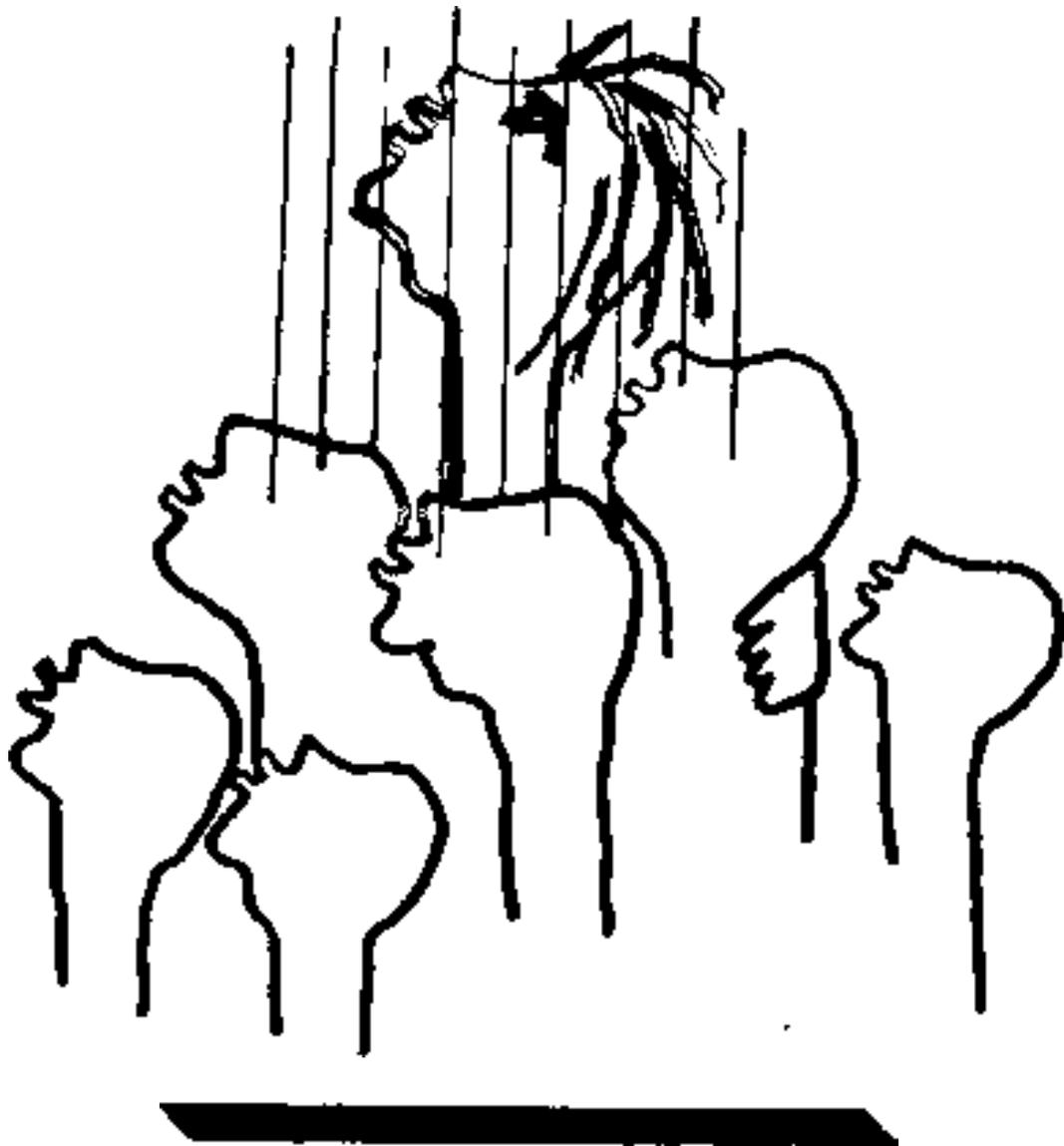


U L L E T

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Editorial:

THE PERSECUTING SOCIETY

Everything done by disinterested trade unionists and civil rights activists to improve the lot of the poor and to create an atmosphere where rule of law and democratic rights are respected in our country, is, at present, totally and utterly futile. This is so because our party politicians/rulers actively aided by the law enforcing administrators are allergic to values which go into the making of a civilized society. What we are witnessing today is that in pursuit of power our rulers submit conscientious citizens who raise their voice in favour of people's legitimate rights, to long years of unspeakable anguish. And, yet these very 'highminded' rulers constantly talk of toleration, respect for individual liberty, and brotherly love

One such case of persecution, is that of the well-known Chhattishgarh Mukti Morcha leader Shankar Guha Niyogi who is highly respected for his integrity and honesty of purpose. Mr. Niyogi was arrested on February 4, 1991. The government of Madhya Pradesh are framing up one charge after another against him so that he can be kept under perpetual detention. When bails were granted in 7 out of 13 cases that were brought against him and bail petitions were filed in the remaining cases before the High Court, arrest warrants were issued in another 19 cases (14 in Durg, and 5 in Rajnandgaon). In fact, new arrest warrants are being issued almost every week.

Niyogi has played an important role in bringing about socio-political upliftment by introducing programmes of far-reaching impacts, such as, educational and health programmes, women's liberation front, anti-liquor campaign, Chhattishgarh Mukti Morcha etc.

Interestingly, Niyogi has been arrested at a time when the M.P. government is planning to withdraw even criminal cases pending against ministers, MLAs, and Bhartiya Yuva Janata leaders.

Democratic forces all over the country, we hope, will raise their voice against this kind of persecution. Mr. Niyogi must be released immediately unconditionally.

PHONE TAPPING

(Dr. Y. P. Chhibbar, Gen. Secy of PUCL, has filed a writ petition, on behalf of PUCL to the Supreme Court of India challenging the provisions of the Indian Telegraph Act which are being abused for tapping telephones. We give below a summary of the Petition. It may be mentioned, by way of providing background material, that the fortnightly magazine India Today published a special report in its February 28, 1991 issue on the still-secret report by CBI on telephone tapping, ordered by Mr. V. P. Singh after Mr. Chandra Sekhar alleged that his phone was bugged. The CBI report gives details of tapping ordered by Congress-I Governments. The India Today report states that . The fall-out from the latest eBI report. will embarrass not only Prime Minister Chandra Sekhar but also his allies, particularly the Congress-I. For the major revelation is that while Chandra Shekhar's allegation about his phone being bugged by V. P. Singh government was utterly baseless, there was, indeed, widespread covert-and even illegal-snooping being conducted, however during the period when the Congress-I government was in power at the Centre"-Editor)

In the present Writ Petition, the petitioner has highlighted as to how the power of phone tapping is being abused by the Government in total violation of the fundamental rights. namely. Article 14, 19 and 21 of the Constitution and the principles which sustain a democratic set-up. It is in brief submitted that the powers given in Indian Telegraph Act, 1885 (as amended by Act 38 of 1972) are unguided, uncanalised and therefore, amenable to gross abuse.

The petitioner states that the incident of phone tapping have time and again surfaced in recent times and have prominently appeared in the news papers and leading magazines; this Hon'ble Court can take judicial notice of all these facts. The petitioner is also relying upon a special report. which appeared in February 28, 1991 issue of "India Today". a fortnightly magazine, wherein, the "still secret report" of CBI all telephone tapping has been elaborately dealt with. The facts therein clearly show that the Government. either at the Centre or the State. have been mis using the power of interception of messages through phone tapping. The petitioner, being a Non-political Organisation does not wish to go into the detailed facts of the same. but being genuinely interested in establishing a rule of law and fundamental rights of an average citizen, is naturally interested in seeking remedy against these occurrences.

The concerned Act is the Indian Telegraph Act,

1885 (Act 13 of 1885). Part-I of the Act deals with the definitions of "telegraph" and "message", relevant in the present case.

It is Part-II of the Act, which mentions privileges and powers of the Government. Section 4 of the Act says that the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs,

It is Section 5, which is under challenge in the present Writ Petition. Section 5(1) gives power to the Central Government or State Government or any Officer specially authorised to take temporary possession of any telegraph established, maintained or worked on the occurrence of any public emergency or in the interest of public safety. Section 5(2) is important and the same is quoted below for ready reference: "5(2)- On the occurrence of any public emergency, or in the interest of public safety, the Central Government or a State Government or any Officer specially authorised in this behalf by the Central Govt. or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of

persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order; Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section".

That an analysis of the above quoted provisions show that the power can be exercised (i) on the occurrence of public emergency, or (ii) in the interest of public safety.

The Government/authorities, which have been empowered to act are: (i) Central Government; or (ii) A State Government; or (iii) Any Officer specially authorised in this behalf by the Central Government or the State Government.

Such Government/authority is empowered to pass an order of interception, when it is satisfied that: (i) It is necessary or expedient to do so in the interest of the sovereignty and integrity of India, security of the State, friendly relations with the Foreign States; (ii) Or Public order; (iii) Or for preventing incitement to the Commission by an offence;

It is further provided that in the above situations, the Authority/Government shall pass an order for reasons to be recorded in writing.

The provision is subject to abuse being an unguided provision for the following reasons: (i) The party in power in the Centre or State is thus empowered to abuse this power as there is no independent agency for controlling the purported exercises of this power. (ii) The officer, who has been authorised under the Act can function according to his own whim and caprice and as per the directions given by the party in power. There are no guidelines as to when and under what circumstances this power can and will be exercised. (iii) The

reasons records in writing are kept secret and, therefore, it is not possible for the person against whom this power has been exercised to know as to why such action has been taken against him. (iv) Secrecy of reasons for phone tapping is totally against the principles of democratic set up as it offends Article 19 and 21 of the Constitution. (v) There is no appellate forum provided for against the order of phone tapping by the Central/State Government/Officer authorised in this behalf and the restriction placed on individual rights are thus unauthorised and excessive. (vi) The power of abusing the provision in fact has been and is being misused. A reference to the enclosed report will show large scale tapping for which there is no authorisation even within the narrow provisions of Statute. It is noteworthy that no records are kept of the phones which are being tapped. Not only that phone is being tapped on the oral order or by Officer not authorised at all. These are the findings of the C.B.I. report. (vii) 'Right to know' is a fundamental right and its deprivation amounts to violation of Article 21 of the Constitution as there is no requirement for the person concerned to be told that his phone is being tapped, he is not in a position to take any action against the violation of his fundamental rights.

This Writ Petition raises the following, amongst others: (1) Because Section 5(2) and action of the Government exercising power under it of the Indian Telegraph Act, 1885 (as amended by Act 38 of 1972) is violative of Article 14, 19 and 21 of the Constitution. The procedure provided under Section 5(2) is unguided and uncanrlised and therefore, subject to arbitrary and malafide exercises of power. (2) Because the order of phone tapping against an individual is kept secret, which is violative of his fundamental rights, i.e. "Right to Know" under Article 21 of the Constitution. (3) Because by tapping the telephone, the Government or the authority intercepts the messages thereby interfering in the privacy of an individual, which is also violative of "Privacy" and "Right to communicate and keep its message secret" as provided under Indian Telegraph Act. (Continued on page 13)

Report From Chhattishgarli Mukti Morcha

State Terror On Peaceful Workers' Struggle

In its attempt to break a peaceful workers' movement, the police lathicharged a group of workers leaving 12 of them seriously injured. 10 of the 12 were women. On 22.2.91 when the workers of the Chattishgarh Distilleries were going to join the morning shift, they were refused entry by the management on the pretext that they had joined a Chattishgarh Mukti Morcha rally on the previous day (20.2.91) demanding release of their leader Com. Shankar Guha Niyogi. When the workers insisted to join their duties, police intervened and lathicharged them mercilessly.

It was on 4.2.91 that Sri Shankar Guha Niyogi was taken into custody in the Govt.'s attempt to crush a four month old workers movement in Bhilai. The workers of 104 industries in Bhitai are agitating under the leadership of Chattishgarh Mukti Morcha for departmentalisation of the contractual workers, minimum wages, bonus and other facilities. To crush the movement, the industrialists adopted various tactics. More than 700 workers were retrenched. 6 leaders have been stabbed. False cases were lodged against prominent Morcha leaders. More than 800 workers have been jailed for varying periods of time. The industrialist-administration nexus persuaded even the Asstt Registrar of Co-op. societies to supercede 3 workers' Co-op. in Dalli Rajhara because the workers of these societies are Morcha members and Dalli Rajhara workers are providing material help to the Bhilai workers.

According to the then district collector, Niyogi had been arrested for continuously attending the hearings of 13 old cases in the sub-divisional court of Balod. When bail orders were obtained in 7 of them and preparations were going on to move the High Court, 2 new cases sprang up in Rajnandgaon district court and 6 new cases in Balod.

The democratic forces view Niyogi's arrest as a step on the part of the industrialist-administration nexus to crush the Bhilai movement. In the last fortnight the

major towns of Chattishgarh have seen endless protest rallies, protest meetings, dharnas, hunger-strikes decrying Niyogi's arrest and demanding his unconditional release.

Chattishgarh Mukti Morcha urges all the democratic forces all over the country to stand by the struggling workers of Bhilai,

A DIARY OF THE MAJOR EVENTS (4.2.91 to 22.2.91),

- 4.2.91 - Niyogi's arrest.
- 5.2.91 - Niyogi produced at Balod Court.
- Industrial Strikes at Rajnandgaon B.N.C. Mills and Dalli Rajhara group of mines.
- Protest rally from Teresara to Rajnandgaon,
- 6.2.91 - Niyogi produced at Balod, bail obtained in one case.
- 7.2.91 - Hearings started for 2 old cases in Rajnandgaon district court.
- Durg Jail superintendent pleads for prolonged detention.
- 9.2.91 - 3000 strong women's rally at Dalli Rajhara. Demands unconditional release.
- 10.2.91 - Bail petitions turned down for 12 cases at Balod and 2 cases at Rajnandgaon.
- 5000 strong women's rally and 4000 strong men's rally at Bhilai,
- 11.2.91 - Massive pubt.c meeting at Dalli Rajhara.
- 13.2.91 - Protest rallies at Bhilai, Teresara, UrJa.
- 14.2.91 - Protest rallies at Dalli Rajhara.
- 15.2.91 - Women workers struck work at Dalli

(Continued on page 13)

ALL BRANCHES

Ms. Sehjo, National Assistant Secretary, has been put in charge of 'women's rights.

Her address is: D/3/3173, Vasant Kunj, Mehrauli, Palam Road, New Delhi-110030

Press council of India

ON AYODHYA REPORTS

(We publish below an abridged version of a Press Release on Jan. 31, '91, by the Press Council of India-Editor)

At its meeting held at Thiruvananthapuram (Kerala) on January 21-22, 1991, the Press Council of India has censured four Hindi dailies *Aaj*, *Dainik Jagran*, *Swatantra Chetna* and *Swatantra Bharat* for their gross irresponsibility and impropriety, offending the canons of journalistic ethics, in covering the events relating to the *Mandir-Masjid* issue on and around October 30, 1990. Simultaneously, the Council has expressed serious concern over the authorities taking recourse to punitive and preventive action in excess of the demands of the situation. It has deplored the actions of the authorities of Government of V.P. in invoking provisions of non-existent Press (Objectionable Matters) Act, 1951, and misapplying provisions of the Press and Registration of Books Act, 1867, in suppressing freedom of the Press. The Council has also reiterated and laid down certain guidelines to be followed by newspapers and governmental authorities in situations like this

There is little doubt that some influential section of the Hindi Press in V.P. and Bihar were guilty of gross irresponsibility and impropriety, offending the canons of journalistic ethics in promoting mass hysteria on the basis of rumours and speculation, through exaggeration and distortion, all of this proclaimed under screaming, banner headlines. They were guilty, in a few instances, of doctoring pictures (such as drawing prison bars on the photograph of an arrested Mahant), fabricating casualty figures (adding "1" before "115" to make "116" deaths), incitement of violence and spreading disaffection among members of the armed forces and police, engendering communal hatred. Some of the examples are: *AAJ* (Ranchi), October 26, 1990: Ayodhya mein Ram Mandir toda gaya (Ram Mandir demolished in Ayodhya). *Dainik Jagran* (Lucknow); Har gaon ko Ayodhya maan kar sangharsh karain (consider every village as Ayodhya and fight out). *Aaj* (Kanpur), November 11, 1990: Yadi Balidan naihinh huye to kahan gawe yeh 307 kar sevak? (If they

had not become martyrs, where have these 307 kar sevak gone?). *Swatantra Bharat* (Varanasi), November 2, 1990: Ayodhya mein kboon ki nadiyan baheen, 168 mare (Rivers of blood flow through Ayodhya, 168 dead). *Swatantra Chetna* (Gorakhpur), November 2, 1990: Ayodhya mein .kar sevakon par firing—115 mare, darjanon ghayal (Firing on' kar sevak in Ayodhya-115 dead, dozens injured) *Aaj* (Bareilly), November 4, 1990: Ram bhakton ne DIG ko peeta, magistraton ki bagavat, D.M. chsuti le bhage (Ram bhakts beat up the DIG, revolt of magistrates, D.M. goes on leave).

The same newspapers carried widely divergent versions from different publication centres and even different editions of the same paper ran widely varying accounts of the same event. An example of this is the 2nd November 1990, issues of *Aaj*, giving different figures of casualties from different centres of publication as below:

Varanasi 100 dead; Ranohi...400-500 dead and injured; Agra... 100 killed; Kanpur 100 killed; Bareilly. 500 killed.

The worst offenders were *Aaj*, *Dainik Jagran*, *Swatantra Chetna* and *Swatantra Bharat*. Fortunately other newspapers, kept by and large their balance. However, the damage had been done and the delicate task confronting the authorities was rendered ever so much more difficult by environment of surcharged emotion, fear and outrage created by the fabrications and exaggerations of a section of the Press

Even admitting this, the Government of V.P. failed to anticipate events and plan for contingencies that could scarcely have been unforeseen in view of known events, the presence of very large numbers of pilgrims and kar sewaks, past experience and current trends. This represents an unconscionable lapse in planning, preparation and press relations. Legitimate media

access to Ayodhya was needlessly converted into an obstacle race

Authoritative briefings were inadequate or absent especially at Ayodhya on the crucial dates, October 30 and November 2, 1990, particularly when access to the most sensitive areas was denied. This gave rise to rumours and allowed free play for the imagination which ran riot and gave credence to speculation and hearsay.

Subsequently, reacting to the admittedly inflammatory coverage in certain cases, the authorities took recourse to punitive and preventive action in excess of the demands of the situation and even outside the law. In certain cases, search and seizure of press material and premises were conducted without warrants and, in one instance, on a misreading of the law (Press and Registration of Books Act), or reliance on the repealed Press (Objectionable Matters) Act. Some editors/newspapermen were handcuffed, presses were stopped, and newspaper bundles seized. Hawkers were arrested or immobilised and advertisements stopped. Recognising that there had been excesses, a senior spokesman of the D.P. Administration expressed regret over the absence of proper warrants, the stoppage of advertisements and handcuffing. But by then, much harm had been done.

Whatever the default on the part of the Administration, however, nothing extenuates the conduct of that section of the press which threw all discretion and journalistic standards and norms to the winds through competitive sensationalism.

It is to be strangely deplored that some errant newspapers showed scarce understanding or regard for the higher values underlying the concept of freedom of the Press and misused this freedom for partisan ends at grievous cost to public order, tranquillity and social harmony without thought to the consequences of their actions.

Recommendations:

- 1) The State Governments should take upon

themselves the responsibility of keeping a close watch on the communal writings that might spark off tension, destruction and death, and bring them to the notice of the Council. 2) The Government may have occasion to take action against erring papers or editors. But it must do so within the bounds of law. If newsmen are arrested or search and seizure operations become necessary, it would be a healthy convention if such developments could be reported to the Press Council within 24 to 48 hours followed by a detailed note within a week. 3) Under no circumstances must the authorities resort to vindictive measures like cut in advertisements, cancellation of accreditation, cut in newsprint quota and other facilities. 4) Provocative and sensational headlines should be avoided. 5) Headings must reflect and justify the matter printed under them. 6) Figures of casualties given in headlines should preferably be on the lower side in case of doubt about their exactness and where the numbers reported by various sources differ widely. 7) Headings containing allegations made in statements should either identify the person/body making the allegation or, at least, should carry quotation marks. 8) News reports should be devoid of comments and value judgments. 9) Presentation of news should not be motivated or guided by partisan feelings nor should it appear to be so. 10) Language employed in writing the news should be temperate and such as may foster feelings of amity among communities and groups. II) Corrections should be promptly published with due prominence and regrets expressed in serious cases. 12) It will help a great deal if in-service training is given to journalists for inculcation of all these principles.

As far as the Government is concerned, it must also heed these lessons and re-evaluate its own procedures and responses and lay down adequate codes and drills for action in troubled situations. The Press is not to be seen as an adversary on such occasions; nor is publicity from open and honest coverage to be regarded as unnecessary or a nuisance to be tolerated at best or even prevented. There is no reason to hide the truth and to seem to be doling out propaganda. 0

FREEDOM OF INFORMATION AND EXPRESSION IN INDIA

(We publish below excerpts of a report from London-based ARTICLE 19, of October 1990. - Editor)

In December 1987, there were more than 24,000 newspapers and magazines, including more than 2,000 daily papers, in 92 languages. Readership of daily papers has remained at around 0.2 per cent of the population, or about 17 million; in 1985 total circulation of all papers and magazines was 64 million. While most of the papers and magazines are under individual ownership, most of the largest papers are published by publication groups, four of which are particularly influential: the Times of India Group, the Indian Express Group, the Hindustan Times Group, and the Ananda Bazar Patrika Group.

The growth of a thriving press has been inhibited by barriers caused by religious, social, and linguistic differences. Consequently, the English-language press, with its primarily educated, middle-class, and urban readership, has retained the widest circulation. The Indian language dailies appeal to the increasingly literate provincial population and, in addition, a few have attracted substantial readership in Delhi and Bombay. The Hindi *Navbharat Times*, with a circulation in 1989 of over 250,000, and the Bengali *Ananda Bazar Patrika* rival the distribution of the largest English language papers.

The government of Rajiv Gandhi took various measures to curtail freedom of the press, most of which were rebuffed. In July 1988, Gandhi's administration, injured by revelations of the Bofors affair and other corruption, introduced a defamation bill which sought to create new offences of "criminal imputation" and "scurrilous writings". A highly successful nationwide strike by the newspaper industry and increasingly strident popular protests forced Gandhi to withdraw the bill. The government was also forced to withdraw a bill, proposed in 1988, that would have given the central

government authority to collect extensive technical and financial information from newspaper and book publishers. The Gandhi government exerted considerable pressure during 1988 and 1989 on newspapers critical of the ruling party and its leaders.

For several years, the government has tightly controlled the production, importation, and distribution of newsprint. In June 1989 the government raised the prices of both domestic and imported newsprint so sharply that the survival of many newspapers was threatened. Various observers accused the State Trading Corporation of India, which has a monopoly over newsprint imports, of profiteering in an essential commodity. The government has consistently rejected demands by newspapers for permission to import newsprint directly.

P.L. Lakhanpal, a Stockholm-based journalist and writer of Indian birth, was denied a visa to visit India in January 1989. The denial was widely viewed as retaliation for his reporting from Sweden on the Bofors arms scandal. For many years foreign journalists have been included in the restrictions on the entry of non-Indians into the seven north-eastern states. These restrictions range from the requirement that visitors obtain a special permit to visit wildlife parks in Assam to outright bans in Manipur, Nagaland, Tripura, and Arunachal Pradesh. In July 1990 a proposal was made by the seven state governments to lift the bans, but as of October no action has been taken by the central authorities.

Near the beginning of its period in office, the government of V.P. Singh announced its commitment to promoting freedom of information and appointed a Cabinet committee, consisting of the Foreign Minister, the Minister of Information and Broadcasting, the Minister of Surface Transport, and the Vice-Chairman

of the Planning Commission, to study means by which to accomplish this goal. To the great disappointment of advocates of information freedom, the committee was dissolved on August 27 1990 without issuing a report or making any recommendations. The National Front government has continued the practices of prior Governments concerning control of newsprint. However, because there has been an adequate supply of newsprint for the past year, albeit at prices that press advocates consider excessive, the government's newsprint policy has not led to significant criticism. Indian customs officials in New Delhi impounded 10,000 copies of the February 5 1990 issue of *Newsweek* magazine. The issue included a map showing northern Kashmir as part of Pakistan. On April 9 1990, the National Front government promised to amend the Official Secrets Act to facilitate greater access to information held by the government. At the beginning of September the Minister of Information, P. Upendra, repeated the pledge, but no action has been initiated towards this end.

Also on April 9, the National Front government announced that it intended to amend the law to prohibit phone tapping for political purposes. A Central Bureau of Investigation report on the subject has been submitted to the government, but as of September the government had not introduced a bill in Parliament. However, the government did withdraw a proposed amendment to the Indian Post Office Act which would have given wide powers to both central and state governments to "intercept, detain or dispose" of postal articles.

Despite its reported interference with AIR and Doordarsan on various occasions, the new government has initiated steps to grant them a measure of autonomy. The Prasar Bharati (Broadcasting Corporation of India) Bill, passed by the Lok Sabha in September 1990 (but currently facing substantial opposition in the upper house), would establish an autonomous corporation to run radio and TV on the British Broadcasting Corporation model. The corporation, which would not begin operation before mid-1991, would be accountable to Parliament and directed by an independent

board of governors drawn from media professionals whose appointments would be insulated from government interference. A Broadcasting Council would be established to examine complaints against the corporation and of unfairness or bias in programmes.

Literary and Artistic Expression

In September 1988, *India Today* and *Sunday* published interviews with Salman Rushdie, the Indian-born British author, about his forthcoming novel *The Satanic Verses*. Khurshid Alam Khan and Syed Shahabuddin, Muslim Members of Parliament, began a vigorous campaign to ban the book. Aslam Bjaz of the Islamic Foundation in Madras wrote to Faiyazuddin Ahmad, of the Foundation's UK office, suggesting that he launch a similar campaign in Britain. On October 5 1988, the Indian Finance Ministry announced the banning of the book under Section 11 of the Indian Customs Act, adding that the ban "did not detract from the literary and artistic merit of Rushdie's work". Several leading Indian newspapers and magazines deplored the ban. *The Hindu's* editorial called it "a philistine decision" and *The Indian Express* called it "thought control". *The Economic and Political Weekly* of October 22 stated that the ban was a political decision and accused Gandhi of capitulating because of the impending elections. Other critics of the ban pointed out that only a small portion of the English-speaking public in India would read the book even if it were available. Early in 1989 there were several demonstrations against Salman Rushdie and his novel. On February 13, one person was killed and over 100 were injured during a riot in Kashmir. On February 14, Iran's late Ayatollah Khomeini issued a *fatwa*, declaring a death sentence against Rushdie, and the following day a senior Iranian cleric placed a bounty of US\$3 million on his head. On February 24, western India experienced its largest riot in several years when young Muslims in Bombay rioted against the book, destroying considerable property. The police restored order at a cost of at least 12 lives and scores of injuries.

In April 1989, Hindu militants threatened to kit-

M. M. Kalburgi, an Indian historian, for writing a Kannada-language book they claim blasphemes a 12th century saint. Kalburgi was given 24-hour protection by police in Dharwar in the southern state of Karnataka. A group of 43 Kannada writers and academics formed a committee in support of the book. Also in April 1989, customs authorities blacked out passages critical of Indira Gandhi's regime in 500 imported copies of the *Oxford Illustrated Encyclopaedia: World History from 1800 to the Present Day*.

Films: On October 27 1989, the government refused to permit broadcasting on national TV of a film about the tragedy that resulted from the explosion at the Union Carbide plant in Bhopal. The refusal was particularly disappointing in light of the fact that the film had previously won a national award for excellence. The film's backers challenged the refusal in the Delhi High Court. No decision had been reached as of July 1990.

Violations of Freedom of Expression by State and Local Authorities

In recent years, there has been a marked increase in the number of attacks on journalists by police and unidentified gunmen, often operating at the behest or with the approval of state or local officials or politicians. In addition, many state and local governments have seriously chilled legitimate exercise of freedom of expression by **detaining** large numbers of people on scant suspicion of **co-operation** with militants; mistreating, torturing and, on occasion, killing people held in detention or confronted during "encounters"; using excessive force in disbursing peaceful demonstrations; and other unlawful methods of harassment and intimidation.

Journalists concerned about the mounting attacks on members of the profession drew little comfort from the assurances in 1988 of India's Deputy Minister of Information that letters had been sent to state chief ministers asking them to give protection to journalists. Only one month later, in the wake of an incident in

which reporters and photographers were beaten by police outside the state government building in Bombay, the Maharashtra Chief Minister, Sharad Pawar, denied having received any letter on the subject.

The Report gives an account of violations of freedom of expression in Andhra Pradesh, Jammu and Kashmir, the Northeast States, the Punjab, Bihar, Delhi, Himachal Pradesh, Madhya Pradesh, Maharashtra, Orissa, Tamilnadu, D.P., and West Bengal.

Over the years government authorities have prosecuted writers and musicians and banned literature. Vittal (also called Gaddar), a writer of popular political songs, went into hiding after he was charged as part of the Ramnagar conspiracy case. A collection of poems by Vara Vara Rao was proscribed in 1987. His challenge to the banning order is pending in the state High Court.

During the TOP government, many university professors were suspended, reportedly for merely asserting their democratic right to protest. Students Union elections were cancelled at two universities and all students agitations have been suppressed by the police. At Sri Venkateswaran University, students demonstrating for higher scholarships were brutally attacked by police wielding lathis (wooden canes) and arrested under TADA. Mr. A. Subramanyam, a lecturer in law at Nagarjuna University and a Joint Secretary of APCLC, was suspended from his job allegedly for representing striking trade unionists. Other professors who have protested allegedly also have been harassed.

Experts predict that India is on the brink of an AIDS crisis of staggering proportions. The chief doctor at the government's only AIDS surveillance centre in Bombay estimates that of the approximately 100,000 prostitutes in Bombay as many as 40 per cent of them may be infected with the AIDS virus. Tests in 1989 of some 1,000 prostitutes showed that the infection rate had risen from under six per cent to 20 per cent in one year. Few of the prostitutes who visit the centre use condoms, and the centre cannot afford to provide them free of cost. The overwhelming number of

prostitutes, even those who have tested positive, continue to engage in unsafe sex. The government maintains that of nearly half a million people tested between 1985 and March 1990, only slightly more than 2,000 tested positive for the HIV virus. Medical experts insist that the government's figures bear little relation to reality. The government's failure to provide adequate testing facilities has permitted widespread contamination of hospital blood, especially outside of Bombay and Delhi. There are tens of thousands of "professional" blood donors in India who give blood on average once a month, accounting for a total of 1.5 million units of blood a year. Although a screening programme begun in 1987 identified hundreds of donors who tested positive, the lack of a co-ordinated system allows most infected donors to continue to donate. Because every blood unit is tested in Bombay, professional donors simply travel 20 miles or so to donate elsewhere. Although government officials tend to view AIDS as a problem of drug users, prostitutes, and the poor, doctors trying to mobilize government action note that blood samples from the so-called five-star hospitals regularly test positive. An initiative by the government of Tamil Nadu in June 1990 to bring home over 800 women and children from Bombay brothels was met with consternation when it was discovered that approximately two-thirds of the returnees were infected with the AIDS virus. Instead of returning the women and children to their homes as originally planned, the Tamil Nadu government confined them to special homes for six weeks, promising to release them after receiving "the required treatment." They were finally released pursuant to the court order.

SOURCES

Court Decisions

S. Rangarajan v. P. Jagjivan Ram & Ors., 30 March 1989, *Judgements Today* 1989(2) S.C. 70 1989.

Ramesh v. Union of India, *Judgements Today* 1988 (1) SC 361 1988 (1) SCC 668.

Sheela Barse v. State of Maharashtra 1988 1 Bom. C.R.58.

S P. Gupta v. Union of India ATR 1982 SC 149.

Hamdard Dawakhana v. Union of India AIR 1960 SC 554.

Books

Desai, Shobha and Colin Gonsalves, *Freedom of the Press*, published by A.R. Desai for e.G. Shah Memorial Trust (Bombay, December 1989).

Europa Publications Ltd., *The Europa Year Book 1989: A World Survey*, pp. 1286-1299.

Hingorani, R.C., *Human Right in India*, published by Oxford & IBH Publishing Co. (New Delhi.. Bombay & Calcutta, 1987).

United Nation Reports

Human Rights Committee, *Second Periodic Report of States Parties Due in* 1985, CCPR/C/37/Add. 13, October 5 1990.

Governmental Reports

United States Department of State, *Country Reports on Human Rights Practices for* 1989 (February 1990), pp. 1381-83, 1386-87.

Reports of Non-Governmental Organizations

Amnesty International (London), *India: Operation Bluebird, A Case Study of Torure and Extrajudicial Executions in Manipur*, October 10 1990.

Amnesty International (London), *Weekly Update*. October 4 1990.

Andhra Pradesh Civil Liberties Committee, *State of Civil Liberties in Andhra Pradesh*, January, 1990.

Bombay Union of Journalists, Report of January 3 1989.

Committee for Initiative on Kashmir, *India's "Kashmir War"* (New Delhi, March 1990) ; *Report on Kashmir* (New Delhi, April 1990) ; *Kashmir Imprisoned* (New Delhi, July 1990).

Committee for the Protection of Journalists (New York), Update No. 39 (August 1990), pp. 10-11.

Index on Censorship, volume 18, no. 8.

India Information Centre., *State Terrorism in Punjab: An Investigative Report*, January 1989.

Kashmir Council for Human Rights, *Kashmir: An Unresolved International Dispute*, 1990.

People's Union for Civil Liberties. *PUeL Bulletin*, September 1989, March 1990.

Newspaper and Journal Articles

Asian Times (London), several issues from April to September 1990.

Daily Telegraph (London), May 11 1990, May 22 1990.

Far Eastern Economic Review (London), pp. 12-13, May 31 1990.

Financial Times (London), April 18 1990, May 15 1990, May 31 1990, September 27 1990, September 29 1990.

The Hindu (Madras), June 7 1990.

Hindustan Times, April 19 1990.

Independent (London), May 2 1990, May 23 1990, June 6 1990, June 8 1990.

India Mail (London), several issues from April to July 1990.

Indian Express (Delhi), numerous issue from 1990.

India Today, September 15 1990, September 30, 1990.

international Herald Tribune, May 22 1990.

Media Watch, August 18 1990.

New Life, September 7, 1990.

New York Time, October, 1990

Statesman (Delhi), March 28 1990.

Statesman Weekly (Calcutta)

Sunday Statesman, numerous issues from 1990,

Time, August 13 1990.

Times of India, January 5 1990, July 9 1990, July 11 1990.

(Continued from page 5)

Act and, therefore, violative of Article 19, 21 as well as to the provisions of Indian Telegraph Act, (4) Because Section 5(2) does not have adequate machinery for exercise of the power which can safeguard the fundamental rights of an individual. This provision in fact militate against other provisions of the Act; in view of the lack of adequate and sufficient machinery is ultra vires the Act. (5) Section 7(b) speaks about framing of rules regarding "the precautions to be taken for preventing the improper interception or disclosure of messages". But the petitioner understands that no rules have been framed in this regard.

The petitioner, therefore, prays on the facts and circumstances of the case, this Hon'ble Court may be pleased to issue a writ of mandamus certiorari or writ or direction of the like nature: (i) Striking down the Section 5(2) of the Indian Telegraph Act, 1885 as ultra vires and unconstitutional: (ii) Pass such other order(s) as this Hon'ble Court may deem fit in the circumstances of the case.

Settled By : Drawn & Filled by :
MR. RAJINDER SACHAR (SANJAY PARIKH)

Senior Advocate

Advocate for the Petitioner

[Continued from page 6]

Rajhara, 3500 peasants rally at Kusumkassa, demanding Niyogi's release and fulfilment of Bhilai workers' demands. Torch rallies from all workers bastis of Dalli.

16.291 - Total Rajhara Bandh. Work stoppage at manual mines and Dalli Mechanised mines. 800 peasants presented memorandum to block office at Dondi.

Protest rallies at Rajnandgaon, Terasara, Bhilai and Urla.

18.291 - Bail petitions filed at Durg for 12 cases. Bail granted for 8, turned down in 5.

Protest rally at Pithora in Raipur district.

20,2,91- Relay hunger strike of 100 women in front of Durg District Collectrate.

6000 workers demonstrate in front of Tehshil office of Dalli Rajhara,

Dharnas at Lohara block office and Baled sub-divisional office.

21.291 - Relay hunger strike and dharnas continue. Police lathicharge in front of Chattishgarh Distilleries, 12 injured.

22.291 - Industrial strike at Dalli Rajhara in protest of the yesterday's lathicharge.

222.91

HIRAMAN SINGH THAKUR

Vice-President

PUBL BULLETIN

DETENTION WITHOUT FAIR TRIAL

Rajindar Sachar

(Paper read at World Congress on Human Rights held at New Delhi-December 10-15, 1990)

[Continued from last issue]

The Indian High Court have jurisdiction to issue writ of Habeas Corpus and the same obviously cannot be controlled by the Constitution of Advisory Board. The function of the Board is purely advisory and its approval does not make the detention valid if it is *ultra vires* the relevant Act or the Constitution. Hence, Habeas Corpus would still lie against the initial order of detention notwithstanding report of the Advisory Board confirming it for instance, on the ground that law is *ultra vires* or that the order is *malafide*. The courts and advisory boards function in different areas.

In this context, a relevant question arises as to whether the jurisdiction to issue a writ of Habeas Corpus can be taken away by the legislature. The power to issue writ by the State High Courts finds mention in Chapter V of Part 6 of the Constitution. Though power to amend given in the Constitution covers Chapter V, this power could not be invoked to take away the powers of judicial review which includes writs of Habeas Corpus. In *Minerva Mills* Case, extending the doctrine of *Keshwanand Bharti*, where Indian Supreme Court had laid down that the power of amendment cannot be exercised if it results in destroying the basic structure of the Constitution, the court has also held that the power of judicial review is a part of the basic structure of the Constitution. The result, therefore, is that no amendment of the Constitution could take place in India which would have the result of taking away from the High Court their power to issue a writ of Habeas Corpus. However, it may be mentioned that earlier (1976) in *ADM Jabolpur* Case the Indian Supreme Court took the view that if President had declared a state of emergency in the country and also suspended the right to move the court for enforce-

ment of any right conferred by Article (21) (the right to life) then the power of the High Court to issue writ of Habeas Corpus cannot be exercised. The court in that case held the view that the right to move any court for enforcement of the fundamental right guaranteed by Article 21 may be suspended by specifying it in the Presidential Order. When that is done, no one can move any court, and any court would mean any court of competent jurisdiction, including the High Courts and the Supreme Court, for enforcement of the right conferred by Article 21. The words "the right to move any court for the enforcement" are wide enough "to include all claims made by citizens in any court of competent jurisdiction when it is shown that the said claims cannot be effectively adjudicated upon without examining the question as to whether the citizen is, in substance, seeking to enforce any of the "specified fundamental rights." Therefore, there can be no doubt that in view of the Presidential Order which mentions Article 21, the detainees would have no *locus standi* to maintain their writ petitions, if it could be shown that the writ petitions were for enforcement of the right conferred by Article 21. So the Presidential Order dated June 27, 1975, bars maintainability of a writ petition for Habeas Corpus where an Order of detention is challenged on the ground that it is *malafide* or not under the Act or not in compliance with it.

This was one of the very unfortunate decisions which led to a great political and constitutional debate in our country. This judgement refuse to accept the permits that certain human rights are non-derogable as mentioned in International Covenant on Civil and Political Rights 1966 which though by Article 14 permits derogation of certain provisions of the Covenants in the time of public emergency, yet at the same time emphasises by Para 2 that no derogation amongst others

from Article 6 shall be made even during the time of emergency. Article 6 provides that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Article 6 of the International Covenant corresponds broadly to Article 21 of the Indian Constitution which provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. International Covenant had not been ratified by India when *ADM Jabalpur* decision was given. That may have been one of the reasons for unfortunate majority section holding that Article 21 can also be abrogated during the declaration of public emergency. It may be mentioned that the Indian Supreme Court had in that case relied upon the decision of *Liveride Vv. Anderson* which a later decision of the house of Lords and which is now consigned to the dust bin of history. The position at present of course is very different. The International covenants were ratified by India in 1978. Further, the Constitution was also amended by 44th Amendment Act 1978 where recognising the power of the President during the proclamation of emergency to declare that the right to move any court for the enforcement of such of the rights conferred by Part-III as may be mentioned in the order an exception was engrafted, namely that such a declaration shall not cover Article 20 and 21 of the Constitution. Thus the result is that Article 21 which guarantees the right to life has been made a non-derogable right like Article 6 of the International Covenant. At present, therefore, it is possible to say that the right to life is recognised in India as one of those rights which cannot be derogated from even during the period of declaration of public emergency.

The scope of Article 21 has also been very broadly interpreted by the later decision of Indian Supreme Court. It has been held that the fiat of Article 21 is that any procedure which deprives a person of his life or liberty must be just, fair and reasonable. A just, fair and reasonable procedure implies right to a speedy trial, free legal services where the accused cannot avail them and human conditions of detention, preventive or

punitive. As part of the right to live with human dignity and, therefore, as a necessary component of the right to life, a prisoner would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Article 14 and 21 unless it is reasonable, fair and just. The same consequence would follow even if this problem is considered from the point of view of the right to personal liberty enshrined in Article 21. 'Personal Liberty' would include the right to socialise with members of the family and friends subject, of course, to any valid prison regulations

The right of a detainee to consult a legal adviser of his choice for any purpose not necessarily limited to defence in a criminal proceeding but also for securing release from preventive detention or filing a writ petition or prosecuting any claim or proceeding, civil or criminal, is also included in the right to live with human dignity and is part of personal liberty and prison regulation may, therefore, regulate the right of a detainee to have interview with a legal adviser in a manner which is reasonable, fair and just, but it cannot prescribe an arbitrary or unreasonable procedure for regulating such and interview and if it does so, it would be violative of Article 14 and 21. The concept of right to life and personal liberty enshrined in Article 21 would, therefore, protect not only the right to provision of a remedy but also to be treated with human dignity of those who are put under preventive detention.

The position is unsatisfactory with regard to compensation in case of unlawful detention. There is no specific law as such in India. Some time in gross cases, the courts may as an *ad hoc* measure grant compensation, but that is very rare. The law, in this regard, is the outmoded one of filing of suit for damages against the State which in the prevailing position of law are difficult to succeed. This aspect certainly requires the attention of Human Rights activists. (Concluded)

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Amnesty International

TORTURE IN MYANMAR

PUCL, Amnesty International, and many other human rights organisations are concerned about political prisoners being detained and tortured, many being sentenced to death after summary and unfair trials.

Recommended action: A letter on the following lines be addressed to Government of Myanmar and sent to the Ambassador of Myanmar at New Delhi.

All PUCL, branches are requested to get the letter signed by as many as possible and to send it to the Ambassadaor.- Y. P. Chhibber, General Secretary PUeL.

PETITION

General Saw Maung
Chairman,
State Law and Order
Restoration Council,
C/o Ministry of Defence,
Signal Pagoda Road,
Yangon,
Union of Myanmar

The Ambassador,
Embassy of Myanmar,
3/50 F Nyaya Marg,
Chankyapuri,
New Delhi-110 021

We urge the authorities in Myanmar at all levels to start impartial and thorough investigations into all reports of torture and extrajudicial executions, to make the findings public and to bring those responsible to justice. Prisoners of conscience, detained solely for the non-violent expression of their opinions, should either be released or brought promptly to a fair trial. All death sentences should be commuted, and legal steps should be taken to restrict the use of the death penalty, with the aim of abolishing it completely.

We, the undersigned, call on the authorities in Myanmar to immediately take all measures to ensure that arbitrary arrests, detention without trial, torture, the death penalty and extrajudicial executions will no longer be inflicted upon the people of Myanmar.

We call on the authorities in Myanmar to ensure the right to peaceful assembly and freedom of expression to everyone, as proclaimed in the United Nations Universal Declaration of Human Rights.

We make this call to express our deep concern at reports that:

Name	Address	Occupation	Signatures'
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- more than 300 political prisoners, many of them prisoners of conscience, have been identified by Amnesty International.
 - torture is widespread, and anyone suspected of criticizing the government is at risk
 - hundreds, possibly thousands of political prisoners have been detained for prolonged periods, some since September 1988
- many have been sentenced to death after summary and unfair trials by military tribunals; some are prisoners of conscience
- thousands of people have been killed in pro-democracy demonstrations, in the context of internal strife in areas with ethnic minorities, or for alleged political opposition to the government.

PUCI AWARD

The Eleventh J. P. Memorial Lecture and the Tenth PUCL Journalism For Human Rights Award function was held this year on March 23 at Chandigarh. The J.P. Memorial Lecture was delivered by Shri K.G Kannabiran and the function was presided over by Shri Kuldip Nayar. This year's Award has gone to SHRI RAJD MATHEW of *Deepika*, the oldest MaJayalam daily published from Kottayam in Karala. The prize consists of Rs. 20,000/-, a Plaque, and a Citation.

CONCEPT OF COPYRIGHT UNDER THREAT

[Verma & Khanna Vs Prannoy Roy]- by A Correspondent

Recently a controversy over the authorship rights of a computer software programme has attracted a great deal of attention in the media. Although it is not a subject that comes strictly under the purview of civil liberties, it does involve the violation of the statutory rights of authors which are guaranteed by the Copyright Act of 1957. The controversy is centered around a software programme, entitled "My Word", by which a computer can reproduce a person's handwriting. Much of the media attention is due to the fact that the controversy involves television personality Prannoy Roy. The aggrieved party is a duo of computer scientists, Vimalendu Verma and Karan Khanna, who developed the software while working with Roy's software company. They now find that, in publicity campaigns launching the software, their work is being credited either to Roy himself or to other engineers who are still employed by his company. It is this violation of their authorship rights that the two authors are objecting to. And their battle with Roy rages on.

This controversy raises serious questions about authorship rights. Section 57 of the Indian Copyright Act, 1957, clearly bestows upon the author certain special rights. This section grants the author "the right to claim authorship of the work as well as the right to restrain or claim damages in respect of any distortion, mutilation or other modification of the work which could be prejudicial to his honour or reputation". All these rights are held "independently of the author's copyright", if it is owned by him, but hold even after its assignment, either wholly or partially by the author. In other words, these special rights enjoyed by the author are inalienable and salutary in nature, a fact unfortunately not widely publicised and therefore not known to most authors.

With regard to the violation of authorship rights, there is only one precedent in India, the

Manu Bhandari versus Kala Vikas Picture Ltd. case. This case established that while the copyright confers economic rights upon its owner, the author has moral rights which remain even after he has assigned away the copyright. This implies therefore, that the assignment of copyright cannot be equated with the sale of goods. Justice Wad of the Delhi High Court held that Section 57 "lifts the author's status beyond the material gains of copyright and gives it a special status". Accordingly, the section "clearly overrides the terms of the contract of assignment" which has always to be read "so as to be consistent with section 57". He further asserted that any modification which makes the work look different from the original is forbidden by the section, whose sole purpose is to provide "inviolability to an intellectual work". With this decision, Section 57 stands interpreted as an authentic protector of the author's moral stature.

In India, software is categorised as literary work. Therefore, the *Manu Bhandari* case would serve as a precedent to the present controversy. From the facts of the case, it appears that the authors Verma and Khanna stand on firm ground.

First, the copyright for the software, "My Word", clearly states Verma and Khanna as the authors and as the sole authors. If there had been others involved, as is claimed by Roy, their names should have been included as authors at the time the copyright was filed for by the company. The copyright was granted in June 1989. Why have Roy and the other authors never objected so far and not taken any action to "rectify" the "mistake" for almost two years?

Hypothetically, if one grants that there had been others involved in the development of "My Word", and that their contribution was as significant as that of

Verma and Khanna, surely the contribution made by the two cannot be overlooked. The very fact that their names appear as authors on the copyright ensures them due credit for their work. By omitting their names, Roy has definitely violated their right to claim authorship of their work.

Roy claims that "My Word" is a different product from "Myscript" the name by which the software is now being marketed. He adds that Verma and Khanna have made insignificant contributions towards "Myscript". The authors deny this claim outright; They insist that both names refer to the same product and that "Myscript" is merely "My Word" with a few added features. This being correct, their rights have been further violated. Section 57 of the Copyright Act states that the author's work cannot be "distorted, mutilated or modified" without their consent. Here, the authors have the added weightage of Justice Wad's view in the *Manu Bhandari* case, in which the judge held that modification

that makes the work look "quite different from the original" is forbidden by the section. Thus, by claiming to have derived another product based on "My Word", Roy has, in effect, admitted to modifying their work, which has been done without their consent, and of therefore violating their special rights as authors.

Verma and Khanna seek to substantiate their claim to authorship largely on the basis of the copyright. Copyright is a statutory right and owes its existence to the Copyright Act, 1957. Their copyright has been granted by the Registrar of Copyrights, whose office functions under the superintendence and direction of the Government of India. It therefore carries the requisite official sanction and is an integral part of the administration. Rights granted by the copyright must not be allowed to come under question or be trifled with. If this is permitted, the entire concept of copyright, or the protection of intellectual work, will be seriously threatened. []

AI-Feb. 9/

Summary of a Document. SRI LANKA

The document summarizes Amnesty International's concerns about continuing human rights violations in Sri Lanka during 1990. It describes reports of thousands of "disappearances" and extrajudicial executions by government forces in the northeast. An unknown number of others were detained in the area. The Liberation Tigers of Tamil Eelam (LTTE) were reported to have killed hundreds of civilians and prisoners, including policemen who had surrendered. In the south, "disappearances" and extrajudicial executions continued to be committed by government forces and 'death squads' linked to them, but on a lesser scale than in 1989. At the end of the year, about 9,000 political prisoners remained in detention without trial for alleged connections with an armed Sinhalese opposition group. The government took no steps to clarify the fate of the many thousands of people who had "disappeared" in the south since 1987, nor of over 680 people who "disappeared" in the northeast in previous years. 0

NEWS

Punjab:

PUNJAB BRANCH SET-UP

The Punjab State branch of the PUCL was established on March 24 at Chandigarh, at a meeting attended by the national president of the PUCL (Justice) Rajinder Sachar, Vice-President Shri K.G. Kannabiran, and General Secretary Dr. Y.P. Chhibbar,

The meeting elected Shri Mahindarjit Singh Sethi as the President and Shri Ved Prakash Gupta as the General Secretary. Some members of the State Council were also elected. The President and the General Secretary were authorised to take further steps to complete the formation of the branch keeping in view a wider representation.

At the beginning of the meeting Dr. Chhibbar explained to the members various clauses of the constitution pertaining to the working of the PUCL as a purely civil liberty organisation, keeping away from party and power politics..

Resolutions:

The meeting also adopted two resolutions condemning the brutal killing of bus passengers near Chandigarh and demanding elections in Punjab. 0

Amnesty International News: INDIA

Fears have been expressed about the whereabouts and safety of Atamjit Singh, a 19-year-old student at Arya College Ludhiana, and Mohan Singh, a 22-year-old student from Doraha village of the same college. The two men were reportedly arrested on 5 February 1991 from Bhai Bala Chowk - a roundabout in Ludhiana - and seen to be taken away by a Deputy Superintendent of Police and a Police Inspector. The police officials were reportedly of the Central Investigation Agency (CIA) staff Ludhiana. A school teacher, a businessman, and a shopkeeper witnessed the incident which occurred some 150 yards away from the CIA headquarters, Ludhiana.

According to reports from eye-witnesses the two men - who were apparently on their way to an exam - were pushed into a matador van, registration No. D.L. 3C 3066, travelling with a police jeep without number plates. The van was a private car, which was reportedly forcibly taken from its owner on 1 February and was alleged to be in possession of the police since then until its return to its owner by the police on 7 February.

So far the police have denied knowledge of arrests and on 12 February 1991 the Chief of Police, Ludhiana, Mr. Sharma, made a statement that neither of the two men was in police custody. A delegation of members of Ludhiana University met the Governor, General O.P. Malhotra, on 11 February. He promised to investigate the two men's whereabouts.

Atarnjit Singh is the son of Dr. Gurbachan Singh Mavi (a lecturer at Punjab Agricultural University and Vice-Chairman of the Ludhiana branch of the Punjab Human Rights organisation). The reported arrests came in the wake of a bomb attack on 2 February in Ludhiana on the Director General of Police, Mr. D.S. Mangat, who escaped without injuries. Two senior policemen accompanying him were seriously injured. Following the attack, scores of young men were arrested on suspicion of involvement in the bomb attack.

CHINA

Two more people held for their activities during the 1989 pro-democracy movement. Chen Yanlin and Zhang Yafei, went on trial in Beijing on 5 February, according to an official notice announcing their trial outside the Beijing Intermediate People's Court.

Chen Yanlin and Zhang Yafei face two charges: carrying out "Counter revolutionary propaganda and agitation" and "organising and leading a counter-revolutionary group", the notice said. No further details were given about them. According to China's criminal law, the latter charge carries sentences ranging from five years' to life imprisonment.

These two cases bring to 21 the number of people tried since December 1990 for their activities during the

1989 pro-democracy movement. Official sources have so far announced the verdicts against 17 of those tried, 12 of whom were sentenced to prison terms. Sentences have been handed down between one and ten days after the beginning of the trials.

PAKISTAN

Rahila Tiwana was reportedly arrested on 15 December 1990. She is a member of the People's Student Federation (Girls Wing) (PSF), which is affiliated to the Pakistan People's Party (PPP). She was held at the Criminal Investigation Agency (CIA) Centre in Karachi, together with her brother and a friend, where she says she was tortured. In an interview published in *The News*, a Pakistani newspaper, on 11 February 1991, she said: "At the CIA Centre Policemen tortured me and caused injuries to my hands and feet. Now I am unable to walk properly or carry any weight". They strung me up by my hands at 11 pm and left me there for the next five hours till four in the morning." She said she was starved for three days, and that police threatened to torture her brother also if she did not give the statement they wanted. The police then allegedly lowered her to the floor after she fell unconscious.

Rahila Tiwana says that despite the alleged threats and torture, she refused to give the police a statement implicating former Prime Minister Benazir Bhutto, her husband Asif Ali Zardari and former minister in the Sind government Manzoor Hussain Wassan in a murder case. Nevertheless, she continued, "The CIA personnel forcibly got my signatures on three blank papers, after abusing me badly and telling me that if I didn't sign the papers they would sealire them after drugging me, so I had no option."

BHAGALPUR INQUIRY BACK TO LIMBO

The People's Union for Democratic Rights has lamented that the judicial inquiry commission on Bhagalpur riots is "back to limbo" because of lack of financial resources and other infrastructural support from the government.

The inquiry was announced by the Bihar government after the October 1989 communal riots in December. According to PUOR, nearly 1,000 people, 93 percent Muslim, died in the riots.

The report said that after the announcement, nothing happened for a month, but the first public notification was issued by the commission in February. Eight lawyers were appointed, and then the Cong (I) government was replaced by the Janata Dal government. The term of the commission expired on March 8, but it was extended by six months.

But all appointments of lawyers were cancelled by the new government and fresh appointments made, further affecting the functioning of the commission. Since March, the commission has not received any funds from the government, PUDR said. -Courtesy: H.R.W.

B U L L E T I N

Regd. No. 39352182

Delhi Post Regd No. D(C)1004

SOUTH ASIAN FORUM FOR HUMAN RIGHTS: Bangladesh: Resurrection of Jatiya Party

Shortly after the triumph of the peoples' democratic movement in December, 1990, the Jatiya Party headquarters in the business district was completely gutted by fire and vandalised. The President Vice-President, Assistant Prime Minister and several cabinet ministers were arrested and all but President Ershad were put in jail. The Prime Minister and several wanted cabinet ministers are still absconding but their properties have been attached by the government.

Yet, within a month a former cabinet minister, Mizanur Rahman Chowdhury, was openly rebuilding the party and preparing to contest the parliamentary election on February 27. The All Party Students Unity is the main group demanding that the Jatiya Party not be allowed to stand for election and that Ershad should also be transferred to jail.

Ershad applied as a candidate for election from five constituencies of Rangpur, his home district, where he is still in jail and where demonstrations for his release were held. His candidacy was disallowed at district level but reinstated by order of the Election Commission. On February 3 Dr. Kamal Hossain moved a writ petition to challenge this order but withdrew it the next day. From February 16 Ershad's trial was to start on a charge of possessing illegal firearms but on February 11 it was stayed for one month. If convicted, his candidacy will again be disallowed.

From late January Jatiya Party rallies in Dhaka were being held openly and from February 3 Jatiya Party supporters began attacks against Awami League rallies. On February 5 Jatiya Party workers marching by Natre Dame College broke into the gate and attacked students, and staff, openly displaying pistols and knives. They damaged several motorcycles. It is well known that the Jatiya Party was formed by the missionaries of Dhaka formerly controlled by the army. The army has not been turned in. The acting government has done nothing in its power to clean up the situation. It seems that the army has been wiped out.

Kader Bahini Revived

These groups in Bangladesh do not belong to the government. Two of the younger brothers of Kader Bahini are directing the Kader Bahini (Army) since his arrest and detention in Jessore Jail. A five crore budget was set up for his reception in Tangail following his triumphant return from India after 15 years. Forced subscriptions upto Tk 50,000 were taken from all the

businessmen of Tangail District, with additional fines levied in case they at first refused. Murad Siddiqui, one of the brothers, beat up a policeman who tried to interfere.

Kadar Siddiqui is running for Parliament from jail on the Awami League ticket. Sheikh Hasina has vehemently protested his arrest on the grounds that the 7-year sentence against him was imposed by Martial Law and that the real reason for his arrest was his opposition to the killers of Sheikh Mujib. (No one has mentioned his international notoriety in 1971 for bayonetting a man to death in front of TV cameras at Dhaka Stadium on Liberation Day and for brutally beating the protesting younger brother of the man.) The Kadar Bahini have also taken from the terrified merchants subscriptions for the election campaign. There are reports that Murad Siddiqui was carrying a pistol when he threatened shop-keepers.

The complete control of Tangail District by the Kader Bahini is well-known to the general public in Tangail Town, but nothing has been reported in the newspapers and nothing has been done by the authorities to oppose it.

SPA-Role Reversal

In the concluding days of the Ershad regime the Special Powers Act (SPA) was the focus of concentrated attention by the prodemocracy forces. They attacked the SPA as a "black law" which deprived people arbitrarily of their basic human right of self-defense before the law. The SPA was applied at random, in both normal as well as emergency situations.

Under popular demand and pressure, Ershad repealed the SPA on December 6, just before his resignation. Since an ordinance can go into effect before its ratification by the National Assembly, it is claimed by several eminent lawyers that the SPA was actually abrogated in law.

But as soon as the democracy movement succeeded, repeal of the SPA was denied and it was applied rigorously to former President Ershad, the Vice-President, Assistant Prime Minister and several cabinet ministers. This inconsistency has not been commented on in newspaper articles. Sheikh Hasina of the Awami League, in a speech, commented that the "black" had become "white" through its use in bringing Ershad under detention.

Report by Commission for Justice and Peace

14.2.91

G.P.O. Box 5, Dhaka-1000