste and religious equations. How far is that true? Keeping aside the fact that Modi was backed to the hilt by Corporate, money flowed like water and all this was further aided by the steel frame of lakhs of RSS workers who managed the ground level electoral work for BJP. Thus Modi stood on two solid pillars,

Corporate on one side and RSS on the other. He asserted that though he could not die for independence he will live for Independent India. This is again amongst the many falsehoods, which he has concocted to project his image in the public eye. One knows that he belongs to a political ideology and political stream of RSS-Hindutva, which was never a part of freedom struggle. RSS-BJP-Hindutva nationalism is different from the nationalism of freedom movement. Gandhi, freedom movement's nationalism is Indian Nationalism while Modiparivar's Nationalism is Hindu nationalism, a religious nationalism similar and parallel to Muslim nationalism of Jinnah: Muslim League. From the sidelines, RSS and its clones kept criticizing the freedom movement as it was for inclusive Indian nationalism, while Modi' ideological school, RSS is for Hindu nationalism. So there is no question of people like him or his predecessors having died for freedom of the country.

There are multiple other factors which helped him to be first past the pole, his aggressive style, his success in banking upon weaknesses of Congress, his ability to communicate with masses supplemented by the lackluster campaign of Congress and the Presidential style of electioneering added weight to Modi's success. Congress, of course, has collected the baggage of corruption and weak governance. The out of proportion discrediting of Congress begun by Anna movement, backed by RSS, and then taken forward by Kejriwal contributed immensely knocking Congress out of reckoning for victory. Kejriwal in particular woke up to BJP's corruption a wee bit too late and with lots of reluctance for reasons beyond the comprehension. Anna, who at one time was being called the 'second Gandhi' eclipsed in to non-being after playing the crucial role for some time. Kejriwal pursuing his

impressive looking agenda against corruption went on to transform the social movement into a political party and in the process raising lots of question on the nature and potentials of social movements. Kejriwal's AAP, definitely split the anti Modi votes with great 'success'. AAP put more than 400 candidates and most of them have lost their deposits. Many of these candidates have excellent reputation and contribution to social issues and for engaging challenges related to social transformation. This experience of electoral battlefield, how will it affect their core agenda of enhancing social movements, remains to be seen.

Many commentators-leaders, after anointing Anna as the 'Second Gandhi' are now abusing Gandhi's name yet again by comparing the likes of Ramdeo and Modi to Mahatma Gandhi. One Modi acolyte went on to say Modi is better than Gandhi! What a shame to appropriate the name of Gandhi, the great unifier of the nation with those whose foundations are on the divisive ideology of sectarian nationalism.

Coming to the 'development' agenda, it is true that after playing his role in Gujarat carnage, Modi quickly took up the task of propagating the about 'development' of Gujarat. This 'make believe' myth of Gujarat's development as such was state government's generous attitude towards the Corporate, who in turn started clamoring for 'Modi as PM' right from 2007. While the religious minorities started being relegated to the second class citizenship in Gujarat, the myth of Gujarat development started becoming the part of folk lore, for long unchallenged by other parties and scholars studying the development. When the data from Gujarat started being analyzed critically the hoax of development lay exposed, but by that time it was too late for the truth of development to be communicated to the people far

and wide. On the surface it appears as if this was the only agenda around which Modi campaigned. That's far from true. Modi as such used communal and caste card time and over again. This was done with great amount of ease and shrewdness. He did criticize the export of beef labeling it Pink revolution, subtly hinting the link of meat-beef to Muslim minorities. This converted an economic issue into a communal one. Modi spoke regularly against Bangla speaking Muslims by saying that the Assam Government is doing away with Rhinos for accommodating the Bangla infiltrators. He further added that they should be ready to pack their bags on 16th May when he will take over as the Prime Minister of the country. The communal message was loud and clear. BJP spokesmen have already stated that these Bangla speaking Hindus are refugees while the Muslim is infiltrators.

If one examines the overall scatter of the areas where BJP has won a very disturbing fact comes to one's mind. While at surface the plank of development ruled the roost there is definitely the subtle role played by communal polarization. BJP has mostly succeeded in areas where already communal polarization has been brought in through communal or violence or terrorist violence. Maharashtra, Gujarat, UP, MP, Bihar, Assam all these have seen massive communal violence in the past. While the states which have not come under the sway of BJP-Modi are the one's which have been relatively free from communal violence: Tamil Nadu, Bengal and Kerala in particular. Orissa is a bit of an exception, where despite the Kandhmal violence, NavinPatnaik's party is managing to be in power. The socio political interpretation of the deeper relations between acts of violence and victory of RSS-BJP-Modi needs to be grasped at depth; the polarizing role of communal-terrorist violence needs a deeper

look. While on surface the development myth has won over large section of electorate, it has taken place in areas which have in past seen the bouts of violence. Most of the inquiry commission reports do attribute violence to the machinations of communal organization.

While overtly the caste was not used, Modi did exploit the word Neech Rajniti (Low level Politics) used by Priyanka Gandhi and converted it in to NeechJati (low caste), flaunting his caste. At other occasions also he projected his

caste, Ghanchi to polarize along caste lines.

What signal has been given by Modi's victory? The message of Mumbai, Gujarat Muzzafnagar and hoards of other such acts has created a deep sense of insecurity amongst sections of our population. Despite Modi's brave denials and the struggles of social activists, justice delivery seems to be very slow, if at all, and it is eluding the victims. The culprits are claiming they are innocents and that they have got a 'clean chit'. While there are many firsts in Modi coming to

power, one first which is not highlighted is that, this is the first time a person accused of being part of the carnage process is going to have all the levers of power under his control. So what are the future prospects for the India of Gandhi and Nehru, what are the prospects of the values of India's Constitution? Can Modi give up his core agenda of Hindu Nationalism, which has been the underlying ideology of his politics, or will he deliver a Hindu nation to his mentors? No prizes for guessing! □

## **Modi's "Masala Governance" May Not Hold True For Tamils**

**Kusal Perera, Senior Journalist, Colombo, Sri Lanka**

Soon after Indian Lok Sabha election results confirmed Narendra Modi's victory with a stunning majority for the BJP, I was asked by a local Sinhala FM radio channel for comments. "Imagine it was Ranasinghe Premadasa who won the general elections in 1977. That's how it is now, with Modi" I said. Knew the young man at the controls in the studio did not know what that election meant to Sri Lanka. It was about Sirima Bandaranayake's SLFP getting routed and the once militant and robust 'Left' that enjoyed continued elected representation from the 1936 State Council onwards and uninterrupted, getting obliterated. "Modi, like Premadasa, comes from the bottom of the social strata and with stubborn perseverance and finesse to climb to the top of the mainstream opposition party. His popular leadership becomes a political necessity for the corporates. Modi thus sweeps the ruling Congress party into Liliputian land, like what Jayawardne did to the SLFP in 1977, I explained.

Modi, like President Premadasa, immediately sets about clearing up the road ahead. This "Modi-fied Indian factor" has stirred Sri Lankan urban minds, more after President Rajapaksa's return from Narendra

Modi's swearing in ceremony as the new Indian PM, than after Lok Sabha election results. President Rajapaksa's 20 minute sit-in with PM Modi and Indian MEA officials, reportedly made the Rajapaksa regime, quite edgy. For Modi to have raised the issue of delayed reconciliation with a crisp and short insistence that the 13 Amendment to the Constitution should be implemented in full with police and land powers intact, to request the Rajapaksa government to begin work at the stalled Sampur coal power project and then talk about the fishermen's issue was not what was expected immediately after his swearing in.

Indian Lok Sabha results, did not prepare the Rajapaksa regime to expect Modi in such mood. The TN vote, almost totally ignored Modi and his BJP. CM Jayalalithaa swept the board all by herself, but was left irrelevant in a ruling alliance with the BJP. Thinking in Colombo therefore was, Modi's government would be closer to the Rajapaksa regime than the vacillating Congress led UPA government now voted out. An alliance government, pushed and pulled by TN players, it was. Modi's stand on the Tamil issue therefore came as a rude shock.

With that, PM Modi raised some

confidence and trust for himself in Tamil Nadu and among Sri Lankan Tamils. While Modi could sail through Lok Sabha on his own and with ease, he still needs allies in the Rajya Sabha. His straight talk with President Rajapaksa was meant for such allies. The "TN lady" who boycotted the swearing in for inviting President Rajapaksa, met PM Modi immediately in New Delhi. The 50 minute meeting with PM Modi on Tuesday and then with Finance Minister Jaitely, made all election time jibes, a thing of the past for both. She will now, she told Indian media, consider supporting Modi on an issue basis. The TNA too wrote, requesting an early opportunity to brief PM Modi on the SL Tamil issue. Reservations on all such sudden affinities would nevertheless remain on hold. For Modi, the SL Tamil issue and TN may be a passing cloud. A short rain to tide over. How Modi's government in New Delhi would respond to the UNHRC investigation on war crimes and accountability, will therefore be the next step to watch.

On hindsight, Modi may back the UNHRC investigation process this year, although India under the Congress government refrained from voting with the March Resolution for investigations. Modi

will have to keep international players on board, who would take time to read his BJP government's positioning in regional geo politics. He also needs Jeyalalithaa's votes in the Rajya Sabha for now, that compels him to take up the SL Tamil issue. The two have foreign policy inter-links. Yet Modi would not go the whole hog of backing a Referendum for a "Separate Tamil State", a slogan peddled by sections of the Tamil Diaspora and some in TN, including Jayalalithaa now.

Modi's Hindutva politics does not provide much space for TN sentiments apart from what he needs for now, with the crucial vote gap in Rajya Sabha. His vision for India is somewhat similar to President Premadasa's nationalist politics. Premadasa's stubborn stand against the IPKF and his overtly anti West positioning in foreign policy (in 1991 he ordered British High Commissioner David Gladstone out of the country, declaring him persona non grata) makes Modi a larger Indian version of Premadasa. That was quite evident when Modi chose Gopinath Munde to be Union Minister for Rural Development. Munde was very much grounded on RSS "nationalism" and came from a backward caste in Maharashtra, closer to the rural population.

Narendra Modi like Premadasa, is out to create a nationalist economy dominated by Indian capital, independent of global pressure. This seems his deviation from Dr. Singh who was a WB/IMF stereotype. Premadasa was also bent on reaching the village and thus took his 200 garment factory programme to rural areas. He was averse to WB dictates and did not budge, when he wanted the WB to back his poverty alleviation programme, "Jana Saviya", that today is "Samurdhi" renamed by Chandrika-SB duo.

These are similarities, no doubt. But the very disparity in scales and the two decade time gap in a neo liberal world that is through a hard

recession, makes PM Modi different to President Premadasa. The difference brings the larger Modi closer to the present Rajapaksa rule, manipulating politics in a neo liberal economy that lives with heavy corruption and shifts social identities, from a plural society to a single dominant identity in political rule. This does not necessarily mean the two would always work together. No. They would have their own incompatibilities too, but would run alike.

The Indian State, like the pro Sinhala State here, has a pro Hindutva blinking. Law enforcement, the lower judiciary included, has been accused of framing "innocent Muslim youth" on terrorist related charges. In April 2013, a memorandum handed over to Home Minister Sushilkumar Shinde signed by CPI General Secretary, A.B. Bardhan and some Rajya Sabha MPs demanded a mechanism to secure compensation and reparation for those acquitted by Courts and a probe against police officers who had arrested "innocent" Muslims and fabricated evidence against them. Added are controversial killings through fake encounters by State police, the army and the para-military that registers a frightening 555 cases in the 04 years up to 2013. The numbers spread from J&K through Uttar Pradesh, Manipur and Assam to West Bengal. And this is the State apparatus Modi takes over, with his pro Hindutva "small" government.

These have parallels in Sri Lanka too, where suspected Tamil youth arrested and detained under PTA languish in prisons without trial. In SL too, custodial killings always go on record as unavoidable acts for self defence, accepted in Magistrate Courts without further questions. Similarities between Modi and the Rajapaksa rule could emerge more conspicuously in time to come. As with the Rajapaksa regime, most said now and the few done just now by Modi, would be cosmetic

gestures for a start. Modi's much fancied and hyped statement, "Minimum government - Maximum Governance" doesn't sound different to Rajapaksa's "Mahinda Chintanaya" philosophy that said in 2005, "... a ruler is only a temporary trustee and not an owner of your children's heritage."(p/02). And this "temporary trustee", brought in the 18 Amendment to the Constitution, that abolished the 02 term limit and now allows him unrestricted number of terms as president, if elected. Elections in our democracies are pure fun, for the rich and the privileged with State power, or access to State power.

Elected representatives in neo liberal economies are bound by market needs and funded by market profits. They are not held responsible to societal requirements. Not by human needs, nor for quality of life. The contradiction between social needs and the electoral system that President Jayawardne introduced in 1978, is just that. Neo liberal democracies require elected legislatures to keep a distance from the people, who would not be a burden in taking decisions to run a free market economy. Modi's government with that small cabinet of ministers and the newly elected Lok Sabha will not be any different. Research by Association for Democratic Reforms (ADR) that analysed affidavits filed by candidates show, MPs with criminal cases keep increasing. In 2004 the percentage was 24 and in 2009 it was 30 percent. This new Lok Sabha has a 34.3 percent high with 186 MPs out of the 543 elected, carrying criminal charges from rape and sexual abuse, attempted murder, murder and kidnapping. The picture is far more disturbing and depressing when numbers show, 442 of them are Crorepathies. The average asset value of a BJP MP is said to be 11 Crore. This Lok Sabha is richer than the previous with 82 percent Crorepathies

elected as MPs as against 58 percent in the previous Lok Sabha. The two together, criminals and crorepathies, is what parliamentary democracy is, in any neo liberal society.

The Indian economy and corruption, very much larger in scale than the Sri Lankan economy and its corruption, will not be different in prioritising human needs. A "human being" is no factor when economic policy for a free market is decided in a neo liberal society. Human beings are only consumers with a "buying power". Therefore in such societies, it is the customer with a high stake in the market, who is tagged as one to be served. All

others are just numbers among many unknown millions and can be abused in any form. This explanation can also be extended to explain the serious increase in child abuse, rape and sexual abuse of women, both in Sri Lanka and India.

Modi was not brought in by corporate leaders to effect fundamental changes to such society, but to de-rugarise the market, for bigger profits. And Sri Lankan Tamil politics, especially in the Diaspora, would have to be satisfied with a Modi government that would only use their issues for his advantage and not in seriously pushing for answers. Thus comes

the edge, the Rajapaksa regime would work on with this Modi government, a "masala" in a sense. Modi's entry signifies a South Asian decline. SAARC in such context is important for Modi to forge a common political agenda for regional market dominance. It's the people in South Asia (SA) who would have to discourse now for alternates. For a system that will go beyond procedural democracy to a functional, participatory democracy with a different development paradigm. Civil liberties will only have social relevance hereafter, if spoken in terms of the SA region and less in terms of national entities.

*Colombo - 05 June 2014* □

## Resisting Modi through mass struggles

**Praful Bidwai**

As Narendra Modi chooses his team of advisers and top bureaucrats, some commentators are appealing to him to follow proper appointment procedures, adopt the dharma of inclusion, and "reach out" to the 69 percent of the electorate who didn't vote for the Bharatiya Janata Party - and especially assure Muslims that they should feel safe under him despite the 2002 Gujarat pogrom.

These commentators are unpardonably naïve in asking Modi to do the opposite of what he stands for. If Modi wanted to send a message of conciliation to Muslims, he would have long ago mourned and expressed sincere regret for the 2002 killings. He hasn't done so, and defiantly says there's nothing to apologise for: "If I'm guilty, I should be punished, but I won't say sorry."

While canvassing, he wore every type of headgear, including a Sikh turban and an Arunachali hat with horns and petals, but pointedly, and repeatedly, refused to don a skullcap!

The Modi government's moral apathy towards Muslims was even more eloquently conveyed by the

sole Muslim in the cabinet, minority affairs minister Najma Heptullah, through her first public speech declaring that India's Muslims are too numerous to be a minority; that term best applies to Parsis - India's wealthiest and most educated community.

This makes nonsense of the idea of protecting the rights of underprivileged religious-minority groups against majoritarianism, the ministry's liberal-democratic rationale.

Modi has shown no respect for settled democratic conventions in making appointments. Thus, instead of choosing someone with scholarly gravitas, interest in academic pursuits, or a deep understanding of the challenges education faces in India, he allotted the weighty cabinet-rank human resource development portfolio to former actress Smriti Irani who has shown no interest in or aptitude for education, and who filed contradictory affidavits about her educational qualifications, which may be a criminal offence.

Worse, Modi used the ordinance

route to override the Telecom Regulatory Authority Act, which bars the TRAI chairman from ever holding government office. This public-interest bar - enacted, ironically, by a BJP-led government in 2000 - is meant to prevent favouritism and promote impartiality, and should have been respected.

Modi was in a rush to appoint former TRAI chairman Nripendra Misra as his principal secretary. He refused to wait for parliament to convene and amend the act. The ordinance violates the Supreme Court judgement in a 1987 case, which says the ordinance power "is to be used to meet an extraordinary situation and cannot be allowed to be perverted to serve political ends".

Misra's is clearly a political appointment. He is no ordinary bureaucrat. He was until recently on the executive council of the Vivekananda International Foundation, a well-funded Right-wing think-tank located in Chanakyapuri, New Delhi's diplomatic enclave.

VIF ([www.vifindia.org](http://www.vifindia.org)) is an offshoot of the Vivekananda Kendra, started

in 1972 by Eknath Ranade, former RSS general secretary. VIF played a crucial, if silent, role in Baba Ramdev and Anna Hazare's anti-corruption protests beginning 2011. It runs several security- and foreign policy-related and "historical and civilisational studies" programmes. VIF's website carries hysterical pro-Hindutva and ultra-nationalist articles. One article describes US scholar Wendy Doniger as someone who delights in "denigrating Hinduism. Most of her own and her students' dissertations/books ... have often been described as pure pornography..." Doniger's book on Hinduism was recently pulped - setting a nasty precedent of successful intimidation by the RSS-sponsored Shiksha Bachao Andolan, since carried over.

VIF's director is former Intelligence Bureau chief Ajit Doval, now appointed the National Security Adviser. As I discovered during a television debate a few years ago, Doval belongs to a school of policing that believes "in shooting first and asking questions later - that's the only way to deal with terrorists", real or imagined.

Doval rationalises fake 'encounter killings' and advocates a militarist approach towards Maoists - regardless of legality and human rights consequences. He calls for a hard line against India's neighbours, including friendly Bangladesh, who he believes, are bent on subverting India's security.

Many VIF leading lights discount the potential for peaceful coexistence between India and Pakistan. India, they demand, should stop being overly "generous" towards its neighbours in economic cooperation, trade, visas, even water-sharing.

VIF, with other pro-Sangh Parivar outfits such as Deendayal Research Institute, Niti Central, Public Policy Research Centre, Friends of the BJP, Centre for Policy Studies and

Rashtriya Seva Bharati, will provide policy inputs to Modi.

Under their influence, we are likely to witness a well-orchestrated campaign to shift India's foreign, security, economic, social and cultural policies rightwards, in keeping with Modi's own orientation, but with disastrous consequences.

It's hard to see how the feeble and demoralised parliamentary opposition can resist this onslaught. Many regional outfits like the Samajwadi Party buy into the BJP's paranoid ultra-nationalist premises and hardline approaches.

Where does that leave the recent elections' greatest losers - the Congress, the Left, the BSP and the Aam Aadmi Party? The first two have suffered their worst-ever defeats, winning respectively 44 and 12 Lok Sabha seats (including two Left-backed independents from Kerala). The AAP, which showed great promise in December, has come a cropper, winning only four seats, all in Punjab.

These parties face an existential crisis. The Congress still deludes itself that the Gandhi family will somehow rescue it. The family refuses to own up to its leadership failure. Yet, no one demands that the party frees itself from this millstone and start afresh.

Unless the Congress rebuilds its base among the Dalits, Adivasis, lower OBCs and the urban poor, by agitating for their livelihood rights, it's likely to go into steep, possibly terminal, decline - especially if it loses the coming assembly elections in Maharashtra and Haryana, as seems likely.

The Left's base has been eroding everywhere, especially in its former bastion West Bengal, where it won the same number of seats (two) as the BJP. Its leadership should have responded to this with alacrity; several heads should have rolled, and the Left should have returned

to vigorous mass activity instead of doing "politics from the top" based on unstable, sterile electoral alliances.

Unless the Left urgently corrects course, updates its programmatic perspectives, and develops a mass-based mobilisation strategy by taking up issues like healthcare, food security, employment, education and defence of people's livelihoods threatened by predatory industrial, mining and water and power projects, it too will be doomed.

The solution lies in radical, painfully critical introspection, abandoning the democratic centralism organisational doctrine which prevents healthy debate, and joining grassroots struggles. This is a tall order, but the Left has no soft options.

As for the AAP, it must reinvent itself not as a political party, but as a political movement which offers new forms of participatory activity not narrowly focused on corruption or "crony capitalism". The AAP must practise what it preaches - transparency, political honesty and inner-party consultation. It's the lack of these that aggravated the AAP's crisis, leading to Shazia Ilmi's and Yogendra Yadav's resignations, and to Arvind Kejriwal's discrediting as an egoistic, unreliable leader.

The AAP must not shy away from ideology. It must link 'crony capitalism' to communal-neoliberal authoritarianism. The BJP embodies all these and is the main enemy. Rather than concentrate excessively on the coming Delhi Assembly elections, the AAP must join a broad-based national campaign against neoliberal Hindutva-capitalism. That's the way forward.

***The writer, a former newspaper editor, is a researcher and rights activist based in Delhi.***

Courtesy **Communalism Watch**, 7 June 2014 □

## Rajasthan Civil Society members outraged and condemn the assault by the GOR on the leading Gandhian Institution in Jaipur, the Rajasthan Samagra Sewa Sangh of Rajasthan

**1. Premises taken over, buildings sealed, allotment illegally cancelled and all belongings and residents including a woman in post delivery thrown out by the JDA**

**2. Famous Gandhian Freedom Fighter, Gokul Bhai Bhatt's Samadhi which was founded by JP Narayan also sealed and gates locked up.**

In a shocking and arbitrary exercise of power on the 7th June, 2014, the Jaipur Development Authority, directly under the Chief Minister Vasundhara Raje, sealed the complete premises of the Rajasthan Samagra Sewa Sangh which had been in existence on its own land since 1959. They threw out all the residents and their belongings, cancelled the allotment and took over their land. The insensitivity of the JDA team led by JDA official Pawan Arora and Subhash Mahariya, was such that in the scorching heat of 47 degrees, one resident who had recently delivered a baby, was asked to leave the room by evening, locking the kitchen and adjoining rooms that she could not even be fed. The 80 year old Secretary of the Sangh, Rameshwar Vidarthi, living with his wife in one room of the premises were thrown out with their belongings and are now on the road. Similarly, the President of the Rajasthan Samagra Sewa Sangh's, Sh. Sawai Singh who had been living with his family, as part of the norms of the Sangh since the last thirty years also found himself with his family and their belongings on their road. The JP Narayan founded Samadhi of Gokul Bhai Bhatt was also treated with disrespect and sealed and as of now the whole place out of bounds. It is also important to know that the letter

of cancellation of allotment and seizure of property dated 6th June, signed by Shikhar Agarwal, Secretary, JDA, was handed over by the officials when they came at 1pm on the 7th June. It was an order of eviction and they had come to evict.

The intention of the JDA was clear. Which was to grab the property of the Rajasthan Samagra Sewa Sangh, convert it to Real Estate and grant it to land sharks. The concerned piece of land is in the prime area, next door to the Airport and Jawahar Circle on JLN Marg, that it is priceless commercially. The Raje Government in the earlier term was well known for its support to the real estate business interests but had spared civil society. ***This action clearly, sends a message to all, that this Government is merciless and it will get rid of all impediments to its design***

***Rajasthan has never seen such straight assault on Gandhian Institutions and ideology. We all condemn this act of the Government.***

*The argument used by the JDA is that the Rajasthan Samagra Sewa Sangh violated the conditions of the allotment of the land in 2001. They had to get a Map passed by the JDA in a years time of its allotment, they had to take approval of construction activity and the space could not be used for any commercial and residential purpose. Notices were given earlier and JDA not being satisfied with the replies to these violations, along with constant notices from the Lok Ayukta to take action for these violations, they were cancelling the allotment.*

Countering these lies the President of the Rajasthan Samagra Sewa Sangh and his team of lawyers gave the following arguments. The Sangh

land was in the erstwhile Chainpura village, which was bought in 1959 from a farmer and the registry is in the name of the Rajasthan Samagra Sewa Sangh. In 1984 when all the land in that area was acquired for the International Airport, the Sangh land too was acquired. However, it was never taken possession off. According to the new and old law, when land is not taken possession off in five years of the acquisition, then the land goes back to the original holder. Thus the land was always of the Rajasthan Samagra Sewa Sangh since 1989. So this business about allotment becomes meaningless and the JDA. Also there was a Rajasthan High Court stay on the land since 2004 against the JDA allotment, which had handed over two bighas land of the Rajasthan Samagra Sewa Sangh to Gokul Vatika Sahakari Samiti, this stay order was violated by the JDA on the 7th when it came to take possession of the land of the Rajasthan Samagra Sewa Sangh. The JDA has actually committed contempt.

However, even if we go by the argument of allotment of 2001, then it is the JDA which has violated the conditions and not the Rajasthan Samagra Sewa Sangh.

The condition was also that the JDA would give Rs 40 lacs for the construction of the Gokul Bhai Bhatt memorial, which the JDA never ever gave since 2001 to the Rajasthan Smagra Sewa Sangh,

Secondly, the executive of the Rajasthan Smagra Sewa Sangh was supposed to have two officials of the JDA and one from the Government, the onus of this lapse is on the Government and the JDA and not the Rajasthan Samagra Sewa Sangh.

The Map was supposed to be prepared under the guidance of the JDA, when did the JDA ever come forward and give its guidance.

The place was never used commercially, the so called use for wedding, were the stray two or three wedding of the family members of the staff. The kitchen run at the back of the Rajasthan Samagra Sewa Sangh was for the participants who came for the constant meetings that took place, as the original objective of the Rajasthan Samagra Sewa Sangh was to be a space for reflections and churning of ideas. It was the space in Rajasthan where activists from all over came month after month for such meetings.

The notices that were given in 2013 November and 2014 February, were duly replied too and if there was a dispute then the Rajasthan Samagra Sewa Sangh, should have been called for a hearing, why was it never given a chance to be heard. Similarly, if the Lok Ayukta felt that there was an issue, then too they should have sent a notice to the Sangh. The Rajasthan Samagra Sewa Sangh, never heard from the Lok Ayukta. Principles of natural justice seemed to be compromised by both.

As concerned citizens and members of civil society, from whom the space of Rajasthan Samagra Sewa Sangh has been a space for carrying forward Sarvodaya, Gandhian and JP's ideals, we condemn this act strongly, and request the JDA and the Chief Minister of Rajasthan to restore the land and the premises back to the Rajasthan Samagra Sewa Sangh. In the eventuality of this not happening, we will resist it tooth and nail and struggle against this high handedness of the Government and expose the Government for its assault on Gandhian Institutions and values.

We are,

**Prem Krishan Sharma**, PUCL, Rajasthan; **Aruna Roy**, MKSS; **Radha Kant Saxena**, PUCL Rajasthan; **Nikhil Dey**, MKSS; **Kavita Srivastava**, PUCL Rajasthan; **Shankar Singh**, MKSS; **Renuka Pamecha**, WRG; **Mamta Jaitly**, Vividha; **Komal Srivastava**, BGVS; **Vishwambhar**, Digantar; **Arvind Ojha**, Urmul Trust; **Narendra Gupta**, Prayas, Chittorgarh; **Khemraj**, Pratirodh, Chittorgarh; **Virendra Vidrohi**, Matsya Mewat Shiksha Vikas

Samiti; **Maulana Hanif**, MMSVS; **Kapil Sankhla**, PUCL Jaipur; **Kamal Tak**, RTI Manch; **Mukesh Goswami**, RTI Manch; **Harkesh Bugalia**, RTI Manch; **P N Mandola**, Lok Sampati Sanrakshan; **Rajendra Kumbaj**, Nagrik Manch; **Nishat Hussein**, National Muslim Women's Welfare Society; **Nisha Sidhu**, NFIW; **Sumitra Chopra**, AIDWA; **Ashok Khandelwal**, Rozi Roti Sandharbh Kendra; **Vijay Lakshmi Joshi**, PUCL, Rajasthan; **Pritam Pal**, Health Activist; **Yogendra Upadhyay**, Educationist; **Ashok Mathur**, Writer; **Anant Bhatnagar**, PUCL, Ajmer; **DL Tripathi**, PUCL Ajmer; **PL Mimroth**, Centre for Dalit Rights; **Satish**, Centre for Dalit Rights; **Ajay Kumar Jain**; Shyam Menariya, Astha; **Bhanwar Singh**, Astha; **Ramesh Nandwana**, PUCL, Rajasthan; **Chandra Bhandari**, PUCL Rajasthan; **Ashwani Paliwal**, PUCL, Udaipur; **Kailash Meena**, PUCL, Sikar; **Kailash Kumbhakar**, Academy for Socio Legal Studies, Jaipur; **Bhanwri Bai**, Mahila Jan Adhikar Samiti; **Richa**, Jan Chetna Samiti; **Mahesh Bora**, Advocate and the PUCL; **Usha**, Vikalp; **Tara Ahluwalia**, Mahila evam Bal Chetna Samiti; **Kusum Saiwal**, AIDWA □

## INDIA: Understanding the Rape Republic

### Anjuman Ara Begum\*

#### Sexual violence continues in India unabated

The December 2012 gang rape and subsequent death of a 23 year old woman led to a shift in discourse on sexual violence in India. For the first time, the blame shifted from victims to perpetrators, fostering changes in certain colonial era criminal laws.

However, the changes have failed to provide crucial protection and redress. Important recommendations, forwarded by the three-member committee following the incident, were ignored, and sexual crimes rage, as uncontrolled as before. News headlines depicting sexual violence have not changed since December 2012.

Gruesome abuse and killings of victims have shaken the human conscience but not the criminal justice system in a country, which continues to prove itself a 'systemic failure'-even after state promises of ensuring its effectiveness. Every 20 minutes, a rape is committed in India; but only 4 out of 10 incidents make it to the country's justice system. Such low reporting of sexual assault, due to legal complexities and ideas of 'honour' and 'shame', make the possibilities of justice remote, and create an insufficient deterrent in society.

Recent gory reports, such as the hanging of raped girls, the sexual assault of a female judge in her official

residence, the pumping of bullets into the private parts of a woman after an assault, and the burning of a dead body following a gang rape, are sufficient evidence to conclude that the 'system' has systematically failed. An insensitive, poorly funded, inefficient, and unnecessarily hierarchic structure called the criminal justice system has proven nothing but a demon to women seeking justice.

#### Why does the state fail to curb sexual crimes?

Cultural aspects cannot be ignored. The substance of the law and its implementation, are two different aspects. The 2013 amendments of laws dealing with sexual assault improved the legal literature, making it more favourable to women, but not

the culture of implementation. The redress system faced by a sexual assault victim has enormous challenges, ranging from legal to cultural. Filing a First Information Report (FIR), the first step in seeking justice, is hard in India. But, it is nothing less than a Herculean task when a woman complains of sexual assault. Due to the culture of enforcement of laws in the country, legal texts alone don't determine her rights and entitlements. Negative stereotyping and attacking the self-esteem of the rape survivor is one of the prime reasons for not reporting the crime and accessing the criminal justice system. Moreover violence against women in India is an institutionalised phenomenon. Before noting the FIR, policemen often satisfy themselves with knowledge of whether the victim wore the 'right' clothing', ate the 'right' food, kept the 'right' male friends, or uses 'questionable' modern electronics like a mobile phone. The 2013 amendments, though they expand the definition of sexual assault and promise to be more sensitive to women, also carry forward negative elements. They retain discriminatory and stereotype concepts like 'insult' or 'outrages to women's modesty' in order to define a criminal act.

The culture of impunity for sexual violence is widespread and has contributed much to propagate the crime. Both de-jure and de-facto culture of impunity for crimes, including sexual crimes, is one of the prime contributory factors for such crimes. In India, de-jure impunity is propagated through several legal instruments that validate immunity for state actors. A provision called 'prior sanction' was incorporated in several security legislations for this purpose. Section 45, 132, 197 of the Code of Criminal Procedure, section 125 and 126 of the Army Act, 1950, section 45 of Unlawful Activities (Prevention) Act, 1967, and section 6 of the Armed Forces Special Powers Act (AFSPA), 1958, state that no court shall take cognizance of any offence committed by certain state actors unless prior sanction is granted by the appropriate government authority. It has been observed that the 'sanction' for prosecution is granted only in the

rarest of rare cases; invariably, authorities, at their discretion, reject an application for 'prior sanction'. This is one of the reasons for the perpetrators of Manorama's rape and murder is yet to be brought to justice. Manorama was found dead within hours of her detention by armed forces in Manipur in 2004 leading a massive public outrage.

De-facto impunity is equally prevalent in the criminal justice system and its enforcement institutions. Police authorities often deny or block access to justice, by refusing the registration of allegations. The process of investigation and trial remains extremely slow and unscientific. Routine practices of torture by security enforcement agencies create a fear psychosis. It discourages formal complaint, propagating a culture of impunity at all levels of the administration of justice. Such a culture is tolerated under different laws and practices with state 'acquiescence'. The principle of due diligence is too narrowly adopted in the legal system to hold private actors accountable for violence against women.

Sociologically speaking, a society based on a patriarchal structure, prescribes male dominance and promotes authoritarian personalities. Law enforcement agencies are based on masculine ideologies. Institutions like the police and the military provide space for such personalities. They foster the tendency to impose power and control over women and their autonomy. This is why police often refuse to register cases of sexual assault, and even if they register them, there is little to no guarantee of justice. Additionally, males disproportionately dominate the police and the armed forces, whereas women comprise little more than 6% of such forces.

The judicial system cannot be spared either. It, too, inherits perceived dominating ideologies over women's bodily autonomy, and administers the law accordingly, encouraging impunity for sexual violence. The country's judicial system, hailed, as one of the most powerful institutions for protection and promotion of human rights, is still not congenial to female victims of sexual assault. An

inadequate number of judges, prolonged periods of litigation, manipulation of medical reports, intimidation of victims, and non-protection of witnesses are barriers to justice in all types of violations. Cases of sexual assault are not immune to this trend. Corruption and political influence are two blameworthy factors.

India's judiciary has adopted and exhibited prejudiced attitudes against women from time to time and justified impunity for sexual assault. In October 2013, a Delhi High Court judge was found sermonizing in an order when he prescribed 'girls are morally and socially bound not to indulge in sexual intercourse before a proper marriage, and if they do so, it would be to their peril and they cannot be heard to cry later on that it was rape.' The judge ignored the law of the country to uphold things in which he had been trained, and undermined the principle of the rule of law.

It is unforgivable that, Bhawri Devi - who was gang raped in 1992 by five men when she was working in a field - had to listen to a judgement three years later delivered by a District and Session court judge, that dominant caste men would not rape a woman belonging to an oppressed caste. Examples of such misguided judicial pronouncements abound in India, from 'Mathura to Manorama' and beyond.

The country's political leaders, who have immense influence over ordinary citizens, do not lag behind in pronouncing and promoting misogynistic ideologies regarding sexual assault, reinforcing impunity. The media also reflects their perceptions.

Politician Babulal Gaur, Home Minister in Madhya Pradesh, has justified rape, saying 'Rape is sometimes right'. According to Ramsevak Paikara, Home Minister of Chhattisgarh, 'No one commits rape intentionally, it happens by mistake'. And, then there is Mulayam Singh Yadav, a prominent senior politician who has said, 'Boys make mistakes, why hang them?' And, then there is Abu Azmi, a senior politician, who supported Yadav by stating that

'women who were raped should also be hanged'.

These statements and perceptions expose the tip of the iceberg; and can help one understand how India's institutions, and the individuals representing the institutions, are certainly not free from authoritarian and misogynistic ideas that further propagate the repression of victims of sexual assault.

In India, social space to be a sexual being is virtually non-existent. Repression rules mainstream society. Talking about sex or sexuality is taboo; it is unwelcome in the public domain. An inclusive culture for sharing space is discouraged especially when it comes to space where opposite sexes can meet. Young children grow up in a gender-segregated environment; the urge to play or mingle with the opposite sex is suppressed simply due to the pain of parental or social disapproval. In Indian society, repressed sexuality is often quoted, for instance by authors like Sudhir Kakar, as a reason for sexual and gender-based violence. Society prescribes that women be pure, chaste, and celibate before 'marriage', suffocating her sensuality

and sexuality. Men are free from control in expressing their sexuality; their attacks are tolerated with an explanation of a double standard, that 'boys will be boys'. Women are advised to have some sort of self-protection as a defence mechanism against getting raped. Prevalence of such a culture prohibits women from reporting crimes that are sexual in nature.

In addition, society has its own calculated notion of sexual behaviour. For example, section 377 of the Indian Penal Code enters into the private space of citizens and criminalizes consensual same sex, tagging it 'unnatural sex'. It is still a valid law despite widespread public opinion calling for its repeal. Legal institutions upholding such measures disallow freedom of citizens over their bodily autonomy and their choice of life.

Violence against women in India continues and will continue, due to a pervasive prevalence of discrimination based on gender, which starts at birth and continues until death. Laws, if enforced properly, are undoubtedly instruments to control and modify human behaviour.

Change will be accomplished when the state takes certain appropriate legal and non-legal measures. Measures to modify and improve the social and cultural patterns of conduct of both men and women in order to achieve equality and to negate the culture of impunity. Such an environment, if achieved, will impact the country's criminal justice and law enforcement mechanisms profoundly. Sexual and gender based violence will be minimized but not eliminated. It is important that law enforcement begin with legal education in the law. Citizens should believe in and respect the law. The ordinary person has no idea what the law prescribes. They hardly care, as the criminal justice mechanism is a failed system in India and they are aware of the possibility of immunity from this system. It is only when men and women from all walks of life subscribe to the principles of the rule of law and non-discrimination and believe in the equality and dignity of each individual that law enforcement can begin to do its job effectively.

*\*Anjuman Ara Begum is Program Officer - India Desk at Asian Human Rights Commission*

19 June 2014 □

**PUCL Rajasthan: Condemning rape and killing of minors, Jaipur, 2nd June 2014**

- **PUCL Condemns the incidents of two Minors being raped, including one being raped and killed in the Rajasthan Chief Minister Vasundhara Raje's Home District and her Son Dushyant Singh's Parliamentary Constituency in Jhalawar District on 31st May, 2014.**
- **The deceased victim of rape could have survived had the Police officials not been on VIP duty for MP Dushyant Singh and taken cognisance of the missing complaint made by girl's father.**

The People's Union for Civil Liberties, Rajasthan strongly condemns the shocking incidents of rapes of two minors, including the rape and murder of one, which took place yesterday on the 31st of May, 2014 in Rajasthan Chief Minister Vasundhara Raje's home district of Jhalawar. This is the constituency from where the CM has represented the people of Jhalwar as MLA (3 times) and MP (2 times) and her son Dushyant Singh is an MP since 2004, winning the third time in May 2014. After talking to the SP, the SHO and some journalists, we learnt

the following the facts.

A 14 year rape and murder victim belonging to the Muslim community had taken goats for grazing on the 31st of May, 2014 in the day to the open fields outside her village Kholi, which falls in Police station Bakani. When the goats returned home without her, the parents tried looking for her. When they did not find her, the father Mohammed Shakib, went to the police station in Bakani where they were told by the police personnel at the police station, that they would take their report only after getting a photograph of the girl. So

the family returned to their village. As it had become very late, they decided to go back the next day to the police station with the photo. According to the SHO Hari Prasad, he was on VIP duty due to the visit of the 3rd time elected MP Dushyant Singh and only returned at the police station at 11.30 pm and did not know about this incident.

But by the next morning, that is today the 1st June, the family members and the villagers found the girl's dead body four kilometres from the village, strangulated by her own chunni. Incidentally, they had

searched the area, where the body was found, the previous night too. It was clear that the body was dumped later. It is possible that had the police acted promptly, the girl could have been saved. The parents named three suspects Pappu, Lal Chand and Sham Lal all belonging to the Tanwar (Rajput) Caste, from the village itself. According to local news reporters and the police, the father of the deceased told them that the Tanwar family actually raped and killed their girl out of revenge in a pending dispute between the two families. This fact needs greater examination. It was also reported by the local reporters that it was a case of sexual exploitation of the teenage girl.

The second rape was of a five year old baby girl belonging to the Kanjar Community of Narayan Khedi village, Police Station Jhalwar Sadar, was raped by her neighbour after she was put to sleep by her mother on the terrace of their house. Her two older brothers, 7 and 8 year old, were also sleeping on the terrace. The neighbour, on seeing no adult, jumped over from his terrace on to where the children were sleeping and raped the five year old girl. It was the screams of the girl which brought the mother up to the terrace. The accused ran away leaving behind his trousers. The mother chased him and he jumped the terrace and fled. The girl was rushed to the hospital and the accused was arrested today.

The PUCL demands:

- That the police personnel who turned the rape and murder victim's relatives away at the Bakani Thana be suspended and removed from their present posts for their refusal to search for the girl in the night. The personnel should be booked under section 166A of IPC (amended 2013) which for the first time fixes responsibility for stalling and not carrying out proper investigation.
- Immediate arrest, speedy investigation, quick and strong charge sheets and fair and fast trial in both cases in order to ensure speedy justice.
- Complete rehabilitation of the five year old rape survivor including ensuring her full education, job guarantee and Rs 10 lakhs transferred to the account of the parents at the earliest.
- The parents of the rape victim and the murdered girl of Kholi village must be provided with at least Rs 25 lakhs worth of compensation for the loss of life as the girl lost her life due to the callous attitude of the State functionaries. The amount of Rs 3 lacs promised by the District Collector is not sufficient.
- That the CM and her son should put together mechanisms to prevent the repetition of such incidents in Jhalwar, their home constituencies. It is obvious that the State police's reflexes for such crimes in that district are

very slow.

- The Chief Minister must urgently have consultations with civil society members and representatives of women's organisations in order to bring in better policies, training content and mechanisms in police stations and in society to stop crimes against women in the state including rape and sexual violence. Almost 6 rapes take place a day in the State (2049 in 2012; NCRB 2012), 7 cases of sexual assault a day (Molestation cases 2447 in 2012, NCRB 2012) and more than 7 cases a day of abduction and kidnapping of women and girls (2713 in 2012; NCRB). These figures are under reporting as the attitude of families is that of silence on matters of sexual violence.
- Also the State Government must urgently prepare a reparation policy, which includes Rehabilitation, compensation, medical and educational support, housing support amongst other things, for survivors of violence against women in the State so that survivors of crimes are fully rehabilitated. The State should also declare the fund as proposed by the NCW as part of its reparation policy for all State's and centre,

**Prem Krishan Sharma**, President;  
**Kavita Srivastava**, General Secretary □

June 9, 2014

## **Reinforcing Subordination of Women in Law and Practice**

**A written submission to the UN Human Rights Council by the Asian Legal Resource Centre on subordination of women in law and practice**

***(Twenty sixth session, Agenda Item 3, Interactive Dialogue with Special Rapporteur on Discrimination against Women)***

To formally recognize the existence of discrimination against women in India, both in law and in practice, the country has acceded to the Convention on the Elimination of All Forms of Discrimination against

Women (CEDAW) in 1993, undertaking obligation to eliminate "any distinction, exclusion or restriction" made on the basis of sex which impairs or nullifies "the recognition, enjoyment or exercise" women's "human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." This duty, however, is still

waiting due recognition and implementation by the state.

In India, discrimination against women in law and practice is multi-layered and complex, owing to country's social, political, economic, and cultural fibers. Discrimination against women in India arises from multiple, intertwined, and pervasive sources, deeply influenced by the

negative elements of caste, gender, marital status, customs and traditions, sexual orientation, economic empowerment, level of education, decision making power, poverty, prejudiced attitudes, and negative stereotyping in private and public spaces among others. Indian laws, as well as law makers, have yet to seriously recognize these aspects in the criminal justice system to ensure equality and non-discrimination regarding women.

Despite adopting constitutional guarantee of non-discrimination against women and affirmative action-like policy of reservations in certain sectors, discrimination against women in India remains both direct and indirect. Women are directly discriminated against for certain employment on the pretext of their supposed inferiority and negative stereotyping, especially regarding promotion to managerial posts. Due to these stereotypes, women are also not considered for employment in security sectors like the armed forces. Laws dealing with marriage and inheritance are discriminatory as codifications of personal and customary laws for many communities have yet to be initiated. Indirect discrimination causes females to be the first ones to be discarded from list of beneficiary of public schemes for obvious reasons like lack of capital, land, adequate training, education, and other assets.

Social conditioning encourages discrimination against women that begins at home. This is due to the fundamental basis of the social and cultural order of Indian family, an institution that women are born into. Families are based on male hierarchy, a fundamental contradiction to the notion of equality and non-discrimination. Indian families protect male dominance to enforce power and control over autonomy of the female members. In this way, women's subordination is reinforced by the tentacles of patriarchy manifested in discrimination at multiple levels through out women's life cycle. This omnipresent cycle of discrimination against women is often described as discrimination "from the womb to the tomb". Such social

conditioning to discriminate against women is reflected in the law as well. For example, marriageable age determined by law still discriminates against women; it is fixed by the state as 18 years while that of a man is 21 years. Early marriage compared to men acts as a barrier for women in education, livelihood, and employment compelling them to be economically dependent on their male counterparts, who are favoured by the law to continue focusing on professional and personal development.

One of the prime manifestations of discrimination is violence against women in family, community, and the labour market, that indoctrinates subordination to women, compromising self-esteem and leading to a life without dignity. Discriminatory cultural practices, such as dowry, honour killings, witch hunting, etc. are widely prevalent in India. Women's subordinated status in the society, reinforces the promotion of male child preference. Consequently, female infanticide and female feticide, with the help of modern scientific medical technologies, has degraded the population sex ratio in the country while legal texts prohibiting such practices remain merely symbolic. Traditional practices in the name of religion can be equally blamed for negative cultural practices against women.

Security of person and property for women, however, supersedes all forms of violence. Gender based violence, rampant all over India, circumscribes women's access to livelihood opportunities and personal development while restricting their mobility. Despite several amendments in criminal laws favouring women, law enforcement remains inaccessible to women due to the high level of insensitivity and lack of professionalism in country's criminal justice mechanism. It is an established fact that women prefer silence over approaching law enforcement institution, such as the police, especially if the violence is sexual in nature. Women are also discouraged from seeking justice for sexual violence as they are perceived as symbols of "honour" for the family

and community.

Women face discrimination in armed conflict situation as well. In India, armed conflict is ongoing in about 21 states and women there are affected disproportionately due to violence perpetrated by both state and non-state actors. Armed conflicts radicalize, utilize and encourage patriarchal dicta unilaterally imposed on women. In addition, sexualized violence committed by the armed actors is often used as a "weapon of war" that leaves women stigmatized for the rest of their life. In India, special legislative measures like Armed Forces (Special Powers) Act, 1958 and its equivalents permitting arbitrary detention are applicable in armed conflict areas of north east India, Chhattisgarh, Jammu, and Kashmir. Such legislations allows extrajudicial executions and involuntary disappearances with impunity and leaves women as widows and forced to live a life full of uncertainties, as documented by Asian Human Rights Commission, the sister organisation of the Asian Legal Resource Centre. The culture of impunity for sexual violence is endemic and is also a regular feature witnessed in armed conflict areas of India.

Much of the consistent and deep rooted pattern of discrimination against women in India can be attributed to the "sameness" (women are considered equal to men in terms of rights and duties) and "protectionist" (women are excluded for their own security from rights and duties) approach of addressing inequality by the policy makers in framing laws and consequently in practice. This approach, to date, has posed a significant barrier to women's equal participation in the decision making bodies, like the parliament of INDIA: the most important law making institution in the country having profound potential for eliminating discrimination against women. However, women's entry to this institution remains poor in spite of a few exceptional leaders. To reverse this discrimination, an affirmative action-like reservation of 33 percent of the seats for women in the entire legislatures was initiated. However, such a pro-women proposal passed in upper house of the parliament lacks

political will and is still catching dust in the lower house of the parliament with a /sine qua non/ status. In last general election (2009), representation of women in leadership and decision making positions for the country was confined to only 11.4 percent of parliamentarians, the lowest in South Asia, despite the fact that almost 50 percent of the electors in the country are female. The status didn't change much in the recently concluded general election of 2014. It was observed that major political parties discriminated against women in nominating them as candidates. Major political parties like the Indian National Congress nominated 56 women and that of Bharatiya Janata Party nominated only 35 candidates. A total of 636 women out of 8,163 candidates contested and 191 of them contested independently. The statistics of representation remains marginalized with only 61 women parliamentarians out of a total of 543 seats in the lower house of the parliament. In local governance, though the 73rd and 74th amendment to the Constitution of India confirmed 33 percent of seats are reserved

for women, areas marked under sixth schedule and other special status areas under the constitution are left out of this scheme. Systematic exclusion from decision making body through their marginalized demography in parliament over a period of time has adverse effects on her entitlements and rights spanning a spectrum of political, public, economic, and social subjects. A change in political landscape affirming equal participation of women is required to further pursue non-discrimination.

The absence of equality in the political field perpetuates harmful discrimination. Constitutional and legal measures or policies adopted in parliament even being labeled as good practices to protect, respect, and promote women's rights on par with men, suffers from inherent inadequacies and lacks any proper implementation apparatus. In addition, insensitive and inefficient institutions further prohibit women from accessing justice in case of a violation or to enforce her rights.

Inadequate resource allocations for implementation of laws and policies promoting women's equality remain a challenge. The Prohibition of Domestic Violence Act 2005 is an

example. Gender budgeting, though adopted in 1990s for mainstreaming gender in state apparatus, is yet to be proved as a strategy rather than a mere catchphrase.

Nearly half of India's population is women. In order to achieve equitable social, political, and economic justice, elimination of discrimination against women in law and in practice should be treated as a prime duty of the state. To achieve this, the Convention on Elimination of All form of Discrimination Against Women (CEDAW) advocates for adoption of a "substantive model" (equality of women in result, not in process) of equality as a strategy that recognizes women's unequal status in the society and stresses the importance of equality of opportunity and equality of results at par with men.

Being a state party to CEDAW, and given that the review of Government of India's report by CEDAW Committee is forthcoming, Indian policy makers must ensure its commitments and obligation to adopt both in law and in practice, the "substantive model of equality" as well as "procedural equality" in criminal justice system as a matter of priority that prescribes equality in results and in process. □

## Promulgating Ordinances in India: Public Scrutiny and Judicial Review - More Transparency is required

Venkatesh Nayak

Within 72 hours of assuming power and even before any of its elected representatives were sworn in formally as Members of Parliament, the National Democratic Alliance (NDA) Government advised the President of India to promulgate two Ordinances. The first notified in the Official Gazette, on 28th February, removes the bar on ex-Chairpersons and Members of the Telecom Regulatory Authority of India (TRAI) from being appointed to any other position under the Government (1st attachment). The second Ordinance seeks to amend the Andhra Pradesh Reorganisation Act passed by Parliament earlier this year to carve out India's 29th State- Telangana from the erstwhile undivided State of Andhra Pradesh (2nd attachment).

This Ordinance makes certain amendments to the territories covered by the Khammam district under this State bifurcation law. Both Gazette notifications do not contain a Statement of Objects and Reasons as to why it has become necessary to promulgate these Ordinances. There is only a cursory mention in the notifications that the Hon'ble President of India is satisfied that circumstances exist which necessitate the promulgation of these Ordinances. What these circumstances are we do not know except for some reporting in the mass media. A brief summary of the discussion of some landmark judgements delivered by the Supreme Court on the subject is given below. The detailed note with citations is in

the 3rd attachment.

### The Power of Judicial Review and Public Scrutiny under the RTI Act:

The jurisprudence that has developed on the subject of the power of the President and the Governors to Promulgate Ordinances under Articles 123 and 213 of the Constitution of India respectively, makes it clear that that power is meant to be exercised in order to deal with emergent situations irrespective of the distance in time that the next session of the concerned legislature may be from the date of such promulgation. However, an eleven-judge Constitution Bench of the Supreme Court in R C Cooper has held that the exercise of the Ordinance-making power is justiciable on grounds of mala fide

intention or corrupt motive. This Bench and the five-judge Constitution Bench in A K Roy have unequivocally kept the door open for justiciability on the ground that circumstances did not necessitate the promulgation of the Ordinance. The burden of proof however is on the challenger to such action.

After S P Gupta, the Courts are no longer hampered by Article 74(2) of the Constitution which prevents a Court from inquiring into advice tendered by Ministers to the President or Sections 123-124 of the Indian Evidence Act, 1872 which prohibit the government from submitting evidence from its unpublished official papers to a court. It is well established that the materials that formed the basis of the ministerial advice can be disclosed to both Courts and Petitioners if the Court determines that no injury to the public interest would be caused by such disclosure. So a Petitioner may demand production of documents relating to the determination of the concerned Government/President/Governor, as the case may be that circumstances exist for the promulgation of an Ordinance.

After October 2005, the position in law has radically changed. The Government has a duty to voluntarily publish all facts while announcing important decisions to the public under Section 4(1) of the Right to Information Act, 2005 (RTI Act). These twin Ordinances very well qualify as important decisions of the Central Government, but all facts necessitating their promulgation have not been placed in the public domain. Further, Cabinet papers including Cabinet notes may be sought for by any citizen under the Right to Information Act (RTI Act) and they will have to be disclosed after a decision

*Contd. from Page. 20*

chief of police in Punjab.

In the absence of morale and discipline, what such an officer will be able to instil in his force is unimaginable. Also, that such an officer has been considered for such an important position underlines that extrajudicial execution continues to be the state policy in Punjab.

has been taken and if the matter is complete or over and no other exemption listed in Section 8(1) of the Act is applicable. I have successfully obtained copies of Cabinet Notes under the RTI Act and also argued for Appellants successfully to obtain materials that formed the basis of the advice of Ministers tendered to the President on the manner of disposal of mercy petitions (case details are in the 3rd attachment).

So it is possible to obtain copies of the Cabinet Notes pertaining to the twin Ordinances under the RTI Act. One could reasonably expect them to reveal the justification for the promulgation of these Ordinances as in their absence, the exercise of this power would become arbitrary. The justification recorded in these Cabinet Notes may indicate some details of the circumstances that existed for the promulgation of the Ordinances. This information could then be assessed to make a decision whether or not to challenge in Court the 'circumstances' claim made by the Government.

However, the delay likely to be caused by the Government in disclosing Cabinet Notes under the RTI Act (after two very likely rounds of rejections internally - one by the public information officer and the other by the first appellate authority) and then the long wait at the concerned Information Commission for a resolution of the second appeal, may simply put a dampener on any effort to make the action of the President under Article 123 and that of the Governor under Article 213 justiciable in court. Nevertheless if Courts were to act swiftly and invoke their powers to summon the materials on the basis of which the decision to

Saini's case indicates the policing policy of the Indian state. It also strongly suggests that in India, accountability is a selective quotient, applied with discrimination; it depends on from whom the accountability of action and inaction is sought.

In such an environment, concepts like the rule of law, fair trial, and

promulgate an Ordinance was taken, the arbitrary use of Articles 123 and 213 may be checked. It is respectfully submitted that when the Supreme Court and the High Courts are the appointed guardians of the Constitution and fundamental rights of citizens, they cannot and must not leave such matters to the legislatures to decide where there is strong public perception that the Ordinance-making power has been exercised without sufficient and just cause.

If the Governments themselves re-establish the practice of mentioning details of the circumstances that necessitate the promulgation of an Ordinance, in the form of Statement of Objects and Reasons, prefixed to the text of the Ordinance, and also disclose the relevant Cabinet Note in toto, soon after the decision is taken and the matter is complete or over, citizens will have an opportunity to make an assessment for themselves about the motives of the Government. Where necessary they may elect to challenge the Ordinance in court. Transparency of this kind will lead to greater accountability even before the matter reaches Parliament or the State Legislatures, as the case may be. Opacity in the decision-making process only leaves Ordinances as fait accompli because Courts have refused to look into matters that are of academic import only. This is not how a transparent and accountable Government must function. The NDA Government has a real opportunity to move away from the practices of secrecy that were the hallmark of previous governments and set new standards by voluntarily disclosing the circumstances that necessitated the twin Ordinances and follow the same method for promulgating any other Ordinance in future. □

equality before law do not have meaning or purpose.

**About AHRC:** *The Asian Human Rights Commission is a regional non-governmental organisation that monitors human rights in Asia, documents violations and advocates for justice and institutional reform to ensure the protection and promotion of these rights. The Hong Kong-based group was founded in 1984.* □

Statement by the AHRC on an officer accused of murders being made head of Punjab Police: May 19, 2014

## INDIA: Officer Accused of Forgery Set to Head Punjab Police

The Central Bureau of Investigation (CBI) has filed an application in a CBI Special Court seeking approval for criminal charges to be framed against the Director General of Police, Mr. Sumedh Singh Saini, of the Punjab state police. The accusation against Saini relates to his conduct of defence in a criminal case in which Saini was accused of having masterminded the murder of three persons in Punjab in 1994.

The CBI alleges that Saini, during the trial of the murder case, obtained certified copies of certain documents, which he later tampered with and produced in court. The charges, if found to be true, are of serious nature; they mandate seven years' imprisonment and a fine.

Saini is a notorious trigger-happy cop from Punjab. The accolades showered on Saini by the government as well as the media, for 'combating terrorists' in Punjab during the 1980s through 1999 are misplaced. Saini, in fact, supervised the 'elimination' of suspects, via officers under his command. In law, all such 'encounters' - as they are oft referred to in South Asia - are extrajudicial executions.

Under law, Saini is an officer who has worked his way up the ranks with illegal acts serving as a catalyst for promotion. The state of Punjab has many such officers who have engaged in extrajudicial execution, prominent among them being Saini's former superior, Mr. Kanwar Pal Singh Gill. Whether those killed directly or under the supervision of such officers were innocents or criminals cannot be ascertained; they are dead.

That Saini, an officer with such a bloody curriculum vitae, will be

appointed as the head of state police speaks volumes about accountability for crime in India.

Extrajudicial execution was state policy in Punjab from the early 80s through the mid 90s. Persons were murdered by police officers and bodies buried in unmarked mass graves or burned without an autopsy or any record during this period. Such actions were widespread in the state; it is cited a hallmark of counterinsurgency strategy by state police in India.

Interestingly, it was during the same period that the Supreme Court of India said that each case of extrajudicial execution is murder, going further to state that 'executive elimination of persons is not allowed under Indian law.' However, the Court's interpretation of law has not helped victims in Indian states like Punjab, where extrajudicial execution has been overt or covert state policy.

Cops who have executed the state policy of 'encounter killing', and who have been praised by the country's media as desi versions of Dirty Harry, have all been later found to have engaged in coldblooded murder for private benefit. The charge of murder against Saini, framed in 1994, which he successfully defended, is one such incident. However, behind his successful defense was yet another alleged act of crime - that of the forgery of documents that he produced in court to buttress his defence.

What should signal greater concern, however, is that unlike his counterparts in the rest of India, Saini is slated to be posted as the

*Contd. on Page. 19*

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