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We are all Minorities
Rajinder Sachar

The Constitution of India is a remarkable document that has provided for the weakest and the least heard sections of India. It has also provided for every possible aspect of the life of minorities – equality for them in the eyes of the law and protection of their culture. The Constitution protects all minorities. The Constitution doesn't lack in giving but our ways of working and administration are what is lacking.

Poor governance is the worst kind of disease that afflicts our country, nor the lack of constitutional provisions. As a character in a play by William Shakespeare famously said, "The fault, dear Brutus, is not in our stars/But in ourselves, that we are underlings."

There are remedies through that Indians have found - different remedies; like people's movements, people's actions, civil societies, the resentment of people and the fear of political ramifications that provide the strength to Indians. I feel this whole debate of who controls the Constitution between the judiciary and the legislature completely misplaced and missing the point. It is people who gave themselves the Constitution, and it is they who should claim it in the ultimate analysis – use all available provisions for the betterment of the poor, the under-privileged and the minorities, at the bottom of the pile.

The state of the minorities is bad today, as we as a country have allowed poverty to exist. The 29 percent poverty level prevalent today is a shame. Did you know that 29 percent of the population in India today means the total population of undivided India? Can we afford that? And amongst the minorities, Dalits and OBCs, the poverty ratios are even higher and crippling.

We need to manage the impact of globalization better and improve the lot of all the weaker sections. Let us not blame the Constitution. Even Joseph Stiglitz says, "For most of the world, globalization as it has been managed, seem like a pact with the Devil." Eminent economists like Jagdish Bhagwati have also now accepted that unless steps to ameliorate the growing inequalities which globalization implies are taken, the lot of the worse-off sections would only get worse.

Our Constitution makes no mistakes, leaves nothing to be desired and enshrines the words "Socialist" and "Secular" on the very first page. As long as we remain committed to those words, I feel there is hope for those lowest on the ladder to recover from the knock they have taken – I mean artisans, glass workers, leather workers, other craftsmen. Invariably, these sections are also minorities, making their lives more difficult. The Constitution also makes it clear that the rights of the underprivileged should be protected.(on page

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Fallout of Secularism under Indian Constitution

Ravi Kiran Jain

Any discussion on secularism would need first to focus on two basic aspects: Firstly, the word 'secularism' has no substitute in any of our languages. Like the 'war' is the opposite word of 'peace', in common parlance in the Indian context, 'secularism' is understood by its antonym 'communalism', while in the Western context, 'secularism' is understood by its antonym 'theocracy'. Secondly, the word 'secularism' was nowhere mentioned in the Preamble of the Constitution when it was enforced. It was included in the Preamble by the controversial 42nd Constitution Amendment during the Emergency with effect from January 3, 1977.

The question arises as to why it was introduced during the Emergency. Was it not a challenge to the wisdom of the Constitution-makers? The Constituent Assembly consisted of persons who had no partisan motive, nor any axe to grind. They were men of vision; they inspired confidence, and were all products of the struggle for independence.

In the struggle for independence, the people of different religious pursuits had a natural worry as to what sort of religious freedom they would be able to enjoy in an independent India. When Mahatma Gandhi appeared on the scene and transformed the freedom movement into a mass movement in 1920s, it was realized that people could hardly be motivated to go the whole hog for the freedom struggle unless they were assured that their religious beliefs and systems would be secure in a post-independent India and that they would not be marginalized and sidelined, in case they belonged to the minority community. It was in the pursuit of this very assurance that Gandhiji gave to the people the much-

valued concept of 'Sarva Dharma Sambhaav' -- the principle that all religions are equal. The Muslim League had boycotted the Constituent Assembly when it started its session on December 9, 1946, and it continued to boycott it even thereafter. Evidently the pressure worked, and on June 3, 1947, Lord Mountbatten announced the coming into existence of two independent States with effect from August 15, 1947.

On August 14, 1947, the President of the Constituent Assembly, Dr Rajendra Prasad remembered Mahatma Gandhi in the following words while speaking on the floor of the Assembly, "Let us also pay our tribute of love and reverence to Mahatma Gandhi who has been our beacon light, our guide and philosopher, during the last 30 years or more. He represents that undying spirit in our culture and make-up which has kept India alive through vicissitudes of history." And then he went on to say, "To all the minorities in India we give the assurance that they will receive fair and just treatment, and there will be no discrimination in any form against them. Their religion, their culture, and their language are safe, and they will enjoy all the rights and privileges of citizenship... To all we give the assurance that it will be our endeavour to end poverty and squalor and its companions, hunger and disease: to abolish distinction and exploitation and to ensure decent conditions of living." These words of Dr Rajendra Prasad on the floor of the Constituent Assembly were clearly influenced by the overwhelming concept of "Sarva Dharma Sambhaav" which reigned supreme in the minds of the members of the Constituent Assembly, and this later found

ample manifestation in the provisions specifically incorporated in the Constitution. Article 15 says, "The State shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them" and also Article 25 provides that "all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion".

What needs to be taken note of is that absolutely nothing happened in the country from 1950, when the Constitution was enforced, to 1977 to hasten the urgency of bringing about a Constitution Amendment to incorporate the word "secular" in the Preamble of the Constitution.

As a matter of fact, the politics in the country remained during all these years focused on issues, people participated overwhelmingly and spontaneously in the poll process, and the public debates were focused primarily on the key issues concerning the masses of this country. In fact, cutting across all barriers of castes and religion, people voted on the issue of "garibi hataao" at 1971 Lok Sabha election. Paradoxically, however, the post-1971 years unfolded nothing effective to tackle the problem of poverty and economic disparities, but, instead, the State, literally dominated by one individual, gave place to a process of demolition of Constitutional institutions. Three Judges of the Supreme Court were superseded. Then followed the Emergency, letting loose a reign of terror, and one of its fallouts was the apex court verdict in ADM Jabalpur case. Against this backdrop came the controversial 42nd Constitution Amendment.

Nehru told the members of the Constituent Assembly on August 14, 1947, "The service of India means the service of the millions

who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity." The country was to achieve this objective on the basis of the principles contained in Part IV of the Constitution, which were "fundamental in the governance of the country". Incidentally, in the Statement of Objects and Reasons in respect of the 42nd Constitution Amendment, similar expression has been used in the following words, "The question of amending the Constitution for removing the difficulties which had arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, had been engaging the active attention of government and the public for some years...It was, therefore, considered necessary to amend the Constitution to spell out expressly the high ideals of socialism, and integrity of the nation".

Paradoxically, after the word "secular" found place in the Preamble as a result of the 42nd Amendment that it was lapped by sections of opportunistic politicians to fuel a highly retrogressive and diversionary debate of secularism vs communalism and vice versa. What the country saw in its wake – the demolition of Babri Masjid and the resultant communal holocaust, and then the Gujarat communal massacre. Looking back, the communalism vs secularism debate has only resulted in throwing into the backyard the issues of removing poverty, illiteracy, disease, and inequality of opportunity. On the other hand, non-issues became issues and issues became non-issues in politics and polls, and what has been worse, it generated its own pernicious offshoot. Politics and polls got additionally hooked onto castes versus castes. The real issues, confronting the people, like poverty, disparity, exploitation, hunger, unemployment, illiteracy,

power crisis, environment degradation, and water scarcity, alarming loot and destruction of our forests, and population explosion have been sidelined. Likewise, Criminalisation of Politics and Corruption have also become non-issues.

There has been no difference between various governments at the Centre or the States during the last two decades on the question of following the economic policies on account which the forces of globalisation have slowly but solidly deprived India of its economic and political sovereignty so much so that the country has lost its right to determine its own agenda of governance and development, which now rests with the international powers, multinationals and world-funding agencies. The question is how long shall we permit this to continue by keeping the people involved the nationally detrimentally quarrels over secularism vs communalism or castes vs castes? □

Letters to the Editor:

1

Special Issue: Tarkunde Number

Sir,

I was very happy to receive the special issue of Tarkunde Number of the *PUCL Bulletin* of March 2007, which is numbered as 300th issue, which coincides with the month of third death anniversary of V M Tarkunde. Apart from that the PUCL is also observing and holding Tarkunde Memorial lecture every year on November 23. I believe it was the day on which the new Constitution of the PUCL was adopted. The second Tarkunde memorial lecture delivered by Justice J S Verma, former CJI and former Chairman of the NHRC is also published in the *Radical Humanist* of February 2007. I have written to you in the past that yourself and the PUCL are the only

organisation which remember and celebrate the memories and activities of V M Tarkunde. I feel very grateful to you and your colleagues in this behalf. – **M A Rane**

2

Tasleema Nasreen

Sir,

Tasleema Nasreen, the well-known author from Bangladesh is reported to have said that the Muslim women, in their own interest, should not wear burqah and should burn the same. As a result, some organisation of Muslim from UP is reported to have issued a Fatwa offering Rs 5,00,000/- to anyone who kills Tasleema. This is an open instigation to commit a crime. On the other hand another school of fundamentalist Muslims is reported to have issued a statement saying that Islam does not permit such killing of a person. But they would insist upon Tasleema not being granted permission to stay in India and she should get out of India. I think the latter attitude is to some extent commendable. – **M A Rane** □

Gujarat PUCL: Press Release

PUCL expresses shock and horror at the BJP attempts to deliberately communalise the on coming UP election to target one religious community in order to provoke the other community is a base and ugly tactic. The sad point is this comes from a party that ruled India for six years.

To come out with a highly inflammatory CD and equally inflammatory advertisements in UP language papers shows that the BJP is deliberately bent on creating a Gujarat type situation in UP. This is grave assault on our democratic structure.

All enlightened concerned citizen must condemn the BJP on this issue. The stakes for country are very high. We can not afford to create a Gujarat in the very heart of the country. For **People's Union for Civil Liberties**, – Dr J S Bandukwala, Rohit Prajapati, 11th April 2007 □

27th J P Memorial Lecture:

Nature and Types of Individual and Group Rights: Promise and Performance

Prof (Dr) T K Oommen

T K Oommen, an eminent social scientist, retired from the Jawaharlal Nehru University, New Delhi in 2002 where he was professor for 26 years. He was president of the International Sociological Association as well as President of the Indian Sociological Society. A visiting Professor/Fellow to numerous foreign universities and research institutes, Professor Oommen is the recipient of all the three awards available to Indian Sociologists. He has published/edited twenty three books including Citizenship, Nationality and Ethnicity, Polity Press, Cambridge 1997; Pluralism, Equality and Identity, Oxford, 2002; Crisis and Contention in Indian Society, Sage, 2005; Understanding Security: A New Perspective, Macmillan 2006. His latest book is: Knowledge and Society: Situating Sociology and Social Anthropology, Oxford, 2007.

He is a founder-member of the People's Union for Civil Liberties (PUCL), a former President of the JNU unit of Citizens for Democracy (CFD) and Member, Prime Minister's High Level Committee to study the Social, Economic and Educational Status of Muslims in India. At present he is the Chairperson of Schumacher Centre for Development, New Delhi and President of Forum for India and European Union – Chief Editor

I feel honoured to be invited to deliver the 27th J P Memorial lecture and I thank Justice Rajindar Sachar in persuading me to accept it because it gives me an opportunity to share with a distinguished audience, such as the present one, some of my raw ideas. I also thank Dr Y P Chhibbar for facilitating a quick, indeed an express delivery!

I met Loknayak Jaiprakash Narain only once in my life although I am reasonably familiar with his writings. J P came to the Rajasthan University, Jaipur in 1962 to deliver the convocation address. The vice-chancellor of the University arranged a meeting of J P with a small group drawn mainly from the faculty. But I, a mere research scholar, too was asked to join the group, as the topic of my Ph D thesis was the Bhoodaan-Graamdaan movement.

Those days J P was immersed in the movement and naturally he was interested in knowing what was happening in Graamdaan villages where I had lived nearly one year. He did not readily approve my critic of the movement but encouraged me to complete my research and publish it. I followed his instruction and subsequently published the book entitled, *Charisma, Stability and Change: An Analysis of Bhoodaan-Graamdaan Movement in India*, in

1972. Later in June 1975 he had asked me to write an article in *Everymans*, which was published under the title 'Twenty-five years of Bhoodaan-Graamdaan Movement'. J P knew for certain that mine will be a critical appraisal of the movement, with which he was totally identified, and yet he provided the space to articulate it; a rare quality among our leaders. To deliver this memorial lecture, given the link between JP and my academic biography, is a matter of great gratification for me.

I have been asked to speak on some aspects of Rights and Liberties. Even as I am aware of the inextricable interlinkage between the two I propose to focus on Rights a widely invoked notion but not always clearly understood. If one examines the conceptual history of rights in the West it would be clear that in the beginning the focus was on individual rights. Latterly, the importance of group rights is acknowledged, albeit reluctantly. I suggest that this development is necessitated by the changes in the empirical situation in the West. But the complexity of the empirical situation in South Asia, particularly India, calls for certain conceptual adaptations so that the notion of rights is rendered meaningful. Mark that I am interrogating the

tendency to apply mechanically the concept of rights, ignoring historicity of context and empirical complexity.

Indian society is stratified on the basis of class, gender, age, rural-urban differences like all human societies; it is also culturally heterogeneous like most other societies. There is a third factor namely plurality which is found in quite a few contemporary societies including Indian, but there is a feature which is peculiar to Indian society namely hierarchy. The rationale for endorsing group rights is provided by the three features of society--heterogeneity, hierarchy and plurality--and hence the need to transcend individual rights.

As independent India was about to be born, two models of reconstruction surfaced. The ideological lineage of these two models may be traced to M K Gandhi, Vinoba Bhave and Jai Prakash Narain on the one hand and Jawaharlal Nehru and B.R. Ambedkar on the other. I am aware of the differences within these lineages but my present concern is to highlight the differences between them. If the first of these lineages wanted to give primacy to rural India, the second insisted on establishing an industrial-urban India. If the first invoked collectivity as the unit of

reconstruction the second insisted on the individual as the unit for marching towards progress and development!

In October 1945 Gandhiji wrote to Jawaharlal Nehru: 'I am convinced...people will have to live in villages, if one were to build a society based on truth and non-violence'. Nehru replied: 'The question before us is not one of truth and non-violence... I do not understand why a village should necessarily embody truth and non-violence. A village, normally speaking, is backward intellectually and culturally and no progress can be made from a backward environment. Narrow-minded people are much more likely to be untruthful and violent'. Intervening in the Constituent Assembly debates, B.R. Ambedkar argued for the acceptance of individual as the unit of society and planning as against village, which he referred to as a den of ignorance and illiteracy, a habitat which perpetuates both physical and mental ill-health.

The purpose of recalling the sharp difference between the two ideological lineages is not to reveal the wedge between the two but to unfold the fact that even Nehru and Ambedkar did not understand the crucial point in the alternate approach to development pursued by Gandhi and his ideological kin. They were not referring to villages as they were, but villages as they ought to be. That is why reconstruction is a pre-requisite for development. The distinction between the actual and the ideal is so obvious and such a humble one that even intellectuals either neglect it or overlook its importance. The ideal structure is the goal of reconstruction, what is regarded by individuals and communities as right, proper, good and preferable and an actual structure is one in terms of which human beings behave. With this caveat let me address the theme of rights.

Following the footsteps of Gandhiji, J P wanted to evolve the Sarvodaya Society, in which the uplift of all is the aim with a focus on antyodaya, development of weakest link in the chain. It aims to evolve a society keeping in line with the genius of India on the one hand and on the other it also attempts to create a Vishwa Maanav, a man with world loyalty. The Sarvodaya ideology is synthetic in that it partakes universalistic and humanistic principles and hence global in its scope. But the social laboratory in which the person with world loyalty is to be nurtured is village republic, thus oriented to a limited locale in its vital aspects. The post-modern notion of glocal, which combines the global and the local, aptly captures the Sarvodaya conception. Much before the idea of glocal assumed currency Gandhiji articulated it when he said: 'For purposes of culture the world is my village, but for purposes of economy the village is my world'.

Sarvodaya disapproves the revolution of unlimited rising expectations and ceaselessly emphasizes the need for voluntary restriction of wants. It cautions against reckless industrialization and does not vote for an economy of abundance; its refrain is to create an agro-industrial society. Modernization is not rejected totally while tradition is accepted partially. It rejects the cult of individualism but the individual rights and liberties are central in its scheme of things. It visualizes a participatory democracy where all adult members of the society are incorporated into the decision making process at the grassroots and representative democracy at the macro level. For want of a better term I designate the Sarvodaya Social Order as a civic society which is conceptualized in contemporary social science as a society which is '...neither traditional nor modern but

partaking of both; a pluralistic culture based on communication and persuasion, a culture of consensus and diversity, a culture that permitted change but moderated it'.

The purpose of this conceptual portrait, although in a bare skeleton, of the Sarvodaya Social Order is to underline the point that the mechanical application of the notion of rights to all societies is inadmissible. Not only the existing empirical reality, but the vision of the society projected by the Gandhian lineage, which encapsulates Jaiprakash Narain, calls for appropriate reformulations of rights.

II

Civil rights consisting of liberty of person, freedom of speech, thought and faith, the right to own property, the right to conclude valid contracts and the right to justice were the first to emerge. This happened in the 17th century in Europe but it was not a universal right for two reasons. One, the right to own property or to conclude contracts was not relevant for the proletariat; it was a bourgeois right. Freedom of speech, thought and faith were irrelevant in non-democratic societies and most societies in the 17th century were authoritarian. But with the slow but steady spread of democracy in the 18th century, political rights, manifesting in the right of franchise and the right of access to public office, gained currency. Once again, political rights were not universal in the beginning in that women and non-tax paying men were excluded from franchise not to speak of access to public-office. However, the idea of universal adult franchise gradually gained currency and in post-colonial polities such as India universal adult franchise was granted right from the beginning.

The spread of democracy and the consequent entitlement of political rights were not as rapid or

widespread as it is widely believed. In 1900 there were only 25 countries with restricted democratic practices, covering 12 per cent of the world population. These included U.K., the 'first democratic nation' and U.S.A the 'first new democratic nation' in the world, which denied voting rights to women, workers and blacks. By 1950 there were 22 electoral democracies, that is, those with universal adult franchise, accounting for 31 per cent and 21 countries with restricted democratic practices accounting for 12 per cent of the world's population. By 2000 there were 120 electoral democracies, out of the 192 countries, accounting for 58 per cent of the world's population. However, liberal democracies, that are countries, which respect basic human rights and the rule of law, were only 85 (out of 192) and their population counted only 38 per cent of the world's population. These disturbing statistics clearly demonstrate the huge gap between the image of the contemporary world as a democratic one and the reality on the ground.

The third right to emerge was initially designated as social rights by T.H. Marshall, the British Sociologist, although its content was mainly economic. The political compulsion to recognize economic rights of the economically disadvantaged in capitalist democracies was the establishment of socialist polities. The welfare state was conceived as an antidote to prevent the penetration of socialism in capitalist democracies. Minimum wages, regulated working hours, parity in wages irrespective of gender for the same work, retirement benefits and the like were the main elements included in economic entitlements. The fact is that with the dismantling of socialist states the capitalist states are quickly abandoning their

welfare functions and leaving the economic rights to the mercy of the rapidly emerging rapacious market endangering the regime of economic rights.

The twentieth century witnessed the consolidation of the three rights--civil, political and economic. Civil and political rights were individual rights and were known as 'public liberties' in France and 'rights of defense' in Germany and there was universal endorsement of these rights. But economic rights are entitlements for the economically disadvantaged say those who are below the poverty line and hence group rights. These rights are often viewed as charity availed of by the lazy, the under motivated, the free riders. Poverty is perceived as the function of individual attributes and not structural deficiencies and hence the objection to economic rights by some. There is however a deeper reason why the civil and political rights are universally endorsed and economic rights are suspects in the contemporary capitalist democracies. Economic rights are perceived as eroding the state exchequer but civil and political rights are defined as cost-free. This is indeed a flawed argument because the state has to make enormous institutional investments for facilitating the practice of civil and political rights. To illustrate, the installation of institutions of judiciary and the Election Commission, pre-requisites for the practice of civil and political rights, hugely cost the state exchequer.

The structural distinction between individual and collective rights is that in the case of the former the state has to pursue a policy of non-intervention whereas in the case of the latter the state has to intervene consciously and decisively. The state is not expected to intervene in the freedom of the press, religious freedom, the right to peaceful assembly or even to interfere in

the process of production and exchange of goods and services in a capitalist society. In contrast, the state has to identify, based on prescribed criteria, those who are entitled for economic rights and provide them with the required assistance. Therefore the real distinction between individually anchored civil and political rights on the one hand and collectivity oriented economic rights on the other is non-intervention in the first set and intervention in the second set by the state.

The three rights--civil, political and economic--are by and large believed to be adequate to cope with the empirical realities of homogeneous societies created or conceived by the nation-state. But with the crystallization of the feminist movement patriarchy came to be recognized as a specific source of deprivation for women. I have already alluded to the denial of property ownership and the right to vote in the case of women. Although both civil and political rights are guaranteed to women in liberal democracies, even in them till to this day their entry into the political space is rare save the Scandinavian countries. But with appropriate social engineering--affirmative action, protective discrimination, quota regime--this can be gradually remedied.

When it comes to economic rights while the state can and should formulate appropriate policies with the help of civil society and market institutions, the implementation of these rights is impossible without the close co-operation of them. The gargantuan hunger of the market for profit, ignoring even the basic needs of the workers should be constantly moderated by the state through eternal vigilance to prevent non-implementation of prescribed norms. There was a time when one could have counted on at least the socialist state to perform this fundamental obligation to its

citizens but with the spread of globalization and emergence of the idea of 'socialist market' this hope is being fast consigned to history. The collaboration between the state and the Corporates is devastating the economic rights of citizens. The latest manifestation of this is the reckless launching of Special Economic Zones (SEZs), which is endangering even the right to livelihood of the rural poor. And, unfortunately there is no consensus in civil society to confront this mighty combination of the state and the market.

One of the devices resorted to by the corporate sector in the wake of globalization is referred to as franchising, a bi-word for informalisation. Indian economy is predominantly in the informal sector. Of the 317 million labour force in 1991 in India a mere 27 million (8.5%) was employed in the formal sector. With the liberalization of the economy informalisation is increasing. The difference between the formal and informal sectors is crucial from the perspective of economic rights. Only those who are employed in the formal sector are protected by legal measures. And, around 70% of the workers in the formal sector are employed by the government, quasi-government and public sector undertakings. The private sector provides employment to only 29% of the labour force in the formal sector. The informal sector workers are rarely paid minimum wages, have to work for long and unstipulated hours, do not have benefits such as provident fund, gratuity, pension etc. I am upset and sad that the economic rights gained by the worker in socialist and welfare states are fast becoming endangered species under the regime of globalization.

If the rights of women and the poor are not conceded even in homogeneous societies, the heterogeneous societies contain social categories with a different structure of deprivation. The

source of societal heterogeneity is basically two--race and culture. When societies are characterized by diversity, racial and/or cultural, the issue of rights takes a different turn. Diversity in itself does not pose a serious problem but when it is accompanied by inequality it makes a lethal combination. Therefore, we need to take into account two distinct empirical situations. When the New World emerged in the Americas, Australia and New Zeland, its racial and cultural composition was drastically different from that of the West European nation-states which were homogeneous and wherein the idea of one-nation, one-state, had taken deep roots. The fact that the European settlers did not constitute nations in their new abodes rendered the notion of national self-determination nebulous. The First Nations of the New World were physically liquidated and culturally decimated. The anti-colonial movements of the New World were but attempts to scissor the umbilical chords from their mother countries. When the process of nation-building began the fact these polities consisted of a multiplicity of racial groups--Whites, Blacks, Reds and later Yellows and Browns--and cultural collectivities--linguistic and religious--gave rise to the regime of collective rights. But conceding group rights to this babel of racial and cultural collectivities would have been at the cost of loyalty to the State, that is patriotism. To overcome this *impasse*, two conceptual innovations were launched.

The idea of multicultural citizenship was first floated in Canada and then spread to the rest of the New World; it de-linked culture and citizenship. In the case of nation-states citizenship was granted based on membership in the nation or on the condition of assimilating into the nation, that is having a shared culture. The idea

of melting pot, and/or from 'many into one' turned out to be an unrealizable proposition and hence the idea of multi-cultural citizenship. The second conceptual innovation that I am referring to is human rights. If national self-determination is irrelevant for the emergence of states in the New World, then salience of citizenship rights diminishes if not disappears. To cope with this situation the idea of human rights, which ought to be the entitlements of all human beings, irrespective of race, nation, culture, gender etc. comes handy. In fact, human rights are formulated by supra-national organizations and the states are only signatories in endorsing them. And, the tension between citizenship rights and human rights, often surface in the process of implementing them.

The second empirical situation that I have in mind is that which exists in multi-national states, both socialist and non-socialist. In the case of socialist states a clear distinction was made between citizenship and nationality, which facilitated a regime of group rights. Individual citizenship rights such as civil rights and political rights were weak in socialist polities; the first due to the socialisation of property and the second because of one-party system. However, the group based entitlements assumed salience in socialist countries. The nationality policy of the erstwhile Soviet Union enunciated to facilitate the rapid development of underdeveloped nationalities is an example of this. Further, the economic rights forged forward rapidly under socialism even as civil and political rights were relegated to the background. Also, the cultural rights of the different nationalities were recognized, although great National Chauvinism endangered it some cases.

The Universal Declaration of Human Rights in 1948 came as a big relief to all human beings

irrespective of their citizenship status. The declaration was followed by two separate Covenants. The first, the International Covenant on Civil and Political Rights largely reinforced the already established scheme of rights. But the second, the International Covenant on Economic, Social and Cultural Rights expanded the scope of the rights regime so as to cope with the newly crystallized empirical situations. The Covenants were introduced in 1966 but became effective only in 1976; they have only a history of thirty years!

Multi-national states of the post-colonial world such as India are ambivalent in recognizing the conceptual distinction between citizenship and nationality. However, the Indian state did maintain and fostered its cultural diversity through specific devices: (a) by not prescribing an official/national religion and (b) by re-organizing provincial states based on language. Both these measures do nurture cultural rights of religious and linguistic communities. This does not mean that inter-group conflicts which endanger cultural rights of groups have disappeared from the Indian polity.

Inter-religious conflicts designated as communal riots have become routine in India. On an average 312 events and 245 deaths occurred every year in India between 1954 and 1988. Apart from these routine riots, the 1984 anti-Sikh violence, the 1992 Babri Mosque demolition and the violence that followed it, the 1999 Staines murder and above all the 2002 Gujarat carnage have created an enormous feeling of denial of cultural rights among the affected Indian citizens because the state has not taken adequate measures to uphold their cultural rights. The root cause of much of this problem is the tendency to define and perceive some of the cultural groups and communities

as outsiders to the society and polity. Acknowledging and nurturing appropriate cultural rights is an important pre-requisite to cope with this precarious situation. The presently contemplated Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill is an important step in this context.

Hierarchy as a source of conflict is peculiar to Indian society in that it is located in India's caste system, which not only institutionalized but also sanctified inequality through the Hindu Doctrine of Creation. Generally speaking religious doctrines uphold that co-religionists are equal in the eyes of god. But this does not mean that they are treated as equals in societies. That is, inequality is practiced within all religious communities. In contrast, inequality, which exists within Hinduism, is anchored to the theory of Karma and Reincarnation and therefore it is expected of all *Varna* categories to adhere to their respective dharma (duty). Because inequality engendered by the class and caste systems is qualitatively different they should be tackled through different approaches.

The value of hierarchy is utterly antithetical to the principles of democracy, and the Republic of India through the values enshrined in its Constitution has substantially unsettled it. Further, it cannot be denied that the traditionally disadvantaged and stigmatized caste groups have also experienced substantial upward social mobility in the last half-a-century. And yet it is true that the traditional value of hierarchy exerts a tremendous influence even today, moulding everyday behaviour in social, cultural and political contexts. Admittedly, co-existence of the traditional value of hierarchy and the modern value of democracy is a source of conflict specific to India. This situation warrants the need for recognizing social rights particularly to those

who occupied the lowest rung in the social hierarchy.

The practice of untouchability was an abominable aspect of India's traditional society. The Indian constitution, promulgated in 1950, had forbidden the practice of untouchability and its practice in any form is punishable. Additionally, a countrywide legislation--the Untouchability (Offences) Act--was passed in 1955, to provide access to Scheduled Castes to all public places, including places of worship and public utilities. To augment the scope of this Act, the Protection of Civil Rights Act, 1976 was passed. As the socio-economic conditions of the Scheduled Castes improved, they gained courage to protest against their erstwhile masters. In turn this resulted in the upper castes unleashing atrocities against the Scheduled Castes. To meet this development the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was passed. However, the practice of untouchability persists particularly in rural India and continues unabated. Between 1955 and 1995 an average of 6,693 cases of discrimination against SCs were registered per year.

All these Acts specifically address the social disabilities of Scheduled Castes, which are quite distinct from their economic disabilities. The need to distinguish social rights from economic rights is thus clearly evident. It may also be noted that the content of social discrimination (who are discriminated, in which context) varies between societies. What is pertinent to note here is that even if appropriate laws are in place it is only with the cooperation of the executive agency and civil society that these can be implemented.

The policy of protective discrimination or reservation did lead to upward social mobility of a section of SCs as noted above. And the widely shared assumption

seems to be that economic and political empowerment will result in their de-stigmatization. But I am afraid this is a flawed and simplistic assumption and let me illustrate it with a couple of examples. Dr B.R. Ambedkar found it impossible, in spite of his very high accomplishments, to hire *tonga* to go to his work place in Baroda, where he was practicing as a lawyer. The tonga men were afraid of being boycotted by savarnas, if their carts carry an 'untouchable' client. Babu Jagjivan Ram was not allowed to enter the Puri temple by the Pandas when he was the Defense Minister of India. These examples clearly show that in spite of a person's spectacular achievements s/he will be denied certain social rights.

Some of you may dismiss these as things of the past and may argue that now the situation is much better. Lest you should be misguided by such a thought let me bring to your attention a few cases relating to the 21st century reported in the press from the state of Haryana, situated close to the city of Delhi, the capital of India. In October 2002, forward caste men lynched five Dalits in Jhajjar because they allegedly killed a cow; in August 2005 Jats looted and burnt the *Baalmiki basti* in Gohana; in March 2007 Rajputs torched Dalit houses in Salwan. The Dalits in Bibipur, were authorized to build a temple in a specified place by the village panchayat. There are already three temples in the village but the Dalits are denied access to them and hence their aspiration to build an exclusive temple. But the Brahmins, with the connivance of the local administration, obstructed the construction of the temple and the project had to be abandoned. The SCs are denizens of the Republic of India. Assuring and implementing civil, political, economic and cultural rights are inadequate to make them fully-fledged citizens. Herein lies the

cruciality of what I call social rights in India.

My argument so far has been that the social structural features of a society not simply influence but largely determine the nature and types of rights required in that society. But the recent reckless development agenda had led to environmental devastation, demonstrated the need to institute a new right, which I shall designate as ecological right. This is a right which is applicable to all, irrespective of class, gender, race, caste or cultural background, who inhabit particular localities, regions, nations and states, it is a right to sustain the ecological health of mother earth. Environmental devastation is a product of reckless production and application of technology, particularly war technology. The widespread tendency to dump nuclear wastes in particular areas is a well-known example but the devastation wrought by huge dams, industrial firms producing chemicals and the like are increasingly being recognized as causes of environmental destruction.

The usual tendency is to view technology as an inevitable instrument of rapid economic development. And there is a lot of truth in it viewed in a short term perspective. But in the long run environmental devastation will not only decelerate economic development but adversely affect the quality of life particularly for the low income countries and for the poor everywhere in the world. Therefore we need to aim at sustainable development, which is not possible if nature is mutilated. The value, which informs the mainstream perspective of development, is homocentric, utterly human oriented. But human beings are a part of nature and for their long term survival it is necessary to nurture a cosmocentric value orientation. Reckless production and

deployment of high technology undermines the sustainability of nature.

I have talked about six rights--civil, political, economic, cultural, social and ecological. The first two, that is civil and political rights, operate at the individual level. The next three--economic, cultural and social--are group rights. The last right, namely the ecological one affects all the people living in a spatial unit. The principal agency to create and administer rights is the state. But in order that these rights are rendered legitimate the people at large should endorse them. Needless to say the involvement of the people varies depending upon the type of rights.

The point can be illustrated by citing a few examples. Civil rights related to property transactions can be legitimate only if the ethical conduct of buyers, sellers and the professionals who facilitate the process is ensured. Any body who is familiar with property transactions in India can easily certify the terrible fraud that is involved in property transactions. The realization of universal adult franchise is predicated on citizen's participation in the electoral process. However, the prevalence of widespread voter apathy even in the so-called advanced democratic polities make this political right difficult to realize. Economic rights assured to the employees cannot be implemented if the market institutions are dishonest.

An important pre-requisite for implementing cultural rights is recognition of the difference between cultural groups without labelling them as inferior or superior. Cultural rights can bring about dignified co-existence of a multiplicity of cultural groups within a polity, if the above condition is fulfilled. Social rights can become meaningful only if the value of hierarchy internalized by individuals, institutionalized in society and sanctioned by religion is interrogated. Ecological rights

pre-supposes the harmonious co-existence of humanity and nature which in turn requires the cultivation of a cosmocentric value orientation by all. That is, the recognition of different types of rights and passing legislations are but the necessary first step to be undertaken by the state. But to institute and implement an appropriate regime of rights the co-operation of the three pillars of contemporary society namely the state, the market and the civil society is an imperative.

III

Friends, it is time that I relieve you of the agony of listening to me. Therefore I propose to conclude my lecture. But permit me to situate J P in the context of the rights discourse that I have attempted. If you recall I have referred to the Sarvodaya Social Order as a civic society, the spirit of which is against governmentalisation. In fact Sarvodaya conceives of a society free from *dandaa* (political power) and *tantra* (formal bureaucratic structure). Development of the weakest (antyodaya) and a society of free and independent individuals committed to societal welfare are at the core of the Sarvodaya Society. JP's continuous refrain to replace *raajniti* (power politics) by *lokniti* (people's power) might not be ever fully realized but it is a sterling goal to be pursued relentlessly.

The Sarvodaya society is based on three important assumptions: 1. The interests of the individual and the group are harmonious. 2. It is possible to create a polity without concentration of power. 3. The smallness of the community facilitates the participation of all individuals in the decision-making process.

These notions are interrelated. Only when the interests of the individual and the group are identical that *lokniti* becomes possible. The goal of power

distribution is to be realized by the equal participation of all individuals in the decisional process. Equal participation is possible only when community is small enough promoting face to face interactions and informal relationships. To wit, JP's communitarian society wherein the community has primacy, can function only when the individual has close ties with groups which surround him and her. Differences are apt to occur but they are by no means irreconcilable and since everything is oriented to the common interest there will be an all pervading anxiety to arrive at reconciliation for common good. An individual can discharge his/her duty to the community only when s/he is conscious of his/her rights and is willing to exercise the same, that is participating in the decisional process of the community. This is the route to *janashakti*. *Janashakti* will do away with the distinction between the rulers and the ruled wherein non-party and non-power politics will reign. Political rights of all are ensured through decentralization in the decision-making process.

The economic foundation of the Sarvodaya Social Order is firmly anchored to Gandhiji's notion of trusteeship, wherein the wealth of the society is held in trust by those individuals who own them. In such a society economic rights are not imperilled because the rapacious pursuit of profit is absent. Civil rights related to property are not germane to such a society as property is held in trust. Every body can contribute in the creation of wealth through one or all of the five daans: Bhoodaan, Graamdaan, Sampathidaan, Budhidaan and Jeevandaan, that is one's gifting of the life itself to the society. (I hope many of you will recall that J P was a jeevandaani). Even the poorest can contribute through their mite by maintaining the Sarvodaya patra.

J P abhorred the caste system and the practice of untouchability. 'It should be appreciated by every Indian democrat that the system of caste hierarchy and untouchability is the greatest and the most stubborn enemy of democracy in this country', he averred. Social rights as I have defined will help coping with this problem to a large extent, if the upper castes accept equality as a seminal value. Finally, according to J.P., man is a product of both nature and culture and the blending of the two is possible only in comparatively small communities.

The intent behind making this brief excurses into JP's basic ideas after an elaborate discussion on the different types of rights is to indicate that these conceptions of rights are present in their incipient form in the Sarvodaya Social Order. These needs to be worked out in detail and couched in the idiom of rights discourse so that more and more people would understand and internalize them. I hope the organizers of the J P memorial lectures will keep this in mind in the years to come.

Thank you for your attention and patience. – 23rd March 2007, Delhi □

(...from page 1)

But look at all political parties, unable to push through even adequate representation for half the population – women in legislatures. Even though the Constitution says it is possible, parties are resisting it.

At a time like this, we need radical transformations and solutions, and I think women's reservation will be that one necessary step that will change India as we know it and empower the poor, oppressed and the marginalized.

Justice (retired) Rajindar Sachar recently headed the PM's high-level committee set up to investigate the social, economic, and educational status of Indian Muslims. □

Growing Numbers of Intolerant Indians

M A Rane

"If we do not believe in freedom of expression for people we despise, we do not believe in it all" - Noam Chomsky.

It is sad that the English Press in India did not report or take notice, of an incident of assault on a fellow journalist Shri Kumar Ketkar, the illustrious Editor of The Marathi Daily *The Loksatta*, who was invited to deliver a keynote address at the 3rd Conference of Multilingual Brahmins at Parbhani (Maharashtra) on Saturday 21st January 2007.

I read the complete text of the written speech of Ketkar as reproduced in the Sunday Edition of *The Loksatta* of 22nd January 2007 under the title "Brahmanya is not acquired by just Birth". It was a very illuminating, analytical and thought - provoking speech of the causes of persistence of castes in India for ages stating in Marathi "*Jaat naahi tee jaat*" which roughly means "That which cannot be cast away is the caste". Once a person is born in a particular caste the same sticks to him like an indelible stamp. He gives a large number of illustrations to support his thesis that Brahmanya is acquired by learning and wisdom and not by birth in a Brahmin family. He cites the case of our President A P J Abdul Kalam who has both learning and wisdom, who knows Sanskrit very well and is a strict vegetarian. He ends his speech by thanking the audience for listening patiently to his "Pakhandi" or blasphemous speech and the organizers of the Conference for inviting him to deliver the keynote address.

However, the actual facts were to the contrary as reported in the next day's *Loksatta* and other Marathi newspapers. Though his speech did not contain any arrogant remarks against or insults to the Brahmin community, he was heckled in the midst of his speech

and some persons rushed to the dais to assault him. The police present on the occasion threw a ring of protection around him and removed him to a police vehicle outside. Even the vehicle was stoned by some unruly elements. Provocative speeches extolling those who protested against Ketkar were delivered by some persons, commending their brave acts of protests.

Some of the instances narrated by Ketkar in his speech are eloquent. He referred to the case of a Hindu Dharmaguru converting 1001 Christians to Hinduism with *yadnya*, *pujaa* and *prasaad*. After some days the neo-Hindus approached the Hindu Dharmaguru and asked him to what "caste" they belonged after conversion. They expected they would be Brahmins. The Dharmaguru replied "I can confer on you Hindu religion but not the caste. Your caste is determined by the caste in which you or your ancestors were born." The high caste Hindus like Gaud Saraswats or Chitpavans who converted themselves to Christianity in Goa are still proud of their original castes. In Madgaon Goa there was a Church in which only high class Hindu converts were admitted, but not the Kunbi converts.

Ketkar has cited several illustrations that a person does not give up his caste, wherever he migrates, whether to another province or foreign State. Recently in one of his columns, Kuldip Nayar cites the case of the Pakistani Army Dictator General Zia-Ul-Haq, who once visited India to watch a cricket match between Pakistan and India and told the journalists that he hailed from Lucknow and he is a Jat from that area. The Jat caste cuts through several religions Hindus, Muslims and Sikhs

I wish Ketkar had translated his speech in English and got it published at least in the sister publications like *The Indian Express*, so that a larger English knowing persons beyond those familiar with Marathi would come to know. A large number of Marathi intellectuals like Dr Shiram Lagoo and other eminent persons from Maharashtra condemned the attack on Kumar Ketkar on the ground, among others that Ketkar was deprived of his valuable fundamental right of freedom of thought and speech conferred on us as a Fundamental Right by our Constitution. "Any thought with which you do not agree should be met by counter argument and not by violence." In fairness to Ketkar, he did not condemn the incident editorially or by any independent article, except referring to the event passingly in one of his editorials on some other subject. What is important is that English language news papers should have condemned the attack. To my knowledge no known organization of journalists or English language news paper condemned the same. By remaining silent we approve of such violation of freedoms guaranteed to us and give passive support to the same.

Our Premier Political Party, the grand old lady of politics, the Congress has a youth organization called The National Students Union of India (NSUI). Recently persons allegedly belonging to NSUI in Mumbai entered the science laboratory of the renowned Wilson College and blackened the face of a Professor of science for his alleged misconduct with a lady student, who did not lodge a complaint though a year had passed since the alleged misconduct. The unruly persons marched the Professor with blackened face in the street

leading to the Gamdevi Police Station. The conduct of the Police was more shocking!. Instead of rescuing the Professor from these persons they marched with them and gave police protection to the persons who acted illegally.

The NCP headed by Sharad Pawar is believed to maintain a organisation named the Sambhaji Brigade, who recently ransacked a prestigious institution of Pune, the Bhandarkar Institute of Oriental Knowledge, which is a pride of not only Pune but also of the entire man-kind, as it contained rare collection of old documents and records assiduously collected by Orientalists like Bhandarkar. The reason for such vandalism of the institute was it gave access for research to an American Historian named Lean who wrote a book on Shivaji, casting aspersions. As Dr Lagoo pointed out thoughts should be countered by thoughts only and not by violence.

It is difficult to list the large number of organizations maintained by the Hindu Saffron Brigade led by the RSS and sister organizations. The RSS was founded by a former Congressman Hedgewar in 1925 with an avowed object of consolidating the Hindus. They maintained that it was a cultural organization to unite the Hindus with no political ambitions. The cadre of the RSS were themselves indoctrinated and trained to attack the Muslims ostensibly in the self defence of Hindus during the riots. It hated Gandhiji and the Congress because the former pleaded for Hindu-Muslim unity. Ultimately Gandhiji was assassinated by Godse on 30th January 1948, while he was proceeding for a prayer meeting in the evening at Birla House in Delhi. The RSS denies that Godse was a member of the RSS. May be so. But Godse and his colleagues in the conspiracy to kill Gandhiji were Hindu fanatics. At Pune Godse disturbed the meetings of others

including those addressed by the late M.N. Roy.

The claim of the RSS that it was a cultural organization of Hindus with no political ambitions was belied by the formation of the Jana Sangh after our Constitution came into force in 1950 with the avowed object of contesting elections. It made no great mark in the elections. After the debacle of the Janata Party of all opposition parties, brought together by Jai Prakash Narayan including the Jana Sangh it was transformed into The Bhartiya Janata Party (BJP). The leaders as well as the cadre of the BJP were members of the RSS. Even now the RSS leads and controls the intellectual and organizational life of the BJP. They highlight emotional issues supposed to offend the Hindus. Fortunately, not all Hindus follow the RSS or the BJP. The C.M like Narendra Modi of Gujarat was a former RSS *Pracharak*. Several other sister organizations of the RSS like the Vishwa Hindu Parishad and the Bajrang Dal consist of elements which are influenced by the RSS who control them.

The RSS is a secret organization, in the sense they do not keep record or minutes of their meetings or maintain accounts of the gifts received by the Guruji on the Vijaya Dashmi day. The RSS Guruji Golwalkar, whose Birth centenary is being observed this year, was a great admirer of Hitler and Fascism. It is reflected in his writings

The RSS and other sister organizations play a leading role of intolerance in burning books, preventing staging of dramas or shooting or exhibiting movies that do not conform to their views. How can an open, tolerant, civilized and democratic society or polity grow or even exist in such a climate of intolerance?

One of the earliest youth organizations promoted by the RSS is the Akhil Bharatiya

Vidyarthi Parishad (AVBP) formed by the RSS. Even those who have ceased to be students continue as its members. Recently the members of the ABVP were alleged to have violently fisted Professor Sabharwal in a college in M.P. because the Professor in charge of the elections of the Students Union acted to the dissatisfaction of the ABVP by postponing the same. The Professor being a heart patient and had recently undergone a bypass surgery, succumbed to the attack. A number of members of the ABVP were prosecuted by the police, as a number of persons present on the occasion implicated the accused in their statements before the police. But as usual where powerful rich or those having connections with political parties, witnesses retract in court their statements made before the police in La Jessica Lal case and several such cases.

The Shiv Sena founded and led by Balasaheb Thackeray, a cartoonist, 40 years ago had an origin for the avowed object of protecting interests of Marathi Manos particularly in Mumbai. It started by going against the South Indians, particularly the Malayalee hawkers selling green coconuts in the streets of Mumbai, then the South Indian Hoteliers who provided cheap food to the Mumbaikars including the Marathis who would not afford to visit 5 starred hotels and lastly the North Indians who migrated to Mumbai for earning a living and resided mostly in slums. Ultimately, the Shiv Sena had a strange metamorphosis in going against the minorities, particularly the Muslims on the ground among others that they were anti-national. They ultimately joined the Hindu Organizations including the BJP and provided strength to the BJP in contesting elections. The Sena's cadre consists mainly of elements who are smart in street fightings and burning books, banning

performance of dramas, and exhibition of movies which they disapprove of. Their leaders do not take part in such street fights, but they make speeches and publish journals that instigate the cadre to commit such violent acts. Today the BJP has a hold in Maharashtra, because of its support from the Shiv Sena.

The Communist Party of India has in its mind-set and functioning also intolerance, the only difference being the communists have a hallow. They did not believe that India had become independent and condemned Nehru and the other Congressmen as the agents of British Imperialists. Later our democratic Constitution brought about a change in the Communists, who resorted to Parliamentary politics and captured political power in Kerala, West Bengal and Tripura through elections. But still they have an allergy of everything that smells of America or the West. After the attack on India across the Himalayas by the Chinese Communists in 1962, the CPI was split into two factions, CPM (supporting the Chinese) and the original CPI led by Dange and others (supporting the Congress). But both the factions have not discarded their intolerance towards others who differ from them. In today's political situation as no single party that can form a stable government, all the Communist

factions come together and lend support to the Congress from outside, without changing their intolerant attitude. The work of the Communists is carried out by the Trade Unions under their control like the CITU who give a call to Bandh causing incalculable harm to a large number of innocent citizens. I believe the Kerala High Court was the first to declare a Bandh to be illegal. The Bombay High Court imposed heavy fines on the Shiv Sena and the BJP for calling a Bandh in Mumbai in protest against the explosion of a bomb in a BEST Bus in Ghatkopar.

Several other political parties and entities and non-party organizations like the Naxalites Maoists, Ulfas in Assam, the Kannada Chaluvalikars and several other outfits including Muslim fanatics, maintain armies of brainwashed intolerant youths and some of them indulge in acts of terrorism killing innocent people. The organizations formed by Muslim fanatics are not only a menace to Muslims particularly to their women but to peace in society. Fanatical organizations feed and strengthen the other. Some of the organizations seem to have closed all the doors and windows of their minds and are not open to reason.

The foundation of a free, open, civilized and democratic society is tolerance towards those with whom they differ. In Kerala where

Jehovah's witnesses according to their faith worship in praise of their God only and not any other God or entity. Their children in a school stood silently and respect with other children, but did not join other students in singing the National Anthem which is in praise of Indian territory. Therefore, the school authorities rusticated those children from their school. This order of rustication was challenged in the Kerala High Court and then in the Supreme Court. It came up for decision before a Bench presided over by Justice Chinnappa Reddy, who delivered the judgment setting aside the order of rustication, on the ground that the order violated the Freedom of Religion guaranteed under Article 25(1) and Freedom of Speech under Article 19(1) by our Constitution, just as the U.S. Supreme Court held that burning of US National Flag was a Freedom of Expression. Justice Chinnappa Reddy concluded his judgment by observing that "Our tradition teaches tolerance, our philosophy follow tolerance and our Constitution practices tolerance. Let us not dilute it" (Vide *Bijoe Emmnauel and Others vs State of Kerala – AIR 1987 SC 748*). Very wise words of judicial advice indeed to all Indians for maintaining a tolerant peaceful and democratic society. □

Violation of Civil and Political Rights in India: An Overview

Asish Kumar Das

India witnesses violence across Jammu and Kashmir, Bihar, Tamil Nadu, Madhya Pradesh, Andhra Pradesh and the North east. There was a sharp increase in torture and extra judicial killings in Jammu and Kashmir. The leaders of the all Party Hurriyat Conference (APHC) continued to be detained without a modicum of judicial scrutiny. All parties to the conflict in Kashmir, the armed

opposition groups as well as law enforcement officials, consistently violated international law.

1. International Instruments

On June 26, 1997, India signed the United Nations convention against Torture and other cruel inhuman and degrading treatment (CAT) However, the Government expressed its reservation to Articles 20, 21 and 21 of the CAT relating to reporting by State

Parties to the CAT Committee, inquiry by the Cat Committee and State complaints, respectively, till date, the government has shown little interest to ratify CAT.

The United Nations Human Rights Committee (UNHRC), monitoring the implementation of the International Covenant on Civil and political rights (ICCPR), examined the third periodic report of the Government of India on July

24 and 25, 1997. It severely censured the Government. Yet the Government took little action to implement the recommendations of the UN Human Rights Committee.

2. National Commission

The National Human Rights Commission (NHRC) is helped as the symbol of protection and promotion of human rights India. The NHRC submitted its last Annual Report for 1997—1998 to Parliament in February 2000. The subsequent annual reports are yet to be submitted to Parliament. The lack of transparency prevents honest evaluation of the functioning of the NHRC.

NGOs have consistently highlighted severe short comings in the Human Rights Protection Act of 1993. 1998 the NHRC formed an Advisory Committee headed by a former Chief Justice of India, Mr. Justice A M Ahmadi to look into various provisions of the Act. The areas considered for review and strengthening include over its own finances; greater independence from the Home Ministry (to which the NHRC is currently attached. And the inadequacy does not respond to the Commissions summons or heed its recommendations at all or in a timely manner. After eight years in experience, it is significant that the NHRC has begun to examine the structural inadequacies of the Commissions enforcement procedures and sanctions. In many cases, as evidence below provides, police frequently does not respond to the Commissions summons or heed its recommendations at all or in a timely manner. After eight years in existence, it is significant that the NHRC has begun to examine the structural inadequacies that have limited it in carrying out its tasks as envisioned in the Paris Principles on National Human Rights Institutions.

3. Political Murders, Torture, Rape

Political Killings, extra judicial executions, rape and disappearances continued on a regular basis throughout the Country, especially in the more volatile parts of the country, State agents, non-State agents, fundamentalist religious groups and political hooligans regularly used terror tactics and violence for their own political purposes.

Areas afflicted by internal armed conflict such as Jammu and Kashmir, the northeastern States, Andhra Pradesh, Bihar and Madhya Pradesh witnessed the same pattern of political killings, albeit on larger scale. Security forces personnel, under the guise of maintaining law and order, routinely resorted to excessive use of force.

During 1999 political killings committed by both Government forces and insurgent groups occurred at an increased rate in Jammu and Kashmir and in some of the seven northeastern State where separatist political sentiments are high.

In Jammu and Kashmir, both Government forces and insurgent groups are responsible for serious human rights violations against both the Muslim majority and Hindu minority population. Whereas Muslims appeared to suffer most from repression by the Government forces. Kashmirii Militant groups often targeted the Hindus. Politicians and their relatives were targets for killings and kidnappings. In Tripura, both the armed opposition groups and law enforcement officials were responsible for serious human rights abuses and violation of international humanitarian law.

4. Custodial Deaths

Custodial deaths and police excesses remain a significant problem throughout the country. In far too many cases as revealed in the section below, police acted rashly and without judgment, leading to the deaths of innocent civilians. Accountability in the

police and security forces remains weak. For example, the ten police officers involved in the deaths of two businessmen in a shooting incident in New Delhi were taken into judicial custody only four months after the incident.

According to the national Human Rights Commission's Annual Report 1996-1997, the number of deaths in police and judicial custody was 888 as compared to 444 in 1995-1996. The 1996-1997 figures represent a 100% increase in custodial deaths over the previous year. However, the NHRC attributes this rise in custody deaths to the commission's repeated instructions that information regarding such tragic occurrences must not be suppressed, but must be reported promptly, investigated and acted upon. But, the figures provided by the NHRC are just the tip of the iceberg.

5. Death Penalty

Article 21 of the Constitution of India states, no person shall be deprived of his life or personal liberty except according to procedure established by law.

As reported on April, 23, 1998 the Supreme Court upheld the death penalty for a man who axed to death all five members of his uncle's family as they slept. The court stated that "we commute the death sentence to life imprisonment we will be yielding to spasmodic sentiment... and misplaced sympathy.

The Allahabad High Court upheld the death sentence on Ram Shri who had one-and-a-half year old daughter. She was convicted of murdering her relatives and was scheduled to be hanged on April 6, 1998. However, the National Commission for women approached the Supreme Court and the verdict was stayed. The petition is pending before the Supreme Court.

In another judgment, the Special TADA Court awarded the death sentence to 26 LTTE

(Liberation Tigers of Tamil Elam) suspects for allegedly being involved in the assassination of former Prime Minister Rajiv Gandhi. The Supreme Court acquitted 19 of the accused and awarded death sentence to seven others.

6. Preventive Detention Laws

All the States Governments take measures to introduce preventive detention laws. Under sub-section 2 of the national Security Act, the State Government of Uttar Pradesh empowered all District Magistrates to detain criminals for up to three months. In Chennai, the High Court ruled that an accused person, whether arrested or not, is entitled to get a copy of the first information Report (FIR) registered against him or her at the earliest possible stage in order to be able to get adequate legal counsel. To help fight insurgency by the outlaws Naxalite People's Ware Group (PWG) in Andhra Pradesh, the State Government is preparing the ground for a special legislation to strengthen the arm of the law and raise the number of Greyhound (the elite state force) units from one to three, at a cost of Rs. 1 million. The Tamil Nadu Government initiated steps to introduce the Tamil Nadu prevention of terrorist Activities Act (POTA) in 1998.

Under the POTA, whomever abets, instigates, conspires, attempts an incites or knowingly facilitates a terrorist act shall be punished with imprisonment for a term not less than three years, but which may extend to life sentence with a fine of Rs.1,00,000. Those who harbour members of terrorist organisations are also liable to be punished similarly.

7. Prison Reform

Severe overcrowding is the most common complaint, although sexual assault of prisoners and inferior sanitary, medical kitchen facilities are also the focus of much concern. The inferior training of

prison staff, as observed by the NHRC, was also a matter of concern. Despite the increased attention, no significant improvements took place.

8. Independence of Judiciary

The judiciary in India is relatively independent. The Supreme Court of India, in a judgment on November 27, 1997, upheld the constitutional validity of the Armed Forces Special Powers Act (AFSPA), 1958 on the ground that parliament has the power to enact laws.

Article 21 of Constitution provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law." "Article-6 of the International Covenant on Civil and Political Rights (ICCPR) states that the right to life is non-derogable. The Indian Courts have explained that "a procedure established by law" under article 21 is a procedure which is reasonable, fair and just. But the counts need to go further, they need to give a practical definition to the words "reasonable, fair and just." By upholding the AFSPA, it has been affirmed that a life-or-death decision could be made on the dubious intuition of a non commissioned officer that the suspect may cause harm rather than on the solid ground of legal evidence and judicial decision.

9. The condition of SCs & STs

The most primitive aspect of the modern India state is the systematic mistreatment of people belonging to the so-called lower castes. The scheduled castes (SC) and scheduled tribes (ST) comprise 22.5 percent of the population of the country. There are also several million people classified as other backward classes (OBCs)

In Article 15(4) the constitution provides for special provisions for the advancement of (a) socially and educationally backward classes of citizens, and (b)

scheduled castes and tribes. Article 16 lays down that the state shall promote the educational and economic interests of the tribal people and protect them from social injustice and all forms of exploitation.

The rapid increase in crimes committed against the Dalits (the term by which the scheduled castes now wish to be known) and other so-called lower castes tells a story. Members of these castes and tribes are subjected to the most inhuman and barbaric treatment. They are disgraced, humiliated and discriminately murdered. Women are paraded naked and raped, and their children abused, and denied access to schools and health care. Their fields and property are ransacked and burned. There are a number of legal instruments to facilitate investigation of atrocities committed against the SC/ST, such as the protection of Civil Rights Act (1995), and the scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act (1999).

Socially degraded and economically impoverished, the tradition of "untouchability" sanctions widespread discrimination and human rights abuses. Unlike the problem of racial discrimination, "untouchability is a construction of the caste system. Birth defines membership in a particular caste, but prejudice is the factor which maintains the social hierarchy.

Not a day passes without news of caste-related atrocities perpetrated with impunity by the so-called upper castes, however, this represents a very small portion of the violence against lower castes, most cases go unreported and are routinely hushed up. From the local panchayat to the district administration, the so-called lower castes are denied their civil rights for no other reason than their social status.

10. Discrimination in Education

The realization of economic and social rights rests on the belief that individual welfare results in part from the economic, social and cultural conditions in which people live and the view that the government has an obligation to ensure the adequacy of such conditions for all citizens. The fundamental rights embodied in the constitution are essentially liberty rights. Welfare rights are consigned to the Directive Principles of State Policy. Within this notion of welfare, well being is based on the convergence of needs and rights. Although the Indian State is an interventionist State and has taken on some welfare functions, it is not a welfare State. The provision of State welfare is generally viewed as a positive obligation rather than an imperative right.

In India, 300 million people live below the poverty line and 324 million are illiterate, a situation that demands an immediate and sustained response from the State. Investing in universal primary education, one of the directive principles of State policy, would be a step towards social justice.

11. Religious Minorities

Religious minorities, of late, are facing out right discrimination in areas such as jobs, housing and education. Various preventive detention laws have been used against them, particularly the Muslims.

There are 20 million Christians in the country. They are the latest target of the Sangh Parivaar, the family of Hindu religious fundamentalist groups, According to Dr Babil James, members of the National minorities Commission, "In the Past year, we have got many more complaints regarding attacks on the Christian community and encroachment on church properties. There is a definite trend. Such attacks have taken place not only in the confliction

states of Bihar and Madhya Pradesh, but also in hitherto peaceful states like Maharashtra, Punjab and Gujarat.

12. The Status of Women

Unfortunately, the overall status of women remains a low priority, both in politics as well as society at large. It remains unacceptable that gender bias persists in law of enforcement and government and does not seem to be given the serious attention it deserves.

According to UNICEF, more than 12 women meet with dowry deaths each day, mostly in fires designed to look like accidents. The actual figures are probably higher, for many dowry deaths are not reported.

In India's capital, Crimes against women are on the rise. The Delhi Commission for Women (DCW) says, "Delhi, located in the highly gender discriminatory north western plains has a recorded crime against women rate of 34.1 percent compared to 9.5 for India. Delhi accounts for 4.1 percent of all crimes against women in the country although its population share is only 1.1 percent.

In 1997, recorded dowry deaths in Delhi were 147 compared to 131 in 1996. During the first five months of 1998, 120 rape cases and 170 molestation cases were reported at the crime against Women cell of the city police department. Conclude journalist from the Asian Age The city is slowly turning into cauldron of sexual assaults, dowry deaths and perverted acts".

Over the past year, the role of the Delhi Police force in providing safety to women in the city has been the subject of much criticism by women's organisations. At a meeting of the Delhi Commission for women discussion took place on the problems affecting the operational effectiveness of the Delhi Police's Crime-Against-Women cell. Officials said that the officers assigned to the cell were

increasingly being deployed for other duties (for example, controlling traffic on the roads) and there was a short age of staff.

Between January 1 and August 31, 1997, there were 473 reported cases of molestation of women in New Delhi, and 381 cases of rape. The actual numbers must be higher because many women choose not to report them. It is particularly troubling that many women report that they are often harassed in police stations.

13. The Status of Refugees

The Government of India is at present represented on the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) despite it has not ratified the 1951 Convention relating to the Status of refugees nor its additional protocol of 1967. The Government rightly feels that the 1951 Convention and 1967 Protocol do not relate to the refugee situation prevalent in South Asia or for that matter in much of the developing world. This is because the existing convention is based on a legal regime of individual determination of refugees claims when, in fact, refugee influxes in the region have mass exoduses of people fleeing civil war or internal conflict.

Conclusion

Political and social action is bound to pick up momentum with judiciary showing the direction and monitors the implementation. Other institutions outside the judiciary are now available for Human Rights Protection will also support the initiatives, which may lead to generate the necessary momentum for better realization of civil political economic rights.

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Copy of Letter:

Caste Based Discrimination and Harassment of Students, Resident Doctors and Faculty at AIIMS

To, Hon'ble Prime Minister of India, Dr Manmohan Singh, South Block, New Delhi.

Respected Sir,

Progressive Medicos and Scientists Forum wishes to bring to your kind notice the open discrimination and harassment being meted out to students, resident doctors, and even members of the faculty belonging to the reserved category in blatant violation of the orders passed in accordance with the decisions of the Governing body of AIIMS, which is the supreme decision making body of the Institute.

Sir since the time of the last anti-reservation stir AIIMS Director, Dr Venugopal has emerged as the poster boy of the upper caste chauvinist elements at the Institute and even the government establishment. The reality of the day is that Institute is being governed as the personal fiefdom of the Director and his coterie, as is home out by the following facts.

Even in the wake of anti-reservation agitation we had sought appointment with your kind self to appraise you of caste discrimination at AIIMS in the form of ghettoization of reserved category students in particular hostels, wide distribution of a video shot at AIIMS that was directly derogatory to the "father of our Constitution" Dr B R Ambedkar and other such incidents. The Director AIIMS, Dr P Venugopal was directly abetting caste chauvinism and protection its protagonists. Taking note of the seriousness of the situation during the AIIMS Institute body meeting, the then Secretary of Human Resource Development Ministry, Mr Sudeep Bannerjee sought explanation in writing from Dr Venugopal regarding the ongoing caste discrimination. It is indeed our misfortune that while you could

meet the leaders of upper caste chauvinist anti-reservation stir more than once, but our repeated requests to be given a hearing by you, fell on deaf ears.

You may kindly be informed that given the serious nature of the above mentioned allegations. Central Ministry of Health and Family Welfare set up a Committee under the Chairmanship of Prof S K Thorat (Chairperson UGC) to look into the complaints of caste discrimination. The Institute authorities made all possible efforts to thwart the work of Committee; so much so that students had to go out of the Institute campus to the office of the Committee so as to avoid notice of the AIIMS authorities. When the AIIMS authorities failed to prevent the deposition by reserved category students before the Committee, they made the students who had played a leading role in this process, the target of their ire.

In the ensuing professional examinations of the final year students, seven students were failed of which two are scheduled tribe and one scheduled caste. That these students, particularly Mr Ajay Singh were failed deliberately due to their role in opposing caste based discrimination and harassment is borne out by the fact that the examiners very clearly asked them; if they had helped the students depose before the Thorat committee and counselled them to concentrate more on studies. Some of the examiners did not ask even one question related to their subject in the viva. It is interesting to note that Ajay has been a good student all through in the MBBS course. The examiners did not even deny having asked derogatory questions when asked

about the same by the Dean office in writing.

The AIIMS administration also acknowledged caste discrimination having been done in the exams is borne out by the fact that it ordered re-examination of the failed students. However the administration under the directions of the Director had the examination conducted under the overall supervision of the earlier examiners only, a fact that can be easily ascertained from the video recording of the repeat exam conducted by the administration. It is obvious that if the earlier examiners were practically in charge of the repeat exams, they would not fault themselves by passing the students.

The AIIMS Governing body meeting held on 24.1.2007 ordered re-examination to be held under the supervision of Dean (Acad.) with independent observers and different team of examiners (Annex I). However the Director has had the audacity to decline implementing the decisions of even the Governing body of the Institute, to which he is subservient as per the AIIMS Act. Same has been the fate of many other decisions of the Governing body.

Even if a reserved category candidate proves himself to be meritorious by the standards of these patent holders of 'merit'. It does not entitle him to be treated in a just manner as is shown by the case of Dr Sukhbeer. Dr Sukhbeer, having completed his MD in Lab Medicine stood 1st in the entrance examination for the post of senior residency in Lab Medicine (Annex II). Yet he has not been allowed to join the main department of the said discipline at AIIMS as desired by him and approval of Dean academic. He has been forced to join at the Trauma Centre of AIIMS which

has not yet become functional. The candidate below him; Dr Asmita has been allowed the prerogative of first choice. The chicanery of AIIMS administration is exposed by the fact that in spite of standing first in merit. Dr Sukhbeer has been adjusted against reserved quota rather than as per merit.

Through Dr Venugopal and his team of meritorious thugs made much noise about 'Merit' during their opposition of the 'Reservation policy', the director has cared little about the same in making the head of Forensic department, Dr Dogra as the head of Biophysics department as well, while the Governing body had decided to make Dr Krishna Dalal (who also happens to belong to the reserved category) the head of the department till such time that a new appointment is made to the post of professor in Biophysics department. Not only that a person who has examined only dead bodies and has no elementary knowledge of the subject has been made the head, but an enquiry has

also been initiated against Dr Krishna Dalal on trumped up charges. The enquiry is being conducted by Dr Dorga himself. In the past also Institute authorities have deliberately prevented her promotion to ensure that she does not become the head.

Respected Sir, the list of facts is far too many to be listed in one letter. It is indeed intriguing as to under whose patronage is Dr Venugopal managing to do so and in this respect we have reliably learnt that certain senior bureaucrats of your office are directly lending their weight behind Dr Venugopal. This throws in face of all, the pledges and passionate declarations of the UPA Government of its commitment to uphold the rights of the oppressed castes. The PMSF requests you to kindly give us a hearing such that you may personally be apprised of the mayhem that rules the roost at AIIMS under Dr Venugopal while your government has quietly chosen to look the other way. Sincerely yours, -- **Dr Rakesh Kumar**, President, Progressive

Medicos and Scientists Forum,
February 22, 2007 ☐

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Public Meeting on Nandigram:

"Nandigram and Gujarat Fall in the same Category as both were State Sponsored" - Human Rights Activists

Pushkar Raj

Fourteen people were killed by the West Bengal police on 14 March 2007 when it opened fire on the agitating farmers against the proposed special economic zone (SEZ) in Nandigram village of West Bengal. The government proposed to acquire the land of the farmers for SEZ and give it to a foreign industrial house for establishment of a chemical hub.

People of the surrounding villages have been resisting the government acquisition of their land as it was their only source of livelihood. In an apparent bid to intimidate and subjugate the farmers the government of West Bengal with the active assistance

of local armed Communist Party of India (Marxist) cadre used brutal force officially killing 14 people while unconfirmed reports put the figure, including missing above 300.

Peoples Union for Civil Liberties (PUCL) and Janahastakshep organized a joint public meeting on the issue of Nandigram police firing at Gandhi Peace Foundation, Delhi on 3rd April 2007. A large number of civil rights activist and intellectuals took part in the meeting. A report by Dr Pushkar Raj National Secretary, PUCL.

A large number of students, lawyers, civil right practitioners and

intellectuals attended the meeting convened by PUCL and Janahastakshep at Gandhi Peace Foundation today, 3rd April 2007. Chairing the meeting and initiating the discussion President of PUCL-Uttar Pradesh Justice (Rtd.) Ram Bhushan Mehrotra said that in a democracy people should have the right to decide about the model of development that they would like to adopt for their good. It is incomprehensible and unacceptable that the government takes upon itself to decide the kind of development that the people should have and persist with it despite the latter's stiff opposition.

Former president of the PUCL, Justice (Rtd.) Rajindar Sachar, expressed shock that over the basic issue of development the governments would go to the extent of shooting the people. 'Sane people of this country must question whether the government that shoots to kill the innocent to grab their land for development should remain in the office', he asked. He further said that in recent times the governments have shown a certain degree of arrogance of power irrespective of the political parties they belong to and this is an insult to our democracy.

Veteran socialist Surendra Mohan regretted that the government that champions the cause of poor and unemployed should lay emphasis on capital intensive industry. 'The government says that they have been inspired by China in the field of SEZ but China has only 6 of them while we are creating them in every nook and corner of the country. Besides, in China the farmer does not lose the land, he remains its sole owner', he said. He further explained that in the SEZs the labor laws will not apply. It is clearly anti-labor policy and those who have been championing the cause of the workers and poor have turned their back at them.

Sumit Chakravarti, the editor of reputed weekly Mainstream, paid rich tribute to the dead farmers who laid their lives for a cause that is dear to the heart of every farmer of the country. Condemning the Nandigram massacre he said that Gujarat and Nandigram fall in the same category because they both were state sponsored. 'As a leftist I can only hang my head in shame', he regretted.

Sumit Chakravarti gave an account of his visit to the west Bengal and surmised that he and his team came to the conclusion that CPM is sheltering a mafia. He said that West Bengal is the 5th largest industrialized state of the

nation and prior to left front government assuming power three decades back it was in the 3rd position. What has happened is that many industries like jute have died down due to the neglect of the government. The need of the present is to revive those industries and provide employment to the people and not to industrialize further with the help of capital intensive technology.

Pointing out of the case of Singrur he said that the land in Singrur is regarded as one of the most fertile land track of the world as per the Geographical Survey of India. The government is uprooting 15000 people who are depended on agriculture for the sake of generating the employment for 12000 people!

Well known Supreme Court lawyer Prashant Bhushan said that he had heard that CPM was no different than the Congress and the BJP when it came to violent cadre; but now this has been well established by the happenings of Nandigram. He said that there must be certain guidelines when the government acquires land of the farmers. Elaborating these guidelines he emphasized on the ceiling on the land holding of an industrial house; not entrusting the private parties for rehabilitation of the displaced persons; making gram sabha a deciding authority in land acquisition of a particular village and finally making a well defined distinction between the public purpose and the public interest when the land of the farmers is acquired.

Dr Aparna from CPI (ML) pointed out that the SEZ Act was passed not long back in the Parliament unanimously and there was no serious discussion as has become norm when it comes to the serious policy legislation in the parliament. Now including CPI (M) all the political parties want amendment in the Act. 'The people of this country must ask these peoples' representative that they

should at least be serious parliamentarians', she exhorted.

Bringing fore her personal visit to Nandigram Dr Amita Singh, Professor of Centre for Law and Governance, JNU saluted the spirit of people of Nandigram and said that the farmers of Nandigram deserve accolade for the fact that they have expressed and asserted what farmers of the rest of the country have not been able to. She compared what is happening in the villages adjoining the cities of Haryana with Nandigram and maintained that the resistance of people of Nandigram will fill the people of the other parts of the country too to rise against the vested interests of the globalization sponsored corporate interests.

Recalling her visit last year in the region she said that the area has been developed for last one decade as one of the best in the state to make people self sustained with the arduous efforts of the self help groups and committed social spirited persons. The result has been that the area now is free of sanitation related epidemics that claimed hundreds of life earlier annually.

Besides due to the efforts of the civil society groups the people are self sufficient economically; in agricultural and related field of animal husbandry, fishery and have grown in economic self dependence and prosperity. The place is livable and beautiful with local peoples' own hard work and efforts of nearly a decade. It is unacceptable for the people of the area that today the government that did the least for them when they were in dire crisis comes and tries to snatch their land and deprive them of their honorable livelihood. Certainly there would be resistance and naturally there was.

Finally Dr Pushkar Raj secretary of PUCL, placed before the meeting a resolution condemning the forcible acquisition of agricultural land and

forests in the different parts of the country and depriving the people of their livelihood through the antiquated, anti-people colonial legislation, viz., the Land Acquisition Act 1894. The resolution demanded the resignation of the state government and arrest of those who planned and carried out the Nandigram massacre. The resolution also demanded the repeal of the Land Acquisition Act, 1894 and the repeal of SEZ Act. □

Gujarat PUCL:

State of Parliamentary Democracy in Gujarat

Different NGOs of Gujarat active in the field of Protection and promotion of human rights and civil liberties such as PUCL, Nishan e Sanvidhan, Punuruthan, Insaf, and Jagrut Nagrik Sanghathan, jointly organized a meeting on 12th March at Ahmedabad to discuss and highlight the sorry state of Parliamentary democracy in Gujarat.

Leading members of these organizations, Dr Mukul Sinha (Advocate), Mr. Gagan Shethi, Prof. Dinesh Shukla, Shri Krashnakant Vakharia (Advocate), Dr Karasandas Soneri (Former Deputy Speaker) and Prof. Ratilal Dave participated in the discussion.

Speakers expressed grave concern over the systematic undermining of the constitutional bodies such as Legislative Assembly, Speaker, Judiciary, in the state. Freedom of speech and expression not only of citizens but of the members of the Assembly is curbed. Gujarat is under undeclared emergency.

Members of the Assembly are being threatened not to ask inconvenient questions in the House, they are suspended on flimsy grounds, the duration of

Assembly's sessions has been cut down. All the speakers expressed grave concern towards increasing intolerance at the government level in the state. They emphasized the urgent need to create a strong public opinion against the undermining of the parliamentary democracy in Gujarat. NGO and Civil society organizations should come forward and play an important role to safeguard the civil liberties and democracy in Gujarat. - **Gautam Thaker**, General Secretary, PUCL Gujarat. (Date: 15-3-07) □

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