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PUCL regrets to inform its readers about the sad demise in Delhi on 19th January, 2015 of its Former President, Prof. Rajni Kothari, one of India's greatest political scientists, human rights activist and outstanding human beings.

Tribute to the former President, PUCL Prof. Rajni Kothari, (1928 to 19.1.2015)

PUCL is deeply saddened by the news of the death of one of its stalwart founders and former National Presidents, Prof. Rajni Kothari on 19th January, 2015 in Delhi. The entire PUCL family expresses its deepest sense of condolence to the family members of Prof. Kothari and would like to record its gratitude and appreciation for the contributions of Prof. Rajni Kothari, not just to PUCL and the human rights movement in India, but to democracy in India itself.

A great thinker and intuitive institution builder, Rajni Kothari was an intellectual giant with an innate grasp of grassroots realities, and the myriad ways in which democracy is shaped by people and communities at the bottom of India's society. Much before the rest of India woke up to the deep social churning taking place in the nooks and corners of India and its political ramifications especially to issues of caste mobility, politics, conflict and democracy, way back in 1961 Rajni Kothari published a 6-part set of essays, "Form and substance in Indian Politics" which were published by the Economic and Political Weekly. Over the next 50 years, Prof. Kothari tirelessly and vigorously interrogated a variety of key political concerns: caste and communal politics, civil liberties and human rights, democracy and development, to name just a few. Prof. Rajni Kothari had a unique gift of at once integrating high political thought and imagination with an acutely sensitive feel of social and political realities at the bottom of Indian society. He was both a towering intellectual while also remaining constantly anchored to grass root realities. Respected as one of India's finest political scientists and theorists of Indian Democracy Rajni Kothari leaves behind a vast corpus of written works including, 'Caste in Indian Politics', 'Rethinking Development: In Search of Humane Alternatives', 'State against Democracy: In Search of Humane Governance', and 'Rethinking Democracy'.

Prof. Kothari was a visionary institution builder and left his stamp in a number of important institutions of higher learning and knowledge including the Centre for the Study of Developing Studies (which he founded), ICSSR, Planning Commission and other bodies. During the Emergency period, Rajni Kothari closely associated himself with Jayaprakash Narayan and played a key role in the formation of 'Citizens for Democracy' and the PUCL. He was the national General

Secretary of PUCL between 1982-84 and later the National President between 1984-86.

Rajni Kothari will be most remembered for being the co-author of the PUCL-PUDR Report "Who are the Guilty" which examined the anti-Sikh riots that swept Delhi in the wake of the assassination of then Prime Minister Indira Gandhi. The Report meticulously documented the manner of spread of the anti-Sikh pogrom in Delhi from 31st October to 10th November, 1984 and boldly named powerful Congress politicians, then in power, for having masterminded and led the anti-Sikh pogrom. The Report remains an important source of reliable information and documentation of the way in which the government apparatus and political forces conspired to engineer caste an communal violence and massacres. Today, 30 years after the gory massacres of Sikhs, the Report is a testimony of the grit and determination of democrats who will not be cowed down from exposing the truth of events to the citizens of the country.

PUCL would like to salute this stalwart of the human rights movement by remembering something Rajni Kothari wrote many years back which is still relevant to India today:

"There is discontent and despair in the air-still highly diffused, fragmented and unorganised. But there is a growing awareness of rights, felt politically and expressed politically, and by and large still aimed at the State. Whenever a mechanism of mobilisation has become available, this consciousness has found expression, often against very heavy odds, against a constellation of interests that are too powerful and complacent to shed (even share) the privileges. At bottom it is consciousness against a paradigm of society that rests on deliberate indifference to the plight of the impoverished and destitute who are being driven to the threshold of starvation-by the logic of the paradigm itself".

The greatest tribute PUCL can pay to its departed former President is by rededicating ourselves to the spirit of democracy and human rights that Prof. Rajni Kothari always epitomised and continue our struggle to 2 key issues Rajni Kothari always fought for: to protect and promote dignity of the most marginalised and excluded of India's people; to democratise development and deepen democracy.

V. Suresh, National General Secretary, PUCL □

Note: In this and the next issue of the 'Bulletin we shall carry reports from the 12th PUCL National Convention held in Patna on 6th and 7th December, 2014. The following report summaries the discussion and key issues of human rights concerns which emerged in the plenary session of the Convention. We thank Prof. Vinay Kanta for very succinctly and evocatively summarizing the discussions for the benefit of all PUCL members who could not come to the Convention and other readers. General Secretary.

XII National Convention, Patna, 6-7 Dec, 2014

Key Concerns & Issues Emerging in the National Convention

Vinay K Kantha, Vice-President, PUCL

I. Context

In the 1993 Vienna Conference on human rights, the then Secretary General of the United Nations, Mr. Boutros Boutros Ghali described human rights as a 'common language of humanity'. Noted jurist Upendra Baxi commented thereupon, "Whether or not a world bursting forth with human rights norms and standards is a better world than one bereft of human rights languages still remains an open question". Two decades after that historic Conference, it is a moot point as to how much there is respect for human rights in India today, considering that the State system is increasingly and continuously wary of human rights, though formally acknowledging and instituting it on the periphery of the system. The tasks before human rights activists in general, and PUCL in particular are getting more and

more complex. These, and many of the immediate and emerging concerns, were debated in the XIIth PUCL Convention which took place in Patna on 6th and 7th December, 2014.

Before enumeration of the great variety of concerns and issues that emerged in the discussions held at the Twelfth National Convention of PUCL at Patna it is important to take stock of the present context of India. Indeed, in addition to the existing problems, there are new elements getting added to both the nature of state and society, which may be indicatively illustrated as follows:

(a) Change in the nature of STATE: While the nature of State has been continually changing rapidly in the recent times, the contemporary changes are more comprehensive and the impact could be far-reaching. Pro-

majoritarian politics & pro-corporate economy define a dangerous mix which emerges with the new regime in power. Unfortunately the State generally seems to acquire a pronounced partisan character against the common man, and sometimes even against democracy and constitution, and this trend may quicken in near future. There is evidence of growing militarization of state, at least in some parts of country, where there is some kind of extra constitutional challenge being faced.

(b) Problems of society are both old & new: If hierarchy vs equality is an old dilemma in modern times, media and technology affect social values and generate new problems. Not to speak of the political class or corporate, even common man

is indifferent to the issues of human rights. It is not part of his concerns or consciousness.

II. Types or the nature of concerns can be classified under different heads as follows

- (a) **State-related:** Concerns relating to constitution or laws, policies, programmes & their implementation fall in this category. Implementing agencies or functionaries constitute arguably the most important source of human rights violations. There are various laws and policies already in place, but they are neither adequate or clearly defined, nor properly executed or implemented. Sometimes laws are flawed, and often policies are warped. Raising of new units of armed police, training in difficult terrains for different kinds of warfare within India specially designed operations against some groups etc may not augur well for a democracy. Further, economic policies, especially the ones designed to promote development may end up serving the interests of a few over many. There are issues to be identified and interventions to be planned. More studies needs to be undertaken to understand these issues in depth.
- (b) **Societal:** Traditionally there are social norms, which appear to be retrogressive, whether they pertain to social hierarchy or patriarchy. The constitutional principles, even when clearly enunciated, are often ignored and society seems to be moving in an opposite direction, at least among the middle class. Treatment of dalits is one such example. New social malpractices also arise which don't promote or support well-defined human rights.
- (c) **Ideological-educational:** The ideological agenda of civil liberties is weakened, threatening peace and universal progress. Possibly the

apparatus of state is not available to humanitarian ideology as it was noticeable in the early years after independence, when the constitution was drawn up, with a view to bring about a social transformation in India.

III. Issues emerging from discussion

These concerns throw up a new set of challenges, in addition to the old ones, before those who are committed to human rights of each individual. The violations are more pronounced in respect of vulnerable groups in the society. Participants at the convention identified a large number of issues, which need attention, which in turn may be classified under the following heads:

State-centric- With respect to Laws, policies, programmes

- (a) **Opposing violations under the constitution, laws and international charters on human rights:** There are several rights or entitlements which are already accepted by the State and still getting violated on a daily basis. Indian constitution lays down basic principles in its preamble, and goes on to give definite rights to the people, several in the Part III as fundamental rights, and some in other parts including Part IV. Police arrests ordinary people without any evidence of their committing any crime, and let go after collecting money. Many persons are kept in custody even without making arrest, torture in police custody is a common phenomenon. Apart from several domestic laws, there are international charters like Universal Declaration of Human Rights and subsequent ones. So the problems relate more often to the implementation aspects, both in respect of ordinary laws and special ones. Everyday encroachments on a variety of civil liberties of common man come under this category. These violations differ from one

group to another, or one place to another. Problems are different, and usually more acute in the zones of conflict.

- (b) **Claiming new rights or protecting the settled ones: like right to food, information, employment, privacy etc.**

There are implementation gaps, as in respect of RTE Act, and sometimes attempts have begun for their curtailment as well. This is being noticed with regard to labour & environmental laws, or RTI Act.

- (c) **Expanding rights:** where they do not yet exist or are ill-defined. This will also include seeking amendments to existing programmes or legislations, e.g., Right to health & sanitation, Right to service etc.

- (d) **Cross-cutting issues:** like the problem of corruption, misuse of public money; appointment & functioning of public functionaries. For example, the manner and choice of heads of government departments or agencies (say, CBI, IB, R & AW etc) or bodies like NHRC/SHRC, ICHR, ICSSR, CBSE etc. sometimes seem to be meant to promote the interest or agenda of individuals or parties.

Primarily Society-related

- (a) **Question of dignity of common man:** In Indian society the common man is often denied his/her dignity as promised in the preamble to the constitution or international charters on human rights. Such denials are characterized by neglect (say, with respect to the disabled), discrimination (e.g., faced by dalits most often); or even hostility (as evident in case of minority communities). If caste is an age-old all India reality creating birth-determined inequality, communal divide has widened in recent times due to politics. (b) **Gender-based issues:** Patriarchal social thought or violence against women in several new forms are basis for gender-related

violations of rights. If girl foeticide or dowry deaths were old stories, acid attacks relatively new form of reprisal and violence against women. In fact, attitudinal changes and greater awareness are much needed in the society. **(c) Child-related issues:** Despite clear enumeration of child-rights under Convention on Rights of Child, ratified by Government of India, child labour and her maltreatment are rampant in the society. Malnourishment of children is a widespread phenomenon. New social evils like trafficking, especially of the girl child, and pornography involving children are growing.

Ideological-educational-addressing both State & Society

(a) Respect for diversity & composite culture:

Communalism emerges as the most formidable challenge with State tacitly (sometimes brazenly!) supporting it and society coming under its sway. Occasionally there are other parochial sentiments expressed by marginalized groups or people in remote areas, often in reaction. Communalisation of social consciousness leads even to riots, or caste discriminations result in social disharmony or acrimony.

(b) Social justice/ equity/ dignity:

There are several marginalized groups, variously constructed, starting from older constructs like dalits, tribals, backward classes to newer categories like mahadalits, transgenders etc. Women, children, disabled etc are also denied dignity or equity. It may be necessary to disaggregate these categories further and suggest/ plan/ promote/ catalyse interventions.

(c) Development debate: New debate which expands the concept by greater stress on the needs of the vulnerable sections in respect of food, shelter, health care, education etc, or offers critiques in the context of threat

to ecology and environment, sometimes with potential of great tragedy, as evidenced in Bhopal or feared in Koodankulan and many other nuclear power generation plants. Migrant workers' problems are increasing particularly from the backward regions or groups to more so-called developed places. Displacement issues are emerging in newer areas or around new development programmes, sometimes at the behest of the corporate sector.

(d) Control and use of natural resources:

Attempts to control and/use natural resources like land, forests, mines, water etc have emerged as one of the most contentious issues taking variety of forms, e.g., Land rights and issues of acquisition, or allotment of water rights, sometimes mediated by the State in favour of the corporate sector (say, as in SEZ); sometimes as an alleged price for development, without caring for cost-benefit analysis for the rich and the poor. Forests and mines have become most contentious issues where the interests of the locals are being overlooked or superseded. While land reforms have been conveniently put on hold, the law governing acquisition of land has been simplified recently. Displacement has been an old issue, which has assumed a different character and scale now, calling for enquiry and intervention.

(e) Transnational or cross-border issues with bearing on human rights of Indians:

The differential treatment accorded to different set of refugees also agitates the minds of some groups, e.g., Tamils in Tamil Nadu feel that Sri Lankan refugees are not given the same treatment as Tibetan refugees. Bengali Muslims from Bangladesh are arguably another neglected lot.

(f) Definitional clarity: Finally, there is an all-round need of proper understanding and appreciation of terms like 'civil liberties' and 'human rights' in contemporary context. If the second World War provided the back drop for the enunciation of human rights globally, in India PUCLDR was created after emergency days. Context today is different and calls for redefinition of terms, apparently in a broader sense.

IV. Engaging State and Society

Great and numerous efforts are needed in several forms by human rights activists, augmented by the efforts of those working in niche areas. PUCL's role may be different, with its primary focus on human rights issues, or own style of functioning. Civil rights per se may have been more immediate concern when PUCL was founded, but today either it has to be interpreted as a broader concept, or even otherwise, human rights issues of all kinds should be considered within its area of work. After all even civil liberties cannot be substantially guaranteed, unless people are assured of their basic needs. There should not be any doubts in this regard at this stage of its development. Likewise greater clarity is needed and maybe position papers/ alternative policy documents are prepared on subjects where PUCL members are themselves active. In other areas our own studies, enquiries and education will be desirable.

Fact finding enquiries are very effective means of unravelling ground realities, and it has remained an important instrument. Dissemination of ideas is very important, through publications or otherwise. Submission of reports/ demands to concerned State authorities or State-created bodies are necessary, while legal intervention has to continue to be a major tool, considering the composition and commitments of PUCL. In fact some of the PILs filed by PUCL has been widely acclaimed and given visibility to the

organization, like PIL relating to right to food or election-related petitions.

V. Failures and lessons learnt

While national or State units of PUCL has been voicing most of these concerns at one place or many, but their interventions remain weak and do not have any significant effect on many issues. It is imperative to do some honest soul searching and locate our own weaknesses so that necessary corrections are made, wherever possible.

In the discussion several weaknesses were reported, which may be summed up as follows:

- a) Even when some decisions are taken and some initiatives are there the follow up programmes are weak. There is an apparent lack of communication between national office and states on the one hand, and between state level structures and districts. It is true that issues, concerns and priorities may be different across the states, but there are concerns with all India significance, where concerted action is desirable. At both levels, national and state, follow up is a weak part of PUCL strategy.
- b) There are gaps in intervention in cases taken up for enquiries,

or there is a lack of clarity in many areas, making it difficult to translate the complaints into action.

- c) This may usually be due to organizational weaknesses, or our slack style of work. Membership is not large enough or sufficiently active. Many members are individuals who are otherwise employed in some work of their own, and hence they are unable to devote full time to the organization. Hence the need of new recruitment of members, particularly from the youths on the one hand, and vulnerable groups like minorities, women, dalits and tribals on the other hand.
- d) In fact there is also a disconnect between PUCL constitution and its functioning in many states. Informal training of new members, sometimes focusing on PUCL constitution, and seeking their involvement in various tasks may help.
- e) Due to the weaknesses of organization and strategies, despite such painstaking honest and fearless work of many stalwarts over decades its reach is limited and there is inadequate dissemination of human rights

issues.

- f) A major part of PUCL work is educational or ideological. Different groups may be constituted tasked with the responsibility of preparing position papers with critiques or alternative formulations on some of the key issues. Help may be sought from the individuals and groups working in that area, within the PUCL or even outside. Further, appropriate strategies will need to be worked out widest dissemination of ideas and activities keeping in focus PUCL. Apart from publications, use of information technology can facilitate wide and timely dissemination in a cost-effective manner.

Linkages with other groups is also problematic, because PUCL has a distinct identity and approach, which it will not like to dilute. Yet there are strengths on which we need to work. PUCL enjoys enormous goodwill and its credentials are impeccable. Its support may come from sensitive individuals cutting across parties, ideologies or communities. Specific issues are being taken up by various civil society organizations today, giving it wider publicity. □

A notable point of the 2014 Patna PUCL National Convention was the discussion on 5 thematic areas of human rights concerns. The 5 thematic discussion groups were: (i) 'Human rights violations under ordinary laws'; (ii) 'Draconian laws, state terrorism and impunity'; (iii) 'Communalism, communal violence and State response' (iv) 'Development process, ecology and human rights issues'; (v) 'Human rights violations of marginalised communities: Dalits, tribals, women, sexual minorities and others'. Because of space constraints as also the need to give adequate space for reporting from activities of PUCL state units, we are carrying the reports of 2 thematic groups in this and the remaining three in next month's issue of the Bulletin. We hope that the reports will be used to initiate discussion on the key thrust areas of human rights concerns that PUCL should be engaged with and take up in the next 2 years within each state / district unit. We invite all the State General Secretaries to take the lead to initiate such discussions and to share reports through the Bulletin to all our members, readers and friends. *General Secretary*

Report of the Discussion in the Sub-group:

Draconian Laws, State Terror and Impunity

Sudha Bharadwaj, National Secretary, PUCL

Our group consisted of 17-18 persons from the states of Tamil Nadu, Bihar, Jharkhand, Uttar Pradesh, Karnataka, Chhattisgarh and Rajasthan. The participants were social workers, lawyers, students, peasant activists and prison rights activists. The discussion was quite

lively despite language barriers and had to be cut short for paucity of time. We have given below our observations on various issues and some suggestions for future actions/campaigns of the PUCL.

1. It was reported that there are about 6000 adivasi undertrials in

Jharkhand, most of whom are ordinary villagers incarcerated in Naxal offences; the situation in Bastar is similar with between two to three thousand adivasi undertrials. Though technically these cases may or may not be under special laws

such as the 17 Cr. Law Amendment or the CSPSA, they form a category where we see abuse of the criminal justice system.

There are more than 200 detainees under the Unlawful Activities Prevention Act in Jharkhand, again many of them are protestors against mega "development" projects. Despite the repeal of POTA, in Jharkhand some 8-12 persons are still facing trials under the old draconian POTA act having many unconstitutional provisions like admissibility of a confession before a police officer. It was also noted that by a vague inclusion of "fronts and formations" of banned organisations under the UAPA, many mass organisations were being criminalized.

In Bihar it was reported that there is widespread misuse of the state Crime Control Act (popularly known as the Goonda Act). Similarly it was stated that in Tamil Nadu, there is wide abuse of the preventive detention laws. Typically the Advisory Board/ Committees constituted under such laws, which are a constitutional requirement, endorse orders of detention mechanically without reasoned consideration of material on record (if there is any!!).

A representative from Jashpur, Chhattisgarh stressed how apart from the laws dealing with public order or security, even through draconian laws like the Coal Ordinance or the proposed amendments to environmental or acquisition laws, people, especially tribal people living in scheduled areas are being deprived of their rights to land, access to forests and their livelihoods.

The abuse of Sections 121 and 124A (Waging War and Sedition) is common even in the cases of democratic dissent. One of the participants described how he is being tried for sedition for publication of a pamphlet.

The PUCL should certainly participate in the campaign for the

repeal of AFSPA even though there are not active PUCL units in the areas directly suffering under this Act.

2. There was considerable discussion on the issues of prisoners.

It was stressed that PUCL needed to highlight not only the plight, but also the democratic agitations of the prisoners against ill treatment, torture, corruption and brutality. We were heartened to hear that the prisoners of Patna and Aurangabad jails had gone on long hunger strikes demanding the release of Irom Sharmila, a fact that was not highlighted in the media.

The group noted that dalits and Adivasis, who comprised 39% of the population, made up about 53% of the prison population, showing the lack of access to justice and also inbuilt discrimination in the criminal justice system.

The situation of political prisoners is even more serious. An allegedly Maoist prisoner Ajay Kanu is being kept in solitary confinement in the Patna Beur jail. Similarly Pramod Mishra is being made to rot away in Aurangabad jail. These prisoners are not produced regularly in courts leading to enormous delay in trial. Repeated re-arrests of political prisoners is a common phenomenon, where they are not tried concurrently despite having been available for trial for years together. The cases of Gopanna and Padmakka in Bastar, who were acquitted in earlier cases and re-arrested in other old cases after about 8 years of incarceration are examples of this.

It was felt that nowadays each time the Parliament or the Cabinet meets it is to take away some or other hard won right of the people and in the next two years we will be seeing large numbers of people and their leaders incarcerated in struggles over jal-jungle-jameen, thus prisoners rights is an area in which we need to be more active. Examples were given from Karnataka where when the

Ryot Sangh protested against the Electricity Bill, and a leader was subject to so much torture that his kidney was damaged. In Bihar similarly there was a police firing in Madangir Block in which 12 persons were killed, this was investigated by the PUCL.

Particularly regarding the recent Apex court judgment regarding the implementation of Section 436A, it was felt that jails were not maintaining proper and necessary records for undertrials to obtain relief under this section, nor was this information being provided under the RTI Act. It was deplored that when funds are provided for modernisation of jails, this is utilised only for security or construction of barracks, but not in the proper maintenance of prisoners records or medical facilities for the prisoners. Deaths, assaults and even murders are occurring in jails with little recourse for the victims or the families of the deceased.

3. One of the members of our sub group was a young child rights activist. He shared that in the Simdega, Dumka and Gumla districts of Jharkhand, there are a large number of tribal children incarcerated in the observation homes under the Arms Act. Many young adults are also illegally incarcerated along with adults in regular jails. Even juveniles are not directly produced before the Juvenile Justice Board, but are first produced before the CJM like adult offenders. A member from Karnataka spoke about the plight of migrant children who are very vulnerable to sexual abuse even in state institutions.

4. Right to be defended by an advocate is often denied, for instance to sex workers who are also subjected to sexual abuse on arrest and detention.

Participants from UP described how even advocates representing political prisoners faced threats and harassment, thus denying such prisoners a fair trial.

5. It was also discussed that about 74 prisoners are on death row in Bihar, 21 of them in a single case in Bhagalpur. Thus our campaign against death penalty needs to be strengthened.

6. The group felt that although there was an attack on PUCL trying to label its activities as "support to banned organisations", but this was not a new thing. When the PUCL was formed, there were 38,000 political prisoners, many of them belonging to various ML groups. But Shri Jayprakash Narayan had raised the slogan of releasing all political prisoners. So we should not be pushed into a defensive position in this regard rather take up these issues more strongly.

7. Thus it was felt that, while appreciating the necessity of taking up the rights violations of the common masses, there would be none to protest the gravest violation such as fake encounters if the PUCL did not take up the same. It was shared how advocates of PUCL co-operated with the Jagdalpur Legal Aid Group to help the villagers participate in the Judicial Enquiry Commission into the Sarkeguda Fake Encounter which had resulted

in the death of 17 villagers including several minors.

Suggestions:

A. A continuous centralized action programme of protests against all (national and state-level) draconian laws should be taken on an All-India basis - for instance six monthly protests in all the state capitals. The PUCL could take initiative to co-operate with other regional human rights organisations for this purpose.

B. A sub-committee of the PUCL could be formed connected by an e-group to gather all news of violation of prison rights and this be compiled from time to time. On this basis, further PUCL teams could be formed to visit prisons and file PILs for various prison rights. Following up Section 436A nationwide can be a common task for all State PUCL units. For this purpose some of the important prison rights judgments will have to be translated into regional languages. We can ask persons to volunteer to be part of this prison rights group.

C. Particularly for the conflict areas of Central India - Jharkhand, Chhattisgarh, Odisha, Andhra etc., a sub-Committee of the PUCL needs to be formed, since the major

problem is that information is not available. Then the PUCL could come out with a quarterly status of the lives of ordinary persons in these conflict areas.

D. Although the PUCL did start a campaign against Sedition, it could not pick up as much as we wished. The process needs to be reviewed and perhaps a more active commitment of state units would be required. Data collection from the states on cases under draconian laws is also very necessary.

E. We can co-operate with other civil liberties, democratic rights and human rights groups to oppose death penalty, AFSPA and the UAPA since such campaigns are already initiated by various other groups.

F. The issue of impunity has been repeatedly raised in the critique of AFSPA, in the necessity of obtaining sanction even when police/ security forces are accused of sexual violence or other acts which cannot conceivably be considered to be in the course of duty, in custodial torture, deaths and rape, in the issue of registering FIRs in fake encounter cases etc. PUCL can conceive of preparing a statement in this regard to make it the basis of a special campaign. □

Report of the Discussion in the Sub-group:

Development Process, Ecology & Climate Change Issues are Human Rights Issues

Rohit Prajapati, National Organising Secretary, PUCL

In the national convention of PUCL in Patna, Bihar, there was a detail discussion on six thematic issues.

1. Human rights violation under ordinary laws, 2. Draconian laws, State Terrorism and impunity, 3. Communalism, Communal Violence and State Response, 4. Human Rights of Marginalised Communities: Dalits, Tribals, Women, Sexual Minorities and others, & 5. Development Process, Ecology and Human Rights. On the various issues around the Development Process, Ecology and Human Rights

was discuss in the sub-group with the view how the same could be looked at within a framework of human rights. The sub-groups were formed to have focused discussion on various such issues. The idea behind discussion in subgroups was to invite more people to express their views and focused discussion could happen on each of the issues at hand.

In the Development Process, Ecology and Human Rights sub-group, there was lively discussion in which members from Tamil Nadu,

Karnataka, Chhattisgarh, Rajasthan, Bihar and Gujarat participated. The major issues covered were:

1. Forced Migration as an outcome of present development model, large scale displacement by so-called development projects. People who are ousted from their land due to big so-called development projects often have no recourse but to migrate to cities or towns where they have no rights, no community life and often insecure living conditions. Migrant labourers who are

brought to work on the same so-called development projects are often deprived of all of their rights.

2. There is a need to do review the state and government's existing development policies.
3. Environmental issues such as pollution of coast, river pollution, pollution of various water bodies, ground water pollution, flora and fauna in general, biodiversity, sand mining, coal mining, mineral mining, Western Ghats, real estate, water disputes among the states and within communities, depletion of ground water, rights of cultivation in river beds, control over natural resources, implementation of forest rights act and forest land, struggles around mining particularly in Rajasthan and Chhattisgarh, fisheries, contamination of food, organic farming, rain water harvesting, awareness among the people on the issue of environment, alternative energy sources such as solar, wind, tidal power and alternatives with reference to building materials etc. were discussed in detail. Particular attention was given to tribal rights, displacement, land grabs and present development paradigm.
4. Ensuring the deserving amendments to 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013' and supporting the struggle against the present government's move to dilute this act to make it anti-farmer to ensure pro industrial growth.
5. Climate change-related effects and Human rights.
6. Struggle against nuclear power plants.
7. There was an extensive discussion on the violation of existing environmental law and court's orders. The TSR Subramanian Report was discussed as the present

government's attempt to get rid of the existing environmental laws.

8. Health problem of the communities staying around polluting industries.
9. Occupational Health Problems of the workers.
10. Environment and Social Impact Assessment.
11. Right to have sustainable development.
12. Food securities.
13. Destruction of Natural Resources is 'Considered Essential' in today's Development Model.
14. We should not play role of just response to government and so-called development project but we should also have our own pro-active agenda.
15. Development Process, Ecology & climate change issues are not argued and articulated as human rights issues.
16. We should campaign that each living being has the fundamental right to freedom, equality, life with dignity and wellbeing and it is our responsibility to protect, enrich and improve the environment for present and future generations.
17. To raise awareness of how fundamental the environment issues are as a prerequisite to have human rights.
18. These are not just struggles which need to be fought in the courts.
19. Further the participants brainstormed as to what should be the role of PUCL in the environmental justice movement. It was made clear that we do not seek to replace or take over existing movements for the environment and social justice but rather our aim is to be part of these movements with our human rights perspective and extend our support to the movements to strengthen these on going struggles.

As PUCL has tried to play a role of watchdog on human rights issues, it

should do the same with environmental issues through conducting fact findings and publishing reports. It can also provide legal and technical assistance to environmental activists and seek protection for whistle-blowers.

It should also put effort into generating awareness material and make interventions which will strengthen the concept of public consultation, people's participation in the development process. We should strengthen the role of the gram sabha in present development paradigm.

We should actively promote communication between various PUCL units which are working on these issues and supporting the movements active on the issues of Development Process, Ecology and Human Rights. This information should be harvested to support and strengthen the movements and various people's initiatives at the national level.

Our language should be accessible for the common people so as to not fall into similar traps of the middle class environmental movement.

We should consider coming out with a status report on 'Environment and Human Rights' with the help of movements across the country on development process, environment and human rights.

It is high time that human rights activists start articulating and understanding the environment as a key component in the realization of the fundamental rights of human beings. In India and the Global South at large, environmental issues are deeply intertwined and inseparable from social movement.

It was agreed that the people who took part in the sub-groups and other PUCL members would send their detailed reports on the various issues on which they are involved, their articulation and analysis on these issues so that when we plan a national level meeting in Gujarat on environment for two days it will help us in preparing our position paper and our short term and long term campaign on the issue. □

The following article was published as part of the Souvenir released during the 2014 Patna PUCL National Convention and is being reproduced for the benefit of members and readers who couldn't attend the Convention.

PUCL at 38! Redeeming the Pledge to Secure Human Rights

What the future beholds.

V. Suresh, General Secretary, All India PUCL: 21st November, 2014

Preamble

"Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights".

... Preamble, ICCPR, 1966

"We promised to our people a democratic polity which carries with it the obligations of securing to the people liberty of thought, expression, belief, faith & worship; equality of status and of opportunity and the assurance that the dignity of the individual will at all costs be preserved. We therefore put Part III in our Constitution conferring those rights on the people. Those rights are not an end in themselves but are means to an end. The end is specified in Part IV".

... SC on Minerva Mills Case (1980)

"Formal structures listed in the Constitution are there but they have nothing to do with equality, justice in all its facets with no possibility of social transformation leading to improvement of the living conditions of 80% of the population. The growth rate advertised has nothing to do with the living conditions of the poor. Under these conditions movements of varied sorts arise the State treats this as a law and order problem and entrusts it to the police and its intelligence wing to whom it has sanctioned enormous impunity".

... KG Kannabiran, President, PUCL, Petition to NHRC, May, 2008

The National Convention is the highest body of the PUCL - the forum where all the members from throughout the country meet to discuss, debate and decide. It is at once a celebration of collegiality, of a coming together of people who have voluntarily committed themselves to the protection of civil liberties and human rights and the promotion of a constitutional way of life. It is also a time to ruminate, to ponder over, to challenge - in short to critically reflect on past work in order to chart out the future.

Everyday life for the vast masses of India's marginalised and excluded communities is tough and difficult; apart from having to endure structural violence, social discrimination and prejudice on account of caste, community, class, gender, sexuality orientation and a host of other social divisions, they also have to cope with an intolerant and brutal state machinery. The mafia of corrupt (i) politicians, (ii) bureaucrats and police & (iii)

business interests makes a deadly and potent combination which manipulates and uses the legally legitimated government machinery to work on their behalf - grabbing common resources and lands, denying and depriving people of their wages and entitlements and brutally crushing dissent.

The National Convention is thus an occasion for all of us to pause and ask ourselves some critical questions: Do we need to re-examine and assess newly, our path and direction, as a human rights movement? Where are we deficient and what are our limitations? How do we strengthen ourselves? So while we pat ourselves in the back for what we have achieved, let us also have the courage to chart out a more dynamic path for the future.

PUCLDR - 1976 to PUCL -2014: From civil liberties to human rights - expanding boundaries

It is important to remind ourselves of our beginnings in 1976, in the middle of the Emergency; when

fundamental rights and the Indian Constitution were suspended, when thousands were imprisoned as they threatened Indira Gandhi's Congress regime; when brute police force was used with abandon and impunity. A period of despair -when most of the highest and mightiest of people preferred to remain silent; a period of shame made worse when even the judiciary failed the test of democracy and constitution with 4 out of 5 judges of the Supreme Court upholding the declaration of Emergency on 26th June, 1975.

It is during those dark days in 1976 that JP's call to all democrats to come together to oppose the Emergency led to the formation of the People's Union for Civil Liberties and Democratic Rights (PUCLDR). The challenge then was to galvanise the people of India to fight for their 'civil liberties', reclaim democracy and to throw out the dictatorial and self serving regime.

Though PUCLDR became inactive with the overthrow of Indira Gandhi

in 1977. The downfall of the Janata party regime and the return to power of Indira Gandhi in 1980 raised the specter of once again losing our 'civil liberties'. It became apparent that there was a need to revive the civil liberties movement in India. This led to the re-launch of PUCLDR now rechristened as PUCL, in 1980, with a new Constitution and a new institutional structure.

Range of PUCL's activities

From asserting the fundamental rights of citizens to free speech and expression and other fundamental freedoms, PUCL's activities in the last 34 years has expanded exponentially covering a wide range of issues, falling under the larger umbrella term of 'human rights'. The thrust of the activities of various state units of PUCL have ranged from challenging the 'impunity' enjoyed by police and security forces in custodial crimes like torture, lockup deaths and sexual violence to demanding that citizens have a right to know about the criminal records of candidates standing for elections and asserting the 'right to privacy' of citizens against illegal telephone tapping by state police and security agencies.

PUCL Bihar has been taking up issues of police firing and fake encounters, death in police and judicial custody, atrocity in prisons, false implication by police and related issues. Additionally, the state unit has had a long record of investigating issues related to carnages committed by armed squads of organisations and PUCL's reports have earned credibility for factually unbiased and fair reporting and findings. Issues of police violence apart, the state unit has also addressed issues of freedom of media, independence of judiciary and social evils like lynching and persecution of women as 'dain' or witches.

PUCL Bombay's efforts to challenge impunity of police in 'encounter killings' led to a landmark SC ruling in September, 2014.

PUCL Rajasthan's role in taking up

the starvation deaths case to the Supreme Court has led to the SC expanding the notion of fundamental 'right to life' to cover the fundamental right of citizens to food security including nutritional security and livelihood security. The landmark case, with the Supreme Court issuing continuing mandamus for the last 13 years since 2001, has seen numerous orders of the SC directing the governments to ensure availability of nutritive food to millions of infants, young children, lactating mothers and the elderly across India. In addition, PUCL Karnataka's interventions in the issues related to sexual minorities resulted in the publication of an important document outlining the need for legislative protection of their rights and the need to sensitise police, state agencies and also the judiciary to their situation and problems. The state unit has also been opposing the issue of slum dweller evictions and their right to life and livelihood without being displaced in the name of beautification of the city.

PUCL Chhattisgarh has been pursuing in different fora, including the subordinate courts and constitutional courts as also the NHRC the acute threat to human rights of tribal people in different tribal areas south and north Chhattisgarh. In particular the state unit has pointed out the large scale violence inflicted by security forces due to 'Operation Greenhunt' launched against the Maoists in South Bastar and other areas and exposing the state support to the Salwa Judum, armed militia propped by the state government which has seen hundreds of innocent tribals being killed, settlements destroyed, hundreds being falsely implicated. Apart from the human rights threat posed by security forces, the state unit has also intervened in issues of human rights related to labour rights of unorganised sector, industrial labour in cement, engineering and other industries in Chhattisgarh.

The depredations of the security forces in name of 'Operation

Greenhunt' has not been confined only to Chhattisgarh but also extends to Jharkhand, Odisha and AP. PUCL Odisha has been consistently taking up the violence unleashed by various wings of the security forces in various parts of Odisha against innocent tribals and villagers who have become victims of state counter violence.

The subversion of criminal justice system by the police and state agencies, the reluctance of judicial system to implement rule of law in a fair and equitable manner, discrimination in judicial treatment meted to tribals as contrasted to non-tribals, the direct and indirect support to communal forces whipping up a hate campaign against Christians and their missionaries are a variety of grave issues challenging the human rights movement in states like Chhattisgarh, Jharkhand and also Odisha.

Considering the scale and intensity of caste and communal clashes, almost all the state units of PUCL have had a long history of engagement with sectarian violence. PUCL Rajasthan has a long and notable record of ensuring that their interventions do not stop with Fact Finding Reports, but have followed up with conflict resolution and peace building activities, launching prosecutions and so on. They have also undertaken programmes for communal harmony and peace in colleges and schools. Similarly PUCL state units of Karnataka, Kerala, AP (undivided state), Bihar, Tamil Nadu, Gujarat, MP, Chhattisgarh, Odisha, Jharkhand and others have also undertaken human rights interventions in caste, communal and other sectarian conflicts.

Environmental and ecological issues, issues related to 'plundering of natural resources and grabbing of the commons', speculative land grabs and issues related to destructive development paradigms have been taken up. PUCL - Tamil Nadu state challenged in high court

and supreme court the environmental clearance given to Koodankulam nuclear power plant; PUCL Chennai - Kanchipuram unit's fact finding on sand mining in Palar river turned the spotlight on grabbing of common resources like river sand, land, water and biodiversity with disastrous consequences for water, livelihood and agricultural rights of people and environment. PUCL Gujarat recently exposed the unnecessary acquisition of land in the name of 4-laning the Jetpur - Somnath National Highway leading to displacement of locals. This was preceded by opposition to a variety of mega projects in Gujarat which have not even obtained necessary clearances. PUCL Karnataka has launched a major campaign against land acquisition by the government to hand over to corporate houses.

The implications of increasing 'saffronisation' and 'communalisation' of bureaucracy

and the judiciary, rising intolerance to any form of dissent and protest against the development paradigm and insidious intervention in the realm of education, pedagogy and culture have made the challenge of promoting and protecting human rights go beyond the narrow and limited construct of 'civil liberties' to embrace a much wider definitional and operational framework of human rights.

In conflict zones like Manipur, Nagaland, other North Eastern states and Jammu and Kashmir the operation of the draconian Armed Forces Special Powers Act (AFSPA), has resulted in major custodial violence, torture and encounter killings; these in turn have led to issues of livelihood, health and food insecurity of common people. Failure of democratic institutions resulted in denying citizens their fundamental right to ensure a fair, accountable and transparent

administration and development. PUCL has only peripherally touched these issues and need to engage with concerned citizens groups, civil society and human rights groups in the coming future.

The challenge is made more onerous with the consolidation of right wing, pro-market, pro-capital, majoritarian political formations which have come to power. The seemingly neutral mantra of 'growth' and 'development' is skilfully used to cloak the harsh reality of a fascist state lurking behind the structures of governance and power.

It is this challenging context that has forced different PUCL state units to intervene - not merely legally, but in several other ways including by way of organising fact finding inquiries and mobilising expert opinions on issues, initiating awareness programmes, launching campaigns and mass actions and other new forms of collective action.

The Future: Expanding Framework of Human Rights Action

Development, Governance and Human Rights

While the range and scope of civil liberties violations by the armed agencies of the state - police, para military and security forces and army is overwhelming (in areas experiencing armed conflict as also in other places) a major issue everywhere is the denial of the democratic right of citizens to information and exclusion from participation in decision making related to development programmes, industrial growth and urban expansion all of which involve displacement of people, loss of biodiversity and alienation from common resources.

A key element determining whether an issue falls within the ambit of a human rights organisation like the PUCL are two interconnected issues:

- (i) Whether the democratic principles of transparency, participation, inclusion, equity, accountability and sustainability

are seen implemented in the specific programme;

- (ii) Response of state agencies, especially police agencies, to demands of people for greater transparency and involvement before decisions with vital consequences to them are made.

What is noteworthy is that even though a specific development programme may not be directly within the limited ambit of human rights organisation's functioning, most often 'human rights concerns' gets invoked because of the brazenly violent, brutal and insensitive response of state agencies to demands of citizens to know more or express opposition about these projects or programmes. Numerous illustrations can be provided as for example in the acquisition of land for big development projects like dams, factories, SEZs and so on.

The essentially interconnected play of civil and political rights with social, economic and cultural rights implicit in the realm of development and governance, is what is underscored in the Preamble to the ICCPR, which talks of their indivisibility. The SC has also emphasised in several cases that Part III of the Indian Constitution dealing with fundamental rights has meaning only when read along with Directive Principles of State Policy in Part IV of the Constitution.

The challenge before the human rights movement in general, and PUCL in particular, is thus to ensure a comprehensive programme of action which integrates civil and political rights with socio-economic and cultural rights.

PUCL has thus the historical responsibility to provide the ideological leadership to help attain 'democracy and development with dignity' for millions of our people. □

PUCL Statement on the Mass Killings of Adivasis in Assam

PUCL strongly condemns the shooting down of unarmed tribals in and outside their homes in Sonitpur and Kokrajhar districts of Assam on 23rd December, 2014 by armed squad of the National Democratic Front of Bodoland (Songbijit) (NDFB (S)) faction. Reportedly there are over 75 people killed, including scores of women and children, which largely included many Adivasis and some tribals. PUCL is deeply concerned over the outbreak of deadly, murderous attacks once again. It is apprehensive that unless the situation is handled both firmly and sensitively, a situation of mass death, destruction and displacement will once again recur as it did during the ethnic killings in mid-2012 in Kokrajhar and neighbouring districts resulting in nearly 100 people being killed and over 400,000 people fleeing their homes.

PUCL demands that the police and para-military authorities immediately ensure the safety, security and protection of lakhs of people in the districts of Kokrajhar, Sonitpur and other districts of the Bodoland Territorial Areas Districts adjoining the border areas of Assam - Bhutan. At the same time, it should be stressed that unless the roots of the conflict are addressed and resolved, such violent attacks are bound to recur.

We learn that the NDFB (Songbijit) faction itself is led by a non-Bodo

and does not enjoy the support of wider sections of the Bodo people themselves. We also learn that there is great popular resentment, even amongst the Bodos, against the NDFB(S) faction due to their extortionist activities and illegal and forcible collection of taxes from all communities, including the Bodo. Despite public knowledge of such illegal activities, the state government has done nothing to curb the unlawful activities of this group which is using arms to terrorise local population. In such a situation, to cloak what is clearly criminal activities using the term 'terrorist' is to lend legitimacy to the group and give an impression as though they are pursuing a political demand.

At the heart of the Bodo conflict is the long simmering sense of frustration, anger, alienation and disaffection caused by decades of neglect and mistreatment by successive regimes, both at the state and centre, which has kept large sections of the Bodo people in a state of deprivation, impoverishment and backwardness.

There is also a perceived sense of historical injustice to the Bodos in their own homeland. The substantial influx of outsiders coming in as migrant labourers who eventually settle in the area has changed the Bodo - non Bodo population demographics. In turn this has created communal resentment and

tensions which is cynically used by political forces to foster violence. This will need to be firmly put down. The Governments, both State and Centre, should seriously initiate a major programme aimed at reassuring the Bodos of their historical identity and ensuring their inclusive development. At the same time, the governments should work to bring about greater community integration and harmony amongst different social sections in the area. Solutions cannot be found through enforcing police or military actions but only through genuine efforts at reconciliation and development which are actually seen to be implemented in the field. Equitable and inclusive development must be seen and felt to be occurring and benefiting all the communities, especially the Bodos. This can be the only sound basis for engendering communal harmony.

PUCL also calls upon all the political parties, especially the ruling Congress (I) party in Assam and the NDA at the Centre, not to indulge in games of finger pointing or apportioning blame but to work together to bring about communal harmony, reconciliation, amity and peace.

Sd/-

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

Statesmanship needed in J&K

Rajindar Sachar

Historically, Jammu & Kashmir represents the culture of both Islam and Hinduism

The exercise of forming the government in Jammu and Kashmir is posing a delicate situation as no single party can form the government on its own. The Bharatiya Janata Party, for all its broad development propaganda totally failed to make any dent, except in Jammu where it got 42 per cent of the votes polled as against Kashmir

where it got a miserable 1 per cent and Ladakh, even where Buddhists are in large numbers, its share was marginal. The BJP has got out of the total 87 seats, 25 seats in the Jammu region but nil in Kashmir region.

So here is the unfortunate situation where no party has not only got a majority but the two regions of J&K

have voted differently. The PDP, with 28 seats, has to have a coalition with other parties like the National Conference (15) and Congress (12). But there are too many personality clashes amongst the leaders of these parties to obtain a workable solution. That apart, they will be falling over each other to retain their support in Kashmir Valley with the resultant absence of participation from

Jammu, the majority Hindu area. Historically, J&K represents the enviable civilisation and culture of both Hinduism and Islam for centuries. Which place is so holy and fortunate enough to have the holy strand of hair of Prophet of Islam and at the same time also the Shiv linga of Hindus which is an occasion for Amar Nath yatra every year, and a temple dedicated to Shankaracharya - the greatest exponent of Hinduism?

With such a complex situation, a workable solution can only be the coalition of the PDP and the BJP-however distasteful it may be for people like me who believe that the BJP policy of development propaganda is a chimera and rue its inability to openly condemn the ugly communal activities of Mohan Bhagwat and his disciples who are bent on spreading communal poison. Notwithstanding my personal views, the peculiar circumstances of Kashmir require a special strategy. It is for this purpose that the odd suggestion of the BJP/PDP coalition in Jammu and Kashmir may perhaps be a better solution for avoiding Governor's rule. In this the personality of the PDP leader Mufti Mohammed Sayeed is very important. He has worked with the BJP in the NDA government in 1990. I believe talks are on between the National Conference and the BJP, with efforts to rope in some Independents. But this combination will hurt the sentiments of people of Kashmir, who have thrown out the National Conference. Of course, the BJP is trying its best at this solution because it hopes that it will get its chief minister from the Jammu region, who will inevitably be a Hindu. I believe this scenario is the most dangerous one for J&K and will make any permanent solution impossible. I have no hesitation in saying that both on principle and practical politics, the chief minister of J&K has to be from the Kashmir

region and a Muslim.

This is not communalism but the appreciation of ground reality of the historical, peculiar situation of J&K. In a similar situation in pre-Independence India, in Punjab general elections in 1946, the Congress had the largest number in coalition. But the Prime Minister, (as he was then called in the states), was the Muslim Unionist Party leader Khizar Hayat Khan.)

The BJP / PDP combine will bring a representative character and will be a source for removing the misunderstanding between the two regions. Of course, before the PDP and the BJP can enter into a pact some absolute pre-conditions will have to be accepted by the BJP. Uptil now, small partisan politics has made the BJP adopt policies which are not permissible under our Constitution, namely the abrogation of Article 370. The result has been its total alienation in the Valley. The results clearly show that sentiment still prevails - notwithstanding Modi's repeated visits to the Valley with his trumpet of development programme and slyly avoiding to mention Article 370. It still brought a zero result for the BJP in the Valley. The BJP must understand that the dignity and self respect of the people of Valley of Kashmir is tied to the non-abrogation of Article 370.

It is not as if Article 370 is the only exception. Article 371 provides for special responsibility of the Governor for establishment of a separate development for Saurashtra and Kutch (in Gujarat) and Vidarbha in Maharashtra for equitable allocation of funds for the development of the area. No objection by the BJP was ever raised to this even when Modi was the Chief Minister.

Article 371G, introduced by Constitution (55th Amendment Act, 1986) provides that no Act of Parliament in respect of ownership and transfer of land shall apply to

the State of Mizoram, unless the legislative Assembly of State of Mizoram by a resolution so decides. This provision is identical to Article 370 of the Constitution regarding J&K. The BJP was party to the above amendment. Why does the BJP apply double standard in case of the Muslim-majority state of Jammu and Kashmir?

It needs to be appreciated that retention of Article 370 is a matter of self respect and honour and assertion of their distinct identity for the people of J&K. Cannot the BJP, even when most of Parties in J&K are desirous of finding a lasting solution, be statesmanlike enough to give up its opposition to Article 370 - which no Kashmiri can possibly agree to abrogate?

It is true that if the communal activity of RSS and allied bodies going ahead with their lunatic activities of ghar wapsi, the silent collusion with Hindu Mahasabha in praise of Godse, the murderer of Gandhiji, are not strictly suppressed, Modi's efforts at coalition with the PDP will be an impossibility.

The BJP must consider the consequences of Jammu and Kashmir not getting a genuine elected majority of the Valley in the Jammu and Kashmir government. This will spread further disillusionment. Notwithstanding that the Army under electoral pressure on the BJP was quick enough to admit and take action against its Army officers for false encounters. But the BJP government at the Centre alone can give confidence to the people of J&K, especially of the Kashmir Valley, that human right violations by the state or the Army will be severely dealt with. This can only be done by the coalition government of the BJP / PDP. Is BJP, especially Modi, willing to show that statesmanship?

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PUCL Condemns Arbitrary and Illegal Prevention of Travel by Ms. Priya Pillai, Greenpeace Campaigner to London

PUCL strongly condemns the arbitrary, highhanded and illegal action of the immigration officials of the Government of India at the New Delhi airport refusing to permit Ms. Priya Pillai, senior Campaigner of Greenpeace, to board her flight to London on 11th January, 2015. Worse still was the vindictive act of the immigration officials stamping Ms. Priya Pillai's passport as 'OFFLOADED' thereby effectively ensuring that she cannot leave India until and unless the Government of India revokes the unannounced ban on her travel.

Ms. Priya had valid business visa and all her travel papers were in order. There is thus no acceptable reason for preventing Ms. Priya from travelling to London as she is neither a convicted person nor is there any judicial restraint order prohibiting her travel abroad.

It is objectionable and shocking that no reason for preventing Ms. Priya from leaving for London was disclosed by any of the authorities on 11th. Incredibly, the Ministry of Home Affairs has reportedly stated that they had no information about such an order being passed, while the immigration officials state that they were acting on orders from the Government of India. PUCL condemns this shameful action on the part of the Government of India's officials from shirking to accept responsibility, as it is unbelievable that such a drastic decision could have been taken without the initiative and instruction at the highest level.

The action to prevent Ms. Priya from travelling is particularly deplorable as Ms. Priya was travelling to London at the invitation of British MPs to talk to them about the destructive and potentially damaging environmental and social impact of coal mining in the Mahan forest area of Madhya Pradesh on local tribals and other

vulnerable communities. The coal mining project being undertaken by a Essar group company and Hindalco, has been opposed by local people as being environmentally destructive, ecologically devastating and posing serious threat to life and livelihoods of local people.

PUCL would like to point out that Ms. Priya, as a whole time environmental campaigner, was only exercising her fundamental right of free speech and expression (u/s Art. 19(1)(a)) to inform people, including ordinary citizens, decision and policy makers and the media about the ill effects of the Mahan coal mining project, which is well within her freedom.

A 7-judge Bench of the Supreme Court in 'Maneka Gandhi vs Union of India' (1978) held that the freedom of speech guaranteed under Art. 19(1)(a) is exercisable not only in India but also outside and if State action sets up barriers to its citizen's freedom of expression in any country in the world it would violate Art. 19(1)(a) as much as if it inhibited such expression within India itself.

Ms. Priya and Greenpeace are only fulfilling their "Fundamental Duties" under Article 51A of the Constitution of India which makes it a duty of every citizen of India to "protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures" (Art. 51A(f)) and "to develop the scientific temper, humanism and the spirit of enquiry and reform". (Art. 51A(h)). Moreover Art. 48A enjoins the State to "protect and improve the environment and to safeguard the forests and wild life of the country".

The peremptory and unexplained action of the Government of India' lends credence to the charge that the government acted clearly to prevent Ms. Priya from sharing with

the outside world about the potentially damaging nature of the coal mining project and the legal infirmities abounding in the project clearance.

In a globalised world, negative impacts - both economic and environmental - has implications globally and is not confined to national borders. Thus any assertion of rights of local communities, articulation of environmental concerns and creation of public opinion has to necessarily be global. It is therefore sinister of the Government of India to dub rights activists, including the environmental campaigners, as "anti-national" and against "national interest" whenever the raise concerns of environmental destruction posed by specific projects.

PUCL calls upon the GoI to immediately desist from criminalising rights activities, including environmental campaigns, and give due recognition to their contribution to the nation.

PUCL demands that the Government of India immediately revokes its decision to ban foreign travel by Ms. Priya Pillai of Greenpeace, strike out the stamp in her passport of being "Off loaded" thereby enabling her to travel abroad if all her travel papers are in order. PUCL also calls upon the Government of India to stop hounding and targeting rights activists for coercive or police action and instead create a conducive, non-adversarial, intimidation-free environment enabling people to share, discuss and debate in a democratic spirit crucial issues of development projects and programmes.

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

□

A Tribute to B.G. Verghese

(1927-2014)

B.G. Verghese who passed away on 30th December 2014 at the age of 87 at Gurgaon was an inspirational personality, not only to large number of journalists but also to the generations of social and civil liberty activists. He belonged to that rare breed for whom journalism was a sacred mission, not a mundane profession. He started his career in 1949 in Times of India and his rise in profession coincided with the period when modern India was in the making, brick by brick, and he not only witnessed the process closely but took care that each of his steps was to be his contribution to the said 'making'.

Tributes are pouring for him, highlighting his exemplary qualities and number of noble causes which he took in his long career. I would like here to mention a few.

One of his distinguished qualities was 'fearlessness'. During 'Indo-China War' of 1962 he was sent to NEFA to cover proceedings of the war at the North East front. Chinese had launched a sharp offensive that scattered the ill-equipped Indian forces. Verghese was in Tejur in Assam when news came on 18th Nov. that Chinese had attacked the Se La which fell to them without a fight and they were further advancing. Lt.Gen.B.N.Kaul, commander of the 4th Corps stationed at Tejur disappeared somewhere and the battalion was called back to Gauhati. In the prevailing anxiety and confusion order came to evacuate Tejur and the North Bank as part of scorched earth policy and the Nunmati refinery to be blown up. By the evening of 19th Nov. , the Tejur town was evacuated. Indian Press had already left the town previous day, anxious to seek safety rather than stay with the news. Tejur became a Ghost town. The State Bank had burnt its currency notes. Official records were destroyed so that Chinese could not get possession of the so called 'state secrets'. The administration had unlocked the gates of the mental hospital and around thirty bemused inmates could be seen wandering around the town like lost souls. Nehru broadcast to the nation that his heart 'went out' for the people of Assam and promised that struggle would continue.

However only eleven journalists remained in the ghost town, only two of them Indian, one Prem Prakash of Visnews, also covering for Reuters, and the other B.G.Verghese. They wandered around the deserted town having their companions the hapless mental patients and a number of uneasy dogs and cats, waiting for the invading Chinese and what would follow. Unexpectedly, a transistor during midnight of 19th&20th Nov. cracked the news that Chinese had announced unilateral withdrawal. Radio stations around the world started flashing this news then onward, but for All India Radio (AIR) it was otherwise. In the words of B.G.Verghese:

"AIR's early morning bulletin still had the Indian Army valiantly fighting the enemy, while all other stations around the world and the newspapers carried the Chinese ceasefire announcement and other details. None in Delhi had dared to wake up a tired prime minister and brief him about the night's dramatic developments. The imbecility and paralysis that had come to characterise Delhi and the pompous vacuity of the official information policy could not have been more strikingly demonstrated. For days and even weeks earlier, everybody from jawan to general, including Bijji Kaul(Lt.Gen.), had been tuning in to Peking (now Beijing) Radio to find out what the hell was going on in their own battlefield."

He writes : "...His (Nehru's) words offered cold comfort and to this day the North-easterners hold it against him and the Indian State that they had been bidden farewell." (First Draft-Witness to the Making of Modern India by B.G.Verghese).

How many journalists there are in India at present who, instead of relying upon the official handouts, generally unconvincing to the discerning eyes, would risk their lives in trying to find out the truth of the claims and counter-claims of rival sides in situations prevailing at present on either sides of our borders where cross firings and ceasefire violations seem to have become the order of the day and each side keeps on blaming the other?

I came in touch with B.G. Verghese during the 'emergency' when he joined People's Union For Civil Liberties & Democratic Rights (PUCL) in 1976, after having been ousted from the post of Editor of the Hindustan Times on account of his opposition to the policies of the then govt., especially his criticism of the annexation of Sikkim and proclamation of the 'emergency'. (PUCL) was founded in October 1976 at New Delhi by Late Lok Nayak Jaiprakash Narayan and V.M.Tarkunde to organize opposition to the 'emergency' and to fight for restoration of the democratic rights. He also joined the Citizens For Democracy (CFD) which was also floated by Late Lok Nayak Jaiprakash Narayan and V.M. Tarkunde in April 1974. I was founder member of both the organizations.

After the end of the 'emergency' in March 1977, Verghese who was then working in Gandhi Peace Foundation, was elected as President of the Delhi chapter of the C.F. D. and myself as its Secretary. He continued to guide CFD for about four years in that capacity till he joined the Indian Express in 1982. CFD took up many notable activities under his leadership and guidance like Jail reforms, electoral reforms, campaign for autonomy for radio, voters' education, etc.etc. To work under his stewardship was very profitable experience for me.

He constituted a committee for jail reforms which included V.M.Tarkunde, B.G.Verghese himself, Mrs. Amiya Rao, Leila Fernandes, Arun Shourie and myself, amongst others. Delhi Administration appointed all the members of the Committee as 'jail visitors' for Tihar jail under Prison rules and the said members used to visit Tihar regularly. Several suggestions were made for reforms. CFD also intervened in 'Sunil Batra Vs. Delhi Administration' case in the Supreme Court and submitted its suggestions. This case resulted in the celebrated judgment (1978) on jail reforms delivered by Justice Krishna Iyer.

Verghese was part of the investigating team which was formed on behalf of the CFD in 1977 to enquire into the

allegations of killings of Naxalites in Andhra Pradesh in so-called police encounters. The other team members were Justice V.M. Tarkunde, Naba Krushna Choudhury, K.G. Kannabiran, Arun Shourie, M.V. Ramamurthy and K. Pratap Reddy. The report of the committee revealed that many of such deaths were the result of cold blooded killings. This report was the first systematic exposure of such fake encounters by the police. The report was widely discussed and reinforced the demand for reforms in the police administration.

The 2nd Police Commission, called as 'Dharamvira Commission', appointed in 1978 to suggest police reforms, submitted its report in 1981. By that time Government had changed and was not willing to publish the report. CFD and other organizations were agitating for publication of the report but the Government did not respond. C.F.D. then filed writ petition in the Delhi High Court praying for mandamus to the Central Government directing it to publish the report. After some hearings the Government was forced to publish the same under pressure of the Court in 1982. Thereafter campaign for implementation of the recommendations of the commission commenced which campaign is still going on though more than 32 years have passed since then.

Two notorious criminals Billa and Ranga had abducted two young persons, a brother and a sister, namely Sanjay and Geeta Chopra, in New Delhi in 1978, raped the sister and murdered both near Budha Garden. There was wide spread anger among the public who did not know how to ventilate its feelings. The present type of organized demonstrations were unknown in those days. It was B.G. Verghese who organized a big public meeting in protest. To my memory this was the first organized demonstration in Delhi in protest against 'rape'. An award i.e. 'Child bravery award' was instituted in the names of brother and sister by the Indian Council of Child Welfare.

Soon after joining The Hindustan Times as Editor in 1969 Verghese started a regular column on one village, namely Chhatera, as a mirror to rural life at a time when news and public attention used to be fixed on urban developments, even of the most trivial kind. This village was situated in Sonapat (at that time Rohtak) district in Haryana, had a population of around 1500 composed of land owning Jats and Brahmins and landless Harijans. It was the most neglected village and therefore an ideal choice for Verghese who used to visit it almost fortnightly along with experts of various kinds to discuss the problems of the villagers and seek their solutions. Discussion would take place in the cemented Jat Chaupal and none was barred on caste grounds. The problems of education, health, communications, sanitation, availability of fertilizer and many other things used to be attended. Regular fortnightly column 'Our Village Chhatera' in the Sunday Magazine of HT began to appear from 22nd February 1969 focusing on the problems of the village till 1975 when Verghese was ousted from the Newspaper. The feature carried a logo showing a pretty but shy eight year old Dalit girl, Premvati, holding a staff and with a lamb draped around her neck. The authorities took notice. Much needed bridge was constructed. A branch of Syndicate Bank was opened and within four hours Rs. 20,000/- were deposited. Young interns and junior doctors of AIIMS started visiting the village. Scientists from the Indian Agricultural Research Institute conducted complete soil survey and water analysis. The number of tube wells doubled in four years. Separate toilet blocks for boys and girls were made beside the school to habituate children to use a latrine rather than go out in the fields. A T.V. set was installed in the Panchayat where all used to sit together, irrespective of caste or gender to view programmes between 6 and 7 P.M. Many developmental activities were undertaken. Chhatera became the most completely documented village in India and a lesson as to how 'development journalism' can become an agent of change.

Two years back CFD was revived (it had become non functional since 1997 due to certain reasons) and he gave his blessings for the effort. He agreed to become member of its newly constituted national council. Thirty four Burmese- Arakan and Karen freedom fighters, who were in Indian jails for about 13 years, first in Andamans and then transferred to Kolkata, were got released as a result of strenuous efforts made by Nandita Haksar. They were in Delhi in June 2012. On the occasion of the observance of Anti-Emergency Day on 26th June, 2012, C.F.D. decided to honour them. B.G. Verghese chaired the meeting and welcomed the Burmese who were overwhelmed by his affection and warmth. They soon got recognition as refugees by the UNHCR and are now in Netherlands. None of us was aware during the function that Verghese was born in Burma in 1927.

Verghese stood for democratic rights of the people and fought for the freedom of the Press. He repeatedly said that in a democracy people had a right to know as to what the terrorists have to say. He equally criticized the terrorists' attempts to intimidate the journalists and dictate to them as to what they should publish and what not. He stood for secular values and communal harmony. He relentlessly criticized the communal propaganda pursued by the Sangh Pariwar. At the beginning of militancy in Kashmir in 1990 the Sangh Pariwar, with a view to justify its campaign towards destruction of Babri Masjid, had launched a propaganda campaign alleging that hundreds of Hindu temples had been destroyed in Kashmir by the Kashmiri Muslims. Verghese investigated such allegations and found them false. His report dented the Sangh Pariwar's mischievous campaign. He was great votary of 'Indo-Pak people to people contact' campaign and made significant contribution to the said process. He wrote important books such as 'Waters of Hope', 'India's North-east Resurgent' and 'First Draft -Witness to the Making of Modern India'. The last one, besides being his biography, is in my opinion the best book to better understand the historical developments of the post independent India.

In his demise, India has lost a great journalist and good human being- a humanist to the core. Having closely associated with him in some of the activities concerning struggle for democratic rights, I pay my tribute to him and salute him.

N.D. Pancholi

6th January, 2015

Eighth V.M. Tarkunde Memorial Lecture delivered by Hon'ble Shri Hamid Ansari, Vice-President of India on 21st November, 2014 at New Delhi:

'Citizens and State Conduct'

It is a great privilege to be invited to deliver the 8th Tarkunde Memorial Lecture today. I did not have the good fortune of knowing Justice Tarkunde personally, but heard a good deal about him and his work from my late friend, Dr. Iqbal Ansari, who rendered Yeoman service to the cause of human rights after he retired from teaching at the Aligarh Muslim University.

Vithal Mahadeo Tarkunde was a versatile man. An eminent judge whose calibre was acknowledged by the supreme Court of India in a Full Court Reference, an ardent advocate of civil liberties and human rights, a supporter of cause fighting against injustice, a founder-member of the Committee on Judicial Accountability, and the founder of the Centre for Public Interest Litigation. He kept alive, as he put it, "the hope of the dawn of a new day" with the recognition of the inherent dignity and of the equal and unalterable rights of all the members of the human family as the foundation of freedom, justice and peace in the world.' He will be long remembered for his advocacy of secularism, for his propagation of the philosophy of radical humanism, and above all for his persistent efforts to highlight the fragility of individual liberty in the modern state as well as specific cases of injustice. He was a passionate believer in the core values of the Constitution of India.

It has been said over and over again that eternal vigilance is the price of liberty, that power is ever being stolen from the many by the few, and that the hand entrusted with power stands in danger of becoming the enemy of the people; hence the need for continual oversight to ensure that a people must be kept sufficiently awake to the principle of not letting liberty be smothered in material prosperity.

In a widely reported judgment In July, 2011 the Supreme Court of India' highlighted the imperative of ensuring 'conditions of human dignity within the ambit of fraternity.' Thus the operative concepts are dignity and

equal and unalterable rights to all. With this in mind, I propose today to explore the state of play with regard to the civil liberties and human rights in the context of what WE, the PEOPLE of INDIA gave to themselves in the Constitution. The constitution-makers were aware that sovereignty to be commensurate with justice had to be embedded in democracy and, as an eminent jurist has observed, the Rule of Law cannot coexist with traditional conceptions of absolute sovereignty. This, in fact, was the trend of informed opinion throughout the past century and as early as 1914, Earnest Barker had penned an essay 'The Discredited State' in which he depicted sovereignty in internal matters as 'Poison - not to be taken internally' since it leads to a false view of the law."

It is generally accepted that a prerequisite of participatory governance is a commitment of the State to its own laws and to their uniform application. The term Rule of Law is a part of our daily vocabulary and implies supremacy of law, equality before the law, and fair and equal access to justice. As one jurist has put it, 'the Indian constitutional conception of the Rule of Law links its four core notions; right, development, governance and justice.' This approach has been upheld in judicial pronouncements with the Supreme Court describing the Rule of Law as 'a potent instrument of social justice to bring about equality in results.'

The debate over the core principles of the Constitution has stretched over six decades. Social philosophers, political scientists, jurists, courts of law, public personalities, political activists and informed citizens have been active participants. The explicit provisions are evident enough; the text also has, secreted in its interstices, many values that have been dilated upon and amplified in judicial pronouncements. These have been reinforced by international covenants to which India is a signatory and which have become a part of the law of the land.

The Constitution of India did not emerge in a vacuum. It was a product of the freedom struggle and of the values and principles enunciated and honed over decades. Issues of rights and liberties were of practical concern to the freedom fighters. Apart from individual acts of assertion of rights, perhaps the first initiative to form a civil liberties organization was taken by Jawaharlal Nehru in November 1936 when he founded the Indian Civil Liberties Union (ICLU) with Rabindranath Tagore as its president, Precision to the task on hand, and its pitfalls, was forthcoming from Dr. Lohia. 'The concept of civil liberties,' he said, 'defines State-authority within clear limits. It assigns well-defined liberties to the people. The task of the State is to protect these liberties. But the States usually do not like the task and act contrarily. Armed with the concept of civil liberties, the people develop an agitation to force the State to keep within clear and well-defined limits.'

The quest for civil liberties did not cease with end of colonial rule. The march of events after Independence brought into sharper focus the imperatives of sovereignty and nationalism and their implications for civil rights. Some of these became evident after June 26, 1975; in the words of a close observer, 'these events changed the basic relationship between the citizen and the State'. It propelled the formation later that year of the People's Union for Civil Rights (PUCL), later to be named People's Union for Civil Liberties (PUCL). The purpose was to mobilise, not to stand outside the State, but to make the State more responsive and to recognise its constitutional obligations towards its citizens.

The comprehension and advocacy of civil rights has undergone quantitative and qualitative changes in the past four decades. Debates over 'civil rights' have progressed into wider realms of 'democratic rights' and then to 'human rights.' Alongside,

new dimensions have emerged as social movements focusing on women, Dalits, regional, minority and environmental issues came into focus. Each of these developed principally in relation to the State since the State was the only conduit through which all segments of society related to each other.

In the final analysis therefore the focus is on the conduct of the State in relation to its own citizens keeping in mind Rousseau's dictum that 'there will always be a great difference between subduing a multitude and ruling a society.'

A primary function of the State, in its most productive form, is to dispense justice to its citizens, since justice, as John Rawls rightly pointed out, 'is the first virtue of institutions' and 'in a just society the liberties of equal citizenship are taken as settled and the rights secured by justice are not subject to political bargaining or to the calculus of social interests.'

II

Two broad categories seem to emerge in considering the failure of the State to deliver. In the first place, act of omission or those matters where the State qua state should have acted in terms of its laws or constitution. Indications of this are readily available in various social development indices. Secondly, act of commission or those acts that were plainly illegal or exceeded the legal or public morality limits prescribed by the law. These can be assessed in terms of the human rights norms present in our laws or subscribed to. Credible documentation with regards to both categories is available nationally and internationally.

The obligations of the Republic of India towards its citizens have been stated in the Constitution, particularly in the sections on Fundamental Rights and Directive Principles of State Policy. A separate section delineates the Fundamental Duties of Citizens. Together, they amplify the vision and the principles enunciated in the Preamble namely, to secure to all citizens social, economic and political Justice, Liberty of thought, expression, belief, faith and worship, and equality of status and opportunity and

furthermore to promote among them Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

A broad categorization of State responsibility in terms of constitutional obligations would relate in the first place to those matters that concern economic, social and cultural rights and the rights to development. A second set of responsibilities would pertain to provision of security and its achievement through the use of legitimately sanctioned force within stated parameters. In the third set, the State is required to ensure access to justice through appropriate mechanisms to redress grievances.

A set of questions seem to emerge:

Has State responsibility been institutionalized for each of the above?

What is its extent and efficacy?

To what degree does the Indian State practice conform to global standard indicated in international instruments to which we have subscribed?

The answer to the first question is in the affirmative. The Constitution and the various rights-centric statutes prescribe the policy and institutional framework for human rights protection; they also enjoin the concerned State institutions in discharging their responsibilities. The institutional safeguards for the rights enshrined in the Constitution include an independent judiciary and the separation of judicial and executive functions. Legislation and exercise of executive power is subject to judicial review with regards to its constitutionality. In the event of infringement of an individual's fundamental rights, the highest court in the land can be moved.

Our development objectives have been carefully spelt out in the 12th Five Year Plan. It is to seek 'a broad-based improvement in living standards of all sections of the people through a growth process that is faster than the past, more inclusive and also more environmentally sustainable.' This requires a carefully crafted strategy for management of resources, demographics,

inclusiveness, rural-urban balance, energy security, environmental sustainability and a sustained period of social peace internally and absence of conflict abroad, particularly in the neighbourhood.

Much has been done to move towards the development targets for the country. Innovative legislation pertaining to right to food, education, information and rural employment has been put in place. A critical analysis of the results however would show imbalance in implementation and insufficient attention to some other areas. We rank 134 out of 187 in UNDP's Human Development Index and while the poverty rate has shown a decline from 45.3 to 37.2 percent in the decade ending 2004, the debate about nutrition levels and poverty line continues unabated. The average growth rate in 2007-2011 was 8.2 percent but the decline of poverty in the same period was 0.8 percent. A poet may well say:

*Roshan kahin bahar ke imkaan
huai to hain*

*Gulshan main chaak chand
garibaan huai to hain*

*Ab bhi khizan ka raj hai lekin
kahin kahin*

*Goshe rahe-chaman main
ghazal khwan huai to hain*

(Though autumn remains dominant, prospects of spring have brightened and flowers have started to bloom)

At the international level, India is a signatory to the six core human rights covenants. It is committed to the rights proclaimed in the Universal Declaration of Human Rights, 1948. We have signed and ratified Human Rights Conventions which inter alia include the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of all forms of Racial Discrimination, Convention on the Elimination of all forms of Discrimination against Women, and the Convention on the Rights of the Child. In 2005, we ratified the two Optional Protocols to the Convention on the Rights of the child and thereafter the Convention on the Rights of Persons with Disability.

We have signed, but not yet ratified,

the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. The same holds for the Convention on Enforced Disappearances.

It is relevant to recall that section 2(d) of the Protection of Human Rights Act, 1993 defines "human rights" as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. This definition is in conformity with the accepted interpretation of

human rights. The Supreme Court has, in its concern for human rights, also developed a highly advanced public interest litigation regime.

It is thus clear that the requisite intellectual, legal and institutional framework for protection and promotion of human rights is in place. Questions however do arise in regard to their efficacy in actual implementation as cases of discrimination based on religion, caste, language, ethnicity, work and economic status continue to be reported. These relate both to violation or denial of rights by state agencies and to violation or denial of rights by individuals and groups to individuals and groups. The weak - individual or group - is invariably the victim.

In the context of today's subject, what concerns us most is State conduct resulting in violation or denial of rights of citizens. It has been observed that there is a 'profound disenchantment with the State at the popular level where 'the lines between legality and illegality, order and disorder, State and criminality have come to be (viewed) as increasingly porous.'

The most serious human rights violations by the State vis-à-vis its citizens pertain to Article 21. Some of these are abuses by the police and security forces, including extrajudicial killings, custodial deaths, torture, arbitrary arrest and detention, enforced disappearances; poor prison conditions that are frequently life threatening; lengthy pre-trial detention; and widespread corruption at all levels of government, leading to denial of justice. This is

particularly acute in areas of internal conflict, such as Jammu and Kashmir, the Northeast, and the Naxal belt where serious complaints about the misuse of laws like Armed Forces Special Powers Act (AFSPA), the Disturbed Areas Act (DAA) or the Public Safety Act (PSA)

continue to be made. Much of this is credible, has been carefully documented, and reflects poorly on the State and its agents."

According to the latest Annual Report of the Ministry of Home Affairs, during the period January 1, 2013 to March 31, 2014, the NHRC conducted investigation of 6,834 cases, including 4,450 cases of death in judicial custody, 448 cases of death in Police custody and 186 cases of police encounter deaths. These figures speak for themselves. The situation is exacerbated by the fact that the judiciary is overburdened and court backlogs cause lengthy delays or the denial of justice.

Despite the constitutional and legal guarantees, religious minorities continue to be target of violence and discrimination from time to time. Patterns of systematic mobilization of hate and divisive politics are discernable; in many cases these have been pursued with impunity. The same holds for other weaker sections of society including SCs and STs women, children and persons with disabilities. Credible data on these is available in government, academic and civil society reports. These cut at the root of the constitutional principle of equality of opportunity and equal access to justice and highlight the failure of the State to act appropriately. As we embark on the path of rapid economic growth and development, the issue of finding a balance between traditional rights of citizens, with environmental imperatives and economic objectives will have to be addressed by State; else, social tensions will undermine the development agenda.

A particular area of concern is the inadequacy of State action in relation to women. The UN Special Rapporteur on violence against Women has reported that it is systematic and occurs in the public

and

private spheres. It is underpinned by the persistence of patriarchal social norms and inter-and intra-gender hierarchies. Women are discriminated against and subordinated not only on the basis of sex, but on other grounds, such as case, class, ability, sexual orientation, tradition and other realities. The manifestations of violence against women are a reflection of the structural and institutional inequality that is a reality. An eminent former judge has recently observed that 'even today, most women in India neither have freedom nor liberty to take decisions.' The need for greater social awareness, and correctives at all levels of society, is imperative.

Records shows that a number of progressive legal and policy initiatives have been taken by the Government. Equality true is the fact that implementation is tardy, that 'mindset' obstacles and social prejudices are formidable, that allocation of resources is inadequate, and that contradictions persist between economic policies, 'development priorities' and national and international human rights commitments.

III

I would like to conclude by drawing attention to two sets of impulses. The first suggests dogged defence of the status quo; the second a measure of introspection. A plural society, and a mature system of governance, would opt for the latter, more so because we stand committed to constitutional and global norms. Pursuant to this, India is a party to, and has participated in, the Universal Periodic Review of Human Rights held by the Human Rights Council in May 2012. The Status Report prepared by the Working Group on Human Rights after the second review summed up its assessment, inter alia, with the following observation:

'Despite a number of progressive and policy initiatives taken by the Indian Government, the continued prevalence of human rights violations across the country poses manifold challenges. The claim of rapid economic development does not hold

any value when it fails to include the excluded Lack of proper implementation of government policies due to the bureaucratic lethargy, inadequate allocation of resources, contradiction between different policies, other development priorities and the so called national and international interests continue to hinder to the full realization of human rights for India's most vulnerable. The ever-growing trend of atrocities against religious minorities, women , children, SCs & STs, apathy towards the disabled and other disadvantaged people, constitute a scar on the face of Indian democracy...'

In a foreword to the Report, the convenor suggested that 'India must meet the human rights accountability challenge defined by the contents of its Constitution, the international human rights instruments it has ratified, and the recommendations that have emanated from the UPR I and UPR II processes at the UN as well as from other UN treaty bodies and special procedures. To meet this enormous challenge, nothing but a radical shift in economic, social and security policies is needed - both at the central and state levels.'

We as a people need to awaken our collective conscience, strive for fulfillment of national norms and global standards, and induce fuller accountability into the system of governance at all levels so that the culture of impunity ends, and the State and its functionaries are held accountable for every act of omission or commission.

Nandini Sunder & Ors V State of Chhattisgarh (2011) 7 SCC 547: '18 Such misguided policies, albeit vehemently and muscularly asserted by some policy makers, are necessarily contrary to the vision and imperatives of our constitution which demands that the power vested in the State, by the people, be only used for the welfare of the people - all the people, both rich and the poor - , thereby assuring conditions of human dignity within the ambit of fraternity amongst groups of them. Neither Article 14, nor Article 21, can even remotely be conceived as being so bereft of substance as to be immune from such policies. They

are necessarily tarnished, and violated in a primordial sense by such policies.'

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