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International Human Rights Day, 10th December, 2015

Celebrating Human Rights! Celebrating the Human Rights movement in India!!

Saluting the human rights movement in India!

On the occasion of international human rights day, PUCL looks back at the heroic struggles of thousands of ordinary Indians who never allowed fear and personal danger to silence their voices or still their actions demanding justice, equality, equity and freedom and braved false prosecutions, torture and systemic violence to safeguard democracy. We remember the sacrifice of hundreds of human rights martyrs and salute the undying thirst for human rights which makes thousands of our citizens across India, to stand up against the tyranny of the state and the mafia of vested interests - scheming politicians, venal bureaucrats, brutal police, and corrupt corporate / business interest; who fight to make India a more just, humane and free country in which the intrinsic dignity of all human beings is respected. Long live the human rights movement!

Prabhakar Sinha, President, V. Suresh, General Secretary, PUCL National

Editorial: Human rights in India: The Challenges Ahead

The thirst for freedom, commitment to justice and dedication to democracy are undying.

Well before the advent of the Modi Raj in India and even during his predecessor Manmohan Singh's term as Prime Minister for two continuous terms of 10 years the human rights situation in India was not only far, far from satisfactory but rather, it was frightful. From regular attacks on Dalits, Adivasis and the minority communities going unpunished to the state's actual connivance in hounding intellectuals such as Dr Binayak Sen and G.N. Saibaba, military and paramilitary operations in vast swathes of central and eastern states where Adivasis live in mineral rich forests and hills, the secret and cowardly hanging in Tihar jail of the Kashmiri Afzal Guru, the continued use of the Armed Forces Special Powers Act (AFSPA) to terrorise the peoples of Kashmir and Manipur or expanding restrictions on free speech, India under the Congress-led regime had seen tremendous violations of human rights of its citizens across various sectors. The high point of the Indian Government's willingness to bend and dilute environmental laws to please international corporate interests was seen in the environment ministry in 2013-14 which saw quick changes in Union Environment Ministers appointed mainly to ensure fast tracking of high value corporate projects caught up in legal tangles relating to environmental clearances. The Environment ministry under Veerappa Moily (who also occupied the post concurrently with the Petroleum ministry) showed the

extent to which the government was willing to ride roughshod over the rights of Adivasis to their habitats and the rights in general of Indian people for a clean environment.

The Foreign Contributions Regulations Act (FCRA) was misused to crack down on home-grown NGOs seeking to protect the rights of Adivasis and others to their habitats. None other than Manmohan Singh, the then prime minister, had sought to cast aspersions on thousands of ordinary aggrieved citizens and activists agitating against the Koodankulam nuclear plant in Tamil Nadu by alleging that they were acting at the behest of foreign forces, never mind that it was the Congress-led government that was colluding with foreign entities in putting up the plant in the first place. The BJP-led NDA regime which formed the Central Government in May, 2014 has not only continued but intensified many of the previous regime's anti-human rights policies. There are twin tracks to the NDA assault on human rights:

On the economic front, under the garb of 'Ease of doing business' the government went on an overdrive to change laws and policies enabling free and unhindered movement of international capital and corporate interests, including by dismantling environmental protection laws like the Environment Protection Act, Air and Water pollution laws and other enactments which gave ordinary citizens the rights to and a lever to challenge industrial projects which potentially threatened ecology and environment. Part of the strategy has been to black paint environment groups and activists and to publicly harass, hound and prosecute them using various coercive laws, institutions and state agencies.

The other, and more potent, part of the strategy has been to scale up and give new thrust to divisive politics and the politics of hate, terror and intolerance. Under an 'emboldened hindutva' regime, Muslims,

Christians, Adivasis, Dalits and women have been facing the brunt of rising communal terror. An astounding number of BJP members, including ministers, have been making incendiary statements against Muslims and other minorities who have continuously affirmed the secular and liberal values enshrined in the constitution. Writers and filmmakers protesting against the increasing assault on the nation's secular fabric have routinely been denounced and invited to "go to Pakistan". The lynching of Mohammed Akhlaq at Dadri in western Uttar Pradesh - quite close to New Delhi - in late September on suspicion that he had consumed beef and the subsequent attempts by BJP members to make light of it as well as the near-complete silence of Prime Minister Narendra Modi over the hate crime has heightened the sense of insecurity among Muslims. The same month, a 48-year-old named Yakub Sheikh had a high-pressure air hose inserted into his rectum by a Hindu co-worker at a Toyota facility in Bombay and this was sought to be dismissed by the Hindutva camp as a "prank" gone wrong. The attacks on churches in Delhi around the time of the last legislative assembly elections in the national capital had similarly led to anxiety on the part of Christians. Vigilante groups close to the Sangh Parivar have been terrorising cattle traders in various parts of the country and the BJP-led Maharashtra government has gone so far as to ban beef - a frontal attack on the diet choices of not only Dalits and minority communities but of others as well.

Sectarian violence has seen a significant transformation. The emphasis has slowly shifted from communal violence to majoritarian politics under which it is not just religious minorities who face threats from the Hindutva groups, but other groups and individuals who challenge the hegemony of a Brahminical

version of Hinduism belying the vast diversity of cultural history, practices, mores and customs across the bewildering range of India's caste groups and communities. Rationalists and anti-superstition campaigners like Narendra Dabholkar, Pansare (both from Maharashtra) and Kalburgi (Karnataka) have been killed. Writers like Perumal Murugan in Tamil Nadu have been violently pilloried and attacked for a powerful portrayal of past practices of dominant communities which no longer fall within the cultural landscape of dominant Hindutva discourse.

Over the past year and a half, NGOs have come under great pressure from the government to the extent that India's higher judiciary has largely taken a dim view of official actions and crackdowns on activists and organisations. Teesta Setalvad and Javed Anand - and their Sabrang Trust - who have done yeoman service in bringing to book and convict, a few at least, those responsible for the 2002 anti-Muslim pogrom in Gujarat, have long been bête-noires of Modi, hounded from pillar to post, harassed and prosecuted with the constant threat of arrest. Thus far the judiciary has not allowed brazen subversion of the law by the state agencies, recognising the fundamental rights of the duo and allowed them to remain free while fighting the numerous cases being filed against them at taxpayers' expense.

In one of the most egregious instances of anti-NGO action, the current regime prevented senior campaigner, Priya Pillai of Greenpeace India from boarding a flight to London. The Delhi High Court later rightly ordered striking down the government's questionable action. But the Modi regime has failed to heed the judiciary's view in this matter and has repeatedly sought to freeze Greenpeace India's assets, cancel its registration and to otherwise harass its staff

members who are merely trying to protect the country's environment and the rights of Adivasis to their habitats.

That these attacks are not isolated incident of abuse of law by the central government is revealed by the latest efforts at intimidating the regime's opponents. Prominent lawyer, Indira Jaising who has represented Priya Pillai, Teesta Setalvad and others, has been served with a notice by the Home Ministry for receiving foreign funds for her human rights advocacy firm, Lawyers Collective.

On the subject of death penalty, Lawyers Collective's Anand Grover had tried in vain to halt the hanging in July of Yakub Memon who was convicted in connection with the 1993 Bombay blasts and who had surrendered to the Indian authorities in what turned out to be a false hope that he would get a fair hearing and a fair trial. He was the third Muslim to be hanged in India in three years - after the Pakistani Ajmal Kasab (the only surviving militant in the 2008 attacks on Bombay) and the Kashmiri Afzal Guru. The Dalit, Surinder Koli, had his death sentence commuted to life by the Allahabad High Court in January following intense and dramatic efforts by lawyers in New Delhi and Uttar Pradesh.

A major factor behind the BJP's success at the hustings last year was slick advertisements and media management, thousands of crores of rupees having one into it. One of the slogans coined then promised that women would be safe under "Modi Sarkar". What in fact we are witnessing is an entrenchment of misogyny and patriarchy which is of a piece with the Hindutva supremacist ideology that informs the Modi regime. BJP members routinely blame the victims/survivors of rapes and other forms of violence against women.

Meanwhile on the economic and social rights front too, the already

dismal scenario under the Congress-led dispensation has been sought to be made even worse by the Modi regime with allocations for health and social welfare being drastically scaled down threatening the continuance of very critical social welfare schemes like the Mid-day meals scheme which ensures crores of India's already malnourished children get at least one full meal a day, the ration system ensuring availability of food grains, maternity and child welfare benefit schemes. The ruling regime's disregard for social protection schemes is highlighted by the Prime Minister himself cocking a snook at the MGNREGA, which economists say has contributed much to reducing poverty and even more importantly empowering women.

One area where in the Modi regime has been causing perhaps irreparable damage is human resource development. In fact, during the previous NDA regime headed by Atal Bihari Vajpayee, the then HRD Minister Murli Manohar Joshi had already caused much damage by introducing ante-diluvian courses such as astrology in universities and tampering with textbooks. The UPA regime did not do nearly enough to set right the damage wrought by the earlier avatar of the NDA. But now the Modi regime has been carrying on an onslaught against education on a massive scale with the looming reality of major change in the 'National Education Policy' (NEP) covering both school as also higher (college) education in the country. Numerous controversies regularly have been erupting highlighting the manner of changes being brought about by the present central government. Instead of strengthening and democratising the existing educational system the push is to integrate India's educational system within the conditionalities of GATT and WTO, opening India's educational sector to foreign universities threatening the possibilities of evolving a uniquely

India-centric educational system sensitive to the richness of our cultural and social diversity and history.

Amidst this gloomy scenario, and to make matters worse, the Modi government proposed to appoint former Chief Justice of India, P. Sathasivam, already appointed Kerala Governor¹ as chairman of the National Human Rights Commission. PUCL's national President, Prabhakar Sinha, has clearly pointed out earlier this year that by accepting his appointment as a Governor, after holding the post of the Chief Justice of India, Justice Sathasivam has accepted a position in which he would be taking orders, including for his own resignation, from the Home Secretary of the Union Government. Justice P. Sathasivam has thus accepted a position in which the incumbent is liable to be hired and fired by the Executive. At least, six or seven Governors have been fired by the present government in a little less than one year.

India is a signatory to the 'Paris Principles' or the 'Principles guiding National Institutions for the Promotion and Protection of Human Rights' (1991) which was adopted by the UN Human Rights Commission in 1992 and the UN General Assembly in 1993. According to the Paris Principles, National Human Rights Institutions (NHRIs) are expected to be "autonomous" and function "independently" of the government and to exercise their power freely to consider any question falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner". Importantly, a key function of the NHRIs includes "drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where

necessary, expressing an opinion on the positions and reactions of the Government. Thus Mr. Sathasivam, who has accepted being subordinate to the Government by accepting the post of Governor, if now appointed to the NHRC it would seriously threaten the principle of independence and autonomy of NHRCs. In the end this will undermine institutional values and ethos.

Despite the threat to human rights, the last few years has however seen the resurgence of the 'rights' movement in India. The spirited opposition to the attempt of the central government to amend the

2013 land acquisition law junking the provision for conducting social audits of impact of industries in areas sought to be acquired, getting approval of local communities and gram sabhas and other damaging legal changes forced the Modi government to drop the amendments. The attempt to change environmental protection laws by setting up an obviously, pre-mandated 'TSR Subramanian' committee and using its recommendations to push through amendments which will in effect dismantle the protective laws brought the environmental movement together. Across India, a thousand

mutinies have flowered, challenging the hegemony of the dominant caste, communal and industrial interests. The spirited battle to safeguard and deepen democracy, epitomises the human rights movement in India. All attempts to crush people's rights using the brutal apparatus of the state will be resisted; it will only ensure a resurgence of the courage of people, for fear is not the natural state of human beings; the thirst for freedom, commitment to justice and dedication to democracy cannot be quenched.

V. Suresh, Chennai and
N. Jayaram, Bengaluru

Note: We carry a number of articles in this issue examining the challenges before the human rights movement in different states and on specific issues. We invite readers to send in their comments as also articles on varied human rights issues for publication in the *PUCL Bulletin*.

<http://www.thehindu.com/opinion/op-ed/comment-on-justice-sathasivam-running-for-nhrc-office/article7282984.ece>

Press Statement: 7th November 2015

PUCL Statement on Intolerance of BJP Government to Expression of Concern of Rising Intolerance in India

The People's Union for Civil Liberties (PUCL) strongly condemns the hostility of the Union Government and the BJP to the writers, scientists, film makers and actors returning their awards to protest against the atmosphere of intolerance in the country and its Nazi-like attitude to the members of a particular community for not toeing the line of the government. Instead of engaging with more than a hundred protesting achievers, they have launched a tirade against them.

Finance Minister Arun Jaitley has termed it as 'a manufactured paper rebellion', Telecom Minister Ravi Shankar Prasad has alleged that they are protesting because they hate 'Modiji' and the West Bengal Governor Tripathi has urged the government to check their 'political affiliation' while Amit Shah has released a booklet to prove that they have vested interest which they are seeking to protect.

By launching the vilification campaign against the protesters instead of countering the allegation

by marshalling facts and advancing convincing arguments to prove them wrong, the ruling dispensation has admitted that they have no defence and the allegation that they are presiding over an intolerant dispensation is true. The government must bear it in mind that as citizens of democratic India, the protesters have every right to love or hate a Prime Minister, a political ideology, make their own assessment of a situation, take remedial measures and support or oppose the policy or acts of a government. It is only in a Fascist State that the government demands that the citizens including scientists, writers and other creative artists must toe the government's line, must 'love the leader' and must blindly support the government.

PUCL views with extreme concern the fact that senior Ministers of the ruling Central Government, like Arun Jaitley and Ravi Shankar Prasad, are leading such a vicious, personal and unconstitutional attack on citizens exercising their fundamental right. By their actions they authenticate the

growing view that the highest levels of the ruling NDA government is fully lending support, overtly and covertly, to the campaign of intolerance sweeping across India.

The attack on Shah Rukh Khan for his remarks that there is growing intolerance in India stands out for the vituperative reaction of the ruling party. Shah Rukh Khan is not only one of India's greatest actors but also known for his respect for India's diversity in religions, culture and festivals. The attack on Shah Rukh Khan by BJP General Secretary, Kailash Vijayvargiya and Yogi Adityanath, who compared him to Hafiz Saeed, the master mind behind the Mumbai terror attack of 2008, and asked to migrate to Pakistan, smacks of the mindset of the Nazis against the Jews. It should not be overlooked that Shah Rukh Khan is not one of the protesters who returned their awards but faced such obnoxious attack simply for expressing the opinion, while answering a question, that an atmosphere of extreme intolerance

exists. In sharp contrast, is the silence of the ruling party on the bold statement of Raghuram Rajan, RBI Governor, who not only spoke against the intolerance but advised against the culture of ban and of

Narayanmurthy, who expressed his disapproval of intolerance. The PUCL would like to remind the government that the people have given it the mandate to rule according to the letter and spirit of the

constitution and it must do so to retain its legitimacy in the eyes of people.

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

Education and Human Rights with Special reference to the Proposed Policy

Prof. Vinay K. Kantha, National Vice President, PUCL

Nature and scope of human rights and education

Nature of human rights is primarily normative and ideological, and hence educational, in a wider and basic sense. Both the idea of universal human rights and universal education aim at a redesign of society and redefine powers of state under a newly defined set of principles. Education thus is a natural site of intervention for the promotion or safeguard of human rights. If democracy is meant to confer rights and dignity on individuals vis-a-vis the state, one of the key objectives of universal basic education is development of values of human rights and democracy in early education. Universal education should be freely provided by the State to all children till an age at which they are well-equipped to take decisions about themselves. This, in turn, ordinarily implies inculcation of acceptable human and social values, as well as role as good citizens and capable useful individuals.

Which values and what kind of society?

Question of values may be a little problematic in the cultural context, but in the present Indian context values enshrined in the Preamble to the Indian constitution, which are similar to the values of UDHR, like the idea of justice and dignity of every individual, liberty, equality, and secularism, among others are fundamental and necessary. In fact these values define the very ethos of democracy.

They also give a perspective of rights-

Rights of men & women, Protection of individuals from State power-broadening concepts of rights including the right to development or third generation rights. At the same time these values can provide a bedrock of society different from the traditional and orthodox. Such a society will be just & egalitarian, inclusive, liberal, secular & democratic

Democracy, Human rights & Democracy

The relationship between human rights and democracy is perhaps most clearly understood through an examination of civil and political rights, especially those articulated in Article 21 of the UDHR and Article 25 of the ICCPR. These rights are related to the rights of expression, association, etc, as well as the rights to liberty, security of person, and the guarantee of due process of law. Further, economic, social, and cultural rights are being increasingly recognized as integral to democracy. Indeed, political and civil rights can be realized only by citizens who meet a basic level of physical security in terms of access to shelter, water, sanitation, and food, as also education, healthcare, and income. Socially, democracy is interrelated with rights to equality and non-discrimination. Culturally, the respect for diversity and pluralism inherent to democracy is linked to the protection of rights related to language, religion, or ethnicity. Thus clearly human rights and democracy are interdependent, especially when defined in the broader conceptualizations of democracy as

substantive democracy. Both can become meaningful if the common man is at the centre of discourse on either.

Whether we examine the guarantee of civil rights of people at the bottom or the economic rights of deprived sections of population, democracy is more a formal affair rather than substantive. The current market-oriented economic policy is increasingly loaded against the underprivileged, contrary to the vision of constitution. A new threat seems to be emerging today in the new educational policy.

Right to Education (RTE)

RTE became a fundamental right in 2002, but the Act to implement article 21 A of the constitution came in 2009. It became effective from April 2010, but norms & standards of the Schedule, not achieved as yet, though there was a three years deadline given in the Act itself. In fact there are several other questions regarding the Act, which need to be borne in mind. Apparently it doesn't genuinely confer an enforceable right to our children? Further, there is hardly any firm assurance on quality, particularly for the children from weaker sections and disadvantaged groups.

Model of market-driven development being followed in the country, is accentuating disparity more sharply since 1990s. It is causing threat to ecology & environment and depletion of natural resources, or their control and excessive use by some people or corporate houses. For the labour there are occupational hazards and for the people denial of

rights. Handling of democratic protests by the state has failed to respect human rights. Quality of education has suffered. Curriculum, text books, knowledge systems etc may all be transformed against the interests of people and tenets of human rights.

Proposal for New Educational Policy

It may be noted that the first National Educational Policy came in 1968 after the Report of Kothari Commission. The second policy enunciation (NPE '86) & the later programmatic framework, *Sarva Shiksha Abhiyan* (SSA), coming just before and sometime after the beginning of liberalization, changed the institutional choice profile, due to a rapid growth of private schools. Hierarchy of schools came into existence. After the 1986 policy, Non-formal education, and then, para-teachers were introduced in place of regular schools and teachers. Government schools became the choice of the poor in course of time, with market providing alternatives to the richer sections. There was an increasing quality-deficit in schools. SSA affected the institutional character of schools and teachers' cadre. Infrastructural facilities improved, but institutional sanctity was not maintained.

A new policy is being proposed today for which a consultation process has begun in March 2015. It has only two parts: school education with its 13 suggested themes and higher education with 20 themes. Yet the agenda, explicit as well as implied, raises many questions and doubts.

A preliminary appraisal of proposal for NEP '15

Rationale & Objectives

It is not clarified by the government, why it should be necessary at his point of time. On the political side, it may be related to scheme of the ideological a new dispensation in power. On the economic front, it may be aiming at a greater thrust to

policy of liberalization, privatization and globalization. One wonders whether the proposed framework is a culmination of the agenda of globalization launched by the Congress government and advanced further by the UPA under GATS provisions of WTO, and a prelude to the Nairobi Ministerial conference of December '15.

Significantly there is hardly any mention of constitution, or its principles, or larger goal of education. The document seems to be shy about constitutional values, or values of human rights, or of larger aims of education. Education can be socially transformative, and individually uplifting. Ignoring all of these the framework within which themes are enunciated are crudely utilitarian. Rather than character-building or all round development, focus is kept on learning of basic skills at the elementary level. At the higher level, likewise, in place of pursuit of knowledge, use of technology and skill development is emphasized.

It seems to be greatly Influenced by some NGO reports, external agencies and corporate sector. Quality concerns comes with definite slant, vocational education and skill training, emphasis on technology (ICT) technology-enabled learning, open & distance learning, online courses, examination/assessment, governance/management, partnership with equity or social gaps, school standards/ ranking & accreditations, research, innovation, new knowledge.

Process of consultation and formulation

There is no evaluation of previous policies and programmes, nor any discussion on change in context. (For example, implementation of RTE Act or *Rashtriya Madhyamik Shiksha Abhiyan* (RMSA) not sufficiently examined). Only some general rhetorical observations preface the supposed process of

consultation, which proposes grass root consultative process through on line consultation and complete transparency in place of previous Top down approach. Further, it is averred that the objective is to ensure an inclusive, participatory and holistic approach. Yet there is nothing on website in any local language. The process of village-level consultation would be a mammoth exercise (2.5 lakh meetings should have taken place during April- May 2015!), but there is no evidence of even its knowledge.

Who will make the policy?

Themes have been defined from above. 1968 policy came out of a very large consultation, mainly with experts- Indian and foreign; 1986 policy was of course prepared by bureaucracy, which is repeated perhaps with a political design.

The document loaded on the website is too short and incomplete background for a policy paper. It has an Inadequate, hurriedly prepared thematic list. Even the words and phrases used are erroneous, misleading or loaded. Timeframe given in the MHRD note is too short and unrealistic-particularly if the process has to be bottom up, and based on wide consultation.

Government's responsibility, especially on system design and financial commitment not clarified.

In fact the mention of PPP and the general tenor of document indicative of a preference for market-driven policy. There is hardly any indication or suggestion for strengthening the public system of education, which will necessarily require higher outlay. If we take a look beyond this particular exercise (or pretense thereof!), then scenario hardly inspires confidence, with budgetary cut on social sector, and various assaults on autonomy of educational system.

There is no reference to Common School System. Both the previous

policies at least referred to Common School System. The discussion on teachers is nearly apologetic, talking merely about their poor quality and need of training and accountability. Further, vacancies are merely mentioned ruefully along with a need of status enhancement. There is no question framed regarding their salary, emoluments, service conditions or factors defining status. Given the lowering of their status lately, large scale recruitment of para-teachers or contract teachers, specific consultation was called for. Even 1986 policy (in spite of its default due to introduction of instructors and NFE) also had a separate part devoted to teachers. In fact the proposed policy is likely

to rely on a framework of regulatory regime, rather than freedoms consisting of NAAC accreditation etc for state universities and non-democratic composition and functioning of academic bodies.

New Concept of Knowledge: Knowledge as 'commodity'

The document redefines knowledge merely as a 'commodity'. At one place it is explicitly noted in the following words in the context of Knowledge economy:

Knowledge economy has an important dimension of commercialization and marketing. It is argued that protection of knowledge will provide an incentive for the producers of knowledge to produce. The 'knowledge' or

'innovation' translated into a tangible good or 'product' that is protected also carries a price which can be charged from the user of knowledge. Innovation is thus considered a critical pillar of knowledge economy. It means that countries will have to make effort to transform its implicit knowledge i.e., knowledge embodied in brains into an explicit knowledge i.e., in forms in which it can be traded.

Thus with greater State control on the one hand, and market for education on the other the system of school and higher education comes may be redesigned, paving the way for a society which is more controlled and less respectful of human rights.

Report of Karnataka state unit

Human Rights in Karnataka: Governance by Denial

A bleak situation presents itself in Karnataka that is best described in the words of the title of a fact-finding report of the PUCL and the Housing and Land Rights Network, Delhi, on a major instance of forced evictions and demolitions of homes of people of Economically Weaker Sections in Bangalore in 2013 - Governance by Denial¹.

The Karnataka government has abjectly failed in its duty to respect - let alone protect, promote and fulfil - the whole gamut of civil, political, economic, social and cultural rights including the rights of the child and the rights of women, Dalits and Adivasis, the minorities, migrant workers and members of the LGBT groups not to be discriminated against. These rights are guaranteed by the Constitution² and international human rights treaties³ which India has ratified.

In other words, the Karnataka administration - both in its previous BJP and its current Congress incarnation - has been duty-bound to respect, protect, promote and fulfil the inalienable rights of the groups enumerated above but has been callously impervious to these solemn obligations.

In too many instances, the administration has neglected its obligations to address multiple rights violations: when Dalits all over the state are made to continue engaging in manual scavenging - government officials looking the other way or actively colluding with private contractors who employ them - it is not only an issue of violation of their civil rights but also of their economic and social rights, the administration failing in its duty to inform them of the schemes it has itself put in place for their rehabilitation and for the improvement of their income-earning power and their status in society.

When people transporting cattle are attacked by Hindutva fascist groups and the police and other arms of the administration take no notice, it is not only a case of violation of civil rights but of economic rights. When young Muslims named Muthi-ur-Rahman Siddiqui (a journalist), Mohammed Yusuf Nalband and Aijaz Ahmed Mirza (then a junior scientist with the Defence Research and Development Organisation) get jailed for several months⁴ - thus shattering their young lives and causing untold damage to their families' lives, only to be cleared by the National

Investigation Agency eventually - far too numerous rights violations are involved: apart from the rights mentioned above is the right to reparation. Far be it from the Karnataka and the Indian government to offer them compensation or reparations⁵ - not even an apology (and here the local media too stand implicated for their unprofessional "reporting" and subsequent failure to correct their horrific misreporting) - Aijaz Ahmed Mirza has been denied his DRDO job back. Senior police officers in the Karnataka boast - off the record - of their prowess in hunting Muslims who have chosen as their targets and of how they have "encountered" - carried out extrajudicial killings of - their quarry. Such is the extent of denial of human rights that the state upholds in an atmosphere of heightening communal polarisation.

Turning to some other victims of discrimination and abject neglect by the state of its obligations, it simply ought not to require activists from faraway places to visit certain towns to try and stop what quite simply are atrocities against Dalits. But that precisely was the case when as recently as in mid-November,

Karnataka PUCL General Secretary Y.J. Rajendra and others prevailed upon the Chair of the Karnataka Safai Karmachari Commission⁶ to visit Pavagada and look into the pathetic plight of manual scavengers (and their living conditions there). It transpires that many members of the local administration did not even attend a public meeting called by the Commissioner: Such being the level of impunity. It took activists' pressure on the Commissioner to order a few remedial measures.

It is not as if the administration is incapable of acting in protection of human rights: Far from it. As Karnataka PUCL President Dr V. Lakshminarayana and other activists found during a fact-finding mission to Hulivana village in Mandya district a few weeks ago, the police actually did a good job of almost immediately intervening to prevent a major attack on Dalit houses by members of dominant castes (in the process the police also rode roughshod over the right to privacy of the women of the members of the latter caste, as the fact-finding report impartially and meticulously records).

However, in another fact-finding visit, to Mudhol town in Bagalkot district, Dr. Lakshminarayana and other activists found the police and other authorities totally lacking in response to horrific - and meticulously pre-planned - attacks on Muslims by Hindutva groups with the connivance of local politicians, if not also members of the bureaucracy. In Mudhol, as far too many other places, the police has gotten communalised.

Many PUCL members in different districts of Karnataka say there has been a rise of caste atrocities in recent years and months and also a sharp increase in communal attacks against Muslims. (Im)moral policing attacking women, Christians and Muslims in many parts of the state - especially in the south-western ones - has been well reported. And in yet another instance of the state's failure to protect the right to life, there have been scores of instances of suicides by farmers facing economic difficulties, with officials of the state

being impervious to the tragic phenomena.

Our National Council Member Darshana Mitra has reported on horrific instances of attacks on the rights of the child through the bizarre and mindless actions such as "Operation Smile" during which numerous innocent children were needlessly picked up by Bangalore police and their families traumatised. Darshana Mitra and other volunteers have also been engaged in monitoring police attacks on women and Transgenders in Bangalore, Belgaum and other places.

Analysing the killing of the rationalist Professor M.M. Kalburgi - coming on top of the killings in Maharashtra of his counterparts Narendra Dabholkar and Govind Pansare - Robin Alexander J, Advocate and State Secretary, Karnataka Komu Souharda Vedike had this to say in the October issue of the PUCL Bulletin:

"The state has remained a mute spectator to this massive mobilisation of the Sangh Parivar and in the process has eroded the values of secularism and democracy that it has committed to protect and re-vivify through its actions. The State has allowed critical reasoning in the public mind to be replaced by phobia and refusal to debate. "The act of killing Kalburgi is the culmination of the process by which Hindutva has entered into the minds of people and has normalised the notion that it is not abhorrent to kill someone who is perceived as 'anti-Hindu'"⁷.

One of Karnataka's most active and indefatigable human rights activists, Narasimha Murthy, has repeatedly been pointing out that the State Human Rights Commission has been headless for three years. He has on numerous occasions buttonholed Chief Minister Siddaramaiah and urged him to fill the post but the latter has stuck to his hollow, specious argument that he is unable to find a retired high court chief justice or a retired supreme court judge who speaks

Kannada, as if a SHRC chairperson adequately supported by local staff cannot perform the task ably. Narasimha Murthy recalls that when Justice S.R. Nayak occupied the post, police stations in Karnataka harboured a modicum of fear of being caught out committing atrocities. But now, he says, impunity reigns. Increasing instances of atrocities on Dalits are not being looked into. Moreover he opines, police stations have been functioning as "real estate offices", meaning that they are in cahoots with land mafia: this is borne out by a recent instance of a church in Benson Town, Bangalore, coming under attack - including disruption of Sunday Mass and threats to children, women and the priest - from land sharks, the police not coming to the aid of those attacked.

Staying with the issue of land and related matters, it is astonishing that the government is spending vast amounts of money on the airport in Bangalore and the Metro - the budget on the latter escalating by crores each month given the delays - while buses which are used by the overwhelming majority of Bangaloreans, meaning the indigent folk are neglected. This is not merely an issue of inequality but a fundamental one of right to livelihood, part of the right to life. Urban policy has been rendering persona non grata increasing sections of the urban poor - beggars, sex workers, itinerant and migrant communities, street vendors etc. As one of our members, U. Ramdas, has most astutely observed, only certain sections of the population have had their privileges reinforced. All others are denied them, with state machinery collusion. Farmers' suicides are treated as mere piece of statistics to be reported in the inside pages.

Resistance

These instances of human rights violations are not going unresisted. As the foregoing testifies, activists have sought to address them through not only fact-finding visits where warranted but interventions including in the courts of law on

behalf of those arrested for no fault of theirs. Activists, lawyers, social workers and members of NGOs and voluntary organisations such as the Alternative Law Forum, Bangalore Bus Prayanikara Vedike, Bangalore Street Vendors Union, Concerned for Working Children, Environmental Support Group, FEDINA, GATWU, Indian Social Institute, Karnataka Komu Souharda Vedike, LesBiT, People's Democratic Front, PUCL, Sadhana Mahila Sangha, United

Theological College, Vimochana, Coalition of Sexual Minorities Rights (CSMR) - to name but a minuscule number of groupings - are engaged in resisting the rising instances of human rights violations.

But alas, in the face of rising Hindutva fascist tendencies - which threaten each and every right guaranteed by the constitution and international human rights treaties binding the country - their resistance is not nearly enough. We need to redouble

our efforts to mount resistance on the ground against the well-funded and well-staffed Hindutva-cum-casteist terror outfits. At the same time, attempts also need to be made to try and knock a semblance of sense into the cabinet of Chief Minister Siddaramaiah: it has a couple of years to rise up and govern the state in accordance with its constitutional obligations and thus redeem itself, or bow out in ignominy.

<http://pucl.karnataka.org/?p=743>

<http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm>

<http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>

<http://www.thehindu.com/news/cities/bangalore/its-tough-for-us-to-even-book-a-train-ticket/article4589011.ece>

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

<http://sw.kar.nic.in/safai%20karmacharis.pdf>

Please see: <http://www.pucl.org/bulletins/2015/PUCLoct2015.pdf>

Challenges before PUCL in Uttar Pradesh

Vandana Misra, General Secretary, PUCL UP

Before deliberating on the challenges to human rights in U.P. it will be pertinent to glance through the socio-economic scenario and the psyche of the state. U.P. happens to be the most populous state of Indian federation with immense symbolic value and political clout as being the core of Hindi Heartland with 80 members in Lok Sabha. The composition of the state is heterogeneous as there are clearly identifiable regional entities with different levels of economic development and distinct social ethos. The entire state remains primarily agrarian. In absence of sound medium or heavy industries it fails to provide sufficient job opportunities to its younger population, both skilled and unskilled. The state has got high level of illiteracy, infant and child mortality, inadequate medical and health facilities, poor and a very weak industrial infrastructure. In terms of universal primary education and gender relations also U.P. lags behind other states. Due to inadequate production of the energy and its proper distribution U.P. fails to attract any substantial investment

from outside. Regional imbalances are so rampant that the backward regions are almost like internal colonies of not only the prosperous and wealthier states but also of relatively affluent parts of the state itself.

The process of urbanization is very slow compared to other states. The social structure of the state, irrespective of its regional diversities is predominantly feudal or at the best semi-feudal and medieval. Ironically even the modern agencies of state and the urban socio-economic institutions have also fallen prey to this ethos. Moreover the political-bureaucratic and other elite groups in the state have not performed their duties of transforming the traditional and feudal social structures into modern, progressive and dynamic social order. This neglect or the lack of will power on the part of political and bureaucratic elite has led to convergence of vested caste and class interests. In the process we witness the emergence in the state of a parasitic elite for whom the term development has become almost a synonym for their own self aggrandizement.

It is therefore not at all surprising that the state remains economically backward and a citadel of obscurantism despite being ruled by the parties that claim to represent the marginalized sections of the society. The state which proudly claims to have had its first ever woman Chief Minister and subsequently the first ever dalit woman Chief Minister remains the most unsafe state for women specially dalit women. The Khap Panchayats blatantly flout constitutional and legal provisions that guaranty equal rights and freedom for women, dalits and other marginalized sections of the society. In the name of so called honour of the community or the family the young boys and girls are hanged despite the stringent strictures of the highest court of the land.

The state which claims to represent the Ganga-Jamuni tahzeeb, the composite culture, has become a battleground of fanaticism and intolerance. Paradoxically, this birthplace of Nehru, Acharya Narendra Dev and Lohia has degenerated into a fertile ground for nefarious designs of majoritarian

communal forces. For majoritarian communalism U.P. has become a laboratory where they make experiments to polarize the society on communal lines. They keep on raising the bogey of love jihad, ghar wapsi and beef eating to terrorise the minorities. The sole purpose is to further their political interests and capture power by subverting the democratic values and suppressing the voices of dissent.

In such communally surcharged atmosphere of hatred and violence the other important issues of development, employment, gender equality and the protection of rights of children and the issues like health and education are relegated to background. Naturally in such an environment the issue of human rights can hardly find favour either with the power elite or the custodians of social status quo.

The infant and child mortality rate is very high and majority of the children are malnourished. The majority of the children who are poor, are still beaten up by the teachers in schools in rural areas. The Minister for primary education of U.P. said in a public meeting that the children won't study unless they are beaten. Even otherwise the condition of children is really pathetic. The primary schools in the rural areas and also in the small towns do not have toilets. This is one reason that the girls' find it inconvenient to go to such schools. As a result the drop out rate of girls in rural areas is quite high.

The behaviour of teachers towards students from dalit families is very discriminatory. Dalit students get an opportunity to go to school with great difficulties and if at all they get any such opportunity the treatment of teachers and the upper caste students towards them is hardly sympathetic. They are forced to perform menial duties. Even the mid-day meal provided in primary schools is most of the times unhygienic.

The condition of government school is so bad that the Allahabad High Court has recently instructed that all

government officials, people's representatives and others who get paid from government-exchequer have to send their children in government schools only. When the officials and the political class start sending their children to government schools, the condition of government schools will automatically improve. But surprisingly the U.P. government is planning to appeal against this order in the Supreme Court. Obviously the bureaucrats and the politicians are unwilling to comply with High Court order as that means curtailment of their privileged superiority in the social hierarchy.

The hypocrisy of almost all the sections of society comes out openly on the issue of child labour. The laws against child labour are violated openly not only by shopkeepers, brick kiln owners, the cold stores and other such business enterprises but also by government departments.

The record of state is very dismal when it comes to its own law enforcing agencies. Branding anyone as a terrorist or Naxalite and putting him behind the bars is a common practice in U.P. The police when fails to capture the real culprit finds it convenient to arrest any innocent citizen and put him behind the bars. Those who dare speak or write against the atrocities committed by the police have to face the consequences.

The police force in U.P. as well as other armed agencies like P.A.C. have got used to suppress and frighten the common men by arbitrary arrests. In fact the police in U.P. has always been a violator of human rights. U.P. police is known for illegal arrests, extortion, rape in police stations, torturing the arrested person in the police station so much so that sometimes the person dies, fake encounters, custodial deaths. It is not just for nothing that Justice A.N. Mullah had called the U.P. police a "uniformed gang of criminals". Even today maximum cases of human rights violation are against U.P. Police i.e. 60% of the

total human rights violation cases against police in India. In most of the crimes committed in U.P. police is as much involved as the criminals. Under such situation it becomes difficult for a person to go to the police station and get the FIR registered. For a common man or economically and socially weak citizen it is almost impossible to file FIR against any influential person. The police always favours the mighty and the strong. Surprisingly the behaviour pattern of superior police officials of provincial or All India Services is no different from their subordinates.

U.P. is far ahead of other states in atrocities against Dalits, despite the fact that U.P. has had a strong Dalit Chief Minister. The cases of atrocities against Dalits have increased with the passage of time, instead of declining. Dalits are not supposed to touch the idols in temples and a dalit couple has been brutally thrashed by upper caste men only a few days back. They neither get the treatment of equality nor the protection which is guaranteed to them by law.

Health facilities are also almost non-existent. Primary health centres, Community health centres and district hospitals lack doctors specially specialists. The state requires at least 20,000 specialists but there are only 3,700 specialists in Government Hospitals in villages. Moreover, the health workers treat the patients as liabilities.

Displacement in the name of development is also an important issue which PUCL needs to address. People are being uprooted from their land and the habitat. The land of small and marginal farmers is being acquitted without proper compensation. The farmers who are robbed of their source of livelihood do not get any share in the projects that come up on their land.

Illegal mining, particularly in Bundelkhand and Vindhyachal region is a cause of concern for PUCL.

Prisoners' rights are also not taken

care of. Ordinary Prisoners are deprived of even the most basic amenities whereas the criminals with political and mafia background always get V.I.P. treatment within the premises of U.P. Prisons. Given the social composition of the state and the elitist attitude of the

government officials it is very difficult for an organization like PUCL to successfully address to burning issues of human rights violation. It is more desirable to educate people about their rights and prepare them to fight. Writing articles, letters to editors, organising meetings,

seminars on the issues of human rights violation is much needed requirement. Pamphlets or small booklets may be published and distributed in public so that there is a broader understanding among various sections of society regarding the issues and their redressal.

Hooch Tragedy: Repeated Occurrence in Bihar

Prof. Daisy Narain, President, Bihar State PUCL

I remember in the 90's the nationwide campaign against illiteracy was launched, hyperbolically referred to as the second national movement in which as claimed, voice was being given to the poor and the marginalised with a special reference to empowerment of women. Anti Liquor campaign led by women and the anti arrack agitation of Andhra Pradesh hogged media attention. The administration soon developed cold feet and pressed down upon the agitationists, ignoring their demand for clamping down on the liquor shops. The liquor barons won the day. Sale increased as did deaths due to consumption of illicit liquor. Bihar is no exception and death due to liquor consumption was reported frequently.

In Bihar amidst the debates on modern Bihar and developing Bihar, came the reports of death due to consumption of liquor. Bihar's Liquor policy came under severe attack. Death due to consumption of illicit liquor acquired monstrous proportion and one after another three incidents of death came to the limelight. Hooch consumption claimed 14 lives at Neknampur, Utsi and Mohjema villages in Muzaffarpur district, followed by quick succession of 30 deaths in Ara Town under Nawadah Ara police Station and Town Police Station of Bhojpur district. As if that was not enough came the report of hooch death in which 12 persons lost their lives in Gaya. The incidents occurred in the period between Oct.2012 to Dec. 2012. The incidents at Ara were investigated by Bihar State PUCL along with district

units of Muzaffarpur and Gaya. A seminar was organized at Patna and the reports made public along with observations and recommendations.

A Brief on the State Liquor Policy

Two current policy documents were issued by the State Government with respect to Bihar State Beverages Corporation Limited (BSBCL), a Government of Bihar undertaking, in March 2008. These are called Liquor Sourcing Policy 2008 (vide circular No.675/BSBCL dated 12.03.2008) and Liquor sales policy 2008 (vide Circular No 676/BSBCL dated 12.03.2008). BSBCL is the wholesaler for all kinds of Liquor in the state of Bihar. While the first circular pertains to sourcing of all kinds of Foreign Made Foreign Liquor(FMFL), IMFL(Brandy, Whisky, Rum, Gin and Vodka etc), Beer and wine, the second one pertains to sale/disposal of liquor. Bihar cabinet approved the formation of BSBCL on 25 March 2006, while it became operational on 1 October 2006 (thankfully on the day preceding Gandhi Jayanti !)

There is a website of the BSBCL which carries the objectives of the Corporation on its home page as given below:

1. To provide suppliers remunerative prices.
2. To make liquor available at reasonable prices.
3. To maintain a buffer stock as measures of liquor security.
4. To intervene in market for price stabilization.

After looking at these objectives, (and maybe substituting" food" in place of Liquor) one wonders if the

state government is equally keen about food security and making food available to everyone 'at reasonable prices'.

There seems to be considerable stress on quality, whether there is quality education or quality health care is nobody's business.

Revenue

Since the establishment of Bihar State Beverages Corporation Ltd. in 2006 there has been a sharp rise in the total revenue collected by the state government through the sale of Liquor. In 2006-07 against a target of Rs 400 cr the collection was 383.87 cr, which went on growing in successive years as follows : 2007-08- 535.56cr(Target- Rs 700cr) : 2008-09 - 749.15cr (Target- 750cr) : 2009-10 -1098.66cr (Target- Rs 950 cr); 2010-11- 1542.25cr (Target- rs 1400cr) : 2011-12-2045 cr (Target- 1900cr) . In 2012-13 till July the collection was already 579.11cr against the annual target of Rs 2715cr. Therefore in five years time the target revenue collection increased by 250% while the actual achievement went up by 433%. The targets were fixed achieved and sometimes exceeded unlike other targets in health and education.

Analysis and Conclusion (Some references from the report)

The liquor policy was laid down and executed while the state slept over formulating the rules for the implementation of the RTE Act of 2009.

It is important to look at two articles of the Indian Constitution. Art.47 directs the state to raise the level of nutrition and standard of living and

in particular to bring about prohibition

Art. 21A enshrines right to education to children in the age group of 06 to 14 as a fundamental right. In terms of nutrition Bihar is at the lowest level and yet the record success in selling liquor. Liquor outlets have come up in front of hospitals and schools, a primary school was being run under a tree, in Muzaffarpur while a government building just about hundred metres away was being used to make spurious liquor as alleged by some villagers.

There is conscious promotion of sale by the government and the CM defends the liquor policy by arguing 'how can bicycles be given to girls if more money is not available'.

There is a general tendency to play down the incidents. Sometimes there is denial or the number of people who died is reduced.

Recommendations and suggestions often lead to knee jerk reactions.

There have been popular protests after the reports of death. Women groups have been very active in denouncing the state liquor policy. The government has been holding meetings directing the officials to give advertisement in newspapers regarding information from people on unlawful liquor trading.

PUCL units carried out enquiries at Muzaffarpur, Ara and Gaya and made recommendations after consultation. The moot question that remains is whether liquor consumption be completely banned or there should be regulated sale? At present BSBCL is designed as a commercial undertaking which has to be toned down and made to function with a different mandate. Instead of ensuring adequacy of supply, quality control and regulated supply should be the motto. It is suggested by some insiders that if country liquor is also permitted only in bottles in place of pouches, a check could be exercised

on bootlegging. At present what is being sold is diluted liquor and adulteration of many kinds is being resorted to for enhancing toxicity. Sometimes it turns poisonous as it happened at Neknampur in Muzaffarpur district. Many other suggestions were made which included the constitution of a high powered committee headed by a retired judge, further accountability of functionaries responsible for hooch tragedies should be fixed in each case and action initiated against them. Limited number of licenses should be issued and be made accountable, local authorities should be made responsible for prevention of sale of illicit liquor. There is no compensation policy in government excise policy but the government must own up responsibility as it solely controls distribution of liquor in Bihar.

(Based on the enquiries made by Bihar State PUCL and Dist. units)

Response from a senior journalist and highly respected human rights activist of Sri Lanka in response to the Statement issued at the end of the National Council meeting in Allahabad on 15-16th, 2015 regarding the peace process in Sri Lanka. (Editor)

For "Collective Democracy" In South Asia

Kusal Perera, Colombo, Sri Lanka

South Asia's unnatural and open borders along with its contiguous ethnic and social spread have easily allowed one country's internal conflicts to spill over into the other, leading to bilateral conflicts. Most of the South Asian countries are guilty of exploiting the neighbour's predicament in this respect at one time or another. India's involvement in Sri Lanka's ethnic conflict and the emergence of Bangladesh, Pakistan's cross-border terrorism against India and Afghanistan, Nepal's resentment over the flow of Nepali refugees from Bhutan, are well known examples of internal conflicts turning into bilateral and regional conflicts in South Asia. - S.D. Muni

[Conflicts in South Asia; Causes, Consequences and Prospects / ISAS Working paper No. 170 - March 2013]

South Asia is a multiracial, multi linguist, multicultural and multi religious expanse of land from the Burmese border to the Afghanistan border that saw rich civilisations in the past and is in conflict with itself today. It has not only cross border conflicts, but conflicts of many types and variations within and without borders, all impacting negatively on society with differing degrees of democratic and human rights violations. Most even leading to

erosion of human, social and cultural values. All leading to breakdown of law and order as well. This decaying of the "collective soul" in South Asia is both national and regional and by now has led to serious intra State and inter State conflicts too. Especially when these countries have been together in the past and even when divided lived with porous boundaries that to date have socio cultural over-lapping, conflicts too become contagious. Therefore

despite its diversity, the whole Indian sub-continent which is now the South Asian Association for Regional Co-operation (SAARC) had been and still remains a politically convergent region.

Thus the statement in respect of the OISL Report tabled at the 30th Session of the UNHRC in Geneva issued on 25 September, 2015 by the prestigious umbrella organisation for civil liberties in India, the People's Union for Civil Liberties (PUCL) that

proudly holds Jayaprakash Narayan as its founding leader and mentor, notes;

"...the government of India should take a consistent principled stand as regards violations of human rights and demands for accountability for commission of major human rights exercise. This is particularly so in cases of human rights violations occurring in countries neighbouring India. It is in this context that PUCL calls upon the Government of India, as a member of the UN Human Rights Council, to move a resolution calling for a credible, independent, international investigation into violations of humanitarian and human rights laws committed against Tamils by the Sri Lankan army during the end stages of the war in May 2009 and the situation thereafter."

This in essence is an opening to revisit the political stand taken on the Indian subcontinent in 1939 by the founding leaders of the Lanka Sama Samaja Party (LSSP). The Ceylonese "Marxists" developed a political theory that for the Ceylonese revolution to succeed, it had to be part of the Indian revolution. But with India lacking a revolutionary party, the LSSP leadership took upon itself the responsibility to develop the Indian revolutionary party. It came to be established as the Bolshevik Leninist Party of India - BLPI [***Tomorrow Is Ours: The Trotskyist Movement In India & Ceylon***, 1935 to 48, Charles Wesley Irwin] The BLPI programme was a very comprehensive document written in 03 long chapters and defined the Indian Congress as "the class party of the Indian bourgeoisie", completely deviating from the Communist and the Socialist Party position of understanding the Congress

as a "multi class platform of people". The BLPI inference was the Indian Congress leadership would not complete the bourgeoisie phase of democratic change in India and thus the necessity to have a revolutionary party.

Juxtaposing this same logic to the present context, we do have contextual differences. That India the BLPI was to liberate is now 03 large separate nations; India, Pakistan and Bangladesh with their own national identities as independent and sovereign States. We thus have to now talk in terms of a SAARC region that would include Bhutan and Nepal as extras in the subcontinent and Maldives out in the Indian Ocean. Yet the old logic remains the same. Democratising of individual countries as single nation States will not be possible, unless the Indian State is efficiently democratised on a SA perspective to take on board the neighbouring countries.

With borders that are no "Berlin Walls" to keep off armed spill overs and cross overs to Indian socio political life, India needs to have first, a stable democratic Pakistan to avoid Kashmir being a battle ground for armed extremism. It needs a democratic Pakistan to avoid Islamic extremist intrusions that would provide "Hindutva" demands for "national security" the justification in curbing democratic rights. Although land enclaves between India and Bangladesh were swapped in May 2015, the border issues would remain with smuggling billions of dollars' worth of goods, narcotics and human labour giving room to a "trigger happy" Indian Border Security Force (BSF) along the world's fifth longest border. This international border runs to over 4,000 kms around Assam, Tripura, Mizoram, Meghalaya, all conflict ridden North-East States and West Bengal. With Nepal's new federal constitution creating massive unrest in two of the newly carved provinces, the Southern Terai region bordering India will be a disturbing factor in

North Indian politics with very porous boundaries. So is Sri Lanka's Tamil nationalism that has often decided the tilt in Tamil Nadu elections. It is so and is reason for PUCL to make a statement on behalf Sri Lankan Tamil people.

It is therefore obvious, the BLPI theory of "collective liberation", now holds true for "collective democratisation" of the whole Indian subcontinent. In this post 9/11 world and in India's post 26/11, "national security" relegates democratic rights of citizens to secondary importance. "National security" gains political coinage in "majority nationalism" as with "Hindutva" in India and "Sinhala-Buddhist" supremacy in SL. "Democracy" in these societies is seen as "anti national" and as space given for de stabilising of the country. All governments thus give "intelligence surveillance" and the military a pride of place in social dialogue in terms of "sovereignty and national pride". What is not paid attention to in the rush is the fact that all governments allow these State agencies to develop their own strategies in curbing "terrorism" that often ignores legal processes. "National security" thus gains importance permeating into the judicial system as well. From arbitrary detention to custodial killings to fake operations, all thus go with impunity, consciously ignored by governments and most leaders opting to live with high security. Over the past decade or so, this social thinking has allowed cross border co-operation on intelligence sharing and surveillance between State agencies.

"Government officials stressed to the Panel the importance, and of being able to share intelligence between countries, particularly with a view to identifying and disrupting the possibility of terrorist acts before they are committed. The Panel was informed that this trend often results in government action being taken on the basis of unsubstantiated intelligence (sometimes gathered by

dubious or unlawful methods) and that many abuses have been documented."(page 10) notes the Report of the Eminent Jurists Panel on 'Terrorism, Counter Terrorism and Human Rights', titled "Assessing Damage, Urging Action" an initiative by the International Commission of Jurists, 07 years after 9/11 terror attack.

This report, the result of an extensive global survey and study carried out by a panel of 08 eminent jurists over a period of 03 years covering North America, Australia, Middle East, North Africa, South East Asia, EU member States, Latin America, also included Pakistan, Bangladesh, India, Sri Lanka, Nepal and Maldives as well. The report concludes by saying this pro State and anti democratic ideology works on 'measures that encourage an "us and them" approach often alienating communities'. And then say, "We need to strengthen, not weaken civil society, if terrorism is to be effectively countered". (page 16)

The issue is, this cannot be achieved by a single country on its own in

South Asia, within its national boundaries. There is geo politics involved too that makes "national security" a priority in addition to 'war on terror'. China's role in moving around India; linking with Pakistan on a new rail track, infrastructure development in Malaysia and Myanmar with road and rail networks and its very strong presence in Sri Lanka also makes neighbouring countries pay more for their "national security" concerns. Governments elected or not, have other reasons too to work on State priorities with "terrorism" used as a cover for shrinking social space. In this region with India also now in the big league with neo liberalism, roaming capital requires stronger State agencies that could reduce social space for protests and agitations, an added political necessity to allocate more for stronger security agencies. State agencies while being given priority for national security with many facets, are also allowed to work together in strengthening each other. What is missing in this complex terrorism based geo political equation

is, the "people's factor". A South Asian "people's factor" within a perspective of "collective democracy" for the region, the BLPI then recognised as "larger" India. It is clearly about strengthening democracy and democracy based on a federated people's movement in South Asia that should bring all social segments the BLPI manifesto spoke of as "social forces"; workers, peasants, students and women. Today the need is also to address a growing middle class and professionals. Stress on a "people's movement" is thought of as necessary, with numerous SAARC initiated interventions ending up as non-governmental organisations working on very selective funded projects with no accountability to society, or even to the professions they at times claim to represent.

Thus for a more open people's campaign, a "South Asian People's Commission for Human Rights" and a "SA Forum on Common Minimum Wage" can be two initiatives that could remove national borders across South Asia.

Human Rights Violations in Tamil Nadu _ A Bird's Eye view

R. Murali & T.S.S.Mani, PUCL Tamil Nadu

Human Rights violations are classified into human rights violations of the state and violations by the non state actors by UN in its Universal Declaration. It is the responsibility of State to uphold and implement international human rights standards. But in Tamil Nadu, we can witness the failure of the state in protecting the human rights of the people. There are many instances of rights Violations by the state machinery in the past one year. Similarly, violations by non state actors are also equally causing damage to civil society by their violation of human rights with regard to gender, caste and religious issues.

Human Rights violations by Tamil Nadu State

Of the recent instances of the State denying human rights is recent arrest of the folk singer Kovan under

sedition charges for challenging the establishment through his songs penned against the J Jayalalithaa-led Tamil Nadu government and its liquor policy is the apt example of the dominant attitude of the Government. His arrest was in violation of a citizen's basic rights. Due to the increased support for Kovan and strong protest programmes conducted by various organisations condemning his arrest the government has gone back from its plan of booking him under sedition charge. Presently he is released on conditional bail.

In 2001, liquor prohibition was lifted in Tamil Nadu and TASMAL became the wholesale monopoly for alcohol. For retail vending, the state auctioned off licenses for running liquor shops and bars. But this led to the formation of cartels and loss of revenue to the

state. Again in October 2003, the government passed an amendment to the Tamil Nadu Prohibition Act, 1937, making TASMAL the sole retail vendor of alcohol in the state. By 2004 all private outlets selling alcohol were either shut down or taken over by the Government. This monopoly established by the ADMK government came into effect on 29 November 2003. The DMK government of M. Karunanidhi which took power in 2006, did not revise its predecessor's policy and TASMAL continues to control the alcohol industry in the state. The increase in the number of liquor shops started ruining the life of many commoners.

The sheer scale of destruction of lakhs of families because of the open sale of liquor by the state itself led to the campaign in favour of 'total

prohibition' gaining momentum across the entire state. Thousands of women's organisations and students bodies joined the spontaneous protests against the liquor policy of the state. However the attitude of the state is revealed by the response of the Police; instead of safeguarding the people, the government and the police started protecting the liquor shops and brutally attacked students and other protesters who raised their voices against liquor shops. Numerous human rights violations by the police have been reported by press and activists. Despite the strong protest movements by all parties and forums, Government is concentrating on increasing the number of liquor shops. But the recent state wide protest programmes in Tamil Nadu are historic of protest movements by people.

Illegal Sand Mining

Illegal sand mining in Tamil Nadu state is of two types: river sand mining from river beds and basins; and sea sand mining from the beaches in the southern coasts from Tuticorin to Kanyakumari. The river sand mining has been on an increase, since the beginning of the 1990s following a boom in the construction industry. Palar River Basin, Vaigai River Basin and Thamirabarani River Basin are the major sites of massive sand mining. Illegal quarrying is happening in these areas in broad daylight. Isolated attempts by local communities to seek legal remedies did succeed to some extent, with courts issuing directions to the State government to regulate sand mining under the provisions of the law. However, the law has often been unable to rein in the greedy among the miners, thanks to their money and muscle power and political influence. Although they should confine their mining operations to the area or areas specified in their licenses and the depth of the mine should not exceed three feet (90 cm), these conditions are seldom respected. In a number of places

they have dug land up to a depth of 18 metres. As a result, the sand they have removed is four to six times the permitted quantum. In some cases mining continues even after the expiry of the licenses. Protests by local communities in the form of dharnas and demonstrations have not had the desired effect.

PUCL's fact finding team could expose the facts with regard to the illegal sand mining in PALAR, a river in Kancheepuram District with the support of the peasants living there. This report has exposed the officials who are involved in this illegal mining. The report appeared in mass media has made the Chief Minister of Tamil Nadu to suspend the District Collector of Kancheepuram and declared a ban on sand mining in that area. But in neighbouring Vellore District, when Dalit youth protested against sand mining in the same Palar river, they had to face the onslaught of unscrupulous miners, corrupt police and compromised administration. Facing numerous prosecutions, youth groups opposing illegal sand mining on environmental grounds had to confront open violence including death threats. In a set of such false cases, PUCL's intervention included exposing the nefarious nexus between miners and officials and also to approach the High Court for appropriate remedies.

Back in 2002, a state-level "public hearing" on the impact of sand mining was organized under the leadership of V.R. Krishna Iyer. While releasing the panel's interim recommendations at a media conference, Justice Krishna Iyer observed that "sand mining terrorism" had created a helpless situation in Tamil Nadu. He hoped that the people's "hunger for justice" would be answered by the Madras High Court. Instead of delivering justice for the people the situation is worsened even after a one and half decade of agitations.

State Sponsored Corruption

Very recently a government Officer - Engineer committed suicide unable to bear the torment and harassment by the then Agriculture Minister and

other officials who were forcing him to collect bribes for appointments. The strong protests which erupted over this led to the arrest of the Minister, Mr. Agri Subramanian and officials. Similarly it is an open secret in the state that no academic appointment can be made without paying heavy bribe in lakhs to the Minister for Higher Education. Corruption is invariably found in all the departments of the state government. This poses a real challenge to the civil rights activists. There are many incidents which reveal the poor state of affairs in Tamil Nadu with regard to the violation of civil and human rights by the Government, and more recently in the context of judicial system too. Some of them are:

- Continuing violence against women, especially professionals involved in the IT and ITES sector. As reported in other cities, in Tamil Nadu also a number of women in IT sector have been sexually assaulted, raped and killed. There are many instances which have not been reported.
- Lawyers who have demanded their right to argue in Tamil in the high court were arrested and punished.
- Lawyers who protested against the implementation of strict-helmet rule were punished.
- In Ramanathapuram District, the Inspector was arrested and booked for killing a person who was taken under custody for enquiry due to the strong protest from the people of that area.
- Similarly, in Tuticorin District, a police official was arrested under Prevention of Atrocities Act for wrongly implicating the innocent marginalized people in a case purposely.
- But it is true that the actions against the culprits have become possible only because of the protest movements of the people.
- It has become the regular feature that Tamil Fishermen's arrest by

Srilankan Navy. Very frequently these poor fishermen are attacked and arrested. The Indian Government has refused to settle this issue permanently with Srilankan Government.

- In a peculiar manner the state government has kept some the Tamil refugees in a special camp as hostages. PUCL has many times condemned this act and demanded the Government to release them. Due to the efforts taken by PUCL members by way of explaining the cases with suitable evidences to the officials, except 12 refugees, all others (around 45-50) were released from the hostage camp in frequent intervals. Rests are in Trichy and Seyyaru camps. In addition to this, Government has stopped dumping refugees in those camps. It is due to the efforts of PUCL the daily allowance for the refugees are hiked from Rs.70 to Rs.100/-.
- When 20 Tamil coolies were killed by the Andhra Police for cutting the Red Sand trees at Thirupathy, PUCL members joined the Fact finding Committee along with other Human Rights organizations around the country and brought out the in human killings of the Andhra Pradesh State.

Non State Actors' Violations

Non state actors' human rights violations are always on the rise. In Southern Districts the caste Hindus dominant over the marginalized people. Especially the Devendrakula

Vellalar youths are taken in to task by the Caste Hindus. Some of the poor youths are even killed. This dominant attitude prevails in the mind of the Caste Hindus because they think that their caste people are in important power centres of the state. Similarly, in the Northern Districts, the Honour Killing is more prevalent. Many murders occurred to protect the prestige of the upper caste. In most of the occasions, Dalit youths are the victims. Hence, PUCL is demanding the Tamilnadu Government to bring an exclusive act to prevent honour killings in the state. Similarly, in a village called Seshapuram in Villupuram District, the Dalit Temple Car was burnt and Dalits were beaten by upper caste people. Similarly in Western Districts, Tamil Novelist Perumal Murugan was taken into task by his own upper caste people by charging him that he has portrayed their caste in a very bad light in his novel. It is a general opinion that the instigation of Sangh Pariwar is the main cause for this incident. Nevertheless, PUCL's legal intervention and lobbying has helped him to get transfer from his place to safe guard his life. In the meanwhile, the Sangh Parivar is propagating among Nadars, Devindra Kula Vellalars and Thevars that the BJP would fulfill their demands, if they support them. Also on the other hand it creates hatred politics among them. Sangh Parivar's role causes deep concern among human rights activists since it would make the entire state a communal one.

The recent floods in Chennai and other parts of the state reveals two troubling aspects related to governance as also responsibilities of citizens both impacting on the right to life of citizens. On one hand the continued disinterest of the government to enforce the laws regulating construction on water bodies, channels and irrigation pathways have been flagrantly violated with the government itself being the biggest violator. Continued negligence of regular maintenance, corruption in the award of tenders and political interference has created conditions leading to a collapse of local administration which effect is seen at the time of disasters, both natural and human engineered. But the apathy of the government agencies is matched by the unacceptable behaviour of the middle classes who knowingly encroach on prohibited water ways thereby affecting the delicate balance of ecology and human habitats. However the scale of citizens' indifference to obey the laws of the land raises the larger issue of the extent to which such middle classes and professional groups may be willing to stand up and oppose violation of human rights in general. A new approach will have to be taken to sensitise and mobilize these sections.

In midst of all these challenges, PUCL Tamil Nadu is attempting to strengthen the human rights movement in the state to ensure it bring justice and peace to the people of the state.

Text of the speech delivered by Shri Sanjay Parikh, Advocate and National Vice President, PUCL at IGNOU, New Delhi on 15.10.2015:

Death Penalty: Concerns of Dr. APJ Abdul Kalam

Sanjay Parikh, National Vice President, PUCL

We have assembled here today to celebrate the birth anniversary of our beloved President AP J Abdul Kalam (Oct 15, 1931 to July 27, 2015). A *karma yogi* in the real sense, he left us on 27th July, 2015, while delivering a lecture at IIM Shillong. He was the

11th President of India and the third recipient of the highest honour - *Bharat Ratna*. He was also known as the Missile Man- an architect of India's missile programme. But above all, he always took pride in claiming that he is essentially a

teacher. I remember once he was invited to speak at a programme in the Supreme Court. He spoke about the relevance of Law before an audience consisting of Chief Justice of India and Supreme Court Judges. He was quite at ease and was

putting questions during his speech to the audience as if he was taking a class! He was an embodiment of goodness, magnanimity and knowledge. He wanted people to change through realization of their inner power and strength. He was admired and loved by all, especially by the children. He was indeed one president who had won the hearts of millions of people of this country. There are several facets of his personality. I am touching only one aspect i.e. whether death penalty be abolished and what were the views of Dr. Kalam on this very complex subject. I say complex because the subject of death penalty encompasses not only law but also the moral and ethical principles, evolution and acceptance in the society of certain values in respect of sanctity of life. One thing which has, however, clearly emerged is that our criminal justice system is in a mess and suffers from such subjective arbitrariness and weaknesses that it seems to be difficult to say with certainty that justice has been done to those convicted and sentenced on known principles. It is difficult to gauge what the correct approach should be in such a situation when the death penalty by its very nature is irreversible.

Dr. Kalam, as the President of India (2002-2007), had before him 28 pending mercy petitions. He decided only two during his tenure. The mercy petition of Dhananjay Chatterjee, who had raped and murdered a young girl, was rejected by him in 2004. But, the mercy petition of one Kheraj Ram, convicted for murdering his wife and children in a village in Rajasthan was accepted. He did not decide other mercy petitions, including that of Afzal Guru. I am sure being a sensitive person, he must have done some introspection as to why he accepted one and rejected the other mercy petition. May be it was troubling his mind, because after

demitting his office, he wrote a letter to the Law Commission of India, expressing his opinion against the death penalty. In the book "Turning Point: A journey through challenges", he admitted that confirmation of capital punishment was a difficult task for him. He wrote:

"One of the more difficult tasks for me as President was to decide on the issue of confirming capital punishment awarded by the courts after exhausting all processes of appeals. As a substantial number of cases have been pending in Rashtrapati Bhavan for many years, it is one inherited task that no President would feel happy about."

The following opinion of Kalam his penetrating insight to reason out why death penalty should be abolished:

"We are all the creation of God. I am not sure a human system of a human being is competent to take away a life based on artificial and created evidence"

These words are extremely significant and we will presently see how globally the consensus for abolition of death penalty is emerging owing to it being based on incompetence of a human system with its subjective prejudices and biases.

Till date 150 countries out of 198 have abolished death sentence. In the US 18 out of 50 States have abolished the death penalty. UN General Assembly has adopted the Resolution 2/149 calling upon countries which still retain death penalty to observe moratorium till its abolition. However, India is one among 59 countries which continues to retain the death penalty.

There are many aspects of death penalty, which are presently being debated world over: its deterrent effect, relevance of retribution and reformation. I am, however, confining myself to the utter arbitrariness in the system, which call for its abolition.

It was in the case of *Bachan Singh* (1980), that the Supreme Court decided upon the constitutional validity of death penalty. The majority found it valid on the reasoning that it should be awarded in the rarest of the rare cases. Justice Bhagwati disagreed and gave a powerful dissenting verdict. He looked into the legal, moral, ethical and philosophical aspects of death penalty and also what other countries think about it. He found the death penalty unsustainable, among others, on the ground that the entire criminal justice system, from investigation to conviction, suffers from so many weaknesses, inherent in the system as well as in the human beings manning it that giving death sentence becomes an exercise in arbitrariness.

But is it true that nowhere in the world we can find a system which runs perfectly, with minimum or no possibility of an error as well as people who run it are totally objective, free from their personal bias in doing justice?

Hugo Bedau, in his well known book, "The Death Penalty in America", documented as many as 74 cases since 1893 in which it was proved beyond doubt that persons were wrongly convicted of criminal homicide. 8 out of these 74, though innocent, were executed. The jurist, Olive Croix, by applying, a calculus of probabilities to the chance of judicial error concluded as far back as in 1860, that approximately 1 innocent man was condemned out of every 257 cases. It is known that the Evans case in England where an innocent man was hanged in 1949 played a significant role in the abolition of capital punishment in that country. These facts were noticed by Justice Bhagwati in his dissent in *Bachan Singh*. What he said about the criminal justice system in 1980, is true even today; in fact, it has become worse. He said that 'howsoever careful may be the procedural safeguards erected by

law before death penalty can be imposed, it is impossible to eliminate the chance of judicial error. No possible judicial safeguards can prevent conviction of the innocent". He gave several reasons why innocent men are convicted of crime:

"Students of the criminal process have identified several reasons why innocent men may be convicted of crime. In the first place, our methods of investigation are crude and archaic. We are, by and large, ignorant of modern methods of investigation based on scientific and technological advances. Our convictions are based largely on oral evidence of witnesses. Often, witnesses perjure themselves as they are motivated by caste, communal and factional considerations. Sometimes they are even got up by the police to prove what the police believes to be a true case. Sometimes there is also mistaken eye witness identification and this evidence is almost always difficult to shake in cross-examination. Then there is also the possibility of a frame up of innocent men by their enemies. There are also cases where an over zealous prosecutor may fail to disclose evidence of innocence known to him but not known to the defence. The possibility of error in judgment cannot therefore be ruled out on any theoretical considerations. It is indeed a very live possibility and it is not at all unlikely that so long as death penalty remains a constitutionally valid alternative, the court or the State acting through the instrumentality of the court may have on its conscience the blood of an innocent man."

What Justice Bhagwati said in his opinion, came true when the Supreme Court gave judgment in *Ravji's case* (1996). It said, contrary

to the principle laid down by the Constitution Bench in *Bachan Singh*, that punishment to be awarded for a crime should be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". On this erroneous understanding of law, as applicable to the sentencing exercise, death penalty was given in *Ravji's case* and he was duly executed. Unfortunately, this erroneous view was followed subsequently from 1996 till 2009 in several judgments and even thereafter. It was in the case of *Santosh Bariyar* (2009), this blatant (in fact unpardonable) error was pointed out and how this error misled the highest court in doing justice (rather injustice). In the same case, the Apex Court expressed its helplessness in deciding as to whether death penalty should be awarded or not, and that this exercise "becomes extremely difficult, if not impossible". It was admitted that there is no uniformity of precedents and in most cases, the death penalty has been affirmed or refused without laying down any legal principle. Faced with this confession that judicial error is unavoidable, the Court further pointed out that the uneven application of law has given rise to a state of uncertainty in capital sentencing law, which violates the constitutional rights and the equality principle. It was further said that the legal discretion to award death penalty can be sustained only if there is any indication, either through law or precedent as to the scope of the discretion and the manner of its exercise. This was indeed an honest admission by the Apex Court and should have led to reconsideration of *Bachan Singh's case*.

Though the Court did not refer the matter for re-consideration, however, on July 25, 2012, Fourteen former

judges addressed a letter to the President seeking his intervention to commute the death sentences of thirteen convicts lodged in various jails across the country. In this rather unusual appeal it was pointed out that two prisoners who had been wrongly sentenced to death, *Ravji Rao* and *Surja Ram* (both from Rajasthan), had been executed on May 4, 1996, and April 7, 1997, respectively, pursuant to the flawed judgments. The judges lamented that it will be known as the gravest known miscarriage of justice in the history of crime and punishment in independent India. They added that the Supreme Court's admission of error had come too late for those who were already executed.

The Law Commission in its 262nd report has relied upon the views expressed throughout the world about the need for abolition of death sentence, particularly on the point that it is not possible to remove the arbitrariness and subjectivity in awarding death sentence. The Law Commission Report, however makes an exception to the terrorist offences. It is, however, difficult to understand that if abolition of death sentence is pleaded on the ground of the criminal justice system being lacking in necessary safeguards, how any exception can be made. It is virtually an argument in self-contradiction. How equal applications can be denied to some convicts because of the nature of offence committed by them. The situation in India, therefore, is that the death penalty remains in the statute book and it is required to be seen whether the legislature of the country will take the first step to remove death sentence from the statute book or the judiciary will take lead following the recent developments to overrule its judgment in *Bachan Singh*, thereby, holding against the award of death penalty and joining the 150 nations who stand against death penalty.

Yet another interesting angle surfaced in the joint report of Amnesty International India and People's Union for Civil Liberties (Tamil Nadu and Puducherry) in 2008 titled "**Lethal Lottery: The Death Penalty in India**". The Report pointed out the selectiveness in awarding death sentence against the marginalised. The report said: "The arbitrariness is fatal, but it is also selective and discriminatory.... It goes without saying that the less wealth and influence a person has, the more likely they are to be sentenced to death." The Report relied upon Justice Bhagwati's dissent in *Bachan Singh*, that "death sentence has a certain class complexion or class bias in as much as it is largely the poor and the downtrodden who are the victims of this extreme penalty. We would hardly find a rich or affluent person going to the gallows". Justice Bhagwati also referred to Warden Duffy who said that Capital Punishment is "a privilege of the poor."

The glaring flaw as to how convicts in similar factual scenarios were awarded different sentences has also been pointed out in the said report. Dharmendra Singh (2002) and Kheraj Ram (2003) were sentenced to death because they killed their wives and children, suspecting infidelity. The former was sentenced to life, the latter to death. Vashram (2002) and Sudam (2011) murdered their wives and children because of "nagging". The former's sentence was commuted; the latter was sent to the gallows. Mohan (2008) was sentenced to death for the rape and murder of two minor girls, having earlier been convicted twice. Sebastian (2010), described as a violent paedophile with previous convictions for molestation, kidnapping, rape and the murder of a young child, was given life imprisonment for yet another rape and murder of a child. In two cases of child sacrifice, the court commuted

the death penalty in one but upheld it in the other.

Asian Centre for Human Rights in its report has pointed out that the EU has been under intense pressure not to agree for extradition of any more potential death penalty cases to India, ever since Germany deported Devender Pal Singh Bhullar who was promptly arrested and later sentenced to hang. The ACHR report notes that "(t)he EU is unlikely to extradite any terror suspect without guarantees from the Government of India that death sentence shall not be imposed on the deportees. Following the death sentence on Bhullar, the jurisprudence against deportation without guarantees for non-imposition of death sentences has further been strengthened across Europe. Thus international pressure is building against nations who still retain death penalty.

It is worth narrating an interesting debate surrounding the case of Richard Glossip in the US, a country where more than 1400 convicts have been executed since 1976. Richard Glossip was sentenced to death for a murder, which as per record, he did not commit. He was convicted solely on the testimony of the murderer, who confessed to using a baseball bat to put the victim to death. In the testimony he involved Glossip by stating that Glossip had pressurized him to commit the murder. In exchange for this testimony, which it is claimed, was coaxed by a police interrogator, he got a sentence of life in prison rather than death. In January, 2014 the Supreme Court stayed Glossip's execution so that it could hear a challenge that he and other death-row inmates had made against the use of the drug midazolam as the anaesthetic in a three-drug lethal-injection procedure, before the other drugs were administered to paralyze the inmate and then to stop the heart. This came in the light of a botched execution in 2014, where midazolam was used as an anaesthetic and

because it was not effective, the inmate suffered searing pain, which exactly is prohibited by the Eighth Amendment of the American Constitution- that is, the clause prohibiting the infliction of "cruel and unusual punishments". The US Supreme Court, thereafter, upheld the constitutionality of the lethal injection 5-4. The Court said that Glossip's lawyers had not shown that the State had a better option than midazolam or that the use of midazolam with the other drugs was "sure or very likely to result in needless suffering.". But the reason why this case is perceived as a turning pointing the international debate against death penalty is Justice Stephen Breyer's dissent which encapsulates his points of arguments against the death penalty on: "(1) serious unreliability, (2) arbitrariness in application, and (3) unconscionably long delays that undermine the death penalty's penological purpose. Perhaps as a result, (4) most places within the United States have abandoned its use."

Richard Glossip was to be executed on 30th September 2015, in Oklahoma, USA. According to the Oklahoma Rules, a death convict has to be given a drug cocktail which causes imminent cardiac arrest after paralysis. It was however, discovered that officials instead had procured a wrong drug. On account of a wrong drug to kill a death convict, a stay was again granted against the execution. It is incomprehensible that a State can be so casual in the matter of life and death. Yet another cause which has triggered the debate to abolish death penalty in US is the execution of a woman Kelly Gissendaner on 30th September, 2015 in Georgia after 70 years.

Therefore, unless the criminal justice system takes care of all these serious shortcomings (others could be pointed out in addition to these) and eliminates the judge-centric

subjective approach resulting in arbitrariness and discrimination, the death penalty should itself be kept in the dock. There ought to be a mechanism which assures that meting out death as a punishment is not couched in uncertainty and it is not a game of chance; that it has been done objectively and after fairly taking into account the mitigating circumstances, unaffected by the collective view of the society. Till this is achieved, there should a complete moratorium on award of death sentence. If ultimately, all the processes commencing from investigation to sentencing by the highest court are still found to be having lurking doubts as to individual biases and subjectivity coming in the way of the sentencing exercise, it will be not only be safe but fair that the death penalty should not be awarded.

But independent of the above arguments, which essentially looks at the lacunae in the adjudication process, the moot question is whether the death penalty is justified in view of Article 21 of the Constitution protecting life and human dignity. If the procedure as mentioned above is fraught with the danger of arbitrariness and unfairness, it will not be just, fair and legal under Article 21. The State cannot support or justify award of death sentence on the ground of retribution or revenge. These human traits cannot be attributed to the State. The State should always stand by welfare principle acknowledging that life is sacrosanct. The State can, in no circumstance, be revengeful. Looking at it from a different angle, the existence of death penalty in the statute book and the possibility of award of death sentence, very often satisfy the retributive wish of the society, which in turn develops a mind set in favour of death penalty. Such a mindset fails to see reason

or rationale. Essentially, countries which have abolished death sentence have changed their mind set that retribution or revenge does good neither to the individual nor to the society. The belief that death sentence acts as a deterrent has proved to be wrong on the basis of studies which have been conducted recently. The question of morality and ethical arguments in support of death penalty or against it become meaningless when the State recognises itself as the protector of life.

Secretary-General Ban Ki-moon while urging for abolition of death penalty said that the death penalty has no place in the 21st century. He argued: "The taking of life is too absolute, too irreversible, for one human being to inflict on another, even when backed by legal process." He added, "We have a duty to prevent innocent people from paying the ultimate price for miscarriages of justice. The most sensible way is to end the death penalty." Seeking co-operation of all the States he urged, "Together, we can finally end this cruel and inhumane practice everywhere around the world," At the end, let us recall what Dr. Kalam said on death penalty and what I quoted in the beginning. He said:

"We are all the creation of God. I am not sure a human system of a human being is competent to take away a life based on artificial and created evidence."

In my humble view, Dr. Kalam had summarized the entire debate on death penalty in few words so beautifully.

Let us remember the great visionary on this occasion.

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