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**President's Speech in the National Council Meeting, GPF, Delhi, 13-14th September, 2014:**

## **The Challenges before the Human Rights Movement, the Inertia and the Way Ahead** **Prabhakar Sinha**

The human rights have been under attack in the Indian Republic from the very beginning. Repressive laws like the preventive detention began to be enacted only a few days after the constitution was adopted. The Preventive Detention Act, 1950 has been followed by a succession of laws more repressive and dangerous for personal liberty and even life. In fact, most of these laws are far more draconian than the notorious Rowlett Act, which led to the massacre of hundreds of men, women and children who had gathered at Jallianwalabagh (1919 at Amritsar) to protest against that black law. A colonial government needs repressive laws to suppress the protest of the people against their exploitation, but normally in a democracy repressive laws are not required except in time of war. Still the Indian State has been adding more and more of draconian laws to its arsenal. The existence of such a large number of draconian laws and the insatiable desire of the Indian State for them raises serious question about the genuineness of democracy in India. Why is there more protests in a democratic India requiring a slew of black laws than in the colonial India? It is because there is more exploitation of the people now than before India became free. The colonial government exploited our resources, indulged in the loot and plunder of our wealth and repatriated it to their country. Now, the exploitation is not by a foreign country, but by one region of the country of another and by one section of the society of the others. The exploitation is thus both regional and sectoral. Some regions (States) of the country are very rich and proud while the others are groaning under poverty and have been made an object of contempt and ridicule. Similarly, a handful of the Indians have been made super rich, millions have been made affluent and the rest have been left in the lurch by misusing the power of the State in favour of the rich. The mandate of the constitution to the State is to minimize "the inequalities in income and endeavour to eliminate the inequalities in status, facilities and opportunities, not only among individuals but also amongst groups of people residing in different areas or engaged in different vocations." Betraying the people and the Constitution, the political class has used the power of State neither to minimize the inequalities of income nor to eliminate the inequalities in status, facilities and opportunities of the individuals or groups of the people living in the different parts of the country or engaged in different vocation (Art.38). The constitution also directs the State to ensure that 'operation of the economic system does not result in the concentration of wealth and means of production to the common

detriment 'and also to ensure that 'the ownership and control of the material resources of the community are so distributed as best to subserve the common good (Art.39). The political class of the country has betrayed the constitution, the people and the country to serve a handful at the cost of the rest. If at all, sedition is to be retained in the Indian Penal Code, it should be rephrased to book those guilty of betraying the constitution, the people and the country to serve a handful to feather their own nests. It is to suppress the protest of the people who have been betrayed and are being exploited that countless black laws are required and human rights of the people are being ruthlessly violated without let and hindrance.

Despite the incredible magnitude of the violations, there is an inertia in the human rights movement. There is no lack of concern or activity. The rights organizations routinely issue statements against the violations, their members participate in the so called discussion in the electronic media (which is meant more for entertainment than enlightenment) , they stage *Dharna* to protest against violations, organise seminars and conventions , but without noticeable effect on the establishment.

It appears that the voice of the rights organisations used to carry more weight earlier than now one of the reasons for it being that then the main opposition parties, which had suffered during the emergency imposed by Indira Gandhi had a vested interest in the protection of civil liberties after her return to power in 1980. Now that they have tasted power and have no fear of the repression they had suffered during the emergency they all consider it a hindrance in their role as rulers or rulers in the waiting. The election campaign for the 2014 Parliamentary election in which human rights were not even mentioned by the mainstream parties show their common approach ranging from indifference to hostility .During an

election campaign , the approach to any issue depends on its popularity or unpopularity. The political class has concluded that human right are a non-issue for the masses. *Thus the rights organizations have to carry on their activities in an environment in which the political class is hostile and the society apathetic.*

Parliament and the State assemblies, though elected by the people, have been functioning as an instrument of oppression rather than as the saviour of the rights and liberties of the masses .There is a reason for their bizarre conduct. Though our Parliament and the state legislatures are modeled after the British Parliament, their backgrounds, which determine their character and role, are different. The British Parliament evolved as a representative body of the commoner, which struggled to protect and expand their rights in the face of the king's repression. It wrested power from the king, made him the titular Head of the State and evolved into a democratic institution to serve the people. The Indian Parliament and the State legislatures on the other hand came into existence to replace the departing despotic colonial ruler and have acquired the character of their repressive predecessors. The colonial bureaucracy with its mindset and repressive character continues to rule the roost under their patronage.

Ending the inertia requires understanding of the problem, vision, determination and a strong drive. The present predicament is the result of working on a wrong and unreal assumption. The rights organizations have been publishing reports of the killing in fake encounters, in the police custody, torture by the police or security forces, disappearances and myriad other types of atrocities but now they hardly create a stir among the people. It might baffle us when a comparison is made with the effectiveness of the Amnesty International or Human Rights Watch, which only publish their

reports without going into action like *Dharna* and demonstration. But they also are very effective in some countries especially of the West, but are not so in India and many other countries. The cause of the different effect lies in the difference in the value system of the people of the respective countries. In many of the Western countries, the people have internalized most of the human rights as cherished value and are outraged if informed of their violations. The adverse public opinion scares the politicians and the government, and they are inclined to listen to and often yield to the pressure of public opinion. In India, the people have, for a number of reasons including the background of the Indian society, have not internalized human rights as a cherished value and are not outraged when informed of their violations.

The movement cannot play an effective role as the defender and promoter of human rights in India without taking up the challenge of changing the value system of the society as its major concern. A plethora of laws against corruption, dowry, discrimination against women and several other social evils have been enacted but have proved toothless because they enjoy social sanction. Of course, the victims and their kith and kin raise their voice but without the support of an outraged community.

Winning the support of the society by sensitising it and changing its mindset is a necessary condition for the protection and promotion of human rights. The rights included in the human rights declaration and subsequent covenants are not wholly new .People have been fighting valiantly against atrocities committed against them and for their own welfare from time immemorial. The arena of the battle against injustice has been the whole of the globe. The battle against atrocities and grave injustice has been fought everywhere locally or nationally. *Yet, there is a basic difference between the rights*

*for which the people fought in the past and the same rights in their new Avtaar as human rights. . Human rights are not the same old wine in a new bottle. The difference lies in the fact that while earlier the people fought for their own rights but they did not concede the same rights to the others. Human rights are universal and do not permit any discrimination. Human rights of one's worst enemy have to be accorded the same respect and value as one's own for them to qualify as human rights. If a society does not undergo a transformation and accepts human right as such its response to their violations would remain partisan. Changing the status quo by changing the mindset of the society should be our top priority.*

Though it is a formidable task, it alone is not sufficient to mobilize the people in favour of human rights. It is our responsibility to carry conviction with the people and win their trust that we are always impartial and truthful. To achieve it, we have to be an organisation with an unimpeachable credibility. *It should be so unimpeachable that the people should trust our word more than any body else's including the State.*

It is undoubtedly a Herculean task in a society which is distrustful of all. Betrayal of their trust is their daily experience and has made them cynical. It is in this situation that we have to win their abiding trust and earn unimpeachable credibility. Though Herculean, it is not impossible to achieve. The conduct of our organisation or its members should give no occasion for doubt that we do not practice what we preach. The people are disgusted with the spectacle of the political parties and most institutions unabashedly practicing against what they stand for or preach. The slightest suspicion that we are not different would destroy the achievement of decades .For an organisation like ours which has a written constitution it is imperative that we remain steadfast in our commitment to

constitutional morality i.e. we must follow the letter and spirit of our constitution. It may sometimes be difficult because we belong to a tradition which has not been democratic and was based on inequality as a way of life for centuries. Dr Ambedkar had drawn attention to this problem in his speech in the Constituent Assembly in the following words:

**“Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people are yet to learn it. Democracy in India is only a top dressing on an Indian soil, which is essentially undemocratic.”**

Constitutional morality is an abstract notion which may not be easily comprehended. It means that we must follow our constitution in letter and spirit in all sincerity. To measure our constitutional morality, we may ask a few questions as given below:

1. Do our members sign the pledge that they subscribe to our aims and objects and will abide by our constitution after giving it due consideration?
2. Have we tried to ‘bring together all those who are committed to the defence and promotion of civil liberties in India *irrespective any difference they may have in regard to political and economic institutions suitable for the country?*’
3. Do we conduct our elections democratically, fairly and as per our rules?
4. Do we try to ensure that the organisation functions democratically and in conformity with our constitution?
5. Do we observe civility (which is inseparable from a democratic way of life) in our interactions in the organisation?

The last point may appear commonplace or trivial but is of special relevance to an organisation with members having different or even *antagonistic* ideological

commitment. In fact, it is believed that *‘the virtue of civility is an important component of constitutional morality. It calls for tolerance, restraint and mutual accommodation in public life Civility is a moderating influence which acts against the extremes of ideological politics’* (Andre Beteille).

To inspire confidence, to maintain our credibility and to deserve to be listened to, the PUCL has to be an organisation maintaining the highest standard of conduct both collectively and individually. Not only the organization but even its members have to set an example before the society.

It is normally the self interest which attracts the people to a cause or organization. The interest of the people in human rights or rights organization would also depend on their assessment of the extent of their interest to be served by them. The issues taken up by the rights organizations lack the universality of appeal which is reflected in the indifference of the unaffected people to the human rights movement. The issues taken up are perceived as the concern of the victimized groups like the ‘terrorists’, Maoists, criminals or of the groups whose interest is being advocated or protected – like the rights of the child, women, Adivasis, dwellers of the slums, sexual minorities etc. Thus, the people in general do not identify with these issues and the interest of these groups and remain unconcerned. The organizations are free to choose their area of interest, but since they are not a common cause of the people in their daily life, it has led to the alienation of the masses from the human rights movement in the country. They tend to think that since they do not belong to the groups targeted by the State, the issue is of no concern to them and remain aloof. This misperception acts as a barrier to the understanding of the universality of human rights and realization that the human rights are in everyone’s interest.

The framers of the PUCL constitution were far sighted and fully conscious that unless the value system of the society was changed, necessary condition created and the common cause of the people in their normal life were taken up on their behalf, civil liberties and democratic rights of the people would remain a mirage. The aims and objects enshrined in its constitution bears witness to this fact. It includes upholding and promoting civil liberties and democratic way of life 'by peaceful means, securing the principle of the dignity of the individual and the rule of law, opposing police excess and the use of third degree method, judicial reform including delay and excessive cost of justice, the repeal of black laws and the end of preventive detention.' It reflects the realization that the independence of the judiciary and the freedom and independence of the media are indispensable condition for the security and expansion of civil liberties. In its holistic approach it includes in its ambit various social evils like casteism, communalism, untouchability etc. which encroach on civil liberties. While taking up the common cause of the people, it makes a special reference to the defence of the civil liberties of the weaker sections of society and women and children.

Thus, the PUCL was conceived and envisaged as a unique organization with unique perspective and features to include in its ambit the civil liberties in its widest sense of the entire populace. In course of time, the organization deviated from its aims and objects, forgot its wide and inclusive agenda and became a poor imitation of the organizations with limited agenda. The organization must correct its course and make vigorous and determined effort to achieve its aims and objects enshrined in its constitution to be equal to the task of protecting human rights in the country.

The correction of course alone would not enable it to play the role it was

envisaged to do unless its members are competent. The competence consists in knowledge of the issues, commitment to the aims and objects of the organization and ability to defend and promote them. Mere addition of number without quality will make the organization hollow while giving a misleading and false impression of strength. Worse still would be its fate if persons without integrity joining the organization with an ulterior motive are not weeded out.

Human rights are under attack not only physically but also ideologically. The political class which rules the roost by playing the game of musical chair, is continuously engaged in destroying the credibility of the human rights organization not by a direct attack but by insinuation. It speaks of the '*human rights wala*' being concerned only with the human rights of the terrorists or the Maoists and not of their poor victims. This misinformation is to mislead public opinion by covering the fact that we support no crime and protect no criminal, but only insist that the government must obey the constitution and the law as the citizens should do. It must punish a person accused of a crime according to the law, as it did in the case of Nathuram Godse, who killed Mahatma Gandhi and Ajmal Kasab, the Pakistani terrorist involved in the terror attack in Mumbai. Sometimes, human rights are pitted against a mythical national interest. Thus, we are engaged in an ideological war with the political class which is making a determined effort to discredit the human rights organisations thereby undermining human rights themselves in order to ruthlessly pursue their agenda of serving the rich at the cost of the rest.

The agenda of the political class to use the power of the State and the resources of the nation to benefit a handful is going to remain unchanged. As a sequel its policy of bulldozing the human rights of those who oppose would continue with greater determination and

ruthlessness. This challenge cannot be countered by tokenism and requires stiff and determined opposition by the people. But they would not join the battle unless they realize that it is their battle that we are fighting and they identify with us. This realization can be inculcated only by pursuing the all embracing agenda of the PUCL. The need of the hour is to be imaginative and innovative and find the ways and means to translate the agenda of the PUCL into action. This is possible only if the PUCL is an organization of dedicated, knowledgeable, determined and committed person of unimpeachable integrity. But we cannot be such an organization if we make it an organization of cronies or of persons of doubtful integrity or of those who have neither any respect for democratic way of life nor a commitment to the PUCL Constitution.

#### Appendix

I would urge the Council to pay attention to the following:

1. Composition of membership: is it heterogeneous in conformity with the letter and spirit of our constitution (Art. 2)?
2. Are decisions made democratically?
3. Are elections held in time and fairly?
4. Is the position of the organization on issues uninfluenced by extraneous consideration and reflect the spirit of the constitution?
5. Are enquiries conducted according to the Guidelines for Investigation prescribed by the organization (Page 23 of *Know PUCL*, Fifth edition 2008).
6. Is care taken to ensure that the ***integrity and credibility of the organization does not become questionable by its conduct?***
7. What are the concrete steps which may be taken to realize the aims and objects enshrined in the PUCL constitution? □

## Report of the General Secretary for the period 2012-14

Dear Colleagues and friends,

Two years back, on 4th and 5th August, 2012, in this same hall, after extensive discussion, we all decided to launch a very forward looking and visionary programme called, '*Reimagining PUCL*'. We set ourselves the objective of individually and collectively exploring our strengths, as an organisation, and our achievements and contributions, both nationally and in the different states we are active in. Many amongst us, felt that we should not rest on our laurels, and keep talking of what we have achieved, but importantly, look inwards with a critical and analytical manner to identify not just what we have done and accomplished, but what we have failed to undertake, the issues of human rights concerns we should have taken up but either did not do so or undertook without seeing it to its logical end. We also discussed that the context of human rights is changing rapidly, and we needed to expand our understanding of civil liberties to include newer challenges confronting us: ranging all the way from a more communalized and saffronised polity and society to deliberate attempts to foment violence to issues of state violence and state terrorism to newer challenges arising from the type of development decisions taken which are having far reaching impacts on our society, and the basis of human rights concerns in them.

At the end of the deliberations in that historic NC meeting, Prof. Vinay Kantha (from Bihar), summarized on behalf of 2 other team members (Prof. Murali from TN and Shri. Radhakant Saxena from Rajasthan) who were assigned the task of summarizing the entire discussion and charting the new direction: "Our old preoccupation with civil liberties issues should be broadened to cover a wider definition of human rights covering economic issues, socio-cultural and political issues and other related concerns. We need to have (i) a wider definition of human rights work, (ii) rethink and

revisit our organisational structure and (iii) critically re-examine our style of functioning so that the process will give us a new direction to meet future challenges ideologically / conceptually, organizationally and programmatically".

The 3-member team also very presciently captured the key issues before PUCL, as India's largest human rights organisation: while we needed to expand our field of activities and respond to the numerous issues of human rights concerns, we need to ensure that we adhere to the vision and spirit underlying the PUCL Constitution and also operate from well defined principles and guidelines so that there is greater consistency and continuity in our work. Very crucially they pointed to the fact that in previous years, PUCL gained credibility because of the issues we had taken up and the stature of the stalwart leaders who guided the organisation. In the fast changing world now best with numerous and complex issues, credibility will be gained by respect for and adherence to organisational principles, developing a clear cut organisational structure which is transparent, accountable and democratic and an organisational culture which respects inclusion, celebrates equity, honors dignity and promotes concern for human rights.

The three member committee were only articulating the views of our members of the National Council, the highest decision making body of the organisation that PUCL needed to change / transform / reposition itself to meaningfully respond to future challenges which itself can be effected only if we become strong organizationally, widen the definitional framework of human rights and expand our mandate as a contemporarily relevant human rights organisation. All the while of course, respecting the spirit of our Constitution.

The 2012 NC Meeting thus laid the template of the '*Reimagining PUCL*'

process which we have been pursuing since then. The team of National Office bearers decided that the task set out for ourselves was a big one which needed greater dialogues and discussions with our members across India and coordinated action. This required the following:

- (i) Greater interaction and deliberations and decision making amongst the team of National Office Bearers; this led to regular meetings of national office bearers in Delhi.
- (ii) Regular visits to State units and have focused discussions with (a) current PUCL members, (b) Inactive and not-so-active members, (c) old members who have dropped out of PUCL's radar in recent years. In addition, in keeping with the spirit of '*Reimagine PUCL*' we also met with, (d) 'friends of PUCL' – journalists, lawyers, academics, teachers, social workers and others who have had connections with us earlier and (e) members of fraternal organisations.
- (iii) Streamline PUCL's functioning in terms of
  - (a) Ensuring that activities of PUCL, at both national and state levels complied, in form and spirit, with the PUCL Constitution by explaining and advocating need to understand the Constitution both to guide actions undertaken as also the importance of complying by its spirit, if an issue arose which was not clearly within the framework of the Constitution.
  - (b) constitutionally required activities like bi-annual elections of office bearers of state / national units;
  - (c) ensuring compliance with constitutionally mandated procedures for electing office bearers and members of State Council and National Council;
  - (d) improving communication between National and State units

and National office and ordinary members, and urging improvement of communications between state units and their district branches;

- (e) Membership lists and updating membership lists regularly.
- (f) Collating information about litigation initiated by PUCL at state and national levels.
- (g) More systematic sharing of press statements, reports of Fact finding Teams, news reports and

other similar information.

- (iv) Creating a calendar of activities for National PUCL and planning events based on that; also encouraging state units to create their own calendar of events.
- (v) To streamline process of issuing Press Statements by distinguishing HR Concerns and issues in terms of those which for which state units should respond and those on which National Unit should undertake action. In this

regard NO decided to consult state units in respect of HR issues arising in their states before deciding any national level intervention.

We would like to record with appreciation, the supportive response of most state units to the effort to reorganize PUCL. With the cooperation of all the state units the team of National Office bearers has been able to organize the following meetings:

|                                      |   |
|--------------------------------------|---|
| 1. National Council Meetings         | : 2 (Mangalore, 14-15th Sep, 2013) & now  |
| 2. National Executive Meetings       | : 2 (Delhi -11-12th May, 2013 and Bilaspur – 21-22nd June, 2014)  |
| 3. National Convention               | : Jaipur, 1-2nd December, 2012  |
| 4. National Office Bearers Mtg       | : 12 meetings between 2012-14   |
| 5. JP Memorial Lecture               | : 2 (Delhi, 2013; Ahmedabad, 2014)  |
| 6. <i>Re-imagining</i> PUCL meetings | : 16 meetings in Delhi, Bhopal, Indore, Ahmedabad, Raipur, Ranchi, Jamshedpur, Bhubaneshwar, Chandigarh, Mangalore Chennai, Mumbai etc. |
| 7. Workshops, programmes :           | 9   |
| 8. Press Statements                  | : 2012 – 4<br>2013 - 17<br>2014 - 5   |
| 9. Cases filed                       | : 2 (in case of Teesta Setalvad and Prof. Saibaba, both with NHRC)<br>1 PIL before SC challenging sec. 66A IT Act.                      |
| 10. Campaigns                        | : Anti-DP campaign; Anti-sedition campaign<br>(Both old campaigns for which new actions were initiated).                                |

In keeping with the spirit of '*Reimagining PUCL*' we outline, in this Report, only the key problem areas or issues before us as a national level organisation, which we need to discuss in the next 2 days.

**Organisational Issues**

“How strong are we as an organisation? What are our strengths and limitations? What are the main challenges before us organizationally?” These are a few of the range of issues we posed during the numerous meetings across India. The following are the key points emerging.

**1. Disconnect between PUCL Constitution and our activities**

Across most of the state units, very few people are familiar with the PUCL Constitution, and its provisions relating to our aims and objects, criteria for membership, formation process of state executive, state

council, national executive and national council.

Very importantly, the spirit underlying some of the provisions especially relating to membership (Clause 2 of Constitution) which provides that anyone who is committed to the defence and promotion of civil liberties in India, “irrespective of any differences which they may have in regard to political and economic institutions suitable for the country” is not known to many members.

In every meeting we held in these last 2 years, we referred back to the PUCL Constitution and read the key provisions with members. We feel that this process needs to be undertaken more seriously and regularly especially amongst new members joining us.

**2. Conduct of elections for District and State office bearers and NC / SC representatives**

Many states do not follow the mandated procedures of conducting elections to different office bearers post and have followed practice of nomination, selections and other methods not provided in our Constitution.

In a few states, no elections have been held in several years, despite the fact that our Constitution requires bi-annual election of office bearers. Other issues relate to elections conducted during State Conventions or Conferences with all delegates attending the Conference participating and so on.

Sufficient advance intimation to all members not being given, state reports not being presented and so on are other issues related to state units' functioning.

**3. Absence of grooming of new / younger / second rung leadership:**

In a number of states we see the

continuing control of same set of leaders over many years and not permitting / obstructing creation of a second and third rung of leadership. There is simmering differences and disputes in these states which needs to be acknowledged and dealt with.

4. Not being open to new persons from becoming members; not launching membership drives to attract younger generation and related issues.

Both these issues are contentious and controversial issues. Without meaning to be personal, there is a need to recognize these as areas of concern. Some state units have not enrolled or have enrolled very few new members. Younger people are conspicuous in their absence. We need to ask ourselves why is it that as an organisation we are not able to attract youth and students. Barring a few states like Rajasthan which is able to attract sizable younger generation, other states have not managed to attract young people. While the lack of interest in younger generation may be due to overall social changes, we nevertheless need to ask ourselves what we can do to attract youth and young adults for we need to shape new leaders capable of taking PUCL forward in the future.

While PUCL is a voluntary organisation and people devote their time to the functioning, it nevertheless is important that attempts are undertaken to develop new leadership. While recognizing that there is no need to necessarily change leadership for the sake of change, it is important to permit space and groom new leaders to undertake organisational responsibilities.

#### **5. Ad-hoc functioning and functioning in fits and bursts**

A great deal of ad hoc functioning characterizes our functioning as a whole, with the exception of a few states. Decisions are taken by a few people without consulting others, lack of holding regular meetings and ensuring decisions are complied with, passing paper resolutions which are not followed or implemented and so on are different facets of such as hoc

functioning.

Issues are taken up without taking it to its logical conclusion. This is an issue which characterizes national unit also. As an example is the anti-sedition campaign which we took up nationally. We had decided to document sedition charges against trade unionists, social activists and others in terms of collecting FIRs, charge sheets and so on. The response was poor and discouraging.

More efforts, planning and vision is required to visualize a campaign and ensure it reaches a logical conclusion. This is an area which requires greater attention within PUCL, both in the states and nationally.

#### **6. Poor communication**

This requires no elaboration. Communication is two way affair, between the leadership and the body of members. Both need to be vigilant. But effective communication and willingness to listen to feedback is critical and as an organisation, we need to strengthen ourselves in this field.

PUCL has a tremendous amount of knowledge resources in the form of FFT Reports, analysis of laws, on social issues and so on. We need to more fully utilize these resources through regular publications – both in the form of printed materials as also in electronic form.

7. Need to ensure adequate involvement and participation of women, dalits, members of minorities, working class and other marginalised communities.

#### **Changing Human Rights Scenario: Context for change**

There are a number of key characteristics of the present human rights scenario which poses a challenge for human rights movement in general and PUCL in particular. How we understand these processes and determine our response is going to influence our growth in the coming years. The following are some of the key changes occurring.

#### **1. Consolidating economic control:**

We are seeing two broad trends in recent policy and law: on the one hand, liberalization of laws

relating to capital, corporates and financial markets and institutions making it easy for big corporate interests, both national and MNCs, to manipulate and freely tinker with the financial world including in speculation on futures and commodity markets, manufacturing and service sector; on the other, a gradual withdrawal of the state from development and welfare functions, including in overall funding of education, welfare, agriculture and other sectors. Labour laws and policies are becoming openly anti-worker as the amendments to 4 crucial labour laws in Rajasthan showcase, Environmental protection laws are being watered down as they are considered investor-unfriendly. The interests of the so-called 'aspirational generation' is used as a fig leaf to cover-up very people-and-ecology unfriendly changes in policy and laws.

#### **2. Undermining Democratic Institutions:**

There is a concerted attempt to undermine constitutionally mandated democratic institutions. Every other regulatory institution legally mandated to oversee or monitor unbiased application of laws have steadily been undermined by appointing politically pliable people – be it the Human Rights Commissions, Information Commissions, Women's Commissions or other bodies. Law making by ordinances, convening joint meetings of parliament to ensure majority and bypass discussion and such like are examples of this worrying trend. When institutions which were meant to function as 'oversight' or independent, non-partisan monitoring institutions, when law making is circumvented through ordinances, in the end democratic processes get throttled and democracy suffers.

**3. Emboldened Hindutva:** In the last few months in particular we are witnessing the spectacle of hundreds of right-wing, sectarian

Hindutva groups openly indulging in politics of hatred, divisiveness and violence. Starting from the Muzaffarnagar riots of mid-2013 to the 'love jihad' conflict and attacks of recent months, the climate of intimidation, fear and violence that has been generated is alarming. The Central Government and the current PM, has not once spoken against or condemned this growing sectarian and communal attack on minorities, not just Muslims but also on Christians (as in Bastar area of Chhattisgarh). The ruling BJP conveniently practices the 'politics of deniability' denying its own role in the violence but doing nothing to stop the fanning of religious divide.

**4. Creeping fascism:** Another worrying trend is the open espousal of the middle and rich classes of depriving the poor of state support and welfare schemes and support to the state's efforts to crush people's struggles and protests. There are clear signs of increased fascist rule by the state, both central and in different states. The police is used as a storm trooper to crush and destroy dissent. Divergent view points are silenced by brute force. The veneer of constitutional democracy is maintained as a show whereas the reality as experienced by the majority is one of a brutal, intolerant, politically biased police state.

**5. Expanding police state:** Widespread use of anti-sedition laws against ordinary citizens protesting for denial of basic amenities, economic and social distress including against unemployment, wages, for environmental safety and pollution; increasing use of draconian laws like UAPA, Criminal Law Amendment Act across states witnessing popular people's protest against destructive development projects and challenging undemocratic state policies; expanding the range and widespread use of

preventive detention laws like NSA, Goondas Acts, etc against political opponents or critics; non-repeal and major use of AFSPA in north east states and Jammu and Kashmir; very gradually but in a major way, the character of a police state is well in place, which threatens democracy and human rights and posing a major challenge to the human rights movement.

**6. Manipulation of public opinion and Influencing Mindsets:** In recent years we have seen the massive expansion in use of mass media and social media platforms by political parties and groups using expensive and expert inputs of Public Relations and Advertising firms, mass media experts and others as a means of spreading propaganda about a political party or leader. These massively funded campaigns have as their focus not just influencing public opinions on issues but the larger agenda of influencing the making or unmaking of mindsets of large sections of the people. Considering the reach of mass media and the fact that control is regulated by financial strength, this means that alternate modes of informing people of the threat to democracy and human rights is very daunting and challenging. As a human rights movement, the forging and consolidation of a larger social mindset permitting the state to arm itself with totalitarian powers, all in the name of ensuring 'growth and development' is a major threat and challenge.

These are only a few of the key issues confronting us. How we understand them and the manner of creating a counter to such anti-human rights processes are going to determine our relevance in the years to come.

**Human Rights – Definitional Issues**

For some years there has been a debate and discussion inside the PUCL on the issue of the scope of human rights and whether PUCL as an organisation should confine itself to 'civil liberties' and not expand into

other domains of human rights. We would like to refer our members to the Proceedings of the Jaipur National Convention (Dec. 2012), National Council meeting (Mangalore, sep, 2013) and National executive Meeting (Bilaspur, June, 2014) which detail the issues on which we need greater deliberation, discussion and decision. We urge our members to initiate this discussion on the differences between civil liberties, democratic rights and human rights and to figure out what should be the key thrust areas for PUCL to focus its collective energies.

We would also like to draw your attention to the decision taken in the Jaipur Convention to form 5 Thematic Committees, which would initiate discussions through producing status papers on diverse range of subjects to be circulated for debate throughout the PUCL. A note of caution is necessary here to point out that these thematic committees are very broad ranging and many diverse issues have been clubbed together, which actually ought to have been separate areas of analysis and interventions. We had decided to err on the side of caution by limiting ourselves to a smaller number of thematic committees for the present with the idea that each committee may split into more sub-groups as and when members decided to form them.

1. Anti-democratic laws including anti-terrorism laws and other anti-HR laws, anti sedition laws, UAPA, AFSPA and other draconian laws.
2. Custodial violations including police and prison violations, encounter deaths and related issues.
3. Caste, communal, regional, diversity issues with special emphasis on the North East and Kashmir.
4. Ecology, environment, resource grabbing and rights related to development processes and paradigms in terms of HR dimensions.
5. ECOSOC issues – esp. RTE, right to health, right to food security and other issues.

We need members to volunteer to be members of these committees and ensure we come out with well thought positions in conformity with our Constitution.

There are two priorities we would like to present before you all:

1. To come out with a publication outlining PUCL's stand or approach on key human rights issues (see minutes of Bilaspur meeting) which can be used as a reference throughout India. During these 2 days let's identify 25 such issues and also have members volunteering to coordinate the discussion and writing of these position papers which can be discussed across India and finalised as a book of statements.
2. To come out with a Manual of Operating Guidelines – which would provide a new comer with information about the

organisation and also guide them on organisational processes.

At a personal level, there is one major short coming I feel personally bad about – to complete drafting this Manual. I had taken the responsibility. There are enough reasons for why I have failed my undertaking. But I feel bad I have slipped up on this. I apologise for this.

In the end I would like to record my deepest sense of thanks to Prabhakarji, who was like a mentor throughout this 2 year term. He taught me the importance of developing a deep sense and commitment to constitutional morality and ethical conduct and that whatever the circumstance, the organisation's interests precede individual feelings. He was also an important bridge to me, from the past of PUCL which I was only dimly acquainted with and the present.

I also want to thank specially Sacharji who has been very supportively in all my work. Kavita Srivastava also was very helpful and my special thanks to her.

I also wish to record my thanks to Mahipalji, who has been a pillar of strength for publishing the *PUCL Bulletin* regularly over many years.

I also wish to record thanks to Babitaji and Ashok of the National Office.

Finally, my thanks to the other national office bearers who helped me through this difficult and challenging journey to '*Reimagining PUCL*'.

More needs to be done and more challenges are ahead of us. I feel more confident today that PUCL will not only grow in strength but become vibrant and be an ideological leader for the human rights movement in India.

**Dr. V. Suresh**, General Secretary, PUCL National ☐

## Resolution passed in the PUCL National Council Meeting on 14.09.2014 at GPF, Delhi

### Resolution 1

It is unanimously resolved that no PUCL office bearer joining a political party shall be eligible to become an office bearer again even if s/he resigns from the party after a period of two years has elapsed from the date of her / his resignation from the political party.

The rule is applicable with immediate effect.

### Resolution 2

It is unanimously resolved that in view of the fact that Andhra Pradesh has been divided into 2 separate states of Telangana and Andhra Pradesh, the National Council resolves to set up two separate State units for each of the States and as a consequence the existing united Andhra Pradesh State Unit ceases to exist and function with immediate effect.

### Resolution 3

It was unanimously resolved that all the State Presidents and General Secretaries will be declared elected

to the National Executive Committee for the next term, 2014-16

### Resolution 4

One of the most serious challenges confronting the nation today is the unprecedented threat faced by Muslims and Christians causing widespread violations of their civil liberties and human rights. Never before in the history of independent India has a religious community been subjected to such a concerted and systematic campaign of hate and humiliation by the leading members and affiliates of the ruling party. An atmosphere of suspicion is being created against Christians in the name of conversion and Muslims in the name of so called 'love-jihad', which is also an attack on the agency of women and their right to choice.

It is a matter of concern when the highest political executive openly displays affiliation with the symbols of a particular religion and making it the primary marker of the identity of

the nation.

Systematic violation of the principles of secular governance accompanied by inaction to enforce the rule of law, resulting in a culture of impunity amongst those spreading physical violence and hate, threatens the democratic ethos and secular fabric of our society.

The PUCL resolves to combat these violations of civil liberties and human rights of Muslims and Christians at every level by peaceful and constitutional means and will work towards the restoration of a secular state.

PUCL appeals to society to not become a part of the hate campaign being promoted and ensure that constitutional values are not compromised with, whichever be the ruling dispensation.

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

## Minutes of the PUCL National Executive Meeting held in Bilaspur, 21st & 22nd June, 2014

### Members present

#### I Day, 21.6.2014

Prabhakar Sinha, Binayak Sen, Sudha Bharadwaj, Kavita Srivastava, Nishant Akhilesh, Ashok Jha, Prof. Saraswathi, Ramashray Prasad Singh, PB D'sa, Amalan Bhattacharjee, V. Suresh

#### II Day, 22.6.2014

Other PUCL members from Chhattisgarh State also joined the discussion including Raju Sail, TG Ajay, Lakhan Singh and others.

**This Report is organised in the following two parts:**

**Part A:** List of Decisions

**Part B:** Summary description of thematic discussions

| Sl. No. | Decision/Resolution  | Person responsible                                 | Time frame            | Remarks   |
|---------|--|--|-----------------------|---|
| 1.      | PUCL fortnightly briefing notes  | Kavita/Sudha/Suresh                                |                       | The briefing note will cover key human rights related / policy issues for benefit of members and media-preferably state wise.(Rajasthan unit has started producing such reports).   |
| 2.      | Thematic notes explaining PUCL stand on issues of Human rights importance  | Suresh/ Prabhakarji / to invite other PUCL members |                       | The thematic papers put together will represent the PUCL's position on a broad range of issues.   |
| 3       | Finalizing date of National Council meeting  | Suresh   | By first week of July | Dates to be finalized are 6 <sup>th</sup> /7 <sup>th</sup> July or 13 <sup>th</sup> /14 <sup>th</sup> July.   |
| 4       | Briefing note explaining method of election of NC members by state units / branches.                                 | Suresh   | By first week of July | The briefing note will explain the process of election based upon the PUCL constitution   |
| 5       | Finalization of state wise updated membership list for NC election – last date to be extended till 20.6.2014         | Unanimous decision of NE                           |                       | 1. The NE approved one time exemption for finalizing updated membership list to be sent by state units to the national office-cut off date to be w.e.f 20 <sup>th</sup> June 2014<br>2. Finalization means remitting NO share of annual subscription and list of members with address sent to the national office by due date |
| 6       | All renewals of annual membership of state members to be sent to national office as hard copy and not only soft copy |  |                       | In view of discrepancies in soft copy list, all state unions should send detailed list of updated membership as hard copy signed by the General Secy.Only hard copies of mails sent by / to state branches by registered post will be considered proof of communication.  |
| 7       | To place before next National Council meeting on   | Unanimous decision of NE                           |                       | This amendment to the rule was decided unanimously by the PUCL  |

|    |   |   |   |  |
|----|---|---|---|--|
|    | 13/14 <sup>th</sup> September for approval: All PUCL office bearers standing for elections on party tickets cannot resume office-bearer ship even if they resign their party post until a period of 2 years has lapsed from the date of resigning from the political party. |   |   | National Executive in view of a number of PUCL state office bearers contesting 2014 elections as political party candidates.   |
| 8  | Guidelines for accepting donations  | Nishant Akilesh                         | By mid-July                                     | The guidelines will be useful to inform members of all states as to the procedures guiding acceptance of donation/contribution to PUCL activities. The note should be circulated to all the states for obtaining their responses.  |
| 9  | Sending annual accounts by all state units to NO  | Ritu/Suresh                             | To be discussed in the National Council meeting | The proforma for sending accounts should be finalized in consultation with Mr. Jagannathan-Suresh to follow up.  |
| 10 | Emerging issues in Human Rights creating guidelines for a 1-2 days workshop or conference at state level  | Kavita/Suresh                           |   | List of 15 topics to be prepared and shared along with reading materials to all the state unions so that they can choose appropriate themes to hold meetings of 1-2days duration   |
| 11 | Preparation of Standard Operation Manuals (SOM)   | Suresh                                  | By 2nd week of Sept.                            | The SOM will detail various aspects guiding the functioning of PUCL units. It will be both a guide for action as also prescribe procedures to be followed by the state units on a regular basis.                                   |
| 12 | Taking initiative to strengthen/stream line/ re-start less active/ inactive state units.  | To be overseen by National GS/President |   | The NE accepted Sudha Bharadwaj's offer to liaise with convenors of PUCL units in Madhya Pradesh and Orissa to help strengthen PUCL activities in those states. Nishant Akhilesh will also assist with the effort in Odisha state. |
| 13 | Measures to ensure compliance by the state units with their responsibility and to ensure the attendance of NE/NC members.(Prabhakarji)  |   |   | The ensuing NC should discuss how to ensure that all state units send reports regularly of their activities to the NO and also to ensure regular participation of NC representatives from their states in NC / NE meetings.        |
| 14 | To file PIL with respect to the Disputed Areas Act and Rules which do prohibits Muslims from buying land or houses in Hindu areas in Ahmedabad  | Kavita                                  | Based on gathering of data and materials        | Kavita to coordinate with Goutham Thakker and other advocates of PUCL Gujarat  |

## Part B

### Thematic Discussions: Summary of Discussion

#### *Understanding the 2014 Lok Sabha Elections and its implications for human rights: Issues of human rights concerns*

Since the PUCL NE meeting was being held soon after the 2014 Lok Sabha general elections and the coming to power of a new government at the Centre, the meeting started with members presenting their analysis and views about the elections and its implications to the human rights movement in general and PUCL in particular.

The following are some of the key issues raised and discussed:

- 1. Prabhakarji:** The complete omission of HR issues affecting ordinary people stands out during the election process. This indicates the fact that for most political parties, human rights violations is not a serious issue, and in any case it is not an issue which will affect voting behaviour. It also signifies our failure to make HR violation issues an election issue. It is ominous sign that all political parties, irrespective of party label, are unanimously against human rights defenders. Media too is controlled by corporate interests who speak for the corporate class of owners but not for democratic rights of people. There is a lesson for PUCL in this: that unless we address the concerns of the common person, the last person, people will not look up to the PUCL as 'their' organisation to approach when in trouble. Only when we reach out to the common person, will they feel inspired to fight for human rights. However, he emphasized that only when we reach out to the common man will they feel motivated and inspired to fight for the protection and promotion of human rights.
- 2. Kavita:** The UPA government was repressive; the NDA government is not going to be different and will use the same laws that the UPA promulgated. For example the UPA made key amendments to Unlawful

Activities (Prevention) Act especially relating to (i) Energy, (ii) Economic Security. Interestingly, energy and economic security, has already been spelt out as key concerns of the new central government. The ominous thing about media control of news is not merely that they control what news filters out by that a climate of fear has started developing by which media professionals are accepting 'self-censorship'. All the Ministers have been told not to talk anything to the media; media houses have been told not to report anything adverse to the ruling government for the first 6 months. Slowly the space for democratic dissent and protest, which was anyway shrinking, has started vanishing. Rajasthan where a majority BJP government has taken charge has already indicated how it is going to deal with rights activists. In this context PUCL needs to do the following:

- (a) PUCL should stand up for rights violations issues and build a supportive structure to offer legal support and other help when needed.
  - (b) Apart from protecting human rights of people, PUCL should also protect rights defenders.
  - (c) PUCL should reach out to media organisations and other human rights organisations to strengthen human rights awareness and consciousness.
  - (d) PUCL should also strengthen coordination amongst human rights lawyers community.
- 3. Nishant:** BJP has been ruling Jharkhand, either directly or indirectly, since 2000. So there is nothing noticeably new in the state because of the new central government. Jharkhand has the highest number of POTA arrests in the country. It is very revealing to see the subversion and manipulation of economic laws. In the last phases of the UPA regime, the requirement of compulsory cost audits by firms was removed. This effectively ensured that there was no accountability of the firms, both to their share-holders and also

to the government and society at large. These economic changes have as much impact on the economic lives of people as do repressive laws; however, these changes are rarely studied from the human rights perspective.

- 4. Ramashray Prasad:** What is of concern from the view point of the ordinary citizen in Bihar is the almost total collapse of the criminal justice system. There are lots of issues which seriously affect the common person: trafficking in women and children; custodial crimes including torture, deaths and other forms of violence. Some of the district units of Bihar state unit take up issues from the Thana level upwards and have earned the trust of local people. However a recent incident occurred when the ABVP attacked and forcefully stopped a meeting organised by PUCL to condemn the arrest of Prof. Saibaba. This is unthinkable before elections. The fact that BJP government has come to power with huge majority will embolden many Sangh Parivar groups to become more visible aggressive and violent. This is a worrying trend.
- 5. Sudha Bharadwaj:** The scenario is going to change rapidly both in the states as also nationally in the coming months. Fascism mentally unites the upper and middle classes against the poor and creates a consensus against the poor. We are going to witness demands to do away with welfare programmes and subsidies for the marginalised sections. In Chhattisgarh, increased militarization and police control is visible in more areas especially in the fifth schedule areas. The 'no go' areas where mining was banned will not be given to big corporate for mining. The coal mafia is flourishing. Newer power and cement plants are being constructed with no concern about impact on environment, common resources, and local people. There is abounding illegalities and environmental violations. There is looting and plundering

of common resources like water, minerals, land, etc. the forest rights act, forest conservation act are hardly being implemented. There is talk of change of forest and environmental laws. The divestment policy is ominous for it will clear up pristine forest areas for coal and mineral mining. The Sarguja ultra mega power plant which was previously stopped will now be cleared. There is plan for constructing a new Raipur by clearing 65 villages to create a new super city. The government has already announced that no 'social impact assessment' is required for new industrial projects. In effect, whatever protective laws exist will effectively be made irrelevant. There is absolutely no information to the ordinary people of the area about the serious environmental threats caused by the new mega industrial projects.

In the conflict areas, civilian administration has almost totally been withdrawn. There is a danger of a civil war turning into a full-fledged war under the new government. Media is not being allowed into the conflict areas and so very little news about atrocities ever comes out.

In this context we need to consider the issue of applicability of declaring these areas as marked by "internal armed conflict" especially if the government wished to continue long term deployment of para military forces against internal armed groups. There is a need to explore the relevance of international standards and systems of monitoring as well as protection of civilians and non-combatants and examine their applicability in the context of the Indian Constitution.

A very worrying trend is the increasing communal divide. There is a concerted attempt by the Hindutva groups in the Bastar area to turn local Hindus against Christian tribes like the Oranons in Jashpur. A Mahapanchayat of over 25,000 people in Bastar has given militant all not to allow Christian

missionaries in that area. New communal divides are being created which is very dangerous for the future. There is also information about the mobilization of Durga Vahini who are being given militant training. The coming of the new BJP government has emboldened many Hindutva groups which is reflected in the random killing of a young Muslim IT professional in early June. All these events pose a major challenge to human rights groups both in terms of stopping violation and also in protecting democratic rights.

6. **PB D'Sa:** In Karnataka, we did not expect the BJP to bounce back so soon after their assembly election defeat. However, communal divide has taken deep roots in Karnataka, fanned by the RSS who do the planning and executed by the Hinduva groups. An illustration is the communal conflict in Babu Bhoodhan Giri, a place which did not have a history of communal conflict, but which is now full of communal tension. Similarly the coastal belt of Karnataka, which has the history of communal harmony is now being polarised by the systematic activities of the BJP, RSS and other affiliated groups. One of the most problematic issues is the 'saffronisation' of bureaucracy and the judiciary in Karnataka.

7. **Amalan Bhattacharya:** Ironically, there is no difference between the TMC and CPI(M) in the way they treat human rights groups and issues. Both look at human rights groups as adversaries to be controlled. The SHRC in West Bengal is totally ineffective. The 30% of the population in West Bengal are Muslims, who are mostly economically weak. In the border areas of 24 Parganas and Birbhum districts, a very serious issue relates to nationality issue of residents. The Hindutva groups claim that most of them are Muslim infiltrants from Bangladesh and have used communally divisive propaganda to expand their political base. In the fight between BJP and TMC, ordinary people become victims.

Another issue is the unsettled problem of the 'CHITMAHAL' problem in which there are enclaves of Indians in Bangladesh territory and Bangladeshis in India territory. People in these enclaves suffer from access to any governmental assistance and are virtually living like stateless citizens. This issue has been defying a solution as it involves foreign policy between India and Bangladesh and lack of common approach between the central government and the state government.

**Suresh:** PUCL, Tamil Nadu has held a number of discussions immediately after election results to understand electoral trends from different perspectives. It is difficult to explain the voting pattern through bi-polar lens of Hindu v. Muslim, urban v. rural, rich v. poor and so on as there has been considerable cross-voting across these fragments. It is wrong to understand the Modi campaign as a recent phenomenon for they have launched their campaign from 2010 itself. In a systematic way, expert PR agencies with unlimited funds, launched a media blitzkrieg campaign projecting Modi as the only person who is 'resolute, visionary, a unifier, and a man who promises to bring Utopia to India'. There is a very major need to re-understand the notions of secularism, faith, religiosity as much as to redefine development, good governance, sustainability. The assault on human rights in the coming months and years will be both through cleverly engineered attacks and by tinkering with the laws and democratic institutions in such a way that the superficial character of constitutionalism exists but the substantial mechanisms of rule of law is made irrelevant and useless. This is going to pose a serious challenge for groups like PUCL to re-imagine politics and the relationships between democracy, human rights and development.

*To be continued in the next issue.....* □

## Attack on the Democratic Processes in Bastar under the Guise of Counter Insurgency is an Issue of Concern

Advocate Sudha Bhardwaj, General Secretary of Chhattisgarh People's Union for Civil Liberties, expressed her organisation's deep concern at the recent developments in the Antagarh By-Election for the Legislative Assembly. The withdrawal of nominations of ten out of the twelve candidates and the subsequent events including the mysterious disappearance and reappearance of the Congress candidate Manturam Pawar cannot be called natural, especially since the Congress party had won several seats in the Bastar division only recently. According to a newspaper report, the only candidate remaining in the fray now - Roopdhar Puddo from the Ambedkarite Party of India - in a press conference stated that he was under a lot of pressure, including even directly from the Private Secretary of the Chief Minister Shri OP Gupta, to withdraw his nomination due to which he had to go "underground" till the period for withdrawing nominations lapsed. Today the 10 candidates who had withdrawn their names are reported to have "joined the Bharatiya Janata Party". The holding of free and fair elections is a fundamental and essential requisite of our democratic structure. But it seems that militarization in Bastar is being

abused to deal with political opponents.

On 26th August in Raipur, the State President of the Congress Party, Mr. Bhupesh Baghel, mentioned in a press conference, that the recent surrender of so-called 'Hardcore Naxalites' - Chetram Sahu and his wife Manjula is false, and the two are ordinary villagers. Manjula works as a cook. Similarly, on 27th August, the President of the Adivasi Mahasabha and former MLA from CPI Party, Mr Manish Kunjam informed the Press at Jagdalpur that he had submitted a memorandum to the Chief Minister stating that that Manjhiram Kashyap and Sukhdev Nag who have been arrested as accused in the Jeeram Ghati incident are actually post bearers of the CPI. Sukhdev Nag is an elected member of the Darbha Janpad Panchayat and Mangiram is secretary of Tahakwada branch of the CPI. They were summoned to the Tongpal police station on August 25th. Although they were sent back on the ground that the Thana Incharge was not present, they were asked to come again in the evening and were arrested on charges of being involved in the Jeeram Attack and the killing of Mahendra Karma. It is pertinent to note that prior to their arrests, the two had been

questioned on two occasions by the NIA, which had let them go on finding no evidence against them.

On 27th August, Soni Sori, the former electoral candidate of the Aam Admi Party, addressed a press conference in Jagdalpur. She mentioned that a fact finding group of her party had discovered that the claim of the State that 11 Naxalites had been killed in an encounter in Village Ramaram in Chintagufa Block was false and actually the indiscriminate firing of the forces had resulted in the death of a woman from the village - Adme Vetti, who was buried in the village itself. She also said that the claim of the state regarding the alleged surrender of a naxalite named Gali from the village of Bade Gudra is also false. Gali was an ordinary villager, who despite his supposed surrender, has been put in jail instead of being given the benefits mentioned in the surrender policy. It is pertinent to note that in the past few months the police claims that there have been about 120 surrenders. These surrenders also include a woman with a 3 year old child.

In the last six months, about 13 people's representatives (Sarpanches/Janpad Sadasyas/Sachivs) have been arrested in the

### PUCL National Office Bearers elected in National Convention on 14<sup>th</sup> September 2014

The following office bearers of National PUCL were unanimously elected during the National Council meeting on 14<sup>th</sup> September, 2014 at Gandhi Peace Foundation, Delhi: **President:** Prof. Prabhakar Sinha (Bihar); **Vice-Presidents:** (1) Dr. Binayak Sen (Chhattisgarh), (2) Mr. P. D'Sa (Karnataka), (3) Mr. Ravikiran Jain (UP), (4) Mr. Sanjay Parikh (Delhi), (5) Prof. G. Saraswathi (TN), (6) Prof. Vinay Kanth (Bihar); **General Secretary:** Dr. V. Suresh (TN); **National Secretaries:** (1) Mr. Chitharanjan Singh (UP), (2) Mr. Dinanath Pente (Jharkhand), (3) Ms. Kavita Srivastava (Rajasthan), (4) Prof. V. Laxminarayana (Karnataka), (5) Ms. Sudha Bharadwaj (Chhattisgarh); **National Organising Secretaries:** (1) Ms. Nishath Hussain (Rajasthan), (2) Mr. Rohit Prajapati (Gujarat), (3) Mr. Ramashray Prasad Singh (Bihar); **Treasurer:** Mr. Surendra Kumar (Bihar).

All the State Presidents and General Secretaries were also elected unanimously to be members of the National Executive Committee.

Kanker District. These arrests included the Congress leader of Antagarh Block, Badri Gawde, who was also spearheading the 'Raoghat Sangharsh Samiti's' protest in the area. The other arrested elected representatives include Ganesh Kunjam, Sarpanch Timnar, Amabeda; Mohan Singh Dhruv, Sarpanch, Bade Pinjori, Amabeda; Baliram Usendi, Sarpanch Siksod, Koyalibeda; Dhannuram Dhruv, Sarpanch Tadoki, Antagarh; Ramkumar Mandavi, Sarpanch Muragaon, Kanker; Mahangu Ram Baghel, Sarpanch, Kavapal, Jagdalpur and the Sarpanches of village Antagarh and Bhaigaon of Antagarh Block. The local people see these arrests as a measure to suppress opposition to the proposed development projects in the area,

notably two Ultra Mega Steel Plants, and the Raoghat Mines.

During the UPA regime, the Chhattisgarh government had filed a petition before the Supreme Court opposing the Polavaram project, wherein it had stated that this project would lead to the submergence of about 16 villages in the Konta region and the loss of approximately 7000 hectares of forest land rich in biodiversity and wildlife. The Chhattisgarh government had alleged that there has not been sufficient research to gauge the true impact of the project, neither have any of the Gram Sabhas in the area been consulted as mandated under the PESA Act. However, now, in the light of the regime change at the Centre, the Chhattisgarh government does not appear to be

doing anything to safeguard the rights and interests of its people. Recently, the Adivasi Mahasabha had taken out a long padyatra to register the protest of local people against the Polavaram project in Konta Block.

Finally, the Chhattisgarh People's Union for Civil Liberties gave the information that on the 25th of August 2014, the Supreme Court has issued notice to the Chhattisgarh State, seeking its reply to the Special Leave Petition filed by PUCL challenging the constitutionality of the Chhattisgarh Special Public Security Act. Justice Rajindar Sachar appeared on behalf of PUCL in the matter.

**Sudha Bhardwaj**, General Secretary of Chhattisgarh PUCL. □

## **PUCL demands Rigorous Inquiry into a Custodial Death in Bangalore**

### **Newzfirst**

Bangalore - *The People's Union for Civil Liberties* (PUCL) Thursday strongly condemned the custodial death of a scrap dealer in Bangalore Central prison and demanded rigorous inquiry into the incident.

The shameful incidence reflects poorly on the entire police and security force of Bangalore - the appointed custodians for citizens' safety with responsibility to ensure constitutionally mandated right to life and liberty of all, said general secretary of PUCL-Bangalore, Arati Chokshi, in a press statement.

A scrap dealer Mubarak Pasha, who was arrested by the Bangalore police on theft charges, died under mysterious circumstances in Central Prison in Bangalore on 31 August.

The PUCL demanded an immediate and rigorous inquiry into the incidence following the guidelines provided by National Human Rights Commission.

Though Pasha was taken into police custody on 19 August, he was produced in the court on 27 August only after his family members' learnt about the illegal detention at Koramangala Police Station.

Even-though Pasha's family managed to get the bail for him on 30 August, he was not released citing his alleged involvement in another case.

Victim's wife Reshma Pasha has accused the Bangalore police of beating her husband to death.

During her visit to the police station, Mubarak Pasha reportedly told her about the physical torture being meted out by the Police

The family received a call from the police station on 31 August that the Pasha was admitted to the Victoria hospital due to some health complications. On rushing to the Hospital, the family had found Mubarak's dead body in the mortuary.

On the other hand, the though the prison authorities claimed that Mubarak died due to cardiac arrest, the Victoria Hospital police have taken it as a case of unnatural death and have sought magisterial inquest. □

### **Forthcoming Events: 12th PUCL National Convention, Patna, Bihar**

PUCL invites all its members to attend the 12th PUCL National Convention to be held in Patna, Bihar on 6th and 7th December, 2014. For more details contact Prof. Daisy Narain (Ms.) (09431022929), President, Bihar PUCL; Shri Ramashray Prasad Singh (09835281394) or Shri Praveen Kumar Madhu (09835643464), General Secretaries, Bihar PUCL for more details. **Dr. V. Suresh**, General Secretary, PUCL National

.....Continued from the previous issue

## Secularism Revisited

### Justice R.A. Jahagirdar

*(Since the BJP led government has taken over at the centre, the forces of Hindutva have started raising their communal agenda. On more than one occasion, Mohan Bhagwat, the RSS supremo, has said that Hindustan (and not 'Bharat' as the Constitution calls us) means the land of the Hindus and all those living in it are Hindus. A few days after asking why all Hindustanis (Indians) should not be referred to as "Hindus," the Rashtriya Swayamsevak Sangh (RSS) Sarsanghchhalak again on Sunday, 17th August, minced no words in stating that "Hindutva is the identity of India and it has the capacity to swallow other identities." "We just need to restore those capacities," he added. More than one minister in various BJP governments in the States has said that the Modi government will lead the nation towards the formation of the 'Hindu Rashtra'. The forces of intolerance have become more aggressive and the secular fabric of our multi-cultural society has come under serious threat. Hence the debate on the secular character of our country, as mandated by our Constitution, has again begun afresh. It has become all the more important for us to understand what secularism really means and how we can protect it.*

*Late Justice R.A. Jahagirdar, a leading Radical Humanist like Justice V.M. Tarkunde, both of whom valued secularism as an essential ingredient of a truly democratic society, gave three important lectures on Secularism. As part of the ongoing debate, we are going to publish all the three lectures. The following is the second part of the first one, which was delivered as the Eighth Smt. Bansari Sheth Memorial Lecture delivered under the auspices of The Asiatic Society of Bombay on Wednesday, 26th April 2000 - Editor).*

Article 28(1) lays down that no religious instruction shall be provided in any educational institution wholly maintained out of State funds.

It is well known that almost all educational institutions receive grants from the Government or a Governmental body like University Grants Commission. It is generally accepted that few schools, even religious schools, can survive without grants-in-aid. (See In Re Kerala Education Bill, AIR 1958 S.C.956 @ 980). These grants cover 100 per cent of the salaries of the teaching staff and 90% of the salaries of the non-teaching staff. A small proportion of the expenses is met by other sources including tuition fees. Such institutions are not institutions wholly maintained, though largely maintained, out of State funds. The ban of Article 28(1) will not apply to such educational institutions. Elphinstone College is covered; St. Xavier's College is not.

We have seen how under the secular Constitution of U.S.A. a State-aided school cannot impart religious education. Article 28(3) permits a State-recognised or a State-aided school to give religious instruction or to hold religious

worship (Satyanarayan Puja) provided no student is compelled to attend the instruction or the worship. It is very difficult for unwilling students to abstain from such classes. Willy-nilly such students will attend religious instructions which may not be educative and which may be propagandist. This is not secularism.

As originally enacted the Preamble to the Constitution did not contain either the word secular or the word socialist. It began with -

"We, the people of India,  
having solemnly resolved to  
constitute India into a sovereign  
democratic republic .....

By the 42nd Amendment, the opening words were replaced by the following:-

"We, the people of India,  
having solemnly resolved to  
constitute India into a sovereign  
socialist secular democratic  
republic ..."

The words in emphasis were added. Nothing else in the Constitution was changed to invest the Constitution with secular character. By putting on a Gandhi cap one does not become

Gandhi or a Gandhian. That is the only comment I can make on this change.

But what is secular? The leaders of the Janata Party, which came into power, noticed that the word secular had not been defined. By the 44th Amendment, an attempt was made to define 'secularism' by saying that it meant 'Sarvadharm Samabhav' (Equal regard for all religions). Incidentally, socialism was also sought to be defined as society free from exploitation. During the discussion of the Amendment Bill in the Rajya Sabha, after its passage in the Lok Sabha, the definitions were deleted. But the phrase 'Sarvadharm Samabhav' sounded and tasted sweet and our politicians have been rolling it on their tongues ever since. But does this not mean that the Parliament in its constituent jurisdiction did not accept that secularism meant 'Sarvadharm Samabhav'? As a lawyer I insist that the meaning of the word must be found in the dictionary. One can also see how historically the word has been used, especially by those who were instrumental in bringing that word into currency.

Prof. Donald E. Smith, Professor of Political Science in Pennsylvania

University, provided what he regarded as a working definition of a secular State. This was in his book "India as a Secular State", 1962 (Pub. Priveetan University Press, Princeton):

"The working definition which I suggest is as follows:

The secular State is a State which guarantees individual and corporate freedom of religion, deals with the individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion". (p.4)

There is not enough space here to examine in detail the views of Prof. Smith. It is sufficient to mention that Prof. Smith himself finds that there are several instances both in the Constitution and the laws which, contrary to his definition, have amounted to interference by the State in religious matters. My criticism of Prof. Smith's approach is that it sweeps away the basic and historical meaning of secularism. I say: Back to basics. You cannot have one meaning of secularism in one country and another meaning in another country. The proper name for Indian polity is probably what Dr. Rafiq Zackaria has called "accommodative pluralism" ("The Widening Divide", Penguin, p.314).

(For an interesting debate on Prof. Smith's book, please see the last three Chapters of "Secularism in India", Ed. By Prof. Sinha, Pub. Lalvani. For a more detailed analysis of the provisions of the Constitution, see Prof. S.P. Sathe's "Secularism - Law and the Constitution of India", Pub. Indian Secular Society).

In fact, some commentators and even the judgments of the Supreme Court have equated pluralism envisaged in the Constitution to secularism. But the difficulties one would encounter if 'Sarvadharm Samabhav' is accepted have not

been appreciated. If you accept 'Sarvadharm Samabhav' as the foundation of Indian Constitution, you cannot bring about any religious reform.

What I have said about the non-secular character of the Indian Constitution is not shaken by whatever has been said by the Supreme Court in some of its judgments. I will refer to one case which can be taken as the most authoritative pronouncement by the Supreme Court on secularism. The interpretation of the word secularism was directly involved in S.R. Bommai v. Union of India (AIR 1994 S.C.1918). I will refer to this case as Bommai's case.

President's rule had been imposed in four States in the north in the wake of the demolition of Babri Masjid and of the disturbances that followed. In those four States BJP was in power and the dismissal of the four Governments was sought to be upheld on the ground that the governments of those States could not be carried on in accordance with the provisions of the Constitution because those governments were acting against the secular principles which were an integral part of the Constitution of India. The President's order was challenged by the governments who had been dismissed. Bommai came in the picture because his JD Ministry in Karnataka had been dismissed, though on another ground. All the petitions challenging different Presidential orders were heard together and disposed of by one set of judgments by a bench of 9 Judges. For a non-lawyer going through all the judgments and finding out the exact law pronounced by the Court may be a difficult, if not a Herculean, task.

Let me assure you that you can safely rely on me on the understanding of the law laid down in Bommai's case. For the present

purposes I will only refer to what has been said in relation to secularism. For the sake of arithmetic, one can say that Justices Pandian, Ahmedi, Jeevan Reddy, S.C. Agarwal and K. Ramaswamy agree with Justices P.B. Sawant and Kuldip Singh who gave the leading judgment to which I will be referring now.

In the light of the contentions raised before the Court, the Judges were required to examine the concept of secularism under the Constitution. Sawant, J., proceeding to refer to Articles 14, 15 and 16 and Articles 25 to 30 said:

"These provisions by implication prohibit the establishment of a theocratic State and prevent the State either identifying itself or favouring any particular religion or religious sects or denomination. The State is enjoined to accord equal treatment to all religions and religious sects and denominations." (Emphasis mine)

The last sentence, with great respect, is not warranted by the provisions considered. Sawant, J. proceeds to quote at length Mr. M.C. Setalvad, from his 1965 Patel Memorial Lecture on Secularism, and accepts the fact that Mr. Setalvad said that our Constitution lacks a complete separation between the Church and the State but asserted that it could not be said that the Indian State did not possess some important characteristics of a secular State. Justice K. Ramaswamy has quoted authors and authorities in several paragraphs (with a number of inaccuracies in the printed report). And after saying that the Supreme Court has not accepted the wall of separation between the Church and the State, proceeded to agree with Justice Sawant. He concluded:

"Secularism, therefore, is a part of the fundamental law and the basic structure of the Indian political system. ..." (p.2020)

The Indian attempt at redefinition of secularism demands of an Indian acceptance of the values of other religions while permitting him to practice his own religion. "The Indian concept of secularism is full of contradictions and therefore is unable to provide a clear unambiguous guideline either to the individual or to the State. As a consequence, the religious values continue to dominate the day to day affairs and in the process generate tension because of plurality of religious views" (Prof. H.Y. Siddiqui in "Quest for Secular Society - Challenge and Response" in 'Secularism and Indian Polity', Ed. Bidyut Chakrabarty, p.233 - Segment Book Distributors, Delhi). Secularism operates on three levels. State as secular; society as secular; individual as secular. A secular society may exist under a non-secular State. In United Kingdom, for example, the State has an established Church, the Anglican Church, but barring a few exceptions the State excludes all considerations of religion in dealing with the citizens. In France, after the Revolution of 1789, Church has been separated from State, but the French citizens may not be so separated. It may in passing be mentioned that in France the census figures do not disclose the population religion-wise because no one is asked, at the time of census, what his religion is. In America, which boasts of a secular Constitution, large number of people seem to belong to one Church or another. In addition, there are different types of weird cults and evangelists. Ronald Reagan threatened to introduce prayers in educational institutions and legislative bodies. His wife advised him by consulting, not very secretly, an astrologer. A truly secular society will give rise to Secular State but not vice versa.

That is why M.N. Roy was rightly skeptical about India becoming secular. At one stage Roy assumed that constitutionally India would be Secular State (Independent India, Aug.1, 1948). This was before the Constitution of India was framed. Of course, Roy proceeded to add in the same article that he doubted whether political life in India would be secular. He noted that religious ritualism has been always associated with public functions. "Ceremonious State functions on the occasion of the transfer of power were religious, according to spiritually prescribed rules. In some places it went to the extent of selecting the auspicious moment according to the advice of priestly astrologers"

(Ibid. re-published in Secularism in India, Ed. V.K. Sinha, p.148, Pub. Lalvani, Bombay).

In a later article in The Radical Humanist - May 14, 1950 (also republished in Secularism in India, p.152) Roy noted several non-secular and anti-secular features of Indian polity and society. He exclaimed in exasperation "all profession of secularism is meaningless". Referring to the large number of Sadhus and Sanyasins roaming across the country, Roy said:

"A secular State should not tolerate a vast, many million strong, army of holy loafers who outrage the ethical and aesthetic sense of its cultured and educated citizens." (p.157)

I must now proceed to consider secularism vis-à-vis main religions of India.

Hinduism is the religion in which the majority of Indians are born and it is but natural that what Hindus believe and how they behave are bound to affect the complexion of Indian polity. What is Hinduism? Why does one say one is a Hindu? If you ask me, I would answer by saying that -

I am born in a caste which is and has always been a part of Hindu system.

I am born in a society or a group which has been recognised as Hindu.

I do not believe in Dashavatar; I dislike the caste system; I do not accept the authority of the Vedas and Upanishads. I enjoy Puranic stories just as much as I enjoy the Greek mythology but I do not believe in their truthfulness.

But still I am dubbed a Hindu. This is the beauty and despair of Hinduism. That this is so is recognised by the Supreme Court in one of the early decisions. In Sastri Yognapurushdasji v. Muldas Bhudardas (AIR 1966 S.C. 1119) the Court inquired into the questions as to who are Hindus and what are the broad features of Hindu religion. The Constitution Bench over which presided an eminent scholar, after referring to writings of scholars, including Dr. Radhakrishnan, found it difficult, if not impossible, to define Hindu religion or even to describe it. Unlike other religions Hinduism does not claim one Prophet, does not worship any one God, does not subscribe to any one dogma, does not believe in only one philosophic tenet. The population regarded as Hindus does not even follow one set of religious rites or performances.

Ten years later, in C.W.T. v. R. Sridharan (AIR 1976 S.C. 489), the Supreme Court said:

"It is a matter of common knowledge that Hinduism embraces within itself so many diverse forms of beliefs, faiths, practices and worship that it is difficult to define the term 'Hindu' with precision."

By and large one can proceed on the basis that all those who are called Hindus worship one, or more, or all of the pantheon of Gods. They also subscribe to the theory of Karma - namely that your sufferings

in this life are attributable to the sins you have committed in your previous life. The large quantity of Bhakti literature also indicates that man's life is only a sojourn in the world and he should prepare himself for a better life hereafter. This is obviously an anti-secular attitude.

It is necessary to deal with 'Hindutva' which as a concept and an idea was developed by V.D. Savarkar. Before I proceed to examine 'the Hindutva' of Savarkar, let me refer to the Supreme Court judgment in Dr. Ramesh Yashwant Prabhu v. Prabhakar Kunte (1996-1 SCC 130). In paragraph 39 of the judgment, the Supreme Court mentioned:

"Ordinarily, Hindutva is understood as a way of life or a state of mind and it is not to be equated with, or understood as, a religious Hindu fundamentalism."

Justice Verma delivering the judgment curiously quotes Maulana Waliduddin Khan for the correct understanding of 'Hindutva'. The Maulana, in his "Indian Muslims - The Need for a Positive Outlook", has formulated his understanding of 'Hindutva' in the following words:

"The strategy worked out to solve the minorities problem was, although differently worded, that of Hindutva or Indianisation. This strategy, briefly stated, aims at developing a uniform culture by obliterating the differences between all of the cultures co-existing in the country. This was felt to be the way to communal harmony and national unity. It was thought that this would put an end once and for all to the minorities problem". (p.159)

Justice Verma quotes this opinion approvingly and says:

"that the word 'Hindutva' is used and understood as a synonym of 'Indianisation' i.e. development of uniform culture by obliterating the differences between all the cultures

existing in the country. (p.159)

One country - one culture.

In a later paragraph viz. 44, Justice Verma says that:

"I is a fallacy to proceed on the assumption that any reference to 'Hindutva' or Hinduism in a speech makes it automatically a speech based on Hindu religion as opposed to other religions or that the use of the words 'Hindutva' or 'Hinduism' per se depicts an attitude hostile to all persons practising any religion other than Hindu religion." (p.162)

On the contrary, says Justice Verma, it may well be "that these words are used to promote secularism or to emphasise the way of life of the Indian people and the Indian culture or ethos. ..." (p.1262)

A brief reference to 'Hindutva' of V.D. Savarkar is inevitable. Savarkar's exposition of the subject is to be found in his essay "Essentials of Hindutva" which is included in Vol.VI of Samagra Savarkar Wangmaya (1964) published by Maharashtra Prantika Hindusabha, Poona.

In this essay of 90 pages, Savarkar surveys the history of India and points out that all those who have lived and shared the glories, trials, tribulations, sufferings as the inhabitants of this land are Hindus and the awareness of belonging to this land and to this community of Hindus is 'Hindutva' which, he says, should not be equated with Hinduism. At some places (e.g. p.58) he uses the word Hinduness. The descendents of these persons also share the 'Hindutva'. The scenes of their history are also the scenes of their mythology. As you read this essay you cannot help being impressed by the almost mystical concept of 'Hindutva' developed by Savarkar. The concept as developed includes Buddhists, Jains, Sikhs and also tribals and excludes Muslims, Christians and Jews. Mr. Savarkar

does not use religion as a unifying factor for 'Hindutva' - if he did he would have to exclude Jains, Bhuddhas and Sikhs but uses religion as an exclusionary factor. This is not secularism.

Savarkar specifically excludes Musalmans for whom Mecca is a sterner reality than Delhi or Agra. "Some of them do not make any secret of being bound to sacrifice all India if that be to the glory of Islam or could save the city of their prophet". (p.87). Savarkar also lashes out at the Jews who despite the hospitality they have enjoyed in other countries have no sense of gratitude and they are attached more and more to the land of their prophets. (p.87).

Can Islam be secular? Some scholars have attempted to argue that Islam, as revealed through Koran, is secular inasmuch as Islam recognises the legitimacy of other religions and says that there is no compulsion in the matter of belief. That Koran was revealed to Mohammed and that Mohammed is the last prophet are the cardinal principles of Islam. If Koran is revealed by God, none other than God can change it. If God wants to send a new message, he cannot do it simply because there cannot be any prophet after Mohammed. Therefore Koran is the last book for all peoples and all times. Koran is the seal of faith; Mohammed is the seal of prophethood.

In support of the claim that Koran does not sanction compulsion in the matter of belief, the scholars quote earlier revelations in Mecca when Mohammed was struggling against the idolatrous Meccans.

In later revelations in Yathrib, that came to be called Medina, there are clear indications that views contrary to Islam could not be tolerated.

This apart, those who believe in a book as the last word which is

infallible and unchangeable cannot by any stretch of imagination be called secular. What you should eat, what you should drink, whom you can marry and whom you cannot marry, whom to believe as a witness, how many witnesses are necessary for proving a contract, how property should devolve -- these and other matters which are wholly secular in character are the subject matter of mandates in Islam.

The question of marriages between Muslims and non-Muslims has been dealt with Sura 2 and Verse 221 as follows:

"And marry not the idolatresses until they believe; and certainly a believing maid is better than an idolatress even though she please you. Nor give believing women in marriage to idolaters until they believe, and certainly a believing slave is better than an idolater, even though he please you..

This Verse should be read with Verse 5 of Sura 5 (Perfection of Religion in Islam) which permits Muslims to marry women who profess a revealed religion.

There is an express mention of a Muslim man marrying a non-Muslim woman. Islamic scholars have agreed that a Muslim woman cannot marry a non-Muslim man. That was the real reason for the furore over Mani Ratnam's "Bombay".

Koran and Islam do not separate the religion and State. What is ordained in Koran has to be implemented by the State. Iqbal has argued that the Musalmans are organised in Ulmma and not in national States.

Syed Muhammad al Naquib al Attar is a well-known Islamic scholar of Malaysia. He specifically addressed himself to the question whether secularism is consistent with Islam

in a book "Islam and Secularism" (Hindustan Publications, Delhi, 1984). I would strongly recommend this book to those who are interested in the subject and especially to Muslims. In this book Syed Muhammad has shown his familiarity with the history of secularisation and of course his profound knowledge of Islam. It would take too much time that is not permissible at this juncture to review the book in details. Let me be content with relevant quotations and please accept my assurance that I am not giving quotations out of context. After a brief outline of the rise of secularism in the West, the learned author says:

"Islam totally rejects any application to itself of the concepts secular, or secularisation, or secularism as they do not belong and are alien to it in every respect...." (p.23)

"A revealed religion as we understand it is complete and perfect in its adequacy for mankind from the very beginning. The Holy Quran says that Islam is already made complete and perfect for mankind...." (p.27)

One more quotation (p.38):

"Not only is secularisation as a whole the expression of an utterly un-Islamic word view, it is also set against Islam and Islam totally rejects the explicit as well as implicit manifestation and ultimate significance of secularisation.

Desacrilisation of politics and society is inconsistent with Islam as in fact it is inconsistent with any religion.

**To be continued in the next issue....** □

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