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110

Editorial:

CONTENTS:

3	Editorial
*	
4	XI J. P. Memorial Lecture: The Integrity of Institutions and Individuals
11	Journalism for Human Rights Award
	CITATION
*	
12	Special Mentions
*	
13	Protest Against Mass Rape
*	
14	Bihar PUeL: The Tiskhora Massacre
*	
22	People's Union for Civil Liberties
*	
23	News
27	South Asian Forum For Human Rights
*	

A SHAMEFUL ACT

A large number of villagers from Kunan, Poshpore in Kupware district of Kashmir made a written complaint to the District Magistrate giving details of gang rape of women on 23/24 of February, 91 by personnel of 4 Rajputana Rifles of 68 Brigade. The District Magistrate Mr. S. M. Yasin made a detailed enquiry and stated, inter alia, that a "large number of Armed personnel entered into the houses of the villagers and at gun point they gang raped 23 ladies", and that "a team of officers be deputed to the concerned village to conduct an enquiry on spot and immediate steps be taken to punish the culprits". Subsequently an FIR was lodged by the Divisional Commissioner of Srinagar.

A number of voluntary organizations in Delhi (report published in this issue page 13 of the BULLETIN) held demonstration protesting against this inhuman and shameful act, and demanding action against the guilty personnel. Representatives of these organizations wanted to meet the President of India; they were however directed to meet the Governor of the State who maintained that the report was baseless. In the light of evidence that has come to light the governor's contradiction does not appear to be convincing. Possibly administrative compulsion on the part of the governor has prevented him from condemning this shameful act.

It has become a fashion with "patriotic politicians" to condemn anyone who points out atrocities committed by armed personnel. We should like to think that anyone who is genuinely concerned about the integrity and well-being of the country must not hesitate to bring to surface any wrongful act committed by anyone, particularly by any law-enforcing machinery including armed force personnel. After all, it is only in the interest of the country as also in the interest of our Armed Forces that wrong-doing of some of their personnel is not kept hidden under the carpet. To hide truth is always counter-productive. One therefore fails to understand why the government should be reluctant to order an impartial enquiry into the incident and bring the culprits to book. Indeed, this is the minimum a civilized government is expected to do.

PHONE TAPPING

Our readers will be happy to know that the Writ Petition filed by PUCL highlighting 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, (a summary of the Petition prepared by Advocate Sanjay Parikh was published in the last issue of the BULLETIN) has been admitted by the Supreme Court for argument. We will publish a summary of the proceedings in the next Issue.

XI J. P. Memorial Lecture:

The Integrity of Institutions and Individuals

K. G. Kannabiran

(The People's Union for Civil Liberties holds a function on March 23 every year to mark the day emergency was lifted in 1977. This function has two important parts, one, a Journalism for Human Rights Award of Rs, 20,000/- is presented to a journalist chosen from amongst a large number of entrants for having written the best piece on any human rights situations in the country during the preceding calendar year. The Award is presented by some eminent person who is invited to preside over the function; two, some eminent person is invited to deliver the J. P. Memorial Lecture.

This year the function was held at Chandigarh, Shri Kuldip Nayar presided and presented the Award to Shri Raju Mathew of Deepika, Kerala. Shri K. G. Kannabiran, a well-known civil Liberties activist from Hyderabad, delivered the J. P. Memorial Lecture. We give below the text of his lecture. r--Editor)

Balzac in one of his novels says "To distrust the Judiciary marks the beginning of the end of society. Smash the present patterns of the institution, rebuild it on a different basis...but don't stop believing in it". There is, I believe, a lot of truth in this statement as this statement sums up the crucial role which a system of Justice has to play in the progress of any society. Today in India, the institution of justice appears to abandon the crucial role that is assigned to it under the constitutional scheme. To say that the Indian judiciary is under a cloud would be an understatement. The judiciary today stands totally destroyed and the controversies that have been surfacing in recent years seem to announce the demise of the institution.

On 23 April, 1990, Justice M.P. Kenia announced

I consider it a great honour to speak on this occasion. This is a small tribute that I can pay to the memory of Iyaprakash Narayan who has been a source of inspiration for all these who have struggled for human rights and democratic values in this country. J. P. has a special significance for me as it was with the committee he constituted to enquire into encounter killing in Andhra Pradesh, popularly known as the Tarkunde Committee of which I was member Secretary, that much of the work that my colleagues in APCLC and I had been doing for several years, gained support and solidarity from all over the country. I am grateful for the privilege of dedicating this lecture to his memory.

Justice V. Ramaswamy currently a sitting judge of the Supreme Court, has been accused of grave misdemeanour and financial improprieties of a serious nature as Chief Justice of the Punjab and Haryana High Court. The audit points out the wasteful and unwarranted expendi-

ture on furnishing his residence to the tune of Rs, 15.28 lakhs. When this information was brought to light it raised a bitter controversy. The issue of disciplining judges has become a matter of public concern for the first time since independence and the debate has assumed

PUBL

BULLETIN

in terms of the constitutional value system which attempts to address the need of developing countries. What we are witnessing today is the disastrous consequence of that failure. The assumed neutrality of the profession thus produced grotesque distortions such as the incident in Nizamabad where three lawyers rushed to a mortuary to claim the corpse of a man killed in a fatal road accident and coming to fisticuffs over the dead body. This for the insurance brief. The competition at the higher level is a far more sophisticated version. The culture and practices of the profession naturally stood transmitted to the Bench as "the advocate is the father of the judie'

When we talk about reforms to be brought to the judicial system, there is an implication of the need for reviewing the profession, its practices and traditions, and an attempt to redefine the concept of the independence of the profession and judiciary to eliminate the recklessness and irresponsibility fostered by the aggressive competitive ethic within the profession. An ethic which has never permitted the professional to pay attention to the values propounded by the Constitution. The courts system and the professional community together deftly built a system of immunity that was designed to screen the entire institution from public scrutiny. This is further secured by the atavistic robes and the esoteric vocabulary used inside the courts.

Justice V. Ramaswamy, as soon as he assumed office, called for a judges meeting and suggested that the practice of orderlies bearing a silver mace heralding the passage of the judges from their chamber to the court and back should be revived. This was a part of the traditional paraphernalia of the courts which had been deliberately discontinued. Silence on the part of the judges assembled at the meeting was taken as approval and verbal orders were placed with P. Orr & Sons' Madras, for twenty five silver maces. This was despite the subsequent written protest of ten judges of the court who did not want to revive this antiquated tradition. The whole practice was revived in a matter of less than ninety days. This incident also cannot be dismissed as eccentric conduct peculiar to Ramaswamy. It weaves in with the cult of the robe, the obscure circumlocutious vocabulary which passes (or legalese.

The black robes which the judges and lawyers continue to wear and the silver mace clearing ordinary mortals from the path of the judges are part of the attempt to set them apart from the common people. A constitution which proclaims an egalitarian society, talks about human dignity, justice in all facets of life and declares that we always have the most important freedoms to enable us to liberate ourselves from want and fear, has not prevented the creation of institutions which are pompous and over bearing and the courts stand out today as the most pompous. It is possible to dismiss these antiquated robes and mode of address as a harmless relic of the past, But they serve the purpose of overawing the citizen. The robe, the enforced obsequious mode of address, the silver mace bearing usher announcing the judges' arrival in the court, the esoteric vocabulary of discourse, the elavabed seating arrangements are the mites which encode a taboo. An institution thus ritually protected by a taboo is fenced off from the attack of critical reason. These trappings serve to shield the system from any rational enquiry. Distanced from the people and their problems, the trappings, the contempt power, and the protected tenure have produced monstrous distortions in the system of which Mr. Ramaswamy and the four judges of the Bombay High Court appear to be the inevitable consequence. Superimposed on this colonial arbitrary structure is the theory of independence of the judiciary. The principle independence of judiciary is unexceptionable so long as it is understood as the device ensuring a check on executive arbitrariness and legislative indifference to peoples' rights. The principle of independence of judiciary is unexceptionable if the independence promotes positively a system of jurisprudence which works towards achieving the objectives set out in the constitution. The independence of judiciary is now sought to be ensured by providing a security of tenure where judges cannot be removed once appointed permanently, except for proved misbehaviour, and by address in the parliament, followed by a vote of a majority of the total members of each house of parliament, and a two-thirds majority of these present and voting in each house. There are, however, other

far subtler and effective ways of destroying this independence. The way in which appointments are made, and by exercising the powers of punitive transfers. Further, the judges help to destroy the independence secured for the institution by abusing the fixity of tenure guaranteed by the constitution.

Initially efforts were made to secure the services of the most competent advocates to serve as judges. The first ten years of the institution thus proceeded smoothly and without many complaints. By the sixties one began to witness the fissures in the judiciary. The practice of appointing judges on the basis of competence was slowly giving way to nepotism. It may be that those appointed had competence. But competence residing in a favourite can only be the sheerest of accidents. On such appointment resulted in an outburst and a writ petition. Though the person involved eventually reached the Supreme Court and even performed creditably. But the method adopted in this case was one of the earliest acts contributing to the gradual erosion of the integrity of the institution. When in the late sixties the government was in the throes of a crisis, it came up with a series of measures to build its socialist credentials, which became hotly contested issues in courts. The debates and decisions in and by the court were then perceived as a confrontation between the parliament and the judiciary and the need for a committed judiciary was declared.

In retrospect it is evident that this was the first ever attempt to subvert the institution for political gains. It is against this background that the Golaknath, Bank Nationalisation, and the Privy Purses cases have to be understood. After the elections in 1967 the Congress suffered a serious political setback for the first time. The party lost power in five states. Congress governments were toppled by large scale defections in three states. Although in these three cases Golaknath, Bank Nationalisation, and Privy Purses, the decisions were such that they reflected a political philosophy, the steps taken to deal with this were not with a view to reverse the process. A marked change in Indian politics in terms of its populist approach was visible thereafter. Managing of the popular vote became the

sole end in itself. The constitutional objectives and agenda contained in the Directives gradually became the instrumentalities by which this populist politics would make a bid for power or through which it would attempt its retention and consolidation. The 1971 General Election as well as the State elections that followed, were fought on the basis of the supremacy of the Directives while at the same time the role of the courts in blocking the progress of the country was systematically attacked. The Indo-Pakistan war further helped the Congress to consolidate its position. And a series of amendments were passed in a bid to rein in the judiciary. Thus the twenty fourth, twenty fifth and twenty sixth amendments were legislative actions to reverse Golaknath, Bank Nationalisation, and Privy Purses cases. The twenty ninth amendment lodged the Kerala Land Reforms Amendment Acts in the Ninth Schedule. While this perhaps was not the first instance of such a confrontation, it was a very successful measure to divert and focus all public debate on to the court. A sweeping majority in the Parliament only served to bring the adversarial system of politics to a grinding halt inside the parliament. When Keshavananda Bharathi brought the issue to Court, the Court was no longer seen as an adjudicator but as an adversary. Intolerance of difference and dissent resulted in the supersession of four judges of the Supreme Court. In the early years of its history when an attempt was made to supersede Mr. Justice Patanjali Sastri, all the judges including the judge, who was to supersede him, threatened to resign. The slow and steady decline in the character and integrity of the Court as an institution since is evident. The Habeas Corpus case, which affirmed the right of the state to suspend fundamental rights and detain citizens without recourse to any procedure and without any scope for judicial review, is a telling instance of how the Supreme Court has been totally denuded of its purposes. When thousands of people were detained all over the country and when instances of excesses were narrated, the then Chief Justice replied "such instances are intended to produce a kind of terror and horror and are exhortative in character". These were viewed as "diabolical distortions" and 'mendacious malignment'. Beg speaking

Of the care and concern bestowed by the state on the welfare of detainees said it was almost maternal: The majority of judges orchestrated such inanities. The dissenting judge Justice Khanna -was superceded without a murmur of protest from his colleagues. But the nature of such protest is to demonstrate against the systematic denigration of an institution. Perhaps this was because protest was considered unbecoming of the dignity of a judge or lawyer. Even a slight decree of interest in maintaininz a democratic policy would not have anowed the neglect of the issue on such i"relevant grounds. However, the nopolism of the 'Emergency' period soon permeated the institution itself and the court began to feel that it should transform itself from "an arena of lezal auibhling for men with long purses" into a court of the "last resort for the oppressed and the bewildered". The shift thus was from the traditional rule of law to the assertion that hereafter the poor also are entitled to rule of law. This was evidently necessary for the Court to ressurect its own image as an institution for democracy and as reaching out to the poor.

But it is unrealistic to expect to bring about a change in institution by such exercises at the apex because changes if they are to be sustaining should emerge from the lowest courts. While these trends of the Supreme Court seemed to promise that these institutions would be restructured in accordance with the objectives and obligations under the constitution, this could not be achieved because there was absence of unanimity in the Supreme Court itself and judges at the state level were sceptical about change. The persistent assault on the judiciary at the highest level eroded the authority of the apex court. Significantly enough when the Bank Nationalisation case and Privy Purses case were cited before a High Court judge, he shrugged his shoulders and told the counsel that the validity of these judgements was affected in view of the fact that these were delivered by judges who are committed to vested interests. When it was pointed out to him that they were legally binding, he repeated that they could safely be overlooked. This created a furore in the court but what this emphasises is the erosion of institutional

discipline. This erosion is visible right down the hierarchical structure of the courts." For instance, the public interest litigation which emanated from the Supreme Court was not received well by the High Courts. When it was welcomed it was for reasons other than its usefulness.

Thus we see from 1973 onwards, the independence of the judiciary systematically attacked by amendments of the constitution, amendments curtailng the power of the Supreme court and the High Courts, and legislation foreclosing judicial review. But by far the most effective method was the supercession of senior judges in the matter of appointment of Chief Justices and punitive transfers. Supercession and the subsequent resignation of judges eroded the authority of the Court as an institution. The transfer of sixteen judges during the Emergency and the refusal to extend the term of the additional judges further crippled the institution. But while admitting that the attempt to subvert the institution has always come from the executive, it is unfortunate but true that there was no force within the institution that sought to counter this. So while there has been a wide ranging debate on the issues raised because they have a bearing on the collective life of the community and its aspirations to bring forth a better social order, what we see before us today is an institution devoid of any sense of purpose and individuality in the institution who have become a law unto themselves utterly devoid of any constitutional or social responsibility. The call for a committed judiciary has thus resulted in throwing up judges wholeheartedly committed to careerism and to seeking status. The sprinkling of good judges here and there can only be a result of culpable oversight.

When the purpose and authority of the institution are eroded and the inter-institutional discipline visibly implied in the working of the Constitution, undermined by artifices and devices, the Constitution itself becomes irrelevant and seems more and more of an obstacle. Our own inadequacies appear as inadequacies of the Constitution. We no longer choose to understand it or to consciously consider the history which preceded its making. Without this understanding, as John Adams

put it, "it might be a kite or balloon nyflgi in the air". The transcendent values of the institution appear hollow and farcical. The transient preoccupies the endeavours of lawyers and gradually anomie sets in. Anomie according to McIver signifies, 'the state of mind of one, who has been pulled up by his moral roots who has no longer any standards, but only disconnected urges, who has no longer any sense of continuity of folk or of obligation. The anomie man has become spiritually sterile, responsive only to himself, responsible to no one. He derides the values of other men. His only faith is the philosophy of denial. He lives on the thin line of sensation between the future and no past ..

"Anomy is, a state of mind in which the individual's sense of social cohesion—the main spring of his morale—is broken or fatally wounded". *

Unable to cope with the problems which confront it and illequipped to function as a vehicle of social change the institution turns on itself and unwittingly condemns itself through the Lok Adalats. The judiciary is thus no longer useful even in the sphere of ordinary private adjudication. The prime target is disposal of cases and, therefore, we have the phenomenon of judges going to the press and proudly announcing that they have disposed of 10,000 writ petitions in record time. What the judges now need is a score card and an official scorer. Sliding from the sublime to the ludicrous, and honestly believing that there has been no infringement of institutional proprieties the judiciary uses public interest litigation to secure its members an adequate conveyance allowance. The two judges who hear the writ Petition direct the Government to supply air-conditioned cars of the judge's choice. This Writ Petitions disposed off in record time. (That this order was not ultimately enforced for other reason is irrelevant to this argument). Yet another public interest litigation was to ensure that sufficient furniture, to entertain guests, (a facility available to Ministers of Cabinet rank) is supplied to the judges at their residence. This was promptly Ordered and the direction was that each judge should be supplied furniture to the tune of Rs. 1.60 lakhs. One may justify this on the ground that these are merely orders of Court. Instead of the judge exercising the right to go to Court a public spirited person brings the issue of judges condition

of service before the Court and this is adjudicated upon in the normal course. While Ramaswamy's acts are an abuse of authority these are an abuse of the institution where judges indirectly litigate for perquisites attached to the office. Unfortunately these are no exceptions or acts of stray individuals. While we can argue that a persons in authority may not be equated with the institution we should also realise that the person in authority is not visible without authority. All acts and statement of persons in authority therefore will be perceived as emanating from the institution. The desideratum is thus a minimum commitment to the Constitutional scheme and a collective endeavour to realise at the ground level a movement towards social change.

All public attention and effort at the moment is concentrated on how to deal with the intransigence of an individual judge, who has a reputation for lack of integrity. We are all earnestly concerned about how to get rid of a judge like Ramaswami. But it is equally important to prevent Ramaswamis from emerging and proliferating like the legendary heads of Ravana. It was generally assumed that reputation for lack of integrity in an additional judge? Nonetheless a High Court Judge, was sufficient to dispense with his services. Logically the yard stick cannot be different for permanent judges. In Industrial law there are several decisions which confirm the right in the employer to terminate the services of an employee for want of confidence. Government fall on grounds of want of confidence, But to read into the provisions of the Constitution pertaining to the office of the judge, an almost irremovable tenure excepting by the arduous task of impeachment in Parliament and to stay on the office on such interpretation is to court disaster. When no redressal is possible or access to it is barred excepting through the Parliament, the Bar is left with no option but collective action. The collective action is in public interest and for the enforcement of the constitutional purpose. Such collective action may be abhorred by some as the ragged edge of anarchy, but it is the only available response in the circumstances. There are few occasions when we act in a socially relevant manner. This is one instance. •

In the matter of appointment of judges the Constitution proceeds on trust and confidence. In the

*R. M. M Iver *The Ramparts We Guard* (Macmillian)

matter of recommending judges it has done away with the selection process. It has prescribed only the minimal qualification. Trust in the political Government to honour the compact in the Constitution that the people will be provided with an independent judiciary, and trust in the Chief Justices of the States and the Supreme Court that they will select and recommend persons of unimpeachable integrity and commitment to the constitutional value system. This trust and confidence is breached at every step. Implied in this scheme based on trust is the creation of healthy conventions which will help in setting out of difficulties that may crop up without executive intervention. Implied in this arrangement is the confidence that the judges will not betray the institution and its purposes and that the erring judge would be eased out of office by collective pressure without the institution and its image being damaged.

Way back in the sixties one Chief Justice of a State was asked to resign because he gave a false declaration of his age. He was a competent judge and was about to be elevated to the Supreme Court. He was asked to resign after an inquiry and a report by the Chief Justice of India. Following the logic of the Supreme Court Committee on Ramaswami's matter the Chief Justice also could have declared that false declaration of his age did not hinder his functioning as a judge.

We are now driven to the necessity of creation of a body and a set of norms which should guide a Constitutional appointee by ordinary statute. When we fought for independence, we also fought for securing institutions, which will protect us from arbitrary exercise of power. We are now inviting the Executive to introduce measures to deal with situation like the one created by Ramaswami, It may be, we create a judicial commission with all immunities. We may formulate a perfect statute which could foresee, regulate, and anticipate every contingency. Nonetheless that would be the first overt step in limiting the independence of the Institution. Subsequent incursion is implied in this first step. A new development in this drama is that the Speaker has admitted the motion signed by the requisite numbers of members for impeachment. He has appointed a committee to enquire into the allegations

against justice V. Ramaswamy under the Judges (Inquiry) Act, 1968. The Act has for its specific object compliance with sub clause (4) of Article 124.

Offences which form the basis of impeachment may not be indicatable under ordinary law. As impeachable conduct these offences are founded on different principles and are intended to secure different objects. Impeachment, to quote Story.

"is a proceeding purely of a political nature. It is not so much designed to punish an offender, as to secure the state against gross official misdemeanors. It touches neither his person nor his property but simply diverts him of his political capacity.' It divests him of his office.

We have all been helpless witnesses to the parody of parliamentary democracy which has trivialised both politics and law for some years now. In entrusting this task of rebuilding the institution however corrupt to an effete political system which has over the years deliberately subverted the Constitution we must be conscious of the danger of placing at risk the minimal safeguards available to us against authoritarian politics should it reemerge.

What we need to do however is to review the working of the institution itself. Should we continue the practice of shrouding in secrecy the entire process of appointment? Should there not be a debate before these appointments are made? How should we restructure the profession so that it can subserv the needs of the country? How can we ensure that the Institution plays a socially relevant role? The social purpose of an independent judiciary has been set out by Bhagavathi J and is an approach worth considering.

"The questions are of great constitutional significance affecting the principle of independence of the judiciary which is a basic feature of the Constitution and we would therefore prefer to bring the discussion on by making a few prefatory remarks highlighting what the true function of the judiciary should be in a country like India which is marching along the road to social justice with the banner of democracy and the role of law, for the principle of independence of the judiciary is not an abstract conception but is a living faith which

must drive its inspiration from the constitutional charter and its nourishment and substance from the constitutional values. It is necessary for every judge to remember constantly and continually that our Constitution is not a non-aligned rational charter. It is a document of social revolution which casts an obligation on every instrumentality including the judiciary, which is a separate but equal branch of the State, to transform the *status quo ante* into a new human order in which justice, social, economic and political will inform all institutions of national life and there will be equality of status and opportunity for all. The judiciary has therefore, a socio-economic destination and a creative function. It has, to use the words of Glanville Austin,

to become an arm of the socio-economic revolution and perform an active role calculated to bring social justice within the reach of the common man. It cannot remain content to act merely as an unspire but it must be functionally involved in the goal of socio economic justice."

In this debate it is our responsibility to inform the people clearly of the flaws in the workings of the courts so that they can participate and understand the working of the system. We must devise ways and means of bringing these institutions under public scrutiny for I believe that in a democracy, courts belong not to the judges or the lawyers or to a few jurists but to the people. 0

JOURNALISM FOR HUMAN RIGHTS AWARD CITATION

This year the PUCL Journalism for Human Right Award is going down-south to Raju Mathew of Kottayam in Kerala. This Journalist writes mostly in Malayalam and is a sub-editor of DEEPIKA, the first Malayalam daily which was established in 1887. Raju Mathew, 29 years old, joined DEEPIKA as a trainee in 1986. During this short span of four or five years he has focused his attention on regional situations and places but the problems that his sharp mind has zeroed-in on are by no means of focal importance only. He has, in the previous years, written on women and children, especially in the rural areas, the section of Indian population which is always out of our mind except when we are observing the 'year' for them. He undertook long difficult and often risky journeys, even on foot, into the deep jungles in search of those who were protesting and organising protests against the feudal exploitation and had been branded by the State as Naxalites. He had the courage to trace the disillusionment of the idealist youth with this movement also. In his words "those who waited for the thunder of the spring finally turned lonely and cynical". He has also written on how the multinational medicine manufacturers sell their products, banned in the developed countries, to the underdeveloped world, covering the triangle of manufacturer-medical profession-promotional techniques, caged within which is the patient. His articles on the exploitation of poor and innocent girls by the legendary blue-film lobby of Kerala attracted wide attention. He traced the trail of black-mail and even murder. In the article "They Too are Human Beings" he traces the travails and the hardships the tribal youth have to face in life. The collective brutality of the society towards them is vividly depicted through his pen,

His outstanding series of six articles that has earned him the appreciation of the jury of this 'Award this year is on the practice of killing newly born female infants. He made visits to obscure villages of Usilampatty in Tamil Nadu. The picture of the callous and inhuman, males and acquiescing females of these pillages is a sad commentary on our society and has been very sensitively written by Raju,

It is to honour this concern for human rights of the obscure and the neglected people and to bring his work to the notice of the society that the Tenth PUCL Journalism for Human Rights Award for 1990 is being presented to Raju Mathew to day, March 23, 1991, at Chandigarh,

SPECIAL MENTIONS

This year's jury has recommended three Special Mentions at par. These are for Kancha Ilaiah, Smita Gupta, and Sukhmani Singh.

KANCHA. /LA/AH. who earned a Special Mention last year also, is a teacher by profession and writes as a free-lance journalist from Hyderabad. His two articles appreciated this year carry forward his commitment to serious analysis of the wide-spread but subtle suppression of the human rights of the down-trodden. Rape As A Weapon, and Reservations: Experiences As Frame work of Debate published in the Frontier and Economic & Political Weekly, respectively. show a deft use of his insight for analysing issues from a human rights angle. His articles also show his courage in upholding the bitter truths even in the face of opposing winds.

MS. SMITA GUPTA is Chief of the Bureau of The Independent. in Delhi. She has shown her tenacity investigating, even in trying circumstances and dangerous situations. the denial of human rights to minorities and in extremely trying situations. Her articles on the human rights situation in Kashmir and on the rash of communal riots in UP. recently cover a very wide range and show her dedication to the cause. Her investigative acumen and commitment to facts mark her out as an objective analyst. From Bhiwandi to Hashimpura to Aligarh her journeys discover the truth and the sufferings of the victims. Her reports have formed the basis of cases in courts for restoring the rights of people.

SUKHMANI SINGH has written in The Illustrated Weekly of India about the results of his investigations into the cases of rape in Kashmir in Ballipora, Pazipora Kupwara. etc. His articles focus on the psychological effects on the victims and how this crime envelops the whole psyche of the sufferer. His incisive interview with the Director General of Police is a testimony to his determination and dedication to the search for truth. His is possibly a lone report on this aspect of the tragedy that Kashmir is.

PUCL President's Acclaim

The President of the PUCL, Shri Rajinder Sachar appreciates the interest that Ms. Usha Shelly, a student of standard XII of Mater Dei School, New Delhi, has shown in the problems of human rights of deprived children by writing a very good article on child labour which was published in the Times of India, dated 03-12-1990.

This President's Acclaim is awarded to her with the expectation that she will continue her interest in this direction and sometime in future will bag the PUCL Journalism for Human Rights Award.

PUCL Journalism for Human Rights Award, 1990

The PUCL conveys its grateful thanks to the following for their generous donations towards the Journalism for Human Rights Award function:

The J. P. Institute for Human Freedoms, Bombay;
The Business India, Bombay' The Chief Justice
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1. Bombay :- Nani Paikhivala, Ashwin J. Shuhm, P. V. Savant. H D. Unwala,
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5. Punjab PUCL :- Mohinderjeet Singh Sethi, R. L. Batta, Rajindar Chhibbar, A.D.Nagpal

Thanks are due to following members of the jury:

1. S. Sahay, 2. Maheep Singh, 3. B. B. Sarkar,
4. R. K. Jain,

PROTEST AGAINST MASS' RAPE

The following letter has been addressed to the President of India,

We the following organisations bring to your attention the Press reports of mass rape of a large number of women by the security forces in Kunan Village in Distt : Kupwara in the Kashmir Valley on the night of 23-24th February, 1991. The FIR. Lodged by the Distt. Magistrate in the Trehgarn Police Station put the number of rape victims at 23 while other sources claim numbers of such victims around 100. From reliable sources it is learnt that Army jawans from Rajputana Rifles of 68 Infantry Brigade entered the village at about 11 p.m. on the night of 23rd February, forced men out of the houses and then started gang-raping the helpless women of the village. This is a brutal outrage.

We have also read the denials by some agencies of the government in the Press. However, such denials do not carry convictions for the following reasons :-

- (a) that the terrified villagers did make a representation in writing to the Deputy Commissioner of Kupwara Distt. :
- (b) It is a confirmed fact that the Dy. Commissioner. Kupwara visited the village on 7.3.1991 and after verifying the facts, wrote a confidential letter about the incident of 23rd & 24th February to the Divisional Commissioner, Kashmir.
- (c) It is also a confirmed fact that an F.I R was lodged in the 1st week of March, 1991 in Trehgam police station:
- (d) it has been telephonically confirmed that Justice Mufti Bahauddin Farouqui (Retired Chief Justice of the J & K High Court) personally visited the place and 53 women affirmed before him about sexual assaults on them:
- (e) apart from the reports by journalists covering the local press in Sri Nagar the two well known journalist-s Mr. Gularn Nabi Khayal and Mr. Mukhtar Ahmad who represent several news papers and news agencies within and outside India made on the spot investigation and have sent their detailed reports confirming the mass-rape carried by various news papers.

The security forces have reportedly questioned that if the allegations were true, why the report was lodged after about ten days. This objection is ridiculous. In the special situation in the Valley where security forces enjoy unbridled power, it is not easy for the innocent villagers to muster courage and immediately lodge a report. Even local police station officials would think hundred times before registering any complaint against the armed forces. It is well established fact that shame and trauma associated with rape does not allow the victims to make a public issue, leave alone following legal procedure. To give one example. during November. 1984 carnage in Delhi when about 3000 Sikhs were killed and many Sikh women were raped in the capital of India, F.I. Rs. on behalf of the victims could not be registered for several days and weeks.

It appears that state administration and the army authorities are trying to white wash the incident. If this is allowed to succeed, then we cannot call ourselves a civilized society. Stories of army atrocities in the Valley are coming from time to time but it is not made known to the public whether any punishment has been inflicted on the guilty officials, Such blatant denials by the security forces is part of the Propaganda that continues to deny all allegations made against their sustained barbaric activities.

We the following organisations appeal to you to immediately order judicial inquiry into the said incident by no less than an independent judge of the Supreme Court so that appropriate punishment may be meted out to the guilty officials under the established rape laws.

We further demand the restoration of civils, democratic & all basic human rights to the people of Kashmir.

1. Co-ordination Committee on Kashmir.
2. Saheli.
3. Nishant Natya Manch.
4. Action India.
5. Sabla Sangh.
6. Pragatisheel Mahila Manch.
7. Shakti Shalini.
8. Peoples Union For Democratic Rights.
9. Indian Students Association,
10. Sikh Forum.
11. Radical Humanist Association.
12. Sampooran Kranti Manch-
13. Mahila Dakshita Samiti
14. Jagori,
15. P.U C L.
16. Citizens For Democracy.

O

May, 1991

Bihar PUCL:

THE TISKHORA MASSACRE

A fact finding committee of the Bihar State People's Union for Civil Liberties consisting of Prof. Prabhakar Sinha, Shri Ram Chandra Lal Das (advocate, Patna High Court) and Shri R. Dubey, President, Secretary, and a member respectively visited Tiskbora on 19.3.91 to enquire into the killing of 14 persons (mostly activists and supporters of the I.P.F.) by the activists of the Bbhartiya Kisan Sangh on 19.2.1991. Dr. Ram Kavindra Singh and Shri Akhilesh Kumar Suman members PUCL assisted the committee.

The committee spoke to a large number of inhabitants of the village as well as the Inspector of Police, Masaurhi Shri A.K. Choudhary and Shri H.N. Tiwari, A.S.I., who was earlier the Investigating officer in the case.

The following were reported killed, Bbushan Pandit (Tiskhora), Ramchandra Pandit (Sevai), Chandradeo Ravidas (Tiskhora) Phagu Rajak (Tiskhora) Jugeshwar Meehl (Hardia) Rajeshwar Prasad Verma, alias Dinkarjee (Ahiyapur) Dulari Gope (Mirapur), Banwari Mochi (Tiskhora) Sadhu Ravidas (Tiskhora) Odhan Thakur (Tiskhora), Tulsi Singh (Tiskhora), Girija prasad alias Gagan y adav, Sarvendra Paswan, Sadhu Saran Yadav.

Village Tiskhora: It is a small village under Masaurhi Police Station in Patna district. With a population of, (about One thousand). The villagers belong to the backward and scheduled castes. A rough castwise break up of the households in the village is as follows :—

Kushwaha-40-45. Pandit(Potter) 4-5, Dhobi (Washerrnen) 12-13; Yadava -4, Nai (Barber) —2; Muslim -5, Chamar (SC) 25-26.

Nobody is a big landlord, Largest land-holding is not more than 25 bighas. There was no recent friction between the groups of the villagers. The earlier strike by the farm labourers for higher wages was also amicably settled. Thus the tragic incident of 19th February, '91 in which 14 persons were brutally murdered in broad day light was like a bolt from the blue for unsuspecting villagers.

Background of the Tiskbora Massacre: The Indian People's Front and the *Bhartiya Kisan Sangh*: The Indian People's Front (I.P.F.) is a mass organisation which consists of several organisations. It is believed to be a front organisation of the C.P.I (M.L.) Led by Vinod Mishra popularly known as 'the Liberation' after its journal, but the I.P.F. does not accept it-self to be a front organisation of any other organisation. This organisation has been taking up the cause of the down trodden and has gained in popularity among the poor, especially in the rural areas. It has fought for the minimum wages for the landless labourers for the distribution of the Gairmazaura government lands in the occupation of the land lords among the landless masses, for the fishing right to the poor in the ponds and rivers, the right of the share croppers, and the recovery and distribution of the land in excess of the ceiling still possessed by the landlords. The I.P.F. has also made efforts to eliminate crime and put to a stop the high handedness of the landlords. The C.P.I. (M.L.), with which the I.P.F. admits a sisterly relation, maintains armed squads which sometimes kill those the organisation considers deserving of death for nefarious activities or aids the organisation in their conflict with their opponents in several ways. The activities of the I.P.F. have been bringing it into conflict with the landlords who have been ruling the roost in the rural areas. The landlords had organised caste based private armies (*Senas*) to suppress the C.P.I (M.L.) groups in central Bihar (e.g. *Kuer sena*, *Bhumi sena*, *Brahmarshi Sena* and *Lorik Sena*—of the Rajputs, Kurnis, Bhumihars and Yadava's respectively). There have been bloody clashes between the *senas* and the C.P.I. (M.L.) groups active in central Bihar (notably the Liberation, the Party Unity and the Maoist Communist Centre) resulting in a large number of deaths. Of the *Senas* the *Bhumi Sena* formally surrendered lately and the others had been relatively inactive. But the effort of the landlords to retain their stronghold continues and new organisations continue to be borne. An organisation called the *Sunlight Sena* has been formed

by the landlords in Palamau district and the *Bhartiya Kisan Sangh (BKS)* has been formed in Patna district.

The BKS is an organisation of the landlords including those who own 10 or 20 bighas of land. It professes to fight to save the interest of the farmers from the atrocities of the Naxalities. It alleges in its pamphlets that the IPF with the support of the liberation is involved in murder, extortion, blackmail and sexual exploitation of women. It claims to fight to protect the people of the area from the atrocities of the IPF. Another organisation engaging in similar activities and closely allied to it calls itself *Kisan Security Tigers*, though the BKS denies it. The two organisations are involved in atrocities including killing of the poor. Many of their activists have police records and quite a few are notorious criminals.

The BKS is still small and confined to a small area like Masaurhi, Bikram, Naubatpur and Dulhin Bazar & Pali in Patna district and does not have any well known person as its office bearers. However, the IPF has been publically alleging that Ram Lakhan Singh Yadava, a Senior Congress (I) leader as well as the leader of the Yadav community for decades in Bihar, is the man behind the organisation and its criminal activities. Shri Yadava denies the allegation though he has issued a press statement to state that the *Bhartiya Kisan Sangh* has been formed by the farmers for their own protection against the atrocities committed by the IPF against them. We shall return to the question of his link with the BKS later.

The IPF. BKS clashes: The attack on Tiskhora on 19/2/51 was not the first clash between the two organisations. There have been clashes in the part in which either their were group clashes Or individuals from the opposite camp were singled out for murder. According to the press statement issued by Mr. R.L.S. Yadava as well as the pamphlets circulated by the BKS and *Kisan Security Tigers (K.S.T)* the I.P.F. has murdered a large number of people including some *Mukhiyas* and has also owned responsibility. Allegedly, according to R.L.S. Yadava, they killed Shaligram Yadav, Rajdeo Yadava, Pradip Yadava, Hari Narain Yadava (all Mukhias), Shyam Narain Singh Yadava (Head Master), Arun Sharma, Ramanand Singh (Dahill), Navlakh

Sharma (Siddhipur), Swayambar Yadav, Bhim Yadava (Maharajganj), Siddheswar Mahto, Banwari Singh Son (Jurnui) and Murari Sharma (Patna). The allegations include many more murders including that of Narendra Singh of Lakho.

The IPF disown the responsibility for most of the killings and attributes some to the 'Party Unity' and *Mazdoor Kisan Sangram Samiti (MKSS)* and some to others.

The IPF in its pamphlets described the BKS as a fascist organisation and called upon the people to demolish their armed organisation (The BKS-KST also do the same). It has alleged that the BKS is responsible for a large number of killings and is created to retain the stronghold of the landlords over the poor and the down trodden. According to the IPF the organisation includes hardened criminals also. Allegedly, the BKS has killed 4 Harijans at Dariyapur (on 17th December 50), 3 at Chiraura, Shyam Narain Patel, Ravindra Singh, Surendra Thakur, Vinay Kumar Verma, Md Rabbani in Masaurhi, and Tes Lal Verma in Patna, apart from several others.

Though it is beyond the scope of the present enquiry to express a definite opinion on the allegations of the killing of the individuals it can be legitimately stated that the two organisations have come involved in a bloody conflict in which many lives have been lost in the past and will be lost in future also if the government does not intervene fairly and strongly to put an end to their mutual violence.

The Massacre of February 19 :

The tragic incident at Tiskaora is not an isolated event but is only a part of the ongoing conflict between the two organisations. On the fateful day the village was surrounded and attacked by the armed supporters of the BKS hailing from the nearby villages and the attack on the village continued for 4 to 5 hours despite the presence of the police. Houses were searched for the IPF activists and leaders and the people were killed by different groups or individuals at different places. In such a situation, there was not a single person who was an eyewitness to the incident from the beginning to the end. Terrified villagers remained

confined to single places and were witness only to what happened there. Since the eye witnesses to all the incidents were not available at the village and the members of the invading party from outside would not accept their presence at the place of occurrence, we obtained the copy of the complaint petition filed before the Chief Judicial Magistrate, Patna. by a villager of Tiskhora as well as well as the F. I. Rs of the incident recorded at the Masaurhi Police Station. Different versions of the incident according to the above mentioned documents are given below :-

(a) The IPF Version: At about 12.30 noon a batch of the IPF workers were proceeding on foot to Masaurhi to participate and help in the bandh call given by various parties in protest against the dismissal of Shri Yunus Saleem, the Governor of Bihar. While they were walking towards Masaurhi, they met Ranjit Singh and Ajay Kumar of Dorapar and Tulsichak villages respectively passing by on a scooter. They allegedly belong to the BKS. Seeing the IPF workers they sped away and returned from the side of village Gangachak with a group of 40-50 persons led by Ranjit Singh, all carrying fire arms and firing indiscriminately. The IPF workers retreated towards village Tiskhora. Another group of 40-50 persons advanced toward them from the village Mirapur. They also were firing indiscriminately. The IPF activists barring a few took shelter in Tiskhora while a few ran away.

The mobs also entered the village and started the killing. Meanwhile a group consisting of 20-25 persons accompanied by the police and Ajay Kumar was also seen. The mob already in Tiskhora shouted at them that they were 'Naxalites' and opened fire on the Police party, but stopped when Ajay Kumar shouted back that it was the Police party. The killing by the mob continued till 4-5 p. m. in the presence of the police.

It is further alleged that Ram Lakhan Singh Yadava, a Congress (I) leader and an M. L. A. and the Police are openly aiding the culprits (Based on complaint petition C 1991 submitted to the C. J. M., Patna by Yugeshwar Singh alias Dineshwar Singh,

village Tiskhora),

(b) According to the F. I. R. of Dasai Mochi of Tiskhora, he heard the sound of firing at about 12 noon while he was at his own place. He also saw that from the east and the north of the village about 40 persons, some of them in Khaki Uniform, were coming towards the village while a group of 60 was following them. Both the groups were firing at each other. Some persons in both the groups had rifles in their hands. He later learnt that the smaller group consisted of the "squad" and supporters of the IPF while the bigger group belonged to the B K S. The IPF group hid in the village and fired at them. The B K S groups continued to come to the village from different sides and 5 or 6 of them beat him up also. They were searching for the IPF people.

The incident is the result of the clash between the IPF and the BKS.

(c) The Version of the Police: According to Braj Mohan Singh's (A Police officer posted at Tulsichak camp) F. I. R. at 11.45 a. m, he was informed by Dukhan Singh of Tulsichak that Ajay Kumar of his village who was coming by a motor cycle was kidnapped by 20-25 extremists of the IPF who were taking him towards Tiskhora. Following this information he left with several other armed policemen to chase the extremists. He along with others heard the sound of firing at Tiskhora while proceeding to that village. He also saw crowds on the road. When they reached near the village there were firings towards them from a "Cabin in the north" 503 Inder Nath Singh (a constable) was injured. He ordered in self defence 5 rounds to be fired. Then they carried the injured constable to the pitch road for sending him for medical treatment.

Meanwhile more people arrived and the firing between the two groups continued. "We continued to try to pacify both the sides", claims the police officer. "Then we saw 20-25 extremists a few in Khaki Uniform fleeing towards the south. The other people were raising the slogan "Kisan Singh Zindabad"

(d) Important Eye witnesses :: (I Chandravati

Devi (60) is the mother-in-law of Kripa Narain Singh of the IPF who had contested R.L.S. Yadava from Paliganj assembly constituency and had polled highest votes next to R.L.S. Yadava. She said that the mob searched her house thrice for her son-in-law and killed a labourer, Phagu Rajak, working in her house. He was shot dead in the *Dehari* (passage) of her house. "Then I saw them shoot a stranger dead just in front of my house. Later I learnt that he was Dinkarji, an IPF leader."

(2) Son of Mrs Chandravati Devi, Hemant Kumar (20), a student of B.A, said that he saw Rajdeo Verma with other running to the village while a mob of about 100 persons came following them from 'Gangachak side, Meerapur, and Charma side. The mob was firing indiscriminately. The police also came. They were with the mob.

(3) Gulabi Devi W/o Lakhon Pandit. "There was *Puja* at my place. We were not apprehending any trouble. Suddenly the mob burst into my hut with firearms. I begged of them to spare us but from a point blank range they killed my son and 5 others who had come for the *Puja*. The killing was done by Ram Dayal Singh and Ram Singh Yadava-both of Meerapur".

(4) Lakhon Pandit said he was at a distance from his house while the carnage was occurring. He wanted to rush to his hut but he was detained by the policemen who said "you are harbouring Naxalites". When he wanted to go home hearing the firing, the policemen said, "The others are dead, now save yourself." The police kept him detained till 8 P.M. at the village temple and then released him.

(5) Lalpari Devi, W/o Banwari Lal Machi: My husband hid himself in the cabin for the pumping set of Raj Kumar Mahto. I locked the room from outside after taking the key from his ploughman, Biju, Later, Raj Kumar took the key and killed my husband inside the cabin. The policeman were also there and threatening us with killing.

(6) Sohrai Singh (60), Tube-well operator: The labourers are with the IPF and the farmers are with the BKS. The labourers dictate terms to us (farmers) and if they are not accepted they stop work. The BKS helps

the farmers who are harassed by the IPF and whose land remains uncultivated due to the labourers strike. Had the IPF people not come here that day nothing would have happened.

(7) Kapilde Singh (20) and (8) Keshava Singh (60): We were inside our house and know nothing. We have not heard of the *Kisan Sangh*, The I.P.F. does **not** harass us. Nobody of Tiskhora is accused in the case here. (Both of them belong to the family of the accused Shatrughan Singh).

(9) Nityanand Pandey, ASI, Tulsichak out post: "All the staff who were on duty on 19.2.91 have been transferred. We do not know where they are. We were not present here on the day of the incident but we know from others what happened that day". (His hearsay has been omitted).

(10) Ajay Kumar Choudhary-Inspector, Masaurhi P. S. and L O. of the case: The Liberation harasses the farmers in many ways. The IPF indulges in blackmail also. (He says there is a sisterly relation between the IPF and the Liberation). They resort to labourers' strike. The farmers have not lodged any such complaint with the police, however. The IPF indulges in acts like unauthorised fishing, farming in the Ahara (irrigation channel), occupying Gaircazurua lands, etc.

Regarding the cause of the incident he said that on 19.2.91 the armed squad of the IPF was passing by Charma (village), Some people raised an alarm that the IPF had kidnapped their men for killing. This created a sensation and the villagers who were supporters of the BKS chased and attacked Tulsichak villagers.

Tulsichak outpost also acted quickly and reached Tiskhora, but one constable was injured by the firing of the Naxalites. Thereafter the police remained at the spot and 2 policemen took the injured fellow for medical treatment. The remaining 4-5 policemen could not do much in the circumstances. They also had to protect their arms from being snatched by the IPF of BKS men.

(11) H. N. Tiwari A.S.T. former IO in the same case (Masaurhi) also corroborated the version: Additionally, following specific questions were put to them:
Q- Was any of the dead men in the police uniform?
A- No.

Q- Was any arm recovered from the dead IPF men or from the houses of their supporters?

A- No.

Q- Are there men in the IPF and BKS who have criminal antecedents?

A- Yes, Ranjit Singh, Vakil Singh, and several others from BKS have criminal records. Similarly Banwari Mochi, Sudama Mochi, and several others of IPF also have criminal records.

Q- Why no attempt was made to save the situation?

A- Very few Policemen were there while the BKS was fully armed.

Q- When did Masaurhi P. S. receive the message and when did the police party reach Tiskhora?

A- Information was received at 14.30 and we proceeded at 16.00 hours and reached Tiskhora at 17.00 hours.

Q- You have said that the BKS people were fully armed. Have there been raids to recover the unlicensed arms and what has been the recovery?

A- Raids have been conducted but very little result has been produced.

Q- It was alleged that the dead bodies at Tiskhora remained uncared for four hours? What is the fact and what do you have to say about it?

A- The dead bodies are not supposed to be interfered with before the inquest. There was no neglect, it's just that the people don't know this compulsion.

Q- Why was there so much delay in forcing the culprits to surrender by taking recourse to attachment of their property?

A- The requisition was filed on 26.2.91 but the order of the court came only on 17/3/91

Several other questions were put which showed the failure on the part of Police on the following points of detail :—

1. The police at Masaurhi took this ghastly incident lightly: it proceeded to the place of occurrence at Snails pace. Even though the police force from Charnna and Tulsiehak outposts reached Tiskhora in time, there is no record to show that they did take any action to stop the 'search & kill' operation of the BKS.

2. It is evident from the evidences available on the Spot that the dead bodies were not taken into custody by the police at the earliest opportunity though there was every likelihood of tampering with the evidence of killing which shows utter callousness and gross negligence on their part and, further, it amounts to dereliction of duty.

3. From the action of the police, as it appears in the records, nothing appears to have been done to prevent recurrence of such incidents, nor any remedial steps have so far been taken to restore confidence among panicky victims.

4. In spite of much drum beating of prompt administrative or police action, nothing substantial has been recovered from the main assailants. Many of the prominent persons responsible for the carnage are roaming about without fear. No specific arms have been recovered; the police have hopelessly failed to nab the culprits and/or recover the arms used in the killings.

5. The investigation work is being done in a very half hearted and routine manner. It is doubtful that the prosecution will be able to apprehend the culprits and bring them to book to meet the ends of justice.

Findings of the enquiry committee :

It is obvious from the facts recorded above that the Tiskhora massacre was not a pre-planned affair, It was an unfortunate coincidence that the group of the IPF activists came across Ranjit Singh of the BKS who has criminal antecedents and is alleged to be involved in the killings of the IPF men. Had that chance encounter not taken place there would have been a massacre at Tiskhora on that day.

It is also beyond any shadow of doubt that the IPF people were attacked with firearms by the mob of villagers owing allegiance to the BKS. The former retreated to the village Tiskhora to save their lives. However, the heavily armed mob surrounded the village, searched houses for the IPF men and killed them brutally. The carnage continued unhindered for 4 to 5 hours in the presence of the police till their thirst for blood was fully quenched,

However, the following points remain to be examined :

(A) Was there an armed squad of the Liberation'

in Khaki uniform who fired on Ranjit Singh.

- (B) Was someone really kidnapped by the IPF ?
- (C) Did Banwari Mochi fire from the cabin?
- (D) Who fired on the policemen?
- (E) Was there a clash between armed squad of the Liberation' and the BKS on the day?
- (F) The role of the police?
- (G) What is the role of R L.S. Yadava in the IPF-BKS conflict?
- (H) Some unanswered questions

(a) The IPF has claimed that their workers were proceeding to Masaurhi by road to participate in Bihar *Bandh* call to protest against the summary dismissal of Bihar Governor. Whereas the others allege that an armed squad of the Liberation attacked Ranjit Singh. It appears very unconvincing to accept that an armed squad of a completely underground outfit was moving in broad day light on a main road in an area which from all sides is surrounded by hostile armed people to the teeth Villages who could go on attack in a few minutes notice (which actually happened in this case). In some other safe locality or situation an attack on Ranjit Singh by the IPF might have looked convincing, but in this case it would have been suicidal and we do not consider The IPF or the Liberation to be stupid enough to do so,

The fact that of the 14 dead on the day not one was found in the Khaki uniform, nor a single firearm belonging to the dead or their supporters was found by the police, gives a lie to the allegation that armed squad of the Liberation was involved in the incident.

(b) It is on record that till 19 391 i.e. till one month after the Tiskhora massacre no substance whatsoever was found in the allegation that the IPF had kidnapped someone on that day. It is now very clear that Ranjit Singh and his companion successfully used this rernour to rouse anger against the IPF men which resulted in such a spontaneous mobilisation of the villagers of Gangichak, Tulsichak, Meerapur Sona and other nearby villages at such a short notice. But for this ploy such a mobilisation would not have been possible despite the fact that the villages are the stronghold of the BKS.

(c) Banwari Mochi was hiding in a room which was locked from outside. His dead body was found in that small room in a pit that inside the room. No arms were found on him. Had he been armed, the BKS men could not have killed him without heavy casualties of their men. A man with a firearm protected in a room would have shot dead anyone opening the room to kill him. There was no fight and he was colly shot dead in the cabin'

(d) Firing on the policemen:

There are two versions. According to the complaint petition of Jugeshwar Singh, the BKS mob fired on them mistaking them to be Naxalite reinforcement (in Khaki) but the F.I.R. of the police alleges firing on them by the Naxalities, The allegation appears unconvincing for several reasons. Firstly, the IPF people were badly out-numbered by the BKS mob hounding them, From this weak position to add to their danger by provoking the police would be both a stupid and suicidal act which we do not consider possible. Secondly, there is no evidence that the IPF men were armed, which makes such allegations to be without substance. (This is on allegation by the police).

BUT the most convincing evidence against the allegation is the conduct of the police itself. Our police force is so intolerant that it has made it a habit of responding to even brickbats with bullets under the pretext of "self defence". Here is a case where they claim to have been fired upon by the Naxalites and yet have not punished even One Naxalite supporter, while their hostility to the Naxalites is no secret, nor is it a secret that they often kill Naxalites In fake counters. Had a policeman been injured in a firing by the Naxalites they would not have spent 5 rounds of bullets without killing a single Naxalite.

In all likelihood constable Indranath Singh was injured either by one of the numerous bullets or pellets being fired all around or by the BKS people because of really being mistaken for a Naxalite as alleged.

(e) The story that there was an armed clash between a squad of the 'Liberation' and armed mob of the BKS is also unconvincing. The IPF men were hiding in houses in Tiskhora, 30-40 armed men who are fully

trained and protected in houses would have killed two to three times their own numbers before dying. Instead, it was a totally one sided affair with no casualty on the other side. Such results are possible only when one side is fully armed and the other is not. Thus, the story of a pitched battle between two armed groups, as alleged, is not acceptable.

(f) The role of the police was wholly condemnable and deserving of severe punishment. On their own admission, policemen from the Tulsichak outpost left immediately to "follow the extremists" on receiving the information at 11.45 a.m. that the "IPF extremists" had kidnapped someone. Subsequently, the F.I.R. by the police officer Braj Mohan Singh, states that they saw firing taking place between the people staying in Tiskhora and the mob which came from the adjoining villages and it is casually mentioned, "We kept on trying to pacify both the sides", We are not told how and with what result.

It is also claimed that one constable was injured and they fired 5 rounds "in self defence".

That appears to be the total activity of the police party of Tulsichak outpost on the day.

The policemen from Charms outpost arrived while the killing was going on. They detained a few villagers of Tiskhora for the day but did nothing to prevent the killing of the IPF supporters and others and allowed the BKS mob to search for the IPF men with the intent to kill for hours together.

These facts lead to the inevitable conclusion that the police party fully abetted in the killing at Tiskhora on February 19. It is impossible to believe that the operation 'search and kill' could have gone on uninterrupted for hours together in the presence of the police in the village without their complicity,

The Masaurhi police station also received the information at 2.30 P.M. but their men reached Tiskhora at 5 P.M, i.e, after two and a half hours. The distance of 15 kilometers should not have taken more than 30 to 40 minutes to cover.

The police were shown in action because the 'Naxalitis' were on the receiving end. We are constrained to observe this, as we found that the police perceive and

refer to the 'Naxalites' with a great deal of hostility. Regardless of the reason for it, there is no doubt that the Masaurhi police showed an extreme callousness in reaching Tiskhora 2½ hours after receiving the information.

We find the inaction of the police extremely abhorrent and deserving of stringent punishment. The mob on the killing spree at Tiskhora on 19.2.1991 had created the arrest of rare situations in which the firing by the police to save the lives of the mob's victims would have been fully justified but the police, which does not hesitate to open fire on unarmed processions at the slightest pretext, chose not to act and to their duty on this occasion,

(g) In the complaint petition referred to above, certain individuals have been named as the killers of some of the deceased. In a situation where a big mob is engaged in 'search and kill' operation, it is difficult for an enquiry of our kind to fix individual responsibility. So, we would neither confirm nor deny the allegation. Similarly, in an F.I.R. filed by one Bhuli Yadava of Meerapur it has been alleged that his brother Ram Dular Yadava was killed by the "extremists" who were running away from Tiskhora. There is no basis for us to confirm or deny this allegation either.

Ram Lakhan Singh Yadava-BKS Nexus:

R. L. S. Yadav is a very senior congress (I) leader who held a ministerial post as early as in the late fifties. He has also been known to command muscle power at a time when it did not play a dominant role in politics. R.L.S. Yadava has been the sole leader of the Yadava community in Bihar till the emergence of Lalu Prasad Yadava, the Bihar C.M" but the difference in their age has made it possible for Lalu Prasad Yadava to forge a very close alliance with R.L.S. Yadava. Regardless of their belonging to different parties, they have been sharing public platforms from which the younger Yadava has been giving the older one a clean chit against numerous allegations made against him, The IPF has accused R.L.S. Yadava of being the spirit behind the BKS and has even demanded his arrest for supporting the BKS killers. R.L.S. Yadava has denied it publicly and categorically and has alleged that the IPF has included his name in its 'hit list'. In view of his

categorical denial, it appears that he has no organisational link with the BKS. But, at the same time in his public statements and pamphlets, he has stated that the "ordinary farmers have organised the Kisan Sangh for their self defence" against the IPF. In the same pamphlet he has levelled charges of various kinds of atrocities including murder, (Issued on 20 December, '90) which allegedly the IPF has been committing.

In view of the persistent allegation against R.L.S. Yadava and strong denials by him, we have to come to some conclusion only on the basis of some undisputed facts before us. The most important fact which establishes R.L.S. Yadava's vested interest in the weakening of the IPF is the fact that his main rival from Pali constituency is an IPF candidate Kripa Narain Singh. Further, the growing influence and power of the IPF is bound to undermine his own in the area, resulting in the decline of his influence and disadvantage during the election. The subjugation of the IPF is also necessary to ensure the capturing of booths with the aid of muscle men which has become the order of the day in Bihar elections. Additionally, his allegation that the IPF has been indulging in the killing of the members of his community also shows his concern and anger. In fact, the pamphlet referred to above is as strong a denunciation of the IPF as is possible. But the most important of all is his allegation that the IPF has included his name in its 'hit list'. Whatever be the truth, from his personal as well as political point of view, it would be in his favour if a force is created to fight the IPF in his area. The BKS is ideally playing that role. In view of this it is difficult to accept that he has no connection of any kind with the BKS, though we are not in a position to specify the nature and extent of that connection.

Observation Recommendations

1. The killing by the mob at Tiskhora was not random. The mob was in search of the IPF members and supporters from Tiskhora and outside. Because of this, there was no killing of women and children witnessed elsewhere in the event of mob violence. A few innocent relatives of the villagers were killed as they might have been mistaken for IPF men from outside the village.

2. As stated earlier, the police showed a monumental inaction when it allowed the BKS led mob to continue its search and kill operation for 4-5 hours together. The fearlessness with which the police allowed the atrocity to go on on 19.2.91 and the subsequent casual way in its approach to the whole episode may be attributed to the close relationship between R.L.S. Yadava and Lalu Prasad Yadava (the Bihar C.M.), in addition to their general hostility to the "Naxalites".

3. If the state does not ensure a fair and impartial administration and allows the administration to be partial to the land lords, the underdog would feel compelled to arm themselves. Consequently, there would be a succession of violence and counterviolence in rural Bihar leading to the law of the jungle.

Recommendations :

1. The police men on duty at Tiskhora should be punished for dereliction of duty as well as complicity in the ghastly murders at Tiskhora.

2. The family of the deceased should be paid Rs. 1 lakh each as compensation.

3. Effectives steps should be taken to ensure that the laws relating to land reforms, minimum wages, gairmazarua land are effectively implemented as these have been the issues on which maximum violence has taken place.

Sd. Prabhakar Sinha, Ram Chandra Lal Das, R. Dubey

ATTENTION ALL BRANCHES

As usual, during the coming Elections also all branches should constitute teams to observe the conduct of Elections in a fair and peaceful manner. The teams should consist of members who are aware of election commission's guide line. Unofficial observers like ours can not interfere in the election procedures but they can surely bring any irregularities to the notice of concerned authorities, specially the election commission observers. wherever the independent initiative teams are appointed our teams should coordinate with them.

The reports of such teams should be sent to us within a week of polling.

Y. P. Chhibbar
General Secretary

PEOPLE'S UNION FOR CIVIL LIBERTIES

CHARTER OF DEMANDS

PRESENTED TO THE POLITICAL PARTIES CONTESTING THE MID TERM ELECTION, 1991.

(THE SEVEN POINTS PRINTED HEREUNDER FORMED THE CHARTER PRESENTED IN 1989. THE ITALICISED COMMENTS AFTER EVERY POINT INDICATE THE ACTIONS TAKEN BY THE NATIONAL FRONT GOVERNMENT.)

1. Radio and Television should be placed under the control of one or more autonomous bodies created by law.
Prasar Bharati Bill was adopted by the Parliament and has been signed by the President. The Government fell before it could be implemented. The JD (S) government took no steps to implement the same.
2. The 59th Constitution Amendment should be repealed.
Repealed.
3. Black laws such as the Terrorist Areas (Special Courts) Act, the Terrorist and Disruptive Activities (Prevention) Act, and other laws which grant arbitrary powers to the police, the army, or the executive should be repealed. All the laws of preventive detention should be repealed.
Indian Postal (Amendment) Bill rescinded.
4. Article 19(I) (a) of the Constitution should be amended so as to include the right to information on matters of public interest and to specifically safeguard freedom of the press.
No action taken.
5. The privileges of parliament and State legislatures should be codified by law so that they would be subject to fundamental rights enshrined in the Constitution.
No action taken.
6. The appointment and transfer of judges and chief justices of High Courts and the appointment of judges and chief justice of the Supreme Court should be made the responsibility of a high powered judicial committee so as to eliminate executive interference in these matters and to maintain the independence and dignity of the judiciary
National Judicial Commission constituted/or appointment of judges to the High Courts and the Supreme Court.
7. The right to work should be made a fundamental right by amending the Constitution and a central law should be passed embodying an employment guarantee scheme.
The Government placed before the National Development Council a proposal for implementing the right to work through employment guarantee programme. The NDC, in turn, constituted a sub-committee of Chief Ministers to work out the operation of the proposal.

Rajlndar Sachar
President

Y. P. Cbhibbar
General Secretary

NEWS

Delhi

TORTURE AND AARATI

Shri Ashfaq Hussain Lone and Shri Shahabuddin Gora were arrested at Delhi and Tanda in U.P. respectively last month. They are in the custody of Delhi Police. The Delhi Police is said to have accused some human rights and civil liberties organisations of being a part of an international conspiracy for harming the interests of the country *Jansatta*, a Hindi Daily of Delhi, in an item, also published such accusations,

Shri Tejender Singh and Shri Ashok Agga wal, Lawyers, who met them said that Shri Lone and Shri Shahabuddin have been tortured. A Joint Press conference of some civil liberties organisations including the PUCL on April 15, condemned the malicious alligations of the police and the JANASATTA corespondents against them and also condemned the torturing of the arrested persons. A Representative of student for Democratic Rights, JNU alleged that when they met the Prime Minister to protest against the torturing of the two, the Prime Minister remarked "*to kyaa police unki aarati utaaregi ?*" □

Pakistan

NEW FORMS OF CRUEL AND DEGRADING PUNISHMENT

{Summary of a 7 page document issued by Amnesty International in March 1991}

New forms of punishment considered cruel and degrading by international human rights standards have been introduced in Pakistan under the Qisas and Diyat Ordinance. The ordinance redefines several categories of bodily hurt and their punishments under the Pakistan Penal Code (PPC), and in some instances requires that the culprits be punished with the same kind of hurt as they inflicted on the victim. Authorised medical officers are required to perform these punishments, although the methods they should use are not specified in the ordinance.

The ordinance introduces forms of the practice of torture as a criminal offence into the PPC for the first time, which is a welcome development, but provides for it to be punished in some instance in a manner considered cruel by international human rights standards. -

PRESS RELEASE

For the past few weeks I have been a witness to the brilliant exercises in imaginative journalism regarding my contest from the Karimnagar Constituency for the parliament. The only fact in all these forays was that some well meaning friends not attached to any political party approached me and suggested that I should contest from Karimnagar. And the rest which appeared in the news is fiction with the Intelligence wing fostering this fiction. The attempt through-out has been to prove that I will be put up as a peoples war group candidate. On this assumption my prospects of victory or defeat, and the turn polling is likely to take place in such an event were discussed and debated threadbare. As part of this, it was also declared that since PWG has decided to boycott elections I might not contest. All these views were paraded without reference to me, which is unfortunate. But I donot deny the press its freedom including its right even for imaginative journalism, but I felt it was unfair not to have sought clarification from me.

I have been approached perhaps on account of the relentless and committed work of APCLC for over a decade and half for promoting and restoring human and democratic rights at the ground level. In a fast deteriorating and degenerating situation, a spokesman for human rights inside the parliament appears to be a necessity. This was debated by us in the committee and felt that:

- (a) unless such candidates for human rights are set up in other parts of the country also one person contesting will be of no effect or use even if he/she succeeds.
- (b) that there is a likelihood of large scale violence during these elections and we donot overrule the role of state law enforcing agencies in sponsoring or supporting such violence or to use overt or covert violence to guide the course of voting and in such situations to commit the manpower and other resources we have for my election would be contrary to the objectives for which we are committed and have been working for:
- (c) in my view any contest by persons who look upon democratic processes as a way of life to

PUBL

BULLETIN

be part of a vulgarised electoral process, is to be dishonest to themselves.

There would be a point if we can set up an alternative political process and culture within this electoral system. This is not possible by individual effort alone.

These are the reasons which has led me to decide against contesting. This decision is not prompted by any political party. In fact we would like to make it clear that we never wish to be beholden to any political party nor do we expect any reward or recompense from any political party for the human rights work we have been doing, of which some of them may be beneficiaries.

I would request you to give the space which you have been using for discussing my election prospect by publishing this statement in full.

K.G. Kannabiran.
(President, APCLC)

KARNATAKA :

The Advocates of Mysore boycotted court work on March 9, 1991 protesting against the 'high-handed' behaviour of a police sub-inspector, Mysore South Police Station against Mr. Shashidar an advocate who had gone there as Commissioner of the Court with a search warrant. The latter alleged that the Station Officer, Sri A. Nogappa insulted him and defied the order of the court. K.C.L.C. demands an inquiry into this. X X X X

Members of the Legislative Assembly demanded a probe into alleged excesses by the Circle, Inspector of Police, Kolar against a woman of Vadalur Village of the district. The minister concerned asked the D.I.G. to investigate the matter. K.C.L.C. urges that a magisterial inquiry be ordered to bring out the truth. X X X X

On March 16, 1991 'Women for Communal Harmony' was observed by several groups like Manini Vimochana, Swad, Women's voice, Visthar, Stree Jagruthi Samithi, Manasa, J.W.P., P.W.J., V.T.C. and others. Ms. Sucharita Eswar, Ms. Geetha Menon were among those who highlighted the diabolic role of communalism and the harm done to woman and children in particular. Prof. Mansur spoke on the precepts of Islam which lay stress on tolerance, pluralism in faith, and humanism. Plays were staged and songs sung by people.

Samaja Parivartana Samudaya organised a study

circle on March 23 and 24, 1991 in Bangalore. Sri Dileep Kamat and Prof. Mansur were the resource persons who were ably assisted by Sri V.S.S. Sastri and Sri Datta Savale. All aspects of communalism were discussed in relation to history, ancient and secularism examined and so also the need for a Common Civil Code. A scheme of action was drawn up to combat the spread of communalism. Among the participants were Dr. Ram Das Rao, Sri S.R. Hiremath, Ms. Shuju Fouzdarj- Ms. Meera Chakravarthy and Sri Sreekanth. Ms. Almitra Patel played hostess and participated in the discussions.

In the current session of the State Legislative Assembly, members were given the following figures concerning the communal riots of 1991:

Dead: 74

Properties lost: Rs. 437 Crores.
compensation to 71 families of deceased: Rs. 34.60 Lakhs
It is needless to add that this assessment is an understatement. A place of worship and some houses were damaged in violence in Gulur Viliage in Tumkur district on March 19, 1991. Arrests were made and police controlled the violence.

In a meeting of Gandhi Peace Foundation and allied organisations, Bangalore held on March 30, Prof. Hasan Mansur made an impassioned plea to stem communalism and this was reinforced by Sri N. Krishnaswamy; Sri Satyapratha and Sri H.S. Doreswamy. It was resolved that comprising these members would visit Malavali and environs and strive to restore amity among the people.

The Home Minister in the State Assembly stated on March 30, 1991 that the Government had identified Davanagere, Shimoga, Tumkur, Kolar, Malevalli, Channapatna, Ramanagaram and parts of Bangalore as communally sensitive areas.

People with faith in democratic values, must wage a relentless struggle against communalism and social injustice. Perilism of faith and culture must be stressed, in the face of the 'Saffron Vision' held aloft by the B.J.P. and its axis. This is no time for complacency but calls for action to uproot the evil of communalism from the Indian Soil.

O

MADHYA PRADESH

The human rights situation in Madhya Pradesh has deteriorated during the BJP rule, according to Mr. Rajindar Sachar, National President of the PUCL. Since the people in general and progressive sections of society in particular voted out the Congress (I) in the last elections in their desire to restore democracy, it was all the more necessary for the political parties being put to power to demonstrate their respect for democratic traditions and practices before the nation and people. But, according to the former Chief Justice of Delhi High Court, Mr. Sachar, the BJP had lost the confidence of the people.. at least, on the human rights front.

Addressing a Press Conference here today, Mr. Sachar said that the MP PUCL was preparing a comparative study of human rights situation in Madhya Pradesh during the BJP & Congress (I) rule. Having come to attend the two-day convention of PUCL at Raipur, Mr. Sachar will be delivering an open lecture on the Civil Liberties & Democratic Rights in India Today on Saturday Evening at the local Gujarati Atithi Grah in Gujarati H.S School.

The PUCL was concerned at the un-natural deaths of more than 600 tribals in Bastar within a month due to blood dysentery, Mr. Sachar disclosed that the MP PUCL had already filed a Writ Petition in the MP High Court on Blood Dysentery Deaths in Bastar. The PUCL was also sending a Team of Doctors and Social Scientists in Bastar to investigate the gravity of the killer disease and failure of the state in dealing with the problem. According to him, the rationale of the welfare state was in taking and implementing welfare measures.

Declaring the programme of the two-day PUCL Convention of Chattisgarh, Mr. Sachar said that issues like the repression of social action groups and trade union movement in Chattisgarh, use of black laws like NSA & TADA, personal attacks on government employees by the BJP activists, deaths and harassment in jails and police custody, demolition and eviction of slum-dwellers and hawkers/vendors, growing violence on dalits and women, up-rooting of tribals from forests and their ancestral land, would be taken up in particular.

Speaking on the growing influence of Naxalities,

Mr. Sachar said that the FUCL had, time and again, clarified that it did condemn the use of individual violence by any group or party. However, it was concerned at the use of state machinery to suppress any political dissent. Mr. Sachar was of the opinion that the normal laws of the land were sufficient to deal with the individual crimes committed by any group or party. But, the Black Laws violative of right to life and liberty were used mainly to destroy the organisations and individuals working for the cause of the down-trodden. The very fact that more than 110 tribals in Bastar were arrested under the TADA and the special police force had unleashed a reign of terror in the tribal dominated regions of Chattisgarh, yet the influence of People's War Group had increased, speaks volumes about the inefficiency of such laws in dealing with a socio-economic problem. He said that the arrests of two young men, Sanjay Sharma and Roop Singh Pahadia under the TADA by Bastar Police in November on the pretext that they were close to PWG, and had "naxalite literature" was giving credence to BJP's intolerance for ideological opposition. Harassment of journalists who had participated in the PWG Convention last year was yet another example of such political intolerance. The BJP government's attitude in not permitting Gadhar's cultural troupe to perform in Chattisgarh in December last year, and subsequent rounding up of the entire troupe and forcibly taking them out the geographical area was un-precedented in recent history.

THE PUCL was re-organizing the civil liberties and democratic rights movement in whole of Madhya Pradesh, and forging links with the social action groups and trade unions to chalk out a strategy to play a constructive role in the forthcoming elections. Although Mr. Sachar opined that the PUCL was not directly interested in participating in the elections, but it was very much concerned about educating the public about the record of various political parties on the human rights front.

RAIPUR
29-3-91

Rajendra K. Sail,
Organising Secretary,
National FUCL

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1991

B U L L E T I N

BANGLADESH: AMNESTY INTERNATIONAL
URGES STEPS TO PROTECT HUMAN RIGHTS

Amnesty International has urged Bangladesh's interim government to ratify international human rights instruments and limit powers of administrative detention as two initial steps to protect human rights.

Acting President Shahabuddin Ahmed was sworn in on 6 December 1990 after two months of anti-government protests led to the resignation of President Hossain Mohammad Ershad. Parliamentary elections are scheduled for 27 February 1991.

In a letter to the acting president, Amnesty International said ratification would demonstrate the government's resolve to uphold and respect human rights by ensuring future administrations were under international obligation to guarantee specific and fundamental human rights.

Amnesty International also called for an urgent review of powers of administrative detention, which it said should only be used as an exceptional measure, and not to bypass safeguards in the judicial framework.

Amnesty International is calling on all candidates in Bangladesh's forthcoming parliamentary elections to take steps to protect human rights if they come to power.

"Reforms must be introduced to avoid a recurrence of the torture, extrajudicial executions and arbitrary detentions which occurred in the past", the organization said.

"Protecting human rights is a fundamental part of government policy which all the candidates must consider and make their views known."

In an open letter to all parties, Amnesty International called for the ratification of international human rights instruments and for an urgent review of existing powers of administrative detention.

"The authorities presently have broad powers to detain people simply for their non-violent beliefs and to deny fair trials to political prisoners by using the administrative detention laws."

Amnesty International said there should be a review of the cases of prisoners currently detained under administrative detention laws. The cases of prisoners convicted by martial law courts which breached international standards for fair trials should also be independently reviewed.

The organization is calling for safeguards against torture to be introduced and for the future government

to ensure that all reports of torture are promptly investigated and that those responsible are brought to justice.

"Numerous prisoners have been tortured in custody over the years in Bangladesh and every year several deaths apparently resulting from torture are reported", Amnesty International said.

"Yet we are not aware of a single case in which the government has brought criminal proceedings against those allegedly responsible."

The organization is also calling for safeguards to be introduced against extrajudicial executions, for investigations into those which have reportedly been committed and for the abolition of the death penalty.

"Implementing these reforms will not only demonstrate the government's resolve to protect human rights but ensure that successive governments will be bound by international law to guarantee such rights." Amnesty International said: 0

ASYLUM-SEEKERS FROM MYANMAR

Amnesty International is concerned about allegations that the seven asylum-seekers from Myanmar (Burma) named above have been singled out and beaten or otherwise ill-treated by Thai police officers at the Suan Phluu Immigration Detention Centre (IDC) in Bangkok. The alleged beatings apparently took place after the asylum-seekers protested their continued detention despite completion of prison sentences for "Illegal immigration". Amnesty International is concerned that they may be subjected to further ill-treatment or may be threatened with forcible return to Myanmar under circumstances that could put them at risk of imprisonment for non-violent political activities and of torture or execution. It is also concerned that their detention may be contrary to international standards. 0

MALAYSIA

"REHABILITATION" OF COMMUNISTS

(Summary of a 4 page document issued by Amnesty International in April 91)

Amnesty International is concerned that some 100 communists who voluntarily renounced armed struggle in December 1989 and pledged their allegiance to the peaceful path of adhering to the constitution and laws of Malaysia are being "rehabilitated" through indefinite detention without trial under the Internal Security Act. Amnesty International considers them to be political prisoners who should be formally charged in court and brought to trial or be released immediately and unconditionally. 0

SOUTH ASIAN FORUM FOR HUMAN RIGHTS: Pakistan News

Sometime back the women of Karachi had taken out a **procession** against the torture of two women in police custody. Subsequently, both the women were admitted into hospital on the orders of the High Court. Both the women are student leaders belonging to the PPP, which is the party in opposition in the Province of Sindh.

One of these leaders, Miss Rahilla Tiwana has given an interview to a pro-establishment newspaper called "THE NEWS". This interview has been published in "THE NEWS" on the 1 February 1991 and it has not read any denial of Miss Tiwana's allegation by the provincial government. Miss Tiwana has given details in her interview how she was tortured and she has further stated that she was tortured in order "to sign a confessional statement implicating Ms. Bhutto, Asif Zardari and Manzoor Wassan." These three persons are leaders of the PPP and Miss Bhutto is the head of this party.

Torture of women prisoners by the police was unknown in the sub-continent and what has happened now is to say the least, disturbing. However, the consequence of the intense polarisation between the coalition parties which have formed the provincial government and the PPP and further, the PPP represents, by and large, the Sindh population of the province of Sindh, whilst the coalition parties represent the non-Sindh population of the province. The non-Sindh population is about 45% of the population of the province and the most well-organized group amongst the non-Sindhis is the party called the MQM. It would be an understatement to state that there is hostility between the PPP and the MQM.

The leader of the MQM was returning from London on 23rd August and the evening before there was firing on his followers. More than 20 people were killed. The Government has implicated the leaders of the PPP for this murder, including Mr. Asif Zardari who is the husband of Ms. Bhutto. The PPP leaders alleged that they have been framed by the police in order to destroy the PPP. In view of our law of contempt, I cannot make any comment on these allegations. However, in this background, Miss Tiwana's interview

that she was forced to sign three blank papers is very disturbing.

More disturbing are the news items in newspapers that the PPP leaders and their followers who are charged for the murder of MQM followers on the 22nd August will be tried under the Suppression of Terrorist Activities (Special Courts) Act, 1975. This statute was enacted by Mr. Bhutto and it is a flagrant violation of the rule of law for two reasons. The first is Section 8 of this Act, which reads.

Burden of Proof:

A person accused of having committed an offence is presumed to be in possession of, or to have under his control, any article or thing which is capable of being used for, or in connection with, the commission of such offence, or is apprehended in circumstances which tend to raise a reasonable suspicion that he has committed such offence, he shall be presumed to have committed the offence unless he can prove that he had not in fact committed the offence.

The second is that the Federal Government appoints the persons who will preside over this Special Court set up under this Law and it can even appoint a person who has served as a Judge for three years in the subordinate Courts. Mr. Bhutto's government had nominated High Court Judges to this Special Court. With the increase of cases referred to Special Courts, the government has appointed several Judges to these Courts. Unfortunately, not a single permanent Judge of the Sindh High Court has been appointed to these Courts. One of the Judges appointed is a retired Judge of the Sindh High Court, whilst the others are senior Judges of the subordinate judiciary services who are near their age of retirement.

I have also heard complaints that the Police do not allow observers to watch the proceedings in these Special Courts which have started functioning. I cannot vouch for these allegations, but fortunately, foreign observers are likely to attend the trial of the murder charges against the PPP Leaders and I do not think that the Police will be so brazen as to prevent foreign observers from Court proceedings which are not being held in camera.

19 February 1991. — Justice (retd.) Dorut Pater

SOUTH ASIAN FORUM FOR HUMAN RIGHTS :: Bangladesh News

The parliamentary election took place in 24, 142 polling centres on February 27. With 2,774 candidates of 76 parties contesting for 298 seats. About 52% of the registered voters turned out for the election. BNP (Bangladesh Nationalist Party) came out on top with

138 seats. Awami League captured 85, Jatiya Party 35 and Jatiya League 18. Other parties and independents totalled 18; 69 parties did not win even one seat and forfeited their bond.

The election was monitored by 70 foreign observers and 10 groups of local observers. It was their unanimous conclusion that the elections were basically free and fair and relatively free of violence and threats. Elections were suspended in only 34 centres due to disturbances, although there were about 30 persons killed in pre-and post-elections violence.

Official election results were declared on March 7. Candidates have 30 days to vacate additional seats after choosing to retain one each. Bye elections for the vacated seats will be arranged in the future. All MPs have to submit a statement of their election campaign expenses to the Returning Officers within 15 days of the publication of their name in the official gazette.

Re-election was held on March 9 in four constituencies where trouble had occurred and the Awami League won three of the seats. Elections in two constituencies where candidates died shortly before the election will be held on March 16 and March 28. Moreover, 30 women members are to be elected on April 4 by all the MPs, who have taken the oath of office. The National Assembly will then meet officially for the first time on April 5.

The major political parties refused to take the oath of office from the previous Speaker of the National Assembly. He at first designated the Chief Justice to administer the oath but when he declined the Speaker named the Chief Election Commissioner to conduct the oath ceremony. This will take place on March 17, 18 and 19.

By mid-March the BNP was to form a cabinet soon and submit the names of ministers to the Acting President, who would appoint a Council of Ministers, whose function is merely advisory. A group of 31 intellectuals on March 11 questioned the impartiality of the Acting President if he allows the majority party to form a one-party cabinet before the issue of parliamentary system is settled. The popular demand of the major opposition parties is for a parliamentary system of government and a "sovereign parliament". If the presidential system is retained by the BNP, the opposition lacks sufficient strength to change the Constitution. Presidential elections would have to be held within 180 days.

Follow-up on Jatiya Party:

Former President Ershad won in five constituencies of Rangpur District in the parliamentary election, but there were strong allegations of huge expenditures and use of "muscle" to influence the election. People are said to have widely believed they were voting to save Ershad from hanging.

Ershad's writ petition for release from detention was heard on March 13 and subsequent days.

On March 12 the Former Deputy Prime Minister

and General Secretary of the Jatiya Party, Shah Moazzem Hossain, was released from jail following a High Court hearing on his writ petition. The Vice-President, Moudud Ahmed, was ordered released by the Supreme Court on March 4 but there was another case against him.

Also elected as MPs were the former Prime Minister, Kazi Zafar Ahmad, and a former minister, Anwar Hossain, editor of the popular daily, *Ittefaq*. Ershad are still in hiding; their properties have been attached by Government.

The acting chief of the Jatiya Party, former minister Mizanur Rahman Chodbury, warned on March 12, that the country would be paralysed if Ershad was not released before Ramadan. Chowdhury failed in his election bid for parliament.

Ershad is facing five criminal charges of corruption and possession of illegal arms. The latter case begins on March 16, after one postponement.

Task Force on Mismanagement:

A task force of specialists from the Planning Commission and the Bangladesh Institute of Development Studies, headed by Dr. Md Yunus, founder and director of the Grameen Bank, presented to the Acting President on March 12 his report on the use of foreign aid. It made the startling revelation that only about 25 per cent of the seven billion dollars of foreign aid received during the Ershad regime was actually spent in Bangladesh. About 12 per cent of that went to indentors, closely followed by a share to engineers and bureaucrats as bribes and payoffs.

The foreign press had often reported that the deposed President Ershad and his associates had misused foreign aid and had transferred up to three billion dollars to foreign banks.

The report stated that condition of the poor masses had not improved over the past eight years despite the massive injection of foreign assistance. It called for due scrutiny of foreign aid and special care in employing foreign consultants.

Electon Snippets:

The election was held under a neutral caretaker government for the first time; The election was basically free and fair, as demanded by the nation in its democracy movement; There was little violence on election day; Yet, the level of pre-and-post poll violence was highly unacceptable (at least 30 killed); Voters, especially women, were happy over the discipline and security arrangements; Voters were so enthusiastic that even elderly person who could not walk came to vote; Experienced, presiding officers said that they had never seen an election like this; The chief election complaint was the many irregularities in the voters lists; A study commission to analyse the elections is needed to further refine the electoral process,

14-3-9L

- Fr. Timm