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THE FLAMING FIELDS OF MANIPUR AND OTHER HUMAN RIGHTS CHALLENGES

For over 2 months beginning 3rd May, 2023, Manipur has witnessed horrific violence and ethnic killings at a scale which is frightening and alarming. What started off as a dispute over the demand of the majority Meitei community for inclusion in the list of Scheduled Tribes in the state and its opposition by the minority Kuki – Zo – Naga tribal communities, soon burst along the faultlines of ethnic hostilities between the majority and minority communities. On 3rd May, 2023, following reports of clashes in the border of Lamka – Bishnupur districts, huge marauding mobs of the armed Meiteis started attacking Kuki-Zomi houses, localities and churches in Imphal valley and other districts. Over the next 2 months, the unabated violence only became bloodier, with counter attacks on Meiteis also occurring.

As on date over 150 persons have been killed, over 55,000 persons displaced and living in camps. Today, the entire state has been geographically and ethnically segregated, with the majority Meitei community living in Imphal valley and the tribal communities confined to living in the hilly areas. The scale, brutality and savagery of the attacks, especially on Kuki-Zomi women, was graphically exposed on 19th July, 2023

through a 26-second short video of an incident that took place in a village in Thoubal district on 4th May, 2023. The video shows the armed mob stripping and parading naked 2 Kuki women, aged 41 and 21, committing gang rape and releasing them. One of the women is reportedly the wife of an ex-Subedar of the Assam Regiment who had fought in the Kargil war. Before the rape the father and brother of the 21-year-old woman were clubbed to death in her presence. The public outcry resulted in the Supreme Court suo motu taking notice of the incident and the continuing violence and remarking:

"The Court is deeply disturbed by the visuals which have appeared in the media since yesterday depicting the perpetration of sexual assault and violence on women in Manipur. What is portrayed in the media would indicate gross constitutional violations and infractions of human rights. Using women as instruments for perpetrating violence is simply unacceptable in a constitutional democracy"

- CJI, SC Proceedings, 20th July, 2023

The comments of the Supreme Court that if the government did nothing to stop the violence it would have to intervene, finally compelled the Prime Minister to break his silence on the issue and state that justice would be

done to the women victims. The PM has since lapsed into silence again, not saying anything about the ethnic violence, despite the fact that Manipur is ruled by the same BJP as in the Centre.

The striking issue in the continued violence is the abdication by the state government of its constitutional obligation to safeguard the lives of people, maintain law and order and prosecute the guilty. The allegations that the state government, including the Chief Minister himself, is partisan towards the majority Meitei community, and is tacitly and in more direct ways, complicit in the violence, gains strength from mounting evidence of police forces present during ethnic violence doing nothing to prevent it. Despite the Meitei groups looting weapons and ammunition from Manipur police and Reserve Battalions, the Biren Singh led State government has taken no action against them and have shown no efforts to de-escalate the violent armed conflict, which has disproportionately affected the Kuki-Zo community.

Instead, the government implemented continuous internet shutdowns, and have prevented human rights groups and the media from reporting and investigating the scale of the conflict. They have even registered an FIR against a fact finding team led by women's rights activists Annie Raja, Nisha Siddhu and Deeksha Dwivedi for addressing the media about their findings when they visited the state. Such abuse of power by the Manipur police has been consistently

targeting human rights groups and Kuki community leaders to criminalize human rights work and violate their democratic rights during such a turbulent time.

The PUCL is deeply concerned with the series of violations of fundamental rights of citizens by the Manipur government and demands that they initiate peace processes and dialogue to end the violent conflict which has turned into ethnic cleansing of the state. The State's functionaries will have to be held to account for the failure to act to stop the horrific violence, large scale killings, sexual violence and destruction of properties and the consequent humanitarian crisis that has engulfed the state. It is important that urgent humanitarian aid is sent to the state, relief and rehabilitation measures initiated, supplies of essential commodities and medical supplies be arranged and all those guilty of perpetrating violence booked.

Uniform Civil Code

On 28th June, 2023, speaking in a meeting of election booth level workers in Bhopal, the Prime Minister spoke about the need to bring the Uniform Civil Code, one of its core political agendas for many years. The PM made it clear that the issue of the UCC was related to its politics of playing the majoritarian card by targeting the Opposition parties of playing vote bank politics. Earlier, on 14th June, the 22nd Law Commission invited public inputs on the Uniform Civil Code (UCC). It was very clear that the Government and ruling

party were raising the issue of the UCC just a few months before Lok Sabha elections for political purposes. What is noteworthy is that the Central government did not come out with a draft proposal spelling out how it proposed to draft the UCC for people and groups to comment upon; equally the Law Commission neither provided a questionnaire nor any indication of the concerns that should be addressed by a Uniform Civil Code. Very obviously, to the ruling party and the Law Commission, the issue of the UCC was seen on religious and communal lines alone. And not from the lens of gender equality and justice.

Several civil society groups including PUCL-Karnataka, along with women's rights activists and queer rights activists have written to the Law Commission demanding that a code that aims to address discriminatory practices must not be written on the lines of religion, but gender. The emphasis on this point must be made to ensure that a law governing a diverse society, should not reflect the viewpoints only of the majority community. Instead, PUCL firmly believes that the Law Commission should conduct detailed consultations with stakeholders from diverse caste, religious and Adivasi groups and human rights groups before proposing to introduce a Uniform Civil Code. We carry in this issue 2 important notes on the UCC for the benefit of readers.

Five Years of Bhima Koregaon Arrests

PUCL, as part of the National Campaign to Defend Democracy, hosted a virtual event on July 5th, 2023 marking the second death anniversary of Father Stan Swamy. The event brought together friends and family of all the BK-16 and human rights activists from across the world. More than 500 people participated in the event. Friends and family of the arrested shared emotional and heart-wrenching stories of their anticipation for justice, and about how the 11 people are still coping with the consistently cruel actions of the authorities and dehumanising prison conditions. Each and every speaker also remembered Father Stan for his work with the Adivasi communities, and for how he coped with being in the prison.

The National Campaign to Def-

-end Democracy, a coalition of over 160 organisations including PUCL, continues to work on amplifying the stories of the BK-16 and their friends and family, and raising the demand for their immediate bail. The first article in this edition is a note prepared by the Campaign to share a status update on the case and re-iterate their demands.

48th Anniversary of the Emergency

On 25th June, 2023 which marked the 48th anniversary of the Emergency, PUCL organized a virtual discussion inviting individuals who had resisted the Indira Gandhi-imposed Emergency. We had earlier invited individuals who had lived through and resisted the Emergency, to share their memories of resistance and reflections of the current political climate. Out of the 16 people who shared their articles

3 people, Kalpana Sharma, Gita Aravamudan and John Dayal spoke at the event, reflecting on the crisis today and remembering their struggles. All the articles are available in the PUCL website and some of them have also been published in the PUCL Bulletin.

To mark the occasion, we also launched the newly redesigned website www.pucl.org on that day. The PUCL has a vast repository and archive of human rights documentation in the form of reports, statements, article, interviews, lectures and rulings. It is our plan to digitise all of this rich history and make it accessible for all by placing in our website. While this is still a work in progress, we invite our subscribers, members and friends of PUCL, and other researchers to visit the website and give us suggestions on how to improve the website experience.

THE BHIMA KOREGAON – ELGAR PARISHAD CONSPIRACY CASE: MARKING FIVE YEARS OF INJUSTICE

NATIONAL CAMPAIGN TO DEFEND DEMOCRACY

The National Campaign to Defend Democracy hosted a virtual commemoration event to remember Father Stan who passed away two years ago on 5th July, 2021. The commemoration was attended by over 500 people with human rights activists, family members, UN officials, artists and lawyers speaking at the event. The event is available at this link. We realized that one of the needs was an update of the legal status vis a vis each of the

BK-16 as well as campaign update as to what the campaign plans to do. The note below seeks to serve the above two purposes.

5 years

In the midst of my identity which is not my name, but only a number which changes every year, In the midst of my struggles to keep alive my dreams, memories, hopes

which are getting buried in captivity
What can I write?

– Mahesh Raut,
Bhima Koregaon prisoner,
Opening excerpt from a poem
on finishing 5 years in jail

Introduction

What does it mean to mark five years of unjust incarceration under false and fabricated evidence of some of India's

finest intellectuals, thinkers, activists and lawyers? To mark such an anniversary is to tell our brave friends and colleagues who are still in jail, that they are not alone in their struggle and that the continuance of this injustice is a stain on India's constitutional conscience. To remember this anniversary of cruelty and sadness is also to rededicate ourselves to righting this injustice. The National Campaign to Defend Democracy believes that the continued unjust incarceration in a false and fabricated case is five years too long and we renew our call for the release of all of the BK-16.

This injustice which goes by the name of the Bhima Koregaon – Elgar Parishad Conspiracy case – started its nightmarish journey five years ago, and it is still continuing its ugly romp. Even as of today, 16 noted academics, intellectuals, lawyers, writers, poets, activists, stand charged with conspiring to overthrow the elected government, indulging in terrorist acts, sedition etc., although the evidence to back these tall claims of high treason is still absent. Of the 16 accused, one – Father Stan Swamy, an 84 year old Jesuit priest – succumbed to illness while in imprisonment on 5th July, 2021. Eleven of them are still in prison, of which 7 have spent 5 or more years behind bars. Three of the accused are out on bail, and one is under house arrest, all facing many restrictions on movements and speech.

What is the Bhima Koregaon – Elgar Parishad Conspiracy Case?

Bhima Koregaon is a small town, 30 kilometers from Pune city, is the site of a historic victory of the Mahar (Dalit) regiment against the Peshwas, which is commemorated every New Year's Day by the Dalit-Bahujan community.

To mark the bi-centenary of the battle of Bhima Koregaon on 1 January, 2018, more than 200 Dalit, Bahujan, Ambedkarite and other organisations came together under the banner of Bhima Koregaon Shaurya Din Prerana Abhiyan (Bhima Koregaon Valour Day Inspiration Campaign), with the former judge of Supreme Court, the late Justice P. B. Sawant and former Bombay High Court judge, Justice Kolse Patil, as conveners. At the eve of the bi-centenary, on December 31, 2017, this campaign organised the hugely successful and massively attended event, 'Elgar Parishad', in Shaniwarwada in Pune, once the seat of Peshwai power. It is reported that tens of thousands of people turned up for this event, many of whom had come in organized foot marches from rural Maharashtra.

This event exhorted its audience to spurn the Navi Peshwai (New Peshwa Regime) — identified as the RSS- BJP combine – which was behind increasing repression on movements, alienation of minorities, increasing caste atrocities, anti-poor development policies and more. All the attendees took a pledge to uphold the Constitution and

abjure Hindutva politics.

A day after the Elgar Parishad took place, on January 1, 2018, Dalit-Bahujan's attending the Bhima Koregaon memorial were attacked by right-wing Hindutva goons carrying saffron flags. In the ensuing violence, shops were looted, cars broken into, and one civilian was killed. It was widely held that the violence was caused by a unilateral attack of the BJP-RSS backed groups (at that time, BJP was in power in Maharashtra) against the Dalits who were proceeding to Bhima Koregaon, and two Hindutva leaders in particular, Sambhaji Bhide and Milind Ekbote were identified as the leaders of this violence.

It is this violence, that took place on the bi-centenary of the Bhima-Koregaon battle that marks the backdrop of the conspiracy case in which various human rights activists are arrested.

The False FIR and the Biased Investigation

On January 8, 2018, Tushar Damgude, a close aide of the RSS, filed an FIR alleging that the violence at Bhima Koregaon on January 1 was instigated by activists who had spoken at the Elgar Parishad on December 31, 2017. It should be noted that this was filed a week after the incident, and after at least 22 other FIRs, including one filed on January 2 by Anita Sawale – a Dalit activist and an eye witness to the incidents of violence – had already been registered alleging the involvement of Hindutva right-wing ideologues Sambhaji

Bhide and Milind Ekbote with the violence that ensued.

However, it was this (Damgude's) FIR and not the others, that the Pune police investigated most seriously, which became the pretext for the persecution and arrest of the 16 noted human rights activists and intellectuals. The FIR named 6 organizers of the Elgar Parishad as those responsible for the violence at Bhima Koregaon. The original FIR invoked Sections 153(A), 505 (1)(b), 117 and 34 of the Indian Penal Code (IPC), but after the Assistant Commissioner of Police, Pune took over the investigation, criminal conspiracy and sections of the Unlawful Activities (Prevention) Act (UAPA) were added. Raids were conducted on those who were named in the FIR, but also those who had nothing to do with the event; electronic devices, including laptops, mobile phones, CDs, pen drives of the entire family were seized, and in a case of investigation spiralling out of control, scores of human rights activists throughout the entire country were raided, interrogated and 16 of them were arrested over the course of the next two years.

What began as an investigation into the Bhima Koregaon violence on January 1, 2018 eventually became a roving enquiry into a "Maoist network", supposedly comprised of various civil liberties and democratic rights organizations around the country, who were all mere "front organizations" of the Maoist party according to the investigative agencies.

Leading human rights activists were arrested, based on their names being mentioned in secretive letters and documents of unknown provenance unearthed on electronic devices recovered during the raids conducted first by the Pune Police, and later by the National Investigation Agency (NIA).

(Due to pressure from Dalit groups, Ekbote was finally arrested on March 14, 2018, after the SC declined him anticipatory bail and ordered his arrest. But he was soon after released on bail in a month's time. Sambhaji Bhide was never taken into custody. No chargesheet has been filed yet. Ironically, around 3,000 young Dalits were arrested under 622 FIRs for violence conducted during the statewide bandh on January 3, 2018, called by Dalit Bahujan groups to protest the right-wing assault on the Bhima Koregaon processions two days earlier).

Who are the BK-16?

Sixteen noted human rights activists, authors, intellectuals, activists have been arrested in this case, stemming from the Bhima Koregaon violence on January 1, 2018. These arrests were conducted at different times over a period of nearly three years after the incident itself. It should be noted that although the FIR in this case mentions Elgar Parishad and its organizers, most of the people eventually arrested (apart from the four mentioned below) had nothing to do with Elgar Parishad, which in itself, being a cultural program cannot be held responsible for the ensuing violence the next day.

6th June, 2018: The first 5 people to be arrested in this case, were arrested from Bombay, Nagpur and Delhi. All of them are still in jail. They are:

1. Surendra Gadling (age 54): A leading criminal lawyer from Nagpur and a Dalit rights activist, he is also the General Secretary of the Indian Association of People's Lawyers. He represented G. N. Saibaba, besides Sudhir Dhawale, Arun Ferreira, Vernon Gonsalves, and the Kabir Kala Manch activists, who are ironically, now his co-accused.
2. Shoma Sen (age 65): A reputed academician, she was the Head of the English Department at Nagpur University at the time of her arrest. She is a Dalit and Women's rights activist and has been actively involved in the Committee for the Protection of Democratic Rights.
3. Sudhir Dhawale (age 53 years): A renowned cultural activist, writer and anti-caste campaigner from Mumbai, he was the editor of Vidrohi magazine, and a member of the Republican Panthers party. Amongst all those arrested that day, he was the only one to have been actively involved with Elgar Parishad, and had recited a poem by Bertolt Brecht that formed part of the FIR against him.
4. Mahesh Raut (age 35): He is a tribal rights activist from Gadchiroli, associated with the Bharat Jan Andolan. He graduated from TISS in Mumbai and worked as Prime Minister's Rural

Development Fellow in Gadchiroli. He is also a co-convenor of the anti-displacement platform, Visthapan Virodhi Jan Vikas Andolan (VVJVA).

5. Rona Wilson (age 52): A champion of political prisoners, he is the Public Relations Secretary of the Committee to Release Political Prisoners in Delhi. He had worked for the release of Prof GN Saibaba, and campaigned against draconian laws such as the UAPA and the NSA.

28th August 2018: There were many raids on this date, and 5 people were arrested. They were put under house arrest for two months while the Supreme Court deliberated on the arrest, eventually upholding it by a split verdict. Later however, the arrest of Gautam Navlakha was quashed by the Delhi High Court on procedural grounds. The others arrested that day are -

1. Sudha Bharadwaj (age 62): She is a trade unionist and lawyer from Chhattisgarh. Associated with the Chhattisgarh Mukti Morcha (Mazdoor Karyakarta Samiti), she is also the National Secretary of the People's Union for Civil Liberties, and Vice President of the Indian Association of People's Lawyers. She was released on the 9th of December, 2021 on default bail.
2. Varavara Rao (age 82): He is a renowned poet and a retired college lecturer based in Hyderabad. Ex-editor of a literary magazine, Srujana, he is one of the founders of Virasam (Revolutionary Writers'

Association). He is an acknowledged Maoist ideologue, and has been jailed many times, but has been discharged or acquitted each time. He has been released on medical bail due to his advanced age and related health problems.

3. Arun Ferreira (age 50): He is a writer, a cartoonist and a lawyer. Hailing from Thane, he was arrested in 2007 and then serially rearrested each time he was acquitted, due to which he spent nearly five years in jail before being finally acquitted in all cases. He wrote a prison diary of that period which has been published as "Colours of the Cage."

4. Vernon Gonsalves (age 66): A writer, translator and ex-trade unionist of unorganized labour in Chandrapur, Maharashtra. He is a gold medallist from Mumbai University who joined trade unions after giving up a corporate job. He spent nearly six years in jail, before being acquitted in 18 cases in 2013. He was convicted in one, which is currently being appealed in the Bombay High Court, and a discharge application in another is pending before the Gujarat High Court.

14th April 2020: After the NIA took over the case in January 2020, it made two arrests of elderly activists, while the country reeled under the corona pandemic.

1. Anand Teltumbde (age 72): A reputed author and Dalit scholar, he has written extensively on issues pertaining to caste atrocities. An engineer and graduate of the Indian

Institute of Management (Ahmedabad), he is a former professor at the Indian Institute of Technology (Kharagpur) and was a senior professor at the Goa Institute of Management at the time of his arrest. He was released on bail on 26 November 2022.

2. Gautam Navalakha (age 70): He is a well-known journalist, writer and civil rights activist based in Delhi. He is an ex-editor of Economic & Political Weekly, and the managing editor of Hindi literary magazine Hans. He is currently under house arrest in Bombay due to his medical conditions.

28th July 2020: After 5 days of interrogation, Prof Hany Babu was arrested on this date.

1. Hany Babu (age 56): An Associate Professor in the English Department of University of Delhi. He is a Linguist, a scholar of caste and language, and has been active in the pro-reservation and other social justice movement within the University of Delhi.

7th and 8th September 2020: Three cultural activists with the Kabir Kala Manch were arrested over these two days.

1. Ramesh Gaichor, Sagar Gorkhe, Jyoti Jagtap: They are all poets, singers of the Kabir Kala Manch, a Dalit group with a left philosophy based in Pune. Earlier also, Gaichor and Gorkhe had been arrested in 2013 and were in jail for three years before being granted bail by the Supreme Court. They were all part of the organizing committee of Elgar Parishad and had

been named in Damgude's FIR. But it was only after two years and nine months of harassment, that they were arrested on this date. They all continue to be in jail.

8th October, 2020: A Jesuit priest, Father Stan Swamy, was arrested by the NIA in Ranchi and produced before the NIA court in Mumbai the next day. At 83 years, Father Stan became the oldest accused in this case. Suffering from Parkinson's Disease, Father Stan's situation kept worsening in jail. He was eventually moved to a hospital, where he was found to be suffering from COVID, and he eventually passed away on July 5th, 2021, while the high court was still deliberating upon his medical bail application.

1. (Late) Father Stan Swamy (died at 84 years): He worked for the rights of Adivasis and other underprivileged groups in Jharkhand for four decades. Among other issues, he worked on displacement, corporate loot of resources, the condition of undertrials and PESA. He had been a vocal critic of the BJP government's attempts to amend land laws and the land acquisition act in Jharkhand.

Biased Investigation, Fabricated Evidence

From the very beginning this case has been about protecting the real perpetrators of violence, and prosecuting political dissidents. On January 2, 2018, the day after the violence at Bhima Koregaon, an FIR was filed by Anita Sawle, a Dalit activist and an eye witness to the violence of the previous

day. The FIR alleged that an armed mob attacked the Dalits and specifically named Hindutva leaders Sambhaji Bhide and Milind Ekbote as those who had masterminded the attack. However, this FIR was never investigated, although several journalist accounts and fact-findings have corroborated these accusations. Instead, it was the other FIR filed by Tushar Damgude several days later, that served as a convenient prop to a biased investigation intended to persecute activists.

The police story appears to be that the Elgar Parishad, which is to blame for inciting Dalits to commit violence on January 1, 2018, is a part of a larger conspiracy by the Maoists in India to overthrow the elected government. Multiple chargesheets running into thousands of pages try to establish a nefarious Maoist conspiracy that includes assassination of the PM, proselytization by Christian missionaries, liberation of Kashmir, and ties with the ISI in Pakistan— all familiar bogeys of the BJP government.

That this case has more to do with domestic politics than any real or imagined crime is evident from the circumstances under which the investigation was transferred to the NIA. For two whole years, the Pune police conducted the investigation of this case. The State elections in late 2019 brought about a fall of the BJP government. Just as the new coalition government started raising questions about the investigation into the cases against activists, the Central

Government intervened and unilaterally turned the case over to the National Investigation Agency (NIA) on January 24, 2020. This move, coming after two years of investigation into this case, underlined the political importance of this case to the Centre.

The conspiracy theory of this case relies entirely on documents seized primarily from computers belonging to a few accused activists, which are all in the form of unsigned, unverified, uncorroborated type-written letters. Many of these letters are undated, and from unknown people to other unknown people. These letters are not even originally created on the computers from where the prosecution claims to have found them. Thus, these letters can never be admitted into evidence in any trial, or marked as an exhibit. However, they are sufficient to deny bail to people accused under UAPA!

That these letters are fabricated is upheld by three different courses of inquiry -

1. Dissenting Opinion in the Romila Thapar case: In 2018, just after some of the arrests in this case, five prominent citizens—historian Romila Thapar, economists Devaki Jain and Prabhat Patnaik, academic Satish Deshpande and Maja Daruwala— filed an urgent Public Interest Litigation (PIL) before the Supreme Court (SC) of India "to subserve larger public interests and to prevent stifling of honest dissent so as to protect democratic values and the democracy," and sought independent

investigation under a court-monitored Special Investigation Team. Although the Supreme Court dismissed the petition, in his minority judgement, Justice DY Chandrachud (as he was then) raised doubts over the authenticity of the letters that had been shared with the bench. In one particular letter written in Hindi, he noted the allegations that the Marathi spellings used for common Hindi words showed that the letter had been written by a Marathi speaking person.

1. **Cyber-forensic Evaluations:** In a series of four reports, Arsenal Consulting, a well-known cyber-forensics firm based in Boston, revealed that the computers of Rona Wilson, Surendra Gadling and Father Stan Swamy had been compromised for 20-22 months prior to their arrests. A malware called “Netwire” had been surreptitiously placed on their drives, allowing a remote hacker to do extensive surveillance of their computers and connected devices. This malware also allowed the remote hacker to plant files on their computers in hidden folders without the user’s knowledge. In fact, these reports concluded that almost all the “incriminating documents” on these computers which were relied upon by the prosecution to argue against the bail applications of the accused, had indeed been planted using the malware.

These reports are also supported by preliminary investigations conducted by the English periodical Caravan,

which had also discovered the malware Trojan, and raised questions on the issue of tampering of electronic devices.

On July 17, 2021, the Washington Post and The Wire both reported that at least 8 of those arrested in the Bhima Koregaon case also figured in the list of potential targets for Pegasus software. This matched the earlier investigations by WhatsApp and the Toronto-based Citizen’s Lab that several family members and close colleagues of the Bhima Koregaon accused were victims of the Pegasus spyware introduced into their phones, presumably by the Indian government.

Independent Corroboration by SentinelOne: A data security firm, SentinelOne, looking into phishing attacks, identified a threat actor, Modified Elephant, that is used to attack hundreds of individuals or groups with ‘spearphishing’ (the fraudulent practice of sending emails ostensibly from a known or trusted sender in order to induce targeted individuals to reveal confidential information) in order to conduct surveillance and deliver potential malware. Some of these individuals also overlap with the Bhima Koregaon accused.

The Status of the Case: An unjust Status quo

The trial in this case before the Special NIA Sessions Court is far from starting. Till now, even the cloned copies of all the evidence that is relied upon in the chargesheet has not been supplied to all the accused, 5 years after they have been

arrested. Currently, applications are being pursued in the NIA court seeking these cloned copies. Meanwhile, applications for discharge are also being argued on behalf of all the accused. It is only after all these applications have been disposed of, and the cloned copies of all the evidence have been supplied to the accused, that the trial can begin.

So far, bail has been granted to three people in this case – Sudha Bharadwaj, Anand Teltumbde and Varavara Rao. The bail applications of the others are stuck in various courts for a variety of reasons.

- The SC has reserved the order on the bail petitions of Arun Ferreira and Vernon Gonsalves since March of 2023, and it is not clear when the order will eventually be pronounced. The bail petitions of Shoma Sen and Jyoti Jagtap have also been admitted for hearing by this bench, and the next hearing will be after the court resumes work after vacation.
- Separate bail petitions for Mahesh Raut and Gautam Navlakha have been put up before the Bombay High Court, after being rejected by the NIA court. The default bail petitions for Surendra Gadling, Sudhir Dhawale, Shoma Sen, Mahesh Raut and Rona Wilson are pending before the Bombay High Court.

Denial of Everyday Rights

Incarceration of these human rights activists has meant more than just loss of the freedom of movement and association. In

blatant flouting of jail rules, these activists have to face a variety of deprivation inside the prisons. For instance,

- Father Stan Swamy, suffering from Parkinson's Disease, was not allowed a sipper cup which allowed him to drink liquids without spilling.
- Multiple requests for mosquito nets have been denied on the pretext that they can be used to commit suicide, even as one of the arrested (Vernon Gonsalves) contracted Dengue, a painful and potentially life-threatening disease, due to mosquito bites.
- Medical treatment is difficult to come by, and jail authorities routinely deny hospital visits, medicines sent by families, and even diet supplements and herbal medicines. A delay in medical care cost Father Stan Swamy his life and almost caused the loss of vision in one eye of Prof Hany Babu. It was only after the Supreme Court intervened that the High Court took up the case of medical treatment for the elderly Varavara Rao, by which time he had contracted Covid and lost his memory. Vernon Gonsalves was moved to a public hospital only after his fellow inmates protested and an application was moved in court, by which time his condition was so serious that he needed oxygen support for two weeks.
- Gautam Navlakha was denied reading glasses after he had broken his pair, till

the jail was pulled up by the Bombay High Court for its inhumane treatment.

Right an Injustice: Drop the false prosecution of the BK-16

Eleven stalwart citizens are behind bars, many for over 5 years, even as the trial shows no signs of starting. Bail has been repeatedly denied to them and the conditions inside jail continue to dehumanize. The evidence in this case, besides being sparse and inadmissible, is of dubious provenance and demonstrably fabricated. This case is a testament to the politicization of our criminal justice system, which is being used to criminalize political foes and put inconvenient dissidents out of the way.

We take inspiration from Varavara Rao who said that 'political prisoners know the meaning of hope but they do not know the meaning of despair', even as we renew our campaign to defend democracy.

We stand in solidarity with all the BK-16 – those behind bars, those silenced by bail conditions and the one, lost to the grave. With every day, every hour, every minute of this unjust imprisonment, we know that this injustice becomes more apparent and visible to the world at large and increasingly unviable. We know that justice demands that persons unjustly incarcerated for over five years must be released. We are convinced that the legal and ethical rationale behind release of the BK-16 become stronger with each passing day.

Keeping in mind the fortitude

and courage of those unjustly incarcerated we resolve to take forward our campaign to bring attention to this injustice with renewed vigour. We demand that:

- The state must not oppose the immediate release on bail of those of the BK 16 still in jail. Five years of unjust imprisonment is enough!
- The prosecution be withdrawn against all 16 on the basis that the evidence against them is false and fabricated.
- An unconditional apology be tendered by the state for the loss of life of Father Stan and the loss of so many productive years for some
- Criminal prosecution be launched against those who conspired to fabricate evidence to keep the BK- 16 in jail.
- The UAPA must be repealed as the law criminalises the constitutional right of the freedom of speech, expression and association.
- Civil society groups as well as citizens concerned about the injustice write letters of solidarity to those still in jail to communicate the sense of solidarity with those unjustly incarcerated.

Visit www.pucl.org to read writings by Rona Wilson, Vernon Gonsalves, in which they pay their tributes to Father Stan and reflect on the 5 years of arrest.

The website will also contain resources created by the National Campaign to Defend Democracy including videos, reports and posters.

PUCL DEMANDS MANIPUR GOVERNMENT TO STOP CRIMINALIZING HUMAN RIGHTS WORK!

PRESS STATEMENT

PUCL Demands from the Manipur Government:

- Stop Criminalising Human Rights Work! Respect the fundamental rights of citizens to conduct Fact Finding Enquiries and publish their reports for public discussion.
- Immediately withdraw FIR against Annie Raja, Nisha Siddhu & Deeksha Dwivedi of NFIW for releasing Fact Finding report after Manipur visit.
- Drop all criminal charges against Prof. Kham Khan Suan Hausing of University of Hyderabad

The PUCL condemns the registration of FIR by Manipur police on 8th July, 2023 against highly respected leaders of the national women's movement, Ms. Annie Raja and Nisha Siddhu, General Secretary and National Secretary of National Federation of Indian Women (NFIW) and advocate Deeksha Dwivedi for addressing a Press Meeting in Imphal at the conclusion of a Fact Finding tour in Manipur, in which they expressed their views that the 3rd May, 2003 riots which broke out in Imphal and surrounding areas was 'state sponsored violence'. The three leaders have also been prosecuted for describing the protest of the Meira Paibis (women belonging to the majority Meitei Hindu community) against the resignation of Manipur CM, N. Biren Singh as "Stage managed drama".

The 3-member team is also reported to have concluded that during their visit to Imphal and other areas, they met many sections of people, and that "people on both sides want peace to return and the State Government should put in sincere efforts to bring normalcy".

What is shocking is that despite the call for peace and harmony to be restored, the Imphal Police have invoked very serious criminal offences against the 3 women leaders. These include offences under sections 121- A (conspiring to commit offences of waging war against India or against the state), 124A (sedition), 153/153-A/ 153-B (provocation with intention to cause riot, promoting enmity between different groups and imputations prejudicial to national integration), 499 (defamation), 504 & 505(2) (insult to provoke breach of peace, false statement, rumour etc with intention to create enmity between different classes), and section 34 (common intention) of IPC.

The PUCL sees the registration of this frivolous FIR by Manipur Police on the 8th of July, as an atrocious, malicious and unconscionable abuse of power by the police. The Police are using the law as an instrument of terror to frighten and intimidate citizens who seek to find out the truth through personal visits to conflict areas,

meeting various stakeholders and parties involved and placing their findings in the public domain for discussion. PUCL has been consistently pointing out how Mahatma Gandhiji himself used the tool of 'Fact Finding Enquiries' during the freedom struggle to place true facts of events based on field visits, which expose the official version to be self-serving lies or obfuscations. Gandhiji's use of FF Reports during the Champaran agitation or during the horrific Jallianwala Bagh massacre played a key historical role in the freedom movement in helping common people know the truth behind official lies of the British Raj. Constitutional courts in India have also acknowledged and recognised the importance of Fact Finding Reports in several PILs involving human rights violations.

Seen in this historical backdrop, the action of the Manipur police criminalising the use of human rights tools, like fact finding, publishing the FF report and the press conference thereafter is a brazen attempt to silence and frighten civil society groups from independently visiting conflict hit areas, conducting enquiries and publishing reports highlighting facts and incidents as they occurred on the ground. Such a vindictive FIR based on a complaint by one L. Liben Singh, son of late Sanoujam Pholo Singh of Heingang Makha Leikai, at the Imphal Police Station should not have

been registered in the first place. Secondly to register the FIR under draconian sections of the IPC like waging war against the state, hate speech etc clearly shows that the agenda of the Manipur police is to harass anyone who challenges the narrative of the Manipur Government and find field evidence to hold that the allegation that the Manipur government is complicit in the explosion of violence by supporting one set of groups against the others, is not without substance.

PUCL expresses its serious concern over the continuing violence that still prevails in Manipur. As on date it is reported that more than 140 persons have been brutally killed in the conflict, including the Kuki, Zo and Meitei community people. More than 300 churches are reportedly destroyed by marauding mobs; numerous villages have been burnt down displacing thousands of people. Instead of addressing how to calm tempers and bring peace to the state, attempts by the Manipur police and government to weaponise the law and criminalise human rights activists is wholly unacceptable and needs to be condemned.

At this juncture, the PUCL would also like to express its deepest concern over a criminal complaint filed before the Imphal CJM Court against Prof Kham Khan Suan Hausing, Head of the Department of Political Science at the University of Hyderabad, for giving an interview with the Wire.in. In the criminal complaint filed by one Manihar

Moirang Singh, who claimed to be an Imphal-based social worker, the allegation was that Prof. Hausing had made false statements which defamed the Meitei community causing greater communal enmity. This criminal complaint includes offences under sections 153A (promoting enmity on grounds of religion, race, place of birth or language), 200 (false statement made in declaration which is by law receivable as evidence), 295A (deliberate and malicious acts intended to outrage religious feelings), 298 (uttering words with intention to wound religious feelings), 505(1) (statements conducing to public mischief) and 120B (criminal conspiracy) of the Indian Penal Code.

A point to be noted at this juncture is that the complainant Manihar M Singh is part of the Meitei Tribal Union (MTU), though it is his contention that he filed the criminal complaint in his personal capacity. The MTU is the organisation which had gone to the Manipur HC and obtained the order dated 27th March, 2023 directing the Manipur Government to recommend inclusion of Meiteis in the ST list. The issue of larger political motives behind the filing of the criminal complaint cannot be dismissed as fanciful. It should be pointed out that Prof. Hausing is a widely respected academic and scholar on the north eastern region of India. He has written extensively on the political issues of the North East including the present violence in Manipur and its historical roots.

What causes great concern to the PUCL is that such FIRs and

criminal cases will have a chilling effect and act as a deterrence on academics, media professionals and others. Such abuse of criminal prosecutions is meant to ensure that professionals like Prof. Hausing will feel intimidated from pursuing their academic research and making public their findings. Intrinsic to an academic's professional tasks is to disseminate their findings, both in academia, academic journals as also in the popular media. A healthy democracy is based on encouraging critical thinking and discussion. The acts of the Manipur police will have precisely the opposite effect and have a chilling effect on academics and free thinking.

The PUCL is clear that no killings and destruction to the scale of what is happening in Manipur since 3rd May, 2023 can take place without the active involvement or tacit consent of the state. Instead of examining honestly its own role in failing to prevent the violence and taking the culprits to task, the Manipur Government and police is indulging in the classic practice of shooting the messenger. We demand from the Chief Minister the immediate closure of this FIR and to take action against the police who have abused their powers under the CrPC.

PUCL is very concerned that increasingly we are witnessing growing attempts by the BJP led Central Government as also State governments led by them, to weaponise the criminal laws to curtail, silence and crush any form of demand for accountability. We are repeatedly witnessing police

like the Manipur Police, using the instrument of the FIR in selective ways by launching prosecutions against certain people and organizations invoking serious criminal offences including under the draconian UAPA. Such acts of criminalising widely accepted human rights tools like Fact finding enquiries, publishing FF reports, writing articles, holding press conferences, giving interviews to the media and so on clearly constitute a violation of Indian people's constitutionally protected fundamental right of (1) the freedom of speech and expression (which includes the right to question the government, dissent and seek accountability) (2) freedom of movement (to move around anywhere in India), (3) freedom of Assembly and other rights.

We would also like to counter the proposition by the Manipur Government that since the Ministry of Home Affairs has issued a Notification dated 4th June 2023 appointing a Commission of Inquiry comprising of (1) Hon'ble Justice Ajai Lamba (Chief

Justice Gauhati High Court Retd.); (2) Himanshu Shekhar Das, JAS (Retd.) and (3) Aloka Prabhakar, IPS (Retd.) there should be no more fact findings. Such an argument flies in the face of both history and an appreciation of constitutional rights. The commission of enquiry act does not prohibit other enquiries. In fact the Commissions of Enquiry are precisely the platform for members of the fact Finding Enquiry to depose and send fact finding reports which unravel the truth.

Historically in this country any major carnage has seen civil society fact findings, and the contribution of civil society has been very important to keeping the struggle for justice alive. To prevent fact-finding is to deprive our society of narratives which contribute towards the struggle for justice. A fact finding by the state does not obviate the necessity for a civil society inquiry. In fact, civil society inquiries draw their mandate from the constitutional right of every citizen to the freedom of opinion, expression and association and as such cannot be prohibited by the state.

Thus, any attempt to prevent and prosecute human rights groups and concerned citizens' groups from engaging in fact finding enquiries is both an abuse of power by the government and violative of fundamental rights of citizens.

We therefore demand from the Government of India through its Ministry of Home Affairs, to issue advisories to all states and police against such act of criminalising people when doing human rights work, academic writing and similar activities.

We demand that the Government of Manipur, immediately drop all charges and close and withdraw the FIR against the NFIW fact finding team. We also call upon the Government of Manipur to take all necessary action to intervene in the criminal complaint filed before the CJM Court, Imphal and ensure that the criminal case against Prof. Kham Khan Suan Housing of Hyderabad University is closed.

We urge that peace processes between the two communities be initiated and the State brings an end to the violence.

KARNATAKA CIVIL SOCIETY'S RESPONSE TO THE LAW COMMISSION OF INDIA'S PUBLIC NOTICE INVITING PUBLIC INPUTS ON THE UNIFORM CIVIL CODE (UCC).

To,
The Hon'ble Chairperson and members
Law Commission of India,
4th Floor, B Wing, Lok Nayak Bhawan, Khan Market,
New Delhi-110 003

Subject: Response to the Law Commission of India's public

notice dated 14.06.2023 inviting public inputs on the Uniform Civil Code (UCC).

Respected Chairperson and the members of the Law Commission of India,

We, the undersigned representatives of organisations

working with women, LGBTQI communities, Dalit, Adivasis and human rights and individual professionals in Karnataka, write to you with reference to the Commission's public notice seeking inputs and engagement with the UCC. While we are all in agreement with the broader and urgent need to bring about

much needed changes in the patriarchal and discriminatory nature of all laws, be it personal, customary or secular, we are aware that the proposal for a Uniform Civil Code has a contested history about whether the State should retain personal laws or replace them with a Uniform Code throughout the country. This debate has been re-ignited through the aforesaid notice even as state governments such as those of Uttarakhand and Gujarat are preparing a draft of the Uniform Civil Code.

Notably, the Law Commission of India, on 7th October, 2016, uploaded a questionnaire to solicit public opinion on family law reforms and the viability of a Uniform Civil Code for the country. Subsequently, on 31st August, 2018, the Law Commission released a Consultation Paper titled, Reforms in Personal Law, which stated in no uncertain terms that “formulating a UCC is neither necessary nor desirable at this stage”. Arguing that various aspects of prevailing personal laws deprive women it was of the view that it is discrimination and not difference which lies at the root of inequality. In order to address this inequality, the commission has suggested a range of amendments to existing family laws and suggested codification of certain aspects of personal laws so as to limit the ambiguity in interpretation and application of these personal laws.

Given this conclusion that the consultation paper put forward, an effort of this nature without offering any justification for the

need to urgently restart or re-examine the issue again indicates that there is no continuity in the process, raising serious apprehensions about the intention guiding such an exercise.

In this context we would like to raise the following procedural concerns that emerge from the Law Commission’s current exercise and put forth what we consider are Principles which should underlie a proposed Gender Equality Code in lieu of a Uniform Civil Code:

Procedural Concerns

1. Lack of adequate time:

The public notice issued by you calls for views from the “general public” and from “recognised religious organisations” no later than 15th July 2023 (30 days). At the outset we would like to state that this time frame given for submission of suggestions/ views is grossly insufficient as the question of enactment of a UCC is a complex and multi-faceted one that involves several existing legislations as well as practice of religion and customs in India. It is disappointing that we are expected to respond to your public notice in such a limited time frame even as the notice is only issued in English. We therefore urge you extend the time for citizens of India to respond and immediately re-issue the notice in all Indian official languages.

2. Lack of clear intent: The fundamental issue with the notice of the 22nd Law

Commission of India is making no attempt to identify and define any questions or concerns that need to be remedied through the instrument of the law. The 21st Law Commission at least was centred around ‘women’s rights’ and proposed social and legal reforms. The current notice put out by your office, however, provides no such framework within which inputs are to be addressed. Moreover the consultation paper of the 21st Law Commission of India, that you reference in your notice, which was a valuable framework for reference is no longer available on your website. Given this lack of clear intent and process, what should have been a considered public discussion and debate has been reduced to a virtual referendum on social media on whether a UCC is desirable or not in which much misinformation and disinformation is being spread vitiating an already polarised and divisive atmosphere. Apart from targeting and demonising only selective personal laws of minorities these social media campaigns erase the fact that almost all personal, customary, and even secular laws related to the family are deeply patriarchal and discriminatory in practice if not in precept.

3. Privileging religion over gender when inviting comments: We also wish to bring to your attention that we do not know what is

meant by “recognised religious organisations”. Nowhere in any statute or elsewhere are we able to find the meaning or definition of which religious organisations are “recognised”. This raises the concern that some religious organisations, that do not speak for all members of a religious community, shall drown the various and diverse viewpoints. Further and more fundamentally no such special invitation has been extended to women’s or LGBTQI rights groups who are the primary stakeholders in the issue. Essentially, this thoroughly patriarchal exercise blatantly privileges voices of religious leaders as opposed to foregrounding voices of those oppressed by antiquated religious diktats. The consultations held for an endeavour of such scale, complexity and consequences must be much wider and inclusive and cannot be framed in the language of religion.

3. Lack of wider consultations: Given that the Uniform Civil Code stands to fundamentally alter tenets of personal law including marriage, divorce, inheritance, adoption, and guardianship, wider consultations including state governments, concerned institutions and cross section of civil society are an imperative. The Law Commission must afford an opportunity to all State Governments to deliberate on the viability and need for such a Code. The State Governments must in turn hold comprehensive

discussions in their respective State Assemblies. The State Governments must also hold detailed discussions with various civic bodies and the civil society including women’s and LGBTQI organisations and representatives of religious organisations, Dalit and Adivasi groups at large. The Commission should visit all the States and meet all the departmental heads, Chairpersons of the Women’s Commission, Human Rights Commission, Minorities Commissions Children’s Commission and other statutory bodies to understand their stand on the issue. A comprehensive report must be submitted to the Union Government by all State Governments following such discussions and deliberations.

Gender representation in the Parliament: Further, when the representation of women & LGBTQI community in abysmally inadequate in the Indian Parliament and State Assemblies, these legislative bodies have no locus to legislate on laws that impact these communities in decisive ways. According to data presented by former Law Minister Kiren Rijju in the Lok Sabha in December, 2022, the share of women MPs in the Lok Sabha and Rajya Sabha stands at 14.94% and 14.05% respectively. The Women’s Reservation Bill has faced vehement opposition in the Parliament and has been cold-storage for over two decades. We therefore, urge

the Law Commission to recommend adequate reservation for women and the LGBTQI community in Parliament as a prerequisite before major legal reforms impacting the lives of both communities are initiated. This will be an important step towards ensuring equality in all spheres for all sections of society. With the current unequal representation within legislative bodies, it is against the spirit of the Constitution to implement such far-reaching and fundamental changes.

Needless to say, without clarity on any of these important aspects, it is wholly undemocratic for the Commission to invite inputs. Its manner of functioning militates against the very essence of public consultations that should be driven by a transparent, democratic, and inclusive process.

Principles which should underlie a proposed Gender Equality Code in lieu of a Uniform Civil Code

We would like to put forward the principles that we believe should underlie any Gender Equality Code drawing from the findings of the very comprehensive report of the High-Level Committee on the Status of Women in India (HLCSSW) chaired by Dr Pam Rajput, which submitted its Report in June, 2015. While examining the specific issue of personal laws and the Uniform civil code it provided a guiding principle on how to approach the issue of inequality of women in personal laws stating:

“... The approach should be not one of ensuring that there is one law for all, but rather, that all women, whether they choose to be governed by secular laws or their personal laws, enjoy equality which the Indian Constitution promises them. This requires addressing several aspects in the legal domain in specific ways rather than a diktat of ‘uniformity’, which is conceived of in fundamentalist or majoritarian ways.”

The Report further notes that “There is a need to address discrimination not only de jure ‘but also de facto, which necessitates State to adopt laws, policies and practices and undertake proactive, measures and affirmative action in order to obliterate these discriminatory provisions and practices. Thus, all personal laws should be in tandem with the principle of equality. Women are working and contributing to the family and society in many ways and it is high time the State recognizes the unpaid contributions of women in their families, The State should enact laws in areas of matrimonial property in which no personal laws exist and ensure women right the property and assets in the natal and as well as in the matrimonial home.”

In a significant observation, the High-Level Committee on the Status of Women in India also highlights that Article 44 of the Constitution, which calls for the State to endeavour to secure for a Uniform Civil Code, has been given new meaning where various laws such as the Protection of Women from Domestic Violence Act, 2005

the Prohibition of Child Marriage Act, 2006 and the Medical Termination of Pregnancy Act, 1971 have been brought in as universally applicable to women from all communities. Thus, it sees that the way to safeguard women’s rights could be seen as two-pronged – one by enacting laws such as those mentioned above, which are universally applicable to women of all communities, irrespective of their religion, and second through targeted reform in all existing laws.

It is not only women who bear the brunt of patriarchal laws and customary practices. Persons of the LGBTQI community, who have recently raised a significant question on why there is no legal recognition of the partnerships / intimate relationships that they are in, are also not full citizens of this country. There lies here a serious challenge to the nature of what is traditionally considered to be family. Here also lies a fundamental question of equality.

We propose instead that the reform of personal laws be re-titled an GENDER EQUALITY CODE instead of a uniform civil code, thereby putting up front, the main objective of the reform exercise and allaying concerns around the imposition of uniformity in a vast and diverse nation. Such a code would be based on ensuring gender justice as well as inclusion of LGBTQI communities without any compromise upon the constitutionally guaranteed rights of Adivasi and Dalit communities apart from religious minorities. The

following principles should guide the formulation of such a code:

Equality

In India today, we are facing acute forms of inequality and even after seventy-five years of Independence, caste, religious, gender and class inequalities are only growing. The need of the hour is legislative and legal interventions that are consistent with the Preamble promises of Social, Economic and Political Justice and ensure equality for all.

All provisions in all personal and customary laws which unfairly discriminate between man and woman should be eliminated. This means that when it comes to the right to divorce, adoption, guardianship and succession, both men and women should have equal rights. This would mean a major change in all personal laws as till today all personal laws are weighted in favour of the man. The understanding of equality underlying the code should be substantive equality and not formal equality as understood in the Constitution. Therefore, any measures which are weighted in favour of women, be it the right to reside in the matrimonial home, protection from domestic violence, or the right to maintenance will be an essential dimension of the right to substantive equality. If equality is the principle then the relationships of same sex as well as transgender couples should also have legislative recognition as either marriage or civil partnership or both.

Currently, the only relief a

women can seek in the context of dissolution of marriage is maintenance / alimony. This scheme denies the recognition that women, who may not be formally employed outside the home, perform labour in the form of caring for children/ husbands and aged persons, maintaining and running a home, which is the back bone on which other family members enjoy a certain life. A right to matrimonial property, which has been recognised in a limited manner by the recent judgment of the Madras High Court, is central to valuing the labour of women in the matrimonial home. Any code or law based on equality must recognise and address this aspect that women spend a majority of their day performing household and related labour/ activities, relentlessly.

Liberty

Liberty in its essence relates to the freedom of individuals to choose. In the context of personal laws it relates fundamentally to the freedom of intimate choice, especially with respect to the right to choose one's spouse. This principle has come under sustained attack under the current administration through the so called 'love jihad' laws enacted by BJP governments in Uttar Pradesh, Gujarat, and Karnataka. This freedom to choose has always been precarious for those who choose to marry across lines of caste and religion. The numerous so called 'honour killings' are a testament to the moral code which governs all personal laws and stipulates that marriage outside caste and religion is a sin. The state has

offered little or no protection to persons inter-caste and inter-religious relationships. The proposed code should guarantee this autonomy of choice to all adults in this connection. A serious commitment to autonomy and privacy must be central to any proposed amendment/s.

Fraternity

As Babasaheb Ambedkar reminded us, by his advocacy of the concept of fraternity, inter caste and inter religious relationships are not only about the freedom of choice but also about making fraternity a lived everyday practice. If we are serious about ensuring fraternity, the barriers to inter-caste and inter-religious relationships should be removed and the Code must in fact make an active effort to encourage the same as a way of building fraternity in our society.

Dignity

The Gender Equality Code must take dignity as its lodestar. The protection of dignity requires that provisions in the personal law which affront the dignity of the individual must go. Autonomy of the individual is central to the notion of dignity. Any dehumanising discriminatory practice that violates the choice or dignity of the individual within the marriage or family be it the right to marry a person of their choice or to reject marriage as the case may be should be removed from the regime of family law. In fact, Art 51A(e) of the Indian Constitution too lays down that it is a fundamental

duty of every citizen to renounce practices derogatory to the dignity of women.

Privacy

The Supreme Court decision in Puttaswamy v Union of India, lays down that privacy is a core constitutional right protected both under Article 21 as well as other fundamental rights. The right to privacy means that one has the freedom to make decisions about one's intimate life without the public gaze. For instance the provisions of the Special Marriage Act which mandate that any two persons who decide to get married must give a notice to the registrar and such notice will be available for public viewing is an egregious violation of the right to privacy and must be repealed in the Gender Equality Code.

Inclusivity and Diversity

The Gender Equality Code must be based on the principle of inclusivity, which means that nobody should be left behind. This should mean the recognition of diverse kinds of relationships right from marriage to a civil partnership law applicable to all those who desire it and the rights and responsibility accruing from such relationships as long as they are informed by the core principles of gender equality and justice. There also exists diversity in the manner in which marriages are solemnised in India. Imposition of one particular manner in which marriage is legally solemnised strikes at the heart of practice of religion, which is also a guaranteed fundamental right.

Similarly, at present various statutes and uncodified law governs the practice of divorce. There are progressive elements that exist in Muslim personal law, that allows for women to seek 'khula' from their husbands to dissolve their marriage, without having to resort to legal proceedings in a court of law. These varying practices must be taken into account. Further under the premise of uniformity the code cannot impose the majoritarian practice of saptapadi which is intrinsic to certain forms of Hindu marriages on all caste and religious communities including Christians, Muslims and Parsis. Similarly, the uniformity of the code cannot end up excluding the rights of Muslim parents to inherit a share of property on the death of their son. Neither can the uniform civil code mean that everyone who intends to marry will have the notice of their proposed marriage put up as a notice in the Sub-Registrar's office.

Constitutional morality

Some parts of the personal laws are still governed by a morality code which is militates against the Constitution. Any reform will mean that such provisions which base themselves upon a moral code must be tested on the anvil of constitutional morality as mandated by the Supreme Court in *Navej Singh Johar v Union of India*. As for instance several existing grounds for divorce like restitution of conjugal rights and adultery reaffirm archaic notions of social morality giving overarching power to the State

to intervene in the personal and intimate lives of individuals who should be allowed to live together or separate on mutually agreed upon terms. The concern of the law and State can only be with the right to personal and economic security and property at the time of the dissolution of the marriage or relationship that under the regime of patriarchy, women are usually deprived of.

We would like to conclude by bringing to your attention that that the state has not, historically, addressed questions of equality in personal laws. The little reform that has come, has been through judicial pronouncement in cases that women have painstakingly litigated from the lowest court to the highest. The cases of Shah Bano, Mary Roy, Geeta Hariharan, Shayara Bano, Pragati Verghese etc are some noted examples. This shows that the state has never been interested in the patriarchal laws that are the basis of inequality. This being the case, any change in the lives of women must be based on the constitutional guarantee of equality.

Furthermore, no attempt to bring in gender equality in law reform would be of any use unless affordability, accessibility and timely access to relief and justice within the constitutional framework is also ensured. This should be kept in mind while affecting any changes/ amendments in personal and secular civil laws.

In the context of all that is stated above it we would urge the Law Commission:

1. drop the short-sighted idea of passing a UCC and put forth the idea of a comprehensive Gender Equality Code taking into consideration the diverse religious and cultural context of this country, and
2. initiate wide ranging and detailed consultations to formulate this code taking on board inputs from multiple stake holders from within diverse caste, religious, ethnic and Adivasi communities and civil society particularly women, gender and sexual minorities.

FEMINISTS RESPONSE TO 22ND LAW COMMISSION ON UCC RECOMMENDATIONS

To,
The Hon'ble Chairperson and
members
Law Commission of India
4th Floor, B Wing, Lok Nayak
Bhawan, Khan Market,
New Delhi - 110 003

Respected Chairperson and
members of the Law
Commission of India,

We, the undersigned, write to
you as representatives of
feminist, queer and women's
rights groups, as well as
concerned citizens, who have
been working on issues related
to gender justice and equality
for women from diverse
communities across the
country. We draw upon our
collective experience over many
decades, as we respond to the
current discussion on the
proposed Uniform Civil Code.

1. CONCERNS RELATED TO PROCEDURE, ITS INTENT AND IMPACT

We write to express our grave
concern regarding the public
notice issued by the LCI
soliciting views and ideas of the
"public at large and recognised
religious organisations on the
UCC." Our concerns are as
follows:

- a. Ironically, despite the call of
the LCI inviting 'views' from
the public, there is complete
lack of information about (i)
what would actually
constitute this Uniform Civil
Code (ii) how it would
conceive of "uniformity" in
matters of marriage, divorce,
custody, adoption,

maintenance, inheritance,
etc across diverse
communities, historic-
geographic locations, and
irrespective of marital status,
and (iii) how the LCI
envisions its implementation.

- b. In the absence of any
concrete proposal, outline or
framework or adequate time
for the public to respond,
what should have been a
serious public engagement,
has been reduced to an
opaque process marked by
political rhetoric and social
media campaigns. Vested
interests, ranging from
temple associations to
Resident Welfare
Associations, and others are
spreading a highly
communalised campaign in
favour of the idea of a UCC
that specifically targets
religious minority
communities. Given the track
record of the BJP-led
government in power,
serious apprehensions are
being expressed by religious
minority groups, tribal and
Adivasi communities across
the country about the intent
and remit of the proposed
exercise. It is extremely
disappointing that the LCI,
the foremost statutory body
for legal deliberation in India,
with an almost 200 year old
history of law reform, has
issued this notice in such a
casual and cavalier manner.
Initiating an ill-informed and
undemocratic process on an
issue that is complex,
sensitive, and that has been
contested for decades.

It is even more worrisome
that the current LCI has
raised this topic without any
substantial reference to the
21st LCI report of 2018 on
the very same issue. In its
Consultation Paper on
"Reforms of Family Law," the
21st LCI made several
recommendations on the
matter of gender equality and
concluded that, "Uniform
Civil Code is neither
necessary nor desirable at
this stage as it would be
counter-productive for the
harmony of the nation," and
suggested that "reforms in
personal laws should be
done by amendments and
not by replacement." Further,
by identifying that
"discrimination and not
difference that lies at the root
of inequality the 21st LCI had
prioritised 'gender equality
within each religious
community, rather than
between communities."

Therefore, the current notice
dated 14/06/2023 that simply
states the 22nd LCI
'considered it expedient to
deliberate afresh' without
clarifying what warrants a
rethink, betrays a complete
lack of seriousness on a
matter that impacts the life of
many, particularly women. It
only carries a vague
reference to 'various court
orders', without even
bothering to specify which
court orders and what issues
they raise. In the absence of
clear terms of reference, it
appears that the present
endeavour is more of a

'political exercise' than a 'legal' one.

- c. It is deeply troubling that the LCI has specifically sought "views from the public at large and recognised religious organisations" to the UCC. This reveals the erroneous presumption that the Indian people can be divided en masse only into religious groupings; and that these groupings can only be represented by religious leaders and so called "recognised religious organisations."

Consequently, the notice fails to recognise or acknowledge that the primary members who are impacted by such laws are women from across religious, caste, Adivasi, and tribal communities, gender minorities, atheists, and agnostics. Hence such a call only serves to reinforce the patriarchal belief that they are not the primary stakeholders in gender-just family law reforms - which makes this a deeply discriminatory process. Pertinently, the term "recognised religious organisations" finds no reference in the Constitution or any other statute, that governs the secular constitutional Republic of India.

Amplifying the confusion surrounding the UCC have been contradictory and conflicting public declarations by the government. In Bhopal on 2 July 2023, Prime Minister Narendra Modi claimed that India needed a UCC as the

country could not run with the dual system of "separate laws for separate communities." Then on 7 July, 2023, Home Minister Amit Shah assured the Chief Minister of Nagaland that, "the government is actively considering exempting Christians and certain tribal areas from the proposed Uniform Civil Code (UCC)." The Chairperson of the Parliamentary Committee on Law and Justice, Sushil K Modi has also stated that the exemption would extend to states under Article 371 such as Maharashtra, Gujarat, Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram and Arunachal Pradesh. If that is so, what parts of the nation and which communities is the proposed UCC meant to bring 'uniformity' to? Who will it protect with gender justice?

2. COMMENTS REGARDING UNIFORMITY, EQUALITY AND NON-DISCRIMINATION VIS À VIS GENDER JUSTICE

a. It is important to reiterate that in a country as plural and diverse as India, the lived realities of people within and across communities are very varied. Exceptions accommodative of customary laws and practices are found and included within most religious laws. Contrary to popular perception, the UCC if drafted adhering to the principle of uniformity, will have implications for and impact on all religious personal laws for Hindus, Muslims, Christians, Parsis, etc as well as the secular law. It will have ramifications on all customary laws, as

well as tribal and Adivasi community practices protected under Schedule V and VI of the Indian Constitution - practices that are not only around family and marriage, but also around how land and resources are held and used as shared by communities. Additionally, any new UCC will also affect the existing UCC already in force in Goa - which in itself requires more analysis and understanding.

b. The rights of those marginalised by gender vis à vis the state and the economy, in the familial, social, legal and political domains remain deeply unequal, determined as they are not only by religion, but also by caste, class, ethnicity, dis/ability and sexuality. The very idea that uniformity, applied across such hierarchies, can guarantee or imply equality is fallacious and misleading, and insidiously opens the door for majoritarian tendencies.

c. In relation to laws relating to marriage, the position of the Central government remains contradictory. The Solicitor General of India, representing the Union of India in the matter of marriage equality, vehemently argued against any change or interference with marriage laws, stating that it would impact more than 157 legal provisions, across statutes that govern the domains of family, marriage, inheritance, adoption, etc. Further, the Central Government in the marriage equality matter

before the Supreme Court also asserted that marriage is a religious institution and despite codification of personal laws, it is a "sacrament" and thus, the "sanctity" of personal laws must not be interfered with.

It is indeed an irony that the same Union of India which argued against the changes to the marriage laws stating that the legal domain is too diverse to homogenise, is now doing so in the name of uniformity, and proposing one omnibus law to address all issues relating to gender equality in the domain of the family!

- d. On the matter of ending unequal rights/discrimination against women, the present government's stance continues to be selective, problematic and lacking credibility. Take for instance the much-discussed issue of polygamy among Muslim communities, around which much of the current propaganda around UCC is centred. The National Family Health Survey - 5 (2019-20) reveals the prevalence of polygamy is 2.1% among Christians, 1.9% among Muslims, 1.3% among Hindus, and 1.6% among other religious groups. Yet, the focus remains on prohibiting polygamy within Muslim communities, without any apparent intent to secure the rights of women in such bi- or polygamous marriages across communities. Therefore we question whether the government is propounding

the UCC to ensure justice for all women, or use this as an occasion to target one community as being discriminatory to women, even though data reveals a different reality.

Additionally, there is no indication of how the proposed UCC intends to address legal changes since 2018 to ensure non-discrimination in matters in the private domain, such as:

- e. The recognition of the rights of transgender persons, through the NALSA Judgment, 2014, and the consequent Transgender Persons (Protection of Rights) Act, 2019.

Emerging and changing concepts of marriage, family, and kinship as being articulated in society and through the courts by those most affected by family laws across community identity. Petitions challenging the constitutionality of restitution of conjugal rights as a matrimonial remedy, and the practice of nikah halala as well as those related to marriage equality, which are pending before the Supreme Court of India.

As women, our lives and our freedoms are in myriad ways impacted by growing political majoritarianism, as well as the disturbing growth of community and state conservatism in which inter caste, inter religious and even intra gender partnerships, friendships and marriages are being violently opposed. As feminists from

diverse locations, we are uncompromisingly committed to a notion of equality not uniformity and affirm women's autonomy within and outside the structures of marriage and family.

The full letter from the Feminist Working Group can be found at kafila.online.

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