# PUCL BULLETIN

Vol. XXXVIII, No. 1 | ISSN-0970-8693 | JANUARY 2018 | Rs. 20


*Inside :*




| Annual Subscription: *PUCL Bulletin* (w.e.f. January 01, 2017) | INDIA |
|---|---|
| PUCL Members | Rs. 200 |
| Non-Members | Rs. 240 |
| Libraries, Institutions | Rs. 300 |
| | OVERSEAS |
| PUCL Members | US$50 |
| Non-Members | US$100 |
| Libraries, Institutions | US$120 |

| PUCL MEMBERSHIP | INDIA |
|---|---|
| Patron | Rs. 2000 |
| Life | Rs. 1000 |
| Annual | Rs. 50 |
| | FOREIGN |
| Annual | Indian Rs equivalent of US $15 |


## "We shall Overcome!

### Challenges before the Human Rights Movement!

The horrifying incident of the burning alive of 46-year old, Mohammed Afzarul slur to the Hindu in broad daylight in a public space, on 6th December, 2017 in Mahasamund of Rajasthan, for the only reason that he was a Muslim, by Shambulal Regar @ Shambu Bhavani, highlights the dangerous depths to which the politics of hatred, intolerance and killing of minorities has descended to in India in the last 2-3 years of the present BJP led UPA government. The filming of the gory incident by Shambulal's 14 year old nephew and the widespread circulation in the social media symptomatises the extent to which many sections of

*Contd. on page 2*

**PUCL informs with Regret the sudden and untimely demise of Prof. Vinay Kanth, National Vice-President, PUCL, in the early hours of Monday, 25th December 2017 in Delhi.**

A pillar of the civil liberties movement in Bihar and with National PUCL, Prof. Vinay K. Kanth, a retired Professor of Mathematis of Patna University, was known for his razor sharp intellect, wide ranging knowledge of many branches of learning covering scientific, social, political, economic, cultural, legal, environmental and educational sectors and deep rooted commitment to human rights and humanitarian laws, Constitutional framework and rule of law. A very gentle and amiable person, he was the personification of a `gentleman' who always found a positive angle even in the most difficult of situations and encouraged all those who interacted with him, with a kind and gentle word of inspiration. Awarded in 2016, Bihar's highest award in the field of education, the `Maulana Abul Kalam Azad Educational Award', he was a mentor to many generations of young people, instilling in them not just intelelctual mastery over the subject but also a commitment to humility, ethical conuct and democratic values. Gifted with expressive ability, in writing and in speech, of explaining the most complex and difficult of subjects in a simple, evocative manner he edited two educational magazines, `Gyan Vigyan' for school teachers and `Jhilmil Jugnu' for children, both very popular magazines.

The entire PUCL and human rights community will miss Prof. Vinay Kanth and expresses their condolences to Prof. Vinay's siblings, family and close friends over his untimely passing away. The best tribute we can pay Prof. Vinay Kanth, is to renew our commitment to the values he represented and continue to work to build a more humane, fair and equitable society.

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

**428**

*Contd. from page 1*

mainstream majority community have become desensitised to brutal acts of violence and legitimise killing of muslims as an acceptable practice.

The most shocking aspect of Afzarul's murder is not just in its cold-bloodedness or brutality. The new dimension is the randomness of the attack, marked by the fact that the killer did not know anything about Afzarul, had absolutely no prior personal interaction or acquaintance or animosity with the murdered person. The filming and subsequent videotaped confession of Shambulal saying that the murder was to avenge the dishonour to the majority community caused luring of young Hindu girls by muslim men in the name of `love jihad' showed how deeply the poisonous and cancerous growth of hate propaganda has seeped into the minds of millions of people of the majority community across India. The fact that Shambulal is reportedly a Dalit only highlights the success of the Hindutva votaries in their campaign to enlist sections of the Dalit, Adivasi and OBC communities as foot soldiers in violent attacks on minority communities as showcased during the 2002 Gujarat pogrom.

The randomness of the killing of Afzarul was followed in subsequent attack on 15th December, 2017 in Satna town in MP when Christian priests and seminarians travelling to attend a Christmas carol singing programme were attacked and their vehicle torched. Ironically, instead of arresting the mob which torched the vehicle and attacked them, the Christian priests were accused of committing offences and arrested. Similar incident of attack on Christian celebration programme took place on 19th and 20th December, 2017 in Pratapgarh, which took place after informing the police, but in which the mob reportedly led by RSS leaders in the presence of policemen attacked the pre-Christmas prayer assembly.

A noticeable feature of such hate-crimes is the lack of response of the BJP-led UPA Government in the centre in not condemning such incidents and calling upon members of the majority community to stop indulging in such violence. The non-prosecution of the key leaders of the Hindutva groups instigating such attacks indicates the political support given by the political executive to those who indulge in hate crimes which in turn emboldens the violators as they are promised immunity and impunity for their lawless acts.

As worrying as are the acts of violence which have engulfed the country, there are three worrying trends visible in the acts of the central government since they came to power in May, 2014.

- Undermining Democratic Institutions: In a systematic way the Modi-led Central Government has been continuously working to undermine democratic institutions and processes. Appointments to key constitutional institutions like the Election Commission to other key oversight institutions like the Central Vigilance Commission (CVC) to appointments to key posts like the Additional Director of CBI and other bodies, have been enmeshed in controversy. The manner in which the decision to announce demonetisation was decided, sidestepping the RBI, or the GST was introduced, bit by bit, the Central Government has continuously shown scant regard to established democratic practices. The delay in appointments of judges or finalising the Memorandum of Procedure (MOP) regarding appointment of judges to the Supreme and High Courts or introduction of key legislations as Money Bills thereby avoiding placing bills before Parliament for discussion, underlines the scant respect to institutions and institutional processes.
- Subverting Rule of Law: In a calculated and systematic manner the Central Government has been subverting the Rule of Law, making a mockery of criminal laws and procedures. Misusing the CBI, Income Tax authority and Enforcement Department (ED) officials to conduct targeted raids of politicians and political groups seen as inimical to the Central Government and dropping charges against those exposed having committed major financial frauds epitomises the manner by which these important institutions authorised by law to enforce the laws of the land have been shackled and made to become dependent on the commands of the political executive rather than implementing the constitution in an independent, objective and fair manner.
- Criminalising Dissent and Silencing Rights Defenders: A worrying trend is the increasing trend of targeting rights defenders across the country. So much so, there is now the need to launch a major programme to `Defend the Defenders' – to support human rights activists and other rights activists from being suppressed, silenced and subdued.

All these trends put together, place a great strain on our democracy and democratic process. A great responsibility rests on the human rights movement to be able to counter the growth of hate politics and violence, not merely by demanding prosecution and improved security of minority and marginalised communities, but by launching a long-term campaign programme to bring about changes in the attitudes and mindsets of the people highlighting the long history of tolerance, communal harmony and sense of compassion and solidarity which have been elemental parts of our collective social and cultural heritage. The challenges are daunting, but they also set the benchmark for the human rights movement in India to work towards. In the end, we will have to rise to the demands of the present historical period and show that "We shall overcome!".

We wish our readers and subscribers a Happy New Year, 2018.

**V. Suresh**, Editor ❑

# The Reality of the Rohingya

**Ravi Nair***

During the Second World War, the Arakan or Rakhine state was one of the frontlines of the South East Asian theatre of war. The Rohingyas fought against the Japanese imperial forces on the side of the British and the allies. It was only for a short period in the 1950s that there were attempts to be more accommodating of the Rohingya as peoples of Burma. The U Nu government recognized 144 ethnic groups in Burma. General Ne Win after his military *coup* pared down the list of recognized ethnic groups to 135. The Rohingyas were excluded.

An estimated between one and 1.5 million Rohingyas in Rakhine State in Myanmar are concentrated in the three townships of North Rakhine State – Maungdaw, Buthidaung and Rathedaung.The word 'Rohingya' is a historical name for the Muslim Arakanese. There is still a Muslim village in Akyab city, now known as Sittwe, by the name of Rohingya. The old name for Rakhine State was Rohang from which the term Rohingya was derived. Today, this term, Rohingya, has become contentious. The Rohingyas settled in Burma in the ninth century, since then they have mixed with Bengalis, Persians, Mughuls, Turks and Pathans.

In 1948, Rohingyas were not subject to laws such as the Foreigner Act (Indian Act III, 1846), the Registration of Foreigners Act (Burma Act VII, 1940) and the Registration of Foreigners Rules, 1948) related to Registration of Foreigners before or after Burma's independence. Under the national quota, Rohingya representatives were elected during the colonial administration from North Arakan as Burmese nationals. In 1946, as an indigenous people, General Aung San assured full rights and privileges to Muslim Rohingyas saying that native people should not be divided. But he soon resiled from this position.

After Ne Win seized power, he dismantled Rohingya social and political organizations in 1962. In 1977, the military registered all citizens and, more than 200,000 Rohingyas had to leave for Bangladesh in 1978. Rohingyas were forced to leave for East Bengal (now Bangladesh) in four main periods: the late 1700s and early 1800s, the 1940s and 1978.This was followed by further expulsions in 1991 and 1992 and again in 2012. These four waves of forced displacement in fact reconfirm that the Rohingya have been living in Burma for centuries and it gives the lie to the claims of the Myanmar government and Buddhist fundamentalists that they are migrants from Bengal.

**India's position on the Rohingya Refugee crisis**

The Ministry of External Affairs statement of 26 August 2017, titled 'Situation in Rakhine State of Myanmar' gave the plot away prior to the visit of Prime Minister Narendra Modi to Myanmar from September 5-7, 2017. "India is seriously concerned by reports of renewed violence and attacks by terrorists in northern Rakhine State Myanmar. We are deeply saddened at the loss of lives among members of the Myanmar security forces….." the statement said. In the joint statement issued by India and Myanmar on September 6, the previous formulation is repeated. "India condemned the recent terrorist attacks in northern Rakhine State, wherein several members of the Myanmar security forces lost their lives."

Nothing about the enormity of the humanitarian crisis nothing about the continuing refugee flow into Bangladesh and the miniscule earlier spillover into India.

There is little to show for Narendra Modi's much hyped visit. Apart from the usual Bollywood kitsch song and dance routine passing off as a display of Indian culture overseas at a diaspora event and sightseeing, the main security formulations were dead on arrival.

The Indian government could not even make a substantive gesture to Bangladesh of offering humanitarian assistance as faraway Turkey has intelligently done. It could have offered to send a medical team to Rakhine to offer medical assistance to all the injured irrespective of the ethnic community that they belonged to.

The Indonesians and Malaysians in ASEAN are none too happy with the Indian position on the Rohingyas. As far as the Look East or Act East policy goes all that one needs to do is to go to Moreh town in Manipur, the alleged Indian gateway to South East Asia. A wild east where infrastructure exists in the fertile imaginations of the denizens of Delhi. Law and order there has been sub contracted out by the Assam Rifles to armed auxiliaries of non-state groups.

**The International Backlash**

"I deplore current measures in India to deport Rohingyas at a time of such violence against them in their country… by virtue of customary law, its ratification of the International Covenant on Civil and Political Rights, the obligations of due process and the universal principle of non-refoulement, India cannot carry out collective expulsions, or return people to a place where they risk torture or other serious violations."

The United Nations High Commissioner for Human Rights could not have said it more bluntly. It was part of his opening statement to the United Nations Human Rights Council's 36th session of the UN Human Rights Council. Zeid Ra'ad Al Hussein has been regularly calling countries to account at the UN where, in nine cases out of ten, nations unite to thwart meaningful international scrutiny of their records.

It is clear that the entire UN human rights system has got the measure of the Goebbelsian spin that the Indian political and diplomatic leadership has been engaging in, particularly since 2014, on human

rights, tolerance, democratic norms and standards. Coincidentally, India's membership at the UN Human Rights Council ends this year.

"I am also dismayed by a broader rise of intolerance towards religious and other minorities in India. The current wave of violent, and often lethal, mob attacks against people under the pretext of protecting the lives of cows is alarming. People who speak out for fundamental human rights are also threatened. Gauri Lankesh, a journalist who tirelessly addressed the corrosive effect of sectarianism and hatred, was assassinated last week."

Underlying the UN High Commissioner's statement is less outrage and more a deep sense of disappointment at India's stonewalling and obfuscation. India's attitude to all well-meaning advice and mild criticism has been procrastination, in the forlorn hope, that the concern about India will be overtaken by concerns elsewhere. Yemen, Syria, Myanmar, et al.

**Indian law on the Refugee Issue**

India does not have a national legal framework to deal with refugee issues. Mercifully, India's courts have recognised the right to non-refoulement. However, this appears to apply solely to persons with or without refugee status, who have entered India.

In *Ktaer Abbas Habib Al Qutaifi v. Union of India (*1999 CriLJ 919, also see Indian Kanoon[1]), the Gujarat High Court held that the right to non-refoulement is protected by the right to life. However, its limited application ends wherein a refugee poses a threat to national security. The Court relied on Article 51(c) of the Constitution which states that "the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another." This includes non-refoulement obligations.

The Court held that "the evidence relating to the meaning and scope of non-refoulment in its treaty sense also amply supports the conclusion that today the principle forms part of general international law. There is substantial, if not conclusive, authority that the principle is binding on all States, independently of specific assent."

The Court concluded that the asylum seeker petitioning for legal recognition could not be deported until status determination by the UNHCR has taken place. This case established that non-refoulement obligations do apply to the State of India, despite its failure to sign international agreements, most specifically the 1951 Refugee Convention.

The Supreme Court has held that the fundamental rights enshrined under Article 21 of the Indian Constitution regarding the right to life and personal liberty, applies to all irrespective of whether they are citizens of India or aliens within the country. In *Malavika Karlekar v. Union of India,* the Supreme Court accordingly prohibited the deportation of a group of asylum-seekers. The group had applied for refugee status and had a *prima facie* case for refugee status. They posed no national security threat. The protection was placed in force until their status was determined.

In U. *Myat Kyaw & Nayzin v.State of Manipur & Superintendent of Jail,* the Guwahati High Court ordered the government to release a group of asylum-seekers from jail. They were arrested for illegal entry into India, under the provisions of the Foreigners Act. The protection was ordered for a period of two months as they were to apply to UNHCR for the determination of their refugee status during this period.

In this case, the Indian courts recognised the right to be free from refoulement. This prohibits sending refugees to their country of origin against their will where there is a significant risk that they may be harmed through threats to the right to life or be subjected to torture, cruel, inhuman or degrading treatment. Cases significantly suggest that before deportation of potential refugees, the UNHCR must determine their status and ensure that obligations of non-refoulement will not be breached.

In *Khudiram Chakma v. State of Arunachal Pradesh*, the Supreme Court approved of the commentary on the Universal Declaration of Human Rights (UDHR), examining Article 14's prohibition on refoulement. It stated, *Article 14 of the Universal Declaration of Human Rights, which speaks of the right to enjoy asylum has to be interpreted in the light of the instrument as a whole; and must be taken to mean something. It implies that although an asylum seeker has no right to be granted admission to a foreign State, equally a State which has granted him asylum must not later return him to the country whence he came. Moreover, the Article carries considerable moral authority and embodies the legal prerequisite of regional declarations and instruments.*

These cases lend emphatic support to the conclusion that the Indian judiciary largely recognises that the State is bound by international agreements on the right to non-refoulement of persons from Indian territory. This is additionally recognised in the Constitution under the right to life and therefore provides a useful legal framework to claim and ensure the enforcement of refugee right to non-refoulement in India.

India's Supreme Court applied Article 21's right to life and Article 14's right to equality in recognising that equal protection of the law should be awarded to aliens as well as citizens within its borders. In *National Human Rights Commission v. State of Arunachal Pradesh &Anr.,* the court recognises the right to security of the person,

In recognising these rights, the Supreme Court places a positive obligation on the Indian State and Central Government to protect the lives and personal security of all aliens, including refugees, from threats by private actors as well as the State or Central Government. Accordingly, the State and Central Governments "must act impartially and carry out...[their] legal obligations to safeguard the life, health and well-being of... [refugees] residing in the State[s] without being inhibited by local politics." In meeting its duties, the

government may use police, paramilitary, or any other necessary force.

The Supreme Court noted the responsibility of the government to deal with threats to refugees in accordance with the law. This includes a duty to apply the law where any party threatens the security of refugees.The Supreme Court of India however, follows normal procedure even when it has urgent items on its list. It postponed the hearing on the government's intention to deport Rohingya refugees, scheduled for 11 September 2017, by one week. On 5 December 2017 the court further postponed the hearing to 31 January 2018 of a batch of pleas, including that of two refugees against the centre's decision to deport Rohingya Muslims to Myanmar.

Case Law Reference:

Kfaer Abbas Habib Al Qutaifi v. Union of India- 1999 CriLJ 919

Dr. Malvika Karlekar v. U.O.I - [Crl. W P No. 583 of 1992]

State Of Arunachal Pradesh vs Khudiram Chakma - 1994 AIR 1461

National Human Rights Commission v. State of Arunachal Pradesh &Anr - 1996 SCC (1)742

U. Myat Kyaw and Nayzin v. State of Manipur and the Superintendent of Jail, Manipur Central Jail, Imphal - Civil Rule No. 516 of 1991

Reference: [1].*https://indiankanoon.org/doc/1593094/*

**Ravi Nair is a human rights activist and a researcher with SAHRDC, South Asia Human Rights Documentation Centre with specific expertise on refugee issues* ❑

# Why Biometric Aadhaar Database Project should be Abandoned

**Gopal Krishna***

Biometric databases have given birth to gnawing present and future civil liberties and civil rights concerns. Biometric identification exercise has been in use at least since 19th century. History of biometric profiling is a history of violence and repression. A stolen password can be changed but stolen fingerprints cannot be changed.

Biometric identification is an invitation to violence. A motorist in Germany had a finger chopped off by thieves seeking to steal his exotic car, which used a fingerprint reader instead of a conventional door lock. This has been reported in the October 2010 issue of *The Economist*. Under its science and technology section, it wrote about the fallibility of biometric identification under the title *The Difference Engine: Dubious security*. It inferred that "Keeping evildoers out is no simple screening matter" contrary to what the belief of the proponents of Central Identities Data Repository (CIDR) of 12 –digit biometric Unique Identification (UID)/Aadhaar numbers.

As per Section 2 (g) of Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, " 'biometric information' means photograph, finger print, Iris scan, or such other biological attributes of an individual as may be specified by regulations." The reference to "such other biological attributes" makes it clear that voice sample and DNA profiling is included under its ambit. It is noteworthy that the Human DNA Profiling Bill, 2015 is aimed at regulating the use of Deoxyribose Nucleic Acid (DNA) analysis of human body substances pro?les and to establish a National DNA Data Bank. The definition of biometric information in the Aadhaar Act seems to make the proposed Human DNA Profiling Bill redundant.

It is germane to recall the role of Task Force for preparation of Policy Document on Identity and Access Management under National e-Governance Programme (NeGP) which submitted a report in April 2007 that revealed Project unique ID (UID) "to create a central database of resident information and assign a Unique Identification number to each such resident (Citizens and Persons of Indian Origin) in the country….." was already under implementation long before the arrival of Nandan Nilekani in July 2009 as Chairman of Unique Identification Authority of India. This report defines biometrics. The report of this Task Force appears to be making one of the earliest references to "Biometric authentication".

Biometric identification and authentication is the foundation on which the entire CIDR of UID/Aadhaar project has been erected. The proponents of the project feign ignorance about a five-year study, Biometric Recognition: Challenges and Opportunities published on 24 September 24, 2010 by the National Research Council in Washington, DC conclude that biometric identification and recognition is "inherently fallible" like the discredited science of Eugenics.

J Satyanarayana, the former IT secretary who is currently a part time Chairman of UIDAI since September 6, 2016 was been the member of the Task Force. The other members of the Task Force included 34 members. The members included 11 Technology Solutions Providers namely, IBM, Microsoft, Oracle, Computer Associates, Novell, Honeywell, HP, Red Hat, ILANTUS Technologies, MPhasis and PricewaterhouseCoopers (PwC).

Satyanarayana who was the member of the Task Force that authored the above mentioned report finds mention at page no. 46-47 of the report Parliamentary Standing Committee on Information Technology that examined the work of Department of Electronics and Information Technology (DeitY), Ministry of Communications and Information Technology, asked about the

surveillance by National Security Agency (NSA) of the US. He informed that, "We have been assured that whatever data has been gathered by them for surveillance relates only to the metadata. It has been reiterated and stated at the highest level of the US President that that only the metadata has been accessed, which is, the origin of the message and the receiving point, the destination and the route through which it has gone, but not the actual content itself. This has been reiterated by them, but we expressed that any incursion into the content will not be tolerated and is not tolerable from Indian stand and point of view. That has been mentioned very clearly and firmly by our Government."

In effect, the Government of India has formally communicated to Government US that India has no problem if they conduct surveillance for metadata in fact it is acceptable and tolerable but "incursion into the content will not be tolerated and is not tolerable." Central Government has been misleading the State Governments, media and the citizens. It must be remembered that the idea of UID was incubated in this very Department. It is evident that Satyanarayana and this Department has no problem in sharing meta data of Indians to foreign agencies.

Contract agreements accessed through RTI reveal unequivocally that personal sensitive data of Indians have been handed over to transnational by private enterprises like Accenture, Safran Group and Enst & Young. It has come to light that companies like 23andMe, a privately held personal genomics and biotechnology company based in California and Ancestry.com, a US online genealogy company collect and store DNA data, and that such data can be sold or accessed by third parties. Notably, Election Commission of India on its website has provided answer to a question about the "system of numbering EVMs", wherein it reveals that "Each Control Unit has a unique ID Number (UID)." The proponents of world's biggest citizen identification scheme aim to converge electoral photo identity card (EPIC) numbers of electoral database, the UID/Aadhaar number database called CIDR. Thus, it can subvert the democratic process.

If these provisions are read with Section 23 (2) (*g*) it is clear that powers and functions of Unique Identification Authority of India (UIDAI), Ministry of Electronics and Information Technology includes the power of "omitting and deactivating of an Aadhaar number and information relating thereto in such manner as may be specified by regulations" through subordinate legislation as and when they deem it appropriate. It means that Aadhaar Act is worse than the overruled verdict in ADM Jabalpur case because it has empowered the central government to cause civil death of anyone it does not like and has deprived citizens the right to compliant as was done by ADM Jabalpur in pursuance of the Presidential Order dated 27 June, 1975 under Article 359(1). The order had "declared that the right of any person (including a foreigner) to move any court for the enforcement of the rights conferred by Articles 14 21 and 22 of the Constitution and all proceedings pending in any court for the enforcement of the above mentioned rights shall remain suspended…."

As per Section 47 (1) of the Aadhaar Act 2016 "No court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Authority or any officer or person authorised by it." This takes away the right of the "residents" and citizens to move any court for the enforcement of the rights conferred by Articles 14 21 and 22 of the Constitution.

Given the fact that Indians biological information is being colonised by these countries it likely to have implications for these "Embodied Subjects" in international relations because they end up creating biometric borders restricting their mobility.

Human body in India came under assault as a result of forced sterilization of thousands of men under the infamous family planning initiative of Sanjay Gandhi during Internal Emergency. Human body is once again under attack through indiscriminate biometric profiling seemingly under patronage of the Prime Minister. Such a project which is aimed at creating an unlimited government, not limited by Constitution must be abandoned in supreme public interest.

**The author is a public policy and law researcher, convener of Citizens Forum for Civil Liberties (CFCL) and editor of* www.toxicswatch.org ❑

## Claims of savings from Aadhaar are an exercise in puffery

**Gopal Krishna**

One must accept a continuing divergence between approved and conditioned belief and the reality. In the end, it is the reality that counts. ***-John Kenneth Galbraith in "*The Economics of Innocent Fraud*"***

If you think IT is the solution to your problem, then you don't understand IT, and you don't understand your problem either." ***- Roger Needham, a noted British computer scientist***

At the recent Global Conference on Cyber Space Prime Minister Modi said, "I am sure most of you are already aware of Aadhaar, which is the unique biometric identity of a person…Through better targeting of subsidies, the JAM trinity has prevented leakages to the tune of nearly 10 billion dollars so far." Sometime back former head of Unique Identification Authority of India (UIDAI), Nandan Nilekani had

claimed in Washington that so far government has saved about $9 billion by eliminating fraud in beneficiary lists due to 12-digit biometric Unique Identification (UID)/Aadhaar Numbers being fed into **Central Identities Data Repository (CIDR).**

These questionable claims about savings from UID/Aadhaar have been widely reported. If they can be believed so far government has made huge savings by Aadhaar Numbers. Such claims have been disseminated without asking them to provide the breakup of the claimed savings. Most publications published this sort of claims without verifying the source of the data. Such routine claims are part of the job of salesman but it is the duty of journalists to ascertain truth before serving it as gospel of truth.

Given the fact that these claims are apparently based on reports of World Bank it is relevant to recall the veracity of Bank's own claims. A World Bank report of 2016 claimed that UID/Aadhaar can save Rs 70, 000 crores annually once UID/Aadhaar if it is applied to all the social programs and welfare systems India. This has been submitted as part of the Central government's reply to a writ petition before the Supreme Court. The affidavit of 27 April, 2017 by the government enclosed the relevant portions of a 359 page long World Bank report of 2016 on digital dividends (at page 195) to underline the imminent savings "through reduce(d) leakage and efficiency gains". This data of 11 billion refers to page 197 of the Bank's report that is based on a 4-page long 2015 study titled *From Cash to Digital Transfers in India: The Story So Far* by one Shweta S. Banerjee. Shweta works on the Microfinance Gateway which is housed at the Consultative Group to Assist the Poor (CGAP). At page no. 1 of this study it is stated "The value of these transfers is estimated to be Rs 70,000 crores ($11.3 billion) per annum." It is quite manifest from the Bank's report itself that it is making a claim about the total value of the money that has been transferred and not about savings as a result of adopting a direct cash transfer model. The source of data which she has cited in this study has conclusively been established to be questionable and unreliable and a major goof up. Such claims have been debunked by Comptroller and Auditor General of India (CAG) as well. If Bank's own data has been found to be 'puffery', how can its volunteer's claims inspire any trust? Now that Bank has admitted its own Himalayan blunder in writing it is high time it came out with a clarification to ensure that misleading claims about such savings can be buried "ten fathom deep, with no chance of resurrection."All the ministers, agencies and publications which are reproducing the Bank's Himalayan blunder of equating value of "transfers" with "savings in subsidy" in its 2016 study are indeed either guilty or are complicit in this not so "innocent fraud".

As to claims about savings from UID/Aadhaar project, insincerity has been evident from the very outset. During the tenure of Niekani at UIDAI, Yashwant Sinha headed Parliamentary Standing Committee on Finance in its Sixty-Ninth Report on the 'Demands for Grants (2013-14)' observed, "A provision of Rs. 2,620 crore has been allocated in Budget Estimate (2013-14) for UIDAI and a major part of the budget provision for Rs. 1,040 crore is earmarked for 'Enrolment Authentication and Updation', out of which an amount of Rs. 1,000 crore has been earmarked under the head 'other charges'."

The total budgetary allocations made for UIDAI since its inception upto 31 March 2014 was Rs 5440.30 crores. For the year 2009-10, it was Rs 120 crores. For 2010-11, it was Rs 1,900 crores. For 2011-12, it was Rs 1,470 crores 1,200. For 2012-13, it was 1,758 crores and for 2013-14, it was Rs 2,620.00 crores. For the year 2014-15, the budget estimate was Rs 2,039. The budget estimate of expenditure on the project being implemented by UIDAI was Rs 2,000 crore in 20015-16. For the year 2016-17, the budget estimate was Rs 990 crores (that included 190 crore first supplementary). As of February 2017, UIDAI has incurred a total cumulative expenditure of Rs 8,536.83 crores. This includes undefined "other charges" pointed out by the Parliamentary Committee.

Shouldn't UIDAI provide the details of the expenses incurred under "other charges"?

Take the case of the year 2009-10 when the budget estimate was Rs 120 crores. The final expenditure was Rs 26.21 crores. In the year 2015-16 the budget estimate was Rs 2,000 crores but the final expenditure was Rs 1679 crores. In 2016-17, when budget estimate (BE) was Rs 990 crores, the final expenditure is Rs 877.16 crore up to February 2017. These are details of expenditures so far. Besides this the Parliamentary Committee wondered in its report as to why inflated targets were consistently being given. It is apparent that there is more to it than meets the eye.

The total estimated budget of the biometric UID/Aadhaar number project has not been disclosed till date despite repeated demand for it while seeking cost: benefit analysis. In any case unless total estimated budget of the project is revealed all claims of benefits are suspect and untrustworthy. How can one know about total savings unless the total cost is disclosed?

*20.12.2017* ❑

# Nehru's Role in India

## Rajindar Sachar

Reverence and hero worship for Jawaharlal Nehru was normal not only with the older generation but with our generation as well. My father, Bhim Sen Sachar was a Congressman in 1937 he was elected to the Punjab Legislative Assembly. Nehru campaigned for my father in that election. Even though I was just 14, I got ample opportunity to have a close view of him at meetings and functions.

In May 1949, the Socialist Party under Ram Manohar Lohia's leadership held a demonstration in front of the Nepal embassy in New Delhi to protest against the Rana government in the Himalayan kingdom. We were arrested (about 50 of us including Lohia) for violating Section 144 CRPC and remained in jail for a month and a half. It was during that imprisonment that Nehru and Indira sent a basket of mangoes to Lohia. Sardar Patel wrote to Nehru expressing his annoyance for sending mangoes to a person in jail who had violated the law. Nehru in his quiet way told him that politics and personal relationships are two separate things and should not be mixed up.

In 1952, the Congress returned to power with a clear majority in the Punjab Assembly elections. Nehru and Azad appointed my father as the leader of the Congress party and he again became the Chief Minister of Punjab, which then comprised of present-day Haryana and Himachal Pradesh.

Political morality was very high amongst the leaders of 1950s. For instance, when the governor of Punjab invited Vijaya Lakshmi Pandit as a guest for a vacation in Simla (then capital of Punjab) in 1954, she was put up in the government guest house and a bill of Rs. 2064 was sent to the governor because she was his guest. The governor however, didn't pay the bill and the chief engineer brought this to the notice of my father. On his next visit to Delhi in May 1955, my father brought that matter to Nehru's notice. Imagine a cm is discussing a small amount of money with his leader. But father was very strict on his principles. And Nehru's response was equally commendable. He opened his drawer and wrote a cheque of 1000 and said: "I am giving this now. I am going to Europe and once I come back I will pay the remaining amount." Later on, the governor was so ashamed that he paid the balance from his discretionary fund.

I myself had a personal experience in 1955 when I was the chairperson of the Socialist Party (Punjab) and the general secretary of the Punjab High Court Bar Association. In 1955, the Punjab High Court was shifting from Simla to Chandigarh. It was to be inaugurated by Nehru and he had come to Chandigarh the evening before. My father, who was then the Chief Minister of Punjab, invited Nehru for an informal breakfast at our residence. I was staying with my father though my office was in another sector. It was a rare occasion for a young man like me, who admired Nehru a lot. But, I had grown up by then. Our party was convinced (rightly or wrongly, time alone will tell) that Nehru, who had shown the vision of socialism to us, had not kept that pace following wrong policies. Our differences with his policies were deep. I was a small fry in part of that milieu. So I told my father that I will not be at the breakfast table to receive Nehru, though my wife will be there along with my mother to play the hostess. My father and I had a beautiful understanding and respected each other's view. He realised my reluctance but mentioned that I was being childish. I went to my office before Nehru arrived. I continued to admire Nehru and I could not think of being at home and be rude by not joining him for breakfast. Of course, we received Nehru with all the dignity and deference due to him when he came to the high court inauguration.

Now I laugh at my presumptuousness — a chit of boy, whom Nehru will not even notice beating his chest by not attending and denying himself a rare close breakfast meeting with one of the greatest of leaders of India and who had been a hero of our family. But then I take it as the peculiarities of a radical youth, the devil I may I care attitude and the almost fatalistic belief in the rightness of the cause of one's own party. But then I believe that is the real difference between youth and old age – one may laugh now, but one does not demean conduct because at that time it represented what I like to feel was a youthful, genuine and unshakeable faith in socialism – which fortunately, I have still not lost.

Nehru was indeed doing some inner thinking and so expressed it to Maulana Azad thus: "we should do something for Sachar". He soon appointed father as the governor of Orissa in 1956 and wrote to the Chief Minister saying "Your governor is a very good administrator and you will find him so."

Father thereafter left active politics and engaged himself in the Khadi movement. But his spirit of freedom was still strong as ever when he wrote to Indira Gandhi during the Emergency reminding her of what Nehru had said about total freedom of the press.

New Delhi
July 23, 1975

"To my mind, the freedom of the press is not just a slogan from the larger point of view but it is an essential attribute of the democratic process. I have no doubt that even if the Government dislikes the liberties taken by the Press and considers them

dangerous it is wrong to interfere with the freedom of the Press. By imposing restriction you do not change anything; you merely suppress the public manifestation of certain things, thereby causing the idea and thought underlying them to spread further. Therefore, I would rather have a completely free Press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated Press."

We must respond to the call. Accordingly we propose, with effect from August 9, 1975 and regardless of consequences to ourselves, to advocate openly the right of public speech and public association and freedom of the Press, for discussing the merits and demerits of the Government arming itself with extraordinary powers.

Yours faithfully,

Bhim Sen Sachar & Ors.

Father was arrested soon, and released because his Habeas Corpus petition was accepted by High Court. Rajindar Sachar

05th November 2017 ❑

# Indian Media Facing Persecution and Control

**Pushkar Raj***

The filing of a criminal defamation suit of 1 billion rupees (US$15.3 million) against news portal The Wire for publishing a story about the accumulation of wealth by the son of the president of the ruling Bharatiya Janata Party (BJP) is a revelation of how the Indian media are battling for credibility and survival.

BJP chief Amit Shah is a close confidant of Prime Minister Narendra Modi. The news report documents that his son Jay Shah's assets grew by 16,000 times, climbing from about $774 to $12.3 million in a single year. The report cites filings with the Indian Registrar of Companies.

Press rights are not separately enshrined in the Indian constitution, unlike the US charter, which maintains that the "freedom of the press, as one of the great bulwarks of liberty, shall be inviolable" by the state. In India, it forms part of Article 19 (a), which deals with freedom of thought and expression with an embedded meaning of right to publish.

Constitutionally it is a weak foundation for the media to operate freely.

**Journalism important in democracy**

Media in a democracy have a critical value as portrayers of any event involving the natural world or people because of its inevitable impact on community.

The value of news has evolved over time, as our ancestors who could not receive news or got it too late either perished or remained backward. It empowers, leading to the popular adage "information is power." In a society the class that controls the news (information) decides its fate for better or worse, while others can only be mascots or at best collaborators.

The prime job of the journalist is to gather and convey news. He is a messenger like Narada in Hindu mythology.

In a democracy news explains reality on which, to borrow a phrase from Walter Lippmann, "men can act." If this news gets filtered through somebody who either twists or colors that information and people are deprived of understanding their reality, then democracy is jeopardized and weakened to the same proportion.

A journalist's task is to explain reality objectively from more than a singular perspective. In a country like India, he is the passionate soldier of democracy who, as Oscar Wilde said, "keeps us in touch with the ignorance of the community by giving us opinions of the uneducated."

In a democracy rulers are accountable for their actions as they have impacts on the people who have chosen them. The journalist brings forth their acts of omission and commission so that people can make an informed choice in the next elections.

In this context, the report on the BJP chief's son is of public interest and value for two reasons. One, it contains the mystery of a rags-to-riches story that has an inspirational value for millions of unemployed youth who may try the same method to earn a livelihood, and second, it brings facts into the public domain for aiding people to make a judgment in subsequent elections on their rulers.

Truth is the moral and legal defense on which independent media exist in a society, and more so in a democracy.

**Media under persecution and control**

However, lately publishing truth is becoming an increasingly dangerous profession as well as passion in India, as data compiled by the Committee to Protect Journalists (CPJ) suggest.

Since 1992, 71 media persons have been killed in the country with hardly any convictions, thus finding a spot in CPJ's 2015 Global Impunity Index. The index highlights those countries where more than five journalists were killed in the previous 10 years without convictions. In India, 11 journalists have been killed in last 10 years and all have been carried out with complete impunity.

In addition, as of May this year there had been 54 attacks on journalists in the country in the past 16 months.

Besides guns, another means of silencing journalists is filing defamation suits, as Jay Shah, defended by the government, has done in the present case.

Governments have been a major culprit in filing criminal defamation suits. For example, between 2001 and 2006 the government of the late Tamil Nadu chief minister Jayalalithaa filed about 120 defamation cases against media.

An editor of Tamil bi-weekly Nakkeeran had 211 defamation cases filed against him.

The government of Rajasthan state last month abandoned plans to control media through a draconian bill that was worse than the press emergency (1975-77) imposed by late prime minister Indira Gandhi when the press was made to bend and crawl. Interestingly, Law Minister Ravi Shankar Prasad, who had a close brush with the emergency and was later a civil-rights activist in Bihar, defended the Rajasthan press gag.

Corporates too resort to defamation suits to stop the flow of news as they do not want media to report on the billions of rupees they have saved in tax concessions and evasions. Well-known journalist Paranjoy Guha Thakurta was forced to resign from the editorship of the Economic and Political Weekly under the threat of a lawsuit by the powerful Adani Group, an Indian multinational.

Earlier another conglomerate, Reliance Industries, prevented publication of Thakurta's book Gas Wars: Crony Capitalism and the Ambanis through legal proceedings, though he later self-published it.

A former aviation minister in the Congress government with corporate interests stopped the publication of the book The Descent of Air India, which exposed alleged willful losses to taxpayers for huge financial gains to the corporation.

The back of free media has been further broken through corporate takeovers after which these corporation regulate the flow of news and information in their interests.

With about $6 billion worth of investment in the media sector, India's richest man Mukesh Ambani has taken over Network 18 group of companies that runs several news channels and hosts digital content, thus becoming the country's largest media group.

New Delhi Television and Living Media, which runs popular news channels, has also received considerable corporate investments recently.

With radio news and Doordarshan (a public television network reaching 596 million of India's 1.3 billion people) under the government and the rest under corporate control, one is little surprised when the country's major TV news channels at prime time serve the audience in the name of news with exploits and wisdom of convicted and current babas (spiritual gurus), Karva Chauth celebrations (fasting by Hindu women for the longevity of their husbands) and agitation for vegetarianism instead of misappropriation of public money or reasons for dying infants in hospitals and farmer's suicides in villages.

If they do attempt to cover social issues, they desensitize them like a Peepli Live spectacle, reducing them to a farce.

All is not lost

The passion of conveying the news is embedded in human nature, as evidenced by the soldier-like passion and courage of journalist Rohini Singh, who broke the Jay Shah story. She writes: "My primary job is to speak truth to power. To question the government of the day." She further says, "I don't do the sort of stories I do because I am 'brave.' I do them because that's journalism…."

The media will create new ways to survive. For example, it may be in the form of setting up media ventures and issuing press-freedom bonds, capitalizing them on the sheer quality of news while maintaining integrity of the profession.

Yugoslav journalist Sasa Vucinic's media development loan fund applied venture-capital principles and created a sustainable free press in 17 developing countries in less than a decade.

So long as Indian media professionals like their American counterparts reaffirm their resolve to "rethink the most fundamental questions about who we are and what we are here for," all is really not lost.

**** Pushkar Raj*** *is a social analyst/author based in Melbourne. Formerly he taught political science in Delhi University and was the National General Secretary of the People's Union for Civil Liberties (PUCL). He writes on society, politics, culture and human rights.*

http://www.atimes.com/HYPERLINK "http://www.atimes.com/indian-media-facing-persecution-control/"indianHYPERLINK "http://www.atimes.com/indian-media-facing-persecution-control/"-HYPERLINK "http://www.atimes.com/indian-media-facing-persecution-control/"mediaHYPERLINK "http://www.atimes.com/indian-media-facing-persecution-control/"-HYPERLINK "http://www.atimes.com/indian-media-facing-persecution-control/"facingHYPERLINK "http://www.atimes.com/indian-media-facing-persecution-control/"-HYPERLINK "http://www.atimes.com/indian-media-facing-persecution-control/"persecutionHYPERLINK "http://www.atimes.com/indian-media-facing-persecution-control/"-HYPERLINK "http://www.atimes.com/indian-media-facing-persecution-control/"controlHYPERLINK "http://www.atimes.com/indian-media-facing-persecution-control/"/ ❑

**Bihar PUCL: Press Statement:** 23 November 2017

## PUCL, Bihar condemns the ill treatment of professor G.N. Saibaba in Nagpur Prison

Professor G.N. Saibaba who is in Nagpur jail since 7March, 2017 is suffering from 90% of disabilities still he is compelled to be confined in a solitary egg cell and deprived of any kind of necessities needed by a disabled person to carry his daily routine. It is not only against the basic human rights but also a shameful example being set before a civilized society.

Professor Saibaba who teaches English in DU was arrested three times since 2014. He remained in Jail for 25 months and rest of time he was in and out of hospitals. When he was first arrested, he could move around on his own on his wheel chair. His stints in jail worsened his health, and his mobility, making him totally dependent on others.

Professor Saibaba along with permanent disability, also suffering from high blood pressure, spinal pain and a heart problem(he once had a cardiac surgery also). Even then jail authorities have made no allowance for him. They do not allow him to wear lungi brought by his wife instead of pyjama which he can't open because his left hand is not in a working condition. Even no blanket was available to him until oct-28 which he needed severely. No attendants are given to him. Only two fellow Adivasi prisoners are there who help him in carrying his daily work.

This Incident raises some serious questions on Indian Jails where there is absence of any kind of sensivity towards disabled prisoners. The ill treatment of any disabled prisoners in such manner is against the constitutional rights given to citizens of India. Article 21 of Indian constitution guarantees dignity even to prisoners. It doesn't matter who are or why is he in prison, the dignity of a person must not be undermined.

PUCL, Bihar urges govt. of India and other concerned authorities to intervene in this matter as early as possible to safeguard life and dignity od disabled person. ❑

**PUDR Press Statement:** 22.November 2017

## Condemn the Continued Violation of Rule of Law and Use of Draconian Legal Provisions in Kashmir

PUDR condemns the 36th Preventive Detention order served on Masarat Alam, leader of Muslim League and member of Tehreek-i-Hurriyat, led by Syed Ali Shah Geelani. The revolving-door-detention, where a person is booked under new detention order illegally irrespective of the earlier order being quashed by the High Court is a feature of Jammu and Kashmir. Cases such as these also bring out the fact about the violation of law and contempt of Supreme Court orders by authorities is a cottage industry in armed conflict area like J&K. State governments have repeatedly held that Public Security Act (PSA) is a must for running the affairs of the state; i.e. without this coercive stick, governance is not possible in J&K. This new Preventive Detention (PD) order under PSA, violates judgments of the Supreme Court which have frowned on repeated and recurrent use of preventive detention and also ruled that without any fresh facts no new detention order can be passed.

On October 26th the Jammu and Kashmir High Court had quashed the 35th order of detention issued against Masarat Alam. Instead of setting him free, the police released and then re-arrested him claiming he was wanted in a case registered in 2015 in Kupwara and as a result was taken to Handwara. On November 16th while being under the detention, he was served his 36th detention order and taken to Jammu.

Since insurgency began in Jammu and Kashmir in 1989-90, he has spent more than 20 years in preventive detention. He was first detained under Public Security Act (1978) of Jammu and Kashmir on October 2, 1990. The PSA allows for arrest and imprisonment of a person without trial for 6 months, renewable for up to two years on mere suspicion that he/she maybe acting "in any manner prejudicial to the maintenance of public order" [Section 8(3)(b), or for activities "in any manner prejudicial to the security of the state" (S 8 (1)(a). Since PD is an administrative measure, it requires no proof of criminal offence or even pretense of due process.

The important thing to note about Masarat Alam is that there are 49 FIRs against him and in 29 of them he is accused of "waging war against the State". However, in 35 cases he was given bail and in 6 cases he was acquitted of all charges. Lacking evidence to convict him the authorities have chosen to employ PD to keep him in perpetual custody. Needless to say that in the cases filed against him, his detention under PSA and incarceration far removed from trial courts in Kashmir means that his right to speedy and fair trial is jeopardized. It is possible to perpetuate injustice under the system of "open FIRs" registered by J&K police against unnamed suspects participating in a crowd.

The dastardly nature of J&K's Preventive Detention Act is brought out by the fact that it overturns due process and infringes the constitutional rights governing the criminal justice system. As a result right to be informed of grounds of detention, make representation against such orders, consult legal

counsel, to be produced before a Magistrate within 24 hours etc all get waived when a person is incarcerated under PSA. There is no provision for bail and the only remedy is to file a writ of habeas corpus before a High Court. J&K PSA provides for detention order to be referred within four weeks of date of detention before the Advisory Board headed by a sitting or retired High Court judge and allows the Board to report to the Government within four weeks. There is no provision for appeal against the decision of the Advisory Board and nor a provision for legal representation before the same.

Such blatant disavowal of the principles of Rule of Law to incarcerate someone for decades without trial and conviction, on mere suspicion is reminiscent of the colonial British Raj which too valorized arbitrariness and coercion for maintaining its control over Indians. Prevalence of the same practice in Indian administered J&K shows that the Indian State has much to hide and suppress in order to sustain its control.

PUDR Demands -

1. Preventive Detention order issued against Masrat Alam to be quashed.
2. Hold J&K Police liable for contempt of court.
3. Repeal of Public Security Act (PSA)

Cijo Joy and Anushka Singh, Secretaries, PUDR

http://pudr.org/content/condemn-continued-violation-rule-law-and-use-draconian-legal-provisions-kashmir ❑

**PUDR Press Release:** 8th November 2017

## Code on Wage Bill, 2017- A Proposed Legislation Violating the Rights of the Workers

*People's Union for Democratic Rights* has long been drawing attention to egregious violation of rights of workers governed under various labour laws. Most important of these rights is the fundamental right to form trade union, so as to engage in collective wage negotiations and to ensure that conditions on shop floor do not become tyrannical.

Ever since the economic reforms began in India in 1991, attempts have been afoot to whittle down the rights of the workers. These efforts received a boost when the Second National Commission on Labour (SNCL) chaired by a socialist and veteran trade unionist Ravindra Verma submitted its report in June 2002. It is significant to note that majority of central trade unions had boycotted the SNCL because of its truncated terms of reference which spoke of the context as the need for "international competitiveness" where globalization, liberalization of trade and industry and changes in technology had taken place. One of the trade unions Hind Mazdoor Sabha that participated in the SNCL because of their respect for Ravindra Varma, expressed its opposition to the terms of reference. The first National Commission of Labour (1969) chaired by Justice Gajendragadkar was assigned the task to "advise how far these provisions (labour laws) serve to implement the Directive Principles of State Policy…". In contrast by the time SNCL was constituted the context had completely reversed and not even lip service was paid to the Directive Principles especially Article 41, 42, 43 and 43A of the Constitution.

While speaking at the 46th session of the Indian Labour Conference in 2015, Prime Minister Narendra Modi talked about the need to ensure "ease of doing business", making it clear that the thrust would now be on making changes which would help and benefit employers. The NDA government is making amendments in labour laws in order to push their programs like 'Make-in-India', 'Skill India', 'Digital India' and 'Ease of doing Business' thereby enabling companies to work in India and squeeze labour. Among other steps, the Central Ministry for Labour and Employment is consolidating 43 labour laws into 4 major laws. These are Labour Code on Wages, Labour Code on Industrial Relations, Labour Code on Social Security and Welfare, Labour Code on Safety and Working Conditions.

On 10th August 2017, a bill called the Code on Wages Bill 2017 was introduced in the Lok Sabha. The proposed legislation Code on Wages, 2017 intends to "subsume, amalgamate, simplify and rationalize" the relevant provisions of the following four Central Labour enactments relating to wages, namely, (*a*) Payment of Wages Act, 1936; (*b*) Minimum Wages Act, 1948; (*c*) Payment of Bonus Act, 1965; and (*d*) Equal Remuneration Act, 1976. This bill claims to be inspired by the recommendations of SNCL. However, it even goes beyond these. It outrightly favours the management instead of workers. Given below are some of the problematic provisions of the proposed bill.

**Schedules of Employment:** In the proposed bill, the Schedules of Employment categorizing skilled, semiskilled and unskilled labour have been removed and wages have been defined with universal applicability. This might be useful for those workers who are not listed in the Schedule like domestic workers (except in 13 states, they do not appear in the Schedule, hence the rule of minimum wages is not applicable them). But this will have a negative impact on the semi-skilled and skilled workers who are entitled for higher wages as per the Schedule as their base line of wages is reduced.

**Criteria for fixing wages:** As per Section 6 of the proposed Code, the minimum wage rates shall be fixed for timework and piecework and the wage period can be by the hour, by the day or by the month. As per Section 6(6) *"the appropriate Government shall take into account the skill required, the arduousness*

*of the work assigned to the worker, geographical location of the place of work and other factors which the appropriate Government considers necessary"*.

The Supreme Court has repeatedly stated that minimum wages should be determined by need-based criteria that extend beyond basic physical needs. It is also not defined as a factor of the quantum of production. The need-based criteria for fixing minimum wages should include specific nutrition requirements (defined in calories), clothing and housing needs, medical expenses, family expenses, education, fuel, lighting, festival expenses, provisions for old age and other miscellaneous expenditure. In a specific case of 1992 *Workmen Represented by Secretary v. Management of Reptakos Brett,* the Supreme Court laid down the following six criteria for minimum wage determination: (1) 3 consumption units for one earner; (2) Minimum food requirements of 2700 calories per average Indian adult; (3) Clothing requirements of 72 yards per annum per family; (4) Rent corresponding to the minimum area provided for under the Government Industrial Housing Scheme; (5) Fuel, lighting and other miscellaneous items of expenditure to constitute 20 percent of the total Minimum Wages; (6) Children, education, medical requirements, minimum recreation including festivals/ceremonies and provision for old age, marriage, etc. to constitute 25 percent of the total minimum wage).

The Code on Wages, 2017 has done away with all of this. Even though the states are required to take into account, cost of living calculated from 'time to time' under Section 7(2), this provision is very ambiguous and not mandatory. This clearly violates the criteria for fixing minimum wage standards established by the Supreme Court.

**Working Hours and Overtime:** Under Section 13 of the proposed Code, the government can fix the number of hours of work, which shall constitute a normal working day. But the following category of workers can be excluded: (*a*) Employees engaged on urgent work or in any emergency, which could not have been foreseen or prevented; (*b*) Employees engaged in work of the nature of preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working in the employment concerned; (*c*) Employees whose employment is essentially intermittent; (*d*) Employees engaged in any work which for technical reasons has to be completed before the duty is over; and (*e*) Employees engaged in a work, which could not be carried on except at times dependent on the irregular action of natural forces.

This means that the existing definition of overtime of work beyond 9 hours per day and 48 hours per week is being sought to be done away with. By removing a clear definition of overtime and allowing complimentary and intermittent work to exceed normal hours, the proposed bill opens the door to compulsory overtime without extra payment.

**Concessions to Employers with respect to Payment of Bonus:** The provision of exemption of new establishments in the Payment of Bonus Act, 1965, from paying bonus has been further expanded in the Code on Wages, 2017 using an ambiguous language for defining new establishments. Now the definition includes "trial running of any factory" and "prospecting stage of any mine." Accordingly under the bill, not only are new establishments exempt from providing bonuses, but existing establishments can also escape liability by being on "trials runs" or at "prospective stages" in order to gain exemption from paying bonuses to their employees. There is no time limit for these "trial runs" or "prospective stages."

The bill further undermines transparency by prohibiting authorities from disclosing balance sheets without the express permission of the employer. Here the presumption is that statements and particulars submitted by corporations and companies are accurate without requiring proof of accuracy from the corporation or company. Unions/ Workers will have to approach the Tribunal/Arbitrator for any clarification who must be satisfied that such clarification is necessary.

**Arbitrary Wage deductions:** Section 18 of the Code permits employers to deduct wages based upon the performance of an employee which may deem to be unsatisfactory; and to "recover losses". In the absence of any due process to be followed before making such deductions, this provision will be misused by the employers for making arbitrary, punitive and vindictive deductions from the workers.

**Gender Based Discrimination:** Even though Section 3 talks about prohibition of discrimination on grounds of gender, the Code on Wages, functionally dismantles the mechanisms available within the *Equal Remuneration Act, 1976* for promoting women's employment and seeking accountability for gender based discrimination.

**Labour Inspectors are replaced by Facilitators:** The Code on Wages, 2017 replaces commissioners and inspectors with "facilitators" appointed to "supply information and advice to employers and workers concerning the most effective means of complying with the provisions of the code". Facilitators will also be responsible for undertaking inspection consistent with inspection regimes set forth by state governments. However, the bill requires state inspection schemes to provide for web-based inspection schedules (s.51(2)). The surprise inspections are going to be missing. Further, there is also a provision of web-based self-certification scheme within the IT-enabled service.

**Putting Limitations on Trade Union Activities:** Workers' contribution to trade union shall be

limited to membership fee. The bill explicitly prohibits them from contributing for promoting common social or political activities.

**Dilution of Penal Provisions to Employers:** Under the *Minimum Wages Act, 1948,* payment of less than minimum wage is punishable with imprisonment upon the first offence. In the case of *Sanjit Roy v. State of Rajasthan* (1983), the Supreme Court has observed that non-payment of minimum wages amounts to constitutionally prohibited forced labour.

In contrast, in the proposed bill, there is a shift from criminal liability to civil liability in matters pertaining to wages, payment of wages and payment of bonuses. Employers violating the Code will be given the opportunity to comply with provisions of the Code or give reasons for violation prior to receiving any penalty. Those who commit offences can be acquitted if the offences are compounded.

**No Fixed Time Line for Revision of Wages:** In **t**he *Minimum Wages Act, 1948* there is a provision for the revision of minimum wages as and when required, which must not exceed five years. It is a major bargaining point for trade unions. This provision has been modified in the Code on Wages, 2017. Section 8 of the Code on Wages, 2017 states "The appropriate Government shall **review or** revise minimum rates of wages at an interval of five years." It virtually removes the time line for revision by introducing the words review or revise and make it optional.

In the light of the above, PUDR views these proposed changes with alarm. For one, these go against Articles 41 (Right to Work), 42 (Just and Humane Condition of work and maternity relief), 43 (Living Wage), in so far as employers are encouraged/allowed to introduce short term employment, increase the number of overtime hours, reduce outgo on wages, overtime, bonus and reduces the collective rights of workers to demand and receive company's audited accounts. Workers were at a disadvantage to begin with. What the Code on Wages, 2017 does is to accentuate the blockades and make it more difficult for them to organise and struggle collectively against employers.

**Cijo Joy, Anushka Singh,** Secretaries**, PUDR** ❑

## Women Representation in Parliament and States Legislatures

**Rajindar Sachar**

Rahul in his latest interview has emphasized that the first priority would be to give representation to Women in Parliament. Similar determination has also been echoed by B.J.P. But the reality on this subject belies the promises made by both the parties.

Sushma Swaraj, usually a calm politician, was so upset that she spontaneously blurted out "I will shave my head if a foreigner Sonia Gandhi becomes Prime Minister of India". Luckily, Sonia Gandhi saved this embarrassment to Swaraj by intelligently and strategically thrusting Manmohan Singh (though a loyalist to the core of the Gandhi family, but on merit of his own), as Prime Minister in 2004, notwithstanding the protest from scores of Gandhi family loyalists.

Switch to March 2010 and you see a happy embrace by Sonia Gandhi and Sushma Swaraj in the precincts of Parliament. What happened in the interim for such close bonhomie?

Though introduced by Deve Gowda for the first time on 12 September 1996 in the Lok Sabha, no concrete action was taken by various governments to effectuate the legislation on Women's Reservation Bill in Parliament and the state legislatures. Everyone expected the legislation to be passed immediately. In fact, Prime Minister I.K. Gujral promised his earliest priority in passing this Bill but nothing concrete happened.

When the UPA government came to power in 2004, it announced that the Act would be its first priority. But instead one had total silence on the Bill in the President's speech on the opening day of the Parliamentary session. This was an open and clear notice to the women activists that the Bill, which had been so proudly projected as a commitment to gender equality, has been quietly buried, and is not likely to be revived in conceivable future.

> *"Every time from 1998 to 2014, whenever Parliament met, women representatives were assured in all solemnity by each major political party that it hoped to pass the Bill in that very session. In reality, this was a tongue-in-cheek operation. Lok Sabha membership can be easily increased to 750, with a provision that one woman candidate will mandatorily be elected from the double-member constituencies."*

But then circumstances of steep price rise, political compulsions of polls in Karnataka and other impending polls made the then government to be a little wise and decide to refer the Bill to the Parliamentary Standing Committee. Though the innocent amongst the women groups were hoping that the Bill would become an Act of Legislature, nothing happened until 2010.

The Women's Reservation Bill or The Constitution (108th Amendment) Bill, 2008, is a lapsed Bill in Parliament of India, which proposed to amend the Constitution of India to reserve 33% of all seats in the Lower House of Parliament of India, the Lok Sabha, and in all state Legislative Assemblies for women.

The Rajya Sabha passed the bill on 9 March 2010. It was this event that made Sushma Swaraj and Sonia Gandhi embrace so emotionally. However, the Lok Sabha never voted on the Bill. The Bill lapsed after the dissolution of the 15th Lok Sabha in 2014.

Every time from 1998 to 2014, whenever Parliament met, women representatives were assured in all solemnity by each major political

party that it hoped to pass the Bill in that very session. In reality, this was a tongue-in-cheek operation.

That is why one feels that women should support the alternative of double-member constituencies which will meet both the requirement of ensuring one-third quota for women and, at the same time, will not disturb the present male seats.

Thus, Lok Sabha membership can be easily increased to 750, with a provision that one woman candidate will mandatorily be elected from those double-member constituencies, and, depending upon the votes received, it may be that even both elected candidate could be women. This law was laid down by the Supreme Court decades ago in former President V.V. Giri's case. The same principle will apply in the case of elections to the state legislatures.

Space in Parliament is not a problem. Shivraj Patil, once Union Home Minister, is on record admitting that space is not a problem if Parliament decides to increase the number of seats.

The alternative of double member constituencies can be done by amending Article 81(2) of the Constitution by increasing the present strength, which can be easily done if political parties are genuine in their commitment to the Bill.

I know the Delimitation Commission has already marked the constituencies on the basis of single member seats. But I do not think it is necessary to redraw the constituencies to make it double.

By a rule of thumb the top one third of the constituencies having the maximum voters in each state could be declared double-member. If the legislators are sincerely genuine they could even submit an agreed list.

At present, of course, a fresh process has again to be initiated in Parliament, because the previous Reservation Bill lapsed with the dissolution of the previous Lok Sabha in 2014.

In the just finished election held propaganda in Uttar Pradesh and Gujarat not one party, including the so-called seculars, with the exception of the Socialist Party (India), included the item of reservation for women in their election manifestoes. Can such male chauvinism be allowed to exist in our country?

With the 2019 Parliamentary elections coming, is it not time for the women leadership in both the Congress and BJP, to jointly clench their fists and warn all the parties that they will no longer tolerate injustice and neglect to continue? They may legitimately continue their differences on other subjects in the light of their own respective programmes.

But let them give a rallying cry against the male chauvinists, like the one given by Spanish freedom fighters in the 1936 Civil War—"*no pasaran*, you shall not pass", i.e. continuing this injustice by not passing the Women's Reservation Bill, otherwise the joint fight will continue and openly. They should request Mamata Banerjee and Mayawati to join hands with them on the issue of Women's Reservation Bill.

Let me recall that Dr Ram Manohar Lohia had opined that reservation for women was an instrument of social engineering—he could never have suggested splitting the strength of women's quota by further splitting them in sub quotas.

Time is short. Only an effort by all the women will see through the Women's Reservation Bill.

Dated: 14/12/2017
New Delhi ❑

## Press Note of Concerned Citizens of Vadodara

### (In the context of the Gujarat Assembly elections)

Tuesday, December 12, 2017

- Do the political candidates vying to win the Vidhan Sabha elections care about environmental issues facing our cities, including Vadodara? Once elected will they do something about these issues?
- Development seems to mean constructing more and more without being constructive and foresighted.
- Why do we suffer from water-logging and floods during each monsoon? Why does the city government keep on inviting "floods" in our city?
- How can a city be planned without inputs from qualified planners and other professionals, coordination among different agencies, genuine public participation, and without scientifically and technically considering the lay of the land (contours of the land)?
- Where do the debris from road widening and demolitions of buildings go? What will wall to wall carpeting do to our *nalas* and rivers?
- Rare natural areas that are home to various rare and endangered flora and fauna are being systematically destroyed. Just planting trees cannot replace these invaluable habitats. Do we care?
- Quality of water supplied to the citizens and used for agriculture is degrading very fast.
- We must come together and demand better development alternatives and better way of planning our cities.

With the election fever reaching its peak, all the political parties are slamming each other over issues of religion, caste, reservations and engaging in petty one-upmanship. Their slogans and speeches brag about their virtues and the incompetence of their opponents. If this scenario persists, irrespective of the outcome of these elections, the environment of our cities and towns will continue to be criminally neglected and the quality of life of the citizens will continue to be degraded. Alternatively, citizens can choose to be well informed and forewarned about the pressing environmental issues so as to question the candidates on their outlook towards the environmental issues that are affecting our cities, including Vadodara.

Vadodara, in the last few years, has witnessed many episodes of environmental neglect and negative impacts that affect not only people but also other species. The so-called

"floods", increase in water pollution, stink and smog in the air, traffic congestion, loss of natural vegetation cover and resulting loss of habitat, displacement of the poor from their homes and places of work, and degradation of its wetlands (*jalaplavit vistaaro*), ponds, ravines, and natural areas are examples of such issues and impacts.

The so-called floods are not natural. They take place due to bad planning and human errors. Wall-to-wall carpeting of roads may accommodate more traffic but they also reduce ground water recharge and increase storm water runoff into the nearby low-lying areas. More paving and buildings actually damage the environment. The rain / storm water accumulation cause water logging. Withdrawing more and more ground water and releasing polluted water into the nearest river, nala, or pond are rapidly causing severe water quantity and quality issues.

Deteriorating ground water quality with high fluoride and other contamination not only cause health problems but also will lead to water drought in Vadodara in about five years. To avoid this protecting riparian zones and wetlands and increasing water harvesting and recharging of ground water are a must. Similarly, expansion of the city without systematic solid waste reduction and management is an open invitation to public health disaster that is experienced by the citizens of Delhi and Beijing on a regular basis. .

Smoke, dust, smog, and stink from the industrial, vehicular traffic, and construction activities are causing very serious health hazards that, in turn, affect productivity and economy. Not paying timely attention to mass public transit alternatives while widening more roads and building more bridges for rapidly increasing number of petroleum-fuelled vehicles, not adapting innovative technologies to reduce air pollution, not punishing the polluters, and not reducing our population and material needs will keep on exacerbating the gravity of this issue.

Slums have been demolished rendering many people unemployed and homeless under the label of encroachments but new buildings have sprung up on the banks of the river and into the lakes under the pretext of development. Environmental and Building laws have been bypassed; construction permits have been awarded to buildings that encroach on rivers, ravines and lakes, thereby increasing the potential for floods and water-logging. Existing buildings, some with great heritage value (Nazarbaug Palace and Shantadevi Hospital), have been demolished and matured trees have been felled to widen roads to accommodate more cars and more construction activity. It is indeed shameful that a city that aspires to become "smart" and spends crores of public money for it is planned without inputs from qualified planners, genuine public participation, and proper contour surveys and plans.

The adhoc construction activity in the city is adding to soil, water and air pollution at an alarming rapid pace without any sound studies of requirement or demand. The Development Plan, Town Planning schemes, various permits for construction of malls, gated communities and large townships, are approved without any understanding of natural habitats or contour plans. Builders and developers dictate what kind of development occurs where, without any studies regarding need. The supply of the housing and commercial stock in the city far exceeds the needs, which has resulted in the large vacancies and unoccupied units across the city. This has had a large impact on the corporation, which is struggling to provide infrastructure and services to this under-occupied expanse of sprawl, severely impacting the quality of life of the residents.

The Vishwamitri River, its tributaries and ravines, ponds and their interconnected nalas, various types of wetlands, and associated land forms and vegetation cover are habitats for a variety of flora and fauna. The water-soil interfaces of natural water features (such as, rivers and ponds) are vital for their survival or rejuvenation. Sadly, the riparian zones of Vishwamitri River are choking due to dumping of solid waste of all kinds. It is interesting to note that Vishwamitri's riparian (eco) system sustains over two dozen scheduled (protected) species such as pythons, fresh water turtles, Bengal monitors, and, of course, crocodiles are few prominent ones. Vadodara city and Vishwamitri both have gained prominence as the river of Vadodara sustains a breeding population of crocodiles and other endangered species that rarely come in conflict with the humans.

Natural environment has many values and offers many free services like biodiversity, climate amelioration, ground water recharge, recreation areas, flood control, and improvement in overall quality of life. Vadodara aspires to have many 'development' projects like 'Smart City', lake beautifications, special use hubs, ring roads, slum rehabilitation schemes. In this context, Vadodara has an excellent opportunity to plan and implement development projects in a manner that creates a win-win situation for its citizens' as well as for the natural environment.

The issues raised here need to be in the center of the forthcoming election discussions and debates. What is the stand of political parties on these issues? Let us ask what they will do about them. Hopefully the people who elect and those who get elected both will pay much needed attention to this grave matter that affects ALL of us as well as the future generations of humans and other species. Let this election kick off the change for the greater good.

Concerned Citizens of Vadodara:

~Prof. Shishir R. Raval, Landscape Architect and Ecological Planner, ~Ms. Neha Sarwate, Environmental and Urban Planner, Dr. Ranjitsinh Devkar, Zoologist, Dr. Deepa Gavali, Wetland Ecologist, Dr. Jitendra Gavali, Botanist, Mr. Shakti Bhatt, Water Resources, Dr, Arjun Singh Mehta, Biotechnologist, Ms. Smita Pradhan, Wild Life Expert, Dr. Jayendra Lakhmapurkar, Hydro-Geologist, Mr. Rohit Prajapati, Environmental Activist, Researcher and Writer, Mr. Hitarth Pandya, Educationist and Writer, Mr. Rutvk Tank, Civil Engineer and Urban Planner. ❑

## Letter sent by Prabhakar Sinha, former President, PUCL:

To
The Chief Justice of India, Supreme Court of India
New Delhi

**Sub: Saving courts' time to reduce delay in disposal of cases in the High Courts and the Supreme Court**

Sir,

As a layman, I am unable to judge the right or wrong of the heavy fine imposed on Suraz India Trust for wasting the time of the High Courts and the Supreme Court by unnecessarily filing PILs , but it has encouraged me to believe that you are serious about saving the precious time of the courts and would pay attention to suggestions made in this regard. I have noticed as a concerned citizen that the State is not only the most notorious litigant but also the most notorious source of the waste of time of the higher judiciary .Its numerous illegal orders passed in a cavalier manner because it has no respect for justice , the money wasted on avoidable litigations and the waste of the courts' s precious time compel the aggrieved citizens ,including its own employees ,to approach the higher judiciary for justice .This undesirable and unacceptable conduct causes a waste of money and time of the State and the citizens as well as the courts . It further compounds its offence by its contemptuous disregard for the orders of the courts compelling the aggrieved to file contempt petitions thus causing further waste of time of the courts and a waste of money and time of the aggrieved citizens and asvwell as the State .This despicable conduct of the State does not only cause a waste of the courts' precious time but also reflects its contempt for the orders of the courts and justice itself .This pernicious practice needs to be stopped immediately not only to save the time of the courts but to inspire due respect for the law and justice in the State as well as the people .

This can be easily done by imposing a heavy fine like 5 lac per day of the hearing of a contempt petition if the State is found to be guilty of contempt of court .The penalty would neither be unreasonable nor harsh because the disregard of the orders of the court causes the waste of the courts' time for the second time .First , the time of the court was consumed during the hearing of the case arising from an illegal act of the State , and then it is wasted for the second time during the hearing of the contempt petition .The present practice of summoning the officials of the State or passing strictures against them has proved totally ineffective in inspring the least respect in them/the State either for the court or for its time .

I would also request you to explore ways to prevent wilful passing of illegal orders by the State which cause flooding of the courts with avoidable cases .

Yours faithfully

**Prabhakar Sinha**

A concerned citizen and member, PUCL (*People's Union for Civil Liberties* founded by Jaypraksh Narain,1976 during the Emergency). ❑

**Press Statement Issued by PUCL – Tamil Nadu & Puducherry: 11th November, 2017:**

# Tamil Nadu - The Emergence of Police State and the Shrinking of Democratic Space!

PUCL, Tamil Nadu calls for restoration of Democratic norms in governance and appeal to the people to raise their vigilance and resistance against the state repression

Tamil Nadu, has turned itself an epitome of denial of fundamental rights enshrined in the constitution. Ever since the historical Jallikattu struggle, which unleashed the democratic aspirations of the people of Tamil Nadu, the ruling establishment in Tamil Nadu has been stifling each end every attempt by political and social groups who express their right to dissent. Such dissents are put down with iron hand, clamping inappropriate and draconian laws against the protestors. Thus denying the democratic aspirations of freedom to assemble and freedom of expression.

Advocate Murugan of People's Rights Protection Committee, Valarmathi of Environmental Protection Collective, Thiru Murugan and his comrades of May 17 movement, Prof Jayaraman of Kathiramangalam struggle, Anti Nuke Advocate Semmani from Nellai, Cartoonist Bala, Environmental activist Mugilan, Arappor Iyakkam Nakeeran, the activists who sought due compensation for the victims of Collapse of Bus Stand roof at Somanur and scores of youngsters who fought against NEET were all incarcerated under notorious Goondas Act and such other draconian laws.

Permission to hold meetings, peaceful protests, processions and even distribution of handbills and pasting of posters are prima facie denied and the activists are arrested and remanded to custody, thus denying their fundamental rights to assemble and express, as guaranteed in the constitution. It is only a sign of emerging Police State in Tamil Nadu. It is also an undeclared emergency curtailing vital aspects of civil rights. When the access to the public domain to articulate one's expression is denied, youngsters, justifiably, resort to the social media and other public spaces to ventilate their dissent. Even such attempts are strangulated by intimidation and coercion perpetrated by the State machinery.

It's unfortunate that the present ruling establishment, in its anxiety to save themselves have lost its transparency and eschewed its commitments to govern democratically. The schism within the ruling establishment has paved the way for a Police State, undermining the rule of law and denying any space for dissent. Civil rights and social groups, who are critical of the ruling establishment, are denied permission to assemble and conduct meetings peacefully.

Right to Information (RTI), a tool

achieved through protracted campaign for ensuring transparency in governance is waning, mainly owing to non compliance of the mandatory voluntary disclosures and delaying and thus denying the information the public have sought for, on time. The large number of appeals pending with the respective State Commissioners manifests the indifference of the Officials concerned, thus sabotaging the spirit of transparency.

This is unbecoming of democratic governance. It is imperative that those responsible for denying what is enshrined in the constitution and law ought to be punished. Be it Police officials or other government officials, including the Head of the District Administration for not adhering to the rule of law and for not observing the democratic governance in letter and spirit.

Hence it is exigent that the present ruling establishment should come to its senses and stop aping the Centre and render transparent and ethically Democratic governance respecting the Democratic aspirations of the people of Tamil Nadu.

When the ruling establishment is not asserting for its federal rights and has earned the notoriety of playing the second fiddle to BJP, supporting the canards of Communal fascism, and is itself plunged into the quagmire of corruption, inefficiency and nepotism and impose the so-called projects, which are detrimental to the interest of the people and their sustained livelihood, it is the duty of the people to resist such anti people measures.

Thus the right to defend the hard earned freedom, democratic rights and social justice is bestowed on the people and the movements concerned, when the ruling establishment fails, miserably.

At this juncture, PUCL demands the TN government to immediately with draw all the cases fabricated against the persons who took part in the Jallikaatu, Neduvasal, Kathiramangalam, Koodangulam, NEET and other protest programmes.

PUCL is taking efforts to form a federation of all the democratic organizations in Tamilnadu at the state level to fight against the all anti democratic suppressive measures of the Government.

Hence PUCL, appeals to the people of Tamil Nadu to keep their vigil and guard our freedom and challenge the threat of the shrinking democratic space by launching the non violent struggles.

***Gana Kurinji,*** President, ***Prof. R. Murali,*** Secretary ❑

**Odisha PUCL: Press Statement**

## The Commission of Inquiry Report on the Incident of Kalinganagar Firing Justifies State Violence on Citizens
## A Citizens' Response, December 18, 2017, Bhubaneswar

Police firing on adivasis leading to 13 deaths in Kalinganagar on January 2, 2006 to acquire land for a private company to usher in industrialization had sent shock waves across the country. Today, it is equally painful and shocking to see the findings of the P K Mohanty Commission of Inquiry that was constituted to inquire into the incident. As concerned citizens, we find it important to share our responses to the report:

- Can the lathis, axes, bows and arrows of the people deemed to be "deadly weapons" stand against the modern arms and ammunition of the Odisha police? Based on the deposition of the Jajpur Collector, the Commission has said that near about 1000 villagers on January 2, 2006 gathered with lathis, axes, bows and arrows who posed a threat to the law and order problem for the construction of the boundary wall of Tata. Therefore 12 platoons of police (over 500 armed police personnel) were stationed with modern arms and weapons.

  Here, the question arises how the gathering of those villagers with their traditional weapons to protect their lands and livelihoods has been termed 'illegal' and 'unconstitutional' whereas the presence of such a large contingent of armed police for the construction work of a private company like TATA as "adequate" and "cannot be faulted"? The Commission's justification of this large presence of police resorting to barbaric violence for their "own self-defence" leading to the killing of 13 adivasis is once again establishing the monopoly of violence that the State and administration carry. The Commission is also making clear that citizens have no right to protect their own lives and livelihood. The protection of the interests of a corporate entity like Tata is the sole concern of the Commission like other Commissions have done in the past.
- The Mishra Commission that was constituted to inquire into the police firing in December, 2000 in Rayagada district where three adivasis were killed and seven injured did not question the justification of police firing. The adivasis of Rayagada were fighting against bauxite mining and alumina plant of Aditya Birla. This time the PK Mohanty Commission too has justified police firing in the process of land acquisition for Tatas. Both Commissions have justified the killing of people

for the self defence of police personnel. However, deployment of armed police forces to acquire land for a private company against the wishes and consent of the people have not been deemed unjustified by any Commission. In both cases, the police firing created an atmosphere of fear and intimidation that became favourable for companies to forcibly acquire land; this has been overlooked by both by a sitting judge as well as by the retired judge. This makes us doubt the impartiality of both Commissions.

- The Mohanty Commission has pointed out that land had been acquired between the years 1990 to 1995 and that from 1995 to 2005 people's disappointment regarding compensation and rehabilitation built up. Those expressions of discontent were peacefully and democratically expressed according to the Commission. This is a success of the people's movement that a Commission set up by the government has acknowledged the discontent of the people with the land acquisition process. It is to be noted that both BJD - BJP and Congress were in power, a fact that is pointed out by the Commission too. Why has the Commission not been able to point out that the administration and elected representatives in power have been equally responsible for the increasing discontent of the people? Had this discontent been addressed instead of their working in favour of the company, such a tragic incident of firing and loss of lives would not have happened.
- The Commission has not hesitated to question the role of some respected citizens for the aftermath of the incidents following the police confrontation with local people in May 2005. The Commission in a biased manner has questioned the role of political activists and NGOs from events around May 2005 and onwards who, according to the Commission, have "taken advantage of the volatile situation, mobilised, instigated and led the villagers to adopt a path of confrontation." Political activists and NGOs have been standing in protection of people's rights and ensuring that the government machinery should work democratically in the interest of people. That is why they have been targeted by the State on several occasions. Here, in justifying the use of excess police force for land acquisition of a corporate entity reveals how the Commission has undoubtedly protected the interest of the corporate.
- The Commission has held responsible three doctors for the incident of chopping of palms of the deceased after post-mortem and at the same time absolved them of any "oblique intent". On the other hand, the Commission has highlighted the role of political activists and additionally attributed them with the intention of having "hijacked and converted the agitation." It is questionable whether the Commission was working towards giving justice to the family of the deceased or instead giving a clean chit to the administration and police in order to uphold the business interests of Tata.
- The Commission had ample opportunity to question the state government why measures had not been taken to implement land settlements as per the Odisha Survey and Settlement Act before declaring the area as Kalinganagar Industrial Complex. Of the 13,000 acres of land earmarked for the complex, the Commission has highlighted that 7,057 acres belong to the private owners. The area came under the control of the Odisha government from the Sukinda royal family under the Odisha Estate Abolition Act 1951. Subsequently, most of the private land in this area was claimed as public land which the government arbitrarily sold to a private company. This was one of the main grievances of the people. For what "public interest" did the government use its authority to keep compensation money of the private land to itself. The Commission has maintained silence on this matter too.
- To recommend jobs of temporary nature to those who gave up their lives in protecting their land to avoid facing uncertainty is a travesty. Such a recommendation of the Commission to provide suitable employment to one member in each family is tantamount to the privatization of lives and livelihoods of individuals. No doubt that such precedence will establish a wrong trend. It would have been appropriate to offer a government job.

We, the undersigned citizens, strongly disagree with the findings of the Commission report. In the last many years when state violence has been increasing against those fighting for their lands

Postal Regn. No.: DL-(E)-01/5151/2015-2017 TOTAL PAGES : 20 RNI No.: 39352/82
Posting : 1-2 January, 2018 at New Delhi PSO Date of Pub.: 27-28 December, 2017

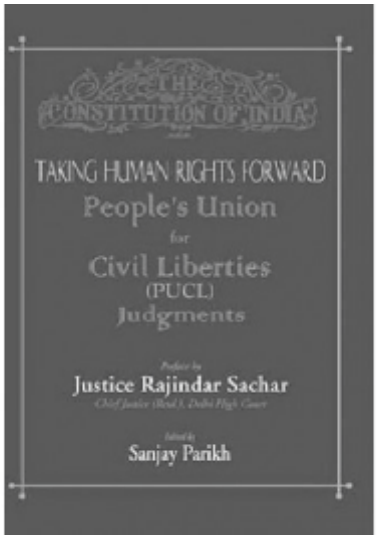
and livelihoods, such a report is legitimising the coercive tactics and undemocratic actions of state and companies. We plan to come together on January 2, 2018 for a collective protest against the police firing and state repression on people's movements struggling for the protection of land and livelihoods.

**Biswapriya Kanungo** (Human Rights Activist), Debaranjan (GASS), **Dhirendra Panda** (Civil Society Forum on Human Rights), **Lenin Kumar** (Janabaadi), **Lingaraj Azad** (Niyamagiri Suraksha Samiti), **Mahendra Parida** and **Banshidhar Parida** ( Trade Unionist, AICCTU), Manohar (CSD, Odisha), **Narendra Mohanty** (Campaign against Fabricated Cases), **Pradeep Sahu** (CSD, Odisha), **Prafulla Samantra** (NAPM), **Pramodini Pradhan** (PUCL), **Radhakant Sethi** (CPI-ML Liberation), **Ranjana** (WSS- Women against Sexual Violence and State Repression), **Sivram** (CPI-ML Red Star), **Srikanta Mohanty** (CPI-ML , Odisha), Srimonto Mohanty, **Tapan Mishra** (Chaasi Mulya Sangha)

Contact Numbers:
9437426647/9437762272

**PUCL Announces the Publication of the Compilation of Judgements of the Supreme Court in PILs filed by the PUCL**

## Taking Human Rights Forward
## People's Union For Civil Liberties (PUCL) Judgments




*Contribution Rs. 295/- per copy (plus postage extra)*

**Copies may be obtained from the following address:**
**PUCL National office, 270-A, Patpar Ganj,**
**Opp. Anand Lok Appartments(Gate No.2)**
**Mayur Vihar-I, Delhi - 110 091**
**Tel.: 011- 22750014**

**Regd. Office :**
270-A, Patparganj
Opp. Anandlok Apartments
Mayur Vihar-I, Delhi-110091
**Tel.:** 22750014
**Fax:**(PP) 42151459
**E-mail :** puclnat@gmail.com
pucl.natgensec@gmail.com
**Website :** www.pucl.org



***Printed and Published by:***
**V. Suresh**, General Secretary, PUCL, on behalf of **People's Union for Civil Liberties**; ***Printed at:*** Royal Offset, 489, Patparganj Indl. Area, Delhi-92; ***Published at:*** 270-A, Patpar Ganj, Opp.Anand Lok Apartments, Mayur Vihar-I, Delhi 110091; ***Editor:*** **V. Suresh**.