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Editorial:

Human Rights in times of the COVID Pandemic

At 800 pm of 24th March, 2020, the Prime Minister of India, announced suddenly and with a warning of only 4 hours, that the Government of India had decided that the only measure to tackle the very contagious COVID-19 virus pandemic was to close down the entire country with immediate effect, i.e., from 1200 am of 25th March, 2020. In effect the Prime Minister announced a literal '**lock-down**' of the entire country to be enforced with an iron will by the security forces. Though originally announced for 21 days, the nationwide lockdown was extended for another period, which eventually stretched into May, 2020. During this period all transportation was stopped. All work establishments were closed, colleges and Universities shut with students asked to return home, entertainment houses and hotels downed their shutters – in effect, social, economic, political and cultural life came to a grinding halt. It was the biggest social and economic lock-down ever seen globally with a nation of 138 crore people confined to their homes.

The implications of the abrupt and arbitrary – and some will call it thoughtless and callous - decision to enforce the severe lockdown became evident very soon. People who had been caught unawares, had not stored enough provisions including medicines. Forced by sheer plight of hunger and depleted provisions, when they came out in search of help, they were mercilessly caned, beaten and imprisoned by the police, in state after state, across the country. The worst manifestation was of course, when tens of thousands, and in fact, lakhs of migrants, started walking their way homes, traversing hundreds and thousands of kilometers under the harsh, unrelenting sun during the very hot summer months of April, May and June, 2020. The insensitivity of the state in not planning for the plight of such marginalised sections was matched equally by the unresponsiveness of democratic institutions tasked with protecting people's rights and concerns. The various Human Rights Commissions and other bodies were found to be in a moribund, comatose state, leaving it to civil society to pitch in to help stranded migrant workers. The ultimate guardian and sentinel of the constitution, the Supreme Court of India, was itself found wanting as in the beginning they blindly and uncritically accepted the claims of the central government that the plight of migrants was being unnecessarily blown out of proportion and being politicized, and actually there was no problem. The SC was seriously criticized by many sections, for abdicating their constitutional obligations and duties and remaining insensitive to the plight of inter state migrant labourers. In fact, the SC dismissed a PIL filed on the plight of migrant workers initially and it was only after nationwide criticism that the SC eventually took up the matter as a *suo motu* PIL. But by that time valuable weeks had been lost and the plight of the migrant workers worsened.

At the time of writing this editorial article, the situation across India is far

from normal. The economy is in shatters. The small and medium sector enterprises have been so badly affected by the Corona lockdown and attendant collapse of global trade and commerce, that it is feared that recovery may be a long drawn process. GDP is expected to be very low this year and the economy is feared to go into a major slump or recession. The economic stimulus and growth boosting packages announced by the Modi led central government, have not led to any major discernible impact, visible on the ground.

As of end August, 2020 crores of citizens are trying to cope with and overcome endless crises – livelihood, economic, social, educational and professional. There is no sense of confidence amongst vast sections of the people that the Central Government knows how to deal with the economic crisis situation in any meaningful manner.

While the government is struggling to come out with a comprehensive, integrated fiscal and financial development plan to revive economic growth in all parts of India, it has very interestingly followed a consistent and clear headed policy of pushing through far reaching changes in the structure of key laws which seriously threatens the scope of human rights protection laws in India, and the very constitutional scheme itself. In a manner which epitomizes the NDA led Central Government, scant respect has been shown to parliamentary principles and constitutional practices of holding public consultations and consultations with other political parties, bypassing Parliamentary Committees and in some instances, Parliament itself, before introducing or passing new policies or laws. The Corona period did not see any let up in the practice of targeted silencing of voices of dissent and protest questioning Covid related policies and programmes. Not just activists and development workers, the media

too faced the wrath of the government for daring to expose corruption in or hollowness of government schemes to tackle the Covid lockdown crisis.

In effect what happened is that the Covid lockdown was used as an excuse by the Central Government to crack down on rights activists and human rights defenders and against anyone in the media who questioned the official line. Very unfortunately, many sections of the media have continued to play a supportive and sympathetic role to the Central Government glossing over obvious shortcomings and contradictions in government policy and shortcomings and problems in practice, earning for the compliant media section, the epithet of 'Godi media' or the 'lapdog media'.

The lack of public movement and social interaction meant that no protests or demonstrations could be organised against government policies, programmes and actions which were considered to be anti-people, anti-human rights and which aimed to stifle dissent and silence critics. Numerous human rights violations have taken place during the Covid lockdown period. (both the full lockdown and the period after lockdown was eased till the time of writing this article in end August, 2020). This includes setting up a 5-member Committee with the assigned task of rewriting criminal laws in India (bypassing the Official Parliamentary Committee of the Law ministry, ignoring the need to hold public consultations and despite questions about the representativeness of the Committee) within a 3 month period (July to September, 2020), amendments and changes to Environmental Impact Assessment Rules which have become very controversial and introduction of National Education Policy only through Cabinet approval and before introduction in Parliament.

The human rights record of the government during the Covid times became the subject matter of discussion in a unique 'Janta Parliament' or 'People's

Parliament' held by citizen's group as a virtual Parliament over a 6-day period from 16th to 21st August, 2020. Numerous subject were discussed ranging from nature of agricultural crisis and policies to changes to labour laws and policies, education policies, and problems of various sections of marginalised communities including LGBTQ+ communities. The last session was on Civil Liberties issues. A number of PUCL members worked to summarise key issues and presented the same before a People's Parliament for discussion and voting as Resolutions. The idea is that the Resolutions passed and the discussions would be summarised and shared with all MPs of both Lok Sabha and Rajya Sabha with the hope that the concerns and issues raised in the Janta Parliament will be represented in actual Parliament. We carry in this issue the Concept Note prepared for circulation in the Janta Parliament, which summarises key problems and concerns of human rights which have occurred during the Covid period.

As we were readying this issue after a gap of several months, a full Bench of the SC found Prashant Bhushan guilty of committing criminal contempt of court for 2 tweets issued by him in June, 2020. In the ensuing national furore which erupted questioning the SC's action in convicting Prashant Bhushan, a lot of articles were written which raise issues of fundamental importance regarding independent functioning of the jury, the legality and need for continuing with colonial legal enactments like Contempt of Courts Act, and other issues, which are of key importance from a rights perspective. We hope to publish some of these articles in future issues.

Many PUCL state units had approached High Courts and obtained several orders from the High Courts providing relief for various social sections suffering because of the lock down. We hope to carry a compilation of these orders in the coming issues.

E profoundly apologise to our readers and subscribers for not publishing several issues of the Bulletin. The Covid lockdown affected all activities including printing presses and the postal services too. We are hoping that

with this issue onwards, we will be able to publish continuously as we did before.

We seek your continued support, encouragement and involvement to improve the *'Bulletin'*.

During this period a number of

PUCL members died. We convey our condolences to the bereaved families.

In solidarity,

Dr. V. Suresh, Editor and General Secretary □

Present Political Scenario Worse than Emergency

Ravi Kiran Jain

The current political scenario and human rights violations in India are much worse today than what was experienced and witnessed during the Emergency from mid-1975 to early 1977 (a period of only 18 months). Mrs Gandhi remained out of power from 25.3.77 to January 1980. On her re-emergence after the fall of the Janata Government Mrs Gandhi took up her unfinished task of having a "committed" judiciary, which she actually did accomplish with the help of the judgment of a Seven -Judge Constitution Bench headed by Justice Bhagwati by a thin majority of 4:3 in the S. P. Gupta case. The Supreme Court in this case held that the opinion of the CJI and Chief Justices had to be ignored in the matter of appointment and transfer of judges, and that power had concentrated completely in the hands of a corrupt executive to the exclusion of the judiciary. The judges in the High Courts and Supreme Court were appointed by the corrupt executive for about 12 years. The judgment in the S. P. Gupta case came on 30.12.81 which was over ruled in the Second Judges case decided on 6.10.93. The S. P. Gupta case went on to the extent of holding that consultation with the CJI in the case of the Supreme Court and the CJI and Chief Justices of the High Courts in the case of the appointment of High Courts was only formal. Mrs Gandhi was able to have complete control on matters of appointment of judges in the Supreme Court and High Courts. Mrs Gandhi was assassinated on 31.10.1984. The power of the executive to appoint the High Court and Supreme Court Judges remained with the executive till 6.10.93. After the

death of Mrs Indira Gandhi, Rajiv Gandhi, Vishwanath Pratap Singh, Chandrashekhar and Narasimha Rao remained the Prime Ministers when the executive maintained its supremacy in the matter of appointment of judges of the High Courts and Supreme Court

In the Second Judges case (decided on 6.10.93), the Supreme Court held that the opinion of the CJI in the case of appointment in the Supreme Court and the opinion of the Chief Justice of the High Court concerned had the supremacy and no appointment could be made in the Supreme Court or High Courts unless it was in conformity with the final opinion of the CJI and the Chief Justice of the High Courts concerned formed in the manner indicated. In the Third Judge's Case (decided on 28.10.98) the Supreme Court held that there has to be a collegium.

At first this system seemed to work well. A large number of Judges were appointed in the various High Courts and it appeared that all those appointments were made on the basis of objectively being made on merit by the Supreme Court and various High Courts. These appointments were made to the satisfaction of all concerned. However, not long after its introduction, it started appearing and an impression was gaining ground that the collegium system had derailed from its basic objectives of choosing judges on the basis of merit.

Why the collegium system got derailed from its basic objective of choosing judges on the basis of merit so soon after its introduction? The reason appears to be that the judges who were appointed in various High Courts during the period the executive held the

supremacy to appoint them (i. e, 30.12.81 to 6.10.93) became senior judges in the Supreme Court and in High Courts around the country and then began to serve as collegium members of the Supreme Court and the collegium of various High Courts, so much so that when Justice V. N. Khare was the CJI (2002-2004), the whole of the Supreme Court was packed with the judges who were appointed to the post of High Court Judges after the S. P. Gupta case. These judges had supremacy in the matter of appointment of High Courts and Supreme Court Judges. Though the executive had been able to exercise influence, both directly and indirectly , over the collegium process and then , started choosing executive-minded judges.

To deal with the problem of terrorism in the aftermath of Mrs Gandhi's assassination, a Terrorist Activities and Disruptive (Prevention) Act (TADA) was enacted in June 1985. TADA came into existence exactly 10 years after the imposition of state emergency and less than a year after the assassination of Prime Minister Indira Gandhi in 31.10.1984. Soon after TADA was implemented petitions challenging the Constitutional validity were filed in the Supreme Court. The Supreme Court ultimately decided it in the Kartar Singh case (1994 SCC (3) 569). When the case ultimately arose for hearing in early 1994, a galaxy of senior lawyers appeared when the judgment was delivered on March 1994. Justice S. R. Pandian, on the eve of his retirement delivered the leading opinion on behalf of the three Judges.

Only a few months before the Kartar Singh judgment a national human rights commission (NHRC) was set up. Ranganath Mishra, a former Chief Justice of India was the first Chairperson of this commission. NHRC was openly dissatisfied with the Supreme Court's Kartar Singh case decision. In 1994 Justice Ranganath Mishra adopted a strategy to work towards convincing MPs not to renew TADA. The efforts of Justice Mishra proved successful as sufficient political support was galvanized to ensure that TADA would not be renewed beyond 23rd May 1995. The Supreme Court in the Kartar Singh case upheld the constitutional validity of TADA, virtually proceeding on the assumption that the act is more fundamental than the constitution. In fact the constitution bench did not feel that it was necessary to submit the act to detailed scrutiny. They embarked on a peroration against terrorism which showed that they had been impressed by the speeches made in the Parliament on this subject. The Supreme Court took into account that terrorist threat that we were facing was on an unprecedented global scale. Terrorism had become a global threat with global effects. The UN Security Council had unanimously passed resolutions 1368 (2001) and 1373(2001). The UN General Assembly adopted resolution 56/1 by consensus, and convened a special session. All these resolutions and declarations inter alia called upon a number of nation-states to take necessary steps to 'Prevent and suppress terrorist acts' and also to 'prevent and suppress the financing of terrorist act'. India was a party to all these resolves. It thus became India's international obligation to pass necessary laws to fight terrorism. The Bench escorted the scrutiny and confirmed the validity of the enactment. Initially enacted as a temporary act for a period of two years, TADA was re-enacted in 1987- once again for a two-year period. By the mid-

1990s TADA had been in operation for nearly a decade. TADA was set up, in effect, as a parallel criminal justice process and a special court for the speedy trial of those accused of terrorism. Many of the provisions were especially Draconian. In the years after it was enacted, TADA became an instrument of oppression in the hands of police and state authorities.

After TADA a new Act namely the Prevention of Terrorism Act 2002 (POTA) came into being. The constitutional validity of POTA was challenged by the People's Union for Civil Liberties (PUCL). But its constitutional validity was upheld by the Supreme Court on 16.12.2003. Since POTA had similar provisions as TADA and since the ground of attack in the Supreme Court in POTA were almost the same as was argued in the case of Kartar Singh, the division bench upheld the constitutional validity of POTA on the ground that the law laid down by the constitutional bench in the Kartar Singh case was binding on the bench of two judges.

After POTA the Unlawful Activities (Prevention) Act, 1967 (UAPA) was drastically amended in 2008 incorporating all the draconian provisions of TADA and POTA. The current situation which is much worse than what it was during the emergency is on account of the use of NSA and UAPA arbitrarily. The UAPA was an instrument of oppression through systematic attacks on human rights defenders by the UPA government of Prime Minister Manmohan Singh, and subsequently by the present NDA government since 2014. It is not possible to challenge the Constitutional validity of UAPA unless we say that the Kartar Singh case was wrongly decided.

Human Rights defenders and journalists are especially becoming victims of the policies of the Modi government to silence any voice raising dissenting views against the misdeeds of the government. There is a policy of extra judicial killings of "terrorists". In U. P alone after Yogi Adityanath came into

power in 2017, there has been till March 2019, over 1100 encounters in the state that have left 49 killed and 370 injured. Yogi Adityanath openly says that criminals will either be jailed or sent to Yamraj's house in police encounter. They are never prosecuted under UAPA.

Not only just in U. P but also in other states, too, human rights defenders are arrested under UAPA. In connection with the Bhima Koregaon clashes by the Pune police, controlled by the Home department of the BJP-led government in Maharashtra, eminent citizens were arrested under UAPA in June 2018. They were Surendra Gadling, General Secretary of Indian Association of People's Lawyers from Nagpur; Professor Shoma Sen Head of Department of English, Nagpur University; Sudhir Dhawale Editor of Marathi Magazine, Vidrohi from Mumbai; Rona Wilson Public relation Secretary, Committee for the release of the political prisoners, (CRPP); and Mahesh Rout, Anti-Displacement activist from Bharat Jan Andolan. The other five were arrested on 28th August 2018 in simultaneous raids conducted in multiple cities across the country on the pretext of investigating the Koregaon Case-Sudha Bharadwaj in Faridabad, Varavara Rao in Hyderabad, Gautam Naulakaha in New Delhi and Vernon Gonsalves and Arun Ferreira in Mumbai. The Pune police had claimed that all these 5 persons were "Urban Naxalites" who had links with the Left-Extremists Communists Party of India (Maoists) and were in the process of creating large scale violence, destruction of property resulting in chaos.

It is the UPA government since 2008 UAPA became an instrument of oppression in the hands of police and state authorities and created a situation which was worse than the state emergency from 1975 to early 1977 (a period of 18 months). After the UPA government, the present government since 2014 has also acted in a similar manner, by using UAPA as an instrument of oppression and has created a

political scenario much worse than what was experienced and witnessed during the emergency. If something is said to criticize the government the person is booked under law of sedition under Section 124A of Indian Penal code. The

Supreme Court has upheld the validity of sec124A in Kedar Nath vs State of Bihar (AIR 1962 SC 955). Article 13(2) provides that the State shall not make any law which takes away or abridges the rights conferred by this Part and any law

made in contravention of this clause shall, to the extent of the contravention, be void. The judgment upholding of both the laws UAPA and Sedition is more effective than ADM Jabalpur case. □

Janta Parliament: Session on Civil Liberties, Laws and Governance, 21st August, 2020

Brief note on Civil Liberties: Stifling Dissent and Silencing of Democracy

The last five months of living with COVID-19 have not just been about control and treatment of this virus. They have accelerated multifold the tectonic shifts that were already being pushed through, over the last six years, to undermine Indian Democracy. The Constitutional values of secularism, liberty, fraternity, free speech and 'equality before the law' are reduced to shreds with democratic institutions such as the Parliament, the Judiciary and executive collaborating across the board (working in tandem) to change the character of the Indian State. The Indian State has shifted from being a welfare state to becoming a communal state, a security state, a police state, a surveillance state. With the streets under lockdown, the embargo on protests has been an opportune moment for the state to unilaterally take decisions that work against the people and undermine the Indian Constitution.

1. Erosion of Secularism: On 5th August the PM presided over the state sponsored Ram Janmabhoomi puja in Ayodhya. The 5th of August also marked one year since the unilateral abrogation by the Indian Parliament of Article 370 and reorganisation of the only Muslim majority erstwhile state of Jammu and Kashmir, into two union territories. It cannot be a mere accident or coincidence that the date for the Janmabhoomi puja was chosen symbolically, but it appears to be a clear intent to establish the fusion of the Indian state with Hindu religion, thereby marking secularism as no longer a guiding principle and establishing the new 'normal' in India.

Meanwhile, the pandemic saw a resurgence of fake news and communal hate speech targeted at Muslims following the Tablighi Jamaat gathering, resulting in brutal hate crimes. In addition to Muslims, there was racial and ethnic profiling of people from North-eastern India, transgender persons and other minorities, in an attempt to communalise the virus and stigmatise vulnerable communities.

Resolution:

- A. To reassert the primacy of secularism as a core constitutional value in the functioning of all institutions and all aspects of state craft.**
- B. Hate speech must be strictly prosecuted. The spread of hate must be stopped at all levels and lynch mobs and perpetrators of violence prosecuted under law.**

2. Jammu & Kashmir: In the last one year the Kashmir valley has experienced further hardening of the State and the implementing of a muscular, masculinized policy of control and repression. The indiscriminate use of section 144, for over six months with no mobile phone and internet connectivity (even in Covid times) followed by the more recent restoration of 2G speaks of scant regard for the well-being of the citizens in the state. The detention of all political leaders with over 450 detentions under the Public security act, combined with muzzling of media have effectively stifled all opposition voices and snatched away the right to dissent. The changing of more than 109 laws, including domicile laws and land acquisition laws have been

expedited with speed and purpose in an attempt to take away the autonomy and permanently alter the demography of J&K state. Meanwhile the killings of civilians, militants and army personnel and search operations continue indiscriminately. Of the 143 militants reportedly killed, 120 were from the Indian side of J&K, reflecting the double speak of the leaders in claiming in Parliament that abrogation of 370 was the road to peace and development. Far from that J&K is one of the most militarised and repressed regions in the world.

Resolution:

- A. Withdraw the police state, restore freedom and democracy in J&K by ensuring the release of all those arrested.**
- B. Restore 4G Internet and remove the information and communication blockade in J&K.**
- C. Put an end to arbitrary detentions and torture, prosecute all security personnel found to have abused the law.**
- D. Repeal AFSPA, J&K Public Safety Act and withdraw all prosecutions against the people of Kashmir under the acts and other penal laws**
- E. GOI, media and Indians citizens urgently start a dialogue with the people of J&K.**

3. Attack on Equal Citizenship and criminalization, arrests of protestors, activists: The nationwide Muslim women led spontaneous and peaceful protests for equal citizenship, against the

discriminatory and unconstitutional Citizenship Laws and Rules (CAA, NPR, NRC) first came under violent attack in Delhi in February and folded up unceremoniously in the rest of the country on account of the lockdown.

The Delhi police under the Ministry of Home Affairs investigating the Delhi riots which killed 53 persons and seriously injured hundreds, apart from destroying homes and businesses, used the lockdown and the closing of public spaces to institute the most malicious investigation. The investigation today seeks to criminalize innocent supporters, victims and protestors as the conspirators under the draconian, non-bailable terror law called the amended Unlawful Activities Prevention Act, 1967 and IPC laws like Sedition, Waging war against state. The target is clearly young Muslim men and women protestors and victims and several youth of Delhi along with a large number of intellectuals and senior activists who have expressed dissent with state policies. Many have already been arrested, even during the pandemic, vilified through unverified leaks and have possibly lost their civil liberties for a long time to come. The objective being that the process itself is the punishment, and ultimate tool to silence dissent.

In Uttar Pradesh too, the protests were violently dealt with by the UP Police under Yogi Adityanath in the months of December 2019, January and February 2020. Apart from loss of lives in several districts of UP, arrests of large number of young protestors, including lawyers, retired policemen, activists, poets, the UP government initiated vindictive methods of naming and shaming protestors, putting up banners of protestors booked for damaging property. Despite court orders, the process of auctioning properties of the protestors, by sending notices, harassing them and throwing people in jail continues. In the North-eastern state of Assam,

public protests were met with violent police firings, criminalization and arrests. Similar vindictive actions were launched against protesting civilians in Karnataka and other parts of the country, with the worst impact felt in BJP-ruled states. The messaging by the Home Ministry and the BJP Government in UP is clear that the Muslim community and dissenting citizens dare not struggle and aspire to achieve the dreams as laid out in the Indian Constitution or those who dare to stand up against the Government will face the brunt of the entire state machinery bearing down on them.

Resolution:

A. The CAA, 2019 and NPR Rules, 2003, be withdrawn and right to equal citizenship be ensured for all.

B. The attempt of the Delhi and UP police to project the anti CAA protest as 'deep rooted conspiracy' is malicious. The fabricated cases against the anti CAA protesters be withdrawn and those arrested released. Direct the Delhi and UP Police to desist from use of coercive and discriminatory investigative methods.

C. Initiate prosecution of political leaders and individuals against whom there is clear evidence incitement and abetment of violence.

D. Stop all vilification campaigns against anti CAA protestors and supporters.

E. Investigate the role of the police in the malicious prosecution in the Delhi riots and police officials found violating the law be prosecuted and held accountable.

4. Repeal the UAPA, 1967 as amended, repeal Sedition law: The UAPA, since its expansion and amendments as a terror law has been used indiscriminately to silence and incarcerate dissenters, those who hold a different political

view. With draconian provisions of 30 days judicial custody, 180 days to file a charge sheet and no bail, it has become an instrument in the hands of the present Government to silence all opposition through incarceration. The Bhima Koregaon Case of Pune since 2018, now under the NIA, continues to be the bogey to indiscriminately crackdown dissenters under the UAPA and also under the Sedition law. The arrests and interrogation of activists, intellectuals, cultural artists continue stridently. Similarly we have seen that in the Delhi riots case, more than 17 people have been arrested under the UAPA and hundreds interrogated.

Resolution:

A. UAPA be repealed with immediate effect. Section 124A IPC be repealed with immediate effect.

5. Prisons Decongestion: The most important Suo moto directive of the Supreme Court during the Covid-19 lock down related to decongestion of prisons. A high powered committee was required to be set up in every State, which had to work towards ensuring the release and granting of parole between 4 to 6 weeks to convicted prisoners. By and large, this directive remained unimplemented for even cases of high comorbidities related to Covid-19. Despite the spread of the virus inside jails, the prisoners were not given this relief and human dignity, and several political prisoners arrested under UAPA were not provided relief. The case of 81 year old VaraVara Rao, stands out as to the cynical play of power by the state. He is undergoing serious neurological problems apart from testing Covid positive. Despite pleas by the family he was not provided medical treatment and it was only pursuant to a national campaign that he was admitted to a private hospital. Similarly the case of 100 percent disabled Professor Saibaba, in Nagpur Jail, who was not granted any relief even when

his mother was on death bed speaks to the disregard for basic rights and dignity of individual citizens. With inadequate testing and complete opaqueness in release of data by the prison department, the actual spread of disease in prisons is not even known, putting our country far behind in containing the pandemic.

Resolution:

A. Decongest all jails and release on bail/parole under trial prisoners and convicts above 60 years of age and all other prisoners with co-morbidities, irrespective of the nature of the offences they are charged with.

B. All prisoners and prison staff need to be regularly tested for Covid and their health status be communicated to their families and lawyers on an immediate basis.

C. Ensure video conferencing facilities to allow prisoners to communicate with their family and lawyers on a weekly basis.

6. Laws and policies during COVID times: Since transparency and genuine public consultation have been seriously affected in this period, all attempts to bring in new laws or policy changes ought to be scrapped immediately. The Committee for Criminal law reforms which is not only not representative, but the entire process is exclusionary and opaque, needs to be scrapped now. Similarly, the process of consultation for the Draft Environment Impact Assessment (EIA) Notification 2020 which brings in drastic overhaul of the environmental governance and was initiated in the midst of a severe lockdown, needs to be halted. Similarly, the National Education Policy (NEP), which was not even tabled in Parliament and was finalized at the level of the cabinet, needs to be scrapped.

Resolution:

A. No new laws and major change of policy should be

introduced during Covid-19 times.

B. The process initiated by (i) Committee for Criminal law reforms, (ii) Draft EIA Notification 2020, (iii) NEP etc. be suspended.

7. The muzzling of dissent, attacks on independence of Media and criminalizing journalists: According to a report by the Rights & Risks Analysis Group titled India: Media's Crackdown During COVID-19 Lockdown, between 25th March and 31st May, more than 55 journalists faced arrest, registration of FIRs, summons or show causes notices, physical assaults, alleged destruction of properties and threats for reportage on Covid-19 or exercising freedom of opinion and expression during the national lockdown. The highest number of attacks on journalists was reported from Uttar Pradesh (11 journalists), followed by Jammu & Kashmir (6 journalists), Himachal Pradesh (5), four each in Tamil Nadu, West Bengal, Odisha, Maharashtra, two each in Punjab, Delhi, Madhya Pradesh & Kerala and one each in Andaman & Nicobar Islands, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Karnataka, Nagaland and Telangana. The sections that reporters were charged with included violation of the Epidemic Diseases Act, National Disaster Management Act and the IPC sections of conspiracy, sedition and the UAPA.

Resolution:

A. Stop criminalizing journalist/members of the media through false and fabricated prosecution.

B. Immediately withdraw all cases against journalists and immediately release all jailed media people. The pandemic and the lockdown should not be used as an excuse to silence the media.

8. The Criminalising of ordinary people through the implementation of the NDMA,

Epidemics Act, Restraining sections of the CrPC, MV Act and the indiscriminate use of Section 144: The lock down saw the most widespread, pan-Indian misuse of power by the police and abuse of the law by the Indian State. The pandemic needed a humanitarian response towards all, ordinary, poor people in particular as they bore the worst- a loss of livelihood, displacement and a threat to their basic survival. In sharp contrast, the Indian State showed a punitive response by using lathis and employing indiscriminate use of force, publicly humiliating and penalizing people by imprisoning them. We saw the discriminatory and unequal implementation of laws and state response to even basic issues like tests and access to health services were denied to the poor and migrants. The Muslims, via the Tablighi Jamaat and the inter-state migrants were once again targeted, targeting them with the help of the media by falsely accusing them of being super spreaders of this virus. This response was unique to India, where the state sought to name, blame and punish its own citizens by using the pandemic as an opportunity to spread hate.

The numbers are huge of criminal cases imposed under these laws and fines charged. It was not only a penalizing state, but an extractive state. In just the State of Rajasthan during a few months of lockdown more than 4,60,000 people were booked under the Epidemic Diseases Act for violating the norms with more than Rs. 7 crore collected as fines. More than 3,584 FIRs were lodged and 7,649 people were arrested. More than Rs. 14 crore collected as fines under the Motor Vehicle Act for violating the Section 144 orders. Under the restraining sections of the CrPC, more than 25,000 people were arrested for breaching peace and restrained. Similarly, 219 people were booked under the IT Act for hate content and 219 cases were lodged and around 300 people

arrested for violation of social media norms.

Resolution:

A. Immediately curb the arbitrary use of the Epidemic Diseases Act, NDMA and other penal laws that restricts the free movement of ordinary citizens and criminalizes their routine activities.

B. Withdraw all prosecutions launched against individuals under the Epidemic Diseases Act, NDMA and other penal laws.

C. Stop the indiscriminate use of force by police against the ordinary citizens under the garb of pandemic.

D. Cease the indiscriminate use of Section 144 of the CrPC.

E. A social and not a high handed, criminal response to the pandemic restriction is the need of the hour.

9. Custodial excesses and encounter killings: With norms of public debate and transparency norms being beyond the pale of police stations and police action,

the increasing instances of custodial torture, deaths and encounters are not even seeing the light of day. The few which got highlighted showed the malaise that increased manifold during the lockdown and the completely compliant supervisory police system and the judiciary which was indifferent towards human Rights.

Resolution:

A. Ratify the UN Convention Against Torture (CAT) and bring in a domestic anti torture law in full compliance with it following a process of public consultation.

B. Ensure the mandated enquiries by a judicial magistrate and the NHRC as per its own guidelines are held immediately following every custodial death.

C. Ensure strict compliance with the Supreme Court Guidelines in the matter of P U C L vs State of Maharashtra, including registration of FIR against police, to independently investigate all encounter

killings by the police.

D. Remove the legal requirement for prior sanction to prosecute public servants in any law including the CrPC, AFSPA.

10. The Silence of the Courts and the NHRC and other Human Rights Institutions: The Courts were inaccessible due to the lockdown where physical courts closed and e- courts became the norm, resulting in ordinary people being pushed to the margins for any kind of access and relief via courts. Apart from this, there was a freehand given to the state with the SC not questioning the decisions of the executive, although some High Courts fared better. Similarly, the Human Rights Institutions, did nothing in this period.

Resolution:

A. Physical hearings should be restarted with precautions.

B. The Human Rights Institutions should be proactive in cases of human rights violations and meet the Paris Principles. □

Text of the Final Resolutions passed in the People's Parliament on 21st August, 2020
Resolution in English for the session on:

Stifling Dissent and Silencing Democracy

The House resolves

1. That the primacy of secularism as a core constitutional value in the functioning of all institutions and all aspects of state craft, be restored and established. .

2. That Civil and democratic rule and 4G internet be restored immediately in J & K. repeal AFSPA & PSA, release all prisoners under detention laws and the Government of India open a dialogue with the people.

3. That UAPA be repealed with immediate effect. The law on sedition, Section 124A IPC be repealed with immediate effect.

4. That the discriminatory CAA, 2019 amendments and the NPR & NRC 2003 (rule), be withdrawn and right to equal citizenship be ensured for all.

5. That all dissent be respected. There should be a stop to the criminalizing of intellectuals and media personnel through fabricated prosecutions. All criminal cases be withdrawn and all jailed journalists released.

6. That all malicious prosecution and vilification campaigns against the anti CAA protestors & supporters in Delhi and UP be stopped and fabricated cases be withdrawn

7. That UNCAT be ratified immediately and a compatible anti-torture law be enacted. All custodial deaths and encounter killings by police be investigated, abolish prior sanction to prosecute.

8. That the criminalisation of ordinary citizens under Epidemic Diseases Act, NDMA and other

penal laws be stopped immediately. Withdraw all such prosecutions. Stop indiscriminate imposition of Section 144 CrPC and use of force by police.

9. That all prisoners, be tested for COVID 19, according to the ICMR guidelines regularly irrespective of the offence. All prisoners above 60 years or with comorbidities be released on bail/ parole.

10. That all Human Rights Institutions should be proactive in cases of human rights violations and meet the Paris principles for NHRIs. .

11. No new laws and major change of policy should be introduced during Covid-19 times. Criminal law reform committee be suspended. □

PUCL Statement on SC Holding Prashant Bhushan Guilty of Contempt of Court

The People's Union For Civil Liberties (PUCL) is dismayed and disappointed over a Full Bench decision of the Supreme Court holding Mr. Prashant Bhushan, Advocate, guilty of criminal contempt of court for a set of tweets which the court felt "undermines the dignity and authority of the institution of the Supreme Court of India and the Chief Justice of India and directly affronts the majesty of law". PUCL feels that the finding of the SC is not only unfortunate but will also have the contrary effect of lending substance to the view that just like how other democratic institutions in India are criminalizing dissenters, the SC too is unwilling to acknowledge serious issues about the way the judicial system is functioning and is acting in a manner which would silence democratic voices using the draconian power of 'contempt of court'.

We would like to point out that Prashant Bhushan is not the first person to raise serious and critical questions about the administration of justice in the highest court of the land. Over two years back, on 12th January, 2018, in an unprecedented press conference, four then sitting SC judges - Justices J. Chelameswar, Ranjan Gogoi, Madan Lokur and Kurian Joseph – went public about their disagreement with the then Chief Justice of India, over functioning of the judicial institution both in its administrative as also judicial sphere of functioning. In particular the issues raised by the four senior judges are central to the independence of the judiciary: manner of deciding the roster and composition and strength of Benches, **integrity of judicial process, institutional integrity**, transparency in appointment of judges, etc. They had clearly and openly indicated that **these vital principles have not just been flouted but ethically**

compromised. The judges pointed out, "There have been instances where **case having far-reaching consequences for the Nation and the institution** had been assigned by the Chief Justices of this court selectively to the benches **"of their preference"** without any rational basis for such assignment. ***This must be guarded against at all costs***". (emphasis ours)

While the language and content of the tweets may not be agreeable or palatable, the fact remains that Prashant Bhushan was only articulating a widespread view amongst many sections of the public, raising questions about the response of the apex court. This is spelt out in a Statement issued by prominent citizens, including former judges Madan Lokur (SC), AP Shah (former CJ, Delhi HC) amongst others, who point out:

"In the past few years, serious questions have been raised about the reluctance of the Supreme Court to play its constitutionally mandated role as a check on governmental excesses and violations of fundamental rights of people by the state. These questions have been raised by all sections of society - media, academics, civil society organisations, members of the legal fraternity and even by sitting and retired judges of the Supreme Court itself. Most recently, the Supreme Court's reluctance to intervene in a timely manner to avert the migrant crisis during the lockdown came under intense public scrutiny. Concerns have also been raised regarding the decision of the court to not restart physical hearings, even in a limited manner, despite passage of five months since the onset of the COVID pandemic"

An issue of equally grave concern

which agitates many citizens is the widespread abuse of draconian laws like anti-sedition law, UAPA and other laws, by the Central Government to suppress and silence dissenting voices. Eminent personalities from all fields have raised concerns about the trampling of fundamental rights and stifling of democratic norms, and have pointed to the prevalence of a 'silent, undeclared emergency'. It is an inescapable reality that many sections of civil society are raising questions as to whether the constitutional courts – both the SC and the HCs – are playing their constitutionally mandated roles and safeguarding liberties of citizens against a vicious and vengeful State. The question as to whether the constitutional courts are abdicating their constitutional responsibilities is a matter of public debate and discussion.

The correctness of Prashant Bhushan's views about the role of former CJI's may be debated, but the fact remains that many sections of society feel that the structures of democracy are being dismantled and destroyed before our very eyes and the constitutionally mandated institutions are failing to play their independent, monitoring role. In such a situation the SC to which people still look up to with respect and hope, is increasingly being seen by people to be supportive of the state and unresponsive to democratic and constitutional concerns.

In our view the conviction of Prashant Bhushan - well respected for doggedly fighting against corruption in high places, indefatigable fighter for constitutional values and the ordinary citizen - for criminal contempt of court for the tweets will only reinforce the view amongst many sections of society that the SC will not allow any public questioning or criticism of its

functioning and is not averse to using contempt laws to silence voices seeking transparency and accountability of the judiciary. Ironically, it is this view which will be more damaging of the image of the SC rather than the import of the tweets of Prashant Bhushan.

A time has come for the nation to seriously discuss the repeal of the contempt laws. Especially when in the country of origin, England itself,

has repealed their laws relating to contempt through the Crime and Courts Act, 2013. Until the law is repealed in India, it bears relevance to keep in mind the need for the greatest restraint in the use of this extraordinary power as was pointed out in a 1946 Scottish case of *Milburn, Re*, (1946 SC 301 at 315-16), in which the then Lord President held:

“The greatest restraint and

discretion should be used by the court in dealing with contempt of court, lest a process, the purpose of which is to prevent interference with the administration of justice should degenerate into an oppressive or vindictive use of the court's power”

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

Statement by Prashant Bhushan, read out to the Supreme Court on 20th August, 2020 on the day the Court had indicated it would hear arguments on sentencing.

I have gone through the judgment of this Hon'ble Court. I am pained that I have been held guilty of committing contempt of the Court whose majesty I have tried to uphold -- not as a courtier or cheerleader but as a humble guard – for over three decades, at some personal and professional cost. I am pained, not because I may be punished, but because I have been grossly misunderstood.

I am shocked that the court holds me guilty of *“malicious, scurrilous, calculated attack”* on the institution of administration of justice. I am dismayed that the Court has arrived at this conclusion without providing any evidence of my motives to launch such an attack. I must confess that I am disappointed that the court did not find it necessary to serve me with a copy of the complaint on the basis of which the suo motu notice was issued, nor found it necessary to respond to the

specific averments made by me in my reply affidavit or the many submissions of my counsel.

I find it hard to believe that the Court finds my tweet *“has the effect of destabilizing the very foundation of this important pillar of Indian democracy”*. I can only reiterate that these two tweets represented my bonafide beliefs, the expression of which must be permissible in any democracy. Indeed, public scrutiny is desirable for healthy functioning of judiciary itself. I believe that open criticism of any institution is necessary in a democracy, to safeguard the constitutional order. We are living through that moment in our history when higher principles must trump routine obligations, when saving the constitutional order must come before personal and professional niceties, when considerations of the present must not come in the way of discharging our responsibility towards the future.

Failing to speak up would have been a dereliction of duty, especially for an officer of the court like myself.

My tweets were nothing but a small attempt to discharge what I considered to be my highest duty at this juncture in the history of our republic. I did not tweet in a fit of absence mindedness. It would be insincere and contemptuous on my part to offer an apology for the tweets that expressed what was and continues to be my bonafide belief. Therefore, I can only humbly paraphrase what the father of the nation Mahatma Gandhi had said in his trial: I do not ask for mercy. I do not appeal to magnanimity. I am here, therefore, to cheerfully submit to any penalty that can lawfully be inflicted upon me for what the Court has determined to be an offence, and what appears to me to be the highest duty of a citizen.

□

LAWYERS FOR DEMOCRACY: Chamber No. 407, Civil Side District Court, Tis Hazari, Delhi:

Press Statement on Prashant Bhushan Conviction for Criminal Contempt

It is a matter of great concern that a first in Indian judicial history an advocate Prashant Bhushan is held guilty of Contempt of Court on account of two tweets which have found sufficient space in public domain even after the verdict. The conviction has raised more questions than the Supreme Court sought to address.

Petition filed by a private person without first obtaining permission from the Attorney General of India, as required by law, was posted in the court on judicial side by an administrative order and thereafter taking cognizance of two tweets it was observed:

“We are prima facie, of the view that aforesaid statement on

twitter have brought the administration of justice in disrepute and are capable of undermining the dignity and authority of the institution of Supreme Court in general and office of the Chief Justice of India in particular, in the eyes of public at large”.

Thus far the private petition. Then

comes the *Suo Moto* cognizance 'We take *Suo moto* Cognizance of the aforesaid tweet also apart from the tweet quoted above and *Suo moto* register the proceeding'. The Lawyers for democracy consider the process fraught with illegality which renders the whole process a nullity.

The Judgement is violation of principle of natural justice at least on two counts. The Court had ordered the notice to the Attorney general who in his capacity as law officer for the Governments represents the public at large in whose eyes the Hon'ble Court considered the purported undermining the dignity and authority of the institution of the Supreme court in general and office of the CJI in particular. The Ld. A. G. was not heard. The public at large was not heard despite a notice. Secondly Prashant Bhushan, the advocate in the dock had filed 134 page affidavit containing narration of his defence supported by documentary evidence running in to 463 pages has not been

considered except noting the defence. This is sufficient for rendering the judgement perverse. The contents of the tweets are perceived by the public at large as an expression of agony accumulated due to functioning of the courts in the Country through video conferences and deferring of the hearing by the top court of the Country on vital issues concerning democratic rights of the people like incarceration of innocent people protesting CAA, issues related to Art 370 in reference to J & K and petition filed on behalf of lakhs of migrant workers walking back to their homes in pathetic conditions created by Lock down on account of COVID-19. Every citizen having little compassion would think in the manner expressed by Sh. Prashant Bhushan

The Lawyers for Democracy strongly feel that exercising of Contempt Jurisdiction in this manner has potential of causing more harm to itself. Constitutional and democratic institutions in a democratic set up are expected by

the public to be independent and accountable to the Constitution. As a sentinel *que vive* for the protection fundamental rights of the people, the Supreme Court should have adopted an approach of majestic liberalism, trifling and venial offences as opined by Justice V. R. Krishna Iyer in *Re Mulgaonkar*.

Lawyers for Democracy even at this stage strongly urge Hon'ble Supreme Court to *Suo moto* review the Judgement and save the right to freedom of speech and expression

We the Lawyers for Democracy:
Som Dutta Sharma (convener) 9810367189; Harish Mehra 9810354910; Amit Srivastava 9968437413; N D Pancholi 9811099532; Wasiq Khan 9811225408; Deepak Jhakad 9278033916; N. S Y9868588724; Mohit Sood 98113 63276; Sunil Kumar 96430 04461; Garima Bharadwaj 9818451905; Neha Nihaan 99101 64710; Rahul Verma 9711328632; Padam Kumar 93121 11717. □

Chitranjan Singh Is No More

Chitranjan Singh, former President of the UP PUCL and a former National Secretary of the PUCL is passed away on 26th June 2020. He has been actively associated with the PUCL for decades and was ever willing to shoulder responsibility given. He had been down with a disabling and painful health condition for the last many years and was confined to bed. The last I had spoken to him was quite sometime back when he was staying with his brother at Jamshedpur.

In his death, we lose not only a PUCL colleague but a public spirited man who spent his life espousing causes of immense value to the society.

Prabhakar Sinha, former President, PUCL National □

Prof. Ilina Sen Is No More

We are sad to announce the demise on 09th August, 2020 of Ilina Sen, a long time PUCL member, a human rights defender, a trade unionist, feminist and woman's right activist and renowned academician and researcher. She was an ebullient, vibrant person who did not allow her tryst with cancer to make her despondent or silent; to the contrary she became more insistent on strengthening the human rights movement and PUCL in particular. A great lover of music and a good singer herself, she energised meetings, wherever and whenever she participated. At the height of the Salwa Judum violence, she remained determined to ensure that justice prevails and that the struggle to assert the primacy of constitutional values, even against a brutal, violent and aggressive militarist state. During Binayak Sen's imprisonment in the false terrorist case in Raipur and even after his conviction by the Raipur court, she indefatigably coordinated and pushed the defence team and coordinated with lawyers from around the country to put up a strong legal fight.

An author of 2 books, *'Inside Chhattisgarh: A Political Memoir'* and *'Sukhavasini: The Migrant Woman of Chhattisgarh'*, she taught at TISS, Mumbai and also in the Mahatma Gandhi International Hindi University in Wardha, Maharashtra. In her loss we have lost a great rights fighter and human being. Salutes to Ilina! Wishing Binayak, Pranhita and Aparajita the strength to bear with the parting.

V. Suresh, General Secretary, PUCL □

PUCL Statement on Kashmir, a year after abrogation of Art. 370 on 5th August, 2010

One year after the abrogation by the Central Government of Art. 370 in Kashmir, what is the situation in the Valley. Have the promises of peace, normalcy and development been realised? What is the current status in the Valley?

We are sharing a detailed Note prepared by the PUCL on the Kashmir situation expressing our deepest concern about what people in the

Valley are undergoing.

The economy has been shattered in the Valley because of the prolonged shutdown, lockdown and closing of 4G internet services and curfew. As of July, 2020 the total unemployment rate in Kashmir Valley is 17.9% when the corresponding unemployment rate in India is 9.5%. Unemployment amongst educated youth in Kashmir is very high. Hundreds languish in prison.

The unrelenting repression and lack of peace and development has caused a tremendous sense of alienation amongst the Kashmiri people. It is important to demonstrate that people in the rest of India care and will stand for a return to peace and development.

We request you to give adequate coverage to the Status report attached to this mail and also copied below.

With regards, V. Suresh, National General Secretary, PUCL

Jammu & Kashmir: One Year after Abrogation of Art. 370 Increasing Alienation, Relentless Repression, Simmering Conflict

- PUCL appeals that the Government of India urgently listen to the people of J&K, initiate dialogue and restore peace*
- Withdraw the police state: Restore freedom and democracy in the region*

Part A: Overview

It has been over a year since 5th August, 2019, when Amit Shah, the Union Home Minister abruptly introduced a Constitutional Amendment in the Indian Parliament abrogating Article 370 of the Constitution, invalidating the autonomy of Jammu and Kashmir and splitting the state into the two centrally governed Union Territories of Jammu & Kashmir and Ladakh. Simultaneously, Article 35-A, which provided demographic safeguards for residents of J&K, was revoked. The official justification was that the abolition of Article 370 would herald the dawn of a new era in Kashmir bringing peace, security and development.

One year after the undemocratic move, the situation in Kashmir is far from being peaceful, secure and normal. Instead what prevails is a deep sense of alienation and suffused anger at being treated in an undignified, cavalier and brutal manner by the Centre and its security forces. All along, attempts were made to silence the people of J&K by throwing a stifling security blanket accompanied by a state wide lockdown. The hard and

muscular policy followed by the Indian Government began by transporting over 38,000 fully armed troops on 04th August, 2019, the eve of takeover, to enforce very severe and crippling lockdown, involving closure of all economic and business activities, total internet shutdowns, detention of hundreds of leaders of Kashmir based political parties, organisations and groups including former CMs and Ministers (barring of course, members of the ruling BJP party), closure of all educational institutions and enforcing a complete curfew type situation stretched over many months. The killings of civilians, militants and that of army personnel, continued unabated, Cordoning, search and destroy operations were at their peak. Many of the democratic and citizenship rights that the Constitution grants to citizens were brazenly denied to them.

The control by the Government of India through its administrators and security forces resulted in a lockdown in every sphere of life, which continues even today. The physical lockdown resulted in disruption to access to education, health and other basic needs, including religious spaces. A complete internet shutdown – the world's longest – was imposed; it took more than six months for telephone lines to be restored. Restoration of restricted internet services – that too only 2G – took

even longer making provision of 4G and 5G facilities a distant dream for the Kashmiris. Access to information is tightly controlled, including newspapers and access curtailed only to a curated list of websites. The J & K media has not been able to operate freely and independently with policing of media content apart from the lack of internet impacting the profession completely.

Indiscriminate imposition of Section 144, CrPC which violates people's basic rights of assembly, meeting, association and expression has ensured that democratic articulation of people's grievances is not possible. Most importantly, the widespread use of the draconian J&K Public Safety Act and the mass use of UAPA and other laws leading to the continued detention of 3 Ex-chief ministers, political leaders lawyers, journalists and others, has effectively silenced democratic voices, preventing the voicing of dissent.

The continued lockdown stretching over the entire year has had a hugely damaging and disastrous impact on the economy of the State. Almost all the major industries in the state, including tourism and handicrafts sector, have suffered blows pushing individual enterprises into loss, loan defaults, closure and consequent loss of lakhs of jobs.

The lockdown has meant that students across the entire State, both in schools and colleges, have

been very seriously affected, adding to the burden of students and parents both in terms of scholastic learning as also in employability.

Unfortunately, the judiciary too has remained silent. Apart from the lower courts, the Constitutional courts - the High Court of J & K, and sadly even the Supreme Court, have refused to intervene in habeas corpus petitions, illegal detentions - including that of children, and restoration of 4 G services, apart from keeping the issues of the abrogation of Article 370 and 35A of the Constitution pending adjudication. In effect, the courts have abdicated their constitutional responsibility of safeguarding the constitutionally mandated rights of citizens by referring in many cases, issues raised before the apex court to Government Committees or the J&K High Court to look into.

The disappointment at all levels, first by the Parliament, then the judiciary, and finally the national media highlights the complete collapse of institutional structures to safeguard the constitutionally mandated rights of the people of Jammu & Kashmir, resulting in the build-up of a strong sense of alienation amongst the Kashmiri people, from the Indian state and people.

Despite the security clampdown and the attempt by the Centre to suppress voices from exposing the true situation in the valley, a number of reports have been published by very experienced, credible and independent organisations and individuals.

PUCL acknowledges the importance of the following Reports which have brought to the attention of the civil society of India the prevailing situation in the valley consequent to the lockdown in place since 05th August, 2019.

(i) The reports of the '**Jammu and Kashmir Coalition of Civil Society**' (JKCCS) and the Association of Disappeared Persons, called the '**Annual Human Rights Review 2019**' and the '**Six monthly Report of the Human**

Rights situation in Indian Administered Kashmir, January to June 2020³;

(ii) The report of the '**Forum for Human Rights in Jammu and Kashmir**' called 'Jammu and Kashmir: The Impact of Lockdowns on Human Rights, August 2019-July 2020 Report'³. It is important to point out at this juncture that the Forum has as its members former SC and HC judges like Justices, Madan Lokur, Ruma Pal, AP Shah, Bilal Nazki, Hasnain Masoodi, Anjana Prakash and former member of Group of Interlocutors for J & K, Radha Kumar, Nirupama Rao, former Foreign Secretary and others as an independent initiative "*so that continuing human rights violations do not go unnoticed*".

(iii) These two reports apart, the report titled "Imprisoned Resistance: 5th August and Its Aftermath"⁴ of various individuals in which a number of PUCL members also participated as also the Report- "(Dis)Integration at Gunpoint"⁵ by the Kashmir Reading Group released on 5th August, 2020.

Part B: The Human Rights Violation in the last one year

To what extent has the government's claim of bringing 'peace, security and development' to the region been realised, a year after the abrogation of Art. 370 on 5th August, 2020? A factual appraisal of the ground situation in the Valley indicates that the situation a year later is a far cry from normalcy, peace and development.

Killings - According to the JKCCS report, between January to June, 2020, there have been at least 229 killings in different incidents of violence which included the killings of at least 32 civilians in J&K, besides killings of 143 alleged militants and 54 armed forces personnel. Children and women continued to be victims of violence in J&K as 3 children and 2 women were killed in the first half of 2020. While total killings have dipped in

the first half year, the number of alleged "militants" being killed is on the increase, which is a worrying trend as it shows that more youth are taking on to armed struggle, who are mostly from within the Kashmir Valley.

According to the data sheet put out by the South Asian Terrorism Portal more than 153 alleged militants were killed of which 120 were youth from the Indian side of the Kashmir valley apart from the prosecution and the arrest of more than 250 'over-ground workers' who constitute their logistics lifeline. (Forum for Human Rights in Jammu and Kashmir).

However, as stated by the report of the Forum For Human Rights in Jammu and Kashmir that the instances of attempted and estimated net infiltration have both seen a substantial rise. Cease-fire violations escalated sharply from 449 in 2016 to 3,168 in 2019.

Cordon and Search Operations (CASOs) and Cordon and Destroy Operations (CADO's) -

Post August 2019, the security force intensified both Cordon and Search Operations (CASOs) and Cordon and Destroy Operations (CADO's) which resulted in at least 57 encounters between the Indian armed forces and the militants following CASOs. (JKCCS six monthly report, 2020). According to the report of the 'Forum for Human Rights in Jammu and Kashmir', the CASOs were conducted every single day from the beginning of June 2020 to around mid-July – exacerbating the pain and suffering that the people of Kashmir have endured over three long decades.

Damage to Properties - In J&K, the destruction of civilian properties by armed forces personnel during encounters or while dealing with the protestors saw an increase in the first six months of 2020. From January 1 to June 30, at least 48 cases of destruction of civilian properties were reported in Jammu and Kashmir. The destruction of civilian properties during encounters saw an increase during the COVID-19 lockdown enforced by the government, rendering many families homeless and

without shelter. (Forum for Human Rights in Jammu and Kashmir).

Mass Arrests of Politicians and Activists and lawyers under PSA and UAPA

According to the Ministry of Home Affairs (MHA), after August 4, 2019, more than 6,605 people, including “miscreants, stone-pelters, over ground workers (OGWs), separatists”, were taken into preventive custody, 444 of them under Jammu and Kashmir's Public Safety Act (PSA) of 1978, under which an individual can be detained for two years, without charges and trial. The Indian State shamefully put an end to all political processes. Most leaders of the mainstream political parties, including three former Chief Ministers – Farooq Abdullah, Omar Abdullah and Mehbooba Mufti – were amongst those detained, as were at least 144 minors. A majority of detainees were released, one by one, over the next six months, but over 400 people still remain in preventive custody. In March 2020, 437 people continued to be detained, 389 of them under the PSA. Even today, except for the father and son duo of the Farooq Abdullah and Umar Abdullah and Sajjad Lone, most politicians including former Chief Minister Mehbooba Mufti remain in detention. The sense of impunity and brazenly indifference to the judicial process on the part of the government officials was recently on national display when in the SC in the petition seeking release of veteran political leader and former Minister Mr. Saifuddin Soz, the central government informed that they had not detained him and he was a free man; which contrasted by visual images of Mr. Soz being confined to his house by a police cordon which wouldn't allow him to leave his house.

The Internet Ban

Except for a BSNL landline phone all telecommunication facilities including mobiles, and the internet were completely shut for the first six months, following which mobile phones were restored by December, 2019 with only restricted 2G facility. The first six months of 2020 witnessed the

continuation of the banning of the 4G mobile internet services. The right to access information continues to be severely restricted in J&K on the ground that it is a necessary part of the ongoing counter-insurgency measures by the government of India. There were 55 instances of internet blockades recorded from January 1 to June 30 2020. (JKCCS).

Despite many appeals by all sections of the people of Jammu and Kashmir, to the Central Government and Court interventions, the restrictions on 4G internet continues to remain in place making it extremely difficult for sectors which depend upon 4G connectivity for its professional requirements. For example, the medical community in the Valley very urgently requires to access new research and information about the pandemic. Access to timely information can act as a preventive measure against the COVID-19 and the absence of high speed internet does have an impact of the health of the entire community. With schools having remained shut for most of the year, the non- restoration of internet has hampered the online education possibility, during COVID times. (JKCCS)

Media - The media was on the radar of authorities before 5th of August, 2019. It continues to be at the receiving end of pressure, intimidation and harassment by security officials.. There have been also several incidents of manhandling and beating up of journalists. Besides physical assaults, a few Kashmir based journalists were also booked under stringent charges and cases were filed against them. Young photo journalist Masrat Zahra and Gowhar Geelani along with others were even booked under UAPA. Ashiq Peerzada of The Hindu was subjected to 12 hours of questioning by the Jammu and Kashmir police over filing what they claimed was 'fake news'. Two other journalists were thrown into jail.

Along with the new media policy which has censorship as its fulcrum, the Right to Freedom of

Expression and the Right to Freedom of Press is completely jeopardised, the message is clear that if the State (ie, the Government's) narrative is not adhered to, then your act will be criminalised and detention and prosecution will follow.

Domicile Rules and other laws -

The strident way in which the Ministry of Home Affairs (GOI) has brought in a domicile law since March, 2020, without consultation or discussion with the people of Jammu and Kashmir is condemnable and raises suspicion about the real agenda behind changes to domicile law. For most Jammu and Kashmiri people, the demographic changes being rammed through, has ominous portents. . According to the new rules anyone who has lived in the state for 15 years, or studied there for 7 years, will be eligible for domicile status. Children of central government officials who have served in Indian-administered Kashmir for a total period of 10 years and to those who are registered as migrants by the Relief and Rehabilitation Commissioner (Migrants) will be eligible for domicile and become permanent residents of the state. According to many people of the region, it is a step to ensure demographic changes in the valley. This will impact the already worsening unemployment situation and also cause greater economic distress and disaffection.

With the GOI replacing all laws of the state of Kashmir with that of the Centre, along with the inclusion of 109 new laws including the Land Acquisition Act, the fear is about , tyrannical acquisition of land by outside interests and converting the landscape into industrial and real estate region deeply affecting the already fragile ecology of the region.

There are many more troubling questions about the adverse economic impact of the lockdown and policies adopted by the Central Government which need to be examined and addressed before there is an irretrievable collapse of the economy and influx by external

economic forces which will sideline local Kashmir interests. These include the sectors related to fruits production, processing, and marketing of the Fruits economy for which Kashmir is globally famous; tourism industry, handicrafts and textile industry and agriculture sector.

It will be a very tragic situation if the social and political alienation of the people of the Valley is accompanied by an economic colonisation process which is constructed over the destruction of local economic players and industry. As the Forum for Human Rights consisting of former Judges, bureaucrats and academics point out:

“Local and regional industries have suffered large losses in every sector. Many companies that are heavily or solely reliant on 4G networks that are available in the rest of the country, such as tourism and cottage industries, **have been forced out of business.** The new domicile rules introduced by the Ministry of Home Affairs and the Jammu and Kashmir administration, moreover, erode prior employment protections for permanent residents of the former state **The economic, social and political impacts of these actions, and their long duration – eleven months thus far – have been disastrous**”. (emphasis ours)

The immediate steps that need to be taken - Despite the claims of the Central Government about peace, calm and development in the Valley, the reality is very different for calm is maintained only by barbed wire, concertina barriers and armed forces covering almost every inch of the Valley. Many key leaders of political parties and organisations are still in jail or have been effectively silenced. In such a grim situation the role of democratic groups, civil society organisation, human rights movements and concerned citizens becomes very crucial.

PUCL appeals to all democratically

and constitutionally minded citizens of India to collectively demand that the political process must be restored in Kashmir in order to hear what the people want, aspire and hope for. The police state that the valley has become, must end. The restrictions imposed on people's freedom must be lifted. Human Rights abuse by the Indian forces must be immediately stopped and democratic rights restored.

Part C: Demands

1. We urge the Government of India to Review and give up the current policy of approaching the Kashmir issue as a counter-insurgency and a security or military problem to be tackled using force and security forces. It is important to acknowledge that at its very core, the Kashmir problem is a political issue which requires a political solution, which in turn requires treating the people of the Kashmir Valley with dignity, respect and humaneness. Peace cannot be obtained through the barrel of a gun.

2. PUCL believes that it is only through a policy of peaceful dialogue and discussion which permits and allows people to openly and freely articulate their views, opinions, experiences, aspirations and vision that the basis of finding a problem to the Kashmir problem be found. PUCL believes that it is only when the different players engage in meaningful conversations with the people of Kashmir, listening to the people and sharing their responses can the process of rebuilding bridges of human concern and solidarity as human beings be built.

3. PUCL wishes to point out that as the more powerful force, there is greater responsibility on the Government of India to take the first initiative to launch the process of rapprochement and peace building with the people of the Valley. We urge the Government to scale down the military presence in the valley

and permit freer movement of people so that they can begin to improve their economic situation by resuming their normal economic avocations and professions.

4. PUCL calls upon the Government to withdraw the social, economic and electronic lockdown in force in the Valley in some form or the other since 04th August, 2019. In particular PUCL urges the government to immediately restore 4G telecommunication services in the entire Valley on par with the rest of India.

5. PUCL demands that the Government immediately release all the political leaders who have been detained under the J&K PSA, UAPA and other laws in various jails and prisons in Kashmir and outside, and those who have been detained under house arrest also. Equally, the vast number of juveniles who have been detained should be released forthwith and charges dropped. The PSA and other preventive detention laws which are now routinely being abused should be repealed.

6. Special economic support programmes and coaching activities should be immediately introduced for both school and college students in Kashmir Valley so as to make up for the loss of almost an entire academic year for the students. Apart from restoration of 4G services to enable access to e-learning modules, special teachers should be employed to make up for the lost months of classes.

7. The Government should acknowledge and recognise the important democratic role played by an independent and free media and desist from following the current practice of imposing censorship through the DIPR in coordination with the security services. All criminal cases launched against media professionals should be immediately

withdrawn and dropped. Local media, like the media elsewhere in India, should be allowed free access to national and international media and no censorship or control should be imposed.

8. The highly controversial domicile policy introduced by the Government some months back should be immediately withdrawn and all actions undertaken under the policies should be revoked. If at all the government is keen on coming out with such a policy, the government should initiate a broad based discussion with different sections of the people of Jammu and Kashmir so as to incorporate the concerns and requirements of the people. Any attempt to unilateral form or announce policy should be avoided.

9. A common demand across the political spectrum in both Jammu as also in Kashmir is the restoration of statehood. The Government of India should immediately initiate the process of bringing about such restoration through necessary legislative changes.

10. PUCL calls upon the Government of India to evolve a special economic package for Jammu and Kashmir so that all local businesses and enterprises which suffered economic loss and were forced to shut down are enabled to resume functioning. It will also spur the return to economic activities in the Valley which have been seriously affected since the beginning of the Lockdown in the Kashmir Valley, imposed from 04th August, 2019.

PUCL Appeals to the GOI, all political parties in the country, and all sections of Indian society to ensure an open and democratic dialogue with the people of Kashmir. It is not only our duty but our historical responsibility to ensure that peace, development and democracy is allowed a chance in the Valley.

Sd/-

Ravi Kiran Jain, President, PUCL;
V. Suresh, General Secretary,
PUCL National ☐

[1] <https://jkccs.net/annual-human-rights-review-2019-2/>

[2] <https://www.jkccs.net/wp-content/uploads/2020/07/Bi-Annual-HR-Report-2020-JKCCSAPDP.pdf>

[3] <http://www.sacw.net/article14389.html>

[4] <http://www.pucl.org/reports/imprisoned-resistance-5th-august-and-its-aftermath>

[5] <https://jklpp.org/kashmir-reading-room-report-aug-2019-aug-2020/?fbclid=IwAR1Mf7SUA3z-dlylpayahPRQrpeVLHAjfsWS1m6UBUDKmm07fXM7CZneC9>

Press Statement: 07th August, 2020

PUCL Welcomes the NHRC directions to the Chhattisgarh Government, Ordering one lakh rupees compensation to those wrongly booked and illegally arrested

The PUCL welcomes the decision of the NHRC against the State of Chhattisgarh on its complaint number 667/33/20/2016 filed in 2016, which directs the Government of Chhattisgarh to pay compensation of Rs. one lakh each, to 13 members of two fact-finding teams, who were maliciously prosecuted under various false and fabricated FIRs by the Chhattisgarh police. Acknowledging that these FIRs against the Human Rights Defenders were indeed false and fabricated, and therefore malicious, the NHRC has also held that mental trauma constitutes a serious human rights abuse, and that these 13 lawyers, academics, writers, activists, who were subjected to police highhandedness, harassment and loss of their liberty need reparation.

The NHRC case was registered at the instance of a PUCL complaint in November 2016, decrying the patently false FIR that had been registered against six academics and rights activists implicating them for various offences including

murder. Investigation against Prof. Nandini Sundar, Dr. Archana Prasad, Vineet Tiwari, Sanjay Parate, Ms. Manju and Mangla Ram Karma in this FIR was dropped in 2019, after the court directed to review the prosecution case. During the hearing in Feb/March 2020, the Chhattisgarh DGP reported to the NHRC that there was no evidence at all against any of them.

Other cases of false FIRs registered at the instance of the Chhattisgarh police against Human Rights Defenders were added by the NHRC to this complaint later – including that of seven members of a fact-finding team from the Telangana Democratic Front, namely CH Prabhakar, B Durga Prasad, B Rabindranath, D. Prabhakar, Lakshimaya, Mohd. Nazir and K Rajendra Prasad, who were illegally arrested and charged under the draconian Chhattisgarh Special Public Security Act. They were granted bail after seven months in prison, and after trial, later acquitted by the Chief Judicial Magistrate, Sukma. The NHRC has

also recommended the State Government to pay compensation of Rupees One Lakh each to the 7 members of this fact-finding team noting that the case against them was based on a “false FIR” and they would definitely have undergone “mental trauma”.

We are dismayed to note that four weeks have passed since the order was issued on 7th July, 2020, but till now the State Government appears to have taken no further steps to comply with the NHRC's order and actually grant this compensation. We request the NHRC to take note of this and ensure that its recommendations are complied with by the State Government forthwith. We also urge the State Government to honour and comply with the recommendations of the NHRC in this matter thereby setting a new precedent that the Government will not permit egregious and brazen violation of law and human rights by its police forces, whatever the circumstances.

While the PUCL applauds this unprecedented step of

compensating Human Rights Defenders for facing false charges foisted against them by the police, we are disappointed that the NHRC was not inclined to consider two other cases of fake FIRs under its purview: that of the Bastar journalist Santosh Yadav, and of Dr. Lakhan Singh, the former President of PUCL Chhattisgarh, now deceased. Santosh Yadav spent nearly 18 months in prison, and has also since been acquitted by the Bastar courts in what was a blatantly false case aimed at silencing him. The FIR against Lakhan Singh, which was registered by a member of the police-sponsored vigilante group, Agni, was withdrawn only after the local Bastar police officials were shuffled at the instance of the NHRC and the Agni group was disbanded. Both of these individuals and their families were subjected to anxiety and trauma, and we hope that the NHRC will review its order in these cases and ensure the payment of Rupees one lakh of Reparation/ compensation to Santosh Yadav and Dr. Lakhan Singh's legal heir.

Press Release: 6th August 2020

Note: A major controversy has broken out over the manner of conduct of investigation into the NE Delhi riots that took place between 23rd to 26th February, 2020 in which 53 people died with numerous suffering serious injuries and properties of large number of people being destroyed. The Special Cell is accused of behaving

While complimenting the NHRC for recognizing the legal principle of awarding 'reparation' to people falsely implicated by the police, PUCL would equally like to record our strongest regret that the NHRC after coming to a finding and conclusion that the 2 FIRs filed in the case against the 13 academics, rights activists and lawyers were "FALSE" did not go to the next logical conclusion – to order criminal prosecution of the police officials concerned. By not doing so the NHRC has let the errant police officials of Chhattisgarh police named in our complaint go scot free and escape criminal prosecution for malicious use of power. The NHRC has thereby condoned egregious abuse of power and brazen violation of rule of law and constitutionally guaranteed fundamental rights of citizens by the security forces.

It has been the consistent stand of the PUCL that the then Inspector General of Police, Bastar, SRP Kalluri, was clearly involved in lodging these false cases, and had also openly threatened and intimidated the Human Rights

in a partial manner, picking up youth and local activists from the minority community, and getting them to implicate well known academics, journalists, activists and others who have supported the peaceful and democratic protests of the anti-CAA campaign. In a manner reminiscent of the ongoing Bhima Koregaon investigation, the

Defenders, as indicated in the original PUCL complaint. We are dismayed to note that the Government of Chhattisgarh has not taken, nor has it been directed by the NHRC to take, any punitive criminal action against Mr. SRP Kalluri or any other police officer involved in these criminal actions of malicious prosecution, which are evidently meant to punish those speaking out against atrocities committed by the Chhattisgarh police and other armed forces. Till such actions are not recommended by the NHRC, the impunity of the Police force in the name of combating insurgency in the state of Chhattisgarh and other states will continue unabated. We also urge the Government of Chhattisgarh to proactively pursue these cases of malicious prosecution and send a strong message to the public that it will not hesitate to take action against its officials, howsoever senior the officer, if they are found to violate the law of the land.

Ravikiran Jain, President, National PUCL; **Dr. V. Suresh**, General Secretary, National PUCL
□

Delhi police have called numerous academics, activists and media people for investigation into their role in instigating and conspiring with others to cause the riots to take place. The following statement was issued in the backdrop of interrogation of Prof. Apoorvanand, Hindi department, Delhi University.
□

Statement by Dr. Apoorvanand after his interrogation by Delhi Police

On Monday, August 3, 2020, I was asked by the Special Cell, Delhi Police, to appear before it in the investigation into FIR no 59/20 related to the violence that happened in NE Delhi in February, 2020. I spent five hours there. The Delhi Police also considered it necessary to seize my phone for the purpose of investigation. While cooperating and respecting the right of police authorities to conduct a full, fair and thorough investigation, one can only hope

that the probe would focus on the real instigators and perpetrators of the violence against a peaceful citizens' protest and the people of Northeast Delhi. It should not lead to further harassment and victimization of the protestors and their supporters, who asserted their democratic rights through constitutional means, while stating their dissent to the passage of the Citizenship Amendment Act, 2019 (CAA) and the decision of the GOI to operationalise the National

Population Register (NPR) and the National register of Citizens (NRC), all over the country. It is disturbing to see a theory emerging which treats the supporters of the protestors as the source of violence. I would urge the police and expect their probe to be thorough, just and fair so that truth prevails.

Link: <https://mail.google.com/mail/u/0/?tab=wm&ogb#inbox/FMfcgwxJXLcWFSzDPPrKjsgnLXNnSjPC>

Nationwide Condemnation of Delhi Police regarding their Interrogation of Prof. Apoorvanand

On August 3, 2020 the Special Branch of the Delhi Police called in Prof. Apoorvanand, well-known writer, public speaker and Professor of Hindi at Delhi University, where he spent 5 hours, for an interrogation in connection with the Northeast Delhi riots. The police have seized his phone. This comes close on the heels of the interrogation of many other activists.

A day when authorities feel free to haul in the nation's leading public voices to police stations, merely because they speak against the policies and ideology of the ruling government, is a day we must all be deeply concerned. Also, a day when we must overcome all fear, to stand up for each individual's right to disagree, dissent, and thereby deepen our democracy. For this democracy today faces its most serious crisis since independence, far more critical than Indira Gandhi's Emergency 45 years ago. As concerned citizens who love and value our democracy, and our country, we must speak out before it is too late and all voices of freedom are silenced forever.

It is not unusual, or even improper, for the police to ask citizens to cooperate in the crime they are investigating. What matters is the context and manner in which this is happening. Like dozens of others in the past two months, Prof. Apoorvanand has been summoned under section 43F of the Unlawful Activities (Prevention) Act, or

UAPA. This is not all – the summons mentions 19 sections of the IPC; two sections each of the Prevention of Damage of Public Property (PDPP) Act; two sections of the Arms Act; and, finally, four different sections of the UAPA. This is not a normal enquiry or police business as usual. It is part of a clear strategy by the Delhi Police to present protests against the CAA as a conspiracy to plan and stage the communal riots that shook Delhi in late February. This, in turn, is part of the larger design to shut down all dissent in the country so that no one dares question authority.

Over the past several months, students, activists, writers, artists, journalists and other public persons who participated in the anti-CAA protests have been targeted for repeated inquiries, and many have been arrested. Under the omnibus FIR 59 of 2020 alone, more than 17 arrests have taken place already under the UAPA, and over two hundred have been arrested under sections of the IPC. The intense activity of the Delhi Police in pursuing this line of inquiry is in marked contrast to their inaction in investigating leaders associated with the BJP who were seen inciting violence on public television. This pattern is identical to that in the Bhima-Koregaon case, launching a nationwide hunt against alleged "Urban Naxals", while those who were so clearly responsible for instigating riots after the Elgar

Parishad meeting in January 2017 are being allowed to go scot-free.

This crusade to silence all of us has been gathering momentum over the past two years. And today, public figures like Prof. Apoorvanand, and many others, known for their unwavering stand against violence and the politics of hate, are being targeted for their dissenting views. This is all being done under the absurd pretext that these were the "masterminds" who instigated the Delhi riots. By attempting to silence people like this, the government intends a chilling effect on all democratic dissent and discourse; if this is permitted, the chilling effect will be nationwide and it could be irreversible.

We appeal to all citizens committed to the values enshrined in the Indian Constitution – freedom of speech, equality before the law, secularism – to resist this attempt to turn India into a police state where all dissent is criminalized under the most draconian laws. We demand that this systematic harassment of voices critical of the government and the blatant misuse of the law and the state apparatus be stopped immediately. If we fail to protest the muzzling of our democracy today, there may be no democracy left tomorrow.

Endorsed by: A C Michael, Christian Activist For Human Rights & Former Member *Delhi Minorities Commission*, **Zoya Hasan**, Professor Emerita, *Jawaharlal Nehru University* and 1335 others. □

Press Statement: 23rd June, 2020

Stop Criminalizing Free Speech, Protect Journalism

The Peoples' Union for Civil Liberties condemns the attempt at criminalizing the writings of journalist Supriya Sharma, Executive Editor of the Scroll, the most recent victim of state attack on the media. The article, "***In Varanasi village adopted by Prime Minister Modi, people went hungry during the lockdown***" was published on June 5th, 2020. Among the people it reported on were Mala Devi and her family, who are

Scheduled Castes from Domari Village. The Uttar Pradesh police filed a first information report on Scroll's executive editor Supriya and the Editor-in-chief, on the 13th of June. Supriya Sharma wrote an 8 part series on the suffering imposed by the lockdown in Varanasi, exposing the loss of livelihoods and hunger faced by the marginalized: the Dalits, single women and informal workers.

The criminal provisions slapped on the Scroll journalists are bizarre and do not even apply to the complaint made by the aggrieved individual. These are: carrying out negligent acts likely to spread infection of disease dangerous to life (**Sec 269 IPC**), defamation through print (**Sec 501 IPC**), intentionally insults or intimidates with intent to humiliate a SC or ST within public view (**Sec 3(1)(r)**) and abuses any member of

SC/ST by caste name in public (section 3 (1)(s) of SC/ST (Prevention of Atrocities) Act). In her police complaint Mala Devi denies saying she went hungry during the lockdown. Mala Devi has also alleged that Supriya has not accurately reported her employment status. The story says Mala is a domestic worker, while in the FIR Mala says she is a sanitation worker with the Varanasi Municipality. It is very conceivable that Mala Devi, being connected to the Municipal body, can be pressurised to state anything on threat of losing her job.

The FIR against Supriya is an attempt to harass her via the police machinery as she showed the failure of the state to protect livelihoods and provide for rations in the Prime Minister's constituency. It is well known by now, that nobody is allowed to be critical of the PM or show his constituency in bad light.

The FIR on Supriya is not the first. According to a report by the Rights & Risks Analysis Group titled **India: Media's Crackdown During COVID-19 Lockdown**, "At least 55 journalists faced arrest, registration of FIRs, summons or show causes notices, physical assaults, alleged destruction of properties and threats for reportage on COVID-19 or exercising freedom of opinion and expression during the national lockdown from 25 March to 31 May 2020." The highest number of attacks on journalists was reported from Uttar Pradesh (11 journalists), followed by Jammu & Kashmir (6 journalists), Himachal Pradesh (5), four each in Tamil Nadu, West Bengal, Odisha, Maharashtra, two each in Punjab, Delhi, Madhya Pradesh & Kerala and one each in Andaman & Nicobar Islands, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Gujarat, Karnataka, Nagaland and Telangana.

The PUCL would like to highlight some of the cases, which exposes the motivated nature and political intention behind the prosecutions. In the case of Vinod Dua, when the Delhi High court gave a stay order, a second FIR was lodged in Himachal Pradesh forcing him to approach the Supreme Court. The police however was literally on his door step on the same day, despite the Supreme Court giving an order stating that no coercive action should be taken. It is obvious that a very senior journalist who has been critical of not just this, but all, governments, needed to be

silenced through police action so as to send a chilling lesson to other younger journalists, not to dare attempt to write against the regime.

Similarly, on 10th April, 2020, in the middle of the Lockdown period, a police team from Ayodhya reached the home of Siddharth Varadarajan, the editor of The Wire, to deliver a summons to appear before the UP police on 14th April, for making an "objectionable comment" about the CM; this, despite the ban on travel during the lockdown period. Nearly 2 months later in the 2nd week of June, 2020, a FIR was filed against Aakar Patel, a columnist and human rights worker, who when highlighting the ongoing civil unrest in America in the wake of George Floyd's death due to police brutality, tweeted that dalits, minorities and adivasis should rise up against atrocities. His twitter account was shut down as a result based on legal demand by the Karnataka state officials.

In Gujarat, Dhaval Patel, the editor of a Gujarati news portal, Face of Nation, was booked and arrested on 11th May, 2020, for sedition for allegedly publishing a "speculative" report on the possible change in leadership in the state due to criticism over the rising Corona count. Patel was booked under section 54 (Punishment for false warning) of Disaster Management Act, 2005 and section 124A (Sedition) of Indian Penal Code (IPC).

On 6th April, 2020, Pawan Choudhary, a web journalist, was arrested in Munger in Bihar on the charges of spreading misinformation about the death of COVID-19 patient. The Station House Officer of Jamalpur, Ranjan Kumar stated that the journalist was found to be spreading rumours through his social media account. He was sent to judicial custody in Munger jail.

Mahender Singh Manral, an Indian Express reporter was asked to appear before the police on the same day after he reported that Delhi police had found that an audio clip of Tablighi Jamaat leader, Maulana Saad, may have been doctored.

On 27 April 2020, Zubair Ahmed, a freelance journalist, was arrested by the police in Andaman & Nicobar for posting a tweet questioning why families were placed under home quarantine for merely speaking over the phone with Coronavirus patients. His tweet reportedly referred to a news article which reported that a family was quarantined as one of the

members spoke to a COVID-19 positive person on phone. Dependra Pathak, DGP, A & N Administration stated that the journalist "posted an inciting, false and instigating tweet to disrupt public harmony, violating government order and to create panic among the public." On 28 April, he was released on bail by a local court.

Even television anchors, who spew hatred against minorities, intellectuals and dissenters on their primetime slots have had FIRs lodged against them. Arnab Goswami of Republic TV, Sudhir Chaudhary of Zee TV and Amish Devgan of News 18, to mention a few. **Although the PUCL does not agree with their views, it stands by their right to freedom of expression, except when it incites hatred and violence.** PUCL believes that the right platform of censure is the Press Council of India and the peer body called the News Broadcasters association. We would insist that the FIRs lodged should be expeditiously investigated by the police who should file chargesheet if there is sufficient evidence and proceed to ensure that the trial is speedily concluded and justice delivered. This will generate confidence in the impartiality, independence and fairness of the police.

The worst scenario for the press is in Jammu & Kashmir, where in April this year, the J&K Cyber Police filed a case against a Kashmiri author and journalist Gowhar Geelani for "glorifying terrorism in Kashmir" through social media posts, days after a photo-journalist Masrat Zahra was booked under the UAPA for publishing "anti-national" posts on social media. *The Hindu* reporter and senior journalist Peerzada Ashiq was also questioned in connection with an FIR filed against his report headlined "Kin allowed to exhume bodies of militants in Baramulla". **With a new media policy in place the authorities will go to the extent of deciding on the content that can be reported and published, in the name of tracking fake and anti national news.**

PUCL expresses concern at the concerted and continuous attack on journalism and its practitioners, in different parts of India. PUCL also condemns the attempts to intimidate media persons, thereby stifling the media from playing its role as an independent and critical watchdog of liberty, democracy and governance.

The cosy relationship between the political executive and the police is highlighted by the brazen impunity with which the police routinely break the law to crush dissent and silence criticism of ruling governments; the casual indifference of political leaders of the ruling party to even acknowledge, let alone respond to, complaints of abuse of law is symptomatic of the deep rot in the body politic of India.

There is a difference between implementing penal laws in an independent, accountable and legal manner and the deliberate and motivated abuse of criminal laws by the police, including in the use of special legislations like the SC & ST (POA) Act, 1987. Ironically, actual victims of caste atrocities and hate crimes find their complaints rejected, whereas the same laws are used

against dissenting activists and media persons. When the State and the police abuse the law through fabricated prosecutions, their aim is not eventual convictions, but to lock up people for long periods of time without bail. Unfortunately, in many instances, the judiciary has failed to play a watchdog role.

The media is a vital part of democracy and plays an important role in holding power to account. India has had a proud tradition of free and fearless journalism, which played a very important role in the freedom struggle and this should be nurtured. A pandemic and the subsequent lockdown should not be excuses to clamp down on the media.

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

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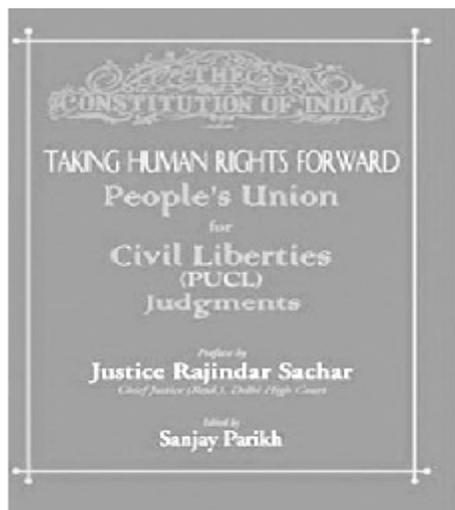
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