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Terrorist Laws and Peace

K G Kannabiran

We are celebrating a hundred years of the concept of Satyagraha, which we practiced tardily during the freedom movement and those that practiced did not fiercely believe in the concept as Gandhiji did, for they knew that they were likely to be the power wielders and their faith in the concept could only be a short term strategy than an article of faith. When Gandhiji started his defiant non-violent protest against the racist South African regime, lethal force was the monopoly of State power and individuals and groups could not command sufficient lethal force to either confront or hold out against the violent assault by the State and its minions. 11th September was the day a hundred years back and that was against British imperialism in South Africa to begin with. He brought to politics a new approach which lays emphasis on ethical relationship between means and ends, a debate, which he commenced with Tolstoy, and the latter's use of passive resistance was transformed into Satyagraha a concept with insurgent potentialities.

A hundred years later on the same day in the month of September 2001 Osama Bin Ladin as an act of defiance of the Super Power embarked on the unprecedented attack on the world trade center by ramming a fuel filled plane on to the twin towers of the World Trade Center which led to horrendous deaths of quite a few thousand trapped in the towers. In an interview to the CNN in the year 1997 he said: The US Government has committed acts that are extremely unjust, hideous and criminal through its support of the Israeli occupation of Palestine. Due to its subordination to the Jews, the arrogance of the United States have reached a point that they have occupied Arabia, the holiest place of the Muslims. For this and other acts of aggression and injustices, we have declared *jihad* against the United States." Some described this as "morally Neandhradal pursuit of this strain of *jihad*". What is to be noticed is the qualitative transformation of politics and war. A handful of terrorists were able to humiliate the most powerful nation in the world.

Both were acts of defiance. One gave the world the concept of Satyagraha, non-violent protest against Imperial domination and the other terrorism as an act of defiance against impervious entrenched power and authority, hegemonic or otherwise.

Against both acts of defiance the response of the State is the same. Gandhiji's non-cooperation and civil disobedience movement were countered by extensive arrests and by the introduction of a repressive legal structure. Independent India proudly uses these very laws for dealing with democratic protests. The impervious Indian Leviathan invited, by its own governance terror as acts of defiance and pronouncedly after 9/11 at the prompting of US has been passing terrorist laws again and again.

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While Gandhi's legacy may not have much relevance to running a government, was the latter abiding by the Constitution or has it adopted the dual character of the British policy of criminal justice system? In dealing with terrorism the new form of defiance, which does shake ones faith in public tranquility, special laws are enacted with special procedures, special evidentiary rules which makes the Indian Penal Code look very liberal. This is what we can call the Rowlatt tradition. After terrorism this is the tradition which has occupied the center stage of all legal and political debate in the world of Anglo Saxon jurisprudence.

The war on terror was politically declared on 9/11 but officially commenced on 9/12/'94 when the United Nations General Assembly passed Resolution 49/60 delineating the measures to eliminate all forms of Terrorism. The Resolution recalled the Principles of International Law concerning Friendly Relations and Cooperation in accordance with the Charter of the United Nations, and goes on to refer to various other Resolutions including International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The reference to the last two Covenants is to assure the World Public opinion that rights ensured by these Covenants will not be trampled upon and that this War on Terror shall not impede the forces of social change. Pursuant to this, a solemn declaration was made containing twelve clauses divided into three sections simultaneously. One of the clauses calls upon the member states "to fulfill obligations under the Charter of the UN and other provisions of International law with respect to combating international terrorism and are urged to take effective and resolute measures in accordance with **relevant provisions of International law and international standards of human rights for the speedy and final elimination of international terrorism.**" The resolution itself is very cleverly worded. It refers to the international standard and not according to the Covenants or the clauses in the Declaration of Human Rights. If we work out among various member countries the average respect for human rights the result will haunt us with pessimism and the prospect of a better world will appear very bleak.

After the attempt at destroying the Ram Temple located in the disputed site by same terrorists, who were immediately shot by the security forces Terrorism has again occupied the center stage replacing the ongoing peace process. This was followed by blasts in Varanasi, trains in Mumbai and the latest being Malegaon in Maharashtra. Along with Advani, who considers himself the author of POTA, Arun Jetley and other important leaders and the electronic are feeling the absence of effective terrorist laws to counter the onslaught by terrorists. They accused the UPA of hastily repealing the POTA of which the National Democratic alliance was the architect. Congress is the holding company of Indian parliamentary politics. They were the persons who authored the first terrorist legislation. Terrorism is no longer the nation's field of legislation. It is a Directive from the United Nations International that directives have to be fitted into the scheme of adversarial power play. There was an election promise that POTA will be repealed by the UPA, and therefore enacted a law to repeal POTA with a saving clause providing for review of all pending cases under POTA. No terrorist law was introduced while repealing POTA, which was not the usual the legislative practice. Such a course would have invited vociferous adverse criticism and the alliance would have cut a sorry figure. After some time lag an existing law was amended to introduce the terrorist provisions. They verbatim copied Chapter II to VI of the POTA into Chapter IV to VII of the Unlawful Activities (Prevention) Act 1967 by amending the long title by adding after the word "association" the words "for dealing with terrorist activities'. By plagiarizing POTA they gain the advantage of avoiding litigation about the constitutional validity of the law. There is no intellectual property right in law making. Nor is there any freedom for nations in law making in this uni-polar world after 9/11 and after we joined US in the War on Terrorism. By choosing to be with US we have surrendered our legislative independence and there is a necessity to resurrect our legislative and policy decision making process from the thralldom of Western hegemonic dominance.

It would be interesting to study the steady erosion of the objectives of the UN. It is necessary to advert to Article (1) of the United Nations Charter: **"To maintain international peace and security, and to that end to take effective collective measures for the prevention and removal of threats to peace, and for the suppression of acts of aggression or other breaches of peace, and bring about by peaceful means, in conformity with the principles of justice and international law, or adjustment or settlement or situation which may lead to breach of peace"**. We also believe that peace is a collective human right of societies in the world.

Then came the United Nations Millennium Declaration, which not only reiterated the continuing faith in the Charter with promises to improve and democratize the functioning of the World Body and its principal ancillaries. Special provision is made to strengthening the UN. The Heads of State met between 6 & 8 September 2000. The States gathered there affirmed

their faith in the Charter expressed their resolve to establish lasting peace all over the world and support all efforts to uphold the sovereign equality of all states, respect for their territorial integrity and political independence, resolution of all disputes by peaceful means and in comity with principles of justice etc.

And then came the attack on the twin towers on 9/11 and thereafter the scene shifted to the Security Council and from that date to 15/1/2002 around 20 resolutions were passed to justify and for preemptive ratification of US large scale intervention into the territories of other states. The event of 9/11 itself beggars description and analysis. As Jean Baudrillard describes it "With attack on the World Trade Center in New York, we might even be said to have before us the absolute event, the mother of all events, the pure event uniting within itself all the events that have ever taken place" The event disrupted, as he points out, the play between history and power. The tragedy also brought about rejoicings from people who were suffering from the violence generated all over the world by the hegemonic US interventions, Gore Vidal, the writer, has recorded 200 armed interventions all over the globe between 1948 to 2002 resulting in quite a huge loss of life in all these interventions. This Hegemonic power was rendered totally helpless by at the most 18 individuals with their hijacked planes felled twin towers and the victory march of globalization overnight had to change its tune to one of self-defense and defending its democratic faith.

The War on Terrorism is unlike all the wars preceding it. There were wars for imperial acquisitions; then there were ideological wars and then we experienced the Cold War, which led ultimately to the collapse of the Communist systems in the world and in this process what is called a uni-polar world led by the United States emerged and for a long time it was believed that there is no state tall enough to contest the hegemony of the US and its satellites. This belief and assumption was rudely disturbed on 9/11. The terrorist attack on 7/7 and later on 21/7 on London again informed us the character of the declared war on terrorism. There is a qualitative change in this war in which all of us are engaged in. All conventions regulating the conduct of war were rendered at one stroke null and void. This war does not respect territorial integrity or the sovereignty of nations. The invasion of alien territory is not out of disrespect of sovereignty but it is in search a wanted terrorist(s). It is asserted that there are only two options. Either you are with the US and fight the terrorist or you are with the terrorist. In search of Osama Afghanistan was almost bombed out of existence. This is the battle cry after 9/11. This war not only erases the territorial boundaries which define the sovereignty of states, but this war brings abut a change in our understanding of the concept of sovereignty. This war on terrorism is forcing a change in our criminal legal structure and this specter is leading us to terrorize ourselves, by introducing statutes, which looks upon Rule of Law as inconvenient to carry on this war. As happened in London on 7/7 an angry and frenzied police force would pump bullets into an innocent person and the angry protest would lead to a half-hearted apology for an act, which is hardly qualitatively different from the act of the terrorists. The state of continued belligerence will be toward the Muslim population around the world and they will be marked as suspects and in all further attacks the articulate among them will be rounded up. The state of war that comes into existence will be genocidal and for the present the Muslims as a religious community will continue to be targeted. We need not look at it as the United States presented it to the world. We need not approve of Huntingdon's thesis that what we are witnessing is a clash of civilizations. Almost all public utility services are privatized. State is distancing itself slowly but surely from peoples problems and therefore from the people. The World Bank or the US stipulates legislation. Foreign policy decisions by the Government are taken under dictation or in consultation with the US. If FDI role is made unrestricted the picture will be complete.

When we entered our era of independence we were confronted with the Cold War and the nations of the world were presented with the choice of either to be with the Western bloc or the Soviet Bloc. On 9 December 1958 Pandit Nehru who played a leading role in enunciating the policy of nonalignment and for campaigning for it set down what it meant "It is said that there are only two ways of action in the world today, and that one must take this way or that. I repudiate this attitude of mind. If we accept that there are two ways, then we have to join the Cold War – if not an actual military bloc, at least a mental military bloc. I do not see why the possession of great armed might or great financial power should necessarily lead to right decisions or a right mental outlook. The fact that I have got the atom bomb with me does not make me any the more intelligent, wiser or more peaceful than I otherwise might have been. I say this with all respect to the great countries. But I am not prepared even as an individual, much less as a Foreign Minister of this country to give up my right to independent judgment to anybody else in other countries. This is the essence of our policy."

We have after the collapse of the Soviet Union what emerged was the US domination and the general indebtedness of the governments of all the countries to the International Financial Institutions, mainly funded by the USA. We are politically emasculated and therefore unable to chalk out an independent line for ourselves. The United Nations, as it is constituted is unequal in its representative capacities as also in terms of power relationship inter se. To make the UN more responsive and democratic seems to be impossible. The broad objective of the Charter and the Declaration of Human Rights remain rhetoric because many of the members of the World Body are themselves not democracies and many have very weak claims to represent its people. There is the added difficulty of restructuring the Body by reforms for the power to bring about amendments for restructuring the Body can be vetoed by one or the other members of the Security Council. The United Nations is entrusted with three tasks. Two of these are inter national responsibilities. To mediate between states with opposing interests and the second is to restrain the members from violating the rights of its citizens. These tasks have been imperfectly performed. The third task that has been assigned to this Body is the global responsibility to represent the common interests of all the people of the world. It is equipped to discharge the first of its aforementioned obligation. In context of Terrorism it is the global responsibility to ensure peace and security to all the peoples of the world. The existing institutions set up by the UN will have to be innovatively used.

The General Assembly comprising of 186 member states should undertake the responsibility of chalking a 'way out' of this 'either/or' impasse. This responsibility the member state should undertake in the General Assembly defying the Security Council, if necessary and set out an independent approach to the problem posed by the Terrorists. Such an approach would enable the General Assembly or the collective of the member states who are gathered in the United Nations keep the channels for a dialogue with them open. Octavio Paz, sees history as dialogue. Yet time and time again this dialogue has been broken off, drowned out by the din of violence or interrupted by the monologue of ranting leaders. Violence exacerbates differences and keeps both parties from speaking and hearing; monologue denies the existence of the other; dialogue allows differences to remain yet at the same time creates an area in which the areas of otherness coexist and interweave. Since dialogues eliminate the ultimate, it is a denial of absolutes and their despotic pretensions to totality: we are relative, and what we say and hear is relative. But this relativism is not surrender: in order for there to be dialogue, we must affirm what we are and at the same time recognize the other in all his irreducible difference. Dialogue keeps us from denying ourselves and from denying the humanity of our adversary."

Perhaps terrorist violence is the only way left to people to fight hegemonic power whether it be Western or Islamic. Later, whether it be domestic or international. To dismiss them as criminals or people having ambition to proselytize the world to Islam appears to be an unfounded inference. It may still be possible to hold a dialogue with terror. One sure method appears to be of holding a dialogue is, to hold a dialogue with the people whom it assumes to represent and shall for the moment call them its constituency. We should dialogue with the constituency, the terrorist assumes he represents and that can be done only when we accord them an equal status. allow them the growth, we are fighting to acquire for ourselves, if we make them feel that they are participating partners in the socio-economic processes they will grow in the main stream as intellectuals as academics as entrepreneurs. All these years we have not allowed "the other people" the space to grow in the main stream and so they grew into Dawood Ibrahim, Tiger Memon, Chota Shakeel and the like of them in various gradations. Relieve them of the reason to turn (to) terrorist and try to build up a plural society where equality reigns in all walks and all facets of life. Penal statutes cannot remedy social imbalances. Despite the presence of penal laws social imbalances trigger political turbulence and intelligent governance consists in addressing the reasons for these social imbalances.

Books Referred:

Select documents on India's Foreign Policy and Relations Vol. I: The Age of Consent-Manifesto for a New World Order – George Monbiot; Octavia Paz – One Earth, Four or Five Worlds; Law Relating to Terrorism – Dr Surat Singh & Hemraj Singh ❑

Letter:

Bushism of NYCBA

Sir,

I have read the Report on New York City Bar Association by Dr V Suresh. With due respects to Dr Suresh and Shri Anil Kalhan, I would like to submit that the NYCBA is engaging in naked *Bushism*. They should better do something about the home scene in the USA, its actions in Iraq, and its threats to other countries, etc.

– **A member form Delhi ❑**

Women's Plight in Muslim Society

Asghar Ali Engineer

Imrana's case from UP and Ayesha Azmi's case from London are very much in media's glare these days. Earlier in eighties of twentieth century the Shah Bano's case remained in media headlines for months. There is no doubt that media pays more than needed attention when it comes to Muslim women. Muslims always complaint abut this extraordinary interest of media, both electronic and print, takes in Muslims women's matters.

Having said this I must say Muslims have to do serious thinking on what goes on in their society. Let them reflect honestly if they follow the Qur'anic injunctions about women honestly. They time and again show their emotional attachment to the *Qur'an* but then it comes to the practice of the Qur'anic teachings, they are less than honest, and particularly so when it relates to women.

The Muslim '*Ulama* are largely responsible for the plight of Muslims in all Muslim societies whichever country they belong to. They are under great influence of patriarchal values of the society they live in, rather than the Qur'anic values. **The entire Qur'anic discourse on women is right-based and for men duty based.** However, the '*Ulama* have reversed it and unto '*Ulama* entire discourse about women is duty-based and for men is right-based. So much for their honesty to *Qur'an*.

The Imrana case has again attracted media attention because of the *fatwa* issued by Darul 'Ulum Deoband and also by village *Panchayat*. One can understand behaviour of village *Panchayat* as it is not Islamic authority but one is greatly saddened by the *fatwa* issued by Darul 'Ulum, Deoband, the great Islamic seminary second only to Al-Azhar, in importance.

Imrana, wife of a rickshaw driver from Muzaffarnagar district in UP was raped by her father-in-law. Ali Mohammad, father-in-law who raped her has been convicted, and the act of rape has been established. The '*Ulama*, before the court verdict came, had even doubted her allegations against her father-in-law and said that it is a property dispute and she is making false allegation against her father-in-law to take revenge. However, they said, if at all she has been raped, she should divorce her husband and marry another man as she had sexual intercourse with the father of her husband.

The "*Ulama*, hardly bothered about the fact that she was raped and it was not consensual sex. Had she had consensual sex with him, it would have been entirely different matter. If she has been raped, how can she be blamed? One should have all the sympathy for her and punishment should be given to her father-in-law. Instead our '*Ulama* are for punishing her. They are not even taking the fact in account that she has five children from her husband and if she obtains divorce, who will look after them? One of her daughters has reached marriageable age.

In rural India a woman cannot afford to defy a *fatwa*, justified or not. She has to live in that society and arrange marriages of her children. Those who face boycott they alone know the consequences. Our '*Ulama*, without bothering to study actual situation and the context, just open their *Shari'ah* books and mechanically issue fatwas. They are totally shy of applying principle of *ijtihad,* which means creative re-interpretation of *Shari'ah* rulings. The Prophet (PBUH) had himself encouraged Mu'adh whom he had appointed as governor of Yemen, to practice *ijtihad*.

Unfortunately our 'Ulama come from poor and backward society and have no knowledge of modern society and its dynamics. They never dare to think out of the box. They have been trained only to study classical *Shari'ah*. They even do not know that great Imams themselves differed from each other while giving their opinion on the same question. For example *Imam* Abu Hanifa, who was great legal genius and thinker, maintained that what is *haram* (prohibited) cancels what is *halal* (permissible). Thus according to Hanafi School if Imrana has been raped which is *haram* will cancel her *nikah* (marriage) which is permissible.

On the other hand, *Imam* Shafi'I, another great jurist, is of the opposite opinion i.e. what is *halal* cannot cancel what is *haram* which, in Imrana's case, would mean that her being raped by her father-in-law which is *haram* cannot cancel her *nikah,* which is *halal.* Since Imrana is Hanafite and *fatwa* was obtained from Hanafi *mufti* he declared her *nikah* with her husband cancelled and advised her to obtain divorce and marry someone else. Had the *fatwa* been obtained from a Shfi'I *mufti* he would have declared her *nikah* as intact.

Similarly *Ahl-e-Hadith* also would have upheld her *nikah*. Thus we can see there are different schools of thought and our *muftis* and '*Ulama* give fatwaas according to their schools of thought. It is high time that the '*Ulama* would at least take from different schools of jurisprudence what is favourable to women and avoid such embarrassing situations. There is definite precedence for that. Maluana Ashraf Thanavi, a prominent '*alim* of his time, too from Maliki school what was favourable to Muslim women about dissolution of marriage as Hanafi School required 90 years of waiting for a Muslim women whose

husband was missing. In Maliki school it is only four years of waiting.

There are several such women issues on which one or the other Shari'ah school is more favourable than the other. For example, triple divorce in one sitting is not valid in *Ahl-e-Hadith* School whereas it is allowed both in Hanafi as well as Shafii' School. Thus this provision from *Ahl-e-Hadith* could be incorporated to abolish triple divorce in one sitting. Such compilation will greatly ease Muslim women's position in India.

In fact such compilation was done in Turkey in nineteenth century itself during Ottoman period. All Muslim countries are making changes in the Shari'ah laws in respect of women and even applying direct Qur'anic provisions or even attempting *ijtihad* in other matters. It is only in India where even compilation from all schools of Shari'ah is considered untouchable, let alone attempting *ijtihad*. There is total stagnation in Shari'ah laws in India and women continue to suffer.

Our '*Ulama* simply consult their school of jurisprudence and issue *fatwas* without caring about the consequences. No wonder than that whole world thinks that Islam oppresses its women and what is worse, refuses to accept any change in the medieval formulations by the Islamic jurists. Our 'Ulama declare Shari'ah laws as divine to stall any attempt to change and to win Muslims in favour of no change.

It is simply not true. Shari'ah is by means immutable. It is product of human thinking, as much as divine laws given by the Qur'an. At best it can be said to be human approach to understanding and applying divine injunctions. Thus one can say Shari'ah is semi-divine and must change in as much as it is human. The conditions in which the great Imams thought have changed considerably and one has to think again in new context.

Today women are active agents in the society and are greatly aware of their rights. Women during the Holy prophet's time were also very active on various fronts and fought their way even into men's world. Often the Prophet consulted his wives from important tasks and assigned them important work including leading prayers in their house. They also actively participated in battles and worked as nurses on battlefields.

Hadrat Umar, the second Caliph, appointed a woman as market inspector and Imam Abu Hanifa allowed women to become judges. Unfortunately from Umayyad period onwards, position of women declined gradually until they were confined to four walls of their houses and put under *Purdah*. Many historians of early Islam hold that the kind of *Purdah* we have today came into vogue in the Umayyad period when they imitated Roman and Sassanid empires who kept hundreds of women in *haram*.

Today women are playing very important part in social, political and economic life of various societies, Indian as well as others. All Shari'ah issues, which do not even conform to Qur'anic injunctions, have to be re-thought and reformulated. If one goes by the women's movement in the country the 'Ulama would have tough time, if they do not take notice of the changes coming in the society.

Though Muslim women are comparatively backward but a section living in urban areas is highly educated and is floating NGOs to fight for their rights. Now some women have even formed their own personal law board headed by Shaista Amber and are questioning everything the '*Ulama* say. In other words, even Muslim women, are not going to accept whatever these learned men of Islam say.

India is a democracy and all have fundamental rights to freely express themselves. It is not closed society dominated by 'Ulama that one will accept all they say without critically examining it. The *ibadat* (matters pertaining to worship and matters relating to hereafter) should not be subject to any change but matters pertaining to *mu'amalat* i.e. between one human being and other human being must be subject to change and only Qur'anic values will remain immutable, the Qur'anic values like justice ('*adl*), benevolence (*ihsan*), compassion (*rahmah*) and wisdom (*hikmah*).

If the '*Ulama* do not show sensitiveness to others suffering and continue to remain rigid, they will not serve the cause of Islam, much less that of women. ❑

What is Wrong with J&K RTI Act and Its Implementation?

Balraj Puri

The Right to Information Act was hailed as a major step towards democratisation of the country as informed citizenry and transparency of information are vital to the functioning of a democratic government and also to contain corruption.

The cases of, say, a tea vendor, a landless worker and other ordinary people, who sought information under RTI, and immediately got attention and justice, have been reported from various parts of the country. Indeed the RTI act had generated so much enthusiasm that when the government wanted to amend it in order to withhold information about noting on files during processing of

a case, there were spontaneous and vocal protests all over India. Eventually yielding to popular pressure, the government postponed moving the amendment bill in the last session of Parliament.

Jammu and Kashmir is the only state of India where the RTI Act conspicuously failed to create any enthusiasm. Not a single case is reported or is known in which any person got redressal under the RTI act. My formal enquiry under the act from the state chief secretary regarding number of representations received by the government under it has so far remained unanswered.

The reason for the indifference of the people of the state to its RTI Act and seek information about any case is not merely due to lack of their interest in their problems or that they do not need such information. Lack of a strong voluntary effort to make people conscious of the right to information also does not fully explain why they are not asserting this right. The main reason is limitations inherent in the state act and lack of will of the state government to implement it.

Central laws are not automatically applicable to J&K state under Article 370 of the Indian Constitution. The state assembly enacted its own law on the subject in 2004 and notified rules there under on 30th June 2005. Its main difference with the central RTI act is that unlike the latter, it does not provide for the institution of the Information Commission. For the rest of the country, Information Commission has been appointed at the Centre and in the states which is to be appointed, in case of the centre, by the President on the recommendation of a committee consisting of the Prime Minister, leader of the opposition in *Lok Sabha* and, a Union cabinet minister to be nominated by the Prime Minister. The State Commission have similarly been assured of their autonomous character and shall be appointed by the Governor on the recommendation of a committee consisting of the chief minister, leader of the opposition and a cabinet minister.

The Commission headed by the Chief Information Commissioner is a vital link between the people and the government. It has the same powers as are vested in a Civil Court. It can summon and enforce attendance of persons and compel them to give oral or written evidence and to produce the document. The Commission, during the inquiry of any complaint under the RTI act, can examine any record which is under the control of the public authority and "no such record may be withheld from it on any grounds."

As J&K RTI act does not provide appointment of Information Commission, the complainant is not only deprived of any guidance about the procedure of filing a complaint, there is also no compulsion on public authority to supply the information sought. Most of the people, including educated people, are unaware of the procedure for filing a complaint.

Further the list of subjects on which the state government can withhold information is as long as fifteen. It includes advice, including legal advice, opinion or recommendation made by any officer of a public authority during the decision making process, information which would affect the enforcement of any law, information the disclosure of which would affect the government's ability to manage economy and in general "any record and information which under the Evidence Act is claimed to be privileged." The in charge of an office can also regret to supply information to an applicant if the information cannot be complied without considerable financial expenditure or without considerable extra work. Further, a public authority can deny information if it would adversely interfere with its functioning.

There is no Commission to which a person seeking information from the government can approach for guidance if his/her request is rejected. Nor any Court "shall entertain any suit, application or other proceedings in respect of any order made under this Act and no such order shall be called to question"; the Act states categorically and somewhat ominously. The corresponding provisions in the central Act are far more liberal. In any case the Central Information Commission and the State Information Commissions have wide powers to force the public authorities to provide the necessary information sought by the applicant.

Apart from glaring features in the state RTI which would handicap and hence discourage any person to seek requisite information, an additional factor to the same end may be the general practice of the ministers and legislators to hold durbars to listen to public grievances and offer redressal. But that is no substitute for institutional system for receiving grievances and doing redressal. For everybody cannot have access to such durbars.

Separate laws and rules for J&K State are made under the name of its autonomy which is most sensitive issue in the state. But autonomy would be justified only if it can make better laws and prevent imposition of unjust laws and decisions of the centre on it. But as far as Right to Information Act of the state is concerned, it is in every sense much worse and regressive than the central act and is thus clearly misuse of the powers that the state enjoys under the cover of autonomy. Autonomy is supposed *(…on page 20)*

Tarkunde Memorial: Proceedings

Second V M Tarkunde Memorial Lecture

J S Verma Delivers the Lecture, Rajindar Sachar Presides

The second PUCL V M Tarkunde Memorial Lecture was delivered on November 23 at 5.30 pm at Gandhi Peace Foundation, Delhi by (Justice) JS Verma (Retd.), former Chief Justice of India and the former Chair person of the National Human Rights Commission of India. Former Chief Justice of Delhi High Court and former President of the PUCL, Justice Rajindar Sachar (Retd.), presided. In the beginning Dr Y P Chhibbar, the General Secretary of the PUCL, spoke briefly about the life of late Shri V M Tarkunde (see elsewhere). Dr Pushkar Raj, Secretary PUCL said a few words about (Justice) Rajindar Sachar (see elsewhere). Dr George Mathew, President Delhi State PUCL, introduced (Justice) Verma (see at the beginning of his Lecture). Justice Verma spoke on *Humanism: The Essence of Civil Liberties* (see elsewhere).

Speaking after (Justice) Verma. (Justice) Rajindar Sachar said a few words about Shri Tarkunde. He, in a voice charged with emotion, recalled that when he had approached Tarkunde to appear in defence of his father (late) Shri Bhim Sen Sachar, (the oldest person to be arrested, during the Emergency in 1975), Tarkunde, setting all formalities aside, came to his residence for preparing the brief. It is a well established practice that the client visit, the lawyer and not *vice-versa.* He also recalled how Tarkunde affectionately persuaded him to accept the Presidentship of the PUCL in 1986.

In the end Shri Mahi Pal Singh, General Secretary of the Delhi State PUCL expressed thanks on behalf of the National PUCL and the Delhi PUCL. He thanked the main speaker and the president of the meeting, Justice J S Verma and Justice Rajindar Sachar respectively. He specially thanked Ms Manik Karanjawala, daughter of Justice Tarkunde. He also mentioned the name of Prof Amrik Singh, who was the Vice President of the PUCL for a number of years. He also thanked the Gandhi Peace Foundation. He profusely thanked the audience for sparing the time to attend the Lecture.

KG Kannabiran, President, PUCL could not came from Hyderabad due to ill health.

After the function every one was invited to a cup of tea.

Second *VM Tarkunde Memorial Lecture*

Humanism: The Essence of Civil Liberties

J S Verma

Former Chief Justice of India and Former Chairperson, National Human Rights Commission

[*Justice JS Verma was born on 18 January 1933. He obtained the degrees of B.Sc. and LL. B from the Allahabad University and then joined the Bar in 1955; he became a Judge of the Madhya Pradesh High Court in 1972 and its Chief Justice in 1985. He became the Chief Justice of Rajasthan in 1986. He came to the Supreme Court of India in 1989 and was the Chief Justice of India from 25 March 1997 to 18 January 1998. He was also the Acting Governor of Rajasthan, twice between 1987 and 1989.*

He headed the Commission to inquire into the security lapses leading to Rajiv Gandhi's assassination (1991-1992) and the Committee to suggest operationalisation of the Fundamental Duties (1998- 1999). He was the Chairperson of the National Human Rights Commission from 4 November 1999 to 18 January 2003.

Justice Verma is known for judicial creativity in the field of gender and social justice, probity in public life, judicial accountability, sustainable development, and human rights. Some of his landmark pronouncements are: Vishaka-AIR1997 SC 3011; Nilabati Behra-AIR1993 SC 1960; Srilekha Vidyarthi-AIR1991 SC 537; Ayodhya-AIR1995 SC 605, Hawala-AIR1998 SC 889; Entry of Dalits in the Nathdwara Temple-AIR 1989 Rajasthan 99, and TNGodavarman-AIR1997 SC 1228 relating to environment. These pronouncements are innovative interpretations of the Constitution.

As Chairperson of the NHRC, Justice Verma widened the horizon of human rights, giving special thrust to economic, social and cultural rights along with group rights of the marginalised and minorities. He focused on public health and social security as human rights issues to cover HIV/AIDS, and other critical issues, including the right to food or the right to be free from hunger, and abolition of child and bonded labour. Interventions by NHRC under his leadership to enforce accountability of governments for starvation deaths in Orissa and elsewhere, after Orissa supe-rcyclone (1999), Gujarat Earthquake (2001) and Gujarat communal disturbances (2002) were based on the new horizon of human rights. Similar was the stand taken on the issue of Dalits at the World Conference on Racism at Durban (2001), and in opposing the stringent provisions of the Prevention of Terrorism law, in assertion of human rights.

Among the several honours conferred on him, are the Honoris Causa *degrees of LL.D.* by *the Banaras Hindu University and the Universities of Allahabadand Jabalpur;* the Honoris Causa *degree of Vakpati (D.Litt.)by the Central Institute of Higher Tibetan Studies, Sarnath, Varanasi; and the* Honoris Causa *degree of D.Sc. by the G B Pant University of Agriculture & Technology, Pantnagar. Some of his speeches and Articles have been published in two Miscellanies titled the* New Dimensions of Justice *and* The New Universe of Human Rights*.*

After demitting office of the Chairperson of the National Human Rights Commission, Justice Verma continues to engage himself in pursuing matters of national and public concerns, and advocating measures for amelioration of the polity.]

Institution of an annual lecture in the memory of VM Tarkunde is a fitting tribute by the PUCL, of which he was a founder. It is a great privilege and an honour for me to be invited to deliver the lecture this year. I am grateful for this opportunity to join in paying homage to a leading member of the legal fraternity who actively, for long served the cause of preserving civil liberties in the country through the rule of law. May his tribe increase!

I

I came to know VM Tarkunde only on coming to the Supreme Court, and then too only from across the Bar since we had different, though analogous, roles in the Court covering the task of protection and enforcement of civil liberties. On demitting office, I came to live in Noida where he too lived, and I looked forward to closer interaction with him, but that was not to be because of his sad demise soon thereafter. My acquaintance with him has remained distant, but our interaction in the Court gave me enough opportunity to observe his humanism and commitment to the cause of protecting civil liberties. In one word I would describe VM Tarkunde as a great *Humanist.* He had transcended from the level of an individual to that of an institution in his lifetime.

The choice I have made of the theme for this lecture in his memory is occasioned by Tarkunde's humanism, which was the motivation for his participation in the crusade for civil liberties, during and after the phoney Emergency.

One incident alone is enough to describe Tarkunde's stature. Some years back at a dinner hosted by Soli Sorabjee, Arun Jaitly and I were discussing the role of lawyers in promoting human rights, particularly the young. Arun named one of them (I will not name him) and described him as the *Tarkunde of our generation.* Indeed, it is high praise for that young lawyer and a fitting tribute to the legend as the benchmark for judging a human rights activist. Tarkunde is a role model for the youth and a gift to our inclusive democracy. I call our democracy inclusive because of the creed of secularism ingrained in it, of which Tarkunde was an active proponent.

Humanism is defined to mean: any system which puts human interests and the mind of man paramount; non-religious philosophy based on liberal values; tendency to civilise; and compassion. Tarkunde satisfies that test and was true to this meaning.

I recall the fervor with which Tarkunde addressed the Court espousing the cause of the minority in the Ayodhya case, and generally, in other matters, of the have-nots for promoting the egalitarian ethos and distributive justice promised in our Constitution. His role during the Emergency as an ally of Jayaprakash Narayan and thereafter in contributing to civilize the exercise of public power is well known. His association with the PUCL was life-long.

II

The basic concept of civil liberties is the upholding of the dignity and worth of the individual, which is the essence of human rights. Man is born free and there is constant struggle to break the shackles, when in bondage. This perception led to renaming the Indian Mutiny of 1857 as the First War of Indian Independence. The Civil War of America was a similar response. Civil liberties in South Asia present a mixed picture. It is dismal where democracy is either not real, or is in the nascent stage, even if not absent in form.

The aftermath of 9/11 with the frenzy of war against terrorism has global impact. It is greater where the civil liberties were already not sacrosanct and the institutional protection was weak. Strength of the polity to overcome the impact determines the current state of civil liberties. Democracy is the best form of polity for protection of civil liberties; human rights are at the core of constitutional governance. India has the lead in this venture, thanks to the large number of human rights activists in all spheres, and the country ethos. Tarkunde and his ilk have made a large contribution.

Civil liberties are a potent tool for empowerment of the people through human development. India with its vast human resources has a great potential. It is already emerging as a super power threatening even the lead status of USA, because of the intellectual capital and its vast resource of knowledge makers in this century of knowledge. The linkage between human rights and human development is recognized, as they share a common vision and serve a common purpose. They in turn depend on the quality of governance, that is, democracy. Synthesis of all three concepts in the polity is essential to achieve the aim.

The struggle for civil liberties has been long and arduous. Its perseverance requires eternal vigilance. Activists have, therefore, continuing significance for awakening the people to this reality.

The French Constitution (1789) in its Preamble declared: *men are born and remain free and equal in rights;* the *Magna Carta* and the American Constitution also emphasized this concept. The Virginia Bill of Rights (1776) proclaimed: *all men are by nature equally free and independent and have certain rights namely the enjoyment of life and liberty.* During the freedom struggle in India, a demand for *Poorna Swaraj* was made in 1929 and the fundamental rights of individuals were spelled out in 1931.

The UN Charter (1945) reaffirmed faith in the dignity and worth of the human person, in the equal rights of men and women, and of the nations. The UDHR (1948) elaborated human rights. It recognized the inherent dignity and equal rights of all members of the human family as the foundation of freedom, justice, and peace in the world. The duty of states for protection of human rights by the rule of law was also recognized. The two Covenants ICCPR and ICESCR honour the obligation of the States under the UN Charter. The inherent rights of life, against torture, to a free and speedy trial, protection against retroactive penal laws are specified in the ICCPR, and the economic, social and cultural rights needed for full human dignity are in the ICESCR. The basic rights are non-derogable even during national emergency. The Vienna Declaration (1993) recognized the universality, indivisibility, and interdependence of human rights, and the linkage between human rights, human development, and democracy. The universal character of civil liberties is inherent in human existence.

The common theme of different philosophies about individual rights is: that *a minimum absolute or core postulate of any just or universal system of rights must include some recognition of the value of individual freedom and autonomy.* It appears that liberty is a basic right, universally recognized along with equality for every individual. The status of a person cannot justify a differential treatment.

This aspect impelled Mahatma Gandhi to say: *It has always been a mystery to me how men can feel honoured by the humiliation of their fellow beings.*

III

The Indian ethos is of commitment to civil liberties. The professed aim of *Poorna Swaraj* with enumeration of fundamental rights during the freedom struggle is reflected in the Constitution of India framed after the Independence. The provisions of the contemporaneous UDHR and the later two Covenants find place in our Constitution. Civil liberties are guaranteed with the provision of constitutional remedies for their enforcement in Articles 32 and 226 of the Constitution. The unique feature of *unity in diversity* with the creed of *secularism* in our plural society is woven through the constitutional fabric. It guarantees *inclusive democracy.*

The core values of *dignity of the individual and unity and integrity of the nation* in the Preamble to the Constitution strike a clear balance between human dignity and national security. The basic rights in Articles 20 and 21 are made non-derogable by Article 359 to correspond with Article 4 of the ICCPR to this effect. A proper appreciation of civil liberties in India requires reading together the fundamental rights, directive principles and fundamental duties, which are complementary and correlative.

The decision in Keshavananda Bharti, AIR 1973 SC 1461 holds that the basic structure of the Constitution is indestructible and beyond the amending power of the Parliament under Article 368. Basic features of the Constitution forming its basic structure include democracy, secularism, rule of law, judicial review, free and fair elections, and the essence of separation of powers, etc. Thus, civil liberties are firmly constitutionalised and judicialised in the Indian polity.

The constitutional remedy in Article 32 for the enforcement of fundamental rights is itself a fundamental right. Ambedkar treated it as the *soul* of the Constitution; and Chief Justice Patanjali Sastri labeled the Supreme Court as the *sentinel on the qui vive* because of this jurisdiction.

The National Human Rights Commission in the context of Gujarat communal violence of 2002 spelled out the State responsibility for protection of human rights, thus:

It is the primary and inescapable responsibility of the State to protect the right to life, liberty, equality and dignity of all of those who constitute it. It is also the responsibility of the State to ensure that such rights are not violated either through overt acts, or through abetment or negligence. It is a clear and emerging principle of human rights jurisprudence that the State is responsible not only for the acts of its own agents, but also for the acts of non-state players acting within its jurisdiction. The State is, in addition, responsible for any inaction that may cause or facilitate the violation of human rights.

This is the status of civil liberties in India.

IV

It is a fallacy to think that there is any conflict between human rights and national security. The coexistence of human dignity and national security in the Preamble to the Constitution of India is sufficient to dispel this impression.

It is only in the event of a possible conflict that there has to be priority, and then too the non-derogable rights remain sacrosanct while the other rights become subservient only to the extent necessary in the larger interests.

Even after 9/11, in the UN Security Council Resolution 1373 of 28 September 2001, the States were called upon *inter alia* to take appropriate measures for combating terrorism in conformity with relevant provisions of national and international law, including standards of human rights. In the same context, Mary Robinson, the UN Commissioner for Human Rights said:

There should be three guiding principles for the world community: the need to eliminate discrimination and build a just and tolerant world; the cooperation by all States against terrorism, without using such cooperation as a pretext to infringe human rights; and a strengthened commitment to the rule of law, and also,

What must never be forgotten is that human rights are no hindrance to the promotion of peace and security. Rather they are essential element of any strategy to defeat terrorism.

The UN General Assembly emphasized in this context, that States must adopt measures in accordance with the UN Charter and the relevant provisions of the international law, including international standards of human rights. Gandhiji had this in mind when he said: *Peace does not come out of a clash of arms, but out of justice lived and done.*

V

The right to freedom of speech and expression guaranteed in Article 19(1)(a) is a potent tool in our representative form of government to facilitate the people's participatory role in governance. The *right to know* is implicit in it. A citizen has, therefore, a right to know about the functioning of the State, its instrumentalities, and all those exercising public power. Freedom of speech is founded on the right to know. It is subject only to *reasonable restrictions* imposed by law under the heads specified in Article 19 (2) in the larger public and national interests. Reasonableness of the restriction is subject to judicial review. The recent Right to Information Act, 2005 is merely to provide for the operationalisation of that right. It must be construed to maximize disclosure and minimize confidentiality.

Freedom of Press is not expressly provided in the Constitution, but it has been derived from the people's right to know. As judicially construed, it includes not merely the freedom to write and publish what one considers proper (subject to the reasonable restrictions), but also the freedom to carry on the business to disseminate information.

It is in the exercise of this right that the voters have a right to know the antecedents of all contesting candidates at an election, so that they can make an informed choice of their representative based on suitability: PUCL v. UQI, AIR 2003 SC 2363.

Thus, the prevailing freedom of press in our country, so essential for democracy is logical. It has been judicially recognised that even a defamatory incorrect news item about a public figure relating to his public conduct is not actionable, unless it results from malice or reckless disregard for truth.

I am pleasantly surprised that in a neighbouring country having democracy only in form, there is considerable freedom of press. A few items published in the *Dawn* of Pakistan castigating the high and mighty wielding power are to be seen to be believed. The space for absorbing the scathing criticism of the authorities by Asma Jahangir and Imran Khan is refreshing to reveal that the germ of democracy has not atrophied even there. Similarly, the global support for the Nobel Peace Laureate Aung San Suu Kyi confined in Myanmar is hope for ultimate triumph of democracy and civil liberties.

VI

International Humanitarian Law is the branch of international law that deals with human rights in situations of armed conflicts. Despite the different historical origins of IHL and human rights law, there is a growing convergence between the two. They complement and supplement each other. The prime aim of both is to protect the right to life and dignity. The basic premise of both is non-discrimination. The fundamental concepts of these laws are based on balance between *military necessity* and *humanitarian considerations.* The rule of proportionality and humane approach are recognized in the IHL. The problem is of ensuring compliance of IHL and enforcing accountability.

The obligation to honour humanitarian laws flows from Article 1, common to the four Geneva Conventions, which reads:

The High Contracting parties undertake to respect and to ensure respect for the present Convention in all circumstances.

The words *in all circumstances* are significant to exclude any exception. The obligation to respect legal protection to civilians and combatants under the Martens Clause in Article 1, Para 2 of the Additional Protocol 1 of 1977, is:

In cases not covered by international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from principles of humanity and from dictates of public conscience.

This is in conformity with the common law rule that in the absence of legislation, the courts are to decide in accordance with

the principles of *justice, equity, and good conscience.* Thus, humanism is the guiding principle of the rule of law, both national and international.

Humanitarian principles govern also the remedy for human rights violations. According to Prof. Van Boven principles, the only appropriate response to victims of gross violations of human rights is one of reparation, which encompasses access to justice, and reparation for harm suffered. The four main forms of reparation are: restitution, compensation, rehabilitation, and guarantee of non-repetition. Duty to prosecute perpetrators is included in reparation. Impunity is in conflict with this principle. The NHRC applied this principle in recommending the obligatory State response to the victims of the Gujarat carnage in the year 2002. A lot remains to be done in that behalf.

VII

Humanism practiced as the universal creed is the assurance for lasting world peace. The mosaic of pluralism with the shade of secularism is a unique feature of the Indian ethos. Indian secularism is the commitment to equal respect for all religions with the State neutrality. The current slogan of *world is one family*, *humanity is one race,* and *all human rights for all* is no different from the Indian concept of *Vasudhaiv Kutumbakam* and *Sarve Bhavantu Sukhinah.*

HH the Dalai Lama believes *that we need different religious traditions, because a single tradition cannot satisfy the needs and mental dispositions of the great variety of human beings.* He adds, *what they have in common is an emphasis on the importance of enhancing such basic values as compassion, love, forgiveness, and contentment, therefore we can describe each religion as a unique way to help people become better human beings.*

At the World Parliament of Religions in Chicago (1893), Swami Vivekananda described the diversity of religions as *the same light coming through different colours*; and a lawyer Charles Bonney hoped that, *henceforth the religions of the world will make war, not on each other, but on the giant evils that affect mankind.* However, that hope has been belied in the last century, and true secularism is yet to become all-pervasive.

The current need is of an all-pervading spirit of humanism, which requires each one of us to be a good human being. In a plural society, the greater responsibility is on those practicing the majority faith to reduce the tensions and to create a conducive environment for practice of humanism as the core of all religious faiths.

The hearing in the Ayodhya Reference, AIR 1995 SC 605 was a mixed experience. In the majority opinion which I wrote, I said at the beginning quoting Jonathan Swift, *we have just enough religion to make us hate, but not enough to make us love one another;* and then I proceeded to say, *genesis of this dispute is traceable to erosion of some fundamental values of the plural commitments of our polity.* However, the pleasant experience was the sight of lawyers belonging to other communities advocating the cause of the minority community. Exhilarated by the silver lining in the dark cloud, concluding my opinion, I said:

It was particularly heartening to find that the cause of the Muslim community was forcefully advocated essentially by the members of the Bar belonging to the other communities. Their commitment to the cause is evident from the fact that Shri Abdul Mannan who appeared for the Sunni Central Wakf Board endorsed the arguments on behalf of the Muslim community. The reciprocal gesture of Shri Mannan was equally heartening and indicative of mutual trust. The congenial atmosphere in which the entire hearing took place was a true manifestation of secularism in practice. The hearing left us wondering why the dispute cannot be resolved in the same manner and in the same spirit in which it was argued.

VM Tarkunde was the senior most lawyer amongst those who contributed to that experience. If the tension of the dispute survives, though diffused to some extent, it is because of the lack of the spirit of tolerance and appreciation of the other view among the principal actors, which is needed in an inclusive democracy. More Tarkundes are needed so that such disputes do not arise, and if they do, they are resolved amicably and humanely. It is regrettable that in the land of Mahatma Gandhi, whom we call *Father of the Nation*, reminder of his precept and practice requires a cinema film called *Lage Raho Munnabhai.* The hero of that film says that his life has been influenced by that role. Let us hope it has a similar positive influence on all of us.

VIII

There was an assembly of the Nobel Peace Laureates in the University of Virginia in 1998, where an extra-ordinary dialogue took place between them for two days. Helena Cobben depicts the shared vision of the global future drawn from their dialogue in a book *The Moral Architecture of World Peace.* Their vision centers on personal strength and public activism, not the economic trends. They discussed: *How can people from different cultural groups, faiths, world views or traditions, try to get along?* Some significant parts of their discussion are educative.

H.H. The Dalai Lama indicated the benefits of transcending the narrow personal interests and becoming more caring and compassionate to others. Archbishop Desmond Tutu explained the system of *transitional justice* practiced in South Africa for dealing with crimes committed during the apartheid, which is restorative instead of retributive.

The broad architecture for world peace that emerged from the meet, is *a world without militarism, where differences are resolved and plans made through dialogue, not coercion and where all human beings are offered equal opportunities to live meaningful, safe and successful lives.*

The problem of achieving this result when, as Oscar Arias noted, *in an age of cynicism you are mocked for*

insisting that we can be more humane, was answered by Betty Williams, saying *The insanity of what going on militarily in the world has got to be challenged not by me, or Jody Williams, or His Holiness, or anybody else who supposed to have a famous name. The insanity of that has got to be challenged by every single one of you, every one of you*

Thus, each one of us is a part of the solution. Tarkunde subscribed to this philosophy of life and led by his own example.

IX

The essence of civil liberties is humanism, which must be the lodestar in all related issues. The Supreme Court of India was guided by it in its exercise to humanize the stringent anti-terrorism laws e.g. TADA and Armed Forces (Special Powers) Act, etc. in developing the doctrine of Constitutional tort in Nilabati Behera, AIR 1993 SC 1960, and in giving benefit of Articles 14 and 21 even to non-citizens.

PUCL has contributed a lot to the protection of civil liberties in the country, more so in difficult times. The several landmark judicial decisions in its name bear ample testimony to this impression. Much of the credit for this must go to VM Tarkunde, who was not only involved in founding PUCL, but also in steering it on a steady course through troubled waters. Having become a living legend as a crusader for civil liberties, Tarkunde will live forever through the activities of PUCL.

I am happy and greatly honoured to join the PUCL and all the admirers of VM Tarkunde in paying my humble tribute to a great son of the soil. Thank you. – November 23 2006 ❑

V M Tarkunde

Vithal Mahadeo Tarkunde was born on July 3, 1909 at Saswad in Pune. Second son, amongst four brothers and sisters, he was educated at Pune. He obtained his B A Agriculture degree in 1929. He proceeded to England and attended the Lincoln's Inn and qualified as a Barrister. He returned to India in 1932. In 1934 he joined the Congress and the Congress Socialist Party.

Barrister Tarkunde started his practice in Pune. As a leftist Congress man, he used to devote 15 days in a month to work amongst the peasants. He was elected to the AICC from Purander Taluka. In the meantime, he came in touch with the writings of MN Roy, who was in jail at the time. MN Roy was released in 1936 and joined the Congress along with his band of workers. Tarkunde also left the CSP and joined the League of Radical Congressmen inside the Congress. The League of Radical Congressmen decided to function as an independent party in 1940 under the name of the Radical Democratic Party. Tarkunde left the Congress and joined the RDP. In 1940 he married Chitra, who was studying for MA in Pune. The RDP was dissolved in 1948. Tarkunde recommenced his legal practice in Bombay High Court in 1948. The then Chief Justice Chagla elevated him to the Bench in 1957.

Vithal Mahadeo Tarkunde and Chitra were blessed with a daughter, Manik. She is a practicing advocate in the Supreme Court along with her husband Rayan Karanjawala, who is also practicing in the Supreme Court.

Being a Judge of the High Court, Judicial discipline required that Tarkunde did not participate in any movements or express views on controversial issues. He, therefore, decided to retire pre-maturely and did so on September 15, 1969 and shifted to Delhi with his wife and daughter and started practicing in the Supreme Court. His life in Delhi and his association with JP and his movements is known to everybody. He expired on March 22, 2004.

The PUCL decided to commemorate his work in the shape of a Memorial Lecture. The PUCL National Council decided that the Lecture should be held every year on November 23, the date on which the Constitution of the PUCL was adopted in 1980. ❑

Rajindar Sachar

Rajindar Sachar, the former Chief Justice of Delhi and Sikkim High Courts is a graduate of the pre-partition, Government of Law College, Lahore. He spent long years in the specialist movement under the leadership of JP and Lohia and went to jail several times as a Trade Union Worker. He joined Law practice in the Punjab High Court in 1952. In February 1970 he was appointed a judge of Delhi High Court. He established the Sikkim High Court in 1975. He was the Chair person of the Committee appointed to review the MRTP Act and the Company's Act 1977. He retired as the Chief Justice of the Delhi High Court in 1985. After retirement he was elected the President of the PUCL in 1986 and continued in that post till 1995. He was the Convenor of the UN Sub Committee on Housing Rights. He was named the Chair person of Prime Ministers High level Committee on the status of Muslim Committee in India in March 2005 and submitted its reports last week. He continues to be actively involved in the working of the PUCL and in the Human Rights Movement in general in the country. He has filed a number of PILs in the Supreme Court on behalf of the PUCL and obtained landmark judgement. Some of the important cases that he filed in the Apex Court were the letter to Child Trafficking; telephone Tapping, Clean Elections, TADA, POTA, and the Domestic question and the Open Ballot System in the Rajya Sabha polls. Excepting the last all were on behalf of the PUCL. ❑

Report Card: NHRC

NHRC is 13 Years Old

The National Human Rights Commission observed its 14th Birthday on October 12, 2006 at the FICCI Auditorium. It was constituted on October 12, 1993 and has completed 13 years of its existence) October 11, 2006. It was for the first time that the foundation day of the NHRC was celebrated. The author of these lines was invited to the function and he was surprised to see that he was probably the only 'outsider', there might have been one or two others whom he might have missed, ot6herwise the spacious Auditorium was filled by members of the NHRC family. One does not know whether all other invitees from the civil society failed to respond to the invitation. For all practical purposes it appeared to be an 'in-house' function. The well written about 28 page report of its activities during the last 13 years was read out by Dr Justice Shivraj V Patil, members of the Commission which went unreported in the press the next day.

We reproduce below important parts of the speech for the readers of the PUCL Bulletin and for information of the readers and for record.

At the inception of the Commission who strongly belied in the promotion and protection of Human Rights, looking provisions of the Act, felt that it would be a 'toothless tiger'. No doubt merely going by the provisions of the Act it may appear so. But a positive look at the provisions, the functioning, performance and impact created by the Commission during the last 13 years show that the Commission has a strong denture sufficient to bite.

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From 12th October, 1993 till the end of the September, 2006 the Commission received 6,37,009 complaints. In the first year of its establishment it received 496 complaints for redressal of the grievances made therein. However in the last three years, the Commission has been receiving on an average 6000 complaints per month i.e. between 70,000 complaints per year. During the year 2005-06, the Commission received 74,444 complaints. Against this, the Commission disposed of 80,923 complaints which included the complaints carried forward from earlier years. The complaints received cover a broad spectrum of Human Rights violation including custodial deaths, custodial torture-other police excesses, bonded labour issues, exploitation of women and children, exploitation of SC/STs, Human Rights violations due to natural calamities such as cyclones, earthquakes etc. and starvation deaths due to deprivation, denial of medical care as ell as death due to electrocution etc.

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During the last 13 years, the Commission has recommended for payment of interim relief to the extent of Rs. 10,44,97,634/- to be paid in 7 16 cases, recommended disciplinary action in 223 cases and prosecution in 74 cases against the public servants who were prima facie found responsible for their acts of omission and commission resulting in violation of Human Rights of the people. Added to this, the Commission has also recommended a total of Rs. 23,24,25,000/- to be paid to the next of the kin of 1245 deceased in the matter of Punjab Mass Cremation case.

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The Commission has evolved a Complaints management System (CMIS) which has been functioning reasonably well. The National Human Rights Commission in Nepal and National Centre for Human Rights in Jordan with the assistance of officers of this Commission have adopted our system.

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Credit for the modest amount of success of the Commission also goes to our special Rapporteurs, senior officers, staff, Chairperson, staff, Chairperson and Members of Core Group and experts for their able advice and assistance. The Commission places on records their services and thank them. Our special Rapporteurs S/Shri Chaman Lal, K R Venugopal, SVM Tripathi and Ms Anuradha Mohit, are no more with the Commission but their valuable contribution is continuing. A special mention is to be made here to Shri Chaman Lal. The Commission could not succeed pursuing him to continue to assist, having regard to his commitment and excellent service record. Some person need institutions after retirement and some institutions need retired persons. Shri Chaman Lal belongs to latter category.

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Civil and Political Liberties

In its initial years, the Commission's focus was on protecting and promoting civil and political rights of the people. As early as 14 December 1993, the Commission instructed all Chief Secretaries to ensure that all cases of custodial death and rape be reported to it within 24 hours of occurrence, failing which an adverse inference would be drawn by the Commission. Thereafter, on 10 August 1995, went a step further, whereby the Chief Ministers were requested to ensure that all post-mortem examinations of deaths in custody be video graphed. On 27 March 1997, Chief Ministers were additionally requested to adopt a Model Autopsy Form, prepared by the Commission. Further,

comprehensive guidelines were sent to Chief Ministers on 27 March 1997 in respect of the manner in which encounters should be investigated and reported. On 22 November 2000, Chief Ministers were sent a letter providing detailed guideless on the subject of arrest and detention in view of well known D K Basu case.

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Disability

The Commission is deeply concerned about the rights of the persons with disability. In 2003 the Commission launched a project in partnership with the Canadian Human Rights Commission (CHRC) and the Indira Gandhi national Open University (IGNOU) to orient legal practitioners, academics, activists with domestic and international law, encouraging its creative application for better protection and promotion of the rights of the persons with disability. Under this project three key areas were identified, namely:

a. A curriculum design;

b. Training and reference material;

c. Trainers to teach Human Rights, disability and law course in a stand-alone mode or as part of formal and non-formal courses in law and human rights.

Besides this under this project in 2004-2005 a training of trainers programme at NLSIU, Bangalore, National Workshop at NALSAR and five Outreach programmes were organised.

These programmes culminated in a National Conference on Disability held on 23 June 2005 at New Delhi. Vice Chancellors of Universities, Union Secretaries, State Welfare Secretaries, State Disability Commissioners, NGOs, representative from NCERT, NCTE, RCI and other apex institutions attended the conference. The recommendations of the National Conference on Disabilities were sent to Central Governments, Union Territories and concerned.

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On coming to know that when disabled people are produced in the Court, they are made to remove their shoes which cause serious difficulty to them. The Chairperson vide letter 25th February 2005 communicated to all Chief Justices of High Courts to take necessary action to prevent inconvenience caused due to this practice to the disabled.

Till date we have received responses from 10 High Courts.

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Rights of Women

Pursuant to the request of the United Nations High Commissioner for Human Rights the Commission, in 2001, designated one of its members Mrs Justice Sujata V Manohar to serve as a Focal Point on Human Rights of Women including Trafficking. To create awareness, the Focal point brought out an Information Kit in Trafficking in Women and Children with able and untiring assistance of dr. Savita Bhakry our SRO Subsequently, in order to an authentic database to deal with the problem in all its dimensions, it undertook an Action Research on Trafficking in Women and children in India along with the UNIFEM and the Institute of Social Sciences based at New Delhi. Based on the study, research and recommendations a plan of action to prevent and end trafficking of women and children in India has been evolved by the Commissions recently and disseminated to all concerned across the country.

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Sexual harassment of women at work place and in trains is another area that has engrossed the attention of the Commission ever since the focal point on Human Rights of women constituted in 2001. It is with the intervention of the Commission that the role of the complaints Committee prescribed in Vishakha guidelines has been redefined. Complaints Committees are now deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 and the report of the Complaints Committee shall be deemed to be an inquiry report under those Rules.

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Rights of Children

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The 'rights of children' is another area that has drawn the attention of the Commission from the beginning. The Commission over the years focused its attention on child labour, child marriage, child trafficking and prostitution, child sexual violence, female foeticide and infanticide, child rape, HIV/AIDS afflicted children and juvenile justice.

The Commission, first and foremost, concentrated on ending the problem of child labour, especially those employed in hazardous industries. It laid emphasis on the provision of free and compulsory education for children up to the age of 14 years, and the allocation of an appropriate level of resources to achieve this objective.

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Last week, Ministry of Labour, Government of India announced that employment of children below years as domestic servants in Dhabas, restaurants, tea shops or any recreational centre is banned w.e.f. 10th October, 2006. Anyone employing children in these occupations is liable for punishment up to one year and /or fine. The commission is happy in this regard as it feels that its efforts got the dividends. As a result of this, large number of children may be released. Though releasing of children from child labour is important but, much more important and vital is to see that they do not relapse to the old position for lack of support. Hence, there is an urgent and imperative need for the Governments both at the Centre and State level to have

a concrete and practical policy in this regard.

Looking to the widespread persistence of child marriage in certain parts of the country, the Commission has realised that the Child Marriage Restraint Act, 1929 (CMRA) should be recast. "The Prevention of Child Marriage Bill" was introduced in the Rajya Sabha on 20th of December 2004, incorporating the recommendations of the commission. Last year, the Commission addressed the Central and the State Governments/Union territories to organise mass-scale awareness programmes campaigns to educate and sensitize people about the demerits of child marriages.

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Sexual violence against children is another sensitive issue in this regard, the commission took concrete measures. The NHRC, in partnership with Prasar Bharati and UNICEF held four workshops for radio and television producers. It was during the course of these workshops that an idea of bringing out a guidebook for the media to address the issue of sexual violence against children emerged. The commission currently is also in the process of preparing guidelines for speedy disposal of child rape cases.

Faced with the widely prevalent misuse of sex determination tests to commit female foeticide, the commission approached the Medical Council of India during the year 1995-96, to take a position on the ethical aspects of such tests. It also emphasised the need for undertaking.

A Vigorous and Comprehensive National Campaign against Female Foeticide and Infanticide

During the course of regional and national consultations on Public Health and Human Rights that were held during 2002-03, the Commission again took up the issue of combating female foeticide and infanticide. The Commission had maintained that vigorous and comprehensive measures be taken by all States and Union territories to put an end to the gruesome problem of female foeticide and infanticide.

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Abolition of Manual Scavenging

The Commission has been vigorously pursuing the need to end the degrading practice of manual scavenging in the country. The Commission has held number of meetings with the State Governments. The last such meeting was held on 25th February, 2006 on Eradication of Manual Governments and other stakeholders. On the basis of detailed deliberations follow up action is taken.

Pursuant to the efforts of the Commission, the prime Minister made an announcement for abolition of manual scavenging. The Planning Commission accordingly formulated a National. Action Plan for Total education of manual Scavenging by the end of 2007.

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National Action Plan for Human Rights

The Commission has taken up the task of preparing the National Action Plan. The Commission constituted a Working group and an Advisory Committee including representatives of various departments of the Government, NGOs and eminent lawyers to prepare a National Action Plan for Human Rights. The working group decided to focus on the following areas which would require a continuous dialogue and discussion before taking appropriate shape for its documentation in the body of national Action Plan for Human Rights: Human Rights Education; Criminal Justice system encompassing police prosecution etc; Rights of vulnerable (women, children, bonded labour, Dalits elderly, tribals, minorities, disabled etc.); Right to food, water, health and environment; Right to Social security, Globalisation and human rights.

The working Group has recently decided to prepare draft chapters of the proposed national Action Plan for human rights and these chapters will be extensively discussed with the concerned ministers/departments of the Government of India before they are finalised.

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Right to Food

The NHRC has consistently maintained that right to food is inherent to living a life with dignity. It has also expressed that right to food includes nutrition at an appropriate level. To deliberate on the food situation in the country as well as ways and means to make the right to food a reality to the common man, the commission reconstituted its core group on Right to Food which met on 13 January 2006. The Group dwelled on issues relating to food security, monitoring of existing schemes and reforms in public Distribution system, starvation deaths/ suicides including the States' response to these occurrences, need for up gradation of scientific and technological measures in the country and the spreading of awareness among the masses that all of them were entitled to get two square meals. It is a matter of common knowledge that wars producer hunger. But people seem to be less alive to the fact that hunger can lead to war. It is un-debatable that hunger and peace cannot co-exist. In other words, while hunger rules, peace cannot prevail. All democratic institutions have onerous abide great responsibility and duty to respond to the challenges, to maintain the abiding faith and continuing confidence of the society, which the society has reposed in them,

because they essentially exist for the society.

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Complementarity between the Judiciary and the Commission

The Act provides for the intervention of the Commission into court cases with the permission of the concerned court. The Commission has approached the courts in several cases to protect human rights of the vulnerable people including in pending cases.

One such latest case is 'Best Bakery Case'. The Supreme Court by its verdict dated 12.4.2004 set aside the judgement of acquittal in this case and further directed fresh investigation of the case and its retrial outside the State of Gujarat in the State of Maharashtra. The trial court at Mumbai on 21.2.2006 after trial convicted and awarded life imprisonment to 9 out of 17 accused. The court also issued show cause notice to the witnesses who had turned hostile as to why they should not be prosecuted for perjury.

The Supreme Court reposing confidence in the Commission in number of cases, which were under its consideration, remitted them to the Commission. Some of the important remits made by the Supreme Court to the Commission are – (i) cases arising out of allegations of deaths by starvation in the "KBK" districts of Orissa; (ii) the monitoring of programmes to end bonded and child labour in the country; (iii) the handling of allegations relating to the "mass cremation" of persons declared "unjustified" in certain districts of the Punjab and (iv) the proper management of institutions of the mentally challenged in Ranchi, Gwalior and Agra; and of the Protective Home for Women in the latter city.

Proceedings in KBK Districts of Orissa and Punjab Mass cremations cases were concluded on 30 8.2006 and 10.10.2006 respectively.

Hormasji 'Homi' Maneckji Seervai

December 5, 2006 marked the birth centenary of late H M Seervai.

The Bombay PUCL was constituted on April 17, 1981. Justice N P Nathwani presided over the meeting in which Justice J C Shah was elected the President and H M Seervai, Jyoti Shah, Aloo Dastur, and Asghar Ali Engineer were elected Vice-Presidents, amongst other office bearers. Later on H M Seervai assumed the Presidentship of Bombay PUCL and made it a distinguished crusader of civil liberties and human rights. Under his stewardship the Bombay PUCL raised the level of protests and defence of the rights of the people to new heights.

H M Seervai and M A Rane made a team that did path breaking work in the newly founded human rights movement of the country. The insights of a constitutional lawyer of the highest degree of integrity and fearlessness combined with a philosophical view of law made Seervai a unique lawyer. He had the courage to caution a Chief Justice like Gajendragadkar not to sit on a Bench in which he could have had a bias, says eminent legal columnist Harish Khare. (*The Hindu*, December 5, 2006, *Remembering Homi Seervai*).

It is on record that the government of India chose Seervai as the leading counsel in precedence over the Attorney General to defend the Power of Parliament to amend the Constitution in *Keshavanand* before a 13 judge bench of the Supreme Court. He argued the case with vehemence for more that three weeks maintaining that the Parliament had the power to amend the Constitution without any limitations. But when he witnessed the misuse of that power during the Emergency in 1975, he had no hesitation to accept that there had to be limitations on Parliament's power to interfere with the Constitution. It needed intellectual courage to recognise such game of political manipulations.

Twice he rejected the judgeship of the Supreme Court because he did not want to leave Bombay. The author of the well known treatise*, Constitutional Law of India*, was declared by the International Bar Association *A Living Legend of Law*. – **Y P Chhibbar**, General Secretary ❑

Such remits from the Supreme Court of India and the High Court of India and the High Court to the NHRC have actually enhanced the prestige and credibility of the Commission. Complementarity between the judiciary and the commission has been of great advantage in so far as the role of the Commission for protecting Human Rights is concerned. This demonstrates how the judiciary and the Human Rights can work in coordination and in a complementary manner with each other protection of Human Rights.

Deeply concerned about the need to protect the Human Rights of the under trial, the Commission moved a Criminal Writ petition No. 1278/2004 before the High Court Delhi and prayed for quashing of the trial of Charanjit Singh who was languishing in jail since 1985 wand whose condition had deteriorated despite prolonged treatment at various hospitals/institutions. The high Court vide its order dated 4.3.2005 quashed the trial of the mentally ill prisoner. The High Court commanded the initiative of the Commission and took note of

promise by the Govt. of NCT of Delhi for taking care of medical need of Charanjit Singh after quashing of the trial. Guidelines proposed by the NHRC for considering the cases of such mentally ill-under trial was accepted by the Court and suitable direction issued to the Govt. of Delhi in this regard [Case No. 3628/30/2001-2002].

During the visit of Shri Chaman Lal, Special Rapporteur, to LGB Regional Institute of Mental Health, Tezpur, Assam, he came across a under trial Machang Lalung who was languishing in jail/mental hospital for 54 years. Pursuant to efforts of the Commission, he was released.

Custodial Justice and Reforms

Prisoners, be they under trials or life convicts of juvenile delinquents are primarily human beings entitled to human rights as others. The Commission has been monitoring at half-yearly intervals the situation obtaining in Central jails/district jails/ sub jails in respect of the over-crowing of prisoners, expediting their trials, their medical examination and treatment, providing proper food, proper sanitation etc.

Elimination of Bonded Labour

The Commission has consistently taken up the issue of elimination of forced/bonded labour. Ever since the Supreme Court entrusted the responsibility of overseeing implementation of Bonded Labour System (Abolition) Act and monitoring the compliance of directions issued by it on 11.11.1997 in WP No. 3922/45 the Commission has initiated the following measures:

Conducting State level reviews on the pace and progress of implementation statutory provisions as also of the directions of the apex court;

Organising sensitisation workshops for DMs and other officials at the State and District levels;

Undertaking extensive field visits to review on the spot measures taken by the State Governments for identification, release and rehabilitation of freed bonded labourers.

Dalits

The Commission has been actively engaged since its inception in the protection and promotion of the human rights of Dalits. The Commission has viewed its role as that of an "Equalizer": adding its weight on behalf of the vulnerable.

In 1996 a National Workshop was organised in Chennai by the Dalit liberation education Trust with the help of the peoples Union for Civil Liberties (PUCL and the Commission. The Commission has also conducted training programmes related with Dalit Rights with different NGOs from time to time. Based on Shri K B Saxena's report, the Commission has made certain recommendations to the Prime Minister, 11 Union Ministers, Deputy Chairperson, Planning Commission and Chief Ministers of all the States and Union territories for taking effective steps as regards issue of Dalits.

In the meeting on Dalits issues in the Commission on 28.6.2006, it was resolved that for the year 2006-2007 the focus would be I) Eradication of Manual scavenging and ii) Elimination for atrocities against Dalits.

Convention against Torture

The commission has been requesting the Government of India to ratify the convention against Torture and other cruel, Inhuman or degrading Treatment of Punishment 1984, which was signed by India on 14 October 1997 on the recommendation of the Commission. The Commission has been urging early ratification of the said Convention. The Government has now drafted The Convention against Torture. The Ministry of Home Affairs had requested the Commission to send the comments on the draft Bill. The Commission has responded on 14.7.2006 to the Government and is hopeful that the Convention will be ratified in near future.

Conclusion

Having said about the work of the Commission so far done, I must say it bas miles to go to reach the goal of all human rights for all. Rule of law is necessary to sustain democracy. Democratic climate is essential to uphold the rule of law. Focus of both must be human beings and human rights. It may not be possible to prevent violation of human beings and human rights. It may not be possible to prevent violation of Human Rights or eliminate them totally but by determination and dedicated efforts with the commitment of all concerned, violation of Human Rights can be minimised. In this regard, the concerted, cooperative and collective efforts of vigilant civil society, dedicated NGOs, committed and honest law enforcing agency, proactive judiciary and objective, sensitive and constructive media are required in respecting the Human Rights of all. All those associated without and fighting for the cause off Human Rights should themselves basically be good human beings with courage and conviction. On seeing a charming but pious lady in a big gathering, the other ladies asked her as to what cosmetics she used for looking so charming. The reply of the pious lady was - to her eyes - pity; to lips-truth; to voice-prayer; to heart-love; to hands-charity and to figure-righteousness. These are not the cosmetics of the body but of the soul. These cosmetics are essential for the soul of both men and women to shine and serve. Now it is time to move from sermon to service. The divine message "Love all, help ever, hurt

never" should be spirit of living to serve the cause of Human Rights.

One thing that is equally and without discrimination available to everyone is Time. Time cannot be stored or restored. It is only to be used appropriately. One should budget the Time in the morning and audit it at night. Growing old is mandatory whereas growing wiser is optional. Hence it is the time for all of us in different walks of life to exercise the option of becoming wiser to commit and contribute for the welfare and development of everyone in the country without any discrimination and differentiation so that individuals develop their potentialities, contribute their maximum to build happy, healthy and strong nation. If that happens it serves in great measure the cause of human rights. I think the Chairperson for giving me this opportunity and thank you all for donating your valuable time in listening to me. ❑

Press Release:

Khairlanji and its Aftermath

An all India Fact Finding Committee to investigate the situation in Vidarbha, following large-scale protests after the murders at Khairlanji visited Amravati, Kamptee, Khairlanji and various parts of Nagpur city on 25th & 26th November. The team comprised representatives of various democratic rights and Dalit human rights organisations.

The main findings of the team are:

(1) The widespread protest and anger actuated by the heinous murders in Khairlanji was subjected to brutal state repression in an organized government effort in many places in Vidarbha. Brutal lathi-charges, unlawful entry into people houses, violence in police custody are some of the instances of police high-handedness. Legitimate and peaceful protests were subjected to random beatings, severe baton charges, unprovoked arrests and widespread insults appealing to caste sentiments. As a result of this suppression, when some of the protest temporarily lost their peaceful character, this was used as an excuse for further widespread repression and mass arrests. We have come across numerous instances of adults, old people and women and in a few cases, children who have received serious injuries by the police- broken bones, long-term incapacitation.

(2) The police firing in Amravati, on 15th November, which took the life of a young man, Dilip Wankhede and injured 3 others, took place after the rally of the protesters had been officially closed by the organisers and the protesters were returning home.

(3) On the same day, a group of 25 women who were on their way to join the rally were arbitrarily arrested and beaten up and three of them as yet have not been released on bail. FIRs have been registered by the Amravati police against 12,000 unnamed participants of the rally.

(4) At Yawatmal, a peaceful rally initiated by Pramodini Ramteke, was instigated into a communal confrontation by upper caste elements in politics, due to which the police entered Dalit houses at random and subjected men and women to severe beating.

(5) Property has been destroyed, auto- rickshaw windscreen broken, TV sets broken in Nagpur and Kamptee. Due to the injuries and destruction of property, people have been deprived the means of their livelihood.

(6) A particularly disturbing feature of the violence was that it was accompanied by deliberate display of an extreme degree of caste prejudice. Photographs of Baba Saheb Ambedkar in people's homes were broken and widespread caste based insults were freely employed.

(7) The team recorded some cases of malicious victimization such as the dismissal of lady constable Vishakha Bhaisana, resident of Kamptee, who was beaten up by both the police and upper caste communal forces. Sarkate, a schoolteacher of Navodaya Vidyalaya, Amravati, was arrested because he had, in his possession, some fact-finding reports and posters, after which, he suffered a heart-attack and has been suspended from his duties.

Analyzing the situation, the team feels that there is a deliberate attempt on the part of the state to teach the Dalit community trying to assert themselves, a lesson. The state machinery has played a partisan role by threatening people that they will repeat Khairlanji in their *bustees.* There were attempts to communalize the situation both in Bhandara and Kamptee by upper caste forces with the police turning a blind eye. Women who certainly were not part of any violence that may have occurred were brutally beaten up, their modesty outraged as they were even hauled out from bathrooms and abused. While there was no serious injury to any of the police, people have been charged under Section.307.

Demands:

(1) An independent judicial enquiry by a senior retired judge.

(2) The entire sequence of events starting from the murder at Khairlanji, suppression of the news of the murder by senior officials of the government and the subsequent widespread repression of peaceful Dalit protest should be placed before the National Human Rights Commission as well as International Tribunals devoted to the suppression of inequalities based on birth.

(3) All instances of grievous injuries and destructions of property should be registered in FIRs with immediate effects and a credible and transparent police investigation should be launched in all such reports forthwith.

(4) All sufferers of such unwarranted police violence should be compensated both for injuries and loss of livelihood. All false cases against those participating in the rally should be withdrawn-since none of the police were grievously hurt Section 307 is falsely applied.

(5) We demand that constable Vishakha be reinstated and suspension order against Mr. Sarkate be revoked.

(6) Cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act should be registered an action to be taken against the guilty. – **Dr Binayak Sen,** Vice President, PUCL; **Moushumi Basu**, PUDR (Delhi); **Debashree Sarkar**, PUDR (Delhi); **Dr Anand**

Teltumbde, CPDR (Mumbai); **Thomas Mathew**, *Samajik Nyay Morcha* (Delhi); **Anthony Samy Lokshahi Hakk Sangathan** (Mumbai); **Yogesh Kamble**, *Lokshahi, Hakk Sangathan* (Mumbai); **Anil**, *Jaatiya Shoshan Viruddh Sangarsh Samithi* (Delhi); **Sunil**, *Sangarshrat Naujawan Sangathan* (Delhi); **Dr Tej Singh**, Editor, *Apeksha* (Delhi); **Paramjit Singh**, *Dalit Intellectual Forum of Human Rights* (Delhi); **Dr Suresh Khairnar**, Human Rights activist, Nagpur; **Shoma Sen**, Committee Against Violence on Women. ❑

Letter:
Priyadarshani Mattoo Judgment

Priyadarshani Mattoo was 23, with dreams to be a lawyer. She was raped and murdered in her house by one of her senior in law campus Delhi, son of a senior police officer serving in the capital, who was stalking her for more than two years.

Mattoo case judgment has come. Though ten years of delay is no ordinary in a supposedly 'alive' society, we have been spared the worst: the case being lost in the maze of millions of cases that drag like a snail on never ending path. Many die before hearing the last word on their fight for justice. Chaman Lal Mattoo, the father of Priyadarshani Mattoo, has been fortunate.

While delivering the judgment the high court has observed, 'you have killed her'. This 'You' is Delhi Police. Priyadarshani Mattoo approached as many as four police stations of the capital with complaint of being stalked. None of the officer in charge had the spine to register a case against the man who was stalking her fearlessly like a nephew of a king in a medieval kingdom. A disgusting reflection indeed on the kind of people who are entrusted with the task of protection of our life, liberty and property! Isn't One reminded of Clowns in a third rate king's court. It would be in the fitness of things of all those officers who are identified and charged with abetment to murder.

If only these police officers, nay clowns, had acted! Ms Mattoo would be alive today. They did not. Is there no punishment for dereliction of duty that leads to a life snuffed out in its prime!

The high court observed that the convict's father influenced the investigation One wonders what kind of leadership the convict's father was providing to the Delhi police force of which he was a senior officer. He did not check his son prior to the crime as he was stalking the woman; he defended him after the heinous act. May be we require psychological profiling at the time of recruitment and periodic moral grading of officers manning responsible positions.

In the intervening period of five years as the appeal against the accused was pending before the high court, someone married him and dreamed of a happy future. This points to another deep rooted perception among the people that if you are moneyed, well connected and morally derailed you can get away with all imaginable crimes in the contemporary India. This perception, to a large extent being non-erroneous, should make all the sane heads in the society sit up, think and act collectively. Or else we shall be carrying on our back a biting anarchy in near future in place of illusory order of the present. – **Pushkar Raj** ❑

(…from page 7) to safeguard the interests of the people of the state and not of its rulers.

The least that the state and the NGOs working for the interests of its people can do is to take steps to bring its RTI Act at par with that of the centre. To start with it must provide for appointment of an autonomous Information Act. Already People's Union for Civil Liberties of the state has submitted a memorandum to the chief minister signed by 200 prominent citizens for the appointment of such a commission. A campaign by the government and the NGOs also needs to be started to make people aware of the existence of the RTI Act and their rights under it. Gradually as the people become mature and learn the benefits of the RTI Act and the government feels more secure, an expert committee can be appointed to suggest improvements on the central RTI Act. Such a step, *inter alia*, will help the state to move towards normalcy. For good governance and lower corruption through empowerment of the people can certainly reduce the level of popular alienation that does exist in the state. ❑

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