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## Hindutva Hatred, Intolerance and Violence shall be Resisted

*"Even if they destroy the body, They can't destroy thought.*

*O religious mercenaries, Can you stop the wheels of progress?"*

So sings Sheetal Sathe of Kabir Kala Manch powerfully exposing the underbelly of religious bigotry, caste intolerance and simmering violence that is ever present across India, threatening physical violence against anyone daring to challenge or criticise the dominant religion's culture, ethics and mores. The politics of hatred has been deliberately and systematically stoked and engineered all across India; so virulent is the campaign that today, hate politics has gone beyond attacking other minority religions but threatens physical harm to anyone from within the majority religion itself daring to question superstitious beliefs, irrational religious practices and false claims about Hindu practices, customs and mores. Even the remotest critique of dominant caste practices is met with violent reaction, not stopping at silencing voices but physically eliminating anyone daring to challenge the caste, cultural and religious hegemony of dominant caste and Hindu religious groups.

The Kabir Kala Manch has won wide fame, having been featured in the internationally renowned documentary filmmaker Anand Patwardhan's, Jai Bhim Comrade, for exposing the travails of Dalit activists and the Dalit movement. The song above was composed by Sheetal's imprisoned husband Sachin Mali. Sheetal Sathe had herself been jailed, accused along with some other Dalit singers of spreading Maoist and Naxalite ideology even though they are Ambedkarites. The song offers a remarkable compendium of dissident thinkers who faced persecution or assassination but whose ideas could not be suppressed - Charvaka, Tukaram, Buddhists of yore, Jyotiba Phule, M.K. Gandhi, revolutionary poet Avtar Singh Sandhu "Pash", Safdar Hashmi, Narendra Dabholkar and Govind Pansare. Upliftingly, the song also turns to historical figures elsewhere in the world whose names and ideas remain celebrated: Socrates, Copernicus and Galileo.

The song focuses on contemporary figures who used poetry, songs and prose to question mainstream practices. The refrain always highlights the stoking of the politics of hate and the spiralling violence unleashed in its wake. The song's reference to Avtar Singh Sandhu whose pen name was "Pash or paash" is poignant. Pash was killed by Khalistani extremists in 1988 during an era when the Congress party government was persisting with the disastrous policies toward the Sikhs which cost not only several thousand Sikh lives in "Operation Bluestar" in June 1984 but many more thousands of Sikh lives during the days and weeks following the assassination of the then prime minister Indira Gandhi in November, 1984. The anti-Sikh pogrom led by many leaders of the

Congress party highlights one of the most egregious forms of hate politics in independent India.

Hashmi was a leftist activist and playwright best known for promoting the street theatre movement. He was killed by Congress party hoodlums in Jhandapur village near Delhi in January 1989 while performing his street play Halla Bol. In recent years, Dr. Dabholkar, founder-president of the Maharashtra Andhashraddha Nirmoolan Samiti was shot dead in August 2013 while out on his morning walk. In an almost identical attack, rationalist and Communist Party of India member Govind Pansare was gunned down in Kolhapur in February this year. Obviously emboldened by the Maharashtra authorities' inability to track down and arrest the assassins, another near identical attack on noted writer and rationalist M.M. Kalburgi was mounted in August, 2015. Professor Kalburgi was shot in his own home, also by two men who had arrived on a motorcycle. The Hindutva groups' delight over these killings overflowed. A Bajrang Dal co-convenor in Karnataka, Bhuvith Shetty, issued an open threat to another noted rationalist and writer K.S. Bhagavan of Mysore. "Kalburgi is gone, KS Bhagavan is next", he tweeted. Bhagavan has since been provided police escort.

Things were not this bleak in India until a few decades ago. The rise of the Dravidian movement was accompanied by a robust rationalist one as well (and it is a travesty that in the heartland of the Dravidian movement, a writer such as Perumal Murugan has now been silenced). A Gandhian atheist based in Vijayawada, Goparaju Ramachandra Rao or "Gora" had been countering superstitious views even in the pre-Independence and kept at it until his death in 1975, following which the Atheist Centre he had set up in the city carried on his work. Among his initiatives was to organise communal dinners in Dalit localities as also "beef and pork dinners" to break down inter-

communal barriers. Sri Lankan rationalist Abraham Kovoor used to visit Indian cities regularly and hold public meetings to debunk self-styled godmen's claims of performing miracles. Physicist Dr H. Narasimhaiah as vice-chancellor of Bangalore University in the 1970s had constituted a Committee to Investigate Miracles and Other Verifiable Superstitions. All of these rationalists had gone about their work relatively unhindered. None met with the kind of violence that has reared its head now.

What could be the causes behind the ever increasing tide of intolerance and violence now? The rise of the communal forces since the 1970s, the selective communalism practised by the Congress party despite its once-secular veneer, the assault on education and independent academics that began with the first NDA government and which was never properly repulsed by the UPA in its ten years in power and the continuing and increasingly bold attacks during the current NDA government on secularism can perhaps be identified as some of the elements explaining the current situation.

Forces such as Bajrang Dal, Sri Rama Sene, Sanathan Sanstha and their multifarious ilk feel free to issue threats on a daily basis. In one of the latest threats, Sanatan Sanstha has put the filmmaker Patwardhan on notice. But can they hold back the wheels of progress?

After members of the Akhil Bharatiya Vidyarthi Parishad sought to block the showing of the documentary film Muzaffarnagar Baaqi Hai (Muzaffarnagar Eventually) by Nakul Singh Sawhney - about the role of communal forces in fomenting riots in the district in Uttar Pradesh in 2013 - at a New Delhi college, activists around India came together to arrange simultaneous screenings on August 25 and screenings are continuing.

Resistance is building. The bigots can cut the flowers but can they hold back the Spring?

This is the theme we begin to

explore in this and future issues of the PUCL Bulletin. We carry an article written by Robin Christopher of the Karnataka Komu Souharda Vedike on the murderous attack on Prof. Kalburgi. We carry an article by Taran Khan who analyses the implication of the violent reaction to the screening of the film, Muzaffarnagar Baaqi Hai (Muzaffarnagar Eventually...) and the denial of certification for Kamal Swaroop's documentary Battle for Banaras in the context of the larger politics of hatred, intolerance and violence. Rajinder Sachar's article points out that the politics of hate can involve also high dignitaries like the Vice President of India, Hamid Ansari, and is a pointer to the threat to constitutional values of secularism. Dignity and democracy in India.

The threat to democracy due to the rise of majoritarian politics and the agenda to push the idea of a theocratic state has been one of the issues PUCL has been intensely discussing within the organisation. This was debated during the Patna National Convention in December, 2014 and recently during the recent National Council meeting in Allahabad on 19th and 20th September, 2015. It was decided that PUCL should launch a campaign focusing on countering divisive hate politics and aimed at strengthening constitutional values of respecting diversity, secularism, tolerance and equitable, sustainable development. We shall be taking up this issue for greater discussion in future issues.

We carry in this issue 2 key note articles of Prabhakar Sinha, National President and Ravikiran Jain, National Vice - President on the issues of 'Dignity of the Individual, Democracy and Human Rights' and 'Crisis in the Criminal Justice System' presented during the National Council meeting.

We invite our readers and PUCL members to send in articles for consideration for publication.

#### **Editorial Committee**

*1 Which can be heard via this link, <https://www.youtube.com/watch?v=BtJoJ53ieoQ>*

## Hate's Tryst With Destiny - Prof. Kalburgi's Murder

**Robin Christopher J.**, Advocate and State Secretary, Karnataka Komu Souharda Vedike

There has been a prominent resurgence of the hindu right wing, all over India but especially in Karnataka, in launching a relentless campaign of hate and murder with a view to curtailing the fundamental freedoms of all people, but specially writers, activists and minorities. This campaign is being carried out by an army of hooligans recruited by the Sangh Parivar. This reminds me of the "army of the dead" from J.R.R. Tolkien's novel Lord of the Rings, which portrays an army of the dead that is continually evolving itself by spreading falsified lies, distortion of history and spewing hate with the sole motive of stifling political dissent. In the case of the Sangh Parivar, the aim is to recruit newer people into and ultimately preparing the battle ground for the establishment of a Hindu Rashtra. This is happening at a time when the Indian state is preoccupied in pushing ahead the anti-people, pro corporate policies down the throats of the marginalised.

The voices of protest of rationalists, intellectuals and activists against these crimes are invariably met with venomous ridicule and hate, both offline and online. This is evinced in the way the army of the Sangh Parivar has systematically targeted the Human Rights Activist John Dayal by sharing his contact details and inviting their supporters to launch crude abuse at the activist; by sending letters of threat to the rationalist writer K.S. Bhagwan in Mysore; by physically assaulting Suresh Bhat of Karnataka Komu Souharda Vedike and Pattabhi Somayaji for their strong voices of condemnation of the Sangh Parivar, by smearing their faces with cow dung. The killing of Kalburgi is the most heinous instance of this campaign of hatred.

Prof. Kalburgi was shot dead by unidentified assailants at his home in Dharwad on August 30. Kalburgi

was known for his extensive research on the 12th century old Vachanas, the literary work of saint Basava. Kalburgi established through his research that the Lingayat community, which the Sangh Parivar has co-opted into the hindu fold, is in fact not a part of Hindu society. In his scriptures saint Basava stood against idol worship, temple construction and the brahminical caste system. According to activist and writer H S Anupama, the Killing of Kalburgi is an act of silencing Kalburgi's rational convictions. The killing of Kalburgi is not only a restriction of right to Freedom of Speech but also one among many other acts of violence, carried out both by State actors and non state actors, to silence rationality with bullets.

The right wing hooligans of the Sangh Parivar have smeared cow dung on the faces of people, chopped off hands of dissidents, killed protestors all for daring to assert their right to question the hindu fundamentalists. Literary critic M M Basheer and Writer Perumal Murugan were forced to disown their work, which in fact meant the "death" of their work. After the Congress government came to power in Karnataka, they have propagated a kind of soft hindutva which has reaped them rich benefits. In this process, the State government of Karnataka has abdicated it's secular and democratic character, and allowed it's institutions to be saffronised.

The present political climate is not a sudden occurrence, but rather the result of changes in social context brought about by the advent of hindutva. It has created a kind of mindset among its followers for whom inflicting pain on others and silencing dissent are seen as heroic acts. Even before Kalburgi's murder, there were any number of atrocious acts carried out by the hooligans of

the Sangh Parivar that showed what this "army of the dead" is capable of, in mutating harmonious co-existence to relations of hate.

In Karnataka, the RSS and its allies have launched a number of events and campaigns in order to dominate public spaces and establish their pre eminent hold on the imagination of the average hindu. They have engaged themselves with the conduct of Hindu Festivals such as Ganesh Chaturthi, and navarathri which are occasions of intercommunal amity but which have turned into events that divide and pitch one community against another, thereby ghettoising masses and mobilising them for vote bank politics. Similarly, the ritual of Khadga Deekshe and Hindu Samajotsava wherein men from the Hindu Community are called upon to be protectors of Hindu Society and Hindu Women instils in them a paranoia about the other communities and, a reductive perception of their women as mere property needing protection. There is a constant engagement with public spaces through Bill Boards, Banners and leaflets with slogans exhorting them to shed hindu blood for the creation of a hindu rashtra. All this only reaffirms a pseudo patriotism which is measured in terms of one's commitment to Hindutva. Periodically, the Sangh Parivar launches campaigns such as Love Jihad, Conversion, "Gow Raksha", immoral policing, aggressive vegetarianism and the scare about muslim population outstripping hindus. These campaigns are launched among different caste communities in order to play on their everyday fears and concerns about their future in order to mobilise them in the service of a larger entity, the Hindurashtra. The Sangh Parivar has also succeeded in getting the attention of the media and has utilised the prime time

debates to reach out to wider audiences.

In the last nine months, in both Udupi and Mangalore combined there have been a total of 136 communal incidents. Out of which 29 incidents are of immoral policing involving the Sangh Parivar and 7 incidents of immoral policing involving muslim fundamentalists, 3 incidents alleging conversion, 15 incidents of cattle vigilantism, 5 hate speeches and 27 other communal

incidents. Despite all this, in Karnataka the State Government and the karavali police personnel continue to maintain a passive approach towards the perpetrators seriously failing to dealing with the situation before its gets out of control..

The state has remained a mute spectator to his massive mobilisation of the Sangh Parivar and in the process has eroded the values of secularism and

democracy that it has committed to protect and re-vivify through its actions. The State has allowed critical reasoning in the public mind to be replaced by phobia and refusal to debate.

The act of killing Kalburgi is the culmination of the process by which Hindutva has entered into the minds of people and has normalised the notion that it is not abhorrent to kill someone who is perceived as anti-hindu. □

## What the Disruption of Two Documentary Films Means for Free Speech and Dissent in India

### A tale of two documentaries

Taran N Khan\*

In early June this year, I reviewed Nakul Singh Sawhney's documentary film *Muzaffarnagar Baaqi Hai (Muzaffarnagar Eventually...)* for Himal Southasian. Shot between September 2013 and April 2014, the film captures the communal violence that tore through areas in north India in the run up to the 2014 general elections. The documentary meticulously maps out the cynical polarisation along communal lines in *Muzaffarnagar* and Shamli districts in Uttar Pradesh. Besides demonstrating how the riots played into the electoral calculations of the Bhartiya Janata Party (BJP), it also indicts the ruling Samajwadi Party (SP) for failing to provide protection, and subsequent support, to the riot victims and the displaced - an overwhelming majority of whom were Muslims. With these broad swipes at dominant political formations, the film has ruffled many feathers. Nevertheless, it was screened at a number of venues across the country, before a screening in Delhi faced a crude disruption.

On 1 August, members of the Akhil Bharatiya Vidyarthi Parishad (ABVP), the student wing of the Rashtriya Swayamsevak Sangh, stopped a private screening of the documentary organised by the film society of Kirori Mal College in Delhi

University. A video of the incident shows about 30 members of the ABVP marching into the venue about an hour into the film and demanding that it be stopped. The organisers asked them to watch the film before raising objections to it. Predictably, they refused, before threatening to assault a student who was recording the stand-off.

It is clear that the protest screenings tapped into a vein of anger and frustration at the invasion of open spaces and the curtailing of freedom of expression in India over the last year.

The immediate responses I encountered on social media after the incident ranged from the resigned ("Did you really expect them to listen?") to the belligerent ("You should have hit them back"). In a short while, however, a remarkably effective response was articulated by a number of groups and individuals, which culminated in coordinated protest screenings across the country on 25 August, less than a month after the disturbance at Kirori Mal College. To counter the unofficial censoring of the documentary, it was screened in over 50 towns and cities across 22 states. The film was watched in places as far flung as Nainital, Raipur, Lucknow, Vishakhapatnam and Gangtok, in small venues, auditoriums and even living rooms.

Outside the country, there were screenings in Oxford and Kathmandu. It is difficult to say precisely how many people watched the film, but the organisers estimate the number to be around 7000. No wonder that Sawhney notes that it seems only right for him to send a bouquet to thank the ABVP, for ensuring a far larger audience for his work.

The success of the protest can be linked in part to the impressive networks nurtured by Cinema of Resistance (COR), the group that issued the call for the nationwide screenings. A movement that aims to bring progressive films and a culture of debate to diverse audiences, COR began in 2006, out of Gorakhpur, Uttar Pradesh. Since then it has held festivals and screenings throughout the country, funding its activities through donations alone. Many of the screenings of *Muzaffarnagar Baaqi Hai* were organised by local chapters or associates of COR. They also sent out DVDs to other groups who volunteered to host sessions. So along with the film, the day of protest was also a testimonial to the power of the kind of sustained, difficult work that COR does so well - widening the network of independent-cinema enthusiasts across the country. The date, 25 August, was picked to mark the first

death anniversary of Shubhradeep Chakravorty, the documentary director whose film *In Dinon Muzaffarnagar* was denied the certification for public viewing by the censor board last year.

With news of successful screenings also came reports of disruptions by different parties: university authorities, the police and political groups. Yet even to this day, groups continue to organise events around the film. It is clear that the protest screenings tapped into a vein of anger and frustration at the invasion of open spaces and the curtailing of freedom of expression in India over the last year. As a poster created by COR declared: "You stop us at one place, we spring up everywhere!" Just days after the protest screenings, the media reported that National Award winner Kamal Swaroop's documentary *Battle for Banaras*, on the 2014 electoral battle between Narendra Modi and Arvind Kejriwal in the constituency of Varanasi, had been denied a censor certificate. The film was shot over 44 days from April 2014, capturing the high-octave campaign and the media frenzy in a city that is an important site for Hindu pilgrims. The Telegraph quoted the chairperson of the Central Board of Film Certification of India, Pahlaj Nihalani as saying, "It looks like this film portrays Modiji in poor light and I think it is anti-government to do so." Swaroop denies this allegation, but it is chilling to think that criticising the prime minister can be held as grounds to refuse a censor certificate. Other media reports held the problem to be with the film's 'inflammatory' language. Talking to the Wire, Swaroop said:

All the candidates were making wild statements and allegations- Phrases like Mukhota, 56-inch-chest, corrupt and many more in that vein, were thrown around liberally. Today when we see all that, it looks stupid and childish but the fact is that these comments were made and shown then on television. I just recorded all of it, without adding any comment from my side...

In 2014 it was like entertainment which boosted TRPs; but today it holds up a mirror which we do not want to see.

The irony of a film that revolves around the electoral exercise of the 'world's largest democracy' being censored is too glaring to escape. A beloved and iconic figure in independent cinema in India, Swaroop is one of the mavericks in the field. In 1988, he made the acclaimed *Om Dar-B-Dar*, which has since been rediscovered by a new generation of audience. He also directed *Rangbhoomi* on the life of Dadasaheb Phalke, one of the pioneers of Indian cinema, that won the National Award for best non-feature film in 2014. *Battle for Banaras* was inspired by Nobel laureate Elias Canetti's non-fiction study 'Crowds and Power'. Published in 1960, the text dwells on how and why crowds conform to the authority of rulers. The online teaser of the film shows images of Varanasi as the city prepares for the elections. Another clip shows the ghats, beautifully lit up at night, with a crowd in perfect formation by the riverside cheering Mr Modi. Even as it was denied a censor certificate, the documentary was set to screen at the Montreal Film Festival 2015. The director reportedly plans to appeal the decision with the Film Certification Appellate Tribunal (FCAT).

The irony of a film that revolves around the electoral exercise of the 'world's largest democracy' being censored is too glaring to escape. The trajectories of these two documentaries tell a larger tale about the freedom of expression in today's India. The censorship of *Battle for Banaras* represents the heavy-handedness of the state apparatus and its attempt to silence critical discourse. Such silences become the pretext for labeling any dissent or alternative idea as 'anti-national'. From such context also emerges an atmosphere where murders of elderly professors in Karnataka are celebrated on Twitter, and where an activist and an actress criticising the prime minister's 'Selfie

with Daughter' campaign are met with vile misogyny and abuse.

The case of *Muzaffarnagar* Baaqi Hai, on the other hand, represents the enduring vitality of protest and resistance, and a rousing determination to break the silence. The coordinated screenings of the film were powerful for being led by people as well as organisations, for being both large and small, for being overwhelmingly unpoliceable. They were both heartening for their innovation, and saddening in the fact that the protest viewings were needed at all.

The excesses of the Censor Board or government authorities while confronting dissent is hardly new. One of India's foremost documentary directors, Anand Patwardhan, has engaged in long legal battles before his films have been broadcast. In 2004, filmmakers protested covert censorship at the Mumbai International Film Festival (MIFF) by setting up *Vikalp*, a parallel festival and platform to protect freedom of expression. But the story of these two documentaries is a telling reminder that for documentary cinema, these are both the worst of times and the best of times: the acts of documentation and remembering itself are under attack, but for all that, there is much that they can stand for and achieve.

\*Taran N Khan is a Mumbai-based journalist who writes on cinema, Islam and gender. She has been traveling to Kabul since 2006 where she worked closely with Afghan media producers and filmmakers. Her work can be seen at [www.porterfolio.net/taran](http://www.porterfolio.net/taran).

This article is part of a series of column on cinema by Taran N Khan for *Himal*. Read her earlier column on a writer and a magazine that brought drama to film criticism. *The above article can be accessed at <http://himalmag.com/muzaffarnagar-banaras-documentary-taran-khan-film-column/#sthash.fE483yw2.dpuf>*.

PUCL Bulletin specially thanks *Himal Southasian* and the author for permission to carry this article. □

# Minorities Integral Part of India

Rajindar Sachar

A nauseating attack by BJP, RSS. loyalists has been set in motion about the speech by Vice President Mr. Hamid Ansari (at the function of golden jubilee celebrations of the All India Majlis-e-Mushawarat). I was myself present there. The speech only posed various issues and important policy matters both internally for Muslims themselves and the obligations by the State, which are discussed every day in press and public meeting all over the country.

The communal critics have in this matter shown their bankruptcy of knowledge of Indian constitution which gives primacy to the protection of Rights of Minorities, and also of States obligations under law.

The Nine judge Bench of Supreme Court highlighted profound policy statements as follows:

"The purpose of law in plural societies is not the progressive assimilation of the minorities in the majoritarian milieu. This would not solve the problem; but would vainly seek to dissolve it..... The purpose of the law must be not to extinguish the groups which make the society but to devise political, social and legal means of preventing them from falling apart and so destroying the plural society of which they are members."

Thus inclusive development in India and for that matter in any country alone is the path to prosperity. It is an undeniable truth and needs to be irrevocably accepted by all in India, namely that minorities, Muslims and Christians are not outsiders. They are an integral part of India. Let me quote what Swami Vivekanand one of the greatest spiritual personality of India has to say of the intimate connection between the spirit of Islam and Hinduism thus, "He also told Hindus not to talk of the superiority of one religion over

another. Even toleration of other faiths was not right; it smacked of blasphemy. For our own motherland a junction of the two great systems Hinduism and Islam - Vedanta brain and Islam body - is the only hope... the future perfect India." There thus can be no real progress in India which does not include minorities, Muslims, Christians as equal stakeholders.

In this connection it heartening to find confirmation of these principles of equal development of majority and Minority as laid down by UN Human Right Council, Forum on Minority issued on 14-15th December 2010 as follows:

"The Council emphasizes; "Consequently, the right of minorities to participate effectively in economic life must be fully taken into account by governments seeking to promote equality at every level. From implementing non - discrimination in employment and enforcing protection laws in the private sector to developing national economic development and international development assistance schemes."

"Governments can consider both targeted and inclusive approaches to addressing the economic and social exclusion of minorities. Targeted approaches aim at programme or project outcomes specifically at minorities, whereas inclusive approaches integrate minorities in a wider focus population for programme or project outcomes. If existing policies are not benefiting minorities equally or gaps in inequality are growing, targeted approaches should be considered. Decisions on policy choices should be made with the full and effective participation of all minority groups, should be transparent, and where

possible, should be supported by disaggregated data demonstrating existing inequalities."

"Governments should gather and regularly publicize disaggregated data to measure and monitor the effective participation of minorities in economic life. Improved data collection should be made a priority for the areas of employment and labour rights, poverty rates, access to social security, access to credit and other financial services, education and training, and property and land tenure rights."

In the report of working group on Minorities formed by U.N. Sub Commission on Protection of Minorities, it was the unanimous view that the assimilative approach was not one promoted by the United Nations, and that formal recognition of minorities is the first crucial step towards their effective participation in society. This means not only participation in governance, but also involvement in the economy. Also accepted was the need for multi-lingual education and respect for cultural identity of minorities and the need to ensure fair representation of minorities within the law enforcement system and the workplace. (emphasis supplied) The basic task is to reconcile the pluralism which then exists in that State, and the need to respect the identity of the various groups, with the overall concerns of non-discrimination, equality, national security, territorial integrity, and political independence.

The above declaration is a forthright rebuke to all those mischievous quarters who propagate that government actions at highlighting the condition of minorities is any way divisive.

Thus the same vision was emphasized by our founding fathers/

mothers of Indian Constitution. In the Fundamental Right Chapter in Part III of our Constitution specifically provides vide Articles 25 to 30 the various rights and privileges for the minorities such as: Freedom of conscience and free profession, practice and propagation of religion.

Freedom to manage religious affairs.

Freedom as to payment of taxes for promotion of any particular religion.

Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

### **Protection of interests of minorities.**

Right of minorities to establish and administer educational institutions. This was so done because it is universally established that the faith and the confidence of the Minorities in the impartial and even functioning of the State is the acid test of being a civilized State. This is accepted wisdom, and was expressed succinctly by Lord Acton as follows:

"A state which is incompetent to satisfy different races condemns itself; a state which labours to neutralize, to absorb or to expel them is destitute of the chief basis of self-government".

We need only substitute minorities for races in the above quotation to apply the test in India.

It is possible that Modi with RSS breathing down his neck may be powerless to take action against RSS. imposed BJP General Secretary Kailash Vijyawargiya. But he should in all propriety and decorum publicly condemn and disassociate himself from this communal low level and false allegation by General Secretary of the Party whose government he heads. The again is Raj Dharma, which he was so strongly reminded by the then Prime Minister Vajpayee in the year 2002. □

Paper presented during the PUCL National Council meeting in Allahabad on 19th September, 2015:

## **A Note on Working of Criminal Justice System in India**

**Ravi Kiran Jain\***

Of late, the relevance of our criminal justice system- both substantive and procedural is being seriously questioned. The system is cumbersome, expensive and cumulatively disastrous .It is a replica of the British colonial jurisprudence. Many draconian laws were passed by colonial rulers which were devised to suppress the movement of independence .All these laws have been retained and now some more such laws are being made to suppress the people's movements.

The criminal justice system includes, in particular, the investigation of offences and the treatment of offenders.]The first contact a defendant has with the criminal justice system is usually with the police (or law enforcement) who investigate the suspected wrong doing and make an arrest. In August 2009 Human Rights Watch Report- "**Broken System - Dysfunction, Abuse and Impunity in the Indian Police**", it has been observed:

"The police structure in India is based on a colonial law that did not provide the lower ranks, usually local recruits, with

operational authority or advanced professional training. Inexplicably, that system continues six decades after the end of British rule in India. Constables, the bottom rank, make up as much as 85 percent of the Indian police, but for the most part they are not trained to investigate crime complaints".

Police have broad authority to arrest without a warrant any individual for whom they have a "reasonable suspicion" of having been "concerned" in certain types of criminal offenses, or against whom they have received either a "reasonable complaint" or "credible information" of such involvement. These vaguely defined situations in which police can arrest leads to misuse of power, leading to arbitrary arrests. The system allows the police to commit such human rights abuses with impunity as rape, torture and ill-treatment, arbitrary detention and illegal killings while victims are unable to attain justice or seek restitution.

The second contact a defendant has to have in this system is with a lawyer. In our criminal justice system

the most vital part has to be played by the Bar. This role is recognized in the Constitution in Article 22(1) which says that no person who is arrested shall be detained in custody without being informed , as soon as may be, of the grounds of such arrest nor shall he be denied the right to consult and to be defended by, legal practitioner of his choice. Unfortunately due to variety of factors, public perception about the Bar is not very flattering. A lot of damage is done if the quality and efficiency of Bar is of low level.

The criminal justice system consists of three main parts:

- (1) Legislative (create laws);
- (2) Executive which includes implementation of law and Policing
- (3) Adjudication by courts through the instrumentality of the Bar

**In the criminal justice system in our country, these distinct agencies operate together.**

Even after attaining independence, and thereafter framing a Constitution which came into force on 26.1.1950, we retained the entire colonial legal system which had been effectively used against the freedom struggle. Experience

shows that the institutions retained after attaining independence were not restructured with the vision necessary to discharge the trust restored on them by the people.

**Article 13(1)** of our Constitution declares: "All laws in force in the Territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this part, shall, to the extent of this inconsistency be void." No Draconian law enacted by the British Parliament should have been on the Statute book after this declaration.

**Article 13(2)**, mandates:- State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of this contravention, be void. Similarly no draconian law could have been enacted in India after 26th January 1950 in view of the mandate in Article 13(2).

The declaration made under Article 13(1) remains a dead letter in the Constitution. We did not follow up with the repeal of various laws which could operate in a sovereign democratic socialist Republic. No one proposed that all the repressive laws which were used against the people during the course of our struggle for independence like section 124A, IPC, Criminal Law Amendment Act 1908 and 1938, and the prevention of Seditious Meetings Act 1917 should be declared to be void under Article 13 (1). A legal structure designed to buttress colonial rule became the legal structure of Independent India. The Constitution when it came into force guaranteed that citizens have certain basic rights. Representative institutions were created to safeguard these rights. The courts were meant to discipline the legislatures, as well as the Executive and ensure scrupulous adherence to those principles.

So long as there is a judiciary

marked by rugged independence, the citizen's civil liberties are safe even in the absence of any cast-iron guarantees in the Constitution. But once the judiciary becomes subservient to the executive and to the philosophy of the party for the time being in power, no enumeration of fundamental rights in the Constitution can be of any avail to the citizen, because the courts of justice would then be replaced by the government's courts. "If the salt have lost his savour, wherewith shall it be salted?"

Unfortunately the judiciary too, continued, the colonial traditions, as can be illustrated by what happened in the case of AK Gopalan, decided on 19th May 1950 which was the first case before the Supreme Court, in which the different Articles of Constitution of India, contained in the Chapter of Fundamental rights had come up for discussion. Much was expected, but there was total disillusionment. The court did not rise to the occasion.

Majority judgment held that Art. 22 was a self contained code and therefore a law of Preventive Detention did not have to satisfy the requirement of Article 19, 14, 21 and the argument that the provisions of Article 19 relating to various personal freedoms should be read into the provisions of Art. 21 and Art. 22 was rejected. The minority judges however disagreed with this view, taken by majority, by holding that Fundamental right of life and personal liberty, has many attributes, and some of them are found in Article 19. Article 21 covers a variety of rights including those, which are specifically provided U/A 19.

O. Chinappa Reddy in Chapter IV of his book, the "Court and the Constitution of India (2008) described Gopalan's case as "NOT A GOOD BEGINNING" and then said:

"The majority judges appeared to be still under the influence of the old colonial jurisprudence and oblivious to the fact what they were expounding was the

jurisprudence of a new Constitution for people who had just freed themselves from colonial rule. One wishes that they had kept in mind the admonition of Lord Atkinson J in *Liversidge v Anderson*.

I view with apprehension the attitude of Judges who on a mere question of construction when face to face with claims involving the liberty of the subject show themselves more executive minded than the executive."

Then in 1962 the Constitutional validity of sec 124A IPC which defines the offence of sedition as 'to excite disaffection towards the Govt. established by law in India' by words, either spoken or written, or by signs or by visible representation, was upheld by a Constitution Bench of the SC.

In the first two decades between 1950 and 1970 there were no draconian laws enacted in India except the Preventive Detention Act 1950 and during 1962 Chinese war defense of India ordinance promulgated on 26th Oct 1962, which later on was replaced by Defence of India Act 1963. The **Maintenance of Internal Security Act (MISA)** was a controversial law passed by the Indian parliament in 1971 giving the administration of Prime Minister Indira Gandhi and Indian law enforcement agencies super powers - indefinite preventive detention of individuals, search and seizure of property without warrants, and wiretapping - in the name of quelling of civil and political disorder in India, and threats to national security. The law was amended several times during national emergency (1975-1977) and used for quelling political dissent. Finally it was repealed in 1977, when Indira Gandhi lost the Indian general election, and Janata Party came to power.

On 28.4.76 came ADM Jabalpur case. The state of emergency declared in 1975 and the Maintenance of Internal Security Act

were both validated in this case. The majority of the court proceeded on the assumption that the people and the state's institution were adversaries, at that freedoms were granted to people and therefore subject to withdrawal. Our failure to evolve a new system of jurisprudence and the continuation of British Indian traditions was responsible for the characteristically colonial response of the Supreme Court to the declaration of a state of emergency and the Maintenance of Internal Security Act in ADM Jabalpur.

After the re emergence of Indira Gandhi after a short spell of Janata Party government, since 1980, two pronged strategy is being adopted by the governments, one is to enact repressive laws and the other to weaken the judiciary and making it subversive to the executive which in turn upholds the constitutional validity of repressive laws. Various state legislatures in nineteen eighties had passed their own preventive detention laws, Parliament enacted Terrorist and Disruptive Activities (Prevention) Act in 1985 which was more repressive than Rowlatt, TADA came into existence exactly 10 years after imposition of State Emergency in 1975.

K.G. Kannabiran rightly observed in his book "*The Wages of Impunity*" as follows:

"The Supreme Court in Kartar Singh, upheld the constitutional validity of TADA, virtually proceeding on the assumption that the act is more fundamental than the Constitution. In fact the Constitution Bench did not feel it was necessary to submit the act to detailed scrutiny. They embarked on a peroration against terrorism which showed they had been impressed by the speeches made in Parliament on this subject. The bench skirted scrutiny and confirmed the validity of the enactment. Thus, conforming to post-Independence practice, the

legislature, executive and judiciary in unison mandated the 'absolute reign of law', overlooking the fact that this is often synonymous with 'absolute reign of lawlessness'.

There is a trite saying that ADM Jabalpur case was the blackest judgment in the constitutional history of this country. But it appears that the case of Kartar Singh in which Constitutional validity of TADA was upheld is blacker than the 'Blackest judgment' in the ADM Jabalpur case. After TADA came POTA on the same lines. The Constitutional validity of this later Act was also challenged by PUCL, which was also upheld by SC. Now the provisions of TADA and POTA have been incorporated in the Unlawful Activities Prevention Act 1967 by UAPA Amendment Act 2004 and 2008.

On the same lines are being enacted Laws by the state legislatures like, U.P Gangsters and Anti Social Activities (Prevention) 1986, Control of Goondas Act, in various State legislatures and Chhattisgarh Special Act in which Dr. Binayak Sen was booked.

Now the UAPA after its Amendments in 2004 and 2008 provide broad powers and immunity protection to security officers and other officials. Specifically, UAPA 2008 uses an expansive and vague definition of terrorist offences that include even acts done by any means that are likely to threaten India or strike terror. Coupled with this abuse-prone definition, the amended UAPA then grants broad powers of arrest and search to any designated officer who knows of a 'design to commit' an offence or 'has reason to believe' based on even 'personal knowledge..... or information given..... or from any document, article, or any other thing 'that an offence has been committed. With these vast discretionary powers of arrest and search and the subjective standard that determines the legality of preventive detention, the act still

provides official immunity to anyone purporting to act in pursuance of the act, unless government sanction is provided after an independent review and recommendation.

By upholding the constitutional validity of these Draconian Laws, the SC has given a free hand to the police to falsely implicate human right activists and the persons engaged in People's Movements under such repressive laws. The effect of the judgments of SC has been that the subordinate courts have become executive minded. Once a person is booked under any of these laws, he or she is not likely to get bail. The case of Seema Azad is a classic example of it. She did not get bail pending trial even by the SC. No offence is made out on the basis of allegation against her but she was not only refused bail pending trial but has also been convicted by the Sessions Judge without there being any allegation to make out any offence. The mindset, of the judiciary is the same as that of the Executive. There are many other accused who were booked under the same provisions as were against Seema Azad on the same day i.e., 6th Feb. 2010 in Kanpur and Gorakhpur who are still languishing in jails as under trial without bail. The reason is that there are no competent lawyers available to them and the courts are loath to give priority for expeditious disposal of their cases and grants adjournments to the prosecution to produce witnesses.

Taken together, the vast powers afforded to perpetrators of abuse under the laws establishes de facto official immunity. Victims of human rights violations at the hands of government officials and the police, have no recourse to the judicial system to ensure justice, including compensation, for the harm done to them. What can PUCL do in such a situation?

*\*Ravi Kiran Jain is Senior Advocate, Allahabad and National Vice President, PUCL* α

## The Dignity of the Individual, Democracy and Human Rights

Prabhakar Sinha\*

The dignity of the individual, democracy and human rights are interrelated and interdependent. None of them can survive without the other. The denial of the dignity of the individual on any ground negates democracy as was evident in South Africa, which practised Apartheid under the rule of the White or is evident in theocratic States in which the citizens following religions other than that of the State are denied equality with the adherents of the religion of the State. Such States do not necessarily have to be a monarchy or a dictatorship. South Africa had an elected government in which only the Whites had the right to vote or seek electoral office. Pakistan has an elected government, but the non-Muslims do not have the same right to seek political office as the Muslims. For example, a non-Muslim is not eligible to be the President or the Prime Minister of Pakistan. South Africa under the Whites was not a real democracy nor is Pakistan today. The UN declaration of human rights goes much beyond its (the dignity of the individual) negative impact on democracy when it declares recognition of 'the inherent dignity' (along with the equal and inalienable rights) of all members of the human family to be 'the foundation of freedom, justice, and peace in the world.' The PUCL constitution, too, framed by the legal luminaries committed to democracy and the people who had actually fought for the restoration of democracy during the emergency underscores the interdependence of democracy, recognition of the 'principle of the dignity of the individual' and the rule of law. **It is clear that securing the dignity of the individual is not a remote and abstract idea or ideal unrelated to the cause of democracy and human rights. It**

**is the foundation on which the edifice of democracy and human rights stands.**

The issue deserved the topmost priority and special attention when India became a Republic because the Indian social system was based on complete negation of this principle. For centuries, the people had been accorded different status and values and differential treatment based on the caste to which they were born, so much so that human beings were treated even as untouchables. The system was based on *the denial of the principle that every human being was equal in his inherent dignity by virtue of his being a human being*. This denial was the source of and justification for the difference in the treatment of the individuals and groups of people in all spheres of life and the unjust and inhuman treatment to which those supposedly having lesser worth were subjected. This unjust and baseless belief was so deeply ingrained in the psyche of the people that even those who were subjected to inhuman treatment accepted it as their destiny.

The mentality, which denies the principle of the inherently equal dignity of the individual, continues to exist (though in much less intense form and not necessarily based on caste) even today and is responsible for the weakening of our democracy and resurrection of many undemocratic feudal practices. It is probably due to this mindset of the political leaders of the freedom movement that eradication of this evil did not receive the top priority it deserved. It may be unfair to attribute it to the hypocrisy of all of them, but it may be a fair guess that though most were intellectually convinced of its injustice their culturally determined response for its eradication was weak.

The neglect of the vital issue has resulted in a culture in which the people have accepted a scheme in which the dignity of the individual has become relative - typical of a feudal system. Prior to independence, there were *Maharajas, Rajas, Nabobs, Sirs, Rai Bahadurs and Zamindars* entitled to recognition of their due but relative status. Though those Titles have been abolished, the culture of difference in status continues in which a poor uneducated person continues to occupy the last rung of the social ladder mutely acquiescing in his indignity while the others above him, too, have acquiesced in their respective positions vis-a-vis the others. Mindful of the baneful effects of the difference of status of the individuals and groups of the people on democracy, the Directive Principles of the State Policy stipulates its elimination, but unlike the Fundamental Rights a citizen cannot get it enforced by a court, and the political class is against the very principle (though endorsing it verbally) and its implementation.

The acquiescence of the people on the last rung of the social order in their degradation has resulted in practices which have been emaciating our democracy with disastrous consequences. Having accepted a feudal order, the common man does not find it incongruous to vote for a dynasty. It has now become a way of life in Indian politics to promote one's family because the common voters do not find it repugnant. Even if a party claims freedom from this ailment because its top post may not remain in a family, it as much promotes family monopoly at the lower level as the parties it may be blaming. Influential political families, treat their constituencies (whatever the scale - a State or a number of constituencies) as their fiefdom.

There are political parties in which most or all of the seats in the Legislature are occupied by a single family. Such politicians unabashedly and fearlessly declare the members of their families as their political heir as if their parties and the seats in Parliament or State Legislatures or the cabinet were their private and personal property.

When the people in a democracy suffer a degradation of their dignity and cease to enjoy equality of status as a citizen, it is inevitably followed by consequences with menacing consequences. The people on the lower rungs of the social order have been reduced to the status of supplicants vis-a-vis the State and been alienated from the democratic process. They no more feel that they are stakeholders in our democracy and are reconciled to their status as supplicants. At every election, they look at the political leaders as their benefactors and are often swayed in favour of the one whose offer appears most attractive.

The reduction of their status from stakeholders to supplicants has caused them to believe their votes of no value and relevance to their

life. To them, their votes are not a means to change their life and a politician's fate, but a mere piece of paper not worth much. It is this thinking which has made votes '**a commodity on sale**' and enormously increased the role of money in elections as a means to purchase votes. The role of money as a means to directly purchase votes has made the rich the masters of the Indian State and the 'Movers and Shakers' of India's democracy.

The alienation of the masses from the democratic system and institutions has caused the emaciation of constitutional institutions, which are grasping for breath to survive. For 70% or 80 % of Indians ,the debates in the Parliament or the State Legislatures ,the proceedings of the apex court on fine constitutional points ,the reports of the Controller and Accountant General of India ,the findings of the Judicial Enquiries and proceedings of many other constitutional institutions have become meaningless and irrelevant. It is this alienation which has emboldened the political class to act with recklessness towards all

including the section of the 30%, which is not unconcerned but has been rendered impotent because of the indifference of the masses.

It is unrealistic to hope to promote or protect human rights acquiescing in the status quo to which the masses continue to be reconciled. If they remain resigned to the denial of their inherent dignity and apathetic to their rights, our democracy would be further emaciated and weakened and human rights further imperilled. It is quixotic to think of protecting human rights overlooking the resignation and apathy of the masses to the denial of their dignity. It is the sense of one's dignity and worth which makes him aware of the injustice done to him by their violation .It is imperative for the human rights movement to arouse the masses to fight for the dignity of which they have been cunningly robbed. As a first step, the State must be asked to treat them with due respect and the masses sensitized to their due dignity and inspired to rise against its denial.

*\*Prabhakar Sinha is the National President of PUCL. α*

PUCL Press Statement: September 20, 2015

## **PUCL National Council Meeting at Allahabad on 19-20th September 2015**

National Council of PUCL met in Allahabad on 19th and 20th of September 2015. About 70 delegates from 12 states participated in the convention. Following are the main decision made in the national convention.

### **National Campaigns:**

PUCL has decided to launch national-level campaign involving all the state units across India starting from 1st January 2016.

PUCL is extremely concerned that 75-80% of the ordinary citizens are alienated from the democratic process because of the denial of their inherent dignity as citizens. In actuality they remain mute spectators to the democratic

process instead of playing the role of key stakeholders. PUCL is therefore launching an all-India programme demanding recognition of the inherent rights and dignity of every citizen irrespective of their social or economic standing, and ensuring giving them respect and recognition in their interaction with officials in government offices, schools, elected bodies including panchayats and all other institutions. This campaign will include poster campaigns highlighting how ordinary citizens are treated when they visit government offices, awareness campaigns in terms of their inherent rights, and documentation of the hundreds of ways by which ordinary citizens ranging from rickshaw-

pullers, workers to slum-dwellers, are treated, and they demand their rights in government offices, police stations, public transport systems, hospitals, and more. This will also include a vigorous campaign to sensitise people to their right to dignity and inspire them to assert and demand due respect.

PUCL is extremely concerned about the grave threat to Indian democracy by the Sangh Parivar's politics which is putting forward a programme to transform India into a theocratic state. PUCL is worried at the divisive programmes initiated and undertaken by both the central and some of the state governments, which is aimed at not only widening the communal divide but also to

polarise political discourse along majoritarian lines. Our concern is that this politics is aimed at weakening the plural structure of the Indian society and polity and the history of tolerance and respect for diversity of communities existent in India. This type of divisive policy in the end will not only threaten the democratic process but will also threaten democracy itself in India. In this context PUCL has decided to launch a nation-wide campaign focusing on strengthening the pluralist and tolerant traditions of India while at the same time creating a discourse in support of communal harmony, peace, and wellbeing.

PUCL wishes to point out the deep systemic and institutional crisis that has engulfed the criminal justice system of India. Not only do the police flagrantly violate all laws with impunity, they in most instances have become a law unto themselves, and remain unaccountable for their actions. Across the length and breadth of India, on the one hand, ordinary citizens who are victims of crime, do not have confidence that they would get justice if they were to approach the police and the courts with their complaints. On the other hand, thousands of innocent persons are falsely implicated and suffer imprisonment for long periods of time. While the rich are able to purchase their way through the criminal justice system, it is the poor, marginalised, weaker section of society who suffer the consequences of the corruption of the criminal justice system. Custodial torture, encounters, forced disappearances are commonplace, affecting millions of ordinary citizens on a daily basis. Politicisation of the police, compromised prosecutorial and judicial systems have become systemic problems visible all across India. PUCL therefore feels that the crisis of the criminal justice system has to be addressed through a nationwide campaign working on

A. empowering citizens through

knowledge of constitution and criminal law,

- B. documenting the actual functioning of the criminal justice system in courts, police stations, prisons, etc.
- C. conducting training programs for judges, policemen, prison officials and other government agencies who play a role in the criminal justice system,
- D. examining loopholes in the criminal justice system and suggesting reforms.

PUCL strongly criticises the decision of the government of Maharashtra to criminalise any criticism of any public functionary in the state of Maharashtra by prosecuting the individuals for sedition for exercising their democratic right. This is a move to stifle any valid criticism of government policy, which has been recognised as forming part of the fundamental right of dissent necessary for ensuring democracy.

**Concerning Amendments to Panchayati Raj Electoral Laws:**

PUCL opposes the amendment brought by Gujarat and Karnataka governments which makes voting compulsory in panchayats in those states. PUCL wishes to point out that the right of a citizen to vote also includes the 'right not to vote'. Boycott of elections has been a democratic process of citizens registering their protest. All such democratic forms of protests are henceforth criminalised. There are other natural reasons why a voter may not vote including illness, personal disability, not being available because of personal circumstances, migration, and other reasons. Criminalising not voting is therefore unacceptable as it is against human rights.

PUCL opposes amendments to election laws related to panchayats brought by the governments of Bihar, Rajasthan and Haryana, imposing:

a condition of disqualification based on educational qualification

a condition of necessity of having constructed toilets in their houses

These disqualifications are unacceptable because they will deprive people in the last rung of the electoral system in India from participating in the self-government process. Similar disqualification has not been imposed for candidates for assembly / parliament elections.

**6. Human Rights in the South Asian Context:**

PUCL has for long held the position that the government of India should take a consistent principled stand as regards violations of human rights and demands for accountability for commission of major human rights exercise. This is particularly so in cases of human rights violations occurring in countries neighbouring India. It is in this context that we call upon the government of India, as a member of the UN Human Rights Council, to move a resolution calling for a credible, independent, international investigation into violations of humanitarian and human rights laws committed against Tamils by the Sri Lankan army during the end stages of the war in May 2009 and the situation thereafter. We would like to point out that the report of the UNHRC commissioner itself highlights that internal mechanisms will not be sufficient to ensure justice and accountability for war crimes and crimes against humanity. And therefore, PUCL calls upon the government of India to urge the international community to support international investigation as a means to secure peace and justice for the Tamils in Sri Lanka.

PUCL calls upon the government of India to take into consideration human rights concerns of Indians living in the border areas of India and Nepal because of problems that have surfaced recently in the border areas.

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

## Minutes of the PUCL National Executive Meeting, 28th Feb. - 1st March, 2015

The meeting was held on 28th Feb, 2015 at Gandhi Peace Foundation, Delhi and on 1st March, 2015 at ND Tiwari Bhawan, Delhi

**Members present: Both days:** Prabhakar Sinha, Vinay Kantha, Daisy Narain, Ramashray Prasad Singh (Bihar); Rajinder Sachar, ND Pancholi (Delhi); Rohit Prajapati (Gujarat); YJ Rajendra (Karnataka); RL Batta and Arjun Sheoran (Punjab); Saraswathi and V. Suresh (TN); Ravikiran Jain, Vandana Mishra, Chittaranjan Singh (UP). Surendra Kumar (Bihar/Delhi). One Day (on 28/2): Sanjay Parikh (Delhi); Kavita Srivastava, Nishath Husain (Rajasthan). (On 1/3): Sheoraj Singh (Delhi)

### Summary of discussions and decisions taken

1. The NE Meeting was chaired by Prabhakarji. Sacharji was present during the entire discussion on both days.
2. The NE meeting began with a recap of the key outcome of the Patna National Convention (Dec, 2014). Apart from the high turnout of almost 400 delegates representing many states from across India, the highlight of the Convention was the spirited and animated discussions in the 5 thematic groups. The reports of the discussions of 3 of the thematic groups were already circulated through the PUCL Bulletin. (Draconian laws and conflict areas (Sudha Bharadwaj); Development process, environmental issues and climate change (Rohit Prajapati) and Rising threat of communalism and majoritarianism (Kavita Srivastava). The remaining 2 will be shared in the coming issues. Each of the groups also discussed on activities that PUCL should undertake in the future. However since there was not much time to concretise an action programme on each of these themes, it was decided in Patna that the NE will discuss in detail on concretising and consolidating the work of the thematic committees.

3. Very briefly, the importance of addressing the different items listed in the agenda was also spelt out with the request that we should conclude the NE with concrete decisions and an action plan. The following records the key discussions and decisions taken.

4. Finances: Suresh highlighted the precarious financial status of the national office which had only a little over Rs. 20,000/- cash in the bank. Monthly expenses towards rent for the office, payment to the two staff on the National Office, cost of printing each issue of the monthly PUCL Bulletin and other costs itself amounts to approximately Rs. 55,000/- pm. PUCL, which has a PAN card and is registered as an 'Association of Persons'. There is divided opinion of the chartered accountants as to whether PUCL can be assessed or is required to pay tax for the donations it received, as mostly the donors have already paid IT on their earnings out of which they were giving donations. Though this issue still requires to be decided, we had decided to pay IT on the amounts received by us in the previous three accounting years 2010-13. In any case PUCL should raise more donations so that we are able to meet the costs of running the National Office and different activities we decide on, on our own. A statement detailing the income and expenditure statement for national office of PUCL was circulated amongst all members.

5. On the issue of the importance of state units independently obtaining PAN registration with IT and having audited statement of accounts each year, a lively debate ensued. Some of the state units pointed out that they very seldom collected any money in the name of PUCL; and even if at all they did collect for some event, it was small sums of money. Most often the members themselves put in their own money to take

care of their costs. They also lacked human resources and also the skill or expertise to maintain accounts in prescribed formats. Further, a question was raised as to the practicability and feasibility of engaging a Chartered Accountant to audit accounts of each state unit.

6. Vinay Kantha of Bihar pointed out that while the Bihar state unit maintains detailed accounts of income and expenditure of their state unit for every year, we need to address a more fundamental ethical and political question as to the necessity of an unregistered organisation like PUCL submitting itself to scrutiny by state authorities and to the need to have annual audits undertaken of accounts. Kavita pointed out that Rajasthan state unit has a PAN registration and annually has its accounts audited and returns filed. As an organisation which spearheaded RTI campaign and constantly demanding accountability from the state, its agencies and corporate bodies, we ourselves should subscribe to the same standards of probity, transparency and accountability and every state unit should have a clear statement of income and expenditure of its activities which are also audited by a competent Chartered accountant. Rohit Prajapati also shared the experience of the trade union and environmental agency he is part of and how they meticulously maintain accounts of even the smallest financial transactions. He also emphasised the importance of the National Office and also the state units in maintaining detailed accounts which can be shown to anyone when called upon. Suresh shared with everyone the experience of Anhad group which is also unregistered and has been organising many events based on public support and also help by individuals and other groups who support specific expenses. The enforcement wing and also the IT

authorities have sent them demand notices asking them to account for every event organised by them with the list of people supporting the event and in turn following up with the individuals concerned. While in the end nothing generally come out of the entire exercise, the entire exercise was in the nature of a witch hunt by the authorities and the experience had caused unnecessary unpleasantness. Vandana Mishra requested that they be informed on how to maintain accounts and pointed out that the model format for maintaining accounts had not yet been sent to them. Others also spoke. At the end of lengthy discussions the following decisions were taken.

**7. As regards raising donations/ financial support for PUCL:**

- (i) Many years back a decision as taken that each of the National Council members from each state should donate Rs. 1,000/- annually towards running the National Office. Unfortunately many NC members are still to pay the amount. The NE unanimously decided that a special appeal be made to all the NC members with the request that they pay up the amounts due for the period 2012-14 and 2014-16 (amounting to 5 years) within the next three months. Members could opt to pay in two parts also.
- (ii) The responsibility for collecting the amount and remitting the amount to the NO will be that of each State President and General Secretary, with the State GS writing to Surendraji, National treasurer in this regard.
- (iii) In case some NC member from the state is unable to pay the amount, the amount should be raised from within the state unit and the amount due from such persons collected and sent to the national office. The GS of the state unit will take responsibility to raise and remit the amount.
- (iv) Apart from this, each state unit is requested to approach individuals who are interested in supporting human rights work to support our work with donations of Rs. 1000

to 5000/- per year. Each state unit should discuss how many such individuals they can approach like this and the amount that can be raised and intimate the National Treasurer and General Secretary.

- 8. On issue of maintaining accounts and necessity of getting them audited:
  - (i) It is unanimously accepted by all that PUCL, nationally and all the states included, being a public organisation should be fully transparent in its functioning and will uphold the highest standards of probity and accountability for all financial transactions of the organisation.
  - (ii) Model format to maintain accounts: Surendraji, National Treasurer will discuss with Jagannathanji, former National Treasurer about a model format to maintain accounts, and circulate to all the state units. This will not only help inform and guide the state treasurers in the proper form of maintaining accounts with all supporting vouchers and documents but also bring about uniformity in method of maintaining accounts amongst all state units.

Action point: Surendraji to circulate note to all state Treasurers and General Secretaries. Concept Note on approach to issue of maintaining accounts: Vinaykantji will draft a note and circulate amongst all NE members outlining his thoughts on the necessity and propriety of state units having to subject themselves to audit and accounts. Action point: The note will be made ready by Vinaykantji.

- (iii) Appeal Note for donations: Rohit shared the view that many PUCL sympathisers / friends of PUCL, who were professionals or in well settled jobs did not know the range of PUCL activities. So much so when they were informed that it was PUCL's intervention in the SC by which we got (a) NOTA judgment or (b) mandatory filing of affidavits by candidates in elections or (c) fundamental rights of citizens to privacy vis-a-vis telephone tapping or (d) challenge to sec.

66A of IT Act (this was pointed out by Arjun Sheoran), they became interested in supporting such activities.

Action point: Rohit, Kavita and Arjun will jointly prepare an Appeal Note for donations.

- (iv) Apart from State office bearers mobilising donations, in view of their widespread contacts and experience, a committee of 3 members, Surendraji, Nishant Akhilesh (from Jharkhand) and Rohit Prajapati (Gujarat) will coordinate to help raise donations from other concerned citizens and friends of PUCL to help meet regular expenses of PUCL.
- (v) Web Donations: Arjun proposed that since the new web site is under construction, we could include an appeal calling for donations from interested visitors to our web site. He also addressed issues of how we can ensure security by asking interested donors to send an email note to us leaving it to us to accept the donation or not. However members raised queries about propriety of accepting donations from unknown people who may not know about PUCL. For the moment decision on this is deferred. But Arjun will prepare a note on this for circulation and discussion in the NE.

Action Point: Arjun sheoran to prepare a note for circulation.

**PUCL Bulletin:** Suresh shared with members some issues relating to the Bulletin. Presently we are not getting sufficient subscription amount to offset the expenses incurred in publishing the Bulletin. We are constrained to post between 900 to 1100 copies each month as these numbers are prescribed conditionalities by the Postal department to avail of concessional postal tariff. As a result we are posting copies to people who have not paid for it. There is therefore urgent need to streamline the subscription so as to ensure that we have subscribers who pay their annual subscription and also copies are sent to people interested in reading the same. In this context

the following were decided:

- (a) All State units should get 50 (Fifty) new subscriptions, collect money and send to national office for 2015.
- (b) If possible, at least 3 years' subscription should be obtained from each such person so that we are assured of a continuing subscription list.
- (c) The responsibility for sending the list of new subscribers shall be that of the State General Secretary who shall send the National GS the details of new subscription.
- (d) The process of getting new subscribers should conclude latest by end - October, 2015.

**9. National Programme on Common Campaigns to be undertaken by all state units:**

An issue which has been under discussion for the last year or so is about the importance of undertaking national level campaign on issues which are relevant throughout the country, which programme will be undertaken by all the state units individually and finally at a national level programme. There have been several examples of such campaigns before like the All India anti-sedition laws campaign, the Anti-Death Penalty Campaign and so on. However the biggest challenge was to sustain these campaigns over a period of time as also the limitation that not all the state units participated in such campaigns. This was discussed in the Patna National Convention and it was decided that the National Executive will discuss and concretise some campaigns which will be the lead campaigns for the PUCL as a whole over the next 1 to 2 years. Prabhakarji proposed that we should choose a campaign theme and issue with which ordinary people will connect with and relate to. Sacharji who had suggested in 2012 that we launch the All India Anti-sedition laws campaign reflected on the importance of having multiple type of campaign activities on which ever issue we finally decided to choose.

**10. Campaign Demanding recognition of the Rights of ordinary citizens to be treated with dignity and respect by government functionaries:**

Prabhakarji circulated a concept paper on the above theme and also shared what he had in mind in proposing this campaign. He stressed that in most government offices across India, ordinary people were treated very shabbily, treated with scant respect and in a very indignifying manner. The bureaucracy, at all levels, treated people so badly that it had negative effect on the self-respect, self-esteem and confidence of people. Hence launching a campaign demanding that the government prescribe standard protocols prescribing the methods of treating any person coming to their offices first by greeting them by offering a hand shake, then asking them to sit in the chairs in front of them and so on will find resonance with ordinary citizens. It's an issue which will also find acceptance anywhere in the country. State level campaigns can be launched keeping in mind the social and cultural specificities in each state and address other local issues also.

A lengthy discussion was conducted on this suggestion. Vinayji and Vandanaji pointed out that insisting that officials shake hands with people may not be acceptable for cultural reasons. Sacharji pointed out that we need to think through the entire campaign so that it can be sustained over a long period of time. Arjun shared his views that the RSS also insists on addressing every person with a honorific "ji" but in reality this has degenerated into a measure of tokenism. Saraswathi pointed out that such a campaign had been launched by Periar in the 1920-30's in Tamil Nadu and had had a major political impact on the conduct of both officials and ordinary people. Kavita spoke of the situation in Rajasthan where adivasis are kept standing at the doorways of offices and treated very uncouthly.

In the end, it was decided that Vinaykantji and Prabhakarji will jointly prepare a position paper which will detail the different activities in which the campaign will be launched and circulate for discussion in all the states.

Action points: (i) Vinaykantji will circulate a position paper in consultation with Prabhakarji which will be sent to all the state units for further discussion in the state and district units. (ii) Each State GS will prepare a summary report of the discussions and decisions in the state/district level meetings and send to national office by end July, 2015. (iii) All the reports will be put together and a final consolidated paper will be circulated to all the NC members by end August so that the same can be finalised during the National Council meeting to be held in Allahabad on 18-19th September, 2015. (iv) Saraswathi will gather materials about the campaign launched by Periar in TN and share with others.

**11. Thematic Committees:**

Suresh presented the perspective behind the formation of the thematic committees which has been under discussion for over a year.

- (a) The key idea that came out during the process of discussion on streamlining PUCL was that we have many subject experts amongst us and do not utilise their knowledge and expertise adequately.
- (b) Considering the fast changing scenario in the country and the rapid changes in laws, policies and schemes, we need to not only be abreast of the changes but also be well informed on all issues which have a human rights dimension. These range from issues as wide ranging as education policy to development framework; environment protection policy and law, international trade laws, including the impact of WTO / GATT and effect on internal issues as for example in the context of food security, labour policies and so on.

- (c) There is a major expectation both within PUCL and from outside the organisation on PUCL to provide a strong analysis on the scope of human rights which goes beyond issues of custodial crimes, state excesses, anti-terror and draconian laws and human rights abuses, caste and communal violence and similar other issues which have been among the main issues taken up.
- (d) Considering all these aspects, it was felt that if we have standing committees made up of subject experts and experienced people comprising a set of related sectors / subject areas, who could constantly scan the interplay of laws, policies, trends and politics and present status papers focusing on the human rights dimensions of these changes, then PUCL, will be strengthened and be able to broadbase our activities.
- (e) The Thematic Committees will be anchored by a national / state office bearer and invite other PUCL members to be part of the Committee which will function independently. As and when necessary, the Committee can propose our stand on issues and also assist by writing up status, analytical papers or if the situation requires, to draft press statements or releases relating to the issue which can be released by national PUCL.
- (f) The thematic committees while it will be anchored by members, could invite other subject experts from amongst friends and well wishers of PUCL to provide their expertise and inputs to the committees.
- (g) About 10 thematic committees are visualised starting with the 5 thematic groups which were the basis of discussions during the Patna National Convention in December, 2014.
- (h) Rohit Prajapati, Sudha Bharadwaj and Kavita Srivastava, who had anchored the 3 groups in Patna were requested to make brief presentations on how they visualised to take the thematic committees forward. (They had volunteered to anchor the three

committees on environment, human rights situation in the central Indian states pursuant to the anti-terror operations of the Indian state including widespread state terror and the issue of majoritarian politics and impact on communal issues, diversity and secularism).

12. Rohit and Kavita presented their ideas on how to launch the work of the thematic committees they had volunteered to lead. Sudha Bharadwaj sent a written note on the plan on how to launch work of the committee she had undertaken to lead.

13. **Discussion on thematic committees:** Sacharji raised the issue of whether we can sustain this effort and whether it will not dilute the key focus of the work of PUCL. He also raised the issue of ensuring that committees did not function totally independent of the PUCL national executive and take positions without consulting the larger National Council and body. Prabhakarji explained that the issue of functioning independently of the organisation did not arise as each committee will be anchored by an office bearer and have members drawn from all state units. Further any public statement will be issued only in consultation with national office bearers and securing their assent and in the name of national unit. Prabhakarji also suggested that we should try out the idea and examine the issue after a year or so after the committees start to function. Daisy pointed out that it will be useful to form national platforms as it will help to understand changes in different states and compare situations in different states. Some other members pointed out the need to have a national perspective on recent policy initiatives, evolved keeping in mind the situation in different states. Rajendra pointed out to the recently floated proposal to form 'Smart Cities' or the 'Education Policy' which will have different implications in various states. Such a committee can help understand from a national perspective.

#### 14. **Challenge of Majoritarianism, communal polarisation and human rights:**

A lengthy discussion was held on the issue of the thematic committee Kavita is to anchor, viz., on majoritarian communalism. Kavita pointed out the all pervasive nature of hindutva consolidation all across India, including in regions / areas which are not known to have a history of communal polarisation. She also pointed out to the issue of understanding the fast paced changes arising from the BJP no being in the helm of affairs in the centre and in many states too. The majoritarian mindset is now very visibly seen amongst officials, especially police and security forces, and also in member so the judiciary, across all levels. This presents a major challenge to the preserving, protecting and promoting the idea of secularism and secular discourse especially since most of the media organisations had been appropriated by corporate who were openly in support of majoritarian politics. Prabhakarji stressed the importance of reaching out to the majority amongst Hindus, who are not necessarily communal, and raise the issue of the danger of a Hindu Rashtra to Hindus. He also pointed out to the need to address changes amongst (a) police, (b) judiciary, (c) administration and (d) educational system and stressed the need to initiate work with a visionary perspective to roll out not in a short time, but over several years. The following are some of the issues sought to be highlighted:

- Identify people who can take the process forward including people from educational field, culture, creative arts. Lawyers, students and others.
- Need to create a cadre of people trained to take the message of importance of preserving diversity, secular values and tolerance to different social sections - in other words to have a comprehensive 'Trainer of Trainers' programme.
- Working to sensitise different sections of bureaucracy, police,

judiciary and other state agencies.

- Relate with other groups working on the issue including groups from education sector who have been analysing school text books.

15. **Action Points:** (i) Rohit, Sudha and Kavita to write up basic concept notes and circulate it to all state units by 15th April, 2015. Thereafter the note will be discussed within each state unit and the results shared across all state units. (ii) Each of the three committee anchors will give a call for volunteers from inside the organisation and will also identify people from outside PUCL to invite to be members of these committees and share with national office. This process should be completed by 31st May, 2015.

16. **Threat to education because of proposed New Educational Policy:** Vinay Kanthaji started by pointing out that amongst many in the human rights and development field, there is an expectation of PUCL to lead discussions in the ideological and conceptual domains. This is especially so on the threat posed by the new education policy being pushed by the Modi government. He pointed out that education is a key site for intervention by the right wing government with far reaching effect on future generations of students / citizens. There is a consistent effort to undermine constitutional value system especially as regards respect to the principles of dignity, secularism, equality and so on by changing the content of education and pedagogy. The state is steadily abdicating its responsibility in ensuring that the educational system addresses constitutional issues of ensuring equality, equity, secular values, respect for diversity, citizenship values and so on by slowly withdrawing itself from the educational sector by slowly privatising educational institutions. Ideological tinkering is being steadily pushed through by Central Agencies including the central government's education

ministry (MoHRD). There is not sufficient public discussion on this dangerous trend. We need to demand that the education system should ensure respect for the creation of liberal, egalitarian societies. From a human rights perspective Vinayji pointed out to the following three interventions to begin the process of engagement with critiquing the education system:

- (a) Critical assessment and critique of educational system, nationally and in context of each state;
- (b) Examine problems and issues related to curriculum and aberrations with this in recent years, again, both nationally and at level of each state.
- (c) How can this process be combated by human rights activists.

17. **Action Points:** Vinayji agreed to the following

- (i) Circulating a summary critical note on current challenges to education and policy for discussion within PUCL;
- (ii) To write a note on the importance of analysing budgetary provision for education, both school system as also higher system, and how to conduct such an analysis which can be undertaken by each state unit;
- (iii) To circulate a note on the 2015-16 annual central budget in terms of provisioning for education.
- (iv) These should be circulated by end April, 2015.

18. **Prison Reforms:** Arjun Sheoran volunteered to anchor the thematic committee on prison reforms by writing up a summary concept note on the subject and creating a template to be circulated to all the states by which we can gather details of prison conditions, learn from best examples, identify critical issues in prison reforms, focus on anti-human rights content in prison laws and policies and in general to create an All India basis for taking up issues related to prison reforms. Ravikiranji will help guide Arjun in this process and together they will create a template to analyse State Prison Manuals. Arjun will circulate a note by end

April, 2015.

19. **PUCL Litigation:** The need for a uniform policy relating to litigation initiated by different state units was raised for discussion. The issue has several dimensions: firstly, if there are several advocates in a state unit, the issue of who will represent the organisation is a ticklish issue; secondly, who will decide whether an issue should be taken up for PIL or not is another problem which has arisen at various times; thirdly, which issues can PUCL take up - can PUCL take up issues of individuals?

From a different angle is the issue of not having information of the various litigations filed by different state units. Recently through press reports we came to know that a district unit (in one of our state units) had filed a petition in a district court against some officials but no one from the state unit had information as to who had filed and for what reason.

The importance of a centralised data base of all cases filed on behalf of PUCL has become very crucial.

After some discussion it was felt that this issue needed greater deliberation and should be taken up at a later time after ensuring that this issue is flagged to the attention of all state units and their opinions sought. Until such time the issue is debated and decided the following guidelines alone were decided:

- (a) At the state level, any PIL in the name of PUCL should be filed only after discussion in the State Committee and approval given for the same.
- (b) In the event that there is no consensus in the Committee, then the State President and General Secretary should take the final decision; they should however consult with the national office bearers before finalising a decision.
- (c) In any case, details of the case filed with all case papers should be shared with the national office.
- (d) Any district unit wanting to file a PIL should necessarily do so after consulting the State Office

bearers and discussion with the State Committee.

20. The next meeting of National Office bearers was fixed for 5th and 6th June, 2015 in Delhi by which time the three committee anchors would firm up their plans and present to the national office

bearers.

21. The next National Council meeting will be held in Allahabad in mid-September, 2015. Ravikiranji / Vandanaji / UP state unit will finalise the dates and inform national office.

22. The next National Executive meeting will be held in Chennai in end - December. Saraswathi will consult with the state unit and intimate the dates of the meeting.

**Minutes prepared by V. Suresh, National General Secretary, PUCL**

¶

PUCL salutes the contribution to the human rights movement of PA Sebastian, Advocate and leading member of the Committee for the Protection of Democratic Rights (CPDR), Mumbai and condoles his death. We carry a short tribute to him by Anand Teltumbde, presently General Secretary of CPDR

## **Advocate P A Sebastian, the Doyen of Civil Rights Movement Passes Away**

**Anand Teltumbde**

Our friend and comrade P A Sebastian, who was the face of Committee for Protection of Democratic Rights (CPDR) for decades, has passed away this morning around 10 am. As per his two caretakers at the old age home in Goa, where he was lodged for the last six months, after shifting from Kerala, he was given medicine and breakfast through nasal pipe as scheduled. Around 10 am when they wanted to take him for bath he just went cold. They called nurse and then doctor, who declared him dead.

Sebastian, Sabby for his friends, was an integral part of the radical movement in Maharashtra. Despite his polio affliction disability, he left his home in Kerala all alone after his matriculation and made Bombay his home. He studied to complete his graduation and law degree and practiced in the High Court. He was always part of the radical students movement. Sebastian remained in the forefront of civil rights movement in Maharashtra. He was one of the founders of Committee for Protection of Democratic Rights (CPDR) after the Emergency and remained its General Secretary until his health rendered him immobile.

He fought many valiant battles, inside and outside courts. He participated in numerous fact finding team all over the country. He was elected Chairperson of the International Association of People's Lawyers and Vice President of the Committee for the Release of Political Prisoners. Despite his disability he travelled all over the country and abroad.

Sebastian was one of the pioneers of the idea of people's tribunals. He had contributed immensely taking cudgel for the hapless victims of Bombay riots in December 1992 and January 1993, in which around 900 people (275 Hindus and 575 Muslims) lost their lives. Sebastian worked tirelessly in presenting their cases before Shrikrishna Commission.

His indomitable spirit came alive in protest against the draconian laws and anti-people legislation. Two years back, in one of the public meeting, he dared the government to arrest him on the charges of sedition. He thundered that criticizing the government was actually a democratic duty of a citizen and hence to charge people for sedition for doing that is the most unlawful act one could imagine.

I had a good fortune to have his acquaintance for many years. For quite a few incidents in and around Bombay, such as Ramabainagar Dalit Hatyakand, Kalyan riots, Mumbra riots, just we two formed an impromptu fact-finding team and rushed off to the sites. Sebastian inspired many people to work for civil rights.

CPDR mourns the loss of its senior comrade.

Sebastian's mortal remains are taken to a hospital where he would be kept in mortuary and funeral will take place at 4 pm on 25th July, 2015. ¶

**PUCL TN & Puducherry: 28th August 2015**

## **Egregious Violence at Seshasamudram, Villupuram Dist in Tamil Nadu**

PUCL strongly condemns the atrocities on Dalits at Seshasamudram village, Sankarapuram taluk in Villupuram district and urges the District administration to lift the ban under sec. 144 Criminal Procedure Code.

A temple car, which was to see the light of the day on the main streets of the village in a Mariamman (local deity) temple procession on 15-08-2015, was set ablaze along with

many houses of the Dalits, by the Vanniyars the previous night. This was perpetrated by a mob comprising 200 people from the same village and a good number of people from neighbouring villages.

The temple car issue erupted way back in 2011 thanks to the assertiveness of the Dalits over their cultural rights. Ever since, the Dalits had been making attempts to make and pull the temple car - a long

cherished desire of the Dalits - at the Mariamman festival. Following this, a temple car with the deity Mariamman was ready to be set in motion in the year 2012. But this was stalled by the Vanniyars led by none other than the Panchayat President!

The temple car, which was all set to be free on 15-08-2015 with the protection of police and bureaucrats, was set afire along with many houses of the Dalits the previous

night. It was done immediately after a meeting organized by the PMK led by Anbumani Ramadoss at Kallakuruchi a day before the incident. By all means, this is a pre-planned attack born out of caste fanaticism.

PMK which professes a bounden duty to foster fraternity and social harmony, has ironically been indulging in orchestrated violence against Dalits. PMK does it with a sinister design to consolidate Vanniyar and other backward class votes in its favour by portraying Dalits as a common enemy! The vote bank politics of PMK disrupts peaceful co-existence among different castes and puts social harmony in jeopardy. Besides, it leads to human rights violations and undemocratic acts.

PMK reaped rich harvest, following the egregious violence unleashed by

Vanniyars against the hapless Dalits at Naicken Kottai, at the last parliament election in Dharmapuri. And the love affair of Divya - Ilavarasan also became a tragedy. The aim of the PMK is polarization on caste lines.

Honour killings are on the ascendancy in south and west Tamil Nadu. Recently a Dalit Engineering student -Gokulraj by name - was brutally murdered by some people from Kongu Vellalars which is a dominant community in west Tamil Nadu. Prime accused in this murder is one Yuvaraj who is a leader of a caste outfit and the Police are yet to nab him. The reasons are not far to seek. The Govt machinery is told to go slow on this case bearing in mind the vote bank of Kongu Vellalars.

Rule of law must take its own course irrespective of caste, religion, haves and have-nots. Communal passions

flare up when elections are round the corner. Mostly Dalits are at the receiving end. Dharmapuri formula designed by PMK bodes ill for the country and is bound to axe at the very root of democracy

By imposing prohibitory order under sec. 144 Cr.PC, social and human rights activists are prevented from meeting the riot-victims at Seshasamudram village and are unable to come out with fact finding reports.

PUCL urges the Govt, a) to lift the ban; b) to announce policies and actions to maintain social harmony; c) to go hammer and tongs against casteist and communal forces; d) to give compensation to the victims.

**Prof. (Ms.) V. Saraswathi**, President, PUCL, T.N. & Puducherry; **S. Balamurugan**, Secretary, PUCL T.N. & Puducherry  
q

**PUCL Odisha: Letter to the Governor on 4th Sept.2015**

## **Odisha Police Bill, 2015**

To  
His Excellency  
The Governor Bhubaneswar  
Odisha, Bhubaneswar  
**In the matter of Odisha Police Bill, 2015 passed by the Odisha Legislative Assembly - Contravention of the Supreme Court's Directives and adverse to democratic aspirations of the Citizens.**

Respected Sir,  
The Odisha Legislative Assembly during its Monsoon Session passed the Odisha Police Bill 2015 on 27th August 2015. Having respect for the Constitution of India, Democracy and Rule of Law, we fail to appreciate the said bill on the following grounds:

The bill was passed on the floor of the Assembly in absence of the Legislators of Opposition political parties including the Leader of Opposition. Strangely, the Bill was moved for discussion just after the Legislators of opposition parties boycotted the Assembly proceedings, alleging the business of the House was being transacted 'undemocratically' and

unconstitutionally'.  
The bill was drafted after longstanding demands from the people and on the directions passed by the Honourable Supreme Court of India in Prakash Singh case (2006). But, it is strange that the Government of Odisha introduced a police bill in the Assembly only in 2014, which lapsed on the dissolution of the last Assembly. Yet another police bill was introduced in the Assembly this year, without keeping contents of the bill in public domain for public debate and discussion. It is also pertinent to mention that as citizens, we have a fundamental right to information and needless to say, it is now a statutory right. Further, as human beings we have inalienable rights to life, liberty and dignity. We believe that given the state of affairs an effective, efficient and impartial police service would help to ensure it.  
The Honourable Apex Court in its judgement directed very categorically and clearly that the police administration should be made independent of the Government. It also gave clear guidelines to draft a

police bill replacing the prevailing Police Act of 1861. It directed the Governments to follow either of the three prescribed models put out in the following Reports: National Human Rights Commission or the Ribeiro Committee or the Soli Sorabji Committee. But it is our concern that the recently passed police bill has ignored many important directives of the Apex Court which are at the core of police reforms. The Court recommended for constitution of a State Security Commission in which the Leader of Opposition has to be a member. But in the new Bill the Leader of the Opposition is not taken as a member of the State Security Commission. It not only offends the Directives of the Supreme Court, but also gives a strong message that there is no scope for dissent other than the views of the government in the affairs of the police administration in the state. So, the fundamental principle to keep the police administration free from the unwarranted control of the Government has no place in the proposed legislation.  
The bill provides for a State Level

Complaint Authority in which the government has every power to nominate any person as the head of the said body. Whereas, the direction of the Apex Court is:

"There shall be a Police Complaints Authority at the district level to look into complaints against police officers of and up to the rank of Deputy Superintendent of Police. Similarly, there should be another Police Complaints Authority at the State level to look into complaints against officers of the rank of Superintendent of Police and above. The district level Authority may be headed by a retired District Judge while the State level Authority may be headed by a retired Judge of the High Court/Supreme Court. The head of the State level Complaints Authority shall be chosen by the State Government out of a panel of names proposed by the Chief Justice; the head of the district level Complaints Authority may also be chosen out of a panel of names proposed by the Chief Justice or a Judge of the High Court nominated by him."

We are extremely disturbed to find a provision in the police Bill 2015 under clause number 65, which gives the members of police force immunity from any prosecution except in a case being filed by an authorised officer or with the previous sanction of an officer authorised by the government.

The provisions of the State Complaint Authority and the above one, prima facie, gives a clear picture of the objective of the Bill that the members of the police force shall not be accountable for their omissions and commissions, which is an essential ingredient of democratic body polity. We have before us the glaring examples of police excesses and brutalities in the incidents such as Sorono police firing (1999), Maikanch Police firing (2000), Kalinganagar police firing (2006), Narayanpatna police firing (2009) and the recent ones in Namtara, Kendrapada, Kandhamal and Nuapada. So we are not able to appreciate the Police Bill 2015, which is no way better than the Police Act 1861, enacted to serve the

interest of the British rule in India.

We are afraid that the provisions of the appointment of Special Police Officers (SPOs) would be very dangerous in the hands of the government as was Salwa Judum in Chhattisgarh. It may be recalled that the Apex Court had declared the appointment of SPOs as unconstitutional in the Nandini Sundar case.

The general power of superintendence of district magistrates in the affairs of law and order at the district level has been excluded from the police Bill in question. On the other hand, the DG of the police has been made as the Head of the State Armed Police. We apprehend that this would lead to increasing militarisation of the police force, centralisation of power and authority without accountability.

Sir, in this small petition we have raised some objections as examples only. There are such other provisions in the Police Bill 2015 which go against the basic objective of the police reforms. This would no doubt strengthen the public perception that the police serve as a 'force' of the strong and the powerful, in adverse to the interests of the common people. The main objective behind the honourable Supreme Court's Directive to enact a new police bill, by replacing the colonial Police Act of 1861, is to meet the democratic aspirations of the people that the police serve as the servants of the common people, not as their masters. We, therefore, request your Excellency to kindly consider to withhold your assent under the first Proviso to Article 200 of the Constitution and send the Odisha Police Bill 2015 to the Odisha Assembly for its reconsideration and oblige.

Yours sincerely,

**Biswapriya Kanungo**, Advocate and Human Rights Activist (Mob. 09861392021),

**Pramodini Pradhan**, Convenor, PUCL Odisha (Mob. 09439200989)

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