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Editorial: A Foreign Policy Without a Constitutional Compass: India's Silent Acquisence

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SL. NO. 511

A FOREIGN POLICY WITHOUT A CONSTITUTIONAL COMPASS: INDIA'S SILENT ACQUIESCENCE IN US-ISRAEL AGGRESSION

June 13, 2025, marked another black day in history as Israel began an unprovoked and illegal attack on Iran with the US joining this illegal war by bombing Iranian nuclear facilities at Fordow, Natanz and Esfahan on June 22nd, 2025. By brazenly disregarding international law,these attacks have driven a stake through the rules-based international order. The rules-based international order consists of the UN Charter, the UDHR as well as the Genocide Convention. **These are norms which are the outcome of the struggle for a most just world, where might does not make right. It is these norms which are in the balance today.**

The heart of the UN Charter is Article 2(4) which mandates that, '*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.*' This provision is meant to outlaw the crime of '*aggression*' which according to the Nuremberg tribunal, is the '*supreme international crime*.' It is only when nation states eschew force as a way of resolving disputes that **the Preambular promise of the UN Charter by the '*people of the United Nations*'**, to themselves, to save '*succeeding generations from the scourge of war*' which has '*twice*', '*brought untold sorrow to mankind*' can be fulfilled.

There is an exception to Article 2(4), under Article 51's '*inherent right of individual or collective self defence if an armed attack occurs against a Member of the United Nations..*' Israel has tried to justify these illegal attacks by arguing that Iran was on the verge of acquiring nuclear weapons and that this posed an imminent threat to the security of Israel. There is no justification under international law for a member state to attack another, without credible evidence that the actions of the state amounted to an imminent attack. The so-called threat of Iran attacking Israel was not based on any credible evidence, hence the attack could not have amounted to an action undertaken in anticipatory self defence.

Such is the level of impunity that, Israel's partner in crime, Trump did not even attempt to demonstrate that the US was acting in self-defence, as former President George W. Bush and Prime Minister Tony Blair did when they invaded Iraq in 2003

on the false pretext of Iraq's possession of nuclear and chemical weapons. Trump did not even assert that he was acting to protect the US, but rather he was '*working as a team*' with Israel to remove '*this horrible threat to Israel.*' Trump even choose to ignore the findings of the National Security Agency of US which had certified in a Congressional hearing in March 2025 that Iran was far away from making the nuclear bomb. Needless to say, Trump's rationale for attacking a sovereign country has no basis in international law.

Iran's nuclear program was within the framework of international law, with Iran being a signatory to the Nuclear Non Proliferation Treaty, thereby committing to not diverting '*nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices.*' Its facilities were subject to international supervision under the auspices of the International Atomic Energy Agency (IAEA). The IAEA had confirmed that '*there is no credible evidence of a systemic effort by Iran to develop nuclear weapons.*' While Iran's nuclear programme is subject to international verification by the IAEA of which it is a member, Israel which is known to not only have a nuclear programme but also nuclear weapons is not a member of the IAEA, and has resolutely refused to allow the IAEA to verify its use of nuclear technology, and steadfastly refused to sign the Nuclear Non Proliferation Treaty. Ironically, the United States, which has been vociferous on Iran's nuclear ambitions has implicitly backed Israel's right to exist as a nuclear power completely outside the framework of international law. **Thus, the rationale for bombing Iran not only has no basis in any independently verifiable threat but also smacks of the hypocrisy of two nuclear-armed nations taking on the self-assumed obligation of policing nuclear '*threats*' outside the framework of the Nuclear Non Proliferation treaty.**

The Israeli and US attacks on a fellow sovereign member of the United Nations has in effect demonstrated that as far as Israel and the US are concerned they acknowledge no legal limits to their power. In the new international order, the powerful will do what they can and the weak must suffer what they must.

Israel has been emboldened in its increasingly brazen defiance of international law by the utter failure of the international community to hold it in check. If the prohibition of '*the use of force against the territorial integrity*' of a fellow member of the United Nations is the very reason for the existence of the United Nations, Israel's actions indicate that it does not respect the UN Charter. Post the Hamas attack on 7th October, 2023 Israel has waged disproportionate and relentless war reducing Gaza to rubble and killing over 57000 Palestinians and committing what international law considers the crime of crimes, namely 'genocide.' It has also bombed Lebanon, killing over 1100 people, repeatedly bombed Syria post the collapse of the Assad regime and now Iran in which over 950 people have been killed.

The United States has an even longer history of the defiance of the prohibition to wage aggressive war. Haiti, Guatemala, Nicaragua, Afghanistan, Libya, Iraq and now Iran are only some of the flash points when the US has shown its utter contempt for the rules based international order. The consequences of this blatant disregard for the rule of law was last seen in Iraq in which over 100000 people have died as a result of the US initiated armed warfare.

The point of greatest concern for those of us in the developing world, is the impunity with which the United States and its partner Israel, continue to violate the UN Charter, that too in a period when the era of colonization has receded into the dim past.

The great defenders of a rules based international order have been stunning in their hypocrisy. The Prime Minister of the United Kingdom Keir Starmer, without acknowledging the US- Israeli breach of the UN Charter, observed without any evidence that, '*Iran's nuclear programme is a grave threat to international security*' and that '*the US has taken action to alleviate that threat.*' Not a mention of the violation of international law by Starmer!

Interestingly it was China, Pakistan and Russia which condemned the US-Israeli strikes and argued that the strikes violated the UN Charter. China noted that US attacks on Iran violated the '*principles of the UN Charter and international law*' as well as '*Iran's sovereignty.*' Pakistan observed that, the US attacks '*violate all norms of international law*', and emphasized that '*Iran has a right*

to defend itself under the UN Charter.' Russian President Vladimir Putin said on Monday that '*unjustified*' U.S aggression is pushing the world towards great danger.

In this division between the opinions of the global north and the global south where did India stand? The Prime Minister Narendra Modi spoke with the President of Iran, Masoud Pezeshkian, and issued a banal call for '*immediate de-escalation.*' In short, India which claims to embrace the rhetoric of decolonisation, has refused to condemn what were blatantly illegal strikes conducted by the United States. The Prime Minister has shown a dangerous lack of vision in not condemning the strikes, thereby paving the way for a world where the powerful have no constraints on their power.

This is a grave betrayal of both India's history, heritage as well as constitutional mandate, that in the face of this tearing down of the rules based order by the powerful, India has been silent. India which was a strong supporter of the right of Palestine to exist as a nation state alongside Israel, has been silent in the face of the genocide of the people of Gaza. In the context of the blatantly illegal Israeli assaults on fellow Asian states be it Lebanon, Syria or Iran, India has again chosen to stay silent.

This amoral silence exposes India. Pakistan, China and Russia by condemning US aggression, have ended up speaking for '*we the people of the United Nations'*. Protests around the world against Israeli and US aggression indicate that there is an increasingly global public opinion which condemns it. India should have stood with this global opinion. By not doing so, India has passed the opportunity by to demonstrate global leadership.

The current dispensation can take a lesson from the first Prime Minister who did not hesitate to criticize the powerful when they acted outside the constraints of rule of law. For Nehru, American unilateralism was the beginning of the end of the United Nations. As he put it, '*it would be perverse if any country tried to destroy the United Nations. That country would suffer more than the organization if it left or sought to disrupt it… The UN with all its failings, is a great world organisation with the seeds of the hope for peace*.'

Going back to another historical parallel, one should remember the Suez crisis of 1956. When Nasser nationalised the Suez canal, Egypt was attacked by the trio of Israel, UK and France. India's response to this unprovoked attack was to assure Nasser of India's full support and to call the actions of Britain and France a, '*reversion to a previous and unfortunate period of history when decisions were imposed by force of arms by Western powers on Asian countries… The whole purpose of the UN is undermined, and the freedom of nations is imperilled, if armed might is to decide issues between nations.*' As Nehru put it, this was a '*reversal of history*' and '*no country in Asia or Africa, which has recently achieved freedom, can possibly tolerate this reversal*'.

Unfortunately India under Modi, has abandoned a foreign policy with a constitutional compass. Indian troops in the past have served as peacekeepers under the banner of the United Nations in over forty nine peacekeeping missions, demonstrating a foreign policy with a constitutional vision and a commitment to the UN Charter. **Today there is no such vision in India's foreign policy, which is governed by a shortsighted transactional approach**. It is an irony that Pakistan and China in their response to the US aggression better embody the spirit of 'we the people of the United Nations'. This loss of a constitutional and moral vision in our foreign policy will have deleterious consequences for India's standing in the world.

It's important that '*We the people of India*', engage our government and demand that our foreign policy take forward the vision of the Constitution rooted in the Directive Principles of State Policy which under Article 51(c) oblige India to "*foster respect for international law*" and under 51(a) require the State to "*promote international peace and security*". **It is of vital importance that our government in the conduct of its foreign policy fulfil India's constitutional responsibility to defend the UN Charter, the Genocide Convention and the UDHR.**

PUCL CONDEMNS THE ASSAULT ON 'PRO-BDS MOVEMENT' DEMONSTRATORS PROTESTING AGAINST THE VIOLENCE IN PALESTINE

PUCL, PUNE

On Saturday, 10th May 2025 late noon an incident of assault on the students activists peacefully demonstrating in support of Palestine by some right wing hooligans and activists, claiming to be Rashtriya Swayamsevak Sangh (RSS) activists, occurred in Karve Nagar area in Pune.

A pro-Palestine movement, called 'BDS Movement' ('*Boycott, Divestment and Sanction*' Movement) has been launched worldwide to protest against various sections and companies supporting Israel directly or indirectly. They have given a call to boycott companies and brands that have presence in the occupied Palestine for profiteering, Domino's Pizzas being one of them.

The youths and activists belonging to the local unit named '*BDS, India*' and '*Indian People in Solidarity with Palestine*' (IPSP) had organised a demonstration in front of "Domino's Pizza' outlet situated in Karve Nagar area. The activist had displayed informative posters and were distributing pamphlets to appeal to stand in solidarity with the people of Palestine and oppose the genocidal war in Gaza. They were appealing to the people to boycott the brands and companies which are acting against the people in Palestine.

While the demonstration was being conducted by young female and male activists peacefully, a mob of hooligans and RSS activists came there and started threatening and assaulting them; alleging that they are supporting '*Palestinee-Muslims*'. The activists were urging them not to give communal colour and were trying to reason and convince them that they are against the inhuman, genocidal acts to which the people from Palestine / Gaza are being subjected to for the last many months. They were also trying to inform them about the BDS movement. However, they paid no heed and started assaulting the activists, tearing of the posters and threatening them. Some activists were injured in this assault.

After sometime the Police came there but instead of taking action against the hooligans, they took the activists to a nearby police chowky; they detained some of them. According to the activists, while they insisted on lodging a written complaint against those who assaulted, the police (Alankar P.S and Warje Malwadi P.S.) avoided to accept the complaint till late night on Saturday. Moreover, the injured were taken to Sassoon Hospital for medical checkup only after lot of persuasion. The complaint was accepted only on Sunday, 11th May noon after insistence by the students since morning. However, as acting on the complaint no action was taken by the police, the activists are approaching the Police Commisioner, Pune for appropriate action.

The PUCL, Pune strongly condemns the unacceptable assault by right wing hooligans and fascist vigilantes. Such blatant assaults and inaction of the police certainly amounts to curbing the rights and civil liberties guaranteed by the Indian Constitution. The PUCL, Pune condemns the police inaction and urges police authorities to take the required lawful action against the perpetrators involved in the assault.

G. D Parekh (Retd Judge), President, PUCL, Pune
Milind Champanerkar, Anagha Lele (office bearers, PUCL Pune)

(Issued on the 11th of May 2025)

MARKING 2 YEARS OF MANIPUR VIOLENCE & UNREST: HEALTH RIGHTS ACTIVISTS & MOVEMENTS ACROSS INDIA APPEAL TO THE PRESIDENT OF INDIA

Call for effective public health infrastructure, personnel, services with safety and appropriate budgetary allocation– in the valley, hills and relief camps of Manipur

Even as the country and the world has '*moved on*' to deal with many other disturbing events, the violence that erupted in Manipur two years back, continues to impact lives of lakhs of people in numerous ways. As a mark of solidarity with the people who have been bearing the brunt of violence and social tensions, a recent initiative sought to **bring the spotlight back to Manipur, by foregrounding the right to health as integral to the right to life, with dignity of people in the state.**

The National Health Rights Alliance, All India Feminist Alliance (ALIFA) and National Alliance for Justice, Accountability and Rights (NAJAR), pan-Indian initiatives of the National Alliance of People's Movements (NAPM) made a collective effort to mobilize solidarity for the serious public health situation in the strife-torn state and drew the attention of Hon'ble Droupadi Murmu as the state is currently under President's rule. The detailed letter signed by many prominent activists from across India seeks immediate intervention of the President to ensure effective public health infrastructure, personnel, services with safety and appropriate budgetary allocation in the valley, hills and relief camps across Manipur. The key demands of the letter are below.

Acknowledging the fact that Manipur has a longer history of sporadic violence, the letter says that the conflict since 2023 has critically undermined its framework of essential services, in particular, the education and healthcare system. Damaged hospitals and clinics have halted necessary health services and drained supplies. Threats to health workers' safety have created severe staffing shortages in key areas. The violence has displaced thousands, forcing them into overcrowded 'relief' camps with poor sanitation and limited medical care, heightening the risk of disease outbreaks. Already fragile, the healthcare system is now overwhelmed, exposing systemic failures in crisis response and infrastructure resilience. Women, children, students, elders have disproportionately faced the impacts of the violence.

The signatories highlighted that ensuring universal health rights is essential in order to achieve a fair, just and lasting peace in the battered region. In the current situation, essential health services remain severely disrupted in many parts of Manipur, both due to the ongoing crisis and due to the skewed distribution of health infrastructure in the state. While most of the services are concentrated in Imphal, the rest of the districts suffer from lack of basic infrastructure like hospitals, staff and services in the existing hospitals.

The signatories placed the following 10 demands before the President that require both immediate attention as well as systemic action:

1. **A Special Task Force** headed by an official with powers equivalent to a cabinet secretary must **be immediately constituted**, with special funds, to investigate the public health situation at hand in Manipur, within a fixed timeline of 2 months. Based on the recommendations of the Task Force, Govt should plan and implement the necessary measures for strengthening public health across Manipur.

2. **Convene a committee of unbiased public health experts** from the region, to discuss how the aforesaid plans can be carried out efficiently, considering the social, political and cultural histories and complexities of the region.

3. **Urgent filling up of vacant posts** and recruitment of nurses, doctors and other medical staff in all the public health centres and hospitals.

4. **Centre must allocate additional funds**, even though Manipur spends somewhat more than some other states on health care. Given how frequently the state has undergone violent conflicts, extra funds and adequate budgetary allocations are crucial.

5. There must be **effective inter-**

sectoral coordination between the home, disaster management, health, food and civil supplies, women and child welfare and social welfare departments to make sure that the rights and entitlements of the most vulnerable citizens and social groups, including tribal, indigenous communities, elders, women, children, persons with disabilities, workers, students, religious minorities, transgender, queer persons etc is taken care of.

6. **Ensure advance preparedness** for the onset of monsoon and disease outbreak both in the villages and relief camps.

7. Ensure that there is no discrimination in health services on the basis of gender, religion and ethnicity.

8. **Setting up effective and decentralized health infrastructure** in as many districts of Manipur as possible, within a fixed time frame. Most immediately, setting up of functional community health centres in Lamka, especially in Tuibuang and Sangaikot areas.

9. **Strengthen the public health infrastructure**, stop privatization of district hospitals, regulate corporate and private healthcare, ensure availability of quality medicines free of cost and include mental health services at all primary healthcare centers along with universal health care in the public health system.

10. Eventually, the state government must **bring a comprehensive law for the Right to Health of all citizens**, to address all health-related concerns.

The letter calls for proactive action by the Centre and state government and a strong political will to implement the aforesaid demands. The signatories also urged the President to visit Manipur at the earliest, interact with and understand the situation of all communities first hand, in the hills, valley and relief camps and intervene effectively to ensure the right to health, right to life, right to safety and dignity of the people of Manipur.

(*Press Release issued on the 24th of June, 2025 by the NAPM)*

STATEMENT ON THE ONGOING SECURITY OPERATIONS AGAINST MAOISTS

All India Lawyers Association for Justice (AILAJ)

Over the last few months, a massive joint operation reportedly involving over 10,000 security personnel, encircled Karreguttalu hills, on the border of Telangana and Chhattisgarh, where hundreds of maoists were holed up. This came in the background of "*Operation Kagar*" and Home Minister Amit Shah's deadline of March 2026 to make India Maoist-free. This situation in Karreguttalu occured despite the Maoists in Chhattisgarh having released three public statements in the past month, expressing their readiness for peace talks and calling for a halt to military operations against them. In a video interview given to Bastar Talkies, a popular YouTube channel, which was uploaded on 22 April 2025, Maoist leader, Rupesh, declared that the CPI (Maoist) party has stopped all operations except when attacked; in effect, a unilateral ceasefire. Reports suggest that 28 Maoists, including four women, have been killed in the ongoing operation in the Karreguttalu hills of Chhattisgarh. In fact, since the escalation in militarisation and intensified Operations January 2024, in Bastar alone over 400 people have been killed.

In these circumstances, concerned advocates, human rights and civil society organisations, media, and other members of the public, including AILAJ, appealed to the Union Government to cease military operations and find a peaceful resolution through talks so as to avoid any more bloodshed. Their only concern is the prevention of loss of human lives. **Their understanding is that even in an insurgency, once an armed group expresses its readiness for talks to halt further bloody violence, then it is the responsibility of a government, bound by the Constitution, to ensure a resolution to the insurgency without spilling of any more blood.**

Around two decades ago, the State of Chhattisgarh promoted

the state-backed armed civilian militia, known as the 'Salwa Judum', in its fight against the Maoists. The permissibility of this reached the doors of the Supreme Court, whose judgment in the matter, reported in *Nandini Sundar and Ors vs. State of Chhattisgarh [(2011) 7 SCC 547]*, is a scathing critique of the development paradigm and broader socio-economic conditions, fuelling the disgruntlement of the people of Chhattisgarh. Such conditions include the degradation and dispossession of Adivasi land due to mining, severe poverty and destitution of the people, and social and political marginalization. The Court deemed that we cannot turn a blind eye to these conditions of impoverishment that have been produced by an extractive model of economic development. The judgement declared 'Salwa Judum' unconstitutional, disapproved the government arming civilians to combat an insurgency and prohibited their deployment in counter-Maoist operations.

The fight against Maoist/Naxalite violence cannot be conducted purely as a mere law and order problem to be confronted by whatever means the State can muster. **The primordial problem lies deep within the socio-economic policies pursued by the State on a society that was already endemically, and horrifically, suffering from gross inequalities.** Consequently, the fight against Maoists/Naxalites is no less a fight for moral, constitutional and legal authority over the minds and hearts of our people. Our constitution provides the gridlines within which the State is to act, both to assert such authority, and also to initiate, nurture and sustain such authority. To transgress those gridlines is to act unlawfully, imperiling the moral and legal authority of the State and the Constitution. We, in this Court, are not unaware of the gravity that extremist activities pose to the citizens, and to the State. However, our Constitution, encoding eons of human wisdom, also warns us that ends do not justify all means, and that **an essential and integral part of the ends to which the collective power of the people may be used to achieve has to necessarily keep the means of exercise of State power within check and constitutional bounds**. To act otherwise is to act unlawfully, and as Philip Bobbitt warns, in "Terror and Consent - The Wars for the Twenty First Century", "if we act lawlessly, we throw away the gains of effective action." Laws cannot remain silent when the canon's roar.

Indeed the Supreme Court holds that "modern constitutionalism posits that no wielder of power should be allowed to claim the right to perpetrate state's violence against any one, much less its own citizens, unchecked by law, and notions of innate human dignity of every individual."

This judgment provides a clear mandate of the manner in which the State was required to deal with the violent actions of the Maoists: the context of severe inequality matters, the ends do not justify all means, the exercise of State power ought to be within constitutional bounds, and any of its violence ought not to be against human dignity and the rights of all Indian citizens. It clarifies that this need to adhere to constitutional norms, the responsibility of every organ of the State to function within the four corners of constitutional responsibility, is the ultimate rule of law, the very foundation of governance and democratic polity. The rule of law, the guiding light and shield available to people against arbitrary executive action, is part of the basic structure of our constitutional jurisprudence, and as the Supreme Court held in *Extra Judl. Exec. Victim Families Assn. and Ors. vs. Union of India [(2017) 8 SCC 417] "the protection and preservation of human rights is one of the most important aspects of the Rule of law"*.

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In State of Maharashtra vs. Saeed Sohail Sheikh [(2012) 13 SCC 192] the issue related to the alleged high-handedness and excessive force of jail officials on prison inmates who were in custody in connection the Bombay Blast case.

Here the Supreme Court held that: "*in a country governed by the rule of law police excesses whether inside or outside the jail cannot be countenanced in the name of maintaining discipline or dealing with anti-national elements. Accountability is one of the facets of the rule of law. If anyone is found to have acted in breach of law or abused his position while exercising powers that must be exercised only within the parameters of law, the breach and the abuse can be punished. That is especially so when the abuse is alleged to have been committed under the cover of authority exercised by*

people in uniform. Any such action is also open to critical scrutiny and examination by the Courts. Having said that we cannot ignore the fact that the country today faces challenges and threats from extremist elements operating from within and outside India. Those dealing with such elements have at times to pay a heavy price by sacrificing their lives in the discharge of their duties. The glory of the constitutional democracy that we have adopted, however, is that whatever be the challenges posed by such dark forces, the country's commitment to the Rule of Law remains steadfast. Courts in this country have protected and would continue to protect the ideals of the rights of the citizen being inviolable except in accordance with the procedure established by law."

In July 2016, the Supreme Court passed its judgment in regard to the alleged 1528 extra-judicial killings in Manipur, in which it made several notable observations of the standards of conduct required of the State and its security forces while dealing with insurgency and armed resistance. In its judgment reported in *Extra Judicial Execution Victim Families Association (EEVFAM) and Ors. vs. Union of India [(2016) 14 SCC 536], the Supreme Court emphatically held as follows:*

… When the State uses such excessive or retaliatory force leading to death, it is referred to as an extra-judicial killing or an extra-judicial execution or as this Court put it in People's Union for Civil Liberties v. Union of India and Anr. [(1997) 3 SCC 433] it is called "administrative liquidation".

Society and the courts obviously cannot and do not accept such a death caused by the State since it is destructive of the Rule of law and plainly unconstitutional. The problem before the courts tends to become vexed when the victims are alleged to be militants, insurgents or terrorists. In such cases, how does anyone (including the court) assess the degree of force required in a given situation and whether it was excessive and retaliatory or not? Scrutiny by the courts in such cases leads to complaints by the State of its having to fight militants, insurgents and terrorists with one hand tied behind its back. **This is not a valid criticism since, and this is important, in such cases it is not the encounter or the operation that is under scrutiny but the smoking gun that is under scrutiny.** There is a qualitative difference between use of force in an operation and use of such deadly force that is akin to using a sledgehammer to kill a fly; one is an act of self-defence while the other is an act of retaliation.

Importantly, the Court makes the following emphatic statement while dealing with the State's argument that an insurgent is an enemy of the State (as defined under the provisions of the Army Act) and hence their killing is justified in counter insurgency or anti-terrorist operations: "*Killing an 'enemy' is not the only available solution and that is what the Geneva Conventions and the principles of international humanitarian law tell us.*"

There are several key implications of this statement. First, it cautions that just because a party is deemed an 'enemy' (which, in any case, is a discourse subject to the geopolitical and political whims of the state in power), this does not imply that this party should not be extended basic rights under international humanitarian law. Second, the EEVFAM judgment makes a reference to Prof. Aharon Barak, a former President of the Supreme Court of Israel ...:

"While terrorism poses difficult questions for every country, it poses especially challenging questions for democratic countries, because not every effective means is a legal means. *I discussed this in one case, in which our Court held that violent interrogation of a suspected terrorist is not lawful, even if doing so may save human life by preventing impending terrorist acts: We are aware that this decision does not make it easier to deal with that reality. This is the fate of democracy, as not all means are acceptable to it, and not all methods employed by its enemies are open to it.*

Sometimes a democracy must fight with one hand tied behind its back. Nonetheless, it has the upper hand. ***Preserving the Rule of law and recognition of individual liberties constitute an important component of its understanding of security.*** *At the end of the day, they strengthen its spirit and strength and allow it to overcome its difficulties."*

The main issue at stake is that the actions of the State have to be compliant with the notion of human rights. The words 'human rights' though not defined in the

Universal Declaration of Human Rights have been defined in the Protection of Human Rights Act, 1993 in very broad terms and that these human rights are enforceable by courts in India. In this context, it is necessary to reiterate what the Supreme Court held in *Ram Deo Chauhan v. Bani Kanta Das [(2010) 14 SCC 209]:*

Human rights are the basic, inherent, immutable and inalienable rights to which a person is entitled simply by virtue of his being born a human. They are such rights which are to be made available as a matter of right. The Constitution and legislations of a civilised country recognise them since they are so quintessentially part of every human being. That is why every democratic country committed to the Rule of law put into force mechanisms for their enforcement and protection.

Human rights are universal in nature. The Universal Declaration of Human Rights (hereinafter referred to as UDHR) adopted by the General Assembly of the United Nations on 10-12-1948 recognises and requires the observance of certain universal rights, articulated therein, to be human rights, and these are acknowledged and accepted as equal and inalienable and necessary for the inherent dignity and development of an individual. Consequently, though the term "human rights" itself has not been defined in UDHR, the nature and content of human rights can be understood from the rights enunciated therein.

Possibly considering the wide sweep of such basic rights, the definition of "human rights" in the 1993 Act has been designedly kept very broad to encompass within it all the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. Thus, if a person has been guaranteed certain rights either under the Constitution or under an International Covenant or under a law, and he is denied access to such a right, then it amounts to a clear violation of his human rights and NHRC has the jurisdiction to intervene for protecting it.

Within this legal framework (of human rights), the question then is not whether or not you 'sympathize' or condone with the ideology or activities of the Maoists. This is beside the point. The question is one simply of basic human rights and protections afforded under the due process of the law. One could very well stand diametrically opposed to Maoist ideology and actions, while also being extremely concerned at the use of disproportionate power against them, especially when they are hemmed in the hills and repeatedly reaching out for talks.

A look at what the Courts have laid down and it is apparent that the State ought not to shy away from bloodless resolution to these issues. In the Nandini Sundar case, the Supreme Court conceptualised the two-fold path in response to insurgency, as follows:

"The response of law, to unlawful activities such as those indulged in by extremists, especially where they find their genesis in social disaffection on account of socio-economic and political conditions has to be rational within the borders of constitutional permissibility. This necessarily implies a two-fold path: (i) undertaking all those necessary socially, economically and politically remedial policies that lessen social disaffection giving rise to such extremist violence; and (ii) developing a well trained, and professional law enforcement capacities and forces that function within the limits of constitutional action."

In the EEVFAM case, the Supreme Court, acknowledging that the insurgency in the State was ongoing for years, and the situation had not improved for decades on end, since 1958 infact, held that:

It is high time that concerted and sincere efforts are continuously made by the four stakeholders – civil society in Manipur, the insurgents, the State of Manipur and the Government of India to find a lasting and peaceful solution to the festering problem, with a little consideration from all quarters. It is never too late to bring peace and harmony in society.

If it is true that it is never too late to bring peace and harmony in our society—and it is—then the state has a moral and constitutional duty to pursue this truth—right now. This is all the more imperative since the Maoist Party seem to be ready for peace talks and have explicitly communicated so. Given that it is impermissible for the state in any of its forms (executive, state agencies, or legislature) to act with impunity, and claim that the law or the Constitution can be ignored, or complied with only at

its convenience, then it is time to pursue an authentic path of resolution for the issues in this region. The state must do everything it can to stop further bloodshed, to secure accountability and democracy in the region, and to address the overall material and political disenfranchisement of the Adivasis of Chhattisgarh and elsewhere in the country.

(This piece is republished from the AILAJ E-Magazine, June 2025 Issue; Advocating for Justice and Reclaiming the Legal Space for the People, the Constitution, and a Democratic Future)

8TH RIGHT TO FOOD CAMPAIGN CONVENTION DECLARATION

Strengthen Democracy, Ensure Right to Food and livelihood for all

The 8th Right to Food Campaign Convention was held on 24 – 26 May 2025 at Ambedkar Memorial Welfare Society, Jaipur (Rajasthan). The theme of this convention was "Securing Right to Food, Strengthening Democracy." (It) brought together over a thousand participants from 16 states across the country. The gathering served as a powerful platform for collective reflection and resistance, as individuals and organizations came together to assess the status of food security amidst growing authoritarianism. Participants deliberated on the weakening of democratic institutions, the erosion of accountability mechanisms, and the increasing marginalization of the poor and vulnerable. The discussions reaffirmed the fundamental link between an assured right to food and a vibrant, participatory democracy, emphasizing that food security is not merely a matter of policy, but a cornerstone of justice, dignity, and democratic governance.

The Right to Food Campaign takes cognizance of the continuing genocide of Gaza, the erosion of democratic values across the world, including in the United States and Europe, and the replacement of a rules-based world with one based on might is right. We unequivocally condemn all violence and call to an end to cessations of all hostilities including in Gaza, Palestine and especially closer home in South Asia.

The Right to Food Campaign calls for the intensification of the struggles against growing inequality, sectarianism, and consolidation of far-right forces both in the political and societal spheres in India and across the world.

Over the three days, plenaries and parallel sessions were held that discussed various nutrition programmes, challenges in securing food by vulnerable groups, shrinking control over means of production, labour rights and codes, and deliberations on the way forward.

The key resolutions adopted during the convention are as follows:

1. **Universalize the Public Distribution System and expand the food basket** to include a variety of millets, dal, oil and sugar. **Remove digital technology induced measures** such as e-KYC and Aadhaar linking from ration cards that lead to exclusions.

2. **Children's Right to Food and Nutrition**:

a. ICDS and Creche service (Palna scheme) should not function as schemes but be established as a universal and comprehensive law for children under 6 years, which includes elements of health, education, nutrition, care and protection. The law must also include norms on infrastructure (such as water, toilets, kitchen, play spaces), food, workers' rights and social audits etc.

b. Extend Mid-day meals to all school children, up to 12th standard.

c. Junk and processed food must carry warning labels and advertisements targeting children on such foods be prohibited.

d. Bal panchayats which currently work with the objective of protection of children, should have a wider ambit which includes holistic development and nutrition of children under 6 years and pregnant and lactating women. Alongside, recommendation should be made to finance commission to make schemes for local production and procurement of food for Anganwadis and Mid-day meal scheme and that should be handed over to the

gram panchayats. Maternity entitlement must be universal and unconditional, adjusted to inflation and cover at least nine months at prevalent minimum wages.

e. There should be an amendment in the Child Labour (Prohibition and Regulation) Act (CLPRA) which should prohibit children below 18 years of age from working.

3. There must be **proper and effective implementation of grievance redressal mechanisms** and adequate resources for institutions responsible for this implementation.

4. Provide **pensionable secure employment for all frontline workers** in public programmes, including appropriate equipment and training.

5. **Cash transfers must not be seen as a substitute for existing in-kind entitlements** such as the Public Distribution System (PDS), Mid-Day Meals (MDM), and Integrated Child Development Services (ICDS).

6. Ensure continuance of all **offline alternatives to online systems**. Ensure that there are no exclusions rising from digitization.

7. All **food entitlements must be comprehensively and universally portable and easily accessible for migrant workers**. Universal portability would allow migrant families to claim their rightful entitlements wherever they reside or work, thereby addressing chronic exclusion and food insecurity faced by this vulnerable population. Strengthen and expand the portability of PDS under the One Nation One Ration Card scheme and ensure universal access to ICDS services, maternity entitlements and mid-day meals programme at destination. Ensuring ease of access and reducing bureaucratic hurdles are critical steps toward making food rights truly universal and inclusive.

8. Ensure all **rights-based entitlements abide by the Constitutional principle of equality and be non-discriminatory** vis-a-vis caste, religious minorities, gender and any other identity.

9. Ensure strict implementation of laws protecting Adivasis, create new employment opportunities, and protect their cultural identity. **Legal provisions** against the misdirection of the funds under the Development Action Plan for Schedule Tribes must be implemented.

10. Ensure **full compliance of the RPWD Act, universalize disability pensions, and publish disaggregated data** of children with disabilities in the NFHS for targeted interventions.

11. Ensure **Constitutional Protection for Religious Minorities** in the Face of Hate Speech, Violence, and Communalism — Along with Stringent Penalties forViolators. **Accountability for public officials and law enforcement** who fail to act against or are complicit in communal violence or discrimination, through disciplinary action or prosecution

12. There must be a **comprehensive enumeration of DNTs** and a clear pathway for their citizenship and access to basic services.

13. Provide **ration cards based on self-declaration** without any conditionalities for gender minorities. Sex workers should get identity cards and must be given maternity entitlements and benefits of all welfare schemes without conditionalities.

14. Ensure that **every homeless person has access to shelter.** There should be a **comprehensive Right to Housing Law** that guarantees adequate, accessible, and dignified shelter for every homeless person in India, with a special focus on women and children who are most vulnerable to exploitation, violence, and health risks due to homelessness.

15. **Food security through Food Sovereignty**:

a. Strengthen the decentralized procurement system without any genetic modification. Strictly implement laws that protect people's control over resources and prevent their commodification.

b. Procure local, diverse, poison-free, GM free, nutritious, diverse food only grown with adequately proven and tested technologies in a decentralised manner with payment in a timely manner for PDS, MDM and ICDS and all other public schemes at MSP.

c. No acquisition or diversion of agricultural land, commons, forests, water bodies or any other natural resources which is a source of food for any non-agricultural purpose.

d. Repeal laws banning slaughter

of animals and rethink laws and policies that are preventing farmers from protecting their crops from wild animals.

16. **Immediately restart NREGA work in West Bengal.** Ensure the recommendations of the Parliamentary Standing Committee on Rural Development. **Increase the NREGA wage rate** to Rs 800/day. Attendance based on **NMMS should be abolished** and any technological interventions in NREGA must be done in consultation with workers and campaigns such as NREGA Sangharsh Morcha. The union government must pay the **compensation for stage-2 delays** in wage payments.

17. **Ensure the recognition of wage and social security rights for informal workers.**Establish legal guarantees for the timely payment of minimum wages. Raise the minimum legal working age to 18 years. Formally acknowledge and protect the rights of domestic and gig economy workers.

18. **Social security pensions should be universal**, it should at least be half of the minimum wage and linked to inflation for annual increases. Cost of the pension scheme should be shared equally by the central and state governments.

19. **Acknowledge the link between malnutrition, poverty, landlessness and occupational health problems** (TB & Silicosis) and their increased prevalence due to displacement and dispossession of vulnerable communities in the name of development.

20. The Digital Personal Data Protection (DPDP) Act in its current form should be withdrawn and no amendments should be made to the RTI Act to restrict our fundamental right.

Action Points

1. Start a campaign to demand universalization and expansion of the food basket in PDS.

2. Children's Right to Food and Nutrition:

1. Make ICDS, including monitoring of Anganwadis, as a national agenda.

2. Drafting a policy paper to establish a comprehensive law for children under 6 years.

3. Initiating community-based management and social audit of Anganwadis.

4. Address caste-based and other social discriminations in schemes related to RTF.

5. Preparing a pamphlet on Anganwadi nutrition.

3. Conduct state-level public hearings on the Maternity Benefit programme in December, 2025, social audit in all states and culmination of the program in September in Delhi.

4. There must be a national campaign to demand effective implementation of the grievance redress mechanisms.

5. Network with unions of frontline workers and conduct a study to estimate additional payments due to frontline workers.

6. State-level campaign committees to monitor attempts to replace entitlements with cash transfer and build a nationwide movement to resist the same.

7. Draft a charter on campaigns' stand on Digitization and alternatives for each process, work closely with Rethink Aadhaar (and similar campaigns) to develop resources and resolutions for Aadhaar based challenges.

8. Organize a two-day convention in Jaipur to draft a charter of demands for migrant workers; coordinate the ground-level mapping of migrant workers' access to food and nutrition entitlements* across districts and states; conduct a national study on ONORC implementation; and file interim applications in the Supreme Court case seeking mandatory panchayat-level registration, a national migration database, social audits, and community kitchens in migrant-dense clusters.

9. Push to simplify the addition of new names to ration cards and monitor discrimination against Dalits, Adivasis, religious and gender minorities.

10. Strengthen movements against displacement and land acquisition against Adivasis, advocate to reopen closed schools in Adivasi areas, organize workshops to formulate legal frameworks for implementing TSP and conduct a national level public hearing on Adivasi issues.

11. Organize training and workshops to build an internal understanding of disability rights and entitlements, engage with

State Disability Commissioners for grievance redressal and systemic advocacy, ensure representation of people with disabilities in decision making.

12. Ensure fraternity is at the core of all campaign work, form a committee to create and conduct workshops on fraternity and secularism for the campaign. Conduct trainings in schools and colleges with special focus on Dalits and Adivasis.

13. Strengthen the mobilization concerning the rights of DNTs, including documentation of ground realities and formation of a network to coordinate action against injustices faced by DNTs.

14. State campaigns to host workshops on sensitization of challenges of gender diverse people. Campaigns should also strengthen efforts to ensure gender diversity in their membership and activities. It should also advocate for the implementation of Transgender Protection Act.

15. Plan a national study about urban and rural homeless people (and families), include them in the next census, demand law for their right to housing.

16. Participate in farmers' struggles, organizelocal meetings of Kisan Mazdoor Commission.

17. Revoke the NMMS attendance app, push non-BJP state governments to write the union government seeking alternatives. Campaign should join the joint call for hartal along with Sanyukt Kisan Morcha and Central Trade Unions. Do a national campaign on delayed NREGA payments, minimum wages.

18. Work towards the rights of workers, including spreading awareness of these rights

19. Social Security pensions should at least be half of the minimum wages, divided equally between union and state government. Do an annual pre-budget dharna in the capital.

20. Expand the food basket for vulnerable TB patients and their families for an extended period of 2 years, make a fourfold increase in cash transfers and develop offline pathways to register diagnosis and care of TB and silicosis patients without mandating Aadhaar.

21. We call for an immediate repeal of Section 44(3) of the DPDP Act which has amended the RTI Act, to exempt all personal information from disclosure. Similarly, the override clause in the DPDP Act must not override the RTI Act. We call for a nation-wide campaign to repeal Section 44(3). Submit petitions to elected representatives and plan a week of action for simultaneous campaigns across the country.

22. The Campaign to document cultural variations in food traditions and make people aware of their importance.

(Issued by the National Convenors of the Right to Food Campaign.)

STOP THE USE OF STARVATION AS A GENOCIDAL WEAPON! UPHOLD THE RIGHT TO FOOD AND FREEDOM OF THE PALESTINIAN PEOPLE!

Resolution by the Right to Food Campaign

We, the participants of the Right to Food Campaign's National Convention, register our profound outrage and condemnation of the brutal use of starvation as a weapon of war by the Israeli government in Gaza. We are equally alarmed by the ongoing complicity of the Indian government in these and other humanitarian crimes occurring in the region.

The humanitarian crisis in Gaza has reached catastrophic levels, with intensified military operations resulting in over 400 civilian deaths and countless injuries, particularly among children. The relentless blockade has severely restricted access to essential aid, prompting the United Nations to issue dire warnings of an impending famine. Alarmingly, more than 930,000 children are now at imminent risk of death due to severe malnutrition and starvation.The situation is further compounded by the declaration of a polio epidemic by the Health Ministry in Gaza, highlighting the urgent need for humanitarian intervention.

We recognize that the denial of food and health care to more than two million Palestinians, particularly children, is not only a grave violation of international humanitarian law but also a profound infringement on basic human rights. The right to food and nutrition is fundamental to all human beings, and its deliberate denial constitutes a crime against humanity. Such actions undermine the very essence of

human dignity and violate the principles enshrined in international human rights treaties.

During the last 20 months, Palestinians in Gaza have been relentlessly bombed, displaced, and deprived of essential necessities such as shelter, health care, clean water, and education. This inhuman siege amounts to using food as a weapon of war and makes a mockery of international law, the Geneva Conventions, and basic human values.

In light of these circumstances, we call for an immediate ceasefire and a cessation of all cooperation with the state of Israel. We express our deep disappointment that the Government of India has failed to take meaningful action to halt these atrocities. Instead, it has maintained its role as a steadfast ally of the Israeli government—supporting Indian companies that manufacture military equipment for Israel, replacing Palestinian workers with Indian labourers, and suppressing protests against Israeli actions within India. According to a recent article in Haaretz, “India has become almost as important a crutch to Israel as the US.”

We affirm that the International Court of Justice defines complicity with genocide as any positive action taken to assist the perpetrators. This accurately reflects the current stance of the Indian government. Despite the government's efforts to stifle protests and expressions of solidarity with the Palestinian people, numerous demonstrations have taken place across India in recent months, and we hope for more in the future.

We stand in unwavering solidarity with the people of Gaza and Palestine in their struggle for justice. We appeal to the Government of India to end all ties with Israel for the time being and urge the Indian public to cease all academic, commercial, cultural, or other ties with Israel, and to take to the streets on this issue. The use of starvation and disease as instruments of war is utterly unacceptable.

The Right to Food Campaign of India reaffirms its commitment to the Right to Food and the freedom of the Palestinian people.

(*This resolution was passed on the 26th of May 2025)*

ON FURTHER UNWANTED ESCALATION OF ISRAEL–PALESTINE ARMED CONFLICT

Kusal Perera

Common open letter to All Heads of States, South Asian Region

On further unwanted escalation of Israel – Palestine armed conflict since October 2023 reaching Iran and US military aggression

Hon'ble Heads of States,

Pardon me a socio-political activist from Colombo, Sri Lanka, for this unsolicited communication on an issue that may not have a common view and a consensus across geographical borders to begin immediate collective dialogue. Yet it is that "**collective regionalism**" I intend to demand from all of you as Heads of States of sovereign nations, on this letter written with impatient urgency in a hi-tech world of military interventions.

I believe, I don't have to give you the latest details on bloody massacres unleashed on humanity, national property and wealth creating a human tragedy in the neighbouring West Asian region, involving Israel and Palestine since the latest armed conflict in October 2023, dragging Iran into the conflict and the USA walking in, for its own geo-political arrogance.

Most political commentators including me fear, with Israeli military offensives now focussed more outside Gaza, targeting Iran with US patronage, may pave way for a Third WW, despite the Universal Charter with the pledge signed by 51 sovereign nations in 1945 April – June in founding the United Nations. The Universal Charter now having 193 signatories as UN Members, including all South Asian nation States, pledges to "*save succeeding generations from the scourge of war, which twice in our life-time has brought untold sorrow to mankind and to reaffirm faith in fundamental rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small…..*"

I do not intend to question the conscience of our nation States,

that allowed with little opposition the ghastly murders of over 56,000 civilians and still counting in the land of Palestinian Gaza since October 2023. That number is said to include 17,400 infants and little children by end March, 2025 according to Al Jazeera, counting over 28,000 women and girls by the UN Women in mid May this year. All this with no estimates on demolished houses, schools, hospitals and other infrastructure for normal living.

While all this brutality the rest of the world including our leaders, all members of the UN watched unfolding during past 20 plus months paying scant importance to, the politico-economically powerful G-7 members issued a statement on 17 June 2025 insisting Israel has a "*right to defend itself*" and warned Iran cannot have nuclear weapons. This right to defend itself as you all know, is about Israel that has criminal proceedings against it at the International Court of Justice for genocide and is led by PM Netanyahu who is under warrant for arrest issued by the International Criminal Court, along with former minister of defence, Yoav Gallant for war crimes and crimes against humanity.

I believe all of you as responsible leaders of sovereign nation States do know, Israel is the only country in Mid-East believed to possess nuclear weapons, though G-7 members have never wanted to question the right of Israel to have nuclear weapons. This allegation of Iran developing nuclear weapons amidst clear, open denials from Iranian leaders, a signatory to the Nuclear Non-proliferation Treaty whilst Israel is not, seems another "Iraqi forgery" the like of what was sold to the whole world and to the UN Security Council on "*weapons of mass destruction*" planned as excuse for the 2003 invasion of Iraq.

Let me stress this, though not very palpable for any of us. During the past 80 years since the founding of the UN, we have sat compromising with Western power blocs looking after our own selfish interests not so much bothered, 04 new world generations in most part of this planet earth were pushed to war and dragged through human tragedy. **There had been no single year, this world had lived without an armed conflict.**

The UN Founding Charter, with all its pledges for peace, humanity, fundamental rights and development, had never been a "charter" held as valid in any international forum by any UN member country including our own South Asian members. It is therefore necessary I believe, to **reach a regional consensus on collective responsibility** to lobby for and intervene in demanding as Article 1 of Chapter I of the UN Charter says, *"To maintain international peace and security, in conformity with the principles of justice and international law*". It is therefore necessary and urgent to **demand**

(1) the US this moment **make a public statement** they will immediately withdraw all their armed forces from Mid-East and will not be party to any armed conflict, even indirectly,

(2) a statement from both Israel and Iran **announcing a cease fire immediately** with their armed forces withdrawn to barracks,

(3) **Hamas be compelled to respect and honour the cease fire** announced by both Israel and Iran and most importantly,

(4) an emergency UN General Assembly to **establish a Peace Council consisting of non-arms dealer sovereign States** in Europe, Latin America, Africa, Asia and the Mid-East with a **mandate to enforce embargoes on military weapons and participation in regional and international cultural activities** against any country that violates the cease fire enforced, effective in all Mid-East countries and patronise armed conflicts.

Let me thus conclude this by appealing to all of you to first convene a South Asian Conference of Heads of States and to unanimously resolve to **call for an urgent UN General Assembly** without any delay and to lobby UN members to adopt a resolution that would include the above 04 demands.

Thank you, all.

With great hope and trust,
Yours most sincerely,
Kusal Perera
Citizen of Sri Lanka

(This piece was originally published on the 23rd of June 2025 on Kusal Perera's blog.)

LANGUAGE OF UNITY, NOT DIVISION: PUCL URGES WITHDRAWAL OF ORDER TARGETING URDU-PERSIAN WORDS

PUCL RAJASTHAN

The People's Union for Civil Liberties (PUCL), Rajasthan, has termed as discriminatory the letter written by the Minister of State for Home Affairs, Jawahar Singh Bedham, to the Police Department, in which he suggested replacing Urdu and Persian words used in the police department with Hindi words.

PUCL believes that Khari Boli Hindi and Urdu have developed together, and there is a natural interchange of words between the two. If Arabic and Persian words are removed from Hindi, the language would become unnatural and unclear, making it very difficult for the general public to understand. Similarly, Hindi words are also used in Urdu.

The language used in the Minister's letter reflects communal prejudice. He has written that Urdu words are used in the police department because it was the language of rulers during the Mughal period. PUCL would like to point out that the Mughal rule ended over two and a half centuries ago, and after that, the country was ruled by the British for a long time. Therefore, linking language with rulers is meaningless.

PUCL stated that, like other states, Rajasthan does not have linguistic hostility. Languages have always served as bridges in our culture. Even within various dialects of the Rajasthani language, people have been using Arabic and Persian words with ease for centuries. Such efforts by the state government will only create distances between speakers of different languages. This kind of divisive order should therefore be withdrawn immediately.

Bhanwar Meghwanshi(President)
Anant Bhatnagar (General Secretary)

(Issued in response to a letter from the Rajasthan State Home Minister citing that the use of Urdu and Persian in police work causes "frequent misunderstandings, leading to delays in justice," the State Home Minister has called for their "complete replacement... with Hindi words." The minister's letter argues this will establish "better communication between the police administration and the general public.")

DEMOCRACY IN RETREAT: COMPARING THE EMERGENCY WITH MODI'S INDIA

Md Zeeshan Ahmad

(This article was originally published in The Wire on the 25th of June 2025, i.e., the 50th Anniversary of the Emergency.)

Today, June 25, 2025, marks the 50th anniversary of the Emergency declared by Prime Minister Indira Gandhi – an unprecedented democratic rupture in India's republican history. Spanning from 1975 to 1977, the Emergency did not merely suspend democratic norms and undermine constitutionalism; it revealed, with brutal clarity, an authoritarian impulse cloaked in constitutional legality. While the immediate trigger was the invalidation of Gandhi's 1971 election by the Allahabad high court on charges of electoral malpractice, the broader political context – rising economic distress and growing social unrest in the late 1960s and early 1970s – set the stage.

Amid mounting protests and global condemnation, Gandhi eventually called for elections in 1977. She was decisively defeated, and India formally restored its democratic order. Yet, the political fabric of the nation had been irrevocably altered.

Half a century later, India confronts a different kind of crisis – what scholars and commentators increasingly describe as an **"undeclared emergency". Unlike 1975, this moment is not marked by the formal suspension of rights, but by the slow, methodical erosion of constitutional values under the guise of electoral legitimacy.**

Democratic backsliding in contemporary India

According to the 2025 reports by V-Dem and Freedom House, India is now classified as an "electoral autocracy" and "partly free", respectively. These sobering designations track the

systematic democratic backsliding since 2014, coinciding with the rise of Narendra Modi and the Bharatiya Janata Party (BJP).

Among the chief causes: persecution of minorities, institutional subversion, weaponisation of legal tools against dissent, and an overt push toward Hindu nationalist ideology. These developments align with recent scholarly assessments that India is undergoing a constitutional crisis of unprecedented scale – less visible than 1975, but no less perilous.

One of the most disturbing outcomes is the deepening communalisation of politics, often reflected in genocidal rhetoric targeting Muslims. Gregory Stanton, founder of Genocide Watch, has even warned that "*early signs of genocide are already visible in India*".

A comparative lens: 1975 and post-2014

The closest historical analogy remains the 1975 Emergency, when Gandhi declared emergency rule to protect her political survival. Through constitutional mechanisms, she suspended civil liberties, censored the press, and compromised institutional independence. **Historian Gyan Prakash famously called it the "lawful suspension of law".** Yet, it was an overt crisis – transparent in its declaration. In 1977, the Indian electorate responded decisively, voting Gandhi out of office and reaffirming the democratic spirit.

In contrast, the Modi era is more insidious. No formal declaration of Emergency has been made. Instead, institutions are being systematically hollowed out through autocratic legalism and bureaucratic capture. Judicial independence has weakened, dissent is criminalised, and laws are increasingly deployed as instruments of authoritarian control. **What emerges is a parallel constitutional order – legally structured but ethically void.**

Carl Schmitt's idea that "*sovereign is he who decides on the exception*" becomes alarmingly relevant. **If Gandhi's Emergency was an extraordinary exception, Modi's governance normalises the exception itself – transforming it into a routine tool of rule.** As philosopher Giorgio Agamben observes, the "*state of exception*" collapses the boundary between legality and illegality. In today's India, that collapse feels almost complete.

Undermining the constitutional promise

Legal scholar Arvind Narrain argues that Modi's India represents "*a kind of State going beyond authoritarianism*". Political scientist Christophe Jaffrelot has warned of a creeping Hindu *rashtra* – where religious majoritarianism is intertwined with authoritarian governance. This vision is in direct contradiction to the constitutional ideals of pluralism, secularism and fraternity.

Reflecting on this decline, political theorist Pratap Bhanu Mehta – who once described India's 1950 democratic leap as "*a leap of faith for which there was no precedent in human history*" – forces us to confront key questions: Why do democratic breakdowns recur in India? What sustains them? And what constitutional future do they portend?

From 1950 to the present: A democratic experiment under stress

India's democratic experiment was, from its inception, radically ambitious. At independence, global observers doubted its feasibility given its enormous diversity, social hierarchies and colonial inheritance. Yet, the Constitution granted universal adult franchise and reimagined colonial subjects as rights-bearing citizens.

Still, as B.R. Ambedkar warned, Indian democracy was built on undemocratic foundations. He called for the cultivation of constitutional morality, which remains elusive to this day. Over time, the post-independence dominance of the Congress system gave way to regional fragmentation, paving the way for populism and patronage – elements inimical to liberal democracy.

The populist fervour of the early 1970s culminated in the Emergency. Today, similar populist impulses – now turbocharged by digital platforms and mass communication – are being deployed by the Modi regime. But this time, they are rooted in a deeper ideological project, with wider and more lasting consequences.

Modi's India as autocratic legalism

Kim Lane Scheppele's concept of "autocratic legalism" – developed in the context of Hungary – is instructive here. It describes how democratically elected leaders use legal instruments to implement illiberal goals. This includes capturing institutions, rewriting rules and co-opting civil society under the veneer of legality.

India under Modi fits this mould disturbingly well.

- The reading down of Article 370, which revoked Jammu and Kashmir's special status, was executed without political consensus – circumventing federal norms central to Indian constitutionalism.

- The Electoral Bonds Scheme, introduced under the pretext of campaign finance reform, has entrenched unprecedented opacity and disproportionately benefited the ruling party – while surviving years in judicial limbo, even if it is now struck down.

- The Citizenship Amendment Act (2019) introduced religion as a criterion for citizenship for the first time in independent India. As political theorist Niraja Gopal Jayal notes, this move represents an attempt to redefine Indian citizenship along ethno-religious lines.

These are only illustrative examples. The broader trend reveals a calculated strategy: remaking the Indian state through democratic means to serve undemocratic ends.

The normalisation of the exception

What makes the present moment especially dangerous is not just the manipulation of the Constitution, but the **entrenchment of impunity**. Civil liberties are routinely violated. Laws like Unlawful Activities (Prevention) Act and sedition are invoked against students, activists and journalists. The 2019 amendment to UAPA allows the state to designate individuals as "terrorists" without trial.

Legal scholar Nasser Hussain has shown how emergency laws, originally meant for exceptional circumstances, are now normalised as tools of everyday governance. Under Modi, this legal architecture of repression has expanded dramatically – undermining the very foundation of rule of law.

India is no longer drifting toward authoritarianism. It is institutionalising it.

A troubling trajectory

A comparative reflection on the 1975 Emergency and the post-2014 era reveals a troubling trajectory. Gandhi's authoritarianism was personal, visible and ultimately repudiated by the people. Modi's version is structural, ideological and – most dangerously – normalised by society.

This shift compels us to ask hard questions: Can democratic institutions endure without democratic values? Can a constitution survive when its spirit is steadily hollowed out?

On this solemn 50th anniversary of the Emergency, the question is not whether democracy is being threatened – but whether it is being slowly undone from within. A strong and resilient democracy depends on a vigilant citizenry. The twin histories of declared and undeclared emergencies in India offer urgent lessons: democracy cannot be taken for granted. On this day, we must resolve – once again – to rescue democracy from the clutches of authoritarianism and restore it to its rightful path: rooted in constitutional values, nurtured by public accountability and sustained by collective vigilance.

(Md Zeeshan Ahmad is a Delhi based lawyer.)

WE RELEASED THE JUSTICE VARMA PROBE REPORT. THE REAL QUESTION IS WHAT MUST FOLLOW NOW?

Indira Jaising, Sushovan Patnaik

(This article was originally published in The Leaflet as an Editorial on the 23rd of June 2025.)

On the morning of June 19, we at The Leaflet, took the decision of publishing the coveted 64 page report of the in-house inquiry committee formulated by former chief justice Sanjiv Khanna to investigate the matter of piles of burning currency being discovered at former Delhi HC judge Justice Yashwant Varma's residence. It was a straightforward, unequivocal decision for us.

The contents of the report, we understood, were surely to further entrench a systemic crisis of faith confronting the judiciary, one we desire to be stronger for the health of our democracy. But the consequence of this opacity was a more overarching concern for us.

It was the right thing to do (in our assessment of Justice Khanna's tenure as the chief justice, we noted that his unwillingness to put out the report in public, which had been submitted to the Court on May 5, had squandered "*an opportunity to reform an opaque procedure in the backdrop of a historic moment for the judiciary*"). The report should have been published on the Supreme Court website, not just sent to the President. It was and is the property of the Supreme Court and this duty was owed to the public. The Court's decision not to publish was our inspiration to publish in public interest. The people, quite simply, had a right to know about the outcome.

On May Day of 1990, a copy of the latest issue of The Lawyers magazine, published then by our co-founder Indira Jaising - which published the full audit report of the Punjab Accountant General of Justice V. Ramaswami - was shared with the chief justice of India. With the shrouded Justice Varma report, The Leaflet experienced a similar journalistic obligation: from the beginning we asked the most crucial unanswered questions and trailed the report closely. Until we had it.

Our reading of these 64 pages is that they are implicatory, and without twisting words, of a major corruption scandal. The committee concludes based on corroborative evidence that cash had indeed been found, that access to the storeroom was under the active or covert control of the judge/his family, that Justice Varma's private secretary and in-house staff had played an "*instrumental role*" in removing the cash-piles in the wee hours of March 15, and that neither the judge nor any of the household members did the bare minimum of securing the CCTV visuals.

"*This Committee is firmly of the view that there is sufficient substance in the allegations raised…enough to call for initiation of proceedings for removal*," the report concludes.

The more foundational question for us, at this moment, is what must follow now. On May 9, former CJI Khanna had forwarded the letter to the President and Prime Minister. Reportedly the Union government is set to initiate an impeachment proceeding in the upcoming monsoon session and is reaching out to opposition members to build consensus. But there are two important issues to look out for: first, some reports suggested that the government may be looking to bypass altogether the formation of a committee under the Judges (Inquiry) Act. **This is unacceptable since it would be a violation of both due process and undermining of a constitutionally enforceable law.** Second, **difficult matters such as an impeachment of a judge could easily fall through the cracks** without an organised campaign and the moral obligation for that rests with the opposition. For this reason, we believe bringing the report out to the public was a necessary step.

Beyond impeachment, there also needs to be serious thought, now that the three-judge committee's findings are before us, regarding a criminal prosecution against Justice Varma in line with the procedure laid down in *K. Veeraswami v. Union of India (1991)*. Earlier this month, a portion of the Bombay bar pushed chief justice B.R. Gavai to grant the sanction but more cohesive, organised efforts from this point on will be crucial. At the end, the bottom line is to understand who the cash belonged to, and why it was paid.

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There are also larger dilemmas in our minds - relating to the health of the republic. The case against Justice Varma is not merely one about eroding public faith in the judicial institution but a symptom of broader incremental democratic backsliding under the current regime. Surely, part of the responsibility has to be borne by the judiciary. Systemic issues with the justice delivery framework (note its discriminatory nature against marginalised communities) in the country have meant that litigation per capita, an indicator of public faith in the judiciary, has remained low, and the opaque, non-accountable manner in which the Collegium functions currently makes the question of access even more difficult.

But perhaps even more concerning is the apparent medley between the executive and the judiciary. Even without the adoption of the NJAC, there is significant evidence to suggest that the executive is exercising a tremendous role in judge appointments to higher courts. Legal scholar G. Mohan Gopal has framed this as a political project in furtherance of the Hindu far-right's objectives. In the past decade, the institution's integrity has consistently faced interrogation: while academic Nandini Sundar has pressed on the executive's reliance on the "neutral judiciary" for "outsourcing several political decisions", a recent paper has blamed institutional failings for the Supreme Court's inability to perform its "representative role."

As the executive weaponises Justice Varma's impeachment to discredit the Collegium system, **it is helpful to remind ourselves that the unbolting of the judicial institution in India under the current regime is due to the transformations in how the judiciary and executive have come to interact under this government**. Justice Varma's impeachment and prosecution, all through due process, should be the leading thought, but without the complex broader picture in the back of our minds, of what might follow the impeachment, the executive's complicity in the judiciary's slow disintegration, and what this case tells us about the health of our republic, we might lose our way.

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