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## **Tarkunde Number**

This is a special number of the *PUCL Bulletin* dedicated to the memory of V M Tarkunde, the doyen of the Civil Liberties Movement in India. This issue of March 2007 is the 300<sup>th</sup> issue of the *PUCL Bulletin*. As chance would have it, V M Tarkunde also expired in the month of March in 2004. It was, therefore, decided that it would be befitting if the 3<sup>rd</sup> centenary number of the *PUCL Bulletin* was dedicated to the memory of the founding President of the PUCL.

We decided that we should approach a new set of writers to write on Tarkunde – people who had known him or who had worked with him but had not written about him, so as to enlarge the canvas of his influence. We, in the PUCL, are proud that we are carrying forward his work to the best of our ability in the direction that he carved. – **Y P Chhibbar**, Chief Editor & General Secretary □

# A Restless Crusader for Human Rights

M A Rane

[M A Rane was treated by V M Tarkunde as a family member. He was the person nearest to him ideologically also. The longish excerpts from his piece are taken from **V M Tarkunde 90 - A restless Crusader for Human Freedoms**, published by him in 1999. – Chief Editor]

Vithal Mahadeo Tarkunde (VMT) was born on July 3, 1909 at Saswad in Pune District. His father Mahadeo Rajaram Tarkunde was a popular lawyer practicing at Saswad, the headquarters of Purandar Taluka adjoining Pune. He was an idealist and a social reformer. Having come from the poorest of poor families he secured the appointment of a judgeship because he stood first in the pleaders Examination, but gave up the Sub-judge's job in order to be free to do social service. He organised the *malis* (peasant – gardeners) of the *taluka* for bettering their mode of cultivation. He did not observe untouchability. The Tarkunde family which belonged to a small sub caste of Brahmans Mahadeo Tarkunde had four sons and one daughter, the youngest. He enabled his children to have best education. VMT was the second son.

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For nearly eight decades since his days in school at Pune, VMT acted as a consistent persistent crusader for protection and promotion of human freedoms in various fields of his life, whether as a student, in India and England, a freedom fighting Congressman a Congress Socialist, a Royist, a prominent members of the Radical Democratic party, a lawyer, judge, jurist, Constitutional Lawyer, a human rights activist, a social reformer, an intellectual, a gressroo0t worker and so on.

In 1920 VMT migrated from Saswad to Pune for High School education. He joined the famous New English School founded by Tilak and Agarkar with the object of inculcating spirit of patriotism and social service among the youth. VMT had S M Joshi, R K

Khadilkar and D P Shikare as his classmates in the school. N G Gore was also his schoolmate. All these students were brilliant and except Shikare all entered politics. They were all inspired by the national movement for independence. Gandhiji was their hero. Shikare was required to join judicial service because we he had to look after the education of his younger brother, he was finally elevated as judge of the Bombay High Court. He remained a close and intimate friend of VMT, till he passed away as a sitting judge of the High Court. Even at the tender age VMT had critical intelligence. He addressed a long letter to Gandhiji questioning the efficacy of prayers. Gandhiji replied to him on postcards as usual VMT was not satisfied with Gandhijis explanation. He sent a polite rejoinder to him. But there was no response.

In the Matriculation examination of 1925 held by the Bombay University for the erstwhile Bombay Presidency VMT stood first. He also secured the prestigious Jagannath Shankersheth Scholarship for Sanskrit, which was divided between him and his friend D P Shikhare.

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Such a brilliant student was expected in those days to pursue academic studies and ultimately to compete for the ICS. But young VMT made it clear to his father that he will not accept Government service, but will serve the people. A former English Principal of the Agricultural College of Pune, the only one in the Presidency, took a fancy for the young boy. As nearly 80 percent of the Indian people lived in villages on agriculture, VMT decided to join the

Agricultural College for the B.A Course. He stood first class in all the examinations of B.A.

After completing B.A. in 1929 VMT was keen to visit England for qualifying himself as a Barrister-at-law- so that on return he would not be required to take up a service but could practice as a lawyer and also serve the people. He was also keen to study the life in England. He could not fulfil his dream unless he secured a refundable loan scholarship on condition he studied for ICS. He had to accept the condition willy-nilly. But in London he studied for ICS, attended the Lincoln's Inn and qualified as a Barrister. He was also keen to join the London School of Economics (LSE), but could not for a technical reason, as he did not have the time to undertake the study of another European language. Therefore he enrolled himself as an external student in the L.S.E. and attended lectures in economics, political science and social anthropology. But he was not entitled to get a degree from L.S.E.

On completion of his studies in England Tarkunde returned to India in December 1932. By then he had ceased to be a Gandhian and had become a convinced Marxist on studying the same in England. On his return he found all his school friends S.M. Joshi, Khadilkar and Core were in jail as they participated in the non co-operation Movement. After their release they joined the newly formed Congress Socialist Party (CSP) which was a party within the Indian national Congress. In or about the end of 1934 Tarkunde joined the congress as well as CSP on the same day.

As a barrister Tarkunde commenced his legal practice in

Pune. As a leftist Congressman he devoted 15 days in a month by working among the peasants in adjoining rural areas of Puranadar Taluka. In view of his such intensive work he was elected a member of the AICC from that area, by defeating a veteran Congressman like Shankarrao Deo who was then a congress working Committee member. During his work in the area he found the local Congressman were connected with local moneylenders and traders. His study of agriculture as a graduate of Agriculture and of Economics in London, he was able to explain to the poor agricultural labourers and artisans that their poverty could not be alleviated because of British imperialism and Indian vested interests.

In the meantime Tarkunde was introduced by a Royist D B Karnik to the writings of M N Roy that were smuggled out of jail as M N Roy was undergoing imprisonment for six years on conviction in the Cawnpore Conspiracy case, Roy was pleading for radicalising the Congress, to free it from Gandhian obscurantism and to open congress committees in every village that would ultimately overthrow the imperialist Government by forming "state within the State".

M N Roy was released from jail on November 20, 1936 whereupon he joined the Congress. A number of young men and women who were impressed by the ideas and plan of action of Roy were working inside the Congress and were known as Royists Tarkunde was finally disillusioned with the CSP as they voted against Subhash Chandra Bose at the Tripura Congress in January 1939 and in favour of the candidate put up the Gandhian leadership. Tarkunde therefore parted the company of the CSP and formally joined the Roy Group. In April 1939 the Royists formed inside the Congress a group called the League of Radical Congressmen (LRC) (vide "Why I left the

Congress" in "Through Humanist Eyes" by VMT).

The growing and promising work of the members of the LRC as Congressmen among the peasantry, middle and working classes as disrupted by the outbreak of World War II on September 1, 1939. Contrary to official Congress stand of opposition to India supporting the British in the War, Roy and his colleagues were of the view that if the Fascist forces won the war there would be no hope for any people of the world including the colonies of becoming free, whereas if the Allies won British Imperialism would emerge as economically bankrupt and as the Allies fought the war against the Fascist for freedom the colonial powers will be under political economic pressure to confer independence to the people of the colonies. Consistent with this war thesis called "India and War" propounded by Roy, members of the LRC exhorted the Indian people to support the Allies in the war of efforts. Some of the members of the LRC were therefore expelled from the Congress. The Central Executive Committee of the LRC resolved at a meeting held at Meerut on October 2-27, 1940 to function as an independent party. They formed the Radical Democratic Party (RDP) which was inaugurated in Bombay at the end of December 1940. Tarkunde left the Congress and joined the RDP. In 1940 he married Chitra (nee Dwarka Valimbe of Ahmednagar) who had joined the group while studying for M A in Pune. Since then both husband and wife did not look back, but devoted themselves wholly to the Royist Movement.

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War time was one of the most trying times for Roy and his colleagues. They had to swim against the strong current of Indian nationalism that could not see beyond its nose. Congress nationalists did not consider what

would be conditions of the Indian people, if the Japanese who were already in Burma walked over the Indian subcontinent and, the Nazi Desert Fox pushed to the east beyond North Africa. The record of the Japanese in Asian countries, which they conquered, was most heinous and cruel. Under them or the Fascists, Indians would never be free. Roy and his colleagues had to fight with their backs to the wall in trying to convince the Indian people that if the Allies won the war there was every possibility of their securing independence from the colonial power, through speeches, study classes, writings and all possible means. The Independent India Weekly founded by Roy in April 1937 was a powerful means of spreading this message. Tarkunde, like other radicals, wrote in the weekly regularly.

As by the end of 1942 Roy was certain that the tide of the war had turned against the Axis powers, he urged upon the Indian people to be prepared for transfer of power by the British and think in advance of an economic Plan for development and of a Constitution of free India Guaranteeing freedoms and development of the Indian people as a whole. The Indian Capitalists had already come out with an economic plan called the Tata Birla plan for development in which the Swadeshi capitalists were to predominate more. Therefore, The Indian federation of labour, which was a labour wing founded by the Royists during the war appointed a Committee of which Tarkunde was the Convenor and Prof G D Parikh and B N Banerjee were members for formulating and economic plan as an alternative to the Tata Birla Plan. The Committee came out with an economic plan, described as People's plan which was largely prepared by Prof Parikh under Roy's guidance, and which placed emphasis on development and modernisation of agriculture and abolition of landlordism with a view

to place more purchasing power in the hands of more than 70 percent of the people engaged in agriculture, thereby increasing gainful employment and giving an impetus to industrial growth. It also placed emphasis on small scale industry and primary needs of the people like elementary education, food, clothing, health care, etc., which is being advocated by Nobel Laureate Prof. Amartya Sen. The said objectives are still not achieved for 50 years after independence. Roy also prepared a Draft Constitution of free India providing for a pyramidal state based on a foundation of local network of people's committee's having wide powers of initiating legislation of referendum and recall of elected representatives among others. Tarkunde was in the forefront in advocating among the people the basic human freedoms embodied in the People's Plan and Draft constitution and is still engaged in the same.

By 1946 Roy had come to the conclusion that Communism had failed in achieving the avowed objectives of freeing the people and it was necessary to go beyond communism. He was also of the view that parliamentary democracy based on atomised and unorganised individuals and political parties indulging in unscrupulous scramble for power had also failed. He therefore evolved an alternative in the form of 22 principles explaining the same in a book entitled new Humanism: A manifesto.

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Roy in consultation with his colleagues decided to dissolve the RDP founded on his initiative. Accordingly at an All India Conference held at Calcutta in December 1948, the RDP was dissolved voluntarily

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In anticipation of the ensuing dissolution of the RDP, Tarkunde recommenced his legal practice, this time in the Bombay High

Court, by settling in Bombay, in June 1948. As his contacts were mostly in the mofussils, he could start his practice on the Appellate Side of the High Court only, through an advocate. I had passed LL.B in 1948 and I was already an active member of the RDP since 1945, when I was studying in the Elphinstone College. One D V Chittal Radical friend suggested to me that Tarkunde was in need of a junior Advocate and I should join him as his Assistant. I enrolled as an Advocate in March 1949 and started legal practice in the High Court on the Appellate side as Tarkunde's junior. It was a great fulfilment to work with Tarkunde as his junior. His approach to any case was very original and he would go to the root of the case. Soon after joining him he literally pushed me in the court of Chief Justice Chagla and encouraged me to argue on my own with the help of notes prepared by him. In a January 1950 the Constitution of India came into force under which he could file Writ petitions in the High Court. It gave me a great opportunity to draft Writ Petitions under the guidance of Tarkunde.

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When Tarkunde commenced his practice in the Mumbai High Court it was presided over by a great Chief Justice Mr. M C Chagla. The High Court had also other eminent Judges like Bavdekar, Gajendragadkar, Rajadhyakshya, Tendolkar and J C Shah. Within a couple of years Tarkunde made his mark an Advocate on account of his brilliance, originality and hard work.

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Within nine years of his regular in the High Court, Chief Justice Chagla decided to elevate him to the Bench and extended him the invitation in 1957. In those days it was a convention to accept the call from the Chief Justice, unless the advocate had any political ambitions. Financially it was a great sacrifice, as the salary of a High Court Judge was then pegged down to a miserable amount of Rs. 3500/- only under the constitution without any perks except a bungalow. Tarkunde accepted the offer and was elevated to the Bench.

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He brought to bear on his decisions and judgements his commitment to human freedoms particularly in cases relating to violation of fundamental rights embodied in our constitution and in cases in which interests of women, minors and weaker sections of the society were involved. He brought to bear on his decisions and judgements his commitment to human freedoms particularly in cases relating to human freedoms particularly in cases in which interests of women, minors and weaker sections of the society were involved. He was ideal judge in Habeas Corpus cases. The bench of Tarkunde and Madon released Bal Thakeray detained under the Preventive Detention Act in or about 1969, after perhaps the first and one of the worst riots by Shiv Sainiks in Bombay. On the suggestion of the Court Thackeray offered to tender apology in exchange for release, but the Government did not accept the offer. I represented the State as Assistant Government Pleader. Advocates loved to appear before him in writ petitions involving Constitutional issues that required original approach and in service cases that required patience to wade through labyrinth of service circulars and orders.

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Being a judge of the High Court there were constraints on Tarkunde from functioning as a Radical Humanist. The judicial discipline required that he did not participate in any movements or express views on controversial issues. Though the R H Movement was not a political platform, it had views on political issues. After functioning as a Judge for 12 years Tarkunde prematurely retired on September 15, 1969, and shifted his residence to Delhi with his wife and daughter and started literally from scratch practice in the Supreme Court.

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When Tarkunde migrated to New Delhi by the end of 1969, Indira Gandhi was chosen as prime Minister after the death of Lal Bahadur Shastri by the Congress Syndicate by sidetracking Morarji Desai. During the 1967 General Elections to Parliament and in most of the States, the political Supremacy of the Congress had eroded to New Delhi by the end of 1969, Indira Gandhi was chosen as the prime Minister after the death of Lal Bahadur Shastri by the Congress Syndicate by side tracking Morarji Desai. During the 1967 General elections to Parliament and in Most of the States, the Political Supremacy of the Congress had eroded. Ultimately in 19669 Indira succeeded in bringing about a split in the congress (Indira) outfit. She came out with the slogan '*Garibi haatao*' and got the support of the left. She secured a thumping majority for Congress (I) in the elections to parliament of 1971. The success in the 1971 War against Pakistan and getting Bangladesh carved out as an independent State, catapulted her to the Zenith of popularity.

With such popularity, Ms Indira Gandhi could have successfully taken up people oriented programmes of eradication of poverty of providing basic education, health care, and other basic needs of the people and of creating increasing opportunity of gainful employment to the people. Instead being paranoiac of her rivals, she was obsessed with the object of concentrating all power in her hands and of her *lumpen* son Sanjay Gandhi, who became an extra constitutional authority. She began to destroy one by one all democratic institutions such as the Congress party, the Parliament, the Cabinet and even the judiciary.

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It was not difficult for Tarkunde to realise the sinister implications of the aforesaid and similar other developments. He relentlessly

criticised the said developments through the columns of the RH and the platforms of the IRI and IRHA and other media and forums available to him.

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In August 1973 the Bar Association of India convened in New Delhi a conference of eminent retired Judges, Jurists, and Lawyers including Justice, J C Shah, Justice M C Chagla, M C Setalvad, C K Daftary, V M Tarkunde, Jethmalani, Fali Nariiman, Soli Sorabji, Ashok Desai and others. Deliberating for two days on the issues arising out of the super session the conference passed a resolution demanding constitution of a high power collegium presided over by the CJI for appointment and promotion of judges of the Supreme Court and High Courts and for transfer of judges of the High Courts.

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At or about the time when Tarkunde and his colleagues were fighting against the increasing centralisation of all powers by Mrs. Gandhi in her hands by destroying the democratic institutions and human freedoms of the citizens, Jayaprakash Narayan (JP) and his colleagues in the Sarvodaya Movement, who had withdrawn from active public life, were also thinking on the same lines. There was a consensus between J P and Tarkunde on these dangerous developments and on the necessity of building a non party organisation for the purpose of meeting this danger with the help of like minded persons. This resulted in the inauguration of the organisation named Citizens for Democracy (CFD) at a Conference held in Gandhi Peace Foundation New Delhi on April 13-14, 1974. Eminent Citizens like V M Tarkunde, Nani Palkhiwala, C T Daru Govindrao Deshpande, P V Mavlankar, Soli Sorabji and others were present. JP presided over the conference Palkhiwala inaugurated

the conference in the absence of Justice Chagla who could not leave Bombay due to ill health. A simple constitution of CFD was adopted setting out 14 aims and objects including developing public movement of active intolerance of all forms of corruption in public affairs, educating the people in the principles of democracy, securing recognition to the right of public dissent and generally to defend civil liberties and others covering the entire range of human freedoms and rights. JP was elected as president of CFD and S M Joshi and N A Palkhiwala as Vice Presidents. Tarkunde at the age of 65 was elected as general Secretary. Rules were madding debarring active members and office bearers of Political Parties as members of CFD in view of the past experience. Provisions were also made for the formation of branches of CFD States, districts and towns.

As the very first act of the CFD, JP as president appointed a Committee consisting of Tarkunde Masani, Mavlankar MP A G Noorani professor K D Desai and E P W D'Costa (Convenor) to study and report on the necessity of electoral reforms on specific terms of reference.

The Committee went into action immediately sent out a questionnaire interviewed a number of concerned persons including leaders of political parties and brought out a report within a year making wide ranging recommendations on the composition and Working of the election Commission the misuse of Government Power and official machinery the check of money power in elections etc. It also recommended public discussion on a system of a proportional representation in the elections. The report received wide publicity in the Press.

The CFD was formed as if in anticipation of the declaration of the Emergency by Mrs Gandhi

during the night of June 25-26, 1975 suspending all important fundamental rights under the Constitution after her election to the Lok Sabha was set aside by the Allahabad High Court and Supreme Court in Appeal gave only a limited stay. The declaration was made without reference to her Cabinet.

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More than lakh of persons including members of opposition parties of the first and second rank such as Morarji Desai, Vajpayee Advani and Dantawate and even opponents from her own party like Chandrasekhar, Krishna Kant and Mohan Dharia were detained under the MISA.

The first midnight knock during the night of June 25-26, 1975 was at Gandhi Peace Foundation, New Delhi, for arresting under MISA old and ailing J.P. who was then engaged in guiding the spontaneous students movements in Gujarat and Bihar and also demanding the stepping down by Mrs. Gandhi as prime Minister, after her election was set aside by the High Court. Though he was suffering from acute diabetes, he was removed to an undisclosed place and kept in solitary confinement.

The period of Emergency was the most trying and setting period for Tarkunde, this being second such time in his life after World War II. He bravely took up the challenge, irrespective of the consequences of being detained under MISA. I think this was a glorious period in his life. He took a leading part in organising resistance to the Emergency rule all over the country, along with several others like leading lawyers of the Supreme Court and High Courts and retired Judges like M C Chagla J C Shah and Nathwani of Bombay. On June 26, 1975 lawyers all over India strongly condemned the declaration of Emergency and arrest of J P and

other leaders and abstained from work for the day.

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As public meetings were not permitted during the Emergency, Tarkunde took a lead in organising and encouraging public meeting all over India in defiance of the authorities. As Gujarat and Tamil Nadu were governed by non Congress Government, a historical All India Civil Liberties Conference was held at Ahmedabad by the CFD on October 12, 1975, with Justice J C Shah presiding and Justice Chagla inaugurating. Justice Chagla delivered a hard-hitting speech. C T Daru arrested to circulate printed copies of the speech all over India and abroad. A highly successful "Save the Constitution" convention was held at Ahmedabad on January 1, 1976.

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It is one of the little known facts that Tarkunde was indirectly responsible for saving the life of JP who was dying in the institute near Chandigarh where he was confirmed due to mysterious failure of both of his kidneys. Due to the climate of fear the relatives of JP. Invariably took the help of Tarkunde in approaching the District Magistrate and taking his permission to meet JP. They found ailment of JP and it became public, the Government which did not want JP to die in custody, released him in November 1975. He was saved by the doctors of the Jaslok Hospital. He has to live dialysis on every alternate day.

As a number of members off political parties were not caught in the net of detention, they requested JP for a separate platform as they could not become members of the CFD under its constitution. JP permitted them to constitute a movement named *People's Union for Civil Liberties and Democratic Rights* (PUCL&DR) later came to be known as PUCL. JP was its president during the Emergency.

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Ultimately Ms. Gandhi declared in December 1976 Elections to the Lok Sabha and released all political detainees. JP took a leading role in bringing all opposition parties together and informing one Janata Party which consisted of the elections successfully by even defeating Ms Gandhi and her son.

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During the Janata Rule Tarkunde did not accept any office of profit under the Government. He refused the Governorship of any of the five states offered to him by the then Home Minister Chaudhary Charan Singh.

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At the request of the reformist section of the Davodi Bohras, a Shia Sect to the CFD that the High Priest of the Sect was depriving the dissidents of their human rights, a Commission presided over by justice NP Nathwani and comprising of Dr Aloo Daster, Dr. Moin Shakir, Dr Alam Khudnini CT Daru and Tarkunde as members inquired into their grievances and brought out a memorable report on April 8, 1979 setting out the inhuman treatment meted out by the Priesthood to the reformist Bohras.

Tarkunde took a leading role with the active assistance of Advocate Kannabiran (now President of PUCL) MV Ramamurthy. Arun Shourie and others in inquiring into the alleged encounter deaths of naxalites in Andhra Pradesh and found that 16 young boys were actually murdered by the police and passed off as encounter deaths. The Janata Government instituted a judicial inquiry into the allegations by a Commission headed by Justice Bhargava. The Commission was however abandoned as it insisted that the proceedings should be in camera and the Government did not continue its term.

The Janata Experiment proved to be failure as the constituents began to quarrel among themselves. JP's world was again in shambles. He passed way at Patna on October 8, 1979. At that time Tarkunde was in Switzerland to attend a meeting of the Red Cross as he was President of the Indian red Cross. On his return journey by Swiz Air, the plane caught fire while landing at Athens Airport at several passengers in the front portion of the plane were burnt alive. Tarkunde who was the rear p[portion jumped out from an opened door of the pane among with others. Before jumping others out himself, he gave precedence to all those who were willing to jump, facing fatal suffocation.

In recognition of the valiant role played by Tarkunde in defence of human freedoms in India during the Emergency rule he was awarded the International Humanist and Ethical Union. He was also awarded the title of humanist Laureate by the Academy of Humanist of the USA in 1984.

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In November 1980, Tarkunde took a leading part in convening a conference at New Delhi for converting the platform of PUCL into membership organisation. The attitude of the major political parties was lukewarm. But a large number of young men and women, who were not interested in politics of power, took enthusiastic part in forming PUCL as a membership organisation electing Tarkunde as its President. Branches of PUCL were formed in all States and major towns. The members worked among the weaker sections of the people educating them in their rights. PUCL filed a number of writ petitions in the High Courts and the Supreme Court for the rights of the downtrodden and the Courts responded very positively. PUCL spread like wild fire all over India. It is today a premier Human Rights

Organisation (HRO) recognised nationally as well as internationally. It runs monthly journal known as PUCL Bulletin. Tarkunde was the moving spirit behind the growth of PUCL. He was its President for a number of years since its inspection. After he ceased to be its President and other able individuals took over the responsibilities, Tarkunde has been designated as its Advisor.

One of the earliest PIL was filed by the Bombay PUCL in the Bombay High Court, challenging the forcible and surprise deportation in State Transport buses of pavement and hutment dwellers from two localities in the city of Bombay on a rainy day in July 1981 at the instance of the then Chief Minister, Mr. A R Antulay with the avowed object of beatifying Bombay. Justice Lention of the Bombay High Court gave interim relief in writ petition filed by PUCL Bombay branch on the very day of deportation and directed the State and Bombay Municipal Corporation to bring back the deported and reconstruct the humble shelters of the victims. The Supreme Court got the petition transferred to itself as a similar petition was filed by the journalist Olga Tellis directly in the Apex Court. Tarkunde along with Jethamalani and Indira Jaising argued the petitions in the Supreme Court who held that the right to shelter was a right to shelter was a right to life and even pavement dwellers could not be evicted without reasonable notice.

Tarkunde argued several PIL cases filed in the Supreme Court by PUCL, CFD, IRHA or other HROs or NGOs without charging any fees. A number of leading Advocates of the Supreme Court and High Courts came forwarded to argue PIL in those courts filed by HROs, or NGOs, for protection of human rights of the weaker sections of the society public spirited citizens in matters involving important public issues

such as appointment to transfer of judges of the superior Courts of dissolution of State Assemblies under Art 356 environmental issues. Tarkunde argued several such PIL cases as well as cases involving important constitutional cases as well as cases involving important constitutional questions. Tarkunde was one of the highly respected counsel by the Bar and Bench of the Supreme Court. He was also recognised as one of the leading Human Rights Activists nationally as well as internationally.

During the anti-Sikhs riots in Delhi Tarkunde visited the affected areas along with Jethmalani, Soli Sorabji, and activists of CFD, IRHA and PUCL and rendered whatever help they could do to the victims. Later a team headed by former Chief Justice Sikri and Tarkunde inquired into the riots and found a number of leading congressmen instigating the killings of innocent Sikhs and torching their

houses. He also lead teams of social activists belonging to the CFD, PUCVL and IRHA to inquire into the atrocities allegedly committed by the Police and para-military forces as well as the army in Punjab and the Kashmir Valley.

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Tarkunde was one of the form view that private terrorism could not be met by State terrorism, as the State and its authorities were bound by rule of law<sup>3</sup> and could not indulge in Extra-legal killings by taking law in their hands. He also pointed out such acts of the States agencies were counter-productive. At the same time he did not condone the killings or violence by private individuals or organised groups, since such acts also amounted to violation of human rights. He also appealed to them to lay down arms and cease killing citizens and members of the police, in their own interest and in the interest of protecting human rights.

For 20 years Tarkunde lived in New Delhi, he resided in rented

premises. He earned well but he spent the better part of his earnings for the R H movement and other causes to which he was committed. He never thought of owing nay house of his own. At last he was persuaded to purchase a plot at Noida, outside Delhi (there being no other choice) and to construct a bungalow in Noida in early 1990 along with his wife Chitratai. On September 23, 1990, Chitratai expired after a prolonged illness, which she bore very cheerfully. Warm tributes paid to Chitratai by her colleagues in the RH Movement originally published in the Radical Humanist, are now collected in an appendix to the book "Though Humanist Eyes". Chitratai was a humanist in her own right, but she effaced herself to assist Tarkunde. Since her passing away their only daughter Manik Son in law Rajan Karanjawala and their two sweet daughters are residing with Tarkunde in the bungalow at Noida, to give him human company, which he badly needs. □

## Tarkunde – My Inspiration Rajindar Sachar

Within a few days of my retirement from the responsibilities of the Chief Justice of Delhi High Court, Dr Y P Chhibbar and Ms Sehjo came to me at my Tughlaq Road residence with a message from Shri Tarkunde whether I would be willing to accept the Presidentship of the PUCL. The then President, Prof Rajni Kothari, had expressed a desire to be relived due to his ill health. It was a surprise and an honour. I never knew that immediately after reentering the civil society in 1986, I would have the privilege of working as a colleague of the doyen of Civil Liberties movement in India.

Shri Tarkunde was always very affectionate and very democratic personally and in meetings. He was always prepared to listen to the opposite view, which is the hallmark of Democracy.

His commitment to JP's ideals and to the structures set-up by JP, his dedication to ideas of *Sampoorna Kraanti* continue to inspire many even today I am one of them. □

### Form IV

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I, Y P Chhibbar, hereby declare that the particulars given above are true to the best of my knowledge and belief.  
– **Y P Chhibbar, Publisher**, March 1, 2007

# Justice Tarkunde - Defender of Democracy

## Era Sezhiyan

*[Era Sezhiyan (b. April 29, 1923) was a Member of Parliament from 1962 to 1984. He served as the Chairperson of the Public Accounts Committee, besides being a member of several other important Parliamentary committees. He retired from party politics in 2001. He had become actively involved with the movement of JP in 1973 when he met him in Patna. After that he came into contact with VM Tarkunde and worked with him towards the establishment of various organisations for furthering the causes dear to JP. His piece not only throws light on his association with JP and Tarkunde but also fills a void in the history of that period leading to the establishment of PUCLDR in 1976. – Chief Editor]*

Justice V M Tarkunde was a guiding beacon for many of us during the dark period of 1975-77 Emergency. He was not only a fearless advocate committed to fight the draconian laws during those times of sycophancy and subservience, but an intense humanist and political philosopher to defend the freedom of the individual. To him "Freedom First" was the hallmark far above the collective will enforced in the name of democracy or high sounding political dogmas.

When I was in Patna in February 1973 on a visit of the Committee of MPs on Land Reforms, Mr. Krishna Kant and I went to Kadam Kuan to meet Lok Nayak Jayaprakash Narayan. That was the first time of my meeting in person the legendary hero of the freedom struggle. I was impressed by his endearing simplicity and captivating tenderness. Thereafter whenever he came to Delhi, Mr. Radhakrishna of Gandhi Peace Foundation would inform me of his arrival and I would call on JP. He was intensely interested about the functioning of the Parliament and of approach of the government and the political parties.

In the last week of March 1974 when I was in the midst of the Budget Session of Parliament, Radhakrishna wanted me to come to the Gandhi Peace Foundation on April 14 to participate in the inauguration of the *Citizens for Democracy*. JP fondly introduced me to Justice Tarkunde and Nani A. Palkhivala. I met the former for the first time and the latter was known to me earlier as I have met him several times in the Parliament

House where as a highly respected expert in constitutional and taxation matters he came to give evidence to us.

At the meeting on April 14, 1974, JP presided and Acharya Kripalani inaugurated the CFD. Justice Tarkunde explained lucidly its aims and objectives and Nani Palkhivala welcomed the founding of an organisation under the illustrious leadership of JP, to preserve, defend and strengthen democracy in the country.

Though CFD was not party-oriented, most of the Opposition leaders welcomed the CFD as an umbrella under which the disunited opposition could come together to fight the impending danger to them individually and to the country in general.

In August 1974, JP appointed a Committee for Electoral Reforms with V M Tarkunde, M R Masani, P G Mavalankar, A G Noorani, K D Desai, and E P W de Costa (Convenor). I met several times Tarkunde and Masani to give my views on the proposals before the committee. One of its major recommendations of the Committees Report released in February 1975 was on proportional representation based on the List System in the elections to legislatures in India. This Report attracted wide favourable public attention and Prime Minister Indira Gandhi was forced to declare that Government would discuss the problem of electoral reforms with the leaders of the opposition.

The beginning of the year 1975 witnessed an explosive situation in the country with mass discontent on steep price rise, non-availability

of essential commodities, rampant corruption, soaring unemployment, black marketing and above all apathy of the governments at the centre and in several states towards the suffering of the people. Student agitation rocked Bihar and Gujarat were in shambles due to the lust for power by the Congress leaders. On the other hand, the opposition parties and their leaders were disunited and ineffective. The Twenties saw a Gandhiji to rise and lead the people in the struggle the alien imperialism; half a century later it was left to JP to lead a second struggle for independence against a native imperialism.

Though most of the opposition leaders were conscious that only JP could redeem the freedom of the country, JP felt that without unity and a common objective of the opposition parties, it would not possible to get the confidence and support of the people in a fight against the authoritarian Government of the day. On the 15th and 16th February 1975, JP held a meeting in Delhi of the opposition leaders and other eminent persons in public life. At JPs initiative the National Coordinating Committee for Peoples Struggle was formed. With JP as the President, the other members were J B Kripalani, Morarji Desai, A B Vajpayee, Asoka Mehta, Charan Singh, N G Goray, George Fernandez, Piloo Mody, Era Sezhiyan, Nanaji Deshmukh, Raj Narayan, Madhu Limaye, L.K. Advani, Tridib Chaudhury, S.M. Joshi, S.N. Mishra, Surendra Mohan, Mohan Singh Tur and P G Mavalankar.

Later some other Members were also were included. Formation of this Coordinating Committee was in reality the beginning of the formation of *Jan Morchaa* later to dislodge the Congress Party from power at the centre.

Needles to say, the Opposition Members of Parliament took active part in mass agitations and the activities organised by JP. As a genuine *satyaagrahi* of Gandhian tradition and an accomplished agitator, he roused the masses wherever he went, be it Delhi, Patna, Ahmedabad, Madras. The finale of the authoritarian tragedy of India came on June 12th 1975 with the Allahabad High Court Judgment setting aside the election of Mrs. Indira Gandhi which led to promulgation of the second emergency on 25th June and arrest of JP and all the important leaders of the opposition parties.

There was an arrest warrant on that day against me also; but I got away from the police hunt thanks to Mr. Somnath Chatterjee who came to my residence at about 11 PM and took me away to a place where we stayed the whole night. Later I was told that two truck load of police came to my house in Bishamber Das Marg some three hours later with arrest warrant and after searching my place thoroughly returned sadly. The next evening I went to the Delhi airport in time to catch a flight to Madras.

In the second week of July 1975 of my stay in Madras, I got a phone call from Justice Tarkunde that he as a lawyer met JP who told him among others things to contact me with some message and asked when I would come to Delhi. As all our phones were tapped, I told him that I would meet him when I chanced to be in Delhi. I did not indicate then any definite date.

The Session of Parliament was to commence on 21st July. I went to Delhi by flight and without

staying in my usual residence, I remained in another place and managed to go to the Parliament House at about 10.30 AM to attend the Session. I was not arrested on my way to Parliament.

The List of Business of the House on the opening day contained an item for consideration of the motion for approval of the Proclamation of Emergency made on 25th June. The opposition seats in the House were mostly deserted as the leading members of the opposition were largely in jails and some prowling incognito evading arrest warrants and police rummage.

When I got the chance, I spoke firmly and effectively against the promulgation of emergency. As there was rigorous censorship prohibiting publication of the speeches of Members of Parliament in any form or manner, my speech did not find any place in the national dailies next day. However, I got the copy of my speech as recorded in the Lok Sabha Debates. We had a good distribution cell to sent copies of our statements and speeches to various destinations in the country and abroad. Thus, though banned in India, my speech got good publicity in the foreign press and the distinguished columnist Jack Anderson paid a glowing tribute to me and others that the democratic spark still flickers in the teeming land.

I met Justice Tarkunde late night in his residence in Defence Colony and gave a copy of my speech. After going through it, he told me: You are likely to be taken by the police. Anyhow I will be there to meet you and defend you! That was the great lawyer to defend democracy under any circumstances. Later on, after the emergency period, I was told that such an appreciation outside India on my speech dissuaded the Government from proceeding with the arrest warrant. At that it was not known to me.

From then on, whenever I was able to be Delhi, I used to meet Justice Tarkunde at odd places and odd times. He was resolute, committed tirelessly to visit leaders in jails and to contest MISA cases in the courts. He was the nodal point where the politicians, lawyers, and fighters for democratic rights converge and drew strength and hope.

The CFD also went to the people through conferences and hall meetings wherever possible. In October 1975, there was the All India Civil Liberties Conference in Ahmedabad. Justice J C Shah, former Chief Justice of the Supreme Court presided over the Conference and Justice M C Chagla made a memorable speech.

The Tamil Nadu Branch of the CFD was held on 10 January 1976 in the crowded Gokhale Hall, Madras which was addressed by Tarkunde and Cho Ramasamy. On my own I participated in hall meetings under CFD in Tamil Nadu and Karnataka and closed gatherings in Bombay, Ahmedabad and several other places.

There was a proposal from the Congress Party to introduce some Constitutional amendments to cover and legitimise their illegal and undemocratic acts. They were formulated in what was then called Swaran Committee Report. It was known to the public when that committee was formed and how they formed the recommendations. On March 20/21 1976, at a meeting held in Bombay of the opposition leaders, JP formed a committee to review the working of the Constitution and to suggest such changes as might be necessary. The members of the Committee were M C Chagla, K Santhanam, Babubhai Patel, Shanti Bhusan, H V Kamath, VM Tarkunde, Ms Aloo Dastur with Era Sezhiyan and Krishna Kant as Convenors. The Committee presented its Interim Report in May

76 which received wide publicity in the national and international press. However the Congress Party did not proceed with their proposal.

At the same March 1976 meeting in Bombay, JP suggested to me for establishing a new organisation to protect the *Civil Liberties and Democratic Rights* of the people. My first reaction was about a new organisation when we had already the CFD doing the good work in that field. He explained that the leaders of Communist Party (Marxist) were prepared to participate in a common frontal organisation in preference to the CFD. The CPI was in support of the emergency of the Government whereas the CPIM, though not aligned with the Jan Morcha movement, was deadly against the emergency and its fiendish rule. Many of their leaders and active party men got arrested and they stood the ground without any compromise.

JP suggested the name of the new organisation to be *People's Union for Civil Liberties and Democratic Rights*. At the end of the meeting, he announced that myself and Krishna Kant would be convenors for formation of the new Council.

When I came to Delhi, I naturally met Tarkunde and

explained the suggestion of JP. He had no objection; he was any additional forum to support us in our fight against the authoritarian regime. Right upon, we set to prepare the aims and objectives, the rules and regulations of the new organisation. However when I again met JP, I expressed my apprehensions about the two parallel organisations, CFD and PUCLDR. He said that the CFD was to inculcate the basic concept of democracy in the all walks of life and would enrol memberships and form an organisation to protect and strengthen a real democracy, whereas the Peoples Union would be a mass movement to agitate on some specific programmes of public importance.

Eventually, we held the inaugural meeting on October 17, 1976. After much difficulty we got permission to have our meeting in a hall in the Vithalbai Patel House. On the day of the inauguration, the hall was completely full and we had an eagerly waiting audience. Justice Tarkunde presided and Acharya Kripalani inaugurated the PUCLDR. Soli Sorabji delivered the keynote address. There was an enthusiastic response from the audience to the fine and strong speeches made by the leaders.

Throughout the period of emergency, remarkable work was done by the CFD and its lawyer-members. They fought relentlessly in various High Courts for release of the political prisoners and to ensure legitimate rights to the persons in detention. In spite of the blind acts of the police and the self-effacement of several judges, they succeeded enormously in stoutly contesting and exposing to the public the misuse of the law and oppression through police. Tarkunde remained as an able lieutenant of JP throughout the emergency period.

Even after the fall of the Janata government and fragmentation of the Janata under several persons and groups, I did not lose my faith in the objectives of freedom and democracy. The people did not fail the movement; it was some leaders who failed us. I maintained my cordial and friendly attachment to Tarkunde and was a frequent visitor to him in Maharani Bagh and later in Noida. He continued till the end of his life and still continues in the minds of his associates and friends a relentless fighter for freedom, a noble humanist and firm rationalist. He stood valiantly against anything inhuman, anything unjust. □

## Remembering Tarkunde

### K G Kannabiran

*[KG Kannabiran, the current President of the PUCL, has been associated with the Human Rights Movement even before he came to the PUCL. He was at the helm of the Andhra Pradesh Civil Liberties Committee for long years and played a vital role along with Shri Tarkunde during the hearings of the Bhargava Commission. – Chief Editor]*

Mr. Tarkunde lived up to very ripe old age with all the faculties in tact and three months before his passing away he presented A Picture for Public Discussion: Party less Politics and Peoples Humanist State Such was his zest for life. He devoted all his life for spreading Humanism as a way of life. He found time to work for the cause of Humanism even amidst his busy

schedule as a senior lawyer. Writing for the special issue of The Radical Humanist April 1995 he asserted there is reason to believe that humanism, in one form or another, would be the philosophy of the future, at least for a long time to come. He was never despondent or dispirited but tried to understand the crisis always with the confidence that these

trends can be fought against and overcome. His liberalism and his understanding of democracy is so very different from bourgeois liberals. For he says in his Radicalism: The philosophy of freedom and Democracy Humanism realizes that democracy cannot be confined to the political organization of society and that democratic values of

liberty, equality and fraternity must pervade all aspects of social life. These values must be fully reflected in the production and distribution of economic goods and services, in the imparting of education in the norms, which govern the relations between various communities, the sexes and the different age groups.

The creation of such an all-pervasive multidimensional democracy presupposes a radical agenda for the transformation of society, a comprehensive and institutional revolution. Surrounded by poverty, ignorance and economic inequalities, humanists cannot be true to their philosophy if their moral sense does not impel them to participate in such a revolutionary effort. Humanism under the circumstances has to be Radical Humanism. All his life he remained a crusader with a sterile following; that has been the misfortune of the few in our country who were leaders of men who had no following or effect following. Tarkunde also realized this and was feeling sorry that no group of persons was able to radicalize the masses in the sense he used the word. It is a radicalization perhaps after the cultural and institutional revolutions, he was talking about.

He was not interested in the Indian intellectual assessment of democracy by examining the trappings and be satisfied. When he suggested that the democratic rights in PUCL&DR be dropped, as this job will be better done by Citizens for Democracy, an organization founded in 1974 under the leadership of JP. His dream for initiating a revolutionary effort to radicalize humanism could have been done through the Citizens for Democracy but that organization lacked committed membership of the youth. The Naxalbari movement attracted youth during the late sixties and early seventies of the last century and the CFD drew blank and the Emergency that followed unleashed repression on the naxalites and other democratic minded persons who were up in arms against authoritarian trends

in the governance of the country. Unfortunately a few of the RSS were arrested and that gave them the credentials to be part of the democratic movement against Mrs. Gandhi but that is another story. Tarkunde was really keen on taking measures to recruit workmen and rural labour in CFD. I remember somewhere in 1978 or 79 his asking me whether it is possible for me to arrange a meeting of rural activists and as the leaders were around I quickly arranged a meet with 60 to 80 persons. He was with them the whole day and I found him very happy after the session in the evening. Afterwards he used to talk about organizing people and radicalizing them and he used to assure me that the revolution that takes place there after will be less violent and may not suffer from distortions. It is these affinities to people who are carrying on struggles, which made him readily agree to be the Chairman of the Committee to enquire into the fake encounters in which young naxalites were killed. With his consent Arun Shourie, as he then was, and I approached JP in Jaslok Hospital and the rest is History. Whenever I wanted him he was there. In the Conduct of Bhargava Commission he was a great support to me. The threats to my life during that period and thereafter I was able to face because the support he always extended to me. For Tarkunde and me, to fight against oppression is a basic human right and it is not just a retranslation or a mere updating of liberal values in human rights language. In 1979, I think, he led twenty thousand strong procession in Hyderabad against encounters. The long march did not tire him.

With his mission to radicalize humanism he headed several non-official committees to investigate into various undemocratic practices in communities in the country. He believed, by talking to political parties, by appealing to reason one can bring about a change in their attitudes. In 1997 in the Gandhi Peace Foundation hall he was heading a seminar on anti corruption and by consensus evolved guidelines to eliminate corruption. He was firmly secular and gave no quarter to obscurantism towards the end of his life, witnessing the tremendous degeneration in politics he wrote about conceptualizing a humanist state. He said he was starting a debate, which

he expects would be carried on by his colleagues.

To day we are in need of an alternative philosophy, an alternative vision to work on and perhaps what M N Roy and Tarkunde thought out as alternative will find acceptance, not only in this country but the world over. Perhaps Marx was the first philosopher to train us consciously to fight for change. He made the fascinating statement-it still fascinates me-Philosophers hitherto interpreted the world; the point is to change it. The statement stresses on the possibility of conscious of human effort to bring about changes in the lives of the people so as to enhance the quality of their lives. But it needs organization of people. The enveloping decadence we are witnessing today benumbs our enthusiasm to do any thing at all to retrieve the situation. A terribly narrowed down constituency of committed persons who are eager even to clasp a utopian intention, to use it as the motor force of history but scattered

This enveloping decadence did not defeat Tarkunde. He was quick to perceive that a different kind of a State is needed and to bring about that State an increasingly large number of men (people) conscious of their creative power, motivated by the indomitable will to remake the world, moved by the adventure of ideas, and fired by the adventure of ideas, and fired with the ideal of a free society of free men (people), can create conditions under which democracy is possible. (Thesis Fifteen) The concept of a humanist State implies a social revolution enlarging its constituency and alongside setting up democratic structures like the peoples committees. The programme of Social Revolution will be based on the principles of freedom, reason and social harmony. It will mean elimination of every form of monopoly and vested interests in the regulation of social life. (Thesis Sixteen) The Humanist state will not wither but shall never be defined in terms of POWER. Tarkunde's zest for life was tethered to this dream of realizing the Humanist State. After carrying the torch for full 95 years, it has been handed over to us. What have we done with it? □

## VM Tarkunde: Some Reminiscences

Balraj Puri

*[Balraj Puri, one of the founder members of the PUCL, is a part of contemporary history of Jammu and Kashmir. Unassuming, but a thinker who has a clear understanding of history, he is the Convenor of Jammu and Kashmir PUCL and is the Director of Institute of J & K Affairs, Jammu. – Chief Editor]*

I might be one of the few privileged persons who had over half a century long association with VM Tarkunde. And fewer among those who were associated with his multi-faced activities till he breathed his last on March 23, 2005; which supposed my last link with the giants of India's public life.

I had first met him around 1950 at the camp of Radical Humanists which used to be held every year in Mussorie or Dehradun (where MN Roy lived). After the death of Roy and his wife Ellen, Tarkunde became the most authentic voice of Radical Humanist movement. I attended a number of such camps and every time got to know Tarkunde better and came closer to him.

In a way, I was a dissenter in this group of dissenters in Indian politics. I was inspired by three sources, which were at that time quite divergent. Firstly, I accepted basic Radical philosophy of supremacy of reason and freedom. Secondly, Gandhi's experiments with moral and non-violent methods had tremendous impact on me. Thirdly, I shared socialist belief in egalitarian society.

Radicals, on the other hand, considered Gandhi a prophet of backwardness and socialism a prescription of totalitarianism. On these issues as also on some other issues, Tarkunde and I often took divergent positions. But that increased his interest and affection for me. Though most of the participants in the camps, broadly tended to agree with Tarkunde, they always complimented me for my contribution to making the discussions lively. I can recall many interesting and cordial interactions between us.

At a meeting of the Radical Humanist Association of India, of

which Tarkunde was unanimously elected as president, we were discussing the role of reason and emotions. As the discussion dragged on, I mischievously raised a point of order and asked the president to give his verdict on what was the best way, according to the philosophy of Radical Humanism, to celebrate the New Year eve (as it happened to coincide with our meeting.) Amidst a peel of laughter, Tarkunde dispersed the meeting and ordered two bottles of whisky, from his own pocket, to celebrate the occasion.

Gradually, the three camps with which I was associated, started coming closer to one another. Under Jayaprakash Narayan's leadership, the socialist movement had been Gandhised. After he retired from party politics in 1954, he came close to Radicals also. He attended their camp at Mussoorie where I was also present.

Unfortunately they came close together precisely on the point on which I had disagreed with all of them viz on the role of political parties in democracy and of power in human life. As Gandhians, Radicals and some ex-socialists campaigned against party politics, Indian democracy was denuded of much valuable talent and the vacuum was filled by much less scrupulous persons.

I continued to warn through series of articles in many papers, including the Radical Humanist, (which again confirmed Tarkunde's liberal attitude towards opposite view point) that the assault of the Sarvodya-Humanist school on democratic institutions like party system would lead to anarchy which would be a step towards authoritarianism.

The warning came true in the form of emergency but it brought me closer to the Sarvodya-Humanist group. Thus when JP and Tarkunde led the formation of *People's Union for Civil Liberties*, I not only attended its founding conference but also became its founder as well life member.

It was pleasant experience to work under Tarkunde's leadership. Another period of very satisfying and fruitful work of my career started when I worked under his leadership in Kashmir Committee that was formed with the beginning of a militant movement in Kashmir of which Tarkunde was the president and when he led a number of visits to monitor human rights violations in the valley. I was assigned the job of drafting the reports which Tarkunde invariably approved and issued.

The support of such an eminent authority made my work in the state, which has been my main field of activities far more effective.

In this long association with Tarkunde, my admiration and respect for him continued to grow. Likewise his affection for me increased over years. He was a rare combination of intellect, integrity, courage and compassion. Many legal luminaries have acknowledged his towering personality as a jurist and his scrupulous practice of taking only cases which he was convinced were genuine. Many of his erstwhile colleagues have recalled his qualities of leadership. Others have paid tribute to his courage of conviction to - champion unpopular causes. He was all this and something more.

I am not here writing a formal obituary in which I could discuss all his qualities. There are more qualified persons who knew biographical details of his life and various facets of his life better. I merely recall some reminiscences of my personal association with a man who had become a source of strength and inspiration for me. □

# Tarkunde Theory of Human Rights

Manoranjan Mohanty

[Prof Manoranjan Mohanty presents a chapter from the life story of PUCLDR. His crisp and honest recording of the events leading to breaking away of some members from the PUCLDR when the Constitution of the PUCL was adopted, is a missing chapter from the traditional history of the PUCL. – Chief Editor]

Justice Tarkunde life and work presents a body of ideas which constitute a theory of human rights. The radical humanist thinker and India best known human rights crusader for nearly half a century contributed through his action and writings to the evolving discourse on rights which provide a valuable vantage point for people movements in the twenty first century.

The radical humanist par excellence carried with him the M N Roy critique of Marxism that it had neglected civil liberties of individuals and critique of capitalism and liberalism that it denied labour its rights which led to a process of dehumanization. Post- Emergency India and post-Soviet world brought these issues into sharp focus. Many Marxists saw the strength of socialism in democracy and people rights and among humanists disenchantment with liberalism grew as capitalism asserted its dominance in global scale. Human rights which were once spurned as the vocabulary of the bourgeoisie gradually entered socialist discourse and socialist practice. Many Marxists who had considered the civil liberty groups as a part of the Western liberal camp began to appreciate the work of people like Tarkunde. A new alliance against authoritarianism emerged that worked for democratic rights. Despite differences over philosophical premises political solidarity was forged on concrete issues. Thus Tarkunde represented the historical forces that challenged Marxists to take civil liberties seriously.

When we split with the PUCLDR to form PUDR in 1980 there was an interesting debate on the distinction between *Civil*

*Liberties and Democratic Rights*. It was said that civil liberties was the preferred values of the liberals who sought freedom of speech and expression, right to vote in free elections while democratic rights covered not only those but also the socio-economic rights such as right to livelihood, right to minimum wage, right to social equality, right to struggle etc. "rights that would interest socialists as well. There were two other issues as well. It was believed that PUCL mainly took recourse to judicial action through filing of cases while PUDR not only sought intervention of the court but also mobilized people through various campaigns. Another point of debate was proposal of the then PUCL leaders to dissolve all existing civil liberty organizations to build an effective all India organization while groups like PUDR, APCLC, CPDR and APDR did not agree with that position arguing that each had a history and relevance of its own. Over the years experience has shown that much of this difference has been muted. Under the leadership of Tarkunde and Rajni Kothari and later after the APCLC President K G Kannabiran assumed the presidentship of PUCL, its programme of activities has included practically all forms of intervention ranging from going to the court to launching or taking part in public demonstrations. When the report on the 1984 Delhi Riots *Who Are the Guilty?* was jointly authored by PUDR and PUCL a new period of PUCL history was evident. PUCL units in Bihar, Jharkhand, Chhattisgarh and Orissa and elsewhere have taken up issues ranging from killings in false encounters to atrocities on dalits, dowry deaths, oppression on tribals and

communal violence. It has been demonstrated that the terms civil liberties, human rights, democratic rights and people rights themselves do not limit their meaning or scope, it is the political perspective guiding the movement that provides the meaning. Tarkunde led and participated in the evolution of the civil liberty discourse into a new stage enriched by on-going people struggles in India. The Indian struggles provided far more substance to this trend than the international movement for human rights. Organisations like Amnesty International mostly echoed the voices of the Indian civil liberty groups.

On the issue of minority rights and communal violence Tarkunde was of the firm view that state had a duty to protect the minorities from the onslaught of Hindu communalists. As Indian polity experienced the process of communalization of state apparatus and cultural institutions Tarkunde was on the forefront of anti-communal mobilization. From Delhi riots to Babri Masjid demolition and Mumbai riots to the burning of Graham Steins and his sons in Orissa Manoharpur Tarkunde voice was loud and clear condemning the fundamentalist atrocities and asking for justice for the victims and punishing the guilty.

I had the privilege of being in the fact-finding teams with Tarkunde a number of times. The ever-smiling, simple human being who was also an intellectual giant with uncompromising political commitment was a great inspiration whose contribution to India democratic transformation will always be remembered. This outline of Tarkunde theory is a small token of my gratitude to him. □

# My Cherished Memories of Bhau

Tahir A Poonawalla

[Tahir A Poonawalla from Pune has held various positions in Maharashtra PUCL and in the National PUCL. He knew VM Tarkunde as a neighbour and saw him from close quarters. – Chief Editor]

It was a long journey for me to find such a good friend like Justice VM Tarkunde, Bhau as affectionately known to his family members, friends and associates.

Bhau had a flat in the model colony, a stone throw away from my bungalow. Tarkunde was a well-known name in Maharashtra, a household name in Pune, especially to its newspaper reading public. In the hey days of the Independence struggle, SM Joshi, Nana Gore, Karandikar, and many other socialists and social reformers along with Tarkunde were looked upon as an inseparable group, inspiring many young people to join the Independence movement.

I came to know him personally many decades later when Nathwani Commission was appointed to investigate in the complaints of the Bohra Reformists against their High Priest, the Syedna. Thereafter the PUCL brought us closer.

Late S P Sathe, the Principal of ILS College and also President of its Society, Mr R P Nene an intellectual and activist and myself, with Bhau, formed a circle, meeting either at Dr Sathe's residence or at my house or

Justice Tarkunde's flat whenever he was in Pune and free to spend time with us.

Being an atheist, my name was suggested to a discussion group in Bombay to exchange my views on atheism with the said group. It was a small group and while the discussion was in progress, Justice Tarkunde walked in quietly and occupied a chair, in the audience. Its presence unnerved me but in no time I found his presence, to my relief an inspiration and encouragement. Being a Muslim by accident of birth to be an atheist was beyond the belief and comprehension of many in the audience. Justice Tarkunde's words of appreciation brought down the mental barriers of his being inaccessible; such was my friend Bhau, one with the grass roots.

Like many other times we found ourselves at Satara at the same hotel where we had been accommodated for a seminar. In the evening we were having a small session when Dr Lagu and Justice Tarkunde had an animated discussion, reminiscing the past, when Bhau became very emotional and took time to unwind himself.

There was a PUCL conference at Jaipur and I was given a room in the Guest House of the Jaipur University where Justice Tarkunde and if I remember rightly Mr Kannabiran, our President PUCL were staying. In the evening I found his company very enlightening and also entertaining. He had in fact a great sense of humour behind which his incisive mind was hiding.

We were celebrating Bhau's birthday in my house with some of our friends, when my wife Zainab presented him a bouquet of flowers, he gallantly took her hand and kissed it. This evoked a spontaneous clapping all around for a few seconds, delighted as we were by our friends. Chivalry not dimmed even at such an advanced age.

His mind remained alert and sublime in the fragile body, which dragged him beyond the sunset to disappear for good.

He has left an indelible impression of courage, honesty, sincerity, and fearlessness and above all love for the humanity. The flame of brave thoughts and action kindled by him will ever remain bright to guide me in the present times of darkness and decay. I salute his memories. □

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***Loktantra Mein Soochnaa Kaa Adhikaar***

by

**Ramashray Prasad Singh**

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## Some Facets of Mr Tarkunde, the Man

Prabhakar Sinha

[Prabhakar Sinha, one of the founder members of PUCL, and the tower of strength of the Human Rights Movement right from the time of JP, has worked in close approximately of various organisations involved in JP's struggles. He is one of the senior most Vice Presidents of the PUCL. – Chief Editor]

I had heard of Mr Tarkunde for the first time during the emergency. I was both surprised and impressed to hear of a former judge of a High Court taking up the cudgels for Civil Liberties and Democratic Rights at a time when even to whisper about them led to jail. I wanted to meet him, as I was myself actively involved in the Bihar movement, which led to my detention under MISA (in 1974) and later under the Defence of India Rules (in 1975) for opposing the emergency. However, I resisted the temptation, as I was under suspension from service (I was a lecturer in the University of Bihar, Muzaffarpur) after release from the jail and was under surveillance.

The opportunity to meet him, though formally, came when he visited Patna for the conference of Bihar PUCL in 1981. He was then the National President of the organization. It was a very pleasant surprise to find him so unassuming, courteous and affable. Everyone felt quite at ease with him. In fact, he presented a sharp contrast with the mental image I had of a High Court judge – stiff, formal and aloof. It was during the subsequent years when I became the President of Bihar PUCL that I had many opportunities to interact with him and know him better.

A convention of the adherents of JP's *Sampoorna Kranti* (total Revolution) was organized at Gaya sometime in 1986 at which an organization called the *Sampoorna Kraanti Manch* was formed. Mr Tarkunde was elected its President. During the preparation for the convention, some members of the PUCL issued a press statement to the effect that the Bihar PUCL was going to

participate in it. Since the PUCL had no such plan, a contradiction was issued, which understandably hurt many of our members who admired J P. I was also invited to the convention, but I did not attend. When Mr Tarkunde returned from Gaya after the convention, I went to meet him at Gandhi *Sangrahalaya* at Patna, where he was staying. I was a little tense not sure of his reaction. He was talking to a group of people from the newly formed organization when I arrived. The question of the non-participation of the PUCL and especially of the contradiction issued to the press by it was raised. They complained that it was not right for the PUCL to distance itself from J P's *Sampoorna Kranti*, as he was also the founder of this organization (i.e. PUCL). Mr. Tarkunde looked at me expecting me to respond. It was a difficult situation for me considering that for many it was an emotional question and Mr Tarkunde himself was the moving spirit behind the *Manch*. I said, "It is true that J P founded the PUCL, but he also set its goal, which was not his Total Revolution. He formed it for a very different purpose. Besides, now it has a Constitution with clearly stated aims and objects. PUCL cannot go beyond its constitution and support any political ideology. It is no more closer to *Sampoorna Kranti* than any other *Kranti*". He listened to me and to my great relief and admiration said, "I think he is right" and turning to me said, "But you could have come in your personal capacity." I explained to him that since the PUCL was a new organization, my attending the convention would have caused confusion and misunderstanding

and hurt the PUCL" He did not say anything, but looked satisfied.

He disapproved of fanfare and extravagance and wanted the PUCL to observe simplicity and economy. I recall an incident of 1986. There was a bye election to the Lok Sabha from Banka in the district of Bhagalpur (Bihar). Mr George Fernandes was one of the opposition candidates. The opposition feared that the ruling Congress Party would resort to large scale rigging. In those days, the Election Commission played a mute spectator and was absolutely ineffective in preventing rigging. The PUCL decided to send teams of observers consisting of people from Delhi as well as Bihar to watch the poll. Many people, including Mr. George Mathew, Ashish Nandy and Arvind Das had reached Patna earlier, and Mr. Tarkunde's arrival the next day was awaited. He was to reach in the morning, spend a couple of hours at Patna and proceed to Bhagalpur by road. Many people from Delhi were staying at the Hotel Chanakya. We received Mr Tarkunde at the airport and drove to the hotel (Chanakya), where he was to get ready for his onward journey. As soon as we reached the hotel, I noticed a sudden change in his mood. For some inexplicable reason, he looked annoyed. I felt puzzled. When the others left and we were left alone, he said, "Mr Sinha, PUCL cannot afford such luxury. Why did you waste money on this hotel? When I come for PUCL, I stay at Gandhi *Sangrahalay*, which costs only rupees ten" (or rupees twenty. I don't remember the exact figure now). When I told him that the room was booked by the people from Delhi, who had made it available for him since he was to spend very

little time there, he relaxed, smiled and said, "Oh, then it is alright."

In May, 1994, I received a letter from Mr Tarkunde to see if something could be done about an inmate of Ranchi jail, who had alleged that Mr Laloo Prasad was determined to get him killed in a fake encounter because his father and he himself were actively engaged in organizing "Chetana" rallies of the Kurmi community against him.. A photocopy of the letter of Rakesh Kumar alias Babloo Singh was also enclosed. A few days later, he rang me up and said that he did not know what one could do and asked me to see if something could be done about it. I informed him that Babloo Singh had a criminal antecedent and had been quite close to Bihar CM, but had switched loyalty following a split in the Janata Dal, and must have invited Mr Prasad's anger, but one could not investigate such an allegation based on mere apprehension. However, we forwarded Singh's letter to Mr Prasad with a covering letter in which we stated that we had not investigated the allegation but wanted him to look into the matter personally and ensure the petitioner's safety. It was also stated that since the police in Bihar did kill people in fake encounters, we had decided to bring the matter to his notice. The letter was also released to the press. A few days later, the happy father of Babloo Singh came to the PUCL office to inform us that the Chief Minister had called him and told him that there was not even an iota of truth in his son's allegation and he should rest assured. However, he thanked the PUCL and said that it was due to the PUCL that his son was safe.

When informed of the outcome Mr Tarkunde was very happy. He had not forwarded Singh's letter mechanically but had followed it up with concern.

Apart from the PUCL, it was in a different and unexpected context

that I had glimpses of his exceptional sensitivity and humane qualities. We had approached him to represent us in a case in the Supreme Court in which we wanted the judgment of the Patna High Court upheld in which the court had quashed the illegal appointment of the Principal our college and ordered the restoration of the incumbent he had replaced. The Supreme Court upheld the judgment of the High Court, but asked the University to reply within ten days whether the petitioner (i.e. the Principal whose appointment had been quashed) could be appointed against one of the several vacant posts of Principal in the University. When requested by our colleague (who was looking after the case) to oppose his appointment, Mr Tarkunde reacted very sharply and said, "Your Principal has got back his job. Now, why are you after the poor man? One should not be vindictive." It was only after I made a telephone call to him and explained that his reappointment would not only be blatantly illegal, but would also deprive other deserving claimants from the University of their right to be considered that he relented.

My other experience with Mr Tarkunde as a lawyer was at a very personal level. In a case, we had challenged the illegal promotion of a lecturer as a Reader. His promotion was notified in March, 1989 but with effect from 01.02.1985. The writ petition was moved within one month of the notification. The High Court made a mistake in conceiving the fact, and dismissed the petition on the ground of delay (thinking that the promotion was notified in 1985 and the court moved after four years). Mr Tarkunde appeared for us, but the bench headed by Justice Mr K.N. Singh repeated the same mistake and refused to examine the notification for verification of the date despite his (Mr Tarkunde's) repeated pleas and

dismissed the petition. He looked angry, and when we were out of the courtroom said, "Such things should not happen in the Supreme Court."

One and half years later, the National Council of the PUCL met at Lucknow, and we were accommodated in a guest house. In the morning, there was a knock at my door and when I opened it, I was surprised to see Mr Tarkunde standing there. He walked into the room, sat down and said, "Mr Sinha, I am so sorry. We should not have lost that case." I was too moved to say anything.

Another personal interaction which I cannot forget was at Pune in 1990 at the time of the National Convention (of the PUCL). In the evening, I was sitting alone on the steps of a building on the campus (of the institution where the convention was held). He came and sat by my side. He talked of his days at Pune when he was young and about writings of Eric Fromme, who seemed to have considerably influenced him. Then changing the topic he said, "Do you remember how much time I spent in Bihar for *Sampoorn Kranti Manch*. I went to remote places (I was not part of the *Manch*, but knew about his movements because I met him whenever he visited Patna or North Bihar). But now most of them (people from the *Manch*) want to fight election. I wasted so much time". He sounded very disappointed. I do not know why he shared his feelings with someone, who was not associated with the *Manch*, and sometimes wonder if it was a sequel to our conversation about my keeping away from the *Sampoorn Kranti Manch* a few years ago.

I respect talent, but admire only goodness. The glimpses I had of Mr. Tarkunde made me both respect and admire him. □

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**Tarkunde – My Tribute  
Sudha Ramalingam**

*[Sudha Ramalingam belongs to, in a manner of speaking, second generation of PUCL members. That is why she says that she did not have much of personal contact with V M Tarkunde. But as would be clear from her rather unusual piece she had grasped Tarkunde's ideas in totality. Currently a Vice President of the PUCL she has been in the forefront of the TN and Puduchery PUCL for years now. – Chief Editor]*

The first thing which comes to my mind when I think of Late Justice V M Tarkunde (Retired), our beloved founder of PUCL along with Jayaprakash Narayan and others, is reading the news of him and others including our present President K G Kannabiran being *laathi* charged in Madurai during the Emergency days. I saw him only in our National Convention in Thrissur, Kerala. A frail and unassuming figure, who moved around with all without an air of being such a renowned personality. He would definitely have welcomed the order of the first bench of the Madras High

Court, consisting of our Chief Justice A P Shah, and Justice K Chandru. Befitting the memory of the great humanist, activist and fighter Late V. M. Tarkunde I am presenting below the land mark judgment, how it came to be ordered on the 11<sup>th</sup> January 2007 giving quality nutritious food, protected water supply, better sanitation and humane conditions and also what are the other areas to be addressed despite the judgment.

The Hon'ble High Court of Madras appointed the author of these lines as Advocate Commissioner on 04.09.2006 to

visit the Women's prisons in Tamil Nadu and file reports about the conditions. As per the directions, I visited all the 15 women prisons in Tamil Nadu. Three students named, Poonkhulali, Dhivya, and Gautham of National Law School of India University, advocates R Venkatesh and R S Akila, helped me with the prison visits and preparing the Commissioners report and the further documentations.

The report was submitted to the Court on 31<sup>st</sup> day of October 2006. The State was directed to file its reply to the report. The Home Secretary and the Additional

Director General of Prisons submitted their remarks / comments (verbatim same) reproducing some provisions in the prison manual and made a blanket statement that all facilities and amenities are available in the Special Prisons situated in Vellore, Trichy and Puzhal.

I was asked to respond to the said reply. Same was submitted on 4<sup>th</sup> January 2007 pointing out the Remarks/Comments seem not backed by a thorough field study, but was merely an enunciation of what amenities should be available to the inmates in the prisons as per the Prison Manual along with specific instances from the report substantiating the earlier report. The Chief Justice and Justice Chandru, were impressed by the report and the Chief Justice said that "All facilities mentioned in the prison manual are completely absent in jails. They also said that the authorities should not treat the inmates as "sub-humans.". I was directed to file the general recommendations to be applicable to all prisons and also in those which need to be done in specific prisons so that those recommendations could be passed as an order and I did the same.

On 11.01.2006 the first bench passed an order which I feel is really historic, giving far reaching facilities to women prisoners in Tamil Nadu. I decided to mention this judgment in details as I am sure that had Shri Tarkunde been living today he must have felt proud that one of his junior colleagues in the PUCL had a significant role in the whole case. This is my tribute to him.

The salient features of the order are:

- Metal detectors be used instead of physical frisking in central prisons, in sub-jails frisking ought to be done with dignity.

- Thorough medical examination should be conducted on the date of admission or the very next date. Special diet if

necessary be prescribed by doctors at the time of examination.

- Identity cards should be provided upon admission, which will list the following details:

1. Name
2. Fathers or husbands name
3. Age/Date of Birth
3. Address
4. Case number
5. Relevant Court
6. Provisions of law involved
7. Identity marks
10. Injuries if any: Yes / No

If yes its details.

#### **Food**

A balanced diet consisting of one fruit every day, quality vegetables, eggs on alternate days, meat (once a week). Coffee/tea should be provided every morning and evening is to be provided.

Cooks be appointed in every prison.

- Grinders/mixers be provided in every prison.

- Pressure cookers be provided in sub-jails

- Steam cookers in central jails should be kept in working condition.

- Closed containers to store provisions.

- Store rooms shall be kept well ventilated and cleaned every alternate day.

- The registers in the store room shall be maintained up to date and not be filled in at one stretch.

- Children should be given milk with sugar. Provision to warm milk should also be made available.

- Provisions and vegetables etc. to be purchased from co-operative super markets or Self Help Groups instead of through the contract system that is in vogue.

#### **Water**

- Reverse osmosis plants must be erected with continuous drinking water supply.

- Wells should be repaired to ensure water supply for other needs.

- Motors should also be kept in working condition.

#### **Canteen**

- Shop-type canteen should be made available in central prisons.

#### **Accommodation**

- Lighting should be provided in the cells. For security concerns, tube lights could be fixed on the ceiling and protected by metal wire mesh cover.

- Fans should be provided in the cells.

- Use solar energy as far as possible.

- Mosquito coils should be provided for every cell.

- Mosquito/insect repellent to be sprayed in the prisons once a week.

- The toilets in the cells should have partitions that provide privacy. The wall around the toilet should at least be 4 feet high and should also have a door.

- Ensure running water in toilets.

- Toilets in the common areas outside the cells should have doors.

- Scavengers be appointed in every prison.

- Provide Generators in Central prisons and Inverters in sub-jail.

#### **Clothing and Bedding**

- On admission, every convict prisoner should be given a kit with 2 sets of dresses (sarees/ blouses/ petticoats), a towel, 2 bed sheets, a pillow, sanitary napkins, toilet soap, detergent soap and hair oil at the time of admission into the prison. Other prisoners who are to stay more than 48 hours should also be given the kit.

#### **Health and Hygiene**

- Disinfect the prison premises at regular intervals

- Protect against mosquitoes / monkeys etc.

- Lay garden and teach gardening to inmates. Encourage planting vegetables and herbs in vacant spaces.

- Keep all drains and water sources closed.

- Personal hygiene classes be held in the prisons at regular intervals with the help of volunteers / local government hospital health visitors / workers.

#### **Medical Care:**

##### **Central Prisons**

- At least 3 doctors should be appointed in the central prisons with hospital facilities.
- Disposable syringes be made available
- Cradles for infants should be provided in the hospitals.
- A psychiatrist should visit the prison regularly.
- Medical records to be maintained and handed over to prisoners when they are discharged to enable them to continue treatment or medication.

##### **Sub Jails**

- A doctor should visit the jail everyday.
- Jails should be equipped with first aid kit and basic medicines such as pain relievers.
- A vehicle should be provided (at least an auto rickshaw) to transport inmates during emergencies.

##### **Education**

- Newspapers/magazines should be provided in all prisons and circulated among inmates.
- Provision to borrow books from the appropriate district / local library be made.
- Prison manual and other law books should be made available for the perusal of the inmates.
- Crash courses in skills such as basket weaving, doll making, screen printing, embroidering and tailoring, making greeting cards etc. can be provided even for remand prisoners.
- Provision for correspondence education be available, and the said facility should be encouraged, even for the use of remand prisoners.
- Yoga and meditation teachers should be appointed and such sessions be made compulsory.

- Counseling centre with the services of a social worker/psychiatrist should be provided.

- Prisoners' rights should be listed and exhibited in every block in the form of posters, including facilities that can be accessed by inmates (e.g.: Timings of the visits by doctors, psychiatrist, NGO, legal aid counsel etc. as well as the constitutional and legal rights of the prisoners). It should also contain Dos and Don'ts for the prisoners. At the outset the posters provided by the Advocate-Commissioner could be displayed.

- Pen and paper should be made available to all inmates.

##### **Recreation**

- One television be provided in every block. It shall be switched on everyday, for 1 hour in the morning and 2 hours in the evening.

- One radio be provided with speakers in every block which could be switched on during day time when the television is not switched on and shall also play some songs or broadcast useful programmed till 8 to 9 p.m.

- Provision for indoor and outdoor games such as ring ball, throw ball, carom, chess as well as *pallankuzhi*, etc. should be made.

##### **Complaint Box**

- Every block in the prisons should have a complaint box kept in prominent places and also inside the common bathrooms.

- It shall be opened in the presence of the District Judge during his/her visit.

##### **Legal Aid:**

- A room should be provided in every prison for the legal aid counsel. - The legal aid counsel should report to the Principal District Judge every month on the work done during that period.

##### **Production before Courts**

- Food packet with water should be provided to the inmates for lunch when they are taken to the courts for production.

- Escorts should ensure that the inmates are given breakfast before leaving to the court.

##### **Child Welfare**

- Every child should be provided a kit consisting of two cups, a plate, three sets of clothes, two towels, soap, talcum powder, oil, bedding consisting of small mattress, pillow and bed sheets.

- Milk with sugar, and provision to warm the milk be made available.

- Creche/nursery with trained personnel should be available in central prisons.

- The children should not be locked in the cells during day time.

- Constant medical check up, and vaccinations be administered to the children.

- Basic education should be imparted to the children in the prisons.

##### **Video Conferencing:**

- No prison authority including convict warders should be present during video conferencing.

- Legal Aid Counsel shall be present to assist the inmates during video conference.

- Panel of Visitors shall be intimated about the days on which Video Conferences are held to enable them to be present if they so desire at least for surprise checks.

##### **Visitors Panel**

- A panel of visitors including non official members such as social workers/ NGOs/ activists may be constituted in every district which shall be authorized to visit all jails in Tamil Nadu without prior notice.

- Their views may be recorded in the visitors' diary.

- The legal aid counselors and judicial magistrates should submit report to the Principal District Judge who has to report to the Registrar, High Court of the visits to the prison once in three months.

##### **Discharge**

- ID cards should be surrendered upon discharge from the prison.

▪ Authorities should hand over medical card with diagnosis and treatment provided to the inmate on discharge.

▪ Inmates should be counseled and provided escort to safely reach their homes.

Apart from the above a few recommendations for renovation of cells, putting up compound walls, wire mesh in the common area to protect inmates against monkey menace etc. were also ordered.

The Court has also said that the State should implement the above with regard to food etc. from 1<sup>st</sup> February and it has also ordered that the State should fill up all vacancies, appoint cooks, scavengers etc. expeditiously.

When I went to the prisons and met the inmates, spoke to not merely the inmates and saw the conditions, but also to the different sections of those involved with prison administration, magistrates, social workers, ex-prisoners and others I found that there is a lot to be done. I wondered where this exercise was taking me to, was it going to be mere pain at seeing the realities, but the Court has at one stroke of the pen done a great service to the face less and voiceless women prisoners. All these and more have to be done to the prisons for men too.

Apart from the above I feel that there are a few other components that we as civil rights activists address when we are on the prison issue. The Court felt that as the writ was pertaining to only jail conditions they could not go further in the instant case. But I feel that the following issues are necessary and PUCL can even contemplate on a PIL to make the all the States in our country extend the facilities made available to all prisoners and to make prisons humane places of reformation and not breeding ground for hardened prisoners.

#### **I. The Prison Staff**

The duties and functions performed by the Jail staff are arduous and onerous and even

hazardous in nature. They are entrusted with the task of keeping and rehabilitating various types of prisoners who have been sentenced to varying terms of imprisonment for criminal offences committed by them. They are also expected to turn the prisoners into law abiding and useful citizens on their discharge from the prison. The criminals committed to the care and custody of the prison staff include hard cores, those who had committed cold-blooded murders, extremists, anti-social elements etc., and hence the life of the prison staff is exposed to grave risk in the discharge of their duties with the emphasis now shifted from punitive to rehabilitative aspects due to introduction of various reformatory measures in the prisons over the years. The responsibilities of the prison staff have become increasingly difficult. Hence, the condition of the service of the prison personnel needs to be improved so as to place the administration of prisons on more sound and efficient footing.

While the prison staff is under the general supervision of the Director General of Police, recruited with the same qualifications of the police and being headed by a Director General of Police, they are not treated on par with the police. Equal work should carry equal pay but Jail staff is not paid on par with their counter parts in the police service. Avenues for promotions and increments are also limited. No jail service personnel have been promoted as Inspector General of Prisons. Till date no woman has been promoted as Deputy Inspector General of Prisons. Thirty percent reservation should be ensured for women in the jail service also.

#### **II. Prohibition Offences and Arrest**

I found that majority of the women in the prisons were apprehended for prohibition offences. There was not a single

rich or socially forward class / caste woman apprehended and held in the prison for such offences. Detaining women under the preventive detention laws such as the Act XIV of 1987 and also remanding them for prohibition offences could be avoided or resorted to only in exceptional cases. All of them hail from lower economic and social back grounds and seem to be poor victims of their family circumstances. They could never be a menace to the society like the pick pockets or other anti-social elements. I found women who were undergoing their second term of preventive detention or the second or third remand. Imprisoning women, invariably, leads to the ruin of their families; their children are caught into criminal and vice gangs. By opting to imprison them no purpose is served either, as these women are not the initiators or profit earners, but belong to the lowest rung in the crime chain of bootlegging. They are more victims, than criminals. Imprisoning such women does not bring down bootlegging, as these women are easily replaced by their masters by recruiting another army of similarly placed women. The state could, also, avoid the huge expenditure it incurs on confining them in prison. It is, therefore, suggested, that women ought not to be detained under Act XIV of 1987, and also prohibition offences be made bail able and non-cognizable.

#### **III. Old and Infirm**

The old and ailing convicts above the age of 60, may be shown clemency and released on probation. Necessary amendments to the Criminal laws and the Probation of Offenders Act may be made to release women who are more than 60 years old.

#### **IV. A Clear Policy on Arrest**

There are a number of prisoners who have permanent addresses and do not seem to be capable of escaping from the clutches of law. They also do not

seem to be capable of influencing the witnesses etc. to subvert the process of law. And so, there seems to be no need to confine them in prisons as remand prisoners.

#### **V. Direction to Magistrates / Trial Judges**

▪ It shall be the duty of the Magistrates during remands and the trial judges thereafter to enquire about the welfare of the prisoners as far as possible in camera and note down his/ her remarks on the stage of the person being remanded (whether neat / haggard / disoriented etc.).

▪ Medical check up shall be ordered by the Magistrates if he /she finds any injury on the body of the person he/ she remands, injuries if any noted and provision made for treatment.

▪ Magistrates shall inform the person being remanded about the

remand, the prison to which the Accused is being remanded and his visitation rights etc. A pamphlet with their rights / do /don'ts could also be given to the person being remanded or legal aid counsel in the said court may be made to talk to the person being remanded and prepared mentally for such remand.

▪ Remanding for petty offences and especially for prohibition offences shall be discouraged and bail be granted as a matter of routine - bail and not jail should be the norm.

▪ Magistrates should ensure that the remanding police is not present in the Court while remanding.

#### **VI. Policy Changes**

▪ Prohibition offences may be made bail able.

▪ Pregnant women and women with infants up to 3 months old

shall not be remanded to judicial custody.

▪ If need be special places of custody with provision to keep them in clean and better environment like the government reception homes would be a better alternative.

▪ Convict women prisoners above 65 years may be given clemency and released.

▪ Alternate modes of punishments such as community service etc. as a reformatory mode of punishment maybe experimented with in offences that are not of heinous nature.

▪ Do away with the classification of prisoners as A class B class etc. and ensure that decent facilities to stay in dignity are available to all inmates of the prisons. □

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**Prabhakar Sinha**

***Soochnaa Kaa Adhikaar: Jan-Jan Kaa Hathiyaar***

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## **A Little I Know Justice Tarkunde**

**Guru Mohanty**

*[Guru Mohanty from Bhubaneshwar has been actively involved in Orissa PUCL and held various positions. He worked with Tarkunde when the Kudal Commission was enquiring into the working of Gandhi Peace Foundation and other Gandhian Institutions in order to placate the Institutions with which JP was connected. – Chief Editor]*

It was probably during Justice, V M Tarkunde was the Shourie was the secretary. I still emergency, I joined in PUCL. president then and Shri Arun remember, I could not meet Shri

Shourie as he was facing the wrath of the emergency, even in his residence. Those were the painful black days in our country. The frowning face of emergency was watching every activity of PUCL. It lost most of its valuable records during such time because of bureaucratic draconian practice of seizure. But no difficulty arose to meet justice Tarkunde in his residence either. The govt. of India was cautious enough to differently deal with him, for his world wide reputation as a civil right promoter with high judicial background. I had the opportunity of assisting him in certain cases in Supreme Court that I carried from Orissa. The litigants were so poor that they could not pay him his minimum fees. Those were civil liberty-related cases. Whether in his residence or in Supreme Court premises, his behaviour was not only friendly but was brotherly. He was to every one, an elder brother like. Many a times I attended meetings during 1976 and 1977, in his residence and in Gandhi Peace Foundation. Shri Kuldeep Nair, Justice Rajindar Sachar, Dr Y P Chhibbar, Sidharaj Dhadda and a few others were attending such meetings. Most of such meetings were held after the emergency was lifted and 1977 election was declared. In all such meetings, after long discussions, over national issues to restore the norms of democracy, his suggestions accepted and carried. His liberal democratic strategies carried out in 1977 election, which was crucial because of emergency. The whole country was passing through hard days during such period as to how to over-come the trauma of emergency and to restructure the political system in terms of constitutional values.

After late Indira Gandhi again became the prime Minister in 1980, Justice Kudal was appointed to enquire into the workings of Gandhian Institutions in the country. Late Radha Krishnan, the

then secretary of G.P.F. was chosen by all the Gandhian institutions to organise throughout the country for giving a befitting reply to the kudal commission of enquiry and lawyers were appointed in each state in defending the Gandhian Institutions. I was handling the cases of Gandhian Institutions in Orissa. Periodically I used to consult Shri Mallik, a Delhi based senior lawyer and also justice Tarkunde, who was guiding us in the matter. Justice Kudal could not submit its manoeuvred report to the govt. of India after the assassination of late Indira Gandhi.

During such time an article was published in *The Gentlemen*, a Mumbai based monthly. The article was written by one Oriya journalist making scathing remarks against the PUCL of Orissa although he praised very high of me, the PUCL secretary. I wanted to go for a defamation. I consulted justice Tarkunde and justice Sachar. Both advised me to file a complaint before the Press Council of India. I did that. I was served with a notice a few days after to attend Press Council meeting in Great Eastern Hotel in Calcutta. A retired justice of Supreme Court was presiding over the meeting. He was then the Chairperson. I proved that allegations baseless and false, on the strength of papers, newspaper clippings, and cases fought out in different courts in protecting the civil liberties of the people. The Chairperson asked me if I belonged to justice Tarkunde's group. On my affirmation, his comment was "They are stiff people. No one can find lapses with them." The editor of the *Gentlemen* was directed to apologize twice in publishing its apology in its monthly. The magazine suffered greatly.

Justice Tarkunde on request attended Orissa PUCL annual meet, held in Cuttack in June 1982 in which I was the convener and

the Gandhian leader of Orissa late Manmohan Choudhury and member Parliament late Pradyumna Bal, the then executive member of central PUCL, were in the reception committee. Late justice Harihar Mohapatra was then the PUCL President. Prof Rajani Kothari was the chief speaker there. His article *Towards Intervention* was discussed elaborately. Justice Tarkunde was the chief guest in that function.

On the second occasion justice Tarkunde attended the PUDR convention in 1988. That was also held in Cuttack. Pancholi with the assistance of PUCL, Orissa organized the convention. On both occasions justice Tarkunde was accommodated in simple arrangements made. We have traveled a long way with him. He was with us in Lucknow, in Jaipur and in other places, wherever PUCL conventions organized and he was enjoying the company of ours together; not separating from others either as president or as the adviser. He set this association an open one, with such people, who are mostly lawyers having faith in democratic values. His third visit to Orissa was in 1989. It was for no other purpose but to enjoy a couple of days in Puri. Those were probably summer days. He telephoned me to receive him from Bhubaneswar air port and requested me to be with him for the days he had to stay in Puri. I made arrangements for him in Puri and we both enjoyed the Puri sea beach together in two evenings.

On the sandy beach of Puri, he was used to describe the sea, its magnificent dashing waves before the sun was sinking. I remember; in the second evening, he wanted me to recite and explain him my poetry. He knew me as a poet. He was enjoying poetry with sound of the sea and the setting sun and was describing his dreams of life he left a few decades behind. He returned back Delhi on the third day.

He is still a great living soul though away from earth. The common man is aware of the constitutional rights a little to-day, because of PUCL's continuous efforts with his advice and guidance.

No PUCL man to forget his association during his life time. His memory shall remain for ever though no one can see him in flesh and blood on earth. □

**Letter:**

## Tarkunde Number

Sir,

\*\*\*      \*\*\*      \*\*\*

Please find with this my cheque... towards VM Tarkunde corpus fund.

\*\*\*      \*\*\*      \*\*\*

I am very happy to go through the January 2007 'Bulletin' of the PUCL in which... full text of the proceedings of the second V M Tarkunde memorial lecture held on November 23, 2006, including the text of speech on *Humanism: The Essence of Civil Liberties* by Justice J S Verma, former Chief Justice of India and former chairperson of NHRC [is printed]. He has paid rich tributes to Tarkunde as well as PUCL for filing number of PILs in the SC. His regret is that he could know Tarkunde only across the Bar and by the time he shifted his residence to Noida, Tarkunde was no more.

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I... preserve... the issues [of the 'Bulletin'] for my record.

I heartily congratulate your not only keeping the memory of Tarkunde alive, but also various activities done by him for promotion and protection of humanism, human rights, and human freedom. All the three are interrelated according to me. I doubt whether any other organisation will do the work of keeping the memory of Tarkunde and his acts alive as the PUCL has been doing.

I also read the note on the Birth Centenary of late H M

Seervai held by the Bombay High Court on the lawns of the High Court on December 5, 2006. In the note you have bracketed H M Seervai and me as having made a team that did path breaking work in the newly founded human rights movement of the country. Actually when *Keshawanand Bharati* was being argued, Seervai was against our stand. But in view of the Emergency and deprivation of the human freedom by Ms Gandhi and her coterie, Mr Seervai changed his view and became active supporter of Tarkunde and PUCL. Unfortunately after his death PUCL in Mumbai is practically not functioning as I have already informed you in my earlier correspondence. However, we have an active team led by Yogesh and associated by Navroz Seervai and Ms Rajni Iyer and a few others. I am very happy that all over India the branches of PUCL are doing very well. Thanks to you and other members of the PUCL. With warm regards, Yours sincerely.  
– **M A Rane**, Mumbai, January 13, 2007 □

### Attention

Please do not send money by Postal Order. Always send by D.D., Cheque, or M.O.

– **General Secretary**

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