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Inaugural Address at the Bihar PUCL Convention:

Unprecedented Threat to Our Democracy and Human Rights
Prabhakar Sinha, Former President, PUCL National

Both our democracy and human rights have been under attack in the past also. Indira Gandhi had declared an emergency in 1975 to save her throne under the pretext of doing it in the national interest. The Congress Party had also been guilty of enacting a series of black laws and misusing them to suppress dissent. They have also been guilty of extrajudicial killings in various ways. Still, the danger to democracy and human rights was nothing compared to the danger posed by Modi. Indira Gandhi belonged to the party, which had given the vision of independent India through a constitution, which guarantees fundamental rights, equality to all citizens, unity in diversity, secularism, an independent judiciary and the rule of law. The constitution also provides for setting up autonomous bodies like the Election Commission and other such bodies. As a Congress member, Indira Gandhi had imbibed the spirit of the constitution though she did not have the integrity and character to live up to it if a price had to be paid. Thus, the lust for power led her to clamp the emergency in 1975, but the feeling of guilt and shame led her to order the free and fair election of 1977, which was held during the emergency and which led to her rout. The subsequent Congress governments often acted against the letter and spirit of the constitution, but remained defensive and tried to justify their misdeeds by misinterpreting the constitution. They violated human rights, but denied it like a guilty man denies his guilt without conviction.

With Modi, all has changed. He represents the original stand of the RSS vociferously articulated during 1930s-40s and also after independence. They summarily rejected the constitution on the ground that it contained nothing from our glorious past. They particularly mentioned the Manusmriti, which, they claimed, was admired by many scholars, forgetting that it was admired as an ancient text written centuries ago, and not something of relevance to the 20th century. Their obsession with India's past made them blind to the fact that democracy, rights of citizens against the king, equality of individuals (including that of men and women) and the rule of law were unknown to ancient India and the ancient world. A modern democratic constitution could not be framed on the basis of political and social systems prevalent in ancient India, as they were incompatible with democracy and the principle of equal dignity of the individual.

The RSS' supremo M. S. Golwarkar had been asserting (though wrongly) that India was a Hindu Rashtra in which the minorities had to live 'wholly subordinated to the Hindu Nation'. He greatly admired Hitler 'for purging the Semitic races' (meaning the Jews) and wrote that Hindustan had a good lesson to learn for use here meaning that India

should do to the Muslims what Hitler had done to the Jews : persecute them, organise State sponsored riots and even kill them en mass. The comparison of Muslims with Jews was absolutely wrong. The Muslims of India belong to the same race as the Hindus but had adopted a different faith. But even if they had belonged to a different race India would have belonged as much to them as the Hindus. Mahatma Gandhi had made this very clear in the issue of The Harijan of 9 August, 1942. He wrote:

"Hindusthan belongs to all those who are born and bred here and who have no other country to look to. Therefore, it belongs to Parsis, the Israelis, to Indian Christians, Muslims, and other non-Hindus as much as to Hindus. Free India will be no Hindu raj: it will be Indian raj based not on the majority of any religious sect or community, but on the representatives of the whole people without any distinction of religion."

This has been unacceptable to the RSS from the beginning. It led to the coldblood murder of Mahatma Gandhi, and with the BJP in power, it has been taken up as their unfinished agenda. But for it, could anyone imagine five thousand men assembling at Jantar Mantar in broad daylight and chanting: **When Mulle Kaate Jayenge, Tab Ram Ram Chillayenge?** Or an open call

by the so called Dharm Sansad to commit genocide of Muslims?

Persecution of Muslims in one form or the other has become the policy of the state since Modi's rise to power. To perceive the state sponsored persecution of Muslim as communal strife is a dangerous misperception

When more than 14% of the citizens of a country are subjected to systematic persecution with a sinister goal by the government of a country, it becomes the topmost and the most urgent human rights issue.

Similarly, when the institutions created to protect rights of the people are subverted, the rights of the people exist only on paper. The independence of the judiciary has been greatly undermined, the National Human Rights Commission has been reduced to a body, which protects the violators of human rights, the Information Commissions have been reduced to bodies which help the government by refusing to give inconvenient information and the CBI and other agencies of the Union Government have been playing the role of the persecutors of the power that be. Fighting for restoring their independence to enable them to play their legitimate role itself has become a human rights issue. The conspiracy hatched by the government to implicate honest and committed

champions of human rights (as in the Elgar Parishad case) in false cases executed by the police and the NIA are grave violations of human rights and need to be taken up with all the might we have.

The role of the media causes grave concern. When Indira Gandhi imposed censorship on the media, she succeeded in suppressing information but not influencing public opinion. The people did not believe the press or the government controlled All India Radio. Now, the private TV channels owned by the cronies of Modi have become his mouthpiece and a means of poisoning the atmosphere by spewing venom against the Muslims and the opposition. This role of the media presents a dilemma. Demanding a curb on the freedom of the media is unprincipled and may prove suicidal in the long run, while reconciling to the irreparable damage they continue to do to the national integration and interest present a choice between the Devil and the deep sea.

The other issues and challenges persist and have to be pursued, but if agencies of the state tasked to protect our rights and save us from the persecution of the state are not made accountable, we will continue to suffer and sacrifice without furthering our cause and achieving our goal. □

India's President Droupadi Murmu and 'An Unbroken History of Broken Promises'¹ Sudha Bharadwaj

The reference in the headline is to the passionate essay by the late Dr BD Sharma of the same title. The continuing criminalisation of the Adivasi peoples is seen even in the 75th year of our Independence.

In the past couple of weeks, several very important events have taken place that will deeply affect the Adivasi people of our country.

Firstly, the highest office of our land, that of the President of India will now be occupied by Smt

Draupadi Murmu, an Adivasi lady hailing from the Mayurbhanj district of Odisha. As a Governor of Jharkhand, in the year 2017, Smt Murmu had shown her empathy for Adivasi concerns when she returned amendments to the Chota Nagpur Tenancy Act and Santhal Parganas Tenancy Act, passed by the BJP Government of Shri Raghubar Das, to the State Legislature, to reconsider the impact upon tribal interests, thus

resonating with the widespread protests in the State.

One Indian President's Words May Inform Another: As a President she will be faced with even greater challenges and greater expectations. Perhaps, she could take heed of what another illustrious President before her, in fact the first Dalit President Dr KR Narayanan had said on the eve of Republic Day, 2001, two decades ago:

“The mining that is taking place in the forest areas are threatening the livelihood and the survival of many tribes. It is through enlightened developmental policies that we can resolve such dilemmas of development. One precondition for the success of developmental projects in our extensive tribal areas is that we should take into confidence the tribals and their representatives, explain the benefits of the projects to them, and consult them in regard to the protection of their livelihood and their unique cultures. When they have to be displaced the resettlement schemes should be discussed with them and implemented with sincerity. This could avoid many critical situations, and we will be able to carry the tribals with us. We have laws that are enlightened and which prohibit the transfer of the tribal lands to non-tribals, private bodies and corporations. The Supreme Court has upheld these provisions through its judgments. We cannot ignore the social commitments enshrined in our Constitution. In eastern India, the exploitation of minerals like bauxite and iron ore are causing destruction of forests and sources of water. While the nation must benefit from the exploitation of these mineral resources, we will have also to take into consideration questions of environmental protection and the rights of tribals.

Let it not be said by future generations that the Indian Republic has been built on the destruction of the green earth and the innocent tribals who have been living there for centuries.”

Droupadi Murmu's First Challenge — Tribal Villagers Against Mining Project: Indeed, the first challenge to Smt Murmu

might be sooner than later, when the amended Forest Clearance Rules, 2022 are laid before the Monsoon Session of the Parliament. These Rules have not only diluted the provisions for recognising forest rights before granting Forest Clearance, but have done away with the earlier mandatory grant of consent by the Gram Sabha. These amendments, though they cannot have retrospective force, come conveniently at a time, when in the erstwhile “no-go area” of the Hansdeo Arand Forest in Chhattisgarh, a decade long protest of tribal villagers against Adani's mining for the Rajasthan Rajya Vidyut Nigam Ltd is reaching a head.

The widespread solidarity this movement has garnered across Chhattisgarh and in fact nationally, has forced the Chhattisgarh Government to issue orders in May 2022 halting the felling of trees for the second phase of mining for the Parsa East Kete Basan coal mine. Earlier in October 2021, the Governor of Chhattisgarh—Smt Anusuya Uikey—also an Adivasi lady, had assured hundreds of tribal villagers, who had undertaken a 300 km long *padyatra* from Village Fatehpur in the Sarguja division of Chhattisgarh to the capital Raipur, that she would discuss the issues of the lack of *gram sabha* consent and the use of fake *gram sabha* resolutions to facilitate clearances for mining with the Chief Minister, Minister for Coal & Mines, and the Prime Minister.

Acquittal of 121 Tribals After 5 Years in Prison: The second story to hit the headlines was the acquittal of 121 tribals by the Special Court (NIA/ Scheduled Offences), Revenue District Sukma and Bijapur, South Dantewada, Bastar on 15 July 2022. They were released after around 5 years of incarceration, allegedly for the act of attacking security forces and killing 25 jawans at Burkapal, Police Station Chintagupha, district Sukma. Indeed, the Learned Judge

had no choice—there was no evidence.

While this may have come as a shock to many people, for any person familiar with the lives of Adivasi people in the Left-Wing-Extremism affected areas, it represents more the norm than the exception.

Whenever any incident of Maoist violence occurs, an FIR is lodged against several hundred unknown persons. And the next time a 'Search and Cordon Operation' is carried out in the concerned area by hundreds of security forces, usually people are rounded up indiscriminately and arrested under this FIR.

Common sense tells us that it is unlikely that those who are arrested in this manner are Maoists, rather they are more likely to be those hapless individuals who have been unable to flee into the forests at the news of a search operation.

Since the FIR is usually registered under very serious offences—as in this case, under the Unlawful Activities Prevention Act—the Chhattisgarh Special Public Security Act, the Arms Act, the Explosives Act, and charges of waging war against the Indian State, there is no question of bail.

Tribals Get Acquitted, But at What Cost?: The Adivasis in this case were lucky to have advocates such as Advocate Beecham Pondi, P Bheema and Bela Bhatia, otherwise they are generally left to the mercies of our flawed and unaccountable legal aid system. All the witnesses are usually policemen, jawans of the security force or Special Police Officers (Adivasi youth often drawn from the ranks of surrendered Maoists). They rarely answer summons promptly, delaying trials inordinately.

Eventually acquittal takes place, but at what cost? Speaking to local media persons at Sukma, the recently released tribals spoke with great pain of the loved ones they had lost during their incarceration. One of the accused Muria

Adivasi—Dodi Manglu s/o late Bakka, aged 42 years r/o Patelpara, PS Jagargunda, district Sukma—could not be released, he had died in judicial custody on 02 October 2021.

The Jagdalpur Legal Aid Group, a group of lawyers who worked and researched in Bastar for around five years from 2013 onwards, analysed court records from 2005 to 2012 in the Dantewada Sessions Court and found a rate of acquittal ranging from 91.5% to 98.7% with the average rate of acquittal for Bastar being 95.7%.

The average number of accused per case was approximately seven per case (6.97). The number of accused in a case were steadily increasing over the years. The number of cases with one or two accused reduced from 50% in 2005 to 30% in 2012, while the cases with 10 or more accused consistently rose. In Bhairamgarh police station there were two cases with 96 and 97 accused at the time of their study.

Bastar Jails Overcrowded with "Naxals": JagLAG found, that in 2013, the prisons of Bastar were considerably more overcrowded than the average in Chhattisgarh or India. While Jagdalpur Central Jail had an occupancy rate of 227% compared to the national average of 118.5%, the Kanker Jail had one

of 428%. While Jagdalpur Central Jail had 62% undertrials among the incarcerated, Kanker District Jail had 97.5% and Dantewada District Jail had 99.5% undertrials. JagLAG also found that while across India, the largest proportion of undertrial prisoners, on an average, spend under one year in prison; more than half the undertrials in Dantewada and Jagdalpur jails spent 1-5 years waiting for their trial to complete.

The reason for this was, that the courts were not granting bail to these prisoners (who of course would usually be in "Naxal cases" with "grave allegations") or were taking longer to dispose of the cases. Unfortunately, the Jagdalpur Legal Aid Group was systematically harassed and hounded out of Bastar till it was eventually disbanded.

Murmu's Long Road Ahead to Secure Rights of Tribals: But by far, the most chilling event has been the judgment of the Hon'ble Apex Court in 'Himanshu Kumar & Ors. Vs State of Chhattisgarh' on 14.07.2022, whereby, not only has the Petitioner No 1 been fined, but the State of Chhattisgarh/ CBI have been explicitly permitted to charge him with perjury and criminal conspiracy.

It appears that the Court believes that he has been unable to prove his case against the State. In this

Petition, Himanshu Kumar and the family members of 7 deceased adivasis had approached the Supreme Court to set up a Special Investigation Team to probe into the events of 1st October 2009 in Village Gompad, district Dantewada, during which these adivasis had been killed.

Only recently, in 2019, the VK Agrawal Judicial Enquiry Commission has indicted the security forces for killing 17 villagers including 7 minors in the village of Sarkeguda, district Bijapur, Chhattisgarh in the year 2012. Of course, so far, no action has been taken against the officers concerned.

In a situation where ordinary Adivasi villagers can so easily be incarcerated or even encountered as a Maoist, the mere thought that they should be cautious even to approach the highest Constitutional Court of this land in the uphill fight for justice, speaks volumes.

Smt Draupadi Murmu has difficult tasks cut out for her if she is to protect rights and ensure justice to the Adivasi people.

<https://www.thequint.com/voices/opinion/in-dia-has-droupadi-murmu-as-president-and-unbroken-history-of-broken-promises-chhattisgarh-tribals-maoist-violence#read-more @ 24Jul2022>

Courtesy: The Quint, 23rd July, 2022
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How Shall We Defend our Democracy?

Mahi Pal Singh

This August in 2022 we are going to celebrate the 75th anniversary of our Independence and pay our homage to the freedom fighters who spent their lives in jails and even laid down their lives so that the people of their country may breathe in an independent country and live a dignified life. This is also an occasion for stock taking whether the rulers of Independent India have fulfilled the dreams of our forefathers and lived upto the expectations of We, the People of India and how the four pillars of our

democracy have worked in that direction, or the State has failed the people of the country.

A lot can be said about the Legislature and the Executive wings of the State. They are elected, directly or indirectly, by the people. Obviously, the people have great expectations from them. They are also accountable to the people of the country for their acts of omission or commission. The experience of the last 75 years shows that most of their hopes and aspirations have been belied by

them. Once elected for five years, the legislators by and large do not care for those who elected them. A large number of them do not even show their faces in their constituencies before the next elections are declared. They remain busy in amassing large sums of black money through illegal means. In order to come to power or to remain in power, political parties indulge in all kinds of immoral acts and the legislators get sold or purchased like commodities in the hands of power

hungry politicians. Anti-defection laws passed by the Parliament fail to deter them from doing so. Once they acquire power and money, they find it easy to get re-elected through the use of ill-gotten money and muscle power.

The Executive wing of the State, which is supposed to be accountable to the legislatures, hardly cares for them because the people in the government are leaders of the parties which have majority in the legislatures. The higher the number of the legislators of the ruling party in the house, more the chances of the head of the government turning into an autocrat. This exactly is happening in our country today where the Prime Minister at the centre and some Chief Ministers in the States, like Yogi Adityanath in UP, act like autocrats. They have become even greater autocrats by adopting the majoritarian agenda of Hindutva supported by a large number of religious fundamentalists in the majority community. In order to remain in power and enjoy the support of the majority community during the elections, they have to keep the pot of religious polarisation boiling all the time even if it means dividing the society. For that they allow the hate mongers to issue statements inimical to the minority community and also spread communal riots after which members of the minority community are further persecuted by the state police leading into further division in society as the suffering community is bound to alienate further.

The media, which is the fourth pillar of democracy, seems to have fallen prostrate completely, with some honourable exceptions, at the feet of the ruling party and keeps singing their paeans 24*7 for fear or favour, perhaps more for fear as those speaking against the ruling party or its leader mostly find themselves hounded by the police/ED/CBI/IT or other officers of the State.

The only hope of saving the

democracy, fundamental rights, civil liberties of the people, the rule of law and the secular character of our country was from the higher judiciary of the country which is the custodian of the Constitution of the country. There is no doubt that whatever freedom and democracy has remained protected is because of our judiciary. But it seems that it has not remained true to its character and reputation in some judgements. People like Muhammed Zubair, the Alt News co-founder, who is being hounded by police in several cases filed against him, at least three by known Hindutva supporters, is just one example. A Delhi court granted him bail in one case relating to his alleged objectionable tweet in 2018 observing that “the voice of dissent is necessary for a healthy democracy, on 15.7.2022 but he will still remain in jail in UP as there are six FIRs against him in Sitapur, Lakhimpur Kheri, Ghaziabad, Muzaffarnagar and Hathras districts in UP for the same tweet. When he is out in one case, he is arrested in another. Obviously, the forces behind these FIRs do not want him to go free. And of course, they want to keep the hate mongers like Nupur Sharma, a former spokesperson of the ruling BJP, and other leaders of the BJP like Kapil Mishra, Anurag Thakur, Parvesh Verma and Abhay Verma free, and they will remain free. In all these cases, the judiciary has not shown its commitment as a defender of the rule of law, protector of the civil liberties of the people and the custodian of the Constitution of India. It always had the power to *suo motu* take cognisance of these matters/ violations and punish the guilty. But it failed to do so. In the matter of Nupur Sharma the Judges did make scathing comments against her. But these comments were made orally and, as some people have opined, not at the right time. So they only invited adverse comments from some motivated people.

In the Zakia Jafri case relating to the 2002 riots, Teesta Setalvad, the rights activist who pursued 2002 riots case against Modi, and R.B. Sreekumar, and Sanjeev Bhatt, two IPS officers from Gujarat, (Sanjeev Bhatt – already in jail for another matter) at that time, have been sent to jail on the suggestion of the Supreme Court. In another case, the Supreme Court has imposed a fine of Rs. 5 lakhs on Himanshu Kumar, a Gandhian and rights activist, for seeking a CBI probe into alleged torture and extra-judicial killings of 17 people by the Chhattisgarh Police and Central forces during the anti-Maoist operations in Dantewada in 2009. “The stiff penalty on the petitioner also echoes the stance of the state in case after case – of labelling or ascribing ulterior motives to all those who raise questions, and demand answers, justice, or redress,” as an editorial in The Indian Express says.

If the court had acted in right earnest in all these matters, it would have immensely increased the faith of the people in the judiciary and also resulted in the punishment to hate mongers and dividers of our secular society and also encouraged those who help the poor and the destitute in seeking justice.

But the greatest defenders of our democracy are the people themselves. They must remain vigilant, support the Constitutional rule in the country and also punish in a legal manner the wrong doers and the hate-mongers. They must understand that the whole edifice of our democracy stands not so much on the four pillars of the Legislature, the Executive, the Judiciary and the Press or Media but on their own shoulders. If they buckle down, the other pillars will not be able to hold the weight of the falling structure. But if they stand upright, even weaker pillars will be able to support it. But it is they who will have to bear the main burden to keep it standing stronger. □

Free Journalist Mohammad Zubair Now!

We, the undersigned, welcome the order of the Delhi High Court, issuing notice to the Delhi police, on a petition filed on behalf of incarcerated journalist Mohammed Zubair, co-founder of AltNews. The petition challenged the legality and propriety of the four-day police remand and the seizure of his electronic devices, as it has been argued that all proceedings in FIR 0172/22 Special Cell, Thana, Delhi Police, are malafide. The Delhi police have been asked by the court to file their response in four weeks.

We are also hopeful that the proceedings before the Metropolitan magistrate on 2nd July will restore the constitutional right to liberty of Mohammed Zubair. The illegal arrest of Mr. Zubair happened on June 27, 2022, by the Delhi Police for allegedly hurting religious sentiments and promoting enmity over a tweet from 2018. The IPC Sections included 153(a) (Promoting enmity between different groups on grounds of religion, race, place of birth, residence) and 295(a) (deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs).

As a part of AltNews which runs a factchecking website it was the job of Mr. Mohammad Zubair to verify news from across the political spectrum on social media. We believe that Mr. Zubair is being targeted maliciously for performing the role which a media person is expected to perform, namely scrupulous fact checking as well as exposing fake news and political disinformation. Mr. Zubair's courageous, conscientious and exemplary work as a journalist upheld the highest standards of the media and his work burnished India's global image as a democracy in which truth could be told to power.

According to the Delhi Police, the

reason for his arrest is a 2018 tweet wherein Mr Zubair posted a screenshot of a 1983 film by Hrishikesh Mukherjee. However, Mr. Pratik Sinha, the co-founder of AltNews, tweeted that Mr. Zubair was called for questioning by the Delhi police in another case for which he already had protection from the court; but arrested without any notice. The 1983 tweet is simply a pretext of seizing Mr. Zubair's phone and laptop as investigation of the offence is barred by limitation. The seizure of the electronic devices is illegal as they are irrelevant to the FIR. Apart from violating his fundamental right to privacy his journalistic integrity and confidentiality of information and sources, we apprehend that the police may tamper with the seized material and build a false conspiracy to implicate him and other members of civil society as was done with some of the Bhima Koregaon accused by planting material on their laptops.

It is also suspicious that the account from which the complaint came was an anonymous Twitter handle @balajikijaiin by the name of Hanuman Bhakt. The account came into being on October 2021, had only one follower, and this complaint was his first tweet. Although in court during Zubair's remand hearing on Tuesday, the police had submitted that the person running the Twitter account was "not anonymous". However, according to news reports the Delhi police sent a notice under Section 91 of CrPC to Twitter, India, in which the investigation officer informed the website about the case and they've asked them to provide IP log details of the anonymous Twitter handle @balajikijaiin, registration details of the account, mobile number, connected email ID, and device used by the user. This exposes the malafide of the police which is now trying to trace the complainant after

using his tweet as material for an FIR against Zubair.

Apart from the above illegalities, after Zubair's arrest his lawyers were not given a copy of the FIR despite repeated requests. They were given a copy only after the police remand order late into the night of the 27th of June. Zubair was taken around with policemen without name tags; these are all violations of the DK Basu guidelines of Arrest and Detention issued by the Supreme Court of India.

We are also perplexed that remand was granted to the police for such a frivolous case. Under the Constitutional scheme, the Magistrate is not expected to function as a glorified post office, blindly accepting the remand report and ordering remand. The Judicial Magistrate should have ensured that the mandate of Sec 41A CrPC is followed as well as the guidelines laid down in Arnesh Kumar v State of Bihar to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. By failing to exercising his judicial role, the Judicial Magistrate ends up empowering the arbitrary state to flout constitutional safeguards with impunity.

We demand that Delhi Police immediately release Mr. Zubair and drop all false charges against him. We also demand that the Delhi Police Commissioner take stern action against errant officials who violated the DK Basu guidelines during the arrest of Mr. Zubair. Given the illegal manner of Mr. Zubair's arrest we are also deeply concerned about Mr. Zubair's safety and prospect of torture in police custody.

It is ironic that on the same day as Mr. Zubair's arrest, India along with G7 countries, signed the '2022 Resilient Democracies Statement', wherein the Indian government

committed to “guarding the freedom, independence and diversity of civil society actors” and “protecting the freedom of expression and opinion online and offline”.

We hope that the Government of India will respect its obligations under the Indian Constitution as well as international laws which India has agreed to be bound by. India in accordance with its self-assumed obligations should also stand by the Declaration on Human Rights Defenders adopted in 1998

by the UN general Assembly, ensuring the safety of all those who are critical of the government including HRDs in India, and protect the freedom of expression and opinion of all.

We are (in alphabetical order):
Aditya Shrivastava, Advocate; **Afsar Jahan**, Advocate; **Qudsia Tabassum**, Advocate; **Aishwarya**, Bahutva Activist; **Ajit Sahi**, Independent Journalist & Indian American Muslim Council; **Aakar Patel**, Writer and Human Rights Activist ; **Aysha**, Social Activist; **Amrita Johri**, National Campaign for People's Right to Information.; **Anant Mariganti**, Independent Writer; **Anik**, Journalist; **Anjali Bhardwaj**, NCPRI

and NAPM; **Annie Raja**, National Federation of Indian Women (NFIW); **Antony PM**, Activist, Bagaicha; **Anubha Rastogi**, Advocate; **Anuradha Banerjee**, Saheli; **Anuradha Talwar**, Paschim Banga Khet Majoor Samiti; **Apar Gupta**, Executive Director, Internet Freedom Foundation; **Apeksha Priyadarshi**, Bhagat Singh Ambedkar Students Organization; **Apeksha Vora**, Independent Theatre Person and Activist; **Apoorvanand**, Academic; **Arjun Sheoran**, People's Union for Civil Liberties (PUCL); **Arundhati Dhuru**, National Alliance of People's Movements (NAPM); **Arvind Narrain**, PUCL Karnataka; **Ashim Roy**, Trade Unionist; **Ashima**, Saheli; **Ashish Ranjan**, JJSS and NAPM Bihar; **Ashok**, PUCL Gujarat; and many others. □

Press Statement on 26th June 2022:

Condemning the Arrest and making an Appeal to join the nationwide protest on Monday 27th June 2022 against the Supreme Court Judgment in the Zakia Jafri case and the Wrongful Detention and Prosecution of noted Activist and Journalist Teesta Setalvad and others, demanding their immediate release

The judgment of the Supreme Court in the case of Zakia Jafri v State of Gujarat, dismissing the petition filed by Zakia Jafri calling for an investigation into the conspiracy to hatch the events resulting in communal violence following the Godhra train burning, deepens the sense of injustice and marks a moment of profound hurt and loss as far as all those who care about constitutional values. The Supreme Court not only dismissed the idea that there was a conspiracy to commit the crimes of murder, rape and destruction of property, but instead went further and took to task those who sought to ensure justice for the communal hate crimes following the Godhra incident.

It observed that a 'coalesced effort of the disgruntled officials of the State of Gujarat along with others was to create sensation by making revelations which were false to their own knowledge.' The judgment then assailed those who used the process of law to pursue justice for those who were targeted because of their minority status for over sixteen long years as having the 'audacity' to 'question the integrity

of every functionary' and their motives were tarred as 'ulterior design'. The Court observed that 'all those involved in such abuse of process, need to be in the dock and proceeded with in accordance with law.'

The state has now used the observations made in the judgment to falsely and vindictively prosecute those who had struggled for justice even in the face of state callousness and complicity. It is truly an Orwellian situation of the lie becoming the truth, when those who fought to establish the truth of what happened in the Gujarat genocide of 2002 are being targeted.

Following the judgment on 24.06.2022, the Gujarat ATS swung into action and forcibly got into Teesta Setalvad house, assaulted her, picked her up and took her in their custody on 25.06.2022. Teesta, in her written complaint to the Santa Cruze Police Station stated "I fear seriously for my life." The FIR under which she has been detained accuses the Gujarat retired police officials ADGP R.B Sreekumar, DIG Sanjiv Bhatt and activist

Teesta Setalvad of conspiring to fabricate evidence, tutor witnesses and abuse the process of law.

The FIR casts its net very wide and makes the case that the time period of the offence ranged from 1.01.2002 to 25.06.2022. In effect every effort for justice for the victims of 2002, be it petitions filed in the High Court, Supreme Court or the Magistrates' court is sought to be criminalised. The ordinary process of criminal litigation to make the state accountable by establishing guilt of those accused of serious crimes is tarred with the criminal brush.

It seeks to deter citizens from holding the state accountable for enabling violence in future and in effect conveys that the state can do no wrong. That if you point out that the emperor has no clothes, you open yourself out to arrest and criminalisation. This is the implicit message going out to all in Indian civil society and to the public at large.

We condemn this naked and brazen attempt to silence and criminalize those who stand for constitutional values and who have struggled against very difficult odds

to try to achieve justice for the victims of 2002. We demand that this false and vindictive FIR be taken back unconditionally and Teesta Setalvad and others detained under this FIR be released immediately.

As a mark of our protest, as a way of expressing our feelings of hurt, loss and anger and to find a way to go forward, and to preserve our Constitution, we are giving a call for

an all India protest day on 27th June 2022. The protest is against the Supreme Court judgement in the Zakia Jafri case and the observations made against Teesta Setalvad, RB Sreekumar, Sanjiv Bhatt and others who fought for justice. It is also against the FIR and the illegal detention, demanding the immediate release of all those detained.

Endorsed by: V. Suresh, General

Secretary, PUCL; **Medha Patkar**, NAPM; **Apoorvanand**, Writer and Columnist; **Kumar Ketkar**, Member of Parliament; **Syeda Hameed**, Writer and Former Planning Commission Member, GOI; **Rooprekha Verma**, Former VC, Lucknow University; **Aruna Roy**, MKSS; **TM Krishna**, Musician; **Shabnam Hashmi**, Anhad; **Feroze Mithiborwala**, Bharat Bachao Andolan; **Pratibha Shinde**, Lok Sangharsh Morcha; **Arvind Narrain**, PUCL Karnataka; **Kavita Srivastava**, PUCL; **Gauhar Raza**, Poet and Activist; **Lara Jesani**, PUCL Maharashtra; **V S Krishna**, HRF; **Nikhil Dey**, MKSS □

Press Note on 27th June 2022

More than 2200 persons from 21 states in India and all around the world condemn the arrest of Human Rights Defender and noted journalist Teesta Setalvad and former DGP police, RB Sreekumar and demand their release
Express shock at the Supreme Court judgment in the Zakia Jafri case which has criminalised the lawful pursuit of the criminal conspiracy case of the 2002 Gujarat genocide
Protests have been planned on the 27th June 2022 in several cities of the country

Condemning the arrest and the five-day remand by the Gujarat police (crime branch) in FIR 87/22 more than two thousand two hundred people from all over India and around the world have come together in solidarity of noted journalist and Human Rights Defender Teesta Setalvad and former DGP Gujarat police RB Sreekumar. They have demanded their immediate release. At the same time have also been very critical of the Supreme Court judgement which undermines the due process of law followed by them in the Zakia Jafri case has criminalised them. They appeal to the SC to review its own judgement in the above matter.

Leading the signatories are General Secretary, PUCL V. Suresh, NAPM convenor Medha Patkar, Columnist Apoorvanand, Theatre and Film Actor Shabana Azmi, Writer Aakar Patel, Kumar Ketkar, MP, former Navy Chief Admiral Ramdas, Writer and Former Planning Commission Member Syeda Hameed, I, Former VC, Lucknow University Rooprekha Verma, MKSS founder Aruna Roy, Carnatic Musician TM Krishna, Poet Gauhar Raza, Shabnam Hashmi, Anhad,

Feroze Mithiborwala, Bharat Bachao Andolan, Pratibha Shinde, Lok Sangharsh Morcha, V S Krishna, HRF, Activist and Socialist party leader Sandeep Pandey, Writer Gita Hariharan, HRD Henri Tiphagne from Human Rights Watch, Writer Shamsul Islam, HRD Babloo Loitongbom Human Rights Alert, Former Diplomat Madhu Bhaduri, Actress Mallika Sarabhai and 2250 others in a statement which said that –

The judgment of the Supreme Court in the case of Zakia Jafri v State of Gujarat, dismissing the petition filed by Zakia Jafri calling for an investigation into the conspiracy to hatch the events resulting in communal violence following the Godhra train burning, deepens the sense of injustice and marks a moment of profound hurt and loss as far as all those who care about constitutional values. The Supreme Court not only dismissed the idea that there was a conspiracy to commit the crimes of murder, rape and destruction of property, but instead went further and took to task those who sought to ensure justice for the communal hate crimes following the Godhra incident.

It observed that a 'coalesced effort

of the disgruntled officials of the State of Gujarat along with others was to create sensation by making revelations which were false to their own knowledge.' The judgment then assailed those who used the process of law to pursue justice for those who were targeted because of their minority status for over sixteen long years as having the 'audacity' to 'question the integrity of every functionary' and their motives were tarred as 'ulterior design'. The Court observed that 'all those involved in such abuse of process, need to be in the dock and proceed in accordance with law.'

The state has now used the observations made in the judgment to falsely and vindictively prosecute those who had struggled for justice even in the face of state callousness and complicity. It is truly an Orwellian situation of the lie becoming the truth, when those who fought to establish the truth of what happened in the Gujarat genocide of 2002 are being targeted.

Following the judgment on 24.06.2022, the Gujarat ATS swung into action and forcibly got into Teesta Setalvad house, assaulted her, picked her up and took her in their custody on

25.06.2022. Teesta, in her written complaint to the Santa Cruz Police Station stated "I fear seriously for my life." The FIR under which she has been detained accuses the Gujarat retired police officials ADGP R.B Sreekumar, DIG Sanjiv Bhatt and activist Teesta Setalvad of conspiring to fabricate evidence, tutor witnesses and abuse the process of law.

The FIR casts its net very wide and makes the case that the time period of the offence ranged from 1.01.2002 to 25.06.2022. In effect every effort for justice for the victims of 2002, be it petitions filed in the High Court, Supreme Court or the Magistrates' court is sought to be criminalised. The ordinary process of litigation to make the state accountable by establishing guilt of those accused of serious crimes is tarred with the criminal brush.

It seeks to deter citizens from holding the state accountable for enabling violence in future and in effect conveys that the state can do no wrong. If you point out that the emperor has no clothes, you open yourself up to arrest and criminalisation. This is the implicit message going out to all in Indian civil society, to the public at large and the Gujarat Judiciary before which there are ongoing criminal

cases of the violence of 2002 in the various courts of the state.

We condemn this naked and brazen attempt to silence and criminalize those who stand for constitutional values and who have struggled against very difficult odds to try to achieve justice for the victims of 2002. We demand that this false and vindictive FIR be taken back unconditionally and Teesta Setalvad and others detained under this FIR be released immediately.

As a mark of our protest, as a way of expressing our feelings of hurt, loss and anger and to find a way to go forward, and to preserve our Constitution, we are giving a call for an all India protest day on 27th June 2022. The protest is against the Supreme Court judgement in the Zakia Jafri case and the observations made against Teesta Setalvad, RB Sreekumar, Sanjiv Bhatt and others who fought for justice. It is also against the FIR and the illegal detention, demanding the immediate release of all those detained.

Several cities have announced protests today, which include, Delhi, Mumbai, Bengaluru, Jaipur, Patna, Ranchi, Ajmer, Ahmedabad, Bhopal, Kolkata, Lucknow, Allahabad, Chandigarh, Chennai, Dhulia, Raipur and more.

Contact: Shabnam Hasshmi: 9811807558, Kavita Srivastava: 9351562965, Arvind Narrain: 9980010933, Lara Jesani: 9819135235

List of 2230 Persons: A. C. Michael , United Christian Forum, New Delhi ; A. G. Sunil , Individual , Maharashtra ; A. Mangai, Chennai, TN; A. P. Josy, PUCL, Chhattisgarh; A. John Vincent , PUCL, Tamil Nadu; A. R. Vasavi, Independent researcher, Karnataka; Aaditto Shen, Kolkata; Aadya Pandey, Independent filmmaker , Delhi; Aakar Patel, Bangalore; Aaloka Kanhere, Maharashtra ; Aarti, Samaykesakhi, literary magazine, Bhopal m.p.; Aban Mukherji, Mumbai; Abbasali Kerawala, RBL BANK LTD, Mumbai; Abdul Basith, Tamilnadu; Abdul Rahman KM, None, Karnataka Mangalore; Abdullah Nasir, Lucknow; Abdurahiman, Zain, Kerala; Abha Dev Habib, Democratic Teachers' Front, Delhi; Abhay , Jan Swasthya Abhiyan, Maharashtra ; Abhay Kanta, PariwartanachaWatsaru, Thane; Abhay Patil, AISA Karnataka , Bangalore; Abhayraj Naik , Azim Premji University , Bengaluru ; Abhijit Mazumdar, CPIML, Siliguri; Abhijit Mitra, West Bengal; Abhijit Pathak , CA, Kolkata ; Abhijit Roy, Jadavpur University, Kolkata; Abhishek Majumdar, NYU , Bangalore; Abhishek Roy, NAPM, KOLKATA; Abhrajyoti, Guwahati ; Abid Shah, Independent Journalist, Delhi, NCR; Absar Ahmad, APCR, Bhopal ; Achutha, Samudaya, Karnataka ; Adarsh Iyer, Janaadhikaara Sangharsha Parishath, Bangalore, Karnataka; Adarsh Tatiya, ILS , Pune; Adhiraaj Ray, Advocate , Kolkata / West Bengal ; Adil, Writer, Pondicherry ; Adil Patel , Fortune Investments , Mumbai ; Adit Goenka, Delhi; Aditi Desai, New Delhi; Aditi Ghosh Mehta, IAS(Retd), Udaipur, Rajasthan and others; □

Jan Swasthya Abhiyan:

Statement condemning growing communal violence – a matter of serious public health concern Demanding Government Accountability and Action

We, the members of Jan Swasthya Abhiyan (JSA) are extremely concerned about the ongoing state-led and state-sponsored targeted violence and discrimination which is particularly directed against Muslims, while also affecting groups like Christians and Dalits. This violence has been particularly witnessed in Karnataka and BJP ruled states, as well as in some other states like Delhi and Rajasthan. JSA is a national level network working across various states on public health issues, with the belief that people's right to

health is intrinsically linked to their human rights, including the right to live and work without discrimination or fear of violence.

In recent period India has seen Hindutva groups unleashing a wave of violence and orchestrated hatred against Muslims, supported through discriminatory practices and malign patronage by the State. The aggressive everyday efforts towards humiliating and subjugating the community are increasingly visible and are being practised with near impunity. This targeting of Muslims has denied

them recourse to police support, judicial oversight and even objective media reporting.

In Karnataka, thousands of young Muslim women and girls who are eager to learn have been subjected to daily harassment on the pretext of the hijab, which has become a tool to deny education. Women and girls, irrespective of whether they wear a hijab or not, have inalienable fundamental rights of equality and equity in education, and all other aspects of life enshrined in the Constitution of India. We are outraged by the

reprehensible targeting of Muslim women on GitHub (a free web platform), where Twitter handles and photographs of Muslim women were uploaded with the explicit aim of directing sexualised hate and harm at these women.

Karnataka has also witnessed vicious public campaigns to boycott Muslim businesses, instigated by sitting ministers and led by Hindutva groups. This includes the attacks on stalls of Muslim traders at fairs and festivals, calls to boycott Muslim drivers and tour operators, and seeking a ban on the Azaan. These along with regressive laws that ban cattle slaughter are pushing Muslim and Dalit communities to economic destitution. Such casteist methods of social and economic boycotts are discriminatory and are in clear conflict with the Constitutional principles as embodied in Article 19(1)(g) and violative of Articles 14 and 15 of the Indian Constitution.

Jan Swasthya Abhiyan staunchly opposes the rise of 'Food Fascism' across the country, which includes calls by Hindutva groups to ban meat shops along with Government targeting of meat sellers, imposing restrictions on sale of halal meat while harassing Muslim traders, attacks on Muslim fruit vendors referred to as 'fruit jihad', and denying provision of nutritious eggs to children through midday meals in BJP ruled states. Such highly discriminatory actions are adding to communal tensions, are causing huge damage to the economic security of vast masses of working people, and are blocking access to much-needed animal sources of protein and nutrients for deprived populations across the country. (JSA will be issuing a separate detailed statement soon on various aspects of this theme of Hindutva based assaults on food security and nutrition, which are deleterious to health, as well as being violations of health and human rights.)

We are alarmed to note that during the recent Ram Navami and Hanuman Jayanti festivals,

provocative and aggressive marches, processions around Masjids and Muslim bastis by communal groups took place in Karnataka, Madhya Pradesh, Gujarat, Delhi and other states, that led to the eruption of communal violence. Moreover, the governments in Madhya Pradesh and Delhi egregiously demolished the residences and shops belonging predominantly to Muslims, while selective arrests and harassment of Muslims in the context of the violence have obfuscated the obvious communal intent and motivation behind these actions.

As Health activists we are shocked by this ongoing, systematic campaign which is unleashing hatred, prejudice and violence against Muslim communities, that can have several long lasting and adverse consequences for people's health and wellbeing. Communal violence and discrimination have serious public health implications, that JSA has been foregrounding for many years. They aggravate barriers to accessing health care, due to non-inclusive, discriminatory services, differential treatment, delay and denial of health care. Communalisation of the public sphere also impacts key entitlements and services such as ICDS, mid-day meals and results in loss of livelihoods, wages and income, affecting people's nutritional status and health. Most importantly, the real threat of violence and continuing discrimination have a direct, unambiguous impact on the health of individuals, families and communities. Poor mental health leads to a host of health concerns, which may include chronic headaches, suicidal thoughts/intent, gastritis, ulcers, insomnia, depression and many other adverse health outcomes. Girls and women are particularly affected physically and mentally by restrictions on their education, movement, and independent

choices.

We note with alarm that the State which is tasked with upholding the law and Constitution, has often itself become an enabler of orchestrated criminal and anti-social actions. The current situation is a blatant denial of the human rights to health and life, guarantees which are enshrined in the Constitution of India, including Article 21. We hold elected governments squarely responsible for tackling and preventing such targeted violence and discrimination against Muslims and vulnerable communities in their respective states. We urgently demand that they immediately take the range of necessary actions which are detailed below.

As members of the people's health movement in the country, we demand that:

- a. All involved governments must ensure the safety, security and wellbeing of the Muslim community, as well as other minority and marginalised populations, while protecting the way of life of their members according to principles of the Constitution. All instigators and perpetrators of acts of violence and hate crimes must be brought to justice, especially those who are principally responsible for organising these actions, however powerful they may be.
- b. Involved State governments must act decisively against hate speeches, fake news and inciting of communal hatred on news channels and other media, calls for violence, as well as social and economic boycotts.
- c. Involved governments must abide by their political and constitutional commitments to ensure that all girls and women, irrespective of their religion, dress, caste, region, have equal and equitable access to education without discrimination. Government of Karnataka must ensure the

- security of girls/women in all educational institutions in the state to ensure that exclusion and denial of right to education and other human rights does not take place in any context.
- d. Courts in all states should take suo motu cognisance of any misinformation and false stories against vulnerable communities that aggravate their risk of being subjected to violence and discrimination. After following due legal procedure, punishment of offenders must be ensured. This includes misinformation through social media and other media platforms.
 - e. All governments should take dedicated measures to ensure that equitable and adequate access to health services for Muslim communities and other discriminated groups is ensured at all levels and in all areas, including sexual, reproductive and mental health services.
 - f. Governments must immediately eliminate official and non-official constraints on the food practices and nutrition rights of marginalised and deprived communities. These include calls to boycott and bans on sale of meat, removal of animal proteins from food supplementation programmes, and interfering in people's choice of food and livelihood by imposing elite 'vegetarianism'.
 - g. The social determinants of health such as employment, education, food security, water, sanitation, nutrition must be addressed on priority basis, while ending any attempts to restrict these entitlements for Muslim communities and other marginalised and deprived populations.
 - h. Jan Swasthya Abhiyan holds governments – at state as well as central levels – completely accountable for ensuring these constitutionally endorsed rights, through means of taking the entire range of relevant actions. In parallel we also call upon all concerned movements, networks, organisations and individuals to not keep silent, and to take all possible actions in the current situation. Communal discrimination, hatred, and violence are as much a public health crisis as the Covid pandemic, and can spread just as virulently. This epidemic of violence and hatred has its roots in both state as well as

society, and hence needs to be countered and eliminated at both levels, in an integrated manner. This crisis needs as serious and urgent intervention as any other public health crisis; together we must stop the scourge of communal hatred and violence in its tracks, before it is allowed to spread any further.

Issued by: *National coordination committee of Jan Swasthya Abhiyan; All India People's Science Network (AIPSN); All India Drug Action Network (AIDAN); Asian Community Health Action Network (ACHAN); All India Democratic Women's Association (AIDWA); Bharat Gyan Vigyan Samiti (BGVS); Breast Feeding Promotion Network in India (BPNI); Catholic Health Association of India (CHAI); Centre for Community Health and Social Medicine, JNU; Christian Medical Association of India (CMAI); SOCHARA; Forum for Creche and Child Care Services (FORCES); Federation of Medical Representative Associations of India (FMRAI); Healthwatch Forum; Joint Women's Programme (JWP); Medico Friends Circle (MFC); National Alliance of People's Movements (NAPM); National Federation of Indian Women (NFIW); National Association of Women's Organisations (NAWO); Prayas, Rajasthan; Public Health Resource Network; SAMA – Resource Group on Women's Health; SATHI*

Contacts: Sulakshana Nandi (9406090595), **N.B. Sarojini** (9818664634), **Deepa Venkatachalam** (9871642320), **T. Sundararaman** (9987438253), **Amulya Nidhi** (9425311547) ☐

An Open Letter to the CJI and Companion Judges of the Supreme Court:

An Appeal to the Chief Justice of India and Honourable Judges of the SC Prabhakar Sinha

Your harshness to the citizens who challenge the inhumanity of the government of unscrupulous men has badly shaken our trust in the judiciary. I appreciate when many guilty men are acquitted because I am aware that you are not free to perceive truth with your own eyes. You perceive truth as presented to you by the police and the prosecution. But that is all the more reason that you should be sympathetic to the citizens who challenge the atrocities committed by the mighty malevolent State but fail to establish the truth as required

by law. I am sure that you would agree that truth and judicial truth (i.e. truth according to the court of law) are often apart. The difference between the two is sometimes the same as the difference between truth and untruth.

I am a layman and cannot argue like Advocates, but can prove my point with examples. In the case of the demolition of Babri Masjid, Lal Krishna Advani, M. M. Joshi and Uma Bharti were acquitted by the CBI court. The three accused said to the court, "I had nothing to do with the demolition of Babri Masjid."

The CBI told the court that they had found no evidence against them. The court perceived the truth through the eyes of the CBI and accepted it, though it was like accepting that the sun rises in the west. It is also another matter that the honourable judge was appointed the Up Lok Ayukt of UP within 4 to 6 weeks!

No better example can be found to show the difference between truth and judicial truth (a lie) than this case. But nobody was punished like Teesta Setalvad and Himanshu Kumar.

For years, Pragya Thakur was being tried and was in jail for acts of terror at Malegaon in which many persons died. She was in jail along with one Colonel Purohit. But when the government changed at the Centre the truth also changed. The conscientious Public Prosecutor refused to play the savior of the accused she had been prosecuting and preferred to resign. Not surprisingly, another officer of the court (PP) replaced her, and now the terror accused Colonel is reportedly reinstated and the other accused Pragya Thakur adorns our Parliament. And such cases of criminals turning innocent with the change of the government are not rare. But the conscience of the

court is not outraged as in the case of Teesta Setalvad and Himanshu Kumar.

When such miscarriage of justice caused by the State does not cause your judicial conscience to revolt, is it fair for you to allow it to revolt against conscientious citizens like Teesta Setalvad and Himanshu Kumar, who have been fighting for a cause which was not going to benefit them personally. Even if the court was inclined to doubt their motive, was their guilt more criminal and immoral than that of Advani, Joshi and Uma Bharti? Were they less deserving of the court's benevolence than the Babri Masjid accused? Was making a false allegation a more heinous

crime than razing the Babri Masjid to the ground with the whole world watching or murdering innocent persons by planting bombs? How can the people be convinced that a judiciary is just and fair, which allows the criminals of Ayodhya to be acquitted with honour and allows a terror accused to adorn the Lok Sabha and a tainted military officer to join the armed forces?

Your jaundiced view has already led to the arrest of Teesta Setalvad and RB Sreekumar. Please find a way to undo the grave injustice done to these champions of justice due to your indiscretion, and end their persecution.

Prabhakar Sinha, *A Concerned & Disturbed Citizen* on Facebook
18 July, 2022 ☐

Press Release:

Statement of the Chhattisgarh Bachao Andolan on the recent Supreme Court Judgment in the case of the Gompad Massacre of 2009

On 14th July 2022, Supreme Court dismissed a writ petition filed by Himanshu Kumar and twelve other people in a 2009 case that sought an independent investigation in the extra-judicial killings of adivasis in the villages of (then Dantewada) now Sukma district of Chhattisgarh. This came to be known as the Gompad massacre, and it includes two major incidents of violence in September and October 2009 that happened in the villages of Gompad and Gachchanpalli along with 2-3 smaller incidents nearby, in which at least 17 adivasis were killed.

While dismissing this writ petition, the Supreme Court has imposed exemplary costs of Rs. 5 lakhs on Himanshu Kumar and has suggested that further action can be taken against the petitioners by the State of Chhattisgarh / CBI, for falsely charging the Police and Security forces, for hatching a criminal conspiracy, among other sections of the IPC. We, the civil society organizations and people associated with the Human Rights movement in Chhattisgarh are alarmed to note that this judgment

has virtually made the pursuit of justice in a judicial court a criminal act itself. This judgment is a threat to the very existence of human rights advocacy and systems of accountability from the Police and Security Forces in Chhattisgarh, especially Bastar.

Himanshu Kumar, who is Petitioner no. 1 in this case, is a Gandhian who has been working in Bastar for over three decades and has consistently helped in bringing out the human rights violations against the adivasi people of Bastar to light. The other twelve petitioners in this case are family members of the people killed in the Gompad massacre. The judgment brazenly targets Himanshu Kumar, by saying that Petitioner no. 1, who runs a NGO has put up this entire petition when there is no need for further investigation into the killings in Gompad, let alone the appointment of an independent agency.

As noted above, two incidents of September 17 and October 1, 2009 resulted in the killing of at least seventeen adivasi people from the villages of Gachchanpalli,

Gompad, Nulkatong and the forest of Singanmadgu among other nearby villages, along with several other people who were harassed and brutalized during these attacks. Several media reports as well as fact finding reports of civil society groups corroborate these incidents of violence by the Special Police Officers (SPOs) and the CoBRA (CRPF) Security forces of the region at the time. Media reports of intimidation and harassment of eye-witnesses to the attacks on the villages, surfaced as the case against the Police and Security Forces moved ahead in the Supreme Court.

By rejecting the plea for an independent investigation, this judgment turns the principle of natural justice on its head. It should be recalled that it was the result of people's demand for an independent investigation that resulted in the CBI inquiry into the violent incidents at Tadmetla, Morpalli and Timmapuram during Salwa Judum in 2011 and the inquiry by the National Human Rights Commission into the incidents of mass sexual violence

in Bijapur and Sukma districts in 2015-2016. Both of these investigations corroborated the villagers' allegations of mass violence conducted by security forces. Therefore, by rejecting the plea of an independent investigation into the Gompad massacre, and harshly penalizing the lead petitioner, this judgment sets back the right to demand a fair and unbiased investigation, and refuses to acknowledge the reality of state violence.

For more than three decades, Bastar has been the ground zero for an ongoing conflict between Naxalites and the Security Forces, resulting in an insurmountable human rights crisis for the Adivasi people of the region. Access to justice has been rendered impossible due to structural constraints like lack of access to courts, resources, language barrier as well as a lack of institutional will of the government. Since 2005 there has been an escalating crisis in Bastar, where reporting, investigating and verifying any incidence of violence has been a herculean task. Even visiting incident sites is challenging as most villages in South Bastar do not have motorable roads. The environment of fear created by the Police and security forces hinders independent journalists, researchers and activists from visiting affected villages. Often the Police's version is the only version available as no other independent voices are allowed to establish the truth of an incident. In this context, very few cases of violence in Bastar are able to reach the Supreme Court.

Thus the role of human rights workers is all the more important in the adivasi people's struggle for justice and peace in Bastar. Himanshu Kumar is one such voice who has helped the adivasi community to seek accountability and justice. Instead of acknowledging the myriad difficulties faced by people in accessing justice, and the multiple means by which the State can harass and intimidate survivors of state violence in a rare case that reaches Delhi, the Supreme court has virtually criminalized all assistance to people in their pursuit of justice.

The judgment in the case of Himanshu Kumar & Others holds that since the petitioners were unable to prove their accusations against the Police and the Security Forces, hence the entire petition has malicious intent, and may even be a criminal conspiracy. This logic is fallacious in itself. It is well known that in the district of Dantewada alone, the acquittal rate of adivasi persons booked in Naxalite cases is over 95%, year after year. A study of 101 cases of UAPA registered in Bastar Sessions Court in 2015 showed that 92 of such cases resulted in acquittals, the remaining 9 were transferred to other courts, and not a single case resulted in a conviction. Does that mean that the entire police force in Bastar should be imprisoned for criminal conspiracy?

We are distressed to note that the vicious circle of incarcerating Adivasi persons for being naxals, and persecuting human rights activists as naxal sympathizers by

the State Police continues unabated till date in Bastar. As people committed to the ideals of peace, justice and truth, we demand the following:

1. Having made peace and justice in Bastar a central plank in their election campaign, the Congress government should reopen the investigation into the Gompad Massacre, and conduct it with fairness and objectivity.
2. No coercive action should be taken against Himanshu Kumar or any of the other petitioners, who are well within their rights to seek redress from a Constitutional Court in such serious matters.
3. We urge the Hon'ble Supreme Court to expand the principle of Accountability jurisprudence and equal treatment under the law with respect to officers of the state not acting in good faith.

Sincerely: Convener's Group, Chhattisgarh Bachao Andolan [Sudesh Tekam, Manish Kunjam, Bela Bhatia, Nandkumar Kashyap, Vijay Bhai, Shalini Gera, Ramakant Banjare, Alok Shukla, Zila Kisan Sangh Rajnandgaon, Chhattisgarh Mukti Morcha (Mazdoor Karyakarta Samiti), All India Adivasi Mahasabha, Jan Swasthya Karmchari Union, Bharat Jan Andolan, Hasdeo Aranya Bachao Sangharsh Samiti (Korba, Surguja), All India Kisan Sabha (Chhattisgarh State Committee), Chhattisgarh Kisan Sabha, Kisan Sangharsh Samiti (Kurud), Dalit Adivasi Manch (Sonakhan), Gaon Ganrajya Abhiyan (Surguja), Adivasi Jan Van Adhikar Manch (Kanker), Safai Kamgar Union, Mehnatkash Avas Adhikar Sangh (Raipur), Jashpur Zila Sangharsh Samiti, Rashtriya Adivasi Vikas Parishad (Chhattisgarh Chapter, Raipur), Jashpur Vikas Samiti, Richharia Campaign, Bhumi Bachao Sangharsh Samiti (Dharmajaigarh)] □

India: Kashmiri Journalist Held Under Abusive Laws End Crackdown on Independent Media, Activists¹

8th February, 2022, Human Rights Watch

(New York) – Indian authorities have arrested the prominent Kashmiri journalist Fahad Shah on politically motivated charges as part of the government's crackdown on the media and civil

society groups in Jammu and Kashmir, Human Rights Watch said today. Since 2019, at least 35 journalists in Kashmir have faced police interrogation, raids, threats, physical assault, or fabricated

criminal cases for their reporting. Shah, editor-in-chief of a leading Kashmir-based news site The Kashmir Walla, was arrested on February 4, 2022 and charged with sedition and support of terrorism

after his site reported on a shootout in Pulwama in January in which security forces killed four people they claimed were militants. Police allege that Shah posted “anti-national” content on social media “glorifying terrorist activities, spreading fake news and instigating people.” The police have questioned and detained Shah multiple times in recent years for his writing.

“Fahad Shah's arrest is only the latest attempt by the Indian government to frighten off the media for doing its job and reporting on abuses,” said Meenakshi Ganguly, South Asia director at Human Rights Watch. “Instead of ensuring justice for security force violations in Kashmir, the government is more interested in silencing those who bring these abuses to light.”

Shah's arrest comes amid increasing harassment, threats, and prosecutions of journalists and human rights activists in Jammu and Kashmir. The government intensified its crackdown after it revoked the state's special autonomous status in August 2019 and split it into two federally governed territories.

In January, the police arrested Sajad Gul, another journalist at the Kashmir Walla, on charges of criminal conspiracy after he reported on a protest against Indian authorities. But after Gul was granted bail, the police charged him under the draconian Public Safety Act to keep him in custody. The journalist Aasif Sultan has been in jail on terrorism charges since August 2018, after the police accused him of harboring militants. In October 2021, a freelance photojournalist, Manan Dar, was arrested under the abusive counterterrorism law, the Unlawful Activities Prevention Act (UAPA).

In November, the authorities also arrested a prominent human rights activist, Khurram Parvez, under the Unlawful Activities Prevention Act. The authorities are increasingly using the counterterrorism law

against activists, journalists, peaceful protesters, and critics of the government to silence dissent. The act contains a vague and overbroad definition of terrorism that encompasses a wide range of nonviolent political activity, including political protest by minority populations and civil society groups. In 2019, the government amended the law to grant officials the authority to designate an individual a “terrorist” without charge or a trial, putting the burden on the suspect to prove they are not a terrorist.

The authorities have ramped up raids on homes of journalists and activists, and confiscated their cell phones. In September, the police raided the homes of four Kashmiri journalists and confiscated their phones and laptops.

In January 2020, the government announced a new media policy in Jammu and Kashmir that gave more power to the authorities to censure news in the region. Since 2019, journalists have been routinely summoned to police stations for questions on their work and their social media posts, threatened with jail if their work criticizes the authorities, and pressured to self-censor. The Hindu correspondent Peerzada Ashiq, the Economic Times correspondent Hakeem Irfan, Basharat Masood of the Indian Express, and the Outlook correspondent Naseer Ganai are among those who have been summoned and questioned.

In April 2020, the police opened criminal investigations against Ashiq; Gowhar Geelani, another journalist; and Masrat Zahra, a photojournalist. In July 2020, the authorities questioned and detained Qazi Shibli, an editor previously held under the Public Safety Act. In recent months, the authorities have also increased scrutiny of independent journalists and freelancers reporting for major national and international media organizations, the news website Article 14 reported. Faced with

raids, threats, and detention, many are fearful and compelled to self-censor, the report said.

The government has placed over 40 people, including 22 journalists, on lists instructing immigration authorities to stop them from traveling abroad, another news report said. In 2019, Geelani and Bilal Bhat, a rights activist, were prevented from traveling abroad.

In June, the United Nations special rapporteur on freedom of expression and the UN Working Group on Arbitrary Detention expressed concerns over “alleged arbitrary detention and intimidation of journalists covering the situation in Jammu and Kashmir.” They noted that these violations “may be part of a broader pattern of silencing of independent reporting in Jammu and Kashmir, which in turn may ultimately deter other journalists and civil society more broadly from reporting on issues of public interest and human rights in the region.”

In October 2020, the Jammu and Kashmir government sealed the Srinagar office of the outspoken newspaper Kashmir Times in an apparent reprisal against its executive editor, Anuradha Bhasin, who filed a Supreme Court petition challenging the government's telecommunications shutdown. The same month, the Jammu and Kashmir authorities also shut down Kashmir News Service, a local news agency.

Shah's arrest has prompted condemnation from several journalism organizations and opposition politicians in Kashmir. The Editors Guild of India said Shah's arrest was “part of a larger trend in Kashmir of security forces calling journalists for questioning and often detaining them, because of their critical reporting of the establishment.” Digipub, an association of several media bodies, said there was no indication that Shah was involved in anything unlawful and that the police had a record of intimidating Shah. The US-based Committee to Protect

Journalists also called for his release, saying his arrest “shows Jammu and Kashmir authorities’ utter disregard for press freedom and the fundamental right of journalists to report freely and safely.”

“The Indian authorities in Kashmir

should immediately release Fahad Shah and all journalists, activists, and critics jailed on politically motivated charges and stop harassing them with draconian laws,” Ganguly said. “When the government uses authoritarian tactics to silence journalists and

activists, it only shows it has abuses to hide.”

¹ <https://www.hrw.org/news/2022/02/08/india-kashmiri-journalist-held-under-abusive-laws> @ 15Jul2022

Courtesy: Human Rights Watch

More Hindu Right Groups, Polarising With Impunity: How Communal Tensions Intensified in Khargone¹

M. Rajshekhar, 08th July, 2022, *The Wire*

Khargone (Madhya Pradesh): On April 10, violence engulfed the small town of Khargone. While the town was celebrating Ram Navami, a rumour spread that the police had stopped a religious procession near the local Jama Masjid.

In response, a second procession moved down the same path. More militant, it aired provocative songs and slogans, and even pulled along a tableau showing a scene from *The Kashmir Files*. The Muslims responded with stones. And the riot began.

In the days that followed, subsequent developments in the town monopolised most attention. The state went on a demolition drive. In tandem, a clutch of local Hindu right-wing groups declared an economic boycott of Muslims. Some Hindus put up boards saying they wouldn't sell to Muslims. A list of Muslim-run shops circulated on social media, asking Hindus to not buy from them.

With these developments occupying headlines, the origins of the violence escaped scrutiny.

A puzzling new time: In the middle of May, *The Wire* went to Khargone. Close to a month had passed since the violence but saffron flags still fluttered over some houses and shops.

Over the last five years, this small town of about 150,000 people has seen communal tensions rise due to a set of poorly-understood changes.

One. Over the last five or so years, Khargone has seen a spike in the number of Hindu right-wing organisations. “Five years ago, only the Shiv Sena was active here,” said one local, on the condition of anonymity. “Today, we have the Bajrang Dal, Shiv Sena, Gau Raksha Dal, Karni Sena, VHP, Sakal Hindu Samaj... in all there are about eight or

nine such sansthans.”

Others disputed those numbers but agreed the number of “*kattar-pathi*” organisations has risen. “Shiv Sena, VHP and Bajrang Dal were here from the beginning,” said Raju Sharma, who heads Shiv Sena in Khargone. “These other groups, like the Sakal Hindu Samaj, Gau Raksha Samiti and Karni Sena, have come up in the last four or five years.”

Two. While Khargone has seen periodic eruptions of communal violence in the past, matters would return to normal after two to four days. Economic ties would resume as ever. Since 2018, however, talk about an economic boycott of Muslims has started. This started with real estate. Between 2011 and 2015, as a part of the town's real estate boom, developers began cutting colonies. “In 2018, people from these organisations began going to developers, asking them to not sell plots to Muslims,” said the local quoted above.

Three. The town began to see more incendiary messages on social media. This has especially intensified over the last year, said Ashutosh Purohit, a local reporter.

Four. Of late, the administrative response has changed as well. In 2015, after stone-pelting incident violence on Dussehra, curfew had been put in place for a couple of days, said the local quoted above. “Once it was lifted, everyone got back to life as usual.”

This time around, parts of Khargone were under curfew right till Eid – May 3.

These changes have to be understood. Even five years ago, Khargone was a peaceful town. “Everything was going smoothly (*Sab kuch smooth chal raha tha*),” said Pankaj, a shopkeeper in the town.

“This was a place where everyone got along.”

And then, like large parts of India, fissures in the town abruptly deepened.

A closer look at Khargone: In 2020, said the local quoted above. A Maulana was beaten up.

In 2021, as Hidayatullah Mansuri, chief of the town's masjid committee told Kashif Kakvi, Khargone saw “over half a dozen incidents... when mosques and Muslims were targeted during festivals.” Stones were also pelted, he told Kakvi, “on the funeral procession of an imam”.

In March 2022, after the BJP won four out of five assembly polls, crackers were thrown inside the Talab Chowk Mosque. A month later, in April, the town saw violence on Ram Navami.

To understand this rise in the number of communal incidents, the spike in the number of Hindu right-wing outfits is one starting point.

Three of these – Durga Vahini, Vishwa Hindu Parishad and Bajrang Dal – are publicly affiliated to the BJP and RSS. The local outpost of the Shiv Sena, set up by Raju Sharma in 1988, is linked to a larger party as well.

The rest lack such linkages. Sakal Hindu Samaj was set up in 2021, said its former *adhaksh* Trilok Dandir, to stand with Hindus whenever they need help.

The Gau Raksha Samiti, created in 2019 by local leaders of right-wing groups and BJP leaders, runs gaushalas and informs the police about cattle shipments into Maharashtra. It also, as the media has reported, gave the call for the second procession on Ram Navami which resulted in violence.

As for Sardar Patel Yuva Sangathan, it came up in Khargone, said Dandir, about five or six years ago. It focuses

on the Patidar community.

It's not clear if these organisations are entirely home-grown. Sardar Patel Yuva Sangathan is also active in Gajnikhedi (MP), Narayangad (MP) and Sarangpur (Gujarat). A Sakal Hindu Samaj is also present in Ajmer (Rajasthan), Betul (MP) and Rajnandgaon (Chhattisgarh). When asked about this, however, Dandir said Khargone's Sakal Hindu Samaj is home-grown.

A stronghold slipping away: These outfits began to emerge at a time the BJP's grip over Khargone was weakening. This has to be understood. Between 2003 and 2013, Khargone was a BJP stronghold. The party's grip began slipping in 2014 when it lost three seats to the Congress. And then, in the 2019 polls, the party lost all assembly seats here.

According to one set of observers, the rise of these outfits is a part of the BJP's strategy to recapture these seats. "There are two kinds of people in the BJP," said journalist Dharendra Jha. "Those who stand for elections; and, for their success, those who are needed for polarisation." According to Jha, the author of *Shadow Armies: Fringe Organisations and Foot Soldiers of Hindutva*, "People standing for election will not go beyond a point. But, they will need others who can. People who can do work which goes exactly against the constitution—like this talk of boycott." These organisations, he said, are kept at an arm's length from the *Sangh parivar*. "These organisations provoke but are not defended. BJP gains from that denial mode."

According to locals, similar processes are underway in Khargone as well. "Assembly elections will be held again in 2023," said a local reporter. "All this is to strengthen the party before the elections. Some people say this is to defeat MLA Ravi Joshi (*Yeh sab chunaav mein majboot karne ke liye hain. Kuch ka kehna hain ki yeh sab Ravi Joshi ko hataney ke liye hain*)."

These outfits have contributed to the ratcheting up of communal tensions. In the past, Sakal Hindu Samaj, notwithstanding its rhetoric about being set up to serve Hindus, has demanded a predominantly Muslim *haat* be shifted outside the town. In the run-up to Ram Navami, Shiv Sena created the tableau. Along with

Sardar Patel Yuva Sangathan, Sakal Hindu Samaj called for the economic boycott. The Gau Raksha Samiti called the second, more militant procession on Ram Navami.

The larger polarisation project: Even as these local processes worked to polarise, larger processes aided them. In 2020, Sudhir Chaudhary aired his "types of jihad" show. "After that, on Facebook and WhatsApp, messages began doing the rounds about a boycott," the local reporter said.

The Kashmir Files roiled matters further. Not only did leaders like Raju Sharma organise free screenings of the film, the film itself deepened fissures.

After the film, said Kamlesh Bhandari, the founder of Khargone's Radha Vallabh Trading Company, both communities turned more hardline. "It has changed people (*Logon ko pharak padha hain*)," he said. "(Hindus) began thinking that if the population of Muslims increases, this will happen."

Compounding matters, on the evening of Ram Navami, Kapil Mishra, a BJP leader from Delhi, visited the town of Bhikangaon, 50 km from Khargone. Not only did he make incendiary statements, his presence in Bhikangaon forced the Khargone administration to divert a section of the police force away from the town.

Later that evening, as the second procession neared Talab Chowk, the riot began.

Then came the demolitions: Even as these processes played out, there was another development.

On December 31, the Enforcement Directorate raided Dilip Buildcon, the infrastructure company said to be close to Shivraj Singh Chouhan. The company's co-founder, Devendra Jain, was arrested as well — on the charge of bribing an NHAI official — and kept in custody for a week.

About 6-9 months ago, a former chief secretary of Madhya Pradesh told *The Wire*, the Adani group made an initial offer for about 35% of Dilip Buildcon's shares. In October, a team from Adani Enterprises checked into Taj Bhopal and stayed for about two months, going over the financials of Dilip Buildcon.

The talks, described in local media as well, remained inconclusive — and the Adani team had headed back.

A few days later, the raid happened.

In business and political circles of MP, the news was received with shock. In India, raids on companies belonging to rival politicians have been relatively normalised — but not raids on a firm perceived as close to a fellow party member.

According to people in Bhopal's business and political circles, the rationale for these talks — and the subsequent raid — lay in politics. According to a political observer in Bhopal, Modi and Shah do not want Chouhan to continue as chief minister — and so, were trying to weaken him by taking away Dilip Buildcon. "They want Jyotiraditya Scindia," he said.

Shortly thereafter, Chouhan's government donned a more hardline avatar—that of "Bulldozer Mama".

Since March 20, his administration has stepped up demolitions of not just those accused of rape but also those charged with communal violence — as in Khargone where buildings of Muslims were razed.

According to the observer, the "bulldozer mama" avatar has added to Chouhan's popularity.

Understanding the hate machine: Rising polarisation in Khargone updates our understanding of how bigotry is being deepened in India.

The media — and movies like *The Kashmir Files* — heighten majoritarian anxieties and result in organisations like the Sakal Hindu Samaj. These outfits, gaining clout due to their proximity to both political power and administration, can operate (and profit) with impunity.

This point came up earlier this year when two tribals were killed by the Gau Raksha Dal, on the suspicion of cow smuggling, in Seoni, MP.

At that time, tribal leader and Congress MLA Arjun Singh Kakodia told the *Indian Express*: "This is all a business. The largest animal market in Seoni district is in Barghat area, which sees business of Rs 10 lakh per week. This market is visited by local farmers who buy and sell cattle... The vigilante outfits don't rescue cattle and send them to gaushalas. They are sold at these animal markets for a profit."

Indian Express also reported that local police was working with the group. It quoted Kurai Police Station in-charge Ganpat Singh as saying: "We are short of 15 men... We do

depend on tip-offs from vigilante outfits and coordinate with them.”

In Khargone too, the groups have operated with impunity. In the town, social media messages keep trying to foment hate. “Recently, there was an incident when a bike hit a pedestrian near the bus stand,” said Pankaj. “The news spread so quickly on WhatsApp – that something had happened in Khargone – that the SP had to clarify that this was a normal incident and that anyone misleading the people will face strict action.”

And yet, even as the administration threatens action on social media rumour-mongers and erects walls between communities, a local police officer confirmed to *The Wire* that it has not acted against the fringe groups destabilising the peace.

Calls for economic boycotts, for instance, violate Section 153B of the Indian Penal Code.

The Wire wrote to the DM Kumar Purushottam and SP Dharmveer Singh asking if action has been taken on outfits threatening boycott. This article will be updated when they respond.

Endgame: All of Madhya Pradesh is seeing such changes, said a RSS

Courtesy: The Leaflet

member who lives in Bhopal.

“*Yeh Khargone ki hi nahin, poorey MP ki kahani hain,*” he said. This scope might be even broader. As many as eight states in India saw violence this Ram Navami.

At one level, this is a tiredly familiar tale. Communal violence is one way to flip societies from, say, caste-based polarisation to a religious one – and has played out elsewhere in India as well, be it UP, Assam or Bihar.

As these processes go unchecked, however, Khargone is being pushed into a newer, altogether more unnerving, direction.

After the violence in April, not only did threats of boycott expand beyond real estate, they also acquired a more coercive tone. “*Personal calls bhi aaney lagey,*” said Pankaj. The callers, all unknown to him, not only admonished him for being close to a Muslim in the town – “You are close to traitors. Keep a distance (*Aapki nazdiki hain deshdrohiyon se. Dur rahey*)” – they also carried a warning. Something wrong might happen to you, said one caller. “*Aapke saath kuch galat na ho jaye.*”

This reporter asked him if this is the

first time he had experienced such a demand. He said yes.

Most people in Khargone want peace, Kamlesh Bhandari had said. What we are seeing now, however, is an outcome where neutrality itself is being frowned upon. Hindus are being told to either participate – or get considered as the other.

The goal is to co-opt the silent majority.

The Wire shared these local apprehensions with the local administration, asking for its response. This article will be updated when they respond.

These boycott calls, however, have not been very successful. About 2/5ths of the people in Khargone are Muslims. An economic boycott will bring real economic costs to the Hindus as well. In areas where Muslims are a smaller proportion of the local population, such boycotts might indeed see greater participation.

¹<https://thewire.in/communalism/khargone-madhya-pradesh-communal-tensions-boycott@15Jul2022>

Courtesy: The Wire □

India's Human Rights Record under Scrutiny as NHRC prepares for Renewal of Accreditation with GANHRI SCA¹

Sarah Thanawala, *The Leaflet*, 8th July, 2022

National Human Rights Institutions across the world are assessed by the Global Alliance of National Human Rights Institutions ('GANHRI') Sub-Committee on Accreditation ('SCA') as per their compliance with the 'Paris Principles' periodically every five years. During its 2016 review session, the GANHRI SCA recommended the re-accreditation of the National Human Rights Commission (NHRC) be put on hold and deferred till November 2017. This implied that until its re-accreditation, NHRC would not be able to represent India either in the United Nations' (UN) Human Rights Council or the UN General Assembly. In February 2018, the 'SCA accredited NHRC with A status' – giving India the right to participate fully in the activities of the UN.

In recent years, the NHRC has failed to intervene in vital human rights violations, including the Citizenship (Amendment) Act-National Register of Citizens issue, human rights violations

in Kashmir, the deplorable condition of thousands of migrant labourers during the pandemic, the harassment of activists, and the rapid practice of hate politics against minorities. Thus, the deferment in the NHRC's accreditation in 2017 and its subsequent accreditation in 2018 are worth revisiting to understand the workings and shortcomings of the NHRC.

Henri Tiphagne is the founder and executive director of Madurai-based human rights organisation People's Watch, which works to protect human rights through monitoring human rights violations, intervention, and building solidarity with people's struggles for human rights. Having worked closely with the GANHRI SCA, Tiphagne shared his extensive knowledge and views with *The Leaflet* on the NHRC's deferment of the accreditation in 2017, the eventual grant of 'A' status, and the desperate need for changes.

Edited excerpts from the interview
Q: What is the UN body of the Global

Alliance of National Human Rights Institutions (GANHRI)? Why is its accreditation valuable for the NHRC, and what does its deferment signify?

A: The GANHRI, formally known as the International Co-ordinating Committee ('ICC') of National Human Rights Institutions ('NHRIs') is a body that is formed by national human rights institutions themselves for ensuring standards for assisting and supporting themselves. It aims to ensure that, globally, the movement of national human rights institutions where countries that do not have national human rights institutions could be encouraged to constitute new ones. It is a body created by NHRIs, for NHRIs. India is proudly a founding member of ICC as well.

Globally, GANHRI is the only body that accredits entering and participating in the proceedings of the UN without the involvement of the UN's Committee on Non-Governmental Organizations

('NGO'). For example, if there is an organization like the Lawyer's Collective in India which is accredited to the UN, it obtains its accreditation through the NGO Committee to participate in the activities of the UN, that is, to participate in the General Assembly, the Human Rights Council, other meetings of the treaty bodies, and so on.

Usually, countries that had to come up with legislation had to wait for long periods of time. However, India was allowed an 'A' grade status on the condition that India would come out immediately with a law in place which would incorporate previous SCA recommendations.

In the case of NHRIs, there is a slight change – the NHRIs, which are the members of GANHRI, receive accreditation within GANHRI, by GANHRI, and on standards set by GANHRI. If the NHRI's are accredited 'A' grade by GANHRI, that *ipso* means that the NHRI is accredited to participate in the UN proceedings. If an individual wants to attend a meeting of the UN, they have to go through an accredited NGO at the international level. In the case of NHRIs, it is GANHRI that actually accredits the NHRIs to participate in the meetings of the UN. So, the accreditation of the NHRIs becomes important because it is only through the accreditation that the NHRIs can participate in any meetings of the UN.

The accreditation process is the process to get entry into the UN. If the Indian NHRC, which is a member of the GANHRI, does not get 'A' grade accreditation, then the Indian chairperson, Arun ishra, will not get to attend any meeting of the Human Rights Council or the General Assembly. This accreditation, therefore, by GANHRI, is carried out by an SCA which GANHRI members themselves constitute – it is their own body that constitutes an accreditation committee – the SCA.

Q: The GANHRI SCA granted NHRC 'A' status, despite its concerns – including non-representation of women, Dalits, and other religious or ethnic minorities, non-transparency in the selection process of the NHRC's Chairperson and other members, and government interference – not addressed at the time of accreditation. What are your views on it?

A: The GANHRI earlier had a lax system of accreditation, where the process was not very structured and the civil society had no role to play.

Between the years 2008 and 2012, one of GANHRI's own chairpersons suggested implementing different procedures for the granting procedure to be qualitatively high. This was because the world community started recognising these NHRIs to participate in the UN activities based on the granting of the accreditation.

It was observed that the Paris Principles were too general in nature. After a resolution of the General Assembly, General Observations of the GANHRI to the Paris Principles were formed. It was announced that in the process of accreditation, the Committee would look into those General Observations that amplified the meaning of the terms contained in the Paris Principles. Such General Observations were put in place for subsequent accreditation processes.

The change came in the case of India. When India was accredited in the year 2011 and granted an 'A' grade status, the Committee generously asked India to get back with an Interim Report on the progress of certain questions or observations. India was, thus, granted, what in common parlance is called, a conditional accreditation. The Indian NHRC, which was then headed by K.G. Balakrishnan, challenged this and claimed that the SCA can accredit or refuse to accredit but cannot accredit with conditions. Subsequently, the GANHRI in turn modified its General Observations to have two parts to the Paris Principles, the first part being that the Principles have to be compulsorily followed; the second part being that they are encouraged to follow – which was a way of finding a settlement for 'common minimum standards' to be followed by NHRIs.

During NHRC's next accreditation in 2016, it was abundantly clear from all the reports that were presented that it was far from adhering to any of the traditions that had been imposed. Therefore, in 2016, it was deferred by a year. In 2017, when India approached for its re-accreditation, things were not as straightforward or transparent as would be expected from a global body. Although the recommendations of 2011 and 2016 were not followed, in 2017, NHRC was granted an 'A' grade accreditation upon a promise and assurance to the global body that India would amend the Protection of Human Rights Act, 1993.

Interestingly, no other country is given such accreditation on the assurance of taking an action in the future. Usually, countries that had to come up with legislation had to wait for long periods of time. However, India was allowed an

'A' grade status on the condition that India would come out immediately with a law in place which would incorporate the recommendations of 2011, 2016 and 2017.

In 2017, India was entering the 25th Anniversary of its own NHRC, and wished to enter its anniversary with an 'A' grade accreditation. The pressure was through different means, including an increase in India's contribution to GANHRI and to the Asian regional affiliation of NHRIs, known as the Asia Pacific Forum, which lobbied for India's accreditation. Thus, in January 2018, India was accredited with an 'A' grade with the trust and hope that the Act of 1993 would be amended. The Act, however, came to be amended only in 2019, almost a year later. The amendments that were passed in 2019 had no relevance to the recommendations of 2011, 2016, and 2017.

Accepting that there was no woman member for a long time, they hurried and persuaded lawyer and academic Jyotika Kalra, who was actually appointed and resigned Kalra, who was politically and ideologically close to the establishment, was asked to withdraw her resignation so that NHRC could pass through the accreditation process.

There are civil society members who are more than capable of being members of the commission, and there are women who have held important positions in the National Commission for Women, National Commission for Child Rights, and the Advisory Committee under the chairmanship of the then Prime Minister Dr. Manmohan Singh and so on. The civil society seat within the NHRC has not been realised so far.

During the period of former Chief Justice of India A.S. Anand, after Justice J.S. Verma had completed his term, there were a series of amendments proposed to the Act. It was due to Justice Verma raising the concern that the Parliament accepted and allowed all other amendments, except one where it was upheld that the chairperson should continue to be a Chief Justice of India or a former Chief Justice of India.

Q: Arun Mishra, a former Supreme Court judge, was appointed as the chairperson of the NHRC last year. What are your views on his suitability for heading an institution like the NHRC?

A: The NHRC is free to bring in Mishra, but what was the process? Did the process involve announcing the vacancies? GANHRI, in its General

Observations, has mandated announcing the vacancies, the selection committee, the indicators to be followed for selection, and intimating the nominees. None of these mandates were followed.

Mishra was cherry-picked. He was kept in waiting and he continued to stay in the same house for several months after his tenure as Supreme Court judge, and then was cherry-picked. The appointment team has to select from a list of members who are suggested. Was there any list of members that were suggested? Except for Mishra, was the name of any other judges of the Supreme Court mentioned? The choice should be made on the basis of the indicators, and that is what GANHRI requires through its General Observations. Therefore, for me, the process of selection of Mishra was not in tune with the standards set for such appointments and selections by the GANHRI.

Q: Both the GANHRI SCA Reports of 2011 and 2017 have raised concerns about the involvement of the police in the investigations of human rights violations before the NHRC. Considering that the Commission is tasked with investigating complaints against the government, including the police, how concerning is this involvement?

A: If the investigations are criminal in nature, then the Commission needs people trained in criminal investigation to be present, including the police and forensic experts. A variety of experts are, thus, drawn into a purely criminal investigation. But under the Protection of Human Rights Act, 1993, the Commission is mandated to undertake an investigation of human rights violations that not only includes the right to life but the right to liberty, the right to equality, and personal integrity. In case of such human rights investigations that are broad in nature, it needs a team that has different potentials and different professionals. In addition, top sociologists, psychologists, and experts in the field of human rights investigation are needed. The need is to have an investigation team that is qualitatively higher. Hence, a complaint against the police cannot be investigated by only the police.

If such a complaint against the police happened to be made by a woman, then a gender expert, along with a woman police investigator, may come out with findings that are revealing. In case of an atrocity against a Dalit, along with a police investigator, if there is a sociologist who is sensitive to such

issues, then the whole question of what caste discrimination means will run through the thread of the investigation and form the main pillar on which the investigation will rely on, with references to the soft law developed by the UN on caste.

We are not saying the investigation should not be done by the police at all. But since it is an investigation of human rights violations, there needs to be the presence of a large team of different competencies, who along with the police, will be investigating the violence.

Q: How, if at all, has the deferment in the re-accreditation impacted the composition and transparency of the Commission? Does the Protection of Human Rights (Amendment) Act, 2019 address the concerns?

A: What the 2019 amendment should have done is at least outlined the selection process of the members, which should include the announcement of the vacancy or the vacancy that is to be caused in the future, the qualification of people who can apply or who can be nominated, the criteria or indicators to be followed by the Committee to shortlist candidates, that such list be presented before the Appointment Committee to select the people based on those indicators, and to make the final list available to the people. It is a whole process and none of this has been included in the 2019 Amendment.

In terms of the investigation team or inclusion and diversity of the members, none of it has been included. It is the question of building trust among victims of human rights violation through NHRC's own existing diversity, as is provided by GANHRI's recommendations. However, it is not reflected in the 2019 Amendment.

For me, the change does not come only through amendments. The change comes by making the NHRC accountable. Today, the NHRC is a body that is not accountable to anybody. Not accountable to Parliament since the Parliament is unaware of the NHRC and its workings, hence the absence of parliamentary questions raised regarding the NHRC. The only opportunity comes when the NHRC's annual report is placed for approval, which is usually three years late.

Therefore, it is important that we make the NHRC answerable to a Parliamentary Committee like a Standing Committee on Human Rights of the Lok Sabha and the Rajya Sabha together. The Secretary of the NHRC

will have to be called into that Committee and the true parliamentarians will be able to question. And once they know they will be able to question, then they will start preparing themselves for the questions.

The NHRC accreditation is a serious process and only if it becomes more effective, more trust will be built in these NHRIs by Indian civil society. For other countries, there is only one NHRI. In our country, we have nine other NHRIs and the model they look up to is the NHRC – one bad thing done by the NHRC means it will be repeated in nine NHRIs. We have over 160 state human rights institutions that have this wrong model to follow. Hence, accreditation becomes important for us. It is not something only a few lawyers have to fight about; political parties have to speak about this accreditation. Movements of ordinary people, the working class, farmers, fishermen, and so on; different thematic groups such as women, people with disabilities, Adivasis and so on have to start speaking about it – this has to be everyone's concern, not just a concern of a few alone.

Q: You have pointed out the need “to form a truly independent commission which recognizes and practices diversity”. In what ways can we achieve this goal for a human rights commission?

A: For the presence of diversity at the NHRC, there needs to be a nomination process by which the nominations can be filed by people representing different interests. The leader of the opposition, and in his absence, the leader of the largest single party sitting in opposition, should be invited to be a part of the selection committee.

The process is what is most important – the process of announcing vacancies, the process of setting indicators, the process of selection based on those indicators, the process of asking for recommendations from members of the civil society – all this will lead to a much more diverse Commission. So, if there are already certain categories of people already represented, it is against that that the selection process should also move.

Q: When is the next accreditation of the NHRC due? What do you think must be particularly focussed on by the GANHRI SCA during the upcoming re-accreditation?

A: There are two events that must be traced at the moment that are of importance. Firstly, the Universal Periodic Review of India is due in 2022, the run-up to which has already started.

This is an event where the NHRC is most likely to get exposed.

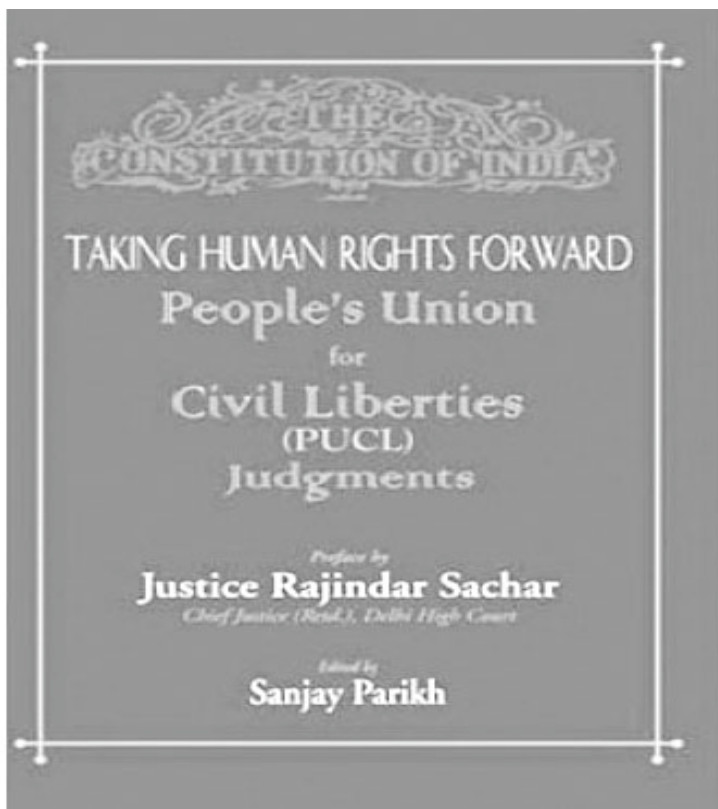
Secondly, the accreditation process is likely to take place in March 2023 at the earliest. This means that by September 2022, the stakeholders' report of the NHRC will have to be completed and submitted. The report will not only have to be prepared but also endorsed by

large sections of the civil society, to be submitted to the GANHRI SCA. The Indian civil society should now be ready to participate on a larger platform on this issue.

¹<https://theleaflet.in/indias-human-rights-record-under-scrutiny-as-nhrc-prepares-for-renewal-of-accreditation-with-ganhri-sca/> @ 24Jul2022 □

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Editorial Board : Sanjay Parikh,

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