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Armed Forces Special Powers Act 1958

K G Kannabiran

"Former Supreme Court Judge is all over the news. The Committee headed by him appointed to Review the Armed Forces Special Powers Act 1958 has submitted its report and two well-known journalists, Siddharth Varadaraj and Sanjay Hazarika, commended it for acceptance. This is a repeat legerdemain of the same trick which was performed by repealing the Prevention of Terrorist Act We should recollect the UPA's Manifesto. This Manifesto had the support of the parliamentary left. They promise the electorate to repeal POTA, not because the constituents of the UPA disagreed with it but because a communal party in power and which had no faith in secular values passed it. The Ruling Alliance, as per its election promise repealed POTA by legislating a Repealing Act and to give it a touch of liberal top dressing made a provision of reviewing of pending cases under POTA. But then in 2004 they introduced the provisions "lock stock and schedule" in to the Unlawful Activities Prevention Act 1967. This was confined to banning organizations because Independent India did not have their own law on the post Independence Statute Book. When we repealed POTA we were aware of the International compulsions with reference to war on Terrorism. After 9/11 we did not have that legislative sovereignty to dispense with a law on terror. North Eastern region was totally under the

occupation of Armed forces from the inception of Indian Independence.

Without going into too much of history the present Prime Minister who wanted to start with a clean slate appointed a Committee to look into the much maligned Armed Forces Special Powers Act and the various Disturbed Areas Acts etc. He appointed Former Supreme Court Judge and former Law Commission Chairman Mr. Jeevan Reddi as the Chairman with four others to assist him in his endeavours to find a solution to long standing peoples' problems in the North East. And as usual we always try to resolve peoples' problems by producing a rehash existing repressive laws. This what the Jeevan Reddi Committee Report did.

The Report is divided into five parts. The first part introduces the problem that has to be tackled. The second part deals with the legal and Constitutional aspects the High Power Body as this one has to deal with. The third part deals with feed back the Committee received from the "Civil Society" Groups in the North Eastern Region. The Committee visited Guwahati on Feb 9 and 10, 2005. There was a general complaint against Army High Handedness and the personal experiences were narrated. Mr. T C Mazumdar, after narrating the humiliating treatment he suffered at the hands of the Army he unequivocally urged for the repeal of the Armed

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Forces Special Power Act. He also opined that Unlawful Activities (Prevention) Act 1967. The Bar Association President pleaded for the repeal of the Special powers Act. A section of the people wanted withdrawal of Armed Forces, the other section wanted the Army to stay and fight the insurgency. One official version is for the retention of the Special Powers Act by some modifications may be considered.

In Dibrugarh the Committee were told by scholars, businessmen and the Vice Chancellor described the Special Powers Act as discriminatory and anti people. In Meghalaya the Peoples Human Rights Council of that state declared that AFSPA has failed to contain insurgency and they pointed out that there are other Acts in force like the Unlawful Activities (Prevention) Act 1967 that has been amended in 2004 to deal with terrorism.

In the Committee's interaction with NEHU the academicians who interacted with the Committee were quite definite that the AFSPA should be withdrawn and that there is a need to end the discriminatory treatment.

The Committee met with people from Nagaland in Kohima. People's organizations and mothers organizations complained of the privations suffered from the Army. All of them in one voice said that they do not need the AFSPA and they can do very well without it and India being a large democracy the laws and its arsenal are sufficient to manage the problems posed these areas. In Arunachal Pradesh the officers and not many citizens seem to have met the Committee.

In Delhi a meeting was held and as always being removed from the storm centre one is put on the defensive while debating about North East. Insurrection, Kashmiri militancy and terrorism and the desire to be acceptable preoccupies the minds of Intellectuals.

We need not go into the view of officials because we are basically concerned with peoples' experience of the enforcement of AFSPA. Courts and judges may not be concerned with the abuse of law. They will tell you that a law cannot be struck down because of the possibility of abuse. People the government that is sworn to protect their cannot disclaim such responsibility. Unanimous opinion is that AFSPA should be scrapped. The anger is not confined to that statute only. That in our view would be a limited understanding of the peoples' views. For around fifty years the Army ruled people in these regions. Merely because they named the Act it does not follow they will not mind an equally bad piece of legislation in its place or even another repressive law in its place. Before the Committee a few said there is this Unlawful Activities Prevention Act 1967 as amended by the Act of 2004, but does it mean that people have preference to that Act? Or does it mean that their views and their experiences suffered in the abuse of law and governance have no relevance. We have not yet entered the phase of experience of the application and abuse of the Unlawful Activities (Prevention) Act. In fact POTA was smuggled in so surreptitiously that nobody noticed this transmigration of POTA in the Unlawful Activities (Prevention) Act for long time for L K Advani was so proud of being the Architect of that Terrorist law he was wailing for its absence even as late as the recent Mumbai blasts. All this time he was not aware that Dr Man Mohan Singh stole the thunder. Even before this Committee in its hearing at Delhi, that meticulous human rights jurist in a memorandum submitted by her argued that if POTA could be repealed why not AFSPA? Of course she overlooked the fact that already POTA had transmigrated into the Unlawful Activities (Prevention) Act.

The Committee after setting out the views of the people did not evolve a more democratic and political method of resolving the problems of these States in the North East. It did not call for expertise on working out pluralist democracy among the various ethnic and tribal groups. We have tried these repressive methods for five decades and more and one need not trouble a distinguished Supreme Court Judge to do the job of a legal draftsman. That certainly was not what he was trained for. This ULP is in force all over India and the organizations in the North East are already covered by the various provisions of the Act and Schedule as well. The Committee says "a major consequence of the proposed course would be to erase the feeling of discrimination and alienation among the people of the North Eastern states that they have been subjected to, what they call, "draconian" enactment made especially for them. The ULP Act applies to entire India including to the North Eastern States. The Complaint of discrimination would then no longer be valid. Coming from a judge of the Supreme Court this is the weirdest understanding of the expression "discrimination" and the equality concept of the Constitution. This understanding of discrimination has only to bring about the integrity of the country by power and abuse. That is what followed after the aforementioned para 'Three'.

The Committee feels that the proposed amendments to the ULP Act would be more comprehensive in the sense that it would expressly permit deployment of armed forces and para-military forces to achieve its object viz curbing terrorism. But that is not complete. The legislature has to fix the human mask somewhere to make it acceptable. That cosmetic dressing was left to the Parliament.

The Committee recommends the incorporation of Chapter IV-A

to be inserted in the ULP Act. The Committee would not trust it to the legislature/parliament and so the committee painstakingly drafted those provisions. The only thing the Committee seems to have done is to use the ULP Act and recommended to the nation's government that use of it will bring about the desired integrity of the country! The redrafted provisions introduce the powers present in the Special Powers Act which the Jeevan Reddi Committee Report says people overwhelmingly laid stress that that Act should be repealed. Repealing that Act and putting in its place yet another draconian measure is not a solution to the problems plaguing the people of the North Eastern States. Had the Committee members gone through the fact finding reports of the various human rights committees they would have come to the conclusion that repressive measures in new forms are not the requirements the people there needed. What was needed was a political resolution of

the problems faced by the people living there for five decades and more. Our Politicians and judges can only think of only law and order solutions and these can never correct social imbalances. This committee is not required to tell the Indian Government that the ULP Act should be enforced. It has come into force all over India. That it was decided to be enforced in the North Eastern States was evident because in the Schedule to the Act are included the militant organizations operating in this region. It is also quite obvious that the Government of India's perception of the activities of these organizations is also like that of the Committee, namely "terrorist activities". The learned judge could have turned down the reference by telling them "Our task will only be repetitious and would be waste of your resources and our time. You have already included the North - Eastern States within the ambit of ULP Act. Please enforce it with such modifications as you think are called for".

The other likely interpretation of the reference by the Government would be "We have the repressive law in place. There are several ethnic and regional groups with strong identities that have been warring among themselves. Kindly suggest federal and democratic proposals for working out a peace process in these plural societies. We have compounded the situation by trying to resolve them by use of force for around fifty years. Please tell us how these plural societies can be persuaded to abandon the antagonistic and annihilating attitude towards each other. We are trying the peace process in Nagaland. Will it be possible for the Committee to contribute inputs to expand the area of the peace process?" The Law & Order reflex is not what the people expected. That is obvious from the report. As this was not what the people of the North East expected it should be rejected. The government will not be justified to enforce the terms of this Report. □

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The Dangers from Nuclear Power Projects

M A Rane

The craze for Nuclear Power Projects (NPPs) for generating electricity in India is the motive behind the controversial Indo-US Agreement of July 18, 2005 between our Prime Minister Dr Manmohan Singh and US President Bush. Indian Government's attitude towards such NPPs since the days of Pandit Nehru has always been a matter of double-speak. We took a moral stand and criticized the nuclear powers like USA, Soviet Russia, UK, France and China for manufacturing nuclear war-heads or bombs while denying the same to other countries like India. The enormous destruction and killing of people of Hiroshima and Nagasaki in Japan in August 1945 ostensibly to end the World War II enraged the conscience of sensitive people all over the world including Albert Einstein. We in India, the land of Buddha and Gandhi were outraged by the same.

In spite of this in the fifties our first PM Pandit Nehru was responsible for founding an Atomic Energy Department with the help of Nuclear Scientists like Bhabha and the same policy was continued by all subsequent PMs and Governments of India. We made a distinction between civil NPPs starting with Trombay and Tarapore NPPs for producing electricity as against for manufacturing nuclear war-heads. But we ignored the inherent dangers in the civil NPPs. Our Parliament passed an Atomic Energy Act, 1962 to provide for the development, control, and use of atomic energy for the welfare of the people of India and for other peaceful purposes. Under section 18 of the said Act the Central Government was empowered to put restrictions on disclosure of certain information about the NPPs.

Since then we have spent millions in establishing more than ten NPPs, apart from those for military purposes and for carrying out the so called Research and Development of nuclear energy. All such NPPs, whether civil or for defence, incidentally generate weapon worthy plutonium from which nuclear war-heads or bombs can be manufactured. In spite of expenditure of millions from the treasury of a poor people, the contribution of NPPs for generating electricity is negligible not exceeding 3 per cent of the total electricity generated by other sources run with power from coal, hydraulic power etc.

In an edit page article in *The Times of India* of 24.3.2006 Arvind Kala, a veteran and knowledgeable senior journalist writes that "America itself gets 50 per cent of its electricity from coal - fired plants. In India's case, 71 per cent of our power is thermal, 26 per cent is hydro-electric, and only 3 per cent is nuclear. This is understandable because with huge coal reserves, coal driven electricity plants make economic sense in India (though it results in high pollution). Yet DAE has set itself a goal of producing 20,000 MW of nuclear generated electricity by 2020. This is around seven times our current electricity supply from nuclear power".

Some of the NPPs such as at Narora in UP were involved in serious accidents, the full information of which was withheld from the people under the secrecy provisions of the Atomic Energy Act. When two RCC domes for containing nuclear radiation from the NPPs were being constructed at Kaiga near the Kali river in the

Karwar Taluka adjoining Goa against the background of the Sahayadri mountains with rich rain forests, one of the domes of the two NPPs collapsed for no reasons

whatsoever disclosed to the people. If at the time the NPPs had gone critical, destruction of the people and nature in the region including Goa would have occurred as it happened in Chernobyl in the then Soviet Russia. Still our Nuclear Scientists and successive Governments in New Delhi have a vested interest in raising as many NPPs in India as possible, when for development of plants of non-conventional and renewable sources for generating electricity such as solar power, wind power, *gobar* gas, etc. for the purposes of which a separate and independent department under the exclusive control of a Minister of State is created by the Central Government.

Under the Department of Atomic Energy (DAE) of the Central Government, several organizations for production and control of nuclear energy are created. One such body is the Atomic Energy Regulatory Board (AERB) created as a watch-dog body to examine the working of the NPPs, to find out whether there are any serious defects in the NPPs that endanger the safety of the NPPs and to protect the people from the dangers of accidents in NPPs due to excessive radiation.

In the middle of the year 1996 there were reports in the news papers that the AERB has detected 130 defects in the various NPPs in India that might result in serious accidents as at Chernobyl. At that time one Dr A Gopalkrishnan a nuclear scientist was the Chairman of the AERB. To effectively discharge its duties as a watch-dog body the AERB should have been an independent establishment, but is under the control of the Department of Atomic Energy of the Government of India, which also controls NPPs.

The AERB was entitled to direct the concerned NPP to

remove the defects pointed out by the AERB. However, the said report of the AERB was not made available to the public.

From the very inception of development of nuclear bombs and particularly since the dropping of the nuclear bombs on Hiroshima and Nagasaki in Japan on 6th & 9th August 1945, the Gandhians and the Radical Humanists were protesting against the use of nuclear bombs. Since August 1945 the Gandhians the Radical Humanists in cooperation with like minded NGOs were holding joint protests on the two days in August 6th & 9th every year against the development of nuclear war heads and the development of nuclear power. In Mumbai the Bombay Sarvodaya Mandal representing the Gandhians and the Radical Humanists Association were holding protests every year. When the CFD, PUCL and PUDR were formed before or during the Emergency, they also joined in the public protests along with several Human Rights Organizations (HROs).

In the Bombay High Court the PUCL through its veteran member Yogesh Kamdar filed a PIL writ petition with a prayer amongst others for disclosure of the adverse report of the AERB, for a direction to Union Government to make the AERB an independent body and not as a wing of the DAE and for a declaration that section 18 of the Atomic Energy Act was unconstitutional, as it confers on the Central Government untrammelled powers for withholding from the public information about the working of the NPPs. The Bombay Sarvodaya Mandal through the highly respected Gandhian late Dr Usha Mehta also filed a companion PIL for similar reliefs. The two PILs were heard at length at the stage of admission by a Bench presided over by the then Chief Justice M B Shah (later elevated to the Supreme Court) and Justice

Rebello. I, with the assistance of Shyam Divan and Madhav Jamdar appeared for the PUCL. B K Subbarao himself a Veteran Nuclear Scientist turned an advocate as he was harassed by his department and arrested for alleged offences under the provisions of The Official Secrets Act, while he was about to leave to USA for reading his paper at a Conference of Nuclear Scientists, first argued the PIL of the Bombay Sarvodaya Mandal along with Madhav Jamdar, as he was conversant with the technical and scientific points involved in the two PILs. The Chief Justice threw the papers down almost with contempt and declared it was summarily dismissed for reasons to be delivered later.

Then I requested the court to permit me to argue the petition of the PUCL as companion to the petition of the Bombay Sarvodaya Mandal. I argued the points of law involved in the petitions particularly the Fundamental Right of the public to Information as held by a larger Bench presided over by Justice Bhagwati in S P Gupta's case (AIR 1982 SC 1497) that the right to know flowed from freedom of speech guaranteed under Art 19(1) of the Constitution and therefore directed the Central Government to disclose the correspondence between the Government and the then Chief Justice of India in respect of demotion of a temporary Judge of the Delhi High Court to his previous office as a District Judge as he was not yet confirmed to find out whether the act of demotion was *mala fide* since the Judge was a party for release of detainees under the MISA at the initial stage of the Emergency.

When I was pointing the various potential dangers from NPPs, the learned Chief Justice was pleased to observe that so far no accident had taken place. On hearing the remark I lost my temper raised my voice and asked

"Whether the Chief Justice is waiting for an accident to take place from an NPP?" It was indiscrete on my part to have raised my voice and given the reply as I did. It was also unprofessional.

My arguments remained part heard and the hearing was adjourned to the next day. As soon as the court assembled I tendered my apologies to the court for raising my voice on the previous evening. I then proceeded to argue the law points. It was clear to us that the court was not with us. It was declared that both the petitions were dismissed summarily for reasons to be delivered at a later stage.

On January 30, 1997 Justice Rebello declared a detailed judgment for the Bench dismissing both the PILs, holding *inter alia* that Section 18 of the Atomic Energy Act was not unconstitutional. In the course of the judgment Justice Rebello observed that "learned counsel for the petitioners advanced arguments before us which were both persuasive and on occasions passionate". That is true.

Against the said decision both the Bombay PUCL and the Bombay Sarvodaya Mandal filed appeals to the Supreme Court through Karanjawala and Co as advocates on record. While entrusting the matters to Karanjawala and Co I requested Rajan Karanjawala that the out of pocket expenses for filing and conducting both the appeals should be borne by his firm, as both the petitioners had no funds to bear the same. Rajan Karanjawala faithfully acceded to my request.

All the matters of PUCL were ordinarily conducted by Senior Advocate V M Tarkunde. As he had retired from legal practice due to old age, I requested Rajan to engage the services of Senior Advocates Rajindar Sachar and Prashant Bhushan as they

conducted matters of the PUCL without charging any professional fees. When both appeals came up for final hearing before the then Chief Justice of India and Justice S B Sinha, Shri Rajindar Sachar was not available. Therefore Prashant Bhushan argued both the appeals. By an elaborate judgment delivered by Justice S B Sinha on behalf of the Bench on January 6, 2004, both the appeals were dismissed with detailed reasoning. On going through the judgment I found that Senior Advocate Prashant Bhushan, in the absence of Rajindar Sachar argued them very efficiently raising very plausible submissions. It is unfortunate that the Supreme Court did not allow the appeals. At that time the Right to Information Act was not passed. Still the S.C. had already held that the Right to Information arises both from Art 19 (1) and Art 21 of our Constitution.

Though I am a layman and not a Scientist much less a nuclear Scientist, for arguing in the High Court I had studied the question of serious dangers from NPPs in depth. One of the dangers apart from possibility of an accident was that the NPPs during their functioning produce nuclear waste that remains radioactive for more than 10,000 years, endangering the lives of human beings as well as all life on the earth. I also learnt that the normal life of an NPP is 30 years, when it should be decommissioned and the plant dismantled. The nuclear waste left behind after the demolition is tremendous that remains radioactive for not less than 10,000 years. One way of disposing of the nuclear waste safely, as I learnt from my study was to store it in huge stainless steel canisters and bury them deep into the earth, a possible permanent danger to human and other life, if it results in leakages. Though the normal life of NPPs whether civil or defence, is 30 years, our Nuclear Establishment in India and their

patrons in Government take the grave risk for working them for even more than 40 years. It is not within my knowledge that any NPP in India is dismantled so far.

The conclusions that I arrived at after my study in depth before arguing the PIL is confirmed by *The Economist* of August 5th-12th, 2006 in a small piece in its section on Britain (at page 52) under the title "Nuclear Waste - The Long View". As *The Economist* writes in a compact manner it is not possible for me to summarise the same but to quote it fully.

The journal says (QUOTE) "Britain has been splitting atoms for over half a century. Yet in all that time, it has never decided what to do with the radio-active byproducts of its nuclear power industry, although successive governments have tried. About 80,000 cubic meters of the stuff are stored at various sites around the country, and with most civil reactors soon to be decommissioned, the problem is about to get bigger. Once all the reactors have been closed, the waste will total 478,000 cubic meters, much of which will be dangerous for thousands of years.

New Labour's efforts to solve the problem began with a paper in 2001 that led to the setting up of the Committee on Radioactive Waste Management (CORWM) in 2003 to study the problem. On July 31st the committee published its final report.

The committee's technical conclusions will surprise no one. Like most other countries that have given thought to the matter it plumps for "deep geological disposal". It suggests burying the waste in a vast bunker up to a mile underground, in an area of stable rock where any leaks are unlikely to contaminate the water table, with interim storage in a dedicated facility while the cavern is being dug out. But the committee argues that getting the science right is not enough. Technically sound

attempts to dispose of nuclear waste have foundered on the rocks of public opinion before- most recently in 1997, when a planning application by Nirex (an outfit that advises the government on Britain's atomic leftovers) to test the rocks at Sell a field, the country's biggest nuclear site, was turned down.

With that in mind, one of CORWM's tasks was to come up with a way to sell a waste dump to a skeptical public. It concluded that residents would accept a dump beneath their backyards only if they had volunteered for it. To persuade them to do so, it proposes that towns and villages bid to play host to the waste, in return for some undetermined "compensation" from a grateful government.

Yet the focus on politics has not been popular with everyone. Two of CORWMs members have left in the past year, alleging that the committee was focusing on public relations at the expense of hard science and wasting time on outlandish options such a firing waste into space. The House of Lords Science and Technology Committee said much the same.

Keith Baversock, a health expert and one of the CORWM members who left, criticizes the committee's report for lacking detail "If they'd sat down and concluded within six months that burial was the way forward, they could have come up with some specific proposals to take to the public", he says. Instead the report itself admits that by the time a detailed design has been sketched out and the bidding process finished, actual construction of the store may not start until at least 2035.

In the end, of course, worries over delays of mere decades seem petty and short-sighted next to the challenge of designing something to last for thousands of years or more. In Britain only a few ancient henges and barrows have endured

for any thing like the amount of time that a nuclear waste dump will be expected to last - Stonehenge, the most famous is "only" 4,300 years old. How best, for example, to convey the concept of dangerous radiation to people who may be exploring the site ten thousand years from now? By that time English (or any other modern language) could be as dead as Parthion or Linear A, and the British government as dim memory as the pharaohs are today". (UNQUOTE)

I cannot describe the problem better than what *The Economist* has put. What is true of Britain is also true of other countries producing electricity from NPPs

like USA, Canada, France, Russia, Japan China and India among others. In USA each State was trying to burry its nuclear waste in it neighbouring State or deserts like Nevada .But there was tremendous opposition from the citizens of the State where the nuclear waste was sought to be buried. The result is no new NPP is being set up either in the private or public sector, both because of the danger of disposing of the nuclear waste as well as the high cost of generating electricity from NPPs. The last attempt to install a huge NPP in the Long Islands a part of New York mega city was bitterly opposed by residents of not only the Long Islands but also of

the neighbouring Queens and Manhattan and other parts of the New York city. Therefore the US government had to dismantle and abandon the entire plant in deference to the views of its citizens. That is perhaps the reason why the US President Bush was keen to enter into the agreement with our PM Dr Manmohan Singh of June 2005 so that the where-withals and materials for producing nuclear power can have a market like India. Let us not fall a pray to this deep laid plan and endanger the lives of generations of Indian people for years to come. – September 3, 2006 □

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Treaty Making Power of A Government

Rajindar Sachar

Recently question has been raised the question whether constitution should not be amended to provide that the Parliament should have a role in pre-ratification in the treaty making power of the Central Govt. Now, Entry-14 of the Seventh Schedule of the Constitution empowers the Parliament of entering treaties with foreign powers. But Article 73 of the Constitution provides that the executive power of the Central Govt. shall extend to the matters with regard to which Parliament has power to make laws. As per present law at the stage of entering into treaty with foreign power, like the recent Indo-US Nuclear Agreement, executive is under no obligation to have parliament's approval. The serious consequences are visible to everyone – parliamentarians learn from rumours and newspaper reports as to what are the exact terms. As against this, the embarrassing situation being reported in the press daily how publicly the Senate of USA is discussing the agreement – and many of them not in complimentary terms.

It is for this reason that some people have objected that the practice where under the treaties are entered into by the Executive without significant Parliamentary or public involvement is undemocratic because it is ultimately the people whose rights and entitlements are going to be affected.

But more delicate and intrusive question concerns Article 253 which empowers Parliament to make any law for India for implementing any treaty, even on entry/topic reserved exclusively for State legislature under the Constitution. This raises an important question of federalism which is a basic feature of our Constitution. Fears are expressed that under cover of treaty-making

power there will be serious inroads into the autonomy of the States. It is evident that in order to effectuate treaties legislation is a necessary compulsion. So far as the Central subjects or Concurrent subjects are concerned, the Parliament could pass a law and no problem would arise. But many of the treaties like WTO especially dealing with agriculture require legislation which can only be dealt with by the states as it is in the State subject. Thus, whether how much agricultural products should be allowed to come in the country (considering the present critical situation which is leading farmers all over the country to commit suicide) is a life and death question to the states.

Of course, it is not suggested that the Central Govt. is an outsider but considering our federal set up the concern of the states would be more direct and urgent as also because the interests of different political parties and governments may not coincide. It can, therefore, happen that in such cases, the Centre may exercise its power under Article 253 to pass legislation contrary to the wishes of the state – a critical impasse – no one will dispute.

It needs to be remembered that though Vienna Convention on the law of treaties which is sometimes mentioned in favour of the parliament's sole power to make law itself provides that this power is subject to Article 46 which allows states to have a defence that it cannot carry out the international treaties because it violates domestic law.

There is a general concern not only in India but in all developing countries that the executive should not have any untrammelled powers to enter into any treaty without legislative approval and later on to brow-beat the parliament into giving effect to a legislation on the

ground that failure to do so would be embarrassing to the country. That is why it has been suggested in some countries like Australia that executive would not ratify a treaty or accept an obligation under the treaty until the appropriate domestic legislation has been passed which would necessarily mean that the ratification treaty has been in principle debated and approved by the Parliament. Furthermore important that the states will be consulted before entering into treaties and all information will be shared between the various Chief Ministers of the States.

In Canada, though ratification of the treaty by the Govt. is left to the Parliament but the constitution also requires that any legislation required to implement a treaty can be enacted only by the provinces.

In a majority of 24 OECD countries, Parliamentary approval is required at least in case of certain categories of treaties, excluding of course the self-executing treaties.

The grave harm done by exclusive power to the Govt. to enter into treaty making without prior consultation with Parliament is apparent from the fact that though the Standing Committee of the Parliament attached to the Commerce Ministry of 40 members had opposed the draft agreement on TRIPS and had voted against product patent the same was not debated in the Parliament, rather the Govt. signed the TRIPS agreement in 1994 in the same form as the draft agreement without approaching the Parliamentary Committee or the Parliament which had taken a different view. We are now reaping the strain of high cost of medicine and the farmers' suicides.

This unfettered and secretive way of Executive to enter into treaties without not only the

Parliament but especially the states (even when the danger to states' rights was glaring) was strongly commented upon by a Peoples' Commission on GATT presided over by Justice Krishna Iyer and other Supreme Court Judges as far back as in 1996 wherein that it recommended that "it is a matter of constitutional necessity that legislation be enacted so that all treaties go through ratification of the agreement by legislature. Applying the constitutional text devised by the Supreme Court, the direct and inevitable effect of the Treaty would be to infringe the right to

medicine, food and livelihood. It even suggested on the basis of a detailed examination, that the final text resulting in the Uruguay Round is *ultra vires* the Treaty Making power."

Justice Venkatchalliah Committee Report of the National Commission to review the working of the Constitution (2002) submitted to Central Govt. had recognized the delicacy of the situation and recommended "that for reducing tension or friction between States and the Union and for expeditious decision-making on important issues involving States, the desirability of prior consultation

by the Union Govt. with the inter-State Council may be considered before signing any treaty vitally affecting the interests of the States regarding matters in the State List.

In spite of all this weighty opinion the old fossilized bureaucratic method of govt. functioning still continues at its snails pace, cocking its finger at all modernisation schemes of computers and satellites.

Why with this explosive situation is Parliament avoiding to pass the necessary amendments and legislations. Has the monster of globalization so totally unnerved our legislatures. □

Police and Minorities - Will New Policies Help?

Asghar Ali Engineer

The Supreme Court has recently directed the Government of India to implement the recommendations of Dharma Vira Commission on the police reform. These recommendations were made nearly 25 years ago but the Government hesitated to implement it and some police officers filed a PIL and the highest court in the land took more than a decade to deliver its judgement on the issue.

It is a well-known fact that politicians interfere with police functioning and arbitrarily transfer inconvenient officers. It is hoped that the implementation of Dharma Vira Commission might give much needed relief to IPS officers to work with a degree of autonomy. However, there are differences among police officers on this question. Most of the police top brass has welcomed the Supreme Court directive, as it would make them independent in functioning. But police officers like KPS Gill have dissenting views. Mr. Gill feels that the police cannot function independently of political bosses.

According to Mr. Gill, "Reforms recommended can only enthuse the armchair administrator and will

do little to improve the operation and efficiency of either the beat constable or his superintending officer." Mr. Riebeiro, another top cop, on the other hand enthusiastically welcomes the Supreme Court directive. He holds politicians by and large responsible for malfunctioning of police. He says, "Selfish politicians choose the wrong persons for the top jobs because the corrupt and the ineffective are willing to carry out the dictates and wishes of their political masters for their own survival. It is classic case of two persons scratching each other's back."

Thus we see that police officers themselves are divided in their opinion on political meddling. However, I must say that most top officers may not agree with Mr. Gill and may welcome the Supreme Court directive. There is no doubt that there is too much of meddling today by politicians. Efficient officers find it very difficult to function professionally.

However, we cannot judge the Supreme Court directive in pure black and white terms. There are grey areas, which cannot be ignored. We, in this article, are more concerned about police

behaviour towards minorities and handling of communal riots and similar disturbances. The police officers are generally have their own biases for variety of reasons. It is, therefore, necessary to take this factor into account.

In fact there is dilemma either way, whether police is given full autonomy and transfers are controlled by a committee or police works under overall control of politicians. If the present system continues honest and secular police officers are likely to suffer. We see in most of the major communal riots, honest and secular police officers are not allowed to function in a professional way. If politicians want to benefit from communal riots they arbitrarily transfer those officers who are determined to control violence.

This has happened in number of major communal riots. The classical case now is of Gujarat carnage of 2002. The BJP Government headed by Narendra Modi was interested in provoking communal violence and arbitrarily transferred all those police officers who tried to checkmate communal flare up in their jurisdiction. I myself interviewed one such top

officer who was arbitrarily transferred just because he was efficiently controlling outburst of violence. And there were number of such officers.

During Mumbai riots of 1992-93 too there were police officers who could not effectively function because of political interference, though not from ruling party politicians. However, situation was not as worse as that in Gujarat. In Mumbai riots there were many police officers who were under direct influence of Shiv Sena and Shiv Sena came to power just a couple of years after the 1992-93 riots and rewarded all those officers who had done its bidding through promotions and profitable postings. One such officer was even made police commissioner of Mumbai soon after Shiv Sena came to power.

After the Mumbai riots I had discussion with many police officers who felt that Dharma Vira Report should be implemented so that police could function more professionally as all those officers who had not done the Sena's bidding were under cloud. If seen from this perspective the Supreme Court directive should be welcomed.

However, we also have to examine this matter from a different perspective. The police have its own anti-minority biases, as pointed out above. If there is no political control and police functions with these biases, minorities are bound to suffer. We can take recent example of harassment of Muslims by the police after train blasts in Mumbai. Large number of innocent Muslims were detained and interrogated without any substantial evidence except that they were Muslims. Their protests fell on deaf ears.

Many Muslims met the Prime Minister and Sonia Gandhi and drew their attention to how innocent Muslims were being harassed by the Mumbai police and Prime Minister assured them

that he will speak to the Chief Minister of Maharashtra in this connection and that innocent Muslims will not be harassed. If the police is not accountable to the elected politicians such misuse of power by the police cannot be stopped. Even after the bomb blasts on 12th March 1993, there were serious complaints of harassment by the police and some police officers even tried to make money by threatening innocent Muslims to detain under TADA if they did not pay up.

Thus in a way the Supreme Court directive on the police reforms can be a double edged sword cutting both ways. The police officers are any way are not accountable to people and politicians are. But if politicians themselves take sectarian and communal view and depend on the votes of one particular community, there will be absolutely no remedy.

What is then to be done? Will the Supreme Court directive help improve police functioning or not? Should politicians retain their control over appointment and transfer of IPS officers? I think, despite problems pointed out above, the reform will be beneficial on the whole. In fact this much reform may not be sufficient, much more needs to be done. The present police act was enacted by the British rulers in 19th century (in 1861).

The main objective of this was to use the police for strengthening and protecting the British rule and to suppress the people's movements. In other words it was pro-British ruler police. Unfortunately this colonial legacy is continuing, as our rulers also want to use the police force for protecting their own interests. They do not want to loose control over the police.

What we need today is people-friendly police. The police act of 1861 needs to be drastically re-caste and this should be done earlier than later. The intension of policing is not to suppress people but to help them. The police should be anti-crime, not anti-people as it is today. The whole outlook of the police has to undergo drastic change. Numbers of things are needed to be done for realising this goal.

First of all the training to be imparted to the police has to change radically. I often find that police attitude, due mainly to improper training, is often communal, casteist and gender-biased. They have hardly appreciation of human rights and their protection. Colonial philosophy cannot impart such sensibilities to them. The lower level officials are much more prone to these prejudices compared to IPS officers.

A glance at training schedule would show that there is hardly much in it to re-orient police thinking on secular and democratic lines. There is hardly any mention of secularism and its importance in multi-religious and multi-cultural society. Also, no concerted efforts are made to remove their caste and gender biases. On the contrary, in appointments, transfers and promotions caste and community factors become primary, and professional competence hardly counts.

Not only this, more often than not, bribery is the only way to get prime posting and politicians demand hefty amounts for appointing officers in good posts. Thus police officers can neither be honest, nor free from caste and communal prejudices. In this respect if transfers are controlled by committees which include persons of integrity and commitment, it may make lot of difference.

My experience with the police shows that the policemen are not inherently communal but most of them are horribly misinformed about minorities. They carry prejudices acquired in schools and colleges as well as in society around them. But if they are properly informed it makes all the difference. I have conducted several police workshops at different levels – from constabulary to high officials – and I always felt change of attitude at the end of workshops.

Coupled with implementation of the Supreme Court directive, if proper training is imparted to the police officials, I am sure it will produce good results in short terms and re-casting of the Police Act, will help things in the long run. It is indeed high time all these measures are taken with a sense of urgency. The country has already paid heavy price for neglecting these much needed police reforms and re-orienting of police attitudes through proper training. □

APCLC Report:

Encounter Killings of Madhav and Seven Maoists in Nallamala Forest

The CPI (Maoist) AP State Secretary Madhav alias Burra Chenniah Goud and seven Maoists including five women were killed in encounter with the police on 23rd July 2006. The alleged encounter took place in the dense Nallamala forest contiguous to Erragondapalem Mandal of Prakasam district in Andhra Pradesh

Police Version

The Director General of Police Mr Swaranjit Sen and other senior police officers have claimed that the incident is a genuine encounter. The SP of Prakasam district Mr. Balasubramanyam said that "a Greyhounds team searching Nekkanti are a (tribal hamlet) chanced up some activity near Doraboyanipenta (another tribal hamlet) at 10 K.M on 23rd July 2006. The Greyhounds team saw some pitched tents and cooking arrangements. It opened fire and the Maoists retaliated. The exchange of fire continued for one hour. Police later searched the area and found eight bodies lying scattered in a radius of 2k.m. The police further stated that 'some of the Maoist leaders might have escaped or died while fleeing for life' The Home Minister Mr Janareddy while congratulating the police, categorically said that encounter killings are inevitable to maintain 'law and order.

Disbelieving the version of the police the Human Rights organisations including APCLC have condemned the incident and described it as a fake encounter and fall out of brutal strategy of 'hot pursuit' of Naxalites to wipe out the movement.

In the background of recent serial encounter killings in the state, seriousness of the present incident and the confusion about the death of state level leader of the CPI (Maoist), a six member

Fact Finding Team (FFT) of APCLC inquired into the incident and brought forth the following facts and circumstances regarding the 'encounter'.

The team with great difficulty went inside the Nallamala forest and located the exact place where the encounter took place. During the course of inquiry the team members visited tribal hamlets in the forest and talked and interviewed the people. The Team met persons who had helped the police in carrying dead bodies down from the hill and also the tribal in Nekkanti hamlet who cleared the trees for preparing the Helipad. The team came across the shepherds on the way to Palutla village. They gave crucial information about the incident as the injured Maoists met them on the way while running for safety. Finally the Fact Finding Team met the DSP in Markapuram town and talked to the SP of the Prakasam district and sought some clarification on the alleged encounter.

The Scene at the Place of Encounter

The incident of encounter took place on Kodavatilanka hill situated between Palutla village and Nekkantipenta at a distance of 15 and 10KM. respectively. The team reached the scene on 26th July. The team found utensils, kit bags, medical kit and some articles scattered all over the place. By watching two ovens and the substance in the bowels the team understood that at the time of incident the squad members might have been involved in cooking.

About 20 steel plates of which five were found damaged. And 30 to 50 kgs of rice, some tea and milk powder pockets found scattered on the ground. The team could observe torn out notebooks, letter pads and two documents

relating to Mahaboobnagar and Nalgonda district plenary meetings held in 2004. There were four sentry posts arranged to guard themselves and to keep a watch on the police. The team members saw three bullet marks on the trunks of the trees and a blood marks near the heli-pad.

From careful observation of the scene one can reasonably infer that there were no adequate arrangements for holding a state level meeting by the Maoists. As the number of steel plates found at the place is only 20, and the quantum of rice left may be sufficient for two or three days. The Fact Finding team believes that 10 to 12 Maoists might have gathered there either for review their programmes or to conduct political classes. There was no evidence to indicate that the Maoists had planned to hold a State level meeting and the police successfully disturbed it.

Exchange of Fire

The firing might have taken place between 7.30 and 8.00 on 23rd July. The police themselves have admitted that first they fired at the women who was on sentry duty. The injured Maoists while escaping from the scene of encounter met the Shepherds on their way and informed that five of their comrades died in the firing and five members had gone for fetching water and looking after security arrangement. Soon after hearing the firing they might have escaped for safety.

The tribals who had gone for bringing down the dead bodies overheard the discussion among the greyhounds, and the same was informed to the team members. The essence of conversation is that 'if the Maoists had been alert and used the weapons there would have been more casualties on the side of greyhounds.'

The DSP Mr Ranganath also conformed that a greyhounds team consisting of 25 members participated in the action and first fired at the women sentry. It appears that there was no rapid fire from both the sides. There might be some resistance from the Maoists. Since the Maoists were just reached and settling down on hill, the greyhounds might have encircled the Maoists and fired pointedly. As per the injured Maoists only five of their comrades fell down to the bullets. The remaining three might have been captured, tortured and later killed by the greyhounds. Those who had gone for fetching water might have escaped immediately after hearing the gunshots.

The DGP in his press brief told that they have good intelligence out put and informer network to trace the movements of armed squads in the forest. The DGP said with jubilation that the greyhounds team has successfully completed the task. This implies that the police have been pursuing a policy of hunting down the Naxalites in the guise of encounters.

Based on the information gathered from the tribals, material at the site, the first hand information left by the injured Maoist with the Shephards, the team is of the opinion that police had a clear information of the movement of the armed squad, encircled it and killed. There might be minimum resistance from the Maoists. If the greyhounds had maintained some restraint they could have captured the victims alive. The intention is to kill the naxalites.

Flouting all Legal Procedures.

In order to prevent the police from violating all procedures of law and the NHRC directions that to be followed in encounter killings, APCLC moved the High Court of AP and sought the following directions:

1. To preserve the dead bodies and take necessary steps and preserve them from decomposition.

2. To conduct post-mortem examination by the experts, shift the dead bodies either to Osmania Medical Hospital, Hyderabad or Medical Hospital, Guntur.

3. To handover the dead bodies to the concerned relatives after proper identification.

4. To prosecute the greyhounds or persons responsible for the encounter killings under 302 IPC.

The Honourable High Court responded very favourably and directed the State Government and concerned officials to perform post-mortem by the specialists, to identify and handover the dead bodies to the relatives. This must be done in the presence of APCLC president Mr Subhas Chandra Bose (petitioner), the district judge and the collector. APCLC President complained that the post-mortem was conducted hurriedly, only two relatives are allowed to identify the body. The CD's of the post-mortem were sealed and signed by the APCLC President, District Judge and sent to the High Court.

Indeed, it was an Herculean task to bring the dead bodies and send them to the mortuary. First, the tribals protested to carry the dead bodies and later accepted afraid of future consequences. There was unreasonable delay in identification and transporting the dead bodies. Five days after the incident the relatives received the dead bodies. They found it difficult to identify their kith and Kin list of victims.

The List of the Victims:

Madav alias Burra Chinnaiiah Goud alias Sri Sailam, A.P. State Secretary, CPI (Maoist), Karimnagar District; Rajitha alias Suseela, Hyderabad; Viraya Lakshmi alias Shyamalakka, Hyderabad; Ramesh alias Eswar, Anantapuram; Rama, Ardavedu

Mandal, Lakshmipuram village, Prakasam District (Commander, Nallamalla Forest Division Committee Secretary); Nagamani - Julakallu Village, Piduguralla Mandal, Guntur District (Squad member); Uday Kumar alias Ramana, Hyderabad; Kusuma alias Sangeetha - Ramajipalli, Pedda Sankarapalli Mandal, Mahaboobnagar District.

Police have made all attempts to suppress the evidence. How can they collect CD's, wireless sets, other documents before the inquest? Any revenue officials do not endorse the amount of cash they recovered at the spot. Although the inquest has been conducted by the officers concerned, it is only the police announced the details of the articles and things at the scene of offence. Will the police produce before the court the material that they have collected from the scene! APCLC has filed a writ petitions on this extra judicial murders and it has come for hearing before a division bench. How the Honourable High Court responds and what would be the wisdom of and judicial mind of the court on this issue of blatant violation of basic and fundamental right to life. – **General Secretary**, Andhra Pradesh Civil Liberties Committee (APCLC) □

Thanks

The PUCL is thankful to the readers of the *PUCL Bulletin* for responding to our appeal for a copy of the July 1988 issue of the *PUCL Bulletin*. We have thankfully received response from more than one source.

– **Y P Chhibbar**, General Secretary

Lesson from the Malegaon Carnage:

Price of Alienating a Community

Vidya Bhushan Rawat

Malegaon, infamous for communal disturbances came back to haunt the entire nation when several bombs exploded on last Friday killing around 38 people and injuring more than 200 people. After the Mumbai blasts, this was the first major incident in the country and since it happened in Maharashtra raises many uncomfortable questions.

While last time, the blast occurred in the local trains of Mumbai killing over 200 people, the Malegaon explosions were clearly aimed at targeting the Muslim community. It was the occasion of not only the usual Friday prayers but also *Sabbarat*, an occasion to remember their dead ones. And therefore the blasts not only occurred inside the mosques but also the burial grounds killing the innocents particularly the children who died in the stampede that happened in the aftermath of the blasts.

It is not strange in these hours of crisis that the role of Pakistan's Inter Services Intelligence was willfully highlighted by the media and 'security experts' some of them are now the members of the think tank of the *Sangh Parivaar*. These 'security experts' have not ever attempted to ask the Parivar and its goons to have an introspection on their own role in masterminding a large number of communal riots in the country. It is therefore more than unfortunate that the security agencies are working with single minded pursuit of a Pakistani hand in these blasts. While no body deny these facts for which ISI is notorious yet would it be wise to ignore our own communal organizations. Is it because that in these terror times, it has become fashionable to dub only Muslims as terrorists. The police and other organisations got a sigh of relief in Mumbai when the

Ganesh Chaturthi festivals passed off peacefully. Yet no body of them could think that the Muslims or Christians could also become target of another willful group, which might take revenge from them.

It is more unfortunate that in the past few months after the British police 'exposed' the biggest terror attack to explode 10 US aero planes, the Muslims became the softest target of willful campaign to deny them not only basic human rights but also dignity. Keeping beard or *Purdah* and speaking in Arabic or reading Urdu has become somewhat a crime. Societies, which considered themselves the most civilized ones, soon became the most fanatic and idiotically fearing a dissenting voice and face, which was not necessarily European or American.

Any news about Muslims and their involvement in terror activities is big news in India. Therefore news coming out of London is picked up with more vigour here than in Britain itself. Even London Police was more careful in declaring the entire community as terrorists but here in India our 'security' experts start discussing the issue in totally communal terms. No questions are ever raised about those who communalized India and created communal disturbances. A former DG of Uttar-Pradesh police Prakash Singh openly said in a TV interview as what could he do all the terrorists happen to be Muslims? Yes, Prakash Singh either does not know history or pretend not to know it. Hopefully, he will read text of Israel's terror regime in Gaza and other parts of the Palestine.

After the Malegaon, the political leaders started making visit to the town and news

channels started campaign for 'united India'. One does not know how India could be united with out participation of a community, which is being singled out for such an atrocious treatment. Just by lighting a candle in your house for India's unity would not bring unity of mind between the Hindus and Muslims or for that matter other communities in India. It is essential that any plural society can only function when there is a fare representation of it in every sector of governance and public life. Had there been more Muslims in our newspapers and TV channels, the stories like terming them terrorists would have never been there because you realize the other side of the story.

In Britain when things went out of hand the government tried to found out whether the Asian community is feeling alienated and tried their best to bring them to the mainstream. In India any positive effort made by any government in the direction of bringing the marginalized to the mainstream is opposed to death. We have seen the protest against the Mandal Commission recommendations. The Hindutva's political outfits do not oppose Mandal openly though their love for an Indian state based on the 'high' ideals of Manu is an 'open secret'. Yet, in the matter of Muslims, any effort, even if it is half hearted, is fiercely opposed as 'appeasement' by the Hindu fundamentalists.

Not only Mumbai but Malegaon had also become notorious for its malfunctioning for the past few years. Power looms are closed like other parts of the country when Muslims happened to work on. Studies show how the criminal activities increases when one lose its livelihood. It is nobody's guess that Muslims in India survived because of their own hard work

and entrepreneurship whether it was small industries or hard work. Had they been depended on the mercy of the government, they would have not survived more than a few years. It is the great spirit of the community that starvation, hunger and female feticide are least found in the community. And see the irony, those preach us the 'merit', 'tehjeb', liberalism and morality, are worst offender of violating all these norms of a civil society. The Hindutva and its theorists should ponder over their misdeeds and try to learn from the Muslims a few good things to take care of their children and families.

However, I am not amused by the response of the Muslim leadership either. While rightfully, they expressed doubt over the involvement of the 'communal outfits', they simply have not accepted that the Kashmiri militants or terrorists organisations outside the country cannot do it. Why? One must realize that people are just pawns in the larger game of politics. International politics is as dirty as the domestic one. When one read document related to Palestine, it is no doubt that Israel did its best to finish the spirit of that great country which has perhaps the best bankers as well as economy in the middle east but very few now realize that Yasser Arafat was equally responsible for the current crisis in that country. The chaos as well as corruption in that region is the result of the crisis of Palestine leadership. What I mean to say here is that in the game between India and Pakistan, Muslims simply are being used to justify stated positions. Muslim leadership has to be careful. The Kashmiri Muslims leadership want to go to Pakistan and perhaps has no linkages the Muslim groups in other parts of the country while the mainstream Muslim leadership has little time to persuade their Kashmiri brothers to condemn the ethnic cleansing in that state. The Pakistanis are

interested in the conditions of Muslims here in India while refuses to provide democratic set up to their own Kashmiris and Baloochis. At least India did not toe the American line that easily and this country has still have the resilience to teach lessons to those governments which have crawled in front of the alien government at the cost of national interests but what about the governments in middle-east, Pakistan and elsewhere. Despite, Muslims being branded as terrorists and extremists, the government of the Middle Eastern countries remain thoroughly impotent. The only exceptions were Iraq and now Iran. The democracy of Iran is the real 'threat' for the western world. The puppet government which export Mullahism elsewhere are the best friends of the American Administration. What could be bigger irony than this that a progressive state of Iran is considered as fundamentalist and the biggest exporter of Mullahism to the world, the Saudis are the best friends of the biggest democracies of the world.

In his wonderful book 'Secrets of the Kingdom', American writer Gerald Posner, has exposed the linkages between the American administration and the Saudi royal family. In his remarkable investigations into various oil and arms deal, Posner reveal how American companies started acquiring the assets in Saudi Arabia during the period of Richard Nixon and how the Saudis always played the Jew card to blackmail the Americans. India has to learn its lesson from the past. Its Muslim population here is living here for over 400 years. In fact, much before George Bush's country became Christian, India had Christianity at the sore of Kerala. These communities have distinct culture habits and they are completely submerged to Indian nationalism. Of course, their religious practices prohibit them to

follow certain things, which they consider against the basic ethos of their values. Except for those, all these communities have contributed tremendously to India's growth. How can one forget that India's best architecture comes from Muslims? Not only this, the contribution of Muslims to India's culture, music, political life and religious values is unparalleled. They fought against the British for Indian freedom. It is therefore more important for the government and political parties to consider certain things carefully with out politicizing the issue. How much has India given to the Muslims? Do they have a right to demand a job reservation or fare representation for them in the services or not?

There need to be more inter community exchanges. How would it be possible? Not just for the photo-copy of the TV cameras or newspapers. Not with the usual business of the NGOs for Holi, Diwali and Eids. Not even by the gimmickery of the new 'sharva dharma' businessman who bring all the 'faltu' 'conservative' 'orthodox' religious heads over our head to preach. We all know that it is only possible by more participation in our daily lives. The Muslims-Hindu and others are depended on each other. Their economies thrive together. More such initiatives privately are available but no participation of the community in the governance. This is a dire need of the hour to bring the faith of the Muslim community to the national law makers by providing space in the governance. Communal disturbances, threatening calls of political gangs ghettoize communities and pitch them against each other. The rule of the law must prevail and the administration must remain secular. Can we say these things are adhered to very well in this country? Will the government of Maharashtra, West Bengal, Uttar Pradesh, Madhya Pradesh, Chhattisgarh, ask their police

officials to remain secular and cannot have a 'Hanuman temple or a Kali temple' in the police station. Of course, the Muslims should also reject government's dole out on the Haj. Rather, they have the capacity to organize these trips at their own. Government's dole out gives an opportunity to the Hindu fundamentalist organisations to term it as an appeasement. There is no appeasement when the police force guards your temples and takes you to the Amarnath Yatra or provides you facilities for Kailash Mansarovar Yatra.

Those who did not care for the promise to the Supreme Court on the Babari Masjid issue and got a heroic welcome after one-day jail level these charges of appeasements. More paradox when you see that media would be broadcasting live from Mumbai the judgment in 1993 Mumbai blast.

Since a majority of the names would Muslims therefore media does its work well in projecting a community as a terrorist without saying so. The same media has no time to focus and repeatedly as why the same aggression is not shown in filing cases who were responsible for killing of Muslims during the post Babari riots in Mumbai. What happened to those who were responsible for Bhagalpur, Meerut or Kanpur riots, not to speak of Gujarat riots. Where is our Judiciary and governance and fair play. Let some of those also go to jail and face life and death sentences who were responsible for some of these biggest carnages in post independent India. Let us not make the murders from the upper caste Hindus as the champion of Indian nationalism and those from minorities as villain. A murder is a

murder irrespective of his religion and caste. If we are a true democracy and believe in fair play, let us send to gallows to all those who work against this secular fabric, who are against the idea of an idea of Bhagat Singh and Ashfaq Ullah, where all of us could live with liberty and freedom, without fear and caste and religious discrimination. Criticism based on communal and caste interest will take India nowhere. Let us not give a license of patriotism and anti nationalism to people on the basis of their castes and religion. An Indian has to defend the secular values of the country and believe in fair play. A country denying dignity and right to its minorities cannot remain peaceful and would rarely progress if it alienates its second majority, the Muslims. – September 10, 2006 □

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Punjab Human Rights Committee:

Report on Cold Blooded Murder of a Muslim Youth

Even after the end of terrorism in Punjab, functioning of some senior officers of Punjab police still remains the same without any accountability and responsibility.

On the information of murder of a youth in Giana village about 40 km from Bhatinda on the night between 20-21.9.2006 by the Special Task Force police men (STF), The Punjab Human Rights Committee (PHRC) formed a three member panel to investigate this cold blooded murder.

The panel comprised of Punjab Human Rights Committee General Secretary Ved Parkash Gupta, Balwinder. S. Bhullar social worker and Sukhjot Singh (Neena).

The panel visited villages Giana, Kanakwal and townships Rama Mandi and Talwandi Saboo in Bhatinda district and interviewed and interacted with common people and the police officers in this connection. The panel heard the eye witness account of Jagsir Singh one of the occupants of the truck who was fortunate enough to escape death at the hands of STF men. The panel also met the first man who saw the blood covered body of the youth lying in a truck and had reported to the police at Rama Mandi. He told the panel that the villagers heard indiscriminate firing which started between Kanakwal and Giana.

PHRC Panel's Findings are as Under:

According to the findings of the PHRC panel four persons including the driver of the truck were coming from Bhagu village in Haryana. They were bringing a bull in the truck. At Kanakwal village the personal of the Special Task Force (STF) signaled them to stop. According to the facts collected by the panel, this STF is nothing but a group of about one dozen loyal and trusted policemen formed by the Inspector General of Police (IGP) Ferozepur range. This STF is personally controlled and run by

the IGP. The STF is not answerable to any one but the IGP only. This force has been working in all the six districts of Ferozepur range independently without any connection, cooperation or coordination with the Senior Superintends of Police (SSPs) of these districts. The working of this STF is very dubious. A few instances when this force directly interfered in the working of the district police have come to the notice of the panel.

The driver of the truck panicked and did not stop and tried to flee as they had stolen a bull from somewhere in Haryana. The STF men chased them in their own vehicle toward village Giana. The STF started unprovoked indiscriminate firing on the truck. This indiscriminate firing was heard by the villagers and the fact substantiated by a *panchayat* member Raj Singh. The truck driver did not stop even then. The STF police tried to overtake the truck but their vehicle grazed with the truck, which infuriated the policemen. Then they fired at the tyre of the truck and punctured it. Even after the puncture, the truck covered some distance from village Giana. Ultimately the truck got stuck in the Kutcha road and stopped. The STF men pounced upon the truck one of the constables gave a lathi blow on the glass panel of the driver's seat and shattered it. Then they pulled out the driver and tied his hands behind his back. They gave him a sound beating.

When the STF men inspected the truck they found the blood covered dead body of one of the four occupants of the truck. They panicked and tried to put the blame of the murder of the youth upon them in vain. After some deliberations the STF men released the tied driver and left the place in their vehicle leaving the

truck with the dead body of the youth there.

A *panchayat* member of village Giana S. Raj Singh dared to find out the cause of so much firing in the early hours that night. In the morning he saw the truck and found the blood covered body of the youth. He immediately informed the Rama Mandi police as well as DSP Talwandi Saboo about the incident. The Rama Police took the truck as well as the dead body of the youth in its custody.

Jagsir Singh one of the four occupants of the truck who was released by the STF men informed the relatives of Namim Khan at Muzaffarpur in Utter Pradesh on phone. Namim Khan was a Muslim youth in his twenties who was shot dead by STF firing. About one dozen near and dear ones of the youth Namim Khan reached Bhatinda on 22nd evening along with Jagsir Singh who escaped death at the hands of STF men. Jagsir Singh narrated the whole story to the press men as well as to the PHRC panel in detail. He also told that the STF men have snatched his mobile set no. 9814876110 also.

The panel also met the SHO Rama police station, also inspected the bullet ridden body of the truck number GLIG 4100 there. The right side of the rear of the truck was still covered with blood. The blood of the victim trickled down covering even the number plate of the truck. The panel also talked to Gurmit Singh DSP Talwandi Saboo in whose area the village Giana falls.

The police got the postmortem of the dead body and hurriedly cremated it without taking the trouble of identifying the dead person.

The panel interviewed SHO Rama Mandi and DSP Talwandi Saboo, the panel found both these officers hesitant to tell the whole

truth behind the firing and the resultant death of a youth on the night of 20-21.9.2006. Some police constables on condition of anonymity informed the panel that firing and the murder of the youth is the work of STF. The panel wanted to know some more in detail about the STF from here and there. Some other persons connected with the police department were also interviewed. The facts collected from all these persons about STF working by the team have already been mentioned.

The local police of Rama Mandi and Talwandi Saboo was not informed in advance by the STF about their movements in the area and setting up check post there. The panel noted that the STF men deliberately did not inform the local police there about the firing and the death of a youth in the early hours of 20-21 September 06. They must have thought that the case would be hushed up as nobody knew any thing at that time.

Varinder Kumar SSP Bhatinda ordered immediate probe into the incident. The investigation led to the arrest of one Surjit Singh ASI

Ferozepur and Lakhvir Singh head constable Bhatinda, it appears that Bhatinda police must be knowing about the activities of the so called STF men in the area. Surjit Singh ASI is the leader of STF and Lakhvir Singh as its trusted member. Both have been arrested under section 302 IPC.

It is to be noted here that Bhatinda is a developing area and is a good place for minting money. The IGP and DIG both have shifted their offices from their head quarters at Ferozepur and Faridkot respectively to Bhatinda city.

Panel has many questions to be asked and probed. Was working of STF in the knowledge of district authorities? Why other STF men not identified and arrested? What was the hurry to cremate the body of the youth without making efforts to find out his identity?

The Punjab Human Rights Committee after thorough investigation, interaction with villagers, eye witness account of Jagsir Singh and circumstantial evidences has concluded that STF men were responsible of murder of youth Namim Khan. PHRC panel has demanded a thorough

investigation into the formation, control and activities of this STF and the arrest of other members who were present at the time of firing resulting in death of a youth near Giana.

The PHRC panel has apprehensions that the powerful and mighty officers may be successful in hushing up the case or pressurize the victims for a compromise and retract their statements given the press and the Panel.

Copies of this report are being sent to Prime Minister Dr Manmohan Singh, Chief Justice Supreme Court of India, Chief Justice Punjab and Haryana High Court, Chairman National Human Rights Commission, CBI, CVC, Chairman Punjab State Human Rights Commission, Chief Minister of Punjab and Director General Police Punjab for thorough investigation to punish the guilty.

Report released by: **Ved Parkash Gupta. Members of the panel:** Ved Parkash Gupta, General Secretary, Punjab Human Rights Committee; Balwinder Singh Bhullar, Social Worker; Sukhjot Singh (Neena), Farmer. – September 30, 2006 □

Letter to the Editor:

Copy of Letter to the Prime Minister

Dr Manmohan Singh, Hon. Prime Minister of India, Govt of India, New Delhi.

Dear Hon. Prime Minister,

Subject - Notice of unlimited fast from 14th November 2006 to save farmers from committing suicides.

You may be surprised to find this unusual letter. I have been deeply concerned since last two-three years over the suicides by farmers in free India. Amongst other reasons, their inability to repay debt has been a major cause. Instead of straightway unburdening from debts taken by farmers, the Central and State Govts have been announcing

several packages with some relief. In spite of such packages the suicides of farmers from rain fed areas continue every day.

To consider the final draft document of the Mission under the Chairmanship of Dr MS Swaminathan, a Workshop was jointly organised by Vanarai, Afarm (having 300 member organisations). CNRI (having nearly 3000 member organisations from all parts of the country) and Yashvantrao Chavan Pratisthan, Mumbai. The Workshop unanimously recommended to abolish all debts of farmers having less than 2 hectares of dry land and to make available required

loans at 4 percent interest. Similar suggestions have been made by several organisations of farmers, eminent personalities, social workers and Dr Swaminathan Mission Report.

On 4th of October in an inaugural function chaired by me at Delhi, Dr Raghuwansh Prasad Singh, Hon. Union Minister, Rural Development severely criticised the policies of the Reserved Bank of the Central Govt. on this issue. Similarly Shri Sharad Pawar, Hon. Minister of Agriculture on 6th of October, 2006 categorically suggested at Sangli that the loans given to poor farmers should be set off along with interest and new

loans be given to them. Both of them have stated that loans worth crores of Rupees to big industrialists are set off but the poor farmers are penalised. Political parties supporting the Govt. from within and outside have been making similar demand. Even then the Central Govt. is not prepared to accept this genuine and urgent demand for reasons well known to the Govt.

I had been to Agakhan Palace to pay my homage to the great leader Mahatmaji on 2nd October and returned back with determination to stake my life to render justice to millions of our farmers in the country. Since then I have been spending sleepless nights. After discussing my concern with several colleagues, I have resolved to address this letter to demand:

1) Debts along with interest of all farmers in the country having a holding of less than 2 Hectares should be immediately written off. All dry land farmers from areas

where it has not rained since last two to three years should be given similar relief.

2) Debts taken from illegal money lenders should be declared illegal and necessary police protection be given to I concerned farmers. And

3) Rate of interest for all farmers be brought down to 4 percent.

The Central Govt. may consider announcing these decisions, preferably before Diwali Festivals as a special gift to poor farmers. Otherwise any good wishes expressed as a ritual by eminent authorities for Happy Diwali will only expose their hypocrisy.

Come as it may, as a freedom fighter, a person who accepted imprisonment on 10 occasions to secure social justice after freedom and fought against emergency to save our great democracy to protect our farmer's interest. I have decided to go on fast from the morning on 14th November, the

birthday of Pandit Jawaharlalji at the Head Quarter of Vanarai, Pune. All my colleagues have resolved to stand by me in this peaceful struggle till justice is secured.

My demands are very clear and there is no room for any clarifications. I am confident that thousands of farmers, their organisations, social organisations, youth, women, member organisations of our Confederation, all political parties committed to serve and save the farmers and various sections of the society will actively support this noble cause.

I am constrained to send this notice. It is being sent prior to 1 month and 7 days in advance to provide adequate time to the Government. I hope that due justice will be done by the Central Government without any delay.

With personal regards, Yours
Sincerely – **Mohan Dharia**,
October 7, 2006 □

Letter to the Editor:

Gujarat Civil Society Acts

Gujarat Civil Society is active on Flood front of the state with two public inquires are being held to suggest flood mitigation measures.

Narmada Abhiyan and Gujarat Sarvodaya Mandal, both non political voluntary organizations are concerned with use of water as a development input. As shortage of water creates problems, access water is also hazardous for lives of people and cattle as well as for property and crops. The unparallel flood in Sabarmati, Mahi, Vishvamitri and Ukai, have created havoc in Gujarat. Central Government as well as State Government will inquire in to the issue of floods and their effects in their own way. The civil society also has to generate knowledge for mitigation of such hazards. Various professionals and experts on the issue of water can help civil society

in this regard. Having felt a need for generating such knowledge Narmada Abhiyan and Gujarat Sarvodaya Mandal decided to appoint an inquiry committee. The committee will look into and consider following aspects:

1. The magnitude of recent floods in Gujarat

2. The prevailing flood control practices and flood manuals at Sardar Sarovar, Dharoi, Vanakbori, Kadana and Ukai dams and their effectiveness.

3. Desilting of major rivers.

4. Warning mechanism, shifting of people and cattle.

5. A rough estimate of damage done to lives, property and standing crops.

6. Possibility of using access water for filling ponds and recharging ground water and preparing channels for diverting

access water; use of Pala system and effect of river front project.

7. Any other relevant aspects for flood mitigation that chairperson and committee may consider.

In order to generate such knowledge and create people's awareness, Narmada Abhiyan and Sarvodaya Mandal propose to appoint a committee of following citizens:

1. Justice RA Mehta, Retd. Justice of Gujarat High Court-Chairperson

2. Dr CD Thatte, Retd. Chairman CWC

3. Dr Manda R Parikh, Economist and Trustee of Gujarat Vidhyapeeth

4. Shri KR Date, Water expert.

5. Shri Mihir Bhatt, Director, Disaster mitigation institute

6. Shri Digant Oza, Editor Jalsewa

7. Shri Rajesh Bhatt, Ahmedabad Study action group

8. Shri Hasmukh Patel, Water shed activist

9. Dr KK Khakhar, Economist

On the other hand citizen's Council Surat formed an eight-member expert committee. The committee is likely to submit its report latest by October 30. The panel has been set up with two main purposes. One is to put pressure on the Government to apply right ways to protect city from floods and the other is to create awareness through findings by experts.

The experts on the committee are: soil expert and retired professor of SVNIT, MD Desai; technocrat from Mumbai, KR Date; Social Scientist, Ghanshyam Shah; hydrology expert from SVNIT, Prof HL Patel; Ravin Tailor, a PhD student; eminent journalist Digant Oza; senior advocate IJ Desai; and director of Centre for Social studies, Biswaroop Das.

The findings of Surat Committee will be suitably used by Gujarat level committee to prepare flood mitigation plan. – **Vidhyut Joshi, Gautam Thaker** □

Press Statement:

Pain of Manipur

“The PUCL strongly supports the demand of Irom Sharmila Chanu of Imphal who has been on hunger strike since November 6, 2000 protesting against the imposition of the Armed Forces Special Powers Act in Manipur and who has now shifted to Jantar Mantar in Delhi. Her hunger strike was a condemnation of gunning down by Assam rifles of 10 persons at a bus stop in Malon on the outskirts of Imphal. Since she was first arrested she was first arrested she has been in and out of jail and judicial custody and has been force fed.

“She represents the pain the people of Manipur have suffered specially because of the Armed Forces Special Powers Act. Though the Act has been withdrawn from the town of Imphal, it continues to operate in the rest of the State.

“The PUCL appeals to all defenders of Human Rights to rally round her to lend her support in this centenary year of Mahatma Gandhi’s *satyaagrah*.” – **YP Chhibbar**, Ph D, General Secretary, October 5, 2006 □

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