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PUCL Statement:

Punitive Home Demolitions: An Outrage on the Constitution

The lowest point in the history of human rights in the Indian context was the emergency declared by the Indira Gandhi regime from 1975-77. The PUCL would like to state with utmost deliberation that the situation today is rapidly taking on emergency like contours. The reason for this prognosis is the way the situation was handled post the protests following the derogatory comments made on the Prophet by the UP administration. Under the leadership of the political executive of the state headed by Shri Yogi Adityanath, the protests were dealt with through mass arrests, police violence and illegal demolitions. All these actions were outside the rule of law framework with the executive becoming a law unto itself. The fact that this unconstitutional state of affairs was allowed to emerge is an indictment of an administration which at all levels right from the Chief Minister to the District Collector and the Police Inspector choose to function as if neither the law nor the constitution existed. The following are the elements of the breakdown of both the rule of law as well as constitutional governance.

Punitive Home demolitions are outside the framework of rule of law

In what has rapidly become a symbol of the current mode of governance, the UP government deployed bulldozers to demolish the homes of protestors and those alleged to be involved in the violence to send a message out that protest will not be tolerated. The demolition which was seen by the world media was that of the house of Parveen Fatima, the wife of Javed Mohammed who was arrested as a suspect in the instigation of the violence which erupted on the 10th of June 2022.

As far as the demolition of the house of Parveen Fatima is concerned, she was not given any notice. The alleged notice which was issued in the name of her husband, Javed Mohammad was pasted on the wall of the house on the 11th night at 10 pm and the house itself was demolished on the 12th mid-morning. The demolition was carried out by the Municipal Corporation in the presence of the District Collector, Mr. Khatri in full glare of the media in the morning hours with more than 10,000 policemen present.

Nether Javed Mohammad nor Parveen Fatima were given any reasonable opportunity to respond to the notice and put forward their reasons as why the home was not illegally constructed and hence should not be demolished. The house was razed to the ground in four hours, giving the family members no chance to save their possessions from the bulldozer. The police used some form of post factu justification for what was to all intents a brazenly illegal and criminal demolition by stating before the media that they found an objectionable poster that read "when injustice becomes law rebellion is your duty" as well as banners and guns. It should be noted that the above mentioned quote is attributed to Thomas Jefferson, America's third President. Afreeen Fatima the daughter of Javed Mohammad noted that there were no guns which were recovered and this seems a fair supposition as the demolition was carried out in the full glare of the media. The guns were a

figment of the police imagination or more seriously a case of illegal planting of evidence.

The state's so called legal justification for the demolition is that notice had been issued on 10 May, a hearing was held on 24 May and orders passed on 25 May. The details of this notice were alluded to in the second notice which was passed on the wall on 11 June. This notice is itself of doubtful authenticity as the main fact which the notice gets wrong is the ownership of the property in question. The fact that the notice was issued in the name of Javed Mohammad when all property records of the Prayagraj Municipality clearly showed that Parveen Fatima was the owner, indicates that the 'notice' was at best a post facto justification for criminal and illegal actions which the state had decided to undertake with the sole objective of punishing Javed Mohammad.

The action violates any minimum compliance with the rule of law. While demolitions of illegal structures are permissible under Indian law they must be undertaken only after due notice has been given to those whose house is to be demolished and a reasonable opportunity is provided for the person to make a representation against the order.

None of these factors were complied with in this demolition.

Punitive home demolitions are outside the framework of the Constitution

Punitive home demolitions are not only illegal but also unconstitutional. India is governed not only by the rule of law but also by the Constitution. The government has obligations to not only to comply with the law but also to ensure that the Constitution is not violated through executive actions. The Supreme Court in its decision in *Olga Tellis vs Bombay Municipal Corporation* (AIR 1986 SC 180) had held that hearing has to be given before any eviction and the government should consider providing alternative sites to those it was considering evicting. The Supreme Court held that the right to life includes the right to shelter and a

government bound by the Constitution cannot ignore its responsibility not to deprive its citizens of the right to shelter without making alternative arrangements.

This legal position has been further elaborated in *Sudama Singh v Government of Delhi*¹ by the Delhi High Court, which was later upheld by the Supreme Court. The Court has laid out clear procedural steps to be followed for evictions. As per the Delhi High Court, prior to an eviction, a survey has to compulsorily be conducted for the purpose of providing alternative accommodation and two, and that the process undertaken must be "meaningfully" done with those sought to be evicted. More importantly, the judgment crucially relies on the United Nation's Special Rapporteur's Guidelines on Eviction, (UN Eviction Guidelines) which states that prior to any decision to evict, authorities must demonstrate that the proposed eviction is unavoidable and consistent with international human rights commitments protective of general welfare.

The Delhi High Court in *Ajay Maken v Union of India*², solidified into law the steps to be taken prior to an eviction. These steps are: 1) An eviction must be compulsorily preceded by a survey to identify whether the residents being evicted are eligible for rehabilitation as per existing law, 2) If the residents are eligible for rehabilitation, necessary arrangements for alternative accommodation or in-situ rehabilitation must be provided for, prior to the eviction and 3) Before any eviction is undertaken, meaningful engagement must be undertaken with the residents, which is in line with the right to life, livelihood and dignity of jhuggi dwellers.

Needless to say, none of these constitutional mandated steps were taken in the demolition of Parveen Fatima's home which was not only illegal but also unconstitutional. The Indian Constitution with the constitutional guarantee of the right to livelihood, the right to shelter and most fundamentally the right to

dignity does not countenance arbitrary state actions which render a person homeless without providing an alternative.

Punitive Home demolitions are a form of collective punishment

According to the UP PUCL Javed Mohammed was in the crosshairs of the state for his work as a member of the Welfare Party of India. The Welfare party had worked with the Muslim community and his house served as a meeting space for community level activism. Since the anti- CAA movement both Javed as well as his daughter Arfeen Fatima have been vocal dissenters who have not hesitated to express themselves against the policies of both the central and state government.

Even in the logic of the state it was targeting Javed Mohammed. But by demolishing the home in which not only the accused but also innocents lived, namely his wife and daughters, it was engaging in a form of collective punishment. For the state to punish those it thinks are guilty of an offence (however heinous the offence may be) by demolishing their homes is not only illegal and arbitrary but also a form of collective punishment. At the heart of criminal law is the idea of individual responsibility and nobody else can be punished for the alleged crimes of their son or father or daughter. By punishing innocents along with those it deems accused, the state devolves from a constitutional state bound by the rule of law to a vengeful, arbitrary despotism.

This form of punitive house demolitions is not only being done to the house of Parveen Fatima but also to houses of those arrested in Saharanpur and Kanpur. This year has seen punitive home demolitions in Assam, Delhi and Madhya Pradesh. This emerging pattern of the use of punitive home demolitions to deal with dissent is a criminal policy of the state, completely at odds with both the law and the Constitution.

Punitive home demolitions authorized by the political

executive and carried out by the permanent executive are criminal acts warranting prosecution

The demolition of Parveen Fatima's home was not just illegal and unconstitutional but was also a malafide act warranting prosecution. The question as to why of all the illegal structures in the city of Prayagraj, the house of Parveen Fatima was singled out and demolished bespeaks the malafide nature of the act of the UP administration to target the family of Parveen Fatima. The UP administration did not hesitate to wear its criminal intent on its sleeve. Two statements of the ADGP Law and order quoted in The Wire.in on the 4th of June states “ that those involved in protests will be booked under the stringent Gangsters Act and their properties seized or demolished” and on the 12th of June he stated that they are dedicated to take action against those involved in violence across the states. He said they had made out stringent cases against the culprits in a manner that they would not be out of prison for a

long period. That there would extra judicial action, was clear from the tweet of the media advisor of the CM, Mrityunjay Kumar after the 10th June violence. It brazenly stated that 'Every Friday is followed by Saturday’.

It bears noting that there was complicity in this criminal enterprise at all levels of the state administration. Right from the implicit authorization to do illegal acts by the Chief Minister to explicit taking of responsibility to carry out the demolition by the District Collector, Mr. Khatri all levels of the administration are complicit. It bears noting that the Chief Minister has taken an oath to 'bear true faith and allegiance to the Constitution of India'. The District Collector in whose presence the demolition was carried out is similarly sworn to work within the framework of the Constitution. The fact that there was no resistance within the bureaucracy to carrying out what were patently illegal and unconstitutional orders, only speaks to the complete failure of constitutional governance within the

state of Uttar Pradesh.

Mass and arbitrary arrests

Apart from punitive home demolitions UP has also responded to the protests by carrying out mass and arbitrary arrests. In the cities of Prayagraj and Saharanpur and four others it was alleged that the mob had set on fire a few motorcycles and carts, and also attempted to set ablaze a police vehicle. The Police justified the use of tear gas and lathis to disperse the protesters.

According to the ADG law and order Prashant Kumar the police had been attacked with the stones by some of the protestors after the Friday prayers causing injuries to 13 cops who were getting treatment. According to the official police statement in more than 9 cities incidents of violence happened after the prayers. With 19 FIRs being lodged and more than 304 people had been arrested.

Information released by the police on the 12 of June regarding the FIRs and arrests

| S.No. | District | FIR Registered | Numbers of People Arrested |
|--------------|-----------------|----------------|----------------------------|
| 1 | Firozabad | 1 | 15 |
| 2 | Ambedkar Naar | 1 | 34 |
| 3 | Muradabad | 1 | 34 |
| 4 | Saharanpur | 3 | 71 |
| 5 | Prayagraj | 3 | 91 |
| 6 | Hathras | 1 | 51 |
| 7 | Aligadh | 1 | 6 |
| 8 | Lakhimpur Khiri | 1 | 0 |
| 9 | Jalon | 1 | 2 |
| Total | | 13 | 304 |

The treatment of Javed Mohammad bespeaks the arbitrary nature of the arrests. On the night of the 10th June, he was arrested and after midnight, his wife Parveen Fatima and his daughter Sumaiya Fatima were detained for more than 30 hours. The police came back at 3 am to take the elder daughter of Javed Mohammed, Afreen Fatima who refused to go with the police citing her constitutional

right not to be arrested by the police in the middle of the night. Javed Mohammed was produced before the Magistrate but was not given the opportunity to consult and be represented by a lawyer.

What happened to Javed Mohammad is only a microcosm of the way arrests have been carried out across the state. The UP police are using the opportunity presented by

the violence to go after dissenters and dissidents who have nothing to do with the violence in an arbitrary, highhanded and illegal manner.

The point is strongly made in a representation by former Supreme Court and High Court judges to the Chief Justice to take *suo motu* cognizance of these series of violations. The letter poignantly notes that:

“Videos of young men in police custody being beaten with lathis, houses of protestors being demolished without notice or any cause of action, and protestors from the minority Muslim community being chased and beaten by the police, are circulating on social media, shaking the conscience of the nation”.

Conclusion

The evolving fact situation noted above based as it is on a complete failure of both the political executive as well as the permanent executive to work within the confines both the law as well as the constitution presents an extraordinary challenge to the future of constitutional governance in India. This form of punitive demolitions outside both the law and the Constitution have been operationalized by the state not only in Prayagraj but also in Kanpur. Prior to punitive home demolitions being undertaken in Uttar Pradesh they were undertaken in Delhi, Madhya Pradesh and Assam. The fact that those perpetrating these illegal

actions have only been emboldened by the failure of all authorities to prevent unconstitutional governance is a cause of grave concern. Worryingly, collective punishment outside the framework of the law and the constitution is emerging as a policy in many states to deal with dissent.

The demands which the PUCL has are that:

- The PUCL calls upon the CJI to exercise his constitutional responsibility to ensure that the judiciary at all levels would take cognisance of the abuse of the rule of law by the Government of UP, Assam, MP and the Home Ministry of GOI and prevent unconstitutional governance.
- The State of Uttar Pradesh as well as the governments of Madhya Pradesh, Assam and the Union Government conform to the requirement of respecting the constitutional right to shelter and not carry out punitive home demolitions and arbitrary

arrests.

- State of UP to register an FIR against all state officials responsible for the illegal home demolitions
- Nupur Sharma and Naveen Jindal should be proceeded against as under law.
- Ensure compensation to all those whose homes have been punitively demolished following the violence
- Set up a committee to inquire into allegations of police excesses and torture of those who were arrested as well as allegations of mass, arbitrary arrests.

Kavita Srivastava, Arvind Narrain, V. Suresh

(The above statement was prepared by Kavita Srivastava (National Secretary) and Arvind Narrain (President, PUCL Karnataka and finalised) □

¹2010 SCC OnLine Del 612.

²2019 SCC OnLine Del 7618

Punitive Demolitions in Madhya Pradesh Madhuri Krishnaswamy, PUCL, MP

The Chief Minister, Shri Shivraj Singh Chauhan, The Home Minister Shri Narottam Mishra and senior officials have frequently been quoted in the media as stating that property of “criminals” are to be summarily demolished, and the Chief Minister is frequently referred to by the sobriquet of “Bulldozer Mama” and compared to “Bulldozer Baba” of UP. After sporadic incidents of summary punitive demolitions over the past two years, several such demolitions took place in Khargone and in Sendhwa town of District Barwani, immediately following communal clashes following Ram Navami processions on 10th April 2022. Even though both communities were affected by the violence, all the properties destroyed by the administration belonged to Muslims. No notices were given, no time was given to retrieve belongings. The

demolition teams led by district officials simply descended on the homes and businesses and destroyed them.

A list of homes and businesses demolished in Khargone is as follows:

1. House of a 65 year old widow, Hasina Bi, which had been sanctioned
 - i. and constructed under the Pradhan Mantri Awas Yojana scheme
2. 21 other houses of labourers in the same neighbourhood of I. Khaskhaswadi
3. 12 shops attached to the Talab Chowk Masjid
4. A bakery belonging to Amjad s/o Abdul Rashid
5. A bakery belonging to Amjad s/o Kalu Khan (partially demolished)
6. 70 year old family home and agricultural implements shop of

Ayub Khan

7. A restaurant, “Wakt Hotel” owned by Alim Sheikh
8. House of Sheikh Mohd Rashid
9. Tent house, godown, room and cattle shed of Zahid Ali (on ancestral
 - i. property and had been demarcated by the Tehsildar in 2017)
10. House of Mukhim Chand, on land which had been demarcated by the
 - i. Tehsildar in 2010
11. House of Shahdullah Beg, as above
12. House of Sheikh Muslim
13. “Lazeez Hotel” owned by Alim Sheikh (partially demolished)

This list of 44 properties is not exhaustive. None of these persons are accused in the violence and these properties appear to have been targeted merely because they were

owned by Muslims . Some of them, like Amjad Kalu Khan and Alim Sheikh were pressurised to accept backdated notices after the demolition, following public outcry against the blatant illegalities of the proceedings . Amjad Khan, a well-known public figure, whose case has been widely documented in the media has been served notices on other buildings, after he took the matter to Court. Other bakery owners have also been served notices now, in a move that is seen to be biased and motivated proceedings against Muslim-owned businesses.

It should be noted that there have also been several allegations of biased and irregular police action following the communal clashes in Khargone on 10th April 2022. The family of a youth, Ibraish Khan who was killed in the clashes has alleged that his death was concealed from them for almost a week and that subsequently the police did not arrest the persons named by the eye witness but instead arrested a few others in order to assuage public sentiment. Owners of cattle-feed godowns which were completely gutted in the violence have complained that in one case , the names of perpetrators named by them in written complaints have been dropped in the FIR while in another case, police refused to register an FIR. There have been several other such allegations of FIRs not being registered, or being manipulated by the police.

The homes of the following persons were demolished in Sendhwa on 11.04.2022, the day after communal violence:

1. Islam Khan
2. Salim Mansuri
3. Shahid Sheikh
4. Raziya Mansuri
5. Kashmira Khan
6. Jafir Khan
7. Sakina Bi
8. Asghar Khan
9. Shakil Teli
10. Samar Khan, Umar Khan, Rukayya Khan
11. Samad Mansuri

Of these, the houses of Kashmira Khan, Asghar Khan and Islam Khan were sanctioned and constructed under the PM Awas Yojana, though the paperwork of Islam Khan is not complete . No member of the families of Kashmira Khan, Islam Khan and Shakil Teli were even accused in the violence. One member of the families of the others were accused, including Sakina Bi's son Shabaaz who was in jail at the time of violence and Jafir Bhai's brothers who is bed ridden with failing kidneys, while Shahid Sheikh's son's name was allegedly added to the FIR after the demolition of their home .

Earlier Incidents

Over the past two years several homes and businesses, mainly belonging Muslims, have been demolished without due process immediately after a member of the family has been accused of a crime.

On 25.12.2020 there were communal clashes in Ujjain during a rally by BJYM. The very next day , the house of a daily wage earner, Abdul Rafeeq was demolished after it was alleged that stones had been pelted at the rally from his house . His family of 19 members, including 10 children was rendered homeless within half hour when the house that they had built over 35 years was razed. The family was not even allowed to retrieve its belongings. However, his neighbour, Meera Bai, said that it was her tenant, who with another woman had pelted the stones. Allegedly the administration originally targeted Meera Bai's house but switched to Rafeeq's house when they realised that she is a Hindu. Similar communal tension in Chandankhedi village of neighbouring Indore district on 29.12.2020 was followed by 13 houses of Muslims being demolished the next day.

2 days after communal violence in Manawar, dist Dhar on 23.12.2021, a two storey building reportedly worth Rs 45 lakhs, belonging to Khalil Khatri was demolished after the allegation that 3 of his tenants had been involved in the violence. Khatri

was given 24 hours to produce building permission papers and his house was demolished when he could not do so within this time period.

On 19.03.2022, following communal violence in Raisen district the previous day, 4 houses and shops of Muslims accused in the violence were demolished . The very next day, on 20.03.2022, the houses of three Muslims accused in the rape of an Adivasi girl in district Sheopur the previous day, were demolished . These two actions were widely reported as being on the orders of the Chief Minister and were celebrated as his taking a tough stand against crime.

On 16.01.2022, the houses of three kite sellers, Abdul Jabbar and two non- Muslims were razed, following the death of a young woman due to dangerous illegal kite string . Abdul Jabbar's non-literate wife was served a notice backdated to 12.01.2022 and within an hour, their house was razed . It is alleged that no action was taken against the wholesale dealer of the illegal kite string .

In November 2020, a school and college run by Bhopal MLA Arif Masood were partially razed immediately after he led protests against anti-Islamic statements by French President Macron.

(However, it is not exclusively Muslims who have been subjected to summary punitive demolitions. On 25.08.2021, property of four Gujjars accused in the public murder of a Bheel Adivasi in Neemuch three days earlier, was razed. This murder, and the initial police reluctance to take action had led to huge Adivasi protests, and the demolitions were seen as an attempt to assuage this anger. There have been a few other punitive demolitions also: In Rewa district, property belonging to the accomplice of a Mahant accused of rape, was partially razed on 03.04.2022) □

Letter/Petition sent by Former SC/ HC Judges and Senior Advocates to the CJI for action in UP incidents

To
The Hon'ble Chief Justice of India,
Supreme Court of India,
Bhagwan Das Road, New Delhi
Subject: Urgent Appeal to the Hon'ble Supreme Court to take *Suo Motu* cognisance of the recent acts in Uttar Pradesh of illegal detention, bull dozing of residences and police violence on protestors and those in police custody following protests against certain objectionable remarks made by BJP Spokespersons.

This letter petition is being presented as an urgent appeal to the Hon'ble Supreme Court of India to take *suo motu* cognisance of the recent incidents of violence and repression by state authorities on citizens in Uttar Pradesh. Recent remarks made by BJP spokespersons (Since suspended from office) on the Prophet Mohammed have resulted in protests in multiple parts of the country and particularly in UP. Instead of giving protestors an opportunity of being heard and engaging in peaceful protest the UP State Administration appears to have sanctioned taking violent action against such individuals. The Chief Minister has reportedly officially exhorted officials "to take such action against those guilty that it sets an example so that no one commits a crime or takes law into their hands in the future". He has further directed that the National Security Act, 1980, and the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986, be invoked against those found guilty of unlawful protests. It is these remarks that have emboldened

the police to brutally and unlawfully torture protestors".

Pursuant to this, the UP Police have arrested more than 300 persons and registered FIRs against protesting citizens. Videos of young men in police custody being beaten with lathis, houses of protestors being demolished without notice or any cause of action, and protestors from the minority Muslim community being chased and beaten by the police, are circulating on social media, shaking the conscience of the nation, Such a brutal clampdown by a ruling administration is an unacceptable subversion of the rule of law and a violation of the rights of citizens, and makes a mockery of the Constitution and fundamental rights guaranteed by the State. The coordinated manner in which the police and development authorities have acted lead to the clear conclusion that demolitions are a form of collective extrajudicial punishment, attributable to a state policy which is illegal.

The mettle of the judiciary is tested in such critical times. On many occasions, including in the recent past, the judiciary has faced such challenges and emerged with distinction as the custodian of the rights of the people. Some recent examples are the *suo motu* actions taken by the Supreme Court in the migrant workers matter and in the Pegasus matter. In the same spirit, and in its role as custodian of the Constitution, we, therefore, urge the Hon'ble Supreme Court to take immediate *suo motu* action to arrest the deteriorating law and order situation in Uttar Pradesh,

specifically involving the high-handedness of the police and state authorities, and the brutal clampdown on the fundamental rights of citizens. We hope and trust the Supreme Court will rise to the occasion and not let the citizens and the Constitution down at this critical juncture.

Signed by

1. Justice B. Sudarshan Reddy (Former judge of Supreme Court of India);
2. Justice V. Gopala Gowda (Former judge of Supreme Court of India);
3. Justice A.K. Ganguly, (Former judge of Supreme Court of India);
4. Justice AP Shah (Former Chief Justice of Delhi High Court and former Chairperson, Law Commission of India);
5. Justice K Chandru (Former Judge of Madras High Court);
6. Justice Mohammed Anwar (Former Judge of Karnataka High Court);
7. Shanti Bhushan (Senior Advocate, Supreme Court);
8. Indira Jaising (Senior Advocate, Supreme Court);
9. Chander Uday Singh (Senior Advocate, Supreme Court);
10. Sriram Panchu (Senior Advocate, Madras High Court);
11. Prashant Bhushan (Advocate, Supreme Court);

Anand Grover (Senior Advocate, Supreme Court). □

¹<https://indianexpress.com/article/cities/ucknow/up-police-arrests-227-people-for-friday-violence-cm-adityanath-warns-7964643/>

The Role of the Judiciary in Difficult Times: Remembering Justice Khanna's Dissent Arvind Narrain

On the 47th anniversary of the declaration of the emergency by Indira Gandhi on the 25th of June 1975, we should remember one very brave judge, Justice H.R. Khanna. In *ADM Jabalpur v Shivakant Shukla*¹.

the Supreme Court (by a majority of four is to one) overruled nine high courts and held that during an emergency, the right of persons to move the court for enforcement of fundamental rights and statutory

rights stood suspended. In effect, the judges ruled that a declaration of emergency was not only enough to set aside the fundamental rights but also the requirement that statutory law be complied with.

The *ADM Jabalpur* judgement, 'Coming at the darkest period in the history of independent India, it made the darkness complete'² However, *ADM Jabalpur* was not a unanimous opinion, with a brave dissent by Justice Khanna, who forcefully asserted the role of the judiciary even in a time of national emergency.

Justice Khanna was fiercely critical of the Attorney General's submission that Article 21 was the sole repository of the right to life. He went on to hold that the protection of the right to life and personal liberty is the 'essential postulate and basic assumption of the rule of law'. He forcefully said:

"... this sacred land shall not suffer eclipse of the rule of law and that the Constitution and the laws of India do not permit life and liberty to be at the mercy of absolute power of the executive, a power against which there can be no redress in courts of law, even if it chooses to act contrary to law or in an arbitrary and capricious manner".

Secondly, his dissent can be read as a forceful critique of formalist understanding of the rule of law on which the majority opinion was based. Justice Khanna held that just because a law is passed, it cannot deprive a person of judicial redress against threat to right to life and liberty.

Thirdly, Justice Khanna reiterated that 'the executive can never go against the provisions of the Constitution or any law'. He went back to the words of Ambedkar before the Constituent Assembly, who had said that 'constitutional government' cannot function unless the 'constitutional authority remembers the fact that its authority is limited by the Constitution'.

Fourthly, his dissenting opinion was a ringing affirmation of the judiciary's role in a time of emergency. 'Even in an emergency when the state is threatened the courts must speak,' he noted.

Justice Khanna was conscious that his was a voice in the wilderness and that his colleagues on the bench were not with him. He ended his dissent by invoking the words of the former US chief justice Charles

Evans Hughes: '**A dissent in a court of last resort to use his words, is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed.**'

However, such was the censorship regime surrounding the decisions of the court that Justice Khanna's heroic dissent was not allowed to be published during the Emergency. There were personal consequences to Justice Khanna too. Although he was in line to be the next Chief Justice of India, in January 1977, nine months after he delivered his historic dissent, he was unjustly overlooked. On being superseded, Justice Khanna resigned from the Supreme Court. On his resignation, one of India's most eminent lawyers Nani Palkhivala penned a moving tribute in the *Sunday Standard* saying that Justice Khanna would be remembered for 'his historic judgment' in the habeas corpus case which was a 'shining example of judicial integrity and courage'. He ended by saying that 'to the stature of such a man, the Chief Justiceship of India can add nothing'³.

In 2017, the Supreme Court in *Puttaswamy v Union of India*, the case in which privacy was declared to be a fundamental right, excoriated the majority decision in *ADM Jabalpur* as a 'discordant note' in the evolution of a jurisprudence which 'places the dignity of the individual [at] the forefront'⁴. The majority said that the *ADM Jabalpur* judgement would 'have to be consigned to the archives, reflective of what was, but should never have been'. The Supreme Court overruled the past judgement, with Justice D.Y. Chandrachud noting that 'the view taken by Justice Khanna must be accepted, and accepted in reverence for the strength of its thoughts and the courage of its convictions'. Justice S.K. Kaul said that the *ADM Jabalpur* judgement was 'an aberration in the constitutional jurisprudence of our country' and expressed the 'desirability of burying the majority opinion ten fathom deep, with no

chance of resurrection'. The overruling of *ADM Jabalpur* will no longer allow for the judgement to be cited as a precedent.

Justice Khanna's dissent kept alive the possibility of justice and became a beacon of inspiration in Indian history. The fact that today Justice Khanna is a byword for judicial courage can be seen in a valedictory address for judges by a former chief justice of the Chhattisgarh High Court Yatindra Singh, who in 2014 referenced the dissent as the 'silver lining in the failure of the rule of law during the emergency'. He compared it to the great dissent of Atkin in *Liversidge v Andersen*⁵, during which Justice Atkin had famously said that when it came to the 'liberty of the subject', judges should not become 'more executive-minded than the executive'.

Justice Singh went on to say, 'With one judgment, Justice Khanna became more famous, more respectable, more celebrated than any judge to have ever adorned the bench in our judiciary,' and told the assembled judges, 'May you go on to follow "rule of law" and become a judge like Justice H.R. Khanna⁶.' It is precisely when the executive overreaches in contemporary times that his dissent moves from being a part of the judicial archive to becoming a conversation about the future of Indian democracy.

Arvind Narain is the President of PUCL Karnataka. □

¹*ADM Jabalpur v Shivkant Shukla*, <https://indiankanoon.org/doc/1735815/>

²Seervai, *The Emergency*, p. vii

³indianexpress.com/article/opinion/columns/january-30-1977-forty-years-ago-4497986/; *Puttaswamy v Union of India*, cf. Opinion of Justice Nariman who cites Palkhivala's opinion piece on Justice Khanna's supersession, main.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf.

⁴main.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf

⁵1941 (3) ALLER 338

⁶Speech delivered by Justice Yatindra Singh, Chief Justice, Chhattisgarh High Court, at the valedictory function of the Regional Judicial Conference on 'Role of Courts in upholding the Rule of Law' at Bilaspur on 30 March 2014, 164.100.179.45/artical/RuleofLaw.pdf.

Summary of Minutes of PUCL National Executive Meeting (Virtual) on 12th June, 2022

Meeting attended by 25 members from the states of Bihar, Chhattisgarh, Delhi, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, and Uttar Pradesh.

Main discussion points and decisions taken during the meeting:

1. Holding National Council Meeting

- Mr. Suresh, General Secretary PUCL explained the distinction between the National Executive and the National Council. The National Executive consists of the current national office bearers, the past National President and all the Presidents and the General Secretaries of the State Units. In the case of Ad Hoc units or new units, the Convenor and another member of the Ad Hoc Committee are also included and as soon as the regular State unit is set up and state office bearers are elected,, the President and GS of the unit become members of the National Executive.
- The National Council is akin to the Electoral College and its membership depends upon the membership at the State level. The norm is every state unit is entitled to one National Council (NC) member for every fifty members of the state unit. The NC members are elected by the State Council. The General Secretary of the state unit is directly a member of the National Council.
- The National Council meets once every year and only members elected to the NC from each state unit, and the National Office bearers participate in the meeting.
- Once every 2 years, the NC meeting elects new set of Office Bearers for the National unit. The newly elected office bearers will assume office on the date when a National Convention is held. The National Convention is held

within a period of 3 months after the National Council meeting.

- The last NC meeting when the present set of National Office Bearers was elected was held in Delhi in October, 2018. The Office bearers took charge in the National Convention in Bengaluru in February – March, 2019. Thereafter the next NC meeting was held in February, 2020 in Allahabad. But pursuant to the Covid lockdown it has not been possible to hold physical meetings. With the easing of travel restrictions, it is imperative that we hold the next NC meeting in the next few months.
- After discussion, the dates for the National Council meeting are as follows:
 - National Council meeting –
 - Dates: **4th (Friday morning) to 6th November, 2022.**
 - Venue: **Gandhi Peace Foundation, Delhi.**
 - (Note: These dates have been finalised and the arrangements for booking the rooms and hall at the Gandhi Peace Foundation have been confirmed.)
- 2. **Submission of Membership**
 - For the holding of the meeting of the National Council, the state membership lists will have to be finalized. Considering the disruption caused by the Covid lockdown the membership details need to be updated and finalised with regard to each state unit. After extensive discussion during the NE meeting the following schedule of dates was finalised for submission by each state unit of the total list of members, who have paid annual subscription (in the case of annual members) and life membership. This list will be used to calculate the number of NC members to be elected from each state in the ratio of one NC member for every 50 state unit members. Any ratio above 0.5% will be counted as another

additional member. (To illustrate, if there are 330 members, based on the above ratio, the unit will be entitled to 6.6 members; in such a scenario it will be calculated as 7 members).

1. 31.07.2022 - Last date for finalising membership list.
2. 07.08.2022 - Date for submission of full membership list WITH share of subscription to reach National Office.
3. 31.08.2022 - Date of finalising the membership list for all states and informing each state unit.

4. Conduct of elections to state office bearers

- A number of state units reported that they had conducted fresh elections to the State Office Bearers. The issue of whether they complied with the Constitution and rules / practices of PUCL were discussed. (A detailed report is being prepared on this and shall be circulated subsequently).
- The importance of following the established procedures for conduct of State Councils and elections to office bearers for each state unit was stressed. In particular, that elections to the state units will have to comply with the procedure laid down was pointed out. These include:
 - The State GS should inform the National Office (through the official email: puclnat@gmail.com) and the National General Secretary (email: pucl.natgensec@gmail.com) the initiation of the process of organising the State Council meeting when the elections will also be held and the date and venue of the State Council meeting.
 - This information will be shared by PUCL National Office to all National Office Bearers.

- A National Office Bearer will be deputed to each State Council and election meeting as Observer.
- In the light of discussions, Karnataka unit asked to submit a report on how the procedures of the election of the state office bearers were carried out. Similarly, Chhattisgarh unit also asked to submit a similar report. A team from the national office

will visit Chhattisgarh post the submission of the report.

- The worrying communal situation in Karnataka and Uttar Pradesh was shared it was resolved to constitute a smaller group to take forward work on combatting the illegal demolitions and other issues. Immediately a statement will be put out and further activities planned. At present the group

consists of Suresh, Mihir, Kavita, Madhuri, Rajni, Pancholiji, Rohit, Vertika to brainstorm on strategies to take this forward. This group will meet on 14.06.22. Others welcome to join.

20.06.2022

Prepared by **Arvind Narrain**, President, PUCL Karnataka) and **V. Suresh**, General Security, PUCL National (A detailed Minutes will be circulated to all the NE members shortly)

¹indianexpress.com/article/opinion/columns/january-30-1977-forty-years-ago-4497986/; *Puttaswamy v Union of India*, cf. Opinion of Justice Nariman who cites Palkhivala's opinion piece on Justice Khanna's supersession, main.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf.

²main.sci.gov.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf.

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⁴Speech delivered by Justice Yatindra Singh, Chief Justice, Chhattisgarh High Court, at the valedictory function of the Regional Judicial Conference on 'Role of Courts in upholding the Rule of Law' at Bilaspur on 30 March 2014, 164.100.179.45/artical/RuleofLaw.pdf.

Courtesy: wired.com

Police Linked to Hacking Campaign to Frame Indian Activists¹ Andy Greenberg, 16th June, 2022, The Wired.com

New details connect police in India to a plot to plant evidence on victims' computers that led to their arrest.

POLICE FORCES AROUND the world have increasingly used hacking tools to identify and track protesters, expose political dissidents' secrets, and turn activists' computers and phones into inescapable eavesdropping bugs. Now, new clues in a case in India connect law enforcement to a hacking campaign that used those tools to go an appalling step further: planting false incriminating files on targets' computers that the same police then used as grounds to arrest and jail them.

More than a year ago, forensic analysts revealed that unidentified hackers fabricated evidence on the computers of at least two activists arrested in Pune, India, in 2018, both of whom have languished in jail and, along with 13 others, face terrorism charges. Researchers at security firm SentinelOne and nonprofits Citizen Lab and Amnesty International have since linked that evidence fabrication to a broader hacking operation that targeted hundreds of individuals over nearly a decade, using phishing emails to infect targeted computers with spyware, as well as

smartphone hacking tools sold by the Israeli hacking contractor NSO Group. But only now have SentinelOne's researchers revealed ties between the hackers and a government entity: none other than the very same Indian police agency in the city of Pune that arrested multiple activists based on the fabricated evidence.

"There's a provable connection between the individuals who arrested these folks and the individuals who planted the evidence," says Juan Andres Guerrero-Saade, a security researcher at SentinelOne who, along with fellow researcher Tom Hegel, will present findings at the Black Hat security conference in August. "This is beyond ethically compromised. It is beyond callous. So we're trying to put as much data forward as we can in the hopes of helping these victims."

SentinelOne's new findings that link the Pune City Police to the long-running hacking campaign, which the company has called Modified Elephant, center on two particular targets of the campaign: Rona Wilson and Varvara Rao. Both men

are activists and human rights defenders who were jailed in 2018 as part of a group called the Bhima Koregaon 16, named for the village where violence between Hindus and Dalits—the group once known as "untouchables"—broke out earlier that year. (One of those 16 defendants, 84-year-old Jesuit priest Stan Swamy, died in jail last year after contracting Covid-19. Rao, who is 81 years old and in poor health, has been released on medical bail, which expires next month. Of the other 14, only one has been granted bail.)

Early last year, Arsenal Consulting, a digital forensics firm working on behalf of the defendants, analyzed the contents of Wilson's laptop, along with that of another defendant, human rights lawyer Surendra Gadling. Arsenal analysts found that evidence had clearly been fabricated on both machines. In Wilson's case, a piece of malware known as NetWire had added 32 files to a folder of the computer's hard drive, including a letter in which Wilson appeared to be conspiring with a banned Maoist group to assassinate Indian prime

minister Narendra Modi. The letter was, in fact, created with a version of Microsoft Word that Wilson had never used, and that had never even been installed on his computer. Arsenal also found that Wilson's computer had been hacked to install the NetWire malware after he opened an attachment sent from Varavara Rao's email account, which had itself been compromised by the same hackers. "This is one of the most serious cases involving evidence-tampering that Arsenal has ever encountered," Arsenal's president, Mark Spencer, wrote in his report to the Indian court.

In February, SentinelOne published a detailed report on Modified Elephant, analysing the malware and server infrastructure used in the hacking campaign to show that the two cases of evidence fabrication Arsenal had analysed were part of a much larger pattern: The hackers had targeted hundreds of activists, journalists, academics, and lawyers with phishing emails and malware since as early as 2012. But in that report, SentinelOne stopped short of identifying any individual or organization behind the Modified Elephant hackers, writing only that the "activity aligns sharply with Indian state interests."

Now the researchers have gone further in nailing down the group's affiliations. Working with a security analyst at a certain email provider—who also spoke to WIRED but asked that neither they nor their employer be named—SentinelOne learned that three of the victim email accounts compromised by the hackers in 2018 and 2019 had a recovery email address and phone number added as a backup mechanism. For those accounts, which belonged to Wilson, Rao, and an activist and professor at Delhi University named Hany Babu, the addition of a new recovery email and phone number appears to have been intended to allow the hacker to easily regain control of the

accounts if their passwords were changed. To the researchers' surprise, that recovery email on all three accounts included the full name of a police official in Pune who was closely involved in the Bhima Koregaon 16 case.

The three hacked accounts have other fingerprints that link them - and thus the Pune police - to the larger Modified Elephant hacking campaign: The email provider found that the hacked accounts were accessed from IP addresses that SentinelOne and Amnesty International had previously identified as those of Modified Elephant. In the case of Rona Wilson, the email provider security analyst says that Wilson's email account received a phishing email in April 2018 and then appeared to be compromised by the hackers using those IPs, and at the same time the email and phone number linked to the Pune City Police were added as recovery contacts to the account. The analyst says Wilson's email account was then itself used to send out other phishing emails to targets in the Bhima Koregaon case for at least two months before Wilson was arrested in June of 2018.

"We generally don't tell people who targeted them, but I'm kind of tired of watching shit burn," the security analyst at the email provider told WIRED of their decision to reveal the identifying evidence from the hacked accounts. "These guys are not going after terrorists. They're going after human rights defenders and journalists. And it's not right."

To further confirm the link between the recovery email and phone number on the hacked accounts and the Pune City Police, WIRED turned to John Scott-Railton, a security researcher at the University of Toronto's Citizen Lab, who along with others at Amnesty International had earlier revealed the extent of the hacking campaign against the Bhima Koregaon 16 and shown that the NSO hacking tool Pegasus had been used to target some of their smartphones.

To prove that the Pune City Police controlled the recovery contacts on the hacked accounts, Scott-Railton dug up entries in open source databases of Indian mobile phone numbers and emails for the recovery phone number that linked it to an email address ending in pune@ic.in, a suffix for other email addresses used by police in Pune. Scott-Railton found that the number is also linked in the database to the recovery email address connected to the hacked accounts for the same Pune police official.

Separately, security researcher Zeshan Aziz found the recovery email address and phone number tied to the Pune police official's name in the leaked database of TrueCaller, a caller ID and call-blocking app, and found the phone number linked to his name in the leaked database of iimjobs.com, an Indian job recruitment website. Finally, Aziz found the recovery phone number listed with the official's name on multiple archived web directories for Indian police, including on the website of the Pune City Police. (WIRED also verified that at the time the accounts were compromised, the email provider would have sent a confirmation link or text message to any recovery contact information added to an email account, which suggests that the police did, in fact, control that email address and phone number).

Scott-Railton further found that the WhatsApp profile photo for the recovery phone number added to the hacked accounts displays a selfie photo of the police official - a man who appears to be the same officer at police press conferences and even in one news photograph taken at the arrest of Varavara Rao. WIRED reached out in multiple emails and phone calls to the Pune City Police and the Pune police official whose personal details were linked to the hacked accounts and received no reply.

One Mumbai-based defense attorney representing several of the

Bhima Koregaon 16, Mihir Desai, says he would need to independently corroborate the new evidence of the Pune police's links to the hacking campaign. But taken at face value, he says, it appears "very damning." He adds that he is hopeful it could help his clients, including Anand Teltumbde, who has been accused of terrorist connections based in part on an apparently fabricated document found on Rona Wilson's computer. "We've known things have been planted, but the police could have always said, 'we are not involved in all this,'" says Desai. "By showing the police did this, it would mean there was a conspiracy to arrest these people. It would show the police have acted in a vicious and deliberate manner knowing fully well this was false evidence." The conclusion that Pune police

are tied to a hacking campaign that appears to have framed and jailed human rights activists presents a disturbing new example of the dangers of hacking tools in the hands of law enforcement—even in an ostensible democracy like India. SentinelOne's Guerrero-Saade argues that it also raises questions about the validity of any evidence pulled from a computer that's been hacked by a law enforcement surveillance operation. "This should invite a conversation about whether we can trust law enforcement with these sorts of malware operations at all," says Guerrero-Saade. "What does it mean to have evidentiary integrity when you have a compromised device? What does it mean for somebody to hack a device for fact-finding in a law enforcement operation when they can also alter

the contents of the device in question?"

Beyond any larger questions, Guerrero-Saade and his fellow SentinelOne researcher Tom Hegel say they're focused on the fate of the victims in the Bhima Koregaon case, almost all of whom have remained in jail even as the evidence against them proves to be more corrupt with every year. Ultimately, the researchers hope their findings can not only demonstrate police wrongdoing in the case, but win those activists and human rights defenders their freedom. "The real concern here is the folks languishing in prison," says Guerrero-Saade. "We're hoping this leads to some form of justice." □

¹ <https://www.wired.com/story/modified-elephant-planted-evidence-hacking-police/>
@ 20Jun2022

A Just Policy Must Precede the Bulldozer

Illegal constructions by encroaching on land which does not belong to the encroachers is a reality. The encroachers are not only the needy poor but also the rich and those with muscle power or political power. Nobody would object to the removal of the encroachment in principle or in practice if it is done in a principled and fair way. The sensitive and fair-minded people feel outraged because of the unprincipled approach of the government. They feel that the encroachment by the desperate poor in need of a roof over their heads and the same by the privileged rich or those possessing muscle power should not be treated alike. While the encroachment by the poor is a matter of life and death, the same by the privileged is a luxury and pomp and show. This fundamental difference needs to be recognised and a study made to adopt a humane and just policy leading to a just law against encroachment and illegal constructions. The encroachments by the needy poor should be viewed as a failure of

state to do its duty to provide accommodation to the needy poor. The approach is not irrational or utopian. There is already a scheme known as Indira or Prime Minister Awas Yojana under which the poor in the rural areas are given financial aid to construct humble 'Awas' for themselves. It is true that unlike the urban encroachers, they are not outsiders but are inhabitants of the same place. But it is not a relevant factor in the case of the urban encroachers. They migrate to the urban centres for livelihood because the work they do in the towns and cities are not available in the villages. Thus, they are not a nuisance but an indispensable necessity for the life of the towns and cities in which they live. This fact had become crystal clear when millions of migrant labourers had returned to their respective villages in the wake of the terror of Covid-19. The life in the urban centres all over the country and in the rural areas where the migrant labourers had been working in the field had come to a stand still. Millions of encroachers living in the towns and

cities are the life force of these places, whose contribution has been denied for decades and continues to be unjustly denied till date. It remains unacknowledged. Their debt to the cities and towns are deliberately denied though it is undisputed that the cities and towns cannot survive without them. This denial of their debt is the cause of denial of their status, right and obligation. The cities and towns owe an obligation to the poor who live with them and serve them. Their debt should be acknowledged and proper legal accommodation provided before bulldozing their shelters.

And when bulldozers are deployed to demolish illegal constructions, the demolition should begin with the mansions of the rich and the privileged because it is they who are wilful encroachers unlike the poor who are compelled to lead a miserable life in shanties and hovels for the use and benefit of the rest of inhabitants.

Prabhakar Sinha, 10 May, 2022
on FB □

SC Must Wake Up and Do Its Duty to The Citizens

The Supreme Court has been tasked by the constitution to protect our life, personal liberty and other fundamental rights against attack by the State. The SC has abdicated its responsibility, and has allowed the governments full liberty to misuse the police as well as the law (both ordinary and black) to put people behind bars to terrorise them into silence. The responsibility of protecting the citizens from such a Mafia-like rule is of the apex court, which has the power to force the State to desist from misusing the laws by issuing detailed guidelines on how the laws should be applied and punishing for disregarding its guidelines. The apex court must also find the remedy against the government's misuse of its power by using its agencies to openly flout laws with impunity. For example, there is law

against creating enmity between the people on the ground of their religion, place of birth etc (s153 of the IPC). Similarly, there is law against questioning anyone's loyalty to the country on the ground of his religion or place of birth etc. (S 153B of IPC). There are provisions under s295 and S 295A of the IPC against similar crimes. These laws are openly flouted by the members and supporters of the BJP and the Sangh Parivar with full impunity. The State has become the protector of these crimes and criminals engaged in pursuit of the ruling party's goal of turning India into a Hindu Pakistan. The police do not take any action because they have come to know that taking action against the violators would displease their masters and invite punishment. It is for the apex court to find the remedy

against the criminal use of the State agencies and the tyranny of the present rulers, who misuse laws and the law enforcing agencies to persecute those who oppose their nefarious acts or nefarious goal. Black Laws like the UAPA (Unlawful Activities Prevention Act), NSA (National Security Act, 1980) and the law against sedition (s 124A of IPC) are being routinely applied to silence criticism against the tyranny of State or to settle score with political opponents. The apex court must rise to the occasion and perform its duty of protecting our life and personal liberty, freedom of speech and expression and other rights and saving us from the tyranny of a Mafia-like rule.

Prabhakar Sinha, 26 April, 2022.
On FB

Note: PUCL Bihar state unit had conducted a Fact Finding team into the incidents that occurred in Muzaffarpur during the Ram Navamani festival period. The following is a summary of the full Report sent by Sarfaraz, General Secretary of PUCL Bihar. The full Report will be shortly uploaded into the PUCL website.

Muzaffarpur Report Summary Sarfaraz, General Secretary, PUCL Bihar

On 10th April, the last day of Ram Navami, in Kazi Mohammadpur in Muzaffarpur district a procession of 500-600 men went around holding swords, sticks and allegedly three guns including a semi-automatic AK-47 rifle. The procession stopped at a Mosque playing loud music with lyrics derogatory and threatening to the Muslim community like Miya kaate jaayenge (Muslims will be killed) and Musalmaan Pakistan jao (Muslims go to Pakistan). Slogans like Pakistan murdabaad (Death to Pakistan) and Pakistan chale jao (Go to Pakistan) were heard. The men from this procession went on to vandalise the mosque with their swords, and then a man climbed on top of a Minar in the outer area of the mosque and planted a Bhagwa jhanda (saffron flag) on top of it. The video was shot

by someone in the procession on their phone, and then extensively shared on social media. This fearlessness of committing a sacrilege and advertising it to the world via social media comes from the impunity given to them by the state and state machinery and support of organisations like Hindu Pur, Bajrang Dal, RSS etc. The Paru Thana inspector and DSP refused to talk and make any statement regarding the case. They cited that the case is sensitive, and hence refused to talk to the Fact Finding Team. The thana inspector also refused to share a copy of the FIR with the fact finding team. He admitted that his higher ups had explicitly given the order forbidding speaking about this case. The license for this procession was granted on 9th April, late at night. In the FIR the date and time of every

instance has been mentioned except for that of the issuance of license which has been kept conspicuously vague; no license number, or the approximate time of when the license was granted is mentioned. The police filed an FIR based on a viral video of the incident on social media. The procession did not follow the route as decided in the licence granted to them.

A panchayat meeting was called by the Mukhiya asking the people to not retaliate with violence, which could have escalated matters into a riot, but to believe and have faith in law and order and the justice system. This pro-active role played by the Mukhiya to subdue the anger of the Muslim community and stopping it from retaliating with violence has in all probability prevented the escalation of

violence and has so saved numerous lives. What these actions by the Hindutva mob has also shown is that every attempt was made to make the Muslims feel unsafe, to make them feel like second class citizens, and to hurt their religious feelings.

Suggestion:

For police administration: In the present case of Muzzafarpur, the police officials who were to be responsible for maintaining communal harmony and protection of people from the communal forces should be penalised. The occurrence of this incident is a proof of their incompetence and/or collusion with these forces who for political gains want to create communal disharmony.

For PUCL and other Civil liberties & Democratic rights organisation: The first suggestion as perceived by the author must go to PUCL and other Civil liberties & Democratic rights organisations. A strong local cadre base has to be formed which will take this and other reports to the masses, and get their suggestions on the issues and in return give them their own suggestions. This exchange of ideas must lead to a structured formula to resist this communal polarisation and brought into practice by the masses in the leadership of organisations like PUCL. From this practice new ideas to strengthen the resistance against forces, which for their own

benefit want to create communal disharmony, will emerge. A response to retaliate against creation of communal disharmony by the masses is necessary to stop the schemes of the Hindutva forces.

When we see such blatant collusion between the State and its machineries and Hindutva forces to cause riots throughout the country, to polarise Hindus against Muslims for the sake of vote bank politics, it is only the politically conscious masses that can resist this communal force and maintain peace between different communities. Covid-19 has along with taking numerous lives and causing unimaginable grief in the lives of people, broken the economy. Riots will only exponentially increase grief in the lives of people and further ruin the economy, making hell the lives of people. This polarisation will also break the country; hence it is a great threat to the internal security of the country.

An immediate role of these organisations will be to speak to the masses on how festivals will be celebrated in the future so that no communal disharmony is created through these celebrations. The Constitution by stating in the Preamble that India is a secular country, and through Articles 14, 25, 26, 27 and 28 guarantees equality before the law regardless of the religion subscribed to by an

individual, and freedom to practice a religion of an individual's choice to the limit that the followers of another religions have the space to subscribe to their own religion.

In Uttar Pradesh in April a discriminatory order was passed for the removal of speakers from mosques. This order unconstitutionally discriminates against one community. In temples too loud speakers are used, in certain places throughout the day, but the state does not consider this to be a law and order issue. But it does call the usage of speakers for Namaz a law and order problem openly showing its theocratic tendencies. These unconstitutional laws which directly violate fundamental rights enshrined in the Constitution have to be actively resisted by the masses.

For local governing bodies- Local bodies can form peace committees which will set rules for how festivals will be celebrated so sentiments of other faiths are not hurt. These committees can vigilantly check that such communal elements from outside do not find entry in these celebrations. These committees can carry out activities, like organising feasts, where people of all communities can come and interact. This will be a step forward in creating long term friendship between different communities.

Sent by Sarfaraz, General Secretary, PUCL Bihar. □

Resolutions passed in the Tamil Nadu State Conference, 2022

The following resolutions were passed in the PUCL Tamil Nadu state Conference held in Madurai on 26th and 27th March, 2022.

1. The Union Government must declare as refugees all those refugees displaced from Sri Lanka during war like situation prevailing there.
2. The Union Government should give up using the term illegal immigrants against refugees.
3. Sri Lankan tea Estate Tamil workers of India origin inside

and outside the Refugee camps should be accorded Indian citizenship under Sirimavo-Sastri Accord 1964.

4. Sri Lankan Tamil people who migrated from Sri Lanka due to economic crisis are now treated as offenders under Passport Act and are being kept behind bars. People from one country move to another country only in extraordinary situations. It is a human right violation. It is requested that

the State Government must interfere in this matter.

5. The State Government must close all the illegal Special Camps for Sri Lankan refugees situated in Tamil Nadu. All those Sri Lankan Tamils against whom no criminal case pending must be set at liberty from the special camps.
6. 90% of the employment in the Union Government departments and organization in Tamil Nadu must be filled

with qualified Tamil Nadu people only.

7. To reiterate right to local language/mother tongue, Tamil must be declared as official language in the High Court of Madras.
8. As per the recommendation of Mandal Commission, Traditional Fishermen must be declared as seashore tribes. The Rights of Fishermen must be enforced in the sea as well as in the seashore as stipulated by the Constitution of India.
9. Education was shifted from state list to Central list during Emergency period. It must be shifted back to the State List as the aspirations of the people of the state can be better understood and met only by the State Government.
10. The Union Government as well as the state Government should help about 20000 students of medicine and Engineering displaced from Ukraine due to war to continue their studies in India.
11. The bonafide human rights activists are arrested under Unlawful Activities Prevention Act [UAPA] in a mala fide manner nowadays. The Union Government must repeal UAPA, NSA, PSA [Kashmir].
12. It is indispensable to strengthen laws protecting women. On the economic side also women must be empowered and get justice. Government officials should ensure equal rights and equal respect to women. The education system must be changed in such a way that women are equal to men in all ways. Community kitchen must be established in all urban and rural areas.
13. The decision of the Hon'ble High Court of Karnataka justifying banning of wearing Hijab by Muslim woman stating wearing Hijab is not essential religious practice and banning

wearing Hijab is unjustified. Under Constitution banning Hijab is against the religious practice, minority rights and against the right to privacy reiterated by the Hon'ble Supreme Court of India, in famous Puttasamy case. The Hon'ble Supreme Court should take up this appeal filed by the students as emergency case and the judgment of the Hon'ble High Court on Hijab must be struck down.

14. Back log vacancies reserved for SC/ST candidates in the various departments of Government of Tamil Nadu must be filled up on priority basis by the Government of Tamil Nadu to uphold social justice.
15. If any district of Tamil Nadu reports more than 30 incidents of Atrocities in a year such districts must be identified and declared as atrocity prone district to provide special attention to reduce atrocities.
16. In the last 5 years in Tamil Nadu over 350 Dalits have been murdered. Though the cases are to be tried and completed within 3 months, after filing of charge sheet most of the cases are pending trial for a long time. The conviction rate is only 1% only. Those who have faith in Atrocities Prevention Act must be posted to prosecute the case and proper protection must be provided to the witnesses to ensure the guilty get punished.
17. Tuticorin Sterlite factory which emits spurious/ poisonous gas must remain closed. The Government of Tamil Nadu should not allow the factory to restart functioning again at any cost.
18. The State Government must honour its assurance and it should withdraw all the cases foisted against the people participated in Anti Sterlite Agitation.
19. As per the data available as on

20.19.2020, 1543 women prisoners with 1779 children are in prisons of India. Out of them 1212 are remand prisoners and the women remand prisoners with children must be enlarged on bail. The State Governments must take care of children's education of women convict prisoners.

20. As per the guidelines issued by the Hon'ble Supreme Court in Sakthivahini -Vs- Union of India [2018] 7 SCC 192 and by Hon'ble Madras High Court in Vimala Devi case and the draft bill recommended by Law Commission of India in its 242nd report on prevention of honour killing, the Tamil Nadu State Government is requested to bring an act to prevent honour killing in the State.
21. The report of the Justice Rajeshwaran headed Committed on Jallikattu Agitation must be placed before the TN Legislative Assembly. All the cases filed against the agitators must be withdrawn.
22. The Government and the police must give up fake encounter killings. The guidelines issued by the Hon'ble Supreme Court in 'PUCL vs. State of Maharashtra' (2014) ruling must be followed scrupulously. FIR must be registered against the officers involved in fake encounter killing cases under Section 302 of IPC.
23. The out sourcing of drinking water purifying service and distribution service at Coimbatore city to one 'Suez' company must be given up and the Coimbatore Corporation must distribute drinking water to the people direct.
24. The poor and down trodden people living on Government *porambokku* land and so - called water bodies for so many years should not be thrown out without offering them alternative place. The State Government is

requested to deal these cases with compassion.

25. Without respecting the salient features of 'The Scheduled Tribes And Other Traditional Forest Dwellers Act 2006', the tradition forest dwellers are

named as encroachers and are thrown out by forest department officials in an unjust manner. The state Government and the forest department are requested to give up this illegal practice and

protect the interest of Traditional Forest Dwellers and Scheduled Tribe People.

Sent by John Vincent, General Secretary, PUCL TN state unit

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Courtesy: The Wire

Supreme Court Collegium ss Now Nothing More than a Post Office with a Fancy Pin Code¹

Madan Lokur, The Wire, 16th June, 2022)

Department of Justice of the Government of India has finally decided to treat the Supreme Court collegium as nothing more than a post office with a fancy pin code.

Appointment of judges and transfer of judges is now beyond the control of the collegium. It has been reduced to nothing more than any other non-statutory body whose recommendations can be disregarded. Decisions taken by the collegium and communicated to the Department of Justice are dealt with in three different ways, depending on the whims and fancies of the powers that be.

Firstly, the Department of Justice can accept the recommendation and act on it with alacrity. For example, on May 4, the collegium recommended seven judges for appointment to the Delhi high court and seven judges for appointment to the Patna high court. On May 14, the official notification for the appointment of the Delhi high court judges was issued in record time. However, the notification of judges to the Patna high court was issued on June 1. Why was the Delhi high court given priority over the Patna high court? Will it adversely affect, in the long term, the seniority of the Patna high court judges? I have no doubt there are several similar pick-and-choose decisions taken by the Department of Justice.

Similarly, as per newspaper reports, the collegium recommended the transfer of six high court judges on or about May 27. Strangely, the exact date of the recommendation has been kept a

secret and even the Supreme Court website does not disclose the date. So much for transparency in the process. Anyway, in less than a week, the Department of Justice notified the transfer on June 1, again setting some kind of a record. There is much to be said in favour of speedy action in the matter of appointment of judges. All appointments should be notified within a week or two. There cannot be a pick-and-choose policy. But this seems to be fine with the Department of Justice, which apparently believes that it must be allowed to flex its muscles and show the collegium who is the boss. And the collegium can do nothing about it. Move over, Bruce Springsteen!

Secondly, the Department of Justice can grudgingly accept the recommendation of the collegium and act on it whenever it feels like. One of the more shocking exercises of this 'power' was the delay in accepting the recommendation of elevating Justice K.M. Joseph to the Supreme Court. The Department of Justice held back his appointment for six months for no ostensible reason. There were whispers in the corridors suggesting that a judgment adverse to the government was the cause of hesitation. How childish, if true! Also, if the rumour is true, all that can be said is that Justice Joseph is lucky he was the chief justice of a high court – otherwise, he would have probably been booked for sedition or under the Unlawful

Activities (Prevention) Act (UAPA) or the National Security Act (NSA). Another shocking case is that of Justice Indu Malhotra, an eminent lawyer in the Supreme Court. She had to wait for three months before the Department of Justice deigned it appropriate to accept the recommendation of the collegium to appoint her to the Supreme Court.

A small digression at this stage. The tradition at the Bar has always been that when the collegium of the high court or the Supreme Court recommends a practising lawyer for appointment to the Bench, the lawyer stops appearing in court and effectively gives up his or her practice. Indu Malhotra followed this tradition, as she should have, but her appointment didn't come through. So she perhaps twiddled her thumbs for a few weeks, if not more, and faced with completely avoidable uncertainty, she resumed her practice and a few more weeks later, she became the first female lawyer to be directly elevated as a judge of the Supreme Court.

Similar instances of delayed appointments to the high courts are galore. The recent appointment of Justice Wasim Nargal as a judge of the Jammu and Kashmir high court is a case in point. He was recommended for appointment by the high court collegium way back in August 2017 and the recommendation was affirmed by the Supreme Court collegium in April 2018. He was appointed as a judge of the Jammu and Kashmir

high court on June 3, 2022, more than five years after he was first recommended. During this period, the Supreme Court collegium reiterated its recommendation once if not twice, but the Department of Justice took its own sweet time to process the appointment.

Also during this period, the Department of Justice sent back the recommendation of his appointment to the collegium for reconsideration without giving any reason and the then chief justice of India had to ask the Department of Justice for the reason. Whether the reason was conveyed or not is beside the point. The fact is that the Department of Justice had the audacity to send back the recommendation without assigning any reason – as if it is some kind of colonial Viceroy dealing with natives.

Recent appointments to some high courts have followed the same pattern of delay and grudging acceptance. Recommendations made by the collegium of the Delhi high court way back in time have been arbitrarily dealt with by the Department of Justice. On receipt of the recommendation of the Delhi high court collegium, the Supreme Court collegium recommended six lawyers for appointment to the high court on August 17, 2020.

Two of the six were appointed to the Bench in February 2021 but the remaining four were left in the lurch. The Supreme Court collegium reiterated its recommendation regarding the remaining four on November 11, 2021 and two of them were appointed in May 2022, with the last two still being asked to hang around. Finally, these two were appointed in early June 2022 and then there were none.

But wait a minute – there is still one. But we will discuss this later.

There are several consequences of this shuffling by the Department of Justice, which the collegium does not seem to realise or is unable to do anything about it. First, competent lawyers decline to

become judges. The recent case of an outstanding lawyer of Karnataka, Aditya Sondhi comes to mind. He was made to twiddle his thumbs for one year and then he withdrew his consent for appointment. If this trend continues, on a given day in the not too distant future, we will have only mediocre lawyers as judges or a committed judiciary of Mrs Indira Gandhi's dreams, thanks to the present political dispensation. Imagine the blow to the independence of the judiciary and the quality of justice.

Another consequence of these unconscionable delays is the death of the tradition that Justice Indu Malhotra and hundreds before her followed. Would any self-respecting lawyer give up his practice waiting for months (if not years) waiting for the Department of Justice to throw some crumbs before him or her? Certainly not. Therefore, now even when a lawyer is recommended for appointment as a high court judge, that lawyer does not stop appearing in court, knowing fully well that his or her fate is uncertain. So, another great tradition of the Bar is clean bowled.

There is a third consequence and we are seeing the green shoots of this. With outstanding lawyers declining judgeship, the space for competent lawyers in India is getting crowded. The result is that some of these lawyers are looking for greener pastures. Some have settled down in London and others have accepted what is called door tenancy in solicitor firms in England. Some are looking towards Singapore. Some are going into academia – not in India but in the US. On the one hand, therefore, the Department of Justice is encouraging mediocrity in the judiciary and on the other, the Bar is being deprived of outstanding lawyers. It's a double-engine assault on our justice system.

Another small digression on the appointment process. Gopal Subramaniam and other

outstanding lawyers were recommended for direct elevation to the Supreme Court, but only Subramaniam was singled out by the Department of Justice for a savage and vicious vilification “whisper campaign” with the result that he withdrew his consent for appointment.

One of the issues raised at that time – still pertinent but forgotten – was whether the collegium makes a single recommendation of several persons (four, when Subramaniam was recommended) or is the recommendation of each person to be treated separately and independently? One view was that the collegium sends a single recommendation to the DOJ consisting of four persons and therefore the persons cannot be segregated through a whimsical pick-and-choose policy.

The other view (which is incorrect) is that the case of each person is to be treated separately. The consequence of this disaggregation is that the Department of Justice would have the 'power' to first process the case of C and then a few weeks later of D and again a few weeks later of A and finally of B. This can seriously impact the seniority of a judge in waiting. Unfortunately, this controversy has not been resolved and is unlikely to be, giving yet another weapon in the hand of the Department of Justice to subordinate the judiciary.

The 'other view' – which I do not endorse – is precisely what transpired in the Delhi high court appointments, with the Department of Justice appointing two judges at a time and upsetting their seniority. This exercise can be, and I am quite sure must be, replicated not only intra high court but also inter high court, with some high courts being favoured (like Delhi over Patna) depending upon the political party in government. Through this process, the Department of Justice has usurped the power of moulding the future of judges and judges of the future. What does it say for the

independence of the judiciary – plasticine judges in the coming years?

Thirdly, the Department of Justice can simply ignore the recommendation of the collegium and, by necessary implication, reject it. Yes please, effectively reject the recommendation of the collegium! The case of Justice Wasim Nargal surfaced recently after five years. It could have remained in cold storage for another few years without anybody being any wiser. If his case had been processed in time, he would most certainly have retired as the chief justice of some high court with a shot at an appointment to the Supreme Court, but now, that is not to be. Que sera, sera.

How many cases similar to that of Justice Nargal are pending in the safe boxes of the Department of Justice? We will never know because the Right to Information Act exempts judicial appointments from scrutiny as it is said to be against the public interest. Maybe the collegium should turn whistleblower so that we eventually know the truth, the whole truth and nothing but the unvarnished truth. But there is still the outstanding case of saurabh Kirpal. He continues to be most eligible for appointment and was recommended by the collegium of the Delhi high court way back in October 2017. The Supreme Court collegium processed his case and recommended him for appointment

only on November 11, 2021 – after four years. The ball is still in the Department of Justice's court. It will probably come up with no reason to send the recommendation back to the Supreme Court collegium. Contrast this case with that of another lawyer, not eligible for appointment as per the Memorandum of Procedure. Yet he was swiftly appointed because of a godfather in the Supreme Court collegium.

Can the Supreme Court collegium stem the rot? Khela hobe!

Justice Madan B. Lokur is a former judge of the Supreme Court.

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¹<https://www.wired.com/story/modified-elephant-planted-evidence-hacking-police/> @ 20Jun2022

Delhi PUCL:

Bulldozer campaign by the ruling party at the Centre

PUCL IRI and CFD activists oppose Unlawful demolition drive in Delhi (Jahangirpuri)

A protest meeting was organized at Gandhi Peace Foundation, New Delhi on 9th May 2022 by several organizations. Mr. Arun Maji, active member of PUCL, IRI and CFD took the lead. But the Delhi Police did not allow it. Arun Maji was very active in West Bengal (Kolkata) and since about 20 yrs has shifted to Delhi and practicing in the Supreme Court. I give below a video in which he, alongwith another colleague, gave interview to "The Wire" which is in circulation at large. It will be of interest to the PUCL CFD and IRI members. I also attach copy of my letter which I sent to the Municipal Commissioner and the police on the 20th April 2022 which made me late to join IRI GB meeting which was held on the same day. A photo is also attached in which the PUCL activists are presenting PUCL letter at the Municipal office.

<https://www.youtube.com/watch?v=SwVECXMtDA>

Courtesy: The Telegraph

Academics Reflect on Evolution of Political Correctness in Language¹ Pheroze L. Vincent *The Telegraph*, 16.05.2022

How have we changed? Here's how:

- Expressions like "azadi" and "inquilab zindabad" were fundamental to the definition of the nation. Now they are regarded as "anti-national".
- Mahatma Gandhi defined "swaraj" in 1924 as "truthful relations between Hindus and Mussalmans, bread for the masses and removal of untouchability". All of those things now appear treasonous.
- Laws that were used to

suppress dissent during the Emergency in India are being used extensively for the same purpose now without an emergency being proclaimed.

Several academics on Saturday evening made poignant reflections on the evolution of political correctness in language as well as the application of laws to curb dissent, speaking at a webinar titled "History will bear witness" in solidarity with "prisoners of conscience".

Romila Thapar, professor of

ancient history, emerita, at Jawaharlal Nehru University (JNU), highlighted how the understanding of words had changed, which may have led to students of her varsity like Umar Khalid and Sharjeel Imam being arrested for their speeches.

"I remember that as a child in the 1930s, when I was about five or six, among the many slogans we grew up with were slogans of the nationalists and the words 'azadi' and 'inquilab zindabad'. They were foundational to the ideology of the

national movement. They were also fundamental to the definition of the nation. Yet there are enough people today who, shall we politely say, strangely enough regard these words when they are used today as anti-national.”

Khalid is in jail, an undertrial on terrorism charges for a speech in Maharashtra in 2020 that called for protests against the new citizenship regime, and which police have linked to communal riots in Delhi that year. In a recent bail hearing, Delhi High Court sought clarification from Khalid's lawyer on his client's use of words such as “*inquilab*” and “*krantikari*”, which mean “revolutionary” in Urdu and Hindi.

Thapar added: “Some of our students have held or are still holding high office, the highest offices in the land. Others have been arrested for asking questions and suggesting solutions. But what they forgot, the ones that were arrested, was that when society changes and historical context changes... the meaning of words may also change, and that is what is happening at the moment.”

She said India had held on to colonial laws to curb dissent, perhaps because changes to the system of governance were not demanded strongly enough soon after Independence.

The 90-year-old academic explained: “Our generation of

intellectuals did not bring up this debate that — 'all right, we have become an independent nation, we are now not subjects but citizens. How do we change the structure of our society and our system in order to ensure that we become citizens and we have the rights of citizens', which would have involved very fundamental changes in the structure.”

Gyanendra Pandey, subaltern historian of Emory University, the US, cited Mahatma Gandhi's definition of “swaraj at the present moment” in 1924 as: “...truthful relations between Hindus and Mussalmans, bread for the masses and removal of untouchability”.

“All of those things now appear treasonous if they are put in as your primary programme... in a regime that appears so narrow-minded, so fixated about staying in power and putting away in jail and killing anyone who challenges their position,” Pandey said.

Partha Chatterjee, anthropologist and political scientist at Columbia University, said the laws used to suppress dissent during the Emergency were being used extensively for the same purpose now without an emergency having been proclaimed.

“Hindu majoritarianism has penetrated deep into the popular domain, especially in western and northern India.... It legitimises

vigilante actions spurred by social media, which are not necessarily centrally controlled.... This particular aspect is closest to what we recognise as fascist actions,” Chatterjee said.

“The subservience of the civil services, police and various enforcement agencies... this was not so 30 or 40 years ago.... All the agencies of government, bureaucracy are not just accomplices, they very often initiate many of these actions.

“The objective is simply to harass.... There is enough punishment simply in the period of detention (under trial) which can go on for years.”

Modern historian Tanika Sarkar, who taught Khalid in JNU before she retired, highlighted his zeal in completing his PhD in 2019 after being released on bail in a previous sedition case in 2016.

She said: “A tireless campaigner for democratic rights and justice, he has never once deviated from the path of peace. All he has hated is the politics of hate.”

¹<https://www.telegraphindia.com/india/academics-make-reflections-on-evolution-of-political-correctness-in-language/cid/1865279>

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Announcement of Next National Council Meeting will be held on 04th-06th November 2022 in Delhi

Attention - All National/State Office Bearers and National Council Members,

The next PUCL National Council Meeting will be held on 04th-06th November 2022 (Friday to Sunday) at Gandhi Peace Foundation, 223, Deen Dayal Upadhyay Marg, New Delhi. Members are requested to make advance travel arrangements to attend the meeting.

(Note: These dates have been finalised and the arrangements for booking the rooms and hall at the Gandhi Peace Foundation have been confirmed.)

V. Suresh, National General Secretary, PUCL □

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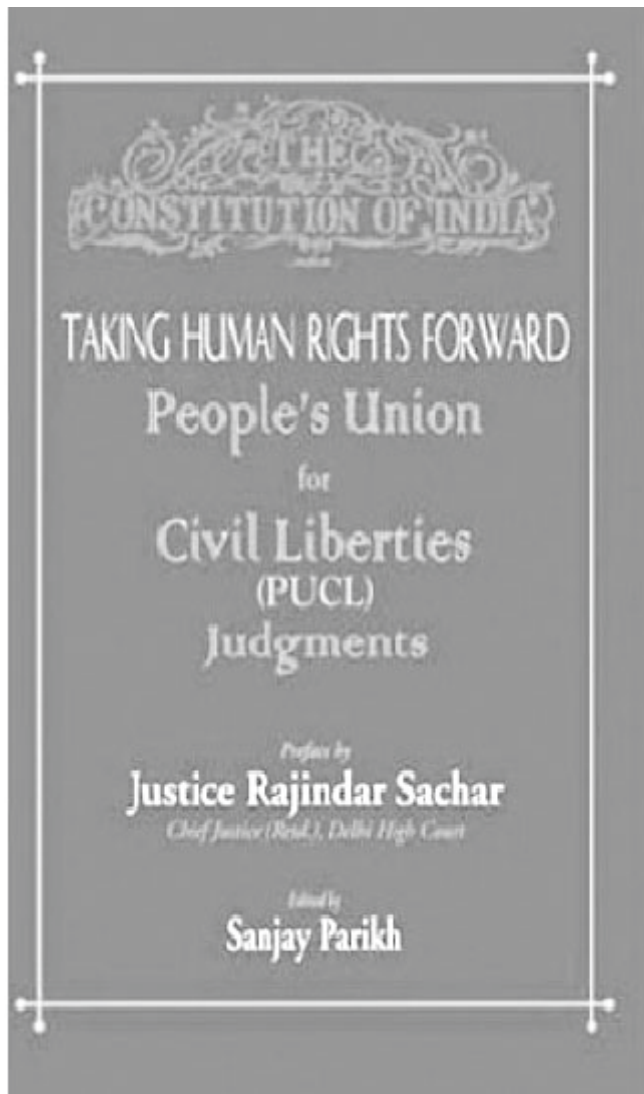
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