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PAST AS PRESENT: REMEMBERING THE EMERGENCY AND LIVING IN AN UNDECLARED EMERGENCY

EDITORIAL BY ARVIND NARRAIN

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The 48th anniversary of the declaration of emergency by Indira Gandhi on 26th June, 1975 provides an appropriate historical vantage point for reflecting upon our current challenges as we confront the 'undeclared emergency' under the Modi regime.

Commentators have described the emergency of 1975-77 and the last nine years of the Modi regime as the two lowest points of Indian democracy. Though many succumbed to the fear generated by the infamous midnight knock on the door during the emergency, there were many others who kept the lamp of freedom alive.

Right from the courageous dissenting judgement by Justice Khanna in the ADM Jabalpur case to courageous journalists, politicians, activists, trade union leaders, student leaders, human rights activists as well as ordinary people - many stood up for constitutional values in difficult circumstances.

This issue is structured around the belief that remembering and recounting the role of those who did not give in to fear and continued to believe in the promise of freedom can serve as an inspiration in our present time. It is natural to experience fear - Fear of arrest, fear of losing one's job, fear of harm to one's loved ones'. The question is how does one confront one's fear and still act? How does one in Franklin Roosevelt's phrase get 'freedom from fear'? Individual experiences can help us to address these questions and our contributors all of whom lived through

the emergency share their experiences of moving forward inspite of fear.

This quality of fearlessness which we feel our contributors to the Emergency section of the bulletin evoke also has an older history and lineage in the freedom movement. Jawaharlal Nehru paying tribute to Gandhiji said that the essence of his teaching was to cultivate 'fearlessness' and 'truth'. This was in contrast to the dominant impulse of colonial rule which was 'that of fear-pervasive, oppressing, strangling fear; fear of the army, the police, the widespread secret service...fear of the laws meant to suppress and of prison'. It was against this 'all-pervading fear that Gandhi's quiet and determined voice was raised' which helped to lift the 'black pall of fear' from 'people's shoulders'.

For Nehru, fearlessness is an important state of mind to cultivate as, 'fear builds its phantoms, which are more fearsome than reality itself, and reality, when calmly analysed and its consequences willingly accepted, loses much of its terror'.

Creating a culture of fearlessness is an act of creative mass participation as the freedom movement teaches us. When we are together in solidarity and struggle, fear melts away. Individuals can be fearful, but once an individual becomes a part of a larger movement, fear can be vanquished.

We need to create such a culture of fearlessness and build mass ownership of this struggle against the 'undeclared

emergency'. This is particularly important as the ongoing period of state repression like the emergency functions through spreading fear by threatening all those who speak out against the regime with arrest, often under draconian laws. Equally important is 'truthfulness', especially when it comes to exposing the lies of the state. (The grim evidence of the state seeking to clamp down on truth speakers is the recent Orwellian proposal by the state for all on-line fact checkers to be registered with the government.)

Manipur violence and a Partisan State

In Manipur, India is facing one of the most disturbing events in the history of post-independent India. The violence in Manipur between the Meitei community and the tribal Kuki and Zo communities, is refusing to die down and the situation since May 2023 only seems to be getting worse.

The violence is affecting men, women and children, with over 50,000 people in more than 300 refugee camps and lakhs displaced. The Manipur government has been seen as not only complicit in the violence, but also partisan. The Union Government has played the same role as Nero played when Rome burned.

A civil society statement initiated by the PUCL and other organizations points out, 'In the present scenario, the worst of the violence against the Kukis has been perpetuated by armed Meitei majoritarian groups like Arambai Tenggol and Meitei Leepun, accompanied by genocidal hate-speech and supremacist displays of impunity.' Chief Minister Biren Singh is closely associated with these groups and the Chief Minister himself has been reported as making many anti-Kuki statements.

This cycle of violence has resulted in ethnic cleansing with the valley areas being cleansed of Kukis and the hill areas being cleansed of Meiteis. However the violence has disproportionately affected the Kukis with the 'overwhelming majority of those killed in the ongoing violence from the Kuki community. Reportedly over 200 Kuki churches have been burned, along with schools, granaries and homes.' The ethnic conflict has taken a majoritarian

and communal overtone due to state complicity.

The disproportionate destruction indicates that while both sides have committed rights violations, the state has not been a neutral party in this conflict between two ethnicities and has openly taken the side of one community. The Biren Singh government has been seen to favour the Meiteis with the Kukis losing faith in the impartiality of the Manipur administration.

The PUCL as a human rights organisation is deeply concerned with this partisan role of the state government which has resulted in the crime against humanity of ethnic cleansing and demands that the centre act to ensure law and order and ensure that there is no more loss of life. It is imperative that the Prime Minister make a statement on the situation and lay out a road map for the future.

Uttarakhand: Discriminatory Hate Propaganda

In another disturbing development, in Uttarakhand, a multi-layered discriminatory public campaign led by certain groups such as Bajrang Dal and VHP for the last few months have been systematically targeting the Muslim community. During the course of these campaigns they have used terms like "*Yyapar Jihad*" (*Business Jihad*), "*Love Jihad*," and "*Land Jihad*" to instigate fear and hatred among the majority community which has created an atmosphere of violence and insecurity against the Muslims living in the region, causing an exodus in the region. The PUCL filed a letter petition with the Chief Justice of India to bring attention to this situation akin to ethnic cleansing. This methodology seems to be of vigilante groups taking forward an unconstitutional agenda of blatantly violating the right of every Indian to live and work in the region of their choice even as the state, especially the police, are complicit in this rights violation.

The conduct of the state in both Manipur and Uttarakhand in allowing vigilante forces to set aside rule of law and violate the rights of their fellow citizens marks a different challenge from

the times of the emergency. In the undeclared emergency, the power of the State has been supplemented by that of the mob which enforces its will regardless of the constitutional requirements of rule of law. Lynching has increased manifold since the BJP came to power and we saw the consequence of state complicity in vigilante actions in both Manipur and Uttarakhand play out with devastating consequences.

The response of the Union of India to both the situation in Manipur as well as Uttarakhand seems to indicate that as far as the current government is concerned it is not just ignoring the constitution but repudiating it. This de facto repudiation of the Constitution stands in diametrical opposition to the hymns to the Constitution sung by the Prime Minister in his address to the US Congress in June of 2023.

Retention (Not Repeal) of the Seditious Law

The state has been stubborn in its unwillingness to cede the constitutional right to fearless speech to the citizens of India. The phrase 'fearless speech' is a rough translation of the Greek *parrhesia*, which designates the citizen who has the moral qualities required to speak the truth, even if it differs from what the majority of people believe and she faces danger for speaking it.

One of the big impediments to fearless speech has been the colonial sedition law which has been challenged by the PUCL as well as other petitioners in the Supreme Court. The Union of India referred the matter to the Law Commission and the Law Commission Report on sedition has ignored constitutional developments as well as a history of abuse of the law and shockingly recommended the retention of the sedition provision. The ignominious history of Section 124-A, particularly in colonial times has been forgotten by the Law Commission! Scores of freedom fighters were thrown into jail under the sedition law for the simple reason of speaking up against British rule, resulting in Gandhi-ji calling this law, '*the prince among the political sections of the IPC designed to*

suppress the liberty of the citizen.' He saw the law as a tool used by the British to stifle dissenting voices.

The memories of anti-colonial struggle also led the Constituent Assembly to reject the proposal to include sedition as a ground for reasonable restriction of the Fundamental Right under 19(1)(a). When sedition has no place in the Constitution, it should have no place in any statute either. It is unfortunate that Justice Awasthi, as the then Chief Justice of the Karnataka High Court, who was the author of the infamous judgment upholding the ban on wearing hijabs in the classroom, has today authored a report which blithely and callously ignores the way Section 124-A impinges on the freedom of speech and expression by calling for the retention of the law.

The 48th anniversary of the declaration of emergency is also the 48th anniversary of the birth of the PUCL and is an opportune reminder for us to rededicate ourselves to the struggle for constitutional values and to widen the circle of engagement. The PUCL in its National Convention held in April of 2023 in response to the challenges of the 'undeclared emergency' resolved to:

1. Firmly and courageous face the challenges posed to constitutional rights by the coming together of an aggressive Hindutva philosophy combined with rapacious neo-liberalism and an attack on the institutions which are guardrails of Indian democracy including the media, civil society and the judiciary.
2. At this time when the Constitution is under attack, defend the values of the Constitution which provides the basis for social and political life based on fraternity, equality, liberty, inclusion, dignity and rule of law.
3. Continue responding to crises using methods such as Fact finding, campaigns, training, litigation, have a long term analysis on how to protect and preserve constitutional democracy and continue to evolve new methods of response.
4. Continue to defend the values of the Constitution both through courts, as well as outside the courts, through the work of fact-finding, public education campaign and building a wider constitutional morality.

We believe that remembering and recounting the role of those who did not give in to fear and continued to believe in the promise of freedom can serve as an inspiration in our present time.

In this section of the bulletin, find the testimonies and memories of those who were arrested, resisted and fought the emergency. Inevitably, we will reflect on today's challenges to Indian democracy, Constitutional values and human rights.

LIVING IN EMERGENCIES, PAST AND PRESENT

BY PRABIR PURKAYASTHA

Whether I look back at the 1975 Emergency and the one today, I do not want to look at it from the point of view of a victim. Victimhood robs us of participation in the creation of history; it reduces us to mere objects of history. Instead, I would like to assume the vantage point of people as makers of history. Yes, the government of the day wields powers that seem to overwhelm individuals and organisations. But it is people, and their actions, that finally determine history; not as we please and when we please, but in ways that neither the people nor their rulers anticipate. Mrs Gandhi's emergency was eventually laid to rest in the 1977 elections in a way that even the opposition parties had not anticipated. A hesitant opposition, unaware of the people's sentiments about the emergency, was swept into power, just as a shocked Congress was swept out. If the state was the principal actor onstage during the emergency, the people took over the stage in its dismissal.

Don't take people's silence for assent: This was the crucial lesson of the emergency for our generation. Mrs Gandhi and the Congress mistook the silencing of the people through the Maintenance of Internal Security Act (MISA) and Defence of India Rules (DIR) for assent. The Supreme Court, to its shame, accepted—in its ADM Jabalpur verdict—that those of us who had been detained under MISA did have the right to life and liberty but could not exercise this right through the justice system. In the chilling words of the then-Attorney General Niren De, even if a constable shoots someone during an emergency, people have no recourse.

Instead of an emergency, the BJP has, today, weaponised a bouquet of laws, such as the Unlawful Activities (Prevention) Amendment Act (UAPA) and the Prevention of Money Laundering Act (PMLA). UAPA and PMLA make bail difficult. These draconian laws, supposedly created for different objectives, have now been repurposed to intimidate, harass or silence those the current government does not like. The instruments of this repurposed policy are not only the police but also the Enforcement Directorate (ED) and that old weapon of the state, the Income Tax (IT) Department. The Press has not been directly muzzled as was during the emergency. But the various instruments of coercion are in full play: news organisations' offices are raided, spurious cases lodged, advertisements cancelled, etc. New laws are now in the offing to address the more recalcitrant digital media. The Ministry of Information will set up a "fact-checking section", a version of the Orwellian Ministry of Truth, whose direction will be "final".

While the weaponisation of the state is similar in many ways to the emergency era, there are also dissimilarities. The Courts provide a thin line of judicial protection, which was not the case during the earlier emergency. But the attack on the Constitution continues in various forms. Citizenship laws, anti-conversion laws, abrogating Article 370 of the Constitution for Jammu and Kashmir, banning cow slaughter and anti-conversion laws in many states—these are only some examples. Simultaneously, changing the Rules of many laws to expand their scope and

sneaking in new provisions by using money bills has become a routine tactic to expand the power of the state. While the Courts have provided some relief to citizens, they have also shied away from contesting the core project of the BJP government: the use of the existing legal structure, tweaking the language here and there, to convert the secular core of the state to a sectarian one that converts Muslims and Christians to second class citizens.

To complement the weaponising of the state, various armed Senas and Dals have been formed in the name of "protecting" cows. Many such brigades are funded by the cow protection fund and have close links with the local police. Mob lynchings, e.g., in Haryana of Junaid and Nasir, Akhlaq in Dadri, UP, and Pehlu Khan's lynching in Alwar, Rajasthan, speak of the complicity of the state with everyday cow vigilantism. Then there are various bhakts whose sentiments are so easily hurt that the police have to immediately file FIRs and criminal charges to assuage their sensitive souls. Never mind their vituperative attacks on social media against anybody who dares criticise their great leader and his party, even if they call for violence and articulate hatred for minorities.

We live in Lewis Carroll's Looking Glass World, where truth is false, and falsehood is true. Secular views are sick-ular; sick-ular views are the "new secular". The people's struggle did not attain independence for India; Modi did by installing the *Sengol* during Amrit Kal in the New Parliament Building, suitably anointed by the priests Thiruvavaduthurai Adheenam.

Behind the optics of the *Amrit Kal* and anointing Modi as the great leader is the reality of replacing a secular state that India aspired to become through its declaration of "We the people" in the Constitution. The Indian Constitution drafted by Ambedkar was given to the country by the people of India through their battle for independence. It embodies the will of "We the People", the aspirations of the people and their desire for development, education, health and equity in a free India. Not a country where independence means a

transformation from the British Raj to the billionaire Raj of today.

Mrs Gandhi knew that she needed the affirmation of the people through an election that was truly free. The current dispensation believes that the facade of freedom, combined with control over media, including social media, is enough. Yes, it may be possible to do this for a short time; maybe in a few states; often creating warlike conditions with a

neighbour; and, throughout, appealing to people to close ranks behind the great leader. But not for long, not across the country. As Shelly's immortal lines say: "Ye are many, they are few"!

(Prabir Purkayastha is the editor of Newsclick.in. and was imprisoned during the Emergency. He was also a petitioner in the ADM Jabalpur case with NM Ghatate representing him in the Supreme Court.)

MY BITTER EXPERIENCE OF THE EMERGENCY

BY PRABHAKAR SINHA

The emergency promulgated by Indira Gandhi on 25/26 June, 1975 came as a bolt from the blue. There was no agitation or unrest in the country and no immediate cause for it. The political leaders, including JP, were arrested in a midnight swoop to prevent any movement demanding Indira Gandhi's resignation following the SC's not staying the judgment of the Allahabad High Court quashing her election to the Lok Sabha. The SC allowed her to attend the Lok Sabha but not to vote nor to draw allowance to which she was entitled as an MP. The opposition wanted her to step down as PM till the SC decided her appeal. The emergency was declared to prevent the inevitable agitation in favour of this legitimate demand.

I, along with a few university teachers, who had been detained under the dreaded MISA for actively participating in the JP led Bihar movement of 1974 wondered about the government's attitude to us. We decided to lie low and work secretly as we were under surveillance. I was informed by friends that the police were aware of my activities and were watching my secret movement to get to know the others involved before arresting me. I was advised to leave Muzaffarpur for a while and go underground. It was sometime in early August that I went on leave from the college and left Muzaffarpur and moved to Patna.

While at Patna, I learnt that the Federation of University Teachers of

Bihar (which was controlled by the CPI) was going to hold a meeting to pass a resolution in favour of the emergency, branding the opposition as fascist. This was Indira Gandhi's line. Later she organized a number of Anti-fascist conferences in the country.

I was in a dilemma. To go to the meeting to oppose the resolution and be arrested or lie low and remain underground. This was the question facing me. I decided to attend the meeting and oppose the resolution. The meeting was held at the Darbhanga House of Patna University. I strongly opposed the resolution on the ground that the federation was meant to protect and promote teachers' interest only. Political issues were outside the jurisdiction of the organisation. The resolution was passed but not unanimously as planned by the leadership. Immediately after opposing the resolution, I left the meeting and went underground apprehending arrest, which was certain.

I learnt later that the police were ordered to arrest me immediately. The police tried to locate me but failed. On instruction from above, the police at Muzaffarpur were instructed to arrest me by hook or by crook. They fabricated a case against me and got me declared an absconder. A large number of policemen with a truck reached my flat and asked my mother to let them taken away whatever was there. When I received the message, I met Radha Raman ji, an Advocate of repute and a champion of civil liberties (who was later elected the

First President of Bihar PUCI). We had known each other for quite some time. He was quite upset and said that there was no legal remedy, but if I spoke to my maternal uncle (he was an eminent CPI leader and an MLA) the problem could be solved easily. Chandrashekhar Babu just has to call the CM and tell him 'catch my nephew but don't bother my sister'. The problem would be solved.' I told him I won't do that. He said, "Then there is no way out."

I called the DM. Mr. Sanglura and asked why I was declared an absconder without a notice. He was embarrassed and said that he had no idea. The SP could tell me the reason.

Then, I called Mr A.M.P. Verma, SP, Muzaffarpur. When I asked him how I was declared an absconder, even he sounded embarrassed and said something about the emergency.

I said, "Do you just want to arrest me or also torment my mother?"

"No. No. We just have to arrest you, and we have to arrest you today."

"Then, arrest me tonight before 12. I have to make some arrangements before I go to jail because I don't know when I would be free. Meanwhile, withdraw the police from my place."

"I will do it, but you must reach before 12 at night."

The police were withdrawn. They arrived at night, took me in their custody and sent me to jail the next day after following the legal procedure.

Life in the jail was comfortable. I was an Upper Division prisoner (along with 18 others) and was entitled to certain facilities and comforts under the rules. Doctors from the government hospital used to visit us and wanted to do something for us like recommending fruits, extra milk and chicken. We used to thank them and decline. Most of them said, "You all are doing so much for the country. Allow us to do something for you."

Occasionally, there were clashes between the jail authorities and the political

prisoners on minor issues in which brutal force was used. No authority would come to our help fearing he might be considered anti-government.

But even during the emergency, nobody was treated with the brutality shown to Fr Stan Swamy, Varavara Rao. Nobody was treated with the enmity with which Prof Saibaba is being treated. Nobody was harassed as Gautam Navlakha is being done. UAPA was enacted in 1967, but I did not come across anyone charged with it.

The people were detained under the MISA, the Defence of India Rules or the Defence of India Act. The purpose appeared to be to prevent or suppress the movement against Indira Gandhi's continuance as PM.

(Prabhakar Sinha was active in the University Teacher's movement in Bihar from the period prior to, during and after the Emergency. He is one of the founding members of PUCI and was a former National President of PUCI).

UNDERGROUND DURING THE 1975 EMERGENCY

BY RAVI NAIR

It was a little over 3 months since the imposition of the Emergency on 25 June 1975 when I was arrested. I had escaped the initial dragnet in Delhi as I was in Bangalore with a colleague to rally local students for the Jayaprakash Narayan movement. I also had three close shaves from being arrested. Two, I have written about earlier.

In terms of the caprice and the workings of the Deep State, nothing seems to have changed. The repressive scaffolding is the same. When the police were looking for me, they raided my father's home but I had left home a year before. The police then raided the Bara Hindu Rao office of the Delhi Socialist party where I had been staying.

Fair weather friends

Living in the underground was not romantic at all. All that I had read about popular support to the French resistance to the Nazi occupation was so much balderdash. Or maybe, the Indian bread, called the "chapatti" did not have the hard crust the French baguette bread had.

One lecturer in a South Delhi college turned me away from his flat with a handout of Rs 10. I threw the note at his face and walked away, hungry as I was. Years later, after the Emergency he tried to see me. I gave him a piece of my mind. He slunk away.

This was not an isolated accident. Another left of CPI (M), Marxist

lecturer, opened the door to me and another comrade only to shoo us before I could even speak two sentences. He is still left of CPM! The little that is ideologically left of him!

The third, a Maoist lecturer allowed me and my friend to enter his drawing room in spite of his lecturer wife's objections. He had been arrested on the night of the emergency. We had learnt that he had been released a few weeks later, hence our visit to his house. It was clear that he was a broken man. Later, I learnt that his family's powerful Punjabi connections had got him released. He did not want to be part of any political work. Looking at him, we understood and left.

Another Maoist, desperately trying to recruit me to the cause before the emergency went so very underground that even if I had journeyed to the Centre of the Earth with Jules Verne I would have not found him!

The Good Ones

One upper middle-class couple, not political but just imbued with liberal values and most important of all good human beings, allowed me their spare bedroom whenever I was in South Delhi. Three working class comrades from the Delhi Socialist Party and members of the then powerful Socialist led Delhi Auto Rickshaw Mens Union were not just comrades. Than Singh Josh, Teja Singh and Jajju, they were life savers. Their homes, their meagre resources were all

shared generously.

There were two Tamil Iyer brothers who had the contract to run the South Indian vegetarian eating place at the back of the United News of India (UNI) office. It was just a lean to shack but the food was scrumptious. It is still there, run by their relatives.

Both of them knew me as a stormy petrel as before the emergency, after every demonstration at Patel Chowk or Boat Club we would come there with our rolled up flags and banners for a delicious tuck in of hot iddies and dosas. Ambi Saar as one of them was called, made sure I got a hot meal and always brushed away offers to pay, knowing fully well that I must be underground and short of money. And what is more I got idly podi in clarified butter," naiee" as it was called in Tamil. Not every paying customer got it!

I would swing by there every 10 days or so when I came to see Mohan Ram, the resident correspondent of the Madras Mail who collected all the new snippets which the print media could not use because of the censorship. There was no electronic media those days. Only All India Radio (AIR). Could have given Goebbels a run for his money! I used it in the underground media, or what passed of as such!

My mother sent me some money every month after squirrelling away something each month from the household expenses and away from my father's scrutiny. Bless her soul. I will write more when I do my autobiography. My father was a bureaucrat, need I say more?

A year after my release, semi underground again, that and the story of my arrest will have to wait for another day.

(Ravi Nair is with the South Asia Human Rights Documentation Centre.)

THE GUILLOTINE OR SLOW BLEED?

BY KALPANA SHARMA

The guillotine or a slow bleed? A sane person would choose neither. More so if they lived in a country that they believed was a democracy. Yet, in democratic India, the very concept of press freedom has faced both – a dramatic cessation and a gradual, though deliberate, suffocation.

As we approach the 48th anniversary of "The Emergency", the state of emergency invoked by then prime minister Indira Gandhi on the night of June 25, 1975, we should reflect on the past, but also ask whether the lessons from that past have informed this country's future trajectory.

In June 1975, freedom of the press was suspended. It suddenly did not exist anymore. We were told that if you wrote critically about the government, you could personally face arrest, as well as the closure of the publication for which you wrote. In those days, the media consisted only of print. A nascent television (Doordarshan), and radio (All India Radio) were entirely controlled by the government.

Editors and journalists were arrested, even before they had a chance to write a word. Publications closed, either out of choice because they did not wish to be censored or were compelled to do so because they had violated censorship laws or were rendered financially unviable.

Smaller publications, often gutsier and more willing to speak up than the larger ones, were the most vulnerable. They depended on "goodwill" advertising, which is not determined by circulation figures. They also received advertisements from public sector companies and banks. The latter were ordered not to advertise in these publications and the former, mostly private companies, were told that if they continued, they did so at their own risk. Most chose not to take the risk.

All this was then. When press freedom was virtually guillotined.

Today, press freedom is intact, apparently. But it has slowly bled since 2014, when the Bharatiya Janata Party under Narendra Modi, won the majority in Parliament. What remains can only be revived with a huge infusion of fresh blood.

The most dramatic change has taken place in television, a medium that reaches the maximum audience compared to other media in India. Pre-2014, privately owned television channels were highly critical of the government of the day, at that time the United Progressive Alliance led by Dr Manmohan Singh. Every mistake, imagined or otherwise, was amplified and discussed in detail.

Print media undertook investigations into corruption, exposed the shortcomings of government programmes, poked holes in government propaganda and highlighted human rights violations.

Post-2014, most mainstream television channels appeared to do a complete turnaround. Initially it was awe and praise for the ruling party and its leader. When Modi announced demonetisation overnight in 2016, there was barely a critical voice heard on these channels. They gave Modi the benefit of the doubt and allowed airtime for him to put forward his point of view. But only that viewpoint was heard. There was practically nothing about how millions of ordinary people suffered the consequences of this decision.

Till then, print media continued to provide space for critical comment and reporting. But even then, you could see that these spaces were shrinking.

By 2019, when the BJP returned with a much larger majority in Parliament, the change in the media was almost universal. Television became an extension of the government's propaganda machine. It fuelled narratives, especially the Hindutva agenda of demonising Muslims, that the

government and the ruling party wanted amplified. And it literally drowned out the few token voices that were willing to say something to the contrary.

Some of this was the consequence of owners of these channels being convinced that the BJP and Modi were the answer for India. And some from the pressures of business and the fear that falling foul of a powerful government would not serve their best interests. Whatever the reasons, or a combination thereof, by 2019 the capitulation of mainstream TV, barring one channel, was almost complete. This was finally completed in December 2022, when that last, lonely, critical voice was muffled by a business ally of Modi taking it over.

Print media does not have the reach of television. Some spaces remain for critical writing and opinion. But they are shrinking by the day as these media houses become increasingly dependent on government advertising. Private advertisers must also be watching their backs, much as they did during the Emergency, by not being seen to support critical media.

The equivalent of the small publications that stood up and spoke out during the Emergency, are the digital news platforms. At the moment, these are virtually the only spaces where legitimate criticism of government policy and programmes, and of human rights violations, can be reported. Their financial future is precarious given the government's ability to pressure anyone supporting any form of dissent.

Yet, although the reach of these platforms is nowhere close to that of television, the current government is determined to restrict their reach even further. This has come in the form of a proposed amendment to the IT rules that allows the government to set up a "Fact Checking Unit". This body can decide that anything reported on a government programme is "fake", "false" or "misleading" and compel any intermediary or social media platform to take it down. Currently, this amendment is being challenged in court. But if it were to go through, it would be a virtual death blow for independent digital platforms that depend on social media to

distribute their content.

Indira Gandhi had proclaimed that she invoked the emergency to "save democracy". The Modi government believes that every draconian step it takes is saving, what it chooses to call the "mother of democracy".

The intent is the same; only the methods

differ. By learning from the past, this government has realised that it has no need to guillotine press freedom. It merely needs to bleed it slowly till the concept itself becomes lifeless.

(Kalpana Sharma is an independent journalist, author, and columnist. She was editor of Himmat Weekly during the Emergency).

'WE CANNOT TIE ANYBODY'S TONGUE'

BY RADHAKANT SAXENA

Radhakant Saxena served as Jail Superintendent, central jails of Jodhpur and Jaipur for 19 months during Emergency (June 1975- March 1977). He retired from the Jail services after becoming IG Jails, the highest post at the point in the Government of Rajasthan for Prisons. He joined the PUCL In 1997 and later on, was also its Vice President. He was also the director of the Justice Mulla Commission on prison reform, the only commission ever constituted on prisons.

A Gandhian by principles, he never let the government-provided staff do the 'menial' tasks in his house and was well known for doing household chores himself, including mopping and sweeping the floors. Now 88 years old, he shares his experience as the jail superintendent of two jails:

During the emergency, the Rajasthan government jailed members of the Jan Sangh, the RSS, the Gandhians, the left leaders of the CPI (M) and young men from radical left organisations. The largest number of detenus were from the Jan Sangh and the RSS. There were a couple of hundred in the two jails of Jodhpur and Jaipur, where I was superintendent, in the 19 months of the Emergency.

This was one of the worst periods of being in service in the Government, as I was determined that I would not allow the violation of any rules and not be a party to any violation. There was no doubt that their political pressure was very high, in just about everything including throwing people in prison and getting special favours in jail.

Basically, there were two types of people in jail: those who could not bear being in jail and were ready to apologise at the drop of a hat to be released; they also wanted special food and other special services. In the two jails that I was there, this lot was from the RSS and the Jan Sangh.

The second lot were from the Intelligentsia, the leftist and some Gandhians, who refused to take any extra services. They held protest meetings inside the jail and mostly stayed the full 19 months.

I want to report two instances about the first lot.

I have no hesitation in stating that the RSS / Jansangh lot even while in jail, could pressurise the government into letting them choose their own diets. Many people got dry fruits prescribed for themselves as Ayurveda medicines. They also got other medicines like Swarnabhasma, Hirakbhasma also prescribed. These were very costly. But since they were prescribed by doctors, the Government had to make it available. These detenus would apply in the court and the court used to approve that Ayurvedic medicine should be given to them. The written order said that Ayurvedic medicines be provided. So they would get after the jail doctor that they really needed the Swarnabhasma. Now no matter how much we would dissuade the doctor, we had to call in Ayurvedic doctors who were more than willing to prescribe medicines of their choice and food supplements. Now, in food supplements, if cashew nuts was

mentioned, what could I have done? They had to be provided ! It used to come at the government's cost. We ordered it and implemented the court order to the hilt.

I would like to share a few more instances of that period.

In the jail, if prisoners break rules, initially we are careful and try counselling them, but when they still brazenly violate the rules, then we punish them.

An ex-MLA of Kota called Harish, while I was on leave, told one of my jailers, that he would strip him and other functionaries naked if we did not comply with some unreasonable wish of his. So, I did send the person to the lock up. I told him, If you have something to say then tell me, if you have any complaint, then complain to me but we will not permit this kind of intimidation of the staff. He, of course, threw names but I was firm that no jail staff could be treated in this fashion. Similarly, the jail staff too could not intimidate or misbehave with any prisoner.

In those days, senior Gandhian leader, former PCC chief, Gokul Bhai Bhatt was sent to my jail in Jodhpur. He was frail, but a straightforward person. He was one of most respected Gandhians, a member of the constituent assembly, a freedom fighter and an erstwhile CM of the princely state of Sirohi. He later led the anti-alcohol movement in the state, but he too was not spared.

In protest he went on a fast, I asked him whether there was anything we could give him while he was fasting, he replied that he would eat four boiled potatoes. Which became his regular meal.

I could not bear to take this frail fasting man to any of the jail wards of cells, so I just made him stay in the rest room attached to my office room. Rest rooms have a bed, so did mine, I asked him to use that. I didn't let him go inside the jail.

A complaint was lodged against me that some prisoners were being provided with a lot of comfort. Gokul Bhai Bhatt was of the age of my father, I knew about

him very well. So whenever I used to go inside I used to touch his feet; he was an elderly person. The IB (Intelligence Bureau), which roamed around the entrance of the jail, complained to the government that I used to touch the feet of these prisoners. The government asked me to explain. I wrote back fearlessly, that if my father was to be locked up in a jail, that would not end my relations with him. I would restrain him, not let him flee. But I would still be respectful of him and touching feet is part of that respect that a son should give his father.

After that, I did not receive any reply, and they were satisfied.

Several other complaints were also filed against me. One young 15/16-year-old RSS chap, lost his father. In those days I didn't have anything but a scooter. I never used the car provided by the government. I made him sit behind me in my scooter and took him to his father's cremation and after the cremation was over, brought him back to jail. A complaint was lodged about this as well.

So I replied to him that it is not written anywhere in the law or in the warrant that the prisoner should be kept inside the jail with handcuffs; it is written that he will remain in the custody of the superintendent. So, he was in my custody all the time, I had taken him in my custody, his father had died, and it would have taken a long time to get the permission, so this was necessary. Since he belonged to Jaipur, I could take him for the cremation, let him participate fully and then brought him back.

What were the other highlights? Firstly, the RSS people wanted to live and eat well. They used to come up with all the arrangements as they wanted. They, more than the left lot, approached the courts for favours.

While I was very tolerant towards all prisoners, I also disapproved of their ways. Nothing in their conversations or interests showed that they had ever been close to any values of the freedom struggle. It was so obvious that they had not imbibed anything of that period. The freedom struggle had touched a large section of India. I had come from a semi

rural part of Mathura, and we were influenced by it in a big way, though we were in our early teens at the time of independence.

The RSS lot always talked about Hindu-Muslim issue. They did not talk about the end of the Emergency as something about the restoration of the Indian Constitution or the rule of law, or democracy. They spoke about how they would get home and never again, be in public life protesting the Congress Government, which was contrary to the resolve shown by the intelligentsia who were always planning to fight back.

I know of two senior leaders who used to literally howl and cry and could not take the incarceration.

One was advocate Guman Mal Lodha, President of the Jan Sangh, Rajasthan, Ex MLA who later became a judge of the Rajasthan High Court in 1978, in the Janata Government period. He was later elevated as Chief justice of the Guwahati High Court in 1988. After retirement, he was elected three times as a Lok Sabha member. He sent two apology letters to the Government of Rajasthan. Although the letters written by them were sealed and forwarded to the Government, we know that they had promised that, if released, he would not do any anti Congress or anti Indira Gandhi activities. He himself told me that!

In Jaipur Jail, there were some young leftists, very argumentative but creative. I remember two of them - Vijay Chawla and Anil Srivastava. I know Anil Srivastava passed away some time back. They were constantly under the watch of the intelligence bureau, they were not allowed to meet visitors even on a one-on-one basis, except in their presence. The state feared the leftists and the intelligentsia, they did not fear the RSS.

They did not indulge in intimidation tactics or indiscipline. They would of course scold us once in a while but never compromised. There was a lot of idealism, they were very young too. They would regularly protest, every evening, against their incarceration. I did not stop them when I was there, as it was their right.

Of course, I remember one of the complaints against me was regarding allowing these protests. But I sent back a reply, that as detainees their right to protest was constitutional. What was wrong in raising slogans? We cannot tie anybody's tongue.

Nowhere in the jail manual was it written that people could not protest. We have to be very careful and cannot thwart people's dreams and aspirations, inside the jail. Jails are not police institutions. Indian jails are correctional homes and here these people were political detainees.

I remember the Jan Sangh leaders, Ujala Arora, Bhanwar Lal Sharma, Manik Chand Surana in the Jaipur jail. They were not poor in spirit as the Jodhpur ones. Of course, they all became ministers later. Girdhari Lal Bhargava became an eight time MP from Jaipur. Manik Chand Surana, was very disciplined, coming from a socialist background. He never took extra favours.

When I took over as Superintendent in Jaipur, Jitendra Daaku was an inmate. He had threatened Sanjay Gandhi, the son of Prime Minister Indira Gandhi, who behaved like the de facto prince of India. According to him, Sanjay Gandhi was a womaniser and had eyes on his sister. I remembered that he was from the city of Banaras, he wrote Daaku, in front of his name. One ordinary morning we had a visit by a team of seven people who came from Delhi to take him. It was led by a DIG, I think Shri Ram Singh ji was Home Secretary in those days, so they told me that they had taken permission to take him to Delhi. They came with so much authority, that they barged into my room.

I called the boy. In front of the boy, I asked them if they had brought the permission letter with them. They said that the Home Secretary had granted permission verbally. I refused to accept this so-called verbal permission. I refused to comply.

Sternly, I was told that I should know that these were madam's (Indira Gandhi's) orders. I replied that was something that the Home Secretary and

the madam would know. It was not my business. But if the state Home Secretary wanted to release a person, he would have to give it in writing. They got upset and could not believe that I was challenging their orders and madam's orders. They were almost abusive and started personally targeting me. I stuck to my ground and said that it did not matter what kind of person I was - whether I am bad or good - but I would not accept the verbal order. I called the state home secretary and just asked one thing of him, that if I do hand him over, should I mention his, Mr. Ram Singh's name in the record at the exit gate. Mr. Ram Singh, ofcourse, said that I should do as my conscience says. There were no instructions from him.

He then told the team, that if I let him off without entering the name of who had taken him, on whose orders and why, what if your jeep has a collision with a truck on Agra Road then, where would I show him killed - in jail or outside? We all knew that his life was at high risk. So, I refused to hand him over. They left disgusted with my stand.

But later they came back with court orders and proper documents before the emergency ended and they took him away to Delhi. We later learnt that he was killed. They tried to show him as having drowned in the Yamuna. The run up to how he was killed we cannot affirm, but it was said that after taking him to Delhi they had hung him upside down in a drum of water that caused his death, after which he his body was thrown close to the banks of the Yamuna, saying that while he was being taken to UP, he bolted and sank in the Yamuna.

I was clear from day one, that I have to implement the law and keep my prisoners happy and also not let the Government bully me for their vested interests.

Similarly, there was a person named Tej Singh from Uttar Pradesh. A delegation of High powered Jats in the Congress, had come to take him in the same way. I refused. After the emergency was over, one day it so happened that a line of several cars stopped in front of my house and Tej Singh ji got down from a car. I

greeted him and he told me that he had become the Minister of Sugarcane Production of Uttar Pradesh.

During the emergency, all prisoners were political prisoners. But there were some who were VIPs. The latter was on the basis of a special order which would come for them that they needed special treatment. That used to be obeyed. Which of course consisted of getting a mattress and cleaner toilets etc. Apart from the dry fruits in the name of Ayurveda etc

Books and Libraries were made available to everyone, and prisoners had access to the library. I remember we would also buy books that people wished to read. Obviously, not Das Kapital! I cannot recall who asked, but one prisoner did ask for it. We were told that we could give Discovery of India but not a copy of Das Kapital!

I was completely relieved when the Emergency was lifted. And very happy that the rule of law was restored.

But in today's context, I am not sure whether the rule of law will ever be restored. Unlawful ways and means are being used to pass laws and arrest people, suppress ideas and deny the right to hold views. The RSS and Jan Sangh were never committed towards India. We had a first-hand experience with them. I shudder to think how much more damage they will do now that they are in power. The decline of Institutions and processes has almost become irretrievable.

(Excerpts from an interview. The full interview will be uploaded on the PUCL website.)

REMEMBERING JUNE 26 AND THE DAYS THAT FOLLOWED

BY VIJAY CHAWLA

June 26th, 1975 began as a great day for me. I was happy because after three years of efforts, I was able to bring together about half a dozen student organisations, who were working in Rajasthan, in Bikaner, Ganga Nagar, Karauli, Udaipur, Dausa, Jaipur and Jhunjhunu. The plan was to hold a meeting of all these organisations, bring them together and form a unified state level student organization, with a proposed name, Sanyukta Chhaatra Sangh.

The meeting was scheduled for June 30th in Jaipur. I had returned from my travels on 25th after finalizing the program with all the organisations. In this elated mood, I went to meet a friend at MI road and had a cup of coffee with him. He mentioned that he has heard that leaders like Morarji Desai have been arrested. But I brushed aside his caution and said that they must be arresting big leaders only. I said, "Who would be bothered about us? We are small fry."

Later, I boarded a bus from Ajmeri Gate towards my university. Still in my chirpy mood and thinking all the time about the student organization, I got down at the university gate, and entered the university whistling softly.

Then I saw a jeep coming from inside the university campus. The DSP asked the driver to stop the jeep as soon as he saw me. Immediately, I realised that something terrible is likely to happen. The DSP called out to me, "Chawla! Zara yahan aao. Chawla! Come here.)" I walked slowly towards his jeep and he asked, "Anil kahan hai?" Anil was a political activist. I told him I didn't know and asked him to go and ask for him at his home. He said, "You come with us. Sit in the jeep. Let us go to his house. I refused and said that I have work and I will not be able to go.

After a few more exchanges when I refused to relent, he lost his patience and shouted, "You are under arrest." I asked him to show me the arrest warrant. I

told him to inform my faculty that you are taking me with you, and I will come. I insisted that instead of sitting in the jeep and going into the university campus, I will walk, and they should follow.

He told the police, "*Isko utha lo.* (Pick him up)" Around 6 policemen dragged me to the jeep while I was continuously resisting. While I was trying to fight, around 30-40 people started gathering around us in a circle. With every passing moment, the crowd was increasing in size. Finally, they lifted me up and threw me inside, immediately after which the jeep fled from the campus. They took me to the Bapu Nagar Police Station. I found Anil was already sitting there and he had been picked up earlier. The news of my detention spread quickly, alerting all activists. Some may have gone underground.

The lesson to be learnt is that when you are being arrested, then do not obey the orders of the policemen like a good schoolboy. You should make as much noise as possible, delay it as much as you can and ask them for a warrant and other relevant documents. Insist on calling your lawyer and resist as much as you can.

Anil was already there in the Bapunagar thana. Then we were taken to Ajmeri Gate police kotwali lines and by afternoon we were taken to main police lines. We were escorted to a big hall. And lo and behold, the who's who of Rajasthan politics were already there. Bhairon Singh Shekhawat of the Jan Sangh, master Rama Sharan Antyanupraashee of Socialist Party, Mahavir Singh Handa of CPI (M), Govind Gupta of CPI (M) and a few more. Handa, who recognised me, greeted me warmly. Everyone knew Anil as he was a more popular figure in the social and political circles. Bhairon Singh greeted him.

Due to poor planning, the administration kept giving conflicting

orders and the plans of where we will be taken kept on changing. Finally, we were taken to Jaipur jail at 11 PM and Bhairon Singh Shekhawat was not with us, he was sent elsewhere. While entering the jail, we shouted slogans to show our solidarity and our resolve to fight. Thus June 26 which started with great optimism ended with a great foreboding for the future.

Due to the presence of senior party leaders from the BJP and the CPI(M), the detainees quickly organized themselves and started agitating. The jail manual was demanded from the authorities and with great difficulty they gave a copy of the manual for us to read. The detainees were from various professions and backgrounds, and were much more informed than the jail authorities.

We demanded the status of political prisoners. As a part of this struggle, we agitated and shouted slogans twice a day and wrote letters to the Superintendent. Finally, two leaders, one from CPI (M) and one from CPI (ML) went on a hunger strike for 5 days, which intensified the agitations. Even though our demand for the status of political prisoners was not accepted, all other demands regarding food, beds and lights were accepted.

We were given food rations and a cook, who was a person serving a long term jail sentence was assigned to us. We even began cooking on our own.

Life was comfortable. There were no efforts from the administration to punish us. We were able to get the books we wanted from outside too. This was because of 2 main reasons: One, we united despite ideological differences. Hence, we were able to agitate against the administration and extract as much as possible. Secondly, the Hari Dev Joshi government of Rajasthan was not in favour of the emergency. So they were liberal and treated the detainees well.

People from different political parties were agitating together in jail, which meant they could also discuss and work together on some issues. Soon, this unity began to wither away, possibly because of the prolonged detention. The first

instance of this disintegration was when the common mess was broken up into different messes that were formed on ideological lines. Such incidents were encouraged by the jail administration to reduce the likelihood of collectivising for a common agitation.

Another move to break the unity of these groups was to transfer us to different jails in Rajasthan.

When I was in Udaipur, a large number of detainees were affiliated with RSS and BJP. There were some socialists and a few members from CPI (M) too. However, everywhere, detainees were not sitting quietly. They were constantly trying different approaches to fight against the government.

Since there was little to no possibility of appeals, some detainees filed writ petitions in the High Court citing violations of fundamental rights. The outcomes of such approaches were not important. What was important was that we pursued whatever avenues were open, and did everything in our capacity to register our dissent against the powers.

While we were in jail, some important developments took place outside. On August 15, there was a coup in Bangladesh during which the Mujibur family and their close associates were murdered. Things radically changed in Bangladesh, leading to instability, and subjecting India to vulnerability on its eastern front. Another major event was the death of Mao Tse Tung in October 1976 which led to the intensification of class struggle. Closer to home, the publication of a photograph of Sanjay Gandhi in RSS mouthpiece Panchjanya, created a storm of debates within the political detainees. This gesture of diplomacy of the RSS towards Congress was quickly dismissed by them and criticised by other political groups.

All detainees indulged in continuous discussions and debates freely. However, I feel that no major writing or thought emerged from the prolonged jail sojourn. When we were released, the world had changed radically. I was very impressed with the kind of work which student activists had done during the emergency. Those who were to form the Sanyukta

Chhaatra Sangh, had come together and opposed the emergency through leafleting and other work. They formed a new student organisation called Rajasthan Democratic Student Front (RDSF), which was active for another 5-

6 years.

Thus, our work had not gone to waste, but had been taken up by others who were doing a good job of it!

IS INDIA GOING TO SUBMIT TO DICTATORSHIP OR OPT FOR DEMOCRACY?

BY NANDANA REDDY

Living in a Modified world and thinking back 48 years to the State of Emergency imposed by Indira Gandhi in 1976, my mind goes into a tailspin. Memories of that dark past still haunt those of us who lived through it. Indira Gandhi declared a national emergency, suspending civil liberties and imposing censorship on the media in a desperate attempt to cling to power. Protests and any form of dissent or resistance was countered by vicious crackdowns. My family was one of the victims of the emergency.

My parents were Socialists, greatly influenced by Dr. Ram Manohar Lohia. Our home, popularly known as 20B, at the end of a cul-de-sac off Saint Marks Road, was an open house...literally open. We never locked the front door! Artists, musicians, writers, photographers, politicians of all hues – far left to far right – and anyone needing refuge, a cup of tea or a hot meal – were welcome.

It was June 25th, 1975. The last day of filming 'Wild Wind' (*Chanda Marutha*) a film my parents were making based on P. Lankesh's play *Kranthi Bantu Kranthi* that prophesied the Emergency. There was a feeling of relief as the shooting was completed, but also an inexplicable sense of unease. By noon the news that Indira had imposed a state of emergency had spread. We received some surreptitious phone calls and were asked to listen to the BBC radio as they were the only media broadcasting this news.

The State of emergency declared by Indira Gandhi is still a recurring nightmare that haunts us. We lost our mother Snehaltha, an innocent victim among the thousands of others who were tortured and killed for opposing this

draconian proclamation.

Unfortunately, there is no balm to heal these wounds and now there is no climate for healing. The environment is toxic and permeated with fear and self-righteous arrogance. We have lost the appetite to resist and are tired of shadow boxing on numerous fronts. Indira's Emergency had a face, and the enemy was visible and tangible. But the Modification of India is a more sophisticated strategy, surreptitious and Machiavellian.

This is a repeat performance. Only the cast is different. Our allies the BJP (then BJS) who fought against the 1976 Emergency are now the protagonists in the play and they have learned their lessons well from the prime architect of 1976. And the Congress Party, Indira's grandchildren, are the ones enunciating much needed democratic slogans such as "*Nafrat ke Bazaar mein, Mohabbat ki dukaan khol raha hoon* (In the bazaar of hate I am opening a shop of love)."

There has been a steady rise in fundamentalism and divisive politics. A new population of thugs, cutting across all class barriers, infused with the saffron hue have sprung up in the past few years. Ignorant, though 'educated', arrogant, egotistic, brash and aggressive they strut around, newly empowered and liberated by their idol Modi, the ultimate dictator of what India should be and how she should be defined.

In the middle of the celebration around *Azaadi ka Amrit kaal*, there continues to be a lack of basic infrastructure, food, shelter, education, livelihood, and healthcare. The COVID Pandemic brought this into stark relief and

battered what was already a wounded economy. This pandemic, unpredictable and devastating as it was, was an asset to Modi's agenda. Social distancing, long periods of isolation, dread of contagion, and a general sense of fear and anxiety, suspicion of other human beings including close family and friends assisted the 'divide and rule' Hindutva agenda of Modi. The two years of COVID took the wind out of our sails. With no possibility to protest, and facing a bigger threat, our appetite for democracy and freedom abated and all we wanted was 'to survive' at any cost. Something in our psyche has changed. Passivity, apathy, submissiveness and compliance has replaced our motivation for militancy and dissent.

During the assembly elections in Karnataka, Modi's campaign included a drive past my home on New Tippasandra Road. His 'parade' was scheduled for Sunday morning, but we were barricaded inside our home from Friday evening. Shops were ordered to close, hawkers and vendors driven away, trees chopped down and electrical lines cut because they were hanging lower than the required clearance of 20 feet. The whole street was saffronised- saffron bunting, flags, shawls, posters, and placards. On Sunday morning van loads of onlookers were ferried in and given caps, shawls, placards and flower petals. Modi's drive past lasted less than 10 seconds. Surrounded by Black Cats carrying AK 47's at the ready, the paramilitary, several hundreds of police, police vans and ambulances. He stood inside his bullet proof casing, grumpy, expressionless, waving like a marionette with his saffron buddies and the local MLA.

Priyanka took the same route a week before. There were no black cats, no fanfare, no barricades. Traffic was disrupted for just 45 minutes when she stood on top of her van and made her speech.

One wonders – Is Modi so afraid and Priyanka not? What a flip around! The roles are reversed. The Chaiwallah does not drink chai in a wayside tea stall and Rahul and Priyanka – high pedigree, foreign educated, do.

Is India going to submit to dictatorship or opt for democracy? Will the new champions of democracy resonate, or will we continue to bow our heads to the saffron lumpen mob and allow Modi to

redefine India and us?

(The writer is a human right, social and political activist based in Bengaluru, Karnataka)

THE EMERGENCY - DECLARED IN THE PAST, UNDECLARED IN THE PRESENT

BY K. VEERAMANI

'Emergency' was declared under Art 352 of Indian Constitution by Indira Gandhi on 25th June 1975, but its ill effects were not experienced by the people of Tamil Nadu in the beginning. The DMK rule was then under Kalaaignar M. Karunanidhi as the Chief Minister. We, the Dravidar Kazhagam founded by Thanthai Periyar along with the DMK opposed the emergency vehemently. 'Tamil Nadu remains an island' stated the then PM Indira Gandhi. The day of vendetta was on 31st January 1976. My leader E.V.R. Maniammaiar and I addressed a public meeting in Thindivanam. While addressing, we were told that the DMK government was dismissed under Article 356 of the Constitution. After winding up the meeting when we returned to our headquarters, Chennai, Periyar Thidal it was about 1.00 am on 1st February. Periyar Thidal was crowded with a large team of police officials. A highly ranked police official met me and said, 'we have come to perform an unpleasant job'. They arrested me and took under preventive custody to Chennai city police commissioner office. One after one, the top leaders of the DMK and other political parties were arrested and brought to that office.

On the same night we were taken to central prison, Chennai. Our whereabouts were not revealed to our movement and our family. Our numbers were disproportionately large compared to the size of the prison cell, in which we were lodged. The cell we occupied was previously filled with leprosy patients. The cell was opened illegally after January 1976. We were beaten severely. During the day time we were not allowed to come out of the cell. We were allowed out only during the lunch hour and locked in again for the night hours.

On the next day when we were locked inside the cell, in the darkness, a youth who was bleeding profusely was pushed inside and he fell on me. In that darkness we were unable to identify him. Later we could find that he was M.K. Stalin (the present Chief Minister of Tamil Nadu). He was also brutally beaten. We were told that all of us were arrested and imprisoned under Maintenance of Internal Security Act (MISA), a draconian law which is no more in vogue. Only after a month our whereabouts were informed to the parties and families. We were kept in the dark and were not aware of the happenings outside the prison. Freedom of individuals and organisations was curtailed. Print medium was subject to scrutiny and restrictions were imposed, with there being censorship in the contents that were critical of the government either directly or indirectly. We faced unbearable abuses and physical torture.

Almost after a year of imprisonment and release, a Single Member Commission was formed under Justice M.M. Ismail to enquire about the atrocities committed on the political detainee that proved the veracity of the allegations of atrocities. Many of the atrocities committed on the leaders and cadres in the name of internal security throughout the country were not revealed but was reflected through people's anger that brought down Congress party from power. Revolting against the oppressive rulers showed the spirit of democratic sentiments and thirst for freedom prevailed in the citizens of the country.

Almost after 40 years, the present BJP rule has started similar atrocities just differently, but under undeclared emergency. Promising growth and development to people but performing

the internal agenda of its Hindutva has led the country to economic slowdown which is detrimental to the well-being and harmony of our people. Invariably the agenda accomplished by the present rule is against the spirit behind the constitutional values. The diversified culture and languages presently in the sub-continent is negated by every action of the BJP - led government. Diminishing the power of States has made a mockery of the federal polity. By enacting laws that deny equal rights to people of a specific religion, the BJP rule has caused enmity among different religious identities.

The first 5 years of BJP rule did not reveal its agenda openly. This second term would end within the next 10 months or even earlier. The rulers are unmindful of constructive criticism. Opposition and dissent are integral to democracy but debates and discussions are not allowed today in both the houses of the Parliament. Central investigating agencies are directed to foist false cases on political leaders in the States ruled by the parties other than the BJP. Both the print and the electronic media are unduly influenced by the rulers. The economic wellbeing of the majority population has declined. The concentration of wealth is now only in a few corporate giants; typically it is a form of crony capitalism. In brief, the image of our country's democratic polity has been tarnished.

All these features are certainly the outcome of an undeclared emergency by the saffron rulers. This trend is more dangerous than the emergency suddenly declared and suffered by people in the past. Many citizens today are not aware of the present-day challenges. Unless they foresee the danger to our democracy, the 2023 election would bring back the same problems faced by us today.

All the democratic forces in the country, irrespective of policies of parties and movements, must unite and fight to root out the BJP from its rule. This must be our agenda for the next 10 months.

Let the 48th anniversary of declared emergency make us all jointly plan and perform to save our democracy from the

clutches of undeclared emergency!

(K. Veeramani is the President of the Dravidar Kazhagam, the parent body of the DMK party.)

SURVIVED THE EMERGENCY. THE FUTURE IS RESISTANCE.

RAJASHRI DASGUPTA

I think most prisoners would go through (this experience of being jailed). I shouldn't generalize, but you come out and you take so much for granted. But at that time, every day, every hour, every minute, oh, I'm alive. Humko ye khana hai.. humko... I'm eating and now I have to go and take a shower. You're are so conscious of every little thing.

Especially when you are in police custody under tremendous pressure. You learn to survive and you learn to appreciate life. You learn to appreciate comradeship and friendship because each one made a difference in our life.

...there (in jail) you are conscious about every survival, every tactic, every strategy you have to take. You learn it the hard way. And I think I was very, very conscious that if I turned bitter, that was the end of it. They have won. They have won. They have won. And they wanted you to be bitter. I remember in police custody, they would say "you will turn mad, we'll make you ugly. You'll be running down the street. A mad woman, stripped off your clothes."

You know, it is a kind of an internal fight I think prisoners have. That, you know, you can touch me this much but not more. That, that internal thing is mine. And I think that is what they always fear. I mean, they shot people, they tortured people, they had the power to do anything they wanted. But the fact that people did not write a bond 'forgive me, I will not do this again.' It is only an one line.that they never understood why people didn't do it, why prisoners refused to write that or people who came from a middle-class background. What do you have? They feared them.

Initially we never understood yeh emergency kya hota. When one of our comrades had come back from court, I

still remember that day distinctly. And she came back and she said, 'Something called the emergency has been imposed'. We all looked very smugly. Emergency, Emergency. What is this? We already knew all rights would be withdrawn or some things like that. She was saying I can't remember the exact thing, but most of the political prisoners just shrugged it off saying that, "yeah, we are already in prison. We are without trials all these years ... kuch bhi nahi ho Raha hai. For years, people have been languishing in jail. Look at our khana. Look at the living situation so brutal like is sey kya kharab ho sakta hai?"

But slowly we understood that 'is sey bhi kharab ho sakta hai!' Because even that little space you got was diminishing...

Through the eyes of our parents, they were the ones who are the most hopeful...We never anyway had faith in the legal system, but they always fought. They had formed a kind of informal network sharing, (there was some form of) solidarity.. But as people got more information (about the Emergency) you could see that hope was dying in their eyes. I remember my father writing me a letter calling me his Sunflower. I think they suffered. They suffered a lot.

The Undeclared Emergency

I think that is really dangerous because...we don't realize the kind of danger we have to go through because there is no law that is being imposed on us. There is no ordinance that is being imposed on us. Look at the insidious way... they have weakened every institution, whether you call it the judiciary, whether it is the universities. They have their people...the entire system, the media, you know.

I think the emergency had a very dramatic effect...but it also took time. I mean, the writing was there on the wall. If you look back at the emergency literature, the way things were coming, Mrs. G couldn't handle it and she felt abhi bahut ho gaya....by the way she was curbing rights and jailing opponents.

I think the present leadership have been smarter in trying to demolish every institution; Look at the judiciary, look at the media....Look at the mainstream media, the large section of the mainstream media. So at that time(Emergency time) actually they withdrew power, they withdrew all the ads, they withdrew water supplies. However now, because of technology, they have been craftily editing pieces. Umar Khalid's speech, he was calling for peaceful resistance, you know, But you cut at that. And you make it sound like he's calling for a riot in Delhi. How dishonest can we get!

From the 60s and 70s...to present day India

I think this late '60s, '70s were bad because there was so much happening all around the country. If you look at it today, we are much more conscious about the issue of caste and the issue of minorities...don't forget the left only talked about the class issue. We were not conscious about caste at all. We were not very conscious about minorities at all, or about Adivasis. We thought there was a class divide, even when we got into feminism. Why do we always question the left about not bringing in the issue of gender. But even then...we knew things were wrong. But the minority issues and the caste issues came even later, as it came right on our face....

This Dalit Panther movement that came up and the kind of caste atrocities, brutal caste atrocities which are still happening today of course but our understanding also was limited. See, when we fought for the Mathura case, the rape case, the first thing which you rallied around the women's groups in the country, very good movement. We understood about the law, the consent and here was a poor woman who was raped...in custody. In police custody.

The whole issue that she was a tribal or an Adivasi. You know, we missed that point even in Bengal.

Like, suppose a lot of women would come to us as being part of the women's groups and we would say, why did this happen with you? Why were you beaten or why were you thrown out? They would answer garibi. So that garibi - poverty - the issue of class was very central. So, many of us missed that point. The other points, the other identities it was always there on our face but it wasn't identified or tackled. Now, no women's group will talk to you without talking about the caste issue or the issue of minorities, you know. So the consciousness also changed as we learned and we struggled.

About the segmented suspension of civil liberties today to the absolute suspension during the Emergency

I think it is a very smart move. They've learned from the emergency. If there is one person the Prime Minister never criticizes, it is Mrs. G. He never criticizes Mrs. G ever. If you look back at all his speeches, Nehru. He has never said anything negative about her! But I also think it is a very smart, insidious way of working.

Silence is a complicity; when we don't say anything. How can they say anything? Slowly, slowly, you are giving in. You give in, you accept that. You make it the status quo, and you make that the norm.

But there are people who are fighting and that is so hopeful. I always feel so when I see the resistance. Look at these young wrestlers. In the heat of Delhi summer...for days they have been fighting against the total indifference in our system. Because they're protesting something that should have gone by the due course of law of sexual harassment, only by investigation. Even when you look at the farmers, why was it so exciting for people across the country? Any resistance!

And even them misusing all these agencies like the ED having, Navsharan being picked up for questioning. I mean they are misusing every kind of agency,

government agency, but look at the resistance. The farmers did come out in support of her because she was one of them; she was, she was there. And also because she has been very active in the farmers movement and that is where the hope lies, you know, in these kind of resistance. And that is why I feel very hopeful.... Individuals will always protest and fight I think. But I think the fight has so much more strength when we are together.

Rajashri Dasgupta, a women's rights activist and independent journalist, was arrested in 1973 in the wake of the Naxalbari uprising enduring and surviving torture in Presidency Jail, Kolkata. She remained in prison throughout the Emergency and was released only in 1977 under the general amnesty.

'THE DEATH OF LAWYER LINCOLN BASTIN IS AN IRREPARABLE LOSS'

TRIBUTES TO A PUCL COLLEAGUE

We are saddened to announce the death on 9th June, 2023 of Lincoln Bastin, Advocate and long-time member of PUCL - Tamil Nadu due to a sudden heart attack while in the Madras High Court premises. Hailing from a fishing community from Kanyakumari district, he ardently championed the campaign to recognise the fishers community similar to Adivasis and to be declared a ST community. A Marxist thinker and active with the CPTs LAWYER'S UNION, he also wrote about the stellar contribution of a great trade union leader, Singaravelar, who was a fisher person by origin and who was part of the Madras Labour Union (one of India's earliest trade unions) and who presided over the first Conference of the Communist Party of India in Kanpur. He was actively involved in various struggles of marginalised communities including the Dalit 'Panchami' land reclamation movement, Mines, Minerals & People, movement against police repression against Dalit protestors in Kodiankulam, police attempt to crush the Anti-Sterlite movement in Thoothukudi and other campaigns. He met Nepali leader Gajral when he was kept imprisoned in Chennai. On 9th JUNE, the day of his death he had participated in a consultation of fishing community from Ennore to Kovalam coast, during which he delivered a fiery speech. From the protest site he returned to the High Court in the afternoon to complete some legal work when he suddenly collapsed and died. Lincoln was only 50 years old. PUCL - TN salutes a courageous and fearless fighter for human rights!

Prof. Sankaralingam, President & John Vincent, GS, PUCL - Tamil Nadu

JALLIKATTU VIOLATES THE DIGNITY AND CIVIL LIBERTIES OF NON-HUMAN ANIMALS

ALOK HISARWALA

On May 18th 2023, a five judge Constitutional Bench of the Indian Supreme Court reversed *Nagaraja* (2014) and with it nullified the nine year ban on the controversial bull sport of Jallikattu, played in a few districts of Tamil Nadu during Pongal in January every year.

Many across the political spectrum, sceptical of the animal rights movement as an essentially elitist movement, have welcomed this decision as a final resolution of a long-standing dispute, that now protects and possibly insulates the cultural realm from animal activists. Barely a few have actually criticized it. Most don't even know who Nagaraja was, or the tragic story of his son Marimuthu.

Yet their story should not be silenced. It matters that the first real citizen opposition to Jallikattu came from a Dalit farmer from Madurai, who in standing up for his late son, was speaking for many who saw that Jallikattu was just too dangerous and not a real representation of the pillars of compassion and justice integral to Tamil society.

One early January morning in 2004, N Marimuthu, a highly gifted, 18 year Dalit artist set out to watch and sketch the Jallikattu event at Alanganallur in Madurai. At around 10am while sketching, seated in the spectator's gallery, he was attacked by a frightened and tortured Jallikattu bull whose horns pierced Marimuthu's body.

It took them almost six hours to admit Marimuthu to the nearest government hospital, but it was all too late. His father, the eponymous Nagaraja, was devastated, not just at his son's death, but the implicit indifference with which it was received. Deaths happened at Jallikattu events all the time. There was nothing to be done.

Two years later in 2006, Justice R. Banumathi at the Madras High Court on

a separate special application seeking permission and protection for a Rekla event (bullock cart races), mindful of the risk to human and non-human lives, placed a ban on both Jallikattu and Rekla.

Learning about this, Nagaraja wanted to ensure that what happened to his son should not be repeated, but was also deeply concerned that the single judge ban could be reversed. The statutory Animal Welfare Board of India, which at that time was also headquartered in Chennai, had already filed an intervention before the Division Bench Proceedings. But Nagaraja also intervened and became the first private citizen who through his lawyer opposed the sport of Jallikattu in the Court.

Ever since then, Jallikattu has been a subject of consistent litigation in the Madurai and Madras benches in Tamil Nadu and the Supreme Court. It has gone back and forth, with interim and final bans that have stopped and reinstated the sport, on and off since the year 2006, till its ultimate ban by the Supreme Court in 2014 (*Nagaraja*).

The 2014 Nagaraja judgment was not without its imperfections but is widely recognized as a watershed moment within the limited space of animal-centric jurisprudence. It developed an animal-centric inquiry to conclude that Jallikattu was inherently cruel, creating the possibility of taking animals out of the closed trap of animal welfare.

Unfortunately, its finite and fact-based finding about the torture to bulls and fatal risk to human and animal lives, was widely misunderstood as a hegemonic attack on Tamil culture. It triggered a state wide culture-protectionist movement, only paralleled by the anti-Hindi protests from the early 1950s.

It was a watershed moment, but consistent with a quietly growing, secular, judicial trend where High Courts across India - in Goa, Kerala, Delhi, Bangalore and Madras - protected

animals from suffering for human entertainment. This infuriated the entire ecosystem of Jallikattu organisers who launched multiple appeals before a Division Bench of the Madras High Court.

The counter-cultural argument in defence of Jallikattu pioneered initially by the BJP and the AIDMK became "the Shah Bano moment of Animal Rights" – a clear progressive victory that was practically difficult to defend across the political spectrum.

The primal, self-interested arguments, which conjured a caricatured opponent of the foreign animal rights agent, began to find favour with the progressive liberal elite. But how does one reconcile a conflict between human culture and non-human suffering? The answer was simple: a false reassurance of animal welfare was floated, that through new guidelines, and checks and balances appeared to make the sport less cruel.

Between 2016 and 2017, Jallikattu was exempted from the scope of the very definition of animal cruelty, first by a central ordinance and then by a TN State Amendment Act in 2017, with an alleged set of additional guidelines to ensure both safety and welfare.

But was it really less cruel now? Can a "blood" sport that necessitates extreme torture of a bull before its release in an open arena for a direct (lethal) combat with a human, be made less cruel, or more safe?

Elsa Foundation from Tamil Nadu has documented 105 human and 28 bull deaths at Jallikattu events between February 2017 to March 2023. Of these 84 were spectators and 21 bull tamers, poor, largely Dalit, villagers who come for entertainment (or maybe like Marimuthu to sketch) without any guarantees of safety or compensation, for that matter.

Animal Rights integral to the project of transformative social justice

The 21st century has been marked by staunch judicial activism and constitutional amendments, taking the animal welfare narrative to a rights-centric argument. This period began a significant contribution in validating animals as separate legal entities, worthy of protection under our Constitution.

Nagaraja is one of the most important constitutional court decisions, both in India and internationally (it inspired a 2020 Islamabad High Court decision to rescue a zoo elephant Kaavan), that recognized a claim of equal consideration in disputes concerning the welfare of animals. This would mean that interest of the non-human animal is relevant and must be weighed and considered against the competing human interests in a constitutional dispute over rights and duties.

Through various judicial pronouncements and animal welfare legislations, we have seen the law elevate the status of animals from being mere 'things' and 'properties' to being entitled to a 'dignified existence' to being accorded fundamental rights under the Indian Constitution.

The Supreme Court held that animal welfare laws have to be interpreted keeping in mind the best interest of the species subject to exceptions of human necessity. The Court held that life under Article 21 of the Indian Constitution extends to 'animal life' and that our duty to protect animals from suffering has to be elevated to a status of a fundamental right:

"Article 21 of the Constitution, while safeguarding the rights of humans, protects life and the word 'life' has been given an expanded definition and any disturbance from the basic environment which includes all forms of life, including animal life, which are necessary for human life, fall within the meaning of Article 21 of the Constitution... Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well."

What was the basis for this historic and cross-species leap made by Justice Radhakrishna, who authored the famous 2014 judgement, in including animals under the purview of Article 21? I set out

three core reasonings from the judgement.

Nagaraja did this by acknowledging that there are certain types of behaviour that are natural to animals, which are manipulated by humans for their own purposes – entertainment, in this case. In this loss of animal autonomy lies their loss of their right to their natural ways of living and their dignity.

"Jallikattu demonstrates a link between actions of humans and the fear, distress and pain experienced by bulls....Bulls (Bos Indicus) are herbivores, prey by nature adopted to protest themselves when threatened engaging in a flight response, that is run away stimulus, which they find when threatening. Bulls, in that process, use their horns, legs, or brute force to protect themselves from threat or harm. Bulls are often considered to be herd animals. Bulls move in a relaxed manner if they are within a herd or even with other Bulls. Individual Bull exhibits immense anxiety if it is sorted away from the herd. Bulls vocalize when they are forced away from the rest of the herd and vocalization is an indicator of stress. Bulls exhibit a fight or flight response when exposed to a perceived threat."

Secondly, the judgment noted that through the 42nd Amendment Act to the Indian Constitution, 1976, Article 51(A) (g) was inserted in Part IV of the Constitution, which is today considered the 'magna carta of animal rights jurisprudence in India'. The amendment casts a fundamental duty on all citizens to protect and improve the natural environment and to have compassion for all living creatures.

And finally, Nagaraja mandated the five internationally recognised freedoms under Chapter 7.1.2. of the Guidelines of World Organisation for Animal Health, in which India is a member, namely:

1. Freedom from hunger, thirst and malnutrition;
2. Freedom from fear and distress
3. Freedom from physical and thermal discomfort
4. Freedom from pain, injury and disease, and
5. Freedom to express normal patterns of behaviour, have now been read

into the provisions of Section 11 of the PCA.

three core reasonings from the judgement.

Nagaraja did this by acknowledging that there are certain types of behaviour that are natural to animals, which are manipulated by humans for their own purposes – entertainment, in this case. In this loss of animal autonomy lies their loss of their right to their natural ways of living and their dignity.

With a recognition of animal autonomy as the animal's desire to live a natural life, the abject lack of each of the five freedoms in the sport and a constitutional duty to show compassion, Nagaraja paved a constitutional path through Article 21 to put a stop to Jallikattu, as inherently cruel.

The Constitutional Bench's Rejection and Reversal (2022/2023)

The specific issue in the constitutional review before the five judge bench was a technical query, whether the 2017 Tamil Nadu amendment to Prevention of Cruelty to Animals Act, to preclude Jallikattu from Nagaraja, was in fact a colourable legislation. Let me give you an illustration that might be more relatable. Suppose the state of UP, soon after Navtej, passed a state amendment, under the concurrent federal powers from the Constitution, to retain the application of section 377 of the Indian Penal Code to consenting homosexuals. This is precisely what Tamil Nadu, buckling under political pressure, did.

To truly appreciate the correct context behind the Constitutional Bench ruling from May 2023, it seems evident that judicial concern must have prevailed over the political strife that was sure to ensue if the ban on the sport was confirmed. The Nagaraja reversal was our Shah Bano and Ram Mandir moments combined, where state and judiciary both yielded to popular morality.

Writing unanimously for the entire bench, Justice Aniruddha Bose, has respectfully rejected Nagaraja without a fair or even an adequate engagement with its reasoning:

1. Court refused to engage with the cultural argument, stating it did not have enough material.
2. It dismissed any scope for constitutional engagement with non-human animals.
3. It agreed that the 2017 amendment had substantially changed the sport, making it safer.

In a politically convenient manner, with deeply inadequate reasoning, the judgement does not even do Nagaraja the justice of a fair engagement.

Through its plain, unreasoned disagreement, the Court wriggled out of the larger political worry. It reinstated the sport as a legal event, dismissing all concerns of animal welfare and risk to human life. Soon after the judgement was reserved between Jan-Feb 2023 over 75 people were injured in Jallikattu events with 10 human deaths.

The sport has not changed, because torture to animals and risk to human life are its hallmark. Without this violence, there is no Jallikattu.

When, as in Nagaraja, expert, objective facts determine that a certain practice is

based upon torture as its key, non-negotiable ingredient, and that this is for “entertainment”, then this finding must be the driving force to re-examine the cultural exception argument. Nagaraja is a decision about bodily integrity and autonomy of non-human animals to live natural, free lives. Any deviation to that natural right of the animal must come with many conditions. Culture and entertainment should not be allowed to trump animal autonomy.

Here unfortunately we have two camps. One believes in a narrow reading of the Constitution with no scope for inclusion of animals. The other – to which I belong – believes that our Constitution was always meant to cure, address and respond to every kind of suffering, whether of humans, non-human animals, or nature itself.

The making of the animal interest as a relevant consideration in a Constitutional deliberation is a progression of our Article 21 jurisprudence on socio-economic rights and environmental justice.

It is important here to note that Justice

Radhakrishnan, aside from Nagaraja, gave us the principle of eco-centricity as a counter to an anthropocentric view in environment jurisprudence in TN Godavarma 2012 and declared long before Navtej, and despite Suresh Koushal, that transgender people had dignity in the widely celebrated NALSA (2014) judgement.

Nagaraja has gone on to inspire a plethora of secular decisions from different High Courts protecting animal interests. These decisions have come in incremental steps, carefully balancing constitutional imperatives, sometimes to help stray dogs, or an elephant or a horse in need.

The powerful transformative and positive impact of Nagaraja in our jurisprudence, has been erroneously undermined. We need to work towards restoring this.

Finally, we owe the late Nagaraja and our fellow non-human animals, a fraternal, constitutional duty to continue the struggle and movement he so bravely heralded.

PUCL ON LAW COMMISSION REPORT ON SEDITION

The Report by the Law Commission of India headed by former Karnataka High Court Chief Justice, Ritu Lal Awasthi, has signally failed to contribute to dislodging the colonial and unconstitutional offense of sedition from the statute books. Instead the Report recommends a minor modification of Section 124-A of the IPC, ignoring the concern that sedition is an over broad, arbitrary offence which has no place in a constitutional republic.

Sedition under Section 124-A was defined as bringing the government established by law into ‘hatred’ or ‘contempt’ or ‘exciting disaffection towards the government established by law. As per the proposed amendment sedition is now defined as bringing the government established by law into ‘hatred’ or ‘contempt’ or ‘exciting disaffection towards the government established by law with a ‘tendency to incite violence or cause public disorder’ Further FIRs can be registered only

after a police officer not below the rank of an Inspector conducts a preliminary inquiry and grants permission for registering an FIR.

The Law Commission does not engage with the troubling way sedition has been used particularly after the coming to power of Narendra Modi. A study by Article 14 indicates that:

·65% of nearly 11,000 individuals in 16 sedition cases since 2010 were implicated after 2014 when Modi took office. Among those charged with sedition: opposition politicians, students, journalists, authors and academics.

·96% of sedition cases filed against 405 Indians for criticising politicians and governments over the last decade were registered after 2014, with 149 accused of making “critical” and/or “derogatory” remarks against Modi, 144 against Uttar Pradesh (UP) chief minister Yogi Adityanath.

Much of this increase is due to a surge in sedition cases after protest movements, such as those against the [Citizenship Amendment Act](#) (CAA), 2019 and the rape of a Dalit teen at Hathras in UP.

There is not a whisper in the report of the way sedition has been used to target activists, journalists, students and ordinary citizens in the Report. Rather the report argues that sedition is an essential tool to deal with a litany of challenges including Maoism, calls for self determination as well as the problem in Kashmir.

One can only conclude that for Justice Awasthi and his team, sedition is not a problem for the functioning of a democracy based on the freedom of speech and expression but rather is a tool which is required from the point of view of national security. In this thinking Justice Awasthi is out of tune with the serious criticisms of the law which have appeared in academia as well

as the media as well as most importantly the jurisprudence of the Supreme Court.

Justice Awasthi's report ignores the jurisprudence of the Supreme Court which has laid down the law on balancing the concerns of national security with human rights. The Supreme Court held in *Anuradha Bhasin v. Union of India* that restrictions of fundamental rights under Article 19(2) should satisfy the doctrine of proportionality.

Unfortunately, Justice Awasthi's Report fails to analyze whether Section 124-A is constitutional using the doctrine of proportionality.

The Law Commission has also completely ignored the jurisprudence around dissent and democracy as laid down by the Supreme Court in *Shreya Singhal vs Union of India*.

In this case the Court struck down section 66A of the Information Technology Act.

The Court reasoned that there are three concepts when it comes to freedom of speech namely, 'discussion', 'advocacy' and 'incitement'. 'Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement', that, 'a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State etc.' The Law Commission is out of sync not only with the Supreme Court but also strangely the position of the Union of India in the Supreme Court.

As the Supreme Court observed in *SG Vombatkere v Union of India*:

..it is clear that the Union of India agrees with the prima facie opinion expressed by this Court that the rigors of Section 124A of IPC is not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime.

the classroom. Today he has authored a report which callously ignores the way Section 124-A impinges on the freedom of speech and expression. In its defence of a colonial unconstitutional law, unfortunately the Law Commission is singularly alone.

This Report deserves to be dumped in the dustbin of history. The people of the country have to stand up against sedition and all other draconian laws, so easily used by the BJP, to muzzle any dissent which opposes its anti-constitutional project of establishing a Hindu Rashtra.

PUCL LETTER PETITION TO CJI: STOP HATE ASSEMBLY IN UTTARAKHAND

To
Dr. D.Y. Chandrachud,
The Hon'ble Chief Justice,
Supreme Court of India.

1. We are writing this letter as People's Union for Civil Liberties (PUCL) to bring to your attention the alarming rise of hate speech, vigilantism, and targeted communal violence against the minority Muslim community in Uttarakhand in the last few days.

2. We are a civil liberties and human rights organisation formed in 1976 by Sh. Jayaprakash Narayan. Unfortunately, Justice Awasthi's Report fails to analyze whether Section 124-A is constitutional using the doctrine of proportionality. PUCL has been at the forefront of the defence of the freedom of speech and expression in its work ever since its inception. However, as per human rights standards both internationally as well as in the Indian Constitution, the freedom of speech and expression does not extend to the 'advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence as per Article 19 of

the International Covenant on Civil and Political Rights. Article 19 (2) envisages a restriction of the freedom of speech and expression on the ground of 'incitement of an offence'. It is precisely this dangerous transgression of the limits of free speech which threatens the life, liberty and property of an entire constitutionally protected grouping, in Uttarakhand that we wish to bring to your kind attention.

3. We submit this petition to draw your immediate attention to the alarming rise of hate speech, vigilantism, and targeted communal violence against the minority Muslim community in Uttarakhand and to request you to kindly direct the state government of Uttarakhand and the concerned authorities to take immediate measures to redress violent hate campaign, incitement to violence, increased insecurity in the minority community which is resulting in many being coerced into leaving their homes.

4. A multi-layered discriminatory public campaign led by certain groups such as Bajrang Dal, VHP for the last few months and continuing till date have

been systematically targeting the Muslim community.

During the course of these campaign they has used terms like "Vyapar Jihad" (Business Jihad), "Love Jihad," and "Land Jihad" to instigate fear and hatred among the majority community which has created an atmosphere of violence and insecurity against the Muslims living in the region, causing an exodus.

5. The situation threatens to escalate by June 15, 2023 in Purola in the district Uttarkashi, where a 'Mahapanchayat' (a mega assembly) is being planned by several groups who have come under the leadership of Swami Darshan Bharti of Debhoomi Raksha Abhiyan. The Hindustan Times has reported that posters have been put up in Purola threatening owners of Muslim owned shops to vacate before the Mahapanchayat. The link to the report can be found here - <https://www.hindustantimes.com/india-news/posters-asking-muslim-traders-to-leave-surface-in-uttarakhand-101685991761377.html>.

6. Papers like Amar Ujala and Hindustan have reported that a letter has been sent by the Vishwa Hindu Parishad to the Tehri District Magistrate giving an ultimatum to members of the Muslims Community to leave the Jaunpur valley and in particular the towns of Nainbagh, Jakhar, Nagtibba, Thatyur, Saklana, Damta, Purola, Barkot and Uttarkashi. The threat specifies that if Muslims don't respond to their ultimatum of leaving the areas themselves, these organizations will organise a chakka jam in Tehri on 20.06.2023. The report of Hindustan, a Hindi newspaper detailing the contents of this letter can be found here – report <https://www.livehindustan.com/uttarakhand/story-communal-tension-tehri-district-after-uttarkashi-particular-community-people-warned-leave-city-within-10-days-8282992.html>.

7. The continuous barrage of hate filled campaigning has already led to the exodus of numerous Muslim families. It will also provoke an already volatile situation into systemic communal violence on a large scale, unless the state takes immediate and urgent proactive measures to stop both the hate campaigns as also to prevent violent attacks to take place.

8. The campaign was based on an incident of alleged abduction of a Hindu minor girl in Purola by two accused (belonging to both Hindu and Muslim communities) and has been escalated as proof of 'love jihad'. It should be noted that no governmental organisation or data has ever substantiated the existence of 'love jihad', or forcible conversions in the guise of fraudulent romantic relationships, but that the concept has been used to buttress hate-speech against Muslims across the country in recent times. The current situation in Uttarakhand is playing out similarly.

9. The Devbhoomi Raksha Abhiyan is an organisation operating in the area, which issued posters demanding that Muslims in the area flee their residences on threat of violence. They were joined by local community leaders like Swami Darshan Bharti and Rakesh Uttarakhandi, who also called for the forced eviction of Muslims while making hate-speech against the community.

Evidence of these speeches are available in videos currently seeing wide circulation, and are contributing to the deterioration of communal harmony in the area.

10. Local press has also reported that homes and shops belonging to Muslims have been marked with an 'X', and long standing residents including a BJP Minority Cell Leader (Mohammed Zaid), have been forced to flee their homes due to the threat of violence.

11. The threats were consolidated and escalated on May 29, when a rally organised by groups of the majority Hindu communities of the ruling BJP parties with the support of trade unions, turned violent, with mob violence against home and shops in the area. Reports suggest senior leaders of the ruling party have been involved with these rallies, with the District General Secretary of ruling party, Prakash Kumar Dabral, saying, "We will not let them do business here, will not let them open shops. Then they will leave on their own."

12. These demands go against the spirit of the Preamble which rests on the spirit of the fraternity. These consistent hate speeches attack the dignity of the individuals, threatens not only their livelihood but also their life based on their religious identity i.e. Muslims. It reduces the Muslim citizens to second class citizenship and creates both institutional and popular sentiment to view them as lesser than. As ground situation shows, it does not stop with seeing Muslims as lesser than but goes on to instigate targeted violence against them, their property and a series of their fundamental rights. The violent targeting of a religious group with the intent of removing them from a geography, holds alarming similarities to genocidal tactics.

This is not an exaggeration, as the primary leaders of this campaign have also previously been involved in explicit calls for the mass-murder of Muslims, at speeches given at the Haridwar Dharma Sansad of 2022. The common leader between the Dharam Sansad of 2022 and the hate campaigns now is Swami Prabodhanand Giri Mahamandaleshwar who is a repeat offender. This court has critically intervened when it came to the hate speeches made in Dharam Sansad

and directed the state to register FIRs against the accused. A brief profile of the antecedents of Swami Prabodhanand Giri Mahamandaleshwar can be found here:

<https://www.thequint.com/news/india/haridwar-dharam-sansad-yati-narsinghanand-jitendra-tyagi-bjp#read-more>

13. This also follows from the incitement to genocide on April 20 2023, at a Dharma Sabha in Uttarakhand organised by the fundamentalist group, the Rudra Sena, where calls for an economic boycott of minorities & and a ban on the settlement of "non-Sanatanis" in the state were made.

14. They declared that "peace cannot prevail in the world unless every 'jihadi' is eliminated." The leader of the Rudra Sena, one Rakesh Tomar Uttarakhandi, has previously made speeches calling for the Van Gujjar community (a primarily Muslim tribal group) to evict the area on threat of violence.

15. Swami Darshan Bharti, mentioned above in paragraph 4 is leading the call for mass evictions. He was among those making hate speeches at the Dharma Sansad. His group, Uttarakhand Raksha Abhiyan, has previously circulated 1.5 lakh pamphlets inciting Hindus to stand up against alleged changes in the demography of Uttarakhand because of Muslims in 2019. He has been previously jailed after his hate-speech inspired physical attacks on Muslims.

17. All of these speeches, posts, fall squarely within the understanding of hate speech that this very court has provided in *Pravasi Bhalai Sangathan v Union of India*. As the Supreme Court observed:

"7. Hate speech is an effort to marginalise individuals based on their membership in a group. Using expression that exposes the group to hatred, hate speech seeks to delegitimise group members in the eyes of the majority, reducing their social standing and acceptance within society. Hate speech, therefore, rises beyond causing distress to individual group members. It can have a societal impact. Hate speech lays the groundwork for later, broad attacks on vulnerable that can range from

discrimination, to ostracism, segregation, deportation, violence and, in the most extreme cases, to genocide." A copy of this judgement is annexed as Annexure – A.

18. The situation in Uttarakhand of fear amongst the Muslims, the exodus and threat of violence are the visible harms of hate speech in action as noted by this Supreme Court. More so, the reality presents alarming similarities to the ground work before a genocide.

19. In such a situation the State's failure to take adequate action is notable given that this was brought to their attention in an open letter dated May 30, written by the Lawyers of the Supreme Court of India to the Governor of Uttarakhand. The letter also noted specifically the actions of the previously mentioned entities in relation to hate-speech and past communal violence.

20. This is despite this honourable Supreme Court in W.P. No.940 of 2022 directing the state of Uttarakhand vide its order dated 21.10.22 "to ensure that immediately as and when any speech or any action takes place which attracts offences such as section 153A, 153B and 295A and 505 of the IPC etc., suo motto action will be taken to register cases even if no complaint is forthcoming and proceed against the offenders in accordance with law." A copy of this order is annexed as Annexure – B. It is important to note that the Hon'ble Supreme Court has been deeply concerned at the rise of hate speech and mob violence in the country and in judgement in Teheen Poonawalla vs. Union of India and Ors., the Court directed all State governments to proactively act against hate speech and mob violence. A copy of this judgement is annexed as Annexure – C.

21. Further, as per the Court's 21.10.2022 order in Shaheen Abdullah vs. Union of India (WP(C) 940/2022), the states of Uttarakhand, Himachal Pradesh and Delhi were specifically directed to "ensure that immediately as and when any speech or any action takes place which attracts offences such as Sections 153A, 153B and 295A and 505 of the IPC etc., suo moto action will be taken to register cases even if no complaint is forthcoming and proceed against the offenders in accordance with law.". Despite this till date no FIR's have been registered by the police.

Given the grave threat to the lives and property of minorities and the dereliction of constitutional duty of the State, in Uttarakhand we urge the Hon'ble Supreme Court:

i. Urgently intervene by directing the Chief Secretary, Government of Uttarakhand and the Director General of Police to personally ensure that the Mahapanchayat scheduled to take place at Purola on 15.06.2023 and the rally and chakka jam programme on Tehri on 20.06.2023 are denied permissions based on the harm caused by the continuing hate campaigns to the constitutional fabric of the State.

ii. The Chief Secretary and DGP, Uttarakhand should be held accountable for the dereliction of their constitutional duty to protect all citizens and ensure law and order in the State.

iii. To direct the concerned authorities to immediately register FIR's under the relevant provisions of the Indian Penal Code, 1860 against Swami Prabodhanand Giri Mahamandaleshwar, Swami Darshan Bharti, Rakesh Uttarakhandi and Prakash Kumar Dabral, amongst others who are threatening the right to life, livelihood and residence of Muslim population in the State of Uttarakhand.

iv. To ensure initiation of a thorough investigation regarding the role of organisations such as Rudra Sena, Devbhoomi Raksha Abhiyan, Vishwa Hindu Parishad, Bajrang Dal among others, into the incidents of hate speech, vigilantism, and violence targeting the minority community in Uttarakhand taking place in an unabated manner with the full and tacit support of the state administration and police.

v. Ensure the implementation of Supreme Court orders regarding hate speech and mob violence, including the appointment of nodal officers to eradicate hostile environments against targeted communities as spelt out by this court in Teheen Poonawala case and Shaheen Abdulla cases.

vi. Provision of adequate protection to the minority community and individuals, both in their residence as also in their shops and business areas, who are at risk due to the ongoing campaign of hatred.

vii. Issuance of clear directives to the state government and law enforcement agencies to maintain law and order, protect minority rights, and prevent any further incidents of violence.

We firmly believe that the judiciary, as the guardian of justice and protector of citizens' rights, has the power and responsibility to uphold the constitutional values of equality, secularism, and social harmony. By addressing this petition, your Lordship would not only ensure justice for the affected communities but also uphold the principles of our democratic society.

We earnestly request your urgent attention to this matter.

Sincerely,

Kavita Srivastava, President, PUCL
V. Suresh, General Secretary, PUCL

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