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## Tarkunde Birth Centenary Year

Late Shri Tarkunde was born on July 3, 1909. Beginning July 4, 2008 will be his centenary year. We decided to dedicate the August 2008 issue of the *PUCL Bulletin* to him to mark his centenary year. We invited some people to write on or about Shri Tarkunde. Most of the contributors are people who have, before this, not made public their ideas about Shri Tarkunde or how they were influenced by his ideas or by his work, how they came into contact with him, or their views about his work, etc. because of limited space at our disposal it appears that for some more forthcoming issues we will have to devote space to the views of the people we approached. In that case every forthcoming issue will have one article on Shri Tarkunde.

- **Dr Y P Chhibbar**, General Secretary and Chief Editor

# Full Court Reference in memory of Late Shri V M Tarkunde, Senior Advocate, on Wednesday, the 7<sup>th</sup> April 2004 in the Supreme Court of India

## Address by Soli J Sorabjee Attorney General for India

My Lord the Chief Justice, Hon'ble Judges of the Supreme Court, President of the Supreme Court Bar Association, Mr. M N Krishnamani and members of the Bar

We are assembled today to pay solemn homage to the memory of one of the legendary lawyers of this country, V M Tarkunde, who passed away on the 22nd of last month.

For the inhabitants of Saswad district in Pune, 3rd July 1909, which witnessed the birth of Vithal Mahadeo Tarkunde, was a routine event in the eternal procession of life and death. Little did they know or dream that this infant child in the years to come would make them proud as he has made our country proud.

Tarkunde qualified as a Barrister in England in 1931. On his return he commenced his legal practice in Pune in 1933. He combined the practice of the law with his excursions into politics. He joined the socialist group in the Congress and was closely associated with the veteran socialist S M Joshi.

His political mentor was M N Roy. His association with Roy began in 1936. Tarkunde was much influenced by Roy's thinking and philosophy which came to be known as Radical Humanism. He was a lifelong ardent admirer of M N Roy whose photograph was always on his table.

Tarkunde gave up his practice in 1942 to become a full time member of the Radical Democratic Party and went on to become its General Secretary in 1944. After independence he started practising in the Bombay High Court and acquired a large practice on the appellate side.

Chief Justice Chagla persuaded Tarkunde to accept judgeship of the Bombay High Court and he was elevated to the Bench in 1957. He was undoubtedly the most distinguished judge of the post-Chagla 1957 period. His thinking and judgements were marked by originality and boldness. He did not relish obstinate adherence to obsolete rulings and outdated judgements.

However Tarkunde was not a universally popular judge. The reason is that he did not suffer fools gladly and had little patience with the rambling and repetitious argument of the preferred pompous seniors, for a well prepared junior it was a delight to appear before him.

Initially Tarkunde sat as a judge on the Appellate Side of the High Court. When the news came of Tarkunde being posted on the Original Side there was gloom in the ranks of Original Side lawyers because of Tarkunde's lack of experience of the Original Side and trial actions and also because of his bias against the Original Side and the Dual System which he thought were outdated and unnecessarily expensive. But the initial gloom was short lived. Tarkunde became a stalwart on the Original Side. He tried many famous and difficult cases including the libel suit filed by Thackersey against the tabloid, *Blitz* in which, he awarded damages of Rs.3 lakhs against *Blitz* which in the mid sixties was a substantial sum. It is in that case that he passed the controversial order directing that the evidence of one Mr. Goda should not be published by the Press. The correctness of that order was challenged and ultimately became

the subject matter of a decision of this Hon'ble Court in the celebrated case of *Naresh Mirajkar vs. State of Maharashtra*.

Another important case tried by Tarkunde was in the Writ Petition filed by Bennett Coleman against the State of Maharashtra in which the issue was whether the prize competitions of the newspaper were of a gambling nature or success in them depended on the exercise of skill. The then redoubtable Advocate General of Maharashtra, H M Seervai, was fully convinced that the competitions were of a gambling nature and argued with missionary zeal. It was apparent from the observations of the Bench that Tarkunde thought otherwise and was unswayed by Seervai's forensic barrage. Quite a few sparks flew in the case. Tarkunde decided against the government. He was overruled by the Court of Appeal but in the Supreme Court his order and judgments were restored.

In disputes between labour and management, Tarkunde's Court was not particularly sought after by the management. In cases of preventive detention, detainees could not have had a better court. To Tarkunde detention without trial was an anathema to the Rule of Law and if there was the slightest non-compliance with procedural requirements or any trace of vagueness in the grounds of detention the Detention Order was unhesitatingly struck down.

Tarkunde's invaluable contribution to constitutional jurisprudence was his judgment in the Passport case. He was the first judge in India to hold that the right to travel abroad was implicit in the concept of personal liberty guaranteed in Article 21 of the

Constitution and since without a passport that right could not be meaningfully exercised, a person had a fundamental right to obtain a passport. I had the privilege of arguing the case before him. His reasoning was subsequently endorsed by the Supreme Court in *Satwant Singh's* case in 1967 which was reaffirmed in *Maneka Gandhi* in 1978.

Tarkunde retired prematurely at the age of 60. At the dinner hosted in his honour he publicly acknowledged that he had *received* the best of assistance from the Original Side in the cases he had tried and that his *earlier* impressions were mistaken. This is only one instance of his intellectual honesty.

Tarkunde commenced practice in the Supreme Court from scratch in 1969. His services were in heavy demand. However he did not confine himself to his briefs. He took an active part in all matters concerning the independence of the judiciary or the autonomy of the Bar. When the supersession of three judges of this Hon'ble Court took place in April 1973 Tarkunde was in the forefront of the opposition to this executive onslaught on judicial independence. He was active in organizing a one day token strike by the Bar against the government's action.

Tarkunde appeared in a number of important cases including *Kesavanand Bharati*, *ADM Jabalpur*, and *S P Gupta*. Having experienced the pleasure of appearing before him I now had the pleasure of appearing with him in these landmark cases. But the most memorable, unforgettable experience was working with him in combating the spurious emergency of June 1975. At that time I was living in Bombay. A virulent censorship was in operation. Telephones were tapped. Hence, messages and communications from friends and colleagues in Bombay would be

slipped by me late in the evening under the front door of his Defence Colony house to the utter bewilderment of his then teenage daughter Manik. Then there were late night conferences in the Habeas Corpus petitions filed in the Delhi High Court challenging the Detention Orders passed under MISA in respect of Kuldip Nayar and the venerable Bhimsen Sachar. Time and energy were expended in organising meetings to mobilise public opinion against the Emergency and its excesses and calling for its revocation. Tarkunde fearlessly opposed the Emergency in his speeches and writings. These were trying and challenging times.

Tarkunde was in constant touch with Jayaprakash Narayan when he was in detention in Chandigarh and was undergoing medical treatment. He filed several applications to ensure that JP got proper medical facilities. It is not generally known that Tarkunde was in a way responsible for saving the life of JP who was dying in the R G Institute in Chandigarh where he was confined because of the mysterious failure of both his kidneys. Due to the climate of fear the relatives of Jayaprakash invariably took Tarkunde's help in approaching the District Magistrate and obtaining his permission to meet Jayaprakashji. Thereafter Jayaprakash's real ailment was discovered. When the news became public government was anxious to avoid JP dying in its custody and the subsequent national reaction. Consequently Jayaprakash was released in November 1975 and was saved by the doctors of the Jaslok Hospital in Bombay.

Tarkunde was an obvious target for a detention order under MISA. But he did not care. His fearlessness was an inspiration and boosted the morale of those who were crestfallen after this Hon'ble Court's disastrous majority judgment in *ADM Jabalpur*.

Tarkunde was no doubt an outstanding lawyer. But his claim to greatness as a lawyer and as a human being lay in his unwavering commitment to the cause of freedom and human rights without counting the cost. This was at a time when fear gripped many and erstwhile courageous souls had turned timorous. He possessed that rare and lovely virtue. Courage, which is not merely one of the virtues but the essence of every virtue at the testing time. Emergency was the testing time for Tarkunde. Indeed that was his finest hour.

In recognition of the valiant role played by Tarkunde in defence of human freedoms in India during the Emergency he was awarded the International Humanist Award 1978 by the International Humanist and Ethical Union. He was also awarded the title of Humanist Laureate by the Academy of Humanism of the USA in 1984.

In November, 1980 Tarkunde took a leading part in forming the People's Union for Civil Liberties (PUCL) and was elected as its President. Branches of PUCL were formed in all States in major towns. The members worked among the weaker sections of the people educating them about their rights.

During the anti-Sikhs riots in Delhi in 1984 Tarkunde visited the affected areas regardless of personal safety along with some of us lawyers and activists of PUCL and rendered to the victims whatever help was needed.

On 26<sup>th</sup> January 1998 he was belatedly conferred the honour of *Padma Bhushan* for his social services in the cause of human rights.

Tarkunde received full support for his work and activities from his dear wife Chitratai, who was a humanist in her own right. Chitratai expired in September 1990. Tarkunde experienced a deep sense of loss but he carried on his mission of spreading the message of rationalism and humanism

without hankering after fame or fortune.

In July 1997 Tarkunde decided to retire from legal practice although he was absolutely fit and alert. He spent his time travelling to different parts of India, delivering talks, participating in seminars attending conferences and writing profusely. His aim was to educate the people about the values which sustain democracy, to abjure communalism and to combat corruption. He wrote regularly in the *Radical Humanist* which he edited for a long time. His mind was keen and incisive as ever to the very last except a couple of weeks before his end.

About six months ago he was given by his former Junior Umesh Lalit a collection of Dalit poetry published in Marathi which was quite volatile. That evoked Tarkunde's interest and he wanted to know more about the poetry and the poets. The range of his interests and concerns is reflected in his letter dated 25.1.2004 to our Prime Minister and to General Parvez Musharraf requesting both of them to discuss the possibility of complete elimination of nuclear weapons of both the nations by mutual consent in stages and within a period of a couple of years.

Tarkunde spent his leisure hours listening to Indian classical music which he thoroughly enjoyed. He regularly attended the concerts by Kumar Gandharva. He was also a keen cricket fan. When he was at the Bar he did not miss a single test match at the Brabourne Stadium in Bombay. In the cricket matches in Bombay

between doctors and lawyers, in which judges also participated, Tarkunde won the cricket shield. But golf was his real passion. He was a regular and familiar figure at the Golf Course both in Bombay and later in Delhi.

After a brief illness Tarkunde breathed his last on 22nd March 2004 and joined the ranks of the Immortals. Admiration and affection for him were overwhelmingly in evidence at the recent condolence meeting at the Gandhi *Peace* Foundation where numerous NGOs and human rights organisations participated and several persons paid him warm and affectionate tributes. Condolence messages were received in plenty, one of which was from Mubashir Hasan, former Finance Minister of Pakistan. His message read: "In the demise of V M Tarkunde, South Asia is bereft of a compassionate and noble soul. Not only was he an untiring fighter for civil liberties but he saw the need of Pakistan-India friendship long before any of us had started working for it... Pakistan mourns for VMT as India does." Tarkunde truly belonged to enlightened humanity.

So long as freedom has any meaning and human rights continue to matter, Tarkunde's memory will always be alive. It is impossible to forget him. His many-splendoured life will be an unending source of inspiration to all freedom loving people and courageous human rights defenders.

The last time I met him was at his home in September last year along with his close friend former

Chief Justice Chandrachud. We went down memory lane and exchanged pleasant reminiscences.

To me Tarkunde *bhau* was a friend, philosopher, and guide. I consulted him and took his advice on crucial personal and professional matters. I trust there will be no breach of the Official Secrets Act if I disclose the fact that his advice was a decisive factor in my acceptance of the present office in April 1998. His passing away has left a deep void in me which will be difficult to fill.

My Lords, we all have to make our exit from this terrestrial planet. At the end of the journey, what is it that ultimately counts? It is the deeds of the brave and the just which smell sweet and blossom in the dust. Our lovable brave warrior has departed. May his soul rest in eternal peace and may flights of angels sing him to his rest.

Tarkunde leaves behind his only daughter Manik who was very much attached to her father and who also was very fond of her who has inherited her father's humanism and values. Manik is a lawyer. She runs a law firm along with her husband Raian Karanjawala, a caring and generous hearted person, in the name of Karanjawala & Co. He also leaves behind two young grand daughters and his younger sister who lives in London.

May I on behalf of the Bar and myself convey heartfelt condolences to them in their sad bereavement and pray that Providence give them the strength to bear this loss with equanimity.

□

## **Speech of Shri M N Krishnamani (President, Supreme Court Bar Association)**

My Lord the Chief Justice of India, Hon'ble Judges of the Supreme Court of India, Learned Attorney General for India and my dear brothers and sisters in the Bar.

Sri V M Tarkunde, one of the great stalwarts of this Bar has passed away on 22nd March 2004. From 1969 and till about 8 years back, all of us in the Bar had seen Sri Tarkunde appearing in different

courts frequently. I have seen him from 1982 onwards. Though I was not his junior, I learnt a lot from him from some distance like Eklavya. All of us used to admire his tenacity, thoroughness and

courage which were moderated with tremendous self-control, pleasing disposition and utmost courtesy to the court and to the counsel on the other side as well. It was a peasant event to instruct him as a Senior Counsel and it was even more pleasant to appear against him on the other side. He was an effective but pleasant and reasonable opponent.

I cannot forget one matter where he appeared for the Writ Petitioners and I was on the opposite side instructing Mr. Venugopal on behalf of the State of West Bengal. The matter is reported in 1983 (4) SCC 522. Two issues arose in that matter: (1) Whether Anand Marga of Anand Margis was a separate Religion or at least a separate "Religious Denomination" entitled to the protection of Articles 25 & 26 and (2) Whether Anand Margis have a Fundamental Right under Article 25 to perform what is known as "*Thaandava Dance*" in public places keeping a human-skull on one hand and a sword or *trishul* in the other! Sri V M Tarkunde, who was an agnostic and an atheist, argued on behalf of Anandmargis. Sri Tarkunde traced "*Thaandava Dance*" is Lord Shiva Himself. He was convincingly arguing that *Thaandava dance* originated from Lord Shiva over 6500 years ago! It was an amusing sight to see an agnostic advancing such arguments. But he was very effective. Finally the court agreed with him that *Anand Marga* was a separate "Religious Denomination" within Hinduism entitled to the protection of Article 25 & 26 of the Constitution. However, the Court did not agree with Sri Tarkunde that the right to perform *Thaandava dance* with a human skull in one hand a *Trishul* in the other, in public places was protected under Article 25.

Though Sri Tarkunde did not believe in God and though he was apparently against religion, he was always advocating for moral

values. In his beautiful treatise on *Radical Humanism* published in 1992, he says:

*"Moral inadequacy affects all aspects of social life. In politics, it takes the form of corruption and the pursuit of unprincipled power politics. No country is free from corruption, although is probably more rampant in the countries of the third world than elsewhere. In the economic sphere, moral inadequacy expresses itself in exploitation of workers in private enterprise, in careless management of public undertakings, and in evasion of work by the employees in public as well as private sectors. Moral inadequacy also affects social life and inter-personal relations. No political, economic or social problem can be solved unless the prevailing moral standards are raised."*

In the same book, in another place, Sri Tarkunde says:

*"Kindness, honesty, truthfulness, and on a higher level of sophistication, justice and equality are the moral values. They are moral values because they promote cooperative social existence. Morality can be described as a conduct impelled by these impulses and values."*

He again says:

*"Moral development consists of the subordination of competitive or egoistic impulses to the co-operative or altruistic ones"*

If one properly analyses the different major Religions of the world one would find that all these Religions speak only of these moral values and human values. No religion is against any of these moral values.

Mr. Tarkunde followed all these moral values in his day to day life. He was always kind to his juniors. He was kind to his employees. He adopted several poor students to help them and was paying their school and college fees.

When I met him in 1982 for the first time, he was already in his

seventies. He used to run from court to court on Mondays and Fridays. When I enquired about him as to how he was keeping himself fit and brisk, I was surprised to learn that in his young days he was a champion wrestler! He used to come No. 1 in wrestling! I know how the Bar in India had produced and has been producing talents in other fields also. Justice T L Venkatrama Iyer was a class one Karnatic Vocalist. Shri V R Raman who was Addl. Solicitor General of India was a highly talented violinist. Our Attorney General, my dear friend Soli is known for his Jazz. The Supreme Court Bar has produced number of poets. Right now we have over 30-40 poets amongst SCBA members. We are having number of musicians and dancers of high caliber, right now in SCBA. However, I never knew that it had a champion wrestler in late Sri V M Tarkunde. How this frail man could have been a Wrestler, I used to wonder!

Apart from being a great Lawyer, he was political activist, a human-rights activist, a great judge and an author. He has authored several books and I knew of at least 3 of them viz. "*Radial Humanism*", "*Through Humanist Eyes*" and "*For Freedom*", which are found to be products of a great mind.

He held various important and prestigious positions. He was the General Secretary of Radical Democratic Party. He was earlier an AICC member. He was a disciple of M N Roy, and imbibed his humanism and revolutionary outlook. He was the President of Radial Humanist Association.

He started a great Movement called "Citizens for Democracy" with Sri Jayaprakash Narayan. He was the Chairman of "Indian Renaissance Institute" He was the Chairman of "Indian Red Cross."

He was awarded *International Humanist Award* and *Padmabhushan* in 1998. He was

conferred so many other prestigious Awards and Honours, recognising his great contributions.

A great Divine Personage of our own time used to say repeatedly that in a civilised Nation, to ensure real equality of opportunity, two things have to be available free:

I Vidya - Education

II Vaidya - Medical Care

Strikingly, Sri V M Tarkunde has touched the same subject in the context of the prolonging reservation policy in India. See the following prophetic words of Sri Tarkunde in his article in *The Radical Humanist* on 6th September 1990:

*"It cannot be denied that the policy of reservation does not cause a good deal of injustice to candidates of merit belonging to communities other than the SC, ST and OBCs. The injustice is greater when the policy of reservation is implemented in higher educational institutions, particularly in medical and engineering colleges. The injustice has to be tolerated for the time being in the larger social interest, but its period should not be unduly extended. Social and educational backwardness should not be allowed to become a permanent source of benefit. Reservation was initially visualised for a period of ten years, but it has now continued for over 40 years and the end is not yet in sight. Reservation is necessary so long as certain communities remain extremely backward compared to other sections of society. But it must be realised that reservation cannot be the principal means for bringing about an advancement of the backward communities. Spread of education is the effective remedy for the removal of social backwardness. It is the failure of our educational policy which is the main cause for the indefinite prolongation of the reservation policy.*

Sri Tarkunde had a glorious life. Apparently he did not believe

in religion. But he believed in humanism. He believed in human values of *Satya, Dharma, Prema, Shanti,* and *Ahimsa* which constitute the core of all the Religions of the world. This core is: Spirituality. Sri Aurobindo used to say: *"Religion as spirituality constituting the core of all the Religions is a cohesive force, but religion as Religiosity constituting the narrow aspects of different religions is a divisive force."*

Sri Tarkunde really believed in humanism which is Spirituality and his writings show that he was only against religiosity. He says:

*"Those who have faith in God, why not they have faith that there are no different Gods for different Religions like Hinduism, Islam, Christianity etc."*

Humanism is love, nothing else. The theme of all the Religions is this:

*"Start the day with love; Spend the day with love; Fill the day with love; End the day with love; Love is the way to God."*

In that perspective, Sri Tarkunde, was a Man of God, though apparently he did not believe in a personal God, He preached love as Humanism, he showered love and he was full of love. Every one of us in this bar from 1969 to 1997 is an eye-witness and a beneficiary of that love.

Those who are full of love will become more and more energetic and more and more useful even as they age. This was demonstrated to be true by V M Tarkunde. Sri J R Gagrat who was very close to Sri Tarkunde says in his article:

*"In the case of Tarkunde, age has been the rich and happy fulfillment of life - the shining consummation of all that has gone before. In his case it has been magnificent to grow old since he has kept himself young. In his case his, mental powers have increased with age and the intellectual powers have intensified in later years. He belongs to a category of*

*those few men who have grown with age. Michelangelo was still producing master pieces at eighty-nine."*

A Chinese philosopher, after referring to the great human qualities of *Pandit Jawaharlal Nehru* who was also an agnostic like V M Tarkunde, said something very significant. He said:

*"Whether Nehru believes in God or not, if there is a God, He would believe none but Nehru."*

This will apply to Sri Tarkunde too.

V M Tarkunde was a legend. We had very few parallels of him in our bar, particularly from amongst retired-judges, like A V Vishwanatha Sastry, and M C Chagla, who could be counted on fingers!

He has left behind a lovely daughter Manek and a lovely son-in-law Raian, who too have imbibed his humanism, his love and his talents as a lawyer of eminence.

My heartfelt condolences to the bereaved family on behalf of the Bar and on my personal behalf as well.

I pray to the Almighty for his Soul to rest in peace. □

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## Reply by the Hon'ble Chief Justice of India, Justice V N Khare

Learned Attorney General for India Shri Soli Sorabjee, President of the Supreme Court Bar Association Shri Krishnamani, members of the Bar, Ladies and Gentlemen,

My colleagues and myself share the sentiments expressed by you on the sad demise of Shri V M Tarkunde, a distinguished Judge, who breathed his last at the Apollo Hospital after a prolonged illness on 22nd March, 2004.

Mr. Vithal Mahadev Tarkunde was born on July 3, 1909 at Saswad in Pune District. His father was a popular lawyer, practicing at Saswad. He took his early education in Municipal School, Saswad and New English School. In 1920, he migrated to Pune for his higher education. He studied at the Ferguson College and Agriculture College in Pune.

After completion of his graduation, he went to London for qualifying himself as a Barrister-in-Law. He attended the Lincoln's Inn and qualified as a barrister. He joined the London School of Economics as an External student. On completion of his studies in England, he returned to India in December, 1932. He enrolled himself as an Advocate on April 13, 1933 and commenced his practice in Pune. He joined the newly formed Congress Socialist Party, which was a party within the Indian National Congress and worked in villages in Pune District for political and social awakening. Because of his study as a graduate of Agriculture and of Economics in London, he could assist the poor agriculturists in protecting their interests.

He was greatly associated with late M N Roy who started the Radical Democratic Party in 1936 and spent most of his time for that party to propagate the humanist thought of M N Roy. He left his practice in 1942 with a view to devote his whole time for the

Radical Democratic Party. He had been its General Secretary from 1944 till its dissolution in 1948. After the dissolution of the Radical Democratic Party, he went to Bombay in June 1948 and started his practice on the Appellate side of the Bombay High Court. Within a couple of years, Mr. Tarkunde made his mark in the legal field by his brilliance, originality and hard work.

He was a leading lawyer in Constitutional matters and argued in several constitutional matters before the High Court and the Supreme Court. He was elevated to the Bench of Bombay High Court on 16th September, 1957 as Acting Judge and as an Additional Judge on 24th November, 1957 and Permanent Judge on 9th June, 1958. He resigned after serving on the Bench for 12 years on 17th September, 1969 and thereafter he joined the Bar. He was designated as Senior Advocate on 23rd September, 1969. He had been the President of the Supreme Court Bar Association.

He was a fearless and independent Judge, an eminent Jurist, an outstanding social reformer, a distinguished humanist, a great statesman and a champion of Human Rights who always stood by humanity without fear or favour. Mr. Tarkunde was a great optimist who dedicated his whole life to the humanist movement. He was the pioneer of the struggle for the defence of Civil liberties and human rights and a restless crusader for human freedoms.

Mr. Tarkunde had been the Chairman and the Advisor of the Indian Renaissance Institute, a research society founded by M N Roy and also the Chairman of the Indian Red Cross Society.

Mr. Tarkunde engaged himself in several activities for promoting human freedoms. He was awarded

the International Humanist Award, 1978 by the International Humanist and Ethical Union, Holland, in recognition of his contribution to promoting human rights. He was also awarded the title of Humanist Laureate by the American Academy of Humanism in 1984. He was also the recipient of Padma Bhushan Award for his historical services for the cause of human rights.

He wrote several books and articles which reflected his deep concern on the cause of human rights and human freedom.

Mr. Tarkunde was held in high esteem and affection both by the Bench and the Bar. His absence would be greatly felt by the legal fraternity. We miss the impact of his presence amongst us.

Mr. Tarkunde died at the age of 94, who will continue to remain in our memories. He is survived by his daughter.

On behalf of my esteemed colleagues and on my own behalf, I offer my heartfelt condolences to the bereaved family and join them in their prayers for eternal peace to the departed soul.

May God bestow enough courage to the bereaved family to bear this irreparable loss with fortitude.

May I request you all to join us in paying homage to the departed soul by observing two minutes silence. **Courtesy: The Legend of V M Tarkunde**, Published by **M A Rane**, President, Indian Radical Humanist Association, Mumbai branch □

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– **General Secretary**

## Justice V M Tarkunde: A Noble Soul

Razi Ahmad, Secretary, Gandhi Sangrahalaya, Patna

We are faced with an unbelievably critical phase of our history. The systematic erosion of values in our day to day life and myopic vision of the ruling elite is creating a nightmarish situation. From Kashmir to Kanyakumari rampant corruption, violation of human rights by the state machinery as well as social and political groups, increasing gap between the haves and have-nots, criminalisation of politics and communal frenzy in the name of religion and politics, are disturbing a phenomenon. Demolition of the Babri Masjid by the fascists and chain of riots and blasts as a reaction by unseen hands and opening of harassment-gate for the "targeted group" by the administrative machinery thereafter, and nefarious developments in the garb of nationalism are damaging the national fabric. This situation caused unfathomable distress to V M Tarkunde who, along with his colleagues, seriously felt that our hard earned freedom was at stake. As a matter of fact, apparently visible deterioration in all spheres of life in the country had shattered the man who had dreamt of an India self-sufficient, self-reliant and free from all fetters and bias for which he and had tirelessly fought in his life.

He was a jurist par-excellence, man of principles and integrity and had human touch in his dealings with all whoever came in his contact. He was a champion of human rights and tirelessly remained a crusader for the establishment of a civil society in India, particularly beneficial to the downtrodden. He left his mark on the Bar Council of Bombay which boasts of having galaxy of legal luminaries as its members. At the Supreme Court Bar also he was considered a guardian like figure for all. Disgusting political scenario

of the country and total lack of 'democratic infrastructure' in political parties, on which the future of secular democratic India depended, disturbed him a lot. Therefore, his last phase of life, [not family wise] can be taken not peaceful and quiet.

He was very close to Jaiprakash Narayan [himself a man of undaunted radical character] and had placed him on the pedestal next to his guide-philosopher M N Roy. After Roy, Tarkunde Saheb kept his Radical Humanist mission get going in shape and spirit. J P had a long people oriented public life full of ups and downs and in many respects was very close to Roy. He borrowed a basic political vocabulary from him, like Party less Democracy, to cite one. Whenever he felt the necessity of intervening in a crisis faced by the nation, he asserted to the best of his ability to fuse the situation and V M Tarkunde stood firmly by his side as in JP and Roy he found several things common. JP stood for values and considered secular and de-centralized democracy as the best alternative suited to India. To keep the flag high he had a galaxy of likeminded reliable friends of integrity round him. And when the situation demanded he never hesitated in forming public watch-dog organisations and put legal luminaries on its executive boards. Formation of the Citizen For Democracy (CFD) or during the Emergency days, Peoples Union For Civil Liberties (PUCL), etc., were the result of that urge and the jurist Tarkunde, always remained with him with full commitment and his legal expertise was available to have a just and suitable stand.

Jai Prakash Narayan held an unique position in Indian politics. At the call of Congress of Mahatma Gandhi in early 20's he

non-cooperated for national cause and never looked back. The igniting speech of Maulana Azad in Patna, in support of non-cooperation, had been the immediate cause of leaving the Patna University. He decided not to pursue his studies in any British supported university and managed with difficulty to go to America. He completed his higher studies in free atmosphere of America. On return he joined public life with is socialist vision and became an active member of the Anand Bhawan, Allahabad group of freedom fighters. He remained politically active and concerned for the good of the country throughout, but never sought any seat of power. Like Gandhi, with whom he differed on certain major issues, especially on violence and non-violence, [but rediscovered him after his assassination] he believed that political parties asserting for power lacked the necessary ingredients and political will of holistic social change. Both of them were concerned for the good of the masses and tirelessly crusaded for achieving that goal. Gandhi with his team [including JP] struggled for the freedom of the country with his unique weapon of *Satyagraha* and *Swaraajya* was the cherished goal. After independence Gandhi did not get much time to see his dream taking shape as he was assassinated on 30th January 1948, hardly five and half months had passed when the country witnessed the dawn of freedom under his acclaimed leadership. When at the fag end of his life JP led the movement, [started by the youth in 1974], he followed the peaceful way of Mahatma Gandhi and gave the call of Total Revolution. In the light of his long experience of Indian affairs, he vowed for a holistic change in the prevailing system, especially in the

matters of public affairs and governance. Throughout these years V M Tarkunde remained by the side of JP as a dependable comrade and provided his legal expertise in formulating the ways to have reforms in electoral system and other matters of public interest. But these public sponsored reports were unheeded by the government. It faced the same tragic fate as had been the fate of several Commissions instituted by the government itself for the redressal of chronic ills of the society.

Jayaprakash Narayan looked towards the youth with optimistic attitude and hoped that they will certainly sail the country out of woods. Since 1960 he was concerned to organise this force and gave the call of Youth for Democracy. Like him Tarkunde Saheb had also special attraction for the youth especially, those who were active in human rights and civil liberty fields. After the death of Jaiprakash Narayan, Tarkunde Saheb acquired the central status for the activists all over India, including, Jammu & Kashmir. Complicated situation of Kashmir was very disturbing to him. He visited the region with human rights activists and was in close contact with persons like Balraj Puri and his colleagues interested in finding just solution of this sensitive issue in the light of the genuine demands of the people of the region.

He was always conveniently available to those individuals or groups who sought his guidance. His legal advice was not only free of charge but often he helped them monetarily also. After his passing away the vacuum created has yet to be filled. When JP was no more, activists looked towards this giant public figure for guidance but now who can claim to possess those qualities?

Tarkunde Saheb sedulously covered the magnificence of his stature with his utmost simplicity

and avoidance of publicity and fan fare, so avidly sought by bloated symbols of power and social service. He was carefully flexible and liberal in approach and yet, uncompromising on principles and values. I have the honour of having known him for long years long and I have much to say about this man of values, a humanist to the core, but time and space constraints do not allow me to go into details. But I would like to share with all my friends, one very awkward but pleasant encounter with him. It were the days when the CFD had instituted an Enquiry Commission under the Chairmanship of justice Nathwani to enquire into the alleged illegalities done to his followers by the head of the Dawoodi Bohra sect of Shia Muslims. Tarkunde Saheb was one of the members. I knew nothing about the same till that morning when I, along with S M Joshi and Noaman Contractor, who were staying with me at *Sangrahaalaya*, went to see JP at his Kadam Kuan residence. When we reached there I saw more than a hundred Bohra men, women, youth and old assembled in the *Mahila Charkha Samiti* compound shouting, "Nathwani go back, Tarkunde go back, death to Noaman Contractor", etc. Since I did not know the background I was shocked to see the unusual scene. I must accept that by that time I did not know any Bohra friend except the fact that most of the Hardware merchants of Patna belonged to the Shia Bohra Dawoodi sect and Syedna Saheb, the head of the sect, is supposed to be the *Daeemutlaq* [final and only guide] of the group. His dictates and commands are final and unchallengeable by his followers as is usually prevalent in *Guru-Shisya Parampara* in India among some Hindu sects.

Tarkunde Saheb and Nathwani Saheb had arrived in the morning and were staying with JP. They were sitting on the *varandah*

up stairs, the normal sitting corner of JP at his residence. All the three were engrossed in discussing some important matter, as signs of seriousness were apparent on their faces. We three reached there amidst surcharged atmosphere. After exchange of normal greetings, I enquired from JP about the unusual atmosphere, as in JP office, ground floor, Sachida Babu, JP's Secretary, was busy in cooling down the excited Bohra youth and situation was surcharged by slogan shouting. By the time we got settled, a representative of the Bohra community came with JP's other secretary Abraham. JP told me that on the suggestion of some senior CFD member friends, as the National Chairman of the CFD, I have constituted an Enquiry Commission to investigate into the details of the alleged inhuman dictates and irregularities in collection of various religious taxes by the Head of the Bohra Community. Heated discussion between the representative of the community, Tarkunde Saheb, Nathwani Saheb and Noaman Contractor in the presence of JP, enabled me to well understand the cause of the surcharged situation down stairs. JP asked me my view on the issue. I told him, Tarkunde Saheb and Nathwani Saheb, that CFD has none of its purpose and business to make uncalled for intrusion in the religious affairs of any community. (At that time, I was Secretary of the Bihar Chapter of CFD, headed by Devendra Prasad Singh, an associate of JP). If once it is allowed to do so, it will open Pandora's Box. If some non-Hindus request JP to institute an enquiry against the alleged irregularities going on in some Hindu Guru's establishment and *Maths* where Babanam Kevlam is the normal rule, will he oblige them? Or if someone asks JP as Chairman of CFD to enquire as to why certain people worship

animals, trees, rocks, and rivers, etc., will it be proper? Further I told them, take my case, I am a Muslim but do not belong to Dawoodi Bohra sect. Therefore, Syedna Saheb's dictates or *Fatwa* is meaningless for me. But for a Dawoodi Bohra it is not the same, it is obligatory for them, as he who follows the Syedna Saheb is a Dawoodi Bohra. If someone does not follow or like the commands, he has the freedom of quitting the sect. Till he is there, he will have to obey the Babanam Kevlam dictates. We had an open hearted discussion on the matter. JP was convinced and agreed to issue a press statement along with the Chairman, Secretary and other members of CFD, Bihar, to clarify his stand that he did not intend to hurt the religious feelings of the Dawoodi Boharas at all. This friendly encounter with Tarkunde Saheb strengthened our relationship which remained intact till his last. He was an intellectual giant, a confirmed Royist and

committed to his Radical Humanism and this humble-self, a small identity in Gandhian circle, but on several issues we differed sharply but never at the cost of our warmth of relationship.

He never refused any invitation of activist groups in the field of human rights, communal harmony, and civil society establishment to grace their conferences or meetings. And till his health permitted he frequently visited different parts of Bihar in this connection. At Patna he preferred to stay with us and happily accepted our modest hospitality. A man of his stature, who deserved to avail 5-star treatment, sharing our limitation was a clear reflection of his undiluted character.

During my stay at Delhi as Director/Secretary, National Gandhi Museum (1981-92) I frequently visited his residence and Supreme Court office. In early 80s along with *Serva Sevaa Sangh*, Gandhi Peace Foundation and some other institutions we had to unnecessarily

bear the brunt of Kudal Commission, constituted by the government under the ill-advice of some of our 'well wishers'. During that period my visit to him was frequent and we got moral support of Tarkunde *Saheb* and at his instance from his two junior colleagues, Mallik *Saheb* and Pancholi *Saheb*. Their cooperation was source of immense strength to us and we faced the odds well. That period gave me ample opportunity to understand this legendry human-rights crusader and our relationship got more strengthened. It was in those days when I fully realized the fact that to adhere to the principles of secularism, democracy and that too within the frame work of our Constitution, and to have an independent stand against establishment, communal and divisive forces is not a joke.

Shri V M Tarkunde is no more with us and we miss him a lot. But his writings and deeds will always make us feel as if he is present amidst us with his ever-smiling, soft spoken welcoming gesture:

Here was one, when comes another? □

## M A Rane is No More

When we had announced that the August issue of the *PUCL Bulletin* will be Tarkunde Centenary Year issue, little did we know that we would have to undo this decision. M A Rane expired in the afternoon of July 24 leaving behind his wife Indira, two daughters Sarita and Rita, and two sons Raj Rane and Amol Rane. He was 83.

He was born in to a peasant family and grew up minding cattle and crops in Kanasgiri village of Uttar Kannada. He passed his matriculation in 1942. Scholarships and freeships enabled him to do his BA in 1946 from the Elphinstone College. After doing his Law degree he was enrolled as an Advocate in 1949 and began his practice as an assistant to jurists like V M Tarkunde and KS Daundkar. Soon afterwards he was attracted to M N Roy and became a member of the Radical Democratic Party. He was an ardent Radical Humanist and remained one till his last day.

He joined the movements launched by Jayaprakash Narayanan along with V M Tarkunde, M C Chagla, and Gandhians. He was among the founders of *Citizens for Democracy* and *People's Union for Civil Liberties*. After the death of Shri H M Seervai, he became the President of Bombay PUCL. He was a prolific writer and second to none in continuing Tarkunde's thought and legacy. His two publications, *V M Tarkunde 90 – A Restless Crusader* and *The Legend of V M Tarkunde*, are his tribute to Tarkunde.

In his death the PUCL has lost a committed civil libertarian. I have personally benefited from his advice as a General Secretary many a time.

All of us in the PUCL are sure that the family is strong enough to bear the tragedy.

**K G Kannabiran**, President

**Y P Chhibbar**, General Secretary, PUCL

# Shri V M Tarkunde – Some Reactions of a Great Man

(Justice) V R Krishna Iyer, (Rtd.) Supreme Court

The birth centenary of Shri V M Tarkunde is an event of great importance to all those who consider integrity and humanity in public life, and radical rationalist version of the world order as values of the finest moments, whatever be the profession which he has chosen to serve in society. Tarkunde was a Radical Humanist which made him a fearless fighter for radical transformation of society and for human rights beyond theological dogmas and political obscurantisms. As a judge of the Bombay High Court, he upheld basic freedoms of persons who espoused even unpopular causes. His radical humanism was not a mere cult but an activist application

of a profound faith in man. Indeed his ruling in the Bombay High Court turned the scales in favour of Maneka Gandhi where freedom to travel outside the country was upheld by the Supreme Court overruling the Central Government's refusal. She stood for the rights of Labour and for working class justice. Likewise, the weaker sections like the landless and the small peasants found him their champion. He interpreted the Constitution of India in a liberal compassionate way as a lawyer; and humanism was his favourite creed. His character as a political figure was beyond purchase and, as a professional advocate, was founded on high principles. His

advocacy in Court was never opportunist geared to win a case but ever grounded on truth and justice in its social dimension. He lived long, indifferent to professional prosperity and always was a paragon of straightforward argument. Civil Liberties were a matter of primary concern for him and so he was rightfully a leader of the PUCL and CFD (Citizen for Democracy). He never tried to please anyone but was always pleasant. He was a great man and I pay my homage to him even as the Country is observing his birth centenary. As an Individual, he was mortal but Radical Humanism is immortal. □

## Tarkunde: A Multifaceted Personality

Ravi Kiran Jain, Vice-President PUCL

On his 90<sup>th</sup> birthday, in reply to the felicitation held in Mumbai on July 3<sup>rd</sup>, Mr. V M Tarkunde spoke on the values he had cherished in his life. He told the distinguished audience that he came from a poor family. His father's mother was a cook in a Pune household. His father passed 'pleaders' examination which could be taken in those days after matriculation. His father was appointed a Sub Judge, but he resigned within a year of his appointment and became a lawyer.

After coming first in his matriculation examination, Mr. Tarkunde took agriculture as his subject. He held a view that if you went to remove poverty, start with agriculture, the main occupation of the people. He knew that India lived in villages. Law was not main pursuit of Mr. Tarkunde. He became a lawyer because his father told him 'if you want to be independent and work for the people become a lawyer'. He worked as a lawyer in the villages for seven years.

I did not have the pleasure of knowing Mr. Tarkunde earlier to 1994. I first met him in the meeting of PUCL in 1994 in Gandhi Peace Foundation, New Delhi, and then in the national convection of PUCL at Thrissur (Kerala) on 2<sup>nd</sup> & 3<sup>rd</sup> January, 1995 and lastly in an informal meeting of PUCL activists at his residence in New Delhi sometime in 2001. I was extremely impressed with his determination and conviction for the preservation of human rights. I was at Nainital on 23<sup>rd</sup> March, 2003 where I was to preside over the J P Memorial Lecture to be delivered by Sri Kuldip Nayar in the evening. In the morning we were told by Mr. Chhibbar that Mr. Tarkunde was no more. His death was mourned before the meeting started in which Mr. Rajindar Sachar, Mr. K G Kannabiran, Mr. Y P Chhibbar, Mr. Kuldip Nayar, Mr. Rajendra Dhasmana and the persons who were to be given the annual journalist award were present besides me and some other persons. The towering personality was no more to guide us. He

represents the epitome of a whole epoch that was full of human sufferings.

Mr. V M Tarkunde was the most shining star in the galaxy of eminent jurists of his era. At the cost of his practice as a lawyer, Mr. Tarkunde rendered great service for the cause of preserving democracy and freedom in our country. As a Judge he was fearless and independent. After his retirement from the Bench in 1969 Mr. Tarkunde again joined the Bar dedicating himself to the cause of maintaining and preserving civil liberties. He moved into the Supreme Court as a Senior Advocate using his professional skill to the cause of waging a war on injustice. He was tough on his principles and integrity which were non negotiable. The termination of his tenure as a Judge coincided with the beginning of the process of centralization of power by Smt. Indira Gandhi in her own hands by destroying the democratic institutions one by one such as congress party, the parliament the cabinet and even the judiciary. She

along with her son resorted to corrupt practice of collecting huge amounts of black money for elections which set the trend of institutionalization of political corruption. She gave a grievous blow to the independence of judiciary by superseding three senior Judges of the Supreme Court in order to appoint A N Ray as CJI. On 12<sup>th</sup> June, 1975 her election was set aside by the judgment of Justice J M L Sinha. She imposed internal emergency on 26<sup>th</sup> June, 75. V M Tarkunde along with M C Chagla, M C Setalwad, C K Daftary, Jethmalani, Fali Nariman and Ashok Desai severely criticized these developments.

Tarkunde was no admirer of Gandhi and he did not approve Gandhian ways. Mr. Levi Fragell a Humanist Leader in Norway once came to India as president of International Humanist and Ethical Union, and had an interview with Mr. Tarkunde. Mr. Fragell put same question to him, the answers to which reveal that Mr. Tarkunde had his own views about Gandhi.

**Fragell:** Are your ideas and your work inspired by Mahatma Gandhi?

**Tarkunde:** Not at all. By the time I became an atheist, in 1929, I had lost my respect for Gandhi. I did not like his extreme orthodoxy. Gandhi's popularity and appeal was the result of his orthodox views coupled with his dislike of modern civilization. Gandhi was opposed to modern science, modern industry, and even modern medicine; and he preached the virtues of abstinence, celibacy, and devotion to God. On the whole his contribution to the Indian nationalist movement was negative.

**Fragell:** Isn't it true that India's independence was won under Gandhi's leadership?

**Tarkunde:** That is a myth. The fact is - that the nationalist movement that developed under Gandhi's leadership was never

capable of overthrowing a mighty imperialist power. The Quit India movement started by Gandhi in August 1942 had subsided by November 1942. British imperialist came to an end as a result of Great Britain's involvement in the Second World War, and the economic and political changes brought about by the war.

**Fragell:** So Gandhi's example has no value to you?

**Tarkunde:** Gandhi's great merit was to insist that politics must not be divorced from morality. Truth and non-violence were the moral principles he introduced into the Indian nationalist movement. After 1946 or 1947, when Gandhi was no longer concerned with political power, his sterling merit as a moral individual became obvious to me. In my view, the last year of his life was truly glorious.

In an Editorial in *The Radical Humanist* of May, 1996 issue he wrote:

"The party system has virtually broken down in India. There is no party in Indian politics for which the electorate has any respect. All parties are known to be corrupt in different degrees. The Congress appears to be the most corrupt party but that is because it has been in power for the longest time. All the parties, moreover, have been very largely criminalized. Every party supports and is supported by, anti-social elements. The Congress, besides being the most corrupt, is also the most opportunistic of all political parties. It has pampered the Muslims on some occasions and this has been rightly described by some BJP leaders as its pseudo-secularism. But on other occasions the Congress has pampered Hindu communalism, which can be rightly condemned as betrayal of secularism. While the Congress has no principles, the BJP has principles which are extremely harmful to democracy and humanism. ...Besides the

Congress and the BJP, the only other party worth mentioning is the National Front-left Front, the so-called Third Force. It has also failed to evoke popular enthusiasm. It is comparative more committed to democratic principles than both the Congress and the BJP, but is not expected to set up a stable government. Although leftist in outlook, the National Front consists for the most part of politicians who are incapable of subordinating their personal ambitions to a common cause. The entire political scene in India presents a dull and gloomy picture."

After his death I came to know recently his views about decentralization of political power by encouraging "grass root activists in rural and urban areas". He wrote in the aforesaid editorial of May, 1996 issue of *The Radical Humanist*:-

"Another relevant development is the formation of gram panchayats in accordance with the 73<sup>rd</sup> Constitution Amendment which came into effect on 24.4.1993 and the formation of ward committees in all large municipalities which will follow as a result of the same amendment. If the better functioning NGOs can be persuaded to widen their field of activities and undertake the work of democratization and radicalizing the gram panchayats and ward committees so that the later become the real representatives of the people including the deprived majority, the gram panchayats and ward committees will perform the function of people's committees as conceived by M N Roy and Jayaprakash Narayan. A genuine people's Raj can then be established.

...Such democratized *graam panchayats* and ward committees can create a machinery through which constituency-wise people's committees can be set up for the election of State and Central legislatures; One representative

from each gram panchayat or ward committee included in one constituency can form a people's committee for that constituency, and such a constituency-wise people's committee can set up a person of moral integrity and devotion to social work as a candidate in a legislative election. The same committee can be a standing body for the period of the legislature and should have the power of recalling the candidate proposed by it and elected by the people. This will be an alternative to the present rickety and ramshackle party system and will be the foundation of a genuine democracy where people remain I power and will be the rulers of themselves".

Had I known these views of Shri Tarkunde about decentralization during his life time, I would have certainly taken the liberty to go to him to share my views with him on the Right to Human Development as a basic human right which can be realized by involving people in these "grass root" democratic activities.

It may not be considered to be out of place if I mention here that at a function celebrated on 60<sup>th</sup> anniversary of Human Rights Day by NHRC. The President of India said that Right to Development is a basic human right. In January, 2008 issue of *The Human Rights News Letter* issued by NHRC the following news was published:

"The National Human Rights Commission celebrated Human Rights Day on December 10, 2007, at a function in New Delhi. Speaking on the occasion, the Chief Guest, the President of India Smt. Pratibha Devisingh Patil

called for building a society fully committed to human rights. Smt. Patil asked the people to re-dedicate themselves to sensitize everyone on human rights issues and strive towards promoting a culture rooted in the values of peace, development, tolerance and universal brotherhood. Human rights had a direct relationship with human development, and the universality of human rights demand an equitable global order. In this respect, Right to Development should be kept as a basic human right for people across the globe, the President added.

In her speech Smt. Patil said that only when the potential of all human beings were fully realised, we could talk of "true human development". The Commission had been playing a pivotal role in the enforcement of fundamental rights enshrined in our Constitution. The Commission had been working relentlessly in sensitizing the States as well as other agencies on importance of human rights. It had set an example for the rest of the world in the promotion and protection not only of the civil and political rights but also economic, social and cultural rights."

With great respect to Sri Tarkunde, while departing I submit with utmost humility that I could never see eye to eye to his views on the indiscriminate entry of multinationals in India - what he said about it, I quote:

"Some dispute has arisen with regard to the extent to which foreign capital should be allowed to enter India. It is contended by many leftists that while foreign

capital should be welcomed in areas where Indian capital is not keen to enter, such as infra-structural industries including power and communications, it should not be allowed to be utilized for the production of consumer goods, since Indian capital is available in that region to support the needs of Indian consumers. It is not proper, they say, that foreign capital should be allowed to enter the country for the supply of such things as soft drinks or potato chips. The argument though superficially attractive, is really fallacious... Use of foreign capital with its better techniques of production and management will benefit Indian capital and will certainly be of advantage to Indian consumers. The query why soft drinks or potato chips should be allowed to be produced in India by the aid of foreign capital can be, fully answered by asking, why should this be prohibited? It is true that when foreign capital is invested in India, the profits arising therefrom may go abroad, but in the ordinary course they are bound to be counter-balanced by the values of Indian exports."

It is not the scope of this note that I may enter into the debate about the correctness of his views on this point. But while I pay rich tributes to him on his centenary year celebration I must express my disagreement on this point which I actually have. The entry of foreign capital to manufacture even consumer goods is destructive to the basic human right i.e. Right to Development and has adverse affects on our sovereignty. □

## Tarkunde as I Knew Him

### C V Francis, Advocate, Supreme Court of India

I had not met Justice V M Tarkunde till 1968. But I had heard of his name through an epoch making judgement in a passport case in 1965. He was

then a judge of the Bombay High Court. Issue of passport to Indian citizen was not a right, but a discretion of the Regional Passport Officer without any guidelines. An

Indian citizen was at the mercy of a bureaucrat to get a passport on the basis of which he could apply for visa for visiting a foreign country. It was Justice Tarkunde

who broke a new ground in the matter of issue of passports and streamlined the process for the first time by his ingenuity to the advantage of all.

A Bombay businessman, Choithram Verhomal Jethwani had applied to the Regional Passport Officer for issue of a passport. The application was rejected in 1963. He made an appeal to the Chief Passport Officer, New Delhi. It was also rejected without giving any reason. He filed a writ petition before the Bombay High Court under Article 226 of the Constitution of India challenging the rejection of his application for issue of a passport. The writ petition raised a question of law with great significance. Does the government of India have an absolute and unfettered discretion to grant or refuse a passport to a citizen of India? Alternatively does a citizen of India have no right to get a passport from the government of India? The petition came up for hearing before Justice Tarkunde while he was a judge of the Bombay High Court. Justice-Tarkunde ruled that the right to get a passport is a fundamental right guaranteed under the Constitution

of India and no citizen should be discriminated against in the matter of issue of passport.

It was my salad days in the legal profession. A friend of mine wanted a passport for going to Canada. He applied for a passport, but his application was rejected. He took my help to file an appeal to the Chief Passport Officer in Delhi. But the appeal was also rejected. I did not know what to do further. It was at this time I came to know the decision of Justice Tarkunde. It gave me a big fillip and I took up the matter again with Regional Passport Officer. After some initial hurdle I succeeded in my attempt. Thanks to Justice Tarkunde.

After passing out law from the Law Faculty of Delhi University in sixties, I was attached to Mr. Hans Raj Sawhney, a Senior Advocate of Delhi High Court to learn the ropes of the profession. Mr. Sawhney was engaged by another senior colleague of his in personal case before the Delhi High Court in 1968. Justice Tarkunde had then resigned his post judgeship of the Bombay High Court in 1967 a little before his retirement and moved to Delhi to resume his legal practice.

Justice Tarkunde was engaged to oppose Mr. Sawhney in the case. Mr. Y K Sabharwal (later Chief Justice of India) was also attached to Mr. Hans Raj Sawhney. Both of us were assisting Mr. Sawhney in the case. It was through this case I had some interaction with Justice Tarkunde. Thereafter I had more occasions to associate with Justice Tarkunde in many ways, and I kept up my rapport with him throughout.

In the seventies Jai Prakash Narain was jailed on his call for total revolution. Internal emergency was imposed in the country by Mrs. Indira Gandhi. Justice Tarkunde had to fight many a battle in the name of PUCL before the Delhi High Court for his release and restoring citizens' rights under democracy, but without a positive result.

Tarkunde was a rare personality with a calm and peaceful disposition. He was a person worth emulating, but it is a difficult task. I have found some of his qualities in Mr. R K P Shankardas, Senior Advocate.

My respectful *Pranaam* to him in the centenary year. □

## Tarkunde Remains a Source of Inspiration

**P P Rao, Senior Advocate, Supreme Court of India**

It is not easy to write about a legend after so many friends, admirers and colleagues have written about him. *The Legend of V M Tarkunde* edited by Mr. M A Rane, is a collection of tributes paid to Mr. Tarkunde. I can only add a few of my reminiscences about him. In 1964, I first heard of him when he passed a controversial order as a Judge of the Bombay High Court directing the Reporter of *Blitz* not to publish the evidence of a witness by name Bhaichand G. Goda. The order came to be challenged by the Reporter of the *Blitz* in the Supreme Court on the ground that it violated the fundamental right to

freedom of the Press guaranteed by Art.19(1)(a) of the Constitution. It became a sensational case. The Supreme Court sustained the order of Mr. Justice Tarkunde. A few years later, Mr. Tarkunde relinquished his high office and started practising in the Supreme Court. By then his reputation had spread that he was a radical humanist with a deep commitment to human rights and civil liberties. He commanded the respect of the Bench and the Bar alike. I first met him in connection with a case. I was engaged as a junior lawyer, by a few student leaders of the Delhi University to challenge before the Delhi High Court the

disciplinary action taken against them by the University, with instructions to brief N A Palkhivala. Palkhivala appeared at the time of admission of the Writ Petition without charging any fee. Subsequently when the appeal was to be heard by the Supreme Court as Mr. Palkhivala was not available. Mr. Tarkunde was engaged as a Senior Advocate to present their case. Mr. Tarkunde also did the case free. I was lucky to have the opportunity of assisting the two stalwarts in a single case and enrich my experience. Both of them prepared the case thoroughly and presented it neatly. Thereafter, I had several opportunities to meet

and interact with Tarkunde. I was pleasantly surprised one day when he told me that his ancestors had migrated to Maharashtra from Tadikonda in Andhra Pradesh and in due course they all became Maharashtrians and known as Tarkundes.

During the Emergency, in the infamous MISA detainees' case, ADM Jabalpur v. S.S. Shukla etc. batch, Mr. Tarkunde was representing some of the detainees pleading for their release. I was on the opposite side assisting Mr. Niren De, the Attorney-General for India in my capacity as a Junior Standing Counsel of the Central Government questioning the maintainability of the Writ Petitions at a time when their right to move the Court was suspended by the President of India. Besides Mr. Tarkunde, several eminent counsel like C K Daphatry, Shanti Bhushan, S N Kakkar, Soli J. Sorabjee appeared on the other side. It so happened that after the counsel for both sides had concluded their respective arguments and while the Attorney General was replying, I noticed a decision of a Constitution Bench dealing with Art.31 of the Constitution i.e. the right to property in which the Court took the view that after the right to property became a Fundamental Right in the Constitution, all the pre-existing rights to property ceased to have separate existence under the Constitution. The language of Arts. 21 and 31 being to some extent similar the analogy was obvious. When Mr. Niren De tried to rely on the decision, Mr. Tarkunde stood up and took serious objection to the Attorney-General relying on a new decision at the stage of his reply arguments. He was right. I could see his deep commitment to the human rights of his clients and his anxiety to protect them. The Court permitted Mr. De to place the decision and gave opportunity to Mr. Tarkunde to reply.

In the First Judges' case, Mr. Tarkunde and I were on the same side fighting for the independence of the Judiciary with great conviction. Two Writ Petitions were filed in the Delhi High Court which were subsequently transferred to the Supreme Court and disposed of by a common judgment along with S P Gupta's case. In the petition filed by J L Kalra, Advocate, I appeared. The second petition was filed by Mr. Tarkunde himself as petitioner. Mr. Soli J. Sorabjee appeared in that case instructed by Ms. Manik Tarkunde and P.H. Parekh.

Mr. Tarkunde was in the forefront of all important national causes. Quite a few of us in the Supreme Court shared his deep concern for the minorities. Soon after the demolition of Babri Masjid on December 6, 1992, there was a meeting organized by R K Garg, Senior Advocate and a political activist, in the Indian Law Institution in which, among others, M/s. Tarkunde, Shanti Bhushan and I participated. We all strongly condemned the incident. In April-May, 1993, some of us, organised a National Convention for Communal Harmony and Constitutional Objectives, Mr. Tarkunde was one of the prominent leaders of the Bar who actively participated in the deliberations. It was attended by several former Judges, Vice-Chancellors, professors, journalists, Doctors, MPs and others. Subsequently, a committee was constituted for suggesting electoral reforms in order to check communal politics. We worked together in that committee headed by Justice V R Krishna Iyer. Mr. Tarkunde made valuable contribution to the deliberation of the Committee. The recommendations made were circulated to all MPs and others.

Mr. Tarkunde served for a term during 1977-78 as President of the Supreme Court Bar Association. Fourteen years later, I was elected to

the same office. Throughout my tenure, I was conscious of the fact that the office was held with the distinction by very outstanding lawyers like M C Setalvad, C K Daphatry, M C Chagla, V M Tarkunde, A K Sen and L M Singhvi. During my term the question of impeachment of Mr. Justice V Ramaswamy arose. Mr. Tarkunde supported the Bar Association's stand that the Judge should not be allowed to sit on the Bench till he was exonerated by the Judges Inquiry Committee.

A few NGOs used to organize a function on 6<sup>th</sup> December every year i.e. the anniversary of demolition of Babri Masjid from 1993 onwards. Mr. Tarkunde used to preside. M/s. Kuldip Nayar, Justice Rajindar Sachar, and I, among others, used to attend and participate in the meeting to express our concern for the minorities, to denounce communal politics and anti-minority policies of some Governments. The Peoples' Union for Civil Liberties of which Mr. Tarkunde was a Founder Member also provided opportunities for us to meet. He made it an effective organization and a crusader for human rights.

After Mr. Tarkunde shifted to his own house in Noida, we became neighbours. We had occasions to visit each other. Sometimes, we used to travel together to attend dinners hosted by common friends in Delhi when I availed the opportunity to interact with Mr. Tarkunde on current topics. Notwithstanding heavy demands on his time, Mr. Tarkunde used to attend all public functions and meetings to which he was invited. He gave his time and thought liberally to public causes. He also used to write frequently for newspapers and periodicals. He believed in mobilizing public opinion in favour of human rights and clean governance. Even after his retirement from the legal profession, our contacts continued. He was a source of inspiration to many persons because of his selfless work, dedication to the profession and to public causes, his charitable disposition and concern for the common man. He followed the motto "service before self". He is no longer there to guide us but the values he cherished will continue to inspire one and all. □

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**A Legend Dies - Long Live the Legend  
(Justice) S M Daud, Retired, Bombay High Court**

*Bhauasaheb* Tarkunde - the prefix is that known to most in Maharashtra - was a legend in his lifetime. But what is more memorable is that he never sought the limelight. Right from the time he joined school, he kept on working to attain the top slot in every field he was engaged in. Whether it was social service, the Bar or politics, he was steadfast in the quest of knowledge. His finest hour came not as people suppose during Mrs. Gandhi's imposed Emergency, but when he fought almost single-handedly against the rising tide of fascism in the country. I am sure he regretted the unwitting help given by J P Narayan and himself to the emergence of the saffronites from the obscurity which was their rightful place in the past. Tarkunde

was a polymath. He could switch from profession to profession and from subject to subject. Nothing was beyond his desire to comprehend or expound. The most complex philosophy and the insoluble tangles in Law excited him unlike others in this field that went in search of easy cases. Whether it was as a practitioner or a judge, He had an unerring instinct to do justice in the sense which is a combination of fairness and relief to the wronged party. Many of his endeavors were pioneering and the light he lit proved of assistance to those who came late to tread a similar path. My personal acquaintance with him was of recent origin. Of course I had appeared before him as an Interviewee for the selection of Additional District and Sessions

Judges. It was natural that I remember what transpired at that momentous event of my life. More remarkable is the fact that he also should remember that because it was then that an exchange took place between me and the interviewing judges in relation to the then published sensational book by Lieutenant General Kaul. The query he made than was whether I thought Kaul was right and my reply was that Kaul had succumbed to the infamous Krishna Menon baiting in vogue at that time. His look was eloquent and it is well known that Tarkunde had a deep dislike for Communists and fellow travelers. That however did not affect his judgment so far as my selection was concerned.

When we first met in a one to one setting, his question was

whether I had gotten over the fellow travelling bug that I was bitten by in my youth. I smiled and answered that I may not have but his revulsion for the Red creed had become less virulent.

He agreed with this assessment. Later when I left him he asked me to see him again and was sorry that our interview had to be cut so soon. I later saw him twice or thrice, the most memorable occasion being the celebration of his ninetieth birthday at Mumbai. He was full of physical ailments but the mind and memory were as sharp as before. In a short speech he commented upon the prevailing situation and his concerns about the messy position of the country. Even when past ninety he was engaged in drawing up a constitution to make

democracy in India more equitable, participatory and humane. I have rarely come across a person with so much concern for his country and country folk. Chauvinism and Fundamentalism never attracted him. While willing to accept that religious faith played an important part in the lives of human beings, in particular, Indians, he hated intolerance and the institutionalized approach to whitewash the ills that ravaged our country. The separatist movements raging in the land were not necessarily exercises in treachery. They represented a revolt against sidelining the struggle of the marginalized and this was more dangerous than the quest for national solidarity. Tarkunde was of course a patriot and wanted Indians to think of

themselves as belonging to one nation. At the same time he resented the attempts to standardize beliefs and loyalties. Unity in diversity was not a mere slogan for him. It was a mantra which he firmly believed and propagated. Tarkunde, a Patriot, a Humanist, a Philosopher, A thinker, a Writer and above all a compassionate person, All this and more can be said of him. With his passing away India has suffered a serious loss and the country has lost half its conscience, the keeper of the other half being Swami Agnivesh. We can only hope that his writings and speeches will guide us to a better future and not for ever enmesh us in the current quagmire that the politicians have landed the country into. □

## **A Tribute to Justice Tarkunde**

**Prof Vinay K Kantha, President, PUCL Bihar**

Indian democracy has gained in depth and character over the sixty decades after independence. While largely it has come about on account of electoral politics and constitutional promises, there have been some extraordinary individuals who have made significant value additions. It is often said, and rightly so, that democracy is in deed a way of life, rather than merely a form of government. It demands people to think and behave under certain norms and values, even if they interpret them differently, and among others, respect for the people is an essential promise of democracy. Some politicians of different hues have pursued this objective right from the era of freedom struggle, socialists in our country being arguably the most innovative in this regard. Ever since the creation of Congress Socialist Party in 1934 as a pressure group some socialist ideologues have tried to contextualize the demands of democracy in the Indian society,

be it the context of freedom struggle, or goal of socialist revolution, or the pervasive caste principles governing society. There has been one more line of infusing democracy with greater meaning-securing for the people at the bottom what was due to them-developing in course of time into a full discourse on rights of people. Justice Tarkunde was perhaps among half a dozen most influential persons to carryout this onerous responsibility.

Even during his association with CSP and later with Radical Democratic Party of M N Roy he was probing the possibilities of deepening of democracy through party-based interventions or ideological routes, but his lifelong search and commitment seems to have led him to the contemporary discourse on human rights. His association with JP in the formation of CFD and then PUCLDR was quite natural because they were not only fellow travellers, but seekers after similar goals. Both realized that outside

the frame of elections and party system there is an urgent and persistent need of promoting democratic ethos and culture. They were men with remarkable courage, commitment and insights. A situation also built up in the country which brought several likeminded individuals together to join hands, form organizations and articulate their position even under the threat of persecution. It was moment of challenge for the nation and he was among the people who rose to the occasion and provided a lead.

If he excelled as an ideologue of radical humanism, he was equally distinguished as a jurist and human rights activist. Deep concern for the people was at the core of all his activities spreading over a long span of active and meaningful life. There were apparent turns and twists, career interruptions and ideological shifts, when read superficially, yet the substance and purpose remains well-defined and unwavering. Even as a jurist, whether as a judge or a

lawyer, there was a sense of purpose and direction with clear judicial insights that was of a piece with his engagement with social reality that prevailed in the country. He was ready to take a stand, whatever the risks, whenever confronted with a situation of perceived injustice. His opposition to emergency or courageous enquiry into atrocities on Sikhs, or unequivocal criticism of communal politics were as much political stand as they were meant to define democracy in India. That he should become the chief architect and ideologue of human rights was the culmination of his commitment to an ethos of democracy and humanist ideals.

Unfortunately I had no personal interaction with him ever, even as I have been working on the issues of human rights for over two decades, but I have come across scores of friends with fond memories and fascinating stories about his commitment, sincerity and simplicity. He was a kind of legend in his lifetime among human rights or even social activists, who would look up to him for support and guidance. The aura around him was not because he held the august office of a High

Court judge at one point of time, rather it was on account of his courage, commitment and clear thinking which helped greatly in the building of organizations like PUCL. He lent full support to the most ordinary workers in the organization based on principles for which he stood. PUCL Bihar gained greatly from the support he extended to the organizations during his numerous visits and in other ways. Not only that he personally came to Bihar to found the state unit, whenever need arose he was ready to come over, sometimes even to smaller places like Muzaffarpur or Banka. In fact when in 1986 when a team was constituted to observe Banka elections, he agreed to take up its leadership. Whether it was taking up legal cases of activists who could not afford otherwise the expensive litigation, or providing them encouragement and support in whatever they were doing for the people, he never failed his legion of admirers in Bihar.

Sometimes there are critical issues in the history of societies which need to be defined and brought into sharp focus. There are but few persons in any age who are capable of identifying

issues with clarity, coherence and force. Justice Tarkunde was surely one among them. During the times of emergency civil rights constituted the core issue and he became virtually its symbol, mascot and torchbearer. He was playing a historic role, but did not stop at an immediate agenda, rather took pains to develop it into a full-fledged ideological concern for a national organization with its own men and style of work. Its framework, norms for membership or holding posts, non-party character and gradual accretion of a high degree of credibility was in substantial measure due to Justice Tarkunde. Human rights as a spectrum of rights, however, are not merely civil liberties which had come under threat during the national emergency of 1975 and he laid the foundation of a group like PUCL to address the issues of human rights in the broader sense on an ongoing basis. Human rights issues may not be the same today, but a true tribute to this great man would be to identify and take up all types of issues with full vigour, force and commitment so that our society is more egalitarian and democratic in the times to come. □

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## V M Tarkunde - As I Knew Him

**(Justice) R B Mehrotra, (Retired), Allahabad High Court and President UP PUCL**

V M Tarkunde was stalwart in many fields of life. He will always be remembered as a judge, as a crusader of Human Rights, as a great rationalist, as a humanist, and last but not the least as a great lawyer.

The first encounter I had, with his judgement of Bombay High Court. It was guided by equity between the parties, but he took care to ensure that judgement is also equally sound. In letters patent appeal his judgement, Mr. S N Kakkar was leading me in the matter. The appellant was state of UP we pointed out many lacunas in the judgement, but the division bench dismissed the appeal, not only upholding the judgement of Mr. Tarkunde, but also lauded it. I could know how difficult it was to dislodge his judgement.

I had also an opportunity to assist him in some cases in the Supreme Court. I had an opportunity to come across a great lawyer, he was thorough all branches of law. He commanded great respect from the bench. Whatever he argued was always heard with patience and attention. In 1980s when I assisted him, he was not known for his oratory but always admired for his deep understanding of law and fairness of approach.

As a president of Delhi unit of PUCL I had occasion to meet him, off and on, for his guidance many of our problems along with Dr Y P Chhibbar along with other senior members. His advice was always of great help.

I had also the advantage of knowing him for his crusade for

Human Rights from his articles, published in a *PUCL Bulletin*. As a rationalist he was follower of M N Roy and believed that there is nothing to be described as a destiny, all incidents of life are governed by human action.

I also confess that I did not agree with him on the issue of new patent law, whereby the Indian patent act of 1970 was amended and agriculture and medicines were brought within the purview of patent law. He was in favour of the new patent law whereas many of us were opposed to it.

These are some of aspects which I remember. I know that this memoir is incomplete to reflect his great personality. Apologies. □

## In Memory of V M Tarkunde

**Shanti Swaroop Data**

In 1995, when, guided by the younger son, Smt. Indira Gandhi had imposed Emergency in the country which had maligned the dedication to the country of the Nehru family, Jaya Prakash Narayanan faced a situation in which the framers of the Constitution, who had given fundamental rights to the citizen, realised that any person in power under the spell of dictatorial tendencies could take away those rights.

Observing these developments Justice V M Tarkunde, who had just resigned from Mumbai High Court, was included by Jaya

Prakash Narayan in a sub committee to protect the rights of the people. Swami Agnivesh was also in this committee along with Shri Tarkunde.

The dedication and the sense of responsibility with which Tarkunde discharged this responsibility is an example for the youth of the country. I had the occasion to invite him for inaugurating the branches of the PUCL at three places, Jaipur, Alwar, and Rewari. He reached on time and inspired the youth to fight for their rights. Through out his life the torch that J P had put in his hands was kept aloft by him. His

humility was an example for others. He always tried to understand the point of the other persons and never lost his temper in discussions. I had a deep personal relationship with him.

If ten to twenty such persons come together in India, many malpractices of the society can be eliminated.

He was not a Gandhian. He always considered himself to be a follower of M N Roy and dedicated his life to the people like M N Roy. The best thing that we can do in his memory is that we may try to work for the rights of the people. □

## My Cherished Memories of *Bhau*

**Tahir A Poonawalla**

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

It was a long journey for me to find such a good friend like Justice V M Tarkunde, *Bhau* as

affectionately known to his family members, friends and associates.

*Bhau* had a flat in the model colony, a stone throw away from my bungalow. Tarkunde was a

well-known name in Maharashtra, a household name in Pune, especially to its newspaper reading public. In the hay days of the Independence struggle, SM Joshi, Nana Gore, Karandikar, and many other socialists and social reformers along with Tarkunde were looked upon as an inseparable group, inspiring many young people to join the Independence movement.

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

Late S P Sathe, the Principal of ILS College and also President of its Society, Mr. R P Nene an intellectual and activist and myself, with *Bhau*, formed a circle, meeting either at Dr Sathe's residence or at my house or Justice Tarkunde's flat whenever he was in Pune and free to spend time with us.

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

Like many other times we found ourselves at Satara, the same hotel where we had been accommodated for a seminar. In the evening we were having a small session when Dr Lagu and Justice

Tarkunde had an animated discussion, reminiscing the past, when *Bhau* became very emotional and took time to unwind himself.

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

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

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

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

I salute his memories. (From PUCL Bulletin, March 2007) □

aims and objects of the PUCL. The PUCL does not issue any identity cards to its members as they are not supposed to take initiative independently. – Y P Chhibbar, General Secretary □

## Organisational Queries

We receive from time to time queries/requests from new members regarding the PUCL identity card and also regarding the privileges of the Life members and Patron members as compared to Annual members. The three types of membership, i.e., Yearly, Life, and Patron, do not represent a hierarchy of membership. All members are equal. Life membership and Patron membership simply afford an opportunity to those who desire to contribute some extra money to the PUCL to strengthen its financial position. No membership carries any privilege. All members shoulder the burden of fulfilling the