

**Inside :**

PUCL Statement on Citizenship Amendment Act, 2019: A Hate Driven Move (1)

**ARTICLES, REPORTS & DOCUMENTS:**

Indian Scientists and Scholars Issue Statement on CAB (5); Don't support CAB, it's Divisive: IIM-B Faculty, Students to MPs (5); Four Myths about the Citizenship Bill – from Fighting Religious Persecution to helping NRC-Excluded (6); The Citizenship Bill Rests on Shaky Legal Grounds (7); Note on Public Interest Litigations filed in the Karnataka High Court (11); Samjhauta Blast (2007) & Role of NIA (13); PUCL Karnataka Report of encounter killings at Kerala (14).

**PRESS STATEMENTS, LETTERS AND NEWS:**

PUCL Statement on Police Violence in Jamia, AMU, DU & other Universities (3); CAA – CAB - Press Briefing on India (4); CFD Statement: Citizenship Amendment Bill: A Black Spot on Indian Democracy - Must Be Abrogated (4); Tribute to Lakhan Singh, President, PUCL Chhattisgarh by Sudha Bharadwaj (9); Letter by Bhima Koregaon Prisoners to SHRC, Maharashtra, sent by Sudha Bharadwaj (10); Solidarity Statement against Police Brutality at JMI University & AMU (10).

**Annual Subscription: PUCL Bulletin (w.e.f. January 01, 2017)**

INDIA	
PUCL Members	Rs. 200
Non-Members	Rs. 240
Libraries, Institutions	Rs. 300
<b>OVERSEAS</b>	
PUCL Members	US\$50
Non-Members	US\$100
Libraries, Institutions	US\$120

**PUCL MEMBERSHIP**

<b>INDIA</b>	
Patron	Rs. 2000
Life	Rs. 1000
Annual	Rs. 50
<b>FOREIGN</b>	
Annual	Indian Rs equivalent of US \$15

Press Statement: 13 December 2019:

**Citizenship Amendment Act, 2019: A Hate Driven Move**

**PUCL Call to Citizens to launch Non-Cooperation Movement against CAA & NRC**

PUCL deplores the promulgation of the Citizenship (Amendment) Act, 2019 on 12<sup>th</sup> December, as a law which renders asunder the basic structure of India's constitutional scheme founded on the stated goals of secularism, respect for diversity and peaceful coexistence of all communities, without distinction of community, caste, creed or other differences. **The PUCL declares that, collectively with others, it will work towards restoration of universal principles of citizenship in India.**

The key thrust of the new Citizenship Act changes the essence of the Constitution, altering the basic principles of universality of citizenship which was obtained irrespective of race, sex, religion, and place of birth. **Citizenship now will have religion as a key determinant for obtaining Indian Citizenship** since the CAB will now include all religions of the region (Hinduism, Sikhism, Jainism, Buddhism, Parsis and Christians) while very conspicuously excluding Islam. While the CAB hides behind the veil of being in favour of persecuted minorities of the three neighboring Muslim majority countries, the pith and substances of the Amendment strips away the secular value of the Constitution which "We, the people of India" had given to ourselves.

It is a matter of supreme irony that while the rest of the world woke up to 10<sup>th</sup> December, 2019, celebrated globally as 'International Human Rights Day', we in India woke up on 10<sup>th</sup> December to witness the virtual desecration of the key human rights principles enshrined in the Indian Constitution which values respecting diversity, ensuring equality amongst all communities and promoting co-existence, secularism and communal harmony. In the early hours of 10<sup>th</sup> December, 2019, the House of People (Lok Sabha) voted in favour of differentiating and discriminating persecuted people who seek refuge in India in terms of 'Muslims versus other religions'. The dark irony in the deliberate action of the NDA government brazenly rushing through a discriminatory draconian law on human rights day was not lost on the rest of the world, as numerous countries condemned the passage of the communally oriented Citizenship Amendment Bill.

The most odious aspect of the CAA is the communal, anti-Muslim bias inbuilt into the law. Thus a law meant to protect people who face 'religiously persecution' in countries neighbouring India and seeking refuge in our country, provides that only persons belonging to 'minority' communities like Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from the Muslim majority countries of Pakistan, Bangladesh and Afghanistan will not be treated as 'illegal migrants'. Though the terms 'religious persecution' and 'minority community' is not present in the

CAA itself, it refers to the Rules under the Foreigners Act, 2016 which clearly refer to these terms. Even if religious persecution is the criteria, the flaws and contradictions in this legal formulation stands exposed by the fact that there are numerous communities within the larger Muslim community in Pakistan who face immense 'religious persecution'. The **Ahmadiya** community, the **Shia Muslims** and the **Balochs** have historically been facing harsh persecution with repeated bombings, mass killings and immense violence at the hands of the dominant Sunni Muslim community in Pakistan. Similarly the '**Hazara**' community in Afghanistan, also face religious persecution forcing them to seek exile in other countries, including India. Religious persecution is not only inter-religious; but as we can see the various Islamic sects with different practices are also under immense violent persecution. It is really sad as how the CAA has deliberately left out of the ambit of the definition of 'religiously persecuted minorities' the tens of thousands of **Rohingya** Muslim refugees who have been declared as the most persecuted community of the world, facing ethnic cleansing and genocide from the murderous Buddhist Myanmar military regime. All these cases are deserving of grant of citizenship by a civilized country, for being victims of the inhuman provisions of the religion patronised by their government. Equally condemnable is that the CAA is silent on providing protection to over hundred thousand Sri Lankan Tamil refugees who fled the 30 - year war and ethnic cleansing in north Sri Lanka and who have been in India for periods ranging from 10 to 30 years. Sri Lanka has recently seen a regime change with Gotabaya Rajapakse, accused by the Tamils as the architect of the genocidal war in 2008-09, as the new

President of Sri Lanka. In these circumstances it's impossible for the Sri Lankan refugees in India to have confidence to go back to Sri Lanka. The BJP government has mercilessly dumped these Tamil refugees to the dustbin of history, a shameful commentary on the international image of India as a country of peace.

It is well know that from the time of independence, India has offered sanctuary to so many persecuted people from all around South Asia, from the Dalai Lama and **Tibetans** who fled in 1959 when China invaded Tibet to refugees from many other war torn nations from across Asia and Africa. We have now lost the moral high ground in our very subcontinent.

It is ominously clear that the Modi – Shah led BJP Government is determined on pushing through all means available in its political armoury, its stated agenda of forcing India to become a *de facto* 'Hindu Rashtra' even though declaring it in law (*de jure*) may take some more time. Part of the strategy to consolidate majority Hindu sentiment is by continuously stoking the fire of communal difference, hatred and intolerance while remaining strategically silent when violence engulfed India through lynchings, mob killings and mass violence in the last few years. CAA, accompanied by the **declaration of forcing the National Register of Citizens (NRC)** on the whole country is the lethal project of subordinating Muslims to virtually become second class citizens in their own country.

What the CAA and nationwide NRC will accomplish is much more sinister: it will unleash insecurity amongst Muslims throughout India in a scale hitherto not experienced. The NRC Assam process has demonstrated that over 19 lakh citizens got left out from the NRC with more than 12 lakh Hindus and Indigenous people failing to prove

their Indian citizenship. In the whole country these numbers could swell to an unimaginable high figure. Even in Assam the, 12 lakh Hindus and Indigenous people cannot be made stateless. The Citizenship Amendment Act is aimed at meeting that contingency by giving citizenship to Hindus, Sikh, Buddhists, Jains, Christians, and Parsis i.e. to all except the Muslims. Thus, the CAA serves several of their purposes: it grants citizenship to all "illegal immigrants" except Muslims by excluding and creating a second, subordinated class of citizens. Who will then have restricted rights, apart from being in detention centres.

With the abrogation of Article 370 of the Constitution, internet lockdown, blackout of all leaders in Kashmir, the Ayodhya - Babri Masjid decision by the SC in favour of the Hindu Community, the nationwide NRC and now the CAA - the Hindu Rashtra Project of the Sangh seems to be a reality and not a far flung prophecy: it is here to stay.

Our country is passing through one of the most serious crises to its existence as a secular, democratic republic. It is extremely vital that all democratically minded citizens join hands to oppose the CAA. The PUCL will work with other human rights groups, constitutionally minded and concerned citizens to oppose the Citizenship Amendment Act, 2019 and the NRC, scheduled to be rolled out throughout India. PUCL gives a call to all concerned citizens to follow Gandhiji's method of civil disobedience and to resist the nationwide NRC process and the implementation of the CAA through non-violent means and non-cooperation and urge the people of India to save democracy and rule of law in the country.

**Sd. Ravi Kiran Jain**, National President, PUCL; **V. Suresh**, National General Secretary, PUCL □

PUCL Statement: 16<sup>th</sup> December 2019:

## **STOP! The Police Violence against students and those protesting the CAA!** **PUCL Statement on Police Violence in Jamia Millia Islamia University, AMU, DU and other Universities**

PUCL strongly condemns the motivated, targeted and brutal attack by the CRPF and Delhi Police on students of Aligarh Muslim University and Jamia Millia Islamia University in Delhi yesterday, Sunday 15<sup>th</sup> December, 2019 causing serious injuries to over 150 students including girls, and also arrest of scores of students and youngsters. By all media reports and eye witness accounts, the brutal charge of the police forces was unprovoked and unwarranted as the students were peacefully protesting against the Citizenship Amendment Act, 2019 and the NRC.

The Vice Chancellor and the Proctor of Jamia Millia Islamia University have come on record that the Police forces entered into the University campus in the evening of 15<sup>th</sup> December, 2019 without either seeking permission from the University authorities or having been called by the University officials. In fact the police forces are reported to have entered into the Zakir Hussain Library inside JMI University and beat up any young person found there irrespective of whether they had participated in the earlier student protest or were scholars working inside the library. Many girl students have also reported that the police forces put off the lights in the girls hostels so that CC TV Cameras inside the campus will not be able to film and document the sexual harassment. The police forces are reported to have ransacked the hostels and the library; violently beating anyone they found causing severe injuries. Today, 16.12.2019, media reports that students of Delhi University who protested against the violence unleashed against fellow students of AMU and Jamia Millia were once again beaten mercilessly by the Delhi Police.

Student protests against the CAA and NRC have been reported from across the country and aggressive

police action has been reported in states with BJP ruled governments. PUCL expresses its serious concern over the misuse of the law and legal machinery by the present Central Government to suppress and silence student's voices and stifle and crush the protests of ordinary citizens against the inequitable and communally discriminatory CAA and NRC. The abuse of police powers and violent use of force to crush dissent seen in the last 2 days in Delhi and other places is part of the growing trend of using brutal police powers to intimidate and stifle any protest to central government policies and if voices are indeed raised, then to crush them through physical, targeted police violence, false prosecution and violent reprisals. PUCL also strongly condemns the reported statement of the Finance Minister, Ms. Nirmala Sitharaman, who is reported to have stated that we have to be "wary that the student protests are not hijacked by Jihadists, Maoists or separatists". The attempt of the State to dub and link any citizen's protest as being Jihadist, Maoist or separatist is done with the aim to not only tarnish the image of the democratic protests but also act as a sinister warning to others to refrain from joining the protests or else they will face arrests as jihadists or terrorists themselves and get embroiled in anti-terrorist law cases.

It is a matter of great regret and is indeed unfortunate, that when mention was made before the Chief Justice's Bench of the Supreme Court today about the serious threat to life and liberty of students caused by unprovoked police violence against students committed inside the Jamia Millia Islamia University Campus, the Court chose to remark, "Let the rioting stop first ... We will determine the rights, but not in this atmosphere of riots ... the riots must be stopped" and posted the

matter for hearing on Tuesday (17<sup>th</sup> December). It is distressing to note that even when a grave situation of serious threat to life and liberty of students and protestors existed caused by violent reprisals of the police acting in an unprovoked, brutal manner, the apex court instead of urging the police to act within the confines of law while dealing with the protests, chose to approach the issue as though it was the students who were indulging in riots and refused to intervene immediately.

PUCL is constrained to point out that such an approach of the SC of refraining from taking immediate action when complaint is made to the court of serious threat to life and liberty of citizens, allegedly being committed by the police and Security forces (as in the present case), seems to be part of the recent practice adopted by the apex Court; it is also in line with the Court's approach seen while dealing with complaints of massive state wide human rights violations committed by Security Forces and police in Kashmir, following the abrogation of Art. 370. PUCL would like to point out that in a situation where the state is the primary violator of human rights, delaying judicial intervention and failing to seek accountability from the State on the ground that the citizen is equally responsible for the conflict situation, unfairly tilts the scales of justice in favour of the state and is a distortion of the Constitutional order and rule of law. In a way of speaking, it also amount to an abdication by the apex court of its role as the protector of the citizen's fundamental rights to life, liberty and fundamental freedoms against an all powerful State.

The situation is fast spiraling out of control with a vengeful Central government clearly permitting the police forces to use their brute power to silence, crush and intimidate ordinary citizens from protesting against the Citizenship

Amendment Act and the NRC. It is important that citizens across the country should raise their voices demanding the government to immediately stop police action against protestors, provide immediate medical aid to all injured

students and drop all criminal cases filed against students of different universities. We also demand an unbiased, independent enquiry into the police action against students of Jamia Millia Islamia University, AMU, Delhi

University and other Universities and criminal prosecutions against all policemen found to have violated the laws of the land.

**Sd. Ravi Kiran Jain**, National President, PUCL; **V. Suresh**, National General Secretary, PUCL □

## CAA – CAB - Press Briefing on India<sup>1</sup>

Spokesperson for the UN High Commissioner for Human Rights: Jeremy Laurence

**Location:** Geneva

**Date:** 13 December 2019

**Subject:** India

We are concerned that India's new Citizenship (Amendment) Act 2019 is fundamentally discriminatory in nature.

The amended legislation seeks to expedite citizenship for religious minorities – naming specifically only Hindus, Sikhs, Buddhists, Jains, Parsis and Christians - fleeing persecution in Afghanistan, Bangladesh and Pakistan, who have been resident before 2014. But it does not extend the same protection to Muslims, including minority sects.

The amended law would appear to undermine the commitment to equality before the law enshrined in India's constitution and India's obligations under the International Covenant on Civil and Political Rights and the Convention for the Elimination of Racial Discrimination, to which India is a State party, which prohibit

discrimination based on racial, ethnic or religious grounds. Although India's broader naturalization laws remain in place, these amendments will have a discriminatory effect on people's access to nationality.

All migrants, regardless of their migration status, are entitled to respect, protection and fulfilment of their human rights. Just 12 months ago India endorsed the Global Compact for Safe, Regular and Orderly Migration, which commits States to respond to the needs of migrants in situations of vulnerability, avoiding arbitrary detention and collective expulsions and ensuring that all migration governance measures are human rights-based.

While the goal of protecting persecuted groups is welcome, this should be done through a robust national asylum system that is premised on the principle of equality and non-discrimination, and which applies to all people in

need of protection from persecution and other human rights violations, with no distinction as to race, religion, national origin or other prohibited grounds.

We understand the new law will be reviewed by the Supreme Court of India and hope it will consider carefully the compatibility of the law with India's international human rights obligations.

In the meantime, we are concerned at reports that two people have died and many including police officers have been injured in the Indian states of Assam and Tripura as people protest against the Act. We call on the authorities to respect the right to peaceful assembly, and to abide by international norms and standards on the use of force when responding to protests. All sides should refrain from resorting to violence.

<sup>1</sup><https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25425&LangID=E> @ 16.12.2019 □

CFD Statement: 12.12.2019

## Citizenship Amendment Bill: A Black Spot on Indian Democracy - Must Be Abrogated

The passing of the Citizenship Amendment Bill i.e. CAB by the Indian Parliament on 11th December, 2019 is one of the most shameful provisions ever passed by it since Independence. The arguments advanced by Amit Shah, the Home Minister and other members of the ruling coalition, in support of CAB are on their face value superfluous and hollow. The Bill is poisonous, horrifyingly wicked and patently discriminatory measure. It is shocking that Narendra Modi, the Prime Minister of India, said that CAB is in line with India's centuries old ethos of

assimilation and belief in humanitarian values when this Bill in its essence is quite opposite of what our traditions of tolerance and fraternity stand for. It is ironical that such shameful measure has been passed by the Indian Parliament when we in India are celebrating the 550th birth anniversary year of Guru Nanak and 150th birth anniversary year of Mahatma Gandhi both of whom laid emphasis on unity of human race and universal brotherhood. Those who claim to be champions of Hindu religion should remember what Guru Nanak said, "He who

regards all men equal is religious." and exhorted all men to share their wealth with the poor and deprived without any consideration of caste or creed. The very concept of Gurudwaras is to provide shelter and relief to all without any distinction OF religion or nationality. It was deplorable to see the members, especially of Akali Dal, coming in support of the Bill which is a total antithesis of what Gurus have taught. We are proud of the song "VAISHNAV JAN TO TENE KAHIYE JO PEER PARAIE JAANE RE" (he alone is noble who understands and feels the pain of

others). India's centuries old ethos flow from the age old concept "Vasudev Kutumbkam" i.e. all humanity is our family. Our saints Budhha, Mahavir, Tulsidas, Guru Nanak, Kabir, Tukaram, Vivekanand and many others never preached or promoted any theory of hate or discrimination on the basis of caste or creed. This Bill is totally in contravention of India's centuries old ethos of

assimilation and belief in humanitarian values, the values which were cherished by us during our freedom struggle and which have found due expression in our Constitution. The passing of the Bill is a black spot on Indian democracy. Sooner the ugly spot is washed away the better. We should not wait for the judiciary to rise and undo the mischief. Sometimes judiciary also fails the people. A

robust democratic people's movement is the need of the hour calling for abrogation of this heinous measure which is a direct assault on our age old ethos and constitutional values. No doubt we shall overcome.

**S.R.Hiremath** - President;  
**N.D.Pancholi** - General Secretary;  
**Anil Sinha** – Secretary [Citizens For Democracy (CFD)] □

## Indian Scientists and Scholars Issue Statement on Citizenship Amendment Bill<sup>1</sup>

*The Wire, 09.12.2019*

Over 750 scholars from around the world have signed the note, including the directors of three major research institutions.

*A group of Indian scientists and scholars from within and without the country have released a note of protest against the draft Citizenship Amendment Bill, expected to be tabled in parliament on December 9. The Bill proposes to grant citizenship to Indians on the basis of religion as well as passively excludes Muslims, and has triggered protests around the country and from various civil society groups as a result.*

*The scholars' note, shared in full below, also calls attention to this aspect of the Bill and states that it violates the spirit of Article 14 of the Indian Constitution. Over 750 scholars from around the world have signed the note, including the directors of three major research institutions: Sandip Trivedi (Tata Institute of Fundamental Research, Mumbai), Rajesh Gopakumar (International Centre for Theoretical Sciences, Bengaluru) and Atish Dabholkar (International Centre for Theoretical Physics, Italy).*

We are a group of Indian scientists and scholars.

We are issuing this statement in our personal capacity as concerned citizens to express our dismay at the reported plans to table the Citizenship Amendment Bill 2019 in parliament. We do not have access to the exact text of the current version of the Bill. Our statement is based on media reports and the text of the previous version of the Bill that was passed by the Lok Sabha in January 2019. Nevertheless, we feel compelled to issue this statement already at this point of time in view of the reports that the Bill may be tabled in parliament early next week and may be taken up for voting in both houses soon after.

We understand that the Bill seeks to grant citizenship to Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan. The stated intent of the Bill is to provide refuge to persecuted minorities from neighbouring countries. While we support this laudable objective, we find it deeply troubling that the Bill

uses religion as a legal criterion for determining Indian citizenship.

The idea of India that emerged from the independence movement, and as enshrined in our constitution, is that of a country that aspires to treat people of all faiths equally. The use of religion as a criterion for citizenship in the proposed bill would mark a radical break with this history and would be inconsistent with the basic structure of the constitution. We fear, in particular, that the careful exclusion of Muslims from the ambit of the Bill will greatly strain the pluralistic fabric of the country.

We note that Article 14 of the Indian Constitution prohibits the state from denying "to any person equality before the law or the equal protection of the laws within the territory of India." While it is the job of legal experts to determine whether this draft Bill violates the letter of the constitution, it seems certain to us that it violates its spirit.

For the reasons mentioned above, we call for the immediate withdrawal of this Bill and as its replacement request for appropriate legislation

that will address the concerns of refugees and minorities in a non-discriminatory manner.

**Signed:** The institutional affiliations provided here are only for the purpose of identification and do not indicate the official positions of these organisations.

1. Abhishodh Prakash, International Centre for Theoretical Sciences, TIFR, Bengaluru
2. Atish Dabholkar, International Centre for Theoretical Physics, Trieste
3. Sandip Trivedi, Tata Institute of Fundamental Research, Mumbai
4. Shiraz Minwalla, Tata Institute of Fundamental Research, Mumbai
5. Suvrat Raju, International Centre for Theoretical Sciences, TIFR, Bengaluru
6. Rajesh Gopakumar, International Centre for Theoretical Sciences, TIFR, Bengaluru
7. Vipul Vivek, JNU
8. Kabir Husain, University of Chicago
9. Alok laddha, Chennai Mathematical Institute
10. Pranav Kumar, Formerly at IISER, Pune

<sup>1</sup> <https://thewire.in/rights/indian-scholars-around-the-world-issue-statement-on-citizenship-amendment-bill> @ 09.12.2019 □

## Don't support Citizenship Amendment Bill, it's Divisive: IIM-B Faculty, Students to MPs<sup>1</sup>

*Counterview, 09.12.2019*

In an open letter to Members of Parliament (MPs), about 80 students, staff, and faculty of the Indian Institute of Management-Bangalore (IIM-B) have said that

the Citizenship (Amendment) Bill (CAB), cleared by the union Cabinet and is slated to be introduced in the parliament soon, is "against the fundamental

founding principle of our republic – equality before law without regard to religious beliefs."

Asking them to treat the whole issue urgently, the letter states,

"The CAB, along with the promise of an expanded nationwide National Register of Citizens (NRC) has spread fear in the minds of more than two-hundred million of our fellow Muslim citizens.

"According to the letter, "India's great strength lies in its diversity. Stripping two-hundred million fellow Indians of their basic dignity will not make India great or strong.

Instead, it will lay the foundations of a country in perpetual strife." Warning that CAB will "foment ethnic and communal discontent across the vast swathe of India, from Tamil Nadu to Assam", the letter says, "It is highly unlikely to benefit even the intended beneficiaries."

across the vast swathe of India, from Tamil Nadu to Assam", the

letter says, "It is highly unlikely to benefit even the intended beneficiaries."

Urging MPs to oppose the CAB in Parliament, the letter adds, "Generations to come will salute the stand that you took in 2019 to safeguard the founding principles of our republic."

<sup>1</sup><https://www.counterview.net/2019/12/dont-support-citizenship-amendment-bill.html> □

## Four Myths about the Citizenship Bill – from Fighting Religious Persecution to helping NRC-Excluded

*The Intelligence Bureau has itself claimed that the bill's strict processes mean only a very small number of people will benefit<sup>1</sup>*

Shoab Daniyal, The Scroll, 08.12.2019

On Wednesday, the Union government cleared a critical amendment to India's citizenship law. The Citizenship Amendment Bill will now be introduced to Parliament next week and is expected to be passed.

If made into law, the legislation would for the first time introduce a religious element in India's citizenship law. The Citizenship Amendment Bill, in theory, allows Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan to apply for Indian citizenship even if they had entered India illegally.

The BJP has used this bill to push forward with its politics of Hindu nationalism. However, a closer look at the bill shows the claims made by the party do not bear out.

Myth #1: The bill is meant to save people from religious persecution: The Citizenship Amendment Bill provides that Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan shall "not be treated as illegal migrants" even if they had entered India illegally.

That Muslims are conspicuously missing from the list has led to criticism that the bill contravenes India's secular principles. In response to this, the BJP has argued that the purpose of the Citizenship Amendment Bill is to help people persecuted on grounds of religion and hence Muslims do not make the list since they are the majority community in these three

countries.

The first hole in this theory is that persecution is also on account of sects – hence even Muslims can be religiously persecuted in Pakistan, Afghanistan and Bangladesh. In Pakistan, for example, the Ahmadi sect is violently oppressed. How is that not an example of religious persecution?

The second flaw lies in the arbitrary selection of countries. The list leaves out India's neighbours such as Sri Lanka and Myanmar. The Tamils of Sri Lanka as well as the Rohingya of Myanmar have suffered genocide in the past decade. How are these grave crimes not worthy of being seen as a cases of persecution?

In fact, as part of the Joint Parliamentary Committee which examined the bill and submitted a report earlier this year, a constitutional expert had suggested that the government should "omit reference to religions like Hindus, Sikhs, Parsis etc" and use the general term "persecuted minorities" – which would be "more useful from the legal and constitutional point of view".

That the Modi government stuck to arbitrarily listing communities from just three neighbouring countries rather than framing a consistent policy of giving shelter to persecuted groups makes it clear that the Citizenship Amendment Bill has less to do with the general principle of saving people from persecution and more to do with the BJP's own internal politics. The

party seems to believe that the Citizenship Amendment Bill would help deepen communal polarisation, which works to its electoral advantage.

Significantly, the bill only opens up Indian citizenship to non-Muslim groups persecuted in Muslim-majority countries: a dynamic that would play well for the BJP's domestic politics.

More evidence for domestic politics being the main driver lies in the existence of a cut-off in the bill: December 31, 2014. This is a result of the BJP bowing to pressure from its allies in the North East, who fear demographic pressure as a result of migration from Bangladesh. Clearly, if the BJP's only aim was to save minorities in Bangladesh by giving them asylum in India, a cut-off date makes little sense.

Myth #2: The bill will help a large number of refugees: As part of its deposition to the Joint Parliamentary Committee on the bill, the Home Ministry's Intelligence Bureau made it clear that anyone applying for Indian Citizenship under the amended law will have to "prove that they came to India due to religious persecution" – a very difficult proposition. The Intelligence Bureau also argued that such a claim would have had to be made at the time the person entered India. As per the bureau, a "strict antecedent verification process" would be put in place involving the foreigner tribunals, notorious for human rights abuse.

Since a similar process as the

Citizenship Amendment Bill has already been under operation since 2015 under the Long Term Visa scheme – which allows non-Muslim illegal migrants from Pakistan, Bangladesh and Afghanistan to stay on in India legally – we already have a window into how the Citizenship Amendment Bill will operate. Only a limited number of people – 31,313 – have availed the Long Term Visa on the grounds of religious persecution, the bureau said in its deposition.

This will be replicated for the Citizenship Amendment Bill and only a “small number” will be able to avail Indian citizenship, the bureau added. The rest, it claimed, would “have already taken citizenship by various means,” referring to the various informal ways by which Bangladeshi migrants gain Indian citizenship.

Myth #3: The bill will help Hindus left out of NRC: As part of its politics of opposing illegal migration, the BJP was initially an enthusiastic supporter of the Supreme Court-monitored National Register of Citizens that began in 2015 in Assam. The party, however, morphed into a trenchant critic of the exercise once reports emerged in 2018 that most of the people excluded from the register were

actually Hindus – a fact that is anathema to the BJP’s politics of Hindu identity.

To dig itself out of this hole, since the 2019 Lok Sabha election, the BJP has been proposing that the Citizenship Amendment Bill will help Hindus excluded from the National Register of Citizens. Yet, how this would actually work has never been explained.

It is unclear how a person excluded from the National Register of Citizens can make a fresh bid for citizenship under the Citizenship Amendment Bill, given the processes contradict each other. Under the National Register of Citizens, applicants had claimed to be Indians. But to apply for the Citizenship Amendment Bill, the same applicants would now have to claim they came from Bangladesh. How will this conflict be managed? Finally, while the bill says that any “proceeding” against a person with respect to illegal migration or citizenship will stand abated, this would apply only after the person has been conferred Indian citizenship. “Proceeding” here could refer to the NRC as well as Assam’s system of foreigner tribunals and detentions camps to identify illegal migrants. Given that the awarding of citizenship could

take years – even decades – this section by itself offers little relief.

Myth #4: Tribal areas of the North East are exempted: Taking into account electoral considerations, the Modi government has made a significant addition to the latest version of the bill: it has introduced exemptions for areas in the North East that come under the Inner Line Permit and the Sixth Schedule of the Constitution. The indigenous tribal communities who live in these areas feared the bill could end up encouraging more Hindu migration from Bangladesh, altering the demography of their homelands. By exempting these areas from the bill, the BJP claims to have addressed those fears.

Some argue, however, that nothing would stop illegal migrants living in these areas to simply move over to another part of the North East, gain citizenship and move back, in much the same way they moved there in the first place. There is also no bar on people from other areas who have gained citizenship to apply for work permits to these areas. Experts *Scroll.in* spoke to said that these restrictions will have little effect on the ground.

<sup>1</sup><https://scroll.in/article/945900/the-citizenship-amendment-bill-rests-on-shaky-legal-grounds-heres-why> @09.12.2019 □

## The Citizenship Bill Rests on Shaky Legal Grounds. Here's why<sup>1</sup>

*Unreasonable classification and exclusion of a group of people cannot stand the test of equality clause.*

Shrutisagar Yamunan, 06.12.2019, *The Scroll*

The Union Cabinet on Wednesday cleared changes to the Citizenship Act of 1955. Termed the Citizenship Amendment Bill, 2019, the most contentious part of the proposed law, expected to be tabled in the Parliament next week, is the exclusion of Muslims for three neighbouring countries from seeking Indian citizenship citing religious persecution.

The draft bill that circulated in the media on Thursday intends to amend the Citizenship Act to allow religiously persecuted minorities, namely Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, to take up Indian citizenship.

Though the bill does not seem to have the term “minority communities” and the criteria of “religious persecution”

directly, it refers to the rules under the Foreigners Act amended in 2015 and 2016, which clearly mention these terms. Muslims constitute the majority in the three countries.

This article explains why the bill as it stands now is unconstitutional, primarily because it violates the very core of the constitutional scheme of equality before law. It also looks at what the government’s possible defence of the bill if challenged in the Supreme Court could be.

But before going into these aspects, an overview of the equality clause in the Constitution is necessary.

**Equality principle:** In a Constitutional democracy, the rule of law is animated through the basic principle that everyone, irrespective of their economic and social position, is equal

before the law. As the Supreme Court elaborated in its **2002 judgement in a case involving the writer Arundhati Roy**, “It is only through the courts that the rule of law unfolds its contents and establishes its concept.” As equality is a fundamental element of rule of law, the courts are duty bound to strike down any legislation that violates it.

In the Indian Constitution, the equality principle is enshrined in Article 14, which reads: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

This carefully worded Article, which applies to all persons and not just to Indian citizens, has two distinct aspects: equality before the law and equal protection before law. According to the Supreme Court, the first

expression “equality before the law” is taken from the English common law and is a declaration of equality of all persons within the territory of India, “implying thereby the absence of any special privilege in favour of any individual.”

But this equality is a qualified equality, in the sense that it treats people in equal position as equals. This brings us to the second expression of “equal protection of the laws.” As per the Supreme Court, this means the Article forbids discrimination between persons who are substantially in similar circumstances or conditions. “It does not forbid different treatment of unequal,” the court said. This is the aspect that enables the state to act in favour of marginalised groups through policies like affirmative action.

This treatment of the similarly placed as equals will apply to any classification that the government makes in a legislation to bestow a benefit or take away one. As has been declared by the courts on numerous occasions, when the government makes special provisions for the protection of the unequal, it should be based on a “reasonable classification” of the individual or a class of persons. It cannot unreasonably compartmentalise equals and discriminate against one section, thereby converting equals into unequal. As we will see, this concept has great significance in analysing the Citizenship Amendment Bill.

**'Persecuted Minorities' and Muslims:** What the proposed law does is that it identifies the beneficiary of the law as minorities who are either persecuted or fear persecution in their own countries and so become eligible for Indian citizenship. Thus, domestic religious persecution and minority status becomes the norm for granting citizenship.

Two layers are then added to this primary identity: membership to specific religions and geography. Those religiously persecuted who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians alone are eligible for Indian citizenship and they should belong to the three countries of Pakistan, Afghanistan and Bangladesh. Muslims of these countries are excluded.

As it has been pointed out by many, Muslims in these countries are not a homogeneous group and minority sects within the community are persecuted for their faith. For example,

members of the Ahmaddiya community in Pakistan are persecuted purely for religious reasons as they have theological differences with the majority Sunni sect. In fact, the Ahmaddis are constitutionally prohibited from calling themselves Muslims and for all practical purposes are minorities. In Afghanistan, Hazaras have faced violent repression from the majority Sunni sect since the 19th century. The Citizenship Amendment Bill, however, does not cover them.

In *KR Lakshmanan vs Karnataka Electricity Board*, the Supreme Court articulated when a classification is constitutional. Any classification of persons or a class of persons should be based on what is termed as “intelligent differentia”. The court said:

“So long as the classification is based on rational basis and so long as all persons falling in the same class are treated alike, there can be no question of violating the equality clause. If there is equality and uniformity within each group, the law cannot be condemned as discriminatory, though due to some fortuitous circumstances arising out of a peculiar situation, some included in the class get an advantage over others, so long as they are not singled out for special treatment.”

When the court says one should not be singled out for special treatment, what it implies is that one cannot be singled out for unfair treatment as well. When this is applied to the Citizenship Amendment Bill, the immediate revealing facet is that Muslims of the three countries are being singled out for a differential treatment that is discriminatory. When the identification of the beneficiary of the law is based on religious persecution, all those religiously persecuted have to be treated as equals. Leaving out Muslims who are persecuted amounts to treating people of similar position unequally.

**Advertisement:** This sort of unreasonable classification which singles out a class “without having any difference peculiar to that class”, according to the Supreme Court, makes the statute unsustainable. In Constitutional law, when a court adjudicates on the constitutionality of a legislation, the presumption is usually in favour of the law being constitutional. Thus, the burden to prove otherwise is on the person who challenges the law. But in the context of Article 14, this is based on the assumption that the law is reasonable and confirms to the concept

of intelligent differentia. According to the Supreme Court, unreasonableness overturns the burden on the challenger and places it on the state. In *Ameerunissa Begum vs Mahboob Begum*, the court said:

“We are not unmindful of the fact that the presumption is in favour of the constitutionality of an enactment; but when on the face of it a piece of legislation is palpably unreasonable and discriminatory and the selection or classification made by it cannot be justified on any conceivable or rational ground, the court has got to invalidate the enactment on the ground of its violating the equal protection clause.”

In fact, the court has gone one step further and has said that even when there is no classification at all, nor any difference peculiar to the class, a law that affects only a particular group will obliterate the presumption of constitutionality.

Further, the classification should have a rational connection to the object of the legislation to sustain the law. If the object of the Citizenship Amendment Bill is to protect religiously persecuted minorities in the three countries, leaving out Muslims will undermine this object. As pointed out earlier, sections of Muslims are actually treated as minorities and persecuted in these countries.

**Advertisement:** Apart from the above contentions, the government may also be called upon to justify why the privilege of Indian citizenship should go only to those religiously persecuted minorities in the three countries and not other countries in India's neighbourhood. In Sri Lanka, the Tamils, whether Hindus, Muslims or Christians, face discrimination by Sinhala Buddhists on the twin factors of ethnicity and religion.

**Possible defence:** The Centre's defence of the law when it eventually reaches the Supreme Court could be two fold.

First, it could question the very basis of the petitions challenging the law by claiming parliamentary prerogative. Citizenship is an important aspect of sovereignty and defining its contours should be the exclusive domain of the Parliament, it could argue. The amendment does not change the nature of citizenship but only the rules of admission.

This prerogative could also be used to counter the question of geography and why only three countries have been included. The government could argue

that there could be eventual additions made to the list. Even otherwise, citizenship is not a fundamental right available to a foreigner to demand inclusion.

Second, the Centre might attack the argument that keeping out Muslims from the three countries is

unreasonable classification. The government could claim that the underlying principle of the amendment is the rescue of people who are persecuted on the basis of being members of a minority religion. For example, while the Shias and other Islamic sects in Pakistan and

Bangladesh may be persecuted, the basis of the persecution is not because they are Muslims. In other words, the attacks are sectarian.

<sup>1</sup><https://scroll.in/article/945900/the-citizenship-amendment-bill-rests-on-shaky-legal-grounds-heres-why> @ 09.12.2019



Courtesy: The Wire

## Tribute to Lakhan Singh, President, PUCL Chhattisgarh who passed away on 8<sup>th</sup> September, 2019, written by Sudha Bharadwaj

Lakhan Singh, the Tenacious, Down-to-Earth Comrade<sup>1</sup>

Sudha Bharadwaj\*, *The Wire*, 02<sup>nd</sup> December, 2019

He was a quintessential liberal in temperament, striving to build bridges between leftists, farmers' leaders, Ambedkarites, feminists, Adivasi leaders and radical theologians.

After the crippling blow of the arrest of Binayak Sen in 2007, it was the tenacious, large-hearted, down-to-earth and unassuming leadership of Lakhan Singh, who, as president for nearly a decade, revived and expanded the Chhattisgarh *People's Union for Civil Liberties* (PUCL) and built it into an organisation capable of facing the challenges of today.

Even as a government employee, Lakhan Bhai never deigned to hide his opinions and was active with various progressive causes. As a consequence, he faced implications in several frivolous cases and was still fighting in courts until the end to obtain his final dues. But, regardless of that, after his retirement, he dedicated himself completely to PUCL.

He was a quintessential liberal in temperament striving to build bridges between leftists, farmers' leaders, Ambedkarites, feminists, Adivasi leaders, radical theologian – between activists and intellectuals, the young and the old – and so broadening the scope and content of PUCL's work.

Despite his seniority, he would

never make it a barrier when it came to engaging with younger friends as equals. It was his idea of regular monthly meetings in different districts of Chhattisgarh that put the PUCL in contact with diverse issues of different communities and regions and drew members from them.

Though his health was fragile, he would be the first to volunteer for a solidarity visit to Jagatsinghpur or a fact-finding team to Dantewada or a National Council Meeting at Jaipur.

He forced the Chhattisgarh PUCL to shift from working in English to Hindi, vastly expanding the effectiveness of our reports, conventions and press releases, and attracting many non-English speaking members and activists. It was with his persistent prodding that the Chhattisgarh PUCL came out with its report on the situation of minorities in the state, made wide contacts with journalists who were facing repression and implication in false cases, and decided to honour brave journalists with a "Nirbhikta Puruskar".

Though he had to give up his own dream of starting a newspaper, he proved to be an excellent documentarian. His painstaking work on a Chhattisgarh centred website gathering ground reports on civil liberties and democratic rights took the shape of CG Basket which became very popular.

It was with his confidence that a cash-strapped Chhattisgarh PUCL dared to take on the task of organising PUCL's National Convention in Raipur in 2016, which was attended by 350 delegates from all over India who gained inspiration and energy.

I cannot forget that he took the trouble to wait the entire day outside Yerwada Jail to get a *mulaqat* (meeting) with me, on the court's permission, despite being very unwell. It reminds me of my first meeting with him when I was standing with Dr. Sen in the Magistrate's court at Bilaspur waiting for him to be taken to Raipur Jail. That's the stuff comradeship is made of.

We will try to strengthen and deepen your work further Lakhan Bhai. That's the only way I know that you will rest in peace.

*Dr Lakhan Singh (August 9, 1952- September 8, 2019) was the president of the Chhattisgarh chapter of PUCL from 2010 to 2019. Sudha Bharadwaj, currently at Yerwada Jail in Pune, wrote this tribute to him in her letter to her daughter, Maaysha, dated September 15, 2019, and it is being published with her permission.*

*\*Sudha Bharadwaj is the general secretary of the Chhattisgarh PUCL and was one of the lawyers for the Sarkeguda case.*

<sup>1</sup><https://thewire.in/rights/lakhan-singh-pucl> @ 04.12.2019



## Letter by Bhima Koregaon Prisoners to State Human Rights Commission, Maharashtra, sent by Sudha Bharadwaj

To,  
The Chairperson, State Human Rights Commission, Maharashtra

Dear Sir,

This letter reaches you on the occasion of International Human Rights day (December 10). As accused in the Bhima Koregaon (Elgar Parishad) case, it is our strong contention that the State has arrested and continues to imprison us due to our longstanding dissenting views as human rights defenders. By this incarceration of over 18 months, the Indian State seeks to create an environment of fear where all such voices critical of the government are warned that their human rights, especially those dealing with freedom of expression, ideology and association can be easily crushed under the garb of "national security".

Despite our expectations, our bail applications were recently rejected. The stringent provisions in the Unlawful Activities (Prevention) Act and sedition Act, have made it easier for the prosecution to brush aside important questions on the authenticity, credibility and admissibility of the digital evidence thus prolonging the incarceration. These aspects of any digital evidence are crucial as recent advancement in digital technology

have allowed political rivals/adversaries to use fake content as an effective tool to attack, defame, criminalise and silence each other.

'Deepfakes' for instance, is a new digital form of technology that has posed as serious challenge to the political environment in the US and Europe. In India, the Union Government and it's IT Minister, Shri Ravi Shankar Prasad is keen to curb the misuse of fake news despite it becoming a regular phenomenon since 2014 as propaganda tool in elections, decisively. The same BJP government criticised the West Bengal government when their party worker was arrested for sharing a fake meme of the Chief Minister on social media. However, this use of fakes becomes even more dangerous and sinister where used by the State against citizens. The revelation the spyware 'Pegasus' was being used by the government to access the phones of journalists and HR activists by fake whatsapp videos calls, is an example. Even IT Major Google has revealed that there have been government backed phishing emails (fake emails asking user details) on nearly 500 users in India between July and September this

year. These samples of modes of surveillance and attacks are nothing short of a sort of "state-sponsored cyber terrorism".

The Bhima Koregaon case (Elgar Parishad) falls within this realm. The Pune Police claim that certain files (fake letters) were found on the computers of two of us accused. Since they deliberately chose to ignore proper procedures to digitally secure the electronic storage devices seized from our residences, they could easily plant such fake and fabricated letters in the hard disks. Based on these fake letters, which have no authentication of their source, the Pune police are attributing criminal intent to every perfectly lawful act done by us.

On the occasion of International Human Rights day, we the political prisoners lodged at Yerwada Central Prison condemn this environment of fear and criminalisation promoted by the state wherein the human rights of Indian citizens and especially those of HR defenders critical of state policies are under threat.

**Signed by:** 1) Arun Ferreira, 2) Sudha Bharadwaj, 3) Soma Sen, 4) Vernon Gonsalves, 5) Surendra Gadling, 6) Mahesh Raut, 7) Rona Wilson, and 8) Sudhir Dhawale.

Pune, 4 December 2019 ☐

## Solidarity Statement against Police Brutality at Jamia Millia Islamia University and Aligarh Muslim University

We, the undersigned, condemn in the strongest possible terms the police brutality in Jamia Millia Islamia University, New Delhi, and the ongoing illegal siege and curfew imposed on Aligarh Muslim University, Aligarh. On 15th December 2019 Delhi police in riot-gear illegally entered the Jamia Millia campus and attacked students who are peacefully protesting the Citizenship Amendment Act. The Act explicitly bars Muslims from India's neighbouring countries from the

acquisition of Indian citizenship. It contravenes the right to equality and secular citizenship enshrined in the Indian constitution.

On the 15<sup>th</sup> at JMIU, police fired tear gas shells, entered hostels and attacked students studying in the library and praying in the mosque. Over 200 students have been severely injured, many who are in critical condition. Because of the blanket curfew and internet blockage imposed at AMU, we fear a similar situation of violence is unfolding, without any recourse to

the press or public. The peaceful demonstration and gathering of citizens does not constitute criminal conduct. The police action in the Jamia Millia Islamia and AMU campuses is blatantly illegal under the constitution of India.

We stand in solidarity with the students, faculty and staff of Jamia Millia Islamia and Aligarh Muslim University, and express our horror at this violent police and state action. With them, we affirm the right of citizens to peaceful protest and the autonomy of the university

as a non-militarized space for freedom of thought and expression. The brutalization of students and the attack on universities is against the fundamental norms of a democratic society.

As teachers, students, and

scholars across the world, we are watching with extreme concern the situation unfolding at Jamia Millia Islamia and Aligarh Muslim University. We refuse to remain silent at the violence unleashed on our colleagues (students, staff, and

faculty) peacefully protesting the imposition of a discriminatory and unjust law.

Link: <https://docs.google.com/forms/d/e/1FAIpQLSf9DVMYiwvGueyORId6vs65VurdP8hk9RWbGM39s2ftFRFXIQ/viewform?vc=0&c=0&w=1>



**Note:** In the aftermath of the brutal lathi charge and assault on students of Jamia Millia Islamia University and Aligarh Muslim University, young people throughout India came out in solidarity with the affected students and opposing the CAA. In many BJP ruled states, the governments invoked prohibitory orders u/s 144 CrPC to prevent students from gathering and opposing the government. When the police in Bengaluru used the announcement of orders u/s 144 CrPC as the excuse to cancel permission already granted to meetings, a number of concerned human activists along with PUCL decided to challenge the same before the High Court of Karnataka. The following note has been written by Leo Saldanha of Environment Support Group explaining the issues involved. We are carrying the same as the information may be of use to readers and PUCL members.

## Note on Public Interest Litigations filed in the Karnataka High Court challenging the 18<sup>th</sup> December 2019 Order of the Bangalore Police Commissioner imposing Sec 144 (curfew) across Bangalore

Public Interest Litigations were filed in the morning of 19<sup>th</sup> December 2019 challenging the imposition of Sec 144 of The Code of Criminal Procedure, 1973,<sup>1</sup> across Bangalore. The impugned order was issued late in the night of 18<sup>th</sup> December by Mr. Bhaskar Rao, IPS, Bangalore Police Commissioner and effective till midnight of 21<sup>st</sup> December 2019<sup>2</sup>. The implication of this order is that curfew is declared across the city, and assembly of five or more persons is prohibited. The PILS came up before the Hon'ble Chief Justice Oka and Hon'ble Justice Yerur.

The core issue of the matter is that just hours before clamping curfew across the city, the very same Police had granted permission to Dalit Sangarsh Samithi (DSS), a constituent of *Hum Bharat Ke Log – Citizen Action Against CAA*, a network of progressive groups, peoples movements, student groups, trade unions, etc., to peacefully conduct public protest on the morning of 19<sup>th</sup> December against the Citizenship Amendment Act, 2019 (CAA) and National Citizenship Register (NRC) at Bangalore's Town Hall. This approval (to DSS) had been granted after due process followed under the Licensing and Controlling of Assemblies and Processions (Bangalore city) Order, 2008. Soon as the approval was received, there was widespread communication by the organisers, including through the internet, asking progressive

people who want to uphold the Constitutional value of Equality of all regardless of caste, creed, religion, etc., to join the protest against CAA/NRC.

The three Public Interest Litigations filed in the Karnataka High Court challenge the Commissioner's decision as arbitrary, unconstitutional and effectively targeting dissenters to the Government's actions on CAA/NRC. The litigants are Prof. M. V. Rajeev Gowda, Member of Parliament (Rajya Sabha) in PIL WP No. 52738/2019; Ms. Sowmya Reddy, Member of Karnataka Legislative Assembly, in PIL WP No. 52731/2019; Mr. Leo F. Saldanha of Environment Support Group, Ms. Kavitha Lankesh, Film Director and Writer, Ms. M. D. Pallavi, renowned singer and actor, Prof. Ramdas Rao, and Peoples Union for Civil Liberties, in PIL WP No. 52718/2019. Appreciating the urgency of the appeal, the case was posted for hearing on the morning of 20<sup>th</sup> December.

**Key content of the Petitions:** The Petitioners have contended that the Police Commissioner's Sec 144 order exclusively target those opposed to the CAA/NRC. This is evident from the Proposal of the order where it is claimed the imposition of curfew is necessary "to prevent any incidents affecting public peace and order from any protests/strikes/procession/events **opposing** the recent Citizenship Amendment Act passed by the

Central Government and the National Register of Citizens" (emphasis supplied), and is the outcome of reports of Deputy Commissioners "within the Bengaluru City Police Commissionerate". Besides this claim, the order does not provide any rationale why Sec. 144 was being imposed in Bangalore, as is necessary per The Code of Criminal Procedure, various Supreme Court judgments<sup>3</sup> and also the Karnataka Police Manua<sup>4</sup>.

Soon after the Sec 144 order, the Deputy Commissioner of Police (Bangalore Central) issued an order cancelling the permission granted on the ground that "the Police Commissioner, Bangalore City and Executive Magistrate Bangalore have passed prohibitory order and also have prohibited gathering of 4-5 persons in public. Hence, permission granted by this office is cancelled." It is pertinent to note that the approval had been provided on the basis of an undertaking by Mr. Vinay Srinivas, Advocate and Coordinator of Alternative Law Forum, to "execute a bond for sum of Rs. 1,00,000/- with a solvent surety to maintain peace and order."<sup>5</sup> Even as steps were taken to provide surety as directed, the permission order was withdrawn.

**The backdrop in which the PILs were advanced:** All protests on the CAA/NRC issue over the past week and more, by the same organisers and also others, have all been absolutely peaceful in Bangalore.

All these factors were obviously taken into account by the Deputy Commissioner (Central Division) who extended police protection for the protest, implicit in the approval letter<sup>6</sup>. Mr. Rao's order effectively nullified the approval granted and also attacked peoples' Right to Express their dissent, per Article 19 of the Constitution of India<sup>7</sup>.

Hundreds gathered in Town Hall on the morning of 19<sup>th</sup> December. Riot police swept in and detained them. The arrested included renowned historian Dr. Ramachandra Guha who was alone protesting, holding a poster of Ambedkar, and as he was speaking to the media.<sup>8</sup> Scores of students, mothers, elders, and just about anyone who are troubled by the CAA/NRC, peacefully gathered to record their protest, and they too were detained. Even more gathered to register their protests, now also against the detentions, and demanding all detained be released. In the midst of all this, an incredible gesture: Deputy Commissioner of Police Mr. Chetan Singh Rathore engaged them, and sang the national anthem.<sup>9</sup>

The protestors were absolutely peaceful shouting patriotic slogans and condemning the CAA/NRC.<sup>10</sup> It was only when the police released all detained, that the large crowd which had gathered in peaceful protest, dispersed.

### **Proceedings in the Karnataka High Court and the decision thereof**

Chief Justice Oka and Justice Yerur heard the matter in the morning of 20<sup>th</sup> December, and then also later in the day. Advancing the concerns of the Petitioners were Senior Counsel Mr. Ravi Varma Kumar and Senior Counsel Mr. Aditya Sondhi, who were briefed by various counsels. Karnataka State was represented by Advocate General Mr. Prabhuling K Navadgi.

Senior Counsel Mr. Kumar explained how the Commissioner's order was not merely arbitrary, but that it is "ex-facie illegal as there is no formation of opinion, which is primary requirement under S, 144. Police can only regulate the rallies/dharnas or processions, they

cannot prohibit protest. It is a Fundamental Right of Citizens, guaranteed under Article 19 of the Constitution of India." Relying on various Supreme Court orders, he submitted that the Commissioner's order was "tailor made only against dissenters and not to maintain peace and tranquillity" and that it appears that it was "orchestrated that all Deputy Commissioners of Police sent intel" to justify imposition of Sec 144 of CrPC. Mr. Sondhi concurred saying that there ought to be a direct and proximate nexus between the anticipated problem of law and order and the order under S. 144. He also stressed on the complete extinguishing of the rights under Art. 19 as opposed to the balancing of rights doctrine laid down by the Supreme Court.

Chief Justice Mr. Oka speaking for the Principal Bench asked the Advocate General "Are you going to ban each and every protest?" He also wanted to know how permissions granted were effectively nullified by imposing curfew, and that without adhering to "elementary principles of natural justice". He further probed and wanted to know when a "person follows procedure comes to you (the police to take permission), you too (the police) must follow procedure" to withdraw the permission granted. He held that *prima facie* there was "absence of opinion" and questioned "Can the State proceed on assumption every protest will disrupt peace?" Chief Justice also expressed the situation could "go to that extent" where Section 144 of CrPC is invoked to "nullify permissions granted".

The Advocate General defended the Police Commissioner saying his action was pre-emptive as there had been disturbances in Mangalore, and the police are worried about "infiltrators turning protest into law and order situation" based on certain intelligence reports.

On the basis of these arguments, the Court issued an interim direction stating that its finds it necessary to go into the legality of the impugned order of the Police Commissioner. The Bench clarified that "we are not concerned with subject of protest.

We are concerned with the decision making process by passing drastic order which curtails citizens rights under Art. 226 of the Constitution.

The preventive measures has a defect of preventing exercise of fundamental rights. Formation of opinion that is required under Section 144 is not reflected in the recitals of orders"... and that too "without giving pre and post decisional hearings" and all these aspects will have to be gone into. The Bench also held that "permissions granted have worked out themselves" and the "impugned order dated 18<sup>th</sup> December 2019 comes to an end tomorrow. Some apprehension is expressed the order may be extended. *Prima facie* preventive order is effective till 21<sup>st</sup> December 2019. Therefore, there will have to be fresh application of mind to pass fresh orders under Section 144".

Referring to the Licensing and Controlling of Assemblies and Processions (Bangalore city) Order, 2008,<sup>11</sup> which regulates permissions for protests, the Court felt it essential to direct the State Government to consider "made from tomorrow" and that "the same shall be decided within a period of three days from which application is made", and not fifteen days, as is stated in the said order, to process such applications. The Principal Bench concluded its interim directions by making it clear that if the State on matters relating to "depriving fundamental rights...this Court is entitled to go into legality of the impugned order. The next date of hearing of these cases is on 7<sup>th</sup> January 2019.

(This note has been prepared by Leo F. Saldanha, one of the Petitioners. What is reported of arguments advanced and of Judicial observations and directions, is based entirely on the author's notes. The author has strained to ensure the narration above is factual and takes comprehensive responsibility for this note.

Reports of the Court proceedings in Livelaw.in,<sup>12</sup> The Hindu,<sup>13</sup> The Times of India<sup>14</sup> and The News Minute<sup>15</sup>, may also be relied on).

## References:

<sup>1</sup>See, Sec 144 of the Code of Criminal Procedure, 1973, at: <https://indiankanoon.org/doc/930621/>

<sup>2</sup>See, Order of Bhaskar Rao, Commissioner of Police and District Magistrate, Bangalore, Vide No. SB/Gu.Va/Prohibition/50/2019, dated 18<sup>th</sup> December 2019.

<sup>3</sup>For a detailed explanation of Sec. 144, and when and how it has to be invoked, highly selectively and restrictively, see, Arabhi Anandan, [Explainer] Section 144 CrPC : What Are The Grounds To Impose Restrictions?, LiveLaw, 20 December 2019, accessible at: <https://www.livelaw.in/know-the-law/explainer-section-144-crpc-what-are-the-grounds-to-impose-restrictions-150988>. See also, Gautam Bhatia, *How Section 144 and Internet shutdowns shrink democratic rights | Opinion*, Hindustan Times, 21st December 2019, accessible at: <https://www.hindustantimes.com/analysis/how-section-144-and-internet-shutdowns-shrink-democratic-rights/story-9D8J8DrbjKfzLXEtIQ8k2K.html>

<sup>4</sup>See, *Karnataka POLICE MANUAL, CHAPTER 26, Preservation of the Peace:* <https://www.ksp.gov.in/Page.aspx?page=Police%20Manual%20Chapter%2026>

<sup>5</sup>See Show Cause Notice under Sec 111 of Cr.P.C, issued by Spl. Executive Magistrate and Addl. Commissioner of Police, Order No. MB/SB/64/DCP(K)/2019 dated 18<sup>th</sup> December 2019 .

<sup>6</sup>See Permission Letter of Deputy Commissioner (Bangalore Central) on behalf of Commissioner of Police, Bangalore, vide Letter No. SB/ANU/366/DCP/Central/2019 dated 18<sup>th</sup> December 2019 .

<sup>7</sup>Article 19 of the Constitution of India is accessible at: <https://indiankanoon.org/doc/1218090/>

<sup>8</sup>See, Jeffrey Gentleman, *Gandhi Biographer Arrested as Protests Over Citizenship Law Sweep India*, New York Times, 19<sup>th</sup> December 2019, accessible at: <https://www.nytimes.com/2019/12/19/world/asia/india-protests-muslim.html>. As also the video of his arrest accessible at: <https://www.ndtv.com/india-news/historian-ramachandra-guha-detained-during-protest-in-bengaluru-against-citizenship-amendment-act-2151152>

<sup>9</sup>See, *Bengaluru DCP asks anti-CAA protestors to trust him, sings the national anthem*, Scroll.in, 19<sup>th</sup> December 2019, accessible at: <https://scroll.in/video/947407/watch-bengaluru-dcp-asks-anti-caa-protestors-to-trust-him-sings-the-national-anthem> and also, Arpita Raj,

<sup>10</sup>See, *Prajwal Bhatt, For 4 hours hundreds of people defy section 133 at Bengaluru's Town Hall*, The News Minute, 19<sup>th</sup> December 2019, accessible at: <https://www.thenewsminute.com/article/4-hours-hundreds-people-defy-section-144-bengaluru-town-hall-114405>

*Bengaluru Cop wins Hearts for Mediating*, accessible at: <https://www.thequint.com/videos/news-videos/caa-protests-meet-the-bengaluru-cop-who-reached-out-to-keep-peace>

<sup>11</sup>This order was notified in 2009 and regulates all public gatherings and protests. It requires organisers to apply for permission at least 15 days prior to the event.

<sup>12</sup>See, *Mustafa Plumber, CAA Protests: Karnataka HC Says It Will Examine The Legality Of Imposition Of Section 144*, Livelaw.in, 20<sup>th</sup> December 2019, accessible at: <https://www.livelaw.in/news-updates/court-will-go-into-the-legality-of-order-passed-under-section-144-150986>

<sup>13</sup>See, *Consider fresh requests to hold protest: HC to Bengaluru police*, The Hindu, 21<sup>st</sup> December 2019, accessible at: <https://www.thehindu.com/todays-paper/tp-national/tp-karnataka/consider-fresh-requests-to-hold-protest-hc-to-bengaluru-police/article30363951.ece>

<sup>14</sup>See, *Consider fresh protest requests in 3 days: Karnataka High Court*, The Times of India, 21<sup>st</sup> December 2019, accessible at: [http://timesofindia.indiatimes.com/articleshow/72909007.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/72909007.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

<sup>15</sup>See, *Section 144 in Bengaluru: K'taka HC gives interim relief to anti-CAA protestors*, The News Minute, 20<sup>th</sup> December 2019, accessible at: <https://www.thenewsminute.com/article/section-144-bengaluru-k-taka-hc-gives-interim-relief-anti-caa-protesters-114482> □

## Release of Report: A Compromised Investigation:

### Samjhauta Blast (2007) and the Role of National Investigation Agency (NIA)

In March 2019, the NIA Special Court, Panchkula delivered the verdict in the Samjhauta Blast Case of 2007, which had killed 67 and injured 13 passengers, mostly Pakistani citizens, aboard the Attari Express near Panipat. The Samjhauta blasts were uncovered as part of a series of alleged Hindutva terror attacks on Muslim places of worship and areas with high concentration of Muslim population, such as the Ajmer and Mecca Masjid blast cases. On trial for the Samjhauta blast were Swami Aseemanand, Ramchandra Kalsangra, Sandeep Dange, Lokesh Sharma, Kamal Chouhan, Rajendra Chaudhary and Amit Hakla, all associated with different Hindutva terror outfits. They had been charged under provisions relating to sedition, criminal conspiracy etc. under the IPC, and

also under the UAPA for unlawful and terrorist activity, raising funds, conspiracy, enhanced penalties, among other laws. After three years of investigations by the Karnal Railway Police and a Special Investigative Team (SIT) pursuing links to the LeT and SIMI, in 2010 the case was transferred to the National Investigating Agency (NIA) when Maharashtra ATS investigations into the Malegaon blasts indicated wide links to the same terror outfits.

Twelve years after the attack, the NIA Special Court acquitted all accused in the case. In its judgment delivered on 20th March 2019, the NIA Special Judge harshly indicts the role of the NIA, noting “*with deep pain and anguish [that] a dastardly act of violence remained unpunished for want of credible and admissible evidence. There are*

*gaping holes in the prosecution evidence and an act of terrorism has remained unsolved.*” Through an in-depth analysis of the prosecution case and evidence as recounted in the judgment itself, PUDR brings attention to the mishandling of investigations and evidence by the NIA. A biased investigation is visible in the lack of safety for witnesses leading to a large number turning hostile, the absence of key evidence linking the accused to the crime, NIA's unexplained rush to file chargesheets, and the crucial loss of time as investigating agencies turned a blind eye to Hindu terror outfits in the initial years after the blast. The Report scrutinizes how the NIA conducted investigations in the case, the report raises a series of questions on the role of the premier investigating agency

enjoying extraordinary powers under law, in the acquittal of all accused brought to the trial. As accused under other cases, such as Mecca Masjid, Malegaon,

Ajmer Sharif etc., are acquitted, released on bail, and elected to Parliament, this report is the first in a series investigating the treatment of Hindutva terror by NIA and other

investigating agencies. **Shahana Bhattacharya** and **Deepika Tandon**, Secretaries, PUDR  
□

**PUCL Karnataka Report of encounter killings at Kerala:**

## **A Fact Finding Report into the extra-judicial killings of 4 suspected Maoists at Attapaddi, Kerala**

*"We, the people as a nation, constituted ourselves as a sovereign democratic republic to conduct our affairs within the four corners of the Constitution, its goals and values. We expect the benefits of democratic participation to flow to us – all of us -, so that we can take our rightful place, in the league of nations, befitting our heritage and collective genius. Consequently, we must also bear the discipline, and the rigour of constitutionalism, the essence of which is accountability of power, whereby the power of the people vested in any organ of the State, and its agents, can only be used for promotion of constitutional values and vision."*

### **Supreme Court of India in Nandini Sundar & Ors vs State of Chattisgarh dated 5<sup>th</sup> July, 2011**

**Introduction:** On 28<sup>th</sup> October 2019 and 29<sup>th</sup> October 2019 at the forest areas at Attapaddi, Palakkad district, the Thunderbolt which is the special wing of the Kerala police "encountered" 4 persons who they have termed as belonging to the Communist Party of India (Maoists). As per the police, 3 persons were killed on 28<sup>th</sup> October during cross firing, and 1 person was killed on 29<sup>th</sup> October 2019 at the same spot. The Government has claimed that they have been shot in cross-firing. On 9<sup>th</sup> and 10<sup>th</sup> November 2019 a team consisting of Dr E. Rati Rao, Adv Maitreyi Krishnan & K M Venugopalan (all belonging to All India People's Forum – AIPF), Adv. P A Pouran & G. Haridasan (both from People's Union for Civil Liberties – PUCL), Vilayodi Venugopal (National Alliance of People's Movements- NAPM) and T Vijayan Karippode (social activist) conducted a fact-finding enquiry into the reported encounters and death of 4 maoists in firing by Thunderbolt police. The team visited the neighbouring village, Mele Manjikandi which is about 2.5 kilometres from the spot of encounter. The team spoke to several villagers of Mele Manjikandi and many people from different locations in Attappadi including the Adivasi hamlet Danyam, which is located in the valley other side of Manchikandi hill. The team met and talked with Smt. Shivani who works on the issues faced by adivasis and is a member of Thakulam which is an Adivasi women's organization based in Attappadi. The Team also visited Agali police station and spoke to the

Station House Officer and Inspector Mr Hidayathulla and few local police officers. On the second day, the team went to the district police headquarters at Palakkad with a view to meeting few higher police officers including the SP. Being told that most of the higher officials were out of station and thus were not available in the concerned offices, a telephonic conversation with Mr Feroz M. Shafi, DySP (Crime Branch), who is the investigating officer in respect of the incident that took place on 28<sup>th</sup> October, 2019 was done. The Team spoke to Mr Sunil Kumar, Mannarkhad Divisional Forest Officer, Ms Shyamala, Range Officer over telephone and had conversation with few local forest officials as well. The Team also spoke with the lawyers representing two close relatives of slain Manivasakam and Karthi before the High Court and Sessions Court.

**1. Version of the police:** The team met the Police Inspector, Agali Police Station, Mr Hidayathulla and had a telephonic conversation with the DySP (Crime Branch), Mr Feroz M. Shafi, the investigating officer in respect of the incident that took place on 28<sup>th</sup> October, 2019. We were informed that two cases have been registered in regard to the "encounters". In regard to the incident that took place on 28<sup>th</sup> October, 2019 Crime number 291/2019 was registered. As per the said complaint registered on 28<sup>th</sup> October, 2019, 14 Thunderbolt were on patrol at around 12.20 pm, a group of persons who belong to the Communist Party of India (Maoist) opened fire at the police. The

members of the Thunderbolt fired back killing 3 persons, including 1 woman. The Police claim that they had camped at the said spot and that they had found cooked rice in a tent. Crime Number 292/2019 has been registered under Section 143, 144, 147, 148, 253, 307 read with Section 149 IPC; Section 3 read with Section 25 (1)(b) of the Arms Act; Section 16, 20, 38, 39 and 49 of the Unlawful Activities Prevention Act (UAPA) and Section 27(1)(e) of the Kerala Forest Act against an unnamed group of people on the basis of a complaint given by one of the members of the Thunderbolt. We were informed by the DySP (Crime Branch), Mr Feroz M. Shafi that these cases after having been transferred to the District Crime Branch have been renumbered respectively as Cr No-495/CB CU-III/KKD/R/19 (Agali PS Cr. 291/2019) & Cr No-496/CB CU-III/KKD/R/19 (Agali PS Cr. 291/2019)

About the three slain persons, we were informed that one of them was named Shri Karthik. In regard, to the other two persons, we were initially informed by the Police Inspector, Mr Hidayathulla that the two of them were named Shri Aravind and Rama. When asked how they found out the names, he stated that it was through sources. However, thereafter, Mr Feroz M. Shafi, DySP (Crime Branch) informed us that the person identified as Shri Aravind had actually been identified as Shri Shrinivasan, by his family, through photos. However, he stated that his family was still to identify the body of Shri Shrinivasan. When we asked them, as to how the provisions of Unlawful Activities Prevention Act had been invoked when the deceased persons had not

been identified, we were informed by Mr Feroz M. Shafi, DySP (Crime Branch) that the same had been mentioned in the complaint itself given by one of the members of the Thunderbolt. No further information in this regard was provided.

As per the police, no FIR has been registered against any of the members of the Thunderbolt, and the only FIR registered, as stated above, is against those who were killed.

In regard to the incident that occurred on 29<sup>th</sup> October, 2019, we were informed that about 60 people including several Thunderbolts, members of the Q branch, Tamilnadu, the Deputy Commissioner, Palakkad, the Superintendent of Police (Operations), the Police Inspector, Agali Police Station were present and the inquest was being conducted. According to Mr Hidayuthulla, they heard shots from the Western side, and all of them were directed to duck down. The Thunderbolt then shot and one person was killed, his name being Shri Manivasakam. They also said that other persons who were with him ran away. Crime number 292/2019 was registered against one accused, i.e. the deceased himself. Mr Feroz M. Shafi, DySP (Crime Branch) informed us that as per the postmortem, Shri Manivasakam had two fractures, on his knee and thigh. He said that those injuries were perimortem (i.e. injuries taking place at or around the time of death).

In regard to the incident that occurred on 29<sup>th</sup> October, 2019, it is necessary to note that after the incident occurred on 28<sup>th</sup> October, 2019, the entire area was cordoned off to a circumference of 400 metres. The body of Shri Manivasakam, according to the Inspector, Mr Hidayuthulla, was found within 40 metres from where they were standing, within the 400 metre cordoned off region.

## **2. Meeting with the villagers and members of the organization**

**Thaikulam:** The team met with some of the villagers of Melle Manjikandi, who told us that the incident had occurred the day after Diwali, and there was too much noise and they could not hear the firings on 28<sup>th</sup> October, 2019. While expressing that the killings were inhuman, they were apprehensive about giving specifics

about the incident.

We also met Smt. Shivani, Smt Narjari and Smt Shivakami from the organization, Thaikulam. Smt. Shivanni is also a member of the district monitoring committee under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. She stated that there was serious doubts in the versions of the police, and that these doubts showed that the killings were not “encounters”, but in fact extra-judicial killings. She stated that the body of the woman who was killed on 28<sup>th</sup> October, 2019 was decomposing at the time itself indicating that she had been killed at an earlier time. They said that they had visited the place on 29<sup>th</sup> October, 2019 and could see that there was cooked food there, indicating that those who had been killed could have been eating when they had been killed. She stated that she was informed that on 28<sup>th</sup> October, 2019, stretchers were brought before the incident took place, indicating that the pre-planned nature of the incident. While it was being said that three casualties happened in the encounter on 28 October, why did they bring 4 stretchers instead of 3? She asked, suggesting that the second day's incident was obviously pre-planned. These women also wondered while Shri Manivasakam had suffered two fractures on his legs, how could he have walked or could have been agile to be able to shoot at the police or the Thunderbolt.

They said that the conditions of the adivasis living in Attapaddi was very difficult and they were a neglected population, and the State instead of addressing their needs was treating them with suspicion and harassing them. They said that subsequent to the incident the surveillance on persons residing in the nearby hamlets and those who were vocal, including themselves has risen. This led to the people living a life of constant fear, knowing that their every move was being watched upon.

They also said that posters purported to be put up by an organization Adivasi Yuvata supporting the police action in the killings were put up. She said that such organization had not been heard of and it appears that the posters had been put up by the police

themselves.

## **3. Response of the State**

**Government:** Mr Pinarayi Vijayan, Kerala Chief Minister has defended the killing of the 4 persons and in fact has stated before the media not to paint the Maoists as “lambs” or “holy souls”. The Chief Secretary of Kerala, Mr Tom Jose, has written an article titled **“It is like war: Kill or be killed”** appearing in Times of India on 5<sup>th</sup> November, 2019, where he makes the following statements amongst others:

*“There is no rationale in stating that Maoists who indulge in armed conflict have got the same human rights and privileges as normal citizens. Not only that it cuts at the very root of the principles we live by, but also mocks and insults the ordinary people who go about their daily lives obeying the laws of the society....*

*It is either kill or be killed. When our soldiers fight our enemies across the border, we don't portray them in bad light. We applaud them. Then why blame our police forces when all they do is to protect the citizens from Maoist terrorists?”*

There can be no two ways that the statements made by the Chief Minister, Mr Pinarayi Vijayan and the article penned by the Chief Secretary, Tom Jose is highly condemnable. The branding of those killed as Maoists, when admittedly they have not even been identified displays the pre-judged manner in which the State has responded. Even otherwise, comparisons of Maoists to terrorists or enemies from across the border and stating that they do not have human rights goes against the fundamental principles of the rule of law which assures equality and equal protection of the law to all citizens.

The pre-determined statements of the Chief Minister and the Chief Secretary also give cause for apprehension that the investigation being carried out would not be independent and would be coloured by the existing bias and prejudice from which these statements stem. Short-circuiting of the judicial process and the encroachment of the executive into the judicial realm by passing judgment through such extra-judicial killings is a cause for

serious concern.

While looking into the response of the State into the incident, it is also necessary to note a subsequent development, which indicates the manner in which the Government has responded to the issue at hand. Alan Shuhaib and Thaha Fasal, both law students from Thalassery, were arrested for distributing brochures criticising the extra-judicial killing of the four suspected Maoists at the Pantheerankavu market on 2<sup>nd</sup> November 2019. Stating that they were distributing “pro maoist” brochures, both the students have been arrested and an FIR under the Unlawful (Activities) Prevention Act has been filed. This arrest which has met with heavy criticism from all quarters once again raises very serious issue on the manner in which the Government is dealing with dissent of any form, and the labeling of all persons who dissent in any form as Maoists and members of terrorist organization.

Summary executions of suspected militants and militant sympathizers in staged "encounters" have a history in counter-insurgency operations throughout India. The present incident is required to be seen in the context of extra-judicial killings that have taken place in the past. A brief note on previous encounters is at Appendix – I.

**Guidelines of the Supreme Court in regard to extra-judicial killings:** The Supreme Court in its order dated 23.09.2014 in People's Union for Civil Liberties vs. Union of India [(2014) 10 SCC 635] has laid down detailed guidelines in respect of encounters and the steps required to be taken in case of the same placed in Appendix – II. The Guidelines include *inter alia* the registration of an FIR in every case of an encounter, independent investigation into the same, information to the next of kin and surrender of the weapons for forensic and ballistic analysis.

In the instant case it becomes clear that the guidelines have not been complied with. Firstly there is requirement that if any information in respect of any persons suspected of having arms is received the same must be immediately put down in writing. However no such information appears to have been put down in writing. Secondly the Supreme Court

has clearly stated then FIR must be registered immediately on any such encounter. In the instant case an FIR has been registered only against those who have been killed whereas no FIR have been registered against the thunderbolt or the police. Thirdly, the question of surrendering the weapons has also not been done by the officers involved.

The Team met Advocate Soya and spoke to Advocate Tushar who are representing Smt. Lakshmi sister of Manivasakam and Murugesan brother of Karthi. A petition had been filed before the Sessions Court at Palakkad praying for an order to preserve the bodies until postmortem examinations were done in strict compliance of Supreme Court guidelines in People's Union for Civil Liberties vs. Union of India [(2014) 10 SCC 635]. The Sessions Court while directing the Police to preserve the body until 04.11.2019, rejected the prayer to register an FIR against the members of the Thunderbolt.

The Kerala High Court has passed order dated 12.11.2019 directing the Police to comply with the directions in People's Union for Civil Liberties vs. Union of India [(2014) 10 SCC 635] and has held that “*Causing death in fake encounters is nothing but cold blooded and brutal murder by persons who are supposed to uphold the law. The encounter philosophy is a criminal philosophy*”. The High Court has, while finding that there was delay in handing over the weapons, directed for the immediate seizing of firearms. The High Court has also directed the investigation of the circumstances and causes of the death of Shri Karthik and Shri Manivasakam.

#### **Conclusions and Findings**

1 Contradictions and circumstances that place serious doubts on the versions of the police: Three persons were killed on 28<sup>th</sup> October, 2019, allegedly after they opened fire on the Thunderbolt. The police have categorically admittedly that not a single member of the Thunderbolt suffered any injury. The presence of cooked food as has been noted in various reports, raises doubt in regard to the version of the Thunderbolt. This places serious doubts in regard to the police claim of firing

from the other side.

- 2 The incident that occurred on 29<sup>th</sup> October, 2019 raises several questions. Admittedly Shri Manivasakam had fracture of his knee and his thigh, and was found around 40 metres from where everyone was standing, within the cordoned areas (of circumference of 400 metres). How did Shri Manivasakam enter the area armed undetected and how could he have made such attempts to shoot when he was so severely injured?
- 3 The Police admit that of the 3 people killed on 28<sup>th</sup> October, 2019, they have not identified two of them. When such persons remain unidentified, on what basis have they been declared as Maoist and how has the Unlawful Activities Prevention Act been invoked against them?
- 4 The failure of the police to register an FIR in respect of the death of the four persons is in violation of the order of the Supreme Court in PUCL vs Union of India, and raises questions as to what they State does not want investigated.
- 5 The statements made by the Chief Minister and the Chief Secretary branding those who have been killed as Maoist and justifying the action of the Thunderbolt, apart from being wholly improper and violative of constitutional obligations, raise concerns about the possibility of a free and fair investigation into the extra-judicial killings that have taken place.
- 6 The complaints of harassment and surveillance of the members of the adivasi communities by the Government in the name of investigation or “combing operations” suggest further assault on an already vulnerable and historically exploited community. The Government instead of addressing socio-economic issues at hand is further victimizing the adivasi community

**Demands:** In this context we demand the following

- 1 An FIR under Section 302 of the Indian Penal Code for murder must be immediately registered against the members

of the Thunderbolt who are responsible for the killing of the four persons and a fair and impartial enquiry must be conducted into the same.

2 The bodies of the deceased persons must be maintained and a postmortem enquiry in the manner prescribed by the supreme court must be conducted.

3 The directions of the Supreme Court in its order dated 23.09.2014 in People's Union for Civil Liberties vs. Union of India [(2014) 10 SCC 635] must be strictly complied with.

4 No out of turn promotion or gallantry awards must be given to any of the persons Thunderbolt involved in this incident

5 Immediate steps must be taken identify the families of those who have been killed, who must also be compensated for such extra-judicial killing.

6 The government must stop all forms of harassment and surveillance of the Adivasi communities and must instead address the socio-economic issues being faced by them.

7 We condemn the arrest of Alan Shuhaib and Thaha Fasal, both law students under the Unlawful Activities Prevention Act and demand their immediate release.

8 The article written by the Chief Secretary and the statement given by the Chief Minister are highly condemnable and are violative of the fundamental principles of the Constitution. We seek that the same is immediately retracted and an assurance must be given that a fair and proper enquiry into this incidents will be carried out.

9 We demand a judicial enquiry to look into all extra-judicial killings that have taken place in Kerala and for steps be taken to punish those responsible for the same and further compensate the families of those killed.

**Appendix-I: Previous extra-judicial killings in Kerala and extra-judicial Killings in the name of "Encounters":** The summary executions of suspected militants

and militant sympathizers in staged "encounters" has a history in counter-insurgency operations throughout India. The present incident is required to be seen in the context of extra-judicial killings that have taken place in the past.

On 7<sup>th</sup> March, 2019, a suspected Maoist, Shri CP Jallel was shot in an extra-judicial killing at Lakkidi, Wayanad. As per the statement of his brother, he was shot from behind with the intent of killing him. Prior to this, Shri Kuppuswamy Devaraj, 65, and Smt. Ajitha, 45, were killed in an extra-judicial killing with police in Nilambur forests on November 24, 2016.

The history of extra-judicial killings in Kerala, in fact, goes back to the killing of A. Verghese on 18<sup>th</sup> February, 1970 in Wayanad. As is well-known, the former Inspector-General of Police, K. Lakshmana was convicted of murder on the basis of the revelation made by the former police constable, P. Ramachandran Nair, who revealed in 1998—that he had shot Verghese dead on the orders of the then Superintendent of Police, Mr. Vijayan, and the then Deputy Superintendent of Police, Mr. Lakshmana.

In May, 2006, the Planning Commission set up an Expert Group on "Development Issues to deal with the causes of Discontent, Unrest and Extremism" which submitted its report in April, 2008. The Report of the Expert Group to the Planning Commission, April 2008 on Development Challenges in Extremist Affected Areas, notes the co-relation between extremism and poverty, which points to the myopic view taken by the Government when it sees such extremism solely as a law and order problem, instead of looking at the larger socio-economic issues at hand.

*"While the official policy documents recognize that there is a direct correlation between what is termed as extremism and poverty, or take note of the fact that the implementation of all development schemes is ineffective, or point to the deep relationship between tribals and forests, or that the tribals suffer unduly from displacement, the governments have in practice treated unrest merely as a law*

*and order problem. It is necessary to change this mindset and bring about congruence between policy and implementation. There will be peace, harmony and social progress only if there is equity, justice and dignity for every one."*

In fact, the Expert Committee recommends *inter alia* that:

*"5.7.10 While condemning occasional bursts of wanton violence by the extremist groups, a government constituted by law and mandated to maintain rule of law can not commit any illegal act in countering rural extremism. Government should strictly prohibit extra judicial killings by its security forces. Such acts of illegality by the authorities tend to legitimise extremist violence in the eyes of millions of non-committed on-lookers."*

A Civil Rights Committee headed by Former Judge of the Bombay High Court, Shri V.M. Tarkunde, conducted an enquiry into the "encounters" of those killed in 1975-76 and released an interim report titled "Encounters' are Murders", where the Committee demanded that the officers responsible for extra-judicial killings be tried for murder. The Andhra Pradesh Civil Liberties Committee has repeatedly stressed on the need to view such extra-judicial killings as murder. In the petition filed by them before the Andhra Pradesh High Court, the Full Bench held in A.P. Civil Liberties Committee (APCLC) and Ors. Vs. Government of A.P. and Ors., while looking into the question of steps to be taken on an extra-judicial killing, held:

*"Executive and even judicial sanctions against life and liberty, it is axiomatic, must be explicitly spelt out in legislative authority. This is the essence of civilized and constitutional governance. In the context of our constitutional scheme and qua Article 21, the State shall not deprive any person of life or liberty except in accordance with the procedure established by law. Considered in the context of the several other fundamental values which substrate the Indian constitutional*

architecture, including those in Articles 14 and 19, it is beyond dispute that an executive agency of the State (including the police) is not authorized to deprive a person of his life without substantive legislative authority and in accordance with the procedure established by law. This non-derogable constitutional value and the concomitant executive and governance obligation could be preserved only by eternal vigilance towards maintaining the sanctity of life and liberty, effectuated and operationalised by relentless pursuit and administering of the sanctions enjoined by law, against deprivation of life and liberty, by the unlawful conduct of any person, agency or instrumentality. In a rule of law society operating under a constitutional order, either deterrent or preemptive executive action against prohibited human conduct including terrorist acts must be pursued only within the matrix of legislatively spelt out substantive and procedural rules of engagement and sanction. The executive, whether political or the professional has no legitimate authority to act in derogation, independent of or beyond the sanction of law. This is the price civil society and all institutions of government willingly pay for a constitutional way of life."

The Court finally arrives at the conclusion that there is a need for an FIR to be registered in every such case, and the justification of self-defense is one that would be required to be proved in trial.

"206. The analysis in the preceding paragraphs compels the conclusion that a self-defense justification cannot be assumed to be legitimate or established on the mere assertion by or on behalf of the perpetrator, without the rigor of a focused investigation for the purpose of collecting relevant evidence after registration of the FIR incorporating the name of the perpetrator(s), if and as disclosed in the information conveyed and duly enumerating the appropriate provisions of substantive law.

207. In our considered view the

failure to record and register the primary offence (of the death of civilian(s) in a transaction involving exchange of fire with officers of the police establishment of the State) is a grave and wholly unwarranted transgression of constitutional and sovereign responsibility. The State is legislatively mandated to record and register a cognizable offence and thereafter set the criminal law in motion including the immediately following process of investigating into the offence."

It is also necessary to note the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions adopted on 24.05.1989 by the Economic and Social Council Resolution 1989/65 that mandates that Governments shall prohibit by law all extra-legal, arbitrary and summary executions enumerate standards that list out the regime of investigative procedures to be followed in the event of any such killing.

**Appendix-II: Previous extra-judicial killings in Kerala and extra-judicial Killings in the name of "Encounters":** The summary executions of suspected militants and militant sympathizers in staged "encounters" has a history in counter-insurgency operations throughout India. The present incident is required to be seen in the context of extra-judicial killings that have taken place in the past.

On 7<sup>th</sup> March, 2019, a suspected Maoist, Shri CP Jallel was shot in an extra-judicial killing at Lakkidi, Wayanad. As per the statement of his brother, he was shot from behind with the intent of killing him. Prior to this, Shri Kuppuswamy Devaraj, 65, and Smt. Ajitha, 45, were killed in an extra-judicial killing with police in Nilambur forests on November 24, 2016.

The history of extra-judicial killings in Kerala, in fact, goes back to the killing of A. Verghese on 18<sup>th</sup> February, 1970 in Wayanad. As is well-known, the former Inspector-General of Police, K. Lakshmana was convicted of murder on the basis of the revelation made by the former police constable, P. Ramachandran Nair, who revealed in 1998—that he had shot Verghese

dead on the orders of the then Superintendent of Police, Mr. Vijayan, and the then Deputy Superintendent of Police, Mr. Lakshmana.

In May, 2006, the Planning Commission set up an Expert Group on "Development Issues to deal with the causes of Discontent, Unrest and Extremism" which submitted its report in April, 2008. The Report of the Expert Group to the Planning Commission, April 2008 on Development Challenges in Extremist Affected Areas, notes the co-relation between extremism and poverty, which points to the myopic view taken by the Government when it sees such extremism solely as a law and order problem, instead of looking at the larger socio-economic issues at hand.

"While the official policy documents recognize that there is a direct correlation between what is termed as extremism and poverty, or take note of the fact that the implementation of all development schemes is ineffective, or point to the deep relationship between tribals and forests, or that the tribals suffer unduly from displacement, the governments have in practice treated unrest merely as a law and order problem. It is necessary to change this mindset and bring about congruence between policy and implementation. There will be peace, harmony and social progress only if there is equity, justice and dignity for every one."

In fact, the Expert Committee recommends *inter alia* that:

"5.7.10 While condemning occasional bursts of wanton violence by the extremist groups, a government constituted by law and mandated to maintain rule of law can not commit any illegal act in countering rural extremism. Government should strictly prohibit extra judicial killings by its security forces. Such acts of illegality by the authorities tend to legitimise extremist violence in the eyes of millions of non-committed on-lookers."

It is in this context that the instant killing of 4 persons and the justification of the Government is to be viewed.

A Civil Rights Committee headed by Former Judge of the Bombay High Court, Shri V.M. Tarkunde,

conducted an enquiry into the "encounters" of those killed in 1975-76 and released an interim report titled "Encounters' are Murders', where the Committee demanded that the officers responsible for extra-judicial killings be tried for murder. The Andhra Pradesh Civil Liberties Committee has repeatedly stressed on the need to view such extra-judicial killings as murder. In the petition filed by them before the Andhra Pradesh High Court, the Full Bench held in A.P. Civil Liberties Committee (APCLC) and Ors. Vs. Government of A.P. and Ors., while looking into the question of steps to be taken on an extra-judicial killing, held:

*"Executive and even judicial sanctions against life and liberty, it is axiomatic, must be explicitly spelt out in legislative authority. This is the essence of civilized and constitutional governance. In the context of our constitutional scheme and qua Article 21, the State shall not deprive any person of life or liberty except in accordance with the procedure established by law. Considered in the context of the several other fundamental values which substrate the Indian constitutional architecture, including those in Articles 14 and 19, it is beyond disputation that an executive agency of the State (including the police) is not authorized to deprive a person of his life without substantive legislative authority and in accordance with the procedure established by law. This non-derogable constitutional value and the concomitant executive and governance obligation could be preserved only by eternal vigilance towards maintaining the sanctity of life and liberty, effectuated and operationalised by relentless pursuit and administering of the sanctions enjoined by law, against depredation of life and liberty, by the unlawful conduct of any person, agency or instrumentality.*

*10. In a rule of law society operating under a constitutional order, either deterrent or preemptive executive action against prohibited human conduct including terrorist acts must be pursued only within the matrix of legislatively spelt out substantive and procedural rules of engagement and sanction. The executive, whether*

*political or the professional has no legitimate authority to act in derogation, independent of or beyond the sanction of law. This is the price civil society and all institutions of government willingly pay for a constitutional way of life."*

The Court finally arrives at the conclusion that there is a need for an FIR to be registered in every such case, and the justification of self-defense is one that would be required to be proved in trial.

*"206. The analysis in the preceding paragraphs compels the conclusion that a self- defense justification cannot be assumed to be legitimate or established on the mere assertion by or on behalf of the perpetrator, without the rigor of a focused investigation for the purpose of collecting relevant evidence after registration of the FIR incorporating the name of the perpetrator(s), if and as disclosed in the information conveyed and duly enumerating the appropriate provisions of substantive law.*

*207. In our considered view the failure to record and register the primary offence (of the death of civilian(s) in a transaction involving exchange of fire with officers of the police establishment of the State) is a grave and wholly unwarranted transgression of constitutional and sovereign responsibility. The State is legislatively mandated to record and register a cognizable offence and thereafter set the criminal law in motion including the immediately following process of investigating into the offence."*

It is also necessary to note the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions adopted on 24.05.1989 by the Economic and Social Council Resolution 1989/65 that mandates that Governments shall prohibit by law all extra-legal, arbitrary and summary executions enumerate standards that list out the regime of investigative procedures to be followed in the event of any such killing.

**Appendix-2 Guidelines of the Supreme Court in regard to extra-judicial killings:** The Supreme Court in its order dated 23.09.2014 in People's Union for Civil Liberties vs. Union of India [(2014) 10 SCC 635]

has laid down detailed guidelines in respect of encounters and the steps required to be taken in case of the same. The guidelines can be summarised as follows

1. Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form.
2. If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the court Under Section 157 of the Code without any delay.
3. An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer
4. A Magisterial inquiry under Section 176 of the Code must be held in all cases of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction Under Section 190 of the Code.
5. The information of the incident without any delay must be sent to NHRC or the State Human Rights Commission
6. The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.
7. It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc., to the concerned Court.
8. After full investigation into the incident, the report should be sent to the competent court Under Section 173 of the Code. The trial, pursuant to the chargesheet submitted by the Investigating Officer, must be concluded expeditiously.
9. In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.
10. Six monthly statements of all cases where deaths have

- occurred in police firing must be sent to NHRC by DGPs.
11. It must be ensured that the six monthly statements reach to NHRC by 15<sup>th</sup> day of January and July, respectively.
  12. If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the Indian Penal Code, disciplinary action against such officer must be promptly initiated and he be placed under suspension.
  13. As regards compensation to be granted to the dependants of the victim who suffered death in a police encounter, the scheme provided Under Section 357A of the Code must be applied.
  14. The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights Under Article 20 of the Constitution.
  15. An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counselling, same must be offered.
  16. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence.

<sup>1</sup>Order of the Supreme Court of India dated 5<sup>th</sup> July, 2011 in `Nandini Sundar vs State Of Chhattisgarh' AIR 2011 SC 2839 ☐

**Regd. Office :**  
332, Ground Floor, Patparganj  
Opp. Anandlok Apartments  
Mayur Vihar-I, Delhi-110091  
**Tel.:** +91-11-22750014  
**E-mail :** puclnat@gmail.com  
pucl.natgensec@gmail.com  
**Website :** www.pucl.org

### PEOPLE'S UNION FOR CIVIL LIBERTIES

*Founder :* Jaya Prakash Narayan

*President :* Ravi Kiran Jain

*General Secretary :* V. Suresh

*Treasurer :* Surendra Kumar

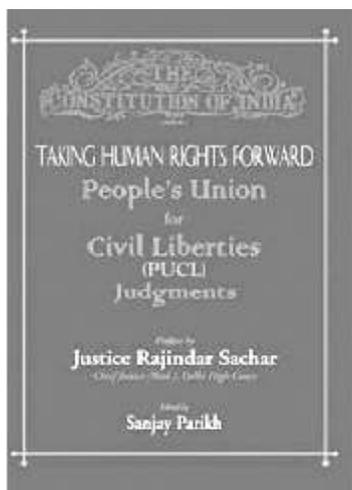
*Vice-Presidents :* Binayak Sen,  
G. Saraswathi (Ms.), N.D. Pancholi,  
P.B. D'sa, Radhakant Saxena,  
Sanjay Parikh.

*Secretaries :* Kavita Srivastava (Ms.),  
Rohit Prajapati, Sudha Bharadwaj (Ms.),  
Vandana Misra (Ms.), YJ Rajendra

*Organising Secretaries :* Ajay T.G.,  
Arjun Sheoran, Nishat Hussain (Ms.).

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, 332, GF, Patpar Ganj,  
Opp. Anand Lok Apartments(Gate No.2)  
Mayur Vihar-I, Delhi - 110 091 Tel.: 011- 22750014**

### PUCL BULLETIN

*Editor :* V. Suresh

*Editorial Board :* Sanjay Parikh,  
Ms. Kavita Srivastava, Ms. Sudha Bhardwaj,  
Ms. Daisy Narain (Prof.)

*Assistance :* Babita Garg

### 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:** 332, Ground Floor,  
Patpar Ganj, Opp. Anand Lok Apptt.,  
Mayur Vihar-I, Delhi 110091;  
**Editor: V. Suresh.**