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EDITORIAL:

Karnataka's Hijab Ban: Threat to Muslim Women Student's Right to Education, Privacy, Dignity, Autonomy and Expression

What happens when toxic majoritarian hate politics spills over into educational spaces and institutions? Worse, what is the consequence when the state supports and promotes policies aimed at denying the rights of Muslim women students to wearing the hijab, the head scarf, while in class?

On 31st December, 2021, the Government PU College in Udupi (Karnataka) suddenly and unilaterally barred the wearing of hijab by Muslim women students inside the class rooms, a practice Muslim women students had been following for many years. Six students protested by sitting on a dharna outside the class room. No one could imagine then, that the issue would spiral into a major crisis pitting the state against the right of Muslim women to education, dignity, autonomy and expression. What was a local incident, suddenly spiraled into a state - wide controversy when the Karnataka government supported the ban and prohibited Muslim women students wearing hijab inside educational institutions and classrooms. Ugly scenes of heckling of Muslim women students by men students of majoritarian community epitomized the real danger to lives and safety of Muslim students, especially women. Media reports vividly highlighted a surcharged atmosphere of threat, intimidation, coercion and terrorization of students of minority community. Though eventually the dispute was taken to the courts, many serious constitutional, legal, gender rights, human rights and social issues have been thrown up which we as a society will have to reckon with.

A far more important question requires to be addressed: beyond and behind the political struggles and legal battles, how has the controversy affected the lives of actual Muslim women students? Has it pushed women students to drop out of education?

These, and other issues are what PUCL Karnataka unit decided to examine, through field visits to different districts where the issue had become explosive. The team met students, spoke to their families, interacted with civil society members, college officials and others to present a detailed report. We present extracts from the Interim Report below. The full Report can be accessed from the PUCL website.

V. Suresh, Editor, PUCL Bulletin

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Impact of Hijab Ban in Karnataka's Educational Institutions

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Shashank SR and Swathi Shukla

Introduction

As per reportage of the media, the Karnataka government was a mute spectator to scenes of college lecturers in a government college in Kundapura actively preventing Muslim girls from entering their colleges on the grounds that they were wearing a hijab on the 4th February, 2022¹. This followed the equally arbitrary action by college authorities in a government college in Udupi preventing girls in hijabs from entering a classroom.²

It should be noted that the ban on wearing the hijab was implemented by the college authorities hastily, arbitrarily and without providing any prior notice. The students are reported to have said, "We are students, we have been wearing the hijab to college for so long, but it has become an issue only now."

The students had a legitimate expectation that they will not be suddenly and arbitrarily prevented from attending classes, that too just two months before the examination. Unfortunately, this expectation was belied by a state government which was duty bound under the Constitution to protect the right to education of all its students without discrimination of any kind.

The Karnataka State Government instead chose to ignore this unconstitutional and arbitrary action by its own employees and failed to safeguard the rights of Muslim women students not to be discriminated against.³ Instead, it issued a Government Order (GO) on 5.02.2022 which stated that the 'prohibition of a headscarf or a garment covering the head is not a violation of Article 25 of the constitution'⁴. The notification goes on to state that in the event of no uniform being prescribed by government colleges, clothes should be worn which are 'in the interests of unity, equality, and

public order.'⁵ It also empowers the College Development Committees (CDCs) to decide what the uniform should be.

This notification was akin to a dog whistle to vigilante elements and the CDCs, as it was notifying them, that as per the government, the wearing of the hijab is not protected under Article 25 and that they are free to go ahead and prohibit the wearing of the hijab. Following this dog whistle, on 8th February, youth wearing saffron shawls and shouting slogans such as 'Jai Shree Ram' went on to harangue, bully and intimidate young Muslim women who were going to their college⁵. The Karnataka Government continued being a mute spectator even as Muslim women around the state from Dakshina Kannada, Udupi, Mandya⁶, Bagalkot⁷, Bidar⁸, Mysuru⁹, Shimoga¹⁰ were prevented from accessing their right to education.

Following this notification, in many instances, the college managements have prevented the girl students from entering the class rooms and college campuses, thereby violating their right to access learning without discrimination¹¹. College managements have allowed the Sangh Parivar activists from outside to enter the college premises and cause widespread disruption in the functioning of the college¹². There have also been incidents during which a Muslim student's hijab was forcibly removed by the college teaching staff as well as by the police, under the glare of the media¹³; and another incident in which a Muslim woman student was sexually harassed during the exam¹⁴. Police presence on the campus during the period of the High Court hearings also had an intimidating effect on the Muslim students.¹⁵ All these

developments have forced these students to seek to transfer to Muslim-managed institutions¹⁶, thereby (as they revealed in their conversations with us) limiting their interactions with students of other communities and creating and widening the social divide among student communities which could potentially lead to ghettoization of education.

The Government of Karnataka by issuing this notification abdicated its obligation to protect the right to education of Muslim girls. The girls affected by the notification challenged it before the High Court of Karnataka¹⁷. Some of the petitioners before the High Court included the young girls from the Government Pre-University College in Kundapura, who had the gates shut on their faces, when they were attempting to enter their college, by their own teachers.

The High Court on 10 February, 2022 in *Resham v State of Karnataka*, delivered a judgment in which it upheld the constitutionality of the notification by the Government of Karnataka which allowed for the ban on the hijab in colleges that have a uniform prescribed by a CDC, ruling that the hijab is not an essential part of Islam.¹⁸

After concluding that hijab is not a part of the essential practice of Islam and the right to wear it is not protected under Article 25, the Court concluded that the right to wear a hijab was at best a 'derivative right' which can be circumscribed 'consistent with...discipline & decorum' in what it calls 'qualified public places like, like schools, courts, war rooms, defence camps, etc.'

The legal critiques of the judgment in Resham v State of Karnataka

An incorrect focus on Hijab as Essential Religious Practices

(ERP)

The judgment focused on whether the right to wear the hijab was an essential religious practice, instead of concentrating on the key issue thrown up by some of the petitioners, namely the imperilment of their right to education.

The ERP test has come under severe criticism by legal thinkers and scholars. Judges themselves have expressed their discomfort with the doctrine for it compels them to adjudicate in the realm of theology as opposed to law. In this regard, framing of the *hijab* issue as a matter of religion and essential practice was limiting in that it gave the court all but two ways to proceed in: (i) to accept the argument and allow the *hijab* on the basis of a highly dated and expressly misogynistic and patriarchal logic, and create a legal fiction where women have no agency in the matter; or (ii) to reject the argument, and in the process, deny the elements of *actual* agency that are involved here.¹⁹ In the instant case, the court in ruling that the hijab is not an essential religious practice denies the women's right to frame the hijab as a matter of choice and agency for themselves. The constraint of approaching the issue through the ERP test, therefore, leaves us with little room to recognise and make constitutional room for the complex reasons that influence women's choices to wear or not wear the hijab. It divests Muslim women of their agency and also negatively impacts their freedom to practice their religion in a manner that they deem fit.

Failure to focus on the principle of non-discrimination as per Article 15 of the Indian Constitution

While the GO in discussion does not explicitly restrict the wearing of the hijab, its dubious phrasing makes a strong case for indirect discrimination that most certainly *disproportionately impacts* women from the Muslim community. A

closer reading of the order would establish that it fails the test of non-discrimination both on grounds of sex and religion. The GO says that *students are following practises as per their religion, which is adversely affecting equality in such schools and colleges* and relies upon several court orders to reason that *restricting students from coming to school wearing head scarfs or head covering is not in violation of Article 25 of the Constitution*. Therefore, the notification was meant to specifically target the practice of covering one's head as mandated by religion and although framed in the language of facially neutral criteria, it disproportionately infringed upon the rights of hijab-wearing girls and women. However, the court deals only preliminarily with this fundamental constitutional wrong of discrimination alleged by the petitioners by saying: *"By no stretch of imagination, it can be gainfully argued that prescription of dress code offends students. In matters like this, there is absolutely no scope for complaint of manifest arbitrariness or discrimination inter alia under Articles 14 & 15, when the dress code is equally applicable to all the students, regardless of religion, language, gender or the like. It is nobody's case that the dress code is sectarian.*

Failure to address the Right to privacy and Freedom of Expression

The petitioners had further contended that the women's right to autonomy and privacy would be gravely infringed upon if the restrictions on the hijab were not revoked. While dismissing the contention, the High Court stated that the right to freedom of expression, speech and privacy were only 'derivative rights' (a category carved out by the court which enjoys no constitutional sanction) and could not be claimed in 'qualified public spaces' (a category that once again has no constitutional basis) such as schools as they were inferior to

'substantive rights.' Shockingly, the court goes on to compare schools to prisons and war rooms and reasons that rights protections in 'qualified public places' such as these are significantly weaker. The HC says: *Such 'qualified spaces' by their very nature repel the assertion of individual rights to the detriment of their general discipline & decorum*. This interpretation is a serious affront to the ruling of the Supreme Court in *Puttaswamy* where it has held that the right to privacy is a core fundamental right and includes an individual's decisional autonomy. The Supreme Court has clearly stated that an individual's right to make choices that do not conform with societal norms or calls for 'homogeneity' are an integral component of the right to privacy. Moreover, an individual's right to make sartorial choices, which may also include expressing their faith in public through their choice of attire, will be protected by the right to privacy.

The court's repeated insistence on establishing homogeneity through uniforms strikes at heart of fraternity and fraternal ways of living. It compels the petitioners and others alike to surrender their individual, religious and cultural rights to college managements to be able to access another fundamental right i.e., the right to education.

The crucial error the Court makes is that it sanctifies the *uniform* instead of sanctifying *education*; instead of looking at the uniform as *instrumental* to achieving the goal of an inclusive and egalitarian right to education (and which would, therefore, require accommodation where accommodation would better serve that goal), it treats the uniform (and its associated values of sameness, homogeneity etc.) as the goal itself.²⁰ Curiously enough, the court goes on to trace out the origins of uniforms in great detail, emphasizing on their significance only to conclude, *'No reasonable mind can imagine a school without*

a uniform.' Nonetheless, neither party to the case had approached the court challenging the need for uniforms or its constitutionality nor was it anybody's case that they do not want to wear uniforms as prescribed by the institution.

Failure to apply the principle of reasonable accommodation

The Court dismissed any via media solution between the interest of the state to prescribe a uniform and the interests of the individual to manifest their faith or to express their identity via their dress. A via media would have been based upon the 'principle of reasonable accommodation' and allowed for students to in addition to the uniform also wear a hijab of the colour of 'prescribed dress code'. However, the Court argues that any such accommodation 'would establish a sense of 'social-separateness' and would 'offend the feel of uniformity which the dress-code is designed to bring about amongst all the students regardless of their religion & faiths.' The Karnataka High Court cites examples of balancing rights such as the uniforms prescribed in Kendriya Vidyalayas which allows for scarf and turban in a prescribed colour, only to dismiss it as militating against the very concept of the school uniform.

Failure to protect the fundamental right to education to be guaranteed by the state without discrimination

As a direct consequence of the restriction on hijab by colleges, the government notification and the interim order of the High Court, thousands of Muslim girls across the state were robbed of their access to education and a sizeable number of women were even unable to appear for their examinations. Appalling scenes of girl students being physically pushed out of educational campuses have emerged since the issue broke out. This constitutes an unconscionable violation of the right to education under Article 21A and Article 21. The right to equal

opportunity in the Preamble to the Constitution of India would also mean right to access opportunities (such as education, employment etc.) without arbitrary barriers. It is apparent that Muslim women in this instance are gravely disadvantaged by the unreasonable barriers to their education that have been placed by the state. Despite the alarming nature of the violation of Muslim women's right to education and elaborate contentions on this question of law by the petitioners' counsels, the court barely engages with this issue while only saying that 'school dress code to the exclusion of hijab, bhagwa, or any other apparel symbolic of religion ... does not rob off the autonomy of women or their right to education'.

The decision of the High Court of Karnataka to uphold a de facto prohibition on Muslim women students wearing the hijab while attending classes in *Resham v. State of Karnataka* has imperilled the right to education as well as other associated constitutional rights of Muslim women students.

Note: For detailed discussion of the findings of the FFT please refer to the full version of the Report in the PUCL website.

Conclusion

The testimonies indicate that a range of rights which are guaranteed to all Indian citizens have been comprehensively violated post the judgment of the High Court of Karnataka. These rights which have been violated include Right to Education without Discrimination, Right to Equality, Right to Dignity, Right to Privacy, Right to Expression, Right to Non-Discrimination and Freedom from Arbitrary State Action.

It's important to note in particular the violation of the right to education without discrimination. It is not just a fundamental right but also an obligation of the state under the Directive Principles of State Policy. Under Article 41, the state shall within the limit of its economic capacity and development, make

effective provision for securing the right to education among other rights.

In the case of the hijab issue, it was disconcerting to see that the State of Karnataka completely ignored its constitutional obligation in its single-minded focus on ensuring that the hijab was prohibited in colleges. This begs the question as to whether the government was indeed ignoring its constitutional obligation.

The study also threw up disturbing narratives which indicated drop-out of students affected by the hijab issue. It is important to do a deeper study to understand the learning loss impacted by the hijab issue on the students. Overall, a whole generation of young Muslim students right to education has been imperilled by the hijab ban.

When the state strenuously argued that the hijab was not an essential practice of Islam, and therefore the student's right to profess their faith under Article 25 was not imperilled, it was wilfully ignoring a whole series of other rights which were imperilled. The right to wear a hijab is not just a right to religious expression but post the judgment in *Puttaswamy* an integral part of the right to privacy, dignity, autonomy and expression.

By ignoring the series of constitutional rights which were violated by the prohibition, there was a disregard for what Babasaheb Ambedkar called constitutional morality.

As he put it in the Constituent Assembly:

"The question is, can we presume such a diffusion of constitutional morality? Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top dressing on an Indian soil which is essentially undemocratic."²¹

In this situation of a complete failure of the state government to fulfil its obligation to protect constitutional

morality, it falls on citizens to then do so. Nobody has done so with more grace, dignity and courage than young Muslim women who have asserted their right to education. The case in point in this regard is the world witnessing Muskan, a young Muslim woman B. Com student, who drove a bike up to her college campus and walked fearlessly past a baying crowd of saffron shawl-wearing bullies on her campus before entering her college. Her courage, her spirit, and her fearless and dignified assertion of her right to freedom of expression, right to education and right not to be discriminated against was an embodiment of what the constitutional principles of Liberty, Equality and Fraternity. We, at PUCL Karnataka, salute her courage and know that her courage will be an inspiration to millions more.

Recommendations:

1. The CM must decisively rescind the notification authorizing the prohibition of the wearing of the hijab
2. The court should conduct an

inquiry into why the state government took such a sudden arbitrary and unconstitutional action

3. The Karnataka government must take adequate measures to strengthen a secular and non-discriminatory learning environment within colleges, allowing the students to express their faith and identity fully and ensuring that such shocking violations do not recur.
4. The human rights commission and minority commission should register suo moto complaints against the principals and CDCs of colleges for violating the fundamental rights of the concerned students and initiate actions at the earliest.
5. The Legal Services Authority at all levels must intervene in this matter and provide all legal assistance to the students to protect their constitutional rights.
6. The court must issue a directive to the government to conduct a

comprehensive inquiry into lost years and expenses incurred as a result of this order and ensure that compensation to the women and their families is paid.

7. The government must allow the students to enter the classrooms immediately, and in consultation with students, arrange special classes for them.
8. The court must issue a directive to hold CDCs accountable, by both:
 - a. Making the CDCs truly representative, to be accountable to all of the different stakeholders, including members of all communities, students, non-teaching staff, teaching staff, members of civil society, and women.

Conducting an inquiry into cases where the CDC had overstepped its mandate and not provided appropriate forms of redress, in writing, to students and parents who have raised concerns and initiate actions against them.

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Than Singh Ji is No More

Than Singh Ji, former PUCL, Rajasthan President and Lok Sabha MP, passed away on 5th September at 5 am. PUCL expresses its deepest condolences to the family members of Shri Than Singh.

Statement by Civil Liberties and Human Rights Organizations:

**Ensure that Atiq-Ur Rehman is released on medical bail and provided the best health care!
Ensure that no prisoner is denied her constitutional right to health!**

20th Sep, 2022: We, the undersigned civil liberties organizations and individuals concerned about human rights, express our deep unease at the manner in which the jailed 28-year-old student leader Atiq-ur-Rehman, allegedly accused in the Hathras conspiracy case, 2020, is being denied timely and appropriate medical treatment and care, rendering him partially paralysed and disoriented. We fear that any further delay in providing optimum health care to him which is the constitutional responsibility of the state, will result in a deterioration of his condition and cause irreparable damage to him.

The fact that Fr Stan Swamy of the Bhima Koregaon Conspiracy case and Pandu Narote serving life sentence in Nagpur Jail, died while in judicial custody is a grim reminder of what neglect of the right

to health in prisons can lead to, namely the very extinguishment of the right to life under the Indian Constitution.

Rehman, the former treasurer of Campus Front of India (CFI), was arrested by Uttar Pradesh (UP) police on Oct 5, 2020, while travelling to Hathras with journalist Siddique Kappan, who was proceeding to cover the heinous gangrape and murder of a Dalit woman.

At the time of his arrest, he was one month from a heart surgery for a serious medical condition. Rehman is a patient of aortic regurgitation, a condition of the heart in which the aortic valve does not close tightly, which may result in some of the blood pumped by the heart to leak backwards.

Post his arrest it was only after repeated petitions before the Court, over a year after his arrest in

November of 2021, that he was finally allowed to travel to All India Institute of Medical Sciences (AIIMS) to have the heart surgery. However, post his surgery he was shifted back to jail.

Since his return to jail his health condition has steadily worsened. His wife told a news outlet "He can't move his left side, and he is even struggling to recognize me. He sometimes remembers who I am but then soon forgets again. It's a very scary situation,"

His family alleges that his condition has worsened due to a lack of post-surgery medical care in prison. As per his father-in-law, Shekhawat, "Since it's a serious ailment, there needs to be regular follow-ups with the doctor, maintenance of hygiene in the jail, dietary restrictions that had to be met. None of this was taken care of".

With respect to his worsening

health condition, on Aug 28, 2022, an application was filed before the Special court requesting directions for providing “procedural medical check-up/treatment and further medical advice in AIIMS New Delhi in accordance with the medical advice in the interest of justice”. The Special Court directed the jail authorities to do the needful as per the jail manual. Pursuant to the Court's direction, the Lucknow district jail authorities moved Atiq-Ur Rehman to Lucknow's King George's Medical University (KGMU) hospital. On Sept 06, 2022, the special judge of the PMLA court has sought all the latest medical reports and the medical status from the jail. The matter has now been posted for further hearing to Sept 16, 2022.

We would like to state that the treatment of Atiq- Ur Rehman violates both the UN Standard Minimum Rules for the Treatment of Prisoners (Also known as the Nelson Mandela Rules) as well the right to health for all persons guaranteed under the Constitution. The relevant part of Rule 27 of the Nelson Mandela rules states:

“All prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals”.

The standards of healthcare prescribed under the United Nations Standard Minimum Rules for Treatment of Prisoners (Nelson Mandela Rules) 2015, must be applicable to all prisoners including Atiq Ur Rehman. These rules were relied upon in the case of *Re: Inhuman conditions in 1382 prisons*, (AIR ONLINE 2017 SC 486), by the Supreme Court to pass directions regarding conditions of prisons, while noting “*These rules provide useful internationally accepted guidelines for implementation by prison administration across the country*”. The Supreme Court went on to

observe that ‘...we are clearly of the view that Article 21 of the Constitution cannot be put on the back burner and as mentioned in the Mandela Rules even prisoners are entitled to live a life of dignity.’

We would further like to note that a catena of Supreme Court cases has repeatedly reiterated the point that a prisoner does not lose his right to dignity or more fundamentally his right to life on entering prison.

By denying Atiq-Ur Rehman, the right to an appropriate level of medical care, which has resulted in a deterioration of his health, the prison administration is denying him his constitutional right to health care, dignity and imperiling the most fundamental of rights, the right to life itself.

It is the responsibility of the state and its agencies - the police, the judiciary and the jail authorities - to ensure the safety and security of all those in custody, whether undertrials or convicted prisoners. Their health and wellbeing must be protected and the failure to do so is a clear indication of the failure of the State, as the custodian, to fulfil its constitutional responsibility to its citizens.

The Government of Uttar Pradesh, to take forward the true meaning of Azadi ka Amrit Mahotsav, must implement the post-colonial Nelson Mandela Rules as well as the guarantee of the right to health under Article 21 and treat prisoners as human beings entitled to the full right to dignity and the right to 'prompt access to medical attention' and immediately 'transfer' Atiq- Ur- Rehman to the 'specialized institution' where he underwent the surgery, namely AIMS. That would be in keeping with the requirement of Rule 27 of the Mandela Rules. It would also be in keeping with the mandate of the Indian Constitution and ensure the 'minimum standard' which is his due as an Indian citizen, namely the protection of his right to life under Article 21.

Sadly, the neglect of Atiq Ur

Rahman's health by the jail authorities is only emblematic of the neglect of the right to health of all prisoners. In recent times this sad reality of a callous state indifference is seen in the treatment of Vernon Gonsalves, Prof G N Saibaba and Gautam Navalakha. Vernon Gonsalves was suffering from dengue which was not diagnosed by the jail authorities in time requiring oxygen support in hospital. This denial of appropriate and prompt medical care is also violative of Rule 24 of the Mandela Rules which states:

“The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status”.

Gautam Navalakha still continues to petition the court for a mosquito net to ensure protection from dengue which is prevalent in Taloja Jail. The fact that the authorities have not given him a mosquito net speaks to a level of systematic neglect of the right to health of prisoners. This too is violative of Rule 13 of the Mandela Rules which states:

“*All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation*”. (italics supplied)

The state has the bare minimum and inescapable constitutional responsibility to guarantee adequate and prompt medical assistance to all those it imprisons. The state needs to be reminded again and again that a prisoner's right to movement may be circumscribed, but not

the right to health care, the right to dignity and the right to life itself. It is the state's constitutional responsibility to ensure that a prisoner's health does not deteriorate and in fact positively to ensure that a prisoner's right to health is protected. It must comply with both Article 21 as well as the

Delhi PUCL:

Minutes of the Meeting of the General Body Meeting of PUCL

Minutes of the meeting of the General Body Meeting of PUCL, Delhi held on 12 August 2022 at Gandhi Peace Foundation, New Delhi

Members who attended the meeting:

1. ND Pancholi
2. Tajinder Singh Ahuja
3. Amit Srivastav
4. Arun Kumar Maji
5. Lalit Mohan Sharma
6. Shamsul Islam
7. Mohd. Mahtab Alam
8. Ms Manju Mohan

Meeting attended by following National Observers:

Kavita Srivastav
Sanjay Parekh Senior Advocate

Minutes:

At the start of the meeting the List of members who were entitled to vote was read out by Mr Arun Kumar Maji, Election Officer and those who were not entitled to vote were requested to sit separately so that elections could be conducted smoothly. The direction was complied with and those who were entitled to vote sat separately from those who were not entitled to vote. At 6.30 pm the nominations received were read out by Mr Arun Maji, Election Officer. Thereafter Mr Arun Maji delivered a welcome address to all the members present and declared that 7 pm was the time fixed for withdrawal of nominations. At 7 pm it was declared by Mr Arun Maji that there were no withdrawals

Nelson Mandela Rules with respect to all prisoners.

Endorsed by:

V. Suresh, General Secretary, PUCL; Ravi Kiran Jain, President, PUCL; Brinelle D' Souza, Academic and Activist, Mumbai; Fr. Frazer Mascarenhas, S.J.- Academic Administrator; Mihir Desai, Sr. Advocate & PUCL Maharashtra; Annie Raja, General Secretary, National

Federation of Indian Women (NFIW); Harsh Mander, Writer, Human Rights and Peace Activist; Medha Patkar, Narmada Bachao Andolan (NBA) and NAPM; Henri Tiphagne, People's Watch, TN; Kavita Krishnan, Writer and Marxist Feminist Activist; Apoorvanand, Columnist and Academic; Kavita Srivastava, President, PUCL Rajasthan and many others. □

and following members were elected unopposed:

President: ND Pancholi
Vice President: Shamsul Islam
General Secretary: Tajinder Singh Ahuja
Treasurer: Amit Srivastav
Members Executive: Lalit Mohan Sharma & Mohd. Mahtab Alam

Thereafter the following members were declared elected to the National Council by Mr Arun Maji, Election Officer:

- a) Mr ND Pancholi
- b) Mr Shamsul Islam
- c) Mr Ashok Bharti
- d) Ms Vertika Mani
- e) Mr Amit Srivastav

After the declaration of results an address was delivered by Mr ND Pancholi President who welcomed and thanked all those who had come to attend the General Body Meeting and drew the attention to the achievements of PUCL Delhi in the past and expressed the hope that we will have a vibrant unit of PUCL Delhi.

Thereafter the meeting was addressed by Ms Kavita Srivastav who laid emphasis on the building of the organization and also that the procedures set by the National PUCL and the constitution of PUCL needed to be followed in letter and spirit. Mr Sanjay Parekh recalled the active role played by PUCL Delhi and how it was the image of National PUCL and laid the

emphasis for strengthening the Delhi PUCL.

Mr Tajinder Singh Ahuja Placed two resolutions before the house One for forming an Internal Audit Committee for finalization of the accounts in which the period for completing the audit was reduced from 6 months to 3 months and the resolution was unanimously passed.

Another resolution was placed giving the right to the executive committee of Delhi PUCL to fill the vacant seat of Executive and to co-opt members as Office Bearers and Executive Committee members. This resolution was also unanimously passed. (copy of the resolution is enclosed).

The meeting ended with a vote of thanks to all those who had made it convenient to attend and especially the observers from National PUCL.

ND Pancholi, President; **Tajinder Singh Ahuja**, General Secretary – PUCL Delhi

Resolution

It is hereby resolved that on account of non-availability of the treasurer it is not possible to present the accounts of PUCL Delhi in this General Body Meeting. Keeping in view these circumstances this house authorises the Executive Committee of Delhi PUCL to finalize the accounts by forming an internal audit committee. All endeavour should be made to finalize the accounts at the earliest

preferably within a period of three months from the date of this General Body meeting. The Internal Audit Committee will finalize the accounts in consultation with all concerned and submit the same to the Executive Committee who will circulate the same and present them before the next General Body Meeting. It is further resolved that the newly elected

Executive Committee shall tentatively treat the cash and bank balances handed over by the previous office bearers as tentative opening balances which will be revised on finalization of the accounts.

Resolution

It is hereby resolved that the Delhi State PUCL Executive Committee shall have the right to nominate

members of the Executive from among its members. The Executive Committee will also have the right to fill the vacancies of office bearers or appoint any additional office bearers from the members of the Executive including from the nominated Executive Committee members. □

Press Statement:

Release Activist Vernon Gonsalves on immediate Medical Bail Statement by Mumbai Rises to Save Democracy - A campaign of 40+ civil society groups

MRSD is distressed to learn about the health situation of 65 year old activist, poet, and writer Vernon Gonsalves, incarcerated since 2018 in the Bhima Koregaon/Elgar Parishad case. Gonsalves started developing several symptoms, such as fever, cough, dizziness, and nausea starting on August 30, as per the affidavit filed by his lawyers in Court. However, his health condition was met with neglect and it was only after pleading several times that he was finally taken to the state-run JJ hospital on September 6. Instead of continuing his treatment there, he was taken back to jail the same day. Upon hearing about this from other co-accused, Gonsalves' lawyers and family members moved the NIA court seeking temporary bail on medical conditions. During the hearing, the lawyers told the Court that apart from Dengue, he may also be suffering from Pneumonia. It is appalling that in spite of this he was not provided adequate medical care by the authorities, leading to his health deteriorating further. Only after the bail hearing on September 7, he was admitted to the state-run JJ hospital. Gonsalves has since been put on Oxygen support. Notably, his condition deteriorated in prison, as mentioned in the affidavit. At first, he was administered Paracetamol and

Erythromycin without examination. Upon no improvement, and recurring fever and cough, on the fourth day, upon requests of co-accused Sudhir Dhawale and other fellow inmates, he was given an injection and antibiotics and sent back to the barracks. The fever still did not reduce, and by the fifth day there was nausea, weakness and dizziness. Till that point also, no check-ups were done.

Earlier, out of the 16 arrested persons, Jesuit priest Stan Swamy died at a hospital in Mumbai while in custody, due to gross delay and neglect on the part of the prison authorities to provide medical care and treatment. Several others have fallen sick or were delayed medical help for an ongoing health condition. Two other accused persons, Sudha Bharadwaj and Varavara Rao, are currently out on bail. The latter, who is out on medical bail, similarly suffered medical neglect in jail and delayed treatment during the pandemic.

The activists, academicians, and lawyers incarcerated in the case have been arrested in multiple rounds, starting from June 2018, months after saffron flag carrying mobs attacked Dalit-Bahujans who had gathered at Bhima Koregaon for its bicentennial anniversary of the battle of Bhima Koregaon. The denial of timely medical treatment and care to not just these

undertrials but several others indicates the callous attitude of the prison authorities and state governments, which is in contravention to national and international guidelines of human rights and individual dignity.

Apart from Gonsalves, the other accused persons in custody are Sudhir Dhawale, Rona Wilson, Surendra Gadling, Shoma Sen, Mahesh Raut, Arun Ferreira, Anand Teltumbde, Gautam Navlakha, Hany Babu, Sagar Gorkhe, Ramesh Gaichor and Jyoti Jagtap.

We demand that activist Vernon Gonsalves be provided timely and proper medical care and that all required tests and examinations be conducted forthwith. We also demand that his family and advocates be kept regularly updated on his medical status and provide access to the medical professionals in the hospital to monitor his condition. We further demand that activist Vernon Gonsalves be granted immediate bail on medical grounds and be released.

We also demand that all the prisoners who are suffering from medical ailments should be released on bail as neither the jail nor the government hospitals are equipped to address emergency medical situations.

Mumbai Rises to Save

Democracy (Participating groups): People's Union of Civil Liberties (PUCL), Committee for Protection of Democratic Rights (CPDR), Citizens for Justice and Peace (CJP), New Trade Union Initiative (NTUI), Trade Union Centre of India (TUCI), Student Islamic Organisation (SIO), Ambedkar Periyar Phule Study Circle (APPSC) - IIT Mumbai, Co-ordination Of Science And Technology Institute's Student Association (COSTISA), LEAFLET, Police Reforms Watch, National Confederation of Human Rights Organisations (NCHRO), Innocence Network,

Association for Protection of Civil Rights (APCR), Indian Christian Women's Movement – Mumbai Chapter, Satyashodhak Feminist Collective, Bebaak Collective, Forum Against Oppression of Women (FAOW), LABIA- A Queer Feminist LBT Collective, Awaaz-E-Niswaan, Jagrut Kamgar Manch (JKM), Majlis, Indian Muslims for Secular Democracy (IMSD), Women against Sexual Violence and State repression (WSS), Bharat Bachao Andolan (BBA), Indian Social Action Forum (INSAF), People's Commission for Shrinking Democratic Spaces (PCSDS), Human Rights Defenders Alert-India (HRDA), Human

Rights Law Network (HRLN), Cause Lawyers Alliance, National Alliance of People's Movements (NAPM), Justice and Peace Commission, Bastar Solidarity Network (BSN), Nivara Hakk Suraksha Samiti, Kashtakari Sanghatna - Palghar, Sarvaha Jan Andolan - Raighad, Shramik Mukti Sangathana – Thane, Jagrut Kashtakari Sanghatana - Raigad, students from various colleges in Mumbai including Homi Bhabha Research Centre, St. Xaviers and Tata Institute of Social Sciences, FTII Alumni and others.

Facebook:

<https://www.facebook.com/MumbaiRis esToSaveDemocracy/> □

PUCL Jharkhand Report

Jharkhand PUCL State Council Meeting

Ranchi -18/09/22

The state council meet of Jharkhand PUCL took place in Ranchi on 18th September 2022. There were 36 persons present from various units. Ranchi unit was represented by 12 members; Dumka 5; East Singhbhum 8, Garwa 6 and Palamu 4. Mr. Praveen Madhu, the former General Secretary Bihar PUCL was the observer for the meeting and the election. The meeting began at 11.30 A.M.

The following Agenda were taken up:

1. Workshop on the PUCL objectives
2. Election of the state council members
3. Deliberation on the convention.

Workshop:

Mr. Praveen conducted the workshop. He explained through a write up about the objectives of the PUCL. He focused on the following principles with the good examples:

1. PUCL ensures Rule of Law.
2. Dignity of Individual
3. Endeavours to change old colonial laws especially laws like Sedition and other
4. Focusing on the prevention and detention laws that are used on political opponents, dissenters and ordinary men and women.

5. Freedom of thought; Right to Public Dissent
6. Right to freedom of expression
7. Independence of Judiciary
8. Providing legal aid to the poor through Legal service authority
9. Civil Liberties
10. Prison Reforms
11. Excess of police torture custodial deaths.
12. Discrimination based caste, Religion, caste and Gender
13. Untouchability, Casteism, and communalism.

The most important part of his reaffirmation about our way of functioning as a team. No individual will undertake any activities on his her own. Whether we give out any statement or meet officials or give press brief it has to be passed by the member in a proper forum and then a task may be delegated to one or two more members.

Election of the State Council Office Bearers.

As per constitution of the PUCL, an agreed process was set prior to the election.

That there will be an electoral officer and he will invite members to create a panel of persons for various posts. Either we unanimously select a person for a respective post or leave it for voting.

Mr. Ashok Jha – Ranch, was appointed as the electoral officer. He requested members to suggest names for various posts of the office bearers. Mr. A.N. Pathak from Garwa on the advice of prominent persons drawn from various units suggested a panel. After deliberations on the names some changes were suggested. Then the following persons were elected

The following persons were elected for various posts.

1. **President:** Mr. C. S. Bhattacharya - Jamshedpur
2. **General Secretary:** Arvind Avinash – Ranchi
3. **Vice Presidents:**
 - a. Mr – Arvind Verma – Dumka
 - b. Dr. Renu Deewan – Ranchi
 - c. Fr. Solomon – Dumka
 - d. Mr. Dasrat Mahto – East Singhbhum
4. **Secretary** – Mr. Anil Arun – Ranchi
5. **Organizing Secretaries** - Mr. S.N. Pathak (Garwa) Ms. Nirmala Murmu (Dumka)
6. **Treasurer:** Anand Kumar Singh – Ranchi
7. **Executive Council members:**
 - a. Mr. Sanjay Bose – East Singhbhum
 - b. Mr. Sunil Vimal - East Singhbhum
 - c. Mr. Sumangal Ojha – Dumka

- d. Mr. Sanjay Tiwari – Garwa
- e. Fr. Pankaj Kujur – Dumka
- 8. National Council members:**
- I. Dr. B.B. Choudary – Ranchi
- II. Mr. S.N. Pathak
- III. Dr. Renu Deewan
- IV. Mr. Ashok Jha
- V. Mr. Arvind Avinash

The observer Mr. Deepak Madhu approved the process we have followed and wished all the office bearers best wishes. These office bearers shall assume their posts in a convention to be conducted.
Convention: It was decided to conduct the convention in Palamu on a day that is convenient to every

one specially to the unit members in Palamu. A zoom meeting will be organized.

The meeting ended in a cordial atmosphere and all the members were energized.

Reported by

David Solomon – Vice President, Dumka ☐

Peoples Union for Democratic Rights (PUDR)
Press Statement on 10 September 2022

Stop Denying Political Prisoners the Right to Healthcare in Jails

On 8th September Vernon Gonsalves, one of the 16 undertrials in the Bhima Koregaon case lodged in the *anda* cell of Taloja Central Jail, was diagnosed with dengue and likely pneumonia. Gonsalves age 65, had been suffering from fever since 30th August, but it took an appeal from his lawyer and the intervention of the Court for the Taloja Jail authorities to shift him to JJ Hospital for treatment. The fact that he was immediately put on oxygen support at the hospital, points to the apathy of the Jail authorities regarding the health of prisoners lodged in their custody.

The incident marked the two month anniversary of the Special Court rejecting Gautam Navlakha's petition for a mosquito net. On 20th May the jail authorities had confiscated the mosquito nets of some inmates housed in the *anda* cell. Sagar Gorkhe and several others had gone on hunger strike expressing apprehensions about contracting malaria and dengue as Taloja is infested by mosquitos. The abysmal jail facilities and hostility of jail staff added to these fears which have all come true.

Vernon Gonsalves' present health condition and delayed hospitalisation underlines the vindictive intent of the jail authorities, the NIA and the Special courts towards the Bhima Koregaon accused. The fact that while the Court set aside Gautam Navlakha's plea for restitution of his

mosquito net, that the Jail authorities did not oppose the Court granting the Antilia terror case accused ex-policeman Sunil Mane permission to use a mosquito net, further underlines the active bias against political prisoners. The pattern of medical negligence, a facet of state oppression against political prisoners is all too familiar: Eg Siddique Kappan journalist, UAPA accused was shifted to AIIMS and diagnosed with Covid, 5 days after falling ill, following orders from the Supreme Court. The Solicitor General and Mathura Jail authorities had vehemently opposed bail despite 50 confirmed Covid cases in the over-crowded jail where Kappan was lodged.

The NIA has consistently opposed bail, including medical and temporary bail, on the grounds that the UAPA charges against the Bhima Koregaon accused are very grave, and the court has accepted this logic (most recently in the rejection of Gautam Navlakha's bail petition on 5th September on the same grounds), despite the case not having come to trial more than four years after the first arrests. The denial of bail, coupled with the negligence of the jail staff and paucity of health and sanitation facilities, means that the incarceration of the Bhima Koregaon accused has taken on a murderous turn. Without a trial in sight, the anxiety of an endless wait, the impossibility of bail, Stan

Swamy's death and Varavara Rao's debilitating health, the incarceration itself has become a punishment.

The fear is real. Previous fatalities like the death of Stan Swamy and more recently of Pandu Narote, a tribal agricultural worker convicted in 2017 under UAPA, who died of swine-flu on 25th August in Nagpur Hospital tell an appallingly familiar story of delayed treatment, not informing the lawyer and family, under-equipped hospital. Political prisoners' right to life, whether as an undertrial when yet not proven guilty or as a convict serving his sentence as per law, is almost non-existent.

Three RTIs by PUDR to Taloja Jail authorities asking for information on the number of deaths in Taloja, health and sanitation, medical infrastructure, all within the ambit of the Maharashtra Jail Hospitals Manual, have received no reply. In this context, though Vernon and the others have been forced to go to Court to get medical attention, paradoxically the cases have brought to light the despicable lack of medical facilities for prisoners. One wonders about the unknown many with no access to the courts who have suffered, even died for want of medical aid.

PUDR demands:

1. The release of all undertrials in the Bhima Koregaon case
2. Prosecution of Ex-Taloja Superintendent Kurlekar, responsible for Stan Swamy's death

- | | | |
|--|--|---|
| <p>3. An inquiry into medical negligence by the Jail staff.</p> <p>4. Providing proper health facilities and immediate</p> | <p>medical attention to jail inmates.</p> <p>5. Decongestion of Taloja Jail</p> <p>6. Protecting the rights of political</p> | <p>prisoners</p> <p>Deepika Tandon and Shahana Bhattarcharya, Secretaries PUDR</p> <p>□</p> |
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Doshi Kaun? As evidence fades on 1984 Kanpur riots, SIT finds clues in a booklet¹

Ishita Mishra, *The Hindu*, 23rd September, 2022

The BJP government in Uttar Pradesh set up a Special Investigation Team to reopen the anti-Sikh riots cases in Kanpur, but the probe hit a dead end until the investigators chanced upon a report by human rights body PUCL. A rare inclusion in an official probe, the booklet has become the proverbial straw the SIT is clutching at, reports Ishita Mishra.

Avtar Singh turned 65 this year but his neighbours hardly know his name. He is still called by his father's name, Vishakha Singh, the man who died protecting his family and daughter's honour.

Mr. Avtar lost seven members of his family when a mob barged into his house in the Dabauli area of Kanpur on November 1, 1984, a day after former Prime Minister Indira Gandhi was killed by her two Sikh bodyguards in New Delhi.

"My father asked me, my mother, four brothers and sister to run. He took a sword and ran towards the mob to save us. My brothers and I rushed to the terrace and jumped from there but only I managed to escape, the rest were caught and killed on the spot. My mother could not run and met the same fate. When the rioters attacked my elder sister, my father beheaded her to save her dignity and then killed himself," Mr. Avtar told *The Hindu*.

He ran to a nearby building and hid there till some people came to rescue him. Mr. Avtar said he went back home in the hope of finding someone alive but could not even identify the bodies of his parents from his siblings as they were charred and dismembered.

He later moved with his three elder

brothers who lived at Gumti number 5, about 10 km from Dabauli, and started a grocery store, named after Vishakha Singh, to earn a living.

Almost 38 years since the killings, not a single accused has been convicted of the gruesome crime. Even the First Information Report (FIR) and post-mortem details of the bodies have gone missing from police records.

In February 2019, the Yogi Adityanath government set up a Special Investigation Team (SIT) to probe the cases registered at two police stations in Kanpur — Nazirabad and Bajaria. The investigating team was also asked to re-examine the FIRs in which the police had filed a final/closure report. The SIT could not find any FIRs, post-mortem reports or even names to start its probe with but a 61-page booklet published by the People's Union for Civil Liberties (PUCL) became the proverbial straw it is clutching at now.

The booklet, *Doshi Kaun*, is perhaps the only documented record, apart from the Ranganath Misra Commission inquiry report, available on the crimes and casualties of the Kanpur carnage.

No Convictions

Though the official death toll in the Kanpur riots stands at 127, residents insist the actual number was much higher. A total of 1,251 FIRs were lodged during the riots — the second highest after Delhi — for heinous crimes, including murders, dacoity and rapes.

In 2018, a Supreme Court Bench headed by former Chief Justice of India Dipak Misra directed the Uttar Pradesh government to get the anti-Sikh riot cases reinvestigated

by top officials from the judiciary, bureaucracy and police. The apex court's order came while hearing a petition by Manjit Singh, president, Sikh Gurdwara Management Committee in Delhi, demanding justice for the forgotten victims of the Kanpur riots.

The SIT constituted by the State government is headed by former Director General of Police, Uttar Pradesh, Atul Gupta and includes former Judge Subhash Chandra Agarwal; former Additional Director, Prosecution, Yogeshwar Krishna Srivastava; and Deputy Inspector General, Balendu Bhushan Singh. Over a dozen policemen are attached to the team, which moved its base to Kanpur from different cities in the State.

Formed initially for six months, the SIT was given multiple extensions by the State government after reviewing its performance.

The SIT started its probe in the last week of May 2019. "About 95% of the crime evidence — fingerprints, DNA, weapons, forensic-related clues — had been erased as people had renovated the homes burnt during the riots. The shops ransacked by the mobs were nowhere to be found as the map of the city had changed in 35 years. We literally had nothing to start with," said Mr. Bhushan.

Months after the probe began, a Sikh community leader gave the officials a copy of *Doshi Kaun*. Published barely days after the violence in Kanpur, the book had graphic details of the killings, interviews of the victims' kin and description of the deceased as well as the accused. Even those who helped the victims found a mention

in the booklet.

Doshi Kaun enters probe

"I was given the PUCL report by my senior Atul Gupta who received the copy from a Sikh leader associated with Gurdwara Bhai Banno Sahib. I read it thoroughly and got what we needed to start the investigation," said Mr. Bhushan.

The booklet mentioned that the police remained a "mute spectator" during the riots. It also described how hospitals allegedly turned away some critically injured victims and the administration turned a blind eye to the accounts of the eyewitnesses who volunteered to identify those involved in the violence, including politicians and their supporters.

"A few leaders of the Congress in 1984 held a press conference in Delhi and criticised the contents of Doshi Kaun. They said the booklet had declared some people 'dead' who were later found to be alive. This may have happened because it was the first on-ground investigation done by anyone into the riots. There were cases where those who escaped the attacks kept hiding for several days, forcing their relatives to add their names to the list of the dead," said Sardar Mokam Singh, former president of Gurdwara Bhai Banno Sahib, one of the biggest gurdwaras in Kanpur. The gurdwara committee too had no idea about the PUCL booklet till March 2019. Soon after the SIT was formed, the shrine organised a few camps in a bid to bring together the relatives of the riot victims who had moved to other places. "A man travelled all the way from Jammu to meet us and gave us a copy of Doshi Kaun. After reading it we realised everything written in the book was true," said Mr. Mokam.

The DIG agreed with Mr. Mokam's opinion. "I can say that 99% of the things written in the booklet are true. PUCL's inquiry into Delhi riots also finds a mention in the report of Justice Ranganath Misra Commission, set up by the Congress government in 1986 to

probe the anti-Sikh riots in Delhi, Kanpur and Bokaro [Jharkhand]," said Mr. Bhushan.

The Ranganath Misra Commission report, however, had rejected the PUCL's findings in the Delhi riots cases, stating that it was not an officially authorised inquiry.

PUCL: then and now

The PUCL, a human rights organisation formed in 1976 by socialist icon Jayaprakash Narayan, has been documenting and highlighting incidents of rights violations across the country. It has worked extensively in Uttar Pradesh too, bringing out reports on heinous crimes such as the gang rape and murder of a Dalit girl in Hathras in 2020 and the killing of protesting farmers allegedly involving the son of a Union Minister in Lakhimpur Kheri last year.

The "reliance" of the SIT on Doshi Kaun has surprised even the members of PUCL. N.D. Pancholi, founder member and vice-president of the organisation, who was one of the key authors of Doshi Kaun, said neither the police nor the Uttar Pradesh government ever responded to any PUCL reports, be it the Hathras case or the Lakhimpur Kheri incident.

"In the 1970s and 80s, the RSS [Rashtriya Swayamsevak Sangh] and the BJP were part of the people's movement against the Congress government and leaders like [the late] Arun Jaitley helped the PUCL in public outreach... We are not affiliated with any political party but they often choose to cite our reports that suit their agenda," Mr. Pancholi said, citing the example of Congress leader Rahul Gandhi who mentioned the PUCL report on the Hathras case.

Mr. Pancholi told The Hindu that during the Kanpur riots they went door to door documenting the incidents of violence. "We met hundreds of people who agreed to share their trauma with us, helping the PUCL bring out a report that is now proving vital for the police in acting against the accused," said

Mr. Pancholi.

He said the situation is very different now as people hardly speak for others. They don't even speak for themselves as they want to avoid more trouble, said the PUCL founder-member.

"Intimidation from the government acts as a deterrent in conducting a thorough probe. Earlier, we never faced FIRs for writing such books but now even a tweet can land us in jail for years," said Mr. Pancholi.

Challenges for SIT

In over three years of its investigation, the SIT has shortlisted 40 cases of heinous crimes from the 1,251 FIRs lodged in 1984. It has filed closure reports in 29 cases and zeroed in on 96 accused involved in the remaining 11 cases. Among them, 23 are dead and four are bedridden due to prolonged illness. Thirty-six people are behind bars, many of them Congress workers from that time.

Mr. Bhushan, however, said the SIT conducted a thorough probe and only after ascertaining all the facts, did they arrest the accused.

The SIT head, Mr. Gupta, said they did not hesitate in making arrests in cases where there was ample evidence. "We had clear orders from the government that those who are not guilty must not be framed and those who are guilty shouldn't be spared, despite their age and political leanings."

Arrests and protests

In July this year, the SIT arrested Yogesh Sharma, 65, and Bharat Sharma, 60, on charges of murder, dacoity and arson (Section 396 and 436 of the Indian Penal Code) at Vishakha Singh's house.

The accused are brothers of Manish Sharma, a former Congress corporator from Dabauli, who alleged that the arrests were "politically motivated". "A policeman came to our house in January this year and asked several random questions, including where we were during the 1984 riots. The policeman warned me of arrest and left. My elder brothers were arrested in July.

They [police] waited all these months just to ensure the BJP got Brahmin votes in the Assembly polls that were held in February-March this year," said Mr. Sharma.

Amarjeet Singh Pammi, a Sikh leader, however, said the SIT action has helped the ruling BJP in Uttar Pradesh pacify the Sikh community, which was angry with the government over the farmers' protest and the Lakhimpur Kheri incident.

"We fought for years with the State government and the Centre for compensation and justice. Finally, we are getting it now," said Mr. Amarjeet, who is also national vice-chairman of the All India Riot Victims Relief Committee.

Political affiliations

The BJP may have sought some political mileage out of reopening the 37-year-old cases, but things have not turned out that straightforward. Many people who were with the Congress then are now with the BJP, including Raghvendra Kushwaha, a key suspect, whose brother Indrajeet Singh Kushwaha is Ghatampur block chief from the ruling party. Their uncle Shivnath Singh Kushwaha was the local Congress MLA at the time of the riots.

Mr. Raghvendra is absconding since the SIT started making arrests, said the police.

The PUCL booklet stated that Mr.

Raghvendra "brought rioters in buses from Ghatampur to Kanpur and killed many", including war hero Mahendra Singh Siddhu and 10 members of his family by throwing them from the terrace of their house.

"Raghavendra's family has shifted its loyalty to the BJP now. His brother has managed to escape arrest due to his political influence in the party," said Mr. Manish.

Kuldeep Singh Bhogal, a prominent Sikh leader from Delhi who fought for the justice of the riot victims, is enraged at Raghvendra still being at large. "Why no bulldozer has been sent to demolish Raghvendra's house," he asked.

Among those who did not get any benefit of switching loyalties to the BJP is Lalit Pal, son of 70-year-old Kailash Pal, a former Congress corporator. Mr. Kailash was arrested on July 12 on charges of burning a house and looting the assets during the riots. "There is no truth in the charges. My father is innocent," said Mr. Lalit, who is currently a BJP worker.

Chinks in the probe

Ravi Gupta, son of 68-year-old Siddh Gopal Gupta who has been arrested by the SIT on charges of robbery and arson, said the probe is faulty with "overwritten" FIRs and questionable evidence.

"The FIR showed to me has the name of our shop, Grihasthi

General Store. There is no mention of my father's involvement in the riots. We had three workers in our shop at that time. It could be them too. But the policemen arrested only my father who, during the riots, was performing the last rites of his dead mother," Mr. Ravi told The Hindu.

"The way the SIT is working, all people above 60 years of age in Kanpur should be wary as they can be randomly picked by the police. They have failed to arrest the real criminals," said Mr. Ravi.

Rohit Singh, son of Ganga Baksh Singh, another sexagenarian arrested by the SIT, said his father had helped a Sikh boy, Paramjeet Singh, who was just seven years old at the time of the riots. Mr. Ganga Baksh was arrested for killing and looting. "What is the police trying to establish? That my father killed a Sikh and saved another? Paramjeet is ready to give his testimony but the court is not allowing us to show any proof," said Mr. Rohit.

Sanjay Jha, the government counsel representing the police, says that bail pleas of the accused are being rejected by the court only because the police have concrete evidence.

¹<https://www.thehindu.com/news/cities/Delhi/doshi-kaun-as-evidence-fades-on-1984-kanpur-riots-sit-finds-clues-in-a-booklet/article65887188.ece@23Sep2022> □

Misrepresenting Subhash Chandra Bose's Philosophy¹

Ram Puniyani Sep 21, 2022

While inaugurating the statue of Netaji Subhash Bose on September 8 in New Delhi, Prime Minister Narendra Modi stated that had India embarked path shown by him, India would have progressed much better, that he has been forgotten, and now (with Modi's rule) his vision is being brought back. Modi claims his governance is showing the imprint of Netaji's policies.

To begin with what was Netaji's vision of economic growth? He was

a socialist who believed in planning as the bulwark of the nation's prosperity. After he became the president of the Indian National Congress in 1938, one of the major steps he took was to bring forth the importance of economic policies. He wrote to Jawaharlal Nehru, offering him and urging him to accept to head the proposed National Planning Committee, "Hope you will accept the chairmanship of the National Committee. You must if it is to be a

success." Nehru in turn not only accepted the offer of his close ideological friend but carried it forward in independent India.

Along these lines, Nehru set up the Planning Commission which steered the economic development of the country. It is only in 2014 with Modi came to power that this Commission was scrapped and replaced by Niti Ayog with a different set of goals. As far as economic planning was concerned it was Nehru who took forward

Bose's vision while Modi has reversed the same. Bose-Nehru saw the role of public sector institutions in the shaping of our economic prosperity, which is currently being undone.

There were differences between Bose and the major leadership of Congress on the issue related to the anti-British struggle. Bose wanted to seek an alliance of Germany-Japan, going by the dictum, 'Enemy's enemy is a friend', while the majority of Congress leadership under Gandhi wanted to launch an anti-British agitation. In a way his seeking Japanese support was disastrous. Had Germany-Japan won the Second World War, India's slavery to Japan would have been inevitable.

Bose believed in Indian pluralism.

As far as India's rich syncretic heritage is concerned, Gandhi as the greatest Hindu saw all the religions as Indian religions and drew from their moral values. Nehru in his own way upheld Ganga-Jamuni Tehjeeb (syncretic culture) and made this the central understanding in his magnum opus 'Discovery of India', which turned into a must-watch Shyam Benegal's 'Bharat Ek Khoj'.

Bose was also a strong proponent of pluralism in Indian culture. Bose in his "Free India and Her Problems" writes, "With the advent of the Mohammedans, a new synthesis was gradually worked out. Though they did not accept the religion of the Hindus, they made India their home and shared in the common social life of the people – their joys and their sorrows. Through mutual co-operation, new

art and a new culture were (sic) evolved" And also that, "Indian Mohammedans have continued to work for national freedom." In order to uphold the rights of minorities, he conceptualized a new State where "religious and cultural freedom for individuals and groups" should be guaranteed and no "state religion" would be adopted.

While the ruling Hindutva ideology sees Islam and Christianity as "foreign religions" and developed this ideology into misconceptions and hate against Muslims and Christians, the understanding of Gandhi, Nehru, Bose and most leaders of the freedom movement revolved around seeing the diverse religions as a point of welcome and strength to the nation.

Bose's actions were testimony of the same. While naming his army, he used the Urdu word "Azad Hind Fauz" rather than any Sanskritised word. So much similar to what Gandhi thought. If one goes through the who's who of Azad Hind Fauz, one will not only see the Rani Jhansi regiment with Laxmi Sehgal as its head, there were Shanwaz Khan, Sehgal and Dhillon coming from different religions. It was conscious planning on the part of the diehard, deeply secular Bose who fashioned his army along these lines.

Nehru's regard for Netaji

The government in exile that he formed was also named similarly Arzi Hukumat Azad-e-Hind. Mohammad Zaman Kiani and Shaukat Ali were his close confidantes. Col. Cyril Stracy was another such confidante.

This was the rooting of fraternity which is being totally undone. Wounds are being inflicted on our

bonding across religions, where anti-minority actions and statements are to the fore and religious minorities, not only Muslims but even Christians, are being relegated to second-class citizenship.

Despite his differences with Indian National Congress on the path to be pursued, he remained very respectful of the Quit India movement and called upon Veer Savarkar and Mohammed Ali Jinnah to participate in the movement. It is another matter that today's ruling elites' ideological mentors Savarkar and Golwalkar not only opposed the Quit India movement but also bowed to the British and helped them in their war efforts.

We are living in strange times. Those in seats of power are trying to gain legitimacy and credibility from those whose ideas and principles they have been totally opposing through their deeds in the current time. The incidental projection that Nehru did nothing to keep alive the memory of Bose is false to the core. Nehru not only adorned the lawyer's coat to fight the cases of war prisoners of Netaji's Indian National Army (INA) but his offering regular support to Bose's daughter who lived abroad should also be remembered as a token of the esteem which Nehru had for his great friend and comrade, Netaji Subhash Chandra Bose.

¹<https://www.southasiamonitor.org/open-forum/misrepresenting-subhash-chandra-boses-philosophy>

(The writer, a former IIT Bombay professor, is Chairman, Center for Study of Society and Secularism, Mumbai. Views are personal.) □

Criminals Cheated but Corrupt are Destroying Hopes

Kanva Scandal Victim Community's two-way tragedy tells the tale of woes

Kanva group had advertised lucrative interest rates for deposits and investments in various entities through extensive ads in the mainstream media across Karnataka and neighboring states.

Since those entities were authorized and regulated by both the state and central governments, hundreds of commission agents have emotionally stalked around gullible victims to lure them to

invest their whole lifetime earnings in various collective investment schemes. Several crores of funds got collected as a result, but upon maturity, the accrued amount along with both interest and benefits

was never returned implying an obvious intent of cheating. According to reports, the perpetrators of Kanva scandal are accountable for about Rs. 1500 crores in losses to around 23,000 victims community. Although most of them are in desperate need, even the principal amount is not accessible after so many years also. This denial of their hard-earned money has caused severe distress to the entire victim community as narrated in repeated petitions to the government. The spirits of victims have been demitting each soul every fortnight for the last 40 months, bequeathing only hope for their kin and ethical obligation upon the government. Most victims being senior citizens with disabilities are abused by their own families, abandoned by their relatives, and a few are homeless begging on the streets without enough medical care and food.

Karnataka government acknowledged the scam by invoking KPID Act through RD 10 GRC 2020 on 16-05-2020 and RD 78 GRC 2021 on 30-12-2021. Since the enforcement is dragged by messing with the preliminary attachments of a few low-value properties. Even with them, there are many embracing flaws due to intentional inconsistencies as detailed in the collective appeal to PR(RD), e-office 4288426 on 21 June 2022. Indeed many assets, both moveable and immovable are yet to be identified for attachment towards liabilities. In other words, certain high-value properties are

deliberately hidden or excluded from the scope of obvious seizures. Thereby, despite more than 3 years of invoking the provisos of the KPID act, serious enforcement activity is yet to even commence.

Similarly, the fact that the prosecution is yet to culminate in the first conviction after three years reveals its apathy. CID's convenience in confining investigation scope to only a few perpetrators is preposterous because net recovery from them would be utterly inadequate as detailed in the collective appeal to DIG (CID). Perhaps many apparent perpetrators are purposely not probed to evade recovery against them. This breach has conducted a lavish lifestyle to all of the accused by outraging the victim community. Such insensitivity to the sufferings of the victim community implies severe indisposition to enforce the law against the whole perpetrator gang. Regardless of these injustices, the most serious issue is the suppression of offenses against the state as reported in the statutory inquiry. Therefore, the wider public's interest is significantly compromised.

There is a collective failure of all departments to apprehend the perpetrators and enforce recovery, particularly state cooperation, transportation, home, and revenue departments as well as the RBI, ED, SEBI, MCA, Finance, and cooperation of the center. Even though the honorable high court commented on the serious lapses and ordered to pursue recovery for returning the victim community's

money quickly, competent authority

does not appear to be diligent in complying. Since 1995, 42 private entities were incorporated, and several dozens of public sector bank accounts have been abused to commit the Kanva scandal. Only one entity among them, Souhrada Co-operative was permitted by Karnataka Government, while the rest were permitted by the Government of India. Karnataka Government has recognized this organized crime by declaring all of these entities to be scandalous through a gazette proclamation K-GO: RD 10 GRC 2020 on 16 May 2020 and K-GO: RD 78 GRC 2021 on 30 Dec 2021. Yet the Government of India has not even started a preliminary inquiry, they have instead allowed the same perpetrator gang to incorporate fresh entities in 2021 also to allow emblaze the booty and hunch for trapping some more gullible victims.

Aside from all the afore derelictions, though the statute stipulates to initiate claims processing within 30 days from the day of appointing competent authority, it's unfortunate that there is no foresight to even begin after 30 months. This mysterious delay is perpetrating huge frustration to the victim community and ruining recovery hopes because many sorts of criminals are exploiting this illegal gap to intrude on a plethora of fake, false, and fraudulent claims. □

Ten Reasons Why the NRC Exercise is both Illegal and Unconstitutional¹

Mohammad Wasim · September 10, 2022, The Leaflet

On September 7, the Supreme Court listed for hearing on November 1 the petitions dealing with, among other things, the exercise of creation of the National Register of Citizens in Assam in line with the Citizenship (Registration of Citizens and Issue of National Identity Card Rules) 2003. However, the legality and constitutionality of both the Register and the Rules are suspect.

IT is important to mention at the outset that the grounds of illegality and unconstitutionality mentioned herein are with respect specifically

to National Register of Indian Citizens ('NRC') alone, and does not consider the combined effect of the Citizenship (Amendment) Act

('CAA') and the NRC, which further aggravates the illegality and unconstitutionality of both.

What is NRC under the citizenship law of the country?

In India, citizenship is solely governed by Part II of the Constitution and the Citizenship Act, 1955.

- In 2003, the Citizenship Act was amended and Section 14A was instituted in the Act. It provided for a National Register of Indian Citizens, commonly known as NRC. Section 14A stipulates that there should be compulsory registration of Indian citizens, and the registered citizens should be issued a National Identity Card.
- To fulfil the mandate of this section, the the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules were framed in 2003, providing for the method and procedure for preparation of the NRC, and for resolution of dispute arising in the process.
- The Rules, prima facie, deal exclusively with the preparation of the NRC, and not the criteria, conditions or the procedure for the determination, acquisition or termination of citizenship, since in that case, the Rules will have to fulfil the requirements of the relevant provisions of the Citizenship Act.
- Yet these NRC-related Rules go beyond their mandate as well as against the provision of the parent Act, and say that persons who do not find their names in the NRC shall be treated as doubtful citizens and maybe referred to Foreigners Tribunal by the concerned District Magistrate, through a provision in an entirely separate Foreigners (Tribunal) Order, 1964 under the

separate Foreigners Act, 1946. Para 8 of the Schedule to the 2003 Citizenship Rules says that those who do not find their names in the NRC or others who are aggrieved by the final order of registering authority can appeal to the Foreigners Tribunal, and a concomitant provision was inserted in the Foreigners (Tribunal) Order in the form of Section 2(1B). If the person does not appeal, then the District Magistrate can refer the cases of doubtful citizens to the Foreigners Tribunal for its opinion whether such persons are foreigners or not within the meaning of the Foreigners Act.

Thus, the procedure that is followed in case of the doubtful citizens is as if the persons are prima facie foreigners, and by implication the provisions of the Foreigners Act is applicable on them.

What are the grounds of the NRC's illegality and unconstitutionality?

1. The NRC, which is provided for under Rule 4 of the 2003 Rules, is ultra vires Section 10 of the Citizenship Act. This section provides for the criteria, conditions and procedure for deprivation of citizenship. The 2003 Rules fulfil neither the criteria and conditions for deprivation of citizenship nor the procedure laid down in section 10.
2. The 2003 Rules are purportedly made under section 14A of the Citizenship Act. But section 14A provides only for the registration of citizens. Hence, any consequence in the nature of deprivation of citizenship has to meet the requirements of section 10 of the Act, which the 2003 Rules do not. Hence, these Rules and the NRC are beyond the scope of section 14A, and thus without any

legal basis.

3. There exists no law that requires a citizen to get registered in order to be considered a citizen; hence, citizenship, being 'a right to other rights' including fundamental rights, cannot be taken away in the absence of any legal provisions requiring registration as the condition of citizenship. To that extent, the 2003 Rules and the NRC are manifestly arbitrary and unconstitutional.
4. The 2003 Rules amount to retrospective delegated legislation, in that they apply to persons born before December 10, 2003, when these Rules came into force. It is a well-established principle that a vested right cannot be taken away by a retrospective legislation, more so when the right is as fundamental as that of citizenship. Hence, the 2003 Rules and the NRC is bad in law. It is to be noted in this context that in the case of Assam, the date of March 24, 1971 reached at in 1985 through the Assam Accord does not amount to retrospective legislation because to deal with the problem of illegal migration, the Parliament had already passed the Imigrants (Expulsion from Assa) Act, 1950, following which the first Assam-specific exercise of NRC was undertaken. The Assam Accord effectively aimed at enforcing what was an existing legislative object, under a legislative provision, with the aforesaid date of March 24, 1971 being reached at by consensus.
5. Deprivation of citizenship, in case a person's name does not appear in NRC, shall have

grave criminal and civil consequences. It is to be noted that a person whose name does not appear in the NRC shall be deemed to be a foreigner. Such a consequence violates the well-established principle of non-retrospective application of criminal laws, as also enshrined in Article 20 of the Constitution. Hence, the 2003 Rules and the NRC are unconstitutional.

6. The Foreigners Act is for foreigners, and in the presence of the Citizenship Act, which provides for the criteria, conditions and procedure for deprivation of citizenship, the application of the Foreigners Act to those who do not find their names in the NRC is bad in law and contrary to harmonious construction of legislations.
7. The Foreigners Act puts the burden of proof of citizenship on an individual, which violates the time-honoured principle of placing the burden of proof on the State in criminal matters or on the petitioner/complainant generally; more so when it concerns citizenship, which is the gateway to a bundle of rights, including certain fundamental rights.
8. In this context, it is important to note that the right of a sovereign State to exclude or expel foreigners at will, which indeed a sovereign State may

rightly claim, is distinct from the preceding question of determination of the very citizenship, which ought to be a circumspect and conscientious exercise requiring the highest standards of proof to be met by a State.

9. The Foreigners Act, a British era legislation, is not in consonance with the idea of citizenship of a nation-State that recognizes popular sovereignty, where the status of a national is not merely that of a 'subject' but of a 'citizen' who is invested with an array of rights, including certain fundamental rights, the violation of which is manifestly unconstitutional.
10. Presuming that the Foreigners Act can be validly applied to those who do not find their names in the NRC, the principle of establishing a prima facie case against a foreigner under the Foreigners Act is violated by the current NRC provisions. It is because the NRC is to be carried out for the whole population, and when all those who do not find their names in NRC are presumed as foreigners in a blanket manner, the possibility of establishing a prima facie case by the State against particular individuals as required under the Foreigners Act is precluded. The inappropriateness of the

evidentiary value of such a large scale exercise in a legal proceeding is recognised in Section 15 of the Census Act, 1948, which nullifies the evidentiary value of data collected during the Census exercise except for wrongs committed under the Act itself.

11. Maintenance of a national register with provision for a single identity card has a detrimental impact on the right to privacy of an individual. Various dimensions of such an impact have been neither comprehended adequately nor examined through any robust public discourse. Moreover, such a provision is more amenable to a totalitarian State, and is against the spirit of a democratic Constitution. Hence, the 2003 Rules and the NRC are potentially violative of the right to privacy guaranteed under the Constitution.

Hence, the only proper course to prepare any list of Indian citizens is to promulgate a law that specifically requires certain documents to prove citizenship. The law must be published widely, and should provide an adequate timeframe for compliance, and place the burden of sanctions for not complying.

¹https://theleaflet.in/ten-reasons-why-the-nrc-exercise-is-both-illegal-and-unconstitutional/?utm_campaign=10-september-2022&utm_medium=email&utm_source=acumbamail@12Sep2022 □

Nirmal Ghoshal is No More

Veteran Socialist leader, activist and one of the founding member of Howrah PUCL, Shri Nirmal Ghoshal passed away on 24th September 2022 at the age of 85. WestBengal state PUCL on Friday mourned the death paying tribute to Sri Ghoshal. PUCL expresses its deepest condolences to his family members

Amlan Bhattacharjee, Convener, West Bengal PUCL

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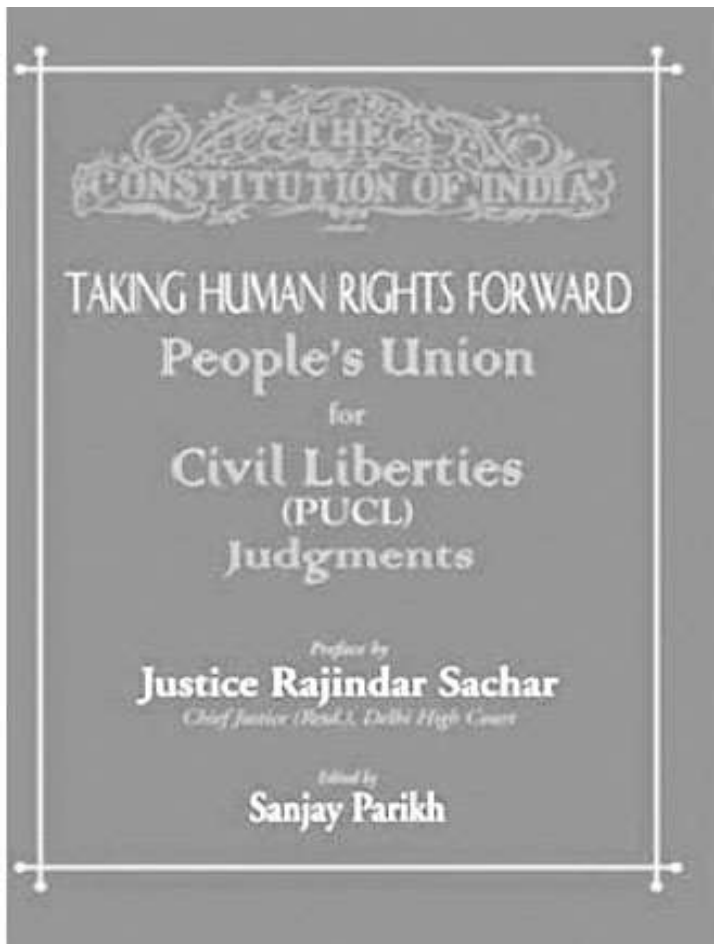
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