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Prostitution and Human Rights

Prabhakar Sinha

A low key campaign for legalizing prostitution in the country is underway with the support of a large number of activists working on the issue and complicity of a larger number supporting the move with their silence. A few articles have appeared in the print media advocating the measure, and the Chairperson of the National Commission for Women Lalitha Kumaramangalam (an appointee of the Modi government) has reportedly written to the Supreme Court in its favour. A larger number of activists working for the rights of women appear to bless the move with their deafening silence. It is quite possible that they think the measure to be in the best interest of the women caged in brothels all over the country, but maintain silence apprehending an outcry against a loud campaign.

It is being touted that legalization of prostitution would save the women in the business from HIV and other sexually transmitted diseases, clutches of the pimps and the keepers of the brothels, financial exploitation and the violence they have to suffer in silence. The legalization, it is argued, would enable them to approach the police which they are presently unable to do due to the illegality of their activity.

It is claimed that the legalization of prostitution would entitle the women in the business to many rights as workers, give them the right to choose or reject their customers and enhance their bargaining power. As a windfall, it would drastically reduce the incidence of rape and make the world safer and better for the rest of women.

The demand for the legalization of prostitution is based on the premise that the *sexual need of men has primacy over the sexual need of women, and it is imperative to provide women not in need of the gratification of their sexual urge to men for the fulfillment of men. Men and women in this respect should not be treated as equal.* The demand for legalization of prostitution is based on the untenable assumption that satisfying the lust of customers for money is work like sweeping, washing, typing nursing and teaching etc., and the women compelled to do it are (sex) workers like sweepers, typists, nurses and teachers.

Designating sex as work and the helpless women compelled to undertake it as a sex worker are misnomers. Work is the exchange of labour and skill for wages and is an exercise extrinsic to a *human being* and alienable from him/her. Sex, on the other hand, is a human instinct, intrinsic and inalienable from a person and can by no stretch of imagination be designated as work like sweeping, nursing and other work of the same category. The end of the two categories of activities itself shows the wide gulf between the two. The end of work is wages in return for the labour

and skill of the worker, while the end of sex is the gratification of the instinctive need of the person/ persons and the happiness and exhilaration accompanying it. The cause of the demand for the facility to buy sex is rooted in one fundamental difference between the nature of men and women. While men may derive pleasure from purchased sex from a strange woman, it is a degrading and humiliating experience for a woman to have sex for wages with strangers. Advocating the opening of shops for sale of sex is the worst kind of exploitation of the abject poverty and helplessness of women for the sole purpose of the gratification of the sexual urge of men.

During the colonial rule, the government adopted the policy of providing Indian women for the gratification of the sexual urge of the British soldiers under 'The Cantonment Acts'. Women were trafficked even from Europe. The policy was claimed to have been adopted to stave off homosexuality among soldiers and offer them comfort. Subjugation of women by force was also done during the Second World War by the Imperial Army of Japan. Women were forced to sex slavery for the comfort of the Japanese soldiers, for which Japan is being condemned even today. Now, no government dares to undertake the responsibility of providing for the gratification of the sexual need of its soldiers living far from their home and spouses. The legalization of prostitution is tantamount to enslaving women citizens for the satisfaction of sexual urge of men, and absolutely unacceptable.

The society does not need any convincing regarding the degradation and inhumanity inherent in the sale of sex by women. Only those unfortunate women, whose abject poverty leaves them no other option, go to a brothel. This fact does not need

any survey for corroboration. 32 to 40% of our countrymen have income below the poverty line. Millions are semi starved. Men, women and children die for want of medical care which they cannot afford, but they prefer semi starvation, watching their kith and kin dying of diseases for want of treatment to opting for prostitution as a way out.

If having sex for wages had been considered 'work' like any other menial job, many women might have preferred it to the degrading chores like scavenging or bone breaking work like in mines or construction of buildings. Recently, a large number of women from affluent families, who do not sweep their own houses, joined the Bharat Swachchhata Abhiyan with brooms in their hands because the exercise did not involve degradation or abasement. Would a woman who is not compelled by her circumstances, join a campaign to accord dignity of legitimate work to have 'sex for wages' by personal participation? Since unlike sweeping, sex as work is degrading, humiliating and a torture without the dignity of labour, there would be no such participants.

The freedom and right to make a choice is also invoked in favour of legalizing prostitution. The right to have sex for money or any other material gain already exists for women who are affluent enough to **have a choice**. An adult woman is free to offer sex for money in private premises. Two or more doing the same are considered to do it for commercial purposes and attract the penal provisions of The Immoral Traffic (Prevention) Act, 1956. Choice implies a free choice. A choice under duress of any kind does not qualify as choice at all. Women who choose to go to a brothel do so under very compelling circumstances caused by abject poverty. They are too poor, needy and helpless to protest against any form of exploitation or an inhuman

treatment. It would be adding insult to injury to suggest that these unfortunate women go to a brothel for fun, pleasure and having a good time. **They do not make a choice. They go there because in the absence of an alternative employment for survival they have no other choice. It is cruel to suggest that women who end up in a brothel make a free choice to live that life. Just as a woman raped at the point of a gun cannot be said to have made a choice between submitting to the assailant and death, women going to a brothel to escape a sub-human life cannot be said to have made a choice.**

There can be no choice between the Devil and the deep sea.

The law in India is basically aimed against sexual exploitation of women for commercial purposes. The Act defines "prostitution" to mean the sexual exploitation or abuse of persons for commercial purposes, and the expression 'prostitute' "shall be construed accordingly" (sec. 2f). As a consequence, it criminalizes all activities or use of places for the purpose of prostitution. It criminalizes trafficking and activities like soliciting at public places. The Act aims at preventing people from making a profit by sexually exploiting women for commercial purpose and to prevent trafficking in women and children.

The underlying basis of advocating legalization of prostitution is the failure of the State to enforce its law and the consequent existence of prostitution and brothels at a large scale in which women continue to be exploited, abused and forced to live a life of misery. They claim that that once prostitution is legalized, the women would be entitled to pursue their profession openly, be free from the fear of the police, would be able to have better medical care, have better bargaining power and be entitled to rights as workers

This rosy picture has been painted on the basis of the completely unrealistic assumption that following the legalization of prostitution its provisions would transform the character of the police and the others concerned and the law would be enforced without fear or favour; resultantly, all will be well, i.e., the **rule of law elusive elsewhere**, would prevail in dealing with this profession, all over the country.

Even if the optimistic view is accepted for argument's sake, the question remains whether the failure of the State to enforce a law, otherwise desirable, should be a ground for legalizing an illegal and inhuman act. Should corruption be legalized because it is ubiquitous and rampant despite a plethora of laws and agencies to check it? Should dowry be made legal because the law has completely failed to curb it? Or should all laws which in themselves are necessary but are ineffective in curbing crimes be replaced by laws to legalise the crimes? Such a position would be a recipe for disaster. It is also untenable to accept that the State, which claims to have the power and determination to end terrorism, curb insurgency and completely control armed struggles spread in several parts of the country is incapable of preventing prostitution. It, undoubtedly, has the capability but not the intention to do it.

The advocacy of legalization of prostitution also smacks of the application of a double standard: one for the poorest and weakest among women who end up in brothels and another for the rest. On the one hand, there is a move to decriminalize and legalise a life of utmost degradation, humiliation and torture of the women in sex trade and on the other, there has been successful movements to win for women security and dignity for women working in other spheres. There are laws to ensure a healthy and safe environment for women at

the place of their work. Any sign, gesture, word or act having sexual overtones is considered to outrage the modesty of a woman and makes the offenders liable for punishment. All institutions - private or public - are bound by law to have a women's cell to ensure that the law is enforced. Male employees having sexual relationship with their subordinates, even with their full consent, are liable to be punished for rape on the complaint of the woman concerned because the consent of a subordinate is rightly considered as consent under duress. But the case of women opting for prostitution under extreme compulsion is touted as genuine consent, and they are considered women of a class who have no feeling, emotion, dignity, or physical pain or trauma. They are not considered women but robots.

The most pertinent question is why should the State undertake the responsibility of providing for the gratification of the sexual need of men? Why should the State create an institution which is degrading and humiliating to women *for the sake of only the pleasure of men*? Why should the State create and take the responsibility of establishing an institution which poses a grave threat to the life of women involved and with other harmful ramifications? Surely, men visiting the brothels would not be required to carry a medical certificate declaring them free of 'Sexually Transmitted Diseases'. Would the boys in their teens visiting a brothel be required to carry proof of their age? Or even children would be free to avail of the facility? Or should the State create an institution to wreck the institution of family by enacting a law which would tempt men to have sex legally outside the marriage? Surely, the law legalizing prostitution would not require the customers to carry a certificate that they have no spouse. Sexual need of a person is a very personal issue, and it must be left to the men and

women to solve it at their personal level. The State should not license Sex Shops like ration shops (under the Public Distribution System).

The State has some obligations to its citizen, which it must meet. The foremost duty of a State, specially a welfare State, is first to utilize the resources of the country to guarantee a decent and dignified life free from abject poverty to citizens. Legalising prostitution is abdication of this responsibility. Only a bankrupt State should not be pardoned for offering prostitution as a source of livelihood to its citizens. India, which is in the race for recognition as an economic world power, can provide a decent and dignified life to her people if its government cared for her people and chose to honour her obligations under various human rights laws. Advocacy for legalization of prostitution absolves the State of its duty to her citizens and its obligation under human rights treaties it has signed. It is also tantamount to telling the poor to fend for themselves even by taking to prostitution for survival. A woman in the trade is condemned to a life without her inherent dignity, which is her inalienable human right. She is forced to take to that life only as a consequence of denial of economic rights guaranteed under the International Covenant on Economic, Social and Cultural Rights. Its Article 11 (1) stipulates that "The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". Prostitution also is an impediment to the enjoyment of a woman's right to found a family and motherhood. If a child is born, the child is denied the care and attention required while young and the dignity of a person when he grows up. It is a profession which jeopardizes not only the life of the woman but also her child/children. The gravity of this injustice

is more galling because the children are in no way responsible for the circumstances of their birth. The life of a woman in the profession would be continual violation of Article 5 of the Universal Declaration of Human Rights which stipulates that, "No one

shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Asking for legalization of prostitution is asking for authorizing a life in which the women would be subjected daily to torture, and cruel, inhuman and

degrading treatment. Advocating for legalization of prostitution is asking for perpetual violation of the human rights of the women forced into the profession and absolving the State of its failure to take care of its citizens. □

Right to Conjugal Visits in India: Rhetoric and Reality

Discussion of the Punjab and Haryana High Court judgment in 'Jasvir Singh vs. State of Punjab'

Ankit Grewal, Advocate, Punjab and Haryana High Court Chandigarh

In the early 1900s Mississippi's prisons allowed female visitors - but only for African-American convicts. This was in the racist belief that it would calm their supposedly fiery passions¹. Even today, have the perspectives of law makers really altered?

Introduction

All rules have a penumbra of uncertainty where the judges must choose between alternatives.² Utilitarians have always believed that *'the development of legal systems has been powerfully influenced by moral opinion, and conversely, that moral standards have been profoundly influenced by law, so that the content of many legal rules mirrored moral rules or principles'*³. *Legal interpretive acts signal and occasion the imposition of violence upon others*⁴ and these acts of interpretations aided by moral values, frequently fill the gap between the black letter law and cases which fall under the penumbra of uncertainties.

Keeping these propositions in mind, this article analyses and critiques, where necessary, the recent judgment passed by the Punjab and Haryana High Court addressing questions regarding a prisoner's right to conjugal visit and procreation

This petition was filed by a convicted husband and wife who had kidnapped and murdered a 16 year old minor for ransom. The petitioners sought enforcement of their perceived right to have conjugal life and procreate within the jail premises. The couple sought Court's direction to allow them to stay together and resume their conjugal life for the sake of progeny

and make all arrangements needed in this regard. The first petitioner (Convict) is the only son of his parents who, alongwith his wife, only 8 months into their marriage, got caught in the criminal case. The petitioners claim that their demand is not for personal sexual gratification and they are also open to 'artificial insemination'.

The State of Punjab opposed the petitioners' prayer essentially on the plea that the Prisons Act, 1894 contains no provision to permit 'conjugal visitation'; its Section 27 rather mandates proper segregation of male and female prisoners. Even 'artificial insemination' as a viable and alternative solution suggested by the petitioners, is not acceptable to the State of Punjab as there is no such provision in the Prisons Act, 1894.

Analysis of the judgment

The court restricted itself to the following questions of law:

1. Whether the right to procreation survives incarceration, and if so, whether such a right is traceable within our Constitutional framework?;
2. Whether penological interest of the State permits or ought to permit creation of facilities for the exercise of right to procreation during incarceration?
3. Whether 'right to life' and 'personal liberty' guaranteed

under Article 21 of the Constitution include the right of convicts or jail inmates to have conjugal visits or artificial insemination (in alternate)?;

4. If question no. 3 is answered in the affirmative, whether all categories of convicts are entitled to such right(s)?

What come shining through this judgment is the recognition of prisoner's conjugal rights in the sphere of fundamental rights, albeit with certain reservations. The court comments that *"there is no gainsaying that ordinarily the right to conjugal visits and procreation is a component of the right to live with dignity and is thus ingrained in the right to life and liberty guaranteed under Article 21 of our Constitution to which a very expansive, dynamic and vibrant meaning has been given by the Apex Court through several historical pronouncements. Incarceration leads to suspension of some of the fundamental rights and is a legal impediment in giving effect to the right to conjugal visits or procreation. The said right inheres right to privacy, dignity, respect and free movements as well. Good behaviour of the convict, unlikelihood of his/her endangering the state security, peace and harmony or the social and ethical order, financial and society security of the convict and his/her family etc. are several other relevant factors to*

determine the extent and limitations for translating such a right into reality".

Another positive outcome was the direction to the Punjab Government to consider expanding the scope of the expression "any other sufficient cause" in Sec. 3(1)(d) of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, to treat conjugal visits of a married and eligible convict as one of the valid and sufficient ground for the purpose of his/her temporary release on 'parole' or 'furlough', though subject to all statutorily prescribed conditions.

Interestingly, the judgment gives an overview of rights of prisoners, conjugal visitation rights, insemination rights, rights of under-trials and even the 'best interest principle' of the child, both in an Indian and global context. In bringing this issue to light, the court is at the helm of a discussion which has not seen the light of day in Indian jurisprudence.

Shaping Rhetoric into Reality: Shifting the Responsibility

However, apart from a discussion of the rights of prisoners and their living conditions the judgement offers no concrete, workable suggestions. Ironically, the Court which explained that "ordinarily" conjugal rights and "procreation" is a component of the right to live with dignity and is thus ingrained in the right to life and liberty guaranteed under Article 21 of the Constitution, eventually left the decision on this crucial aspect in the hands of the policy makers. Even though, the court seems convinced that prisoners should be entitled to conjugal visits and procreation rights, the onus of decision-making was shifted to a Jail Reform Committee; all the while recognising that '*jail reforms in India have been the priorities of none*'.

The court points out that "*owing to the neglected and limited*

infrastructure, causing overcrowding, lack of specialized services and above all the "prevailing social norms" and the "societal expectations", it may not be conducive to create space for conjugal visits within the existing prisons". It is a moot question whether interpretation or expansion of fundamental rights and constitutional provisions can be based on prevailing societal 'expectations'; nor can 'societal norms' be justified to curtail fundamental freedoms. In the same breath, the judge also remarks "*It can nevertheless be introduced on trial basis in Model Jails or Open Air-Free Jails in such a manner that the independent family units of the 'convicts with good behavior' may live like in a small hamlet*". What government or department will come forward to fund the elaborate infrastructure required in such jails? It should also be noted that the judgment has limited the scope of legal questions to conjugal visits for procreation or artificial insemination. The Court discusses the issue of conjugal visits on the general assumption that sexual relations for the cause of progeny, is the sole purpose of relations of sexual nature. As pointed out earlier, the development of legal systems has been powerfully influenced by moral opinion; the Jail Reforms Committee being set up based on the court's directions should in no way permit an interpretation of the rights of those behind bars based on 'morals' of the society. The Jail Reforms Committee should also look at the existing form of 'family relations' prevalent in our society and whether they are eligible to be replicated within a prison system and is there a need for the same.

This judgment which brings out the importance of reintegration of prisoners into the society once they have served their prison sentence,

however fails to reflect on the importance of re-entry of prisoners in their normal lives and ways to achieve such reintegration. Keeping this in mind, it is essential that the prison systems be built in a way which stresses the need for a community based living as opposed to confinement of convicts. Firstly, the transition experienced by individuals as they leave prison and return home to their families and communities is fundamentally a dynamic, social process.⁵ There are studies to show that correctional systems which allow conjugal visits stress the importance of family and it is believed that these visits maintain the family and reduce marital partner stress⁶ Secondly, another contention is that conjugal visits reduce violent behaviour in prison, especially sexual assaults. In other words, the program serves as a control mechanism and deters negative inmate behaviour.⁷

There are certain issues that the judgment only touches upon lightly or not at all. Firstly, regarding the status of under-trials; The problem of under-trial prisoners does not require discussion here; however, it is essential to address the fact whether such under-trial prisoners fall in the category of 'eligible inmates' (inmate who is eligible for a conjugal visit) or they should be completely be governed by separate rules and procedures, such that they allow for greater freedom as compared to the 'eligible inmates'. Secondly, what will be the status of female prisoners with respect to conjugal rights? With the assumption that conjugal visits will only be allowed for procreation, how will the needs of the child be addressed and what will be the scope of the best interest of the child principle. Thirdly, the Supreme Court and various High Courts have time and again equalled the rights of domestic partners in a live-in

relationship to those of a married couple. Does this mean that 'eligible inmates' would include the prisoners who previously stayed in live-in relations with their partners? Fourthly, artificial insemination treatments involves considerable 'financial burden'; so will the financial condition of inmates be considered before allowing conjugal visit petitions? Lastly, and importantly, desire for sexual intimacy and sexual expression is a powerful force that survives imprisonment⁸ is there space within our "societal norms" for allowing conjugal visits to fulfil these sexual desires alone?

After a detailed discussion on this issue, the court decided that the petitioners in this case should be denied their rights. As per the judgment the petitioners' claim were vividly distinguishable, for the reasons that: (i) the society, its fabric and pragmatic approach to allow or disallow certain events to happen in the case in hand are laid on entirely different foundations and thus no common pyramid can be structured; (ii) the circumstances which led to the petitioners' incarceration are far grave in nature and different from those where one of the spouses was totally innocent and possessory of all human rights without any curtailment unlike the instant case where both of them are convicts and

undergoing death sentence and life conviction, respectively; (iii) even the most liberal view taken by some of the European or American Courts would not justify the claim put forth by the petitioners; and (iv) the existing infrastructure and overall environment do not support emergent measures.

Conclusion

Given the advent of this country's mindset in the sphere of LGBT rights, the paradox of state control in the bedrooms of individuals should not be lost on those reading this judgment. On the one hand, the LGBT rights activists demand non-intrusion of the state in their bedrooms and here the state is being asked to legitimise and control the rights of the individuals in the prison.

The real question underlying the judgment is whether providing access to conjugal visits or procreation as a matter of right violates or maintains balance with the state's motives of incarceration of prisoners. This judgment has certainly opened the Pandora's Box, leaving a lot for the legal community to discuss and debate. In fact, recently a couple incarcerated in Pune and facing trial for alleged involvement in Maoist activities, sought implementation of their conjugal visitation rights. In view of this, it is important for the Jail

Reforms Committee to consider all the unasked and unanswered questions as well and to go beyond the scope of this judgment to be able to provide an effective framework for conjugal rights in India.

In the end, this judgment resurrects the debate as to whether prison systems have become obsolete⁹ and the need for incarceration. It forcefully bares open our reluctance to face the realities hidden within the prison systems and the fear of thinking about what happens inside them.

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Budget 2015-16: Food Security, Malnutrition and Eliminating Hunger Low on Priority

Kavita Srivastava and Dipa Sinha

The Budget 2015 made it clear that the Government's agenda is of keeping the markets and corporate sector happy even at the cost of the welfare of the poorest and most vulnerable persons in the country. Using the excuse of giving states greater share of the taxes under the new rules of fiscal devolution, the central Government is trying to

abdicate itself from any responsibility to the social sector. While greater decentralization is a welcome step, it has been seen that although projected receipts of the states has increased by Rs 1.41 lakh crore (by 37 per cent), this has been matched by a reduction of Rs 1.34 lakh crore in the budgeted 'Central Assistance to State Plans' (CASP).

Even taking into account the grants-in-aid recommended by the Fourteenth Finance Commission, the total transfers from the Centre to the states go up from Rs 7.62 lakh crore in 2014-15 (budget estimate) to Rs 7.93 lakh crore in 2015-16, a nominal increase of only 4 per cent [as pointed out by Prof. Abhijit Sen, member of the Finance

Commission].

Having been passed unanimously in September 2013, the budget for year 2015-16 should have provisioned for the finances needed to implement the National Food Security Act, 2013 to the hilt, but this budget shows no commitment towards food security entitlements of the people. It is appalling to see that in spite of the law the Modi Government has no qualms in systematically preventing its implementation by starving it of funds.

PDS: The NFSA (National Food Security Act) provides for cheap foodgrains of 5kg per head for 67% of the country's population. According to the Government of India's own statistics, as of now the Act is being implemented only in 11 states, that too partially. This year the budget for the food subsidy has hardly increased, from Rs. 1.22 lakh crores to Rs. 1.24 lakh crores. This indicates that the Government does not anticipate any increase in the quantum of grain to be distributed through the PDS this year, nor an increase in prices (MSP) in which the grain is procured.

Further, with the emphasis on cash transfers in the Economic Survey and the Finance Minister's speech it is not even clear if the PDS in the current form will be allowed to continue for much longer. Recent media reports and government letters indicate that pilots are being planned across the country for reforming the PDS where it will be linked to AADHAR and also be allowed to be modified to provide cash transfers in place of foodgrains. Replacing distribution of foodgrains with cash transfers is also one of the recommendations of the High Level Committee on Reforming FCI ('Shanta Kumar' committee). The other recommendations of this committee are also equally harmful. If the Government accepts the Shanta

Kumar Committee's recommendations for decreasing the coverage under NFSA (from 67% to 40%) and shifting from PDS to cash transfers over the next few years, they will be going back on the promises made by them in Parliament and in the BJP election manifesto. The Committee also recommends increasing of prices from the current Rs. 3 for rice and Rs. 2 for wheat to a price of which is 50% of the MSP. This would be a 3-4 time increase in the price at which subsidised foodgrains are available from the PDS.

There are a number of dangers of replacing the provision of grains through the PDS with cash transfers as it will result in loss of minimum grain security for many families. Banks are inaccessible and the entire procurement mechanism which provides price support to farmers will be under threat. Even some state governments (Madhya Pradesh, Odisha, Tamil Nadu recently, and Chhattisgarh sometime back) have written openly that they do not think that the time for replacing PDS with cash transfers has come.

Women and children's nutrition and health is a non-issue for this Government despite India ranking 126 in terms of Maternal Mortality Ratio and 127 in the Gender Inequality Index. (Human Development 2014). More than 93% of women in the country are in the informal sector and have no access to any maternity benefits whatsoever. Despite the NFSA having a provision of a universal maternity benefit entitlement of Rs. 6000 to all pregnant and lactating mother, there is no provision for this in the budget denying the pregnant and lactating women and the new born children of their right. All we have is a pilot scheme in 53 districts (which was initiated even before the NFSA). The budget allocation for this scheme for 2015-16 of Rs. 400

crores is hardly sufficient to provide maternity entitlements to women even in these 53 districts.

Other NFSA provisions too have been undermined by reducing the budget provisions of the school mid-day meal scheme by about 30%. Integrated Child Development Scheme (ICDS) has been reduced by 50%. While it is argued that the states can now spend more on these schemes with the fiscal restructuring, we need to remember these schemes were already underfunded and with such cuts the states will barely be able to maintain current spending levels. In fact, there were urgent enhancements required in these schemes such as introduction of eggs and fruits, better wage payments to cooks, helpers and Anganwadi workers, additional workers and so on. There seems no political will to ensure better nutrition. This budget is not bad news only in the case of food but for the entire social sector. The budgetary allocations for the pension schemes have also been similarly cut. In the case of NREGA as well, the budget allocation is almost the same as last year which means in real terms it has actually gone down. There has been a 29 % reduction in budget for children from 2014-15 and there is a cut of 21% in the *Sarva Shiksha Abhiyan*. In the case of health, the overall budget allocation has been reduced by almost 15.5% from Rs.39, 237crores to Rs.33,152 crores. On each of these schemes, the current levels of spending are already very low and there is a crying need for expanding outlays. Even as a proportion of GDP, social sector spending is amongst the lowest in India. If there is indeed high economic growth as mentioned by the Finance Minister, there is no excuse for not allocating sufficiently for these high-priority sectors.

At a time when the rural economy is in crisis, as agreed by the Finance Minister himself in his speech, it is

worrying that the budget has seen greatest cuts in this sector. This is a serious cause for concern because of the predicted decline cereal, pulse

and oilseed outputs this year. In the context where the Land Ordinance poses the threat of unfair land acquisition on a large scale, this is

nothing but a full-fledged attack on the agriculture sector, farmers' livelihoods and food security of the country. □

Letter: 26, February, 2015

Memorandum given to Police Commissioner, Sh. Janga Rao By the Christian Community, Sadbhav Manch and the PUCL, Rajasthan

Sh. Janga Rao,
Police Commissioner,
Jaipur

Subject: Suspension and Arrest of policemen who committed torture on 20 members of the Christian community at the Mansarovar Police station, Jaipur

Sir,

All of us of the *Sadbhav Manch* (an inter faith dialogue platform) and members of the PUCL are shocked that the Mansarovar Police station blatantly indulged in the custodial violence of the 20 members from the Hebron Church of Hyderabad who had come to Jaipur to carry out publicity of their faith. It is clear to us that the police carried out this action at the behest of the hindutva forces, who not only hurled abuses and barged into the house in Shanti Nagar, Gurjar ki Thadi, where the Hebron Church preachers were staying since their arrival that morning itself but also prevented them from peacefully distributing literature in the nearby areas. It is ironic that the Mansarovar Thana police instead of bringing the law breakers (the RSS people) to the police station, they pushed these 20 representatives of the Hebron Church in 2 jeeps. On reaching the police station they were first kicked and then subjected to custodial

violence by ASI Daya Ram and one other ASI in khaki police clothes but without a tag and one other Constable in plain clothes. They were subjected to third degree torture. They were made to spread their palms and were hit with a patta (cane), photographs give the evidence of serious injuries on the palms and wrists. At least 6 people were seriously injured including one whose wrist watch was damaged. It was of no surprise that ACP Sodala and SHO Mansarovar only arrived after the PUCL and other Human Rights workers reached, which was only after we spoke to the SP about the illegal detention and custodial torture in the police station. The two officers agreed that violence had been meted out at the police station and they also told us that they knew which policemen did it. But they kept wanting us not to lodge the FIR but instead agree to an apology. With great difficulty the 20 preachers lodged their written complaint, with Daya Ram constantly threatening them, despite our presence there. What shocked us was that when the complaint process was happening the Thana filled up with several RSS and other elements who used abusive language against us.

At about 10.30 pm we decided that

the 20 must go to their home stay in Jaipur and rest. But what shocked us was that after we reached our own homes we learnt that the police which had gone to drop the 20 had pressurised the owner of the Hostel where they were staying, Mr A.P. David to not let them spend the night there. The people were thrown out without food and water on the road and told to make their way to the railway station and not return to the city, they were told that cases of conversions would be filed if they would not leave the city.

Terrorised and devastated the group left after midnight, despite our assurances, including informing you that the Mansarovar police had indulged in this mischief of sending them off.

We demand that action be taken against

- Daya Ram ASI and the two policemen who illegally detained and beat the men. They be arrested and suspended from their service.
- The Complaint given by the affected by converted into an FIR and it be investigated by the police by going to Hyderabad and meeting the people.
- The ACP Sodala and SHO Mansarovar be held accountable for threatening the

Organisational Matters

Queries have been made whether the PUCL is a constituent or part of some federation or front of organisations on the issue of human rights in the country. It is clarified that the PUCL is not a constituent or part of any organisation or front. It is further clarified that the PUCL has not authorized any person to represent it on any such body. PUCL is a national organization and only the National Executive can take any such decision.

General Secretary

people to leave the city violating their fundamental rights along with arm twisting Mr. David to make them vacate the premises in the night

- Action against the miscreants (the RSS lot) who terrorised the group from Hyderabad and FIRs be lodged against them.
- The CLG of Mansarovar, which is full of communal elements be reconstituted and the complete Thana also be subjected to change.
- Ensure complete protection of the Constitutional Rights of Minorities and they be allowed

to freely propagate, profess and practice their religion.

- Ensure complete protection of the properties including churches and mosques and other institutions of all minorities in the city of Jaipur
 - All police stations of the Commissionerate be made extra aware of the above and be made accountable on the issue of protection of rights of minorities. CLGs be reconstituted with people from all faith being members
- We hope that you will ensure the above.

With regards,

Kavita Srivastava, John Mathew, Salim Engineer, Dr Iqbal, Dr. Vijay pal Singh, Harold Singh, Acharya Vikas, Bijendra Singh, Kapil Singh, VArgnese M, Walter Massey, AB Paul, AB Singh, Samuel Roberts, Olive Malaki, Abul Kalam John Tito Rathnam, Khalid Manzoor, Dr. M Ismail, Tamil Mani, Morris Kancham, Lisa MATHews, Lp Bharti, shahid Khan, Nazimuddin C/O John Mathew: Emmanuel Mission, Kalvad Road, Jhotwara, Jaipur: Phone: 9414048991,
Contact: Prof Salim: 9829098734 and **Kavita Srivastava:** 9351562965 □

Attacks on Christians in Udaipur

(Received from Kavita Srivastava, PUCL Rajasthan on 22nd March, 2015 as Update II)

Several Tribal Christians in Udaipur district are being denied their Constitutional Right to Worship, particularly holding house prayers in groups and visiting the church. They have faced attacks while protecting their rights. What is shocking is that there has been a complete silence on the persecution of Adivasi Christian which is every day. It is surprising that no media house or newspaper has talked of it. Neither did any NGO bring it to the notice of the public, whereas we know that the area where this persecution has happened has had the presence of some of the other *Kaaryakarta* of these NGOs. What is also depressing is that the Tribal Christian Welfare Society of India, Udaipur, which took up the matter initially, also did not share it with any of the progressive groups in Udaipur although they do know those who work on some of these issues. It was only when the PUCL members in Jaipur observed on 25th February, 2015, how in one of the city *Thana*s 20 Christian Preachers from Hyderabad Hebron Church were not only subjected to serious custodial violence followed by "*ilaka*

nikala", eviction from the area as a part of a well crafted handiwork of the Jaipur Police and the RSS, that we realised that we must examine other areas and districts of the State. As part of that probe we learnt about the Udaipur district persecutions. The Udaipur incidents show how several Right Wing groups, like the RSS, the Banvasi Kalyan Parishad, VHP and others are actively working in the background in order to make every incident of persecution of Adivasi Christian appear to be a local resistance which is the majority (Non Christian) Tribal Vs Tribal Christians, where the former are showing their disapproval of the religious choice made by their fellow Tribals. Decisions which were perhaps taken more than 90 years ago by their grand parents. These stories also show a strong collusion between the Non Christian Tribal provoked by the Hindu radical elements, the local police, the MLA so that no criminal cases get lodged against them. Each incident shows the indifference of the senior officials whether the District SP or the District Collector. Wherever the people have resisted either they have had

to get the cases withdrawn after extortion of money or been arrested or else have suffered in silence. The situation of the Christians is really desperate and disturbing, that we can clearly say that things are very bad in Udaipur District. We are documenting briefly six incidents which have confirmed by the Udaipur PUCL in this report. The Udaipur PUCL unit met most of those persecuted people on the 19th of March from the various villages of Sarada and Girwa Tehsil of the district. Also those participated were senior members of the Tribal Christian Welfare Society including Father Samson Bhagora, Prabhu Lal Damor and advocate Amos. The meeting was coordinated by Ashwani Paliwal of the PUCL Udaipur and several other members also participated. In that meeting more stories of hostilities and attacks and unfurled. The role of local police and the SP was analysed. The indifferent attitude of the SP towards the attack on the Christian community was analysed and condemned. The Udaipur PUCL has decided to hold a big protest against these

attacks before the end of the month. They will also examine the false cases that have been filed against the Adivasi Christians. Jointly with the State PUCL they plan to write to the Speaker against the MLA and the higher police officials and make it into a State level issue. The home minister is from Udaipur district and also an active member of the *Sangh*, it is obvious that the struggle for justice will not be easy.

Incident 1

23rd December, 2014

Village Kankapura, Parsad Thanaa Area, Sarada Tehsil

On the eve of Christmas on the 23rd of December, 2014 more than a hundred Adivasi Christian families numbering almost five hundred of them, women and children included, decided to gather for a meal together in village Kanakpura at the house of Kanhaiya Lal Meena S/o Amraji, for house prayers and a meal. Some of the RSS elements of the neighbourhood reported to the police about the gathering of Christians. At 12.15 the police reached. First they started taking photographs. When the people asked them as to why they were being photographed, they were told by the police to leave the place. The police started using coercion. When the people urged the police to at least let them eat the food they had been cooked for 500 of them, after all they had brought 1.5 quintal of grains along with Dal and other ingredients, disrespecting them the Police said let the dogs and cows and other animals eat this, we will not let you stay a minute longer and forced them to leave the place. They were not only prevented from holding the house prayer but celebrating Christmas together. The police also told them, which they themselves confirmed later that the people of hamlet Khed in Chanavada and also of village Delwaas were also not allowed to hold group house prayers. The

police had actively stopped them from holding these prayers. When these people went to the Police Station, they were told categorically that the Christians would not be heard by the police.

Soon after when the Reverend Manohar H Kala talked to Mangi Lal SHO of Parsad Thana over the phone and asked him as to why the Christians were being prevented from celebrating their festival, he also requested that action be taken against the policemen who did this. It seems Mangi Lal shouted back by and said that ***“Agar tum yahan aye toh Jutey Maroonga aur Mukdama dayar kar doonga”***. (If you dare come here, you will be beaten with shoes and a case will also be lodged against you).

Next day on the 24th some of the Christian community members mustered courage and went to meet the Udaipur district SP Ajay Lamba with a memorandum. The SP just did not respond and refused to take any action against what had happened in Kanakpura, Khed and Delwaas. According to the members of the delegation that went to meet him, he remained indifferent to the episode and did not even care to make a call in order to know what had happened, to the local police. The community members did not where to go and who to go to. They also shared the report with some media people but their story was not picked up so they sat back.

In the memorandum written to the District SP the delegation has also mentioned, which is also written in their memorandum, that the police prevented people of several villages around Parsad and Rishabh Dev towns to hold collective prayers due to which the people are living in deep fear. They also reposed their faith in the police and administration to take care of their security and other concerns. They go on to say that the Tribal Christians who are mostly from the rural areas and are small

farmers living in the areas of Girwa, Jhadol, Kotra, Khedada and Sarada are frightened of the recent incident in Kanakpura and around as all the anti social elements in their region also have the support from “above”. The most important issue mentioned by them is that these collective celebrations by the Tribal Christians have happening regularly over Christmas time in these Tehsils and they were never disturbed. So why this time.

The memorandum written to the SP, with copies to the District Collector and IG Udaipur on the banner of Tribal Christian Welfare Society of India (Udaipur Zone, Rajasthan) is attached. This is a society is an all Christian organisation of Tribals with membership of people from all churches including the CNI, CCFM, Pentacostal.

The Christian community members did not realise that this was the beginning of a series of such attacks which are ongoing.

Perhaps following up on the memorandum which the SP must have forwarded to them, the local police of the Sarada police station called them on 5th January, 2015 and forced them to compromise. They were forced to sign on a paper which said that the affected did not want further action against the police and the people who obstructed the programme. They were also made to write that the police took the right decision which was in the interest of the Tribal Christians, almost stating that had the police not stopped the prayers it may have snowballed into a bigger episode.

Although the people were not happy with this action of the police, but they felt that if they pursue it then maybe they will be trouble more. So they have accepted that they want no action against the police as local Tribals as of now.

It is important to know that community prayer since then have not resumed.

Incident 2

2nd January, 2015

Barapal, Girwa Tehsil

On 2nd January, 2015 about 40 Adivasi Christian members as part of the New Year celebrations were holding a group prayer at the house of Mohan Lal Meena when two policemen from Goverdhan Vilas Thana, near Udaipur and twenty kms from the city came and stopped them from praying and dispersed them all. The people did not know what to do. They talked to some members of the Tribal Christian welfare society from Udaipur who said that the SP had not cooperated in the Parshad case so maybe they would all have to suffer it in silence. Barapal Christians did not compromise. The prayer meeting was stopped for a few weeks and now it has begun. No obstruction has happened since then. The Christian families hold restraint do not do loud singing or be ostentatious in their worship so that the "sensibilities" of the other Tribal people are not affected and they can carry out their prayers in peace.

Incident 3

14 February, 2015.

Village Rata Kheta, Badawali Panchayat, Sarada Tehsil

Victims: Lal ji and Devi Lal Meena and their families.

Lalji and Devi Lal Meena, two of the four brothers took to the Christian faith many years ago, four of the brothers did not. The four brothers and some of the villagers frequently

prevented them from going for prayers at the Sallada village Church, which was 15 kms away. This Church has been constructed by Lalji and Devial Meena's sister Patasi and husband Pratap Meena, who too came into the Christian fold several years ago. In the frequent altercation that have taken place the four brothers backed by the villagers have threatened that either they return to their original fold or they will be stripped of their property rights. The two brothers Lalji and Devi Lalji seasonally migrate to Udaipur whenever they don't have work in the village. However, Lalji goes regularly and Devi Lal goes less frequently, because of these fights.

On the 14th of February, 2015, when Lalji went with his wife to talk peacefully with his brothers regarding the frequent altercation between them, they were shocked when both of them were thrown on the floor and were beaten up by the villagers, their brothers and their families.

They decided to challenge this hostility and attack and went to Chowki Temari, Sarada Police Station and told the police that they wanted to file a case. Instead the villagers who reached after them were allowed to write and give a complaint which was received by the police and thus a false case complaint also got filed, stating that Lalji and his wife had verbally abused them and had tried hitting

them.

According to Lalji the police came the next day to investigate the case and first went to hear the villagers and the four brothers. When the police did not come in for a long time, Lalji Bhai and his brothers family decided to meet the police and tell their version too. He was shocked to learn that the villagers had actually reported to the police that they were Muslims (which is what the police told them) and that they were disturbing the culture of the village and that they would be thrown out of the village. The police told them that they should do as the villagers and their brothers wanted. They said that the brothers were right. They were actually told to stop going to Church and practicing Christianity. They also said that the police categorically told them that they too would also not let them pray. They were called by the police a few days later after the festival of Shivratri on the 18th of February. His elder brother's daughter Bhuri came along with him and his wife. Lalji informed us that when they went to the Chowki, the police asked them to compromise otherwise, they were told, there was no option but of being arrested. I told them, he goes on to say, that, I was ready to go to Jail as within the premises of the police station, the villagers and the brothers had demanded Rs. 70,000 for a compromise. He repeated told the police to proceed with a case against him and could

Organisational Queries

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

Dr. V. Suresh, General Secretary □

not cough up so much money. When he resisted to pay up the police said arrest Lalji. When Lalji's sister's husband Prabhat came and said that the villagers were asking for Rs. 70000 then the policeman seemed to show some anger with the villagers.

The villagers continued to demand and came down to Rs. 20,000. Lalji says that, I told them in duress that I would pay Rs. 2000 and then the police and the villagers finally pressurised me to agree for 10,000 rs. I gave one thousand that day and three days later after borrowing from my sister and brother in law Prabhat who has the church I handed over the rest. Lalji also stated that he gave the money to the villagers in front of the police.

They withdrew the case after that. It consisted of the police getting him to sign on a piece of paper which said that Lalji and his wife had called his non-Christian brother's wife a "dakin". (this was an incident which had happened five years ago and had finished, but the police raked that and made it seem as if that was the cause of the altercation of the 14th of February. The police made it out to be a case of attack due to an "old enmity".

When we talked to Lalji he seemed quite disgusted and kept stating that the statement that he had signed on was false but the police refused to write about the actual incident.

It was three years ago that 8 of the Christian families were boycotted out by the village and are not called for any function of the village. Nobody now comes to their homes. Lalji however, added that they go to the Church 15 kms away every Sunday despite the villagers not being happy about it.

In Udaipur city Lalji is presently running a tea stall. He says he will keep going back but to the village but not succumb.

Incident 4

22nd August, 2014, 7th March, 2015

Village: Chokda Nimdi, Sagatara Panchayat, Sarada Tehsil

Victims: Bada Meena son of Thavra Meena and five others - Dhanna Lal Meena, S/o Nanji: 45 years; Rupa Lal, S/o Nanji; Poza S/o Nanji; Thavra S/o Deva; Dela S/o Rupa In village Chokda Nimdi, villager Bada Meena, one Christian person had pledged (taken a mannat) that if his wife Narabda would become better healthwise, then he would keep a group prayer along with a meal at his house. Actually, the group had prayed for her recovery and she recovered in due course. So about 30-40 Adivasi Christians gathered from 5 to 6 villages. During the prayer several villagers including Ratna s/o Hurji, attacked them and threw stones. Rama S/o Lala, came with an axe to harm them, Nathu, S/o Moga, Came with a big stick and Durga S/ o Kanan also was in the fore front of the attack. They were beaten up. The stone throwing resulted in the roof tiles being broken. People saved their lives and left in the middle of the prayers and the food was wasted.

The affected people went the next day to Sarada Thana. But the police did not lodge a case despite the affected villagers going over four times to the Thana. Instead of taking action against the violators, the Thana Adhikari threatened that their ration cards would be cancelled if they continued being Christians. They realised that the police was hand in glove with the violators. The violators went to Armit Lal Meena (BJP), the MLA, for help. The MLA got the police to lodge an FIR against them and they were locked up illegally in the police station. The FIR that was lodged against Bada Meena, Dhanna Ram and four others from the village Chowkdi Nimdi alleging that the six had broken Murtis in the homes of the Non Christian Tribals, it also stated

that they had also been beaten by them and verbally abused. According to Dhanna Lal the policemen also got a fraudulent medical report made that the arm of one of the complainant had been broken.

The police arrested 6 of them **Bada Meena son of Thavra Meena, Dhanna Lal Meena, S/o Nanji: 45 years, Rupa Lal, S/o Nanji, Poza S/o Nanji (another one), Thavra S/o Deva Dela S/o Rupa. They were kept in the lock up** in the police station for a period of two days, Only on payment of Rs. 20,000 made to the lawyers and others that were they released on bail.

Following this they gave a report of the injustice meted out to them to the District Collector, The District collector said that they would be heard. However, Dhanna Lal said that things did not change.

As recent as the 7th of March as part of celebrations of Holi (which is till Rang Panchami), some of villagers again came and stood outside the house of Bada Ram and Dhanna Lal and shouted at them and threatened them. They came very close to being beaten up. The shouting and threatening was carried out by several villagers.

This time they did not go to the police station as they said that was no support for them at the Sarada Police station. These incidents were happening every day off late.

They now do not hold group, instead go to Sarada Church on Sundays which is about two kilometres away. It is important to know that these families have been ostracised since the last 8 years.

Incident 5

15th or 18th January, 2015

Village Tidi, Thana Tidi , Girwa Tehsil

About 15 persons had gathered in the house of Babulal Meena an Adivasi Christian and were doing a

collective prayer, when they were stopped by the police and local RSS people. The Police from Tidi Police Station dissuaded them from holding group prayers and told them that if they will do this again then action will be taken against them. This too did not get raised as they felt that the SP was not interested in taking action and therefore they have decided to suffer in silence. Group prayers are not happening presently.

Incident 6

Khud Gaon, Sarada Tehsil

Around the 15th of February, 2015 Dhana Bai was carrying out his prayers alone. When his three brothers who are not Christians along with the local RSS people came and beat him for having become a Christian and practicing the faith.

After a while he went to the police station to lodge an FIR against them and also seek protection when the police refused to hear him or lodge a case. When they went to their area

MLA, Amrit Lal Meena of the BJP. He was worse they said as he told him that in their rule (BJP is presently in power in Rajasthan) they would not be allowed to either become Christians or practice the faith.

Conclusions

The PUCL is certain that these incidents are just the tip of the iceberg. If village after village is investigated in South Rajasthan, then all will have a story to tell regarding the rights of worship of the Adivasi Christians. What is required is a Tehsil to Tehsil investigation in South Rajasthan.

It is also important that action be taken against the policemen of the Police stations of Sarada, Tidi and Parsad, whose role has been clearly that of working for the nexus of the local Hindutvavadi forces with the support of the local MLA Amrit Lal Meena.

The SP and District Collector's role is also very clear that they are not interested in implementing the

Constitutional rights of the Adivasi Christians, they saw their role in terms of being a mere post office and forwarded the complaints of the affected Christians, back to the same Police Station. Very clearly, those who reported or resisted the attack on their rights, were further victimised, by either compromising or facing a false police case and even jail for some of them. The MLA too has to be made accountable who is a part of the hate brigade.

The Udaipur PUCL has decided to hold a big protest against these attacks shortly. They will also provide legal support against the false cases that have been filed against the Adivasi Christians. Jointly with the State PUCL plan to write to Speaker against the MLA and higher authorities in the state and take it up at the State level.

Kavita Srivastava, General Secretary, PUCL Rajasthan; **Ashwani Paliwal**, General Secretary, Udaipur district □

Press Statement: March 11, 2015

Justice Rajindar Sachar Former President of *People Union For Civil Liberties* has issued the following statement:

The outrageous, senile statement on blog by Justice Katju Calling Gandhi Ji "an British Agent who did great harm to India" being the raving of an out of office frustrated individual deserves to be rejected with the contempt it deserves. By this statement Katju has qualified himself to be the fittest successor to Mohan Bhagwat, RSS Chief. Had Churchill been alive he would have embraced Katju and included him the senior most position in his cabinet of 1940".

Playing With Fire

Rajindar Sachar

The facts in Masarat Alam's case had left the government with no choice but to release him

I had never accepted what I maintained was the cynical comment of George Bernard Shaw that "Politics is the last resort for a scoundrel" or even the more cynical one of Samuel Johnson, who noted that "Patriotism is the last refuge of a scoundrel". But my resistance has

got a blow from the simulated outburst of patriotism by almost all political parties at the release of Masarat Alam.

How hollow and politically motivated was the whole debate! The facts in Masarat Alam's case had left the government with no choice but to release him. He was on bail in 27 cases, though charged under the Public Safety Act. His detention was

revoked by the Congress-National Conference government under a Supreme Court order in March 2013. The court had commented adversely on the misuse of power of detention. More significantly, the release order was issued during Governor's rule with the Modi government at the Centre. Ironical that the Left and other non-Congress political parties should

insist on the detention of Alam under security and public safety laws when all this time they had been agitating for the repeal of these draconian laws.

The hypocritical stand of the Congress-National Conference combine is nauseating. It very glibly offered unconditional support to the Mufti to form a government and promised him full support from outside. Is the anger now borne out of the frustration that they were not able to block the coming together of the PDP-BJP government? Even Congress leader Soz, who knows the real situation in J&K, has openly said that Alam's release was necessary. And yet the Congress floats its opposition from M.P.s from Gwalior/Rajasthan who have little knowledge of the reality in J & K.

The Congress role is still more hypocritical. It has had a coalition with the Mufti in the past. For practical reasons the Mufti-BJP coalition was inevitable. It alone could provide a sense of participation to all the regions in the valley. It inevitably meant that the BJP would have to forego its dangerous and loud-mouthed noise about abrogating Article 370. Does not the Opposition appreciate that, even though under coalition pressure, the BJP silence over the abrogation of Article 370 will be a blow to the communal and undemocratic wing of the RSS?

Prime Minister Narasimha Rao had played a positive role in dealing with the Kashmir problem. His practical approach was shown in the situation created by Yasin Malik, who had publicly abandoned the resort to armed militancy but was maintaining peaceful public protests. It so happened that Yasin (possibly in

1994) went on hunger strike to demand an inquiry by Amnesty International into killings by security forces in J & K. This demand for international involvement was outrageous and could not be conceded. His condition became very serious endangering his life. Yasin then suggested that he was agreeable to have an inquiry by the *People's Union of Civil Liberties* (PUCL). Rao agreed that if he broke his hunger strike, the Central government would agree to an inquiry being held by the Indian N.G.O.

Though Yasin agreed to break his hunger strike but set a pre-condition that he would do so at Srinagar before his family and party colleagues. Yasin's physical condition was so serious that the continuation of hunger strike could pose a danger to his life. Rao and Rajesh Pilot (Minister of State for Home) understood the delicate situation and did not stand on false prestige and arranged a special plane the very next morning to fly Yasin and two PUCL activists to Srinagar, where he broke his fast. There was Governor's rule. Even the Governor was kept out of loop. None suggested that this was an unpatriotic act endangering the security of the state or it showed the weakness of Rao or Pilot. On the contrary, it eased the tension and allowed talks between the government and militants to resume. Much is made of the fact that Alam is a follower of Geelani and is therefore a danger to the security of the state. How laughable! Geelani is a free man and goes everywhere, and even meets the Pakistan High Commissioner. Rightly the government has not taken any

action against Geelani. It was P. Chidambaram as Home Minister who initiated the talks with Geelani and other Hurriyat leaders in 2010. What is so magical or mysterious about the release of Aslam that his release caused such a furor among all sections in Parliament?

How sad that it did not strike all these worthies as to what message was being sent to the people of J & K, especially to the parents of children who were shot by the security forces in return for stone-throwing. Must India display the same demon-like face, which I had seen in 1993 on a visit to Kashmir as a member of the PUCL delegation? On my return, I had observed: "I do not know how and in what manner the Kashmir question will be solved with its nuances of 'azadi', plebiscite and greater autonomy. But one thing is certain - India would remain a loser unless the face that it presents to the people of the Kashmir Valley is humane, compassionate and understanding. At present that face is ugly and insensitive".

It is to be hoped that there would be a quietus to this outrageous provocation by the Opposition. I am quite sure the Mufti is too senior and suave a politician (who has also passed through the deepest agony of his daughter's abduction during militancy in J & K) to let anger overtake him. He understands the delicate situation in J & K and realises that if the present opportunity is not utilised effectively, we could be in deep waters again for a long time. Will the Opposition make a genuine effort to prove George Bernard Shaw wrong?

Published in The Tribune, March 17, 2015 □

Please Note: In case of: (1) **Change of Address** - Always send your old address along with your new address with PIN Code. (2) **Money Order** - Please give instructions (if any) with your complete address in space provided for communication. (3) **Postal Order** – **Please do not send Postal orders.**

– General Secretary, PUCL

Fact Finding Report on Polavaram Project Affected Seven Villages by *Human Rights Society (HRS)* Andhra Pradesh

I. Preface

1. The Government of AP had declared that waters of Godavari River which are flowing into sea can be utilized by multipurpose dam at Polavaram. This has been later named as Indira Sagar Project. Popularly it is known as Polvaram project. The design and final approvals from Ministry of environment and Forests are being hotly contested in High Court of Judicature at Hyderabad (Previously AP High Court).
2. In the process, extensive area covered by thick forest comprising plenty of flora and fauna will be inundated along with the permanent settlement of schedule tribes who are totally dependent upon forest produce, fishing and other natural wealth available in the forest. These tribal people being far away from developed society cannot survive in the main stream of human activity.
3. The Governments (as claimed) as well as social organizations have been seized of the issue of protecting the helpless people affected by such developmental activities. Several Acts, Rules are promulgated and after research work voluntarily made by non-Governmental social Organizations, suggestions are made for the improvement of quality of life of such displaced population especially that of scheduled tribals. In fact even before displacement occurs, mandatory rehabilitation measures required to be undertaken by the Governments and other

concerned departments are identified and prescribed. It has to come our notice that in implementation of the same, lot of injustice due to negligence is occurring and the innocent affected persons are not in a position to fight for their lively hood and their rights. This has prompted us to undertake this preliminary study.

4. The Human Rights Society (HRS), (H.O. Hyderabad) a registered non-Governmental Organization, has voluntarily ventured to enquire and help the helpless who are immediately affected in Polavaram project. Consequently on 5th and 6th of January ,2015 a fact finding Committee consisting of Justice A. Gopala Rao, former Judge of High Court of Andhra Pradesh; N. Rajeshwar Rao, Advocate, High Court, P. Sivaramakrishna, Director 'SAKTI' NGO; Alluri Satya Saibaba, Advocate, Kovvur; Yughandhar, Journalist, Vishakhapatnam have visited the immediate affected seven villages which are located in the dam site and are going to be inundated:- viz:1.Mamidigondi 2.Devaragondi 3.Ramayyapeta 4.Thota Gondhi 5.Singanapalli 6.Pydipaka and 7.Chegondapally.
5. The committee interacted with the residents of all these seven villagers and this status report is prepared on the basis of all the factual data provided by the affected persons. Various reports by govt. and NGOs were perused .Interaction with the local Communities and examination of circulars, orders etc. was done with due diligence.

II. Factual Back Drop

1. The project involves displacement of 47911 families spread over 288 settlements. The total number of project affected persons comes to 1,95,357.About 50% are Scheduled Tribes, 15% Scheduled Castes, 17.5% backward classes and the balance fall in other categories.
2. State of Andhra Pradesh claims that separate organizational structure at the State, district and project level is proposed to be created. The State has appointed the Commissioner for Resettlement and Rehabilitation at the State level and who will be responsible for the supervision of the formulation of the rehabilitation and resettlement plans, their proper implementation and redressal of the grievances. A State level Monitoring Committee comprising of Secretaries of various Departments along with the State Level NGOs and the concerned Chief Engineer has been formed vide government order dated 9.5.2005. The project level Monitoring committee has been formed with the Chairmanship of the senior most District Collector. A Grievance Redressal Cell has also been constituted under the Chairmanship of the Commissioner for the R&R. the implementation of the R&R plan is programmed in such a way that it is completed at least one year before the completion of the project and all the project displaced persons will be accommodated in the new sites. These are claims of the 'State'. The local affected

communities hotly contest this. It is difficult to brush aside the cries of affected persons.

III. Reality Check

1. Government of Andhra Pradesh issued G.O.Ms.No.68 Irrigation & CAD (Project wing-LA-1V-R&R) Department, dt: 08-04-2005, laying down the Irrigation and CA Department Rehabilitation and Resettlement (R&R) Policy of Government of Andhra Pradesh. Close scrutiny of the R&R policy of 2005 will establish the procedure and remedial mandatory criteria to be adopted by the Government in order to satisfy the requirements and aspirations of the members of project affected families (PAF).
2. The guidelines and mandatory criteria prescribed in chapter - 1V of the policy, though impressive on paper, implementation of the same in strict compliance, is not at all observed and forthcoming at the ground level. The committee is asserting and emphasizing this aspect, with responsibility based on the survey conducted at the affected location (PAF).
3. Tahsildar/Revenue Officer, Polavaram prepared a list of 8 items for payment of compensation with respect to the project affected families. Accordingly villagers (PAF) in general with some exceptions have admitted before this committee, the amounts as per the assessment made by the department are deposited in the respective individual bank accounts opened by the persons. No doubt the villagers are not satisfied with quantum of compensation paid.
4. As per the policy separate compensation should be paid to all the varieties of trees in existence in homestead and agriculture land of the

individuals. The authorities are avoiding payment of such compensation, on the premise that compensation paid to the lands is inclusive of the trees existing thereon. This is objectionable, unfair, and not in strict compliance of the policy.

5. Government issued G.O.Ms.76, dt: 13-04-2006 to treat each major son and daughter as separate families and pay compensation accordingly. The committee noticed that this package has not been offered to the eligible persons.
6. Claims under Forest Rights Act, 2006 are not yet settled and community uses are yet to be identified.
7. Resettlement colonies identified by the authorities for PAF are far away from their habitat, and agriculture lands allotted to them, in some places are 20 or more Kilometers away. This is not a practicable proposition and not in tune with LAR&R Act, 2013
8. No provision is made in the resettlement area, for communal requirements, such as burial ground, area for construction of temple (Gramadevatha), Kondapodu, as prescribed under "The Scheduled Tribes and other Traditions Forest Dwellers (Recognition of Forest Rights) Act".
9. In order that the STs enjoy the same status and benefits in the resettled areas, the new colonies should be declared as Scheduled villages for applicability of LTR, FRA, PESA and special reservations (100%) applicable to local STs in Scheduled areas.

Note: All the aforesaid requirements are uniformly applicable to all the seven named villages visited by the committee (Project affected families). The details of versions are

given in annexure.

IV. Preliminary Recommendations

The lessons learnt from the earlier projects such as Sardar Sarovar Project and the other major projects should be taken into consideration while finalizing the R&R plan. The following specific suggestions are therefore made:

- i) The precise details of the land identified for the rehabilitation of the project displaced persons including the site for the construction of house and agriculture land should be made public. This would also imply that the particulars of the land proposed to be allotted to each of the displaced person should be decided in advance with approval of the Gram Sabhas.
- ii) The monitoring and evaluation of the implementation of the R&R should be done by an independent Monitoring Committee consisting of eminent experts and NGOs with adequate powers to effectively perform its function;
- iii) Concurrent monitoring and evaluation of the progress made in the implementation of the R&R should be carried out under the directions and supervision of the Monitoring Committee. If the R&R is found to be lagging with reference to the fixed bench marks, the construction should accordingly be deferred/stopped.
- iv) The R&R should be implemented in such a way that minimum disturbance is caused to the PAP and the compensation for land is in the form of land. Concurrent audit of the R&R works should be carried out. The Monitoring Committee should be capable of taking rational decisions and making recommendations independently uninfluenced by the Government.

- v) In the interest of and to safeguard the rights of the project affected families, to declare the rehabilitated area [relocated areas] as schedule area, to enable them to continue to get the protection and benefits of being Scheduled tribes.
- vi) Project affected families should be conferred with the right to indulge in fishing activity in the water protected by the Polavaram project.
- vii) The budget allocation for the construction of the dam has been upwardly revised and enormously increased. It will be just and appropriate to consider and increase appropriately the financial assistance to the project affected persons (considering increase in cost of living) so that they can live in peace with dignity, in their relocated habitat.
- viii) The Government has to give compensation to those who have crossed 18 years (as on today and as on the day of completion of project) immediately.
- ix) The Government has to provide compensation and rehabilitation as per the "The Right to Fair Compensation and transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 as it is a multi-state project and Gol is taking up the project.
- x) The unemployed educated youth of the displaced families should be provided skill improvement training.
- xi) The Government of India should take responsibility for a fair rehabilitation and resettlement of the displaced families as according to the state re organization act, 2014, the project is declared as a national project.
- xii) In order that the STs enjoy the

same status and benefits in the resettled areas, the new colonies should be declared as Scheduled villages for applicability of LTR, FRA, PESA and special reservations (100%) applicable to local STs in Scheduled areas.

- xiii) Since there are many short comings and complaints in the matter of rehabilitation, the authorities should negotiate with the displaced families for the rectification of the lapses and for the improvement in their living conditions.

V. The Heart Burn among the Tribals

- A) The ground level reality in affected Tribal villages is that the lands are tilled and enjoyed by the native Tribals but the revenue records have the names of nontribal landlords as owners. The compensation and rehabilitation package will never reach the tribals. This issue has not been addressed by the government or the proponents of the dam. The proceedings of Gramsabhas in the tribal villages of undivided AP were fudged manipulated to suit the then ruling clique.
- B) Another issue which has escaped the policy makers and their contractor masters is that the rights of individual tribal and customary traditional rights recognized by the FRA have not been documented yet. They have not been codified and gazetted by the governments yet. Even before this is done these tribals are being displaced by giving them nominal compensation.

VI-The Action Plan-Demands

- 1. The rights of each individual tribal, his family, his community, lands under cultivation, and grazing lands are to be documented along with traditional customary rights and

boundaries of the community enjoyment areas under the supervision of Grama Sabha and then the Government shall officially recognise and accept this. The Governments shall conduct meetings and communicate with the Grama Sabha and not local politicians and then prepare a road map on mutual agreements and consents and then only the next brick shall be laid for Project. The surveys and Studies done under the FRA shall be placed before the Grama Sabha as per the PESA. The issue of rehabilitation shall be discussed by State and Central Governments within these parameters.

- 2. Hon'ble Supreme Court had directed the governments to constitute a monitoring committee. This committee has not been constituted for last several years. This committee shall be constituted after the discussion with the local communities and the Vanvasi Organizations. Till this committee gives the clearance as directed by the Supreme Court, no further activity shall take place.

VII-Conclusion:

- 1. The Human Rights Society would like to remind every one that in the history of independent India lakhs of acres have been brought under cultivation by constructing big dams and the Tribal Communities have been displaced. Most of them are not yet been rehabilitated.
- 2. Pathetic site of Tribal Communities being displaced and their inhuman living conditions is part of record. All the right thinking democratic institutions and persons must remember that this contentious issue of Polavaram Dam is

being discussed and rival contentions regarding the dam etc., are being raised without recognizing the fact that the Tribal Communities have to leave their home land, agriculture field, mother forest for the sake of this dam.

3. Until the State and Central Governments document, record and given final Gazette publication regarding the traditional rights of the Tribal Communities in the affected villages, no further work regarding the dam shall be taken up.
4. The Governments shall conduct meetings and communicate with the Grama Sabha and not local politicians and then prepare a road map on mutual agreements and consents and then only the next brick shall be laid for Polavaram.
5. The surveys and Studies done under the FRA shall be placed before the Grama Sabha as per the PESA. The issue of rehabilitation shall be discussed by State and Central Governments within these parameters.
6. In the name of Development and antagonistic stand regarding the rights of two states of Andhra Pradesh and Telangana on sharing of waters etc., the rights of the Tribal Communities shall not be ignored.

The HRS promises to visit the area and continuously monitor the plight of tribal communities with periodic reports and involve interdisciplinary experts and activists.

Sd/-

Justice A.Gopal Rao, Former Judge A.P.High Court, Hyderabad;
P.Sivaramakrishna, Director 'SAKTI' NGO, Hyderabad;
N.Rajeshwar Rao, High Court Advocate, Hyderabad; **Alluri**

Satyasaibaba, Advocate, Kovvur, West Godavari; Yughandhar, Journalist, Vishakhapatnam.

ANNEXURE-I

Devaragondhi village

It is stated by the residents of this village that the school building, some of the houses was demolished by the revenue authorities with an intention to drive them away from the village even before the total rehabilitation of PAF. This has to be enquired into and appropriate action needs to be taken in accordance with law.

Alternate land provided to Project Affected Families, is located in non-tribal area, whereby these families loose their tribal rights and safeguards extended to them by the government.

The agricultural land given to the PAF though located in Tribal area is 10Kms away from their residential site. Management of agricultural operations covering this distance has become difficult and expensive. This requires the attention of the authorities and a workable solution has to be arrived at.

Ramayyapeta - Non Tribal village

Total number of residents of this village is 494 whereas plot of land is not provided to 120 families of this village. This is a serious matter and has to be sorted out by the revenue authorities before they are dislodged from the village.

Meduri Bhaskar S/o.Chilliabbayi stated that 8-00 acres of land was possessed by his father and compensation of Rs.140000/- was paid only to his brother Sivaramachandra Murthy. Initially authorities gave cheques for similar amount to him and his mother but taken back on the next date stating the cheques are defective.

Now the stand of the authorities appears to be that these persons are above poverty line. This is unfair and discriminatory. This should be sorted out by the authorities without

any further delay.

Thota Gondhi Tribal village

Resettlement land provided by the authorities at Vinjaram is not useful for habitation as there is no water source. This problem needs to be solved.

Singanapalli

Authorities received application from all eligible persons to grant pattas, but deleted few names and issued pattas to residents of other villages. Reasons are not stated.

Residents have a right to know what prompted the authorities to do so.

Authorities should look into this and grant pattas to all the eligible persons.

It is stated that though the compensation for the land was given to eligible persons, compensation for trees existing on the land is given to third parties from other villages. This is wrong and needs to be rectified.

Pydipaka - Non Tribal village

Compensation for gramakantam only given but not for other lands of the affected persons.

House sites allocated to residents of this village were also allotted to residents of Ramayampet village. Consequently this benefit has not accrued to them.

One Parivala Chinna stated that he gave representation on 02-09-2014 to M.R.O. complaining that though R&R enquiry was conducted, compensation package is not given. This requires immediate action.

Chegodapalli

Due to blasting at project site, roof of a house of resident of this village collapsed resulting in the death of a qualified nurse Kum. Balathripurasundari who was working at Rajahmundry Hospital and leg of her mother was badly injured leading to permanent disability. No compensation is paid for the damaged house and personal loss suffered by occupants, even after this incident, authorities did not stop the blasting

and are not taking any steps to prevent the damage. House sites are given to some in Gunjavaram and for others allotment of sites is pending. The entire exercise done by the

committee discloses the actual state of existing facts and circumstances at the ground level of the seven villages. Based on our study we suggest in the interest of and to safeguard the

rights of the project affected families, to declare the rehabilitated area [relocated areas] as schedule area, to enable them to continue to get the protection and benefits of being scheduled tribes. □

No Polavaram Project Works till Tribal Rights Settled

Ch. Narendra, President, Human Rights Society (HRS), Hyderabad

Expressing severe concern over negligent attitude of the state and central governments over the fate of the displaced tribals due to construction of mega irrigation project at Polavaram on river Godavari in Andhra Pradesh, the Human Rights Forum has demanded that no further works should be take place till rights of the tribals are settled as per law.

The Forum charged that revenue records in village are fudged so that names of outsiders are replaced with the names of original tribal residents who will end up not receiving any rehabilitation package. It further said that details of the rights of tribals living in the submergence area of the Polavaram Project, as enunciated by the Forest Rights Act, are not even documented, before which the tribals are being displaced.

The fact finding team of the Forum headed by retired judge of Andhra Pradesh High Court Justice A Gopala Rao deplored that the individual and customary traditional rights of the tribals have not been codified and gazetted by the governments yet. Even before it is done, they are being displaced with a nominal compensation. In this regard, the Forum reminded that in the history of independent India lakhs of acres have been brought under cultivation by constructing big dams and the tribal communities have been displaced. But most of them are yet been rehabilitated.

The Forum demanded that details of the rights of each individual, his

family, his community, lands under cultivation, and grazing lands should be documented along with traditional customary rights and boundaries of the community enjoyment areas. It should be done under the supervision of Grama Sabha, and the recommendations accepted by the government.

Recalling that the Supreme Court had directed the government in 2006 to constitute a monitoring committee, the Forum expressed concern that it has not been constituted till now. It demanded that such committee should be constituted immediately after discussing with the local communities and the tribal organizations. Till this committee gives the clearance as directed by the Supreme Court, it said no further activity shall take place.

In the absence of such monitoring committee, the Forum felt the affected people unable to represent grievances and no authority is coming forward to look into any lapses. For example, it said in Chegondapalli village a tribal nurse was died in a blast and her mother's legs were broken. But till now no assistance was provided to their family and authorities even refusing to acknowledge such incident.

Alleging that the government has been adopting very brutal and most inhuman attitude towards vacating submerged villages, it pointed out in Devaragondi village all the houses were bulldozed fearing displaced tribals may return back. Even school building was demolished. Pointing

out that some tribals were given farm lands about 15 to 20 kms away from the houses provided to them, it wonders how can they cultivate their lands from such distant place? The report noted that revenue records in the villages were fudged so that names of outsiders are replaced by the names of original tribal residents who will end up not receiving any rehabilitation package. Nobody in the seven villages have received the relief and rehabilitation settlements, he said, and pointed out that even while increasing the project cost since 2005, it has not occurred to the government to increase the amount payable for those being displaced.

Though land for land and house for house are on offer, land and housing plot are separated by long distances, unlike in the present villages where they are adjacent to each other. The team visited the villages named Mamidigondi, Devaragondi, Ramayyapeta, Thota Gondhi, Singanapalli, Pydipaka and Chegondipally, which are the first to be submerged by the project.

Team members demanded that the government conduct meetings, interact with the Gram Sabha and local politicians, and preparing a road map based on mutual agreement and consent, before laying the next brick for the project. The issue of rehabilitation should be discussed by the State and Central governments within these parameters.

It sought that the package should be as per the directions by the

monitoring committee, and if the package is found to be lagging in reference to the fixed benchmarks, construction should be deferred or stopped. In the interests of the rights of the project-affected families, the area of relocation should be declared as Scheduled Area, so that the protection and benefits of being Scheduled Tribes are not lost.

Justice Gopala Rao deplored that the government has been revising project cost every time to benefit contractors, but keeps silence on rehabilitation packages. He said that funds for rehabilitation also should be increased as per requirements. Pathetic site of tribal communities being displaced and their inhuman living conditions is part of record. All the right thinking democratic institutions and person must remember that this contentious issue of Polavaram Dam is being discussed and rival contentions regarding the dam etc are being

raised without recognizing the fact that the tribal communities have to leave their home land, agriculture field, mother forest for the sake of this dam.

So, the Forum insists that until the state and central governments document, record and given full gazette publication regarding the traditional rights of the tribal communities in the affected villages, no further work regarding the dam shall be taken up.

It also says that the monitoring and evaluation of the implementation of relief and rehabilitation should be done by an independent monitoring committee consisting of eminent experts and NGOs with adequate powers to effectively perform its function. Concurrent monitoring and evaluation of the progress made in the implementation should be carried out under the direction and supervision of such monitoring committee. □

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